REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MERIDIEN BUSINESS LEADER, INC., *Petitioner,*	**CTA Case No. 9316** Members:
-versus-	**DEL ROSARIO**, *PJ, Chairperson,* **CASTAÑEDA, JR.**,[1] *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 07 2021 2:32 pm

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RESOLUTION

MANAHAN, *J.:*

This resolves the following motions:

1. Petitioner's *Motion for Reconsideration [Re: Amended Decision dated 23 February 2021]*, filed on March 19, 2021, with respondent's *Comment/Opposition (Re: Petitioner's Motion for Reconsideration)* filed on June 11, 2021; and,

2. Respondent's *Motion for Partial Reconsideration (Re: Amended Decision dated 23 February 21)* posted on March 19, 2021, and received by the Court on May 19, 2021, with petitioner's *Comment [Re: Partial Motion for Reconsideration dated 19 March 2021]* posted on April 5, 2021 and received by the Court on May 21, 2021.

Both parties assail this Court's Amended Decision in the above captioned case promulgated on February 23, 2021. The dispositive portion of which reads as follows:

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[1] Assigned as special member.

"**WHEREFORE**, in view of the foregoing, the Motion for Partial Reconsideration filed by respondent is **PARTIALLY GRANTED**.

Accordingly, the Court's Decision dated July 29, 2020, is hereby amended to read as follows:

"**WHEREFORE**, premises considered the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for deficiency income tax, EWT, VAT, WC and FBT for TY 2010 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE HUNDRED SEVENTY-THREE MILLION EIGHT HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FORTY-SIX PESOS AND THIRTY CENTAVOS (P173,888,746.30)**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the Tax Code, and 20% deficiency and delinquency interests imposed under Section 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as follows:

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In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, based on the following amounts:

Income tax	₱18,262,936.80
Expanded Withholding Tax	1,989,798.56
Value Added Tax	73,970,555.48
Withholding Tax on Compensation	10,997,137.97
Fringe Benefit Tax	1,359,501.12

SO ORDERED."

The Court will now discuss the parties' respective motions.

Petitioner's Motion for Reconsideration

Petitioner argues that the assessments are void for failing to state a fixed and definite tax liability. Petitioner argues that that Formal Assessment Notice (FAN) and Formal Letter of Demand (FLD) employed language which is identical to that used in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[2] (*Fitness By Design case*), thus, like in the said case, the tax liability remained indefinite and still subject to modification, and therefore void.

Petitioner also argues that the Final Decision deprived it of its right to due process when it failed to state the law and the facts on which the Final Decision was based.

Assuming that the FLD/Final Decision are valid, petitioner manifests that it made payments for the following basic taxes and interests:

Tax	Basic Tax	Interest	Total Payment
EWT	P 938,727.00	P 971,132.00	P 1,909,860.00
VAT	7,146,940.00	--	7,146,940.00
WTC	674,437.00	214,331.00	888,768.00

Petitioner argues that the Court erred in upholding various items of assessment, i.e. unrecorded sales from prepaid cards, reimbursable charges, discrepancy on income subject to value-added tax (VAT) per ITR *versus* per VAT return, and deficiency WTC, pointing to the testimonies of its witnesses to bolster its arguments.

Furthermore, petitioner argues that with the payment of its deficiency expanded withholding tax (EWT), inclusive of interest, the related disallowed expense should be allowed to be claimed for the purpose of computing its income tax.

The motion has partial merit.

The FLD/FDDA contained a definite due date.

It is reiterated that the FLD and Final Decision on Disputed Assessment (FDDA) both contained due dates, June 30, 2014 and October 31, 2015, respectively. Thus, there is a definite demand to pay on a specific due date. This is unlike the factual circumstances of *Commissioner of Internal Revenue v.*

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[2] G.R. No. 215957, November 9, 2016.

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Fitness by Design, Inc.,[3] where the assessments did not contain a specific due date, thereby negating the demand for payment.

With those due dates contained in the FLD, FDDA and assessment notices, together with the computation of tax liability up to the said due dates, then there is a definite amount of tax liability.

The statement contained in the FLD and the FDDA merely means that the interest will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. The basic deficiency tax liability remains the same. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

The sustained assessment items already considered the testimonies of petitioner's witnesses

As to the specific items of assessment, the assailed Amended Decision has already considered the testimonies pointed out by petitioner and extensively discussed the reasoning for sustaining the assessments.

While the said testimonies may have been uncontroverted, the Court made findings based on the testimonies and on available evidence and found that the assessments should be sustained. The Court is not inclined to repeat the same discussions in this resolution.

Petitioner's payment of deficiency taxes shall be considered in computing its remaining liability

Petitioner manifested that it made the following payments:

Tax Type	Payment Date	Amount	Reference documents (attached to Pet's MR)

3 G.R. No. 215957, November 9, 2016.

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EWT	March 16, 2016	Basic	₱938,727.10	
		Interest	971,132.48	
		Total	*₱1,909,859.58*	Annexes A-2 to A-4
VAT	December 29, 2016	Basic	₱7,146,940.44	Annexes B-2 to B-4
WC	March 16, 2016	Basic	₱207,178.66	
		Interest	214,330.57	
		Total	*₱421,509.23*	Annexes C-1 to C-3
	December 29, 2016	Basic	₱467,258.39	Annexes B-6, B-8, B-10

Based on the records, the documents showing these payments were not formally offered and admitted, but were merely attached to petitioner's *Motion.*

In *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*,[4] the Supreme Court considered the returns attached to a motion for reconsideration in deciding a claim for refund, reasoning that:

> True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. xxx
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> In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.
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> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on ground of strict technicality, the Return submitted before the CTA and even before this Court. (*underscoring supplied*)

Similar to the aforequoted case, petitioner herein submitted proof of its payments of deficiency taxes with its *Motion for Reconsideration.* It would be unjust not to consider

[4] G.R. No. 122480, April 12, 2000.

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the said payments in the computation of petitioner's remaining deficiency liability.

However, the Court does not agree with petitioner's averment that the disallowed expense originally amounting to Php46,428,677.25 and reduced to Php44,991,463.91 in the assailed Amended Decision be allowed for computing its deficiency tax, in view of the payment of the related deficiency EWT, inclusive of interest, in the total amount of Php1,909,859.88.

Section 2.58.5 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 14-2002, reads:

> Sec. 2.58.5. Requirements for Deductibility - Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
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> A deduction will also be allowed in the following cases where no withholding of tax was made:
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> xxx xxx xxx
>
> (C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation <u>or</u> reinvestigation/reconsideration**. *(Emphasis supplied)*

It should be noted that the partial payment of the EWT was made only on March 16, 2016 - long after the issuance of the FLD dated May 19, 2014, received by petitioner on May 21, 2014,[5] and the FDDA dated September 18, 2015, received by petitioner on September 23, 2015.[6] Evidently, the <u>payment was **beyond** "the time of the audit/investigation or reinvestigation/reconsideration"</u>. Thus, the related expenses shall still be disallowed for income tax purposes.

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[5] Exhibits "P-2" and "R-11".

[6] Exhibit "R-14".

Consequently, the findings on the deficiency income tax shall not be disturbed.

Thus, petitioner's deficiency liability shall be recomputed incorporating petitioner's various payments.

Respondent's Motion for Partial Reconsideration

Respondent argues that the Court erred in ruling on matters that were never substantiated in the administrative level, stating that several items of assessments were reiterated from the Preliminary Assessment Notice (PAN) to the FLD/FDDA for failure of petitioner to substantiate its arguments. Based on this, respondent argues that the Court should confine itself to the issues and documents raised in petitioner's protests to respondent's assessment.

On the items of assessments, respondent reiterates that that the assessments are correct based on the findings after audit of petitioner's undeclared sales, undeclared purchases, and undeclared other operating income. Respondent likewise asserts that petitioner is also liable for deficiency VAT on the foregoing findings of undeclared items.

Respondent also reiterates that verification of petitioner's Summary List of Purchases (SLP) versus petitioner's income payments per Summary List of Sales (SLS) showed a discrepancy, which petitioner failed to refute; that petitioner did not subject to withholding tax some of its expenses; and, that the disallowance of such expenses should be upheld.

Finally, respondent reiterates that petitioner violated some of the invoicing requirements and that petitioner is liable for compromise penalty and the 50% surcharge.

The *Motion* is without merit.

Respondent's arguments are mere rehash of the grounds for the assessments, which have been considered and discussed in the assailed Amended Decision. There is no compelling reason nor substantive argument that would merit a modification or reversal of the Amended Decision in favor of respondent.

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WHEREFORE, petitioner's *Motion for Reconsideration (Re: Amended Decision dated 23 February 2021)* is **PARTIALLY GRANTED** as to the recognition of its payments made. On the other hand, respondent's *Motion for Partial Reconsideration (Re: Amended Decision dated 23 February 2021)* is **DENIED** for lack of merit.

Petitioner's deficiency tax liability is recomputed to take into consideration the payments it manifested in its *Motion for Reconsideration.*

Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE HUNDRED FIFTY-NINE MILLION SIX HUNDRED FORTY-SIX THOUSAND FIVE HUNDRED SEVENTY-TWO PESOS (₱159,646,572.00),** inclusive of the 25% surcharge imposed under Section 248(A)(3) of the Tax Code, and 20% deficiency and delinquency interests imposed under Section 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as follows:

	Deficiency EWT	Less: Payment on March 16, 2016	Remaining Balance
Basic Deficiency EWT	₱ 900,361.34	₱ 938,727.10	(₱ 38,365.76)
Surcharge (25%)	225,090.34		225,090.34
Deficiency Interest (20%) from Jan. 14, 2011 to Oct. 31, 2015 *[₱900,361.34 x 20% x 1,752/365 days]*	864,346.89	971,132.48	(106,785.59)
Total Amount Due, October 31, 2015	**₱ 1,989,798.57**		
Deficiency Interest (20%) from November 1, 2015 until payment on March 16, 2016 *[₱900,361.34 x 20% x 137 days/365 days]*	67,588.77		67,588.77
Delinquency Interest (20%) from November 1, 2015 until payment on March 16, 2016 *[₱1,989,798.57 x 20% x 137 days/365 days]*	149,371.18		149,371.18
Total Amount Due, March 16, 2016	**₱2,206,758.52**	**₱1,909,859.58**	**₱296,898.94**
Delinquency Interest (20%) from March 17, 2016 until December 31, 2017 *[(₱1,989,798.57-₱1,909,859.58) x 20% x 655 days/365 days]*			28,690.43
Total Deficiency EWT Due as of December 31, 2017			**₱325,589.37**

	Deficiency VAT	Less: Payment on December 29, 2016	Remaining Balance
Basic Deficiency VAT	₱ 33,570,721.48	₱ 7,146,940.44	₱ 26,423,781.04
Surcharge (25%)	8,392,680.37		8,392,680.37
Deficiency Interest (20%) from Jan. 26, 2011 to Oct. 31, 2015 *[₱33,570,721.48 x 20% x 1,740/365 days]*	32,007,153.63		32,007,153.63
Total Amount Due, October 31, 2015	**₱73,970,555.48**		
Deficiency Interest (20%) from November 1, 2015 until payment on December 29, 2016 *[₱33,570,721.48 x 20% x 425 days/365 days]*	7,817,839.25		7,817,839.25
Delinquency Interest (20%) from November 1, 2015 until payment on	17,226,019.77		17,226,019.77

December 29, 2016 *[₱73,970,555.48 x 20% x 425 days/365 days]*			
Total Amount Due, December 29, 2016	**₱99,014,414.50**	**₱7,146,940.44**	**₱ 91,867,474.06**
Deficiency Interest (20%) from December 30, 2016 until December 31, 2017 *[₱26,423,781.04 x 20% x 367 days/365 days]*			5,313,713.78
Delinquency Interest (20%) from December 30, 2016 until December 31, 2017 *[(₱73,970,555.48-₱7,146,940.44) x 20% x 367 days/365 days]*			13,437,954.37
Total Deficiency VAT Due as of December 31, 2017			**₱110,619,142.21**

	Deficiency WC	**Less: Payment on March 16, 2016**	**Amount Due, March 17, 2016**	**Less: Payment on December 29, 2016**	**Remaining Balance**
Basic Deficiency WC	₱ 4,976,080.53	₱ 207,178.66	₱ 4,768,901.87	₱ 467,258.39	₱ 4,301,643.48
Surcharge (25%)	1,244,020.13		1,244,020.13		1,244,020.13
Deficiency Interest (20%) from Jan. 14, 2011 to Oct. 31, 2015 *[₱4,976,080.53 x 20% x 1,752/365 days]*	4,777,037.31	214,330.57	4,562,706.74		4,562,706.74
Total Amount Due, October 31, 2015	**₱10,997,137.97**				
Deficiency Interest (20%) from November 1, 2015 until payment on March 16, 2016 *[₱4,976,080.53 x 20% x 137 days/365 days]*	373,546.87		373,546.87		373,546.87
Delinquency Interest (20%) from November 1, 2015 until payment on March 16, 2016 *[₱10,997,137.97 x 20% x 137 days/365 days]*	825,538.58		825,538.58		825,538.58
Total Amount Due, March 16, 2016	**₱12,196,223.42**	**₱421,509.23**	**₱11,774,714.19**		
Deficiency Interest (20%) from March 17, 2016 until payment on December 29, 2016 *[₱4,768,901.87 x 20% x 288 days/365 days]*			752,571.91		752,571.91
Delinquency Interest (20%) from March 17, 2016 until payment on December 29, 2016 *[(₱10,997,137.97-₱421,509.23) x 20% x 288 days/365 days]*			1,668,921.14		1,668,921.14
Total Amount Due, December 29, 2016			**₱14,196,207.24**	**₱467,258.39**	**₱13,728,948.85**
Deficiency Interest (20%) from December 30, 2016 until December 31, 2017 *[₱4,301,643.48 x 20% x 367 days/365 days]*					865,042.83
Delinquency Interest (20%) from December 30, 2016 until December 31, 2017 *[(₱10,997,137.97-₱421,509.23-₱467,258.39) x 20% x 367 days/365 days]*					2,032,751.74
Total Deficiency WC Due as of December 31, 2017					**₱16,626,743.42**

	Income Tax	**FBT**	**Total**
Basic Tax	₱ 8,456,672.29	₱ 615,464.07	₱ 9,072,136.36
Add: 25% Surcharge	2,114,168.07	153,866.02	2,268,034.09
20% Deficiency Interest up to Oct. 31, 2015			
IT: From Apr. 16, 2011 to Oct. 31, 2015 *[₱8,456,672.29 X 20% X 1660/365 days]*	7,692,096.44		7,692,096.44

FBT: From Jan. 16, 2011 to Oct. 31, 2015 *[₱615,464.07 x 20% x 1750/365 days]*		590,171.03	590,171.03
Total Amount Due, Oct. 31, 2015	**₱18,262,936.80**	**₱1,359,501.12**	**₱19,622,437.92**
Add: 20% Deficiency Interest from Nov. 1, 2015 to Dec. 31, 2017			
IT: *[₱8,456,672.29 x 20% x 792/365 days]*	3,669,964.08		3,669,964.08
FBT: *[₱615,464.07 x 20% x 792/365 days]*		267,094.54	267,094.54
20% Delinquency Interest from Nov. 1, 2015 to Dec. 31, 2017			
IT: *[₱18,262,936.80 x 20% x 792/365 days]*	7,925,614.22		7,925,614.22
FBT: *[₱1,359,501.12 x 20% x 792/365 days]*		589,986.24	589,986.24
Total Amount Still Due as of Dec. 31, 2017	**₱29,858,515.10**	**₱2,216,581.90**	**₱32,075,097.00**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, based on the following amounts:

Income Tax	₱18,262,936.80
Expanded Withholding Tax *(₱1,989,798.57 - ₱1,909,859.58)*	79,938.99
Value Added Tax *(₱73,970,555.48 - ₱7,146,940.44)*	66,823,615.04
Withholding Tax on Compensation *(₱10,997,137.97 - ₱421,509.23 less ₱467,258.39)*	10,108,370.35
Fringe Benefit Tax	1,359,501.12

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice