REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TYC TRADING & MANUFACTURING PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2973
(CTA Case No. 10247)

Members:

RINGPIS-LIBAN, *PJ,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

FEB 03 2026 3:55 p.m.

x - x

DECISION

***MODESTO-SAN PEDRO, J.*:**

Before the Court *En Banc* is a *Petition for Review* under *Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals ("RRCTA")* on the Decision of the Special First Division of the Court of Tax Appeals ("CTA") dated April 18, 2024 ("Assailed Decision") in CTA Case No. 10247 entitled *TYC Trading & Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue*, and its Resolution dated August 5, 2024 ("Assailed Resolution") denying herein petitioner's Motion for Partial Reconsideration on the Assailed Decision, as follows:

Decision dated April 18, 2024:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2015 covering the deficiency VAT and

WTC are **CANCELLED** and **SET ASIDE**, while the assessments for deficiency **Income Tax** and **EWT** are **UPHELD**, but with modification.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱1,686,035.63**, representing deficiency **Income Tax** and **EWT** for TY 2015, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the 1997 NIRC, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion ("TRAIN") Law, respectively, computed until January 21, 2019, as shown below:

	Income Tax	**EWT**	**Total**
Basic deficiency tax	₱ 955,090.80	₱ 24,802.44	₱ 979,893.24
Add: Surcharge (25%)	238,772.70	6,200.61	244,973.31
Deficiency interest on:			
Income Tax			
20% from Apr. 16, 2016 to Dec. 31, 2017	327,085.89		327,085.89
(₱955,090.80 x 20% x 625/365 days)			
12% from Jan. 1, 2018 to Jan. 21, 2019			
(₱955,090.80 x 20% x 386/365 days)	121,204.95		121,204.95
EWT			
20% from Jan. 16, 2016 to Dec. 31, 2017			
(₱24,802.44 x 20% x 716/365 days)		9,730.71	9,730.71
12% from Jan. 1, 2018 to Jan. 21, 2019			-
(₱24,802.44 x 20% x 386/365 days)		3,147.53	3,147.53
Total deficiency tax due as of Jan. 21, 2019	**₱1,642,154.34**	**₱ 43,881.29**	**₱1,686,035.63**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱1,686,035.63** as of January 21, 2019, as determined above, or equivalent to ₱554.31 per day, computed from January 22, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963, also known as TRAIN Law, as implemented by RR No. 21-2018.

SO ORDERED.

Resolution dated August 5, 2024:

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration (of the Decision dated 18 April 2024)* is hereby **DENIED**.

SO ORDERED.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR") vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve, and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[1]

Respondent TYC Trading & Manufacturing Philippines, Inc. is a domestic corporation duly registered with the Bureau of Internal Revenue ("BIR") with Taxpayer Identification No. ("TIN") 236-370-679-000 and office address at Unit 16, G/F Prime Center, Prime cor. Enterprise St., Madrigal Business Park, Ayala Alabang, Muntinlupa City.[2]

The Facts

The following relevant facts were culled from the Assailed Decision:

> On November 10, 2016, a Letter of Authority ("LOA") (SN: eLA201200035094) was issued authorizing Revenue Officer ("RO") Abdul Bashit Busran and Group Supervisor Aurora Balisacan of Revenue District Office (RDO) No. 53B - Muntinlupa City, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2015 to December 31, 2015.
>
> Later, an undated Notice of Informal Conference ("NIC") was issued to and received by petitioner on July 4, 2018. Subsequently, the Preliminary Assessment Notice ("PAN") dated November 19, 2018 with attached Details of Discrepancies was issued and received by petitioner on November 27, 2018.
>
> On December 28, 2018, respondent served and petitioner received the Formal Assessment Notice ("FAN") dated December 21, 2018, finding petitioner liable for deficiency income tax, VAT, EWT and WTC for TY 2015, detailed as follows:

Tax Type	Basic	20% Interest	12% Interest	Total
Income Tax	₱ 7,647,381.60	₱2,618,966.30	₱1,066,024.04	₱11,332,371.94
VAT	5,084,008.28	1,966,745.12	708,696.82	7,759,450.22
EWT	94,340.82	37,012.62	13,150.85	144,504.29
WTC	40,364.34	15,836.09	5,626.68	61,827.11
TOTAL	**₱12,866,095.04**	**₱4,638,560.13**	**₱1,793,498.39**	**₱19,298,153.56**

> On January 17, 2019, petitioner timely filed a Letter Protest/request for reinvestigation with the BIR dated January 14, 2019 relative to said FAN.
>
> In reply thereto, Regional Director Glen A. Geraldina granted petitioner's request for reinvestigation, through the letter dated February 11, 2019, stating therein that the necessary documents to support its claim and/or defenses shall have to be submitted to RDO No. 53B within sixty (60) days from the date of filing of the protest, pursuant to Section 3.1.5 of Revenue Regulations ("RR") No. 12-99, as amended by RR No. 18-2013.

[1] Assailed Decision, p. 2.
[2] *Id.* at 1.

On December 20, 2019, respondent served and petitioner received the FDDA dated December 17, 2019, finding petitioner liable for deficiency income tax, VAT, EWT and WTC for TY 2015, as follows:

Tax Type	Basic	20% Interest	12% Interest	Total
Income Tax	₱ 7,647,381.60	₱2,618,966.30	₱2,526,778.69	₱12,793,126.59
VAT	5,084,008.27	1,966,745.12	1,236,876.53	8,287,629.92
EWT	94,340.82	37,012.62	22,951.96	154,305.40
WTC	40,364.34	15,836.09	9,820.15	66,020.58
TOTAL	**₱12,866,095.03**	**₱4,638,560.13**	**₱3,796,427.33**	**₱21,301,082.49**

Unsatisfied with the findings contained in the FDDA, petitioner filed its Petition for Review with the Court on January 17, 2020.

On April 18, 2024, CTA's Special First Division promulgated the Assailed Decision, to which petitioner filed his Motion for Partial Reconsideration ("Motion") on May 10, 2024.

Thereafter, the Assailed Resolution denying petitioner's Motion was rendered on August 5, 2024.

Petitioner then filed its Motion for Extension of Time to File Petition for Review before this Court on August 20, 2024,[3] and the case was docketed as CTA *EB* No. 2973.

In the Minute Resolution dated August 27, 2024,[4] the Court, subject to the condition that the motion for extension was filed on time, granted petitioner a final and non-extendible period of 15 days from August 24, 2024, or until September 8, 2024, within which to file his Petition for Review.

On September 6, 2024, petitioner filed his *Petition for Review*,[5] while respondent filed its Comment/Opposition (Re: CIR's Petition for Review) on November 25, 2024.[6]

In a Minute Resolution dated December 13, 2024, this Court referred the present case to the Philippine Mediation Center – CTA ("PMC-CTA") for mediation of the parties. However, on January 8, 2025, the PMC-CTA reported that the parties decided to not have their case mediated.[7]

Thus, in a Minute Resolution dated January 22, 2025, this case was submitted for decision.

r

---

[3] *Rollo*, pp. 1-3.
[4] *Id.* at 5.
[5] *Id.* at 15 to 34.
[6] *Id.* at 89 to 107.
[7] *Id.* at 108.

The Assigned Error

Petitioner raises the following issue before this Court:

> The Honorable Special First Division of the CTA erred in partially granting respondent's Petition for Review and in ordering petitioner to cancel and set aside deficiency tax assessment against respondent for Value-Added Tax (VAT) and Withholding Tax on Compensation (WTC) and upholding only in part the deficiency tax assessment for Income Tax (IT) and Expanded Withholding Tax (EWT) for taxable year 2015.[8]

Arguments of the Parties

Petitioner's arguments:

Petitioner argues that the Court's Special First Division's findings, which led to the cancellation of deficiency VAT and WTC and a significantly reduced amount of aggregate deficiency income tax and EWT, were erroneous. In particular:

1.) Respondent's evidence to substantiate its alleged payments to general professional partnerships ("GPPs") are insufficient to warrant non-withholding on its income payments;

2.) The Independent Certified Public Accountant's ("ICPA") finding that respondent had no deficiency WTC is erroneous as she did not consider the salaries and wages as reported in respondent's income tax return ("ITR");

3.) Respondent's purchases from Manila Hemp Trading Corporation ("Manila Hemp") and Catanduanes Agro-Business and Development Corporation ("Catanduanes Agro") were not properly substantiated in accordance with *Section 34(A)(1)(b)*, in relation to *Section 237*, of the *National Internal Revenue Code, as amended*, ("the *Tax Code*");

4.) The net operating loss carry over ("NOLCO") and minimum corporate income tax ("MCIT") should be disallowed as respondent's operations for the taxable year ("TY") 2015 did not result with a loss and that it is liable for regular income tax and not MCIT. Hence, respondent should not carry forward any benefit from the same in the succeeding years; and

5.) Respondent had sales not subject to VAT and failed to prove that the same are zero-rated sales.

---

[8] *Id.* at 18.

Lastly, petitioner insists that the extraordinary period of 10 years should be applied in the assessment of respondent's deficiency VAT, EWT, and WTC for TY 2015 since there is a presumption of falsity when respondent underdeclared more than 30% of receipts subject to VAT and that it failed to withhold corresponding EWT and WTC and that petitioner need not present further evidence on the matter.

Respondent's arguments:

Respondent counters that petitioner's arguments in the present Petition are mere rehash of his arguments already raised and sufficiently passed upon by the Court *a quo*. In particular, respondent argues that:

1.) The particular issues raised on the propriety of the substantiation of its purchases from Manila Hemp and Catanduanes Agro were belatedly raised on petitioner's Motion for Partial Reconsideration and was never stated in the FAN and FDDA;

2.) It is not liable for: a.) deficiency income tax and EWT arising from its income payment to GPPs; b.) deficiency WTC; and c.) deficiency VAT arising from its zero-rated sales as found and discussed in detail by the Cour *a quo*;

3.) The Court *a quo* already upheld the disallowances of respondent's NOLCO and MCIT, yet petitioner still raised it in his Petition before the Court *En Banc*; and

4.) Petitioner's right to assess respondent already prescribed since only the three-year period to assess applies in its case.

Our Ruling

The *Petition for Review* must be denied.

The Court En Banc has jurisdiction over the Petition

Rule 4, Section 2(a)(1) of the Revised Rules of the Court of Tax Appeals[9] ("*RRCTA*") provides that the Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies (*i.e.* the Bureau of Internal Revenue), thus: ✓

---

[9] A.M. No. 05-11-07-CTA, November 22, 2005.

> SECTION 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

In relation thereto, *Rule 8, Section 1 of RRCTA* provides that in cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

On the other hand, *Section 3(b)* of the same provides that:

> SECTION 3. *Who May Appeal; Period to File Petition.* —
>
> . . . .
>
> (b) a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

As such, in order for this Court to acquire jurisdiction in the instant case, the petition for review by the aggrieved party must be filed before the Court *En Banc* within 15 days from the date of receipt of the Court in Division's resolution on the party's timely motion for reconsideration or new trial on the decision of said Court acting in division. However, said 15-day period to file petition for review before the Court *En Banc* may be extended by a period not exceeding 15 days from the expiration of the original period within which to file the petition for review.

In this case, petitioner received the Assailed Resolution on his timely filed Motion for Partial Reconsideration on August 9, 2024,[10] giving him until August 24, 2024 to file a petition for review before this Court.

[10] *Id.* at 78.

Petitioner then filed a Motion for Extension of Time to File Petition for Review on August 20, 2024,[11] in order to avail of the additional 15 days from the expiration of the original 15-day period to file the petition for review. This was granted by this Court on August 27, 2024,[12] giving petitioner until September 8, 2024 to file his petition for review.

Petitioner filed his Petition for Review on September 6, 2024 via registered mail, which was received by the Court on September 12, 2024.[13] Thus, this Court acquired jurisdiction over the same.

Petitioner's right to assess respondent for deficiency VAT for the 1st to 3rd quarters and EWT and WTC from January to November of TY 2015 has already prescribed

Petitioner insists that his right to assess respondent for deficiency VAT, EWT, and WTC for TY 2015 had not yet prescribed when he issued the FAN on December 21, 2018 considering that the period to assess respondent should be ten years under *Section 222 of the Tax Code* because respondent substantially underdeclared its sales in its VAT returns and failed to withhold taxes from its substantial expenses and compensation.

Citing *Commissioner of Internal Revenue vs. Asalus Corporation*[14] ("*Asalus*"), petitioner argues that when there is a showing that a taxpayer has substantially underdeclared its sales, receipt, or income, there is a presumption that it has filed a false return and that the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

There is partial merit in petitioner's argument but, nevertheless, the extraordinary 10-year period to assess still does not apply in this case.

Section 222 of the Tax Code provides that:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a *false* or fraudulent return with intent to evade tax or of *failure to file* a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission:

[11] *Id.* at 1 to 3.
[12] Minute Resolution dated August 27, 2024, *Id.* at 5.
[13] *Id.* at 15.
[14] G.R. No. 221590, February 22, 2017.

> Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
> (Italics, Ours.)

In the Assailed Decision, the Court in Division ruled in this wise as to the inapplicability of *Section 222 of the Tax Code* in respondent's case:

> For assessments issued beyond the three (3)-year period, *where fraud is being invoked*, the factual basis must also be stated and communicated to the taxpayer. Otherwise stated, to avail of the extraordinary period of assessment in Section 222(a) of the 1997 NIRC, as amended, the CIR should show that the facts *upon which the fraud is based* is communicated to the taxpayer. It is incumbent upon the CIR to clearly state the *allegations of fraud* committed by the taxpayer to serve the purpose of an assessment notice to aid the taxpayer in filing an effective protest. It is indispensable for the CIR to include the basis for its *allegations of fraud* in the assessment notice.
> (Italics, Ours.)

In ruling so, the Court in Division cited *Commissioner of Internal Revenue v. Spouses Magaan*[15] and *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[16]

However, We find these rulings inapplicable in this case as both cases pertain to *allegations of fraud* in assessing the taxpayers. This is in contrast with this case where petitioner *alleges presumption of falsity of returns* upon finding that more than 30% of respondent's receipts were not subjected to VAT or not properly reported as sales in the quarterly VAT returns and that there were items of deductions that respondent failed to withhold the corresponding EWT and WTC.

Instead, We find *Asalus* more applicable here, as correctly invoked by petitioner, which was the prevailing jurisprudence on falsity at the time the FAN was issued on December 21, 2018.

In *Asalus*, the Supreme Court pointed out three matters which led to its ruling that the extraordinary period of 10 years under *Section 222(a) of the Tax Code* on allegations of falsity in returns applicable in that case: 1.) there is *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income; 2.) the CIR need not present further evidence as the presumption of falsity of the returns was not overcome; and 3.) Asalus was sufficiently informed that with respect to its tax liability, the extraordinary period would apply. Thus:

[15] G.R. No. 232663, May 3, 2021.
[16] G.R. No. 215957, November 9, 2016.

Presumption of Falsity of Returns

In the present case, the CTA opined that the CIR failed to substantiate with clear and convincing evidence its claim that Asalus filed a false return. As it noted that the CIR never presented any evidence to prove the falsity in the returns that Asalus filed, the CTA ruled that the assessment was subject to the three (3)-year ordinary prescriptive period.

The Court is of a different view.

Under Section 248 (B) of the NIRC, there is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.

Hence, *the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC.* To require the CIR to present additional evidence in spite of the presumption provided in Section 248 (B) of the NIRC would render the said provision inutile.

Substantial Compliance of Notice Requirement

The CTA also posited that the ordinary prescriptive period of three (3) years applied in this case because there was no mention in the FAN or the FDDA that what would apply was the extraordinary prescriptive period and that the CIR did not present any evidence to support its claim of false returns.

Again, the Court disagrees.

It is true that neither the FAN nor the FDDA explicitly stated that the applicable prescriptive period was the ten (10)-year period set in Section 222 of the NIRC. They, however, made reference to the PAN, which categorically stated that "[t]he running of the three-year statute of limitation as provided under Section 203 of the 1997 National Internal Revenue Code (NIRC) is not applicable xxx but rather to the ten (10)-year prescriptive period pursuant to Section 222 (A) of the tax code xxx." In *Samar-I Electric Cooperative v. CIR*, the Court ruled that it sufficed that the taxpayer was substantially informed of the legal and factual bases of the assessment enabling him to file an effective protest, to wit:

> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated.

Thus, *substantial compliance with the requirement as laid down under Section 228 of the NIRC suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment. In the case at bench, Asalus was sufficiently informed that with respect to its tax liability, the extraordinary period laid down in Section 222 of the NIRC would apply. This was categorically stated in the PAN and all subsequent communications from the CIR made reference to the PAN. Asalus was eventually able to file a protest addressing the issue on prescription, although it was done only in its supplemental protest to the FAN.*

Considering the existing circumstances, the assessment was timely made because the applicable prescriptive period was the ten (10)-year prescriptive period under Section 222 of the NIRC. To reiterate, there was a prima facie showing that the returns filed by Asalus were false, which it failed to controvert. Also, it was adequately informed that it was being assessed within the extraordinary prescriptive period.

(Italics, Ours. Citations and emphases omitted.)

Guided by the foregoing, We find that while there indeed was a presumption of falsity on respondent's returns, this was nevertheless overcome by respondent's evidence as found by the Court in Division, which was not satisfactorily rebutted by petitioner during trial. As can be confirmed from the Assailed Decision:

> Upon review of the supporting documents, the Court finds that petitioner had direct export sales in TY 2015 to Yamamoto-Tomo Menko, Ltd. with office address located in 5-3-3 Soto-Kanda, Chiyoda-Ku, Tokyo

> Japan amounting to ₱66,351,051.41 which are properly and adequately supported by commercial invoices and ORs that are compliant with the invoicing requirements under Section 113 of the 1997 NIRC, as amended, as well as the related Bills of Lading. . . .
>
> . . . .
>
> Furthermore, the export sales were paid for in US Dollars as evidenced by Passbooks, Application and Declaration for Remittance, Bank Certification and Debit Memo. Moreover, the above aggregate sales figure is the same as the sales amount reflected in the Sales Schedule and the Audited Financial Statements.
>
> Notably, petitioner was able to prove that its sales per ITR pertain to export sales subject to zero-rating, thus respondent's deficiency VAT assessment thereon should be cancelled.

Lastly, petitioner indeed failed to sufficiently inform respondent on his basis in applying *Section 222(a) of Tax Code* in its case. A review of the PAN, FAN, and FDDA shows that they never mentioned any allegation of falsity nor any statement of applicability of the 10-year extraordinary period. Apparently, there was no compliance on notice at all in this case. This is in contrast with *Asalus*, where there was a categorical statement of the applicability of the extraordinary period in the PAN, thereby ruling that there was substantial compliance on notice therein.

As such, while We find error in the Court in Division's jurisprudential basis in ruling out the applicability of *Section 222(a) of Tax Code* in this case, We nevertheless find that petitioner failed to prove its applicability after testing it against the guidelines set in *Asalus*. Verily, petitioner only had three years to assess respondent, and in his failure to do so, his right to assess respondent's EWT and WTC returns for the periods January to November 2015 and VAT returns for the 1st to 3rd quarters of TY 2015 already prescribed.

Respondent's income payments to GPPs are not subject to withholding tax

Petitioner insists that respondent's income payments to L.A. De Jesus and Associates, CPA ("De Jesus") and Jimenez Gonzales Bello Valdez Caluya & Fernandez ("Jimenez") are subject to EWT since it failed to submit evidence to prove that both are GPPs. In particular, petitioner asserts that the Articles of Partnership presented were either not in the name of the payee or the issuer of the official receipts ("ORs") and/or the Articles of Partnership was issued after the date of purchase of respondent in the year 2015.

We find this untenable.

While, indeed, the GPP name in the Articles of Partnership of De Jesus and Jimenez are different from the GPP name in their respective ORs, a review of all documents submitted by respondent during trial nevertheless shows that De Jesus and Jimenez were sufficiently proven to be GPPs.

With respect to De Jesus, its Articles of Partnership[17] and issued ORs[18] reflect the same TIN 008-398-939. To this Court's mind, this should already satisfactorily prove that De Jesus is a GPP since as a taxpayer, it can only secure one TIN even if it changes its registered name. This is in accordance with *Section 236 of the Tax Code*, which states:

> SEC. 236. *Registration Requirements.* –
>
> . . . .
>
> *Only one Taxpayer Identification Number shall be assigned to a taxpayer.* Any person who shall secure more than one Taxpayer Identification Number shall be criminally liable under the provision of Section 275 on "Violation of Other Provisions of this Code or Regulations in General".
>
> (Italics, Ours.)

Thus, despite the discrepancy in the GPP names per Articles of Partnership and ORs, it can still be sufficiently concluded that they both pertain to De Jesus as both documents bear the same TIN.

With respect to Jimenez, in addition to its Articles of Partnership with Registration No. P000015845[19] and issued ORs,[20] respondent also submitted BIR Ruling No. DA-(C059) 197-08 dated September 5, 2008[21] issued to Jimenez which indicates its Securities and Exchange Commission ("SEC") Registration No. P-15845, consistent with the registration number in its Articles of Partnership. Of these three documents, it is the BIR Ruling and issued ORs which reflect the same name of Jimenez. Nevertheless, all these documents are traceable to Jimenez.

Verily, respondent sufficiently proved that De Jesus and Jimenez are GPPs. Accordingly, its income payments thereto are not subject to EWT.

---

[17] Exhibit "P-18-h-1.3".
[18] Exhibits "P-18-h-1.1-a-1" to "P-18-h-1.1-a-1k".
[19] Exhibit "P-18-h-1.3-a".
[20] Exhibits "P-18-h-1.1-b-1" to "P-18-h-1.1-b-1k".
[21] Exhibit "P-18-h-1.3-a-1".

Respondent is not liable for deficiency WTC

Petitioner insists that the ICPA was only able to examine the salaries and wages reported in the financial statements vis-à-vis the salaries and wages reported in the Monthly Withholding Tax Return and not the one reported in the Income Tax Return ("ITR"). As such, respondent still failed to overcome the presumption that the deficiency WTC arising from the same should be cancelled.

Again, this is untenable.

As can be gleaned from the Assailed Decision, the Court in Division did not even refer to the ICPA's findings in resolving whether respondent is liable for deficiency WTC. Instead, the Court in Division made its own finding on the matter and, indeed, considered the amount of salaries and wages per ITR, to wit:

> An examination of petitioner's ITR/ AFS shows that the amount of salaries and wages reported therein is equal to the amount of gross compensation per Alphalist of Employees as of December 31, 2015, which is in the amount of ₱4,102,334.80. Of the said amount, the taxable compensation is ₱3,789,360.73 only, with a corresponding withholding tax of ₱1,007,965.32.
>
> On the other hand, the gross compensation per BIR Form No. 1601-C amounts to ₱3,950,873.93, of which the taxable compensation is ₱3,823,913.93, with a corresponding withholding tax of ₱1,018,968.25, to wit:
>
> . . . .
>
> The fact that the amount remitted, as shown through bank receipts and eFPS confirmations, is greater than the amount that should have been made means petitioner paid more than what is due. Apparently, petitioner had an overpayment of ₱11,002.93. As such, respondent had no basis in disallowing the compensation in the amount of ₱151,460.92 as deduction from petitioner's gross income and subjecting the same to deficiency withholding tax on compensation. Accordingly, this item of assessment shall be cancelled.

This finding was unrebutted by petitioner both in his Motion for Partial Reconsideration on the Assailed Decision and Petition herein.

There being no substantial argument presented by petitioner to warrant a revisit of the Court in Division's ruling on the matter, the same shall thus stand.

Respondent's purchases from Manila Hemp and Catanduanes Agro were properly substantiated

Petitioner argues that the deductions arising from its purchases from Manila Hemp should be disallowed considering that the invoices submitted to substantiate the same reflect the nature of items purchased as "I/G" which cannot sufficiently prove that it has direct connection with respondent's business.

As for respondent's purchases from Catanduanes Agro, petitioner argues that the same must also be disallowed as some of the invoices were dated even before the invoices were authorized for printing and some of the invoices do not bear the signature of the issuer.

Upon revisiting the Court a quo's findings, this Court finds petitioner's arguments on respondent's purchases from Manila Hemp untenable, while his arguments on the purchases from Catanduanes Agro partially meritorious.

In contesting the Assailed Decision's disposition on the matter, petitioner anchors his arguments mainly from *Section 34(A)(1)(b) of the Tax Code*, which provides:

> SEC. 34. *Deductions from Gross Income*. — . . .
>
> (A) *Expenses*. —
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses*. —
>
> . . . .
>
> (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*.
>
> (Italics, Ours.)

For purposes of deduction of ordinary and necessary trade, business, or professional expenses, the following requisites must concur: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be supported by receipts, records or other pertinent papers.[22]

Thus, to meet the requirements of the law, the taxpayer seeking allowance of such deduction must present official receipts or invoices of its transactions,[23] and such official receipts or invoices must show the amount of expense being deducted, and 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.

As for the purchases from Manila Hemp, respondent adequately explained the nature of the items purchased therefrom and its direct connection with the conduct of respondent's business. In its Comment/Opposition (Re: Respondent's Partial Motion for Reconsideration), respondent explained that the term "I/G" is a description of the grade of abaca fiber being used in the industry and are bought from Graded Bailing Establishments or Class "A" Traders. These fibers are processed into pulp which respondent exports and sells to its customers abroad.

Meanwhile, it can be confirmed from respondent's BIR Certificate of Registration[24] that its Line of Business/Industry is for the MANUFACTURE OF PULP, PAPER, PAPERBOARD, and from Note 1 – Corporate Information of its Audited Financial Statements for TY 2015[25] that its primary purpose is to engage in the general business of, or in production development, processing, exportation, marketing of all types of fiber or pulp. Verily, the purchase of "I/G", a particular grade of abaca fiber, is directly connected with respondent's conduct of business.

These matters were accordingly considered by the Court in Division when it resolved to uphold its Assailed Decision in the Assailed Resolution. However, petitioner did not offer any new arguments to rebut the foregoing explanation by respondent when he brought the issue forward with the Court *En Banc*. In this light, We see no cogent reason to revisit the same.

On the other hand, We cannot rule the same way for respondent's purchases from Catanduanes Agro.

Petitioner noted three purchases from Catanduanes Agro totaling ₱2,006,216.00 which were supported with sales invoices dated before it was authorized for printing by the BIR. In addition, two of these invoices do not bear any signature from the seller, as summarized below:

---

[22] *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007.
[23] *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 173373, January 29, 2013.
[24] Exhibit "P-1".
[25] Exhibit "P-3".

Exhibit No.	Sales Invoice No.	Date of Receipt	Date of Issuance of Authority to Print	Amount	Remarks
P-18-e-3.1	0052	March 23, 2015	July 29, 2015 to July 28, 2020	643,572.00	No signature from the seller
P-18-e-3.2	0053	April 13, 2015		579,812.00	No signature from the seller
P-18-e-3.3	0056	July 5, 2015		782,832.00	
Total				**2,006,216.00**	

As for the absence of the seller's or issuer's signature in the sales invoice, the same is of no consequence with the deductibility of the expense claimed as the Tax Code does not require that a signature of the issuer should also be shown in an invoice. All that *Section 237 of the Tax Code* requires is that the receipts or sales or commercial invoices show the date of transaction, quantity, unit cost, and description of merchandise or nature of service, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, *showing the date of transaction, quantity, unit cost and description of merchandise or nature of service*: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.
>
> (Italics, Ours.)

However, We find that a receipt or invoice issued even before the ATP was secured from the BIR does not qualify as a proper substantiation of an expense. Consequently, it cannot be claimed as a deduction from income tax.

Section 238 of the Tax Code requires that an authority to print ("ATP") sales or commercial invoices must be secured from BIR before a taxpayer may print the same, to wit:

> Section 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> . . . .

(Italics, Ours.)

Meanwhile, *Revenue Regulations ("RR") No. 18-12* provides that the approved ATP shall be valid only upon full usage of the inclusive serial numbers of principal and supplementary receipts/invoices reflected in such ATP or five (5) years from issuance of the same, whichever comes first.

Given that ATPs during TY 2015 were subject to a five-year validity period, it is thus essential that issuance of receipts or invoices were made within the ATP's validity period, which in Catanduanes Agro's case is from July 29, 2015 to July 28, 2020. On the other hand, a receipt or invoice issued outside the validity period is considered as a document not authorized for printing (and use) by the BIR. Consequently, a taxpayer may not claim any tax benefit from such non-compliant document.

Compliance on this ATP requirement is fatal to respondent's claim for deduction. In *Silicon Phil., Inc. vs. Commissioner of Internal Revenue* ("*Silicon*"),[26] the High Court emphasized that without proof of the requisite ATP, the invoices or receipts would have no probative value for purpose of refund, thus:

> Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, *since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP* from the BIR. *Without this proof, the invoices or receipts would have no probative value for the purpose of refund.* In the case of Intel, we emphasized that:
>
>> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. *Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.*
>
> (Citations omitted. Italics, Ours.)

While *Silicon* was ruled in light of a VAT refund, We find the principle equally applicable to claims for deduction from taxable income since both instances are akin to tax exemptions which are strictly construed against the taxpayer.

---

[26] G.R. No. 172378, January 17, 2011.

Verily, Catandanues Agro had not secured the requisite ATP when it issued the sales invoices to respondent. As a consequence, said invoices are not considered registered with the BIR and, thus, have no probative value for purposes of claiming deduction from respondent's taxable income.

Considering the foregoing, We find that the purchases from Catanduanes Agro amounting to ₱2,006,216.00 must be disallowed as deduction from respondent's taxable income. Accordingly, the amount of unsubstantiated purchases which is disallowed as a deduction from taxable income is increased from ₱6,261,961.00 to ₱8,268,177.00. Thus:

Purchases per FS/ITR	₱26,264,147.50
Less: Purchases per audit	
Manila Hemp Trading	17,995,970.50
Unsubstantiated Purchases	**₱8,268,177.00**

However, despite the unsubstantiated purchases being increased to ₱8,268,177.00, respondent's basic deficiency income tax computation remain unaffected since the consequent increase in the taxable income is still covered by respondent's NOLCO from TY 2012, as can be demonstrated below:

Sales		₱66,351,051.00
Less: Cost of Sales	₱62,049,217.00	
Less: Unsubstantiated Purchases	8,268,177.00	53,781,040.00
Gross Income from Operation		**₱12,570,011.00**
Add: Other Taxable Income Not Subject to Final Tax		949,966.00
Total Gross Income		**₱13,519,977.00**
Less: Ordinary Allowable Itemized Deductions	₱8,435,436.00	
Less: Disallowed Expenses due to non-withholding of tax	1,854,819.13	6,580,616.87
Taxable Income before Allowance for NOLCO		**₱6,939,360.13**
Less: Applied NOLCO – (NOLCO for TY 2012 - ₱15,179,346.34)		6,939,360.13
Adjusted Taxable Income after Allowance for NOLCO		**₱-**
Add: NOLCO - TY 2015		3,183,636.00
Taxable Income/(Loss)		**₱3,183,636.00**

MCIT		*₱270,399.54*
NCIT		*₱955,090.80*
Tax Due		**₱955,090.80**
Less: Tax Credits/Payments		
Prior Year's Excess Credits other than MCIT	30,309.00	
Income Tax Payments under MCIT from Previous Quarter/s	640.00	
Income Tax Payments under MCIT per Annual ITR	74,087.00	
Total Tax Credits/Payments	105,036.00	
Less: MCIT for TY 2015 carried over to succeeding period	105,036.00	-
Basic Deficiency Tax Due		**₱955,090.80**

/

The NOLCO and MCIT for TY 2015 were validly disallowed

Petitioner argues that the NOLCO and MCIT for TY 2015 should be disallowed as respondent's operations for the taxable year ("TY") 2015 did not result with a loss and that it is liable for regular income tax and not MCIT. Hence, respondent should not carry forward any benefit from the same in the succeeding years.

We find that this argument no longer necessitates revisiting as the Assailed Decision already upheld the disallowance of respondent's NOLCO and MCIT for TY 2015 after finding that the latter's operations did not result to a net loss and that its regular income tax due is higher than the MCIT. Verily, no NOLCO and MCIT benefits may be carried forward in the succeeding period.

Respondent's sales amounting to ₱66,351,051.41 is not subject to VAT

Petitioner, lastly, insists that respondent is liable for deficiency VAT since it failed to subject its sales amounting to ₱66,351,051.41 to VAT and it failed to prove that the same are zero-rated sales.

Again, We find this untenable.

As already discussed in the Assailed Decision, and reproduced herein, the subject sales were sufficiently proven by respondent as zero-rated sales after testing respondent's evidence against the requirements under *Section 106(A)(2)(a)(1) of the Tax Code*, to wit:

> Petitioner argues that the subject receipts refer to its export sales to Yamamoto-Tomo Menko, Ltd. Petitioner anchors its claim on Section 106(A)(2)(a)(l) of the 1997 NIRC, as amended, which provides that export sales by VAT-registered persons, such as petitioner, shall be subject to zero percent (0%) rate , to wit:
>
> . . . .
>
> Based on the foregoing, the following requisites must be met for petitioner's sales to be considered as zero-rated export sales, to wit:
>
> > 1) There is a sale and actual shipment of goods from the Philippines to a foreign country; and,
> >
> > 2) The goods are paid for in acceptable foreign currency or its equivalent in goods or services, accounted for in accordance with the BSP rules and regulations.

/

Corollary thereto, Section 113(A) and (B) of the 1997 NIRC, as amended, and Section 4.113-1 (A) and (B) of RR No. 16-05, as amended, provide that any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;

2. The Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and,

3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended. Upon review of the supporting documents, the Court finds that petitioner had direct export sales in TY 2015 to Yamamoto-Tomo Menko, Ltd. with office address located in 5-3-3 Soto-Kanda, Chiyoda-Ku, Tokyo Japan amounting to ₱66,351,051.41 which are properly and adequately supported by commercial invoices and ORs that are compliant with the invoicing requirements under Section 113 of the 1997 NIRC, as amended, as well as the related Bills of Lading. Details of the export sales are summarized as follows:

. . . .

Furthermore, the export sales were paid for in US Dollars as evidenced by Passbooks, Application and Declaration for Remittance, Bank Certification and Debit Memo. Moreover, the above aggregate sales figure is the same as the sales amount reflected in the Sales Schedule and the Audited Financial Statements.

Notably, *petitioner was able to prove that its sales per ITR pertain to export sales subject to zero-rating*, thus respondent's deficiency VAT assessment thereon should be cancelled.

(Italics, Ours.)

Despite the foregoing being clearly adjudicated, petitioner failed to rebut the same in his Motion for Partial Reconsideration and in his Petition herein. As such, We leave the matter undisturbed.

In summary, while We find merit in one of petitioner's arguments, the same did not affect the final amount of deficiency income tax. As for the rest, We find that petitioner failed to advance any new and cogent argument to warrant reversal or modification of the Assailed Decision and Resolution.

ACCORDINGLY, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Decision dated April 18, 2024 of the Court's Special First Division in CTA Case No. 10247 and Resolution thereon dated August 5, 2024 are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I concur as to the result.
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice