REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LIBERTY FLOUR MILLS, INC.,
Petitioner,

CTA Case No. 9603

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 02 2020

9:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The present *Petition for Review* filed on May 26, 2017, prays for the cancellation of petitioner's alleged deficiency tax assessments for the calendar year ending December 31, 2009 in the aggregate amount of ₱204,013,305.81, inclusive of increments.[1]

[1] Summary of the Case, Pre-Trial Order dated October 25, 2017, Docket – Vol. III, p. 1131.

THE FACTS

Petitioner Liberty Flour Mills, Inc. is a corporation duly organized and existing under Philippines laws with business address at No. 835 Liberty Building, A. Arnaiz Ave., Legaspi Village, Makati City.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

On June 4, 2014, petitioner received the *Formal Letter of Demand* (FLD) dated May 30, 2014, through OIC-Assistant Commissioner, Large Taxpayers Service (LTS) of the BIR, signed by Mr. Alfredo V. Misajon, OIC-Assistant Commissioner,[4] assessing petitioner for alleged deficiency income tax, improperly accumulated earnings tax (IAET), value-added tax (VAT), final withholding VAT (FWVAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), capital gains tax (CGT), documentary stamp tax (DST), and final withholding tax (FWT), in the aggregate amount of ₱774,710,307.07,[5] inclusive of increments, for taxable year 2009.

Petitioner filed its *protest letter* to the said FLD on July 4, 2014,[6] contesting the said assessments.

On September 5, 2014, petitioner filed its *supplemental protest*.[7] Thereafter, on January 27, 2015, petitioner filed a *second supplemental protest letter*.[8]

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[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1112.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. III, p. 1112.
[4] Exhibit "P-3", Docket – Vol. II, pp. 456 to 473; Exhibit "R-13", BIR Records – Folder 1, pp. 883 to 891.
[5] Income tax: ₱476,509,269.16; IAET: ₱160,158,682.38; VAT: ₱102,928,851.38; FWVAT: ₱92,316.62; EWT: ₱21,074,003.48; WTC: ₱7,741,142.62; CGT: ₱5,302,138.66; DST: ₱3,002,555.72; and FWT: ₱3,711,813.71.
[6] Exhibit "P-4", Docket – Vol. II, pp. 474 to 491.
[7] Exhibit "P-5", Docket – Vol. II, pp. 492 to 514.
[8] Exhibit "P-6", Docket – Vol. II, pp. 515 to 534.

Subsequently, on June 30, 2016, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated June 24, 2016 issued by Mr. Nestor S. Valeroso, Assistant Commissioner, LTS,[9] declaring that petitioner is still liable for income tax, VAT, EWT, WTC, FT, and DST, in the total amount of **₱204,992,889.42**, for taxable year 2009, including surcharge, interests and compromise penalties, the details of which are broken down as follows:

Type of Tax	Total Amount (plus increments)
Income tax	₱14,697,572.46
IAET	186,843,462.77
VAT	349,578.36
FWVAT	110,575.70
EWT	2,011,310.18
DST	111,382.04
FWT	868,007.91
Total tax assessments	**₱204,992,889.42**

On July 22, 2016, petitioner filed a *Motion for Reconsideration* of the said FDDA, contesting the BIR's findings, except those pertaining to deficiency FWVAT and FWT, which petitioner settled and paid to the BIR through the Electronic Filing and Payment System (eFPS).[10]

On April 26, 2017, petitioner received respondent's *Decision* dated April 24, 2017,[11] denying, in effect, petitioner's *Motion for Reconsideration* of the FDDA.

Petitioner filed the present *Petition for Review* on May 26, 2017.[12]

Respondent filed his *Answer (Re: Petition for Review dated 25 May 2017)* on August 7, 2017,[13] interposing the following defenses, to wit:

> "4.1 Petitioner argued that being a publicly-held corporation, it is not subject to the provisions of the National Internal Revenue Code pertaining to Improperly Accumulated Earnings Tax. Respondent disagrees. *gr*

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[9] Exhibit "P-8", Docket – Vol. II, pp. 539 to 554; Exhibit "R-16", BIR Records – Folder 1, pp. 1007 to 1009.
[10] Exhibit "P-9", Docket – Vol. II, pp. 555 to 570; Exhibits "P-10" and "P-10-A", Docket – Vol. III, pp. 1350 to 1354 and 1355 to 1359, respectively.
[11] Exhibit "P-11", Docket – Vol. II, p. 579; Exhibit "R-18", BIR Records – Folder 1, pp. 1023.
[12] Docket – Vol. I, pp. 10 to 38.
[13] Docket – Vol. I, pp. 308 to 319.

Verification and evaluation of the documents submitted disclosed that 18 stockholders comprise more than 50% of the total ownership of petitioner.

4.2 Section 127 of the National Internal Revenue Code of 1997 provides:

> 'For purposes of this Section, the term **'closely held corporation'** means any corporation at least fifty percent (50%) in value of outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals.'

4.3 Further, Revenue Regulations No. 2-2001 provides:

> 'For purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:
>
> 1. Stock Not Owned by Individuals – Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.'

4.4 This method of determining ownership of corporations also known as the Grandfather Rule was recognized and applied by the Honorable Supreme Court in the case of *Narra Nickel, et, al. vs. Redmont Consolidated Mines,* where it held:

> 'This concept of stock attribution inherent in the Grandfather Rule to determine the ultimate ownership in a corporation is observed by the Bureau of Internal Revenue (BIR) in applying Section 127 (B) of the National Internal Revenue Code on taxes imposed on closely held corporations, in relation to Section

96 of the Corporation Code on close corporations. Thus, in BIR Ruling No. 148-10, Commissioner Kim Henares held:

In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders. This is in consonance with the 'grandfather rule' adopted in the Philippines under Section 96 of the Corporation Code (Batas Pambansa Blg. 68) which provides that notwithstanding the fact that all the issued stock of a corporation are held by not more than twenty persons, among others, a corporation is nonetheless not to be deemed a close corporation when at least two thirds of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation.' (Citations omitted)

4.5 In addition to the burden of proving that petitioner is a publicly-held corporation, it must prove that the accumulation of earnings beyond the reasonable needs of the company is justified. In the case of *Cyanamid Philippines vs. Court of Appeals, et. al.,* the Honorable Supreme Court ruled:

'In *Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue,* we ruled:

To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called **'Immediacy Test' which construed the words 'reasonable needs of the business' to mean the immediate needs of the business, and it was generally held that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable**

> **needs of the business, and the penalty tax would apply**. (Mertens, Law of Federal Income Taxation, Vol. 7, Chapter 39, p. 103).
>
> xxx xxx xxx
>
> **We agree with the tax court that the burden of proof to establish that the profits accumulated were not beyond the reasonable needs of the company, remained on the taxpayer**. This Court will not set aside lightly the conclusion reached by the Court of Tax Appeals which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. Unless rebutted, all presumptions generally are indulged in favor of the correctness of the CIR's assessment against the taxpayer. With petitioner's failure to prove the CIR incorrect, clearly and conclusively, this Court is constrained to uphold the correctness of tax court's ruling as affirmed by the Court of Appeals.' (Emphases and underscoring ours)

4.6 Hence, petitioner cannot simply provide self-serving arguments that it has appropriated its earnings for expansion projects in order to evade improperly accumulated earnings tax. Thus, petitioner is liable for Improperly Accumulated Earnings Tax computed as follows:

Taxable Income 2009 per ITR		P162,153,829.00
Add: Gain on sale of available for sale financial assets	P195,599,090.00	
Dividend Income	560,439.00	
Interest Income	712,500.00	P196,872,029.00
		P359,025,858.00
Less: Dividends		49,999,665.00
Total		P309,026,193.00
Add: Retained Earnings from prior years		853,396,104.00
Total		1,162,422,297.00

Jr

Less: Reasonable Needs of business	400,000,000.00
Amount subject to Improperly Accumulated Earnings	
Tax rate	762,422,297.00
Rate of Tax (Section 29)	.10
Deficiency IAET (Basic)	**P76,242,229.70**

5. xxx

5.1 After conduct of investigation, it was ascertained that petitioner is liable for deficiency income tax due to unaccounted sources of disbursement amounting to ₱135,645.22. The details of which are as follows:

Discrepancy in Wheat Importation	
Wheat used per G/L (5110-01-100-01)	P1,357,843,351.93
Add: Inventory End	341,844,364.62
Total	1,699,687,716.55
Less: Inventory Beg	444,325,904.01
Purchases of Wheat per audit	1,255,361,812.54
Purchase of Wheat Importation per BOC data	1,255,979,751.86
Discrepancy on purchases	**(P617,939.32)**
Difference in Purchases	P617,939.32
Divided By cost ratio	82%
	753,584.54
Multiplied by gross rate	18%
Unaccounted sources of disbursement	**P135,645.22**
Gross income	P326,753,243.00
Gross sales	1,829,027,978.00
Gross rate	**18%**

5.2 After conduct of investigation, it was ascertained that petitioner is liable for deficiency income tax due to difference between Summary List of Sales (SLS) and Summary Alphalist of Creditable Withholding Tax (SAWT) amounting to ₱632,046.06 with details as follows:

SAWT	P16,559,583.56
Sales for 2008 recognized as purchases in 2009 by the customer	(15,927,537.50)
Undeclared Sales	**₱632,046.06**

7c

5.3 Respondent's audit investigation of deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to obtain information from other sources as enshrined in Section 5 of the National Internal Revenue Code of 1997 which specifically provides:

> '**Sec. 5. Power of the Commissioner to Obtain Information, and to Summon/Examine, and Take Testimony of Persons**. – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> A. To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> **B. To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation x x x'** (Emphasis ours)

5.4 After conduct of investigation, it was ascertained that petitioner is liable for deficiency income tax from gross profit on undeclared sales arising from undeclared purchases (local) in the amount of ₱64,663.61, with details as follows:

Local	
Discrepancy (SLP vs. MAP)	P294,578.66
Divided by Cost Ratio	82%
	P359,242.27
Multiplied by gross rate	18%
	P64,663.61
Cost Ratio (Cost/Sales)	
Cost	P1,502,274,735.00
Sales	1,829,027,978.00
Cost Ratio	**82%**
Gross Income	P326,753,243.00

Jc

Gross Sales	1,829,027,978.00
Gross Profit Rate	**18%**

5.5 After conduct of investigation, it was ascertained that petitioner is liable for deficiency income tax due to disallowed expenses in the form of income payments not subjected to withholding taxes amounting to ₱21,360,936.71, which details as follows:

Account Title	Per F/S – ITR	Per 1601E	Difference
Supplies	P58,135,147.66	P41,060,010.66	P17,075,137.00
Contractor	148,193,169.00	146,403,838.99	1,789,330.01
Professional Fees	7,752,225.68	5,255,755.98	2,246,469.70
Grand Total	**P214,080,542.34**	**P192,719,605.63**	**P21,360,936.71**

5.6 Section 34 (k) of the National Internal Revenue Code of 1997 provides explicitly:

> '**SEC. 34. Deductions from Gross Income**. — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx
>
> **K) Additional Requirements for Deductibility of Certain Payments**. — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be 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 with this Section, Sections 58 and 81 of this Code.' ℊℯ

5.7 Further Section 6 of Revenue Regulations No. 14-2002 explicitly provides:

> '**Section 6. Requirements for Deductibility of Certain Expenses.** – Section 2.58.5 of Revenue Regulations No. 2-98 is hereby amended to read as follows:
>
> 'Sec. 2.58.5 Requirements for Deductibility – Any income payment which is otherwise deductible under the Code shall be allowed as deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.'

6. xxx

6.1 After conduct of investigation, it was ascertained that petitioner is liable for deficiency Value-Added Tax (VAT) gross receipts not subjected to VAT in the total amount of ₱1,117,25 [*sic*] with details as follows:

Gain on Sale of PPE	P223,214.00
Miscellaneous Income	894,211.00
Gross Receipts Subject to VAT	**P1,117,425.00**

6.2 Aside from an assessment for deficiency income the following audit findings are also subject to deficiency VAT:

a. Unaccounted sources of disbursements in the amount of P753,584.54;
b. Undeclared sales based on the difference between SLS and SAWT amounting to P632,046.06; and
c. Gross profit on undeclared sales arising from undeclared purchases (local) in the amount of P359,242.57.

6.3 After audit the amount of P41,076.21 was disallowed input tax for failure to comply with invoicing requirements of the National Internal Revenue Code which provides:

> 'SEC. 113. Invoicing and Accounting Requirements for VAT – Registered Persons. —
>
> **(A) Invoicing Requirements**. – A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> **(B) Information Contained in the VAT Invoice or VAT Official Receipt.** – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
>
> (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sales is [*sic*] subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt. *gc*

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.'

7. xxx

7.1 After audit it was ascertained that petitioner is liable for deficiency Expanded Withholding Tax with details as follows:

Account Title	Per F/S-ITR	Per 1601E	Difference	Rate	Tax Due
Supplies	P58,135,147.66	P41,060,010.66	P17,075,137.00	1%	P170,751.47
Contractor	148,193,169.00	146,403,838.99	1,789,330.01	2%	35,786.60
Professional Fees	7,752,225.68	5,255,755.98	2,246,469.70	15%	374,470.46
					581,008.43
Under Withholding per MAP vs. AITIEID)					7,160.08
Grand Total	P214,080,542.34	P192,719,605.63	P21,360,936.71		**₱588,168.51**

8. xxx

8.1 After audit it was ascertained that petitioner is liable for deficiency Documentary Stamp Tax (DST) with details as follows:

Trust receipts		₱330,542,899.00	
Rate (Section 182)	(30/200)	0.0015	P495,814.35
Total DST			P495,814.35
Less: Taxes Paid by the bank			451,735.20
Deficiency DST			**P44,079.15**

9. xxx *Jc*

9.1 The Compromise Penalty has been imposed in view of petitioner's failure to file and/or pay the internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 19-2007.

10. The decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands* may be used well as a guide, thus:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"

The pre-trial conference was initially set on August 31, 2017.[14] However, upon the filing of petitioner's *Motion To Reset* on August 23, 2017,[15] the pre-trial conference was reset to,[16] and held on, September 28, 2017.[17]

The *Respondent's Pre-Trial Brief* was filed on September 20, 2017;[18] whereas the *Pre-Trial Brief* for the petitioner was submitted on September 25, 2017.[19]

The *BIR Records* for the present case was transmitted on September 25, 2017.[20]

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[14] *Notice of Pre-Trial Conference* dated August 9, 2017, Docket – Vol. I, pp. 320 to 321.
[15] Docket – Vol. I, pp. 325 to 328.
[16] Minutes of the hearing held on, and Order dated, August 31, 2017, Docket – Vol. I, pp. 332 to 333.
[17] Minutes of the hearing held on, and Order dated, September 28, 2017, Docket – Vol. III, pp. 1064 to 1065.
[18] Docket – Vol. I, pp. 363 to 369.
[19] Docket – Vol. II, pp. 1046 to 1060.
[20] Docket – Vol. II, pp. 1061 to 1062.

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on October 12, 2017.[21] The Court issued the Pre-Trial Order on October 25, 2017, approving and adopting the parties' JSFI, and deeming the pre-trial terminated.[22]

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Ms. Marsha Angelyn M. Resurreccion,[23] Head of the Issuer Regulation Division of the Philippine Stock Exchange; (2) Ms. Maria Luisa L. Quizon,[24] Chief Accountant of petitioner; (3) Mr. Antonio B. Madrid,[25] Operations Manager of the Stock Transfer Processing Section of Rizal Commercial Banking Corporation; and (4) Atty. Rosario S. Bernaldo,[26] the Court-commissioned Independent Certified Public Accountant (ICPA).

On December 22, 2017, the *ICPA* Report was submitted to the Court.[27] The *Amended ICPA* Report was filed on January 16, 2018.[28]

Petitioner filed its *Formal Offer of Evidence* on January 29, 2018.[29] Respondent, however, failed to file his comment thereon.[30]

In the Resolution dated April 3, 2018,[31] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibit "P-25", for failure to correspond with the document actually marked; and
2. Exhibit "P-30-B", for failure to submit the original for comparison."

[21] Docket – Vol. III, pp. 1112 to 1126.
[22] Docket – Vol. III, pp. 1131 to 1140.
[23] Exhibit "P-52", Docket – Vol. II, pp. 374 to 377; Minutes of the hearing held on, and Order dated, December 11, 2017, Docket – Vol. III, pp. 1160 to 1161.
[24] Exhibit "P-51", Docket – Vol. II, pp. 379 to 426; Minutes of the hearing held on, and Order dated, November 22, 2017, Docket – Vol. III, pp. 1154 to 1155.
[25] Exhibit "P-53", Docket – Vol. III, pp. 1502 to 1506; Minutes of the hearing held on, and Order dated, December 11, 2017, Docket – Vol. III, pp. 1160 to 1161.
[26] *Oath of Commission* dated November 22, 2017, Docket – Vol. III, p. 1156; Exhibit "P-82", Docket – Vol. III, pp. 1167 to 1208; Minutes of the hearing held on, and Order dated, January 22, 2018, Docket – Vol. III, pp. 1300 to 1301.
[27] Docket – Vol. III, pp. 1162; Exhibit "P-79", Docket – Vol. III, pp. 1209 to1228.
[28] Docket – Vol. III, p. 1163; Exhibit "P-80", Docket – Vol. III, pp. 1252 to 1272.
[29] Docket – Vol. III, pp. 1302 to 1348.
[30] Records Verification dated February 12, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1507.
[31] Docket – Vol. III, pp. 1509 to 1511.

Consequently, petitioner filed its *Partial Motion for Reconsideration [of the Resolution dated 3 April 2018]* on April 19, 2018,[32] praying for the inclusion of Exhibit "P-25" (JV # 09-04-30) as part of the evidence admitted by the Court. However, no comment was filed thereon by respondent.[33]

Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent proffered the testimony of Ms. Olivia F. Aviles,[34] Chief Revenue Officer I of the BIR.

On May 7, 2018, respondent filed his *Formal Offer of Evidence.*[35] Petitioner filed its *Comment/Opposition [To Respondent's Formal Offer of Evidence dated 7 May 2018]* on May 28, 2018.[36]

In the Resolution dated August 20, 2018,[37] the Court granted petitioner's *Partial Motion for Reconsideration*, and admitted Exhibit "P-25". In the same Resolution, the Court admitted the respondent's Exhibits, *except* for Exhibits "R-5", "R-22-a", "R-22-b", "R-22-c", "R-22-d", "R-22-h", "R-22-i", "R-22-j", "R-22-k", "R-22-l", "R-22-m" and "R-22-n", for failure to present the originals for comparison; and Exhibit 'R-22", for failure to identify.

Consequently, respondent filed an *Omnibus Motion A. Motion for Partial Reconsideration of the Honorable Court's Resolution dated 20 August 2018 B. Motion to Set Commissioner's Hearing C. To Recall Witness and C. Defer Filing of Respondent's Memorandum* on September 10, 2018.[38] Petitioner filed its *Comment/Opposition [To Respondent's Omnibus Motion dated 07 September 2018]* on September 25, 2018.[39]

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[32] Docket – Vol. III, pp. 1523 to 1526.
[33] Records Verification dated May 18, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1558.
[34] Exhibit "R-20", Docket – Vol. I, pp. 345 to 362; Minutes of the hearing held on, and Order dated, April 4, 2018, Docket – Vol. III, pp. 1512 to 1513; Exhibit "R-23", Docket – Vol. IV, pp. 1608 to 1611; Minutes of the hearing held on, and Order dated, November 21, 2018, Docket – Vol. IV, pp. 1612 to 1613.
[35] Docket – Vol. III, pp. 1538 to 1556.
[36] Docket – Vol. IV, pp. 1560 to 1568.
[37] Docket – Vol. IV, pp. 1571 to 1573.
[38] Docket – Vol. IV, pp. 1574 to 1577.
[39] Docket – Vol. IV, pp. 1583 to 1587.

In the Resolution dated October 11, 2018,[40] the Court, in the interest of substantial justice, granted respondent's *Omnibus Motion A. xxx; B. Motion to Set Commissioner's Hearing and C. Motion to Recall Witness*; set the Commissioner's Hearing on October 29, 2018 for comparison and/or marking of respondent's evidence; set the hearing on November 21, 2018 for the recall of Revenue Officer Olivia Aviles to identify Exhibit "R-22"; and held in abeyance the resolution on respondent's *Motion for Partial Reconsideration of the Resolution dated August 20, 2018.*

Respondent filed his *Supplemental Formal Offer of Evidence* on December 6, 2018.[41] Petitioner filed its *Comment/Opposition [To Respondent's Supplemental Formal Offer of Evidence dated 5 December 2018]* on December 21, 2018.[42]

In the Resolution dated January 17, 2019,[43] the Court granted respondent's *Motion for Partial Reconsideration of the Resolution dated August 20, 2018*, and admitted all of respondent's Exhibits in his *Supplemental Formal Offer of Evidence.*

Subsequently, respondent filed his *Memorandum* on March 5, 2019;[44] while petitioner filed its *Memorandum* on March 11, 2019.[45]

The present case was considered submitted for decision on March 18, 2019.[46]

THE ISSUES

The parties submitted their respective issues,[47] for this Court's resolution, as follows:

"2. For Petitioner: *gr*

[40] Docket – Vol. IV, pp. 1593 to 1595.
[41] Docket – Vol. IV, pp. 1614 to 1620.
[42] Docket – Vol. IV, pp. 1652 to 1659.
[43] Docket – Vol. IV, pp. 1662 to 1663.
[44] Docket – Vol. IV, pp. 1675 to 1686.
[45] Docket – Vol. IV, pp. 1688 to 1727.
[46] Docket – Vol. IV, p. 1729.
[47] Submitted Issues for Trial, Docket – Vol. III, pp. 1113 to 1114.

a. Whether or not petitioner is liable for alleged deficiency Improperly Accumulated Earnings tax for taxable year 2009 in the amount of PHP186,843,462.77 as stated in the Final Decision on Disputed Assessment dated 24 April 2017.

b. Whether or not petitioner is liable for alleged deficiency Income Tax for taxable year 2009 in the amount of PHP14,697,572.46 as stated in the Final Decision on Disputed Assessment dated 24 April 2017.

c. Whether or not petitioner is liable for alleged deficiency Value-Added Tax for taxable year 2009 in the amount of PHP349,578.36 as stated in the Final Decision on Disputed Assessment dated 24 April 2017.

d. Whether or not petitioner is liable for alleged deficiency Expanded Withholding VAT for taxable year 2009 in the amount of PHP2,011,310.18 as stated in the Final Decision on Disputed Assessment dated 24 April 2017.

e. Whether or not petitioner is liable for alleged deficiency Documentary Stamp Tax for taxable year 2009 in the amount of PHP111,382.04 as stated in the Final Decision on Disputed Assessment dated 24 April 2017.

f. Whether or not petitioner is liable for compromise penalties.

3. For Respondent:

a. Whether petitioner has factual and legal bases to refute the deficiency tax assessment in the aggregate amount of Two Hundred Four Million Thirteen Thousand Three Hundred Five Pesos and 81/100 (P204,013,305.81) representing deficiency Income Tax, Value-Added Tax (VAT), Improperly Accumulated Earnings Tax (IAET), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), Compromise Penalties for taxable year 2009, as well as 25% Surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997."

Petitioner's arguments:

Petitioner argues that respondent's assessment for alleged deficiency IAET lacks legal and factual basis; that the same assessment is void for not informing petitioner of the facts upon which the assessment was made; that petitioner is a public corporation not subject to IAET; that its top twenty (20) stockholders own less than fifty percent (50%); that respondent's computation of petitioner's alleged top eighteen (18%) stockholders is erroneous; and that petitioner appropriated its retained earnings for the reasonable needs of the business.

Moreover, petitioner contends that respondent's assessment for alleged deficiency income tax likewise lacks legal and factual basis; that its alleged discrepancy on wheat purchases are actually mere adjustments made on freight charges and agency rebates; that petitioner's apparent discrepancy between the SLS and SAWT is merely due to unaccounted rebates; that minor inconsistencies in petitioner's SLP and MAP caused the apparent discrepancy; and that petitioner's disallowed expenses for alleged non-withholding were actually payments made to persons exempt from income tax.

Furthermore, petitioner avers that respondent's assessment for alleged deficiency VAT also lacks legal and factual basis; that it paid the VAT due on the gain of sales of Property, Plant and Equipment and miscellaneous income; that it has no unaccounted sources of funds; and that petitioner's input tax invoices follow the requirements imposed.

In addition, petitioner claims that respondent's assessment for alleged deficiency EWT lacks legal and factual basis; that petitioner's expenses represent payments made to persons exempt from income taxes; and that bonuses were actually subjected to EWT.

Petitioner also asserts that respondent's assessment for alleged deficiency DST lacks legal and factual basis; and that remittance of the DST is the responsibility of the bank and not of petitioner. 9r

Lastly, petitioner argues that it should not be held liable for compromise penalties.

Respondent counter-arguments:

Respondent counter-argues that petitioner is liable for IAET as the latter has the burden of proving that it is a publicly-held corporation; and that petitioner should justify the accumulation of earnings beyond the reasonable needs of the company.

Moreover, respondent further contends that petitioner is liable for deficiency income tax for the following reasons: (a) unaccounted sources of disbursements in the amount of ₱135,645.22; (b) difference between SLS and Summary Alphalist of Creditable Withholding Tax in the amount of ₱632,046.06; (c) undeclared sales arising from undeclared local purchases in the amount of ₱64,663.61; and (d) disallowed expenses in the form of income payments not subjected to withholding taxes in the amount of ₱21,360,936.71.

Respondent also claims that petitioner is liable for deficiency VAT due to (a) gross receipts not subjected to VAT in the total amount of ₱1,117,425.00; (b) unaccounted sources of disbursements in the amount of ₱753,584.54; (c) undeclared sales based on the difference between SLS and SAWT in the amount of ₱632,046.06; and (d) gross profit on undeclared sales arising from undeclared local purchases in the amount of ₱359,242.57.

Respondent likewise insists that petitioner is liable for deficiency EWT, DST, and compromise penalties.

THE COURT'S RULING

Notwithstanding the issues raised by the parties, this Court resolves to raise, and rule on, the following related issue, which it deems as necessary to achieve an orderly disposition of the instant case, before looking into the issues raised by the parties, if still warranted, to wit: *gr*

"Whether or not the subject tax assessments are valid."

Needless to state, the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[48] Thus, this Court shall primarily resolve the above-stated issue.

Relative to the same issue, Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. – *Rendition of judgment* – xxx

In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." *(Emphasis supplied)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[49] Such authority of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[50] *viz*:

"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule

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[48] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016; *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.
[49] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[50] G.R. No. 183408, July 12, 2017.

upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> **SECTION 1.** ***Rendition of judgment.*** **– xxx**
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases ours)*

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[51] the Supreme Court held:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx

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[51] G.R. No. 163835, July 7, 2010.

> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts**. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
>
> xxx xxx xxx
>
> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance**." *(Emphases and underscoring ours)*

On the basis of the foregoing doctrinal pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance*. ✓

In this case, whether or not the subject tax assessments are valid is a *matter of record*, and *of public importance*. The said issue is a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Moreover, the issue raised by this Court has some bearing on the issues submitted by the parties. Furthermore, the same issue can be deemed as *matter of public importance*, simply because a void assessment bears no valid fruit.[52] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

Correspondingly, this Court see no legal obstacle to resolve the above-stated issue raised by this Court.

The subject tax assessments are void due to the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

After judicious evaluation of the case records, this Court finds that the present Petition for Review should be granted on the ground that the deficiency assessments upon which the present case is anchored on are intrinsically void. The invalidity of the deficiency assessments is due to the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

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[52] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated: ge

> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
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> x x x x x x x x x

> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

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

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division 1 is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
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> x x x x x x x x x
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the

> service, **other officials may be authorized to issue and sign Letters of Authority __but only upon prior authorization by the Commissioner himself__**."
> *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[53]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. In any event, the same does not and cannot negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is just an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[54] As such, they do not grant any vested right to any taxpayer over any particular work procedure,

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[53] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[54] Revenue Administrative Order No. 001-12 dated April 2, 2012.

which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[55]

In the present case, there is no issue as to the due issuance of Letter of Authority (LOA) No. LOA-116-2010-00000125 dated September 17, 2010.[56] The said LOA expressly authorizes Revenue Officers Alpha Betty Tanguilig, Miguel Sulit, William Sundiam and Wilfredo Reyes under Group Supervisor Joriz Saldajeno to conduct the examination of petitioner's books of accounts and other accounting records for taxable year 2009. However, the revenue officers named therein were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2009.

An examination of the records shows that a Memorandum of Assignment dated May 3, 2011[57] was issued by Ms. Edralin M. Silario, OIC-Chief of the Large Taxpayers Regular Audit Division 1, assigning the conduct of examination of petitioner's books of accounts and other accounting records for taxable year 2009 to Revenue Officer Olivia F. Aviles and Group Supervisor Marivic Bautista. Another Memorandum of Assignment dated August 5, 2016[58] was issued by Mr. Cesar D. Escalada, Chief of the Large Taxpayers Regular Audit Division 1, re-assigning the conduct of examination of petitioner's books of accounts and other accounting records for taxable year 2009 to Revenue Officer Aurora S. Pelayo and Group Supervisor Olivia F. Aviles.

The Memorandum of Assignment issued by Ms. Silario cannot validly grant RO Aviles and GS Bautista the authority to conduct the audit examination pursuant to LOA No. LOA-116-2010-00000125 dated September 17, 2010. As OIC-Chief of RLTAD 1, Ms. Silario does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. The same holds true as regards the Memorandum of Assignment issued by Mr. Escalada to RO Pelayo and GS Aviles.

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[55] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[56] Exhibit "R-3", BIR Records, p. 3.
[57] Exhibit "R-1", BIR Records, p. 28.
[58] BIR Records, p. 1014.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[59] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

Petitioner is not liable to pay the subject compromise penalties.

Given that the subject assessments are void, petitioner cannot likewise be held liable to the compromise penalties in the aggregate amount of ₱200,000.00. Nevertheless, it must be stressed that a compromise is, by its nature, mutual in essence.[60] It implies agreement. One party cannot impose it upon the other.[61] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[62] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

In view of the findings that the subject assessments are invalid and that the subject compromise penalties may not be imposed in this case, it becomes unnecessary to address the issues and arguments raised by the parties.

WHEREFORE, the *Petition for Review* is **GRANTED.** Accordingly, the FDDA dated June 24, 2016 issued by Assistant Commissioner Nestor S. Valeroso, and respondent's *Decision* dated April 24, 2017, as well as the assessments for deficiency income tax, IAET, VAT, EWT, and DST, in the aggregate amount of ₱204,013,305.81, inclusive of surcharge, interests and compromise penalties, for taxable year 2009, are **CANCELLED and SET ASIDE.**

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[59] G.R. No. 178697, November 17, 2010, 649 Phil. 519. See also *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017, 822 SCRA 444.
[60] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[61] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[62] Refer to Part III.4, Revenue Memorandum Order No. 7-2015.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice