REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TRINITY FRANCHISING AND MANAGEMENT CORPORATION, Petitioner,	**CTA CASE NO. 9177**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 2 6 2019 1:38 PM

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration [re: Amended Decision dated October 29, 2018]**, filed on November 14, 2018, with petitioner's **Comment (to Respondent's Motion for Partial Reconsideration dated 14 November 2018)**, filed on December 10, 2018.

Respondent moves for reconsideration of the Amended Decision dated October 29, 2018 (assailed Amended Decision), the dispositive portion of which states:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration [Decision dated 13 June 2018]** is **DENIED** for lack of merit, while petitioner's **Motion for Partial Reconsideration (of Decision promulgated on June 13, 2018)** is **PARTIALLY GRANTED**. Accordingly, the Decision dated June 13, 2018 is **AMENDED** to read as follows:

'**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2011 covering deficiency income tax, deficiency final withholding tax, deficiency fringe benefits tax, deficiency documentary stamp tax, and compromise penalties are hereby **CANCELLED** and **WITHDRAWN**. On the other hand, assessments covering deficiency value-added tax, deficiency expanded withholding tax, and deficiency withholding tax on compensation are hereby **AFFIRMED** but with modifications. Petitioner is **ORDERED TO PAY** respondent the amount of **FOUR MILLION TWO HUNDRED SIXTY-THREE THOUSAND THIRTY-NINE PESOS AND SIXTY-TWO CENTAVOS (₱4,263,039.62)** representing the basic deficiency taxes for the taxable year 2011, 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed under Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	**EWT**	**WTC**	**Total**
Basic tax	₱ 639,700.13	₱ 158,114.02	₱ 480,273.29	₱ 1,278,087.44
25% Surcharge	159,925.03	39,528.51	120,068.32	319,521.86
Deficiency Interest				
VAT - 1/26/2012 to 10/2/2015[1] [1,346 days] (₱639,700.13 x 20% x 3.6876712 yrs.)	471,800.75			946,131.26
EWT- 1/16/2012 to 10/2/2015 [1,356 days] (₱158,114.02 x 20% x 3.71506849 yrs.)		117,480.88		
WTC- 1/16/2012 to 10/2/2015 [1,356 days] (₱480,273.29 x 20% x 3.71506849 yrs.)			356,849.63	
Total Amount Due as of October 2, 2015	**₱1,271,425.91**	**₱315,123.41**	**₱ 957,191.24**	**₱2,543,740.56**
Deficiency Interest				
VAT - 10/3/2015 to 12/31/2017 [821 days] (₱639,700.13 x 20% x 2.24931506 yrs.)	₱ 287,777.43			574,964.27
EWT - 10/3/2015 to 12/31/2017 [821 days] (₱158,114.02 x 20% x 2.24931506 yrs.)		71,129.65		

[1] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, vol. II, p. 542. Deficiency tax liability is payable immediately upon receipt of FDDA; Exhibit "P-1-15", docket, vol. I, pp. 384-386.

WTC - 10/3/2015 to 12/31/2017 [821 days]			216,057.19	
(₱480,273.29 x 20% x 2.24931506 yrs.)				
Delinquency Interest				
VAT - 10/3/2015 to 12/31/2017 [821 days]	571,967.49			
(₱1,271,425.91 x 20% x 2.24931506 yrs.)				
EWT - 10/3/2015 to 12/31/2017 [821 days]		141,762.37		1,144,334.79
(₱315,123.41 x 20% x 2.24931506 yrs.)				
WTC - 10/3/2015 to 12/31/2017 [821 days]			430,604.93	
(₱957,191.24 x 20% x 2.24931506 yrs.)				
Total Amount Due as of December 31, 2017	**₱2,131,170.83**	**₱528,015.43**	**₱1,603,853.36**	**₱4,263,039.62**

In addition, petitioner is liable to pay delinquency interest at the rate of twelve percent (12%) on the total unpaid basic deficiency tax, surcharge and deficiency interest as of October 2, 2015 amounting to ₱1,271,425.91 for VAT, ₱315,123.41 for EWT and ₱957,191.24 for WTC, or in the aggregate amount of ₱2,543,740.56, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.'

SO ORDERED."

Upon examination of respondent's motion, the Court finds that respondent merely repeats the arguments already raised in his previous pleadings, which this Court had already considered, weighed, and resolved in rendering the assailed Decision and Amended Decision. It is noteworthy that respondent has also acknowledged the same in his motion, to wit:

> "xxx To require the CIR to file a motion for reconsideration of the Amended Decision would be an exercise in futility since he will just be raising the same arguments already passed upon and denied by the Honorable Court in Division when it rendered the assailed Amended Decision."

Nonetheless, the Court clarifies some points, if only to reinforce its discussion in the assailed Decision and Amended Decision.

Respondent argues that the case of *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue (CIR)*[2] cited by the Court in the assailed Amended Decision is inapplicable to the present case because no decision was issued by the CIR in the case of *PAL*. Since respondent rendered a Final Decision on Disputed Assessment in this case, respondent asserts that the Court's jurisdiction becomes strictly appellate in nature and matters not substantiated in the administrative level cannot be ruled upon by the Court.

Respondent also cites the case of *CIR vs. Manila Mining Corporation*[3], and avers that litigants must present anew their evidence with this Court in accordance with the Rules of Court.

On the other hand, petitioner contends that in the exercise of its appellate jurisdiction, this Court may consider all evidence formally offered by the taxpayer, whether or not they were submitted in the administrative level. Moreover, petitioner argues that the evidence a taxpayer can present before this Court cannot be limited to documents already presented at the Bureau of Internal Revenue (BIR) level because to do so would make it mandatory for the taxpayer to be represented by counsel at the BIR proceedings.

Respondent's arguments are misplaced.

In *Manila Mining,* respondent therein submitted purchase invoices and official receipts to the BIR, but did not present them before the Court. In the case at bar however, respondent contends that evidence not submitted at the administrative level cannot be used by this Court in rendering a decision. Evidently, *Manila Mining* is inapplicable to this case.

The Court maintains its ruling that the taxpayer may present evidence not presented at the administrative level to the Court of Tax Appeals (CTA) to support its case. Republic Act No. 1125, as amended, provides that the CTA is a court of record, thus:

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[2] G.R. Nos. 206079-80 & 206309, January 17, 2018.

[3] G.R. No. 153204, August 31, 2005.

> "Section 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."

Thus, cases filed before this Court are litigated *de novo*, and party-litigants are required to prove every minute aspect of their cases.[4] This is supported by the case of *CIR vs. Philippine National Bank (PNB)*[5], where the Supreme Court similarly ruled that:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. <u>Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim</u>.'" (*Underscoring supplied*)

Hence, in the assessment case of *Parity Packaging Corporation vs. CIR*[6], the First Division of this Court cited the *PNB* case, and resolved that it is not precluded from accepting evidence even when such evidence was not presented at the administrative level.

Thus, based on the foregoing, the Court holds that it may consider all evidence formally offered and admitted in this case, notwithstanding their non-presentment in the BIR.

Respondent further asserts that the imposition of compromise penalties is not subject to review by this Court because of the failure of petitioner to dispute the same. *ge*

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[4] *Dizon vs. Court of Tax Appeals and CIR*, G.R. No. 140944, April 30, 2008.
[5] G.R. No. 180290, September 29, 2014.
[6] CTA Case No. 8825, Resolution dated January 22, 2018.

On the other hand, petitioner avers that respondent does not deny that the nature of a compromise penalty requires that petitioner must consent to the same in order for it to be imposed. According to petitioner, the Court already succinctly and correctly held that there is nothing in the records which would show that petitioner consented to the compromise penalty, thus, the same should not be imposed.

Suffice it to state that in Revenue Memorandum Order (RMO) No. 01-90[7], as amended by RMO No. 19-07[8], respondent CIR acknowledged that 'compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer.' Hence, this Court finds no basis for respondent's imposition of compromise penalty.

Respondent also contends that the maximum tax rate of 32% should be used on the upheld deficiency withholding tax on compensation because tax assessments are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment.

On the other hand, petitioner points out that the presumption of correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.

Respondent's argument is unmeritorious. As explained by the Court in the assailed Amended Decision, only 53 out of the 385 employees of petitioner had net taxable income above ₱500,000 while most of the rest of the employees belong to the bracket of over ₱140,000 where the tax rate is ₱8,500 plus 20% of the excess over ₱70,000. Since the Court cannot ascertain the exact income tax rate that should be used, it is only fair to use the average income tax rate based on total withholding tax due and net taxable compensation income reflected per petitioner's Alphalist of Employees.

As to the remaining arguments raised by respondent in the subject motion, the Court finds that he merely rehashed his previous arguments and failed to raise new matters which warrant the attention of this Court.

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[7] SUBJECT: Amendments to the Provisions of a "Revised Schedule of Compromise Penalties" for Internal Revenue Violations as Prescribed in RMO 26-86.

[8] Subject: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

WHEREFORE, finding no reversible error in the assailed Amended Decision to warrant its reconsideration, respondent's **Motion for Partial Reconsideration [re: Amended Decision dated October 29, 2018]** is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice