REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ADELANTADO CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10406

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 15 2024
3:57 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that the Court:

1. Declare as void (a) *Warrant of Distraint and/or Levy* (WDL) dated October 9, 2020 issued by respondent against petitioner, and (b) assessments upon which the said warrant is based, involving the collection against petitioner of alleged deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax, plus penalty and interest, for taxable year 2015, in the total amount of ₱14,527,753.44; and

2. Order respondent to withdraw and cancel the WDL and the assessments upon which the said warrant is based.[1]

[1] Statement of the Case, Pre-Trial Order dated June 22, 2022, Docket – Vol. 3, pp. 1181 to 1182.

THE PARTIES

Petitioner Adelantado Corporation is a duly organized and existing under Philippine laws.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 008-537-278-00000, with address at 6th Floor Sol Building, 112 Amorsolo St., Legaspi Village, San Lorenzo, City of Makati, NCR, 4th District, Philippines 1223.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority and power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof by the BIR.[4]

THE FACTS OF THE CASE

On October 19, 2016, respondent issued the *Letter of Authority* (LOA) No. eLA201200033073,[5] authorizing Revenue Officer (RO) Melissa Baes and Group Supervisor (GS) Rebecca Pandapatan of Revenue District Office (RDO) No. 47 – East Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2015 to December 31, 2015.

On February 22, 2018, respondent, through Regional Director Glen A. Geraldino, issued the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies*,[6] informing petitioner that the BIR found due from petitioner deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST), plus interests, surcharge, and compromise penalty, in the total amount of ₱15,066,881.46, for the taxable year 2015.

On March 14, 2018, petitioner filed its letter-response dated March 12, 2018,[7] refuting the findings of the BIR, and requesting reconsideration and reinvestigation of the deficiency tax assessments, as well as the cancellation of the said PAN, for lack of factual basis.

On April 2, 2018, petitioner received the *Formal Assessment Notice*, with attached *Assessment Notices* and *Details of Discrepancies* (FAN), dated March 14,

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[2] Exhibits "P-1", and "P-2", Docket – Vol. II, pp. 650 to 668.
[3] Exhibit "P-3", Docket – Vol. II, p. 669.
[4] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 3, p. 1145.
[5] Exhibits "P-4" and "P-4-A", Docket – Vol. II, p. 670; and Exhibit "R-1", BIR Records, p. 3. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[6] Exhibits "P-5", "P-5-A", "P-5-B", "P-5-C", Docket – Vol. II, pp. 671 to 676; and Exhibits "R-8", "R-8-1", "R-8-2", "R-8-3", and "R-8-4", BIR Records, pp. 435 to 440. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[7] Exhibits "P-6" and "P-6-A", Docket – Vol. II, pp. 677 to 679.

2018, signed by Regional Director Geraldino,[8] assessing petitioner of deficiency income tax, VAT, EWT, and DST, plus interests, surcharge, and compromise penalty, in the aggregate amount of ₱13,276,132.77, for the taxable year 2015.

On April 30, 2018, petitioner filed its letter-protest dated March 14, 2018 to the FAN,[9] reiterating its arguments in its letter-response dated March 12, 2018, and requesting reconsideration and reinvestigation of the deficiency tax assessments, as well as the cancellation of the said FAN with reference to LOA No. eLA201200033073, for lack of factual basis.

On September 9, 2019, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated September 5, 2019 signed by Regional Director Maridur V. Rosario,[10] for deficiency internal revenue taxes, including interests, surcharge, and compromise penalty, for taxable year 2015, in the total amount of ₱14,527,753.44.

Petitioner then filed its *Request for Reconsideration on the Final Decision on Disputed Assessment for Taxable Year 2015* before the respondent on October 7, 2019.[11]

On October 21, 2020, petitioner received the WDL No. RR8A-WDL-2020-10-235 dated October 9, 2020, signed by Assistant Regional Director Greg M. Buhain,[12] for the deficiency internal revenue taxes, for taxable year 2015, in the total amount of ₱14,527,753.44.

The present *Petition for Review* was filed on November 19, 2020.[13]

Petitioner filed an *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond* on December 17, 2020.[14] It also respectively filed its *Compliance (with attached Original Warrant of Distraint and Levy dated October 9, 2020)* and *Manifestation* on December 28, 2020[15] and January 14, 2021.[16] Respondent posted his *Opposition (To Petitioner's Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with the Payment*

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[8] Exhibits "P-7", "P-7-A", "P-7-B", "P-7-C", "P-7-D", "P-7-E" "P-7-F", "P-7-G", "P-7-H", Docket – Vol. II, pp. 680 to 690; and Exhibits "R-10", "R-11", "R-11-1", "R-11-2", "R-11-4", and "R-11-4", BIR Records, pp. 455 to 465. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[9] Exhibits "P-8" and "P-8-A", Docket – Vol. II, pp. 691 to 698.
[10] Exhibits "P-9", "P-9-A", "P-9-B", Docket – Vol. II, pp. 699 to 702; and Exhibit "R-13", BIR Records, pp. 509 to 512. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[11] Exhibits "P-10" and "P-10-A", Docket – Vol. II, pp. 703 to 716.
[12] Exhibits "P-11", "P-11-A", "P-11-B", and "P-11-C", Docket – Vol. II, p. 717; and Exhibit "R-16", and "R-16-1", BIR Records, p. C-4. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[13] Docket – Vol. I, pp. 7 to 49.
[14] Docket – Vol. I, pp. 454 to 470.
[15] Docket – Vol. II, pp. 566 to 571. In compliance with the Resolutions dated December 3, 2020 and January 7, 2021, Docket – Vol. I, pp. 453 and Docket – Vol. II, p. 573, respectively.
[16] Docket – Vol. II, pp. 574 to 577. Noted in the Resolution dated January 25, 2021, Docket – Vol. II, p. 589.

of Bond) on March 1, 2021.[17] On March 15, 2021, petitioner filed its *Motion to Admit Reply (To Respondent's Comment/Opposition dated March 1, 2021).*[18]

In the meantime, in relation to *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond*, petitioner filed its *Formal Offer of Evidence* on March 11, 2021,[19] to which respondent posted his *Comment/Opposition (To Petitioner's Formal Offer of Evidence)* on March 22, 2021.[20]

On May 24, 2021, petitioner posted his *Answer*,[21] raising certain special and affirmative defenses, to wit: (1) the FDDA dated September 5, 2019 is final, executory and demandable, hence, the execution of summary collection remedies is valid; (2) the assessments against petitioner are valid; (3) the LOA was properly served to petitioner, and hence, its right to due process was not violated; (4) the FAN dated March 14, 2018 was validly issued; (5) the WDL and *Warrant of Garnishment* are validly issued; (6) the ten (10) year period to assess applies to this case; and (7) the assessments contain the factual and legal bases of the assessment.

Petitioner then filed its *Reply (To Respondent's Answer dated May 24, 2021)* on June 11, 2021.[22]

In relation to petitioner's *Formal Offer of Evidence* relative to its *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond*, the Court issued the Resolution dated September 6, 2021[23] admitting all of petitioner's exhibits. Subsequently, in the Resolution dated October 13, 2021,[24] the Court granted petitioner's *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond*, and accordingly lifted and declared null and void the *Warrant of Garnishment No. RR8A-WG-2020-10-167* served upon petitioner's Security Bank deposits and such other summary collection remedies employed and issued by respondent seeking to collect an alleged deficiency taxes in the amount of ₱14,527,753.44.

Thereafter, the Pre-Trial Conference was initially set on September 7, 2021,[25] and reset to, and held on, April 7, 2022. Prior thereto, petitioner filed its *Pre-Trial Brief* on December 3, 2021,[26] while *Respondent's Pre-Trial Brief* was filed on April 5, 2022.[27]

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[17] Docket – Vol. II, pp. 602 to 613.
[18] Docket – Vol. II, pp. 899 to 920. Granted and Admitted in the Resolution dated June 7, 2021, Docket – Vol. II, p. 1017.
[19] Docket – Vol. II, pp. 638 to 648.
[20] Docket – Vol. II, pp. 925 to 927.
[21] Docket – Vol. II, pp. 929 to 945.
[22] Docket – Vol. II, pp. 1020 to 1048.
[23] Docket – Vol. 3, pp. 1052 to 1053.
[24] Docket – Vol. 3, pp. 1055 to 1071.
[25] Notice of Pre-Trial Conference dated June 11, 2021, Docket – Vol. 3, pp. 1018 to 1019.
[26] Docket – Vol. 3, pp. 1073 to 1093.
[27] Docket – Vol. 3, pp. 1129 to 1134.

In the meantime, on December 10, 2021, respondent transmitted the *BIR Records* for this case, consisting of pages 1 to 541 (Assessment Stage) and C-1 to C-274 (Collection Stage).[28]

On December 17, 2021, respondent posted his *Motion for Reconsideration*, praying for the setting aside of the Resolution dated October 13, 2021,[29] to which petitioner filed its *Comment (To Respondent's Motion for Reconsideration dated December 17, 2021)* on March 16, 2022.[30] The Court, however, denied respondent's *Motion for Reconsideration* in the Resolution dated October 27, 2022.[31]

On May 10, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[32] which was admitted and approved by the Court in the Resolution dated May 25, 2022.[33] The Pre-Trial Order dated June 22, 2022 was then issued.[34]

Trial then ensued, wherein both parties presented and offered their respective documentary and testimonial evidence.

Petitioner offered the lone testimony of its custodian of corporate and tax records, Ms. Clyde A. Saylago.[35]

On December 22, 2022, petitioner filed its *Formal Offer of Evidence*,[36] to which respondent posted his *Comment/Opposition (To Petitioner's Formal Offer of Evidence dated 22 December 2022)* on January 20, 2023.[37] In the Resolution dated March 7, 2023,[38] the Court admitted all the exhibits, *except* Exhibit "P-22-T-2", for failure to present the original for comparison, and since that the contents and veracity thereof are at issue.

For his part, respondent presented the testimonies of Group Supervisor Melissa Carla R. Baes;[39] and RO Rosauro Alex B. Basco.[40]

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[28] *Submission of BIR Records* dated December 10, 2021, Docket – Vol. 3, p. 1097.
[29] Docket – Vol. 3, pp. 1099 to 1107.
[30] Docket – Vol. 3, pp. 1112 to 1125.
[31] Docket – Vol. 3, pp. 1194 to 1200.
[32] Docket – Vol. 3, pp. 1145 to 1160.
[33] Docket – Vol. 3, pp. 1168 to 1169.
[34] Docket – Vol. 3, pp. 1181 to 1191.
[35] Exhibit "P-26", Docket – Vol. I, pp. 54 to 88; Exhibit "P-32", Docket – Vol. II, pp. 517 to 526; Minutes of hearing held on, and Order dated, February 17, 2021, and February 24, 2021, Docket – Vol. II, pp. 592 to 596, and 597 to 599, respectively; Exhibit "P-43", Docket – Vol. 3, pp. 1212 to 1243; Minutes of hearing held on, and Order dated, November 8, 2022, Docket – Vol. 3, pp, 1527, and 1529 to 1530, respectively.
[36] Docket – Vol. 4, pp. 1532 to 1564.
[37] Docket – Vol. V, pp. 2064 to 2066.
[38] Docket – Vol. V, pp. 2074 to 2075.
[39] Exhibit "R-19", Docket – Vol. II, pp. 949 to 965; and Minutes of the hearing held on, and Order dated, March 9, 2023, Docket – Vol. V, pp. 2076, 2082 to 2083.
[40] Exhibit "R-20", Docket – Vol. II, pp. 969 to 973; and Minutes of the hearing held on, and Order dated, March 9, 2023, Docket – Vol. V, pp. 2076, 2082 to 2083.

Respondent filed his *Formal Offer of Evidence* on March 24, 2023,[41] to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated March 24, 2023)* on April 11, 2023.[42] Petitioner filed its *Manifestation (with Motion for Remarking of Petitioner's Exhibits)* on April 12, 2023.[43] In the Resolution dated June 23, 2023,[44] the Court admitted all of respondent's exhibits; granted the said *Manifestation (with Motion)*; and ordered the transmittal forms marked as Exhibits "P-33", "P-34" and "P-35" be remarked as "P-44", "P-45" and "P-46", respectively.

Petitioner filed its *Memorandum* on August 3, 2023.[45]

On August 4, 2023, respondent posted its *Motion to Admit Attached Memorandum For Respondent*,[46] which was granted by the Court in the Minute Resolution dated August 23, 2023, and the attached *Memorandum for Respondent*[47] was accordingly admitted.

The present case was considered submitted for decision on August 23, 2023.

THE STIPULATED ISSUE

The parties agreed on the following issue for resolution of this Court, to wit:

> "Whether or Not Petitioner is liable for the alleged deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax, plus penalty and interest for the taxable year 2015 in the total amount of **Fourteen Million Five Hundred Twenty-Seven Thousand Seven Hundred Fifty-Three and 44/100 Pesos (₱14,527,753.44)**."[48]

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction to take cognizance of this *Petition*; that the assessments are void for respondent's failure to comply with its General Audit Procedures and Documentation (GAPD); that the assessments

[41] Docket – Vol. V, pp. 2084 to 2091.
[42] Docket – Vol. V, pp. 2093 to 2096.
[43] Docket – Vol. V, pp. 2098 to 2101.
[44] Docket – Vol. V, pp. 2105 to 2106.
[45] Docket – Vol. V, pp. 2107 to 2171.
[46] Docket – Vol. V, pp. 2245 to 2247.
[47] Docket – Vol. V, pp. 2248 to 2267.
[48] Statement of the Issue, JSFI, Docket – Vol. 3, p. 1146.

are void for respondent's failure to properly serve the LOA and the PAN; that the assessment is void for lack of valid authority of the revenue officials to assess petitioner; that the assessments are void for respondent's violation of petitioner's right to due process; that the assessments are void for respondent's failure to state the facts and law on which the assessment is made; that the WDL dated October 9, 2020 issued by respondent is void; that respondent's right to assess petitioner for EWT for the months of January and February for taxable year 2015 had already prescribed; and that petitioner is not liable for the alleged deficiency income tax, VAT, EWT and DST, plus penalty and interest, for taxable year 2015 in the total amount of ₱14,527,753.44.

Respondent's counter-arguments:

Respondent contends that the execution of summary collection remedies is valid; that the assessments against petitioner are valid; that the LOA was properly served to petitioner, and hence, its right to due process was not violated; that the FAN dated March 14, 2018 was validly issued; that the ten (10) year period to assess applies to this case; and that the assessments contain the factual and legal bases of the assessment.

THE COURT'S RULING

Jurisdiction of the Court

Sections 7(a)(1) of Republic Act (RA) No. 1125[49], as amended by RA No. 9282[50], provide as follows, to wit:

> "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 <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**"
> (*Emphases and underscoring supplied*)

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[49] AN ACT CREATING THE COURT OF TAX APPEALS.

[50] 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.

Based on the foregoing provision, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondents on 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 respondent.[51]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*Philippine Journalists* case),[52] the Supreme Court held as follows, to wit:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on 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 Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the <u>warrant of distraint and levy</u> issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis and underscoring added)*

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 No. RR8A-WDL-2020-10-235 dated October 9, 2020[53] issued by BIR (the chief of which is the respondent)[54], the same then can be taken cognizance of 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 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.[55]

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

[51] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[52] G.R. 162852, December 16, 2004.
[53] Exhibits "P-11", "P-11-A", "P-11-B", and "P-11-C", Docket – Vol. II, p. 717; and Exhibit "R-16", and "R-16-1", BIR Records, p. C-4. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[54] Section 3, National Internal Revenue Code of 1997.
[55] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

> law for action as referred to in Section 7(a)(2) herein." *(Emphases added)*

Thus, petitioner had thirty (30) days from receipt of the WDL RR8A-WDL-2020-10-235 dated October 9, 2020 on October 21, 2020 or until November 20, 2020, within which to file its appeal before this Court. Correspondingly, the filing of the present *Petition for Review* on November 19, 2020[56] was timely made.

There was no violation of due process

a. RO Baes was authorized to examine petitioner's books of accounts

A revenue officer must be armed with an authority before he could conduct an examination of a taxpayer's accounts. This is specifically stated in Section 13 of the NIRC of 1997, as amended.

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

Records show that on October 19, 2016, the LOA SN: eLA201200033073 was issued by Regional Director Jonas DP. Amora authorizing Revenue Officer (RO) Melissa Baes and Group Supervisor (GS) Rebecca Pandapatan of RDO No. 047- East Makati to examine petitioner's books of accounts.

In the 1) Memorandum for the Regional Director dated June 28, 2017, RO Baes and GS Pandapatan recommended that the audit report pertaining to 2015 internal revenue tax deficiencies of petitioner be approved and that the assessment notice be issued;[57] 2) Memorandum for the Regional Director dated January 19, 2018, RO Baes and GS Pandapatan recommended that the entire case docket of petitioner be returned to the Assessment Division for issuance of assessment notice;[58] and 3) Memorandum for the Regional Director dated March 22, 2019, recommended that the case be forwarded to the Assessment Division,

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[56] Docket – Vol. I, pp. 7 to 49.
[57] BIR Records, pp. 366-370.
[58] Ibid., p. 407.

reiterating and adjusting the original assessment issued to petitioner, for review and evaluation and that a Final Decision on Disputed Assessment (FDDA) be issued to petitioner.[59] From the foregoing, it appears that the assessment notices were issued pursuant to the audit report of RO Baes and GS Pandapatan.

We find specious petitioner's claim that RO Ricaredo O. Balderas was not authorized to conduct audit on petitioner's accounts. Records show that in the alleged Exhibits "P-33", "P-34" and "P-35" which were remarked as Exhibits "P-44", "P-45" and "P-46" respectively, wherein the name of GS Ricaredo O. Balderas appears, the said exhibits refer merely to the "Transmittal Form for the written report on personal service or substituted service and assessment notices duly stamped and signed-received by taxpayer from the Revenue District Offices to the Assessment Division." They do not refer to an audit report or any recommendation for the issuance of assessment notice to the petitioner. Moreover, said exhibits were not formally offered and admitted by the Court.

b. Respondent's failure to comply with the GAPD will not invalidate the LOA.

Petitioner claims that according to the GAPD, a revenue officer is allowed only one hundred twenty (120) days from the date of receipt of the LOA by the taxpayer to conduct the audit and submit the required report of investigation; and that after the said period without any report from the RO, the LOA must be revalidated, otherwise, the audit investigation will be invalidated.

Contrary to petitioner's claim, the Court rules that the non-revalidation of LOA does not make the same void.

It is clear from Revenue Memorandum Circular (RMC) 23-2009 issued on April 16, 2009 that failure on the part of the revenue officer to request for revalidation does not nullify the LOA but can be a ground for disciplinary action against the said revenue officer. We quote portions of RMC 23-2009:

> "I. Revalidation of LA
>
> The revalidation of LA 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**

[59] Ibid. pp. 501-503.

> **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)*

Thus, the LOA is valid even if the investigation was conducted more than 120 days without said LOA being revalidated.

c. Revenue Regulations (RR) No. 18-13 is the prevailing rule at the time when the ROs conducted examination on petitioner's books of accounts.

Petitioner claims that the assessment is void for failure of respondent to issue a Notice of Informal Conference (NIC) to petitioner.

Section 2 of RR No. 18-13, *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment*, issued on November 28, 2013, states:

> SECTION 2. Amendment. — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read 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:
> >
> > 3.1.1 Preliminary Assessment Notice (PAN). — <u>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</u>

jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

The LOA in this case was issued on October 19, 2016. Considering that the prevailing rule during the time when RO Baes conducted the examination of petitioner's books of accounts was RR No. 18-13, hence, the issuance of NIC is not required in this case.

d. The subject FAN was timely issued based on Section 3.1.2 of Revenue Regulations No. 12-99, as amended.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides 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

xxx xxx xxx

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings." *(Emphases added)*

To implement the foregoing provision, Section 3 of Revenue Regulations (RR) No. 12-99,[60] as amended by RR No. 18-2013[61] and renumbered by RR No. 7-2018[62], provides, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 *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 <u>shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment</u>.** It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx.
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, <u>in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued</u> calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* - The Formal Letter of Demand and Final

[60] 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.

[61] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[62] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payments 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; otherwise, the assessment shall be void." *(Emphases and underscoring added)*

It is clear from the foregoing provisions that as part of due process in the issuance of tax assessments, a taxpayer is given fifteen (15) days from receipt of the PAN to file a protest or response thereto with the BIR. It is only upon the lapse of the prescribed fifteen (15)-day period, without such protest or response being filed by the taxpayer within such period, that respondent or the BIR may issue the corresponding FLD/FAN.

In this case, it is undisputed that the FAN was issued on March 14, 2018.[63] On the same day, petitioner filed its letter-response to the PAN.[64] Petitioner claims that it had until March 14, 2018 within which to file the said letter-response, having received the PAN on **February 27, 2018**, as shown in its copy of PAN bearing the receiving stamp date of February 27, 2018.[65] On the other hand, respondent alleges that the PAN was personally served to, and was received by, petitioner, through its authorized representative, Rafael Jason Caste (receptionist) on **February 26, 2018**, as evidenced by its copy of the PAN and the *Written Report on Personal Service or Substituted Service* executed by RO Melissa Carla Baes[66]. Hence, according to respondent, the issuance of the FAN on March 14, 2018 was proper, since it was made after the lapse of the fifteen (15)-day period for the petitioner to respond to the PAN.

We agree with respondent.

It is noteworthy that petitioner did not explain the circumstances upon which it received the PAN dated February 22, 2018 on February 27, 2018, or how the BIR served the same, or how it come in possession thereof. It simply pointed out that the stamp of receipt indicates "February 27, 2018".[67] To the Court's mind, it is possible that the above-named receptionist indeed received the said PAN on February 26, 2018, and only on the following day, *i.e.*, February 27, 2018, that said receptionist forwarded the same to the responsible officer of petitioner and made the corresponding stamp of receipt—which are indicia that the same receptionist is an authorized agent of petitioner, at least insofar as the receipt of the same PAN is concerned. As such, the receipt of the said receptionist on February 26, 2018 binds petitioner. Moreover, contrary to petitioner's evidence, the Court finds credible respondent's documentary

[63] Exhibits "P-7", "P-7-A", "P-7-B", "P-7-C", "P-7-D", "P-7-E" "P-7-F", "P-7-G", "P-7-H", Docket – Vol. II, pp. 680 to 690; and Exhibits "R-10", "R-11", "R-11-1", "R-11-2", "R-11-4", and "R-11-4", BIR Records, pp. 455 to 465. Refer also to par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 3, pp. 1145 to 1146.
[64] Exhibits "P-6" and "P-6-A", Docket – Vol. II, pp. 677 to 679.
[65] Exhibits "P-5", "P-5-A", "P-5-B" and "P-5-C" Docket – Vol. II, pp. 671 to 676.
[66] Exhibit "R-8", "R-8-1", "R-8-2", "R-8-3", "R-8-4" and "R-9", BIR Records, pp. 435 to 442.
[67] Refer to Q/A Nos. 23 to 26, Exhibit "P-26", Docket – Vol. I, pp. 60 to 61.

evidence that the PAN was received on February 26, 2018 by petitioner through Rafael Jason Caste. The stamp receipt of the PAN bears the signature of Rafael Jason Caste, including the date and time when he received the PAN. Correspondingly, the counting of the fifteen (15)-day period commenced on February 26, 2018. Such being the case, the issuance of the subject FAN on March 14, 2018 was made only after the said fifteen (15)-day period. Thus, the issuance thereof is not in violation of Section 3.1.2 of RR No. 12-99, as amended.

Since the protest to the PAN was not timely filed, it is as if no protest was filed. Hence, there are no new arguments for the BIR to consider.

Considering that there was no violation of due process, the assessment notices are valid.

The Court shall now determine whether petitioner is liable for the alleged deficiency taxes.

Only some of the assessment items are valid

Based on the Final Decision on Disputed Assessment (FDDA),[68] petitioner was assessed of deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST) for TY 2015, in the aggregate amount of ₱14,527,753.44, including surcharges, interests and penalty, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Penalty	Total
Income Tax	₱ 8,031,708.82		₱ 4,432,623.08		₱ 12,464,331.90
VAT	781,630.01		466,065.63		1,247,695.64
EWT	469,889.80		273,334.26		743,224.06
DST	31,299.00	₱ 7,824.75	18,378.09		57,501.84
Compromise				₱ 15,000.00	15,000.00
Total	**₱9,314,527.63**	**₱7,824.75**	**₱5,190,401.06**	**₱15,000.00**	**₱14,527,753.44**

I. Deficiency IT

Petitioner was assessed of deficiency income tax for TY 2015 in the amount of ₱12,464,331.90, computed as follows:

I. IT		
Taxable Income (Loss)		₱ 10,933,542.00
Add: Adjustments		
Disallowed Professional Fees due to non-withholding	₱ 381,500.00	
Disallowed Interest Expenses	237,888.34	
Undeclared Revenues	₱26,152,975.73	26,772,364.07
Adjusted taxable income		₱ 37,705,906.07
Income Tax due per audit		₱ 11,311,771.82

[68] Exhibit "P-9", Docket – Vol. II, pp.699 to 700.

Less: Total Tax Credits/Payment	₱ 5,380,158.00	
Less: Excess Tax Credit Carried Over	2,100,095.00	3,280,063.00
Income tax payable		₱ 8,031,708.82
Less: Tax paid per audit		-
Basic Tax Due		₱ 8,031,708.82
Add: Interest 20% (04/16/16 - 12/31/17)	₱ 2,750,585.21	
Interest 12% (01/01/18 - 09/30/19)	1,682,037.87	4,432,623.08
TOTAL AMOUNT DUE		**₱12,464,331.90**

The deficiency income tax assessment arose from the following items:

a. Disallowed Professional Fees due to non-withholding	₱ 381,500.00
b. Disallowed Interest Expenses	237,888.34
c. Undeclared Revenues	26,152,975.73
d. Excess Tax Credit Carried Over	2,100,095.00

a. Disallowed Professional Fees due to non-withholding – ₱381,500.00

Respondent's verification disclosed that petitioner has not withheld the appropriate withholding tax due on its income payments for professional fees amounting to ₱381,500.00, as shown below, hence, disallowed pursuant to Section 34(K) of the NIRC, as amended.[69]

Schedule 1:

Income Payments	Per FS	Per Alphalist	Disallowed Expenses	EWT Rate	EWT Due
Professional Fees	₱381,500.00	-	**₱381,500.00**	15%	**₱57,225.00**

Petitioner argues that the professional fees amounting to ₱381,500.00 represent the following payments made to General Professional Partnerships (GPPs) and are therefore not subject to withholding tax:[70]

	Name	Details	Amount
Audit/Due Diligence Fees			
31/12/2015	Reyes Tacandong & Co.	Acceptance fee for 2015 Audit of FS	₱ 21,000.00
31/12/2015	Reyes Tacandong & Co.	2015 Audit Fee	49,000.00
25/08/2015	Reyes Tacandong & Co.	Acceptance fee for due diligence	60,000.00
08/10/2015	Reyes Tacandong & Co.	Billing for due diligence	90,000.00
		SUBTOTAL	₱ 220,000.00
Legal Fees			
16/07/2015	Tamayo & Affiliates Attorneys-at-Law	Legal services rendered from May 12-June 1, 2015.	₱ 71,500.00
08/01/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of January 2015.	7,500.00

[69] Exhibit "P-7-A", Docket – Vol. II, p. 682.
[70] Exhibit "P-8", Docket – Vol. II, p. 694.

09/02/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of February 2015.	7,500.00
11/03/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of March 2015.	7,500.00
10/04/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of April 2015.	7,500.00
12/05/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of May 2015.	7,500.00
09/06/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of June 2015.	7,500.00
07/07/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of July 2015.	7,500.00
10/08/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of August 2015.	7,500.00
09/09/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of September 2015.	7,500.00
10/11/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of October 2015.	7,500.00
09/12/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of November 2015.	7,500.00
09/12/2015	Quasha Ancheta Pena & Nolasco	Retainers fee for the month of December 2015.	7,500.00
		SUBTOTAL	₱ 161,500.00
		GRAND TOTAL	**₱381,500.00**

Verily, pursuant to Section 2.57.5 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 14-2002, in relation to Section 26 of the NIRC of 1997, as amended, income payments made to a GPP, as juridical person, are exempt from income tax and consequently from EWT, to wit:

> "Section 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)*
>
> "SEC. 26. *Tax Liability of Members of General Professional Partnerships.* - A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities."

To support its claim, petitioner submitted the Certifications of the Articles of Partnership issued by the Securities and Exchange Commission (SEC) to Tamayo & Affiliates Attorneys-at-Law, Reyes Tacondong & Co. and Quasha Ancheta Pena & Nolasco,[71] showing that these partnerships are indeed registered with the SEC as GPPs; and the related vouchers, billing invoices, requests for payment and official receipts (ORs)[72] for the above-listed payments made to said GPPs.

Perusal of the related documents shows that the professional fees of ₱161,500.00 are duly supported payments made to GPPs, particularly, Tamayo & Affiliates Attorneys-at-Law and Quasha Ancheta Pena & Nolasco.[73] However, as to the alleged professional fees paid to Reyes Tacondong & Co. amounting to ₱220,000.00, verification reveals that only the amount of ₱153,000.00, as detailed below, was supported by valid documents proving payments to the latter:

Details	Amount	Exhibit No.[74]
Acceptance fee for 2015 Audit of FS	₱ 21,000.00	"P-22-N-1" to "P-22-N-4"
2015 Audit Fee		
Progress bill for 2014 Audit of FS	30,000.00	"P-22-R-1" to "P-22-R-4"
Final billing for the 2014 Audit of FS	12,000.00	"P-22-S-1" to "P-22-S-4"
Billing for due diligence	90,000.00	"P-22-Q-1" to "P-22-Q-4"
Total	**₱153,000.00**	

Hence, out of petitioner's professional fees of ₱381,500.00, the amount of ₱314,500.00 (total of ₱161,500.00 and ₱153,000.00) is not subject to withholding tax, being payments made to GPPs. As such, the said professional fees worth ₱314,500.00 cannot be disallowed due to non-withholding.

On the other hand, as to the remaining professional fees of ₱67,000.00,[75] consisting of the amounts of (1) ₱7,000.00, which was included in the ₱49,000.00 alleged 2015 audit fee but was not supported by any documents, and (2) ₱60,000.00 acceptance fee for due diligence supported only by unsigned check voucher[76], which was not given credence being self-serving absent other corroborating evidence, petitioner failed to prove that the same are payments made to Reyes Tacondong & Co. or any GPP to be exempt from withholding.

Having failed to subject the professional fees of ₱67,000.00 to EWT and prove that the same are not subject to withholding, the disallowance of the same shall be upheld.

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[71] Exhibits "P-19" to "P-21", Docket – Vol. 4, pp. 1570 to 1619.
[72] Exhibits "P-22-A-1" to "P-22-T-1", Docket – Vol. 4, pp. 1620 to 1707.
[73] Exhibits "P-22-A-1" to "P-22-M-5', Docket – Vol. 4, pp. 1620 to 1682.
[74] Docket – Vol. 4, pp. 1683 to 1686 and 1695 to 1706.
[75] Total amount of ₱220,000.00 less validly supported amount of ₱153,000.00.
[76] Exhibit "P-22-T-1", Docket – Vol. 4, p. 1707.

b. Disallowed Interest Expense – ₱237,888.34

Respondent's verification disclosed that petitioner failed to consider the non-deductible interest expense amounting to ₱237,888.34 in violation of Section 34(B)(1) of the NIRC, which states that "the amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: Provided that the taxpayer's otherwise allowable deduction for interest expense shall be reduced by thirty-three percent (33%) of the interest income subjected to final tax." The disallowed interest expense of ₱237,888.34 was computed as follows:[77]

Schedule 2:	
Interest Income earned per Financial Statements	₱ 576,699.00
Divided by rate (100% - Final tax rate of 20%)	80%
Gross up value of interest income	₱ 720,873.75
Multiplied by the rate	33%
Non-deductible interest expense	**₱237,888.34**

Petitioner avers that it is aware of the limitation on the interest expense that can be claimed as deduction from gross income under Section 34(B)(1) of the Tax Code; that while it incurred ₱14,859,424.00 interest expense on loan payable as disclosed in Note 14 of its Audited Financial Statements (AFS) for TY 2015, it only claimed ₱14,619,133.00 as deductible interest expense in its Annual Income Tax Return (AITR) filed for the same period; that the difference of ₱240,291.00 pertains to the non-deductible interest expense computed pursuant to Section 34(B)(1) of the Tax Code, which was also presented as "Nondeductible interest expense" in Note 22 of its AFS; and that respondent's disallowance of interest expense lacks factual basis considering that it has complied with Section 34(B)(1) of the Tax Code.

We find for the petitioner.

Based on its Statement of Comprehensive Income,[78] petitioner reflected interest expense for TY 2015 amounting to ₱15,124,173.00, which is composed of interest expense on loan payable in the amount of ₱14,859,424.00 and amortization of debt-issue costs in the amount of ₱264,749.00 as disclosed in Note 14[79] of its Notes to FS. Out of the ₱14,859,424.00 interest expense on loan payable, only the amount of ₱14,619,133.00 was claimed by petitioner as deductible expense per Note 22[80] of its Notes to FS and as deduction from gross income per its AITR for TY 2015[81]. This is so because petitioner considered the

[77] Exhibit "P-7-A", Docket – Vol. II, p. 682.
[78] Exhibit "P-14", Docket – Vol. II, p. 739.
[79] *Id.*, p. 758.
[80] *Id.*, p. 765.
[81] Exhibit "P-15", Schedule 4, Line 15, Docket – Vol. II, p. 772.

amount of ₱240,291.00 as "Nondeductible interest expense" as disclosed in Note 22[82] of its Notes to FS, which is even higher than the amount of ₱237,888.34 being disallowed by respondent.

Clearly and contrary to respondent's position, petitioner already considered the non-deductible interest expense in claiming deduction for interest expense in its AITR. Thus, the disallowed interest expense in the amount of ₱237,888.34 must be cancelled.

c. Undeclared Revenues – ₱26,152,975.73

Respondent's verification disclosed that petitioner failed to adduce evidence to support the non-taxable income and/or subjected to final withholding tax and reversal of unearned income to non-revenue account – advance rentals, as shown below, hence, treated as undeclared revenue subject to income tax pursuant to Section 27 and 32 of the NIRC as amended:[83]

Schedule 3:	
Unsupported Non-Taxable Revenues	₱ 6,568,688.00
Unsupported Reversal of Unearned Income	19,584,287.73
Total	**₱26,152,975.73**

Petitioner argues that the alleged unsupported non-taxable revenues amounting to ₱6,568,688.00 consist of (a) the net operating loss carry-over (NOLCO) of ₱3,663,907.00 incurred in 2013 and applied in 2015, and (b) decrease in unearned rental income of ₱2,904,781.00; that the application of NOLCO is in accordance with Section 34(D)(3) of the Tax Code which provides that it can be carried over as a deduction from gross income for the next three consecutive TYs immediately following the year of such loss; that the decrease in unearned rental income of ₱2,904,781.00 and alleged unsupported reversal of unearned income in the amount of ₱19,584,287.73 pertain to petitioner's adjustments because of the difference in the manner of reporting the advance rentals and rental income in the books and tax returns; that for tax purposes, its advance rentals are reported as income upon receipt in accordance with Revenue Memorandum Circular (RMC) No. 16-2013; and that in relation to the method of reporting for ITR purposes, there may be rent income recognized only in the books in 2015 but may have already been reported and subjected to income tax in prior years' ITR upon receipt, and there may be advance rentals reported and subjected to income tax in 2015 but may not have been reported yet in its books in 2015 because these may have not yet been realized.

We partially uphold the assessment.

[82] Exhibit "P-14", Docket – Vol. II, p. 765.
[83] Exhibit "P-7-A", Docket – Vol. II, p. 682.

Anent the alleged unsupported non-taxable revenues of ₱6,568,688.00, the said amount was broken down by petitioner as follows:[84]

NOLCO incurred in 2013 applied against taxable income in 2015		₱ 3,663,907.00
Decrease in Unearned Rental Income		
Advance payments received 2014 but applied in 2015	₱15,044,336.00	
Advance payments received 2015 to be applied in subsequent period	12,139,555.00	2,904,781.00
Total		**₱6,568,688.00**

Upon perusal of petitioner's AITR for TY 2015,[85] it is established that the amount of ₱3,663,907.00 pertained to NOLCO, which was reflected as deduction from its gross income for the same period. Such NOLCO originated from the net operating loss of ₱10,866,376.00[86] incurred in TY 2013 that was carried over to TY 2014, of which the amount of ₱7,202,470.00[87] was partially applied against the gross income for the latter year. The remaining NOLCO thereon amounting to ₱3,663,907.00 was then carried over to and applied against the gross income for TY 2015 pursuant to Section 34(D)(3) of the NIRC of 1997, as amended.[88] Clearly, the NOLCO, in the amount of ₱3,663,907.00, is not a revenue item subject to income tax but rather a proper deduction from gross income.

As to the decrease in rental income of ₱2,904,781.00, this refers to the difference between the beginning and ending balances of petitioner's Unearned Rental Income per Statement of Financial Position,[89] as shown below, which, based on the Reconciliation of Unearned Rental Income[90] submitted by petitioner, essentially pertains to the net effect of the transactions affecting the Unearned Rental Income in TY 2015, *i.e.,* deductions from unearned rental income (advance rentals applied in TY 2015), net of additions to unearned rental income (advance rentals received in TY 2015):

	Reflected under Current Liabilities	Reflected under Noncurrent Liabilities	Total
Unearned rental income, Dec 31, 2014	₱1,733,325.00	₱13,311,011.00	₱15,044,336.00

[84] Exhibits "P-8" and "P-10", Docket – Vol, II, pp. 696 and 708, respectively.
[85] Exhibit "P-15" (Part IV, Line 37 and Schedule 6A, Line 5), Docket – Vol. II, pp. 770 & 773.
[86] Exhibit "P-16" (Part IV, Line 40 and Schedule 6, Line 4), Docket – Vol. II, pp. 778 & 781.
[87] Exhibit "P-17" (Part IV, Line 37 and Schedule 6A, Line 5), Docket – Vol. II, pp. 786 & 789.
[88] "SEC. 34. *Deductions from Gross Income.*-Xxx

Xxx xxx xxx

(D) *Losses.*-

xxx xxx xxx

(3) *Net Operating Loss Carryover.*-The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss: *Provided, however,* That any net loss incurred in a taxable year during which the taxpayer was exempt from income tax shall not be allowed as a deduction under this Subsection:Xxx."

[89] Exhibit "P-14", Docket – Vol. II, p. 738.
[90] Exhibit "P-33", Docket – Vol. 4, p. 1862.

Unearned rental income, Dec 31, 2015	399,327.00	11,740,228.00	12,139,555.00
Difference	₱1,333,998.00	₱1,570,783.00	**₱2,904,781.00**

As such, it is improper to assess income tax on the amount of ₱2,904,781.00 as it is merely the net amount of deductions from Unearned Rental Income, which may include advance rentals already received and subject to income tax in the previous year but only applied in TY 2015, and does not represent the actual amount of income related to the advance rentals received in TY 2015. If at all, the revenues subject to income tax for TY 2015 should be the advance rentals actually received by petitioner in the same period pursuant to RMC No. 16-2013,[91] as quoted hereunder, and not the amount of advance rentals actually applied in TY 2015:

> "I. Policies and Guidelines
>
> Deposits/Advances Part of Gross Receipts
>
> When cash deposits or advances are received by taxpayers other than GPP covered by RMC 89-2012 from the Client/Customer, a corresponding Official Receipt shall be issued. The amount received shall be booked as Income and shall form part of the Gross Receipts and subject to Value-added Tax (VAT) or Percentage Tax (Gross Receipt Tax), if applicable, and shall in turn be deductible as expense by the Client/Customer provided that it is duly substantiated by Official Receipts pursuant to Section 34(A)(1) of the Tax Code.
>
> II. PRO-FORMA ENTRIES
>
> Upon receipt of the deposit/advances, the same shall be treated and recorded as outright Income.
>
> <u>Accounting entries in the Books of the Taxpayer other than GPP</u>
>
> a. <u>For VAT Taxpayers</u>

		Dr.	Cr.
Cash		xxx	
Prepaid Income Tax (Creditable)	xxx		
Income			xxx
Output VAT			xxx"

As regards the alleged unsupported reversal of unearned income of ₱19,584,287.73, perusal of petitioner's Reconciliation of Unearned Rental

[91] SUBJECT: Clarifying the Tax Implications and Recording of Deposits/Advances for Expenses Received by Taxpayers not covered by Revenue Memorandum Circular No. 89-2012.

Income[92] reveals that the said amount consisted of advance rentals in TY 2014 totaling ₱13,311,012.69 and advance rental in TY 2015 amounting to ₱6,273,275.04, as detailed below:

Tenant/s	Exhibit No.[93]	OR No.	Particulars	Amount
Medical Doctors, Inc[94]	"P-25-1"	031	Advance Rental	₱ 11,743,489.59
Rustan Coffee Corporation	"P-25-2"	033	Advance Rental	1,371,725.79
Dr. Gonzales	"P-25-3"	045	Advance Rental	11,025.00
Rustan Coffee Corporation	"P-25-4"	048	Advance Rental	36,392.07
Medical Doctors, Inc	"P-25-5"	054	Advance Rental	101,130.24
Security Bank Corporation	"P-25-6"	074	Advance Rental	47,250.00
Total Advance Rentals in TY 2014				₱ 13,311,012.69
Medical Doctors, Inc	"P-24-28"	107	Advance Rental	6,273,275.04
Total Amount				**₱19,584,287.73**

Apparently, the amount of ₱13,311,012.69 is equivalent to the balance of Unearned Rental Income of ₱13,311,011.00 reflected under Noncurrent Liabilities as of December 31, 2014 per petitioner's AFS,[95] which pertained to advance rentals actually received in TY 2014 as evidenced by the corresponding ORs. Following RMC No. 16-2013, such advance rentals are subject to income tax in TY 2014 upon receipt thereof. Hence, the assessment in TY 2015 on the said advance rentals of ₱13,311,012.69 has no basis.

On the other hand, the advance rental of ₱6,273,275.04 received in TY 2015 is subject to income tax in the same period of receipt. Absent any proof to the effect that the said amount was already included in the revenues subjected to income tax per its AITR for TY 2015, the assessment thereon stands.

Thus, of the assessed undeclared revenues, only the amount of ₱6,273,275.04 shall be sustained.

d. Excess Tax Credit Carried Over - ₱2,100,095.00

Respondent disallowed the excess income tax payment for TY 2015, in the amount of ₱2,100,095.00, as tax credit in the computation of deficiency income tax for the same year considering that the excess amount shall be credited against the income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose pursuant to Section 2.58.3 under RR No. 2-98.

[92] Exhibit "P-33", Docket – Vol. 4, p. 1862.
[93] Docket – Vol. 4, pp. 1856 to 1861.
[94] Issued to Makati Medical Center Phils. Inc. per OR.
[95] Exhibit "P-14", Docket – Vol. II, p. 738.

The disallowance is fitting.

Pursuant to Section 2.58.3(C) of RR No. 2-98, as quoted hereunder, the excess tax credit is automatically allowed as credit against a taxpayer's income tax due for the taxable quarters/years immediately succeeding the taxable quarter/year in which the excess credit arose:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* – xxx
>
> (C) *Excess Credits* – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate."

Here, petitioner had excess credits in the amount of ₱2,100,095.00, which it opted to be carried over as tax credit next year/quarter per its AITR for TY 2015.[96] Considering that petitioner does not deny the fact that it carried over the excess credits of ₱2,100,095.00 to the succeeding TY 2016 and did not present any proof that the same were not utilized on the same period, the said amount was presumed to have been utilized as credits against the taxes due for the said TY 2016 and/or in the succeeding periods.

And since the said excess credits was already applied as tax credits in the succeeding TY/s, it is only just and proper to disallow the same as tax credit against the computed deficiency income tax for TY 2015 so as to avoid the double claim of tax credit by petitioner. Thus, the disallowance of excess carry over to succeeding period in the amount of ₱2,100,095.00 shall be sustained.

In sum, petitioner's basic deficiency income tax due for TY 2015 amounted to ₱1,902,082.11, computed as follows:

Taxable Income		₱ 10,933,542.00
Add: Adjustments		
Disallowed Professional Fees due to non-withholding	₱ 67,000.00	
Undeclared Revenues	6,273,275.04	6,340,275.04
Adjusted Taxable Income		₱ 17,273,817.04
Income Tax Due (30%)		₱ 5,182,145.11

[96] Exhibit "P-15" (Lines 20 & 21), Docket – Vol. II, p. 769.

Less: Total Tax Credits/Payment	₱5,380,158.00	
Less: Excess Tax Credit Carried Over	2,100,095.00	3,280,063.00
Basic Deficiency IT Due		**₱1,902,082.11**

II. Deficiency VAT

Petitioner was assessed of deficiency VAT for TY 2015 in the amount of ₱1,247,695.64, computed as follows:

Vatable Receipts per VAT returns		₱ 58,824,283.57
Add: Receipts not subjected to VAT		6,513,583.50
Adjusted Vatable Receipts		₱ 65,337,867.07
Output Tax		₱ 7,840,544.05
Less: Input Tax per VAT Returns		7,058,914.04
VAT Payable		₱ 781,630.01
Less: Tax Paid per Audit		-
Basic Tax Due		₱ 781,630.01
Add: Interest 20% (01/26/16 - 12/31/17)	₱302,373.03	
Interest 12% (01/01/18 - 09/30/19)	163,692.60	466,065.63
TOTAL AMOUNT DUE		**₱1,247,695.64**

Respondent's comparison of petitioner's Receipts per Cash Book Receipts as against the amount reported per VAT returns showed that there are receipts not subjected to VAT amounting to ₱6,513,583.50, as computed below, hence, the same is subjected to Section 105 and 108 of the NIRC, as amended:[97]

Schedule 4:

Cash Receipts per Books		
Rental and Storage	₱62,503,185.51	
Parking Rental	1,349,545.18	
Security Deposit	1,485,136.38	₱ 65,337,867.07
Total		
Less: Sales/Receipts Per VAT Returns		58,824,283.57
Receipts not subjected to VAT		**₱6,513,583.50**

Petitioner posits that it was erroneous for respondent to compare the amount of receipts per Cash Receipts Book (CRB) against the amount of VATable Sales/Receipts per VAT returns since the CRB reflects the total actual cash or collections received, inclusive of 12% VAT and net of applicable withholding tax, while the VATable Sales/Receipts reported in the VAT returns are net of VAT; and that the CRB includes the security deposits received by petitioner, which are not income to the latter (as lessor) as it is required to return such deposit at the end of the lease period upon fulfillment of all the obligations of the lessee.

[97] Exhibit "P-7-A", Docket – Vol. II, p. 683.

To support its position, petitioner submitted the CRB,[98] Reconciliation of receipts per CRB and per VAT returns[99] and various ORs[100] for the related payments received thereon.

Verification of the said documents shows that petitioner was able to substantiate its taxable sales per VAT return worth ₱58,824,283.13 and that the corresponding receipts thereto as recorded per CRB amounted to ₱62,941,364.01, as detailed below:

OR Exhibit No.	Registered Name/Tenant	Taxable Sales (breakdown of amount per VAT return)	Output Tax	Creditable Withholding Tax	Cash Receipts (related amounts recorded per CRB)
"P-24-1"	Makati Medical Center/ Medical Doctors Inc	₱ 6,700,356.00	₱ 804,042.72	₱ 335,033.88	₱ 7,169,364.84
"P-24-2"	CTLR Construction Corp	2,232.14	267.86	-	2,500.00
"P-24-3"	Security Bank Corporation	45,450.00	5,454.00	2,259.00	48,645.00
"P-24-4"	Makati Medical Center/ Medical Doctors Inc	2,730,225.71	327,627.09	136,517.84	2,921,334.96
"P-24-5"	Gonzales Dental Clinic	10,500.00	1,260.00	525.00	11,235.00
"P-24-6"	Makati Medical Center/ Medical Doctors Inc	409,500.00	49,140.00	20,475.98	438,164.02
"P-24-7"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-8"	CTLR Construction Corp	2,232.14	267.86	-	2,500.00
"P-24-10"	Rustan Coffee Corporation	1,214,894.40	145,787.33	60,744.71	1,299,937.02
"P-24-11"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-12"	Makati Medical Center/ Medical Doctors Inc	6,879,032.16	825,483.86	343,968.12	7,360,547.90
"P-24-13"	Security Bank Corporation	45,450.00	5,454.00	2,259.00	48,645.00
"P-24-14"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-15"	Makati Medical Center/ Medical Doctors Inc	2,837,577.60	340,509.31	141,885.69	3,036,201.22
"P-24-16"	Gonzales Dental Clinic	11,025.00	1,323.00	551.25	11,025.00
"P-24-17"	Makati Medical Center/ Medical Doctors Inc	5,460.00	655.20	273.01	5,842.19
"P-24-18"	Makati Medical Center/ Medical Doctors Inc	425,880.00	51,105.60	21,295.02	455,690.58
"P-24-19"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-22"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-23"	Rustan Coffee Corporation	1,216,391.41	145,966.97	60,819.57	1,301,538.81
"P-24-24"	Makati Medical Center/ Medical Doctors Inc	6,968,370.24	836,204.43	348,435.24	7,456,139.43
"P-24-25"	Security Bank Corporation	15,150.00	1,818.00	753.00	16,215.00
"P-24-26"	Makati Medical Center/ Medical Doctors Inc	2,839,363.31	340,723.60	141,974.98	3,038,111.93
"P-24-28"	Makati Medical Center/ Medical Doctors Inc	6,273,275.04	752,793.00	313,678.81	6,712,389.23
"P-24-29"	Gonzales Dental Clinic	11,025.00	1,323.00	551.25	11,796.75
"P-24-30"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-31"	Makati Medical Center/ Medical Doctors Inc	425,880.00	51,105.60	21,295.02	455,690.58

[98] Exhibit "P-40", Docket – Vol. 4, pp. 1999 to 2003.
[99] Exhibit "P-24" and "P-24-A", Docket – Vol. 4, pp. 1810 to 1812.
[100] Exhibits "P-24-1" to "P-24-43", Docket – Vol. 4, pp. 1813 to 1855.

"P-24-32"	Security Bank Corporation	45,450.00	5,454.00	2,259.00	48,645.00
"P-24-33"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-34"	Makati Medical Center/ Medical Doctors Inc	6,968,370.24	836,204.43	348,435.24	7,456,139.43
"P-24-35"	Rustan Coffee Corporation	1,216,391.40	145,966.97	60,819.57	1,301,538.80
"P-24-36"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-37"	Makati Medical Center/ Medical Doctors Inc	2,837,577.60	340,509.31	141,885.69	3,036,201.22
"P-24-38"	Gonzales Dental Clinic	11,025.00	1,323.00	551.25	11,796.75
"P-24-39"	Makati Medical Center/ Medical Doctors Inc	427,665.71	51,319.89	21,384.31	457,601.29
"P-24-40"	Security Bank Corporation	47,700.00	5,724.00	2,371.50	51,052.50
"P-24-41"	Rustan Coffee Corporation	1,216,391.40	145,966.97	60,819.57	1,301,538.80
"P-24-42"	Makati Medical Center/ Medical Doctors Inc	1,785.71	214.29	89.29	1,910.71
"P-24-43"	Makati Medical Center/ Medical Doctors Inc	6,968,370.24	836,204.43	348,435.24	7,456,139.43
	Total	**₱58,824,283.13**	₱7,058,913.98	₱2,941,061.35	**₱62,941,364.01**

As gleaned from the table above, the receipts per CRB of ₱62,941,364.01 is higher than the taxable receipts per VAT returns of ₱58,824,283.13 due to the inclusion of the Output taxes, net of the CWTs in the amount per CRB. Hence, the difference thereon in the amount of ₱4,117,080.88,[101] pertained to the net amount of the output taxes and CWTs, which were properly excluded in the amount of receipts subjected to VAT.

Furthermore, of the assessed Security Deposit of ₱1,485,136.38,[102] only the amount of ₱377,151.84 was substantiated by OR[103] and verified as pertaining to Security Deposit, which is not subject to VAT pursuant to Section 4.108-3 of RR No. 16-2005, to wit:

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[101] Receipts of ₱62,941,364.01 as recorded per CRB less taxable receipts of ₱58,824,283.13 subjected to VAT, or in the alternative:

Total Output Taxes less Total CWTs (₱7,058,913.98 less ₱2,941,061.35)	₱4,117,852.63
Less: Output Tax net of CWT from payment by Gonzales Dental Clinic ("P-24-16") not included in the amount of Cash Receipts per CRB	771.75
Net Amount accounted for (the difference between Taxable Sales and Cash Receipts)	₱4,117,080.88

[102] Breakdown of assessed Security Deposit per examination of CRB (Exhibit "P-40", Docket – Vol. 4, pp. 2001 and 2002):

Account Name	Amount
Medical Doctors Inc	₱ 377,151.84
Solid Mills Condominium Corp.	265,826.89
Solid Mills Condominium Corp.	842,157.65
Total	₱1,485,136.38

[103] Exhibit "P-24-20", Docket – Vol. 4, p. 1832.

"SEC. 4.108-3. ***Definitions and Specific Rules on Selected Services.*** –

xxx xxx xxx

In a lease contract, the advance payment by the lessee may be:

(i) a loan to the lessor from the lessee, or
(ii) an option money for the property, or
(iii) a security deposit to insure the faithful performance of certain obligations of the lessee to the lessor, or
(iv) pre-paid rental.

If the advance payment is actually a loan to the lessor, or an option money for the property, or a security deposit for the faithful performance of certain obligations of the lessee, such advance payment is not subject to VAT. However, a security deposit that is applied to rental shall be subject to VAT at the time of its application." *(Underlining supplied)*

Considering the foregoing, out of the assessed receipts not subjected to VAT, only the amount of ₱2,019,350.78 must be sustained, as computed below:

Receipts not subjected to VAT		₱ 6,513,583.50
Less: Net effect of output VAT inclusion and CWT deductions in the amounts per CRB	₱4,117,080.88	
Security deposit not subject to VAT	377,151.84	4,494,232.72
Adjusted Receipts not subjected to VAT		**₱2,019,350.78**

Thus, petitioner's basic deficiency VAT due for TY 2015 amounted to ₱242,322.08, computed as follows:

Vatable Receipts per VAT returns	₱58,824,283.57
Add: Receipts not subjected to VAT	2,019,350.78
Adjusted Vatable Receipts	₱60,843,634.35
Output Tax	₱ 7,301,236.12
Less: Input Tax per VAT Returns	7,058,914.04
Basic Deficiency VAT Due	**₱ 242,322.08**

III. Deficiency EWT

Finding that petitioner failed to withhold/remit the correct withholding tax due on income payments previously disallowed from gross income, respondent assessed petitioner of deficiency EWT for TY 2015 in the amount of

₱743,224.06 pursuant to Section 2.57.2 of RR No. 2-98, as amended, computed as follows:[104]

Basic Tax Due (Schedule 5)		₱ 469,889.80
Add: Interest 20% (01/16/16 - 12/31/17)	₱184,351.29	
Interest 12% (01/01/18 - 07/31/19)	88,982.97	273,334.26
TOTAL AMOUNT DUE		**₱743,224.06**

Schedule 5:

Income Payments	Per FS	Per Alphalist	Discrepancy	EWT Rate	EWT Due
Building and Improvement	₱23,772,904.00	₱ 3,789,003.57	₱19,983,900.43		
Interest Expense	15,124,173.00	14,474,833.20	649,339.80		
	₱38,897,077.00	₱18,263,836.77	₱20,633,240.23	2%	₱ 412,664.80
Add: EWT Due (Schedule 1)					57,225.00
Total EWT Due					**₱469,889.80**

Petitioner avers that the deficiency EWT assessments pertaining to the income payments made in January and February 2015 have already prescribed; that as to the Building and Improvements, the difference between the ₱23,772,904.00 per AFS and ₱3,789,003.57 per Alphalist cited in the FDDA includes ₱19,835,185.97 costs that have been capitalized and already subjected to applicable EWT in 2014, while the ₱148,715.58 pertains to income payments made in 2015 that were subjected to 1% EWT; that it is not one of the top 20,000 private corporations liable to withhold 2% EWT on interest expense; and that the professional fees of ₱381,500.00 as already contested under the income tax assessment were paid to GPPs, which are not subject to withholding tax.

We partially uphold the assessment.

As regards the period to assess deficiency EWT for January and February 2015, petitioner is correct in saying that the same had already prescribed, as shown in the table below. But since petitioner was unable to point out which portion of the basic deficiency EWT assessment pertains to the months of January and February 2015, if any, the entire assessment of ₱469,889.80 shall be considered as pertaining to the months of March to December 2015.

Exhibit No. (monthly EWT returns)[105]	Period Covered	Date Return was filed	Last Day to File Return[106]	Last day to Assess	Date of Receipt of FLD/FANs
"P-12"	January 2015	February 6, 2015	February 13, 2015	February 13, 2018	April 2, 2018
"P-13"	February 2015	March 5, 2015	March 13, 2015	March 13, 2018	April 2, 2018

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[104] Exhibits "P-7" and "P-7-A", Docket – Vol. II, pp. 680 and 683.
[105] Docket – Vol. II, pp. 719 and 728.
[106] Pursuant to RR No. 26-2002, taxpayers classified under group C, such as herein petitioner, are required to file the Monthly Withholding Tax Returns within thirteen (13) days following the end of the month.

Anent the Building and Improvement, while petitioner allegedly accounted the assessed discrepancy as pertaining to payments of ₱19,835,185.97 made and subjected to 2% EWT in TY 2014 and payments of ₱148,715.58 made and subjected to 1% EWT in TY 2015,[107] the same are not backed up by documents for proper verification of said amounts and details of such transactions.

Nevertheless, the income payments of ₱23,772,904.00 for Building and Improvement per FS being assessed by respondent actually composed of Additions to Building and Improvement in the amounts of ₱23,540,418.00 in TY 2014 and ₱232,486.00 in TY 2015 as can be gleaned in Note 10[108] of petitioner's Notes to FS. Verily, the bulk of the assessed amount apparently pertained to income payments for asset worth ₱23,540,418.00 already recorded as Additions to Building and Improvement in TY 2014. As such, pursuant to Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-01,[109] the obligation to withhold tax on the said Additions of ₱23,540,418.00 already arose in TY 2014 when the same was recorded as an asset in its books. Hence, the said amount of ₱23,540,418.00 shall be excluded in the assessment for TY 2015. This leaves the assessed income payments on Building and Improvement subject to EWT in the reduced amount of ₱232,486.00 for TY 2015.

However, considering that the ₱3,789,003.57 income payments subjected to EWT per Alphalist is higher than the assessed amount of ₱232,486.00 subject to EWT, there is no under withholding of tax on income payments for Building and Improvement. Hence, the cancellation of the assessed EWT due on Building and Improvement is warranted.

As to the Interest Expense, petitioner's only defense is that it is not one of the top 20,000 private corporations liable to withhold 2% EWT on interest expense. However, its Alphalist of Payees, attached to the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E],[110] indicating, among others, "Income payments made by top 20,000 private corporations" as nature of payment, belies its claim. And since no other

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[107] Annex 5 of protest to FAN (Exhibit "P-8", Docket – Vol. II, p. 698):

	Tax Base	Withholding
Building and Improvement		
a. Payment made in 2014 at 2% rate	₱19,835,185.97	₱396,703.72
b. Payment made in 2015 at 1% rate	148,715.58	1,487.16
	₱19,983,901.55	₱398,190.88

[108] Exhibit "P-14", Docket – Vol. II, p. 755.

[109] "Sec. 2.57.4. *Time of withholding. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment* is paid or payable, *or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books*, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable."

[110] Exhibits "P-12" and "P-13", Docket – Vol. II, pp. 719 to 720 and 728 to 729, respectively.

explanation was given to dispute the assessment, the assessed EWT due on the ₱649,339.80 discrepancy on Interest Expense shall be upheld.

With regard to the Professional Fees previously disallowed under the deficiency income tax, as earlier discussed, petitioner failed to subject the professional fees in the amount of ₱67,000.00 to 15% EWT and prove that the same are payments made to GPP to be exempt from withholding tax. Hence, the assessed EWT due thereon shall likewise be upheld.

In sum, petitioner's basic deficiency EWT due for TY 2015 amounted to ₱23,036.80, computed as follows:

	Tax Base	EWT Rate	**Basic Deficiency EWT Due**
Interest Expense	₱649,339.80	2%	₱12,986.80
Professional Fees	67,000.00	15%	10,050.00
Total	₱716,339.80		**₱23,036.80**

IV. Deficiency DST

Petitioner was assessed of deficiency DST for TY 2015 in the amount of ₱57,501.84, computed as follows:

Basic Tax Due (Schedule 6)		₱ 31,299.00
Add: Surcharge (25%)	₱ 7,824.75	
Interest 20% (01/06/16 - 12/31/17)	12,451.00	
Interest 12% (01/01/18 - 07/31/19)	5,927.09	26,202.84
TOTAL AMOUNT DUE		**₱57,501.84**

Respondent's verification disclosed that petitioner failed to pay the DST of one peso (₱1.00) on each Two Hundred Pesos (₱200.00), or fractional part thereof, on the Advances from Stockholders which purported to be loans pursuant to Section 179 of the NIRC as established in the case of CIR vs Filinvest Dev't Corp. and of one peso (₱1.00) on each Two Hundred pesos (₱200.00), or fractional part thereof for the availment of loan pursuant to the same Section of the same Code. The basic tax due of ₱31,299.00 was computed as follows:[111]

Schedule 6:

	AMOUNT	**DST RATE**	**DST DUE**
Availment of Loan	₱200,000,000.00	₱1.00/₱200.00	₱1,000,000.00
Advances from Stockholders	3,600,000.00	₱1.00/₱200.00	18,000.00
Total			₱1,018,000.00
Less: Tax Paid per return			986,701.00
Basic Tax Due			**₱31,299.00**

[111] Exhibit "P-7-A", Docket – Vol. II, p. 683.

Petitioner contends that the loan agreement allegedly not subjected to DST pertains to the transaction entered into between petitioner and a bank, particularly, Security Bank Corporation; that the bank is the one liable for the remittance of the corresponding DST under Section 3(c)(4) of RR No. 9-2000; and that the advances from stockholders pertain to working capital advances for its business operations which are not subject to DST.

We find merit on petitioner's contention but only in so far as the Availment of Loan from Security Bank is concerned.

Subject of the assessment is the availment of loan by petitioner from Security Bank in the amount of ₱200,000,000.00 as evidenced by the Promissory Note[112] issued by the former.

Section 3 of RR No. 9-2000 clearly provides that when one of the parties to the taxable document or transaction is a bank, the bank shall be responsible for the remittance of the DST prescribed under Title VII of the NIRC of 1997; and unless it is exempt from said tax, then it shall remit the same only as a collecting agent of the BIR Commissioner, to wit:

> "SECTION 3. *Mode of Payment and Remittance of the Tax.* —
>
> (a) *In general.* — Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.
>
> (b) *Exceptions.* —
>
> xxx xxx xxx
>
> (2) If the said tax-exempt party is one of the persons enumerated in Section 3(c)(4) hereof, he shall be constituted as agent of the Commissioner for the collection of the tax, in which case, he shall remit the tax so collected in the same manner and in accordance with the provisions of Section 200 of the Code: Provided, however, that if he fails to collect and remit the same as herein required, he shall be treated personally liable for the tax, in addition to the penalties prescribed under Title X of the Code for failure to pay the tax on time.
>
> xxx xxx xxx
>
> (c) *Persons liable to remit the DST.* — In general, the full amount of the tax imposed under Title VII of the Code may be

[112] Exhibit "P-18", Docket – Vol,. 4, pp. 1566 to 1569.

remitted by any of the party or parties to the taxable transaction, except in the following cases:

xxx xxx xxx

(4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code: *Provided, however*, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent**, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:

(a) A **bank,** a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company;" *(Emphasis supplied)*

Pursuant to the foregoing provisions, considering that Security Bank is a party to the taxable transaction and that there was never an allegation of it being exempt from DST, said bank is directly liable for the payment and remittance of the DST on the Promissory Note. As such, the DST assessment on petitioner for the said availment of loan is unwarranted.

On the other hand, petitioner failed to support its contention that the assessed Advances from Stockholders in the amount ₱3,600,000.00, which was reflected as "Due to a related party" under Current Liabilities in petitioner's Statement of Financial Position as at December 31, 2015, are not loans subject to DST. Hence, the assessed DST due thereon in the amount of ₱18,000.00 shall remain.

In sum, petitioner is liable to pay DST due in the amount of ₱18,000.00 only. However, following respondent's computation of the DST assessment, since petitioner's "Tax Paid per return" of ₱986,701.00 is way higher than its assessed DST due of ₱18,000.00, petitioner has no deficiency DST liability for TY 2015.

V. Compromise Penalty

Respondent's imposition of ₱15,000.00 compromise penalty on the deficiency DST must be removed absent a showing that petitioner consented to the same.

payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice