CTA Form No. 8

20-000052-0085

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10259

MUNICIPALITY OF PULILAN, represented by Municipal Mayor HON. MARIA ROSARIO O. MONTEJO and Municipal Accountant, MR. PAULO BERBENZANA,
Petitioner,

NOTICE OF DECISION

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. NAPOLEON P. CAMPOS, JR.
ATTY. LEONARD BRYAN DG. GONZALES
ATTY. CHRISTIAN WILFRED D. MORALES
Bureau of Internal Revenue-Revenue Region No. 5
9th Floor, Legal Division, BIR Regional Office Building
No. 140, Bo. Kalaanan, Brgy. 86
EDSA, Caloocan City

ATTY. GERARD EMMANUEL V. TAYAO
Pulilan Municipal Legal Office
Pulilan Municipal Hall
Brgy. Poblacion, Pulilan, Bulacan

GREETINGS:

You are hereby notified by these presents that on **March 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 25, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MUNICIPALITY OF PULILAN, represented by Municipal Mayor HON. MARIA ROSARIO O. MONTEJO and Municipal Accountant, MR. PAULO BERBENZANA, *Petitioner,*	**CTA Case No. 10259** Members: **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 2 2 2024; 1:40PM

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DECISION

REYES-FAJARDO, *J.*:

Under consideration is the Petition for Review[1] dated February 13, 2020, filed by the Municipality of Pulilan, Bulacan, which aims to: (1) set aside the alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Other Percentage Tax (OPT) and VAT Withheld assessments covering Taxable Year (TY) 2016; and (2) lift the Warrant of Distraint and/or Levy (WDL) dated January 15, 2020.

FACTS

Petitioner Municipality of Pulilan is a local government unit created under the laws of the Philippines, with office address at Municipal Hall, Poblacion, Pulilan, Bulacan. It is represented by its

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[1] Docket (Vol. I), pp. 6-28. This is coupled with a Motion for Issuance of Temporary Restraining Order and/or Suspension of Collection of Taxes.

Municipal Mayor, Maria Rosario O. Montejo, and Municipal Accountant, Mr. Paulo Berbenzana.[2]

Respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules, and regulations. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City[3] and represented herein by the Legal Division, BIR, Revenue Region No. 5, 5th Floor BIR DPD & Executive Building, No. 140 Bo. Kalaanan, Brgy. 86, EDSA, Caloocan City 1400.

On April 26, 2018, a Letter of Authority (LOA) issued in accordance with the requirements of the NIRC, was served upon Elsa Dionisio, a person of sufficient age and discretion, in her capacity as private secretary.[4]

On September 17, 2018, a Notice of Informal Conference (NIC) was served upon Elsa Dionisio, a person of sufficient age and discretion, in her capacity as private secretary.[5]

On March 18, 2019, petitioner received a Preliminary Assessment Notice (PAN) dated March 6, 2019 issued by Regional Director Manuel V. Mapoy (RD Mapoy),[6] containing the proposed deficiency IT, VAT, EWT, OPT and VAT Withheld, along with the corresponding surcharge, interests, and compromise penalty for TY 2016.

On April 17, 2019, petitioner received[7] RD Mapoy's FLD[8] and FAN,[9] assessing the former for deficiency IT, VAT, EWT and OPT & VAT Withheld covering TY 2016, computed as follows:

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2 See paragraph 2, Petition for Review. Admitted in paragraph 7, Answer. *Id.* at pp. 6-7, and 363, respectively.

3 See paragraph 3, Petition for Review. Admitted in paragraph 7, Answer. *Id.* at pp. 7 and 363, respectively.

4 See paragraphs 1 and 2, Joint Stipulation of Facts (JSF). Docket (Vol. II), p. 600.

5 See paragraph 3, JSF. *Ibid.*

6 Exhibit "P-1." Docket (Vol. I), pp. 403-406.

7 Through Municipal Accountant Paulo Berbenzana. See paragraph 5, JSF, Docket (Vol. II), at p. 601.

qd

Tax Type	Basic	Surcharge	20% Interest	12% Interest	Total
IT	₱19,956,900.00	₱4,989,225.00	₱2,843,174.79	₱3,186,451.70	₱30,975,751.49
VAT	7,982,760.00	1,995,690.00	1,487,199.12	1,274,580.68	12,740,229.80
EWT	989,267.82	-	192,432.92	157,953.10	1,339,653.84
OPT & VAT Withheld	2,656,415.96	-	516,727.49	424,141.08	3,597,284.53
TOTAL	₱31,585,343.78	₱6,984,915.00	₱5,039,534.32	₱5,043,126.56	**₱48,652,919.66**

On May 17, 2019, petitioner filed [10] a request for reinvestigation,[11] contesting the FLD, followed by a supplement[12] thereto, filed on July 5, 2019.

The BIR sent a Final Decision on Disputed Assessment (FDDA) to petitioner by registered mail. [13] In the FDDA, [14] the BIR reconsidered the deficiency assessment on petitioner's income derived from operation of the public market, operation of a slaughterhouse, and garbage collection as these are basic services as defined in Section 17 of the Local Government Code (LGC),[15] which local governments should endeavor to provide to their constituents.[16]

On January 15, 2020, petitioner received[17] the BIR's WDL[18] dated January 10, 2020.

On February 14, 2020, petitioner filed a Petition for Review with Motion for Issuance of Temporary Restraining Order and/or Suspension of Collection of Taxes,[19] docketed as CTA Case No. 10259.

Through Resolution dated June 15, 2020,[20] petitioner's Motion for Issuance of Temporary Restraining Order and/or Suspension of Collection of Taxes was eventually[21] set for hearing on July 16, 2020.

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8 Exhibit "P-2." Docket (Vol. I), pp. 427-429.
9 *Supra* note 7.
10 Par. 6, JSF. Docket (Vol. II), p. 601.
11 Exhibit "P-3." Docket (Vol. I), pp. 45-51.
12 Exhibit "P-4." *Id.* at pp. 53-59.
13 Par. 7, JSF. Docket (Vol. II), p. 601.
14 Exhibits "R-15" and "R-15-F." Docket (Vol. I), pp. 431-434.
15 Republic Act No. 7160.
16 Par. 8, JSF. Docket (Vol. II), p. 601.
17 Par. 9, JSF. *Ibid.*
18 Exhibit "P-5." Docket (Vol. I), p. 61.
19 *Supra* note 1.
20 Docket (Vol. I), pp. 105-106.
21 In the Resolution dated March 2, 2020. Said incident was initially set on March 19, 2020. *Id.* at pp. 71-72.

Accordingly, Paulo G. Berbenzana was presented[22] as witness in support thereof.

On July 21, 2020, petitioner filed its Formal Offer of Evidence,[23] to which respondent filed his Comment on Formal Offer of Exhibits/Evidence[24] on September 11, 2020.

On August 17, 2020, respondent posted his Answer.[25]

Under Resolution dated October 16, 2020,[26] petitioner's Motion for Issuance of Temporary Restraining Order and/or Suspension of Collection of Taxes was granted, subject to the posting of a bond equivalent to 100% of the basic deficiency taxes.

On November 26, 2020, petitioner filed a Motion for Partial Reconsideration (of the Resolution dated October 16, 2020), praying that the bond requirement as precondition for suspension be dispensed with,[27] to which respondent filed his Comment[28] on January 12, 2021, followed by petitioner's Reply[29] thereto, filed on February 9, 2021.

Via Resolution dated February 26, 2021,[30] petitioner's Motion for Partial Reconsideration (of the Resolution dated October 16, 2020) was partially granted. Accordingly, the required amount of the bond was reduced from 100% to 25% of the basic deficiency taxes.

On May 21, 2021, petitioner filed another Motion for Reconsideration (of the Resolution dated 26 February 2021),[31] praying

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22 Exhibit "P-1" (later re-marked to Exhibit "P-6"), *id.* at pp. 108-116; Minutes of the hearing held on, and Order dated, July 16, 2020, *id.* at pp. 232-237.
23 In support of its Motion for Issuance of Temporary Restraining Order and/or Suspension of Collection of Taxes. *Id.* at pp. 245-247.
24 *Id.* at 442-443.
25 *Id.* at pp. 362-377. Admitted in the Resolution dated September 21, 2020, *id.* at pp. 446-447.
26 *Id.* at pp. 454-457.
27 *Id.* at pp. 468-480.
28 *Id.* at pp. 485-491.
29 *Id.* at pp. 505-512. Attached to petitioner's Formal Entry of Appearance with Omnibus Motion dated February 8, 2021, *id.* at pp. 500-502.
30 *Id.* at pp. 528-532.
31 *Id.* at pp. 543-555.

that the reduced bond be totally dispensed with, *sans* respondent's comment.[32]

On October 7, 2021, a pre-trial conference was held whereby we: (1) set the scheduled presentation of the parties' evidence and marking of their respective evidence; (2) formulated the issue to be addressed in this case; and (3) directed the parties to file a Joint Stipulation of Facts and Issues and appear before the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA).[33]

On October 18, 2021, the parties filed their Joint Stipulation of Facts.[34]

Through Resolution dated November 3, 2021, petitioner's Motion for Reconsideration of May 21, 2021 was granted. Consequently, a writ of preliminary injunction or suspension order was issued, *sans* the required bond.[35]

On March 15, 2022, a Pre-Trial Order[36] was issued.

In the hearing held on March 17, 2022, petitioner manifested that during the mediation proceedings before the PMC-CTA, the latter agreed to pay the amount of ₱4,800,000.00, approximately representing its tax liability on "Other Business Tax," and that the parties agreed to limit the legal issue to be resolved in this case—whether the income derived by petitioner from operation of its municipal water system is liable to tax under the NIRC, as amended. In view thereof, the parties were ordered to submit a Joint Motion for Early Resolution of this Case Based on Legal Issue, encapsulating their oral manifestations, and to submit their memoranda, in lieu of their presentation of evidence.[37] Only respondent submitted his Memorandum.[38]

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32 Records Verification dated July 16, 2021. *Id.* at p. 574.
33 Minutes of hearing, and Order dated October 7, 2021. Docket (Vol. II), pp. 584-589.
34 *Id.* at pp. 600-602.
35 *Id.* at pp. 606-608.
36 *Id.* at pp. 640-653.
37 Minutes of hearing, and Order dated March 17, 2022. *Id.* at pp. 654-657.
38 *Id.* at pp. 661-673.

By Records Verification dated March 30, 2022, the CTA Judicial Records Division confirmed that the parties failed to file the required Joint Motion for Early Resolution of this Case Based on Legal Issue.[39]

On April 18, 2022, petitioner filed an Urgent Motion to Strike Out Respondent's Memorandum and to Continue with Presentation of Petitioner's Evidence,[40] stating that the parties' disagreements led to the non-filing of the supposed Joint Motion for Early Resolution of this Case Based on Legal Issue, to which respondent filed his Comment/Opposition[41] thereto on April 29, 2022.

Under Resolution dated July 1, 2022,[42] the Urgent Motion to Strike Out Respondent's Memorandum and to Continue with Presentation of Petitioner's Evidence was granted. Accordingly, the presentation of petitioner's evidence was set, and that respondent's Memorandum was stricken-off the case records, among others.

In the hearing held on January 25, 2023, petitioner presented Paulo G. Berbenzana as its sole witness.[43]

On February 9, 2023, petitioner filed its Formal Offer of Evidence,[44] to which respondent filed his Comment[45] on February 17, 2023.

By Resolution dated April 5, 2023,[46] the pieces of evidence offered by petitioner were admitted. The latter rested its case.

For his part, respondent manifested that he would not be presenting any evidence.[47]

Through Resolution dated April 5, 2023,[48] this case was submitted for decision, considering: (1) Memorandum for the

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[39] *Id.* at p. 660.
[40] *Id.* at pp. 675-678.
[41] *Id.* at pp. 679-692.
[42] *Id.* at pp. 704-707.
[43] Exhibit "P-6," Docket (Vol. I), pp. 108-116, and Exhibit "P-10," Docket (Vol. II), pp. 732-736; Minutes of the hearing held on, and Order dated, January 25, 2023, Docket (Vol. II), pp. 805-807.
[44] Docket (Vol. II), pp. 827-830.
[45] *Id.* at pp. 861-863.
[46] *Id.* at pp. 879-881.
[47] Minutes of the hearing held on, and Order dated, January 25, 2023. *Id.* at pp. 805-807.

Petitioner,[49] filed on February 9, 2023; (2) respondent's Memorandum,[50] filed on February 17, 2023; and (3) petitioner's Memorandum (In Reply to Respondent's Memorandum dated 15 February 2023),[51] filed on March 2, 2023.

ISSUE

Is petitioner liable for the basic deficiency IT, VAT, EWT and OPT for TY 2016, in the total amount of ₱31,585,343.78?[52]

ARGUMENTS

In its Petition[53] and Memorandum,[54] petitioner maintains that the LOA was served to an individual, *i.e.*, Elsa Dionisio, not authorized to receive BIR notices in its behalf; thus, its right to due process on examination and audit was violated.

Petitioner further claims that the FLD is void because it failed to contain a fixed and determinate amount of tax liabilities, citing *Commissioner of Internal Revenue v. Fitness by Design, Inc. (FDI)*[55] as authority.

Petitioner also insists that the income derived from the operation of its water system is exempted from income taxes because: said gain was earned in the exercise of a governmental function, excluded from income taxation under Section 32(B)(7) of the NIRC, as amended. Neither may such income be subject to VAT for being without legal basis.

All in all, petitioner theorizes that the deficiency tax assessments covering TY 2016 must be struck down for being void.

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48 *Id.* at pp. 879-881.
49 *Id.* at pp. 810-826.
50 *Id.* at pp. 831-860.
51 *Id.* at pp. 866-874. Admitted in the Resolution dated April 5, 2023, *supra* note 46.
52 See Issue/s to be Tried or Resolved, Pre-Trial Order dated March 15, 2022. *Id.* at p. 647.
53 *Supra* note 1.
54 *Supra* note 47.
55 G.R. No. 215957, November 9, 2016.

Through his Answer[56] and Memorandum,[57] respondent points out that petitioner's tax liabilities for other business taxes was judicially admitted by the latter's counsel; hence, the defenses regarding the supposed procedural infirmities in the service of the BIR notices and assessments, were relinquished by petitioner. On top of said judicial admission, petitioner's declarations are considered as declarations against interest under Section 40, Rule 130 of the Rules of Court.

Assuming *arguendo* that these defenses may still be invoked by petitioner, respondent retorts that the gain derived by the former from operation of its waterworks system is subject to internal revenue taxes, because said activity is a proprietary, and not a governmental function of said local government unit. Besides, petitioner failed to present a Certificate of Tax Exemption, or a ruling confirming its exemption from the BIR.

In refuting[58] respondent's Memorandum, petitioner ripostes that it did not judicially admit its tax liability. Rather, it only manifested willingness to pay for its other tax liabilities, and to waive its other defenses so that the case may be resolved with utmost dispatch. Additionally, said offer and waiver was conditioned upon the submission of this case for early resolution, which did not materialize due to the non-filing of the parties' supposed Joint Motion for Early Resolution of this Case Based on Legal Issue. Moreover, respondent did not even bother to challenge at the earliest opportunity, the Court's resolution, allowing it to present evidence.

Petitioner, too, replies that the gain derived from its operation of the water system is excluded from income tax imposition, irrespective of whether said activity is a governmental or proprietary function under the Section 32(B)(7) of the NIRC, as amended. Specifically, the income is derived from the supply of water, which is classified as a public utility, and that said income accrued in its favor. Moreover, the law does not require a taxpayer to obtain a Certificate of Tax Exemption, to enjoy the benefit of income tax exemption in said provision.

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56 *Supra* note 23.
57 *Supra* note 48.
58 Memorandum (In Reply to Respondent's Memorandum dated 15 February 2022). *Supra* note 49.

Petitioner as well adds that respondent offended its right to due process because the persons who received the LOA, NIC, and PAN have no corresponding authority to perform such act.

Besides, petitioner says that the deficiency tax assessment issued against it for TY 2016 is void for lack of factual and legal basis.

RULING

We partly grant the Petition.

Foremost, Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[59] as amended by RA No. 9282 acknowledges our jurisdiction over respondent's action over other matters arising from the NIRC, as amended.[60] One of the matters specified in Section 2 of the same Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges.[61] This includes the issuance of the rules, regulations, and measures in pursuit thereof.[62] Additionally, an aggrieved party must appeal such action to the Court, within thirty (30) days from receipt thereof. These provisions respectively read:

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

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59 An Act Creating the Court of Tax Appeals.

60 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

61 SEC. 2. ***Powers and Duties of the Bureau of Internal Revenue.*** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... See *Commissioner of Internal Revenue v. Bank of the Philippines Islands,* G.R. No. 227049, September 16, 2020. (Boldfacing supplied)

62 See *Commissioner of Internal Revenue v. Bank of the Philippines Islands,* G.R. No. 227049, September 16, 2020.

...

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: ....

...[63]

On January 15, 2020, petitioner received the WDL dated January 10, 2020.[64] Counting thirty (30) days from January 15, 2020, petitioner had until February 14, 2020 to seek judicial redress. Thus, the seasonable filing of the Petition for Review[65] on February 14, 2020, clothed us with jurisdiction over CTA Case No. 10259.

Next, the parties are at odds with one another as to whether there was a judicial admission as to petitioner's liability for other business taxes. For respondent, there was such an admission by petitioner, rendering the issue in this case as a pure question of law; hence, all other issues in the service of BIR notices and assessments were deemed waived by petitioner. The latter says otherwise, explaining that it simply expressed willingness to pay such tax liability, under condition that it be put into writing. As said writing never materialized, it may still invoke defenses relative to the service of BIR notices and assessments.

We agree with petitioner.

Section 4, Rule 129 of the Rules of Court, as amended,[66] states that a written or oral admission made by the party in the course of the proceedings does not require proof, save when such admission:

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63 Boldfacing supplied.
64 *Supra* notes 15 and 16.
65 *Supra* note 1.
66 A.M. No. 19-08-15-SC.

one, was made through palpable mistake; or *two,* the imputed admission was not, in fact, made.[67] A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding.[68] *Ybiernas, et al. v. Tanco-Gabaldon, et al.*[69] clarified that "[i]n construing an admission, the court should consider the purpose for which the admission is used and the surrounding circumstances and statements."

True, in the hearing held on March 17, 2022, petitioner made representations on: (1) admission of its tax liabilities, save for the tax liabilities pertaining to the operation of the municipality of the water system; and (2) waiver of issues pertaining to the alleged invalidity of the LOA and all other procedural matters that may nullify the tax assessments. Yet, in the same proceeding, the parties were required to put those representations in writing, through a joint motion or manifestation prepared by them:

ATTY. TAYAO:

> During the mediation conference between the Philippine Mediation Center, the **petitioner and respondent substantially agreed that the petitioner will be paying the other tax liabilities pertaining in the deficiency tax assessment, except the liabilities pertaining to the operation of the municipality of the water system.** In view thereof, your Honors, we respectfully submit that the remaining questions are purely legal. So in view thereof, your Honors, we move that we waive the presentation of evidence. And in lieu thereof, we submit Memoranda, your Honors.

JUSTICE MANAHAN:

> First and foremost, **if you are saying or manifesting that there is an agreement to enter into a partial mediation as far as the other assessments of the respondent is concerned, that has first to be deduced into a formal agreement.** So, since your last meeting at the conference of

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67 **Section 4.** Judicial admissions. - An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made.

68 *Landoil Resources Corporation v. Al Rabiah Lighting Company,* G.R. No. 174720, September 7, 2011.

69 G.R No. 178925, June 1, 2011 citing *Harmon v. Christy Lumber, Inc.,* 402 NW2D 690 (1987); and *Moffett v. Arabian American Oil Co., Inc.,* 85 F. Supp. 174 (1949).

the Philippine Mediation Center, what has been the agreement between the two parties? What are your next steps?

ATTY. TAYAO:

Your Honors, the proceedings before the Philippine Mediation Center was terminated because we were advised by Atty. Morales that they are not allowed to enter into partial compromise. However, considering that the **municipality is willing to pay the other balances aside from the tax liability pertaining to its operation of the municipal water system**, we respectfully submit that to expedite this [sic] proceedings, your Honors, **it would be in the best interest to limit the issues to be tried in this case, which is, whether or not the petitioner is liable for deficiency income for its operation of the municipal water system**. And considering that that issue is purely a question of law, we agreed to jointly move to waive the presentation of evidence, to submit memoranda.

JUSTICE MANAHAN:

What is your comment, Atty. Morales?

ATTY. MORALES:

Your Honors, **may I be put on record that the municipality admit [its] tax liability in so far as the liability of the municipal corporation with the deficiency income tax, except with the operation of the water system**, your Honors.

...

ATTY. TAYAO:

The 4.8 million, your Honors, is broken down as 1.2 basic deficiency income tax from the assessment of other business income, P480,480.00 pertaining to deficiency VAT, P682,630.24 pertaining to basic deficiency expanded withholding tax, and 1,344,264.55 pertaining to basic deficiency other percentage taxes.

JUSTICE MANAHAN:

So, this is the amount that you are willing to pay?

ATTY. TAYAO:

Yes, your Honors.

JUSTICE MANAHAN:

And then the balance, you are telling this Court pertains now to the income tax allegedly due on the receipts from the operation of the water system?

ATTY. TAYAO:

Yes, your Honors.

JUSTICE MANAHAN:

What is your comment, Atty. Morales?

ATTY. MORALES:

In so far as the manifestation, your Honors, of the opposing counsel, we have no objection, your Honors. We submit this case on the following issue on whether or not the water system is liable to the deficiency internal revenue taxes, your Honors.

JUSTICE MANAHAN:

So, you are therefore making an oral motion for the early resolution of this case based on a purely legal issue whether or not the income derived from the operations of the municipal water system is subject to tax, and the remaining balance, the petitioner is willing to settle it by paying the amount of 4.8 million, is that what the joint manifestation is all about?

ATTY. MORALES:

Yes, your Honors, and we will be filing a Memorandum for that matter, your Honors.

JUSTICE DEL ROSARIO:

All right, let us clarify your points. Out of the 31 million more or less of the assessment, what you are saying now is that only 4.8 million will be your tax liability, or that will be the amount that you are willing to pay? You are actually accepting that you are liable to the extent of 4.8 million?

ATTY. TAYAO:

That is correct, your Honors.

JUSTICE DEL ROSARIO:

Has your position been cleared with the officials of the Municipality of Pulilan?

ATTY. TAYAO:

Yes, your Honors.

JUSTICE DEL ROSARIO:

Particularly with the Municipal Mayor. **This is actually something that should be incorporated in a corresponding written agreement.** So, it is actually a supplemental position you are telling the Court. Basically, you are actually modifying your Petition for Review in such a way that you are actually filing or telling the Court that there is a supplemental Petition for Review that is necessary to be done now. Because this is an event that the Court after the filing the original Petition for Review, there is a supervening event, and that what you are asking now is for the Court to consider your Petition for Review as limited to that particular issue on whether or not the Municipality of Pulilan is liable for the tax deficiencies on the operation of the water system, is that it?

ATTY. TAYAO:

Yes, that is correct, your Honors.

JUSTICE DEL ROSARIO:

So basically, now, you would need to file a written or joint motion because you have to confirm that. You cannot change your theory later on because if you decide to pay the entire amount, all you have to do is actually file a Motion to Withdraw your Petition for Review. As of now, what you are saying is that you actually withdrawing certain claims in your Petition for Review? You are seeking of the dismissal of the plea in your Petition of Review in so far as the tax deficiencies you are contesting are concerned. All right, so you are very certain of your position now? Would you like a Petition for Review or definitely just a Motion to the effect that you are waiving the cause of action in so far as the other tax liabilities are concerned? What do you have in mind?

ATTY. TAYAO:
Your Honors, I am *(Interrupted)*

JUSTICE DEL ROSARIO:

We are not going to resolve. The way I gather it is that the Court is not going to resolve certain aspects of your Petition for Review anymore.

ATTY. TAYAO:

Yes, your Honors.

JUSTICE DEL ROSARIO:

So, technically you're dropping that cause of action?

ATTY. TAYAO:

Yes, your Honors because upon perusal of the evidence, your Honors, and considering the predicament of the respondent, your Honors, we are willing to (Paused) After discussing this matter with the Municipal Mayor and Municipal Accountant, we are of the opinion that it would be in the best interest in the speedy disposition of this case that we limit the issues raised in the Petition to whether or not the municipality is liable to the income arising from its operation of the water system, considering, your Honors, that the other tax liabilities of the municipality are not that substantial compared to that assessment alone. If you will recall, your Honors, in the Formal Letter (Paused) Just a brief background, your Honors, in the original Final Assessment Notice, your Honors, there were four categories of income that was being assessed by the respondent. However, it is the position of the municipality that in the FDDA, which the municipality claims that it did not receive, the BIR already withdrew its assessment on the income of the municipality pertaining to the operation of its garbage system, market, and slaughterhouse. Those assessments, your Honors, were already withdrawn by the BIR in the FDDA. However, in the Petition, your Honors, part of the Petition already was assailing those assessments that were already withdrawn by the BIR for the very reason, your Honors, that we did not receive the FDDA. However, considering that *(Interrupted)*

...

JUSTICE DEL ROSARIO:

So, when we say if the Court resolves ultimately that the items subject of this case is taxable, the petitioner, in so far as our understanding is concerned, is amendable actually to admit that your computation is accurate. Because sometimes this is the situation: a taxpayer is willing to pay let say the assessment, but there is a recomputation whether the computation is correct. But the way you present it, it seems that petitioner is amenable to accept the accuracy of the computation. So it's just a matter of the Court deciding the legal point. If we resolve in favor of the BIR, then the liability will be like that. There is already an admission of the accuracy of the computation. So that is so far clear, Atty. Tayao?

ATTY. TAYAO:

Yes, your Honors. So just to *(Interrupted)*

JUSTICE DEL ROSARIO:

And in so far as the other causes of action, the invalidity of the Letter of Authority and all other procedural matters that may nullify the assessment, you are waiving that issue already?

ATTY. TAYAO:

Yes, that is correct, your Honors. So, we are just objecting, your Honors, in a sense to the inclusion of the income derived from the water system in the taxable income of the municipality.

...

JUSTICE DEL ROSARIO:

So, what you will now be doing is to file your corresponding Motion, technically withdrawing the other issues raised in your Petition for Review, and asking the Court to solve only that particular issue on whether the income from the operation of water system is taxable in the total amount of, and then indicate the amount.

...

JUSTICE MANAHAN:

So, will it be a **joint manifestation** so that there will be no further Motion for Reconsideration, changing position on the part of respondent?

ATTY. TAYAO:

Yes, your Honors, it would just be a joint manifestation.

...

JUSTICE MANAHAN:

...

> Petitioner's counsel further manifested that both parties have agreed to limit the issue in this case to the determination of one legal issue, which is whether or not the income derived by petitioner from the operation of its municipal water system is liable to tax under the National Internal Revenue Code. So that covers not just income, but also value-added tax and such other taxes that may apply. There being no opposition or objection interposed by respondent's counsel, **both parties have been ordered to submit a Joint Motion to embody [these] representations that have been manifested in open Court**, and to submit the same within ten (10) days from today, or not later than March 28, 2022. Likewise, the Court ordered both parties to submit their respective Memoranda within thirty (30) days from today, in lieu of the presentation of evidence on part of petitioner, as well as on the part of respondent. Thus, the presentation of the witness for today's proceedings is already waived. So ordered.[70]

Given that the parties failed[71] to file the required Joint Motion for Early Resolution of this Case Based on Legal Issue, as expressed in the hearing held on March 17, 2020, the representations of the parties in said proceeding were not transmuted to admissions on their part. Accordingly, petitioner may still question the invalidity of the tax assessments issued against it for TY 2016.

Now, the merits of this case.

Petitioner argues that it failed to receive an LOA and FDDA from the BIR; hence its right to due process was offended.

We ultimately disagree with petitioner.

LOA

Item III.23[72] of Revenue Memorandum Order (RMO) No. 19-2015[73] states that the RO assigned to the case shall present or serve

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70 Transcript of Stenographic Notes (TSN) of the hearing held on March 17, 2022, pp. 4-10, 12-14, 16-17, and 20. Boldfacing supplied.

71 *Supra* note 38.

72 III. Policies and Procedures

...

the eLA to the taxpayer or his [or her] representative in accordance with Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[74] as amended by RR No. 18-2013,[75] which reads, in part:

> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

Here, the LOA was served upon Elsa Dionisio, a person of sufficient age and discretion, in her capacity as Private Secretary.[76] Meanwhile, the NIC was also served upon the same individual,[77] and was received [78] by petitioner's municipal accountant Paulo Berbenzana. Berbenzana replied on said NIC. [79] Additionally,

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23. The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013.

73 SUBJECT: BIR Audit Program.

74 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

75 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

76 See Par. 2, JSF. Docket (Vol. II), p. 600.

77 See Par. 3, JSF. *Ibid.*

78 See Exhibit "P-6" (Q&A Nos. 6 to 8). Docket (Vol. I), p. 110.

79 Transcript of Stenographic Notes (TSN) of hearing held on July 16, 2020, p. 25.

Berbenzana clarified in open court that Elsa Dionisio is the Private Secretary of the local chief executive (LCE):

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. I am showing to you the Notice for Informal Conference, which I believe is a common exhibit. On the lower portion of the Notice for Informal Conference, there is a stamp, "received". Can you read the name of the person who received it?

MR. PAULO DG. BERBENZANA:

A. Elsa Dionisio.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. And it was received on? When was it received?

MR. PAULO DG. BERBENZANA:

A. September 17, 2018.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. September 17, 2018. Now you claimed that you did not receive the Letter of Authority. Is that correct?

MR. PAULO DG. BERBENZANA:

A. Yes, Your Honors.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. I am showing to you a Letter of Authority attested at the Municipality of Pulilan, dated April 24, 2018. Can you read the person who received it? Can you read the name of the person who received it?

MR. PAULO DG. BERBENZANA:

A. Elsa B. Dionisio.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. Okay. It was received when?

MR. PAULO DG. BERBENZANA:

A. April 26, 2018.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. April 26, 2018. I am going to, so that you can see. So, do you agree with me then that the person who received the NIC and the LOA bears the same name?

MR. PAULO DG. BERBENZANA:

A. Yes po.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. Will you agree with me then that the person who received the NIC and the LOA is one and the same person?

MR. PAULO DG. BERBENZANA:

A. Yes, Your Honors.

...

ATTY. GERARD EMMANUEL V. TAYAO:

Q. Okay. Next, Mr. Witness, when the good counsel asked you a while ago who received the Notice for Informal Conference and the Letter of Authority, you confirmed that it was received, based on the records, by one Elsa B. Dionisio. Do you know this Elsa B. Dionisio?

MR. PAULO DG. BERBENZANA:

A. **She was the private secretary of the LCE.**

ATTY. GERARD EMMANUEL V. TAYAO:

Q. Private Secretary. You mean what is her position?

MR. PAULO DG. BERBENZANA:

A. Co-terminus, Your Honors.[80]

Section 474(b)(11), Article IV of the LGC acknowledges the municipal accountant, such as Paulo Berbenzana, as the individual empowered to account for all issued requests for obligations and maintain and keep all records and reports related thereto.[81] Taxes and

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80 TSN at the hearing held on January 25, 2023, pp. 31-33, and 37. Emphasis added.

81 **ARTICLE IV**
The Accountant

the obligation to pay the same are all created by statute; so are its collection and payment governed by statute.[82] Therefore, it is safe to conclude that Berbenzana is petitioner's authorized representative insofar as the latter's tax matters are concerned.

More, in *Factory Automation and Instrumentation Corp. v. Commissioner of Internal Revenue (FAIC)*,[83] therein taxpayer disclaimed receipt of the FLD/FAN served by the BIR, because the person who received the same, *i.e.*, a certain Irene Masula (Masula), lacks the requisite authority to do so. However, it was found that the PAN was received by Masula, and that said taxpayer was able to protest the PAN. In ruling that there was valid service, and receipt by such taxpayer of the FLD/FAN, through Masula, *FAIC* held:

> [The taxpayer] did not contest the authority of Irene Masula to receive the PAN. It cannot now claim that the same person is unauthorized to receive the FAN, when it acted on the PAN that Irene Masula previously received.

Akin to *FAIC*, petitioner cannot assert that Elsa Dionisio is without authority to receive the NIC because its legal representative Berbenzana acted on said NIC. On top of that, Elsa Dionisio is the LCE's private secretary. These circumstances lean towards a sole conclusion—petitioner implicitly recognized Elsa Dionisio's authority to receive notices from the BIR. Therefore, the LOA was validly served to, and received by petitioner, through Elsa Dionisio.

FDDA

Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc. (GJM)[84] decreed that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial

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SECTION 474. Qualifications, Powers and Duties. –

...

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

...

(11) Account for all issued requests for obligations and maintain and keep all records and reports related thereto;

82 See *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 12, 2006.

83 G.R. No. 236789, March 27, 2023.

84 G.R. No. 202695, February 29, 2016.

of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee. Considering that petitioner directly denies receipt of the mailed FDDA[85] and following *GJM,* the burden was shifted to respondent to prove that the same was indeed received by petitioner or by its authorized representative.

Respondent did not adduce any evidence to demonstrate actual receipt by petitioner of the FDDA. Nevertheless, we are cognizant that the latter presented the following documents:

Exhibit	Description	Purpose
"R-15"[86]	Final Decision on Disputed Assessment (FDDA) dated 23 October 2019	To prove that Respondent reconsidered its assessment of deficiency income on the Municipality's operation of public market, slaughterhouse, and garbage collection
"R-15-F"[87]	Registry Receipt No. RE 025 459 398 ZZ dated 29 October 2019	To prove that Respondent sent a copy of the FDDA to the Municipality via registered mail

These pieces of evidence leave much to be desired. To be precise, the registry receipt merely proved the fact of mailing, and nothing more. It means that there was dearth of proof that the FDDA was actually received by petitioner or its duly authorized representatives. This would ordinarily lead to the nullity of such FDDA, and thus, would not produce any legal effect. However, petitioner itself recognized the validity and efficacy thereof against it by adopting the BIR's cancellation of taxes pertaining to certain items of income or fees embodied in said FDDA. For specific reference, paragraph 8[88] of the parties' Joint Stipulation of Facts is reproduced in *verbatim*:

> 8. That in the FDDA, the Bureau of Internal Revenue ("BIR") reconsidered the deficiency assessment on [p]etitioner's income derived from operation of the public market, operation of [the] slaughterhouse, and garbage collection [fees] as these are basic services as defined in Section 17 of the Local Government Code

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85 Exhibit "P-6" (Q&A No. 14), Docket (Vol. I), p. 111.
86 *Id.* at pp. 431-434.
87 *Id.* at p. 431.
88 Docket (Vol. II), p. 601. Letter and words in brackets supplied.

("LGC"), which local governments should endeavor to provide to their constituents.

In fine, notwithstanding the lack of proof of petitioner's actual receipt of the FDDA for TY 2016, petitioner ultimately acknowledged the validity and effectivity thereof against it.

Petitioner nonetheless insists that the tax assessments for TY 2016 are void, because it lacks a definite and fixed amount of tax liabilities, invoking *FDI* as authority.

We disagree.

Pertinent snippets of the FAN dated March 17, 2004 in *FDI*, and the FLD dated April 4, 2019 are reproduced below:

FAN dated March 17, 2004 in *FDI*[89]	**FLD dated April 4, 2019[90]**
... Please note, however, that the interest and the total amount due will have to be adjusted if paid **prior or beyond** April 15, 2004.	Please note that the interest and total amount due will have to be adjusted if paid **beyond** [blank]

The FAN dated March 17, 2004 in *FDI* is indeterminate because adjustments are made on therein taxpayer's tax liabilities irrespective of whether it was paid *before or after* a certain due date, *i.e.*, April 15, 2004. In contrast, the FLD dated April 4, 2019 may not be adjusted because the specific due date from which the corresponding change would be reckoned remained unaccomplished. Owing to the variance between the FAN in *FDI*, and the FLD here, they cannot be treated, much more, be decided alike.

We finally probe the extent of petitioner's tax liability for TY 2016. Respondent assessed[91] petitioner for deficiency IT, VAT, EWT, and OPT & VAT Withheld covering TY 2016. Our discussion on each item of tax assessment shall proceed in *seriatim*.

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89 *Supra* note 54.
90 *Supra* note 8.
91 Per FDDA. *Supra* note 14.

A. IT

Respondent slapped petitioner with deficiency IT for TY 2016 on the waterworks system fees and other business income it reported in its financial statements, ratiocinating that these are items of gain derived from the latter's exercise of proprietary functions, over and above the sums needed to promote the general welfare,[92] computed as follows:

Waterworks System Fees		₱57,349,000.00
Other Business Income		4,004,000.00
Total		61,353,000.00
Multiplied by tax rate		30%
Basic Deficiency IT		18,405,900.00
Add: 25% Surcharge	₱4,601,475.00	
20% Interest (4.16.2017-12.31.2017)	2,622,210.41	
12% Interest (1.1.2018-9.30.2019)	3,859,103.70	11,082,789.11
Total Amount Payable		**₱29,488,689.11**

A.1 Waterworks System Fees - ₱57,349,000.00

Petitioner contends that it may not be held liable for income taxes derived from fees on operation of its waterworks system, as said income is excluded from taxation under Section 32(B)(7)(b) of the NIRC, as amended. Respondent counters that since said income was derived from petitioner's exercise of proprietary function, it is liable for income taxes thereon under Section 27(C) of the same Code.

We find for petitioner.

Section 32(B)(7)(b) of the NIRC, as amended, provides:

> SEC. 32. *Gross Income.* –
>
> ...
>
> *(B) Exclusions from Gross Income.* - **The following items shall not be included in gross income and shall be exempt from taxation under this Title:**
>
> ...
>
> *(7) Miscellaneous Items.* –

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92 *Ibid.*

> . . .
>
> *(b) Income Derived by the Government or its Political Subdivisions.* - Income derived from any public utility **or** from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.[93]

For income to be excluded from gross income and be excused from income taxation under Section 32(B)(7)(b) of the NIRC, as amended, the following conditions must concur: (1) the income must be derived by the government or political subdivision thereof; (2) such income emanated from a public utility ***or*** exercise of essential governmental function; and (3) said income accrued to the government or political subdivision. These conditions were met. Consider:

First. The waterworks system fees were realized by petitioner, one of the territorial and political subdivisions of the State.[94]

Second. Various [95] paragraphs of respondent's Answer acknowledged that the waterworks system fees were earned from petitioner's supply of water on its constituents. Petitioner similarly advanced the same point.[96] Petitioner's activity of providing water for its constituents falls within the context of public utility. *Commissioner of Internal Revenue v. Secretary of Justice and Camarines Norte Water District [CNWD]* [97] confirmed:

> A **'public utility'** is 'a <u>business or service engaged in regularly supplying the public with some commodity or service of public consequence such as</u> electricity, gas, <u>water</u>, transportation,

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93 Emphasis added.

94 Section 1, Article X of the 1987 Constitution provides: "SECTION 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, **municipalities**, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided." (Boldfacing supplied)

95 Paragraph 30 of his Answer (Docket, p. 368) states in part:

> 30. ... The business of water supply, although considered as public utility[,] which is inarguably beneficial to the petitioner's constituent[s], are merely optional and cannot be considered as governmental functions. ...

Further, paragraph 37 of the same Answer (Docket, p. 370) reads:

> 37. When the **petitioner took it upon itself to provide water**, it has engaged itself as a corporate entity representing the inhabitants of its territory. ... (Boldfacing supplied)

96 See paragraphs 34, and 40, Petition for Review. Docket, pp. 18 and 21, respectively.

97 G.R. No. 197611, June 23, 2021, citing *JG Summit Holdings v. Court of Appeals,* G.R. No. 124293, September 24, 2003 (Resolution). Underscoring added.

> telephone or telegraph service.' To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. However, the fact that a business offers services or goods that promote public good and serve the interest of the public does not automatically make it a public utility. Public use is not synonymous with public interest. As its name indicates, the term 'public utility' implies **public use** and **service to the public.** The principal **determinative characteristic** of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public as such which has a legal right to demand and receive its services or commodities. Stated otherwise, the owner or person in control of a public utility must have devoted it to such use that the public generally or that part of the public which has been served and has accepted the service, has the right to demand that use or service so long as it is continued, with reasonable efficiency and under proper charges. Unlike a private enterprise which independently determines whom it will serve, a 'public utility' holds out generally and may not refuse legitimate demand for service.

We are aware of respondent's argument that petitioner's waterworks system fees for TY 2016 are earned in the exercise of its proprietary, and not governmental function; hence, such gain must be subjected to IT. Yet, Section 32(B)(7)(b) of the NIRC, as amended, only enjoins satisfaction of ***either*** condition, *i.e.*, income was earned from public utility ***or*** exercise of essential governmental function, for its applicability. Indeed, the term "or" is a disjunctive [conjunction] indicating an alternative. It often connects a series of words or propositions indicating a choice of either.[98] Having demonstrated that the water system fees were derived by petitioner as a public utility, *i.e.*, supply of water to constituents, it need *not* establish that said fees were earned in the exercise of essential governmental function.

Third. In the Certification dated April 18, 2022,[99] petitioner's municipal treasurer attested that all the sums collected by its Municipal Water Services Office from its concessionaires, representing water consumption, along with other fees and charges are deposited to the General Fund Account under petitioner's name in Landbank of the Philippines. Berbenzana, too, confirmed that the proceeds from petitioner's municipal water system accrues to the general fund:

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98 See *First Philippine Holdings Corporation v. Securities and Exchange Commission,* G.R. No. 206673, July 28, 2020, citing *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.,* G.R. No. 142618, July 12, 2007.

99 Exhibit "P-9." Docket, p. 737.

ATTY. CHRISTIAN WILFRED D. MORALES:

Q. So, will you agree with me then that both **the proceeds** of other business income, and those **that come from the Municipal Water System accrues to the same general fund**. Is that correct?

MR. PAULO DG. BERBENZANA:

A. **Yes**, Your Honors.[100]

In addition, respondent already recognized[101] that said fees were reported in petitioner's financial statements. This coincides with Note 16[102] of the Commission on Audit (COA)'s Annual Audit Report on petitioner, for year ended December 31, 2016, whereby the amount of ₱57,349,000.00 was reflected as its waterworks system fees.[103] It means that these fees went to petitioner's coffers; hence, the municipal water system fees accrued to the latter.

Ergo, the municipal waterworks system fees amounting to ₱57,349,000.00 must be excluded from income taxation on the strength of Section 32(B)(7)(b) of the NIRC, as amended. Accordingly, the cancellation of deficiency IT pertaining thereto is in order.

A.2 Other Business Income - ₱4,004,000.00

Petitioner recognized in open court, the deficiency IT assessment on other business income amounting to ₱4,004,000.00.[104] However, no sufficient evidence[105] was proffered by the latter to contradict the same. For this reason, we sustain the deficiency IT imposed thereon. Indeed, the burden of proof is upon the

100 TSN of hearing held on January 25, 2023, p. 20.

101 The Details of Discrepancy on IT per FDDA states in part: "Deficiency on Income Tax was imposed due to business income **[petitioner] declared on [its] financial statements[,] including Waterworks System Fees** and Other Business Income. ..." See Exhibit "R-15," *supra* note 14. Boldfacing and words in brackets ours.

102 Docket, p. 295. The amount of ₱57,349 was stated therein. However, this is understood as in thousands of pesos unit (Docket, p. 268). ₱57,349 x 1000 = ₱57,349,000.00.

103 *Republic of the Philippines v. Hon. CA*, G.R. No. 119288, August 18, 1997, citing Justice Edgardo L. Paras held: "A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case ..." The COA Report on petitioner for TY 2016 are found in the records of this case (Docket, pp. 253-360).

104 TSN of hearing held on January 25, 2023, p. 19.

105 Petitioner's Formal Offer of Evidence and Resolution thereon. *Supra* notes 44 and 46, respectively.

complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. [106]

B. VAT

Respondent assessed[107] petitioner for deficiency VAT covering TY 2016, with the following computation:

Waterworks System Fees		₱57,349,000.00
Other Business Income		4,004,000.00
Total		61,353,000.00
Multiplied by tax rate		12%
Basic Deficiency IT		7,362,360.00
Add: 25% Surcharge	₱1,840,590.00	
20% Interest (1.26.2017-12.31.2017)	1,371,617.75	
12% Interest (1.1.2018-9.30.2019)	1,543,641.48	4,755,849.23
Total Amount Payable		**₱12,118,209.23**

B.1 Waterworks System Fees - ₱57,349,000.00

Petitioner contends that since the deficiency IT on its waterworks system fees is wanting in legal basis, the deficiency assessed deficiency VAT thereon should likewise be cancelled.[108]

We are not swayed.

The deficiency IT on petitioner's waterworks system fees was eradicated because it satisfied all the conditions set forth in Section 32(B)(7)(b) of the NIRC, as amended.[109] However, said provision solely operates as an exclusion from IT under Title II of the NIRC, as amended, and may *not* be used as an exemption from VAT imposition found under Title IV thereof.[110]

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106 See *Commissioner of Internal Revenue v. Gonzales, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

107 Per FDDA. *Supra* note 14.

108 Par. 54, Memorandum for the Petitioner. Docket, p. 824.

109 The complete text of this provision is found in pages 24-25 of this Decision.

110 See *IFC Capitalization (Equity) Fund L.P. v. Commissioner of Internal Revenue*, G.R. No. 256973, November 15, 2021.

As petitioner failed [111] to present satisfactory proof demonstrating palpable error on the deficiency VAT slapped on the waterworks system fees, we are constrained to uphold the same. Again, the burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. [112]

B.2 Other Business Income - ₱4,004,000.00

There was likewise no[113] countervailing proof demonstrating the flaw in the deficiency VAT imposed on petitioner's other business income; thus, said item of assessment must be sustained. To repeat, the burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[114]

All in all, the BIR's VAT imposition on the waterworks system fees and other business income realized by petitioner for TY 2016 are wholly upheld.

C. EWT

Respondent found deficiency EWT for TY 2016 against petitioner, because the latter failed to withhold taxes on professional fees, property, plant, and equipment acquisitions, and other operating expenses, along with discrepancy in salaries and wages,[115] computed as follows:

Office Supplies	₱5,698,659.47	1%	₱56,986.59
Drugs and Medicines	8,637,000.00	1%	86,370.00
Medical/Dental & Lab. Supplies	2,310,500.00	1%	23,105.00
Fuel Oil & Lubricants	4,158,091.08	1%	41,580.91

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111 Petitioner's Formal Offer of Evidence and Resolution thereon. *Supra* notes 44 and 46, respectively.

112 See *Commissioner of Internal Revenue v. Gonzales, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

113 Petitioner's Formal Offer of Evidence and Resolution thereon. *Supra* notes 44 and 46, respectively.

114 See *Commissioner of Internal Revenue v. Gonzales, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

115 Per FDDA. *Supra* note 14.

Textbooks & Instructional Materials	381,000.00	1%		3,810.00
Other Supplies & Materials	234,881.42	1%		2,348.81
Other Maintenance & Operating	10,847,217.65	1%		108,472.18
Property, Plant & Equipment	38,273,375.61	1%		382,733.76
Utilities	13,732,422.75	2%		274,648.46
Communication	744,388.91	2%		14,887.78
Professional Services	4,645,000.00	10%		464,500.00
General Services	9,086,689.53	2%		181,733.79
Repairs & Maintenance	27,930,380.84	2%		558,607.62
Other Maintenance & Operating	33,962,229.14	2%		679,244.58
EWT Due				2,879,029.48
Less: EWT paid per return				2,196,399.24
Deficiency Expanded Withholding Tax				682,630.24
Add: 20% Interest (1.11.2017-12.31.2017)			₱132,785.61	
12% Interest (1/1/2018-9/30/2019)			143,124.81	275,910.42
Total Amount Payable				₱958,540.66

Considering that petitioner presented no[116] proof to exhibit that these professional fees, property, plant, and equipment acquisitions, and other operating expenses were properly subjected to withholding tax, respondent's deficiency EWT assessment for TY 2016 is wholly sustained. Truly, the burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[117]

D. OPT & VAT Withheld

Respondent found[118] deficiency OPT and VAT Withheld against petitioner for TY 2016, in the following manner:

Other Percentage Tax	₱58,828,023.40	3%		₱1,614,840.70
Value Added Tax	106,813,813.00	5%		5,340,690.65
Total				6,955,531.35
Less: Payments				5,611,266.80
Basic Deficiency OPT				1,344,264.55
Add: Penalties				
20% Interest (1.11.2017-12.31.2017)			₱293,377.85	
12% Interest (1/1/2018-9/30/2019)			281,847.47	575,225.32
Total Amount Payable				₱1,919,489.87

Respondent justified said finding by explaining that "[a]dditional Withholding Tax- VAT and OPT was imposed due to [petitioner's] deficiency on the amount of tax withheld for [g]oods and [s]ervices subject to either 5% or 3% depending on whether it is a

116 *Supra* note 104.

117 See *Commissioner of Internal Revenue v. Gonzales, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II v. Court of Appeals*, G.R. No. 120880, June 5, 1997.

118 Per FDDA. *Supra* note 14.

VAT Registered or Non-[VAT] Registered suppliers, contractors[,] etc., pursuant to Section 251 of the NIRC, [as amended,] Revenue Memorandum Circular [RMC] No. 23-2012[,] and Revenue Memorandum Order [RMO] No. 23-2014."[119]

We cancel the deficiency Withholding Tax - VAT and OPT as the legal bases for the imposition thereof is inapplicable to petitioner.

RMC No. 23-2012[120] penalizes non-withholding of tax, under-withholding of tax, and non-remittance of withheld tax under Section 251 of the NIRC, as amended. We reproduce the pertinent portion of said circular for reference:

C. *Applicable Penalties for Specific Violations*

1. The following penalties (additions to the tax) are applicable to the following violations involving all types of withholding taxes:

	Violation	*Applicable/Penalty Additions to the Tax*	*Basis*
1.	Non-withholding of tax	a. Collection of the amount the withholding agent failed to withhold	Section 251, Tax Code
		b. 20% Interest	Section 249, Tax Code
2.	Under-withholding of tax	a. Collection of the underwithheld tax	Section 251, Tax Code
		b. 20% Interest	Section 249, Tax Code
3.	Non-remittance of tax withheld	a. Collection of the amount withheld but not remitted	Section 251, Tax Code
		b. 20% Interest	Section 249, Tax Code

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119 *Ibid.*

120 SUBJECT: Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof.

RMO No. 23-2014,[121] too, re-affirmed that non-compliance of a withholding agents' duty to withhold would subject the latter to the penalty under Section 251 of the NIRC, as amended:

> VII. *Penalty Provision*
>
> In case of non-compliance with their obligation as withholding agents, the abovementioned persons shall be liable for the following sanctions:
>
> A. Failure to Collect and Remit Taxes (Section 251, NIRC)
>
> "Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted."

Yet, for the penalty referred to in Section 251 of the NIRC, as amended, to be validly imposed against the errant withholding agent, conviction of the latter for criminal infractions involving withholding tax provisions is indispensable:

> SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* - **Any person required to withhold**, account for, **and remit any tax imposed by this Code** or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, **be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.**[122]

As the record is devoid of any showing that petitioner, or the persons responsible for withholding of taxes in the municipality, *i.e.*, chief accountant, municipal treasurer, and the municipal mayor[123] were convicted for violation of withholding tax provisions, then Section 251 of the NIRC, as amended, as implemented by RMC No. 23-2012 and RMO No. 23-2014 finds no application here. On that account, cancellation of the deficiency Withholding Tax – VAT and OPT covering TY 2016 pivoted thereon must ensue.

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121 SUBJECT: Obligations of Government Agencies, Bureaus and Instrumentalities as Withholding Agents.

122 Boldfacing supplied.

123 See item VI(c) of RMO No. 23-2014.

WHEREFORE, the Petition for Review dated February 13, 2020, filed by the Municipality of Pulilan, Bulacan is **PARTIALLY GRANTED**. Accordingly, we **RESOLVE** to:

a. **CANCEL** the deficiency OPT and VAT withheld assessment issued by respondent against petitioner for TY 2016 in the amount of ₱1,919,489.87; and,

b. **AFFIRM with MODIFICATION** the deficiency Income Tax, VAT and EWT assessments issued by respondent against petitioner for TY 2016. Accordingly, petitioner is **DIRECTED TO PAY** respondent the total amount of **FOURTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED FIFTY-TWO PESOS AND EIGHTY-SIX CENTAVOS (₱14,750,152.86)**, inclusive of the surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) 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 Revenue Regulations (RR) No. 21-2018, computed as follows:

	Income Tax	VAT	EWT	Total
Basic Tax	₱1,201,200.00	₱7,362,360.00	₱ 682,630.24	₱ 9,246,190.24
25% Surcharge	300,300.00	1,840,590.00	170,657.56	2,311,547.56
20% Deficiency Interest				
from April 16, 2017 to Dec. 31, 2017 *(₱1,201,200.00 x 20% x 260/365 days)*	171,129.86			171,129.86
from Jan. 26, 2017 to Dec. 31, 2017 *(₱7,362,360.00 x 20% x 340/365 days)*		1,371,617.75		1,371,617.75
from Jan. 11, 2017 to Dec. 31, 2017 *(₱682,630.24 x 20% x 355/365 days)*			132,785.61	132,785.61
12% Deficiency Interest				
from Jan. 1, 2018 to May 14, 2019				
(₱1,201,200.00 x 12% x 499/365 days)	197,062.62			197,062.62
(₱7,362,360.00 x 12% x 499/365 days)		1,207,830.46		1,207,830.46
(₱682,630.24 x 12% x 499/365 days)			111,988.76	111,988.76
Total Amount Due as of May 14, 2019	**₱1,869,692.48**	**₱11,782,398.21**	**₱1,098,062.17**	**₱14,750,152.86**

Petitioner is further **ORDERED TO PAY** respondent, delinquency interest at the rate of twelve percent (12%) per annum on the **₱14,750,152.86** total amount due as of May 14, 2019, or an amount equivalent to **₱4,849.37** per day,[124] from May 14, 2019 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963 and implemented by RR No. 21-2018; and

c. **DENY** petitioner's prayer to lift the Warrant of Distraint and/or Levy dated January 15, 2020.

SO ORDERED.

Marian Ivy F Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

124 ₱14,750,152.86 x 12%/365 days.