REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

WIPRO PHILIPPINES, INC., *Petitioner*,

- versus -

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

CTA CASE NO. 10329

Members:
BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

APR 22 2024

2:20 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed by Wipro Philippines, Inc. on July 22, 2021, seeking the cancellation and withdrawal of the deficiency Income Tax assessment issued against it in the amount of ₱8,488,051.32, inclusive of surcharge, interests, and penalty for the fiscal year (FY) ending March 31, 2015.

THE PARTIES

Petitioner Wipro Philippines, Inc. (formerly Wipro BPO Philippines Ltd., Inc.) is a corporation existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office No. 123, as a taxpayer with Tax Identification Number 006-897-563-0000,[3] and with office address at Cebu IT Tower 1, Lt. 7 Blk. 2 cor. Arch. Reyes St. and Mindanao St., Cebu City Business Park, Cebu City.[4] It is duly registered with the Philippine Economic Zone Authority (PEZA), as evidenced by Amended Certificates of Registration 07-73-IT dated October 8, 2013 and August 29, 2018.[5]

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[1] Docket – Vol. I, pp. 6 to 23.
[2] Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI) dated May 10, 2022, Docket – Vol. II, p. 560; Exhibits "P-27" and "P-28", Docket – Vol. II, pp. 746 to 781.
[3] Par. 1.b, Stipulation of Facts, JSFI dated May 10, 2022, Docket – Vol. II, p. 560.
[4] Exhibit "P-29", Docket – Vol. II, p. 782.
[5] Exhibits "P-18" and "P-18-1", Docket – Vol. II, pp. 724 to 725.

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is charged with the assessment and collection of all national internal revenue taxes, fees, and charges, and enforcement of all forfeitures, penalties, and fines connected therewith. He may be served with summons and other court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.[6]

THE FACTS AND THE PROCEEDINGS

On March 18, 2016, then Assistant Commissioner for the Large Taxpayers Service, Mr. Nestor S. Valeroso, issued a *Letter of Authority* (LOA) No. eLA201100077955 authorizing Revenue Officers (ROs) Gisela Amodia, Emeteria Ang, and Group Supervisor (GS) Philips Caesar Pardillo to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2014 to March 31, 2015.

On April 17, 2017, petitioner received a *Preliminary Assessment Notice* (PAN) dated March 27, 2017, with *Details of Discrepancies,*[7] informing it that after investigation, there has been found due deficiency Income Tax (IT), Value-added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), and Final Withholding Tax (FWT) for the FY ending March 31, 2015, in the aggregate amount of ₱455,503,707.47, broken down as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Total
Income tax	₱73,558,480.90	₱ 0.00	₱26,400,441.09	₱ 100,000.00	₱ 100,058,921.99
VAT	43,128,980.04	10,782,245.01	17,629,709.10	50,000.00	71,590,934.15
WTC	68,161,141.92	0.00	27,862,033.90	50,000.00	96,073,175.82
EWT	6,266,713.63	0.00	2,561,626.50	50,000.00	8,878,340.13
FWT	107,822,450.10	26,955,612.53	44,074,272.75	50,000.00	178,902,335.38
				Total	**₱455,503,707.47**

On May 2, 2017, petitioner filed with the BIR a letter of even date[8] requesting the reinvestigation and cancellation of the alleged deficiency tax assessments.

[6] Par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 6 and 482, respectively.
[7] Exhibit "P-5", Docket – Vol. II, pp. 641 to 647; Exhibits "R-7" and "R-7-A", BIR Records (Exhibit "R-17"), pp. 380 to 386.
[8] Exhibit "P-6", Docket – Vol. II, pp. 648 to 663.

On August 22, 2017, petitioner received an *Amended* PAN dated July 17, 2017,[9] with *Details of Discrepancies*. In the said *Amended* PAN, while the deficiency VAT assessment was deleted, petitioner's deficiency tax assessments increased to an aggregate amount of ₱523,671,954.73, broken down as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Total
Income tax	₱161,571,223.81	₱ 0.00	₱67,461,519.20	₱ 100,000.00	₱ 229,132,743.01
WTC	68,161,141.92	0.00	31,858,330.99	50,000.00	100,069,472.91
EWT	6,266,713.63	0.00	2,929,044.78	50,000.00	9,245,758.41
FWT	107,822,450.10	26,955,612.53	50,395,917.77	50,000.00	185,223,980.40
				Total	**₱523,671,954.73**

On September 6, 2017, petitioner filed a letter of even date,[10] refuting the findings of respondent in the *Amended* PAN.

In the *Memorandum*[11] of November 3, 2017, addressed to Ms. Teresita M. Angeles, then OIC-Assistant Commissioner for the BIR's Large Taxpayers Service, ROs Amodia and Ang with GS Pardillo recommended the issuance of the Final Assessment Notice. Thus, on even date, respondent issued the *Formal Letter of Demand* (FLD), with *Details of Discrepancies* and *Assessment Notices* (FAN),[12] which was served to petitioner on November 15, 2017. Petitioner was still assessed deficiency taxes, but in the reduced amount of ₱20,201,221.63, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Total
Income tax	₱13,153,837.08	₱ 0.00	₱6,155,275.00	₱ 100,000.00	₱ 19,409,112.08
WTC	0.00	0.00	0.00	330,152.52	330,152.52
EWT	294,475.30	0.00	152,481.73	15,000.00	461,957.03
				Total	**₱20,201,221.63**

On November 21, 2017, petitioner partially paid the assessment on deficiency IT, WTC, and EWT, in the aggregate amount of ₱13,227,756.48,[13] the details of which are as follows:

[9] Exhibit "P-7", Docket – Vol. II, pp. 664 to 670; Exhibits "R-10" and "R-10-A", BIR Records (Exhibit "R-17"), pp. 461 to 467.
[10] Exhibit "P-8", Docket – Vol. II, pp. 671 to 686.
[11] Exhibit "R-11", BIR Records (Exhibit "R-17"), pp. 567 to 576.
[12] Exhibit "P-9", Docket – Vol. II, pp. 687 to 696; Exhibits "R-12", "R-13", "R-13-A", and "R-13-B", BIR Records (Exhibit "R-17"), pp. 580 to 589.
[13] Pars. 1.c and 1.d, Stipulation of Facts, JSFI dated May 10, 2022, Docket – Vol. II, pp. 560 to 561.

Tax Type	Amount
Income tax	₱12,434,517.45[14]
WTC	330,152.52[15]
EWT	463,086.52[16]
Total	**₱13,227,756.48**

On December 15, 2017, petitioner contested the unsettled portion of the assessed IT through a letter[17] dated December 14, 2017. In support of this, petitioner submitted documents on February 13, 2018, and October 17, 2019.[18]

On June 15, 2020, respondent issued the *Final Decision on Disputed Assessment* (FDDA) with *Details of Discrepancies* and *Assessment Notice*,[19] requesting payment from petitioner of the remaining deficiency IT amounting to ₱8,488,051.32, including increments. Petitioner received the FDDA on June 29, 2020, through its security guard.[20]

On July 29, 2020, petitioner challenged the FDDA before the Court *via* the instant *Petition for Review*.[21] The case was initially raffled to this Court's Third Division.

In his *Answer*[22] filed through registered mail on November 16, 2020, respondent submits that the Court has no jurisdiction over the instant *Petition for Review* for having been filed out of time. According to respondent, petitioner has thirty (30) days from receipt of the FDDA to appeal the same with the Court. Allegedly, petitioner received the FDDA on June 29, 2020; hence, it has until July 30, 2020, to appeal. However, the instant *Petition for Review* was filed only on August 24, 2020, as evidenced by the date of receipt by the Judicial Records Division (JRD), the Receiving Unit of the Court. Petitioner's appeal was twenty-five (25) days late; thus, the assessment had already become final, executory and demandable. Respondent added that even assuming the Court has jurisdiction over the instant case, respondent submits that petitioner is liable to pay the assessed deficiency IT for the FY ending March 31, 2015, for failure to provide a Certificate of Income Tax Holiday (ITH), non-

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[14] Exhibits "P-10" to "P-10-2", Docket – Vol. II, pp. 697 to 700.
[15] Exhibits "P-11", "P-11-1", and "P-11-2", Docket – Vol. II, pp. 701 to 704.
[16] Exhibits "P-12", "P-12-1", and "P-12-2", Docket – Vol. II, pp. 705 to 708.
[17] Exhibit "P-13", Docket – Vol. II, pp. 709 to 713.
[18] Exhibits "P-20" and "P-22", Docket – Vol. II, pp. 728 to 729, and 731 to 732, respectively.
[19] Exhibits "P-24" and "P-24-2", Docket – Vol. II, pp. 735 to 736, and 730 to 742, respectively; Exhibits "R-15", "R-15-A", and "R-16-A", BIR Records (Exhibit "R-17"), pp. 709 to 715.
[20] Pars. 4 and 20, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 7, 11 and 482, respectively.
[21] Docket – Vol. I, pp. 6 to 27.
[22] Docket – Vol. I, pp. 482 to 489.

declaration of unregistered activity, non-withholding of income payment, and non-withholding of salaries and wages.

On February 3, 2021, respondent transmitted the BIR Records for this case, which consisted of one (1) folder with 721 pages.

The Pre-Trial Conference was held on April 7, 2022.

On May 10, 2022, the parties filed their *Joint Stipulation of Facts and Issues,*[23] which the Court admitted and approved in the Resolution dated May 20, 2022. The *Pre-Trial Order,*[24] dated June 24, 2022, was then issued.

The case was transferred to this Court's Second Division, pursuant to the Order dated June 30, 2022.

The trial then ensued, with the parties presenting their respective documentary and testimonial evidence. Petitioner presented its witnesses, namely: (1) Atty. Harold S. Ocampo, petitioner's Corporate Secretary; (2) Atty. Lawrence C. Biscocho, one of the partners of petitioner's External Tax Consultant—Isla Lipana & Co.; and (3) Ms. Susan Batistis, petitioner's Deputy Manager for Finance.

On September 30, 2022, petitioner filed its *Formal Offer of Evidence,*[25] to which respondent filed his *Comment/Opposition* on October 19, 2022.[26]

On November 7, 2022, the Court resolved to admit petitioner's offered documentary evidence, *except* for Exhibits "P-2" and "P-15", for failure to present the originals for comparison. [27]

When it was his turn to present evidence, respondent offered RO Gisela R. Amodia's testimony as his lone witness.

On February 15, 2023, respondent filed his Formal Offer of Evidence. Petitioner failed to file its comment.

[23] Docket – Vol. II, pp. 560 to 567.
[24] Docket – Vol. II, pp. 577 to 586.
[25] Docket – Vol. II, pp. 627 to 634; Order dated September 14, 2022, Docket – Vol. II, pp. 625 to 626.
[26] Docket – Vol. II, pp. 783 to 786.
[27] Resolution dated November 7, 2022, Docket – Vol. II, pp. 789 to 790.

On March 20, 2023, the court admitted respondent's offered documentary evidence, and he was deemed to have rested his case.[28]

On May 10, 2023, the instant case was submitted for decision considering petitioner's *Memorandum*[29] filed on April 27, 2023, and respondent's *Memorandum*[30] filed on April 28, 2023.[31]

Hence, this Decision.

THE ISSUE

As stipulated by the parties, the lone issue[32] for this Court's resolution is:

> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE AMOUNT OF EIGHT MILLION FOUR HUNDRED EIGHTY-EIGHT THOUSAND FIFTY-ONE AND THIRTY-TWO CENTAVOS (P8,488,051.32)."

Petitioner's Arguments:

Petitioner argues that it is not liable for the alleged deficiency IT in the amount of ₱8,488,051.32 for the FY ending March 31, 2015, as assessed by respondent under the FDDA dated June 15, 2020, for the following reasons: (1) the revenue from its 1 Cyber Pod Centris site is entitled to ITH, hence not subject to the 5% GIT; (2) respondent's assessment finds no factual basis since it was able to submit proof of the said ITH entitlement for the covered period; and (3) PEZA has confirmed its continuous ITH entitlement from March 1, 2010 (SCO) up to the end of its second ITH extension on February 28, 2016 on the account of NFEE.

Respondent's Arguments:

Respondent contends that petitioner is liable to pay the assessed deficiency IT for FY ending March 31, 2015, mainly because petitioner does not actually have an existing ITH incentive, and during the tax audit of its books and records for

[28] Docket – Vol. II, pp. 808 to 809.
[29] Docket – Vol. II, pp. 810 to 833.
[30] Docket – Vol. II, pp. 834 to 845.
[31] Resolution dated May 10, 2023, Docket – Vol. II, p. 847.
[32] Stipulation of Issue, JSFI, Docket – Vol. II, p. 561; Pre-trial Order, Docket – Vol. II, pp. 577 to 586.

FY 2015, it did not have an existing ITH entitlement; that with respondent's decision in the administrative level, as stated in the FDDA, this Court's jurisdiction becomes strictly appellate in nature; that petitioner should have presented all relevant supporting documents, which in this case, is its proof of ITH incentive; and that the right of taxation cannot easily be surrendered, and statutes granting tax exemptions are considered as a derogation of the sovereign authority.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the present Petition.

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction. As such, the CTA can only take cognizance of matters clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125,[33] as amended, provides:

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

In exercising its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the NIRC of 1997, as amended, which prescribes the rules for issuing a deficiency tax assessment and protesting the same. The said provision, in part, reads:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

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

xxx xxx xxx

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable**." (*Boldfacing and underscoring supplied*)

Based on the foregoing, petitioner has thirty (30) days from receipt of the assessment to file its administrative protest and another thirty (30) days from receipt of respondent's decision or from the lapse of the one hundred eighty (180)-day period, to file a *Petition for Review* with this Court.

Records show that petitioner received the FLD with attached *Details of Discrepancies* and *Assessment Notices* on November 15, 2017.[34] Counting thirty (30) days, petitioner had until December 15, 2017, to file its administrative protest. Thus, petitioner's protest to the FLD (*i.e.*, the letter dated December 14, 2017) filed on December 15, 2017, was timely.[35]

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[34] Exhibit "P-9", Docket – Vol. II, pp. 687 to 696; Exhibits "R-12", "R-13", "R-13-A", and "R-13-B", BIR Records (Exhibit "R-17"), pp. 580 to 589.
[35] Exhibit "P-13", Docket – Vol. II, pp. 709 to 713.

Thereafter, on June 29, 2020, petitioner received the FDDA dated June 15, 2020, with attached *Details of Discrepancies*, [36] finding petitioner liable for the assessed deficiency IT for the FY ending March 31, 2015, in the amount of ₱8,488,051.32, including interests and compromise penalty. [37] Counting thirty (30) days from June 29, 2020, petitioner had until July 29, 2020, to file its *Petition for Review* with the Court.

Evidently, the filing of the present *Petition for Review* via registered mail on July 29, 2020,[38] was clearly within the 30-day prescriptive period. Hence, the Court has jurisdiction to take cognizance of this case.

Respondent contends that since a decision has already been rendered in this case, petitioner could no longer submit documents it did not submit at the administrative level and that the Court is confined to a more limited issue of whether the finality of the assessment was proper given the evidence submitted at the administrative level.[39]

The Court finds the same without merit.

Settled is the rule that cases filed before this Court are litigated *de novo*.[40] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to this Court all evidence required for the successful prosecution of its claim.[41]

The Court may consider and evaluate new evidence submitted before it and make its factual determination of the case.

We shall now proceed to resolve the merits of the present case.

[36] Exhibits "P-24" and "P-24-2", Docket – Vol. II, pp. 735 to 736, and 730 to 742, respectively; Exhibits "R-15", "R-15-A", and "R-16-A", BIR Records (Exhibit "R-17"), pp. 709 to 715.
[37] Par. 1.e, Stipulation of Facts, JSFI dated May 10, 2022, Docket – Vol. II, p. 561. Refer also to pars. 4 and 20, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 7, 11 and 482, respectively.
[38] Docket – Vol. I, pp. 6 to 27.
[39] Respondent's *Memorandum* dated April 25, 2023, Docket – Vol. II, pp. 5 of 12 and 8 of 12.
[40] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.
[41] *Id.*; *Philippine Airlines v. Commissioner of Internal Revenue*, G.R. No. 206079-80 and 206309, January 17, 2018.

Petitioner is a PEZA-registered entity and is entitled to ITH for the subject taxable period.

In the FDDA dated June 15, 2020,[42] petitioner was assessed deficiency Income Tax for the FY ending March 31, 2015, for ₱8,488,051.32, inclusive of interests and compromise penalty, computed as follows:

I. Income Tax	Regular Rate	Special Rate
Taxable Income per Return		₱ 594,616,185.00
Add: Adjustments		
Taxable Revenue (substantiation)		95,463,132.05
Taxable revenue (unregistered activity)	25,923,454.40	25,923,454.40
Disallowed income payments (non-withholding)		5,216,204.38
Disallowed salaries & wages (non-withholding)		32,780,120.00
Taxable Income per Investigation	25,923,454.40	702,152,187.03
Income Tax Due	7,777,036.32	35,107,609.35
Total Income Tax Due		42,884,645.67
Less: Tax Credits/Payments		
Prior year's excess credit	1,910,807.00	
Share of other agency	11,892,323.70	
Creditable Withholding Taxes	-	
Tax payments	15,927,677.89	29,730,808.59
Deficiency Income Tax Due		13,153,837.08
Add: Interest (July 16, 2015 to November 21, 2017)	6,191,312.91	
Compromise penalty	100,000.00	6,291,312.91
Total Amount Payable		19,445,149.99
Less: Payment (November 21, 2017)		12,434,517.45
Unpaid balance		7,010,632.54
Add: 20% interest – November 22, 2017 to December 31, 2017	149,816.26	
12% interest – January 1, 2018 to July 31, 2019	1,327,602.52	1,477,418.78
TOTAL AMOUNT DUE		**8,488,051.32**

As the above assessment shows, petitioner made a partial payment of ₱12,434,517.45 on November 21, 2017.[43]

Based on the *Details of Discrepancies* attached as "Annex-A" of the FDDA, the corresponding tax due on the following issues were already paid:[44]

2. **<u>Revenue subject to regular tax rate, ₱25,923,454.40</u>** – Verification disclosed that technical support is a registered activity of the Eton Centris location only and not in its Cebu IT Tower location. Thus, revenue declared in its Cebu IT Tower location is subject to the regular tax rate of 30%

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[42] Exhibit "P-24", Docket – Vol. II, pp. 735 to 736; Exhibit "R-15", BIR Records (Exhibit "R-17"), pp. 714 to 715.
[43] Exhibits "P-10" to "P-10-2", Docket – Vol. II, pp. 697 to 700.
[44] Exhibit "P-24-2", Docket – Vol. II, pp. 739 to 741; Exhibit "R-15-A", BIR Records (Exhibit "R-17"), pp. 710 to 712. Par. 1.d, Stipulation of Facts, JSFI dated May 10, 2022, Docket – Vol. II, p. 561.

pursuant to Section 1 of Revenue Regulations (RR) No. 20-2002.

3. **<u>Disallowed Income Payments for non-withholding of tax, ₱5,216,204.38</u>** – Comparison of your income payments subject to withholding tax claimed per financial statement/income tax return as against the Alpha list disclosed that you have not subjected to withholding tax the hereunder expenses hence disallowed pursuant to RR No. 12-2013 in relation to Section 34 (K) of the National Internal Revenue Code (NIRC), as amended, which states that "*...any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld there from has been paid to the Bureau of Internal Revenue in accordance in this Section of this Code*".

4. **<u>Disallowed Salaries and Wages for non-withholding, ₱32,780,120.00</u>** – Comparison of your salaries & wages subject to withholding tax claimed per financial statement/ income tax return as against return filed disclosed that you have not subjected to withholding tax certain amount of salaries & wages hence disallowed pursuant to Section 34 (K) of the NIRC, as amended, which states that "*...any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld there from has been paid to the Bureau of Internal Revenue in accordance in this Section of this Code*".

Accordingly, the deficiency Income Tax assessment of ₱8,488,051.32, as stated in the FDDA, arose from the *remaining item* in the said *Details of Discrepancies* (Annex A), as follows:[45]

1. **<u>Additional Taxable Revenue, ₱95,463,132.05</u>** – Verification of record disclosed that ITH entitlement for the original activity at the Cebu IT Tower has already expired last February 28, 2013. In addition, up to date of reporting, taxpayer failed to submit proof/ Certificate of ITH entitlement extension for the expansion project located at 1 Cyber Pod, hence, the amount has been subjected to a preferential rate of 5% pursuant to Section 24 of Republic Act (RA) No. 7916.

[45] Exhibit "P-24-2", Docket – Vol. II, p. 739; Exhibit "R-15-A", BIR Records (Exhibit "R-17"), p. 712.

	CENTRIS/GAGFA	WITH APPROVED SCO	ADJUSTED AMOUNT
Sales/Revenues (ITH)	₱1,417,074,698.00	910,512,921.74	₱506,521,195.61
Less: Cost of Sales	721,698,900.00	310,640,837.20	411,058,063.56
Gross Income	695,375,798.00	599,872,084.54	₱95,463,132.05

In other words, the additional taxable revenue amounting to ₱95,463,132.05, which respondent subjected to a 5% preferential rate, is the remaining issue in the FDDA.

Notably, the said revenue of ₱95,463,132.05 consists **only** of petitioner's gross income from its 1 Cyber Pod Eton Centris Site and does not include any revenue from petitioner's Cebu IT Tower site.[46] Moreover, the *Audit Result/ Assessment Notice* (BIR Form No. 0401) with Assessment No. IT-LA06124-15-20-38 dated June 15, 2020, also attached to the FDDA, shows that the tax liability in the amount of ₱8,488,051.32 was due to petitioner's failure to submit a certificate of ITH extension,[47] as presented below:

TAX TYPE:	PARTICULARS	AMOUNT	
INCOME TAX			
BASED ON/REASON:			
Section 24 of Republic Act (RA) No. 7916	Failure to submit a certificate of ITH Extension	Basic	₱4,773,161.60[48]
		Surcharge	0.00
		Interest	3,714,889.72
		Compromise	0.00
		Total	**₱8,488,051.32**

Sections 23 and 24 of RA No. 7916[49], as amended by RA No. 8748[50], provide as follows:

> "SEC. 23. *Fiscal Incentives.* – **Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as** provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.**
>
> xxx xxx xxx

[46] Cost of sales of petitioner's GAGFA and Centris sites are ₱310,640,837.20 and ₱411,058,062.56, respectively, refer to Memorandum dated November 3, 2017, BIR Records, p. 574; Cost Breakdown per site, Annex "D", BIR Records (Exhibit "R-17"), p. 508.

[47] Exhibit "R-16-A", BIR Records (Exhibit "R-17"), p. 709.

[48] With ₱5.00 difference; Assessed additional taxable revenue of ₱95,463,132.05 multiplied by preferential tax rate of 5% equals ₱4,773,156.60.

[49] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

[50] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

> SEC. 24. *Exemption from National and Local Taxes.* – **Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE** shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." *(Emphases added)*

Section 23 of RA No. 7916, as amended, gives the PEZA-registered enterprises the option to choose between two (2) sets of fiscal incentives: (a) the five percent (5%) preferential tax rate on its gross income under RA No. 7916, as amended; and (b) the ITH provided under Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.[51]

The five percent (5%) preferential tax rate on gross income under RA No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax, **not even an indirect tax like VAT**, may be imposed on a PEZA-registered enterprise availing this fiscal incentive.[52]

Alternatively, Book VI of EO No. 226, as amended, grants ITH to registered pioneer and non-pioneer enterprises for six and four years, respectively. Those availing of this incentive are exempt only from income tax but shall be subject to all other taxes.[53]

Specifically, the grant of ITH is governed by Article 39(a)(1), Title III, Book VI, of EO No. 226, as amended by RA No. 7918. Said provision enumerates the fiscal incentives granted to a registered enterprise, which include ITH from four (4) to six (6) years, depending on whether the enterprise is registered as a pioneer or non-pioneer firm,[54] as a rule. It provides as follows:

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[51] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.
[52] *Id.*
[53] *Id.*
[54] *Commissioner of Internal Revenue v. J.P. Morgan Chase Bank, N.A. – Philippine Customer Care Center*, G.R. No. 210528, November 28, 2018.

x---x

> "ARTICLE 39. *Incentives to Registered Enterprises.* – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) *Income Tax Holiday.* –
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. xxx.
>
> The preceding paragraph notwithstanding, no registered pioneer firm may avail of the incentive for a period exceeding eight (8) years."

However, Rule XIII, Section 5 of the *Implementing Rules and Regulations* of RA No. 7916[55] specifies that PEZA-granted incentives shall apply only to registered operations of the Ecozone Enterprise and only during its registration with PEZA. In other words, tax incentives to which an Ecozone Enterprise is entitled do not necessarily include all kinds of income received during the period of entitlement. Only income actually gained or received by the Ecozone Enterprise related to the conduct of its registered business activity are covered by fiscal incentives.[56]

As observed in this case, the remaining deficiency IT assessment of ₱8,488,051.32 pertains only to petitioner's revenue earned from its 1 Cyber Pod Eton Centris Site.[57]

As borne by the records, petitioner registered with the PEZA as an Ecozone IT Enterprise on November 29, 2007, covering its Cebu IT Tower, **Eton Centris**, and GAGFA IT Center, which later on included the CBP-IT Park, as evidenced by the Amended Certificates of Registration (COR) No. 07-73-IT

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[55] Said provision reads:

"RULE XIII
Application and Entitlement

xxx xxx xxx

SECTION 5. *Limitation of Entitlement to Incentives.* – Incentives granted by the PEZA shall apply **only to registered operations of ECOZONE Enterprises** and only during period of its registration with PEZA." *(Emphasis added)*

[56] *Commissioner of Internal Revenue v. J.P. Morgan Chase Bank, N.A. – Philippine Customer Care Center*, supra.

[57] Cost of sales of petitioner's GAGFA and Centris sites are ₱310,640,837.20 and ₱411,058,062.56, respectively. [Refer to Memorandum dated November 3, 2017, BIR Records (Exhibit "R-17"), p. 574; and Cost Breakdown per site, Annex "D", BIR Records (Exhibit "R-17"), p. 508.]

issued on October 8, 2013,[58] and August 29, 2018,[59] respectively.

Further, and after careful examination of the evidence presented and the laws applicable, it is without question that petitioner complied with the requirements for an entitlement to ITH under Article 39(a)(1) of EO No. 226, as amended, as a PEZA-registered company. This is manifested in the letter dated December 18, 2013,[60] signed by PEZA Director General Lilia B. De Lima and addressed to petitioner's president and country manager, Jibin Arjunan Thandayamparambil, the pertinent portion of which reads:

> "On the basis of the documents submitted..., please be advised that your application is hereby **APPROVED**, as follows:

ACTIVITY COVERED (New Project)	:	**To provide customer contact center operations, specifically in reference to the processing of hotel and travel-related transactions (e.g. online ticketing, reservation and booking services, marketing, promotions, membership service and administration, customer service, etc.) technical support, billing and customer service queries, collection and other similar activities, <u>at 1 Cyber Pod Centris, Eton Centris</u>.**
REFERENCE DOCUMENT	:	Supplemental Agreement dated 17 September 2009
SCO DATE IN SUPPLEMENTAL AGREEMENT	:	March 2010
WBPLIPROVED DATE OF SCO	:	March 2010
ITH Entitlement Period	:	**1 March 2010 – 28 February 2014**". *(Emphases and underscoring added)*

Verily, the period of petitioner's ITH of four (4) years commenced on March 1, 2010, until February 28, 2014. In any event, its entitlement to ITH was extended when petitioner applied for[61] and was granted an extension thereof, pursuant to the following:

[58] Exhibit "P-18", Docket – Vol. II, p. 724.
[59] Exhibit "P-18-1", Docket – Vol. II, p. 725.
[60] Exhibit "P14", Docket – Vol. II, p. 714.
[61] Exhibits "P-17" and "P-19", Docket – Vol. II, pp. 720 to 721, and 726 to 727, respectively.

1. *PEZA Notice of ITH No. 19-ERD/ITH/CELR/ITE 056* dated September 23, 2019,[62] signed by Director General Charito B. Plaza, which indicates the period within which petitioner is entitled to ITH, to wit:

Inclusive ITH Period	**ITH Extension Period**
March 1, 2010 to February 28, 2014	**March 1, 2014 to February 28, 2015**

2. *PEZA Notice of ITH No. 22-ERD/ITH/NFEE/ITE-027* dated June 3, 2022,[63] signed by Director General Charito B. Plaza, indicating the period within which petitioner is entitled to ITH, to wit:

Inclusive ITH Period	**ITH Extension Period**
March 1, 2010 to February 28, 2014 (Notice of Confirmation No. 17-ERD/ITH/CONF/ITE-184 dd. December 27, 2017) Extension: CELR March 1, 2014 to February 28, 2015 (CELR/Approval No. ITE-056 dated September 23, 2019)	**March 1, 2015 to February 28, 2016**

With the granting of ITH in favor of petitioner from **March 1, 2010, to February 28, 2016**, it is evident that petitioner is entitled to avail itself of the same during the taxable period from **April 1, 2014, to March 31, 2015, or its FY ending March 31, 2015.** Correspondingly, petitioner should not be assessed for deficiency IT for the period.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency Income Tax assessment in the total amount of ₱8,488,051.32, including interests and compromise penalty, for FY ending March 31, 2015, is **CANCELLED and WITHDRAWN**, and the FDDA dated June 15, 2020 issued by respondent against petitioner is **REVERSED** and **SET ASIDE**.

Respondent is **ENJOINED** from proceeding with the collection of the said deficiency Income Tax assessment.

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[62] Exhibit "P-23", Docket – Vol. II, pp. 733 to 734.
[63] Exhibit "P-17-1", Docket – Vol. II, pp. 722 to 723.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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