REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BASF PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11071

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

2:10 pm

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DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

Before this Court is a *Petition for Review* wherein petitioner prays that judgment be rendered declaring the assessments against it for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC), for taxable year 2017, in the total amount of ₱10,220,228.64, inclusive of increments, void and/or invalid, and cancelling the same.[1]

THE PARTIES

Petitioner BASF Philippines, Inc. is a corporation duly organized and existing under Philippine laws, with principal office at Upper Penthouse, Units 3 & 4 CTP Asean Tower, Block 3, Lot 2, Asean Drive, Spectrum District, Filinvest City, Alabang, Muntinlupa City.[2]

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[1] Prayer, *Petition for Review*, Docket – Vol. I, p. 26.
[2] Exhibit "P-1", Docket – Vol. III, pp. 986 to 1012.

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR), National Office, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The BIR issued a *Preliminary Assessment Notice* (PAN) dated December 21, 2020,[4] assessing petitioner for deficiency income tax, VAT, EWT, WTC, and documentary stamp tax (DST) for taxable year 2017. In response to the PAN, petitioner filed a letter dated January 5, 2021 on January 6, 2021.[5]

Thereafter, the BIR issued a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies* and *Assessment Notices* dated January 27, 2021.[6] On February 26, 2021, to protest the FLD, petitioner filed its letter of even date,[7] requesting for a reinvestigation of the assessments.

Respondent then sent petitioner a letter dated March 17, 2021 with the subject, *Action on Protest Letter dated February 26, 2021 Request for Reinvestigation* on April 26, 2021,[8] wherein respondent granted petitioner's request for the reinvestigation of the assessments, and informed petitioner to submit the necessary supporting documents within sixty (60) days from the date of filing of its protest. Subsequently, on June 14, 2021, petitioner filed the letter of even date transmitting documents which were alleged to be requested by the BIR on May 27, 2021.[9]

Respondent, through Regional Director Jethro M. Sabariaga of Revenue Region No. 8B, issued the *Final Decision on Disputed Assessment* (FDDA), with attached *Details of Discrepancies* and *Amended Assessment Notices*, dated November 22, 2022, which partially denied petitioner's protest.[10]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed a *Petition for Review* on January 19, 2023.[11]

[3] Par. 2, *Petition for Review*, Docket – Vol. I, p. 6.
[4] Exhibit "P-3", Docket – Vol. III, pp. 1024 to 1032.
[5] Exhibit "P-4", Docket – Vol. III, pp. 1044 to 1046. *Cf:* Docket – Vol. III, pp. 1033 to 1035.
[6] Exhibit "P-5" to "P-5-E", Docket – Vol. III, pp. 1047 to 1060.
[7] Exhibit "P-6", Docket – Vol. III, pp. 1061 to 1078.
[8] Exhibit "P-7, Docket – Vol. III, p. 1079.
[9] Exhibit "P-8", Docket – Vol. III, pp. 1080 to 1082.
[10] Exhibits "P-2" to "P-2-D", Docket – Vol. III, pp. 1013 to 1023.
[11] Docket – Vol. I, pp. 6 to 31.

On February 15, 2023, respondent received a *Summons* issued by the Court on February 1, 2023, which ordered the filing of an *Answer* to said *Petition for Review.*[12] Respondent's counsel posted a *Motion for Extension of Time to File Answer* on March 14, 2023,[13] asking until April 16, 2023 to file the *Answer*, which was granted by the Court in its *Minute Resolution* dated April 11, 2023.[14]

The Judicial Records Division of this Court reported that, as of June 26, 2023, respondent still failed to file an *Answer* in this case.[15] In the Resolution dated September 8, 2023,[16] in view of respondent's failure to file his *Answer*, the Court set the case for hearing for the reception of petitioner's evidence on November 16, 2023.

Subsequently, petitioner filed a *Motion to Declare Respondent in Default and to Set Additional Commissioner's Hearing* on September 18, 2023.[17] The Court granted petitioner's motion and declared respondent in default in its *Resolution* dated November 6, 2023.[18]

Trial of the case then ensued *ex parte.*

Petitioner offered the testimony of Mr. John Sylvester M. Duran,[19] petitioner's Finance and Controlling Specialist.

On December 19, 2023, petitioner filed its *Manifestation and Submission*,[20] with the attached hard copy of its *Formal Offer of Evidence.*[21] In the Resolution dated August 20, 2024,[22] the Court admitted all of petitioner's offered exhibits.

Petitioner's *Memorandum* was filed on October 9, 2024.[23]

The case was considered submitted for decision on October 21, 2024.[24]

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[12] Docket – Vol. I, p. 477.
[13] Docket – Vol. I, pp. 478 to 480.
[14] Docket – Vol. II, p. 483 [stapled at the end of Vol. II].
[15] Records Verification dated June 26, 2023 issued by this Court's Judicial Records Division, Docket – Vol. I, p. 483.
[16] Docket – Vol. I, pp. 484 to 485.
[17] Docket – Vol. I, pp. 486 to 489.
[18] Docket – Vol. II, pp. 502 to 504.
[19] Exhibit "P-34", Docket – Vol. II, pp. 509 to 537; Minutes of the hearing held on, and Order dated, November 16, 2023, Docket – Vol. II, pp. 963 to 963-B.
[20] Docket – Vol. III, pp. 964 to 965.
[21] Docket – Vol. III, pp. 968 to 985.
[22] Docket – Vol. III, pp. 1383 to 1385.
[23] Docket – Vol. III, pp. 1387 to 1418.
[24] Minute Resolution dated October 21, 2024, Docket – Vol. III, p. 1423.

THE ISSUES RAISED BY PETITIONER

Petitioner summarizes the issues for the Court's resolution, as follows:

> "a. Whether or not the Assessments are void on account of the Respondent's failure to observe due process;
>
> b. Whether or not the Assessments are invalid for lack of factual and/or legal bases; and
>
> c. Whether or not portions of the assessments for VAT, EWT, and WTC issued against the Petitioner are barred by prescription."[25]

Petitioner's arguments:

Petitioner argues that the assessments are void because respondent failed to observe due process when he converted the PAN to FLD without considering the defenses and supporting documents submitted by petitioner, and without explaining the specific facts and law for rejecting petitioner's defenses and submissions; that the assessments are invalid for lack of factual and/or legal bases; and that the portions of the VAT, EWT, and WTC assessments issued against the petitioner are barred by prescription.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

There was no violation of petitioner's right to due process.

Petitioner argues that the assessments are void because respondent failed to observe due process when he converted the PAN to FLD without considering the defenses and supporting documents submitted by petitioner and without explaining the specific facts and law for rejecting petitioner's defenses and submissions.

Petitioner avers that the FLD itself shows that its explanations in the PAN protest letter were *simply brushed aside and ignored* by respondent. It further asserts that while respondent confirmed receiving the PAN protest letter, there was no reference in the FLD that would show that respondent considered the legal and factual arguments raised by petitioner in its PAN protest letter. According to petitioner, the BIR simply replicated its PAN findings in the FLD, including the same assessment items and the same amount of deficiency

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[25] Par. 28, petitioner's *Memorandum*, Docket – Vol. III, p. 1392.

taxes; and in fact, the *Details of Discrepancies* attached to the FLD is allegedly identical to the *Details of Discrepancies* attached to the PAN.

The Court is *not* convinced.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 reads, in part, 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: xxx
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> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> xxx xxx xxx." *(Emphasis added)*

The foregoing provision explicitly requires that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[26] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is *mandatory*. It cannot be presumed. As a requirement of due process, this rule enables the taxpayer to make an effective protest.[27] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is *not* a hollow exhortation. The law imposes a *substantive*, not merely a formal, requirement.[28] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[29]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[30] as amended by RR No. 18-2013,[31] and renumbered by RR No. 7-2018,[32] provides, in part, as follows:

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[26] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[27] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[28] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[29] *Ibid.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).

[30] 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.

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

[32] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> xxx xxx xxx
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> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).
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> xxx xxx xxx
>
> 3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision.*" *(Emphases and underscoring added)*

As part of due process in the issuance of tax assessments, this provision prescribes that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

Indeed, in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon*),[33] the Supreme Court made the following pronouncements:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**

[33] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

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The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.**

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In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

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In *Ang Tibay v. The Court of Industrial Relations*,[34] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) **The administrative tribunal or body must consider the evidence presented.**
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

[34] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) The administrative tribunal's decision is rendered in a **manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.**

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The second to the sixth requirements refer to the party's 'inviolable rights *applicable at the* **deliberate** state'. **<u>The decision-maker must consider the totality of the evidence presented as he or she decides the case</u>.**

The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

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Administrative due process is anchored on fairness and equity in procedure. <u>It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself</u>. Moreover, it demands that the **party's defenses be considered** by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

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<u>The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.</u> Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **<u>Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void</u>.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' <u>This is an essential requirement of due process and applies to the</u> Preliminary Assessment Notice, **<u>Final Letter of Demand with the Final Assessment Notices</u>**, and the Final Decision on Disputed Assessment.

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The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted** by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter **null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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In *Commissioner of Internal Revenue v. Reyes*,[35] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[36]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of

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[35] 516 Phil. 176 (2006) [Per *C.J.* Panganiban, First Division].
[36] 241 Phil. 829 (1988) [Per *J.* Cruz, First Division].

taxation, which is the promotion of the common good, may be achieved.

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But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed. (Emphasis supplied)

xxx. *[The Commissioner of Internal Revenue's]* **disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

Based on *Avon*, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. And due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment *void*, and of no force and effect. In the issuance of tax assessments, the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

In this case, the BIR found the following due from petitioner for taxable year ending December 31, 2017 per PAN issued on December 21, 2020:[37]

I. INCOME TAX			
Taxable Income per return			P 87,689,267.00
Add: Adjustments/disallowances			
Receipts Not Subjected to Income Tax (Schedule 1)		P 39,141,932.38	
Disallowed Representation and Entertainment (Schedule 2)		7,840,480.27	

[37] Exhibit "P-3", Docket – Vol. III, pp. 1024 to 1032.

Disallowed Accrued Expense (Schedule 3)		30,158,088.00	
Unsupported Expenses (Schedule 4)		74,620,000.00	
Disallowed Expenses due to Non-withholding (Schedule 5)		46,355,117.34	
Disallowed Salaries & Wages due to Non-withholding (Schedule 6)		21,806,278.46	219,921,896.45
Taxable Income			P 307,611,163.45
Basic Deficiency Income Tax			P 92,283,349.03
Less: Tax Credits/Payments			
Payments		P 17,860,429.83	
Creditable Tax Withheld		5,659,277.00	
Foreign Tax Credits		2,787,073.00	
Total		P 26,306,779.83	
Less: Disallowed Foreign Tax Credits		2,787,073.00	23,519,706.83
Basic Tax Due			P 68,763,642.20
Add: Interest 12% (Apr. 16, 2018 to Jan. 15, 2021)			22,742,868.18
TOTAL AMOUNT DUE			**P 91,506,510.38**
II. VAT			
Taxable sales/receipts per VAT return			P 777,716,236.43
Add: Disallowed Zero-Rated Sales			417,160,652.59
Taxable sales/receipts as adjusted			P 1,194,876,889.02
Output Tax Due			P 143,385,226.68
Less: Allowable input tax per audit			
Input Tax from current period		P 110,678,366.12	
Input Tax carried over from previous period		76,195,546.07	
Input Tax Deferred on Capital Goods Exceeding P1M		1,775,589.73	
Total		188,649,501.92	
Less: Adjustments/disallowances			
Unsupported Input Tax	P 110,678,366.12		
Input Tax on Purchases of Capital Goods exceeding P1M	2,189,200.09		
Excess input tax carried over to succeeding period	93,134,353.46	206,001,919.67	(17,352,417.75)
VAT Payable			P 160,737,644.43
Less: VAT Payments per Return			-
Basic VAT Due			P 160,737,644.43
Add: Interest 12% (Jan. 26, 2018 to Jan. 15, 2021)			57,389,944.72
TOTAL AMOUNT DUE			**P 218,127,589.15**
III. EWT			
Basic Tax Due (Schedule 5)			P 3,564,405.02
Add: Interest 12% (Jan. 16, 2018 to Jan. 15, 2021)			1,284,357.67
TOTAL AMOUNT DUE			**P 4,848,762.69**
IV. WTC			
Basic Tax Due (Schedule 6)			P 5,734,918.32
Add: Interest 12% (Jan. 16, 2018 to Jan. 15, 2021)			2,066,456.05

TOTAL AMOUNT PAYABLE			**P 7,801,374.37**
V. DST			
Basic Tax Due (Schedule 7)			P 5,892,633.00
Add: Surcharge (25%)		P 1,473,158.25	
Interest 12% (Jan. 6, 2018 to Jan. 15, 2021)		2,142,658.22	3,615,816.47
TOTAL AMOUNT DUE			**P 9,508,449.47**

In sum, petitioner was assessed the following items:

Tax Type	Basic	Surcharges	Interests	Total
Income tax	₱ 68,763,642.20	-	₱ 22,742,868.18	₱ 91,506,510.38
VAT	160,737,644.43	-	57,389,944.72	218,127,589.15
EWT	3,564,405.02	-	1,284,357.67	4,848,762.69
WTC	5,734,918.32	-	2,066,456.05	7,801,374.37
DST	5,892,633.00	1,473,158.25	2,142,658.22	9,508,449.47
Total	**₱244,693,242.97**	**₱1,473,158.25**	**₱85,626,284.84**	**₱331,792,686.06**

Subsequently, in the FLD dated January 27, 2021,[38] the assessment retained the same deficiency tax liabilities, with an *adjusted interest rate*:

I. INCOME TAX			
Taxable Income per return			₱ 87,689,267.00
Add: Adjustments/disallowances			
Receipts Not Subjected to Income Tax (Schedule 1)		₱ 39,141,932.38	
Disallowed Representation and Entertainment (Schedule 2)		7,840,480.27	
Disallowed Accrued Expense (Schedule 3)		30,158,088.00	
Unsupported Expenses (Schedule 4)		74,620,000.00	
Disallowed Expenses due to Non-withholding (Schedule 5)		46,355,117.34	
Disallowed Salaries & Wages due to Non-withholding (Schedule 6)		21,806,278.46	219,921,896.45
Taxable Income			₱ 307,611,163.45
Basic Deficiency Income Tax			₱ 92,283,349.03
Less: Tax Credits/Payments			
Payments		₱ 17,860,429.83	
Creditable Tax Withheld		5,659,277.00	
Foreign Tax Credits		2,787,073.00	
Total		₱ 26,306,779.83	
Less: Disallowed Foreign Tax Credits		2,787,073.00	23,519,706.83
Basic Tax Due			₱ 68,763,642.20
Add: Interest 12% (Apr. 16, 2018 to Feb. 26, 2021)			23,692,371.63
TOTAL AMOUNT DUE			**₱ 92,456,013.83**
II. VAT			
Taxable sales/receipts per VAT return			₱ 777,716,236.43
Add: Disallowed Zero-Rated Sales			417,160,652.59

[38] Exhibit "P-5", Docket – Vol. III, pp. 1047 to 1055.

Taxable sales/receipts as adjusted			₱ 1,194,876,889.02
Output Tax Due			₱ 143,385,226.68
Less: Allowable input tax per audit			
Input Tax from current period		₱ 110,678,366.12	
Input Tax carried over from previous period		76,195,546.07	
Input Tax Deferred on Capital Goods Exceeding P1M		1,775,589.73	
Total		188,649,501.92	
Less: Adjustments/disallowances			
Unsupported Input Tax	₱ 110,678,366.12		
Input Tax on Purchases of Capital Goods exceeding P1M	2,189,200.09		
Excess input tax carried over to succeeding period	93,134,353.46	206,001,919.67	(17,352,417.75)
VAT Payable			₱ 160,737,644.43
Less: VAT Payments per Return			-
Basic VAT Due			₱ 160,737,644.43
Add: Interest 12% (Jan. 26, 2018 to Feb. 26, 2021)			59,609,445.34
TOTAL AMOUNT DUE			**₱220,347,089.77**
III. EWT			
Basic Tax Due (Schedule 5)			₱ 3,564,405.02
Add: Interest 12% (Jan. 16, 2018 to Feb. 26, 2021)			1,333,575.75
TOTAL AMOUNT DUE			**₱ 4,897,980.77**
IV. WTC			
Basic Tax Due (Schedule 6)			₱ 5,734,918.32
Add: Interest 12% (Jan.16, 2018 to Feb. 26, 2021)			2,145,645.06
TOTAL AMOUNT PAYABLE			**₱ 7,880,563.38**
V. DST			
Basic Tax Due (Schedule 7)			₱ 5,892,633.00
Add: Surcharge (25%)		₱ 1,473,158.25	
Interest 12% (Jan. 6, 2018 to Feb. 26, 2021)		2,224,024.99	3,697,183.24
TOTAL AMOUNT DUE			**₱ 9,589,816.24**

Briefly, the FLD contained the following details:

Tax Type	Basic	Surcharges	Interests	Total
Income tax	₱ 68,763,642.20	-	₱ 23,692,371.63	₱ 92,456,013.83
VAT	160,737,644.43	-	59,609,445.34	220,347,089.77
EWT	3,564,405.02	-	1,333,575.75	4,897,980.77
WTC	5,734,918.32	-	2,145,645.06	7,880,563.38
DST	5,892,633.00	1,473,158.25	2,224,024.99	9,589,816.24
Total	**₱244,693,242.97**	**₱1,473,158.25**	**₱89,005,062.77**	**₱335,171,463.99**

However, the Court finds that *Avon* cannot apply here.

The Court notes that in its January 5, 2021 letter-reply to the PAN,[39] petitioner merely refuted the findings/assessments as follows:

"Good day. In connection with the Preliminary Assessment Notice received on December 23, 2020, please see below explanations on the 2017 deficiency tax assessments:

I. <u>**Income Tax – PHP 145,239,844.77**</u>

a. **Schedule 1: Receipts not Subjected to Income Tax – PHP 39,141,932.38** Recognition of sales upon issuance of sales invoice for the sale of goods.

b. **Schedule 2: Disallowed Representation & Entertainment – PHP 7,840,480.27** Refer to our Letter reply to Notice of Discrepancy for the explanation and supporting document submitted **(See attachment A).**

c. **Schedule 3: Disallowed Accrued Expenses – PHP 30,158,088.00** these are expenses incurred but paid in 2018 **(See attachment A).**

d. **Schedule 4: Unsupported Expenses – PHP 74,620,000.00** Refer to our reply to Notice of Discrepancies include all supporting documents **(See attachment A).**

e. **Schedule 5: Disallowed expenses due to non-withholding – PHP 46,355,117.34 (See attachment A – Letter reply to Notice of Discrepancy).**

1. **Offshore services of foreign suppliers** Represents services of suppliers rendered offshore which are not subject to EWT.

2. **Expense payments via Global Corporate Credit Card (GCCC)** for travel, communication, repairs & maintenance, representation & entertainment are not subject to EWT amounting to PHP 21,875,147.71

3. **Professional Fees –** payment for General Professional Partnerships are not subject to EWT.

f. **Schedule 6: Disallowed Salaries & Wages due to Non-Withholding – PHP 21,806,278.46** some personnel costs mapped under salaries and benefits in the audited FS that are not subject to w/tax on compensation **(See attachment A)**

GL#			Amount
	Retirement Provision	PHP	4,958,190.00
	Net Past Service Cost		5,652,545.00
4184000	Medical Insurance Others		5,075,656.24
4194300	Medical Expenses		691,042.13
4194320	Medical Expenses – Check Ups		518,139.73

[39] Exhibit "P-4", Docket – Vol. III, pp. 1044 to 1046.

4195100	Events/Parties for Employees		2,355,048.86
4195200	Employee Leisure Activities		91,429.06
4199100	Recruitment & Interview Process		1,110,615.08
4194000	Expert Workshops Events Training		3,623,765.05
TOTAL		**PHP**	**24,076,431.15**

g. **Disallowed/Unsupported Creditable Withholding Tax – PHP 2,787,073.00** pertains to 20% creditable tax deducted by BASF Indonesia on commission revenue payment, please refer to supporting documents submitted in our Letter reply to Notice of Discrepancy.

II. **<u>Value-Added Tax – PHP 160,737,644.43</u>**

a. **Unsupported Zero-Rated Sales – PHP 417,160,652.59** USD Inward remittance Certification from Deutsche Bank **(See attachment B/B-1)** and BOI/PEZA certificates representing zero-rated sales on local customers.

b. **Schedule 10: Unsupported Input Tax – PHP 110,678,366.12** Refer to Summary List of Purchases and Importations duly attached to our Letter reply to Notice of discrepancy **(See attachment A).**

III. **<u>Expanded Withholding Tax – PHP 3,564,405.02</u>**
Please refer to explanation on Schedule 5

IV. **<u>Withholding Tax on Compensation – PHP 5,734,918.32</u>**
Please refer to explanation on Schedule 6

V. **<u>Documentary Stamp Tax – PHP 5,892,633.00</u>**

Related Parties are trade related transactions within the normal course of business and not a debt instruments therefore not to be subjected to DST **(See attachment C –** Notes 21 of AFS**).**

Loan Proceeds pertains to DST on short-term bank loans directly remitted by the bank based on pro-rated tenure ranging from 14/360 to 91/360 days **(See attachment D).**

Future Lease Payments are only AFS disclosures that pertains to prior years lease contract agreement.

xxx xxx xxx"

Notably, **petitioner did *not* submit in evidence the attachments referred to in its reply to the PAN.** Hence, the reply to the PAN *standing alone* are mere factual allegations not backed by any relevant documents to prove the same. In fact, a reading of the reply given by petitioner to address some of the items of assessment are *vague one-liner* or *single sentence statements* concerning the supposed facts. In view of the *unsubstantiated* factual claims, the assessments are deemed *uncontested or undisputed.* In which case, there was *no due process violation* when respondent retained these items in the FLD, and simply reiterated what were *previously* already indicated in the *Details of Discrepancies* attached to the PAN. One requirement in *Avon* is that the decision-maker must consider the totality of evidence presented to decide the case. But respondent cannot be expected to comply with this requirement if petitioner did not provide the evidence needed to resolve the factual issues to begin with.

Simply put, in this case, the BIR *cannot* be faulted if it merely reiterated the findings in the PAN. With nothing to consider after the receipt of the letter-reply, respondent is justified in merely restating its findings, without giving any reason for rejecting the petitioner's unsubstantiated refutations. Groundless, vague one-liners or single sentence statements which are not responsive to the issues raised in the PAN are *insufficient* to overturn the factual findings in the PAN using the *Avon* case. This should be a guiding rule for the Court, otherwise, an indiscriminate application of *Avon* will open an opportunity to overturn the presumption of correctness of assessments based on unfounded defenses.

Since petitioner failed to show that it refuted these items, petitioner's defenses were not duly proven or have remained unsubstantiated. To be fair, the Court *cannot* conclude that respondent had anything to consider in re-evaluating these assessments prior to issuing the FLD. Again, *Avon* is *not* on all-fours with the present case that will merit voiding the findings of respondent.

The BIR's right to assess portions of the subject deficiency EWT and WTC is barred by prescription.

Petitioner argues that by the time respondent issued the subject FLD on January 27, 2021, prescription had already set in for deficiency VAT for the 1st and 2nd quarters of taxable year 2017, and deficiency EWT and WTC for the months of January to July 2017.[40]

We *partly* agree with petitioner.

Section 203 of the NIRC of 1997 reads as follows:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such

---

[40] Par. 86, petitioner's *Memorandum*, Docket – Vol. III, p. 1414.

> period: *Provided*, **That <u>in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed</u>.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphases and underscoring added)*

Section 203 clearly provides that internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[41] As a corollary thereto, an assessment notice issued *after* the three-year prescriptive period is *not* valid and effective,[42] except as provided in Section 222 of the NIRC of 1997.

Section 114(A) of the NIRC of 1997, as amended, also reads:

> "SEC. 114. *Return and Payment of Value-added Tax.* —
>
> (A) *In General.* – **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis added)*

Based on the foregoing provision, petitioner's *Quarterly VAT Returns* for the 1st and 2nd quarters of taxable year 2017 should have been filed on or before:

(1) April 25, 2017, for the 1st quarter; and,
(2) July 25, 2017, for the 2nd quarter.

With regard to withholding taxes, Section 2.58 of RR No. 2-98,[43] as amended by RR No. 17-2003,[44] provides that for taxpayers who availed of the electronic filing and payment system (EFPS), the deadline for electronically

[41] Refer to *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[42] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

[43] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[44] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

filing the applicable withholding tax returns and paying the taxes due thereon *via* the EFPS shall be five (5) days later than the abovementioned deadlines, unless the EFPS regulations provide for different deadline dates. The relevant provisions of RR No. 2-98, as amended, read:

> "Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. –
>
> (A) *Monthly return and payment of taxes withheld at source. –*
>
> (1) xxx xxx xxx
>
> (2) *WHEN TO FILE –*
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within **ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx.
>
> xxx xxx xxx
>
> (b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates** and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." *(Emphases added)*

Relative thereto, Section 7 of RR No. 9-2001,[45] as amended by RR No. 26-2002,[46] providing for the staggered *filing* of returns of taxpayers enrolled in the EFPS based on industry classification. For petitioner, whose Line of Business is "OTHER BUSINESS ACTIVITIES N.E.C.",[47] and thus, classified under Group E, its monthly EWT and WTC Returns shall be filed eleven (11) days after the end of each month, to wit:

> "Section 7. TIME OF FILING OF RETURN. - For purposes of filing returns under the EFPS, the taxpayers classified under the following business

[45] SUBJECT: Electronic Filing of Tax Returns and Payment of Taxes.

[46] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

[47] Refer to Exhibits "P-31" to "P-31-B", "P-32" to "P-32-F", and "P-33" to "P-33-F", Docket – Vol. III, pp. 1341 to 1378 .

industries shall be required to file the Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage Tax Returns, on or before the dates prescribed and presented herein-below:

BUSINESS INDUSTRY	MONTHLY WITHHOLDING TAX RETURNS EXCEPT WITHHOLDING OF VALUE ADDED TAX	MONTHLY VAT DECLARATIONS AND MONTHLY PERCENTAGE TAX RETURNS
xxx	xxx	xxx
Group E Activities of Membership Organizations Inc. Health and Social Work Private Educational Services Public Admin & Defense Compulsory Social Security Public Educational Services Research and Development Agricultural, Hunting, and Forestry Farming of Animals Fishing **Other Service Activities** **Miscellaneous Business Activities** **Unclassified**	• **Eleven (11) days following end of the month.**	xxx

xxx xxx xxx

For purposes of these regulations, the industry of the taxpayer is its primary line of business or the primary purpose of its existence as stated in the Articles of Incorporation, for corporate taxpayers."

For purposes of the subject tax assessments of deficiency VAT, EWT and WTC against petitioner for taxable year 2017, the end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 is respectively determined as follows:

Kind of Tax & Period	**Actual date of filing of the pertinent tax return**	**Reckoning date of the three-year prescriptive period**[48]	**End of the three-year prescriptive period**
VAT – 1st Quarter 2017	Dec. 26, 2018[49]	Dec. 26, 2018	**Dec. 26, 2021**
VAT – 2nd Quarter 2017	Dec. 26, 2018[50]	Dec. 26, 2018	**Dec. 26, 2021**
EWT – Jan. 2017	Feb. 8, 2017[51]	Feb. 13, 2017[52]	Feb. 13, 2020
EWT – Feb. 2017	Mar. 9, 2017[53]	Mar. 13, 2017[54]	Mar. 13, 2020
EWT – Mar. 2017	Apr. 11, 2017[55]	Apr. 11, 2017	Apr. 11, 2020
EWT – Apr. 2017	May 10, 2017[56]	May 11, 2017	May 11, 2020

[48] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[49] Exhibit "P-31", Docket – Vol. III, pp. 1341 to 1344.
[50] Exhibit "P-31-A", Docket – Vol. III, pp. 1345 to 1348.
[51] Exhibit "P-32", Docket – Vol. III, 1351 to 1352.
[52] February 11, 2017 fell on a Saturday.
[53] Exhibit "P-32-A", Docket – Vol. III, 1353 to 1354.
[54] March 11, 2017 fell on a Saturday.
[55] Exhibit "P-32-B", Docket – Vol. III, 1355 to 1356.
[56] Exhibit "P-32-C", Docket – Vol. III, 1357 to 1358.

Kind of Tax & Period	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period[48]	End of the three-year prescriptive period
EWT – May 2017	June 8, 2017[57]	June 13, 2017[58]	June 13, 2020
EWT – June 2017	July 4, 2017[59]	July 11, 2017	July 11, 2020
EWT – July 2017	Aug. 7, 2017[60]	Aug. 11, 2017	Aug. 11, 2020
WTC – Jan. 2017	Feb. 6, 2017[61]	Feb. 13, 2017[62]	Feb. 13, 2020
WTC – Feb. 2017	Mar. 7, 2017[63]	Mar. 13, 2017[64]	Mar. 13, 2020
WTC – Mar. 2017	Apr. 4, 2017[65]	Apr. 11, 2017	Apr. 11, 2020
WTC – Apr. 2017	May 3, 2017[66]	May 11, 2017	May 11, 2020
WTC – May 2017	June 2, 2017[67]	June 13, 2017[68]	June 13, 2020
WTC – June 2017	July 3, 2017[69]	July 11, 2017	July 11, 2020
WTC – July 2017	Aug. 2, 2017[70]	Aug. 11, 2017	Aug. 11, 2020

Considering that the FLD and *Assessment Notices* were issued on January 27, 2021 and received by petitioner on February 1, 2021,[71] the right of the BIR to assess deficiency VAT for the 1st to 2nd quarters of taxable year 2017 has not been barred by prescription. However, the BIR's right to assess petitioner for deficiency EWT and WTC for the months of January to July 2017, appears to have already prescribed.

However, pursuant to Section 4(z) of Republic Act (RA) No. 11469 dated March 24, 2020,[72] the statutory deadlines and timeliness for the filing and submission of any document were extended, to wit:

> "SEC. 4. *Authorized Powers.* – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:
>
> xxx xxx xxx

[57] Exhibit "P-32-D", Docket – Vol. III, 1359 to 1360.
[58] June 11, 2017 fell on a Sunday while June 12, 2017 is a holiday.
[59] Exhibit "P-32-E", Docket – Vol. III, 1361 to 1362.
[60] Exhibit "P-32-F", Docket – Vol. III, 1363 to 1364.
[61] Exhibit "P-33", Docket – Vol. III, 1365 to 1366.
[62] February 11, 2017 fell on a Saturday.
[63] Exhibit "P-33-A", Docket – Vol. III, pp. 1367 to 1368.
[64] March 11, 2017 fell on a Saturday.
[65] Exhibit "P-33-B", Docket – Vol. III, pp. 1369 to 1370.
[66] Exhibit "P-33-C", Docket – Vol. III, pp. 1373 to 1374
[67] Exhibit "P-33-D", Docket – Vol. III, pp. 1371 to 1372.
[68] June 11, 2017 fell on a Sunday while June 12, 2017 is a holiday.
[69] Exhibit "P-33-E", Docket – Vol. III, pp. 1375 to 1376.
[70] Exhibit "P-33-F", Docket – Vol. III, pp. 1377 to 1378.
[71] Exhibit "P-5" to "P-5-E", Docket – Vol. III, pp. 1047 to 1060; Q&A No. 17, Exhibit "P-34", Docket – Vol. II, p. 513.
[72] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES, otherwise known as *"Bayanihan to Heal As One Act"*.

(z) **Move statutory deadlines and timelines for the filing and submission of any document**, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine;" *(Emphasis added)*

To implement the above law, several Revenue Regulations / Revenue Memorandum Circulars (RMC) were issued by the BIR, with respect to the suspension of the running of the statute of limitations in the assessment of taxes under Sections 203 and 222, pursuant to Section 223, of the NIRC of 1997, as amended, to wit:

Issuance	Date	Subject
RR No. 7-2020	Mar. 27, 2020	Implementing Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act", particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes
RMC No. 34-2020	Mar. 27, 2020	SUSPENDING THE RUNNING OF THE STATUTE OF LIMITATIONS IN THE ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF A NATIONAL EMERGENCY FROM THE CORONA VIRUS DISEASE 2019 (COVID-19) SITUATION
RMC No. 39-2020	Apr. 7, 2020	Further Extension of the Due Dates for the Submission and/or Filing of Certain Documents and/or Returns as well as Payment of Certain Taxes under Revenue Regulations No. 7-2020
RR No. 10-2020	Apr. 9, 2020	Amends Section 2 of Revenue Regulations No. 7-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RR No. 11-2020	Apr. 29, 2020	Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RR No. 12-2020	May 14, 2020	Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RMC No. 74-2020	July 15, 2020	Amending and/or Clarifying Certain Provisions of RMC 34-2020
RMC No. 77-2020	July 30, 2020	Clarifying ECQ as Referred to under RMC No. 74-2020

Based on the revenue issuances above, the running of the statute of limitations under Sections 203 and 222, pursuant to Section 223[73] of the NIRC of 1997, as amended, was suspended from March 16, 2020 and for sixty (60) days after the lifting of the quarantine.

Subsequently, from May 1, 2020 to May 15, 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases continued to place the National Capital Region (NCR) under Enhanced Community Quarantine (ECQ).[74]

On May 15, 2020, IATF Resolution No. 37 was issued placing all Highly Urbanized Cities (HUCs) of the NCR and the Municipality of Pateros under Modified Enhanced Community Quarantine (MECQ) until May 31, 2020, without prejudice to the declaration of localized Enhanced Community Quarantine in critical areas. All HUCs of the NCR and the municipality of Pateros was then placed under General Community Quarantine beginning June 1, 2020.[75]

Then, on August 3, 2020, NCR was again placed under MECQ effective from August 4, 2020 to August 18, 2020.[76]

The computation of the period of suspension was clarified in RMC No. 136-2020,[77] issued on December 7, 2020, which provides as follows:

> "Item 32 in the matrix provided under RR No. 11-2020 pertains to the suspension of the statute of limitation provided under Sections 203 and 222 of the Tax Code. The said matrix provided that the suspension shall start from March 16, 2020, when the state of emergency was declared due to COVID-19 virus until sixty days after the lifting of the quarantine. With such suspension, the counting of the three (3)-year prescriptive period for the period to assess and the five (5)-year period to collect, shall exclude the number of days covered by the period of suspension, which is a total of one hundred thirty-seven (137) days.
>
> To illustrate:

	Original Prescriptive Date	**New Prescriptive Date**
Case 1	March 15, 2020	March 15, 2020
Case 2	March 16, 2020	July 31, 2020

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[73] "SEC. 223. *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; xxx"

[74] IATF Resolution Nos. 28 and 29 dated April 23, 2020 and April 27, 2020, respectively.

[75] IATF Resolution No. 41 dated May 29, 2020.

[76] Memorandum from the Executive Secretary dated August 3, 2020.

[77] SUBJECT: Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.

	Original Prescriptive Date	New Prescriptive Date
Case 3	April 15, 2020	August 30, 2020
Case 4	June 15, 2020	October 30, 2020
Case 5	July 15, 2020	November 29, 2020
Case 6	April 15, 2021	August 30, 2021"

Moreover, RMC No. 93-2021,[78] emphasizes that the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while the ECQ and/or MECQ is in effect, including any extension/s thereof, and for sixty (60) days thereafter; and that the suspension of the running of the statute of limitations shall apply with respect to the issuance and service of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

Accordingly, the end of the BIR's *right to assess* was extended as follows:

Kind of Tax & Period	Original prescriptive period	Extended prescriptive period[79]
EWT – Jan. 2017	Feb. 13, 2020	Feb. 13, 2020
EWT – Feb. 2017	Mar. 13, 2020	Mar. 13, 2020
EWT – Mar. 2017	Apr. 11, 2020	Aug. 26, 2020
EWT – Apr. 2017	May 11, 2020	Sept. 25, 2020
EWT – May 2017	June 13, 2020	Oct. 28, 2020
EWT – June 2017	July 11, 2020	Nov. 25, 2020
EWT – July 2017	Aug. 11, 2020	**Mar. 11, 2021**
WTC – Jan. 2017	Feb. 13, 2020	Feb. 13, 2020
WTC – Feb. 2017	Mar. 13, 2020	Mar. 13, 2020
WTC – Mar. 2017	Apr. 11, 2020	Aug. 26, 2020
WTC – Apr. 2017	May 11, 2020	Sept. 25, 2020
WTC – May 2017	June 13, 2020	Oct. 28, 2020
WTC – June 2017	July 11, 2020	Nov. 25, 2020
WTC – July 2017	Aug. 11, 2020	**Mar. 11, 2021**

In this case, the FLD and *Assessment Notices* were issued on January 27, 2021 and received by petitioner on February 1, 2021,[80] or beyond the extended three (3)-year prescriptive period to assess the alleged deficiency EWT and

[78] SUBJECT: SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE (ECQ) AND MODIFIED ECQ (MECQ) IN THE NATIONAL CAPITAL REGION (NCR) AND OTHER AREAS OF THE COUNTRY.

[79] Applying RMC No. 136-2020 and RMC No. 93-2021, NCR was placed under ECQ/MECQ from March 16, 2020 to May 31, 2020 (77 days) and August 4, 2020 to August 18, 2020 (15 days). Hence, suspension of statute of limitations is for 137 days (77 days + 60 days) and 75 days (15 days + 60 days), whichever is applicable.

[80] Exhibit "P-5" to "P-5-E", Docket – Vol. III, pp. 1047 to 1060; Q&A No. 17, Exhibit "P-34", Docket – Vol. II, p. 513.

WTC taxes for January 2017 to June 2017, *except for the month of July 2017, when the assessment was issued within the period allowed to assess.*

Nevertheless, it must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. All presumptions are in favor of the correctness of tax assessments.[81]

While the Court finds that the respondent's right to assess petitioner for deficiency EWT and WTC for the months of January 2017 to June 2017 has prescribed, the burden is still upon petitioner to show which portion of said deficiency taxes pertain to the prescribed months. However, petitioner did *not present evidence to show which portion of the deficiency taxes fall under the months that have prescribed.* It only presented the returns to prove the date of filing the subject returns. Thus, no deduction or disallowance shall be made relative the portions of the assessed deficiency withholding taxes which have prescribed.

Petitioner is liable for deficiency income tax, VAT, EWT and WTC for taxable year 2017.

Based on the FDDA,[82] petitioner was assessed of deficiency income tax, VAT, EWT, and WTC for taxable year 2017, in the aggregate amount of ₱10,220,228.64, inclusive of interests, summarized as follows:

Tax Type	Basic	Interest	Total	Exhibit No.[83]
Income tax	₱4,515,774.21	₱2,509,038.38	₱7,024,812.59	"P-2-A"
VAT	57,567.20	33,499.38	91,066.58	"P-2-B"
EWT	348,834.69	204,139.97	552,974.66	"P-2-C"
WTC	1,609,491.54	941,883.27	2,551,374.81	"P-2-D"
Total	**₱6,531,667.64**	**₱3,688,561.00**	**₱10,220,228.64**	

I. Deficiency Income Tax

Per the FDDA, respondent assessed petitioner of deficiency income tax amounting to ₱7,024,812.59, including interest, for the taxable year 2017, as follows:[84]

[81] *Bonifacio Sy Po vs. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue,* G.R. No. 81446, August 18, 1988; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007.
[82] Exhibit "P-2", Docket – Vol. III, pp. 1013 to 1019.
[83] Docket – Vol. III, pp. 1020 to 1023.
[84] Exhibit "P-2", Docket – Vol. III, at p. 1013.

I. INCOME TAX		
Taxable Income per return		₱87,689,267.00
Add: Adjustments/disallowances per investigation		
Disallowed Accrued Expenses (Schedule 1)	₱1,952,010.79	
Disallowed Expenses due to Non-Withholding (Schedule 2)	6,976,693.80	
Disallowed Salaries & Wages due to Non-Withholding (Schedule 3)	6,123,875.22	15,052,579.81
Adjusted Taxable Income		**₱102,741,846.81**
Basic Deficiency Income Tax		₱30,822,554.04
Less: Tax Credits/Payments		
Payments	₱17,860,429.83	
Creditable Tax Withheld	5,659,277.00	
Foreign Tax Credits	2,787,073.00	26,306,779.83
Basic Tax Due		₱4,515,774.21
Add: 12% Interest (Apr. 16, 2018 to Nov. 30, 2022)		2,509,038.38
TOTAL AMOUNT DUE		**₱7,024,812.59**

The deficiency income tax assessment arose from the following items:[85]

i. Disallowed Accrued Expenses	₱1,952,010.79
ii. Disallowed Expenses due to Non-withholding	6,976,693.80
iii. Disallowed Salaries and Wages due to Non-withholding	6,123,875.22

i. *Disallowed Accrued Expenses - ₱1,952,010.79*

Respondent's verification disclosed that petitioner has not provided supporting evidence for the accrued expenses amounting to ₱1,952,010.79. Hence, the aforementioned expenses have been disallowed pursuant to Section 34(A)(1)(a) and (b) of the NIRC of 1997, as amended. The disallowed accrued expenses are computed as follows:[86]

Schedule 1		
Note 13 of AFS		
Travel and External Services		₱22,849,276.00
Professional Fees		3,764,312.00
Disallowed Accrued Expenses		26,613,588.00
Less: Adjustments per Investigation		
GCCC	₱1,460,572.53	
Suppliers	22,419,104.68	
Professional Fees	781,900.00	24,661,577.21
Disallowed Accrued Expenses		**₱1,952,010.79**

[85] Exhibit "P-2", Docket – Vol. III, at pp. 1015 to 1017.
[86] *Details of Discrepancies,* Exhibit "P-2", Docket – Vol. III, pp. 1015 to 1016.

Petitioner argues that the disallowed accrued expenses were lifted from Note 13 relating to *Trade and Other Payables and Accrued Expenses* of its 2017 Audited Financial Statements (AFS).[87] Thus, petitioner claims that the disallowance is improper because it was derived by respondent from the provisions entered to liability accounts and not from deductions it actually claimed in its 2017 income tax return.[88] The Court notes that the petitioner did not present its 2017 *Annual Income Tax Return* as evidence, however, a copy of which was attached to the *Petition for Review*.[89]

Moreover, petitioner claims that it can only assume that such disallowed accrued expenses may pertain to professional fees. These professional fees allegedly represent fees of general professional partnerships (GPPs) for services rendered in 2017 but were not yet billed in 2017.[90]

Petitioner submitted the following billing invoices from supplier R.G. Manabat & Co. (KPMG):

Billing Invoice No.	Billing Invoice Date	Amount	VAT	Total	Exhibit No.[91]
0021667	Jan. 9, 2018	₱348,796.00	₱41,855.52	₱390,651.52	"P-10"
0023710	Apr. 10, 2018	523,193.04	62,783.16	585,976.20	"P-10-A"
TOTAL		**₱871,989.04**	**₱104,638.68**	**₱976,627.72**	

Petitioner asserts that the BIR did not explain the breakdown of the *Adjustments per Investigation* in Schedule 1 of the FDDA.[92] Likewise, the BIR did not submit any documents or records for the Court to verify if the invoices submitted by the petitioner is already included in the *Adjustments per Investigation.*

Notably, petitioner argues that these accruals of professional fees are provisions entered to the liability accounts.[93] On this note, it was held in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*,[94] that the accrual of income and expense is permitted when the "all-events test" has been met. This test requires (1) fixing of a right to income or liability to pay; and (2) the availability of reasonably accurate determination of such income or liability.

The "all-events test" requires that the right to income or liability be *fixed*, and the amount of such income or liability be determined with *reasonable accuracy*. However, the test does not demand that the amount be

[87] Exhibit "P-9", Docket – Vol. III, at pp. 1176 to 1177.
[88] Par. 35, *Petition for Review*, Docket – Vol. I, p. 18; Par. 54, petitioner's *Memorandum*, Docket – Vol. III, p. 1408.
[89] Docket – Vol. I, pp. 215 to 228.
[90] Par. 56, petitioner's *Memorandum*, Docket – Vol. III, p. 1408.
[91] Docket – Vol. III, pp. 1195 to 1196.
[92] Refer to par. 55, petitioner's *Memorandum*, Docket – Vol. III, p. 1408.
[93] Par. 35, *Petition for Review*, Docket – Vol. I, p. 18; Par. 54, petitioner's *Memorandum*, Docket – Vol. III, p. 1408.
[94] G.R. No. 172231, February 12, 2007.

known absolutely, only that a taxpayer has at its disposal the information necessary to compute the amount with "reasonable accuracy," which implies something less than an exact or completely accurate amount.[95] Thus, estimates not supported by bills, contracts, or facts to establish the amount of liability with reasonable accuracy may not be deductible yet. They can instead be considered provisions.

A provision is an existing liability of uncertain timing or amount.[96] It is not yet an incurred expense, hence, *not* deductible for income tax purposes, and the company has no obligation yet to withhold taxes in the year the provision was recognized.

In this case, the invoices which were *not* yet billed until 2018 are mere provisions and thus *not* deductible for income tax purposes. Consequently, the amounts of disallowed accrued expenses should be adjusted as follows:

Disallowed Accrued Expenses		₱26,613,588.00
Less: Adjustments		
Per BIR Reinvestigation	₱24,661,577.21	
Per Court Verification	871,989.04	25,533,566.25
Disallowed Accrued Expenses		**₱1,080,021.75**

ii. *Disallowed Expenses due to Non-withholding - ₱6,976,693.80*

Respondent's verification disclosed that petitioner has *not* withheld the appropriate withholding tax due on its ₱6,976,693.80 income payments enumerated hereunder. Section 34(K) of the NIRC, as amended, expressly provides that "[a]ny amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code." Hence, the aforementioned expenses have been disallowed pursuant to the above provision of the law.[97]

Schedule 2					
Income Payments Subject to EWT	**Per ITR/AFS**	**Per 1601-E**	**Disallowed**	**EWT Rates**	**EWT Due**
Rentals					
Direct Charges-Rental	₱8,456,297.00				
Rental	29,508,442.00				
Total	**₱37,964,739.00**	**₱30,988,045.20**	**₱6,976,693.80**	5%	**₱348,834.69**

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95 *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007.
96 Philippine Accounting Standard (PAS) 37.
97 Exhibit "P-2" (*Details of Discrepancies*), Docket – Vol. III, pp. 1016 to 1017.

Petitioner's witness, Mr. John Sylvester M. Duran, its Finance and Controlling Specialist, explained that the *disallowed expenses* due to non-withholding pertains to fees paid by petitioner to supplier *Cyrus Logistics, Inc.* for warehouse storage service and operations management, which do not represent income payments for rental that is subject to 5% EWT as shown in the *Billing Invoices* submitted by petitioner.[98] The *Billing Invoices* amounting to ₱6,994,471.17 *(exclusive of VAT)* are listed as follows:

Billing Invoice No.	Billing Invoice Date	Amount	VAT	Total	Exhibit No.[99]
40461	Dec. 09, 2016	₱480,095.07	₱57,611.41	₱537,706.48	"P-11"
40586	Jan. 12, 2017	478,667.60	58,878.17	537,545.77	"P-11-A"
40832	Feb. 07, 2017	411,758.36	49,411.00	461,169.36	"P-11-B"
40843	Feb. 09, 2017	57,792.00	6,935.04	64,727.04	"P-11-C"
40950	Mar. 10, 2017	352,273.54	42,272.82	394,546.36	"P-11-D"
41090	Apr. 08, 2017	415,766.50	49,891.98	465,658.48	"P-11-E"
41262	May 09, 2017	453,926.31	54,471.16	508,397.47	"P-11-F"
41475	June 08, 2017	423,529.38	50,823.53	474,352.91	"P-11-G"
41659	July 13, 2017	417,635.80	50,116.30	467,752.10	"P-11-H"
41817	Aug. 09, 2017	478,423.42	57,410.81	535,834.23	"P-11-I"
42013	Aug. 09, 2017	168,070.19	20,168.42	188,238.61	"P-11-J"
42011	Aug. 09, 2017	432,641.49	51,916.98	484,558.47	"P-11-K"
42014	Sept.07, 2017	361,380.05	43,365.61	404,745.66	"P-11-L"
42016	Sept. 07, 2017	189,368.16	22,724.18	212,092.34	"P-11-M"
42173	Sept. 30, 2017	427,301.04	51,276.12	478,577.16	"P-11-N"
42175	Sept. 30, 2017	196,922.40	23,630.69	220,553.09	"P-11-O"
42379	Oct.31, 2017	160,609.80	19,273.18	179,882.98	"P-11-P"
42378	Oct. 31, 2017	488,856.81	58,662.82	547,519.63	"P-11-Q"
42634	Nov. 30, 2017	132,543.60	15,905.23	148,448.83	"P-11-R"
42633	Nov. 30, 2017	334,956.75	40,194.81	375,151.56	"P-11-S"
43031	Dec. 31, 2017	131,952.90	15,834.35	147,787.25	"P-11-T"
	TOTAL	**₱6,994,471.17**	**₱840,774.61**	**₱7,835,245.78**	

Petitioner noted that the fees paid to supplier Cyrus Logistics, Inc. were recorded in the general ledger as rental expense but were classified as purchase of services for withholding tax purposes. Petitioner further claims that it withheld 2% EWT from such fees as shown in the *Alphabetical List of Payees from whom Taxes were Withheld* for the taxable year 2017.[100]

Per examination of the *Alphabetical List of Payees from whom Taxes were Withheld* for the taxable year 2017, the payments subjected to 2%, 5% and 10% EWT to supplier Cyrus Logistics, Inc. are as follows:[101]

[98] Q&A Nos. 36 to 38, Exhibit "P-34", Docket – Vol. II, pp. 517 to 519.
[99] Docket – Vol. III, pp. 1197 to 1217.
[100] Q&A No. 37, Exhibit "P-34", Docket – Vol. II, p. 517; Exhibit "P-12", Docket – Vol. III, pp. 1218 to 1233.
[101] Exhibit "P-12", Docket – Vol. III, pp. 1223 and 1231 to 1233.

ATC[102]	Tax Base	Rate	EWT	Month
WC160	₱437,371.50	2%	₱8,747.43	January
WC160	1,499,358.00	2%	29,987.16	February
WC160	701,613.00	2%	14,032.26	March
WC160	869,526.50	2%	17,390.53	April
WC160	2,081,620.00	2%	41,632.40	June
WC160	2,204,645.50	2%	44,092.91	July
WC160	446,503.50	2%	8,930.07	August
WC160	1,422,448.50	2%	28,448.97	September
WC160	3,572,018.50	2%	71,440.37	October
WC160	1,451,910.00	2%	29,038.20	November
WC160	1,674,417.50	2%	33,488.35	December
Sub-Total_WC160[103]	**₱16,361,432.50**		**₱327,228.65**	
WC100	₱106,291.40	5%	₱5,314.57	February
Sub-Total_WC100[104]	**₱106,291.40**		**₱5,314.57**	
WC140	52,648.00	10%	5,264.80	January
WC140	619,658.80	10%	61,965.88	February
WC140	506,211.60	10%	50,621.16	March
WC140	288,344.00	10%	28,834.40	April
WC140	105,960.00	10%	10,596.00	May
WC140	388,312.00	10%	38,831.20	June
WC140	701,003.10	10%	70,100.31	July
WC140	413,945.90	10%	41,394.59	August
WC140	441,160.00	10%	44,116.00	September
WC140	941,280.00	10%	94,128.00	October
WC140	679,080.00	10%	67,908.00	November
WC140	573,470.00	10%	57,347.00	December
Sub-Total_WC140[105]	**₱5,711,073.40**		**₱571,107.34**	
TOTAL	**₱22,178,797.30**		**₱903,650.56**	

However, upon the Court's verification, there is an *unaccounted variance* between the sum of *Billing Invoices* submitted amounting to ₱6,994,471.17 (exclusive of VAT), *vis-à-vis* the disallowed expenses amounting to ₱6,976,693.80.

Moreover, petitioner did *not* provide proper tracing of the *Billing Invoices* paid to supplier Cyrus Logistics, Inc. to the income payments subjected to 2% EWT. Thus, petitioner failed to prove that the ₱6,976,693.80 disallowed expenses is included in the total income payments of ₱16,361,432.50, as computed above, which were subjected to 2% EWT.

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102 That is, Alphanumeric Tax Code.

103 Nature of income payment for ATC WC160 is EWT- Income payments made by top 10,000 private corporations to their local/resident supplier of services.

104 Nature of income payment for ATC WC100 is EWT- rentals: real/personal properties, poles, satellites & transmission facilities, billboards.

105 Nature of income payment for ATC WC140 is EWT- gross commission or service fees of custom, insurance, stock, real estate, immigration & commercial brokers & fees of agents of professional entertainers.

Furthermore, petitioner did not submit its contract with supplier Cyrus Logistics, Inc. or other similar document to allow the Court to verify the nature of these warehouse storage services and confirm that these are *not* in the nature of rental fees and to clarify why the income payments made to supplier Cyrus Logistics, Inc. are subjected to different withholding tax rates, at 2%, 5% and 10%.

Since petitioner failed to properly refute respondent's assessment, the Court has no recourse but to *uphold* the disallowance of expenses due to non-withholding in the amount of ₱6,976,693.80.

iii. *Disallowed Salaries and Wages due to Non-withholding - ₱6,123,875.22*

Respondent's verification disclosed that petitioner failed to subject to withholding tax its salaries and wages paid to its employees in the amount of ₱6,123,875.22, hence, this was disallowed as a deduction from gross income for income tax purposes pursuant to Section 34(K) of the NIRC, as amended. The disallowed expenses are computed below:[106]

Schedule 3		
Total Salaries and Wages per ITR/AFS		
Salaries and Allowances	₱70,886,263.00	
Direct Charges-Salaries, Wages and Benefits	30,154,081.00	₱101,040,344.00
Total Compensation per 1601-C		79,230,077.54
Unadjusted Disallowed Salaries and Wages due to Non-Withholding		₱21,810,266.46
Less: Retirement Provision	₱4,958,190.00	
Net Past Service Cost	5,652,545.00	
Medical Insurance	5,075,656.24	15,686,391.24
Disallowed Salaries and Wages due to Non-Withholding		**₱6,123,875.22**

Petitioner claims that the disallowed salaries and wages include income payments *not* subject to WTC, listed as follows:[107]

Particulars	**Amount**
Medical Expenses	₱691,042.13
Medical Expenses-Check Ups	518,139.73
Employee Leisure Activities	91,429.06
Recruitment & Interview Process	1,110,615.08
Expert Workshops Events Training	3,623,765.05
Employee Christmas Gifts	11,333.01
TOTAL	**₱6,046,324.06**

At the outset, the Court noted that there is an *unaccounted difference* of ₱77,551.16 between the assessed amount of ₱6,123,875.22 and the allegedly income payments not subject to WTC amounting to ₱6,046,324.06.

[106] *Details of Discrepancies,* Exhibit "P-2", Docket – Vol. III, p. 1017.
[107] Par. 62, petitioner's *Memorandum*, Docket – Vol. III, p. 1409.

We proceed to discuss each item of the income payments *not* subject to withholding tax on compensation per petitioner's claim.

A. Medical Expenses - ₱691,042.13;
Medical Expenses-Check Ups - ₱518,139.73

As a rule, if the medical benefits granted per employee per anum do *not* exceed ₱10,000.00, the same shall be considered as *de minimis* benefits that are *not* subject to income tax as well as to withholding tax on compensation income of both managerial and rank and file employees.[108] However, if the employer pays more than the ceiling of other benefits provided in Section 32(B)(7)(e) of the NIRC of 1997, as amended by RA No. 10653,[109] the excess shall be taxable to the employee receiving the benefits only if such excess is beyond the ₱82,000.00 ceiling, *i.e.*, if pertaining to supervisory or managerial employees, the excess shall be subject to fringe benefit tax while those pertaining to rank and file employees, the excess shall be subject to withholding tax on compensation. Hence, the medical benefits provided by the employer to its employees in excess of the amount considered as *de minimis* is subject to either fringe benefit tax or income tax on compensation.

However, if the value of the medical benefits provided to an employee in addition to his remuneration for services rendered, if furnished to such employee for the convenience of the employer, shall not be added to the remuneration paid for the purpose of determining the amount of compensation subject to income and withholding tax. Neither shall facilities or privileges that are of relatively small value constitute compensation income if these are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees as contemplated under Section 2.78.1(A)(3), of Revenue Regulations (RR) No. 2-98, as amended.

Petitioner claims that the account *Medical Expenses* are payments to third-party suppliers for the medical needs of employees such as dental and health services including travel insurance. While the account of *Medical Check-ups* are payments to third-party suppliers for the annual physical/medical examination done for all employees to determine if they are fit to work.[110]

Petitioner submitted the following billing invoices to prove that the nature of these accounts does not pertain to payment of compensation and should not be subject to WTC:

[108] Section 2.78.1(A)(3)(f), Revenue Regulations (RR) No. 2-98, as amended by RR No. 5-2011.
[109] AN ACT ADJUSTING THE 13TH MONTH PAY AND OTHER BENEFITS CEILING EXCLUDED FROM THE COMPUTATIONS OF GROSS INCOME FOR PURPOSES OF INCOME TAXATION, AMENDING FOR THE PURPOSE SECTION 32 (B), CHAPTER VI OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.
[110] Q&A No. 46, Exhibit "P-34", Docket – Vol. II, p. 526.

1. PrevHealth, Inc.[111]

SOA Date	Fee	Admin Fee	VAT	Total	Exhibit No.	Nature of Services per SOA
Dec. 01, 2016	₱12,133.33	₱1,455.99	₱1,630.71	₱15,220.03	"P-16"	Basic Salary/Health Services
Dec. 01, 2016	9,350.00	-	1,122.00	10,472.00	"P-16-A"	Basic Salary/Health Services
Feb. 01, 2017	9,350.00	-	1,122.00	10,472.00	"P-16-B"	Basic Salary/Health Services
Feb. 01, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-C"	Basic Salary/Health Services
Mar. 01, 2017	140,855.00	16,902.60	18,930.91	176,688.51	"P-16-D"	Annual Physical Exam
Mar. 01, 2017	39,000.00	-	4,680.00	43,680.00	"P-16-E"	Medical Emergency Response Protocol
Mar. 01, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-F"	Basic Salary/Health Services
Mar. 01, 2017	9,350.00	-	1,122.00	10,472.00	"P-16-G"	Basic Salary/Health Services
Apr. 01, 2017	7,000.00	-	840.00	7,840.00	"P-16-H"	Lecture on Healthy Lungs
Apr. 01, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-I"	Basic Salary/Health Services
Apr. 01, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-J"	Basic Salary/Health Services
Apr. 01, 2017	69,255.18	8,310.62	9,307.89	86,873.69	"P-16-K"	Executive Check-Up
Apr. 03, 2017	110,765.00	13,291.80	14,886.82	138,943.62	"P-16-L"	Annual Physical Exam
May 02, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-M"	Basic Salary/Health Services
May 02, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-N"	Basic Salary/Health Services
June 01, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-O"	Basic Salary/Health Services
June 01, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-P"	Basic Salary/Health Services
June 20, 2017	10,000.00	-	1,200.00	11,200.00	"P-16-Q"	Medical Emergency Response Drill
July 03, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-R"	Basic Salary/Health Services

[111] Exhibits "P-16" to "P-16-CC", Docket – Vol. III, pp. 1250 to 1279.

July 03, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-S"	Basic Salary/Health Services
Aug. 01, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-T"	Basic Salary/Health Services
Aug. 01, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-U"	Basic Salary/Health Services
Sep. 06, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-V"	Basic Salary/Health Services
Sep. 06, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-W"	Basic Salary/Health Services
Oct. 03, 2017	10,752.50	-	1,290.30	12,042.80	"P-16-X"	Basic Salary/Health Services
Oct. 03, 2017	12,133.33	1,455.99	1,630.71	15,220.03	"P-16-Y"	Basic Salary/Health Services
Nov. 02, 2017	5,000.00	-	600.00	5,600.00	"P-16-Z"	Health Services
Nov. 02, 2017	59,025.44	-	7,083.05	66,108.49	"P-16-AA"	Health Services
Dec. 01, 2017	73,846.87	-	8,861.62	82,708.49	"P-16-BB"	Health Services
Dec. 01, 2017	73,846.87	-	8,861.62	82,708.49	"P-16-CC"	Health Services
Subtotal	**₱813,245.16**	**₱53,064.92**	**₱103,957.11**	**₱970,267.19**		
2. Home Health Care, Inc.[112]						
Billing Date	**Fee**	**Deduction**	**VAT**	**Total**	**Exhibit No.**	**Nature of Services per Billing**
May 15, 2017	₱8,928.56	(₱1,000.00)	₱1,071.44	₱9,000.00	"P-17"	Wellness Event on Laguna and Taguig Site
June 29, 2017	76,204.89	-	9,145.11	85,350.00	"P-17-A"	Various Vaccines
Aug. 15, 2017	7,678.58	-	921.42	8,600.00	"P-17-B"	Various Vaccines
Subtotal	**₱92,812.03**	**(₱1,000.00)**	**₱11,137.97**	**₱102,950.00**		
TOTAL	**₱906,057.19**	**₱52,064.92**	**₱115,095.08**	**₱1,073,217.19**		

However, based on the documents submitted by petitioner, there is an *unaccounted difference* in the amount claimed by petitioner as income payments not subject to WTC against the sum of the invoices provided by petitioner, computed as follows:

Medical Expenses	₱691,042.13
Medical Expenses-Check Ups	518,139.73
Alleged total income payments not subject to WTC as claimed by petitioner	₱1,209,181.86
Less: Billing invoices provided by petitioner	958,122.11

112 Exhibits "P-17" to "P-17-B", Docket – Vol. III, pp. 1280 to 1283.

(Sum of ₱906,057.19 and ₱52,064.92)	
Unaccounted Difference	**₱251,059.75**

Moreover, petitioner failed to provide a breakdown of the transactions recorded under the accounts *"Medical Expenses"* and *"Medical Expenses - Check Ups"* to prove that such transactions are those services described per billing invoices submitted, and thus, not subject to WTC.

In this regard, this item of assessment shall be retained.

B. *Employee Leisure Activities – ₱91,429.06;*
Recruitment & Interview Process – ₱1,110,615.08;
Expert Workshops Events Training – ₱3,623,765.05;
Employee Christmas Gifts – ₱11,333.01

Petitioner asserts that the account *Employee Leisure Activities* are income payments incurred for employee meetings, social events and activities. Then, the account *Recruitment & Interview Process* are income payments to head-hunters and advertisers in search of qualified applicants. Whereas, the account of *Expert Workshops Events Training* are payments made for local and foreign trainings to improve work-related competencies of the employees. Lastly, the account *Employee Christmas Gifts* are payment to third-party suppliers for giveaways to various partners.[113]

Petitioner submitted invoices and billings to prove that the transactions recorded under these accounts are income payments not subject to WTC, listed as follows:

1. Payments to Center For Leadership and Change, Inc.

Billing Date	Fee	VAT	Total	Exhibit No.[114]	Description per Billing or Invoice
Mar. 20, 2017	₱ 42,000.00	₱ 5,040.00	₱ 47,040.00	"P-19"	Project Management Service Fee
Oct. 19, 2017	279,900.00	33,588.00	313,488.00	"P-19-A"	Productivity Workshop
Oct. 25, 2017	273,600.00	32,832.00	306,432.00	"P-19-B"	Productivity Program
Nov. 29, 2017	228,900.00	27,468.00	256,368.00	"P-19-C"	Manager's Workshop
TOTAL	**₱824,400.00**	**₱98,928.00**	**₱923,328.00**		

2. Payment to Fleishman-Hillard Hongkong Limited

Billing Date	Fee	Total	Exhibit No.[115]	Description per Billing or Invoice
June 29, 2017	HK$30,000.00	HK$30,000.00	"P-20"	Media Training for Managing Director
TOTAL	**HK$30,000.00**	**HK$30,000.00**		

[113] Q&A No. 46, Exhibit "P-34", Docket – Vol. II, p. 526.
[114] Docket – Vol. III, pp. 1306 to 1309.
[115] Docket – Vol. III, p. 1310.

Note that petitioner did not provide the reference rate for the peso equivalent of its foreign currency payment amounting to HKD 30,000.00.

3. Payments to GuthrieJensen Global Training Consultants					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[116]	**Description per Billing or Invoice**
Sep. 29, 2017	₱ 44,000.00	₱ 5,280.00	₱ 49,280.00	"P-21"	Powerful Presentation Skills
Sep. 29, 2017	44,000.00	5,280.00	49,280.00	"P-21-A"	Powerful Presentation Skills
TOTAL	**₱88,000.00**	**₱10,560.00**	**₱98,560.00**		

4. Payment to *International Rice Research Institute*					
Invoice Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[117]	**Description per Billing or Invoice**
Aug. 25, 2017	₱ 37,658.00	₱-	₱ 37,658.00	"P-22"	Training Fee, RDM 101
TOTAL	**₱37,658.00**	**₱-**	**₱37,658.00**		

The *Invoice* from supplier *"International Rice Research Institute"* does not indicate whether the supplier is VAT-registered or not, nor was there a breakdown of fees and VAT.

5. Payments to Mansmith and Fielders, Inc.					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[118]	**Description per Billing or Invoice**
Sep. 13, 2017	₱ 304,000.00	₱ 36,480.00	₱ 340,480.00	"P-23"	In-House Seminar on Think Big. Move Skillfully
Sep. 22, 2017	25,099.52	3,011.94[119]	28,111.46	"P-23-A"	Additional Charges on Think Big. Move Skillfully
Aug. 23, 2017	29,750.00	3,570.00[120]	33,320.00	"P-23-B"	Small Store Marketing
TOTAL	**₱358,849.52**	**₱43,061.94**	**₱401,911.46**		

6. Payment to Mercer Philippines, Inc.					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[121]	**Description per Billing or Invoice**
Mar. 29, 2017	₱ 19,000.00	₱ 2,280.00	₱ 21,280.00	"P-24"	2017 Philippines Compensation Management Workshop
TOTAL	**₱19,000.00**	**₱2,280.00**	**₱21,280.00**		

7. Payment to Executive Support, Inc.					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[122]	**Description per Billing or Invoice**
Aug. 22, 2017	₱ 154,700.00	₱ 18,564.00	₱ 173,264.00	"P-25"	Search Support Service Fee
TOTAL	**₱154,700.00**	**₱18,564.00**	**₱173,264.00**		

[116] Docket – Vol. III, pp. 1311 to 1312.
[117] Docket – Vol. III, p. 1313.
[118] Docket – Vol. III, pp. 1314 to 1316.
[119] *Billing Invoice does not have VAT breakdown.*
[120] *Billing Invoice does not have VAT breakdown.*
[121] Docket – Vol. III, p. 1317.
[122] Docket – Vol. III, p. 1318.

8. Payments to Harrison Profiles International, Inc.					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[123]	**Description per Billing or Invoice**
May 04, 2017	₱196,980.00	₱23,637.60	₱220,617.60	"P-26"	Assessment Talent Solutions System
June 28, 2017	10,000.00	1,200.00	11,200.00	"P-26-A"	Executive Coaching Session
TOTAL	**₱206,980.00**	**₱24,837.60**	**₱231,817.60**		

9. Payments to Infinite Business Infosys Co. Ltd.					
Billing Date	**Fee**	**VAT**[124]	**Total**	**Exhibit No.**[125]	**Description per Billing or Invoice**
Feb. 10, 2017	₱ 2,000.00	₱-	₱ 2,000.00	"P-27"	Character Reference Check
Mar. 20, 2017	2,000.00	-	2,000.00	"P-27-A"	Character Reference Check
July 17, 2017	3,000.00	-	3,000.00	"P-27-B"	Character Reference Check
Sep. 18, 2017	5,000.00	-	5,000.00	"P-27-C"	Character Reference Check
July 31, 2017	1,000.00	-	1,000.00	"P-27-D"	Character Reference Check
Dec. 04, 2017	2,000.00	-	2,000.00	"P-27-E"	Character Reference Check
Dec. 26, 2017	1,000.00	-	1,000.00	"P-27-F"	Character Reference Check
June 05, 2017	1,000.00	-	1,000.00	"P-27-G"	Character Reference Check
TOTAL	**₱17,000.00**	**₱-**	**₱17,000.00**		

10. Payments to Leading Edge Executive Talent Search, Inc.					
Billing Date	**Fee**	**VAT**	**Total**	**Exhibit No.**[126]	**Description per Billing or Invoice**
Jan. 26, 2017	₱ 191,880.00	₱ 23,025.60	₱ 214,905.60	"P-28"	"Billing for Services Rendered"
Sep. 19, 2017	175,500.00	21,060.00	196,560.00	"P-28-A"	"Billing for Services Rendered"
Oct. 11, 2017	152,100.00	18,252.00	170,352.00	"P-28-B"	"Billing for Services Rendered"
TOTAL	**₱519,480.00**	**₱62,337.60**	**₱581,817.60**		

11. Payments to Truth Verifier Systems Incorporated					
Billing Date	**Fee**	**VAT**[127]	**Total**	**Exhibit No.**[128]	**Description per Billing or Invoice**
May 08, 2017	₱ 24,785.71	₱ 2,974.29	₱ 27,760.00	"P-29"	Background Investigation plus Operational Expenses
Feb. 07, 2017	11,635.47	1,396.26	13,031.73	"P-29-A"	Background Investigation plus Operational Expenses
July 03, 2017	7,392.86	887.14	8,280.00	"P-29-B"	Background Investigation plus Operational Expenses
July 08, 2017	29,571.43	3,548.57	33,120.00	"P-29-C"	Background Investigation plus Operational Expenses
July 08, 2017	5,000.00	600.00	5,600.00	"P-29-D"	Background Investigation plus Operational Expenses
Sep. 28, 2017	19,785.71	2,374.29	22,160.00	"P-29-E"	Background Investigation plus Operational Expenses
Sep. 22, 2017	7,392.86	887.14	8,280.00	"P-29-F"	Background Investigation plus Operational Expenses
Oct. 18, 2017	5,000.00	600.00	5,600.00	"P-29-G"	Background Investigation

[123] Docket – Vol. III, pp. 1319 to 1320.
[124] Non-VAT Registered.
[125] Docket – Vol. III, pp. 1321 to 1328.
[126] Docket – Vol. III, pp. 1329 to 1331.
[127] *Service Invoice does not have VAT breakdown.*
[128] Docket – Vol. III, pp. 1332 to 1339.

					plus Operational Expenses
TOTAL	**₱110,564.04**	**₱13,267.69**	**₱123,831.73**		

The invoices and billings enumerated above, except for the foreign currency payment of HK$30,000.00 to supplier "*Fleishman-Hillard Hongkong Limited*" which is not included since petitioner did not provide the peso equivalent of this transaction, are summarized as follows:

Supplier Name	Fees	VAT	Total
Center For Leadership and Change, Inc.	₱824,400.00	₱98,928.00	₱923,328.00
GuthrieJensen Global Training Consultants	88,000.00	10,560.00	98,560.00
International Rice Research Institute	37,658.00	-	37,658.00
Mansmith and Fielders, Inc.	358,849.52	43,061.94	401,911.46
Mercer Philippines, Inc.	19,000.00	2,280.00	21,280.00
Executive Support, Inc.	154,700.00	18,564.00	173,264.00
Harrison Profiles International, Inc.	206,980.00	24,837.60	231,817.60
Infinite Business Infosys Co. Ltd.	17,000.00	-	17,000.00
Leading Edge Executive Talent Search, Inc.	519,480.00	62,337.60	581,817.60
Truth Verifier Systems Incorporated	110,564.04	13,267.69	123,831.73
TOTAL	**₱2,336,631.56**	**₱273,836.83**	**₱2,610,468.39**

However, the total amount per invoices submitted versus the amount per expenses listed by the petitioner do *not* tally. Per examination, there is an *unaccounted difference*:

Particulars	Amount
Employee Leisure Activities	₱ 91,429.06
Recruitment & Interview Process	1,110,615.08
Expert Workshops Events Training	3,623,765.05
Employee Christmas Gifts	11,333.01
Total	₱4,837,142.20
Less: Invoices provided by the Petitioner[129]	2,336,631.56
Unaccounted Difference	**₱2,500,510.64**

Furthermore, petitioner failed to provide the detailed schedule of the transactions recorded under the accounts "*Employee Leisure Activities*", "*Recruitment & Interview Process*", "*Expert Workshops Events Training*" and "*Employee Christmas Gifts*". Hence, it cannot be ascertained if the transactions per invoices submitted are recorded under the account Salaries and Wages. The Court cannot simply assume that the invoices submitted are included in the expenses claimed by the petitioner without proper tracing of the supporting documents to the schedule or general ledger.

Thus, this part of assessment shall also be retained.

[129] *Foreign currency payment of HKD30,000.00 to supplier "Fleishman-Hillard Hongkong Limited" is not included as petitioner did not provide the peso equivalent of this transaction.*

In sum, petitioner's basic deficiency income tax due for taxable year 2017 amounted to ₱4,254,177.50, computed as follows:

I. INCOME TAX		
Taxable Income per return		₱87,689,267.00
Add: Adjustments/disallowances per Court Verification		
Disallowed Accrued Expenses	₱1,080,021.75	
Disallowed Expenses due to Non-withholding	6,976,693.80	
Disallowed Salaries & Wages due to Non-withholding	6,123,875.22	14,180,590.77
Taxable Income		**₱101,869,857.77**
Basic Deficiency Income Tax		₱30,560,957.33
Less: Tax Credits/Payments		
Payments	₱17,860,429.83	
Creditable Tax Withheld	5,659,277.00	
Foreign Tax Credits	2,787,073.00	26,306,779.83
Basic Tax Due		**₱4,254,177.50**

II. Deficiency VAT

Respondent assessed petitioner of deficiency VAT amounting to ₱91,066.58, including interest, for taxable year 2017, as follows:[130]

II. VAT			
Taxable sales/receipts per VAT return			₱777,716,236.43
Add: Adjustments/Allowances			
Disallowed Zero-Rated Sales (Schedule 4)			239,863.34
Adjusted Vatable Receipts			**₱777,956,099.77**
Output Tax Due			₱93,354,731.97
Less: Tax Paid/Creditable Input Tax			
Input Tax from Current Period		₱110,678,366.12	
Input Tax Carried Over from Previous Period		76,195,546.07	
Input Tax Deferred on Capital Goods Exceeding P1M		1,775,589.73	
Total		₱188,649,501.92	
Less: Adjustments/Disallowances			
Disallowed Input Tax (Schedule 5)	₱28,783.60		
Input Tax on Purchases of Capital Goods Exceeding P1M	2,189,200.09		
Excess Input Tax Carried Over to Succeeding Period	93,134,353.46	₱95,352,337.15	93,297,164.77
Net VAT Payable			**₱57,567.20**
Less: VAT Paid per Return			-
Basic Tax Due			₱57,567.20
Add: 12% Interest (Jan. 26, 2018 to Nov. 30, 2022)			33,499.38
TOTAL AMOUNT DUE			**₱91,066.58**

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[130] Exhibit "P-2", Docket – Vol. III, at p. 1013.

Based on the foregoing, the deficiency VAT arose from the following items of assessment:

i.	Disallowed Zero-Rated Sales	₱ 239,863.34
ii.	Disallowed Input Tax	28,783.60
iii.	Excess Input Tax Carried Over to Succeeding Period	93,134,353.46

i. Disallowed Zero-Rated Sales - ₱239,863.34

The BIR's verification disclosed that petitioner failed to present pieces of evidence to substantiate its claims of zero-rated sales, hence, such sales are subjected to VAT pursuant to Sections 105 & 106 of the NIRC, as amended, in relation to Sections 4.106-5 and 4.113-1 of RR No. 16-2005.[131]

Schedule 4	
Sales to Jotun Philippines (VATable Sales)	₱ 239,863.34
Disallowed Zero-Rated Sales	**₱239,863.34**

Notably, petitioner admitted that the sale to Jotun Philippines amounting to ₱239,863.34 is an error on its part for considering this transaction as a zero-rated sale instead of vatable sale, since Jotun Philippines does *not* enjoy any Board of Investments/Philippine Economic Zone Authority certification.[132] In view of this admission and for failure of the petitioner to properly refute this assessment, the disallowance is upheld.

ii. Disallowed Input Tax - ₱28,783.60

The BIR's verification disclosed that petitioner has not presented documents to support its claimed input taxes amounting to ₱28,783.60 in order to determine whether the said input taxes were in fact issued by VAT-registered entities. Hence, the same have been disallowed in accordance with the provision of Section 110 of the NIRC, in relations to Sections 113 and 237 of the same Code,[133] as amended, as follows:

Schedule 5	
Sales to Jotun Philippines (VATable Sales)	₱239,863.34
Multiplied by: VAT Rate	0.12
Disallowed Input Tax	**₱28,783.60**

[131] Disallowed Zero-Rated Sales, *Details of Discrepancies,* Exhibit "P-2", Docket – Vol. III, pp. 1017 to 1018.
[132] Exhibit "P-6", Docket – Vol. III, at p. 1072.
[133] Exhibit "P-2" (Unsupported Input Tax, *Details of Discrepancies*), Docket – Vol. III, p. 1018.

On the other hand, petitioner submitted the *Sales Invoice* for the assessed sales transaction to its customer "Jotun (Philippines) Inc." amounting to USD11,702.40.[134]

The Court finds the above item of assessment bereft of merit.

Under Section 110 the NIRC of 1997, as amended, the term 'input tax' means the VAT due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT registered person. It shall also include the transitional input tax determined in accordance with Section 111 of the Tax Code. While the term 'output tax' means the VAT due on the sale or lease of taxable goods or properties or services by any person registered under Section 236 of the Tax Code.

Based on the definition provided under the Tax Code, the sale of petitioner to its customer "Jotun Philippines" is not subject to input VAT. There is no factual basis for imposing an input VAT on a sales transaction as the input VAT is imposed on a purchase and/or importation and not on a sales transaction. Hence, this part of assessment shall be cancelled.

iii. Excess Input Tax Carried Over to Succeeding Period - ₱93,134,353.46

Based on the *Details of Discrepancies* attached to the FDDA, the excess input tax per VAT returns amounting to ₱93,134,353.46 was *not* applied against the output tax in computing deficiency VAT since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the NIRC, as amended.[135]

The Court finds the disallowance proper.

Albeit the amended *Quarterly VAT Return* for the 4th quarter of taxable year 2017 shows an accumulated and excess input VAT credits of ₱93,134,353.46,[136] petitioner failed to prove that such excess credits have not been applied against its output VAT liability in the subsequent periods. Hence, the deduction made by the BIR is *proper*.

In sum, petitioner is liable for deficiency VAT for the taxable year 2017, computed as follows:

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134 Exhibit "P-30", Docket – Vol. III, pp. 1340.
135 Excess Input Tax Carried Over to Succeeding Period, *Details of Discrepancies,* Exhibit "P-2", Docket – Vol. III, p. 1018.
136 Line 29, Exhibit "P-31-B", Docket – Vol. III, p. 1350.

II. VAT			
Taxable sales/receipts per VAT return			₱777,716,236.43
Add: Adjustments/Allowances			
Disallowed Zero-Rated Sales			239,863.34
Adjusted Vatable Receipts			**₱777,956,099.77**
Output Tax Due			**₱93,354,731.97**
Less: Tax Paid/Creditable Input Tax			
Input Tax from Current Period		₱110,678,366.12	
Input Tax Carried Over from Previous Period		76,195,546.07	
Input Tax Deferred on Capital Goods Exceeding P1M		1,775,589.73	
Total		₱188,649,501.92	
Less: Adjustments/Disallowances			
Disallowed Input Tax	₱ -		
Input Tax on Purchases of Capital Goods Exceeding P1M	2,189,200.09		
Excess Input Tax Carried Over to Succeeding Period	93,134,353.46	₱95,323,553.55	93,325,948.37
BASIC TAX DUE			**₱ 28,783.60**

III. <u>Deficiency EWT</u>

Although petitioner claims that assessment for deficiency EWT covering certain months of the taxable year 2017 had already prescribed, neither parties provided a breakdown of the amounts so that the prescribed portion could be determined. Thus, the entire EWT assessment shall be taken as a whole.

The BIR's verification disclosed that petitioner failed to withhold and remit the correct EWT on its income payments amounting to ₱6,976,693.80. Hence, petitioner was assessed of deficiency EWT pursuant to Section 2.57.2 of RR No. 2-98, as amended,[137] as follows:

<u>III. EWT</u>	
Basic Tax Due (Schedule 2)	₱348,834.69
Add: 12% Interest (Jan. 16, 2018 to Nov. 30, 2022)	204,139.97
TOTAL AMOUNT DUE	**₱552,974.66**

Based on the discussion covering the income tax assessment under item no. *I. ii. Disallowed Expenses due to Non-withholding - ₱6,976,693.80*, petitioner is liable for deficiency EWT amounting to ₱348,834.69, computed as follows:

Rent Expense not subjected to 5% EWT rate	₱6,976,693.80
Withholding Tax Rate (WC100)	5%
Basic Tax Due	**₱348,834.69**

[137] Exhibit "P-2", Docket – Vol. III, at pp. 1014, 1016 and 1018.

IV. Deficiency WTC

Likewise, although petitioner claims that the assessment for deficiency WTC covering certain months of the taxable year 2017 had already prescribed, neither parties provided a breakdown of the amounts so that the prescribed portion could be determined. Thus, the entire WTC assessment shall be taken as a whole.

The BIR's verification disclosed that petitioner failed to withhold/remit the corresponding withholding tax on the ₱6,123,875.22 Salaries, Wages and Benefits previously disallowed from Gross Income. Hence, petitioner was assessed for deficiency WTC, pursuant to Section 79(A) of the NIRC, as amended, and implemented under Section 2.78 of the RR No. 2-98, as amended,[138] computed as follows:

IV. WTC	
Basic Tax Due (Schedule 3)	₱1,609,491.54
Add: 12% Interest (Jan. 16, 2018 to Nov. 30, 2022)	941,883.27
TOTAL AMOUNT DUE	**₱2,551,374.81**

Similarly, based on the discussion covering the income tax assessment under item *I. iii. Disallowed Salaries and Wages due to Non-withholding - ₱6,123,875.22,* petitioner is liable for deficiency WTC in the amount of ₱1,609,491.54 for failure to prove that the same are not subject to WTC. Hence, the assessment shall be upheld.

To summarize, petitioner is liable for a total of ₱6,241,287.33 basic deficiency taxes for the taxable year 2017, to wit:

Tax Type	Basic Deficiency Tax
Income tax	₱ 4,254,177.50
VAT	28,783.60
EWT	348,834.69
WTC	1,609,491.54
Total	**₱6,241,287.33**

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. The assessments for deficiency income tax, VAT, EWT and WTC, for taxable year 2017, are **UPHELD WITH MODIFICATIONS**.

Petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱10,004,828.47** inclusive of surcharge and deficiency interest imposed under

[138] Exhibit "P-2", Docket – Vol. III, at pp. 1014, 1017 and 1018.

Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income tax	VAT	EWT	WTC	Total
Basic Tax	**₱4,254,177.50**	**₱28,783.60**	**₱348,834.69**	**₱1,609,491.54**	**₱6,241,287.33**
Add: **25% Surcharge**	1,063,544.38	7,195.90	87,208.67	402,372.89	1,560,321.84
Add: **12% Deficiency Interest**					
Income tax: From Apr. 17, 2018[139] to Feb. 26, 2021 *[₱4,254,177.50 x 12% x 1047/365 days]*	1,464,369.48				1,464,369.48
VAT: From Jan. 26, 2018 to Feb. 26, 2021 *[₱28,783.60 x 12% x 1128/365 days]*		10,674.38			10,674.38
EWT: From Jan. 23, 2018[140] to Feb. 26, 2021 *[₱348,834.69 x 12% x 1131/365 days]*			129,709.16		129,709.16
WTC: From Jan. 23, 2018[141] to Feb. 26, 2021 *[₱1,609,491.54 x 12% x 1131/365 days]*				598,466.28	598,466.28
Total Amount Due - February 26, 2021[142]	**₱6,782,091.36**	**₱46,653.42**	**₱565,752.52**	**₱2,610,330.71**	**₱10,004,828.47**

Finally, petitioner is **ORDERED TO PAY** respondent *delinquency interest* at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due of ₱10,004,828.47 as of February 26, 2021, as determined above, or equivalent to ₱3,289.26[143] per day, computed from February 27, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[139] April 15, 2018 fell on a Sunday.
[140] Petitioner is an EFPS filer, hence, for December EWT/WTC Return, payment of the tax due is on January 20 of the following year; January 20, 2018 fell on a Saturday.
[141] *Ibid.*
[142] February 26, 2021 is the due date for payment shown in the *Assessment Notices* attached to the FLD, Exhibits "P-5-A" to "P-5-E", Docket – Vol. III, pp. 1056 to 1060.
[143] [₱10,004,828.47 x 12%] / 365 days.

WE CONCUR:

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice