REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ORIENTAL ASSURANCE CORPORATION, *Petitioner,*	**CTA CASE NO. 8582**
	Members:
-versus-	***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 07 2016 4:20 p.m.

x -- x

DECISION

BAUTISTA, J:

The Case[1]

This is a Petition for Review filed on November 29, 2012, pursuant to *Section 7(a)(1)*[2] of *Republic Act* ("RA") *No. 1125,*[3] *as amended by RA No. 9282*[4] and *RA No. 9503*[5] and *Section 3(a)(1)*[6], *Rule IV of the*

---

[1] *Records, CTA Case No. 8582, Petition for Review,* p. 6.
[2] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals 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.aw
[3] *"An Act Creating the Court of Tax Appeals."*
[4] *"An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."*
[5] *"An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes."*
[6] SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

Revised Rules of the Court of Tax Appeals ("RRCTA"), seeks for the Court to render a judgment reversing and setting aside the Decision of respondent, and declaring petitioner as not liable for any deficiency Withholding Tax on Compensation ("WTC"), Expanded Withholding Tax ("EWT"), Value-added Tax ("VAT") Withholding, and Documentary Stamp Tax ("DST") for taxable year 2005.[7]

The Parties[8]

Petitioner is a domestic corporation duly organized and existing under Philippine law, with principal office at the 2nd Floor, OAC Building, 27 San Miguel Avenue, Ortigas Center, Pasig City.

Respondent is the Honorable Commissioner of the Bureau of Internal Revenue ("BIR").

The Facts

The present case has its roots from the Letter of Authority ("LOA") dated June 7, 2006 and received by petitioner from the BIR, informing the former that BIR examiners were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2005 to December 31, 2005.[9]

The BIR sent petitioner its letter dated June 8, 2006 requesting the latter to prepare and submit for verification several documents in connection with the examination of its internal revenue taxes for the calendar year 2005.[10]

On August 2, 2006, even before petitioner could comply with the LOA, petitioner received a Second Request for Presentation of Records from the BIR dated July 31, 2006.[11]

(a) Exclusive original or 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; xxx

[7] *Records, Petition for Review*, p. 27.
[8] *Ibid., Pre-Trial Order*, pp. 325-326.
[9] *Id.*, p. 326.
[10] *Id.*
[11] *Id.*

On February 22, 2008, petitioner availed of the benefits under the *Tax Amnesty Program* ("TAP") under *RA No. 9480*, otherwise known as *"An Act Enhancing Revenue Administration and Collection by Granting Amnesty on all Unpaid Internal Revenue Taxes Imposed by the National Government for the Taxable Year 2005 and Prior Years."*[12]

Petitioner received an undated Post Reporting Notice ("PRN") from the BIR informing it that after an investigation pursuant to the LOA, a recommendation for deficiency income tax, VAT withholding and DST were made against it for taxable year 2005.[13]

On September 2, 2008, petitioner received a Preliminary Assessment Notice ("PAN") dated July 31, 2008 from the BIR, with an assessment for deficiency WTC, EWT, VAT Withholding and DST for taxable year 2005.[14]

Petitioner received on December 22, 2008 an undated Formal Letter of Demand ("FLD") informing it that after investigation, it was found that there were allegedly due from petitioner deficiency WTC, EWT, VAT Withholding and DST for calendar year 2005.[15]

On October 31, 2012, petitioner received the Final Decision on Disputed Assessment ("FDDA") from the BIR dated October 17, 2012 stating that after re-investigation, the deficiency tax assessments of WTC, VAT Withholding and DST are proper; with respect to EWT, the same was adjusted by the BIR on account of an erroneous double take-up of items.[16]

Hence, petitioner was left with no recourse but to seek redress from the Court on November 29, 2012 through the present Petition for Review.[17]

---

[12] *Records, Pre-Trial Order,* p. 326.
[13] *Ibid.,* p. 326.
[14] *Id.*
[15] *Id.*
[16] *Id.,* p. 327.
[17] *Id., Petition for Review,* pp. 6-107, with Annexes.

On January 2, 2013, respondent filed a Motion for Extension to File Answer[18], which was granted by the Court in its Resolution[19] dated January 8, 2013.

On January 28, 2013, respondent filed her Urgent Motion for Extension of Time to File Answer[20], which was likewise granted by the Court in its Resolution[21] dated February 7, 2013.

On February 4, 2013, respondent filed the required Answer[22], interposing the following Special and Affirmative Defenses[23]:

SPECIAL AND AFFIRMATIVE DEFENSES

Respondent hereby reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative defenses.

5. The tax deficiency assessment on the petitioner is based on facts, law, rules, and jurisprudence.

6. Petitioner Oriental Assurance Corporation is liable for deficiency [WTC] in the amount of [Php]4,611,016.52, [EWT] in the amount of [Php]44,114,316.89, [VAT] withholding tax in the amount of [Php]45,926,764.24 and [DST] amounting to [Php]137,791,709.56 or a total of [Php]232,443,807.21 inclusive of increments covering the Calendar Year 2005.

6.1. A portion of the [FDDA] dated October 17, 2012 contains the results of the re-investigation by the respondent as to the tax liability of the petitioner. Pertinent portion of the FDDA reads as follows:

FINAL DECISION ON DISPUTED ASSESSMENT

Referring to your letter dated December 23, 2008, please be informed that your protest against our Calendar Year [("CY")] 2005 deficiency tax assessments of [WTC] in the amount of [Php]3,124,090.08, [EWT] in the amount of [Php]96,614,233.60, VAT Withholding amounting to [Php]32,465,385.48 and [DST] in the amount of

[18] *Records*, pp. 110-114.
[19] *Ibid.*, p. 116.
[20] *Id.*, pp. 117-121.
[21] *Id.*, p. 150.
[22] *Id.*, pp. 122-148.
[23] *Id.*, pp. 123-146.

[Php]93,227,868.91, the subject matter of our [*sic*] covering FLD received by you on December 22, 2008, has been given due course and a re-investigation was conducted and completed.

The re-investigation involved judicious re-examination of your contention that the assessments were incorrect due either to erroneous computations or to erroneous interpretations of the law.

The re-investigation showed the deficiency tax assessments of [WTC], VAT Withholding and [DST] to be proper and therefore these are to be reiterated.

DEFICIENCY WITHHOLDING TAX ON COMPENSATION
Assessment No. WC-05-000143

Compensation not subjected to withholding tax pursuant to Section 2.78 of RR 2-98 in relation to Section 79 of the NIRC		5,980,554.94
Tax due thereon @32%		1,913,777.58
Add: Discrepancy in tax paid per returns as against tax due per alpha lists		23,153.72
Total deficiency [WTC]		**1,936,931.30**
Add: Applicable Increments:		
Interest - January 15, 2006 to November 15, 2012	2,649,085.22	
Compromise Penalty	25,000.00	2,674,085.22
Amount payable		**4,611,016.52**

DEFICIENCY EXPANDED WITHHOLDING TAX
Assessment No. EWT-05-000246

Particulars	INCOME PAYMENT NOT SUBJECTED TO EWT	EWT THEREON
Purchases of services subject to 2% EWT as top 10,000 corporation	480,966,811.00	9,619,336.22
Purchases of goods subject to 1% EWT as top 10,000 corporation	7,167,596.00	71,675.96
Professional/talent fees subject to 10% EWT	3,256,667.10	325,666.71
Commission expenses per IC Report subject to 10% EWT	86,047,058.20	8,604,705.82
Total EWT payable		18,621,384.71
Add: Applicable Increments:		
Interest - January 15, 2006 to November 15, 2012	25,467,932.16	
Compromise Penalty	25,000.00	25,492,932.18
Amount payable		**44,114,316.89**

DEFICIENCY VAT WITHHOLDING TAX
Assessment No. VAT-05-000275

Reinsurance premiums paid to non-resident agents (per IC Report):		
Ceded premiums		140,792,180.00
Retroceded premiums		34,561,255.00
Total		175,353,435.00
Tax due thereon pursuant to RR 8-2002		17,535,343.50
Add: Applicable Increments:		
Surcharge	4,383,835.88	
Interest - January 15, 2006 to November 15, 2012	23,982,584.86	
Compromise Penalty	25,000.00	28,391,420.74
Amount payable		**45,926,764.24**

DEFICIENCY [DST]
Assessment No. DST-05-000178

[DST] payable pursuant to Sec. 184 of the NIRC:	
DST payable, beginning	7,736,214.00
Add: DST due for the year	78,102,035.50
Total	85,838,249.50
Less: DST payable, end	8,486,011.00

DST payable, beginning		77,352,238.50
Less: DST payments per returns		19,300,000.00
Deficiency DST		58,052,238.50
Add: Applicable Increments:		
Interest - January 5, 2006 to November 15, 2012	79,714,471.06	
Compromise Penalty	25,000.00	79,739,471.06
Amount payable		**137,791,709.56**
TOTAL TAX DEFICIENCIES AND INCREMENTS		**232,443,807.21**

7. Clearly the deficiency assessments issued against petitioner have factual and legal bases.

7.1. A [LOA] dated June 7, 2005, which authorized Revenue Officers to examine the books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2005 to December 31, 2005, was issued against petitioner.

7.2. A Letter dated June 8, 2006 requiring petitioner to prepare and submit for verification the listed documents therein, was issued to petitioner. Subsequently, a Second Request for the Presentation of Records dated July 31, 2006 was issued to petitioner. Finally, a Final Request for Presentation of Records dated November 27, 2006 was issued to petitioner, informing it that as of this date and after the lapse of sufficient time granted to you, the requested records have not yet been submitted in spite of repeated phone calls and personal follow-ups.

7.3. A [PRN] was issued to petitioner giving it the opportunity to present [its] side of [the] case and inviting [it] to an informal conference to evaluate the findings and submit whatever documents to refute the findings.

7.4. A [PAN] dated July 31, 2008 was issued to petitioner informing it the findings of the investigation relative to its deficiency taxes for taxable year 2005. Attached to the said PAN is the details of discrepancies, which reads as follows:

DETAILS OF DISCREPANCIES

WITHHOLDING TAX ON COMPENSATION

Examinations showed that compensation in the total amount of [Php]5,980,554.94, as shown by comparison of the Salaries and Wages *per* the audited financial statements and the compensation per the alpha lists of employees subjected to [WTC], has not been subjected to [WTC] pursuant to Section 2.78 of Revenue Regulations No. 2-98 in relation to Section 79 of the NIRC. Thus, the [WTC] due thereon of [Php]1,936,931.30 is accordingly assessed, together with the increments thereon of [Php]1,032,965.46 [] (computed up to September 15, 2008) penalty interest pursuant to Sec. 249 of the [NIRC] and [Php]25,000.[00] compromise penalty pursuant to Revenue Memorandum Order applicable [("RMO")] No. 1-90.

EXPANDED WITHHOLDING TAX

Examinations disclosed that you failed to pay [EWT] in the total amount of [Php]60,368,271.09 pursuant to Section 2.57 of [RR] No. 2-98 in relation to Section 57(8) of the NIRC, as shown by the comparison of your income payments and the [EWT] due thereon *per* the audited financial statements and the corresponding amounts *per* the alpha lists of payees subjected to [EWT]. Thus, said amount was assessed plus likewise the applicable increments thereto of penalty interest pursuant Section 249 of the NIRC (also computed up to September 15, 2008), in the amount of [Php]32,194,398.97 and compromise penalty pursuant to [RMO] No. 1-90 of [Php]25,000.00.

WITHHOLDING TAX ON VALUE ADDED TAX[]

Examinations disclosed that your total payments of withholding VAT on reinsurance premiums paid to non-resident agents (retroceded) pursuant to [RR] No. 8-2002 in relation to [RR] No. 16-2005 was short by [Php]17,535,343.50, as borne out by comparison of information from your report to the Insurance Commission and your pertinent tax returns and alpha lists. Thus, said amount was assessed, plus likewise the applicable increments thereto of 25% surcharge pursuant to Section 248 (A) of the NIRC and amounting to [Php]4,383,835.68, and penalty interest pursuant Section 249 of the NIRC (also computed up to September 15, 2008), in the amount of [Php]9,351,598.69 and compromise penalty pursuant to [RMO] No. 1-90 of [Php]25,000.00.

DOCUMENTARY STAMP TAX

Examinations disclosed that your total payments, pursuant to Section 184 of the NIRC, of [DST] on your insurance premiums was short by [Php]58,052,238.50 as shown by the matching of the arrived at DST due from you during the year and your corresponding DST payments. Thus, said amount was assessed plus likewise the applicable increments thereto of penalty interest pursuant to Section 249 of the NIRC (also computed up to September 15, 2008); in the amount of [Php]31,278,546.10 and compromise penalty pursuant to [RMO] No. 1-90 of [Php]25,000.00.

7.5. A [FLD] was issued to petitioner informing it that after investigation there was found due from it deficiency taxes for calendar year 2005. Attached to the FLD is the Audit Result/Assessment Notice.

7.6. Finally, a [FDDA] was issued informing the petitioner of its deficiency tax assessment for the calendar year 2005.

8. The issues relevant to the instant case are: Whether petitioner is liable for tax deficiency [WTC], [EWT], [VAT] Withholding [] and [DST], and whether petitioner is qualified to avail the benefits of the tax amnesty under [RA] No. 9480.

9. Primary discussion on the issue [of] whether petitioner is exempt from payment of all internal revenue taxes for the taxable year 2005 after having availed of the benefits of tax amnesty is relevant and precedes over the other issue.

9.1. On [May 24,] 2007, [RA] No. 9480 or An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years (RA [No.] 9480), was passed into law.

9.2. Pursuant thereto, the Department of Finance [("DOF")] issued DOF Department Order No. 29-07 (DO [No.] 29-07). Section 6 of DO 29-07 provides:

"SEC. 6. Method of Availment of Tax Amnesty. -

Forms/Documents to be filed. - To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such form as may be prescribed by the BIR;

b. Statements of Assets, Liabilities and Networth [("SALN")] as of December 31, 2005 in such form, as may be prescribed by the BIR;

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

xxx

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.** (Emphasis supplied)"

9.3. The BIR issued Revenue Memorandum Circular No. 19-2008 (RMC 19-2008). The pertinent provisions are:

"**Who may avail of the amnesty?**

The following taxpayers may avail of the Tax Amnesty Program:

- Individuals
- Estates and Trusts
- Corporations
- Cooperatives and tax-exempt entities that have become taxable as of December 31, 2005
- Other juridical entities including partnerships.
- Fiscal year taxpayers may likewise avail of the tax amnesty using their Financial Statement ending in any month of 2005.

EXCEPT:

➢ Withholding agents with respect to their withholding tax liabilities
➢ Those with pending cases:
o Under the jurisdiction of the PCGG
o Involving violations of the Anti-Graft and Corrupt Practices Act
o Involving violations of the Anti-Money Laundering Law
o For tax evasion and other criminal offenses under the NIRC and/or the RPC
o Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (*e.g.* Taxpayers who have failed to observe or follow BOI and/or PEZA rules on entitlement to Income Tax Holiday Incentives and other incentives)
o Cases involving issues ruled with finality by the Supreme Court prior to the effectivity of RA 9480 (*e.g.* DST on Special Savings Account)
o Taxes passed on and collected from customers for remittance to the BIR
o Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax. (Emphasis supplied)"

9.4. Petitioner is not qualified to avail of the [TAP] under R.A. No. 9480. Pursuant to [RMC] No. 19-2008 and [RMC] No. 69-2007, the TAP covers all national internal revenue taxes such as income tax, estate tax, donor's tax, capital gains tax, [VAT], other percentage taxes, excise taxes and [DST], **except withholding taxes and taxes passed-on and already collected from customers for remittance to the BIR**, since these funds are considered funds held in trust for the government. It has been the practice of all non-life insurance companies to include in its bill to customers aside from the yearly premium, **all the necessary expenses like government tax, local tax and [DST].** Thus, [WTC], [EWT], VAT withholding [] and [DST] here were withholding taxes and passed-on taxes charged and collected from its policy holders. Thus, petitioner is proscribed to utilize the [TAP] for the aforesaid taxes which they merely withheld from its employers, suppliers and clients and for which they are not directly and statutorily liable.

9.5. Worthy of emphasis is the fact that petitioner is merely a **collecting/withholding agent** with respect to the withholding taxes billed by petitioner on its customers. These taxes were already withheld from the customers and petitioner is merely obliged to remit the same to the respondent. Indeed, to allow petitioner to avail of [TAP] for taxes which were merely collected by them and for which they are not directly liable would cause prejudice to the mandate of the government to tax. Under the [TAP], a juridical entity is only required to pay the minimum amnesty tax payments which could be 5% of its networth or the amount ranging from [Php]25,000[.00]-[Php]500,000[.00] whichever is higher. To reiterate, it is a firm but humble stand of respondent that [WTC], [EWT], VAT Withholding and [DST] in this case are withheld and passed-on taxes already paid by employees, suppliers and customers to Insurance Companies --- a fact which is apparent in non-life insurance contracts. Ergo, to exemplify, if the aforesaid taxes as collected amounted to 1 Billion Pesos and insurance companies would only be allowed to avail of the TAP, obliging them to pay only 5% of the 1 Billion Pesos collected, without a doubt, it would definitely bring immense gain to the taxpayer to the detriment of the government. The Legislature, in passing [RA No.] 9480, could not have intended the said law to be utilized for the propagation of schemes to avoid the payment of taxes.

9.6. The law is supposed to enhance revenue administration and collection and should not be used otherwise. It is respondent's mandate to guarantee not just the payment of taxes, but the payment of correct taxes. And in view of the foregoing, respondent humbly avers that petitioner is not entitled to avail of [TAP] and is liable to pay the entire amount of Two Hundred Thirty

Two Million Four Hundred Forty Three Thousand Eight Hundred Seven and 21/100 ([Pp]232,443,807.21).

9.7. A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. **A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.** [Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, G.R. No. 170574, 30 January 2009]

9.8. From the foregoing, it must be stressed that petitioner should be ordered to pay the entire amount of deficiency taxes and should not be allowed to avail of the TAP not only pursuant to the provisions of the NIRC and exceptions provided under RA [No.] 9480, but likewise in the interest of strict construction of tax exemptions and for the purpose of maintaining the integrity of the government's power to tax.

10. Petitioner is liable to pay deficiency [WTC], [EWT], VAT Withholding tax and [DST] in the amount of [Php]232,443,807.21 covering taxable year 2005. The foregoing tax deficiency was assessed for the following reasons:

10.1. Sec. 2.78 of [RR] No. 2-98 expressly provides that: xxx

10.2. Sec. 79 of the NIRC provides that: xxx

10.3. Sec. 2.57 of [RR] No. 2.98 expressly provides that: xxx

10.4. Sec. 57(B) of the NIRC expressly provides that: xxx

10.5. Sec. 3 of [RR] No. 8-2002 provides that: xxx

10.6. Similarly, Sec. 4.108-3(i) and Sec. 4.114-2(b) of [RR] No. 16-2005 explicitly provides that: xxx

10.7. Sec. 184 of the NIRC provides that:

11. Based on the foregoing legal provisions, the assessment against petitioner, who was found to be liable for tax deficiency on [WTC], [EWT], withholding tax on [VAT], and [DST], is based on legal and factual grounds.

12. The assessment against the petitioner was found to be proper and in order after the completion of the re-investigation, which involved judicious re-examination of petitioner's contention as to the correctness of the assessment due to either erroneous computations or erroneous interpretations of law.

13. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue [v.] Bank of Philippine Islands* (G.R. No. 134062, April 17, 2007):

> "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, as assessment duly made by a [BIR] examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessments."

14. Well-settled is the rule that tax assessments are entitled to the presumption of correctness 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 [BIR] examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (*Sy Po [v.] Court of [T]ax Appeals, 164 SCRA 524*). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

Petitioner and respondent filed their respective Pre-trial Briefs on March 26, 2013[24] and March 21, 2013[25].

[24] *Records*, pp. 187-194.
[25] *Ibid*, pp. 164-168.

On May 17, 2013, the parties filed their Joint Stipulation of Facts and Issues ("JSFI")[26], thus, a Pre-Trial Order[27] was issued on June 7, 2013.

On November 13, 2013, petitioner filed its Formal Offer of Evidence[28], which was resolved by the Court in its Resolution[29] dated January 13, 2014.

On March 17, 2014, respondent filed her Formal Offer of Documentary Exhibits (with Motion to Admit)[30] by registered mail, which was resolved by the Court in its May 29, 2014[31] and December 18, 2015[32] Resolutions.

In compliance to the above May 29, 2014 Resolution of the Court granting the parties a period of thirty (30) days from receipt thereof to file their respective memoranda, petitioner and respondent then filed their Memoranda on July 17, 2015[33], and February 23, 2015[34], respectively.

On March 6, 2015, the Court promulgated a Resolution[35] submitting the case for Decision, hence, this Decision.

The Issues[36]

The issues for consideration of the Court are as follows:

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY WTC, EWT, VAT WITHHOLDING AND DST IN THE TOTAL AMOUNT OF PHP232,443,807.21, INCLUSIVE OF INCREMENTS, COVERING THE CALENDAR YEAR 2005; AND

---

[26] *Records*, pp. 311-315.
[27] *Ibid.*, pp. 325-330.
[28] *Id.*, pp. 854-1003, with Annexes.
[29] *Id.*, pp. 1012-1013; *Exhibits* "A" to "S," inclusive of their sub-markings were admitted.
[30] *Id.*, pp. 1023-1035.
[31] *Id.*, pp. 1073-1074; *Exhibit* "12" was denied for failure to comply with the Judicial Affidavit Rule; consequently, *Exhibits* "1" to "11" were denied for failure to identify.
[32] *Id.*, pp. 1203-1205; *Exhibit* "12" was admitted, hence, *Exhibits* "1" to "11" are deemed admitted.
[33] *Id.*, pp. 1085-1123.
[34] *Id.*, pp. 1208-1239.
[35] *Id.*, p. 1241.
[36] *Id.*, *Pre-Trial Order*, p. 327.

WHETHER OR NOT PETITIONER IS QUALIFIED TO AVAIL THE BENEFITS OF THE TAX AMNESTY PROGRAM UNDER *RA NO. 9480.*

Petitioner's Arguments

Petitioner avers that this Court, in *"Oriental Assurance Corporation v. Commissioner of Internal Revenue," CTA Case No. 7862, June 11, 2012,* has previously cancelled and set aside the FLD and FDDA for deficiency DST for taxable year 2004 in view of petitioner's full compliance with all the requirements under RA No. 9480, hence, valid availment of the benefits under the TAP. The same ruling was reiterated by the Court *En Banc* in *"Commissioner of Internal Revenue v. Oriental Assurance Corporation," CTA EB No. 934 (CTA Case No. 7862), June 17, 2013.* This was also raised to the Supreme Court *via* Petition for Review on *Certiorari* in the case entitled *"Commissioner of Internal Revenue v. Oriental Assurance Corporation," G.R. No. 209445 (CTA EB No. 934; CTA Case No. 7862),* which was denied for failure to sufficiently show any reversible error.

Moreover, petitioner claims that it has duly shown full compliance with the requirements of the TAP, hence, the benefits thereunder are applicable to petitioner and it is, therefore, exempt from payment of the assessed DST for taxable year 2005.

Respondent's Counter-Arguments

Respondent counters that the tax deficiency assessment is based on facts, laws, rules and jurisprudence, as found in the FDDA; that the BIR sent to petitioner several requests for presentation of records, but to no avail, despite follow-ups and phone calls; that the assessment underwent the necessary process, *i.e.* issuance of LOA, Requests for presentation of records, PRN, PAN, FLD and FDDA; that the TAP does not cover withholding taxes and taxes passed on and already collected from customers for remittance to the BIR; that it is the practice of all non-life insurance companies to include government taxes in its bills; that petitioner is merely a collecting/withholding agent; that the TAP is not intended to be utilized for the propagation of schemes to avoid taxes; that petitioner is not qualified to avail the benefits under the TAP; and that it is liable to pay the tax assessment.

The Ruling of the Court

Petitioner validly availed the benefits under the Tax Amnesty Program.

We first delve into the second issue on petitioner's availment of the TAP.

The recent Supreme Court case of *CS Garment Inc. v. Commissioner of Internal Revenue ("CS Garment")*[37] had the opportunity to define tax amnesty in this wise:

> Tax amnesty refers to the articulation of the absolute waiver by a sovereign of its right to collect taxes and power to impose penalties on persons or entities guilty of violating a tax law. Tax amnesty aims to grant a general reprieve to tax evaders who wish to come clean by giving them an opportunity to straighten out their records. In 2007, Congress enacted R.A. [No.] 9480, which granted a tax amnesty covering "all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005."

The pertinent law and rules are *RA No. 9480*[38] and *DO No. 29-07*[39], as follows:

> ***RA No. 9480***
>
> SECTION 1. *Coverage.* — <u>There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years</u>, with or without assessments duly issued therefore, <u>that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted</u> <u>shall not cover persons or cases enumerated under Section 8 hereof</u>.

---

[37] G.R. No. 182399, March 12, 2014.

[38] *"An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and prior Years,"* dated July 24, 2006, lapsed into law on May 24, 2007.

[39] *"Implementing Rules and Regulations of Republic Act No. 9480, otherwise known as 'Tax Amnesty Act of 2007,'"* dated August 15, 2007, effective November 7, 2007.

SEC. 2. *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the [BIR] a notice and Tax Amnesty Return accompanied by a [SALN] as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (["IRR"]) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.

xxx xxx xxx

SEC. 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

1. The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the [1997 NIRC], as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

xxx xxx xxx

SEC. 7. *When and Where to File and Pay.* — The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made within six months starting from the effectivity of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment.

SEC. 8. *Exceptions.* — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

1. Withholding agents with respect to their withholding tax liabilities; xxx

xxx xxx xxx

SEC. 15. *Implementing Rules and Regulations.* — The Secretary of Finance shall, in coordination with the

Commissioner of Internal Revenue, promulgate and publish the necessary rules and regulations within sixty (60) days from the effectivity of this Act. [Underscoring ours]

DO No. 29-07

SECTION 1. *Title and Purpose.* These rules and regulations to be known and cited as the [IRR] of [RA] No. 9480. "Otherwise known as [']Tax Amnesty Act of 2007[',"] are hereby promulgated to govern the availment by qualified persons and/or entities of the tax amnesty granted under RA 9480, covering all unpaid internal revenue taxes for the taxable year 2005 and prior years.

xxx xxx xxx

SEC. 3. *Taxes Covered.* The tax amnesty shall cover all national revenue taxes imposed by the National Government for the taxable year 2005 and prior years, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005.

xxx xxx xxx

SEC. 5. *Exceptions.* - The tax amnesty shall not extend to the following persons or cases existing as of the effectivity of RA [No.] 9480:

1. Withholding agents with respect to their withholding tax liabilities;

xxx xxx xxx

SEC. 6. *Method of Availment of Tax Amnesty.* -

1. *Forms/Documents to be filed.* - To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such forms as may be prescribed by the BIR.

b. [SALN] as of December 31, 2005 in such forms, as may be prescribed by the BIR.

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return.* - The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

xxx xxx xxx

3. *Payment of Amnesty Tax and Full Compliance.* Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of or to be accomplished by - the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of RA No. 9480.

4. *Time for Filing and Payment of Amnesty Tax.* - The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made within six (6) months from the effectivity of these Rules.

xxx xxx xxx

SEC. 10. *Immunities and Privileges.* - Taxpayers who have fully complied with the conditions under RA [No.] 9480 and these rules shall be entitled to the following immunities and privileges:

> 1. The taxpayer shall be immune from the payments of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the [1997 NIRC], as amended, arising from the failure to pay any and all internal revenue taxes year 2005 and prior years.
>
> xxx xxx xxx
>
> SEC. 18. *Effectivity*. These Rules shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation. [Underscoring ours]

Based on the foregoing, the TAP covers all national internal revenue taxes for the taxable year 2005 and prior years that have remained unpaid as of December 31, 2005. However, the TAP shall not extend to withholding agents with respect to their withholding tax liabilities.

In the case of *CS Garment*, the Supreme Court expounded, as follows:

> Amnesty taxpayers may immediately enjoy the privileges and immunities under the 2007 Tax Amnesty Law, as soon as they fulfill the suspensive conditions imposed therein.
>
> A careful scrutiny of the 2007 Tax Amnesty Law would tell us that the law contains two types of conditions - one suspensive, the other resolutory. Borrowing from the concepts under our Civil Code, a condition may be classified as suspensive when the fulfillment of the condition results in the acquisition of rights. On the other hand, a condition may be considered resolutory when the fulfillment of the condition results in the extinguishment of rights. In the context of tax amnesty, the rights referred to are those arising out of the privileges and immunities granted under the applicable tax amnesty law. [Emphasis ours]

As a suspensive condition to the valid availment of the benefits under the TAP, the taxpayer must submit the following documents, *viz.*:[40]

[40] *CS Garment, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182399, March 12, 2014.

1. Notice of Availment of Tax Amnesty;

2. SALN attached to the Tax Amnesty Return filed within six (6) months from effectivity of the IRR;

3. For residents, Tax Amnesty Return (BIR Form No. 2116) filed with the Revenue District Officer ("RDO")/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be, within six (6) months from effectivity of the IRR;

4. Payment Form (BIR Form No. 0617); and

5. Proof of payment of tax amnesty to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business, payment shall be made within six (6) months from effectivity of the IRR.

The Court now determines whether petitioner has complied with the above-stated requirements, to wit:

1. *Notice of Availment of Tax Amnesty*

Petitioner submitted as evidence its Notice of Availment of Tax Amnesty (Under *RA No. 9480*)[41] dated February 22, 2008, with the attached previous SALN and Amended declaration, Tax Amnesty Return and Tax Amnesty Payment Form/Acceptance of Payment Form. This was received by the Authorized Agent Bank ("AAB") concerned on February 22, 2008 and by the BIR LT-Audit & Investigation Division I on February 26, 2008.

2. *Statement of Assets, Liabilities and Networth*

As proof, petitioner presented its SALN as of December 31, 2005[42], with a declared networth of Php349,472,286.00. This was

[41] *Records, Exhibit* "H-3," p. 907.
[42] *Ibid., Exhibit* "H-4," p. 908.

received by the AAB concerned on February 22, 2008 and by the BIR LT-Audit & Investigation Division I on February 26, 2008.

It must be noted that the taxable year involved is 2005, which is clearly covered by *RA No. 9480* dated July 24, 2006, effective May 24, 2007; and *DO No. 29-07* dated August 15, 2007, effective November 7, 2007. Hence, the last day for availing the benefits of the TAP is on May 5, 2008. Clearly, the SALN was timely filed.

3. *Tax Amnesty Return (BIR Form No. 2116)*

As a requirement for residents, petitioner submitted its Tax Amnesty Return For Taxable Year 2005 and Prior Years Pursuant to *RA No. 9480* (BIR Form No. 2116)[43], which was received by the AAB concerned on February 22, 2008 and by the BIR LT-Audit & Investigation Division I on February 26, 2008, with a Total Amnesty Tax Due of Php607,815.00. This was likewise submitted within the six (6)-month prescriptive period.

4. *Payment Form (BIR Form No. 0617)*

For compliance, petitioner provided its Tax Amnesty Payment Form (Acceptance of Payment Form) For Taxable Year 2005 and Prior Years Pursuant to *RA No. 9480* (BIR Form No. 0617)[44] with a Total Amnesty Tax Due of Php607,815.00. This was received by the AAB concerned on February 22, 2008 and by the BIR LT-Audit & Investigation Division I on February 26, 2008, which was filed within the prescriptive period.

5. *Proof of payment of tax amnesty*

To support its claim of payment, petitioner showed its BIR Tax Payment Deposit Slip[45] dated February 22, 2008 to the account of "Bureau of Treasury – BIR," RDO 116, in Landbank of the Philippines for the total amount of Php607,815.00, payment was made within the six (6)-month prescriptive period to end on May 5, 2008.

---

[43] *Records, Exhibit* "H-5," p. 909.
[44] *Ibid., Exhibit* "H-6," p. 910.
[45] *Id, Exhibit* "H-7," p. 911.

Having successfully proven compliance with the requirements under *RA No. 9480* and *DO No. 29-07*, the benefits thereunder shall be enjoyed by petitioner, *e.g.* immunity from the payment of taxes. Hence, it is generally not liable for any deficiency national internal revenue taxes for taxable year 2005.

Petitioner is liable for Value-added Tax Withholding, Withholding Tax on Compensation and Creditable Withholding Tax, which are not covered by the Tax Amnesty Program.

Having determined that petitioner validly availed of the benefits under the TAP, the Court now determines whether the taxes assessed are covered by the TAP.

Based on *Question 1 of Revenue Memorandum Circular* ("RMC") *No. 69-2007*[46], the TAP covers (and excludes) the following taxes:

> **Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA [No.] 9480 as implemented by DO [No.] 29-07?**
>
> **A-1** The [TAP] covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that ***"No person shall unjustly enrich himself at the expense of another"*** should always be observed. [Emphases supplied; Underscoring ours]

From the above *RMC* and the doctrine in *CS Garment*, it can be gathered that TAP covers all national internal revenue taxes, including (and excluding) the following:

[46] *"Clarification of Issues Concerning The Tax Amnesty Program Under Republic Act No. 9480 as Implemented by Department Order No. 29-07,"* November 5, 2007.

Includes:

1. Income tax;
2. Estate tax,
3. Donor's tax;
4. Capital gains tax;
5. VAT;
6. Other percentage taxes;
7. Excise taxes; and
8. DST.

Excludes:

1. Withholding taxes; and
2. Taxes passed-on and already collected from the customers for remittance to the BIR.

In her FDDA[47] dated October 17, 2012, respondent found petitioner liable of the following deficiency taxes for taxable year 2005 in the total amount of Php232,443,807.21, inclusive of increments, broken down as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise	Total
WTC	₱ 1,936,931.30		₱ 2,649,085.22	₱ 25,000.00	₱ 4,611,016.52
EWT	18,621,384.71		25,467,932.18	25,000.00	44,114,316.89
Final Withholding VAT	17,535,343.50	₱4,383,835.88	23,982,584.86	25,000.00	45,926,764.24
DST	58,052,238.50		79,714,471.06	25,000.00	137,791,709.56
Total	**₱ 96,145,898.01**	**₱4,383,835.88**	**₱ 131,814,073.32**	**₱ 100,000.00**	**₱232,443,807.21**

It is evident and clearly stated in *Question 1 of RMC No. 69-2007,* as confirmed by the Highest Tribunal itself in *CS Garment,* that DST is covered by the TAP. Therefore, the deficiency DST assessment for taxable year 2005 in the amount of Php137,791,709.56 *per* FDDA[48], being among the types of tax covered by the TAP, is hereby cancelled and set aside.

Consequently, the Court's evaluation will now be limited to the remaining issues pertaining to assessments for deficiency WTC in the amount of Php4,611,016.52, EWT in the amount of Php44,114,316.89 and final withholding VAT in the amount of Php45,926,764.24 for taxable year 2005.

---

[47] *Records, Exhibit* "I," pp. 912-915.
[48] *Id., Exhibit* "I," pp. 912-915.

1. *Withholding Tax on Compensation*

The pertinent provisions relating to WTC in the *1997 NIRC* are the following:

> SECTION 79. *Income Tax Collected at Source.* —
>
> (A) *Requirement of Withholding.* — Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx
>
> SECTION 80. *Liability for Tax.* —
>
> (A) *Employer.* — The employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld under this Chapter. If the employer fails to withhold and remit the correct amount of tax as required to be withheld under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.
>
> xxx xxx xxx
>
> SECTION 81. *Filing of Return and Payment of Taxes Withheld.* — Except as the Commissioner otherwise permits, taxes deducted and withheld by the employer on wages of employees shall be covered by a return and paid to an authorized agent bank, Collection Agent, or the duly authorized Treasurer of the city or municipality where the employer has his legal residence or principal place of business, or in case the employer is a corporation, where the principal office is located.
>
> xxx xxx xxx
>
> The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers. [Underscoring ours]

The Supreme Court explicated, in the case of *Filipinas Synthetic Fiber Corporation v. Court of Appeals, et. al.,*[49] that the withholding agent is constituted the agent both of the government and of the taxpayer, the former with respect to the collection and/or withholding of the tax, and the latter as to the filing of the necessary income tax return and the remittance of the tax to the government. The withholding agent is held personally liable for the tax he is duty bound to withhold.[50]

From the above, it can be deduced that petitioner, as employer, is a withholding agent and that WTC falls under the definition of "withholding taxes," which is beyond the coverage of the TAP.

2. *Expanded Withholding Tax*

The provisions relating to EWT/Creditable Withholding Tax ("CWT") in the *1997 NIRC* are the following:

> SECTION 57. *Withholding of Tax at Source.* —
>
> xxx xxx xxx
>
> (B) *Withholding of Creditable Tax at Source.* — The 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, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.
>
> SECTION 58. *Returns and Payment of Taxes Withheld at Source.* —
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* — Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly

[49] G.R. Nos. 118498 & 124377, October 12, 1999; citing *Phil. Guaranty Co., Inc. v. Commissioner,* G.R. L-22074, September 6, 1965, 15 SCRA 1.
[50] *Id.*

> authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> xxx xxx xxx
>
> (D) *Income of Recipient.* — Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent. [Underscoring ours]

The FLD reveals that the assessment for deficiency EWT pertains to the following:[51]

1. Purchases of services subject to 2% EWT as a top 10,000 corp.;
2. Purchases of goods subject to 1% EWT as a top 10,000 corp.;
3. Professional/talent fees subject to 10% EWT;
4. Underwriting expenses subject to 10% EWT;
5. Commissions paid *per* IC subject to 10% EWT;
6. Commissions payable subject to 15% EWT; and
7. Outside services (cost of sales) subject to 10% EWT.

The foregoing line assessments fall under the definition of EWT, wherein petitioner, as the buyer of goods and services, acts as withholding agent of the government in withholding the income tax from its payments to the seller of goods and/or service provider. The withholding agent has the obligation of remitting the said tax to the

[51] *Records, Exhibit* "H," pp. 892-893.

government. Being in the nature of a withholding tax, the assessment of EWT is not covered by the TAP.

3. *VAT Withholding*

While *RMC No. 69-2007* states that VAT is covered by the TAP, Withholding VAT is a different issue. The current assessment pertains to petitioner acting as a withholding agent and not as a VAT taxpayer.

The implementing rules of *Section 144(C) of the 1997 NIRC, RR No. 2-98,* as amended by *RR No. 14-02,* provide the following:

> *SECTION 4.114. Withholding of Creditable Value-Added Tax*
>
> In general, [VAT] due on sales of goods and services are not subject to withholding since the tax is not determinable at the time of sale. However, the gross payments to non-residents by both government and private entities for services rendered in the Philippines shall be subject to final withholding tax at the rate of 10% to be filed and paid using BIR Form No. 1600 - Monthly Remittance Return of [VAT] and Other Percentage Taxes Withheld (RR 14-02)
>
> xxx xxx xxx
>
> (A) *Rates and basis of creditable value-added tax to be withheld.* — xxx
>
> xxx xxx xxx
>
> Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-resident insurance or reinsurance companies (final) 10%
>
> xxx xxx xxx
>
> (B) *Persons required to deduct and withhold.* — xxx
>
> Private entities are likewise considered as withholding agents on gross payments made to non-residents, applying the final withholding tax rate of ten (10%) percent. (RR 14-02)

From the provisions stated, it is evident that petitioner acts as the private withholding agent of the non-resident entity and the government in ensuring that the VAT is rightfully deducted from the income of the non-resident and that the same is remitted to the Government. Therefore, VAT Withholding is a withholding tax, which is not covered by the TAP.

Having determined that VAT Withholding, WTC and EWT are all not covered by the TAP, the Court now determines the amounts which should be assessed.

1. *Deficiency WTC amounting to Php4,611,016.52*

Respondent computed the deficiency WTC assessment in the amount of Php4,611,016.52, inclusive of increments, as follows:

Compensation not subjected to withholding tax pursuant to Section 2.78 of RR 2-98 in relation to Section 79 of the NIRC		₱ 5,980,554.94
Tax Due thereon @ 32%		₱ 1,913,777.58
Add: Discrepancy in tax paid per returns as against tax due per alpha lists		23,153.72
Total deficiency Withholding Tax on Compensation		₱ 1,936,931.30
Add: Applicable Increments		
Interest - January 15, 2006 to November 15, 2012	₱2,649,085.22	
Compromise penalty	25,000.00	2,674,085.22
Amount payable		**₱ 4,611,016.52**

The following items of assessment are vital in the determination of whether or not petitioner is liable of any deficiency WTC for taxable year 2005:

A.	Discrepancy in tax paid per returns as against tax due per alphalists	₱ 23,153.72
B.	Compensation not subjected to withholding tax	5,980,554.94

A. Discrepancy in tax paid *per* returns *vis-à-vis* tax due *per* alphalists - Php23,153.72

Respondent found a discrepancy between the compensation tax paid *per* petitioner's returns as against the compensation tax due *per* alphalist amounting to Php23,153.72[52], computed as follows:

Per Alphalist		
No Prev employer	₱	2,589,463.36
with Prev employer		25,250.21
Total	₱	2,614,713.57
Tax paid per 1601C		2,591,559.85
Discrepancy in Tax paid	**₱**	**23,153.72**

Petitioner disputes the aforesaid assessment because allegedly, respondent incorrectly picked-up the amount of Php25,250.21 from the alphalist as amount of tax withheld from employees with previous employer instead of Php2,096.49.

The Court agrees with petitioner and finds the assessment erroneous.

Scrutiny of BIR Form 1601CF - Schedule 7.1, Alphalist of Employees Terminated before December 31[53], and BIR Form 1601CF - Schedule 7.2, Alphalist of Employees as of December 31 with no Previous Employer within the year[54] showed the amounts of Php2,096.49 and Php2,589,463.36 as Tax Withheld as Adjusted, respectively. These amounts, when compared with the total amount of Php2,591,559.85 remitted by petitioner to the BIR and reflected in BIR Form 1604CF[55], shows no such discrepancy:

Per Alphalist:		
No Previous Employer	₱	2,589,463.36
With previous employer		2,096.49
Total Per Alphalist	₱	2,591,559.85
Tax Paid per 1604CF		2,591,559.85
Difference	**₱**	-

Consequently, the said assessment is cancelled.

[52] *BIR Records*, p. 416.
[53] *Records, Exhibit* "K-1," p. 945.
[54] *Ibid.*, p. 944.
[55] *Id., Exhibit* "K," p. 938.

B. Compensation not subjected to withholding tax - Php5,980,554.94

Upon comparison of the "Salaries and wages" *per* petitioner's financial statements (FS) with that reflected in petitioner's alphalist, respondent found a discrepancy in the amount of Php5,980,554.94, computed as follows[56]:

Per FS:				
Salaries and wages				26,148,283.00
Per Alpha:				
Employees terminated bef Dec. 31				
Non Taxable				
13th Month	25,791.66			
SSS, Pag-ibig, etc.	15,414.70	41,206.36		
Taxable Salaries		262,962.20	304,168.56	
Employees with no previous employer				
Non Taxable				
13th Month	1,528,785.49			
SSS, Pag-ibig, etc.	725,524.63	2,254,310.12		
Taxable Salaries		17,609,249.38	19,863,559.50	20,167,728.06
Discrepancy				**5,980,554.94**

Noting that the aforesaid discrepancy of Php5,980,554.94 was not subjected to withholding tax pursuant to *Section 2.78 of RR No. 02-98* in relation to *Section 79 of the 1997 NIRC,* as amended, respondent imposed the corresponding deficiency WTC (32%) in the amount of Php1,913,777.58.

Petitioner, on the other hand, argues that the assessment is wrong and that the amount of "Salaries and wages" stated above (Php26,148,283.00) is actually reported in its Audited Financial Statements (AFS)[57] for the taxable year 2005 (Note 13) as "Salaries, wages and benefits" and therefore included items that are non-taxable[58].

Petitioner further avers that based on the AFS and the alphalist[59] attached to the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes[60], the "Salaries, wages and benefits" reflected in its AFS consists of Salaries and wages, Employees' benefits and payments to the Social Security System

---

[56] *BIR Records,* p. 416.
[57] *Records, Exhibit* "J," pp. 916-937.
[58] *Ibid., Petitioner's Memorandum,* par. 4.16, p. 1101.
[59] *Id., Exhibit* "K-1," pp. 942-945.
[60] *Id., Exhibit* "K," pp.938-941.

("SSS"), Philippine Health Insurance Corporation ("PHIC") and Home Development Mutual Fund ("HDMF"). Employee benefits, in turn, allegedly consist of meal allowance of rank and file employees, uniforms, expenses incurred during an annual bowling tournament of the employees, medical assistance given to employees' immediate family, food for employees during company celebrations, mineral water provided to the employees, emergency medicine and annual medical check-up of the employees, among others[61].

Petitioner posits that the aforesaid items are not subject to WTC pursuant to *Section 33(C) of the 1997 NIRC*, as amended, which provides[62]:

> SECTION 33. *Special Treatment of Fringe Benefit.* —
>
> xxx xxx xxx
>
> (C) *Fringe Benefits Not Taxable.* — The following fringe benefits are not taxable under this Section:
>
> (1) Fringe benefits which are authorized and exempted from tax under special laws;
>
> (2) Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans;
>
> (3) Benefits given to the rank and file employees, whether granted under a collective bargaining agreement or not; and
>
> (4) *De minimis* benefits as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx

Likewise, petitioner submits that *Section 2.78.1 of RR No. 02-98*, as amended, further provides that the following items are not subject to WTC[63]:

---

[61] *Records, Petitioner's Memorandum*, par. 4.17, p. 1101.
[62] *Ibid., Petitioner's Memorandum*, par. 4.22, pp. 1103-1104.
[63] *Id., Petitioner's Memorandum*, par. 4.23, p. 1104.

1. *De minimis* benefits;
2. Fixed or variable transportation, representation and other allowances;
3. Remunerations received as an incident of employment such as, among others, amounts received by an employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee;
4. Thirteenth (13th) month pay and other benefits; and
5. GSIS, SSS, Medicare and other contributions.

Petitioner maintains that the supposed compensation not subjected to withholding tax is not subject to tax, being employee benefits expressly declared by the *1997 NIRC* and *RR No. 02-98* as non-taxable.[64]

The Court partially upholds the assessment.

As correctly pointed out by petitioner, *Section 2.78.1 of RR No. 02-98*, as amended by *RR Nos. 08-00* and *10-00* provides that "facilities and privileges (such as entertainment, medical services, or so-called "courtesy discounts" on purchases), otherwise known as '*de minimis* benefits,' furnished or offered by an employer to his employees, are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees."

However, the same RR provides for a limit in the amount of each "*de minimis*" benefit. If the employer gives more than the limit prescribed, the excess shall be taxable to the employee receiving the benefit — if such excess is beyond the Php30,000.00 ceiling of "Other Benefits" provided under *Section 2.78.1(B)(11)*[65] of *RR No. 02-98*, as

---

[64] *Ibid., Petitioner's Memorandum*, par. 4.24, p. 1104.

[65] **Sec. 2.78.1. *Withholding of Income Tax on Compensation Income.***

xxx xxx xxx

(B) *Exemptions from withholding tax on compensation.* the following income payments are exempted from the requirement of withholding tax on compensation:

xxx xxx xxx

(11) *Thirteenth (13th) month pay and other benefits.* —

(a) xxx

(b) Other benefits such as Christmas bonus, productivity incentives, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices, including the Additional Compensation Allowance (ACA) granted and paid to all officials and employees of the National Government Agencies (NGAs) amended, in relation to *Section 32(B)(7)(e)*[66] of the *1997 NIRC*, as amended.

The Court-commissioned Independent Certified Public Accountant ("ICPA"), Mr. Albert G. Alba, determined that the Php5,980,554.59 compensation not subjected to withholding tax as found by respondent, consisted of the following accounts:

		Per AFS	Per Alphalist	Discrepancy
Salaries and wages		₱ 18,743,141.03	₱ 17,872,211.58	₱ 870,929.45
Nontaxable SSS, etc		1,121,160.89	740,939.33	380,221.56
13th month pay				
Per alpha list	₱ 1,554,577.15 *			
Not reported in the alphalist	70,520.60	1,625,097.75	1,554,577.15	70,520.60
Christmas bonus		1,541,369.72	-	1,541,369.72
Uniform allowance		932,209.10	-	932,209.10
Allowances of management personnel		606,065.79	-	606,065.79
Unused leave paid in cash		488,306.54	-	488,306.54
Employee awards		132,500.00	-	132,500.00
Financial assistance		100,000.00	-	100,000.00
OT allowance		78,343.52	-	78,343.52
Medical expense		73,625.00	-	73,625.00
Bowling alley fee - Sportsfest for employees		43,636.36	-	43,636.36

---

including State Universities and Colleges (SUCs), Government-Owned and Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Local Government Units (LGUs).

The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

[66] **SEC. 32.** ***Gross Income.*** —

xxx xxx xxx

(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(7) *Miscellaneous Items.*

xxx xxx xxx

(e) *13th Month Pay and Other Benefits.* — Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (P30,000) which shall cover: (i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686; (ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; (iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and (iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (P30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering among others, the effect on the same of the inflation rate at the end of the taxable year.

Employee compensation contribution		24,060.30	-	24,060.30
Meal allowances		20,490.69	-	20,490.69
Other de minimis benefits		618,275.96	-	618,275.96
		₱26,148,282.65	**₱20,167,728.06**	**₱ 5,980,554.59**
* per alpha list				
with no previous employer	₱ 1,528,785.49			
with previous employer	25,791.66			
	₱ 1,554,577.15			

While petitioner submitted supporting documents[67] proving payment of uniform allowance in the amount of Php932,209.10, unused leave paid in cash in the amount of Php488,306.54 and OT allowance in the amount of Php78,343.52, the same cannot be considered *"de minimis"* benefits. Petitioner failed to provide payroll lists or schedules detailing the names of its employees, as well as the amount and type of benefits received by each of its employees in order for this Court to ascertain that the same did not exceed the acceptable ceiling for *"de minimis"* set by *Section 2.78.1 of RR No. 02-98*, as amended, namely: a) uniform and clothing allowance not exceeding Php3,000 *per* annum; b) monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year; and c) daily meal allowance for overtime work not exceeding twenty five percent (25%) of the basic minimum wage. Hence, respondent's assessment on these items are upheld.

With regard to the "Other *de minimis*" benefits in the amount of Php618,275.96, the same was broken down in the ICPA report as follows[68]:

Petty Cash	₱	337,960.62
Payroll		188,957.95
Reclassification adjustment		91,357.39
Total	₱	618,275.96

The amount of Php337,960.62 disbursed out of petty cash, mostly representing fare and meal expenses incurred by petitioner's employees, as shown by the supporting schedules, official receipts,

[67] *Exhibits* "P-1-44," "P-1-116," "P-1-119 to 121," "P-1-142 to 143," "P-1-176 to 177," "P-1-20," "P-1-34," "P-1-45," "P-1-57," "P-1-70," "P-1-93," "P-1-102," "P-1-115," and "P-1-145."
[68] *Exhibit* "P-1," page 4 of 4.

invoices, journal vouchers and check vouchers,[69] shall be considered "*de minimis*" benefits and the deficiency WTC assessment thereon shall be cancelled. However, as regards the remaining amounts of Php188,957.95 and Php91,357.39 totalling Php280,415.34, petitioner merely submitted journal vouchers, BPI checks issued and check requisition[70], thus, this Court cannot verify whether the said amounts qualify as "*de minimis*" benefits. Consequently, respondent's deficiency WTC assessment on petitioner's claimed Other de minimis benefits amounting to Php280,415.34 remains.

As to the financial assistance in the amount of Php100,000.00, medical expense in the amount of Php73,625.00, bowling alley fee (sportsfest for employees) in the amount of Php43,636.36 and meal allowances in the amount of Php20,490.69, petitioner presented sufficient evidence[71] establishing that these amounts represent non-taxable "*de minimis*" benefits granted to its employees, hence, the deficiency WTC assessment thereon is cancelled.

With reference to the "Non-taxable SSS, etc." in the amount of Php380,221.56 and Employee compensation contribution in the amount of Php24,060.30, it must be noted that under *Section 32(B)(7)(f) of the 1997 NIRC*, as amended, and *Section 2.78.1(B)(12) of RR No. 02-98*, as amended, GSIS, SSS, Medicare (now Philhealth) and Pag-ibig contributions are not included in the computation of compensation income subject to withholding tax. However, petitioner was able to provide supporting documents[72] only with regard to the Employee compensation contribution in the amount of Php24,060.30. Thus, respondent's deficiency WTC assessment on the alleged "Non-taxable SSS, etc." of Php380,221.56 is upheld.

Anent the Christmas bonus amounting to Php1,541,369.72, Employee awards amounting to Php132,500.00 and 13th Month Pay in the amount of Php70,520.60, pursuant to *Section 2.78.1(B)(11)(b) of RR*

---

[69] *Exhibits* "P-1-2," "P-1-5 to 6," "P-1-12 to 19," "P-1-22 to 37," "P-1-40 to 80," "P-1-91," "P-1-94 to 95," "P-1-98 to 101," "P-1-103," "P-1-106," "P-1-109 to 114," "P-1-118," "P-1-122 to 123," "P-1-126," "P-1-128," "P-1-130," "P-1-133," "P-1-137," "P-1-139," "P-1-144," "P-1-147 to 148," "P-1-151 to 154," "P-1-162," "P-1-178" and "P-1-179."

[70] *Exhibits* "P-1-3," "P-1-7" to "P-1-11," "P-1-17," "P-1-18," "P-1-25," "P-1-31," "P-1-39," "P-1-48," "P-1-55," "P-56," "P-1-58," "P-1-62," "P-1-64," "P-1-74," "P-1-92," "P-1-96," "P-1-104," "P-1-105," "P-1-107," "P-1-111," "P-1-117," "P-1-124," "P-1-127," "P-1-131," "P-1-132," "P-1-135," "P-1-140," "P-1-146," "P-1-150," "P-1-156," "P-1-164," "P-1-165," "P-1-167," "P-1-168," "P-1-169,"and "P-1-184."

[71] *Exhibits* "P-1-21," "P-1-36," "P-1-81" to "P-1-90," "P-1-141," "P-1-158," "P-1-160," "P-1-161," "P-1-166," "P-1-170" to "P-1-172," "P-1-174," and "P-1-181."

[72] *Exhibits* "P-1-4,""P-1.24," "P-1-38," "P-1-47," "P-1-61," "P-1-75," "P-1-97," "P-1-108," "P-1-125," "P-1-136," "P-1-149," "P-1-163," and "P-1-183."

No. 02-98, as amended, 13th month pay and other benefits such as Christmas bonus, productivity incentives, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by the employees are not subject to withholding tax provided they do not exceed Php30,000.00. However, in the present case, petitioner failed to present payroll lists or schedules detailing the names of its employees and the corresponding amount and type of benefits granted to its employees in order to establish that the subject benefits fall within the Php30,000.00 threshold. Hence, respondent's deficiency WTC assessment on these compensation items remain.

As regards the Salaries and wages in the amount of Php870,929.45, respondent's deficiency WTC assessment is upheld for petitioner's failure to prove that such amount constitutes non-taxable compensation income.

In sum, the amount of Php5,980,554.94 compensation not subjected to withholding tax found by the respondent shall be upheld but only to the extent of Php5,302,438.45, computed as follows:

Compensation not subjected to withholding tax per respondent's audit		₱5,980,554.94
Less: De minimis benefits		
Financial assistance	₱ 100,000.00	
OT allowance	78,343.52	
Medical expense	73,625.00	
Bowling alley fee - Sporstfess for employees	43,636.36	
Meal allowances	20,490.69	
Other de minimis benefits	337,960.62	
Employee compensation contribution	24,060.30	678,116.49
Compensation not subjected to withholding tax per this Court's verification		**₱5,302,438.45**

In this case, the above difference of Php5,302,438.45 should be subjected to withholding tax on compensation based on the graduated tax rates of 5% to 32%. However, the employees to whom the compensation pertained to were not individually identified. Hence, the Court notes that the BIR used the highest tax rate of 32%, in computing the deficiency WTC. However, the appropriate tax rate to be used should be the effective rate computed based on the total WTC paid divided by the total amount of taxable compensation reported during the taxable year 2005, as shown below:

Total Withholding Tax on Compensation	₱ 2,591,559.85	[73]
Total Taxable Compensation	÷ ₱ 14,284,211.58	[74]
Effective tax rate	18.14%	

In sum, petitioner is liable to pay basic deficiency WTC for taxable year 2005 in the amount of Php961,862.33, computed as follows:

Compensation not subjected to withholding tax per this Court's verification	₱	5,302,438.45
Multiply by Effective tax rate		18.14%
Basic deficiency WTC	**₱**	**961,862.33**

2. *Deficiency EWT amounting to Php44,114,316.87*

Finding that various income payments made by petitioner for taxable year 2005 were not subjected to EWT pursuant to *RR No. 02-98*, as amended, respondent assessed petitioner for the corresponding deficiency EWT in the amount of Php44,114,316.87, inclusive of increments, computed as follows:

Particulars	Income Payments Not Subjected to EWT	EWT Thereon
A. Purchases of services subject to 2% EWT as top 10,000 corporation	₱ 480,966,811.00	₱ 9,619,336.22
B. Purchases of goods subject to 1% EWT as top 10,000 corporation	7,167,596.00	71,675.96
C. Professional/Talent Fees subject to 10% EWT	3,256,667.10	325,666.71
D. Commission expenses per IC report subject to 10% EWT	86,047,058.20	8,604,705.82
Total EWT Payable		₱ 18,621,384.71
Add: Applicable Increments		

[73] The sum of the amounts of Php2,589,463.36 and Php2,096.49 taxes withheld, as adjusted per alphalist (*Exhibit* "K-1"), Docket, Vol. 3, pp. 944 and 945.

[74]

Taxable Salaries and Other Forms of Compensation (Exhibit "K-1")		
Employees with no previous employer	₱ 17,609,249.38	
Employees terminated before Dec. 31	262,962.20	
Total Taxable Salaries and Other Forms of Compensation		₱ 17,872,211.58
Less: Personal Exemption		
Employees with no previous employer	₱ 3,339,000.00	
Employees terminated before Dec. 31	249,000.00	3,588,000.00
Net Taxable Salaries and Other Forms of Compensation		**₱ 14,284,211.58**

Interest - January 15, 2006 to November 15, 2012	₱ 25,467,932.16	
Compromise Penalty	25,000.00	25,492,932.16
Amount Payable		**₱ 44,114,316.87**

The Court shall now determine the propriety of the above assessment items.

A. Purchases of services subject to 2% EWT - Php9,619,336.22
B. Purchases of goods subject to 1% EWT – Php71,675.96

The deficiency EWT assessments of Php9,619,336.22 and Php71,675.96 were arrived at by respondent upon comparison of the income payments reflected *per* petitioner's alphalist with those reported in petitioner's FS and Insurance Commission ("IC") Report[75]. as shown below[76]:

A.	Purchases of services subject to 2% EWT	Amount
1.	Agency expenses	₱ 10,769,931.00
2.	Comm, light and water	6,188,060.00
3.	Repairs & Maint	4,694,663.00
4.	Representation Exp	4,424,757.00
5.	Promotional & technical dues	3,863,432.00
6.	Transpo & travel	3,264,916.00
7.	Advertising	2,461,965.00
8.	Insurance expense	1,361,873.00
9.	Losses paid (per IC)	213,824,642.00
10.	Losses & claims pay-direct (per IC)	251,841,011.00
	Total per FS	₱ 502,695,250.00
	Per Alpha list	21,728,439.00
	Discrepancy	₱ 480,966,811.00
	Tax rate	2%
	Basic deficiency EWT due	**₱ 9,619,336.22**
B.	**Purchases of goods subject to 1% EWT**	
1.	Printing and office supplies	₱ 2,007,862.00
2.	Other expenses	2,378,665.00
3.	Inc. in Deferred acquisition cost	15,561,120.00
4.	Inc. in Other assets	622,772.00
5.	Materials, Supplies & Facilities	14,528,908.00
	Total Per FS	₱ 35,099,327.00
	Per Alphalist	27,931,731.00
	Discrepancy	₱ 7,167,596.00
	Tax Rate	1%
	Basic deficiency EWT due	**₱ 71,675.96**

[75] *BIR Records*, pp. 35-93
[76] *Ibid.*, p. 415.

The pertinent provision governing the withholding of tax on these income payments is *Section 2.57.2(M) of RR No. 02-98*, as amended by *RR No. 17-03*, to wit:

> Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods — One percent (1%)
> Supplier of services — Two percent (2%)
>
> xxx xxx xxx
>
> The term "*local/resident supplier of goods*" pertains to a supplier from whom any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves ten thousand pesos (P10,000.00) or more shall be subject to a withholding tax. The term "*regular suppliers*" refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax.

Thus, in light of the foregoing provisions, the Court shall resolve whether or not respondent's imposition of 2% and 1% EWT on the following transactions is correct.

A.1 Agency expenses - Php10,769,931.00
A.2 Communication, light and water - Php6,188,060.00
A.3 Repairs and maintenance - Php4,694,663.00
A.7 Advertising - Php2,461,964.00
A.8 Insurance expense - Php1,361,673.00.

Respondent's imposition of 2% EWT on the above expenses/income payments is deemed correct since petitioner did not refute the same, in line with the well-settled rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of the same.[77]

A.4 Representation expenses - Php4,424,757.00

As found by the Court-commissioned ICPA[78], representation expenses amounting to Php4,424,757.00[79] refers to meals of insurance agents in different restaurants and related purchases from other than regular suppliers that do not exceed Php10,000.00 or do not involve at least six transactions, which are not subject to EWT under *RR No. 02-98*.

A careful examination of the evidence presented[80] reveals that some of the representation expenses actually pertained to payments of association/monthly dues to recreational clubs and sponsorships exceeding Php10,000.00. Such payments, being in the nature of purchases of services, are subject to 2% EWT under *Section 2.57.2(M) of RR No. 02-98*, as amended. The account also included booth rental in the amount of Php12,000.00 and purchase of goods (tikoy) in the amount of Php21,451.00, which shall be subjected to 5% and 1% EWT pursuant to *Section 2.57.2(C) and (M) of RR No. 02-98*, as amended, respectively. Likewise, the account included the amount of Php83,894.11 for which no supporting invoices and/or receipts were

---

[77] *Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997, 273 SCRA 47.
[78] *Exhibit* "S," p. 5, par. 10.1(e).
[79] *Exhibit* "P-2-4."
[80] *Exhibits* "P-2-4-1" to "P-2-4-486."

presented by petitioner in order for this Court to ascertain the actual nature of the expense. Consequently, the amount of Php83,894.11 shall be considered as subject to 2% EWT under *Section 2.57.2(M) of RR 2-98*, as amended. Below is a summary of these expenses/income payments totaling Php533,833.55 and the corresponding EWT due in the total amount of Php10,822.16:

Exhibit No.	Payee	Description	Expense/ Income Payment	EWT Rate	EWT Due
Purchases of services subject to 2% EWT					
P-2-4-1	Wack Wack Golf & Country	Accounts Due	₱ 14,950.00		
P-2-4-39	Alabang Country Club	Accounts Due	17,000.00		
P-2-4-45	The Kiwanis Club Of Mla	Sponsorship	10,000.00		
P-2-4-64	Valley Golf & Country	Club Dues	21,193.00		
P-2-4-97	Ortigas Center Assoc.	Sponsorship	20,000.00		
P-2-4-99	Wack Wack Golf & Country	Monthly Dues	14,950.00		
P-2-4-130	Filipino-Chinese Wei Due	Sponsorship	10,000.00		
P-2-4-133	Wack Wack Golf & Country	Accounts Due	17,225.00		
P-2-4-178	Luz Cotoco	Accounts Due	29,830.00		
P-2-4-194	Filipino Chinese Amateur	Sponsorship	30,000.00		
P-2-4-210	Valley Golf & Country	Accounts Due	10,687.00		
P-2-4-211	Valley Golf & Country	Accounts Due	10,150.00		
P-2-4-291	6Th Don Celso Tuason	Hole Sponsorship	25,000.00		
P-2-4-325	Bigay Awa At Tanglaw	Sponsorship	10,000.00		
P-2-4-345	Luz N. Cotoco	Accounts Due	13,900.00		
P-2-4-349	Rural Bankers Association	Sponsorship	10,000.00		
P-2-4-360	Phil. Pediatric Dental	Sponsorship	10,000.00		
P-2-4-371	Citibank Mastercard	Accounts Due	47,653.44		
P-2-4-374	Lbp Insurance Brokerage	Sponsorship-Bowling	11,000.00		
P-2-4-389	Rural Bankers Association	Sponsorship	31,000.00		
P-2-4-398	Gonzalo Cotoco Iii	Accounts Due	20,000.00		
P-2-4-415	Asiaphil Mftg.,	Sponsorship	10,000.00		
P-2-4-438	Luz Cotoco	Accounts Due	21,950.00		
P-2-4-486	Adjusting Entry	Offset Prem Receivables	83,894.11		
Subtotal			**₱ 500,382.55**	**2%**	**₱ 10,007.65**
Purchase of goods subject to 1% EWT					
P-2-4-52	Nelly Cotoco	Tikoy	**₱ 21,451.00**		
Subtotal			**₱ 21,451.00**	**1%**	**214.51**
Rental subject to 5% EWT					
P-2-4-15	Globalinsure Ins. Agency	Booth Cost	**₱ 12,000.00**		
Subtotal			**₱ 12,000.00**	**5%**	**600.00**
TOTAL			**₱ 533,833.55**		**₱ 10,822.16**

Therefore, out of petitioner's claimed representation expenses of Php4,424,757.00, only the amount of Php3,890,923.45 (Php4,424,757.00 less Php533,833.55) is not subject to EWT, as it pertains to meals of insurance agents in different restaurants and related purchases from other than regular supplies that do not exceed Php10,000.00 or do not involve at least six (6) transactions. Hence, respondent's imposition of 2% EWT on the amount of Php3,890,923.45 is hereby cancelled.

A.5 Promotional and Technical Dues - Php3,863,432.00

The ICPA reported that the "Promotional and technical development" account refers mainly to seminars (venue, food, seminar materials, *etc.*) conducted by petitioner or its agents and various seminars for employees, including foreign trips to Shanghai and other countries for top performing agents, where no regular supplier is involved and therefore are not subject to EWT under *RR 02-98*.[81]

However, a perusal of the supporting documents[82] disclose that the "Promotional and technical development" account included the following income payments exceeding Php10,000.00 or made from a regular supplier , which are in the nature of purchases of services, thus, subject to 2% EWT:

Exhibit No.	Payee	Description	Amount
P-2-5-76	Linden Suites	Hotel Accomodation	₱ 60,000.00
P-2-5-77	Linden Suites	Add'l Rooms-Network	15,304.55
P-2-5-21	Optimum Travel & Tours	Airfare, travel taxes & hotel accommodation	67,802.40
P-2-5-21	Optimum Travel & Tours	Less: travel taxes	(1,620.00)
P-2-5-78	Isauro Cotoco Jr.	Airfares-Network	53,194.55
P-2-5-8	Ag Healthy Nuts	Catering Services-POSW	14,160.00
P-2-5-92	Valle Verde Country Club, Inc.	Food & Drinks	21,403.64
P-2-5-89	Luz N. Cotoco	Network conference	44,350.00
P-2-5-49	Optimum Travel & Tours	Package Tour	50,566.90
P-2-5-49	Optimum Travel & Tours	Less: travel taxes	(1,620.00)
P-2-5-4	Ins. Inst. For Asia & Pac. Inc.	Registration Fee-Mktg	12,000.00
P-2-5-12	Ins. Inst. For Asia & Pac. Inc.	Registration Fee-Chat	6,000.00
P-2-5-10	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	6,000.00
P-2-5-15	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	800.00
P-2-5-37	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	1,000.00
P-2-5-38	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	12,000.00
P-2-5-64	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	12,000.00
P-2-5-87	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	6,000.00
P-2-5-56	Ins. Inst. For Asia & Pac. Inc.	Seminar Fee	6,500.00
P-2-5-52	Rodolfo Acuzar & Zaida	Seminar Fee	12,609.09

[81] *Exhibit* "S," p. 5, par. 10.1(f).
[82] *Exhibits* "P-2-5-1" to "P-2-5-95."

P-2-5-60	Kent Cotoco	POSW Seminar	20,000.00
P-2-5-69	Cristina Tupas & Claudine	POSW Seminar	25,232.00
P-2-5-22	The VIP Hotel	Seminar Fee	16,100.00
		Total	**₱ 459,783.13**
		EWT Rate	2%
		EWT Due	**₱ 9,195.66**

A. 6 Transportation and Travel - Php3,264,916.00

According to the ICPA, transportation and travel amounting to Php3,264,916.00 refers mainly to fuel and fares not covered by *RR No. 02-98*[83].

Verification of the evidence submitted[84] shows that the following income payments exceeding Php10,000.00 and income payments below Php10,000.00 but for which no supporting invoices/receipts were presented to prove that the same were made from non-regular suppliers, being in the nature of purchases of services, shall be subject to 2% EWT:

Exhibit No.	Payee	Description	Amount
P-2-6-80	Miriam Moreno	Plane Fare	₱ 5,850.91
P-2-6-89	Miriam Moreno	Plane Fare	9,815.75
P-2-6-120	Kent Cotoco	Plane Fare	7,752.00
P-2-6-133	Miriam Moreno	Plane Fare	6,746.00
P-2-6-143	Miriam Moreno	Plane Fare	14,462.00
P-2-6-151	Miriam Moreno	Plane Fare	8,766.00
P-2-6-171	Miriam Moreno	Plane Fare	10,792.73
P-2-6-177	Kent Cotoco	Plane Fare	20,433.00
P-2-6-195	Miriam Moreno	Plane Fare	6,512.00
P-2-6-202	Kent S. Cotoco	Plane Fare	26,202.00
P-2-6-207	Optimum Travel & Tours	Plane Fare	42,720.00
P-2-6-222	Isauro Cotoco Jr.	Plane Fare	35,758.00
P-2-6-228	Isauro Cotoco Jr.	Plane Fare	17,559.00
P-2-6-229	Miriam Moreno	Plane Fare	10,779.27
P-2-6-242	Isauro U. Cotoco Jr.	Plane Fare	18,678.00
P-2-6-252	Kent S. Cotoco	Plane Fare	12,004.00
P-2-6-271	Kent S. Cotoco	Plane Fare	26,202.00
P-2-6-282	Miriam Moreno	Plane Fare	3,841.82
P-2-6-286	Miriam C. Moreno	Plane Fare	8,795.55
P-2-6-306	Miriam C. Moreno	Plane Fare	6,441.82
P-2-6-335	Miriam Moreno	Plane Fare	17,473.19
P-2-6-346	Miriam Moreno	Plane Fare	6,360.00

[83] *Exhibit* "S," par. 10.1(g).
[84] *Exhibits* "P-2-6-1" to "P-2-6-390."

P-2-6-358	Miriam C. Moreno	Plane Fare	6,330.00
P-2-6-376	Kent S. Cotoco	Plane Fare	7,066.00
P-2-6-379	Miriam C. Moreno	Plane Fare	7,290.00
P-2-6-126	Luz Cotoco	without payment details	92,673.00
P-2-6-149	Kent Cotoco	without payment details	10,424.07
		Total	**₱ 447,728.11**
		EWT Rate	2%
		EWT Due	**₱ 8,954.56**

A.9 Losses paid (*per* IC) - Php213,824,642.00

Based on the ICPA report, the "Losses paid (per IC)" in the amount of Php213,824,642.00 consisted of the following[85]:

Claims paid to beneficiaries	₱ 171,894,886.84
Motor car claims paid to repair shops	
For parts	26,913,865.93
For services	15,015,889.23
Total	**₱ 213,824,642.00**

Petitioner explains that the major portion of "Losses paid (*per* IC)" refers to payments to beneficiaries of fire, marine, personal accident insurance and other claimants. The other portion refers to parts supplied by accredited repair shops of petitioner and repairs provided by the said repair shops from which petitioner had allegedly withheld the corresponding taxes.

As clarified under *RMC No. 72-2004*,[86] payments for life and non-life insurance **premiums** by the top 10,000 corporation to domestic/resident foreign insurance companies are considered payment for services subject to the 2% EWT.

However, petitioner's supporting documents[87] show that the amount of Php171,894,886.84[88] represents insurance **claims** (not insurance premiums) directly paid by petitioner to the insured or their beneficiaries, thus, the same is not subject to EWT under *RR No. 02-98*, as amended.

---

[85] *Exhibit* "P-2."

[86] Q15. Are payments for life and non-life insurance premium by the TTC/GO/LT to domestic/resident foreign insurance companies considered payment for services subject to the 2% EWT?
A15. Yes.

[87] *Exhibits* "P-2-2-1" to "P-2-2017."

[88] *Exhibit* "P-2-2."

With reference to the Motor car claims paid to repair shops for parts amounting to Php26,913,865.93, the Court finds that the same is subject to 1% instead of 2% EWT under *RR No. 02-98*, as amended. On the other hand, the Motor car claims paid to repair shops for services in the amount of Php15,015,889.23 is subject to 2% EWT.

A.10 Losses & claims pay-direct (*per* IC) - Php251,841,011.00

Petitioner asserts and the Court concurs that the "Losses & claims pay-direct (*per* IC)" in the amount of Php251,841,011.00[89] refers to insurance claims and not payments to suppliers, hence, it is not among the items subject to EWT under *RR No. 02-98*, as amended.

B.1 Printing and Office Supplies - Php2,007,862.00

Petitioner did not contest respondent's finding that the above income payments of Php2,007,862.00 should be subjected to 1% EWT, hence, it is upheld.

B.2 Other Expenses - Php2,378,665.00

Petitioner contends that the "Other expenses" in the amount of Php2,378,665.00 refers to expenses not involving regular suppliers, not exceeding Php10,000.00 and not involving at least six (6) transactions, such as payments for newspapers and magazines, association dues (such as association of insurance providers), donations, interest and bank charges, notarial fees and miscellaneous expenses. Petitioner further alleges that withholding tax corresponding to the miscellaneous expense in the amount of Php1,411,118.00 was already paid.

As verified by the ICPA, petitioner's "Other Expenses" consisted of the following[90]:

Other expenses:	Exhibit	Amount
Association and pool dues	P-3-4	₱ 581,848.00
Interest expense	P-3-5	189,638.00

[89] *Exhibit* "P-2-1."
[90] *Exhibit* "P-3."

Donations	P-3-6	136,540.00
Subscriptions expense	P-3-7	30,441.00
Notarial fees	P-3-8	29,080.00
Miscellaneous		1,411,118.00
Total		**₱ 2,378,665.00**

With regard to the association and pool dues in the amount of Php581,848.00 and interest expense in the amount of Php189,638.00, the Court sustains respondent's imposition of EWT thereon but at the rate of 2% instead of 1%. As clarified under *RMC No. 72-04*, these expenses are considered as payments for services subject to 2% EWT under *RR No. 02-98*, as amended by *RR No. 17-03*[91].

Anent the donations amounting to Php136,540.00, respondent's imposition of 1% EWT thereon is erroneous since donations are not among those enumerated transactions subject to EWT under *RR No. 02-98*, as amended.

As to the subscription expense in the amount of Php30,441.00, it is provided under *RMC No. 72-04* that the same is considered as purchase of goods subject to 1% EWT under *RR No. 02-98*, as amended by *RR No. 17-03*[92].

The notarial fees of Php29,080.00, being in the nature of purchase of services, shall be subject to 2% EWT.

---

91 REVENUE MEMORANDUM CIRCULAR NO. 72-04

xxx xxx xxx

IV. OTHER CLARIFICATION

Q18. Is payment of interest on bank loans by the TTC/GO/LT and other fees paid to the bank subject to the 2% EWT?
A18. Yes. However, payment of interest to OBUs/FCDUs shall be subject to final withholding tax of 10%.

Q23. Is the payment for membership dues of the TTC/GO/LT to country clubs and/or sports club and the like considered service subject to the 2% EWT under RR 17-2003?
A23. Yes, membership fees are considered services subjected to the 2% EWT. However, when the payee-club or organization is a non-stock, non-profit organization not subject to income tax, hence, payment is not subject to EWT upon presentation of proof of exemption issued by the BIR.

92 Q28. Is payment by TTC/GO/LT for magazine/newspaper subscription subject to 1% EWT?
A28. Yes, it shall be considered purchase of goods subject to 1% EWT.

With reference to the miscellaneous expenses amounting to Php1,411,118.00, petitioner did not provide documents by which the Court can ascertain the veracity of the amounts indicated in the schedule, thus, respondent's imposition of 1% EWT thereon remains.

B.3 Increase in Deferred Acquisition Costs - Php15,561,120.00

The ICPA stated that the increase in deferred acquisition costs amounting to Php15,561,120.00 is not an actual payment but an item in the tax return to reconcile accounting income with the taxable income and is not covered by *RR No. 02-98,* as amended[93].

A perusal of petitioner's audited balance sheets[94] as of December 31, 2005 and 2004 shows that the amount of Php15,561,120.00 represents the increase in value of petitioner's Deferred Acquisition Costs from the amount of Php49,398,012.00 as of December 31, 2004 to the amount of Php64,959,132.00 as of December 31, 2005.

Note 2 of petitioner's audited AFS for 2005 and 2004 defines Deferred Acquisition Costs as follows[95]:

> **Acquisition Costs**
>
> Costs that vary with and are primarily related to the acquisition of new and renewal insurance contracts such as commissions, certain underwriting and policy issue costs, and inspection fees are deferred and charged to expense in proportion to the premium revenue recognized.
>
> The resulting net unamortized acquisition costs are accounted for as Deferred Acquisition Costs and shown in the Assets section of the balance sheets.

From the foregoing, it may be inferred that the amount of Php15,561,120.00 represents costs such as commissions, certain underwriting and policy issue costs and inspection fees incurred and/or paid by petitioner relative to acquiring new customers in the year 2005 but such costs remained unamortized as of the end of 2005.

---

[93] *Exhibit* "S," par. 10.2.(b).
[94] *Exhibit* "J," Docket, Vol. 3, p. 917.
[95] *Ibid.*, p. 928.

Since petitioner failed to present documents that would show the actual nature of these costs, the same shall be considered as purchases of services subject to 2% EWT under *Section 2.57.2(M) of RR No. 02-98*, as amended.

B.4 Increase in Other Assets - Php622,772.00

As found by the ICPA, the amount of Php622,772.00[96] pertains to certificates of tax withheld and prior year's excess tax credit not covered by *RR No. 02-98*.[97]

However, only the tax credits of Php161,869.00 can be traced to petitioner's Annual Income Tax Return for the year 2005, thus, respondent's imposition of 1% EWT on the remaining amount of Php460,903.00 is upheld.

B.5 Materials, Supplies and Facilities - Php14,528,908.00

Based on the ICPA report, Materials, supplies and facilities in the amount of Php14,528,908.00 is a double count as this was also included in communications, light and postage, repairs and maintenance, transportation and travel, printing and office supplies and insurance expenses in respondent's computation, as illustrated below[98]:

Expenses	Per Income Tax Return		Per FS	Exhibit Nos.
	Materials, Supplies and Facilities (a)	Other Deductions	Total (a)	
Communication, Light and Postage				
Light & Water	3,163,017.00	166,475.00	3,329,492.00	
Communication And Postage	2,715,640.00	142,928.00	2,858,568.00	
	5,878,657.00	309,403.00	6,188,060.00	P-2
Repairs & Maintenance	2,347,332.00	2,347,332.00	4,694,664.00	P-2
Transportation Expense	3,101,671.00	163,246.00	3,264,917.00	P-2
Printing & Supplies	1,907,469.00	100,393.00	2,007,862.00	P-1
Insurance	1,293,780.00	68,094.00	1,361,874.00	P-2
	14,528,909.00 *	**2,988,468.00**	**17,517,377.00**	

* *Rounding-off difference*

[96] *Exhibit* "P-3-3."
[97] *Exhibit* "S," par. 10.2(d).
[98] *Exhibit* "P-2."

The Court agrees with the ICPA's finding.

As can be seen in petitioner's Annual Income Tax Return for taxable year 2005, each of the above expenses was partly claimed as deduction for Cost of Sales (Service) under the account "Direct Charges - Materials, Supplies and Facilities"[99] and the other part was claimed under "Deductions"[100] for operating expenses. In arriving at the deficiency EWT assessment, respondent imposed EWT (either at 2% or 1%) on each of the above expenses totaling Php17,517,377.00. Thus, it was erroneous on the part of respondent to subject again to EWT the amount of Php14,528,909.00, which is part of the aggregate sum of Php17,517,377.00.

In sum, petitioner is liable for basic deficiency EWT due in the amount of Php774,520.70 on the following income payments:

	Income Payment Per FS	Income Payment Not Subj to EWT	Income Payment Subject to EWT at			Total EWT Due
			1%	2%	5%	
Agency Expenses	10,769,931.00			10,769,931.00		
Communication, light and water	6,188,060.00			6,188,060.00		
Repairs and maintenance	4,694,663.00			4,694,663.00		
Representation expenses	4,424,757.00	3,890,923.45	21,451.00	500,382.55	12,000.00	
Promotional and technical dev	3,863,432.00	3,403,648.87		459,783.13		
Transportation and travel	3,264,916.00	2,817,187.89		447,728.11		
Advertising	2,461,964.00			2,461,964.00		
Insurance expense	1,361,873.00			1,361,873.00		
Losses paid (per IC)	213,824,642.00	171,894,886.84	26,913,865.93	15,015,889.23		
Losses & claims pay-direct (per IC)	251,841,011.00	251,841,011.00				
Printing and office supplies	2,007,862.00		2,007,862.00			
Other expenses	2,378,665.00	136,540.00	30,441.00	2,211,684.00		
Increase in Deferred acquisition costs	15,561,120.00			15,561,120.00		
Increase in Other assets	622,772.00	161,869.00	460,903.00			
Materials, supplies and facilities	14,528,908.00	14,528,908.00				
Per FS	537,794,576.00	448,674,975.05	29,434,522.93	59,673,078.02	12,000.00	
Per Alphalist			27,931,731.00	21,728,439.00		
Discrepancy			**1,502,791.93**	**37,944,639.02**	**12,000.00**	
EWT Rate			1%	2%	5%	
EWT Due			**15,027.92**	**758,892.78**	**600.00**	**774,520.70**

C. Professional/Talent Fees subject to 10% EWT - Php325,666.71

[99] Schedule 3 under Section A of the 2005 Annual Income Tax Return, BIR Records, p. 357
[100] Line numbers 87, 90, 94, 96 and 98, Section D of the 2005 Annual Income Tax Return, BIR Records, p. 356.

Respondent computed the deficiency EWT assessment of Php325,666.71 as follows[101]:

Prof & legal fees		
Per FS	₱	5,618,478.00
Per Alphalist		2,361,810.90
Discrepancy	₱	3,256,667.10
EWT rate		10%
EWT due	**₱**	**325,666.71**

Based on the ICPA report, the professional and legal fees of Php5,618,478.00 is comprised of the following[102]:

Security services	₱	672,000.00
Paid to registered general professional partnerships		248,508.00
Others		4,697,970.00
Total	**₱**	**5,618,478.00**

C.1 Security Services - Php672,000.00

The ICPA noted that petitioner's payments for security services amounting to Php672,000.00[103] were subjected by respondent to 10% instead of 2% EWT rate.[104]

The Court agrees with the ICPA's finding. The various check vouchers, check requisition slips, statements of account and official receipts submitted by petitioner disclosed the latter's payments for security services to Philippine Airhawk Security during the year 2005 in the amount of Php672,000.00, detailed as follows:

Exhibit No.	Date	Reference	Payee	Amount
P-2-7-4	01/13/2005	0020891	Phil. Airhawk Security	₱ 28,000.00
P-2-7-5	01/20/2005	0020994	Phil. Airhawk Security	28,000.00
P-2-7-9	02/03/2004	0021245	Phil. Airhawk Security	28,000.00
P-2-7-12	02/23/2005	0021574	Phil. Airhawk Security	28,000.00
P-2-7-18	03/10/2005	0021845	Phil. Airhawk Security	28,000.00
P-2-7-22	03/21/2005	0022007	Phil. Airhawk Security	28,000.00
P-2-7-27	04/07/2005	0022232	Phil. Airhawk Security	28,000.00
P-2-7-31	04/27/2005	0022559	Phil. Airhawk Security	28,000.00

101 *BIR records*, p. 416.
102 *Exhibit* "P-4."
103 *Exhibit* "P-2-7."
104 *Exhibit* "S," par. 10.3(a).

P-2-7-35	05/05/2005	0022664	Phil. Airhawk Security	28,000.00
P-2-7-37	05/26/2005	0022993	Phil. Airhawk Security	28,000.00
P-2-7-43	06/09/2005	0023230	Phil. Airhawk Security	28,000.00
P-2-7-46	06/22/2005	0023348	Phil. Airhawk Security	28,000.00
P-2-7-51	07/06/2005	0023660	Phil. Airhawk Security	28,000.00
P-2-7-56	07/28/2005	0024019	Phil. Airhawk Security	28,000.00
P-2-7-60	08/11/2005	0024294	Phil. Airhawk Security	28,000.00
P-2-7-63	08/24/2005	0024546	Phil. Airhawk Security	28,000.00
P-2-7-69	09/15/2005	0024959	Phil. Airhawk Security	28,000.00
P-2-7-71	09/22/2005	0025040	Phil. Airhawk Security	28,000.00
P-2-7-76	10/05/2005	0025223	Phil. Airhawk Security	28,000.00
P-2-7-79	10/20/2005	0025470	Phil. Airhawk Security	28,000.00
P-2-7-87	11/17/2005	0025878	Phil. Airhawk Security	28,000.00
P-2-7-89	11/24/2005	0026008	Phil. Airhawk Security	28,000.00
P-2-7-93	12/08/2005	0026206	Phil. Airhawk Security	28,000.00
P-2-7-98	12/21/2005	0026414	Phil. Airhawk Security	28,000.00
Total				**₱ 672,000.00**

Such payments for security services are subject to 2% instead of 10% EWT pursuant to Section *2.57.2(E)(4)(g) of RR No. 02-98,* as amended.

C.2 Professional fees paid to general professional partnerships ("GPPs") - Php248,508.00

As aptly found by the ICPA[105], there were payments made by petitioner to GPPs amounting to Php248,508.00 which were duly supported by check vouchers, check requisition slips, statements of account and official receipts, detailed as follows:

Exhibit No.	Date	Reference	Payee	Particulars	Amount
P-2-7-2	01/07/2005	0020773	Del Rosario & Del Rosario	Prof. Fee	₱ 36,525.00
P-2-7-16	03/01/2005	0021639	Alba Romeo & Co.	Retainer'S Fee	4,000.00
P-2-7-29	04/13/2005	0022318	Alba Romeo & Co.	Retainer'S Fee	4,000.00
P-2-7-42	06/06/2005	0023153	Roco Kapunan Migallos	Legal Services	113,982.72
P-2-7-48	06/28/2005	0023503	Alba Romeo & Co.	Audit Fees	70,000.00
P-2-7-54	07/20/2005	0023914	Alba Romeo & Co.	Retainer Fee-May & June 2005	4,000.00
P-2-7-64	08/29/2005	0024622	Alba Romeo & Co.	Retainer Fee-Jul & Aug	4,000.00
P-2-7-77	10/12/2005	0025326	Alba Romeo & Co.	Retainer'S Fee	4,000.00

[105] *Exhibit* "S", par. 10.3(b).

P-2-7-95	12/12/2005	0026255	Alba Romeo & Co.	Retainer Fee-Nov & Dec 2005	4,000.00
			Reclassification		4,000.00
Total					**₱ 248,507.72***

*difference of ₱.28 due to rounding-off

Section 22(B) of the 1997 NIRC, as amended, defines GPPs as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. Corollary thereto, *Section 26 of the same NIRC* provides that a GPP shall not be subject to income tax. Its partners are the ones liable in their individual capacity for the payment of income tax.

Pertinent thereto is *Section 2.57.5 of RR No. 2-98*, as amended by *RR No. 14-02*, which explicitly exempts income payments made to GPPs from the EWT, to wit:

> 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:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> (4) General professional partnerships

Therefore, respondent's imposition of 10% on the amount of Php248,507.72 representing payments to GPPs is cancelled.

C.3 Other Professional Fees - Php4,697,970.00

Records show that the professional fees of Php4,697,970.00 consisted of the following[106]:

Exhibit No.	Payee	Particulars	Amount

[106] *Exhibit* "P-2-7."

P-2-7-1	Emprisa Inno Solutions	Individual Profiling	₱ 2,727.27
P-2-7-3	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,230.33
P-2-7-6	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-7	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-8	Office Payroll	Fee For January 2005	120,060.00
P-2-7-10	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-11	Emprisa Inno Solutions	Individual Profiling	3,800.00
P-2-7-13	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-14	OAC Fao:Atty. Alejandro	Retainer'S Fee	11,000.00
P-2-7-15	Office Payroll	Fee For February 2005	120,060.00
P-2-7-17	Emprisa Inno Solutions	Credit Investigation	7,000.00
P-2-7-19	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-20	Atty. Alejandro Ruiz Jr.	Attendance Fee	26,454.53
P-2-7-21	Emprisa Inno Solutions	Individual Profiling	3,500.00
P-2-7-23	Rodolfo Acuzar & Zaida	Prof.Fee/Payroll-Bat	8,350.00
P-2-7-24	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-25	Emprisa Inno Solutions	Credit Investigation	4,000.00
P-2-7-26	Office Payroll	Fee For March 2005	120,060.00
P-2-7-28	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-30	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-32	Office Payroll	Fee For April 2005	120,060.00
P-2-7-33	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-34	Emprisa Inno Solutions	Credit Investigation	4,000.00
P-2-7-36	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-38	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-39	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-40	Office Payroll	Fee For May 2005	120,060.00
P-2-7-41	Tanco & Partners	Retainer'S Fee	5,000.00
P-2-7-44	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-45	Atty. Edward S. Relucio	Acceptance Fee	40,000.00
P-2-7-47	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-49	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-50	Office Payroll	Fee For June 2005	120,060.00
P-2-7-52	Emprisa Inno Solutions	Credit Investigation	4,477.27
P-2-7-53	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-55	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-57	Office Payroll	Fee For July 2005	120,060.00
P-2-7-58	OAC Fao: Atty. Alejandro	Retainer'S Fee	11,000.00
P-2-7-59	Atty. Edward S. Relucio	Prof. Fee	11,945.50
P-2-7-61	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-62	Atty. Joseph Tanco	Retainer'S Fee	5,000.00
P-2-7-65	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	8,350.00
P-2-7-66	OAC Fao: Atty. Alejandro	Retainer'S Fee-Aug	11,000.00
P-2-7-67	Office Payroll	Fee For Aug 2005	120,060.00
P-2-7-68	Rodolfo Acuzar & Zaida	Prof.Fee/Payroll	8,350.00
P-2-7-70	Dr. Nikki Y. Cotoco	Professional Fee	1,000.00
P-2-7-72	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,650.00
P-2-7-73	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-74	Office Payroll	Fee For Sept 2005	106,800.00
P-2-7-75	Tav Systems, Inc.	Psycho Assessment	10,800.00
P-2-7-78	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,000.00
P-2-7-80	Atty. Edward S. Relucio	Prof. Fee	7,600.00
P-2-7-81	Rodolfo Acuzar & Zaida	Prof.Fee/Payroll	9,000.00

P-2-7-82	Office Payroll	Fee For Oct 2005	85,800.00
P-2-7-83	Villaraza & Angangco		2,783,500.00
P-2-7-84	Atty. Alejandro Ruiz Jr.	Prof. Fee-Oct 2005	11,000.00
P-2-7-85	Sonny Coloma	Workshop-Training Fee	83,005.10
P-2-7-86	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,000.00
P-2-7-88	Atty. Joseph Tanco	Legal Retainer Fee	20,000.00
P-2-7-90	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,000.00
P-2-7-91	Office Payroll	Fee For November 2005	85,800.00
P-2-7-92	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-94	Atty. Alejandro Ruiz Jr.	13 Month Prof. Fee	11,000.00
P-2-7-96	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,000.00
P-2-7-97	Atty. Joseph Tanco	Retainer'S Fee-Dec 2005	5,000.00
P-2-7-99	Atty. Alejandro Ruiz Jr.	Retainer'S Fee	11,000.00
P-2-7-100	Rodolfo Acuzar & Zaida	Prof. Fee/Payroll	9,000.00
P-2-7-101	Office Payroll	Fee For Dec 2005	85,800.00
P-2-7-102	Adjusting entry	Reversal Of Accrued Expenses 2004	(28,000.00)
P-2-7-103	Adjusting entry	Auditors Adjustment	28,000.00
	Reclassification		(4,000.00)
Total			**₱ 4,697,970.00**

Pursuant to *Section 2.57.2 (A) and (B) of RR No. 2-98*, as amended by *RR No. 30-03*, professional fees paid to individuals or taxable juridical persons are subject to EWT either at ten percent (10%), if the current year's income payment is Php720,000.00 and below, or fifteen percent (15%) if the current year's income payment exceeds Php720,000.00.

Of the Php4,697,970.00 professional fees, the amount of Php2,783,500.00 paid to Villaraza & Angangco shall be subjected to 15% instead of 10% EWT. Also, considering that petitioner failed to provide documentary proof that the following professional fees in the amount of Php1,067,280.00 were received by more than one individual, the same shall be subject to 15% EWT:

Exhibit No.	Payee	Particulars	Amount
P-2-7-8	Office Payroll	Fee For January 2005	₱ 120,060.00
P-2-7-15	Office Payroll	Fee For February 2005	120,060.00
P-2-7-26	Office Payroll	Fee For March 2005	120,060.00
P-2-7-32	Office Payroll	Fee For April 2005	120,060.00
P-2-7-40	Office Payroll	Fee For May 2005	120,060.00
P-2-7-50	Office Payroll	Fee For June 2005	120,060.00
P-2-7-57	Office Payroll	Fee For July 2005	120,060.00
P-2-7-67	Office Payroll	Fee For Aug 2005	120,060.00
P-2-7-74	Office Payroll	Fee For Sept 2005	106,800.00
		Total	**₱ 1,067,280.00**

Therefore, only the remaining professional fees of Php847,190.00 [Php4,697,970.00 less Php3,850,780.00 (the sum of Php2,783,500.00 and Php1,067,280.00)] is subject to 10% EWT.

In sum, petitioner is liable for basic deficiency EWT of Php439,594.91 on the following income payments:

	Income Payment Per FS	Income Payment Not Subj to EWT	Income Payment Subject to EWT at			Total EWT Due
			2%	10%	15%	
Professional and legal fees						
Security Services	672,000.00		672,000.00			
Prof fees paid to GPPs	248,508.00	248,508.00				
Other Prof fees	4,697,970.00			847,190.00	3,850,780.00	
Total Per FS	5,618,478.00	248,508.00	672,000.00	847,190.00	3,850,780.00	
EWT Rate			2%	10%	15%	
EWT Due			13,440.00	84,719.00	577,617.00	675,776.00
EWT Paid per Alphalist			-	-	-	236,181.09
EWT Still Due						**439,594.91**

D. Commission expenses *per* IC report subject to 10% EWT - Php8,604,705.82

Respondent computed the deficiency EWT assessment of Php8,604,705.82 as follows[107]:

Commissions	
Direct business	₱ 120,831,527.00
Reinsurance	17,045,078.00
Total	₱ 137,876,605.00
Commission payable - beginning	17,734,530.00
Commission payable - ending	(22,542,142.00)
Total	₱ 133,068,993.00
Per Alpha list	41,322,360.00
Discrepancy	₱ 91,746,633.00
BIR adjustment	(5,699,575.00)
Adjusted discrepancy	₱ 86,047,058.00
Tax rate	10%

[107] *Exhibit* "P-4."

Basic tax deficiency	**₱ 8,604,705.82**

Other than its allegation that the commissions paid on reinsurance business amounting to Php17,045,078.00 is not subject to EWT, petitioner did not present documentary evidence to disprove respondent's finding that the commissions it paid in the amount of Php86,047,058.00 was not subjected to 10% EWT. Hence, respondent's deficiency EWT assessment of Php8,604,705.82 is upheld.

To recapitulate, petitioner is liable to pay basic deficiency EWT for taxable year 2005 in the total amount of Php9,818,821.43, computed as follows:

		EWT Due
On Purchases of Goods and Services	₱	774,520.70
On Professional Fees		439,594.91
On Commissions		8,604,705.82
Total Basic Deficiency EWT	₱	**9, 818,821.43**

3. *Deficiency VAT Withholding amounting to Php45,926,764.24*

Based on the FLD, the deficiency assessment on VAT Withholding relates to reinsurance premiums paid to non-resident agents in accordance with *RR No. 8-2002.*

Petitioner explained that non-life reinsurance premiums are not subject to VAT under *RR No. 4-07;* that *RMC No. 11-96* excludes reinsurance premiums of a company that has already paid the tax from the gross receipts of a non-life insurance company; and that imposition of the tax will result in double taxation.

It must be emphasized that *RR No. 4-07,* which was dated on February 7, 2007 and is to take effect after fifteen (15) days following its publication. Publication was made on March 22, 2007, hence, it became effective only on April 6, 2007. Considering the fact that the taxable year covered by the present assessment is 2005, the said RR cannot be applied to the said premiums.

As to *RMC No. 11-96,* this was deemed revoked by *RR. No. 14-02,* which took effect on October 1, 2002, for being inconsistent thereto.

Section 4.114 of RR No. 2-98, as amended by *RR No. 14-02,* expressly provides that services rendered to local insurance companies, with respect to reinsurance premiums payable to non-resident insurance or reinsurance companies are subject to VAT at the rate of ten (10%).

Even under the assumption that petitioner that non-life insurance companies are not subject to VAT on reinsurance premiums for which VAT has been paid, petitioner's arguments must nonetheless fail.

The Supreme Court has consistently ruled that tax assessments by tax examiners are presumed correct and made in good faith; that all presumptions are in favor of the correctness of a tax assessment unless proven otherwise; that the burden of proof is upon the complaining party to show clearly that the assessment is erroneous; and that failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[108]

While petitioner provided its arguments against the assessment on VAT Withholding, it failed to present evidence that it actually paid the VAT on the said reinsurance premiums being assessed.

Further, petitioner claims that the assessment is a direct double taxation, which is prohibited since it already paid VAT on premiums it received from insurance policies, hence, it talks about tax imposed upon it as a VAT taxpayer. However, as already discussed, the current tax assessment pertains to petitioner's liability as a withholding agent (the VAT taxpayer being the non-resident agent) and not as a VAT taxpayer.

It must be stressed that "[t]here is double taxation when <u>the same taxpayer</u> is taxed twice when he should be taxed only once for the same purpose by the same taxing authority within the same jurisdiction during the same taxing period, and the taxes are of the same kind or character."[109]

---

[108] *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, et. al.,* G.R. No. 177279, October 13, 2010, 633 SCRA 139.
[109] *Nursery Care Corporation, et. al. v. Treasurer of Manila, et. al.,* G.R. No. 180651, July 30, 2014; Emphasis ours.

Hence, petitioner's contentions must fail and respondent's assessment relating to basic VAT Withholding amounting to Php17,535,343.50 is upheld.

Compromise Penalty - Php75,000.00

Respondent's imposition of compromise penalty amounting to Php75,000.00 cannot be sustained. *Under RMO No. 01-90, as amended by RMO No. 19-07,* compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that the taxpayer refuses to pay the same.

It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because, by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying the penalty distinctly belongs to the taxpayer.[110] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[111]

Absent any clear showing that petitioner consented to the compromise penalty, its imposition should be deleted.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2005 covering deficiency DST in the amount of Php137,791,709.56 is hereby **CANCELLED** and **WITHDRAWN**. However, the assessments issued by respondent for taxable year 2005 covering deficiency WTC, EWT and final withholding VAT are hereby **UPHELD IN PART**. Accordingly, petitioner is hereby **ORDERED TO PAY** the deficiency WTC, EWT and final withholding VAT in the total amount of **Thirty Five Million Three Hundred Ninety-Five Thousand Thirty-Four and 8/100 Pesos (Php35,395,034.08)**, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*, as amended, computed as follows:

---

[110] *The Philippines International Fair, Inc. v. Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 774.

[111] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et. al.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

Type of Tax	Basic Tax	25% Surcharge	Total
Withholding Tax on Compensation	₱ 961,862.33	₱ 240,465.58	₱ 1,202,327.91
Expanded Withholding Tax	9,818,821.43	2,454,705.36	12,273,526.79
Final Withholding VAT	17,535,343.50	4,383,835.88	21,919,179.38
Total	**₱ 28,316,027.26**	**₱ 7,079,006.82**	**₱35,395,034.08**

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency WTC, EWT and final withholding VAT computed from the dates indicated below until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed from
Withholding Tax on Compensation	961,862.33	January 15, 2006
Expanded Withholding Tax	9,818,821.43	January 15, 2006
Final Withholding VAT	17,535,343.50	January 10, 2006

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php35,395,034.08, representing the basic deficiency WTC, EWT and final withholding VAT and the corresponding twenty five percent (25%) surcharge; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from October 31, 2012 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC, as amended.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(Took No Part)
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice