REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DMCI HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10784

Members:

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

Promulgated:

NOV 04 2025
3:00 p.m.

x- -x

DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] dated February 23, 2022 aims to nullify the Final Decision on Disputed Assessment (FDDA) dated December 20, 2021, issued by the Commissioner of Internal Revenue (CIR) against DMCI Holdings, Inc. Said FDDA found the latter liable for deficiency internal revenue taxes in the total amount of ₱199,283,071.13, inclusive of interest, for Taxable Year ended December 31, 2016 (TY 2016).

FACTS

Petitioner DMCI Holdings, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 3rd Floor Dacon Building, 2281 Don Chino Roces Avenue, Makati City.[2] It is a publicly listed holding company

---

1 Docket (Vol I), pp. 1-40.
2 Exhibit "P-2a." *Id.* at p. 89.

with a certificate of permit to offer securities for sale issued by the Securities and Exchange Commission (SEC) on August 17, 1995.[3]

Respondent is the duly appointed CIR, authorized to perform the duties of his office, including, among others, acting on disputed tax assessments and entering into a compromise with respect to, or abating, tax liabilities as provided by law.[4]

On May 21, 2018, OIC - Assistant Commissioner Large Taxpayer's Service Teresita M. Dizon (ACIR-LTS Dizon) issued a Letter of Authority (LOA) SN: eLA201600030598, authorizing Revenue Officers (ROs) Ernesto Nacpil and Agnes Sison under Group Supervisor (GS) Erlita Maria Vergara, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the periods January 1, 2016 to December 31, 2016.[5]

On May 30, 2019, ACIR-LTS Dizon issued LOA SN: eLA201700005622] LOA-125-2019-00000221, authorizing ROs Hannah Thea Tulio-Binangon, Limuel Miguel, and GS Bryan Francis Lim, to examine petitioner's books of accounts and other accounting records for the periods January 1, 2016 to December 31, 2016.[6]

On June 30, 2020, the Bureau of Internal Revenue (BIR) issued a Notice of Informal Conference on petitioner.[7]

On January 15, 2021, petitioner received Assistant Commissioner - Large Taxpayer's Service Manuel V. Mapoy (ACIR-LTS Mapoy)'s Preliminary Assessment Notice with Details of Discrepancies (PAN) dated January 11, 2021, containing the proposed deficiency income tax (IT), value-added tax (VAT), final withholding tax (FWT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp

[3] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. III), p. 888.

[4] Par. 1, Stipulated Facts, JSFI. *Id.* at p. 888.

[5] Exhibit "R-1." BIR Records – Folder 1 (Exhibit "R-15"), p. 4.

[6] Exhibit "P-3," Docket (Vol. I), p. 92; and Exhibit "R-2," BIR Records – Folder 1 (Exhibit "R-15"), p. 93.

[7] Exhibit "R-6." BIR Records – Folder 1 (Exhibit "R-15"), p. 380.

qu

tax (DST) assessments, and miscellaneous charges (MC) for TY 2016, with surcharges with respect to FWT, amounting to ₱452,664,985.26.[8]

On January 29, 2021, petitioner submitted its reply of even date, contesting ACIR-LTS Mapoy's PAN.[9]

On March 23, 2021, petitioner received[10] Deputy Commissioner - Operations Group Arnel SD Guballa (DCIR Guballa)'s Formal Letter of Demand and Final Assessment Notices, with Details of Discrepancies (FLD/FAN)[11] dated March 18, 2021, assessing the former for deficiency IT, VAT, FWT, EWT, WTC, FBT, DST, and MC for TY 2016, in the total amount of ₱455,982,952.58, inclusive of surcharges and interests.

On April 22, 2021, petitioner lodged its Protest/Request for Reinvestigation,[12] challenging DCIR Guballa's FLD/FAN, followed by its submission[13] of documents in support thereof on June 17, 2021.

During reinvestigation, petitioner paid portions of the deficiency internal revenue taxes found in DCIR Guballa's FLD/FAN,[14] with the following particulars:

Tax Type	Amount
FBT	₱1,187,010.18
EWT	₱180,526,81
WTC	₱1,012,710.43
VAT	₱7,443,164.61
IT	₱247,788.49

On January 24, 2022, petitioner received [15] respondent's FDDA,[16] demanding payment of deficiency IT, FWT, EWT, DST, and

---

8 Exhibit "P-4," Docket (Vol. I), p. 93-104; and Exhibit "R-8," BIR Records - Folder 1 (Exhibit "R-15"), pp. 435-446.

9 Exhibit "P-5," Docket (Vol. I), pp. 105-108.

10 Exhibit "P-6," Docket (Vol. I), at p. 121; and Exhibit "R-10," BIR Records - Folder 1 (Exhibit "R-15"), at p. 523.

11 Exhibit "P-6," Docket (Vol. I), pp. 121 to 141; and Exhibits "R-10," "R-10-A," "R-11," and "R-11-A" to "R-11-G," BIR Records - Folder 1 (Exhibit "R-15"), pp. 503 to 523.

12 Exhibit "P-7." Docket (Vol. I), pp. 142-178.

13 Par. 8, Stipulated Facts, JSFI, Docket (Vol. III), p. 889; and Exhibit "P-8," Docket (Vol. I), pp. 179-183.

14 Par. 9, Stipulated Facts, JSFI. Docket (Vol. III), p. 889.

15 Exhibit "P-1," Docket (Vol. I), p. 64; and Exhibit "R-13," BIR Records - Folder 1 (Exhibit "R-15"), at p. 868.

MC covering TY 2016, in the total sum of ₱199,283,071.13, inclusive of interest.[17]

On February 23, 2022, petitioner filed its Petition for Review,[18] docketed as CTA Case No. 10784, which was met by respondent's Answer (Re: Petition for Review dated 23 February 2022),[19] posted on May 13, 2022.

Meanwhile, petitioner received the BIR's Warrant of Distraint and/or Levy No. 125-2022-037 (WDL) on April 7, 2022.[20] In view thereof, petitioner moved,[21] and We granted,[22] its plea to suspend collection of tax and/or to enjoin the enforcement of the WDL, *sans* the required bond.

On August 17, 2022, pre-trial conference was held.[23] There, the parties jointly submitted, and We adopted the issue to be addressed in this case. The scheduled presentation of the parties' evidence and the date of commissioner's hearing for the marking of their respective exhibits were as well set. Additionally, the parties were directed to submit their Joint Stipulation of Facts and Issues not later than September 16, 2022.

On September 16, 2022, the parties submitted,[24] and We admitted and approved,[25] their Joint Stipulation of Facts and Issues, thereby terminating pre-trial. Accordingly, a Pre-Trial Order[26] was issued on November 22, 2022.

Trial followed.

---

16 Exhibit "P-1," Docket (Vol. I), pp. 64-77; and Exhibits "R-13," "R-14," and "R-14-A" to "R-14-E," BIR Records - Folder 1 (Exhibit "R-15"), pp. 855-868.

17 Par. 10, Stipulated Facts, JSFI, Docket (Vol. III), p. 890.

18 *Supra* note 1.

19 Docket (Vol. II), pp. 636-649.

20 Per Manifestation filed on May 19, 2022. Docket (Vol. II), pp. 653-656.

21 Petitioner's Urgent Motion to Suspend the Collection of Tax and/or to Enjoin the Enforcement of Warrant of Distraint and/or Levy filed on April 13, 2022. *Id.* at pp. 600-609.

22 Resolution dated December 7, 2022. Docket (Vol. III), pp. 969-978.

23 Order dated August 17, 2022. Docket (Vol. II), pp. 872-874.

24 Docket (Vol. III), pp. 888 to 902.

25 Resolution dated October 17, 2022. *Id.* at p. 926.

26 *Id.* at pp. 957-967.

Petitioner presented the following witnesses: (1) Mary Grace M. Garcia,[27] its Finance Officer; (2) April A. Arriola,[28] its Accounting and Administrative Officer; and (3) Independent Certified Public Accountant[29] Emmanuel Y. Mendoza (ICPA Mendoza).[30]

On May 5, 2023, petitioner filed its Offer of Documentary Evidence,[31] to which respondent filed his Comment (Re: Offer of Documentary Evidence dated 05 May 2023) on May 11, 2023.[32]

By Resolution dated June 21, 2023,[33] the evidence offered by petitioner was admitted, save for: (1) Exhibit "P-2," for failure to submit the duly marked exhibit; (2) Exhibits "P-10w," "P-37 series," and "P-38 series," for not being found in the records of the case; and (3) Exhibits "P-39 series," "P-40 series," "P-41 series," "P-42 series," "P-45 series," and "P-60 series to P-69 series," for not being found in the records of the case and for failure to identify. Petitioner rested its case.

Respondent presented Revenue Officer Hannah Thea Tulio-Binangon[34] as witness.

On March 13, 2024, respondent filed his Formal Offer of Evidence,[35] to which petitioner filed its Comment/Opposition (re: Formal Offer of Evidence dated March 13, 2024) on March 25, 2024.[36]

Under Resolution[37] dated June 4, 2024, the evidence offered by respondent were admitted. Respondent rested his case.

---

27 Exhibit "P-64," Docket (Vol. II), pp. 691-701; Identified during the hearing held on March 30, 2023, per Order of even date, Docket (Vol. III), pp. 1021-1022.

28 Exhibit "P-46," Docket (Vol. I), pp. 45-63; Identified during the hearing held on March 2, 2023, per Order of even date, Docket (Vol. III), pp. 986-987.

29 Oath of Commission dated January 26, 2023 [Docket (Vol. III), p. 980]; and Order dated January 26, 2023, *Id.* at p. 981-982.

30 Exhibit "P-124," *Id.* at pp. 992-1018. Identified during the hearing held on April 20, 2023, per Order of even date, *Id.* at pp. 1023-1025.

31 *Id.* at pp. 1039-1052.

32 *Id.* at pp. 1078-1080.

33 *Id.* at pp. 1086-1089.

34 Exhibit "R-16," Docket (Vol. II), pp. 666-677. Identified during the hearing held on March 12, 2024, per Order of even date. Docket (Vol. III), pp. 1098-1099.

35 Docket (Vol. III), pp. 1100-1109.

36 *Id.* at pp. 1112-1121.

37 *Id.* at pp. 1126-1127.

On August 5, 2024, CTA Case No. 10784 was submitted for decision,[38] considering: (1) respondent's Manifestation[39] filed on July 10, 2024, saying that he is adopting the arguments in his Answer as his Memorandum; and (2) petitioner's Memorandum[40] filed on July 18, 2024.

ISSUE[41]

Is petitioner liable to pay the deficiency IT, VAT, EWT, FWT, DST, and MC, in the total amount of One Hundred Ninety-Nine Million Two Hundred Eighty-Three Thousand, Seventy-One Pesos and Thirteen Centavos (₱199,283,071.13) found by respondent for TY 2016?

ARGUMENTS

Petitioner argues that the deficiency internal revenue tax assessments found in respondent's FDDA covering TY 2016 should be cancelled because it is wanting in legal and factual bases, explaining in this wise:

a. The BIR unjustifiably ignored its actual net loss in computing its adjusted taxable income in its 2016 Annual Income Tax Return (AITR);

b. It properly, accurately, and timely reported its income in its 2016 AITR;

c. The BIR's *pro rata* approach in allowing the proportional deduction of expenses imputed to income subject to regular IT lacks foundation in fact and law;

d. It subjected, and paid the EWT corresponding to its professional fees;

e. The dividends it declared for TY 2016 are exempted from IT; hence, it is not required to withhold final income taxes thereon;

f. Some of the expenses disallowed by the BIR are exempt from imposition of EWT;

g. The expenses disallowed by the BIR, for failure to subject the same to FBT under Section 33 of the 1997 National Internal Revenue Code

---

38 Minute Resolution dated August 5, 2024. *Id.* at p. 1180.

39 *Id.* at pp. 1128-1130.

40 *Id.* at pp. 1132-1176.

41 See Stipulated Issue, JSFI, Docket (Vol. III), pp. 890-891.

(NIRC), as amended, is not subject to said tax, because those expenses are not fringe benefits on the part of the recipient thereof. Rather, they are simply its business expenses;

h. The DST imposed on the transaction, *i.e.*, receivables from its subsidiary, was already settled by such subsidiary; and

i. The MC (Compromise Penalties) slapped by the BIR against it is incorrect because it did not agree to the imposition thereof.

On the other hand, respondent counters that the findings and results of petitioner's 2016 deficiency internal revenue taxes, are sufficiently supported by legal and factual bases; thus, the FDDA embodying these results and findings should stand.

RULING

We partly grant the Petition.

First. Did We obtain jurisdiction over CTA Case No. 10784?

Yes.

Section 7(a)(1) of Republic Act (RA) No. 1125,[42] as amended by RA No. 9282, endows the CTA exclusive appellate jurisdiction over respondent's or his duly authorized representative's decision on disputed assessments:[43]

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

---

42 An Act Creating the Court of Tax Appeals.

43 See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, G.R. No. 208731, January 27, 2016.

...[44]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[45] clarified that the CTA in Division has jurisdiction over respondent's or his duly authorized representative's decision involving disputed assessments, among others.[46] For the decision of respondent or his duly authorized representative to be raised on appeal before the CTA in Division, there must first be a disputed assessment.[47] To correctly dispute a final assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[48]

In turn, the validity of the administrative protest rests upon the confluence of two (2) conditions, namely: *first,* it must be filed within

---

44 Boldfacing ours.

45 A.M. No. 05-11-07-CTA.

46 **SEC. 3.** Cases within the jurisdiction of the Court in Divisions. - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws, administered by the Bureau of Internal Revenue; (Boldfacing ours)

47 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

48 Boldfacing ours.

30 days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[49] Subsection 3.1.4 of Revenue Regulations (RR) No. 18-2013, echoed the period to institute an administrative protest before the BIR, as well as the form and manner thereof, in this wise:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

Indeed, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest. Upon the taxpayer's receipt of the FDDA, it has another thirty (30) days to seek redress with the CTA in Division.

On March 23, 2021, petitioner received[50] DCIR Guballa's FLD/FAN.[51] Counting thirty (30) days therefrom, petitioner had until April 22, 2021 to file an administrative protest thereto; thus, he timely[52] lodged his administrative protest on the FLD/FAN on April 22, 2021. Said protest, too, contained: (1) a statement seeking reinvestigation of the assessment, citing various documents and certifications in support thereof; (2) the legal and factual grounds of

---

49 See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

50 *Supra* note 10.

51 *Supra* note 11.

52 *Supra* note 12.

such protest; and (3) the date of FAN.[53] Therefore, petitioner registered a valid administrative protest on the FLD/FAN, thereby transmuting the assessment to a disputed assessment.

On January 24, 2022, petitioner received[54] respondent's FDDA.[55] Counting thirty (30) days therefrom, petitioner had until February 23, 2022 to seek judicial recourse. Therefore, the timely[56] filing of petitioner's Petition for Review on February 23, 2022, clad Us with jurisdiction over CTA Case No. 10784.

Second. Is petitioner liable to pay 2016 deficiency IT, EWT, FWT, FBT, DST, and MC found by respondent?

Yes, albeit in part.

In his FDDA,[57] respondent slapped petitioner with deficiency internal revenue taxes, inclusive of increments, and MC for TY 2016, amounting to ₱199,283,071.13, summarized as follows:

Tax Type	Basic Deficiency Tax	Surcharge	Interest	Total
IT	₱23,792,897.36	-	₱14,554,734.58	₱38,347,631.94
FWT	78,963,024.89	-	52,197,804.50	131,160,829.39
EWT	1,932,351.37	-	1,277,363.67	3,209,715.04
FBT	1,716,615.27	-	1,134,753.24	2,851,368.51
DST	12,241,729.56	₱3,060,432.39	8,159,364.29	23,461,526.25
MC				252,000.00
Total	**₱118,646,618.45**	**₱3,060,432.39**	**₱77,324,020.28**	**₱199,283,071.13**

Our finding on each item of deficiency internal revenue tax, and corresponding justifications therefor shall proceed in *seriatim*.

I. IT

Petitioner's 2016 deficiency IT liability amounting to ₱38,347,631.94, inclusive of interest, was calculated by respondent in the following manner:[58]

53 *Ibid.*
54 *Supra* note 15.
55 *Supra* note 16.
56 *Supra* note 1.
57 *Supra* note 16.
58 Exhibit "P-1." Docket (Vol. I), p. 64.

Net Income per ITR		₱ -
Add: Adjustments		
Undeclared Income	₱ 3,457,050.81	
Disallowed Expense – Unnecessary Expense	54,520,492.51	
Disallowed Expenses due to non-withholding of tax	21,332,114.53	79,309,657.85
Adjusted Taxable Income		₱79,309,657.85
Tax Rate		0.30
Tax Due		₱23,792,897.36
Add: Tax Payments/Credits		
Prior year excess credit	₱8,940,226.00	
Excess Minimum Corporate Income Tax (MCIT) applied this current taxable year	-	
Creditable Tax Withheld – Three (3) Quarters	787,500.00	
MCIT Paid	(56,861.00)	
Carried Forward in the succeeding year	(9,670,865.00)	-
Basic Tax Due		₱23,792,897.36
Add: Interest		
20% (Apr. 16, 2017 to Dec. 31, 2017)	3,376,635.84	
12% (Jan. 01, 2018 to Nov. 30, 2021)	11,178,098.74	14,554,734.59[59]
TOTAL AMOUNT DUE		**₱38,347,631.95**

What we can refract therefrom is that the 2016 deficiency IT found by respondent against petitioner originated from the following items:

1. Net Income per ITR	nil
2. Undeclared Income	₱3,457,050.81
3. Disallowed Expense – Unnecessary Expense	54,520,492.51
4. Disallowed Expense due to non-withholding tax	21,332,114.53
5. Minimum Corporate Income Tax (MCIT) Paid	56,861.00
6. Carried Forward in the succeeding year	9,670,865.00

I.1. Net Income per ITR (nil)

To recall, in its AITR for TY 2016,[60] petitioner reported net loss of ₱51,720,118.00 for said year, computed as follows:

Line No.	Particulars	Amount
30	Net Sales/Revenues/Fees	₱4,200,000.00
31	Less: Cost of Sales/Services	9,339,206.00
32	Gross Income from Operations	(₱5,139,206.00)
33	Add: Other Taxable Income Not Subjected to Final Tax	7,982,238.00

[59] Actual footing is ₱14,554,734.58; With a difference of ₱0.01.

[60] Exhibit "P-34," Docket (Vol. II), pp. 504-512.

34	**Total Gross Income**	**₱2,843,032.00**
35	Less: Ordinary Allowable Itemized Deductions	54,563,150.00
40	**Net Taxable Income**	**(₱51,720,118.00)**

Respondent omitted petitioner's reported net loss amounting to ₱51,720,118.00.[61] Instead, the former set the latter's net income to zero (0), resulting in corresponding IT deficiency on the part of petitioner.

Respondent must be corrected.

Section 228 of the NIRC, as amended, pertinently states that "[t]he taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

No explanation was provided by respondent in the FLD/FAN[62] and FDDA[63] to rationalize his total deletion of petitioner's net loss amounting to ₱51,720,118.00, reported in its 2016 AITR, as well as fixing petitioner's net taxable income at zero (0). It means that petitioner was *not* informed of the suppose reasons for said actions, offensive of its right to due process. By this premise alone, petitioner's reported net loss of ₱51,720,118.00 in its 2016 AITR may still be used in computing its IT liability for said year.

Besides, petitioner was able to show that its reported net loss in the amount of ₱51,720,118.00 for TY 2016, represents the excess of allowable deductions over its gross income for said year; hence, it is the net operating loss contemplated by Section 34(D)(3)[64] of the NIRC, as amended.[65] ICPA Mendoza's presentation is hereby adopted:[66]

---

61 *Supra* note 16.

62 Details of Discrepancy (FLD/FAN), Exhibit "P-6," Docket (Vol. I), pp. 125-130.

63 Exhibit "P-1," *Id.* at pp. 64-71.

64 **SEC. 34. Deductions from Gross Income.** - ...

...

(D) Losses. -

...

3) **Net Operating Loss Carry-Over.** - 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: ...

...

For purposes of this subsection, the term 'net operating loss' shall mean the excess of allowable deduction over gross income of the business in a taxable year.

65 Item V.A.2. of the ICPA Report (Exhibit "P-123"), Binder, p. 16.

OH

Revenues:		
Dividend income	₱6,348,634,046.00	
Finance income	96,047,480.00	
Management fees	4,200,000.00	
Foreign currency exchange gains (loss) – net	494,519.00	
Pension income	430,461.00	
Gain on sale of property and equipment	348,214.00	₱6,450,154,720.00
Less: Expenses		
General and administrative expenses		
Professional fees	18,916,387.00	
Salaries, wages, and employee benefits	16,463,930.00	
Depreciation and amortization	5,308,810.00	
Entertainment, amusement, and recreation	3,866,766.00	
Contribution and donation	3,160,326.00	
Rent	3,132,592.00	
Taxes and licenses	2,678,038.00	
Transportation and travel	2,629,669.00	
Repairs and maintenance	2,488,550.00	
Supplies	1,930,792.00	
Advertising and promotions	1,852,498.00	
Communication, light, and water	1,201,643.00	
Contracted services	949,399.00	
Fuel and oil	545,250.00	
Bank charges	3,918.00	
Miscellaneous	5,342,551.00	70,471,119.00
Loss on liquidation of subsidiary		2,590,385,419.00
	Income before income tax	**₱3,789,298,182.00**
Reconciling Items:		
Add: Non-deductible expenses/taxable other income		
Entertainment, amusement, and recreation	3,824,766.00	
Others	2,593,555,745.00	2,597,380,511.00
Less: Non-taxable income and income subjected to final tax		
Dividend income	6,348,634,046.00	
Others	89,764,765.00	6,438,398,811.00
	Net Operating Loss	**(₱51,720,118.00)**

Considering that petitioner had net operating loss amounting to ₱51,720,118.00 for TY 2016, Section 34(D)(3)[67] of the NIRC, as amended, too, permits the carry-over thereof for three (3) succeeding taxable years. However, petitioner did not report said sum in its

---

66 Table 12 of the ICPA Report (Exhibit "P-123"), Binder, pp. 11-16.

67 *Supra* note 64.

AITR for 2017, 2018, and 2019, albeit it was reported as a disclosure in its 2017, 2018, and 2019 AFS.[68] Neither did petitioner utilize its 2016 net operating loss of ₱51,720,118.00 in 2017, 2018, and 2019.[69] As illustrated by ICPA Mendoza:[70]

AFS	AITR	Year Incurred	Expiration Year	NOLCO Amount	NOLCO Applied/Expired	Cumulative Balance
Exhibit "P-47"[71]	-	2015	2018	₱48,432,539.00	-	₱210,526,253.00
Exhibit "P-35"[72]	Exhibit "P-34"[73]	2016	2019	**51,720,118.00**	₱3,045,005.00	259,201,366.00
Exhibit "P-48"[74]	Exhibit "P-51"[75]	2017	2020	1,617,162.00	159,048,709.00	101,769,819.00
Exhibit "P-49"[76]	Exhibit "P-52"[77]	2018	2021	-	48,432,539.00	53,337,280.00
Exhibit "P-50"[78]	Exhibit "P-53"[79]	2019	2022	-	51,720,118.00	1,617,162.00

On these accounts, petitioner's net operating loss for TY 2016 amounting to ₱51,720,118.00 stands and should indeed be considered in computing its 2016 IT liability.

I.2. Undeclared Income (₱3,457,050.81)

Respondent computed petitioner's undeclared income, by comparing the Other Income subjected to VAT and the Other Income per AFS/ITR, tabled below:[80]

Total 1st Quarter Sales		₱6,157,265.10
Sale of Company Vehicle (net of VAT)	₱348,214.29	
Possible Collection from Management Fee Receivable	2,352,000.00	2,700,214.29
Possible Undeclared Income subject to Regular Corporate Income Tax (RCIT)		**₱3,457,050.81**

68 Item V.A.3. of the ICPA Report (Exhibit "P-123"), Binder, pp. 16-17.
69 *Ibid.*
70 *Ibid.*
71 Note 15, p. 34, USB (Exhibit "P-124-2").
72 Note 15, Docket (Vol. II), p. 554.
73 Line 37, *Id.* at p. 506.
74 Note 15, p. 32, USB (Exhibit "P-124-2").
75 Line 37, p. 3, USB (Exhibit "P-124-2").
76 Note 15, p. 38, USB (Exhibit "P-124-2").
77 Line 37, p. 6, USB (Exhibit "P-124-2").
78 Note 15, pp. 28 to 29, USB (Exhibit "P-124-2").
79 Schedule 6A, p. 6, USB (Exhibit "P-124-2").
80 Exhibit "P-1." Docket (Vol. I), p. 65.

Petitioner asserts that it properly declared its taxable income for 2016, invoking the following reconciliation:[81]

Total 1st Quarter Sales per 2016 BIR Form No. 2550-Q		₱6,157,265.10
Gain on Sale of Investment Property (2015 ITR)	₱4,759,050.91	
Gain on Sale of Fully depreciated service vehicle (2016)	348,214.29	
Collection of Management Fees (2016)	1,050,000.00	6,157,265.10[82]
Possible Undeclared Income subject to RCIT		**₱0.00**

Petitioner is correct.

The specifics of petitioner's immediately preceding reconciliation can be traced to the following presentation made by ICPA Mendoza:[83]

Particulars	Reference	Amount Per 2016 AFS/ITR	Amount Per 2015 AFS/ITR	Total	Remarks
Gain on sale of vehicle, net of VAT	Annex A-1	₱348,214.29	₱-	₱348,214.29	It is petitioner's internal policy that it has the option to sell fully depreciated vehicle at 20% of cost. Cost = ₱1,741.071.43[84] X 20% Gain = **348,214.29** VAT = 41,785.71 Price = **₱390,000.00**
Gain on sale of land to DMCI Mining, net of VAT	Annex A-1	-	4,759,050.83[85]	4,759,050.83	Price = ₱28,477,000.00 Cost = 23,146,863.09[86] Gain = 5,330,136.91 VAT = (571,086.10) Net = **₱4,759,050.83**
Management fee collected	Annex A-1	1,050,000.00		1,050,000.00	
	Total	**₱1,398,214.29**	**₱4,759,050.83**	**₱6,157,265.10**[87]	

Our validation of petitioner's reconciliation and ICPA Mendoza's examination and presentation generated the following results:

---

81 Par. 26, Petition for Review, Docket (Vol. I), pp. 16-17.
82 Actual footing is ₱6,157,265.20; With a difference of ₱0.10.
83 Item V.B.2 of the ICPA Report (Exhibit "P-123"), Binder, pp. 17-18.
84 Note 8 of AFS, Exhibit "P-35," Docket (Vol. II), p. 543.
85 ₱4,759,050.00, Line 1, Schedule 3, Exhibit "P-9," Docket (Vol. I), p. 188.
86 Note 7 of AFS, Exhibit "P-35," Docket (Vol. II), p. 542.
87 Actual footing is ₱6,157,265.12; With a difference of ₱0.02.

One. Petitioner's AITR[88] and AFS[89] for TY 2015 reveal that the gain from the sale of real property [90] in 2015, amounting to ₱4,759,050.00, was recorded as gain on sale of investment properties, and already recognized as income by petitioner for said year.

Two. The sale of fully depreciated vehicle to Herbert M. Consunji was supported by Official Receipt (OR) No. 47 [91] and Statement of Account (SOA) No. 44.[92] The gain thereon amounting to ₱348,214.29, was properly recorded in petitioner's AITR[93] and AFS[94] for TY 2016.

Three. The collection of management fees from DMCI Project Developers, Inc. for the 1st quarter of TY 2016 amounting to ₱1,050,000.00 was supported by OR No. 50[95] and SOA No. 45.[96] These management fees were properly reported and included in the total Management Fees received for 2016, and declared in petitioner's AITR for the TY 2016.[97]

Ergo, the IT imposed on petitioner's undeclared income in the total amount of ₱3,457,050.81 should be cancelled.

I.3 Disallowed Expense – Unnecessary Expense (₱54,520,492.51)

Respondent theorizes that only those expenses attributable to petitioner's active income must be permitted, whereas expenses imputable to petitioner's passive income must be disallowed. Given that only 0.08% of petitioner's total income constitutes its *active* income, only 0.08% of petitioner's reported expenses per 2016 AITR should be allowed. As such, 99.92% of its reported expenses

---

88 Line 1, Schedule 3, Exhibit "P-9," Docket – Vol. I, p. 188.
89 Parent Company Statements of Comprehensive Income, Exhibit "P-47," p. 5, USB (Exhibit "P-124-2").
90 Exhibit "P-28," Docket (Vol. III), pp. 1072-1077.
91 Exhibit "P-13-a," Docket (Vol. I), p. 279.
92 Exhibit "P-13-b," *id.* at p. 280.
93 Line 1, Schedule 3, Exhibit "P-34," Docket (Vol. II), p. 508.
94 Parent Company Statements of Comprehensive Income, Exhibit "P-35," *Id.* at p. 518.
95 Exhibit "P-13-c," Docket (Vol. I), p. 282.
96 Exhibit "P-13-d," *id.* at p. 281.
97 Included in the amount of ₱4,200,000.00 Sale of Services, Line 2, Schedule 1, Exhibit "P-34," Docket (Vol. II), p. 507; Refer to Exhibits "P-13-c" to "P-13-j," Docket (Vol. I), pp. 282-288.

amounting to ₱54,520,492.51 was disallowed. Respondent provided the following table:[98]

Computation of Rate:			
	Total	Active Income	Passive Income
Dividend Income	₱6,348,634,046.00		₱6,348,634,046.00
Finance Income	96,047,480.00		96,047,480.00
Management Fees	4,200,000.00	₱4,200,000.00	
Forex Gain	494,519.00	494,519.00	
Pension Income	430,461.00		430,461.00
Gain on Sale of PPE	348,214.00	348,214.00	
Total	**₱6,450,154,720**	**₱5,042,733.00**	**₱6,445,111,987.00**
Rate	**100%**	**0.08%**	**99.92%**
Total Expenses claimed in the ITR			₱54,563,150.00
Rate for Passive Income			99.92%
Disallowed expense – Unnecessary Expense			**₱54,520,492.51**

Petitioner retorts that the determination of whether an expense is necessary is factual in nature. It cannot be made to depend on respondent's arbitrary allocation formula.

Respondent is in error.

The relevant portion of Section 34(A)(1)(a) of the NIRC, as amended, reads:

> **SEC. 34.** ***Deductions from Gross Income.*** - ...
>
> *(A) Expenses. –*
>
> *(1) Ordinary and Necessary Trade, Business or Professional Expenses.-*
>
> (a) **In General.** - There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, ...

[98] Exhibit "P-1," Docket (Vol. I), p. 65.

Indeed, there is no requirement in Section 34(A)(1)(a) of the NIRC, as amended, that only expenses allocable to a taxpayer's active income would be allowed as an expense deduction, whereas those expenses imputable on its passive income would be disallowed as an expense deduction. In fact, the very act of allocating expenses is not even mentioned therein. Therefore, respondent's disallowance of 99.92% of petitioner's reported expenses per its 2016 AITR, in the amount of ₱54,520,492.51, is wanting in legal foundation. Our conclusion finds solace in the following dictum in *Department of Finance (DOF), et al. v. Asia United Bank, et al. (AUB)*:[99]

> Under Section 34 (A) (1) of the Tax Code, the taxpayer has the right to claim as deductions from its gross income all the ordinary and necessary expenses paid or incurred in carrying on, or which are directly attributable to the development, management, operation and/or conduct of its trade or business, to arrive at the correct amount of taxable income.
>
> We agree with respondents that **common expenses should** be **deductible in full against its income subject to regular tax. As currently worded, all expenses are deducted directly and in full without any allocation or attribution between the different income streams.** There is no requirement to allocate the common expenses to its income subject to Final Withholding Tax or exempt income. **There is no distinction for common expenses among income streams, as these are, after all, common expenses. Thus, there can be no allocation of expenses between different income in the same trade or business unit.**[100]

Above and beyond, ICPA Mendoza verified that the deductible expenses amounting to ₱54,563,150.00, as reported in petitioner's AITR for TY 2016, were tied up with the amount of expenses disclosed in petitioner's 2016 AFS. ICPA Mendoza likewise confirmed that said expenses were directly related to and properly classified as ordinary and necessary in the conduct of petitioner's business.[101]

Respondent contends that the apportionment he made on petitioner's expenses is warranted, based on: (1) *Commissioner of Internal Revenue v. Court of Tax Appeals and Smith Kline & French*

---

99 G.R. Nos. 240163 & 240168-69, December 1, 2021.
100 Boldfacing ours.
101 Item V.C.1. of the ICPA Report (Exhibit "P-123"), Binder, pp. 18-21.

Overseas Co. (Philippine Branch);[102] (2) *Citytrust Banking Corporation v. Commissioner of Internal Revenue*;[103] and (3) RR No. 16-86.

The contention is specious.

Smith Kline is inapplicable in this case due to variance in factual milieu. Particularly, said case involves the BIR's allocation of expenses between a Philippine branch of a foreign corporation vis-à-vis its head office, based on the ratio of Philippine gross income vis-à-vis worldwide gross income. Here, however, the BIR allocated the expenses of a *single* taxpayer, *i.e.*, petitioner, based on *different* income streams. Besides, the case at hand does *not* involve apportionment of expense between a Philippine branch of a foreign corporation and its head office.

Neither could the ruling in *Citytrust* be adopted here. There, the BIR disallowed three (3) deductions claimed by therein taxpayer. These are: (1) Foreign Currency Deposit Unit Expense; (2) trading loss; and (3) allocated expenses to non-taxable income. Of these three (3) deductions, therein taxpayer impugned the allocated expenses before the CTA, insisting that the allocation used by the BIR is not a requirement under the old Tax Code. The BIR countered that attribution of said expenses is proper because it pertained to therein taxpayer's tax-exempt income. The CTA agreed with the BIR, mainly holding that in the absence of adequate evidence on which to base a more reasonable allocation of office expenses between taxable and non-taxable income, such expenses are held allocable to each type of income in the proportion that each type bears to the total taxable and non-taxable income for the year, and that portion allocated to the non-taxable income is non-deductible. Yet, the CTA's ruling cannot prevail over the following pronouncement of the *Supreme Court* in *AUB*:[104]

> We agree with respondents that **common expenses should be deductible in full against its income subject to regular tax. As currently worded, all expenses are deducted directly and in full without any allocation or attribution between the different income streams.** There is no requirement to allocate the common expenses to its income subject to Final Withholding Tax or exempt income. **There**

102 G. R. No. L-54108, January 17, 1984. Smith Kline for brevity.

103 CTA Case No. 5261, January 28, 1998. Citytrust for brevity.

104 *Supra* note 99. Boldfacing ours.

> **is no distinction for common expenses among income streams, as these are, after all, common expenses. Thus, there can be no allocation of expenses between different income in the same trade or business unit.**

Nor could the allocation of expenses sanctioned by RR No. 16-86[105] save the day for respondent. This regulation applies only to transactions involving a Philippine branch of a foreign corporation and its head office. Petitioner is a domestic,[106] and *not* a branch of a foreign corporation.

All told, respondent's disallowance of unnecessary expenses amounting to ₱54,520,492.51 should be cancelled for lack of legal and factual basis.

I.4 Disallowed Expense Due to Non-Withholding of Tax (₱21,332,114.53)

Initially, DC Guballa's FLD/FAN disallowed expenses claimed by petitioner for TY 2016 due to non-withholding of tax, in the total amount of ₱22,073,844.03, with basic deficiency EWT of ₱2,043,610.80. Said expenses are composed of: (a) payment of professional fees (₱12,339,203.03); (b) purchase of services (₱9,538,394.00); and (c) purchase of goods (₱196,247.00). [107] Petitioner recognized that it needed to pay the EWT corresponding to ₱741,729.50 worth of professional fees; thus, it voluntarily paid[108] the 15% EWT thereon in the sum of ₱111,259.43. Consider the ensuing table: [109]

Professional Fees per AFS		₱18,916,387.00[110]
Professional Fees subjected to EWT		
• Professional fees subjected to EWT	₱10,726,037.50	
• Professional fees (GPPs)	7,448,620.00	18,174,657.50
Difference		**₱741,729.50**
Tax Rate		15%
EWT Due		**₱111,259.43**

105 SUBJECT: Amendment to Section 160 of the Income Tax Regulations (Rev. Regulations No. 2) Regarding the Basis of Determining Ratable Part of Overseas Overhead Expenses Apportioned under Section 37(b) of the National Internal Revenue Code.

106 *Supra* note 2.

107 Schedule 9, Details of Discrepancy (FLD/FAN). *Supra* note 11.

108 Exhibits "P-30" to "P-30-a," Docket (Vol. II), pp. 488-491.

109 Annex "C," Exhibit "P-7," Docket (Vol. I), p. 160.

110 Note 13 of AFS, Exhibit "P-35," Docket (Vol. II), p. 553.

Respondent acknowledged petitioner's voluntary payment of EWT in the sum of ₱111,259.43; hence, the former removed in his FDDA, the professional fees pertaining thereto amounting to ₱741,729.50. Precisely, the total expenses disallowed by respondent due to non-withholding of tax was reduced from ₱22,073,844.03 to ₱21,332,114.53, *viz.*:

Nature	Income payment per FLD[111]	Income Payment subject of petitioner's voluntary EWT payment	Income payment per FDDA[112]
Payment of Professional Fees	₱12,339,203.03	₱741,729.50	₱11,597,473.53
Purchase of Service	9,538,394.00	-	9,538,394.00
Purchase of Goods	196,247.00	-	196,247.00
Total	**₱22,073,844.03**	**₱741,729.50**	**₱21,332,114.53**

Respondent is obstinate in disallowing income payments amounting to ₱21,332,114.53, claiming that petitioner failed to subject the same to EWT.

Petitioner ripostes that it already paid the remaining EWT due; thus, respondent has no basis to maintain that the amount of ₱11,597,473.53 in professional fees was not subjected to EWT.

We partly uphold respondent's disallowance.

Section 34(K) of the NIRC, as amended, provides that "any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance in this Section of this Code." Inversely, failure to withhold taxes on, *inter alia,* expenses expended by income-payor/withholding agent would lead to the disallowance thereof.[113]

---

111 Exhibit "P-6," Docket (Vol. I), at p. 127.

112 Exhibit "P-1," *id.* at p. 66.

113 See *Green Valley Marketing Corporation v. Commissioner of Internal Revenue,* CTA EB Nos. 1801 and 1808, October 14, 2019.

Relatedly, Section 57(B) of the NIRC, as amended, states that "[t]he Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law..." The items of income payments referred to in said provision is found on Section 2.57.2 of RR No. 2-98,[114] as amended.

ICPA Mendoza classified the expenses not subjected to withholding tax amounting to ₱21,332,114.53, [115] into specific categories, based on petitioner's 2016 AFS. ICPA Mendoza also compared each classification to the corresponding amounts declared in petitioner's Monthly Alphalist of Payees (MAP)[116] and Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E),[117] generating the following summation:[118]

General Expense Accounts	Reference	Amount of Expense Per AFS [a]	Reference	Amount of Expense Per 1601E/MAP [b]	Admitted and Paid [c]	Difference - Amount Disallowed by the BIR [d = a- b - c]
a. Professional fees	Annex A-5 page 6	₱18,916,387.34	Annex A-6 page 5	₱6,577,183.80	₱741,729.50	₱11,597,474.04
b. Services	Annex A-5 page 22	17,129,433.00	Annex A-6 page 10	7,591,039.00	-	9,538,394.00
c. Goods	Annex A-5 page 31	3,677,683.58	Annex A-6 page 12	3,481,438.00	-	196,245.58
Total		₱39,723,503.92		₱17,649,660.80	₱741,729.50	₱21,332,113.62

I.4.a Professional Fees (₱11,597,474.04)

ICPA Mendoza relayed that these professional fees include payments made by petitioner for director's fees and allowances, professional fees, as well as legal and audit fees, broken down as follows: [119]

---

114 SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

115 Amount per summary on Table 19 of the ICPA Report (Exhibit "P-123"), Binder, p. 23; With a difference of ₱0.91 per actual sum of annexes.

116 Exhibits "P-55-1" to "P-55-12," USB (Exhibit "P-124-2").

117 Exhibits "P-56-1" to "P-56-12," "P-57-1" to "P-57-11," and "P-58-1" to "P-58-12," USB (Exhibit "P-124-2").

118 Table 19 of the ICPA Report (Exhibit "P-123"), Binder, p. 23.

119 Table 20 of the ICPA Report (Exhibit "P-123"), Binder, p. 23.

Specific Expense Accounts	Reference	Amount of Expense Per AFS	Reference	Amount of Expense Per 1601E/MAP Subjected to EWT	Reference	Difference - Amount Assessed by the BIR
a.1. Director's fees and allowance	Annex A-5 page 3	₱5,770,000.00	Annex A-6 page 3	₱2,360,000.00	Annex A-7 page 2	₱3,410,000.00
a.2. Professional fees	Annex A-5 page 5	8,236,167.34	Annex A-6 page 5	4,217,183.80	Annex A-7 page 3	4,018,983.54
a.3. Legal and audit fees	Annex A-5 page 6	4,910,220.00		-	Annex A-7 page 5	4,910,220.00
Sub-total		₱18,916,387.34		₱6,577,183.80		₱12,339,203.54
Less: Admitted and paid						741,729.50
					Total	**₱11,597,474.04**

I.4.a.1 Director's fees and allowances - ₱3,410,000.00

This pertains to *per diem* payments granted to various individual directors of petitioner.[120] Petitioner also subjected these fees and allowances to 10% EWT, in the amount of ₱341,000.00.[121] Yet, petitioner erred in using the 10% EWT rate.

For the 10% EWT rate to be applied, Section 2.57.2(A)[122] of RR No. 2-98, as amended by RR No. 30-2003, requires a duly executed

---

[120] Annex A-8 of the ICPA Report (Exhibit "P-123").

[121] Page 2, Annex A-6 of the ICPA Report (Exhibit "P-123").

[122] Section 2.57.2(A), RR No. 2-98, as amended by RR No. 30-2003, provides in part that "Furthermore, in order to determine the applicable tax rate (10% or 15%) to be applied/withheld by the withholding agent, every individual professional/talent/corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR) by submitting a notarized sworn declaration attached as Annex 'A' hereof in three (3) copies (two (2) copies for the BIR and one (1) copy for the taxpayer), copy furnished all the current payors of the declaration duly stamped received by the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/Large Taxpayers Collection Division for large taxpayers in Metro Manila/LTDO for large taxpayers outside Metro-Manila). Sworn declaration may likewise be filed by the income payor on behalf of the professionals/talents/directors whose services were being rendered exclusively to the aforesaid payor. The disclosure should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional/talent/director's income reaches P720,000, whichever comes earlier. In case his total gross income is less than P720,000 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches P720,000. The payee — professional/talent/director shall furnish each payor a copy of the BIR duly stamped received sworn declaration not later than five (5) days from the date of receipt by the BIR. **In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.**" (Boldfacing ours)

sworn declaration submitted by the income payees, attesting that their gross receipts or sales does not exceed the ₱720,000.00 threshold; otherwise, the applicable EWT rate is 15%.[123]

The director's fee and allowances amounting to ₱3,410,000.00 was subjected to 10% EWT by petitioner; hence, should be allowed as the latter's deduction. However, for petitioner's failure to provide the requisite duly executed sworn declaration referred to in Section 2.57.2(A) of RR No. 2-98, as amended by RR No. 30-2003, the applicable EWT rate is 15%. Accordingly, petitioner is liable for deficiency EWT in the reduced amount of ₱170,500.00, computed as follows:

Particulars	Annex	Gross Amount	Required EWT 15%	Tax Withheld 10%	Deficiency EWT
Director's fees	A-8	₱3,410,000.00	₱511,500.00	₱341,000.00	₱170,500.00
				Total	**₱170,500.00**

I.4.a.2 Professional fees - ₱4,018,983.41

This[124] represents payments made by petitioner for various services, including consultancy, technical assistance, audit fees, and appraisal fees, itemized as follows:

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-9	Technical Assistance	₱5,000.00
Annex A-10	General Professional Partnerships	661,700.00
Annex A-11	Service Fees	330,000.00
Annex A-12	Consultancy Fees	390,000.00
Annex A-13	Consultancy Fees	38,783.41
Annex A-14	Appraisal Fees	2,593,500.00
	Total	**₱4,018,983.41**

One. Technical Assistance (Annex A-9) – The amount of ₱5,000.00, paid by petitioner to Philippine International Software Corporation, corresponds to the services the latter rendered in retrieving petitioner's 2013 books and records from its General Ledger (GL)

123 Item V.D.2.a.1 of the ICPA Report (Exhibit "P-123"), Binder, pp. 23 to 24.
124 Amount per summary on Table 20 of the ICPA Report (Exhibit "P-123"), Binder, p. 23; With a difference of ₱0.13 per actual sum of annexes.

system. Clearly, said transaction falls under payments made to certain contractors or persons engaged in the sale of computer services, computer programmers, software/program, developer/designer, internet service providers, web page designing, computer data processing, conversion or base services and other computer related activities. Section 2.57.2(E)(4)(m) of RR No. 2-98, as amended by RR 14-2002, imposes 2% EWT on these transactions.[125] Since these technical fees were subjected by petitioner to 2% EWT,[126] respondent erred in disallowing the same as deductible expense.

Two. General Professional Partnerships (Annex A-10) – the sum of ₱661,700.00 represents audit fees paid by petitioner to SGV and Co., a General Professional Partnership (GPP).[127]

Income payments made *to* GPPs are exempt from EWT, because their income is exempted from IT under Section 26[128] of the NIRC, as amended. Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-2002[129] confirmed:

> Sec. 2.57.5. *Exemption from Withholding.* – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> ...
>
> (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:
>
> ...
>
> <u>(4) General professional partnerships</u>

The income payments made by petitioner to SGV and Co. pertain to professional fees paid to a GPP; hence, not subject to IT,

125 Item V.D.2.a.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 24.

126 Page 10 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder.

127 Item V.D.2.a.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 24.

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

129 SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as amended.

and consequently to EWT. For this reason, respondent erred in disallowing the same as deductible expense.

Three. Service fees (Annex A-11) - this income payment amounting to ₱330,000.00 was made by petitioner to Securities Transfer Services, Inc. (STSI),[130] and was subjected by petitioner to 10% EWT; thus, respondent erred in disallowing the same as petitioner's expense.

At any rate, considering that petitioner failed to present duly executed sworn declaration made by STSI, attesting that its gross receipts or sales did not exceed the ₱720,000.00 threshold, mandated by Section 2.57.2(A) of RR No. 2-98, as amended by RR No. 30-2003, the applicable EWT rate is 15%.[131]

Four. Consultancy fees (Annex A-12) - this income payment amounting to ₱390,000.00 was made by petitioner to Mr. David Siddharta C. Reyes (Mr. Reyes),[132] and was subjected by petitioner to 10% EWT;[133] thus, respondent erred in disallowing the same as petitioner's expense.

In any event, with petitioner's failure to provide the duly executed sworn declaration submitted by Mr. Reyes, attesting that his gross receipts or sales did not exceed the ₱720,000.00 threshold, the applicable EWT rate is 15%.[134]

Five. Consultancy fees (Annex A-13) – given that no proof was produced by petitioner to establish that said fees amounting to ₱38,783.41 were subjected to EWT,[135] the disallowance thereof as petitioner's expense must be upheld.

Six. Appraisal fees (Annex A-14) – no proof was adduced by petitioner to establish that such fees in the sum of ₱2,593,500.00 were

---

130 Annex A-11 of the ICPA Report (Exhibit "P-123"), Binder.
131 *Supra* note 122.
132 Annex A-12 of the ICPA Report (Exhibit "P-123"), Binder.
133 Pages 12 to 13 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder.
134 *Supra* note 122.
135 Annex A-13 of the ICPA Report (Exhibit "P-123"), Binder.

subjected to EWT;[136] thus, the disallowance thereof as petitioner's expense must be upheld.

Seven. We condense the foregoing discussion as follows:

For one, the following disallowances on professional fees amounting to ₱1,386,700.00 are cancelled, *viz.*:

Annexed to the ICPA Report (Exhibit "P-123")	**Particulars**	**Amount**
Annex A-9	Technical Assistance	₱5,000.00
Annex A-10	General Professional Partnerships (GPPs)	661,700.00
Annex A-11	Service Fees	330,000.00
Annex A-12	Consultancy Fees	390,000.00
	Total	**₱1,386,700.00**

For another, petitioner is liable for deficiency EWT in the amount of ₱430,842.51, computed as follows:

Particulars	**Annex**	**Gross Amount**	**Required EWT - 15%**	**Tax Withheld**	**Deficiency EWT**
Service Fees	A-11	₱330,000.00	₱49,500.00	₱33,000.00	₱16,500.00
Consultancy Fees	A-12	390,000.00	58,500.00	39,000.00	19,500.00
Consultancy Fees	A-13	38,783.41	5,817.51	-	5,817.51
Appraisal Fees	A-14	2,593,500.00	389,025.00	-	389,025.00
				Total	**₱430,842.51**

I.4.a.2 Legal and audit fees - ₱4,910,220.00

ICPA Mendoza explained that the legal and audit fees incurred by petitioner represent payments made to various audit and legal firms, as well as disbursements to individuals through petty cash replenishments,[137] with the following itemization:

136 Annex A-14 of the ICPA Report (Exhibit "P-123"), Binder.
137 Item V.D.2.a.3 of the ICPA Report (Exhibit "P-123"), Binder, p. 25.

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-15	GPPs	₱3,606,350.00
Annex A-16	GPPs	40,940.00
Annex A-17	GPPs	1,257,830.00
Annex A-18	Notarial Fees	5,100.00
	Total	**₱4,910,220.00**

One. GPPs under Annexes A-15 and A-17. - since the income payments corresponding thereto, amounting to ₱3,606,350.00 and ₱1,257,830.00, respectively, were made to GPPs, it is exempt from IT, and consequently, to EWT, under Section 26 of the NIRC, as amended in relation to Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-2002. Thus, respondent's disallowance thereof as petitioner's expense is incorrect.

Two. GPPs under Annex A-16. - since the amount of ₱40,940.00 is supported only by a Journal Voucher,[138] it cannot be ascertained whether the same was paid to a GPP. Thus, respondent is correct in disallowing the same as petitioner's expense.

Three. Notarial fees under Annex A-18. - the amount of ₱5,100.00 represents petty cash replenishments for payment made to various individual lawyers for notarial services.[139] However, no supporting documents were submitted to support the claim; hence, respondent is correct in disallowing the same as petitioner's expense.

Four. petitioner is liable for deficiency EWT in the amount of ₱6,906.00, computed as follows:

Particulars	Annex	Gross Amount	Required EWT - 15%	Tax Withheld	Deficiency EWT
GPP	A-16	₱40,940.00	₱6,141.00	-	₱6,141.00
Notarial Fees	A-18	5,100.00	765.00	-	765.00
				Total	**₱6,906.00**

I.4.b Services (₱9,538,394.00)

138 Exhibit "P-75," USB (Exhibit "P-124-2").
139 Item V.D.2.a.3 of the ICPA Report (Exhibit "P-123"), Binder, p. 25.

ICPA Mendoza traced respondent's disallowance of services amounting to ₱9,538,394.00 for failure to withhold tax from the following items of service fees, tabled as follows:[140]

Expense Accounts	Reference	Amount of Expenses Per AFS
b.1. Contracted services	Exhibit "P-35"	₱ 949,399.00
b.2. Representation	Exhibit "P-35"	3,866,766.00
b.3. Transportation	Exhibit "P-35"	2,629,669.00
b.4. Advertising	Exhibit "P-35"	1,852,498.00
b.5. Repairs	Exhibit "P-35"	2,488,550.00
b.6. Miscellaneous	Exhibit "P-35"	5,342,551.00
Total amount of expense per AFS		17,129,433.00
Amount of income payments subjected by the Petitioner to 2% EWT on services based on MAP for taxable year 2016	Annex A-6-page 10	7,591,039.00
	Difference	**₱9,538,394.75**[141]

ICPA Mendoza proceeded to account the income payments made by petitioner for service fees subjected to 2% EWT based on its MAP, which respondent used in computing the disallowed portion of petitioner's expenses, particularized below:[142]

Income Payments Subjected to 2% EWT on Services by the Petitioner	Reference	Amount of Income Payments Subjected to 2% EWT on Services by the Petitioner Per 1601E/MAP
b.1. Contracted services		₱ -
b.2. Representation	Annex A-6 page 5	51,495.50
b.3. Transportation	Annex A-6 page 5	85,546.00
b.4. Advertising	Annex A-6 page 5	748,961.00
b.5. Repairs	Annex A-6 page 6	390,790.50
b.6. Miscellaneous	Annex A-6 page 7	142,439.00
b.7. Advances to suppliers	Annex A-6 page 7	443,928.50
b.8. Communication, light, and water	Annex A-6 page 9	1,088,386.50
b.9. Development cost	Annex A-6 page 9	1,607.14
b.10. Fuel and oil	Annex A-6 page 9	39,906.50
b.11. Leasehold improvement	Annex A-6 page 9	1,706,843.50
b.12. Office supplies	Annex A-6 page 10	682,876.11
b.13. Other employee benefits	Annex A-6 page 10	126,149.00
b.14. Business licenses	Annex A-6 page 10	2,000,000.00
b.15. Professional fees	Annex A-6 page 10	5,000.00
b.16. Training and dev. course	Annex A-6 page 10	77,109.00

140 Table 24 of the ICPA Report (Exhibit "P-123"), Binder, p. 26.
141 Actual footing is ₱9,538,394.00; With a difference of ₱0.75.
142 Table 25 of the ICPA Report (Exhibit "P-123"), Binder, p. 27.

	Total	₱7,591,039.00[143]

ICPA Mendoza then noted that the total income payments related to contracted services, representation expenses, transportation expense, advertising expense, repairs and maintenance, and miscellaneous expense subjected to 2% EWT on services only amounted to ₱1,419,232.00 (sum of b.1 to b.6 of immediately preceding table). On the other hand, the remaining ₱6,171,806.25 (sum of b.7 to b.16 of immediately preceding table) were not related to the expense accounts being faulted by the BIR. With this notation, ICPA Mendoza concluded that respondent's disallowances should have been computed as follows:[144]

Expense Accounts	Reference	Amount of Expenses Per AFS (Exhibit "P-35)	Reference	Amount of Income Payments Subjected to 2% EWT on Services by the Petitioner Per 1601E/MAP	Difference - Should be Amount of Disallowances by the BIR
b.1. Contracted services	Exhibit "P-35"	₱949,399.00		₱-	₱949,399.00
b.2. Representation	Exhibit "P-35"	3,866,766.00	Annex A-6 page 5	51,495.50	3,815,270.50
b.3. Transportation	Exhibit "P-35"	2,629,669.00	Annex A-6 page 5	85,546.00	2,544,123.00
b.4. Advertising	Exhibit "P-35"	1,852,498.00	Annex A-6 page 5	748,961.00	1,103,537.00
b.5. Repairs	Exhibit "P-35"	2,488,550.00	Annex A-6 page 6	390,790.50	2,097,759.50
b.6. Miscellaneous	Exhibit "P-35"	5,342,551.00	Annex A-6 page 7	142,439.00	5,200,112.00
	Total	**₱17,129,433.00**		**₱1,419,232.00**	**₱15,710,201.00**

I.4.b.1 Contracted Services - ₱949,399.00

The contracted services amounting to ₱949,399.00,[145] represent payments to multi-purpose and service cooperatives for the services they performed,[146] thus:

143 Actual footing is ₱7,591,038.25; With a difference of ₱0.75.

144 Table 26 of the ICPA Report (Exhibit "P-123") Binder, p. 27.

145 Amount per summary on Table 26 of the ICPA Report (Exhibit "P-123"), Binder, p. 27; With a difference of ₱0.23 per actual sum of annexes.

146 Item V.D.2.b.1 of the ICPA Report (Exhibit "P-123"), Binder, pp. 27-28.

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-19	Cooperatives	₱860,429.90
Annex A-20	Cooperatives	88,969.33
	Total	**₱949,399.23**

These transactions are governed by Sections 7 to 10 of the Joint Rules and Regulations Implementing Articles 60, 61, and 144 of RA No. 9520 (Joint IRR), as circularized by Revenue Memorandum Circular (RMC) No. 12-2010,[147] whereby cooperatives are granted exemptions from IT, VAT, donor's tax, and DST, *inter alia*. However, for a cooperative to enjoy these tax exemptions, the Joint IRR and RMC No. 12-2010 demand presentation of a valid Certificate of Tax Exemption/Ruling (CTER).

Petitioner did not withhold the EWT on payments made to cooperatives. Neither did petitioner produced the required valid CTER of the cooperatives who rendered services to it. This means that petitioner failed to substantiate said cooperatives' tax exemption, rendering the income payments to them subject to 2% EWT. For this reason, respondent's disallowance of contracted services in the amount of ₱949,399.23 as petitioner's expense is sustained.

I.4.b.2 Representation - ₱3,815,270.50

The ₱3,815,270.50[148] worth of representation expense incurred by petitioner, falls within the scope of representation expense as defined under Section 2 of RR No. 10-2002.[149] This expense is comprised of food and beverage consumed during meetings and conferences,[150] listed as follows:

---

147 SUBJECT: Circularizing the Full Text of JOINT RULES AND REGULATIONS IMPLEMENTING ARTICLES 60, 61 AND 144 OF REPUBLIC ACT NO. 9520, OTHERWISE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008" IN RELATION TO RA NO. 8424 OR THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

148 Amount per summary on Table 26 of the ICPA Report (Exhibit "P-123"), Binder, p. 27; With a difference of ₱0.58 per actual sum of annexes.

149 SUBJECT: Implementing the Provisions of Section 34(A)(1)(a)(iv) of the Tax Code of 1997, Authorizing the Imposition of a Ceiling on "Entertainment, Amusement and Recreational Expenses"

150 Item V.D.2.b.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 28.

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-21	Representation – Purchase of goods	₱57,098.15
Annex A-22	Representation – Purchase of goods	148,000.00
Annex A-23	Representation	3,610,171.77
	Total	**₱3,815,269.92**

We note that the amounts of ₱57,098.15 (Annex A-21) and ₱148,000.00 (Annex A-22), with the total sum of ₱205,098.15, were subjected by petitioner to 1% EWT,[151] since these representation expenses were classified as purchases of goods.

We likewise observe that as for representation expense worth ₱3,610,171.77 (Annex A-23), no EWT was withheld due to petitioner's failure to provide adequate substantiation. Being so, it cannot be ascertained whether such transaction pertained to purchase of goods or services. In the absence of such classification, the higher EWT rate of 2% is deemed applicable.[152]

Despite the immediately preceding observation, petitioner only claimed and deducted the amount of ₱42,000.00 as representation expense in its 2016 AITR. This claim is in accordance with the allowable ceiling on entertainment, amusement and recreation (EAR) expenses enjoined by Section 34(A)(1)(a)(iv)[153] of the NIRC, as amended, as implemented by Section 5 of RR No. 10-2002. We quote with approval ICPA Mendoza's tabulation:[154]

Transaction [For taxpayers engaged in]	EAR Ceiling	Computation of EAR Ceiling
Sale of goods or properties	0.50 percent (%) of net sales (i.e., gross sales less sales returns/allowances and sales discounts)	

151 Page 12 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder.

152 Item V.D.2.b.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 28.

153 SEC. 34. Deductions from Gross Income. – ...
(A) Expenses. –
...
(1) Ordinary and Necessary Trade, Business or Professional Expenses.-
(a) In General. –
...
(iv) A reasonable allowance **for entertainment, amusement and recreation** expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or profession of the taxpayer, or that are directly related to or in furtherance of the conduct of his or its trade, business or exercise of a profession **not to exceed such ceilings as the Secretary of Finance** ...

154 Table 29 of the ICPA Report (Exhibit "P-123"), Binder, p. 29.

		Management Fee =	₱4,200,000.00
		Multiply by limit	1%
		EAR Ceiling	₱42,000.00
		Representation expense per books	₱3,866,766.00
		EAR Ceiling	42,000.00
		Excess/unclaimed representation expense	₱3,824,766.00
Sale of services, use or lease of properties	One (1) percent (%) of net revenue (i.e., gross revenue less discounts)	Claimed deduction per 2016 AITR	₱42,000.00

Again, of the ₱3,866,766.00 worth of representation expenses per petitioner's books, the latter only claimed ₱42,000.00—the maximum representation expense that it is allowed to claim as deduction under the law and regulations. Petitioner took the initiative of *not* claiming the *remaining* and *excess* representation expense of ₱3,824,766.00 as deduction, a portion of which, already comprises the BIR's disallowance of ₱3,815,270.50.[155] Simply put, there is nothing more for the BIR to disallow here. For this reason, respondent is *incorrect* in disallowing representation expenses amounting to ₱3,815,270.50.

I.4.b.3 Transportation - ₱2,544,123.00

Petitioner's claimed transportation expenses totaling ₱2,544,123.00[156] pertains to airfare ticket, hotel accommodation, *per diem* allowances for various meetings and conferences:

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-24	Transportation - out of pocket expenses	₱9,382.00
Annex A-25	Transportation	2,534,741.09
	Total	**₱2,544,123.09**

One. The transportation - out of pocket expenses (Annex A-24) in the sum of ₱9,382.00 represented out-of-pocket reimbursements advanced by Castillo Laman Tan Pantaleon Law Office (Castillo).

155 Item V.D.2.b.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 29.

156 Amount per summary on Table 26 of the ICPA Report (Exhibit "P-123"), Binder, p. 27; With a difference of ₱0.09 per actual sum of annexes.

In this regard, Section 2.57.2(A) of RR No. 2-98 and Question and Answer No. 21 of RMC No. 72-2004[157] consider unsubstantiated transportation expenses, including reimbursable amounts not properly supported by third-party receipts issued in the name of the client (herein petitioner) as part of the service provider's gross income; hence, subject to 2% EWT.

Petitioner's Statements of Account and Acknowledgement Receipts reflected the amount of ₱9,382.00. Yet, the absence of Castillo's receipts issued in the name of petitioner renders the documentation insufficient to exempt said sum from EWT. Otherwise stated, said sum is liable for EWT.

Two. Transportation expense (Annex A-25) amounting to ₱2,534,741.09 lacked proper substantiation.

In a nutshell, petitioner *failed* to withhold 2% EWT on transportation expenses totaling ₱2,544,123.09. [158] Therefore, respondent's disallowance thereof as petitioner's transportation expense is sustained.

I.4.b.4 Advertising - ₱1,103,537.00

Petitioner incurred ₱1,103,537.00 [159] worth of advertising expenses, which pertains to photo coverage, design, and execution of its annual report, detailed as follows:

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-26	Advertising	₱135,766.67
Annex A-27	Advertising	967,770.06
	Total	**₱1,103,536.73**

157 SUBJECT: Clarification of Issues on the Additional Transactions Subject to Creditable Withholding Tax under Revenue Regulations No. 17-2003 (RR 17-2003), as Amended by RR 30-2003, RR 1-2004 and RR 3-2004.

158 Item V.D.2.b.3 of the ICPA Report (Exhibit "P-123"), Binder, p. 30.

159 Amount per summary on Table 26 of the ICPA Report, Exhibit "P-123," Binder, p. 27; With a difference of ₱0.27 per actual sum of annexes.

One. The advertising expense amounting to ₱135,766.67 (Annex A-26)[160] was subjected to EWT at a rate of 10%;[161] hence, respondent erred in disallowing the same as petitioner's expense.

Nevertheless, considering that petitioner failed to present duly executed sworn declaration submitted by the payee thereof, attesting that its gross receipts or sales did not exceed the ₱720,000.00 threshold, mandated by Section 2.57.2(A) of RR No. 2-98, as amended by RR No. 30-2003, the applicable EWT rate is 15%.[162]

Two. The advertising expense in the sum of ₱967,770.06 (Annex A-27) was *not* subjected by petitioner to EWT. Neither did petitioner provide supporting documents to substantiate the same. Therefore, the disallowance thereof by respondent as petitioner's advertising expense is proper.[163]

Three. Petitioner's deficiency EWT liability on its advertising expense in the amount of ₱26,143.73, is condensed as follows:

Particulars	**Annex**	**Gross Amount**	**Required EWT - 15%/2%**	**Tax Withheld**	**Deficiency EWT**
Advertising	A-26	₱135,766.67	₱20,365.00	₱13,576.67	₱6,788.33
Advertising	A-27	967,770.06	19,355.40	-	19,355.40
				Total	**₱26,143.73**

I.4.b.5 Repairs - ₱2,097,759.50

The amount of ₱2,097,759.50 [164] relates to repairs and maintenance expense of petitioner's various offices and vehicles, broken down as follows:

Annexed to the ICPA Report (Exhibit "P-123")	**Particulars**	**Amount**
Annex A-28	Repairs and Maintenance	₱8,482.14

---

160 Page 13 of Annex A-6 of the ICPA Report (Exhibit "P-123").
161 Item V.D.2.b.4 of the ICPA Report (Exhibit "P-123"), Binder, p.30.
162 *Supra* note 122.
163 Item V.D.2.b.4 of the ICPA Report (Exhibit "P-123"), Binder, p. 30.
164 Amount per summary on Table 26 of the ICPA Report (Exhibit "P-123"), Binder, p. 27; With a difference of ₱2.91 per actual sum of annexes.

Annex A-29	Repairs and Maintenance	59,758.93
Annex A-30	Repairs and Maintenance	2,029,521.34
	Total	**₱2,097,762.41**

ICPA Mendoza opined that: (1) petitioner subjected the amounts of ₱8,482.14[165] and ₱59,758.93,[166] aggregating to ₱68,241.07, which represents repairs and maintenance to 1% EWT;[167] and (2) petitioner did not submit supporting documents to substantiate the expenses amounting to ₱2,029,521.34.[168]

We partly agree with ICPA Mendoza.

An examination of the supporting documents shows that only repairs and maintenance amounting to ₱59,758.93 (Annex A-29) was indeed subjected by petitioner to 1% EWT. Thus, respondent erred in disallowing the same as petitioner's expense.

In contrast, petitioner failed to subject repairs and maintenance amounting to ₱8,482.14 (Annex A-28) and ₱2,029,521.34 (Annex A-30) to EWT; hence, the disallowances made by respondent in the total amount of ₱2,038,003.48[169] as petitioner's expense is correct.

In fine, petitioner is liable for deficiency EWT in the amount of ₱40,760.07, computed as follows:

Particulars	**Annex**	**Gross Amount**	**Required EWT - 1% or 2%**	**Tax Withheld**	**Deficiency EWT**
Repairs & Maintenance	A-28	₱8,482.14	₱169.64	-	₱169.64
Repairs & Maintenance	A-29	59,758.93	597.59	597.58	-
Repairs & Maintenance	A-30	2,029,521.34	40,590.43	-	40,590.43
				Total	**₱40,760.07**

165 Annex A-28 of the ICPA Report (Exhibit "P-123"), Binder.
166 Annex A-29 of the ICPA Report (Exhibit "P-123"), Binder.
167 Page 12 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder.
168 Item V.D.2.b.5 of the ICPA Report (Exhibit "P-123"), Binder, p. 31.
169 Sum of Annexes A-28 and A-30 of the ICPA Report (Exhibit "P-123"), Binder.

I.4.b.6 Miscellaneous - ₱5,200,112.00

The amount of ₱5,200,112.00 [170] represents petitioner's miscellaneous expense, such as various out-of-pocket expenses of audit and legal firms, donations, online subscriptions, and petty cash reimbursement of expenses,[171] tabulated below:

Annexed to the ICPA Report (Exhibit "P-123")	**Particulars**	**Amount**
Annex A-31	Goods	₱ 15,813.00
Annex A-32	Donation	1,520,000.00
Annex A-33	Miscellaneous	24,025.72
Annex A-34	Miscellaneous	100.00
Annex A-35	GPP	546,105.00
Annex A-36	Miscellaneous	3,094,069.42
	Total	**₱5,200,113.14**

One. Petitioner properly subjected the amounts of ₱15,813.00 (Annex A-31)[172] and ₱24,025.72 (Annex A-33)[173] to 1% EWT since these pertain to purchase of goods; thus, respondent's disallowance thereof as petitioner's expense is incorrect.

Two. The sum of ₱1,520,000.00 (Annex A-32) refers to alleged donations made by petitioner to the Teodoro F. Valencia Foundation, Inc., the Palayan City Water District, and Department of Health.

Indeed, gifts or donations are excluded from IT imposition, and consequently to EWT, because these gifts or donations given by the donor - transferor, are *not* income on the part of the donee - transferee. Section 32(B)(3) of the NIRC, as amended, attests to this discussion:

> **SEC. 32.** ***Gross Income.*** -
>
> ...

---

170 Amount per summary on Table 26 of the ICPA Report (Exhibit "P-123"), Binder, p. 27; With a difference of ₱1.14 per actual sum of annexes.

171 Item V.D.2.b.6 of the ICPA Report (Exhibit "P-123"), Binder, p. 31.

172 Page 12 of Annex A-6 of the ICPA Report (Exhibit "P-123").

173 Pages 11 and 12 of Annex A-6 of the ICPA Report (Exhibit "P-123").

> *(B) Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> ...
>
> *3) Gifts, Bequests, and Devises.* - The value of property acquired by gift, bequest, devise, or descent: Provided, however, That income from such property, as well as gift, bequest, devise or descent of income from any property, in cases of transfers of divided interest, shall be included in gross income.

However, no valid Deed of Donation[174] was adduced by petitioner to prove said suppose gratuitous transaction; hence, the *alleged* donation or gift totaling ₱1,520,000.00 (Annex A-32) is subject to EWT. Petitioner *failed* to subject said amount to EWT; thus, it must be disallowed as expense.

Three. The miscellaneous expense of ₱100.00 (Annex A-34) corresponds to payment made to Securities Transfer Services, Inc. ICPA Mendoza noted that petitioner subjected said sum to 10% EWT on professional fees; hence, it must be allowed as expense.

Nevertheless, considering that petitioner failed to present duly executed sworn declaration submitted by the payee attesting that its gross receipts or sales did not exceed the ₱720,000.00 threshold, mandated by Section 2.57.2(A) of RR No. 2-98, as amended by RR No. 30-2003, the applicable EWT rate is 15%.[175]

Four. ICPA Mendoza validated that out-of-pocket cost amounting to ₱546,105.00 (Annex A-35) paid to SGV and Co., a GPP, was not subjected to EWT; thus, must be disallowed as petitioner's expense. To repeat, the absence of a third-party official receipts or invoices to substantiate the reimbursed expenses renders the entire amount subject to EWT.

Five. ICPA Mendoza, too, verified that the miscellaneous amount of ₱3,094,069.42 (Annex A-36) was *not* subjected to EWT by petitioner; hence, should be disallowed as petitioner's expense.

---

174 Exhibits "P-86-1," "P-86-2" and "P-86-2-a," USB (Exhibit "P-124-2").
175 *Supra* note 122.

Six. Petitioner's deficiency EWT liability in the sum of ₱103,208.49, is broken down, in this wise:

Particulars	Annex	Gross Amount	Required EWT 1%/2%/15%	Tax Withheld	Deficiency EWT
Goods	A-31	₱15,813.00	₱158.13	₱158.13	-
Donations	A-32	1,520,000.00	30,400.00	-	₱30,400.00
Miscellaneous	A-33	24,025.72	240.26	240.26	-
Miscellaneous	A-34	100.00	15.00	10.00	5.00
GPP	A-35	546,105.00	10,922.10	-	10,922.10
Miscellaneous	A-36	3,094,069.42	61,881.39	-	61,881.39
				Total	**₱103,208.49**

I.4.c Goods - ₱196,245.58

The BIR disallowed petitioner's expenses on purchases of goods amounting to ₱196,245.58. ICPA Mendoza recaptured said amount based on available records, as follows:[176]

Expense Accounts	Reference	Amount of Expenses Per AFS
c.1. Fuel and oil	Exhibit "P-35"	₱545,250.00
c.2. Office supplies	Exhibit "P-35"	1,930,792.00
c.3. Communication, light, and water	Exhibit "P-35"	1,201,643.00
Total amount of expense per AFS		3,677,685.00
Amount of income payments subjected by the Petitioner to 1% EWT on goods based on MAP for TY 2016	Annex A-6 page 12	3,481,438.00
Difference		**₱196,247.00**[177]

ICPA Mendoza proceeded to account for the income payments made by petitioner for goods subjected to 1% EWT, based on its MAP, which respondent used in computing the disallowed portion of petitioner's expenses,[178] itemized as follows:

Income Payments Subjected to 1% EWT on Goods by the Petitioner	Reference	Amount of Income Payments Subjected to 1% EWT on Goods by the Petitioner Per

176 Table 34 of the ICPA Report (Exhibit "P-123"), Binder, p. 33.
177 With a difference of ₱1.42 from respondent's findings.
178 Table 35 of the ICPA Report (Exhibit "P-123"), Binder, p. 33.

		1601E/MAP
c.1. Fuel and oil	Annex A-6 page 11	₱379,081.00
c.2. Office supplies	Annex A-6 page 11	521,902.00
c.3. Communication, light, and water		-
c.4. Advances to suppliers	Annex A-6 page 11	22,500.00
c.5. Miscellaneous	Annex A-6 page 12	24,026.00
c.6. Other employee benefits	Annex A-6 page 12	30,982.00
c.7. PPE	Annex A-6 page 12	2,205,314.00
c.8. Repairs and maintenance	Annex A-6 page 12	76,722.00
c.9. Representation	Annex A-6 page 12	205,098.00
c.10. Subscription/ periodicals	Annex A-6 page 12	15,813.00
	Total	**₱3,481,438.00**

ICPA Mendoza then observed that the total income payments related to fuel and oil, office supplies, and communication, light, and water subjected to 1% EWT on goods, only amounted to ₱900,983.00 (sum of c.1 to c.3 of the immediately preceding table). On the other hand, the remaining ₱2,580,455.00 (sum of c.4 to c.10 of the immediately preceding table) were not related to the expense accounts being faulted by the BIR. Accordingly, ICPA Mendoza concluded that respondent's disallowance should have been computed as follows:[179]

Expense Accounts	**Reference**	**Amount of Expenses Per AFS**	**Reference**	**Amount of Income Payments Subjected to 1% EWT on Goods by the Petitioner Per 1601E/MAP**	**Difference - Should be Amount of Disallowance by the BIR**
c.1. Fuel and oil	Exhibit No. "P-35"	₱545,250.00	Annex A-6 page 11	₱379,081.00	₱166,169.00
c.2. Office supplies	Exhibit No. "P-35"	1,930,792.00	Annex A-6 page 11	521,902.00	1,408,890.00
c.3. Communication, light, and water	Exhibit No. "P-35"	1,201,643.00		-	1,201,643.00
	Total	**₱3,677,685.00**		**₱900,983.00**	**₱2,776,702.00**

I.4.c.1 Fuel and oil - ₱166,169.00

ICPA Mendoza pointed out that this account consists of purchases of fuel and oil from Pilipinas Shell Petroleum Corp., to wit:[180]

179 Table 36 of the ICPA Report (Exhibit "P-123"), Binder, p. 33.
180 Item V.D.2.c.1 of the ICPA Report (Exhibit "P-123"), Binder, p. 34.

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-37	Fuel and Oil	₱ 39,906.71
Annex A-38	Fuel and Oil	126,262.29
	Total	**₱166,169.00**

One. Petitioner subjected to 2% EWT (instead of 1% applicable rate), the fuel and oil expenses[181] amounting to ₱39,906.71 (Annex A-37).[182] Being so, there is no deficiency EWT on said transaction. Accordingly, this should be allowed as an expense deduction.

Two. ICPA Mendoza confirmed that remaining fuel and oil expenses totaling ₱126,262.29 (Annex A-38) was not subjected to EWT and no supporting documents were submitted to validate the expense. Therefore, this should be disallowed as petitioner's expense.

Three. Petitioner is liable for deficiency EWT of ₱2,525.25, computed as follows:

Particulars	Annex	Gross Amount	Required EWT - 1%	Tax Withheld	Deficiency EWT
Fuel & Oil	A-37	₱39,906.71	₱399.07	798.13	-
Fuel & Oil	A-38	126,262.29	1,262.63	-	₱1,262.63
				Total	**₱1,262.63**

I.4.c.2 Office supplies - ₱1,408,890.00

This pertains to purchases of various office supplies, such as printing services for business cards, cleaning materials, and kitchen supplies, among others,[183] in the amount of ₱1,408,890.00,[184] detailed as follows:

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-39	Office Supplies	₱81,992.45
Annex A-40	Office Supplies	600,883.14

181 Exhibits "P-90," "P-90-a," and "P-90-b," USB (Exhibit "P-124-2").

182 Page 9 of Annex A-6 of the ICPA Report (Exhibit "P-123").

183 Item V.D.2.c.2 of of the ICPA Report (Exhibit "P-123"), Binder, p. 34.

184 Amount per summary on Table 36 of the ICPA Report (Exhibit "P-123"), Binder, p. 33; With a difference of ₱0.43 per actual sum of annexes.

Annex A-41	Office Supplies	20,287.00
Annex A-42	Office Supplies	705,727.84
	Total	**₱1,408,890.43**

One. Petitioner subjected[185] 2% EWT on the office supplies amounting to ₱81,992.45 (Annex A-39)[186] and ₱600,883.14 (Annex A-40),[187] with a total sum of ₱682,875.59. Billing statements and ORs confirmed that these expenses relate to printing services; hence, petitioner correctly applied the 2% EWT rate on income payments pertaining to services. On this account, the same should be allowed as petitioner's deduction.

Two. In contrast, petitioner failed to subject the out-of-pocket expenses and unsubstantiated office supplies in the amounts of ₱20,287.00 (Annex A-41)[188] and ₱705,727.84 (Annex A-42),[189] with the total sum of ₱726,014.84 to 1% EWT; thus, the disallowance thereof as expense is proper.

Three. Petitioner is liable for deficiency EWT in the amount of ₱7,260.15, computed as follows:

Particulars	Annex	Gross Amount	Required EWT - 2%/1%	Tax Withheld	Deficiency EWT
Office Supplies	A-39	₱81,992.45	₱1,639.85	₱1,639.85	-
Office Supplies	A-40	600,883.14	12,017.66	12,017.66	-
Office Supplies	A-41	20,287.00	202.87	-	₱202.87
Office Supplies	A-42	705,727.84	7,057.28	-	7,057.28
				Total	**₱7,260.15**

I.4.c.3 Communication, light, and water - ₱1,201,643.00

ICPA Mendoza explicated that this account amounting to ₱1,201,643.00[190] pertains to the purchase of services for various utilities such as electricity, telephone or mobile charges, and water,[191] itemized as follows:

185 Page 10 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder.
186 Annex A-39 of the ICPA Report (Exhibit "P-123"), Binder.
187 Annex A-40 of the ICPA Report (Exhibit "P-123"), Binder.
188 Annex A-41 of the ICPA Report (Exhibit "P-123"), Binder.
189 Annex A-42 of the ICPA Report (Exhibit "P-123"), Binder.
190 Amount per summary on Table 36 of the ICPA Report (Exhibit "P-123"), Binder, p. 33; With a difference of ₱0.47 per actual sum of annexes.
191 Item V.D.2.c.3 of of the ICPA Report (Exhibit "P-123"), Binder, p. 35.

Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
Annex A-43	Cellphone charges	₱ 11,344.50
Annex A-44	Communication	1,053,242.23
Annex A-45	Communication	14,799.03
Annex A-46	Cellphone charges	9,000.20
Annex A-47	Communication	5,081.50
Annex A-48	Communication	108,175.07
	Total	**₱1,201,642.53**

One. Petitioner correctly subjected the amounts of ₱11,344.50 (Annex A-43), ₱1,053,242.23 (Annex A-44), ₱14,799.03 (Annex A-45), and ₱9,000.20 (Annex A-46), with a total of ₱1,088,385.96,[192] to 2% EWT because these are payments for services, rather than goods.[193] Therefore, these items are allowed as expense deduction.

Two. Quite the opposite, the amounts of ₱5,081.50 (Annex A-47) and ₱108,175.07 (Annex A-48), with a total of ₱113,256.57, were *not* subjected to 2% EWT.[194] Thus, these communication, light and water expense, to the extent of ₱113,256.57[195] must be disallowed as expense deduction.

Three. Petitioner is liable for deficiency EWT of ₱2,265.13, computed as follows:

Particulars	Annex	Gross Amount	Required EWT - 2%	Tax Withheld	Deficiency EWT
Cellphone Charges	A-43	₱11,344.50	₱226.89	₱226.89	-
Communication	A-44	1,053,242.23	21,064.84	21,064.87	-
Communication	A-45	14,799.03	295.98	295.97	-
Cellphone Charges	A-46	9,000.20	180.00	180.00	-
Communication	A-47	5,081.50	101.63	-	₱101.63
Communication	A-48	108,175.07	2,163.50	-	2,163.50
				Total	**₱2,265.13**

192 Pages 7 to 9 of Annex A-6 of the ICPA Report (Exhibit "P-123"), Binder; Sum of Annexes A-43, A-44, A-45 and A-46 of the ICPA Report (Exhibit "P-123"), Binder.

193 Item V.D.2.c.3 of the ICPA Report (Exhibit "P-123"), Binder, p. 35.

194 Item V.D.2.c.3 of of the ICPA Report (Exhibit "P-123"), Binder, p. 35.

195 Sum of Annex A-47 amounting to ₱5,081.50 and Annex A-48 amounting to ₱108,175.07.

Abridging Our exhaustive discussion, the following are the results of our examination of petitioner's expenses:

No.	Particulars	Annex	Gross Amount	Tax Rate	EWT per verification	EWT remitted	EWT still due
a.	**PROFESSIONAL FEES**						
a.1	**Director's Fees**						
	Director's Fees	A-8	₱3,410,000.00	15%	₱511,500.00	₱341,000.00	₱170,500.00
		Subtotal	**₱3,410,000.00**				**₱170,500.00**
a.2	**Professional Fees**						
	Technical Assistance	A-9	5,000.00	2%	100.00	100.00	-
	GPPs	A-10	661,700.00	-	-	-	-
	Service Fees	A-11	330,000.00	15%	49,500.00	33,000.00	16,500.00
	Consultancy Fees	A-12	390,000.00	15%	58,500.00	39,000.00	19,500.00
	Consultancy Fees	A-13	38,783.41	15%	5,817.51	-	5,817.51
	Appraisal Fees	A-14	2,593,500.00	15%	389,025.00	-	389,025.00
		Subtotal	**₱4,018,983.41**				**₱430,842.51**
a.3	**Legal and Audit Fees**						
	GPPs	A-15	3,606,350.00	-	-	-	-
	GPPs	A-16	40,940.00	15%	6,141.00	-	6,141.00
	GPPs	A-17	1,257,830.00	-	-	-	-
	Notarial Fees	A-18	5,100.00	15%	765.00	-	765.00
		Subtotal	**₱4,910,220.00**				**₱6,906.00**
		Total	**₱12,339,203.41**				**₱608,248.51**
b.	**SERVICES**						
b.1	**Contracted Services**						
	Cooperatives	A-19	860,429.90	2%	17,208.60	-	17,208.60
	Cooperatives	A-20	88,969.33	2%	1,779.39	-	1,779.39
		Subtotal	**₱949,399.23**				**₱18,987.99**
b.2	**Representation**						
	Representation – purchase of goods	A-21	57,098.15	1%	570.98	570.98	-
	Representation – purchase of goods	A-22	148,000.00	1%	1,480.00	1,480.00	-
	Representation	A-23	3,610,171.77	2%	72,203.44	-	72,203.44
		Subtotal	**₱3,815,269.92**				**₱72,203.44**
b.3	**Transportation**						
	Transportation – out-of-pocket	A-24	9,382.00	2%	187.64	-	187.64
	Transportation	A-25	2,534,741.09	2%	50,694.82	-	50,694.82
		Subtotal	**₱2,544,123.09**				**₱50,882.46**
b.4	**Advertising**						
	Advertising	A-26	135,766.67	15%	20,365.00	13,576.67	6,788.33
	Advertising	A-27	967,770.06	2%	19,355.40	-	19,355.40
		Subtotal	**₱1,103,536.73**				**₱26,143.73**

b.5	**Repairs**						
	Repairs & maintenance	A-28	8,482.14	2%	169.64	-	169.64
	Repairs & maintenance	A-29	59,758.93	1%	597.59	597.58	-
	Repairs & maintenance	A-30	2,029,521.34	2%	40,590.43	-	40,590.43
		Subtotal	**₱2,097,762.41**				**₱40,760.07**
b.6	**Miscellaneous**						
	Goods	A-31	15,813.00	1%	158.13	158.13	-
	Donations	A-32	1,520,000.00	2%	30,400.00	-	30,400.00
	Miscellaneous	A-33	24,025.72	1%	240.26	240.26	-
	Miscellaneous	A-34	100.00	15%	15.00	10.00	5.00
	GPP	A-35	546,105.00	2%	10,922.10	-	10,922.10
	Miscellaneous	A-36	3,094,069.42	2%	61,881.39	-	61,881.39
		Subtotal	**₱5,200,113.14**				**₱103,208.49**
		Total	**₱15,710,204.52**				**₱312,186.18**
c.	**GOODS**						
c.1	**Fuel and Oil**						
	Fuel and oil	A-37	39,906.71	1%	399.07	798.13	-
	Fuel and oil	A-38	126,262.29	1%	1,262.63	-	₱1,262.63
		Subtotal	**₱166,169.00**				**₱1,262.63**
c.2	**Office Supplies**						
	Office Supplies	A-39	81,992.45	2%	1,639.85	1,639.85	-
	Office Supplies	A-40	600,883.14	2%	12,017.66	12,017.67	-
	Office Supplies	A-41	20,287.00	1%	202.87	-	202.87
	Office Supplies	A-42	705,727.84	1%	7,057.28	-	7,057.28
		Subtotal	**₱1,408,890.43**				**₱7,260.15**
c.3	**Communication, light, and water**						
	Cellphone charges	A-43	11,344.50	2%	226.89	226.89	-
	Communication	A-44	1,053,242.23	2%	21,064.84	21,064.87	-
	Communication	A-45	14,799.03	2%	295.98	295.97	-
	Cellphone charges	A-46	9,000.20	2%	180.00	180.00	-
	Communication	A-47	5,081.50	2%	101.63	-	101.63
	Communication	A-48	108,175.07	2%	2,163.50	-	2,163.50
		Subtotal	**₱1,201,642.53**				**₱2,265.13**
		Total	**₱2,776,701.96**				**₱10,787.91**
	GRAND TOTAL		**₱30,826,109.89**[196]				**₱931,222.60**

196

Total expenses examined by the ICPA		₱30,826,109.89
Less: Reconciling items:		
Professional fees – voluntarily paid by petitioner (Exhibits "P-30" to "P-30-a," Docket – Vol. II, pp. 488 to 491)	₱741,729.50	
Services not related to the assessed amount by respondent (Table 25, ICPA Report – Exhibit "P-123," p. 27; Sum of b.7 to b.16)	6,171,806.25	
Goods not related to the assessed amount by respondent (Table 35, ICPA Report – Exhibit "P-123"; Sum of c.4 to c.10)	2,580,455.00	9,493,990.75

We, thus, hold: (1) expenses totaling ₱15,303,327.39 must be disallowed as petitioner's deduction due to non-withholding of tax, pursuant to Section 34(K) of the NIRC, as amended; and (2) said disallowed expenses generated deficiency EWT amounting to ₱645,725.83. Ponder on the following presentation:

Particulars	Annex	Gross Amount	Rate	EWT Due
Professional Fees:				
Consultancy Fees	A-13	₱38,783.41	15%	₱5,817.51
Appraisal Fees	A-14	2,593,500.00	15%	389,025.00
GPPs	A-16	40,940.00	15%	6,141.00
Notarial Fees	A-18	5,100.00	15%	765.00
Services:				
Cooperatives	A-19	860,429.90	2%	17,208.60
Cooperatives	A-20	88,969.33	2%	1,779.39
Transportation - out of pocket expenses	A-24	9,382.00	2%	187.64
Transportation	A-25	2,534,741.09	2%	50,694.82
Advertising	A-27	967,770.06	2%	19,355.40
Repairs and maintenance	A-28	8,482.14	2%	169.64
Repairs and maintenance	A-30	2,029,521.34	2%	40,590.43
Donations	A-32	1,520,000.00	2%	30,400.00
GPP	A-35	546,105.00	2%	10,922.10
Miscellaneous	A-36	3,094,069.42	2%	61,881.39
Goods:				
Fuel and Oil	A-38	126,262.29	1%	1,262.63
Office Supplies	A-41	20,287.00	1%	202.87
Office Supplies	A-42	705,727.84	1%	7,057.28
Communication	A-47	5,081.50	2%	101.63
Communication	A-48	108,175.07	2%	2,163.50
	Total	**₱15,303,327.39**		**₱645,725.83**

Moreover, upon further verification, petitioner is liable for additional deficiency EWT in the amount of ₱285,496.77, as computed below:

Particulars	Annex	Should be EWT	EWT Paid	EWT Due
Professional Fees:				
Directors' Fees	A-8	₱511,500.00	₱341,000.00	₱170,500.00
Service Fees	A-11	49,500.00	33,000.00	16,500.00
Consultancy Fees	A-12	58,500.00	39,000.00	19,500.00
Services:				
Representation	A-23	72,203.44	-	72,203.44
Advertising	A-26	20,365.00	13,576.67	6,788.33

Total expenses assessed by respondent ₱21,332,114.53 (Exhibit "P-1," Docket - Vol. I, p. 66); *With a difference of ₱4.61		₱21,332,119.14*

Miscellaneous	A-34	15.00	10.00	5.00
	Total	**₱712,083.44**	**₱426,586.67**	**₱285,496.77**

I.5 MCIT Paid - ₱56,861.00; and
I.6 Excess Credits Carried Forward to succeeding year - ₱9,670,865.00

Respondent's FDDA[197] is empty of any legal and factual ground, justifying his imposition of deficiency IT, due to disallowance of the Minimum Corporate Income Tax (MCIT) amounting to ₱56,861.00, and excess credits carried forward in the succeeding year amounting to ₱9,670,865.00, from the available tax credits of petitioner. Therefore, respondent's deficiency IT against petitioner emanating therefrom must be set aside. As Section 228 of the NIRC, as amended, puts it: "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

All in all, We sustain the disallowance of the amount of ₱15,303,327.39 due to non-withholding of tax. Even if said figure were to be considered, petitioner is still in a net loss position; thus, would *not* be subject to *regular* corporate income tax, computed as follows:

Particulars	Amount
Net Sales/Revenues/Fees (per ITR)	₱4,200,000.00
Less: Cost of Sales/Services (per ITR)	(9,339,206.00)
Gross Income from Operations	(₱5,139,206.00)
Add: Other Taxable Income Not Subjected to Final Tax	7,982,238.00
Total Gross Income	**₱2,843,032.00**
Less: Ordinary Allowable Itemized Deductions	(54,563,150.00)
Add: Disallowed expenses due to non-withholding	15,303,327.39
Adjusted Net Taxable Income (Loss)	(₱36,416,790.61)

Significantly, even if one is in a net loss position, a 2% MCIT may still be imposed on the taxpayer under Section 27(E)(1)[198] of the

[197] Exhibit "P-1," Docket (Vol. I), pp. 64-71.

[198] SEC. 27. Rates of Income Tax on Domestic Corporations. —

...

(E) Minimum Corporate Income Tax on Domestic Corporations. —

(1) Imposition of Tax. — A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when

NIRC, as amended, as interpreted by Section 2.27(E)(1)[199] of Section 2.27(E) of RR No. 9-98,[200] as amended by RR No. 12-2007.[201] *Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Romulo*[202] acknowledged:

> RR 9-98, in declaring that MCIT should be imposed whenever such corporation has zero or negative taxable income, merely defines the coverage of Section 27(E). **This means that even if a corporation incurs a net loss in its business operations or reports zero income after deducting its expenses, it is still subject to an MCIT of 2% of its gross income.** This is consistent with the law which imposes the MCIT on gross income notwithstanding the amount of the net income. But the law also states that the MCIT is to be paid only if it is greater than the normal net income. Obviously, it may well be the case that the MCIT would be less than the net income of the corporation which posts a zero or negative taxable income.

Here, petitioner possesses sufficient tax credits to answer for its 2016 MCIT liability, computed as follows:

MCIT per ITR	₱56,861.00
Less: Tax credits/Payments	
Prior year's excess credits other than MCIT	(8,940,226.00)
Creditable tax withheld from previous quarters per BIR form No. 2307	(787,500.00)
Excess Tax Credits/Overpayment	**(₱9,670,865.00)**

Ergo, petitioner is **not** liable for deficiency IT imposed by respondent for TY 2016.

---

the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

199 Sec. 2.27(E) [MCIT] on Domestic Corporations. –
(1) Imposition of the Tax. – ... The MCIT shall be imposed whenever such corporation has **zero or negative taxable income** or whenever the amount of [MCIT] is greater than the normal income tax due from such corporation. (Boldfacing ours).

200 SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Imposition of the Minimum Corporate Income Tax (MCIT) on Domestic Corporations and Resident Foreign Corporations.

201 SUBJECT: Amending Certain Provisions of Revenue Regulations No. 9-98 Relative to the Due Date Within Which to Pay Minimum Corporate Income Tax (MCIT) Imposed on Domestic Corporations and Resident Foreign Corporations Pursuant to Section 27(E) and Section 28(A)(2) of the 1997 National Internal Revenue Code, as Amended.

202 G.R. No. 160756, March 9, 2010.

II. FWT

Respondent found petitioner liable for deficiency FWT for TY 2016,[203] with the following computation:

		Tax Rate	Gross Dividend	Tax Withheld by Petitioner	Should be FWT (if no documentation) at 30%
China	Corporation with Tax Treaty	-	₱8,195,191.20	-	₱2,458,557.36
China	Corporation with Tax Treaty	0.15	10,495,176.00	1,574,276.40	3,148,552.80
Cayman Islands	Corporation without Tax Treaty	0.15	121,068,685.92	18,160,302.89	36,320,605.78
France	Corporation with Tax Treaty	15%	1,804,632.00	270,694.80	541,389.60
Kuwait	Corporation without Tax Treaty	-	24,821,832.00		7,446,549.60
Netherlands	Corporation with Tax Treaty	15%	2,632,536.00	394,880.40	789,760.80
Philippines	No W/Tax – Domestic Corp.	-	85,909,161.60	-	
Philippines	No W/Tax – Domestic Corp.	-	482,476,089.12	-	
Resident Alien	Corporation	-	16,932,649.92	-	5,079,794.98
Singapore	Government Institution	-	5,071,924.80	-	1,521,577.44
Singapore	Corporation without Tax	-	54,658,824.00	-	16,397,647.20
Singapore	Corporation with Tax Treaty	15%	34,253,376.00	5,138,006.40	10,276,012.80
Switzerland	Corporation with Tax Treaty	15%	1,469,712.00	220,456.80	440,913.60
United Arab Emirates	Government Institution	-	20,871,096.00	-	6,261,328.80
United States	Corporation with Tax Treaty	15%	46,796,506.08		14,038,951.82
		Total	**₱917,457,392.64**	**₱25,758,617.69**	**₱104,721,642.58**
				FWT	25,758,617.69
				FWT still due	**₱78,963,024.89**

[203] See Schedule 4, Exhibit "P-1," Docket (Vol. I), p. 67.

Relevantly, ICPA Mendoza identified and classified the shareholders/beneficial owners, corresponding to each Philippine Central Depository (PCD) Nominee Corporation listed in respondent's assessment,[204] itemized below:[205]

Country	Payee/Shareholder	Payee Classification	Gross Dividends	FWT at 30% per BIR
China	People's Bank of China (PBOC)	Foreign government institution	₱8,195,191.20	₱2,458,557.36
Kuwait	Kuwait Investment Authority (KIA)	Foreign government institution	24,821,832.00	7,446,549.60
Singapore	Monetary Authority of Singapore (MAS)	Foreign government institution	5,071,924.80	1,521,577.44
Singapore	GIC Private Limited	Foreign government institution	54,658,824.00	16,397,647.20
United Arab Emirates	Abu Dhabi Investment Authority (ADIA)	Foreign government institution	20,871,096.00	6,261,328.80
China	Best Investment Corporation (BIC)	Nonresident Foreign Corporation (NRFC)	10,495,176.00	3,148,552.80
Cayman Islands	Cartica Investors, L.P. and Cartica Capital Partners Master, L.P.	NRFC	121,068,685.92	36,320,605.78
France	BNP Paribas Arbitrage SNC	NRFC	1,804,632.00	541,389.60
Netherlands	Stichting Depositary APG Emerging Markets Equity Pool	NRFC	2,632,536.00	789,760.80
United States	Cartica Corporate Governance Fund, L.P. and Cartica Investors II, L.P.	NRFC	46,796,506.08	14,038,951.82
Singapore	Corporation – no name/ details provided	NRFC	34,253,376.00	10,276,012.80
Switzerland	Corporation – no name/ details provided	NRFC	1,469,712.00	440,913.60
No details provided	Corporation – no name/ details provided	NRFC	16,932,649.92	5,079,794.98
		Total	**₱349,072,141.00**[206]	**₱104,721,642.58**

204 Schedule 4, Exhibit "P-1," *id.* at p. 67; Exhibit "P-16," *id.* at pp. 338-341.
205 Table 40 of the ICPA Report (Exhibit "P-123"), Binder, p. 36.
206 Actual footing is ₱349,072,141.92; With a difference of ₱0.92.

Respondent posits that the imposition of 30% FWT on the dividend payouts made by petitioner to the foregoing entities is warranted, because petitioner failed to prove the eligibility of the beneficial owners of the dividends for tax exemption or preferential tax treaty rates. [207]

Petitioner retorts that the names, countries of residence, and tax status of the beneficial owners are identifiable and that their entitlement to tax exemption or tax treaty relief may be confirmed from the documents submitted to petitioner by the various participating brokers and custodians of the Philippine Depository and Trust Corporation (PDTC).[208]

We partly sustain the 2016 deficiency FWT assessment.

To determine whether: (1) petitioner is required to withhold final income taxes on the dividend pay outs it made to the entities specified in the immediately preceding table; and (2) the proper final income tax rate petitioner is required to withhold, the following provisions of law must be consulted.

First. Section 32(B)(7)(a) of the NIRC, as amended, which exempts from IT, "[i]ncome derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."

Second. Section 28(B)(1)[209] of the NIRC, as amended, which generally imposes 30%[210] final income tax on dividends received by a

---

207 Exhibit "P-1," *id.* at p. 66.

208 Par. 58, Petition for Review. *Id.* at pp. 27-28.

209 SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

...

(B) *Tax on Nonresident Foreign Corporation.* –

...

(1) *In General.* – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty- five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, **dividends**, ...: *Provided,* That effective January 1, 2009, the rate of income tax shall be thirty percent (30%). (Boldfacing ours)

non-resident foreign corporation (NRFC) from another corporation. By way of exception, the tax-sparing rule in Section 28(B)(5)(b)[211] of the same Code, reduces the final income tax rate from 30% to 15% of said dividends, if the domiciliary country of the NRFC recipient of the dividends, "allows" a credit against the tax due from said NRFC *deemed* paid in the Philippines. The amount of tax due from NRFC *deemed* paid in the Philippines is 15% (the difference between the 30% regular income tax on NRFC and 15% tax covered by the tax-sparing rule) of said dividends.

Third. Section 32(B)(5) of the NIRC, as amended, which exempts from IT, "[i]ncome of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines."

Here, petitioner presented the following pieces of evidence in support of its stance:

Country	Payee/ Shareholder	Payee Classification	Gross Dividends	Supporting Documents	Exhibit No.
China	People's Bank of China (PBOC)	Foreign government institution	₱8,195,191.20	BIR Ruling No. 1300-18 of PBOC	"P-98-1"
				Consularized Indemnity Undertaking	"P-98-2"
				Application for BIR Ruling received by the BIR on Nov. 27, 2012	"P-98-3"

210 Now 25%, per Section 7 of Republic Act No. 11534. The dividend pay-outs here were made prior to the effectivity of said law.

211 SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

...

(B) *Tax on Nonresident Foreign Corporation.* –

...

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –

...

(b) *Intercorporate Dividends.* – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, **subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines** equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided,* That effective January 1. 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), **which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends.**

				Deutsche Bank Certification	"P-98-4"
Kuwait	Kuwait Investment Authority (KIA)	Foreign government institution	24,821,832.00	BIR Ruling No. 495-2012 of KIA	"P-99-1"
				Consularized Indemnity Undertaking	"P-99-2"
				Certificate of Residency	"P-99-3"
				Article of Law, Dividend	"P-99-4"
				Citibank Certification	"P-99-5"
Singapore	Monetary Authority of Singapore (MAS)	Foreign government institution	5,071,924.80	BIR Ruling No. 405-2013 of MAS	"P-100-1"
				Consularized Indemnity Undertaking	"P-100-2"
				Deutsche Bank Certification	"P-100-3"
Singapore	GIC Private Limited (GPL)	Foreign government institution	54,658,824.00	Consularized Indemnity Undertaking	"P-101"
United Arab Emirates	Abu Dhabi Investment Authority (ADIA)	Foreign government institution	20,871,096.00	BIR Ruling No. 162-2011 of ADIA	"P-102-1"
				Consularized Indemnity Undertaking	"P-102-2"
China	Best Investment Corporation (BIC)	NRFC	10,495,176.00	Tax Treaty Relief Application (TRRA) for Dividend BIR Form No. 0901-D stamped received by the BIR on May 27, 2016	"P-103-1"
				HSBC Certification	"P-103-2"
				Indemnity Undertaking	"P-103-3"
Cayman Islands	Cartica Investors, L.P. and Cartica Capital Partners Master, L.P.	NRFC	121,068,685.92	Deutsche Bank Certification	"P-105"
France	BNP Paribas Arbitrage SNC (BPAS)	NRFC	1,804,632.00	Tax Treaty Relief Application (TRRA) for Dividend BIR Form No. 0901-D received by the BIR on May 20, 2016	"P-104-1"
				Consularized Certificate of Residency	"P-104-2"
				Consularized Indemnity Undertaking	"P-104-3"

Netherlands	Stichting Depositary APG Emerging Markets Equity Pool	NRFC	2,632,536.00	PDTC Summary of Withholding Tax Report dated June 3, 2016	"P-16"
United States	Cartica Corporate Governance Fund, L.P. and Cartica Investors II, L.P.	NRFC	46,796,506.08	Confirmation Request Letter received by the BIR on June 1, 2016	"P-106-1"
				Deutsche Bank Certification	"P-106-2"
Singapore	Corporation – no name/ details provided	NRFC	34,253,376.00	PDTC Summary of Withholding Tax Report dated June 3, 2016	"P-16"
Switzerland	Corporation – no name/ details provided	NRFC	1,469,712.00	PDTC Summary of Withholding Tax Report dated June 3, 2016	"P-16"
No details provided	Corporation – no name/ details provided	Resident Alien[212]	16,932,649.92	PDTC Summary of Withholding Tax Report dated June 3, 2016	"P-16"
		Total	**₱349,072,141.92**		

Our perusal of petitioner's evidence bore the following findings:

First. There is no sufficient proof that PBOC, KIA, MAS, GPL, and ADIA are financing institutions owned, controlled, or enjoys refinancing from foreign governments; hence, the IT exemption under Section 32(B)(7)(a) of the NIRC, as amended, remained inoperative.

Specifically, petitioner presented BIR Ruling Nos. 1300-18 (PBOC),[213] 495-2012 (KIA),[214] 405-2013 (MAS),[215] and 162-2011 (ADIA)[216] as evidence in support thereof. However, petitioner was not the party to whom these rulings were addressed and issued. Being so, petitioner may not employ the same to establish adherence

---

212 Based on the PDTC Summary of Withholding Tax Report, the shareholder was classified as "Corporation - Resident Alien," however, due to inconsistency of such classification under the NIRC, as amended, it is deemed appropriately classified as "Resident Foreign Corporation." Nonetheless, due to petitioner's failure to present sufficient evidence to prove that it is a resident foreign corporation licensed to do business in the Philippines, the shareholder is deemed classified as a Non-Resident Foreign Corporation subject to a FWT rate of 30%.

213 Exhibit "P-98-1."

214 Exhibit "P-99-1."

215 Exhibit "P-100-1."

216 Exhibit "P-102-1."

with Section 32(B)(7)(a) of the NIRC, as amended. As held in *San Miguel Corporation v. Commissioner of Internal Revenue:*[217] "[i]t is a basic rule that a taxpayer cannot utilize for themselves specific BIR Rulings made for another, as only the taxpayer who sought such BIR Ruling may invoke the same."

Likewise, a consularized indemnity undertaking, [218] and nothing more, is deficient to prove that GPL is a financing institution owned, controlled, or enjoys refinancing from a foreign government.

Second. Neither could the tax sparing rule set forth in Section 28(B)(5)(b) of the NIRC, as amended, be applicable, with respect to the entities who received dividends from petitioner. The reason—the respective foreign tax laws of these entities were not adduced as evidence; thus, it cannot be ascertained whether the domiciliary country of these entities "allow" as credit, the 15% tax deemed paid in the Philippines. *Kuckscar v. Sekito, Jr.*[219] decreed:

> ... [I]t is settled that foreign laws do not prove themselves in this jurisdiction, and our courts are not authorized to take judicial notice of them. Like any other fact, they must be properly pleaded and proved. Under the Rules of Court, the record of public documents of a sovereign authority or tribunal may be proved by (1) an official publication thereof, or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

Besides, save for KIA and BPAS, none of these entities have their corresponding proof of residency; hence, their domiciliary country for purposes of tax-sparing rule may not be determined with certainty.

---

217 G.R. No. 257697, April 12, 2023.
218 Exhibit "P-101."
219 G.R. No. 237449, December 2, 2020.

Third. Petitioner produced KIA's Certificate of Residency[220] and BPAS'[221] Consularized Certificate of Residency. These certificates show that KIA is a resident of Kuwait, whereas BPAS is a resident of France. Considering that they received their dividends from a Philippine resident like petitioner, a review of the applicable Tax Treaties relative to said transactions is in order.

KIA

Paragraph 2, Article 10 of RP - Kuwait Tax Treaty,[222] states:

> **ARTICLE 10**
> *Dividends*
>
> ...
>
> 2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
>
> a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 10 per cent of the capital of the paying company;
>
> b) 15 per cent of the gross amount of the dividends in all other cases.

Following Article 10(2) of RP - Kuwait Tax Treaty, the dividends paid by petitioner to KIA may be taxed in the Philippines. However, the tax imposed is *not* the 30% FWT found by the BIR. Rather, said dividends should be taxed at 15% of the gross amount thereof, because there is ***no*** proof that KIA directly holds at least 10% of petitioner's capital.

---

220 Exhibit "P-99-3."

221 Exhibit "P-104-2."

222 CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

BPAS

Paragraph 2, Article 10 of the RP - France Tax Treaty,[223] reads:

ARTICLE 10
Dividends

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends in a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 15 [now 10] per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;

b) in all other cases, 25 [now 15] per cent of the gross amount of the dividends.[224]

Consistent with Article 10(2) of RP - France Tax Treaty, the dividends paid by petitioner to BPAS may be taxed in the Philippines. However, the tax imposed is *not* the 30% FWT found by the BIR. Rather, said dividends should be taxed at 15% of the gross amount thereof, because there is no proof that BPAS holds at least 10% of petitioner's voting shares.

We now chart the *proper* final income tax rate on the dividends paid by petitioner in favor of the entities listed below, as follows:

Country	Payee/Shareholder	Payee Classification	Exempt	Preferential Rate	30% FWT Rate
China	People's Bank of China (PBOC)	Foreign government institution	No	No	Yes

[223] CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

[224] The tax rates for dividends under paragraph 2, Article 10 of the *original* RP-France Tax Treaty, was amended by Article 5 of The Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the French Republic Signed on January 9, 1976.

Kuwait	Kuwait Investment Authority (KIA)	Foreign government institution	No	Yes at 15%	No
Singapore	Monetary Authority of Singapore (MAS)	Foreign government institution	No	No	Yes
Singapore	GIC Private Limited	Foreign government institution	No	No	Yes
United Arab Emirates	Abu Dhabi Investment Authority (ADIA)	Foreign government institution	No	No	Yes
China	Best Investment Corporation (BIC)	NRFC	No	No	Yes
Cayman Islands	Cartica Investors, L.P. and Cartica Capital Partners Master, L.P.	NRFC	No	No	Yes
France	BNP Paribas Arbitrage SNC	NRFC	No	Yes at 15%	No
Netherlands	Stichting Depositary APG Emerging Markets Equity Pool	NRFC	No	No	Yes
United States	Cartica Corporate Governance Fund, L.P. and Cartica Investors II, L.P.	NRFC	No	No	Yes
Singapore	Corporation – no name/ details provided	NRFC	No	No	Yes
Switzerland	Corporation – no name/ details provided	NRFC	No	No	Yes
No details provided	Corporation – no name/ details provided	NRFC	No	No	Yes

Petitioner's basic FWT liability on dividends for TY 2016 stands at ₱100,727,672.98. However, petitioner only paid ₱25,758,617.69.[225] Therefore, petitioner is liable for the *remaining* deficiency FWT in the amount of ₱74,969,055.29, computed as follows:

Payee/Shareholder	Payee Classification	Gross Dividends	FWT Due per verification	FWT remitted by Petitioner	Under (Over) Remittance
People's Bank of China (PBOC)	Foreign government institution	₱8,195,191.20	₱2,458,557.36	-	₱2,458,557.36

225 Table 47 of the ICPA Report (Exhibit "P-123"), Binder, pp. 45-46.

Kuwait Investment Authority (KIA)	Foreign government institution	24,821,832.00	3,723,274.80[226]	-	3,723,274.80
Monetary Authority of Singapore (MAS)	Foreign government institution	5,071,924.80	1,521,577.44	-	1,521,577.44
GIC Private Limited	Foreign government institution	54,658,824.00	16,397,647.20	-	16,397,647.20
Abu Dhabi Investment Authority (ADIA)	Foreign government institution	20,871,096.00	6,261,328.80	-	6,261,328.80
Best Investment Corporation (BIC)	NRFC	10,495,176.00	3,148,552.80	₱1,574,276.40	1,574,276.40
Cartica Investors, L.P. and Cartica Capital Partners Master, L.P.	NRFC	121,068,685.92	36,320,605.78	18,160,302.89	18,160,302.89
BNP Paribas Arbitrage SNC	NRFC	1,804,632.00	270,694.80[227]	270,694.80	-
Stichting Depositary APG Emerging Markets Equity Pool	NRFC	2,632,536.00	789,760.80	394,880.40	394,880.40
Cartica Corporate Governance Fund, L.P. and Cartica Investors II, L.P.	NRFC	46,796,506.08	14,038,951.82	-	14,038,951.82
Corporation – no name/ details provided	NRFC	34,253,376.00	10,276,012.80	5,138,006.40	5,138,006.40
Corporation – no name/ details provided	NRFC	1,469,712.00	440,913.60	220,456.80	220,456.80
Corporation – no name/ details provided	Resident Alien	16,932,649.92	5,079,794.98	-	5,079,794.98
	Total	**₱349,072,141.92**	**₱100,727,672.98**	**₱25,758,617.69**	**₱74,969,055.29**

226 Subjected to the preferential rate of 15% FWT pursuant to Article 10(2) of RP – Kuwait Tax Treaty. *Supra* note 222.

227 Subjected to the preferential rate of 15% FWT pursuant to Article 10(2) of RP – France Tax Treaty, as amended. *Supra* notes 223 and 224.

III. EWT

Respondent found petitioner liable for deficiency EWT covering TY 2016, in the amount of ₱1,932,351.37,[228] computed as follows:

Nature	Income payment (per FLD)[229]	Voluntary Payment Made	Income payment (per FDDA)[230]	Tax Rate	EWT Due
Payment of Professional Fees	₱12,339,203.03	₱741,729.50	₱11,597,473.53	15%	₱1,739,621.03
Purchase of Service	9,538,394.00	-	9,538,394.00	2%	190,767.88
Purchase of Goods	196,247.00	-	196,247.00	1%	1,962.47
Total	**₱22,073,844.03**	**₱741,729.50**	**₱21,332,114.53**		**₱1,932,351.38**

We finished tackling petitioner's 2016 deficiency EWT liability under item I.4 of deficiency IT assessment. To repeat, petitioner is liable for deficiency EWT totaling ₱931,222.60, composed of: (a) EWT due to non-withholding in the amount of ₱645,725.83; and (b) additional EWT identified upon further verification amounting to ₱285,496.77, as summarized in the table below:

(a.) EWT due to non-withholding				
Particulars	**Annex**	**Gross Amount**	**Rate**	**EWT Due**
Professional Fees:				
Consultancy Fees	A-13	₱38,783.41	15%	₱5,817.51
Appraisal Fees	A-14	2,593,500.00	15%	389,025.00
GPPs	A-16	40,940.00	15%	6,141.00
Notarial Fees	A-18	5,100.00	15%	765.00
Services:				
Cooperatives	A-19	860,429.90	2%	17,208.60
Cooperatives	A-20	88,969.33	2%	1,779.39
Transportation - out of pocket expenses	A-24	9,382.00	2%	187.64
Transportation	A-25	2,534,741.09	2%	50,694.82
Advertising	A-27	967,770.06	2%	19,355.40
Repairs and maintenance	A-28	8,482.14	2%	169.64
Repairs and maintenance	A-30	2,029,521.34	2%	40,590.43
Donations	A-32	1,520,000.00	2%	30,400.00
GPP	A-35	546,105.00	2%	10,922.10

228 With a ₱0.01 discrepancy against per Schedule 5, Exhibit "P-1," Docket (Vol. I), p. 67.
229 Exhibit "P-6." *Id.* at p. 127.
230 Exhibit "P-1." *Id.* at p. 67.

Miscellaneous	A-36	3,094,069.42	2%	61,881.39
Goods:				
Fuel and Oil	A-38	126,262.29	1%	1,262.63
Office Supplies	A-41	20,287.00	1%	202.87
Office Supplies	A-42	705,727.84	1%	7,057.28
Communication	A-47	5,081.50	2%	101.63
Communication	A-48	108,175.07	2%	2,163.50
	Subtotal	**₱15,303,327.39**		**₱645,725.83**
(b.) Additional EWT upon further verification				
Particulars	**Annex**	**Should be EWT**	**EWT Paid**	**EWT Due**
Professional Fees:				
Directors' Fees	A-8	₱511,500.00	₱341,000.00	₱170,500.00
Service Fees	A-11	49,500.00	33,000.00	16,500.00
Consultancy Fees	A-12	58,500.00	39,000.00	19,500.00
Services:				
Representation	A-23	72,203.44	-	72,203.44
Advertising	A-26	20,365.00	13,576.67	6,788.33
Miscellaneous	A-34	15.00	10.00	5.00
	Subtotal	**₱712,083.44**	**₱426,586.67**	**₱285,496.77**
			Total	**₱931,222.60**

IV. FBT

Respondent found petitioner liable for deficiency FBT covering TY 2016, in the amount of ₱1,716,615.27. He asserts that petitioner's expenditures on golf club memberships, foreign travels, and motor vehicle provided to its officers and directors, were not subjected to the proper FBT,[231] computed as follows:

Payment of Golf Club Memberships and Travels	₱6,279,545.27
Motor Vehicle FBT (as computed)	229,234.82
Total	₱6,508,780.09
Taxable Base per FBT Returns	1,306,409.01
Benefits not subjected to FBT	₱5,202,371.08
Divisor	68%
Tax Base/Grossed up Value	₱7,650,545.71
Tax Rate	32%
FBT per FLD	₱2,448,174.63
Payment by DMCI on August 5, 2021	731,559.36
FBT Still Due	**₱1,716,615.27**

ICPA Mendoza then traced respondent's findings to the entries in petitioner's GL, and unearthed the following details:[232]

---

231 Exhibit "P-1," *id.* at p. 68.
232 Table 49 of the ICPA Report (Exhibit "P-123"), Binder, p. 48.

Particulars	Amount Assessed by the BIR		Booking in GL
Travels			
a.1 Deutsche Bank conference in Singapore	₱500,430.85		Account no. 603001 - transportation and travel
a.2 Berong Palawan Site Visit for annual report	57,300.91		
a.3 UBS-Hongkong/ Singapore conference	188,165.41		
a.4 Business conference in London	484,435.46	₱1,230,332.63	
Golf membership			
b.1 Corporate membership fees in Baguio Country Club	2,188,240.00	2,188,240.00	Account no. 602026 - membership dues
Motor vehicle		229,234.82	
Total		3,647,807.45	
Divisor		68%	
Tax base/ grossed-up value		5,364,422.72	
Tax rate		32%	
Total FBT due		**₱1,716,615.27**	

IV.1 Travels - ₱1,230,332.63

Petitioner argues that as a publicly listed company, its officers are invited to various local and foreign investor conferences commonly referred to as "road shows," to promote the company. They attend such events to provide prospective investors with a better understanding of the company. Thus, these foreign travels do not constitute fringe benefits granted to the officer, but rather form part of their core functions to represent the company to potential investors, as provided under Section 2.33(B)(7) of RR No. 03-98.[233]

We partly agree with petitioner.

ICPA Mendoza verified that the travel account amounting to ₱1,230,332.63, consists of the following:

Event	Annexed to the ICPA Report (Exhibit "P-123")	Particulars	Amount
a.1 Deutsche Bank Conference in Singapore	Annex A-49	Hotel Accommodation	₱43,512.88
	Annex A-53		32,530.38
	Annex A-50	Airfare	276,899.99
	Annex A-52	Per diem allowances	147,487.20
		Subtotal	**₱500,430.45**
a.2 Berong Palawan site visit	Annex A-54	Airfare	57,300.91
		Subtotal	**₱57,300.91**
a.3 UBS-Hong Kong/Singapore Conference	Annex A-55	Per diem allowances	37,421.60
	Annex A-56	Hotel Accommodations	65,773.69
	Annex A-57	Airfare	84,970.12
		Subtotal	**₱188,165.41**

233 Pars. 66 and 67, Petition for Review, *id.* at pp. 29-30.

a.4 Business conference in London	Annex A-51	Airfare	320,628.00
	Annex A-58	Per diem allowances	148,966.40
	Annex A-59	Visa application	14,841.06
		Subtotal	**₱484,435.46**
		Total	**₱1,230,332.23**[234]

Of the ₱1,230,332.63 falling under travel account, ₱62,829.87 pertains to expenses incurred by Mr. Victor S. Limlingan, petitioner's Managing Director, in connection with his participation in Access Philippines Corporate Day held in Singapore. This expense is supported by official event invitation,[235] a Statement of Account[236] and Official Receipt[237] issued by Cristina Travel Corporation for airfare, and a Tax Invoice issued by The Fullerton Hotel Singapore[238] for accommodation. These documents substantiate that the travel expense was undertaken for business purposes; thus, does not constitute a taxable fringe benefit and is not subject to FBT under Section 33(A) of the NIRC, as amended, and Section 2.33(B)(7) of RR No. 3-98.[239] Consider:

Particulars	Annex	Exhibit Reference Nos.	Amount
Accommodation	A-49	"P-110-1", "P-110-1-a", "P-110-1-b"	₱43,512.88
Airfare	A-50	"P-111-1", "P-111-1-a"	19,316.99
Travel expenses verified as business related			**₱62,829.87**

On the other hand, the remaining amount of ₱1,167,502.76[240] under travel account should be subjected to FBT, due to insufficient substantiation, and failure to establish that the expenses are business related.

IV.2 Golf Membership - ₱2,188,240.00

ICPA Mendoza explained that the ₱2,188,240.00 falling under golf membership account pertains to the club membership shares owned by petitioner. Being an owner of these club shares, petitioner

---

234 With a difference of ₱0.40 (Total amount of ₱1,230,332.63 per ICPA v. actual sum of ₱1,230,332.23).

235 Exhibit "P-110-1-b," USB (Exhibit "P-124-2").

236 Exhibit "P-111-1-a," USB (Exhibit "P-124-2").

237 Exhibit "P-111-1," USB (Exhibit "P-124-2").

238 Exhibit "P-110-1," USB (Exhibit "P-124-2").

239 SUBJECT: Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits.

240 Total assessed amount of ₱1,230,332.63 reduced by duly substantiated travel expenses of ₱62,829.87.

may use the club facilities for the entertainment of clients and investors. In addition, these are also supported by billing invoice and acknowledgement receipts.[241] Moreover, these are not fringe benefits borne by petitioner for the benefit of its employees; rather, these are treated as ordinary and necessary business expenses of the petitioner and thus not subject to FBT.[242]

We sustain the FBT assessment on golf membership account.

Petitioner submitted its Acknowledgement Receipts[243] and Billing Invoice[244] to support its stance. These documents merely prove payment of club fees for Baguio Country Club IFO Baguio Country Club and one (1) corporate share of Baguio Country Club IFO Dianel T. Domingo.[245] It means that petitioner fell short in demonstrating that these are ordinary and necessary business expenses and used exclusively for business purposes. More, the purpose and professional or business relationship of these expenses were not even proven. Therefore, the golf membership in the entire amount of ₱2,188,240.00, is deemed a taxable fringe benefit subject to FBT, pursuant to Section 33(A) of the NIRC, as amended, Section 2.33(B)(6) of RR No. 3-98 and Section 2 of RR No. 10-2002.

IV.3 Motor Vehicle - ₱229,234.82

ICPA Mendoza clarified that the vehicle subject of the FBT assessment is a Honda Odyssey acquired by petitioner on January 27, 2016. Based on this acquisition, respondent calculated the deficiency FBT on motor vehicle as follows:[246]

Particulars	Amount
Acquisition cost of the vehicle	₱2,065,178.57
Add: 12% VAT	247,821.43
Less: 1% EWT	(20,651.79)
Total – acquisition per BIR computation	2,292,348.21
Divide by 5 years estimated life of the vehicle	5
	458,469.64
Multiplied by 50%	50%

241 Item V.G.2.b.1 of the ICPA Report (Exhibit "P-123"), Binder, p. 49.
242 Item V.G.2.b.2 of the ICPA Report (Exhibit "P-123"), Binder, p. 50.
243 Exhibits "P-119-1" and "P-119-2-a," USB (Exhibit "P-124-2").
244 Exhibit "P-119-2," USB (Exhibit "P-124-2").
245 Annex A-60 of the ICPA Report (Exhibit "P-123"), Binder.
246 Table 52 of the ICPA Report (Exhibit "P-123"), Binder, p. 50.

Monetary value per BIR computation	**₱229,234.82**

We note that respondent used an acquisition cost *inclusive* of 12% VAT and net of 1% EWT in computing the monetary value of the motor vehicle, leading to the acquisition cost at ₱2,292,348.21. However, Vehicle Sales Invoice No. 94197,[247] states the correct acquisition cost thereof at ₱2,065,178.57 and should be used as proper basis for computing the monetary value of the motor vehicle pursuant to Section 2.33(B)(3)(e) of RR No. 3-98. Using the acquisition cost of ₱2,065,178.57, the monetary value to be used as basis for the computation of FBT is ₱206,517.86, computed as follows:

Particulars	Amount
Acquisition cost of the vehicle	₱2,065,178.57
Divide by 5 years estimated life of the vehicle	5
Annual Depreciation Expense	413,035.71
Multiplied by 50%	50%
Monetary value	**₱206,517.86**

Therefore, petitioner correctly determined the FBT due on the motor vehicle and timely filed and paid the corresponding amount due, as detailed below:[248]

Particulars	1st Quarter (Exhibit "P-109-1")	2nd Quarter (Exhibit "P-109-2")	3rd Quarter (Exhibit "P-109-3")	4th Quarter (Exhibit "P-109-4")
Should be monetary value	₱206,517.86	₱206,517.86	₱206,517.86	₱206,517.86
Divide by	12	12	12	12
Monthly amortization	17,209.82	17,209.82	17,209.82	17,209.82
Multiply by	2	3	3	3
Quarterly amortization	34,419.64	51,629.46	51,629.46	51,629.46
Divisor	68%	68%	68%	68%
Tax base/ grossed-up value	50,617.12	75,925.68	75,925.68	75,925.68
Tax rate	32%	32%	32%	32%
Total FBT due per quarter	**₱16,197.48**	**₱24,296.22**	**₱24,296.22**	**₱24,296.22**

Accordingly, the deficiency FBT assessment on motor vehicle should be cancelled for lack of legal and factual basis.

To summarize, petitioner is liable for basic FBT for TY 2016 in the amount of ₱1,579,173.06, computed as follows:

---

247 Exhibit "P-120," USB (Exhibit "P-124-2").
248 Table 54 of the ICPA Report (Exhibit "P-123"), Binder, p. 51.

Particulars	Amount
Travels	₱1,167,502.76
Golf Membership	2,188,240.00
Total	**₱3,355,742.76**
Divisor	68%
Grossed-up monetary value	4,934,915.82
Tax rate	32%
FBT	**₱1,579,173.06**

V. DST

Respondent slapped petitioner with deficiency DST for TY 2016, in the amount of ₱12,241,729.56,[249] computed as follows:

Particulars	Legal Basis	Tax Base	Tax Rate	Tax Due
Advances from PDI for future dividends	Sec. 179 of the NIRC	₱15,000,000.00	1/200	₱75,000.00
Receivables from wholly owned subsidiary (increase)	Sec. 179 of the NIRC	2,117,719,511.00	1/200	10,588,597.56
Advances from Affiliates: Various net of Dividend received for the year (from CRB and ARB)	Sec. 194 of the NIRC	314,999,999.91	1/200	1,575,000.00
Rent Expense		3,132,592.00	₱3 first ₱2,000.00; ₱1 for succeeding	3,132.00
			Total DST	₱12,241,729.56
			Less: DST Payments	-
			DST Still Due	**₱12,241,729.56**

V.1 Advances from PDI for future dividends - ₱15,000,000.00; and Advances from Affiliates - ₱314,999,999.91

Petitioner complains that the alleged advances from affiliates are not advances. Instead, these are "dividends receivable" from its various subsidiaries and affiliates; thus, not subject to DST. In support thereof, the relevant pages of its cash receipts book[250] were adduced as evidence.

The complaint is unfounded.

---

249 Schedule 7, Exhibit "P-1," Docket (Vol. I), p. 70.
250 Exhibit "P-26." *Id.* at p. 385.

Sifting through the cash receipts book shows that it is simply a breakdown of the petitioner's cash inflows for TY 2016 (*i.e.*, dividend income, other income, management fees, 2015 dividends receivable, 2015 receivables, and miscellaneous items). Yet, this alone is insufficient proof that these transactions do not represent advances from affiliates. For this reason, the DST assessment pertaining to said advances is sustained.

V.2 Receivables from wholly owned subsidiary - ₱2,117,719,511.00

Petitioner argues that DMCI Mining Corporation, its wholly owned subsidiary, fully paid the DST on receivables on March 10, 2020. [251] Also, said payment covers the same intercompany transaction, subject of respondent's deficiency DST assessment in the amount of ₱10,588,597.56, as evidenced by the PAN[252] issued to DMCI Mining Corporation. Additionally, the BIR's Termination Letter[253] certified such DST payment.[254] Thus, DST thereon should be cancelled.

We agree with petitioner.

Our verification disclosed that in its 2016 AFS, [255] petitioner reported receivables amounting to ₱2,117,719,511.00 from its wholly owned subsidiary, DMCI Mining Corporation. On the other hand, DMCI Mining Corporation classified the same transaction as a loan assignment[256] in its own 2016 AFS. Petitioner presented the following documents to establish payment of DST thereon, to wit

1. PAN[257] issued by respondent to DMCI Mining Corporation;
2. Payment Form (BIR Form No. 0605);[258] (3)
3. BIR Filing Reference;[259]
4. PNB BIR eFPS payment confirmation;[260] and
5. Termination Letter[261] issued by respondent confirming the closure and termination of said DST assessment.

---

251 Exhibits "P-22" to "P-25." *Id.* at pp. 380-382 and 384.
252 Exhibit "P-43." Docket (Vol. II), pp. 595 and 597.
253 Exhibit "P-44." *Id.* at p. 598.
254 Par. 71, *Petition for Review*, Docket (Vol. I), p. 32.
255 Note 11, Exhibit "P-35," Docket (Vol. II), p. 547.
256 Note 11, Exhibit "P-121," p. 25, USB (Exhibit "P-124-2").
257 Exhibit "P-43," Docket (Vol. II), pp. 595-597.
258 Exhibits "P-22" and "P-23," Docket (Vol. I), pp. 380-381.
259 Exhibit "P-24," *id.* at p. 382.
260 Exhibit "P-25," *id.* at p. 384.

These documents jointly establish that the DST liability for said intercompany transaction between petitioner and DMCI Mining Corporation was duly paid by the latter. In fact, the BIR's Termination Letter confirmed the closure of this matter. Indeed, Section 173 of the NIRC, as amended, as implemented by Sections 2 and 3 of RR No. 9-2000,[262] states that any of the parties shall be liable for the full amount of the DST due and the full amount of the DST may be remitted by any of the party or parties to the taxable transaction.

Simply put, there is no more outstanding DST liability on said transaction against petitioner. On this account, the deficiency DST assessment on receivables from wholly owned subsidiary in the amount of ₱10,588,597.56 should be cancelled.

V.3 Rent Expense - ₱3,132.00

Petitioner admits its DST liability on rent expense.[263] Thus, respondent's assessment in the amount of ₱3,132.00, representing petitioner's deficiency DST is upheld.

In sum, petitioner is liable for basic DST in the amount of ₱1,653,132.00 for TY 2016, computed as follows:

Particulars	Gross Amount	Tax Rate	DST Due
Advances from PDI	₱15,000,000.00	₱1.00/₱200.00	₱75,000.00
Advances from Affiliates	314,999,999.91	₱1.00/200.00	1,575,000.00
Rent Expense	3,132,592.00	₱3.00 for the first ₱2,000.00, and ₱1.00 for every ₱1,000.00, or fractional part thereof, in excess of ₱2,000.00[264]	3,132.00[265]
		Total deficiency DST	**₱1,653,132.00**

---

261 Exhibit "P-44," *id.* at p. 598.

262 SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

263 Item H.2.d. of the ICPA Report (Exhibit "P-123"), Binder, p. 52.

264 Section 194 of the NIRC of 1997.

265 Upon re-computation, the DST due should be ₱3,134.00; With a difference of ₱2.00. However, since the Court cannot go beyond what is stated in the assessment and considering that the power to assess is bestowed to respondent, the Court is constrained to limit its findings only up to the extent of respondent's assessment.

VI. MC (Compromise Penalties)

Respondent found petitioner liable for the following compromise penalties covering TY 2016:[266]

Nature of Violation	Violated Provisions	Compromise Penalty
Failure to file and pay income tax	Sections 32 & 27 of the NIRC & RMO 7-2015	₱50,000.00
Penalty for Non-filing of Summary List of Sales and Purchases	Section 250 of the NIRC & RMO 7-2015	25,000.00
Failure to file and pay Final Tax	Sections 24(B)(2) and 25(A)(2) of the NIRC & RMO No. 7-2015	50,000.00
Penalty on late remittance of Final Tax	RMO No. 7-2015	25,000.00
Failure to file and pay EWT	Section 57 of the NIRC, Section 2.57.2 of RR No. 2-98 & RMO No. 7-2015	25,000.00
Penalty for Non-filing of WE Alphalist		1,000.00
Penalty for Non-filing of WC Alphalist	RMO No. 7-2015	1,000.00
Failure to file and pay FBT	Section 2.33(6), 3(e) and (7) of RR No. 3-98 & RMO No. 7-2015	25,000.00
Failure to file and pay DST	Sections 179, 176, 194 of the NIRC, and RMO No. 7-2015	50,000.00
	Total Penalties Due	**₱252,000.00**

Yet, petitioner never gave its imprimatur to the imposition thereof; hence, must be cancelled for being illegal and unauthorized.[267]

CONCLUSION

First. Petitioner is liable for ***basic deficiency internal revenue taxes*** for TY 2016, in the total sum of ₱79,133,845.57, computed as follows:

Type of Tax	Amount of Basic Deficiency Tax
IT	-
FWT	₱74,969,055.29
EWT	931,222.60
FBT	1,579,173.06
DST	1,653,132.00

---

[266] Exhibit "P-1," Docket (Vol. I), p. 70.

[267] See *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc, et al.*, G.R. No. L-35266, January 21, 1991.

MC (Compromise Penalties)	-
Total	**₱79,132,582.95**

Second. Petitioner is likewise liable for 25% ***surcharge*** of the basic internal revenue taxes, pursuant to Section 248(A)(3) of the NIRC, as amended, which provides:

> SEC. 248. *Civil Penalties.* —
>
> ...
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> ...
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment

Third. Petitioner, too, is liable for ***deficiency interest***, with the following rates: (1) 20% per annum, counted from date prescribed by law for payment of FWT, EWT, FBT, and DST, until December 31, 2017; and (2) 12% per annum, counted from January 1, 2018 until April 30, 2021; the latter date being the due date under the FAN,[268] pursuant to Section 249(B) of the NIRC, as amended by RA No. 10963.

Fourth. Petitioner's tax liability for TY 2016, in the total amount of ₱145,527,776.53, consisting of basic deficiency internal revenue taxes, surcharges, and deficiency interest computed as of April 30, 2021, are broken down as follows:

	FWT	EWT	FBT	DST
Basic Tax Due	**₱74,969,055.29**	**₱931,222.60**	**₱1,579,173.06**	**₱1,653,132.00**
Add: 25% Surcharge	18,742,263.82	232,805.65	394,793.27	413,283.00
Subtotal	**₱93,711,319.11**	**₱1,164,028.25**	**₱1,973,966.33**	**₱2,066,415.00**
Add: Deficiency Interest on				
FWT: 20% from Jan. 21, 2017[269] to Dec. 31, 2017 (₱74,969,055.29 x 20% x 345 days/365)	14,172,232.37			

268 Exhibit "P-6." Docket (Vol. I), pp. 134-141.

269 Petitioner is an eFPS filer.

12% from Jan. 1, 2018 to Apr. 30, 2021 (₱74,969,055.29 x 12% x 1,216 days/365)	29,971,190.54			
EWT: 20% from Jan. 21, 2017[270] to Dec. 31, 2017 (₱931,222.60 x 20% x 345 days/365)		176,039.34		
12% from Jan. 1, 2018 to Apr. 30, 2021 (₱931,222.60 x 12% x 1,216 days/365)		372,284.94		
FBT: 20% from Jan. 17, 2017[271] to Dec. 31, 2017 (₱1,579,173.06 x 20% x 349 days/365)			301,989.81	
12% from Jan. 1, 2018 to Apr. 30, 2021 (₱1,579,173.06 x 12% x 1,216 days/365)			631,323.10	
DST: 20% from Jan. 6, 2017 to Dec. 31, 2017 (₱1,653,132.00 x 20% x 360 days/365)				326,097.27
12% from Jan. 1, 2018 to Apr. 30, 2021 (₱1,653,132.00 x 12% x 1,216 days/365)				660,890.47
Total Amount Due, April 30, 2021	**₱137,854,742.02**	**₱1,712,352.53**	**₱2,907,279.24**	**₱3,053,402.74**

Fifth. Petitioner is likewise liable for ***delinquency interest*** at the rate of 12% per annum, based on the sum of basic deficiency internal revenue taxes, 25% surcharge, and deficiency interest (until April 30, 2021), computed from May 1, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended.

ACCORDINGLY, the Petition for Review dated February 23, 2022, filed by DMCI Holdings, Inc. is **PARTIALLY GRANTED**.

Respondent's deficiency Income Tax assessment and Compromise Penalties for taxable year 2016 are **CANCELLED** and **SET ASIDE**. On the other hand, respondent's deficiency Final

270 Petitioner is an eFPS filer.

271 January 15, 2017 fell on a Sunday.

Withholding Tax, Expanded Withholding Tax, Fringe Benefit Tax, and Documentary Stamp Tax assessments for taxable year 2016 are **UPHELD WITH MODIFICATIONS**. Thus, petitioner is **ORDERED TO PAY** respondent the following:

	Basic	Surcharge	Deficiency Interest	Total
FWT	₱74,969,055.29	₱18,742,263.82	₱44,143,422.91	₱137,854,742.02
EWT	₱931,222.60	232,805.65	548,324.28	1,712,352.53
FBT	1,579,173.06	394,793.27	933,312.91	2,907,279.24
DST	1,653,132.00	413,283.00	986,987.74	3,053,402.74
Total	**₱79,132,582.95**	**₱19,783,145.74**	**₱46,612,047.84**	**₱145,527,776.53**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱145,527,776.53** as of April 30, 2021, or equivalent to the amount of ₱47,844.75[272] per day, computed from May 1, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended by Republic Act No. 10963, as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

272 ₱145,527,776.53 multiplied by 12% divided by 365 days.

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice