REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HOTEL SPECIALIST (TAGAYTAY), INC., *Petitioner,*	**CTA Case No. 9349**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
	Promulgated: JAN 18 2019 4:30 p.m.

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DECISION

MANAHAN, J.:

This involves a Petition for Review filed by Hotel Specialist (Tagaytay), Inc. on May 16, 2016 as petitioner, against the Commissioner of Internal Revenue, to seek the cancellation and setting aside of the Final Decision on Disputed Assessment (FDDA)[1] dated April 12, 2016 finding it liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT), inclusive of interest and compromise penalty, in the aggregate amount of ₱30,845,693.98 for taxable year 2009.

THE FACTS

Petitioner Hotel Specialist (Tagaytay), Inc. is a corporation duly organized and existing under Philippine laws,[2] with principal office located at Taal Vista Hotel, National Road,

[1] Exhibit "P-9", docket, vol. I, pp. 18-28; Exhibit "R-10", BIR Records, pp. 775-785.
[2] Par. 6, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 368.

Barangay Kaybagal, Tagaytay City.[3] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 005-377-969-000.[4]

The primary purpose of the business of petitioner as stated in its Amended Articles of Incorporation[5] is as follows:

> "To engage in and carry on the business of hotel and resort; to operate and maintain any and all services and facilities incident thereto such as but not limited to the management, operation and maintenance of clubhouse, restaurant, bar, discotheques, music lounge and other related business including club conference and training rooms; provide and maintain sports facilities such as golf courses, tennis and pelota courts, gymnasium, swimming pools and other recreational facilities within the hotel and resort on such real property therewith and with such personal property as it may acquire, own, possess or lease."

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 14, 2010, respondent issued Letter of Authority[6] (LOA) No. 125-2010-00000052, authorizing the concerned revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2009 to December 31, 2009.[7]

On July 14, 2014, petitioner received the Preliminary Assessment Notice (PAN)[8] with Details of Discrepancies dated July 11, 2014 for alleged deficiency income tax, VAT, WTC, and EWT, including interest and compromise penalty, for taxable year 2009.[9] On July 30, 2014, petitioner filed its Protest

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[3] Exhibit "P-2", Court Docket, vol. II, p. 422.
[4] Exhibit "P-3", Court Docket, vol. II, p. 428.
[5] Exhibit "P-2-A", Court Docket, vol. II, p. 420.
[6] Exhibit "P-4", Court docket, vol. II, p. 429; Exhibit "R-1", BIR Records, p. 4.
[7] Par. 3, JSFI, Court docket, vol. II I, p. 368.
[8] Exhibit "P-5", Court docket, vol. II, pp. 432-435; Exhibit "R-6", BIR Records, pp. 554-560.
[9] Par. 8, JSFI, Court docket, vol. I, p. 368.

Letter[10] dated July 20, 2014, questioning the PAN's validity for lack of factual and legal bases.[11]

On February 26, 2015, petitioner received the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (FLD/FAN)[12] dated February 25, 2015 for alleged deficiency income tax, VAT, WTC, and EWT, inclusive of interest and compromise penalty, for taxable year 2009.[13] On March 30, 2015, petitioner filed its Protest[14] on the FLD/FAN, on the ground that the FAN lacks factual and legal bases.[15]

On April 14, 2016, petitioner received the FDDA issued by respondent dated April 12, 2016 finding it liable for deficiency income tax, VAT, WTC, and EWT, inclusive of interest and compromise penalty, in the aggregate amount of ₱30,845,693.98 for taxable year 2009.[16]

Petitioner then filed a Petition for Review with this Court on May 16, 2016.

Respondent filed his Answer[17] to the Petition for Review on August 15, 2016.

The Pre-Trial Conference was scheduled on November 10, 2016.[18]

Respondent filed its Pre-Trial Brief[19] on September 23, 2016, while petitioner filed its Pre-Trial Brief[20] on September 26, 2016.

The parties filed their Joint Stipulation of Facts and Issues[21] (JSFI) on December 2, 2016, which was approved by the Court in its Pre-Trial Order[22] dated December 27, 2016.

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[10] Exhibit "P-6", Court docket, vol. II, pp. 439-447.
[11] Par. 9, JSFI, Court docket, vol. I, p. 368.
[12] Exhibit "P-7", Court docket, vol. II, p. 448-458; Exhibit "R-8", BIR Records, pp. 594-604.
[13] Par. 4, JSFI, Court docket, vol. I, p. 368.
[14] Exhibit "P-8", Court docket, vol. II, pp. 459-468.
[15] Par. 10, JSFI, Court docket, vol. I, p. 369.
[16] Par. 5, JSFI, Court docket, vol. I, p. 368.
[17] Court docket, vol. I, pp. 97-105.
[18] Notice of Resetting dated September 27, 2016, docket, vol. I, p. 315.
[19] Court docket, vol. I, pp. 306-310.
[20] Court docket, vol. I, pp. 321-337.
[21] Court docket, vol. I, pp. 367-380.
[22] Court docket, vol. I, pp. 381-387.

Petitioner presented Ms. Susana R. Magpantay and Cecilia R. Patricio as its witnesses.[23]

On April 20, 2017, petitioner filed its Formal Offer of Evidence[24], offering Exhibits "P-1", "P-2 and submarkings", "P-3", "P-4", "P-5", "P-6 and submarkings", "P-7", "P-8 and submarkings", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", P-23", "P-24", "P-25", "P-26", "P-27", P-28", "P-29", "P-30", "P-31", "P-32 and submarkings", and "P-33 and submarkings", as its documentary evidence. Respondent failed to file his comment thereto.[25]

The Court admitted all of the said exhibits in a Resolution[26] dated June 6, 2017.

Respondent presented Revenue Officer (RO) Manuel T. Tasarra as his lone witness.[27]

On August 29, 2017, respondent's Formal Offer of Evidence[28] was filed, offering Exhibits "R-1", "R-1-a", "R-1-b", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17" and "R-18". Petitioner filed its Comment (Re: Formal Offer of Evidence of Respondent)[29] on September 26, 2017.

The Court admitted all of the enumerated exhibits in its Resolution[30] dated December 1, 2017.

The Court declared the case submitted for decision on January 30, 2018, [31] considering that petitioner filed its Memorandum[32] on January 5, 2018 with respondent choosing not to file his memorandum.[33]

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[23] Minutes of the hearing dated March 29, 2017, Court docket, vol. I, p. 402.
[24] Court docket, vol. II, pp. 405-417.
[25] Records Verification dated May 2, 2017, Court docket, vol. II, p. 481.
[26] Court docket, vol. II, pp. 484-485.
[27] Minutes of the hearing dated July 12, 2017, Court docket, vol. II, p. 500.
[28] Court docket, vol. II, pp. 507-513.
[29] Court docket, vol. II, pp. 515-520.
[30] Court docket, vol. II, pp. 522-523.
[31] Resolution dated January 30, 2018, Court docket, vol. II, p. 539.
[32] Court docket, vol. II, pp. 524-537.
[33] Records Verification dated January 23, 2018, Court docket, vol. II, p. 538.

THE ISSUE

The parties submitted the following issue[34] for the Court's resolution:

> Whether petitioner is liable for deficiency income tax, VAT, EWT and WTC, including interest and penalties for taxable year 2009.

Petitioner's Arguments

At the outset, petitioner maintains that the assessments for deficiency income tax, EWT and WTC for taxable year 2009 should be canceled in view of its payment/settlement of the aforesaid taxes with interests and penalties computed up to May 10, 2016 pursuant to the FDDA which it received on April 14, 2015.

With regard to its payment of the WTC and EWT, petitioner also asserts that the item referring to "Disallowed expenses due to non-withholding" in the amount of P24,915,763.99 should be canceled pursuant to Section 6 of Revenue Regulations (RR) No. 14-2002 which provides that the disallowed expenses due to non-withholding will be allowed as deduction from gross income when the corresponding withholding tax and penalties have already been paid.

Petitioner also submits that the deficiency VAT assessment for taxable year 2009 should be canceled and withdrawn because the imposition of VAT on its total service charges is without legal basis. First, petitioner claims that respondent did not make any factual determination as to his basis that the service charges it collected should be subjected to VAT. It was allegedly based on a generalization that the service charges collected by hotels must be subjected to VAT. Petitioner maintains otherwise and argues that only 15% of the service charges it collected in 2009 should be subjected to VAT pursuant to Article 96 of the Labor Code which provides as follows:

> "Article 96. *Service Charges.* All service charges collected by hotels, restaurants and similar establishments shall be

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[34] JSFI, Court docket, vol. I, p. 369.

> distributed at the rate of 85% for all covered employees and fifteen percent for management. The share of the employees shall be equally distributed among them. In case, the service charge is abolished, the share of the covered employees shall be considered integrated in their wages."

In view of the aforequoted provision, the 85% share of the employees is not considered as "gross receipts" subject to VAT as such amount was merely held in trust to be eventually distributed to its employees. Petitioner now avers that it already paid the VAT on its 15% share of the service charges as seen by the evidence it submitted in Court hence it should no longer be liable for VAT for taxable year 2009.

<u>Respondent's Counter-Arguments</u>

In his Answer, respondent interposed the following Special and Affirmative Defenses, and we quote:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

4. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as his defense that:

Petitioner is liable to pay its deficiency Income Tax, Value Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation based on the foregoing, to wit:

5. Upon consideration and evaluation of the protest filed by petitioner, respondent finds the arguments of the subject taxpayer meritorious except for service charge. Section 32(A) provides that... 'Except when otherwise provided in this Title, gross income means all income derived from whatever source, xxx'. Accordingly, service charge was subjected to Income Tax.

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6. **<u>Disallowed Expenses for Non-withholding of Tax, ₱24,915,762.99</u>** - Comparison of expenses claimed as deduction per income tax returns as against those subjected to withholding taxes per Alphalist disclosed that petitioner failed to withhold and remit fully to the government the corresponding taxes from income payments/expenses shown hereunder, hence, disallowed pursuant to Sec. 34(K) of the NIRC.

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7. **<u>Disallowed Per Allocation of Expense ₱2,111,292.93</u>** – Verification disclosed that per allocation of expense schedule it

was disclosed that operating expense attributable to taxable activity was overcharge by the amount of ₱2,111,292.93, hence, it was disallowed pursuant to Sec. 50 of the NIRC. This issue was neither denied nor accepted in the protest, hence, it was reiterated.

8. **VALUE-ADDED TAX**

PER FLD

Undeclared receipts. ₱26,044,676.39 – It was the result of comparing its gross receipts per book of ₱275,895,956.63 as against to their declaration per VAT return of ₱249,851,280.24.

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9. **Other income ₱5,465,029.00** – It consist of Car parking and Miscellaneous income which were not subjected to VAT.

PER FDDA

Revenue not subjected to VAT, ₱23,970,045.66 – Per reinvestigation it was ascertained that their manner of reporting of revenue/sales for VAT purposes was based on billing, in other words it was based on accrual not on receipts. Based on the computation as shown below the revenue not subjected to VAT were (sic) reduced to ₱23,970,045.66, hence they were assessed pursuant to Sec. 108 of the Tax Code as amended.

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10. **WITHHOLDING TAX ON COMPENSATION:**

PER FLD

Basic Tax – Withholding Tax on Compensation, ₱441,122.28 – Per FLD they were assessed of ₱441,122.28 basic tax, this assessment represents the tax on the discrepancy in the amount of Salaries and Wages per Books and the amount reflected in the Alphalist amounting to ₱1,112,006.00 which was not subjected to withholding tax per Revenue Regulation 2-98. Withholding tax due of 948,784.43 was computed using the composite rate of 17.75% arrived at after factoring the Tax due per alphalist of ₱9,073,965.76 divided by the total taxable salaries ₱51,124,618.33 also per alphalist, pursuant to CTA 6195 Jardin Pacific Finance vs. CIR. Further, Section 80(A) of the National Internal Revenue Code provides that – Comparison of computed withholding tax on compensation against monthly payments per BIR Form 1601-C disclosed that petitioner failed to pay in full the amount of tax due thereon in violation of Section 32(A)(1) of the NIRC in relation to Section 79(A) of the same Code and implemented under Sec. 2.78 of Revenue Regulations No. 2-98 and under remittance of 243,755.44

<u>PER FDDA</u>

<u>Basic Tax - Withholding Tax on Compensation, ₱306,197.70</u>

<u>Adjustments</u>

<u>Disallowed de minimis benefits - ₱613,051.46</u> – Per reinvestigation it was concluded that this expense does not qualify to the requirement of de minimis benefit given to employee as provided by RR. 3-98 as amended. Hence, they were assessed pursuant to Section 32(A) (1) of the NIRC in relation to Section 79(A) of the same code and as implemented under Section 2.78 of RR no. 2-98 as amended.

<u>Under-remittance - ₱243,755.44</u> – Per reinvestigation and evaluation of the documents submitted, it was concluded that the said under-remittance was nil.

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11. **<u>EXPANDED WITHHOLDING TAX</u>**

<u>Basic Tax Due - Expanded Withholding Tax, ₱1,595,127.70</u> – Per FLD subject taxpayer has a deficiency EWT of ₱1,223,748.15; upon reconciliation and submission of supporting documents & schedule the subject taxpayer still had a deficiency tax of ₱1,595,127.70.

In addition to the deficiency taxes due from the above stated findings a 20% interest per annum has been imposed pursuant to the provision of Section 249 of the National Internal Revenue Code of 1997, as amended. And also compromise penalty pursuant to Section 255 of the NIRC as amended.

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12. Basic as a hornbook principle is that, taxes are the lifeblood of the government and should be collected without unnecessary hindrance. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.

13. Further, petitioner never questioned respondent assessments for income tax, expanded withholding tax and withholding tax on compensation, thus the same attained finality,

14. Based on the foregoing discussions, respondent respectfully submits that the subject assessment was issued in accordance with law, rules and regulations, having the presumption of correctness and regularity.

15. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed.

16. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment contained in the Formal Letter of Demand is imbued with factual and legal bases."

As earlier mentioned, respondent no longer filed his Memorandum.

THE RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals

At the outset, it is imperative to determine the timeliness of the filing by the petitioner of its administrative and judicial appeals as this is determinative of this Court's jurisdiction.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[35] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[36] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[37]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[38] The jurisdiction of the CTA regarding internal revenue tax refund is provided under Section 7(a)(1) and (2) of

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[35] Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue, G.R. No. 185666, February 4, 2015, citing Commissioner of Internal Revenue vs. Leonardo S. Villa and the Court of Appeals, G.R. No. L-23999, January 2, 1968.
[36] Carmen Danao Malana, et.al. vs. Benigno Tappa, et.al., G.R. No. 181303, September 17, 2009 quoting Laresma vs. Abellana, 484 Phil 766.
[37] *Supra,* Note No. 35.
[38] Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), G.R. No. 169778, March 12, 2014.

Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, which states:

> "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;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) and (2) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

On the other hand, Section 228 of the 1997 National Internal Revenue Code (1997 NIRC), as amended, governs the periods in filing administrative and judicial protests, as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to the aforequoted Section 228 of the 1997 NIRC, as amended, petitioner has thirty (30) days from receipt of the FLD/FAN within which to file its administrative protest and another thirty (30) days from receipt of respondent's decision, or from the lapse of one hundred eighty (180)-day period from submission of documents within which to file its Petition for Review with the Court of Tax Appeals.

The records of the case show that petitioner received the FLD/FAN for alleged deficiency income tax, VAT, WTC, and EWT, inclusive of interest and compromise penalty, for taxable year 2009 on February 26, 2015. Hence, petitioner had 30 days from its receipt of the FLD/FAN on February 26, 2015 or until March 30, 2015[39] within which to file its administrative protest. Accordingly, petitioner's protest filed on March 30, 2015 was within the said prescriptive period.

On April 14, 2016, petitioner received the FDDA dated April 12, 2016 for alleged deficiency income tax, VAT, WTC, and EWT, inclusive of interest and compromise penalty, in the aggregate amount of ₱30,845,693.98 for taxable year 2009. Counting 30 days from April 14, 2016, petitioner had until May 16, 2016[40] within which to file its Petition for Review before the Court. Consequently, the Petition for Review filed on May 16, 2016 was filed within the 30-day prescriptive period.

The Court shall now proceed to determine and resolve the merits of the case.

I. Deficiency Withholding Tax on Compensation – ₱711,587.35
II. Deficiency Expanded Withholding Tax – ₱3,642,803.50

Respondent assessed petitioner of deficiency WTC in the amount of ₱711,587.35 for taxable year 2009, computed below:[41]

Basic tax due[42]		₱ 306,197.70
Add: 20% interest p.a. (Sec. 248, NIRC) (01/16/10 - 04/30/2016)	₱385,389.65	
Compromise penalty (RMO 19-2007)	20,000.00	405,389.65
Total Amount Due		**₱711,587.35**

As stated in the Details of Discrepancies attached to the FLD/FAN, the assessment represents the tax on the discrepancy in the amount of Salaries and Wages per Books and the amount reflected in the Alphalist amounting to ₱1,725,057.46 which was allegedly not subjected to withholding

[39] March 28, 2015 fell on a Saturday.
[40] May 14, 2016 fell on a Saturday.
[41] Exhibit "P-9", Court docket, vol. I, p. 18.
[42] Schedule 5, Annex A.3 of Exhibit "P-9".

tax per RR No. 2-98. The withholding tax due of ₱306,197.70 was computed using the composite rate of 17.75% arrived at after factoring the tax due per Alphalist of ₱9,073,965.76 divided by the total taxable salaries of ₱51,124,618.33 also per Alphalist.

Further, a comparison of the computed withholding tax against the monthly payments made (BIR Form 1601-C) pursuant to Section 80(A) of the 1997 NIRC, reveals that petitioner failed to pay in full the amount of tax due thereon in violation of Section 32(A)(1) of the 1997 NIRC in relation to Section 79(A) of the same Code and implemented by Section 2.78 of RR No. 2-98. Hence, additional withholding tax was assessed.[43]

Also, petitioner was assessed by respondent of deficiency EWT in the total amount of ₱3,642,803.50, computed as follows:[44]

Basic tax due		₱ 1,595,127.70
Add: 20% interest p.a. (Sec. 248, NIRC) (01/16/10 - 04/30/2016)	₱2,007,675.80	
	40,000.00	2,047,675.80
Total Amount Due		**₱3,642,803.50**

Respondent's verification disclosed that petitioner failed to remit in full the EWT on the latter's income payments in violation of relevant provisions of RR No. 2-98, as amended, as detailed below:[45]

Income payments subject to:		
1%	₱166,196,398.00	₱ 1,661,963.98
2%	77,795,536.87	1,555,910.74
5%	69,350,620.00	3,467,531.00
10%	3,747,055.65	374,705.57
15%	8,858,135.95	1,328,720.39
Total tax due		**₱8,388,831.67**
Less: Payment per return		6,793,703.94
Basic Tax		**₱1,595,127.73**

[43] Details of Discrepancies, FDDA, Exhibit "P-9", Court docket, vol. I, p. 21.
[44] FDDA, Exhibit "P-9", Court docket, vol. I, p. 19.
[45] Details of Discrepancies, FDDA, Exhibit "P-9", Court docket, vol. I, pp. 21 to 22.

Petitioner paid both the deficiency WTC and EWT, including the imposed deficiency interest and compromise penalties on May 10, 2016, as evidenced by the respective BIR Forms No. 0605, to wit:

	WTC[46]	EWT[47]
Basic tax	₱ 306,197.70	₱ 1,595,127.70
Interest	388,409.69	2,023,408.56
Subtotal	***694,607.39***	***3,618,536.26***
Compromise	20,000.00	40,000.00
Total	**₱714,607.39**	**₱3,658,536.26**

With the above payments, petitioner now asserts that the deficiency WTC and EWT assessments must be cancelled.

This Court agrees with the petitioner that the basic deficiency EWT and WTC assessments must be cancelled in view of the payment/settlement already made. However, we find that petitioner is not totally relieved from its liability as it is still required to pay the increments thereon, such as the 25% surcharge and the 20% delinquency interest imposed under Sections 248(A)(3) and 249(C) of the 1997 NIRC, as amended, which provide as follows:

> "SEC. 248. *Civil Penalties.* –
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;
>
> xxx xxx xxx
>
> SEC. 249. *Interest.* –
>
> xxx xxx xxx
>
> (C) *Delinquency Interest.* – In case of failure to pay:

[46] Exhibits "P-25" to "P-29", Court docket, vol. I, pp. 78 to 82.
[47] Exhibits "P-10" to "P-14", Court docket, vol. I, pp. 63 to 67.

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(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

The law is clear. The imposition of surcharge is mandatory, the intention being to discourage delay in the payment of taxes due to the State. The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge, pursuant to Section 248(A)(3) of the 1997 NIRC, as amended.[48]

We also rule that the imposition of delinquency interest is legally sound. Section 249(C)(3) of the 1997 NIRC, as amended, mandates the imposition of such interest in the event that the taxpayer is held liable for deficiency taxes. Based on established doctrine, these charges incident to delinquency are compensatory in nature and are imposed for the taxpayer's use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory.[49]

III. Deficiency Income Tax – ₱19,970,328.16

Respondent assessed petitioner of deficiency income tax in the amount of ₱19,970,328.16, inclusive of increments, detailed as follows:[50]

Taxable income per return				₱ 4,112,800.00
Add:	Discrepancies per audit			
	Revenue not subjected to tax		₱ 3,028,002.69	
	Disallowed expenses due to non-withholding		24,915,762.99	
	Disallowed per allocation of expense		2,111,292.93	30,055,058.61
Adjusted taxable income				₱ 34,167,858.61
Income tax due				**₱10,250,357.58**
Less:	Tax paid/tax credits			

[48] *Felisa L. Vda. de San Agustin vs. Commissioner of Internal Revenue*, 364 SCRA 810.
[49] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 137002, July 27, 2006.
[50] Exhibit "P-9", Court docket, vol. I, p. 18.

	Prior years excess credit		₱ 2,035,056.00	
	Tax paid		-	
	Current year's creditable withholding tax		2,023,404.00	
	Total tax paid/tax credits		4,058,460.00	
	Less: Carried over to succeeding period	₱2,783,986.00		
	MCIT	40,634.00	2,824,620.00	1,233,840.00
Basic tax due				**9,016,517.58**
Add:	20% interest p.a. (Sec. 248, NIRC)	(04/16/10 - 04/30/2016)	10,903,810.58	
	Compromise penalty (RMO 19-2007)		50,000.00	10,953,810.58
Total amount due				**₱19,970,328.16**

Based on the foregoing, the following items comprise the deficiency tax assessment against petitioner:

A. Disallowed expenses due to non-withholding – ₱24,915,762.99
B. Revenue not subjected to tax – ₱3,028,002.69
C. Disallowed per allocation of expense – ₱2,111,292.93
D. Disallowed tax credits carried over to succeeding period – ₱2,783,986.00
E. Disallowed MCIT – ₱40,634.00

A. Disallowed expenses due to non-withholding – ₱24,915,762.99

As stated in the Details of Discrepancies attached to the FDDA,[51] a comparison of expenses claimed as deduction per Income Tax Returns as against those subjected to withholding taxes per Alphalist disclosed that petitioner failed to withhold and remit fully to the government the corresponding withholding taxes from income payments/expenses shown hereunder, hence, disallowed pursuant to Section 34(K) of the 1997 Tax Code:

Particulars	Per FS	Per Alphalist	Discrepancy
Subject to:			
2%	₱ 77,795,536.87	₱ 55,273,513.89	₱ 22,522,022.98
5%	69,350,620.00	69,245,990.45	104,629.55
15%	8,858,135.95	8,294,082.95	564,053.00
TOTAL	₱156,004,292.82	₱132,813,587.29	₱ 23,190,705.53

[51] Details of Discrepancies, FDDA, Exhibit "P-9", Court docket, vol. I, p. 20.

Add: Sales not subject to WC			1,725,057.46
Disallowed expenses due to non-withholding			**₱24,915,762.99**

Petitioner argues that since it has already paid the deficiency WTC and EWT assessment, then the item referring to "Disallowed expenses due to non-withholding" in the amount of ₱24,915,762.99 should be deleted pursuant to Section 6 of RR No. 14-2002, which provides that the disallowed expenses due to non-withholding will be allowed as deduction from gross income when the corresponding withholding tax and penalties has already been paid.[52]

The Court finds the contention of petitioner without merit.

Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, reads:

> "Sec. 2.58.5. *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> A deduction will also be allowed in the following cases where no withholding of tax was made:
>
> xxx xxx xxx
>
> (C) The withholding agent erroneously under withheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation or reinvestigation/reconsideration**." *(Emphasis supplied)*

Pursuant to the foregoing revenue regulations, it is clear that a deduction is allowed even when no tax was withheld **only** when the corresponding deficiency withholding taxes were paid at the time of the audit/investigation or reinvestigation/reconsideration.

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[52] Par. 31, Petitioner's Memorandum, Court docket, vol. II, pp. 529 to 530.

In the instant case, petitioner received the FDDA on April 14, 2016. Petitioner paid the deficiency EWT and WTC only on May 10, 2016, *i.e.,* only after the receipt of the FDDA. Thus, petitioner's payment on May 10, 2016 cannot be considered as paid at the time of the audit/investigation or reinvestigation/reconsideration.

Without payment of the subject withholding taxes at the time prescribed by the rules and regulations, the Court finds no basis to cancel the disallowance of the corresponding expenses.

B. Revenue not subjected to tax – ₱3,028,002.69
C. Disallowed per allocation of expense – ₱2,111,292.93

Records show that on May 10, 2016, petitioner paid the income tax due on the revenue not subjected to tax of ₱3,028,002.69 and on the disallowed per allocation of expense of ₱2,111,292.93 in the total amount of ₱3,457,279.58, inclusive of interest and compromise penalty, as computed below:

Revenue not subjected to tax	₱ 3,028,002.69
Disallowed per allocation of expense	2,111,292.93
Total	₱ 5,139,295.62
x RIT Rate	30%
Basic Income Tax Due	**₱1,541,788.69**
Add: Interest	1,875,490.89
Compromise Penalty	40,000.00
Total	**₱3,457,279.58**

In light of the aforesaid payment made by petitioner, the said amount shall accordingly be deducted from petitioner's total deficiency income tax due. However, petitioner is still required to pay the increments thereon, such as the 25% surcharge and the 20% delinquency interest imposed under Sections 248(A)(3) and 249(C) of the 1997 NIRC, as amended.

D. Disallowed excess tax credits carried over to succeeding periods – ₱2,783,986.00
E. Disallowed MCIT – ₱40,634.00

In the FLD [53] and FDDA, respondent deducted the amounts of ₱2,783,986 and ₱40,634.00 from the available tax credits of petitioner.

The amount ₱2,783,986.00 was lifted from Line 33 of the Annual Income Tax Return (AITR), [54] representing the tax overpayment for taxable year 2009. The amount of ₱40,634.00 represents the excess minimum corporate income tax (MCIT) paid in taxable year 2009 amounting to ₱1,274,474.00[55] over the regular corporate income tax (RCIT) of ₱1,233,840.00.[56] Both amounts are to be carried over to the succeeding periods as tax credits.

However, respondent failed to provide legal and factual bases for the above disallowances in the FLD nor FDDA. This renders the disallowance null and void for not being compliant with Section 228 of the NIRC of 1997, as amended, which requires that the taxpayer shall be informed of the law and the facts on which the assessment is made. Consequently, the deficiency income tax assessment thereon should be cancelled.

In view of the foregoing, the Court finds petitioner liable to pay basic deficiency income tax in the modified amount of ₱6,191,897.58, computed below:

Taxable income per return		₱ 4,112,800.00
Add: Discrepancies per audit		
Revenue not subjected to tax	₱ 3,028,002.69	
Disallowed expenses due to non-withholding	24,915,762.99	
Disallowed per allocation of expense	2,111,292.93	30,055,058.61
Adjusted taxable income		₱ 34,167,858.61
Income tax due		**₱10,250,357.58**
Less: Tax paid/tax credits		
Prior years excess credit	₱ 2,035,056.00	
Current year's creditable withholding tax	2,023,404.00	4,058,460.00
Basic income tax due		**₱ 6,191,897.58**

IV. Deficiency Value-added Tax – ₱6,520,974.97

[53] Exhibit "P-7", Court docket, vol. I, pp. 237 to 247.
[54] BIR Records, p. 365.
[55] Lines 27 and 28A, 2009 AITR, BIR Records, p. 365.
[56] Line 25B, 2009 AITR, BIR Records, p. 365.

Respondent assessed petitioner of deficiency VAT in the amount of ₱6,520,974.97, inclusive of interest and compromise penalty, computed as follows:[57]

Taxable sales per return		₱249,851,280.24
Add: Discrepancies per audit		
Revenue not subjected to VAT		23,970,045.66
Total taxable income		₱273,821,325.90
VAT rate		12%
Output tax		₱ 32,858,559.11
Less: Input tax		17,414,239.20
VAT payable		₱ 15,444,319.91
Less: Tax paid per returns		12,567,914.43
Basic tax due		**₱ 2,876,405.48**
Add: 20% interest p.a. (Sec. 248, NIRC) (01/26/10 - 04/30/2016)	₱3,604,569.49	
Compromise penalty (RMO 19-2007)	40,000.00	3,644,569.49
Total amount due		**₱ 6,520,974.97**

Based on respondent's reinvestigation, it was ascertained that petitioner's manner of reporting its revenue/sales for VAT purposes was based on billing. In other words, it was based on accrual not on actual receipts. From the computation shown below, petitioner garnered an amount of ₱23,970,045.66 of revenues/sales that were not subjected to VAT, hence, it was assessed by respondent based on Section 108 of the 1997 NIRC, as amended:[58]

Gross revenue per VAT returns	₱ 249,851,280.25
Add: Zero rated sales not reflected in VAT returns	8,866,047.33
Total revenue per VAT	₱ 258,717,327.58
Less: Revenue per ITR	
Exempt sales (ITH)	₱ 8,895,834.00
Sales under regular rate	242,271,989.00
Other income	6,505,109.00
Service charge	25,014,441.24
Total	₱ 282,687,373.24
Revenue not subjected to VAT	**₱(23,970,045.66)**

According to petitioner, the above-quoted computation would reveal that respondent subjected the ***total*** service charges collected by petitioner to VAT. Petitioner assails the legal basis of the imposition of VAT and maintains that the deficiency VAT

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[57] FDDA, Exhibit "P-9", docket, vol. I, p. 18.
[58] Details of Discrepancies, FDDA, Exhibit "P-9", Court docket, vol. I, p. 21.

assessment must be cancelled and withdrawn.[59] Petitioner submits that only fifteen percent (15%) thereof must be subjected to VAT, and not the entire amount of service charges in accordance with Article 96 of the Labor Code quoted earlier.[60]

Petitioner cites the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Tours Specialist, Inc., et al.*[61], where it was declared that the gross receipts subject to tax do not include monies or receipts which do not belong to the taxpayer and do not redound to the taxpayer's benefit.

Petitioner submits that the share of the employees in the service charges, which is 85% of the total amount collected, is not considered as gross receipts subject to VAT since such amount was merely held in trust for purposes of distributing to the employees pursuant to the Labor Code.[62]

Following this position, petitioner believes that respondent should not have subjected to VAT 100% of the service charges collected by petitioner for the subject period (which amounted to ₱25,014,441.24), but only 15% thereof amounting only to ₱3,208,002.69.[63]

Finally, petitioner already paid on May 10, 2016 the total amount of ₱558,019.46[64] as deficiency VAT on its 15% share of the service charges during the period in question, inclusive of increments, computed in line with the above-mentioned arguments:

	₱
Gross revenue per VAT returns	249,851,280.25
Add: Zero rated sales not reflected in VAT returns	8,866,047.33
Total revenue per VAT	258,717,327.58
Less: Revenue per ITR	
Exempt sales (ITH)	8,895,834.00
Sales under regular rate	242,271,989.00
Other income	6,505,109.00
Service charge	3,208,002.69
Total	260,700,934.69
Discrepancy	**₱ 1,983,607.11**
VAT rate	12%

[59] Par. 36, Petitioner's Memorandum, Court docket, vol. II, p. 531.
[60] Par. 42, Petitioner's Memorandum, Court docket, vol. II, p. 532.
[61] G.R. No. L-66416, March 21, 1990.
[62] Pars. 45 to 46, Petitioner's Memorandum, Court docket, vol. II, pp. 533 to 534.
[63] Par. 47, Petitioner's Memorandum, Court docket, vol. II, p. 534.
[64] Exhibits "P-15" to "P-19", Court docket, vol. I, pp. 68 to 72.

Basic deficiency VAT	**₱**	**238,032.85**
Add: Interest		299,989.61
Compromise penalty		20,000.00
Total amount due	**₱**	**558,019.46**

It for this reason that petitioner insists that the VAT deficiency assessment be canceled and withdrawn.[65]

The Court finds merit in the contention of petitioner.

At the outset, the Court finds that the service charges that are being collected by hotels, restaurants and other similar establishments, earmarked and set aside for purposes of distributing the same to the employees should not be subject to VAT.

The VAT is a tax on spending or consumption. It is levied on the sale, barter, exchange or lease of goods or properties and services.[66] It is a percentage tax imposed at every stage of the distribution process on the sale, barter, exchange or lease of goods or properties and rendition of services in the course of trade of business, or the importation of goods. It is an indirect tax, which may be shifted to the buyer, transferee, or lessee of the goods, properties, or services.[67] It is computed on the basis of the gross selling price of goods or gross receipts realized from the sale of services.[68]

It is to be noted in this regard that the term gross receipts as mentioned as the tax base under the 1997 NIRC does not contain any specific definition. Therefore, absent a statutory definition, this Court has construed the term gross receipts in its plain and ordinary meaning, that is, gross receipts as understood as comprising the entire receipts without any deduction. The Philippine Congress, under Section 108 of the 1997 NIRC, could have simply left the term gross receipts similarly undefined and its interpretation subjected to ordinary acceptation. Instead of doing so, the Philippine Congress limited the scope of the term gross receipts for VAT purposes

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[65] Pars. 48 to 49, Petitioner's Memorandum, Court docket, vol. II, pp. 534 to 535.
[66] *Abakada Guro Party List (formerly AASJAS) Officers Samson S. Alcantara and Ed Vincent S. Albano vs. The Honorable Executive Secretary Eduardo Ermita, et al.*, G.R. No. 168056, September 1, 2005.
[67] *Commissioner of Internal Revenue vs. Benguet Corporation*, G.R. Nos. 134587 and 134588, July 8, 2005.
[68] *Integrated Customs Brokers Association of the Philippines and Jesus B. Banal vs. The Hon. Commissioner, Bureau of Internal Revenue*, G.R. No. 81921, June 30, 1988.

only to the amount that the taxpayer received for the services it performed or to the amount it received as advance payment for the services it will render in the future for another person.[69] Therefore, gross receipts subject to tax under the 1997 NIRC do not include monies or receipts which do not belong to the taxpayer and do not redound to taxpayer's benefit;[70] and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the 1997 NIRC.[71] Hence, the service charges collected by hotels, restaurants and other similar establishments, earmarked and set aside for purposes of distributing the same to the employees should not be subject to VAT.

Notwithstanding this legal rationale, the Court finds that petitioner failed to adduce sufficient evidence to support its claim that the amount of ₱25,014,441.24 represents 100% of the service charges it collected and that the remaining amount of ₱21,986,438.55 (₱25,014,441.24 less ₱3,208,002.69) indeed pertains to service charges and tips distributed to its employees, which were merely held in trust and did not redound to its benefit.

Without adequate proof to overturn respondent's findings, the Court deems it proper not to disturb the same. Consequently, petitioner is liable to pay the basic deficiency VAT of ₱2,876,405.48, computed below:

Taxable sales per return	₱249,851,280.24
Add: Discrepancies per audit	
Revenue not subjected to VAT	23,970,045.66
Total taxable income	₱273,821,325.90
VAT rate	12%
Output tax	₱ 32,858,559.11
Less: Input tax	17,414,239.20
VAT payable	₱ 15,444,319.91
Less: Tax paid per returns	12,567,914.43
Basic deficiency VAT	**₱ 2,876,405.48**

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[69] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

[70] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 147375, June 26, 2006.

[71] *Commissioner of Internal Revenue vs. Tours Specialists, Inc. and The Court of Tax Appeals*, G.R. No. L-66416, March 21, 1990.

However, in light of the payment made by petitioner on May 10, 2016, the said payment shall accordingly be deducted from petitioner's total deficiency VAT but with increments such as the 25% surcharge and the 20% delinquency interest imposed under Sections 248(A)(3) and 249(C) of the 1997 NIRC, as amended.

V. Compromise Penalties

Respondent assessed petitioner with compromise penalties in the amount of ₱150,000.00 which the latter partially paid in the amount of ₱120,000.00, leaving an unpaid compromise penalty of ₱30,000.00, detailed below:

	Per FDDA[72]	**Less: Payment on May 10, 2016[73]**	**Remaining Balance**
Deficiency income tax	₱ 50,000.00	₱ 40,000.00	₱ 10,000.00
Deficiency VAT	40,000.00	20,000.00	20,000.00
Deficiency WTC	20,000.00	20,000.00	-
Deficiency EWT	40,000.00	40,000.00	-
Total	**₱150,000.00**	**₱120,000.00**	**₱30,000.00**

Nevertheless, this Court finds that the unpaid amount of ₱30,000.00 must no longer be enforced against petitioner.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[74] Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[75]

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[72] Exhibit "P-9", Court docket, vol. I, pp. 18 to 19.
[73] Exhibits "P-10" to "P-29", Court docket, vol. I, pp. 63 to 82.
[74] *Phil. International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[75] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1999.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2009 is **AFFIRMED with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱17,350,792.92, ₱9,780,127.69, ₱542,523.63, and ₱104,141.81, representing deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), and 249(B) and (C) of the 1997 NIRC, as amended, respectively, computed until December 31, 2017, detailed below:

	Deficiency Income Tax	**Less: Payment on May 10, 2016**	**Remaining Balance**
Basic Deficiency Income Tax	₱ 6,191,897.58	₱ 1,541,788.69	₱ 4,650,108.89
Surcharge (25%)	1,547,974.40		1,547,974.40
Deficiency Interest (20%) from April 16, 2010 to April 30, 2016 *(₱6,191,897.58 x 20% x 2,207 days/365 days)*	7,487,955.05	1,875,490.89	5,612,464.16
Total Amount Due, April 30, 2016	**15,227,827.03**		
Deficiency Interest (20%) from May 1, 2016 until payment on May 10, 2016 *(₱6,191,897.58 x 20% x 10 days/365 days)*	33,928.21		33,928.21
Total Amount Due, May 10, 2016	**₱15,261,755.24**	**₱3,417,279.58**	**₱11,844,475.66**
Deficiency Interest (20%) from May 11, 2016 to December 31, 2017 *(₱4,650,108.89 x 20% x 600 days/365 days)*			1,528,802.92
Delinquency Interest (20%)			
from May 1, 2016 until payment on May 10, 2016 *(₱15,227,827.03 x 20% x 10 days/365 days)*			83,440.15
from May 11, 2016 until December 31, 2017 *(₱11,844,475.66 x 20% x 600 days/365 days)*			3,894,074.19
Total Deficiency Income Tax Due as of December 31, 2017			**₱17,350,792.92**

	Deficiency VAT	**Less: Payment on May 10, 2016**	**Remaining Balance**
Basic Deficiency VAT	₱ 2,876,405.48	₱ 238,032.85	₱ 2,638,372.63
Surcharge (25%)	719,101.37		719,101.37
Deficiency Interest (20%) from January 25, 2010 to April 30, 2016 *(₱2,876,405.48 x 20% x 2,287 days/365 days)*	3,604,569.50	299,986.61	3,304,582.89

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Total Amount Due, April 30, 2016	**₱7,200,076.35**		1999
Deficiency Interest (20%) from May 1, 2016 until payment on May 10, 2016 *(₱2,876,405.48 x 20% x 10 days/365 days)*	15,761.13		15,761.13
Total Amount Due, May 10, 2016	**₱7,215,837.48**	**₱538,019.46**	**₱6,677,818.02**
Deficiency Interest (20%) from May 11, 2016 to December 31, 2017 *(₱2,638,372.63 x 20% x 600 days/365 days)*			867,410.18
Delinquency Interest (20%)			
from May 1, 2016 until payment on May 10, 2016 *(₱7,200,076.35 x 20% x 10 days/365 days)*			39,452.47
from May 11, 2016 until December 31, 2017 *(₱6,677,818.02 x 20% x 600 days/365 days)*			2,195,447.02
Total Deficiency VAT Due as of December 31, 2017			**₱9,780,127.69**

	Deficiency EWT	**Less: Payment on May 10, 2016**	**Remaining Balance**
Basic Deficiency EWT	₱ 1,595,127.70	₱ 1,595,127.70	₱ -
Surcharge (25%)	398,781.93		398,781.93
Deficiency Interest (20%) from January 15, 2010 to April 30, 2016 *(₱1,595,127.70 x 20% x 2,297 days/365 days)*	2,007,675.80	2,023,408.56	(15,732.76)
Total Amount Due, April 30, 2016	**₱4,001,585.42**		
Deficiency Interest (20%) from May 1, 2016 until payment on May 10, 2016 *(₱1,595,127.70 x 20% x 10 days/365 days)*	8,740.43		8,740.43
Total Amount Due, May 10, 2016	**₱4,010,325.85**	**₱3,618,536.26**	**₱391,789.59**
Delinquency Interest (20%)			
from May 1, 2016 until payment on May 10, 2016 *(₱4,001,585.42 x 20% x 10 days/365 days)*			21,926.50
from May 11, 2016 until December 31, 2017 *(₱398,781.93 x 20% x 600 days/365 days)*			128,807.54
Total Deficiency EWT Due as of December 31, 2017			**₱542,523.63**

	Deficiency WTC	**Less: Payment on May 10, 2016**	**Remaining Balance**
Basic Deficiency WTC	₱ 306,197.70	₱ 306,197.70	₱ -
Surcharge (25%)	76,549.43		76,549.43
Deficiency Interest (20%) from January 15, 2010 to April 30, 2016 *(₱306,197.70 x 20% x 2,297 days/365 days)*	385,389.65	388,409.69	(3,020.04)
Total Amount Due, April 30, 2016	**₱768,136.78**		
Deficiency Interest (20%) from May 1, 2016 until payment on May 10, 2016 *(₱306,197.70 x 20% x 10 days/365 days)*	1,677.80		1,677.80
Total Amount Due, May 10, 2016	**₱769,814.58**	**₱694,607.39**	**₱ 75,207.19**
Delinquency Interest (20%)			
from May 1, 2016 until payment on May 10, 2016 *(₱768,136.78 x 20% x 10 days/365 days)*			4,208.97
from May 11, 2016 until December 31, 2017 *(₱75,207.18 x 20% x 600 days/365 days)*			24,725.65

Total Deficiency WTC Due as of December 31, 2017			**₱104,141.81**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Income Tax	₱ 11,844,475.66
VAT	₱ 6,677,818.02
EWT	₱ 391,789.59
WTC	₱ 75,207.19

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice