REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8141
For: Assessment

Members:
CASTAÑEDA, JR., *Chairperson*
and
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 2 6 2019

x---x
2:10 p.m.

DECISION

MINDARO-GRULLA, J.:

This is a case remanded to the Special Second Division of this Court by the Court of Tax Appeals (CTA) *En Banc* in CTA EB Nos. 989 and 990, pursuant to the Supreme Court's Decision dated April 18, 2016 in G.R. Nos. 215534 and 215557 entitled *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation* and *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*[1], respectively, for the assessment of deficiency Expanded Withholding Tax (EWT) and Fringe Benefits Tax (FBT) of petitioner for taxable year 2005.

As culled from the Supreme Court's Decision[2] in G.R. Nos. 215534 and 215557, the facts of this case are as follows:

> "Liquigaz Philippines Corporation *(Liquigaz)* is a corporation duly organized and existing under Philippine laws. On July 11, 2006, it received a copy of Letter of Authority *(LOA)* No. 00067824, dated July 4, 2006, issued

[1] Docket, vol. 3, pp. 1619-1637.
[2] *Ibid.*

L

by the Commissioner of Internal Revenue *(CIR)*, authorizing the investigation of all internal revenue taxes for taxable year 2005.

On April 9, 2008, Liquigaz received an undated letter purporting to be a Notice of Informal Conference *(NIC)*, as well as the detailed computation of its supposed tax liability. On May 28, 2008, it received a copy of the Preliminary Assessment Notice *(PAN)*, dated May 20, 2008, together with the attached details of discrepancies for the calendar year ending December 31, 2005. Upon investigation, Liquigaz was initially assessed with deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱23,931,708.72, broken down as follows:

Expanded Withholding Tax *(EWT)*	₱ 5,456,141.82
Withholding Tax on Compensation *(WTC)*	₱ 4,435,463.97
Fringe Benefits Tax *(FBT)*	₱ 14,040,102.93
TOTAL	**₱23,931,708.72**

Thereafter, on June 25, 2008, it received a Formal Letter of Demand *(FLD)*/Formal Assessment Notice *(FAN)*, together with its attached details of discrepancies, for the calendar year ending December 31, 2005. The total deficiency withholding tax liabilities, inclusive of interest, under the FLD was ₱24,332,347.20, which may be broken down as follows:

EWT	₱ 5,535,890.38
WTC	₱ 4,500,169.94
FBT	₱ 14,296,286.88
TOTAL	**₱24,332,347.20**

On July 25, 2008, Liquigaz filed its protest against the FLD/FAN and subsequently submitted its supporting documents on September 23, 2008.

Then, on July 1, 2010, it received a copy of the FDDA covering the tax audit under LOA No. 00067824 for the calendar year ending December 31, 2005. As reflected in

L

the FDDA, the CIR still found Liquigaz liable for deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱22,380,025.19, which may be broken down as follows:

EWT	₱ 3,479,426.75
WTC	₱ 4,508,025.93
FBT	₱ 14,392,572.51
TOTAL	**₱22,380,025.19**

Consequently, on July 29, 2010, Liquigaz filed its Petition for Review before the CTA Division assailing the validity of the FDDA issued by the CIR.

The CTA Division Ruling

In its November 22, 2012 Decision, the CTA Division partially granted Liquigaz's petition cancelling the EWT and FBT assessments but affirmed with modification the WTC assessment. It ruled that the portion of the FDDA relating to the EWT and the FBT assessment was void pursuant to Section 228 of the National Internal Revenue Code *(NIRC)* of 1997, as implemented by Revenue Regulations (RR) No. 12-99.

The CTA Division noted that unlike the PAN and the FLD/FAN, the FDDA issued did not provide the details thereof, hence, Liquigaz had no way of knowing what items were considered by the CIR in arriving at the deficiency assessments. This was especially true because the FDDA reflected a different amount from what was stated in the FLD/FAN. The CTA Division explained that though the legal bases for the EWT and FBT assessment were stated in the FDDA, the taxpayer was not notified of the factual bases thereof, as required in Section 228 of the NIRC.

On the other hand, it upheld the WTC assessment against Liquigaz. It noted that the factual bases used in the FLD and the FDDA with regard thereto were the same as the difference in the amount merely resulted from the use of a different tax rate.

L

The CTA Division agreed with Liquigaz that the tax rate of 25.40% was more appropriate because it represents the effective tax compensation paid, computed based on the total withholding tax on compensation paid and the total taxable compensation income for the taxable year 2005. It did not give credence to Liquigaz's explanation that the salaries account included accrued bonus, 13th month pay, *de minimis* benefits and other benefits and contributions which were not subject to withholding tax on compensation. The CTA Division relied on the report prepared by Antonio O. Maceda, Jr., the court-commissioned independent accountant, which found that Liquigaz was unable to substantiate the discrepancy found by the CIR on its withholding tax liability on compensation. The dispositive portion of the CTA Division decision reads:

> **WHEREFORE**, the *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency expanded withholding tax in the amount of ₱3,479,426.75 and fringe benefits tax in the amount of ₱14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby **CANCELLED** and **WITHDRAWN** for being void.
>
> However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Salaries per ITR	₱52,239,313.00
Less: Salaries per Alphalist	₱42,921,057.16
Discrepancy	₱ 9,318,255.84
Tax rate	25.40%
Basic Withholding Tax on Compensation	₱ 2,366,836.98
Add: 25% Surcharge	₱ 591,709.25

Total Amount Due	₱ 2,958,546.23

In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum of the basic deficiency withholding tax on compensation of ₱2,958,546.23 computed from January 20, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

The compromise penalty of ₱25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

SO ORDERED.

Both the CIR and Liquigaz moved for reconsideration, but their respective motions were denied by the CTA Division in its February 20, 2013 Resolution.

Aggrieved, they filed their respective petitions for review before the CTA *En Banc*.

The CTA En Banc Ruling

In its May 22, 2014 Decision, the CTA *En Banc* affirmed the assailed decision of the CTA Division. It reiterated its pronouncement that the requirement that the taxpayer should be informed in writing of the law and the facts on which the assessment was made applies to the FDDA — otherwise the assessment would be void. The CTA *En Banc* explained that the FDDA determined the final tax liability of the taxpayer, which may be the subject of an appeal before the CTA.

L

The CTA *En Banc* echoed the findings of the CTA Division that while the FDDA indicated the legal provisions relied upon for the assessment, the source of the amounts from which the assessments arose were not shown. It emphasized the need for stating the factual bases as the FDDA reflected *different* amounts than that contained in the FLD/FAN.

On the other hand, the CTA *En Banc* sustained Liquigaz's WTC assessment. It observed that the basis for the assessment was the same for the FLD and the FDDA, which was a comparison of the salaries declared in the Income Tax Return *(ITR)* and the Alphalist that resulted in a discrepancy of ₱9,318,255.84. The CTA *En Banc* highlighted that the change in the amount of assessed WTC deficiency simply arose from the revision of the tax rate used—from 32% to the effective tax rate of 25.40% suggested by Liquigaz.

Further, it disregarded the explanation of Liquigaz on the ground of its failure to specify how much of the salaries account pertained to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to the Social Security System, Medicare and Pag-Ibig Fund. The CTA *En Banc* reiterated that even the court-commissioned independent accountant reported that Liquigaz was unable to substantiate the discrepancy found by the CIR.

Both parties moved for a partial reconsideration of the CTA *En Banc* Decision, but the latter denied the motions in its November 26, 2014 Resolution."

On December 16, 2014, respondent filed through registered mail a Motion for Extension of Time to File Petition for Review[3] with the Supreme Court.

[3] Docket, vol. 3, pp. 1080-1082.

L

Likewise, petitioner filed a Motion for Extension of Time to File Petition for Review[4] with the Supreme Court through registered mail on December 19, 2014.

On January 7, 2015, respondent filed another Motion for Extension of Time to File Petition for Review.[5]

On January 14, 2015, petitioner filed through registered mail its Petition for Review on Certiorari[6] with the Supreme Court entitled *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*, with Docket No. G.R. No. 215557.

Meanwhile, on January 20, 2015, respondent filed through registered mail his Petition for Review on Certiorari[7] with the Supreme Court entitled *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*, with Docket No. G.R. No. 215534.

In a Resolution dated January 21, 2015, the Supreme Court consolidated G.R. No. 215534 with G.R. No. 215557 and granted the parties' separate motions for extension of thirty (30) days within which to file their respective Petitions for Review on Certiorari in G.R. Nos. 215534 and 215557.[8]

Both petitioner and respondent filed their Comment on the Petition for Review[9] and Comment (Re: Petitioner Liquigaz' Petition for Review on Certiorari dated 14 January 2015)[10], through registered mail on May 25, 2015 and June 24, 2015, respectively with the Supreme Court.

Both respondent and petitioner filed their Reply (Re: Comment on the Petition for Review dated 25 May 2015)[11] and Reply (To the Respondent's Comment dated 23 June 2015)[12], through registered mail on September 10, 2015 and October 30, 2015, respectively, with the Supreme Court.

---

[4] Docket, vol. 3, pp. 1083-1088.
[5] Docket, vol. 3, pp. 1093-1095.
[6] Docket, vol. 3, pp. 1096-1115.
[7] Docket, vol. 3, pp. 1237-1258.
[8] Docket, vol. 3, pp. 1492-1493.
[9] Docket, vol. 3, pp. 1523-1546.
[10] Docket, vol. 3, pp. 1548-1561.
[11] Docket, vol. 3, pp. 1576-1583.
[12] Docket, vol. 3, pp. 1591-1601.

On April 18, 2016, the Supreme Court rendered a Decision[13] partially affirming the CTA *En Banc* Decision dated May 22, 2014 and Resolution dated November 26, 2014 insofar as upholding the assessment on deficiency Withholding Tax in Compensation (WTC) and remanding the case back to the CTA for the assessment on deficiency EWT and FBT. The dispositive portion of the Supreme Court Decision reads as follows:

> "**WHEREFORE,** the May 22, 2014 Decision and the November 26, 2014 Resolution of the Court of Tax Appeals *En Banc* are **PARTIALLY AFFIRMED** in that the assessment on deficiency Withholding Tax in Compensation is upheld.
>
> The case is **REMANDED** to the Court of Tax Appeals for the assessment on deficiency Expanded Withholding Tax and Fringe Benefits Tax.
>
> **SO ORDERED.**"

In a Resolution dated July 27, 2016, the Supreme Court denied with finality, petitioner's Motion for Reconsideration of the Decision dated April 18, 2016.[14]

On January 31, 2017, the CTA *En Banc* received the Entry of Judgment issued by the Supreme Court on December 1, 2016, stating that the Supreme Court Decision dated April 18, 2016 in G.R. Nos. 215534 and 215557 has become final and executory on September 6, 2016.[15]

The CTA *En Banc* issued a Resolution[16] dated January 22, 2018, remanding the case to the court of origin for the proper determination of the validity of the assessment on the deficiency Expanded Withholding Tax and Fringe Benefits Tax.

---

[13] Docket, vol. 3, pp. 1619-1637.
[14] Docket, vol. 3, pp. 1638-1639.
[15] Docket, vol. 3, pp. 1640-1642.
[16] Docket, vol. 3, pp. 1665-1667.

l

The CTA Special Second Division issued Resolution[17] dated March 12, 2018, setting the case for the presentation of petitioner's evidence on April 11, 2018.

On April 11, 2018, counsel for petitioner failed to appear and the presentation of the evidence for the petitioner was reset for the last time to April 30, 2018.[18]

However, petitioner's counsel was still absent despite due notice and warning during the hearing on April 30, 2018. Thus, petitioner's right to present further evidence was deemed waived. During the hearing, respondent manifested that he will adopt the evidence previously presented.[19]

On May 31, 2018, respondent filed a Manifestation[20] that he is adopting the arguments he raised in his Memorandum filed on May 15, 2012 as his Memorandum. On the other hand, petitioner failed to file a memorandum.[21] Accordingly, the case was submitted for decision on July 10, 2018.[22]

The parties submitted the following issue[23] for this Court's resolution:

> **"Whether the FDDA issued by the respondent against the petitioner is valid."**

It must be noted that per the Supreme Court's Decision, it was ruled that while the FDDA is void for lack of factual basis, the revised assessment on the deficiency WTC per the FDDA actually has factual basis and should withstand the nullity of the FDDA, to wit:

> "As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was

[17] Docket, vol. 3, pp. 1669-1672.
[18] Minutes of the Hearing and Order dated April 11, 2018, docket, vol. 3, pp. 1673-1674.
[19] Minutes of the Hearing and Order dated April 30, 2018, docket, vol. 3, pp. 1675-1676.
[20] Docket, vol. 3, pp. 1684-1685.
[21] Records Verification dated June 5, 2018, docket, vol. 3, p. 1683.
[22] Resolution dated July 10, 2018, docket, vol. 3, p. 1694.
[23] Stipulation of Issue, Joint Stipulation of Facts and Issue (JSFI), docket, vol. 1, p. 172.

a

no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

On the other hand, **the Court agrees that the FDDA substantially informed Liquigaz of its tax liabilities with regard to its WTC assessment. As highlighted by the CTA, the basis for the assessment was the same for the FLD and FDDA, where the salaries reflected in the ITR and the alphalist were compared** resulting in a discrepancy of ₱9,318,255.84. The change in the amount of assessed deficiency withholding taxes on compensation merely arose from the modification of the tax rates used– 32% in the FLD and the effective tax rate of 25.40% in the FDDA. The Court notes it was Liquigaz itself which proposed the rate of 25.40% as a more appropriate tax rate as it represented the effective tax on compensation paid for taxable year 2005. As such, Liquigaz was effectively informed in writing of the factual bases of its assessment for WTC because the basis for the FDDA, with regards to the WTC, was identical with the FAN—which had a detail of discrepancy attached to it.

Further, the Court sees no reason to reverse the decision of the CTA as to the amount of WTC liability of Liquigaz. It is a time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside because by the very nature of the CTA, it is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject. The issue of Liquigaz' WTC has been thoroughly discussed in the courts *a quo* and even the court-appointed independent accountant had found that Liquigaz was unable to substantiate its claim concerning the discrepancies in its WTC." *(Emphasis supplied)*

Considering the foregoing, this Court shall simply adopt its original findings as far as the computation of the deficiency WTC is

ℓ

concerned. In the dispositive portion of our November 22, 2012 Decision, We ruled as follows:

> "However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED to PAY** respondent the amount of ₱2,958,546.23, inclusive of the 25% surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

Salaries per ITR	₱ 52,239,313.00
Less: Salaries Per Alphalist	42,921,057.16
Discrepancy	₱ 9,318,255.84
Tax rate	25.40%
Basic Withholding Tax on Compensation	₱ 2,366,836.98
Add: 25% Surcharge	591,709.25
Total Amount Due	**₱2,958,546.23**

> In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency withholding tax on compensation of ₱2,958,546.23 computed from January 20, 2006 until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.
>
> The compromise penalty of ₱25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties."

On December 14, 2012, petitioner paid through the BIR's EFPS its deficiency WTC liability for TY 2005 in the amount of ₱8,492,671.32[24], broken down as follows:

Basic deficiency WTC	₱2,366,836.98
Surcharge	591,709.25

[24] BIR Form No. 0605 and Confirmation Receipt, docket, vol. 2, pp. 545 and 546.

l

Interest	5,534,125.09
Total Amount Paid	₱8,492,671.32

The aforesaid payment shall be deducted in the determination of petitioner's final deficiency tax liabilities for TY 2005.

Thus, the sole issue for determination of this Court pertains to the assessment of deficiency EWT and FBT of petitioner for taxable year 2005, *viz*:

> "Whether or not petitioner is liable for deficiency EWT and FBT in the amount of ₱19,832,177.23 for taxable year 2005, inclusive of interest and compromise penalty."

DISCUSSION/FINDINGS

The tax assessments per Formal Letter of Demand (FLD) are reproduced hereunder:

Tax Type	Basic	Interest	Compromise	Total
EWT	₱ 3,675, 048.75	₱ 1,815,841.60	₱ 45,000.00	₱ 5,535,890.35
FBT	9,501,564.07	4,744,722.81	50,000.00	14,296,286.88
Total	**₱13,176,612.82**	**₱6,560,564.41**	**₱95,000.00**	**₱19,832,177.23**

I. DEFICIENCY EWT – ₱5,535,890.35

Based on the FLD[25], respondent assessed petitioner of deficiency EWT for TY 2005 in the amount of ₱5,535,890.35, broken down as follows:

Basic Deficiency EWT		₱ 3,675,048.78
Add: Interest up to June 30, 2008		1,815,841.60
Compromise	₱25,000.00	
Compromise non filing of alpha list	₱20,000.00	45,000.00
Total Deficiency EWT		**₱5,535,890.38**

The assessment resulted from respondent's findings that there were income payments made by petitioner in the year 2005 that were

[25] Exhibit "E".

not subjected to EWT pursuant to Sections 57(B) and 58 of the National Internal Revenue Code (NIRC) of 1997, as amended and implemented by Revenue Regulations (RR) Nos. 02-98 and 03-04. The details are as follows:[26]

	Per FS/ITR/TB	Per 1601E/Alphalist	Difference	Rate	EWT Due
Contractor/Services	₱ 170,178,521.07	₱ 169,903,059.53	₱ 275,461.54	2%	₱ 5,509.23
Commission	2,116,203.35	-	2,116,203.35	10%	211,620.34
Brokers	5,980,352.18	4,587,354.42	1,392,997.76	10%	139,299.78
Purchase – Goods	688,546,955.44	617,542,655.20	71,004,300.24	1%	710,043.00
Other services	7,856,987.02	-	7,856,987.02	2%	157,139.74
Professional Fees	8,718,992.06	2,377,600.31	6,341,391.75	10%	634,139.18
Rentals	9,415,302.65	5,389,008.11	4,026,294.54	5%	201,314.73
Interest expense on loans	18,909,525.88	-	18,909,525.88	2%	378,190.52
Importation Charges					
Bank charges	6,118,836.47	-	6,118,836.47	2%	122,376.73
Brokers Fee	1,649,254.23	-	1,649,254.23	10%	164,925.42
Wharfage	8,961,322.61	-	8,961,322.61	2%	179,226.45
Arrastre	26,940,450.94	-	26,940,450.94	2%	538,809.02
LPG Purchases	6,350,321,051.29	6,327,075,586.09	23,245,465.20	1%	232,454.65
Total	**₱7,305,713,755.19**	**₱7,126,875,264.06**	**₱178,838,491.53**		**₱3,675,048.78**

The Court shall discuss each of the above category of income payments hereafter.

1. Contractors/Services – ₱275,461.54

As for this item of assessment, petitioner failed to provide contradictory arguments as well as supporting documents to discharge its burden of proof.

It bears stressing 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 said assessment.[27] As such, the Court is constrained to uphold the deficiency EWT assessment on contractors/services.

---

[26] BIR Records, p. 452.
[27] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

L

2. Commissions – ₱2,116,203.35

Petitioner argues that respondent erroneously computed petitioner's alleged liability for EWT on commissions by subjecting it to ten percent (10%) EWT rate, although the petitioner properly withheld EWT at the rate of two percent (2%), the reason being that subject payments are for services rendered by various sub-contractors and as such, the same should only be subject to two percent (2%) EWT. Moreover, there are also other expenses which were included/lumped in the account commissions, which were subjected by petitioner to withholding taxes, albeit, using the correct rate. There were also accruals made in the account commissions wherein EWT was paid at the time of actual payment thereof. Thus, to collect EWT on the very same expense or income payment would amount to double taxation.[28]

The Court-commissioned Independent Certified Public Accountant (ICPA) examined the supporting purchase invoices, official receipts, GL vouchers and other supporting documents amounting to ₱1,620,410.41 (Exhibits "AAAAA-1" to "AAAAA-38"), which disclosed the following:[29]

Subjected to 2% EWT	₱ 456,950.84	1.3.1
Subjected to 2% EWT but not in the Alphalist	135,756.49	1.3.2
Accruals	798,139.52	1.3.3
Payroll related GL entry	179,285.37	1.3.4
	50,278.19	1.3.5
	₱1,620,410.41	

It must be noted that the original assessed amount per FLD is ₱2,116,203.35. Therefore, there is clearly the amount of ₱495,792.94 (₱2,116,203.35 - ₱1,620,410.41), that remained unsupported and unverified. Accordingly, the Court upholds the deficiency EWT assessment on the amount of ₱495,792.94.

With regard to the amount of ₱456,950.84 under 1.3.1 above, the ICPA reported that this pertains to purchases of services, which were traced to petitioner's Alphalist of Payees in 2005.[30] Based on the documents presented, the income payments of ₱456,950.84 subjected to 2% EWT can be broken down as follows:

---

[28] Par. 44, Petitioner's Memorandum, pp. 16 and 17, docket, vol. 1, pp. 431 and 432.
[29] Exhibit "IIII", p. 6.
[30] Exhibit "IIII", p. 6.

ℓ

	Supplier	Amount subject to EWT	EWT Withheld (2%)	Exhibit Reference
1	Glen Solis	12,895.00	257.90	AAAAA-1
2		4,034.50	80.69	AAAAA-10
3		4,052.50	81.05	AAAAA-11
4		3,994.50	79.89	AAAAA-14
5		12,545.00	250.91	AAAAA-20
Sub-total		*37,522.00*	*750.44*	
6	Sojits Philippines	77,543.70	1,550.87	AAAAA-3
7		49,479.60	989.59	AAAAA-7
8		36,145.20	722.90	AAAAA-13
9		45,337.20	906.74	AAAAA-19
10		63,488.70	1,269.77	AAAAA-24
Sub-total		*271,994.40*	*5,439.87*	
11	Aristeo Castillo	54,101.92	1,082.04	AAAAA-4
12		26,371.58	527.43	AAAAA-17
13		27,631.19	552.62	AAAAA-22
Sub-total		*108,104.69*	*2,162.09*	
14	Mega Metro Manila Gas	18,354.09	367.08	AAAAA-6
15	Corp.	20,975.66	419.51	AAAAA-23
Sub-total		*39,329.75*	*786.59*	
TOTAL		**₱456,950.84**	**₱9,138.99**	

The Court finds that these income payments are actually commissions paid to brokers that are taxable at 10% EWT, pursuant to Section 2.57.2 (G) of RR No. 02-98, as amended, which states:

> "(G) *Income payments to certain brokers and agents.* – On gross commissions or service fees of customs, insurance, stock, real estate, immigration and commercial brokers and fees of agents of professional entertainers – Ten percent (10%);"

The supporting documents clearly state that payments made to the above individuals are for commissions at a rate based on their contract with petitioner, hence, falls under the purview of commercial brokers.

Therefore, since petitioner has already remitted 2% EWT on the income payments of ₱456,950.84, it shall only be liable for the remaining 8% EWT, or the amount of ₱36,556.07 (₱456,950.84 x 8%).

L

As to the income payments amounting to ₱135,756.49 classified under 1.3.2 and described by the ICPA as pertaining to purchases of services, with withholding taxes per General Ledger (GL) but not reflected in the Alphalist of Payees in 2005[31], the same is broken down as follows:

	Supplier	Amount subject to EWT	Exhibit Reference
1	Maria Cindy Lim	10,335.00	AAAAA-2
2	Marissa Villanueva Manalo	40,161.49	AAAAA-5
		38,790.00	AAAAA-8
		10,970.00	AAAAA-12
		5,542.50	AAAAA-15
		14,037.50	AAAAA-16
		7,970.00	AAAAA-18
		7,950.00	AAAAA-21
TOTAL		**₱135,756.49**	

A perusal of the supporting documents reveals that these represent payments to sales agents, which are subject to 10% EWT under Section 2.57.2(G) of RR No. 02-98, as amended. Therefore, the deficiency EWT assessment on the amount of ₱135,756.49 is sustained.

With reference to the amount of ₱798,139.52 classified under 1.3.3, the ICPA found that this pertains to commission accruals which were traced to GL vouchers but not subjected to withholding taxes in 2005[32].

Section 2.57.4 of RR No. 02-98, as amended by RR No. 12-01, provides when the obligation to withhold arises, to wit:

> "Sec. 2.57.4. *Time of withholding.* – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, *or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books,* whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.

---

[31] Exhibit "IIII", p. 6.
[32] Exhibit "IIII", p. 6.

Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes."

Applying the foregoing provision to this case, the duty of petitioner to withhold arises when commissions were paid, becomes payable, or were accrued/recorded as expense in petitioner's books, whichever comes first. The second paragraph, however, provides that if petitioner recorded the commissions as expense, although they were not yet paid or payable, the obligation to withhold shall be within the last month of the return period in which commissions were claimed as expenses for tax purposes.

Since it had already accrued and claimed the commissions of ₱798,139.52 as expense deduction in its ITR[33], petitioner was already obligated to withhold and remit the 10% EWT at the time of accrual thereof. Hence, for failure to do so, petitioner is liable to pay deficiency 10% EWT on ₱798,139.52.

With regard to the payroll related item in the amount of ₱179,285.37 (under 1.3.4), the ICPA stated that the same was traced to petitioner's accounting system and GL voucher and pertains to commission payment that became part of salaries in February 2005[34].

As per ICPA's summary schedule, the supporting document for this particular item is Exhibit "AAAAA-27", which, however, cannot be found in the records submitted before the Court.

On the other hand, petitioner's Chief Finance Officer, Ms. Julieta S. Albano, testified that the amount of ₱179,285.37 is merely a mistake in the booking of the said expense as it is really a payroll related entry.[35] However, We find the GL entry[36] submitted by petitioner insufficient to ascertain the truthfulness of such claim. Thus, the

[33] Exhibit "I", line 87 (part of the Commissions of ₱2,116,203.00).
[34] Exhibit "IIII", p. 7.
[35] Exhibit "BBBB", p. 6.
[36] Exhibit "QQQQ".

ﾋ

deficiency 10% EWT assessment on the commissions of ₱179,285.37 shall remain.

Likewise, the Court upholds the deficiency 10% EWT assessment on the amount of ₱50,278.19 as the supporting documents[37] show that the same actually pertains to commissions paid.

Considering the foregoing, the deficiency 10% EWT assessment on commissions is upheld but in the reduced amount of ₱202,481.32, computed as follows:

Deficiency 10% EWT per FLD	₱ 211,620.34
Less: 2% EWT remitted on commissions of ₱456,950.84	9,139.02
Deficiency 10% EWT still due	**₱202,481.32**

3. Brokers – ₱1,392,997.76

Petitioner asserts that it is not liable for deficiency EWT in relation to its income payments to brokers for the following reasons:[38]

1. Non-resident suppliers:		
a. COS-Brok. & Handling-(2) Premiership/Wheterby	₱112,419.36	
b. COS-Brok. & Handling-Haydock/Clipper Posh	180,382.17	₱ 292,801.53
2. Paid in subsequent year		1,100,196.53
Total		**₱1,392,997.76**

Moreover, in its Petition, petitioner asserts that a distinction should be made with respect to foreign and local brokers. Under Section 2.57.2 of RR No. 02-98, it is explicitly provided that there shall be withheld a creditable income tax at the rates therein specified for each class of payee from the enumerated items of income payments to **persons residing in the Philippines**, which includes income payments for rentals and to brokers. Therefore, petitioner contends that no such withholding should be applied on income payments to petitioner's brokers who are not residing in the Philippines and rendered the brokerage services outside of the Philippines.

---

[37] Exhibits "AAAAA-9", "AAAAA-25" and "AAAAA-26", inclusive of sub-markings.
[38] Exhibit "F", p. 3.

L

Petitioner submitted Exhibits "ZZZ" and "AAAA" which are Certificates of Non-registration issued by the Securities and Exchange Commission (SEC) to Clipper Posh and Wheterby, respectively, to prove that petitioner's payments to these foreign brokers are not subject to EWT.

The ICPA then presented Exhibits "BBBBB" to "BBBBB-88" which are the documents that he was able to examine to ascertain whether said brokerage fees were indeed paid to non-resident foreign entities, as petitioner claims.

Per our investigation, we find that all of the supporting documents pertain to one local supplier only, Manik's Inc. There were no documents (*i.e.*, sales invoices, official receipts, or bank certifications) to corroborate the alleged payments to non-resident foreign brokers, Wheterby and Clipper Posh.

Meanwhile, per ICPA Report, there appeared a verified amount of ₱214,526.70 which was subjected to 2% EWT[39], pertaining to insurance costs[40]. Since it was subjected to 2% EWT, albeit under the category of "income payments to contractors" rather than "income payments made by top 10,000 corporations to local supplier of services" pursuant to Section 2.57.2(M) of RR No. 02-98, as amended, the same shall be deducted from the total assessed amount on broker's fees.

With regard to the alleged ₱1,100,196.53 broker's fees paid in the subsequent year, petitioner maintains that it was only upon payment in the subsequent year that it was able to withhold the corresponding tax and remit the same to the BIR.

However, it was noted that petitioner did not present a breakdown of the amount of ₱1,100,196.53, which the Court can trace to the 2006 Alphalist of Payees (BIR Form No. 1604-E) marked as Exhibits "AA" to "AA-2". Thus, the Court cannot ascertain the truthfulness of such claim due to lack of evidence.

---

[39] Exhibit "IIII", p. 7.
[40] Exhibit "BBBBB-49.4"

l

In fine, petitioner remains liable for deficiency 10% EWT in the amount of ₱117,847.11 on broker's fees of ₱1,178,471.06, computed as follows:

Broker's fees subject to 10% EWT per FLD	₱1,392,997.76
Less: Amount pertaining to insurance cost which was subjected 2% EWT	214,526.70
Broker's fees subject to 10% EWT, as adjusted	₱1,178,471.06
Deficiency 10% EWT on broker's fees, as adjusted	**₱117,847.11**

4. Purchase of Goods – ₱71,004,300.24

For purchase of goods, respondent's verification resulted to a deficiency EWT assessment on the following income payments:[41]

Purchases	₱6,350,321,051.29	
Less: Importation	5,732,026,825.85	
Local purchases		₱ 618,294,225.44
Other overhead		5,009,873.00
Personnel Party		258,138.41
Training		270,895.07
Canteen		61,456.07
Working clothes		1,790.00
Electricity		1,630,208.92
Water		84,347.90
Gas		6,200.00
Cars-Fuel		1,250,584.66
Small Equipment and Materials		119,963.63
Articles of Publicity		461,532.18
Sales campaigns		231,327.29
Gifts		553,837.44
Promotions		40,951.00
Sponsoring		168,752.53
Games		370,808.24
Telephone		1,371,702.84
Portable telephone		1,228,060.57
Small Office Equipment		553,272.52
Printed Papers, Docs, Books, etc.		486,460.73
Additions to Fixed Assets		56,092,567.00
Total		₱ 688,546,955.44
Less: Alpha List		617,542,655.20
Difference		**₱71,004,300.24**

[41] Exhibit "F", pp. 3 and 4.

ℒ

Out of the above-listed items in the assessment, petitioner protested some items and offered the following computation:[42]

Purchases	₱6,327,075,405.84	
Less: Importation	5,732,026,825.85	
Local purchases		₱595,048,579.99
Other overhead		5,009,873.00
Personnel Party		258,138.41
Training		81,293.33
Canteen		61,456.07
Working clothes		1,790.00
Electricity		1,215,246.08
Water		84,347.90
Gas		6,200.00
Cars-Fuel		1,250,584.66
Small Equipment and Materials		17,668.18
Articles of Publicity		255,409.09
Sales Campaigns		32,600.00
Gifts		496,037.44
Promotions		40,951.00
Sponsoring		168,752.53
Games		370,808.24
Telephone		1,371,702.84
Portable telephone		1,228,060.57
Small Office Equipment		441,288.68
Printed Papers, Docs, Books, etc.		188,720.25
Additions to Fixed Assets		34,806,090.35
Total		₱ 642,435,598.61
Less: Alpha List		617,542,655.20
Difference		**₱24,892,943.41**

It should be noted that the difference in Local Purchases per respondent's assessment (₱618,294,225.44) and Local Purchases per petitioner's recomputation (₱595,048,579.99) is ₱23,245,465.20, which is the assessed amount of LPG Purchases per FLD. We find for petitioner on this matter since the amount of ₱23,245,465.20 LPG Purchases was separately assessed, and shall be discussed hereafter.

Moreover, based on the above table, we find that petitioner has conceded to the EWT assessment on the following income payments, as these remained uncontested, and therefore the total amount of ₱9,852,665.22 shall be subject to deficiency 1% EWT:

Other overhead	₱ 5,009,873.00

[42] Exhibit "F", p. 10.

L

Personnel Party	258,138.41
Canteen	61,456.07
Working clothes	1,790.00
Water	84,347.90
Gas	6,200.00
Cars-Fuel	1,250,584.66
Promotions	40,951.00
Sponsoring	168,752.53
Games	370,808.24
Telephone	1,371,702.84
Portable telephone	1,228,060.57
TOTAL	**₱9,852,665.22**

On the other hand, the following items are being contested by petitioner:

a.	Training	₱ 270,895.07
b.	Electricity	1,630,208.92
c.	Small Equipment and Materials	119,963.63
d.	Articles of Publicity	461,532.18
e.	Sales Campaigns	231,327.29
f.	Gifts	553,837.44
g.	Small Office Equipment	553,272.52
h.	Printed Papers, Docs, Books, etc.	486,460.73
i.	Additions to Fixed Assets	56,092,567.00
TOTAL		**₱60,400,064.78**

Based on the examination and validation of the documents supporting the above accounts, the Court-commissioned ICPA recommended that the assessed amount of ₱71,004,300.24 be reduced to ₱69,082,566.65, computed as follows:[43]

Per FS/ITR/TB		₱ 688,546,955.44
Less:		
Subjected to 1% per Alphalist of Payees and BIR's FAN		617,542,655.20
Contested Amount		₱ 71,004,300.24
Less:		
Training		
Payments to General Professional Partnership	₱ 5,500.00	
One time purchase below P10,000	14,743.50	
Advances to Employees	83,577.50	
	₱ 103,821.00	
Electricity		
Payments to an exempt company	₱1,637,355.44	

[43] Exhibit "IIII", p. 20.

Small Equipment and Materials		
Advances to Employees	77,259.75	
Small Office Equipment		
Advances to Employees	45,579.95	
Printed Papers, Docs, Books, etc.		
Advances to Employees	57,717.45	1,921,733.59
Not examined/No W/tax		₱ 69,082,566.65

We shall determine the propriety of each of the above adjustments made by the ICPA totaling ₱1,921,733.59.

a. Training – ₱103,821.00

Petitioner alleges that the *Training* account consists of income payments paid to several tax-exempt organizations for seminars/trainings.

The ICPA recommended that the assessed amount of ₱270,895.07 should be reduced by ₱103,821.00 which comprised of the following:[44]

Payments to General Professional Partnership	₱ 5,500.00
One time purchases below P10,000	14,743.50
Advances to Employees	83,577.50
Total	**₱103,821.00**

Records show that the amount of ₱5,500.00 pertains to income payment made to Punongbayan & Araullo, a general professional partnership ("GPP") [45], which is exempt from income tax pursuant to Section 26 of the NIRC of 1997, as amended, and consequently from EWT pursuant to Section 2.57.5 of RR No. 02-98, as amended by RR No. 14-02, which states:

> "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

[44] Exhibit "IIII", p. 20.
[45] Exhibit "L".

(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;"

Hence, respondent's deficiency EWT assessment on the amount of ₱5,500.00 is cancelled.

As to the amount of ₱14,743.50 allegedly representing one time purchases below ₱10,000.00, the Court sustains the deficiency EWT assessment thereon. It cannot be ascertained from the records whether these alleged one-time purchases were made from non-regular suppliers. As provided for by RR No. 17-03, purchases for at least six (6) times, either in the previous year or current year, are considered purchases from regular supplier, subject to withholding tax, regardless of the amount. Therefore, without supporting document that shows petitioner's declarations of regular suppliers (*i.e.*, Semestral List of Regular Suppliers), the Court cannot assume that the one-time purchases were actually made from non-regular suppliers.

Under RR No. 17-2003, it was provided that:

> "The **withholding agent shall submit on a semestral basis a list of regular suppliers of goods and/or services** to the Large Taxpayers Assistance Division/Large Taxpayers District Office in the case of large taxpayers duly notified as such pursuant to RR 1-98, as amended, or Revenue District Office having jurisdiction over the withholding agent's principal place of business on or before July 31 or January 31 of each year." *(Emphasis supplied)*

With reference to the alleged advances to employees amounting to ₱83,577.50, the supporting documents[46] show that these pertain to payments for fire-fighting and defensive driving classes which are clearly purchases of services subject to 2% EWT under Section 2.57.2(M) of RR No. 02-98, as amended.

[46] Exhibits "CCCCC-3", "CCCCC-4", and "CCCCC-10".

h

b. Electricity – ₱1,637,355.44

Petitioner alleges that under the *Electricity* account are income payments to Peninsula Electric Cooperative ("Penelco") that is a duly registered electric cooperative with the Cooperative Development Authority, hence, exempt from income tax.

Petitioner presented BIR Ruling No. DA-371-2007[47] affirming the Tax Exemption of Penelco, which We find in order.

Moreover, examination of the ICPA report[48] reveals that petitioner paid a total amount of ₱1,637,355.44 to Penelco during the taxable year 2005, which is duly supported by journal vouchers, sales invoices and copies of checks issued by petitioner to Penelco[49]. According to the ICPA, the difference between the balance per GL amounting to ₱1,630,208.92 and the ₱1,637,355.44 total amount examined can be attributed to the audit adjustment noted in the petitioner's GL. Therefore, the Court cancels the deficiency EWT assessment on the electricity payments to Penelco. However, instead of the ICPA's recommended adjustment of ₱1,637,355.44, only the assessed amount of ₱1,630,208.92 shall be removed in computing the deficiency EWT on purchases of goods.

c. Small Equipment and Materials – ₱77,259.75
d. Small Office Equipment - ₱45,579.95
e. Printed Papers, Docs, Books, etc. - ₱57,717.45

The ICPA concluded in his report that liquidated advances to employees in the amounts of ₱77,259.75, ₱45,579.95 and ₱57,717.45 should be excluded from the assessed amounts for Small Equipment and Materials, Small Office Equipment and Printed Papers, Docs, Books, etc., respectively.

The Court disagrees with the ICPA's finding.

[47] Exhibit "BBBB".
[48] Exhibit "IIII", p. 8.
[49] Exhibits "DDDDD-1" to "DDDDD-10".

L

Records disclosed that the subject advances to employees represent reimbursements made by petitioner to its employees for purchases of goods or services made by the latter on behalf of petitioner in the ordinary course of business.

Section 2.57.3 of RR No. 02-98, as amended by RR No. 30-03, provides as follows:

> "Sec. 2.57.3. *Persons required to deduct and withhold.* –
>
> xxx xxx xxx
>
> Agents, employees or any person purchasing goods or services/paying for and in behalf of the aforesaid withholding agents shall likewise withhold in their behalf, provided that the official receipts of payment/sales invoice shall be issued in the name of the person whom the former represents and the corresponding certificate of taxes withheld (BIR Form No. 2307) shall immediately be issued upon withholding of the tax."

Clearly, from the foregoing, employees are required to withhold on income payments made by them on behalf of their employer. Since the subject reimbursements were made on purchases of goods and services and petitioner did not submit proof that such purchases were from non-regular suppliers, the Court sustains the deficiency EWT on the advances to employees in the amounts of ₱77,259.75, ₱45,579.95 and ₱57,717.45.

In sum, the deficiency 1% EWT assessment in the amount of ₱693,685.91 on purchases of goods amounting to ₱69,368,591.32 is sustained, computed as follows:

Purchases of Goods per FS/ITR/TB	₱688,546,955.44
Less:	
Subjected to 1% per Alphalist of Payees	617,542,655.20
Purchases of Goods subject to 1% EWT per FLD	₱ 71,004,300.24
Less:	
Training	
Payments to General Professional Partnership	5,500.00
Electricity	
Payments to Penelco, an exempt company	1,630,208.92
Purchases of Goods subject to 1% EWT, as adjusted	₱ 69,368,591.32

	x 1%
Deficiency 1% EWT, as adjusted	**₱ 693,685.91**

5. Other Services – ₱ 7,856,987.02

Based on the FLD, income payments recorded under the *Other Services* account per FS/ITR/Trial Balance amounting to ₱7,856,987.02 has no corresponding EWT remittance for the taxable year 2005.

The ICPA obtained the schedule of the *Other Services* account and traced the total to petitioner's GL for the year ended December 31, 2005. He also examined supporting purchase invoices, official receipts, GL vouchers and other supporting documents amounting to ₱3,809,931.84, marked as Exhibits "PPPPP-1" to "PPPPP-253", and disclosed the following results:

Advances to employees	₱ 220,973.72
Not subjected to withholding tax	129,359.31
Amortization of prepaid expenses	3,459,598.91
Total	**₱3,809,931.84**

From foregoing, there appears an unsupported amount of ₱4,047,055.18 (*i.e.*, ₱7,856,987.02 - ₱3,809,931.84).

Upon perusal, the Court noted that the amount considered as Advances to Employees consists mainly of various employee liquidations for travel and meals that are supported by expense reports, petty cash vouchers with attached invoices, tape and official receipts and parking tickets.

However, as discussed earlier, the Court upholds the deficiency EWT assessment on these expenses since there is no guarantee that they were not purchases from non-regular suppliers pursuant to Section 2.57.2(M) of RR No. 2-98, as amended.

Moreover, within the Advances to Employees, the Court found payments to Accette Insurance Brokers for life group insurance and fire insurance in the sum of ₱197,789.44. These were likewise not subjected to EWT, as they are reimbursements of the insurance premiums advanced by the broker in behalf of petitioner. However,

L

since there was no proof that the proper EWT was withheld from the insurer company pursuant to Section 2.57.2(M) of RR No. 2-98, as amended, the Court sustains the deficiency EWT assessment on this item.

Also included in the supporting documents are payments of insurance premiums to The Insular Assurance Co. which were not found in the 2005 Alphalist of Payments[50].

Therefore, the deficiency EWT assessment on the advances to employees and purchases not subject to EWT in the total amount of ₱350,333.03 (₱220,973.72 + ₱129,359.31) shall remain.

With regard to the alleged amortization of prepaid expenses in the amount of ₱3,459,598.91, the supporting documents provided were merely journal vouchers, which are not sufficient. Petitioner should have provided the original sales invoices and official receipts showing the actual prepayment to the supplier in order for the Court to determine the actual nature of the expenses and their corresponding tax implications.

Considering the foregoing, the Court upholds the entire deficiency 2% EWT assessment of ₱157,139.74 on *Other Services* for the full originally assessed amount of ₱7,856,987.02.

6. Professional Fees – ₱6,341,391.75

With regard to professional fees, respondent found a discrepancy between petitioner's trial balance accounts and alphalist in the amount of ₱6,341,391.75.

Petitioner posits that professional fees should also be reduced by the amount of income payments made to GPPs, which, as previously mentioned, are exempt from income tax pursuant to Section 26 of the NIRC of 1997, as amended.

Furthermore, petitioner alleges that expenses under the sub-account *Interim Employees* were allegedly made to temporary drivers, messengers and administrative staff while expenses under sub-

[50] Exhibit "Z-2".

L

accounts *Other contractors – utilities, Other Contractors – securities,* and *recruitment costs* were payments made for utilities, security services and newspaper advertisement cost for job opening, respectively, which were all subjected to proper rates of EWT. Petitioner asserts that all of these expenses cannot by any stretch of imagination be considered as professional fees subject to 10% EWT.

The ICPA examined supporting journal vouchers, sales invoices, official receipts and other documents (marked as Exhibits "LLLLL" to LLLLL-202"), and the results are as follows:[51]

Per FS/ITR/TB	₱ 8,718,992.06
Less: Subjected to 10% EWT per Alphalist of Payees and BIR's FAN	2,377,600.31
Contested Amount	**₱6,341,391.75**
Less:	
Subjected to 1% per Alphalist of Payees and traced to third party supporting documents	₱ 9,121.50
Subjected to 2% per Alphalist of Payees and traced to third party supporting documents	3,093,084.53
Payments to professional partnerships	158,100.00
Advances to employees	44,395.40
Total	**₱3,304,701.43**
Not examined/No Withholding Tax	**₱3,036,690.32**

Upon review of these supporting documents, the Court notes the following:

a. *<u>Subjected to 1% per Alphalist of Payees and traced to third party supporting documents – ₱9,121.50</u>*

The amount of ₱9,121.50 subjected to 1% EWT and traced to third party supporting documents, was for payment of drivers[52], therefore a purchase of service. Perusal of the supporting documents showed that the EWT withheld was actually 2%, and not 1% which is correct, and therefore, merits removal from the assessed amount of professional fees.

b. *<u>Subjected to 2% per Alphalist of Payees and traced to third party supporting documents – ₱3,093,084.53</u>*

[51] Exhibit "IIII", p. 21.
[52] Exhibit "LLLLL-172".

The expenses ₱3,093,084.53 which were subjected to 2% EWT and traced to third party supporting documents were income payments to service contractors such as maintenance and security agencies, as well as sample testing services. Upon perusal of the supporting documents, it was revealed that the following are properly supported and were properly subjected to 2% EWT:

Supplier Name	Per Supports
Berkman Systems, Inc.	₱ 38,500.00
Gervasio Security	711,809.42
Jefcor Laboratories, Inc.	53,236.36
Link Edge	363,636.36
Metropolis Management	1,035,460.88
Nico Investigation	105,000.00
Nozomi Fortune Services	31,891.76
Phil Credit Consulting	28,807.13
Roca Security	624,136.90
TOTAL	**₱2,992,478.81**

As can be gleaned from the above table, there is a discrepancy between expenses subjected to 2% EWT per ICPA and per this Court's finding in the amount of ₱100,605.72 (₱3,093,084.53 less ₱2,992,478.81). These shall be considered unaccounted for, hence, still subject to deficiency 10% EWT. On the other hand, the amount of ₱2,992,479.81 shall be taken out from the assessed amount of professional fees.

c. Payments to professional partnerships – ₱158,100.00

The amount of ₱158,100.00 represents payment to Manalo Puno Jocson & Guerzon Law Offices, a GPP as evidenced by its Amended Articles of Partnership[53], hence said income payment is exempt from EWT and must be deducted from the assessed amount.

d. Advances to employees – ₱44,395.40

The advances to employees amounting to ₱44,395.40 are reimbursable expenses subject to 2% EWT, for failing to be supported by a Semestral List of Regular Suppliers, as previously discussed.

[53] Exhibit "N".

ℒ

In sum, the Court upholds the deficiency 10% EWT assessment of ₱318,169.14 on professional fees amounting to ₱3,181,691.44, computed as follows:

Professional Fees subject to 10% EWT per FLD	₱6,341,391.75
Less: Adjustments	
Subjected to 2% per Alphalist of Payees and traced to third party supporting documents	₱ 9,121.50
Subjected to 2% per Alphalist of Payees and traced to third party supporting documents	2,992,478.81
Payments to professional partnerships	158,100.00
Total	₱3,159,700.31
Professional Fees subject to 10% EWT, as adjusted	₱3,181,691.44
Deficiency 10% EWT, as adjusted	**₱318,169.14**

Again, it is to be noted that the Court cancelled the assessment on the ₱2,992,478.81 purchase of services properly subjected to 2%, however, we shall deduct this amount from the per Alphalist column of the assessment since not doing so will give rise to the same expenses being doubly removed from the assessed amounts.

7. Rentals – ₱4,026,294.54

Petitioner contradicts respondent's assessment on rentals due to respondent's disregard of the timing difference and exemption of non-resident foreign payees. Rentals allegedly includes reimbursements/payments to foreign affiliates for rentals of properties abroad. Moreover, it is alleged that the same account also includes amortization of prepaid rentals wherein withholding taxes were remitted at the time of payment.

Meanwhile, the ICPA's examination of the supporting documents (marked as Exhibits "MMMMM" to "MMMMM-35") yielded the following results:

Subjected to 2% EWT	₱ 64,000.00
Subjected to 2% EWT but not in the Alphalist	276,315.79

L

Subjected to 5% EWT	263,157.90
Not subjected to EWT	3,800.00
Amortization of prepaid expenses	495,043.92
Net accruals of rent	3,666,668.56
Total	**₱4,768,986.17**

Upon review of these supporting documents, the Court finds that out of the amount of ₱4,768,986.17, only the income payment to Oceanic Container amounting to ₱64,000.00[54] is validly supported.

For the amortization of prepaid expenses, petitioner presented journal vouchers only, which, as previously discussed, are not sufficient. Furthermore, documents supporting the payments of ₱276,315.79 and ₱263,157.90 to Micasa Realty Holdings were also inadequate, for not clearly showing the EWT withheld thereon. The Court agrees with the ICPA's finding that the ₱3,800.00 was actually not subjected to EWT.

However, as for the accruals and reversals where the consideration of timing difference is a must, the Court finds that journal vouchers/entries are still insufficient to prove the same. The reason is that even though there is an obvious timing difference when it comes to the accrual of the rent expense and the actual payment thereof, there is no reason for petitioner to not present the supporting documents showing the eventual payment of the accrued rent in the following periods.

It must be noted that per ICPA examination, the amount as stated in the supporting documents examined is greater than the discrepancy per FAN (*i.e.*, ₱4,768,986.17 vs. ₱4,026,294.54). Nevertheless, the improperly supported amount of ₱4,704,986.17 (₱4,768,986.17 less ₱64,000.00) is still greater than the said discrepancy. Therefore, the Court upholds the deficiency EWT assessment of ₱201,314.73 on rental expenses for the full amount of ₱4,026,294.54.

Again, it is to be noted that the Court cancelled the assessment on the ₱64,000.00 purchase of services properly subjected to 2% EWT, we shall deduct this amount from the per Alphalist column of the

[54] Exhibit "MMMMM-2".

L

assessment since not doing so will give rise to the same expenses being doubly removed from the assessed amounts.

8. Interest expense on loans – ₱18,909,525.88

Petitioner argues that the bank charges are automatically debited from its bank account, thereby depriving petitioner of control over such payments. Thus, petitioner submits that the subject interest expense is not subject to withholding tax pursuant to Section 5 of RR No. 30-03 which states:

> "All income payments which are required to be subjected to withholding tax shall be subject to the corresponding withholding tax rate **to be withheld by the person having control over the payment and who, at the same time, claims the expenses.**" (*Emphasis supplied*)

However, under Section 2.57.2(M) of RR No. 02-98, as amended, and as clarified by Revenue Memorandum Circular No. 72-04[55], interest on loans, service fees, and other charges are considered as payments for services rendered, hence, subject to 2% EWT. Consequently, petitioner is liable to pay the deficiency 2% EWT imposed on interest payments of ₱18,909,525.88. It is petitioner's responsibility, as a withholding agent, to make arrangements with the creditor bank that the amount which the latter would automatically debit from petitioner's account should be net of the 2% EWT.

9. Importation Charges – ₱43,669,864.25

Based on the Details of Discrepancies[56] attached to the FLD, the breakdown of Importation Charges is as follows:

Bank Charges	₱ 6,118,836.47	a
Broker's Fee	1,649,254.23	b
Wharfage	8,961,322.61	c
Arrastre	26,940,450.94	d
Total	**₱43,669,864.25**	

[55] See Q18, A18, Q19 and A19 of RMC No. 72-04.
[56] Exhibit "E-1".

Petitioner claims that amounts recorded in the account "Importation Charges" actually represent wharfage, arrastre and bank charges paid to the Bureau of Customs (BOC), which is not subject to income tax pursuant to Section 2.57.5(A) of RR No. 02-98. Hence, the total amount of ₱43,669,864.25 should not be included as part of the deficiency EWT computation.

On the other hand, the ICPA appreciated the foregoing items as follows:

a. According to the ICPA, there were no bank charges pertaining to importations per petitioner's GL.

b. Brokerage fees paid are being charged to the Brokers account that was previously discussed.

c. Wharfage and Arrastre are paid to government agencies and therefore should not subjected to withholding taxes.[57]

Included as an attachment to Exhibit "C", which pertains to the Notice of Informal Conference presented by petitioner is the working paper of respondent entitled Comparison of Importation per BOC and & taxpayer's (TP's) schedule. Based on this document, it appears that respondent was able to vouch the importation documents and found the bank charges, wharfage and arrastre, in the amounts as reported in the FLD. On the other hand, the broker's fee of ₱1,649,254.23 is the discrepancy between the total per IEIRDs and per FS.

The Court cancels the deficiency EWT assessment on the ₱8,961,322.61 wharfage fees and ₱8,961,322.61 arrastre charges as these were paid to the BOC, which is exempt from EWT pursuant to Section 2.57.5 of RR No. 02-98, as amended, which states:

> "SECTION 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:

---

[57] Exhibit "IIII", p. 15.

c

(A) National government and its instrumentalities, including provincial, city or municipal governments;"

On the other hand, as to the bank charges and broker's fees in the respective amounts of ₱6,118,836.47 and ₱1,649,254.23, the Court sustains the deficiency EWT assessment thereon. Absent of documentary evidence, the Court cannot ascertain whether the said bank charges and broker's fees were already included in the assessed amounts for interest expense on loans and broker's fees in the respective amounts of ₱18,909,525.88 and ₱1,649,254.23.

10. Purchases of LPG – ₱23,245,465.20

The alleged discrepancy of ₱23,245,465.20 on which petitioner is being assessed of deficiency 1% EWT corresponds to an adjustment made by petitioner for an overstatement of its importation. As explained, it is petitioner's accounting practice "to record all gas importation and local purchases in the account Cost of Sales (COS). At each month-end, the inventory level is determined and any changes [are] charged to the account 'COS-Inventory Change' to properly set up the actual cost of sales for the period."

However, based on the ICPA's Report, petitioner was not able to substantiate the discrepancy found by respondent. Therefore, the Court upholds the deficiency 1% EWT assessment of ₱232,454.65 on purchases of LPG amounting to ₱23,245,465.20.

To recapitulate, petitioner is liable for basic deficiency EWT in the amount of ₱2,668,836.06, computed as follows:

	Per FS/ITR/TB	Per 1601E/Alphalist	Adjustments	Difference, As Adjusted	Rate	EWT Due
Contractor/Services	170,178,521.07	169,903,059.53		4,012,539.39	2%	80,250.79
		Less: (456,950.84)				
		(214,526.70)				
		(9,121.50)				
		(2,992,478.81)				
		(64,000.00)				
Commission	2,116,203.35			2,116,203.35	10%	211,620.34
		456,950.84		(456,950.84)	2%	(9,139.02)

Brokers	5,980,352.18	4,587,354.42		1,178,471.06	10%	117,847.11
		214,526.70				
Purchase – Goods	688,546,955.44	617,542,655.20	(5,500.00)	69,368,591.32	1%	693,685.91
			(1,630,208.92)			
Other services	7,856,987.02	-		7,856,987.02	2%	157,139.74
Professional Fees	8,718,992.06	2,377,600.31	(158,100.00)	3,181,691.44	10%	318,169.14
		9,121.50				
		2,992,478.81				
Rentals	9,415,302.65	5,389,008.11		4,026,294.54	5%	201,314.73
Interest expense on loans	18,909,525.88	-		18,909,525.88	2%	378,190.52
Importation Charges						
Bank charges	6,118,836.47	-		6,118,836.47	2%	122,376.73
Brokers Fee	1,649,254.23	-		1,649,254.23	10%	164,925.42
Wharfage	8,961,322.61	-	(8,961,322.61)	0.00	2%	0.00
Arrastre	26,940,450.94	-	(26,940,450.94)	0.00	2%	0.00
LPG Purchases	6,350,321,051.29	6,327,075,586.09		23,245,465.20	1%	232,454.65
Total	**7,305,713,755.19**	**7,126,811,263.66**	**(34,107,964.63)**	**141,206,909.06**		**2,668,836.06**

II. Deficiency FBT – ₱14,296,286.88

Respondent assessed petitioner for basic deficiency FBT on income payments not subjected to FBT and unpaid FBT amounting to ₱9,501,564.07, which is broken down in the FLD and Details of Discrepancies[58], as follows:

Total Monetary Value of Fringe Benefit not subjected to FBT	₱ 18,988,960.02
Grossed up MV (68%)	27,924,941.21
Tax Rate	32%
Basic Def. FBT Due	8,935,981.19
Add: Unpaid FBT (ITR vs. 1603)	565,582.88
Total Basic Def. FBT Due	**₱9,501,564.07**

1. Income payments not subjected to FBT – ₱18,988,960.02

The monetary value of fringe benefits not subjected to FBT was determined by respondent as follows:

Income payments not subjected to FBT (₱ 8,395,981.19)

[58] Exhibit "E-1".

Rest-Hotel abroad	₱ 1,147,740.15
Travel Cost	7,410,238.17
Membership & Duties	10,430,981.70
Total	**₱18,988,960.02**
Grossed up (68%)	27,924,941.21
Deficiency FBT (32%)	**₱ 8,935,981.19**

Taxation of fringe benefits is covered by Section 33 of the NIRC of 1997, as amended, which states:

> "SEC. 33. *Special Treatment of Fringe Benefit.* –
>
> (A) *Imposition of Tax.* – A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation **(unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer).** The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57(A) of this Code. The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: *Provided, however,* That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: Provided, further, That the grossed-up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D) and (E) of Section 25." (*Emphasis supplied*)

L

Relative thereto, Section 2.33 of RR No. 03-98, as amended, provides as follows:

> "SEC. 2.33. *Special Treatment of Fringe Benefits.* –
>
> (A) *Imposition of Fringe Benefits Tax.* – A final withholding tax is hereby imposed on the grossed-up monetary value of fringe benefit furnished, granted, or paid by the employer to the employee, except rank and file employees as defined by the Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities **except when: (1) the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer**. The fringe benefit tax shall be imposed at the following rates: xxx" (*Emphasis supplied*)

Petitioner explains that some of the expenses included in respondent's computation are not fringe benefits given to non-rank-and-file employees but instead are ordinary and necessary business expenses.

The accounts *Rest Hotel – Abroad* and *Travel Cost* are allegedly not subject to fringe benefits tax as these are legitimate business expenses incurred for the purposes of attending business meeting or conferences abroad, activities which are necessary in the conduct of petitioner's business.

On the other hand, the account *Membership and Subscription* allegedly shows that petitioner incurred fees in several organizations to which it is a member. However, petitioner avers that the membership dues to these organizations listed under the account were incorrectly considered as fringe benefits. Petitioner further states that memberships to the organizations under the said account are corporate memberships, made in the name of petitioner, and for the benefit of petitioner as a corporate entity, and certainly not for particular employees. Petitioner enumerates the following instances:

L

a. Membership with LPG Industry Association Inc.[59], New Petroleum Association[60], and Philippine Institute of Petroleum Companies[61], all of which are organizations designed for the protection of and oil and gas-related member-companies and the oil and gas industry as a whole.

b. Petitioner's payment of membership dues to Commerce Condominium Corporation[62] is a result of its Contract of Lease mandating the payment of membership dues to the condo corp, which owns the common areas of the building where petitioner rents its office space.

Section 33(B) of the NIRC of 1997, as amended, defines Fringe Benefits as follows:

"(B) *Fringe Benefit Defined.* – For purposes of this Section, the term '*fringe benefit*' means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees as defined herein) such as, but not limited to, the following:

(1) Housing;
(2) Expense account;
(3) Vehicle of any kind;
(4) Household personnel, such as maid, driver and others;
(5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
(6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
(7) Expenses for foreign travel;
(8) Holiday and vacation expenses;
(9) Educational assistance to the employee or his dependents; and

---

[59] Exhibit "S".
[60] Exhibit "ZZZZ".
[61] Exhibit "T".
[62] Lease Contract, Exhibit "DDDD".

L

(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows." *(Emphasis supplied)*

On the other hand, ordinary and necessary business expenses allowed as deductions under Section 34(A)(1) of the same Code are defined as follows:

"(A) *Expenses.* –

(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –

(a) *In General.* – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

(i) A reasonable allowance for salaries, wages, and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of fringe benefit furnished or granted by the employer to the employee: Provided, That the final tax imposed under Section 33 hereof has been paid;

(ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession;

(iii) A reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user or possessor;

(iv) A reasonable allowance for entertainment, amusement and recreation expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or

l

profession of the taxpayer, or that are directly related to or in furtherance of the conduct of his or its trade, business or exercise of a profession not to exceed such ceilings as the Secretary of Finance may, by rules and regulations prescribe, upon recommendation of the Commissioner, taking into account the needs as well as the special circumstances, nature and character of the industry, trade, business, or profession of the taxpayer: Provided, That any expense incurred for entertainment, amusement or recreation that is contrary to law, morals public policy or public order shall in no case be allowed as a deduction.

(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the **taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.**" (*Emphasis supplied*)

Moreover, in the Supreme Court case of *H. Tambunting Shop vs. Commissioner of Internal Revenue*[63], it was held that:

"The requisites for the deductibility of ordinary and necessary trade or business expenses, like those paid for security and janitorial services, management and professional fees, and rental expenses, are that: (a) the expenses must be ordinary and necessary; (b) they must have been paid or incurred during the taxable year; (c) they must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) they must be supported by receipts, records or other pertinent papers.

xxx xxx xxx

Among the expenses allegedly incurred, courts may consider only those supported by credible evidence and

[63] G.R. No. 173373, July 29, 2013.

which appear to have been genuinely incurred in connection with the trade or business of the taxpayer."[64]

In light of the foregoing, in order for petitioner's expenses to be considered ordinary and necessary business expenses instead of fringe benefits provided to non-rank-and-file employees, petitioner must be able to prove, through clear evidence, that there is a direct connection between the incurred expenses and the trade or business of petitioner.

The results of the ICPA's verification procedures, are shown as follows:[65]

Rest Hotel – abroad	₱ 1,218,293.09	
Less:		
Subjected to FBT per FAN	70,552.94	
Verified as valid business travels	915,758.40	₱ 231,981.75
Membership & Subscription	₱ 11,878,118.82	
Less:		
Subjected to FBT per FAN	1,447,137.12	10,430,981.70
Travel Cost	₱ 7,410,238.17	
Less:		
Subjected to FBT per FAN	-	
Verified as valid travel costs not subject to FBT	5,591,106.28	1,819,131.89
Total		12,482,095.34
Grossed up MV (Total divided by 68%)		18,356,022.56
Tax rate		32%
Basic deficiency FBT due		**₱5,873,927.22**

Verified business travels in the amount of ₱915,758.40 lodged under the account *Rest Hotel –Abroad* are supported by expense reports and different proofs of payment such as invoices and official receipts. However, as earlier discussed, petitioner should establish the fact that these expenses were incurred in connection with petitioner's business, which it failed to do. The Court did not find any proof that the travels done abroad were business-related, such as certificates of attendance to a conference abroad, or copy of the minutes of a meeting abroad.

---

[64] Citations removed.
[65] Exhibit "IIII", p. 21.

On the other hand, upon perusal of the supporting documents for the amount of ₱5,591,106.28 lodged under the *Travel Cost* account, the Court found that this is composed primarily of transportation expenses corroborated by expense reports. The following expense reports are accompanied by receipts, invoices, tickets, and a document wherein the kind of work completed by the employee was indicated (*i.e.*, Sales Invoice Countering, Collection, Check Deposit, Pick-up Document/Invoice, Others), which is then signed off by the client. The Court finds that the same are sufficient to prove that the following expenses were incurred in connection to petitioner's business:

Document No.	Amount	Reference
PPPI-106662	₱ 849.00	OOOOO-20
PPPI-106750	655.00	OOOOO-21
PPPI-106827	803.50	OOOOO-22
PPPI-106882	810.50	OOOOO-23
PPPI-107053	841.50	OOOOO-24
PPPI-107076	761.50	OOOOO-25
PPPI-107177	888.75	OOOOO-26
PPPI-107318	806.50	OOOOO-27
PPPI-107534	695.25	OOOOO-28
PPPI-107560	583.25	OOOOO-29
PPPI-107610	575.00	OOOOO-30
PPPI-107676	527.75	OOOOO-31
PPPI-107782	734.00	OOOOO-32
PPPI-107880	473.75	OOOOO-33
PPPI-107913	907.50	OOOOO-34
PPPI-108033	606.25	OOOOO-35
TOTAL	**₱11,519.00**	

However, other supporting documents do not have attachments wherein the kind of work rendered is indicated and confirmed by the client, hence, failed to prove that the expenses are related to petitioner's trade or business. The expense reports only show the kind of expense, where the same was incurred and with whom (such as meeting with clients), but not whether the purpose is actually business-related. Consequently, the assessment on these expenses is upheld.

Meanwhile, as for the *Membership and Duties* account amounting to ₱10,430,981.70, while petitioner presented the Articles of Incorporation ("AOI") of the above-cited associations, it did not present documents evidencing its payment of membership and condo dues. Therefore, there is no way for the Court to ascertain the correctness of the amount claimed as membership dues not subject to FBT. Moreover, even the ICPA was not able to examine any supporting document for the *Membership and Duties* account.

In light of the foregoing, the Court upholds the deficiency FBT assessment of ₱8,930,560.48 on inadequately supported employee expenses, computed as follows:

Rest-Hotel abroad	₱ 1,147,740.15
Travel Cost	7,410,238.17
Membership & Duties	10,430,981.70
Total	**₱18,988,960.02**
Less: Expenses not subject to FBT per Court's verification	11,519.00
	₱ 18,977,441.02
Grossed up (68%)	27,908,001.50
Deficiency FBT (32%)	**₱ 8,930,560.48**

2. Unpaid FBT – ₱565,582.88

Based on the FAN, respondent found a discrepancy between the FBT claimed per ITR for the taxable year 2005 and the Total FBT paid per BIR Forms 1603, hence:

Unpaid FBT (₱ 565,582.88)	
Total FBT claimed per ITR	₱2,596,284.34
Total FBT per 1603 returns	2,030,701.46
Unpaid FBT	**₱565,582.88**

Since petitioner did not contest this issue, the Court is constrained to uphold the assessment on unpaid FBT amounting to ₱565,582.88.

In sum, petitioner is liable for a total amount of ₱9,496,143.36 basic deficiency FBT for TY 2005, computed as follows:

Total Monetary Value of Fringe Benefit not subjected to FBT	₱ 18,988,960.02
Less: Expenses not subject to FBT per Court's verification	11,519.00
Total Monetary Value of Fringe Benefit not subjected to FBT, as adjusted	₱ 18,977,441.02
Grossed up MV (68%)	₱ 27,908,001.50
Tax Rate	32%
Basic Deficiency FBT Due	₱ **8,930,560.48**
Add: Unpaid FBT (ITR vs. 1603)	565,582.88

L

Total Basic Deficiency FBT Due	**₱ 9,496,143.36**

III. COMPROMISE PENALTIES – ₱95,000.00

Respondent imposed compromise penalties on petitioner's deficiency EWT and FBT in the respective amounts of ₱45,000.00 and ₱50,000.00.[66]

Pursuant to RMO No. 01-90, 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 a 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 in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[67] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[68]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency WTC, EWT and FBT assessments issued by respondent against petitioner covering the period January 1, 2005 to December 31, 2005 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **EIGHTY-FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND THIRTY PESOS AND TWENTY-SEVEN CENTAVOS (₱84,715,030.27)** inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows

	WTC	EWT	FBT	TOTAL
Basic Tax Due	₱ 2,366,836.98	₱ 2,668,836.06	₱ 9,496,143.36	₱ 14,531,816.40
25% Surcharge	591,709.25	667,209.02	2,374,035.84	3,632,954.10

[66] Exhibit "E".
[67] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[68] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

L

20% Deficiency Interest				
from 01/12/06 to 07/01/10				
[₱2,366,836.98 x 20% x 1631/365 days]	2,115,238.97			2,115,238.97
from 01/12/06 to 06/30/08				
[₱2,668,836.06 x 20% x 900/365 days]		1,316,138.33		1,316,138.33
from 01/25/06 to 06/30/08				
[₱9,496,143.36 x 20% x 887/365 days]			4,615,385.84	4,615,385.84
Total Amount Due ,06/30/08 and 07/1/10	**₱5,073,785.19**	**₱ 4,652,183.41**	**₱16,485,565.04**	**₱26,211,533.64**
20% Deficiency Interest				-
from 07/2/10 to 12/14/12				-
[₱2,366,836.98 x 20% x 897/365 days]	1,163,316.59			1,163,316.59
from 07/01/08 to 12/31/17				-
[₱2,668,836.06 x 20% x 3471/365 days]		5,075,906.83		5,075,906.83
[₱9,496,143.36 x 20% x 3471/365 days]			18,060,884.17	18,060,884.17
20% Delinquency Interest				-
from 07/1/10 to 12/14/12				-
[₱5,073,785.19 x 20% x 897/365 days]	2,493,800.17			2,493,800.1
from 07/1/08 to 12/31/17				-
[₱4,652,183.41 x 20% x 3471/365 days]		8,848,070.47		8,848,070.47
[₱16,485,565.04 x 20% x 3471/365 days]			31,354,189.73	31,354,189.73
Total Amount Due, 12/14/12 and 12/31/17	₱ 8,730,901.95	₱ 18,576,160.70	₱ 65,900,638.94	₱ 93,207,701.59
Less: Payment made on 12/14/12	8,492,671.32			8,492,671.32
Amount Still Due, 12/14/12 and 12/31/17	**₱ 238,230.63**	**₱18,576,160.70**	**₱65,900,638.94**	**₱84,715,030.27**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due of ₱17,718,862.32[69] as of June 30, 2008 and July 1, 2010, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

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

[69] Total Amount Due of ₱26,211,533.64 less Payment made of ₱8,492,671.32.

I CONCUR:

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Special Second Division