CTA Form No. 8

20-000015-0069

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10247

TYC TRADING & MANUFACTURING PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. APRILYN T. POBAR
Bureau of Internal Revenue - Revenue Region No. 8B, South NCR
2nd Floor, Legal Division, BIR Regional Office Building
No. 313 Sen. Gil Puyat Ave., Makati City

PAR BENIGNO LAW FIRM (BENLAW)
Unit 1905, One Park
11th Drive corner 9th Avenue
Bonifacio Global City
Taguig City

GREETINGS:

You are hereby notified by these presents that on **April 18, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 22, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TYC TRADING & MANUFACTURING PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10247**
	Members:
-versus-	**DEL ROSARIO,** *Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 18 2024 3:35PM

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DECISION

MANAHAN, *J.*:

This is a Petition for Review filed by petitioner on January 17, 2020, praying that a judgment be rendered ordering the nullification of the Final Decision on Disputed Assessment (FDDA) dated December 17, 2019 upholding the tax deficiency assessments in the total amount of ₱21,301,082.49 representing income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC), including interest, for taxable year (TY) 2015.

THE PARTIES

Petitioner TYC Trading & Manufacturing Philippines, Inc. is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 236-370-679-000,[1] and office address at Unit 16, G/F Prime Center, Prime cor. Enterprise St., Madrigal Business Park, Ayala Alabang, Muntinlupa City.[2]

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[1] Par. 2, *Joint Stipulation of Facts and Issue* (JSFI), Docket, p. 199; Exhibit "P-1", Docket, p. 342.
[2] Par. 4, *Petition for Review*, vis-à-vis Par. 4, *Answer*, Docket, pp. 8 and 68, respectively.

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

THE FACTS

On November 10, 2016, a Letter of Authority (LOA) (SN: eLA201200035094) was issued authorizing Revenue Officer (RO) Abdul Bashit Busran and Group Supervisor Aurora Balisacan of Revenue District Office (RDO) No. 53B – Muntinlupa City, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2015 to December 31, 2015.[3]

Later, an undated Notice of Informal Conference (NIC) was issued to and received by petitioner on July 4, 2018.[4] Subsequently, the Preliminary Assessment Notice (PAN) dated November 19, 2018 with attached Details of Discrepancies was issued and received by petitioner on November 27, 2018.[5]

On December 28, 2018, respondent served and petitioner received the Formal Assessment Notice (FAN) dated December 21, 2018, finding petitioner liable for deficiency income tax, VAT, EWT and WTC for TY 2015, detailed as follows:[6]

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

On January 17, 2019, petitioner timely filed a Letter Protest/request for reinvestigation with the BIR dated January 14, 2019 relative to said FAN.[7]

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[3] Exhibit "R-1", BIR Records, p. 2.
[4] Exhibit "R-2", BIR Records, p. 236; Refer to Exhibit "P-15" (Q&A No. 6), Docket, p. 502.
[5] Exhibits "P-9" and "R-3", BIR Records, pp. 256 to 260; Refer to Exhibit "P-15" (Q&A No. 6), Docket, p. 502.
[6] Par. 4, JSFI, Docket, p. 200; Exhibit "P-10", Docket, pp. 472 to 480; Exhibit "R-4", BIR Records, pp. 266 to 274.
[7] Par. 5, JSFI, Docket, p. 200; Exhibit "P-11", BIR Records, pp. 285 to 290.

In reply thereto, Regional Director Glen A. Geraldino granted petitioner's request for reinvestigation, through the letter dated February 11, 2019, stating therein that the necessary documents to support its claim and/or defenses shall have to be submitted to RDO No. 53B within sixty (60) days from the date of filing of the protest, pursuant to Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.[8]

On December 20, 2019, respondent served and petitioner received the FDDA dated December 17, 2019, finding petitioner liable for deficiency income tax, VAT, EWT and WTC for TY 2015, as follows:[9]

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

Unsatisfied with the findings contained in the FDDA, petitioner filed its Petition for Review with the Court on January 17, 2020.[10]

On June 30, 2020, respondent filed his Answer (With Special and Affirmative Defenses) (With Attached Judicial Affidavit of Witness and Documentary Evidence).[11]

On July 8, 2020, respondent transmitted the BIR Records to the Court consisting of one (1) folder with 351 pages.

The Pre-Trial Conference was set and held on October 1, 2020.[12] Prior thereto, petitioner's Pre-Trial Brief was filed on September 18, 2020,[13] while respondent's Pre-Trial Brief was submitted on September 28, 2020.[14]

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[8] Exhibit "R-5", BIR Records, p. 293; Par. 11, *Petition for Review*, Docket, p. 10.
[9] Par. 6, JSFI, Docket, p. 200; Exhibits "P-12" and "R-8", BIR Records, pp. 309 to 314.
[10] Docket, pp. 7 to 26; Par. 7, JSFI, Docket, p. 200.
[11] Docket, pp. 67 to 80.
[12] *Notice of Pre-Trial Conference* dated July 23, 2020, Docket, pp. 128 to 130; Minutes of the hearing held on, and Order dated, October 1, 2020, Docket, pp. 179 to 183.
[13] Docket, pp. 134 to 139.
[14] Docket, pp. 168 to 173. cmn

During the Pre-Trial Conference held on October 1, 2020, the Court, among others, directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on November 9, 2020 at 10:00 a.m., pursuant to A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals).[15] However, the PMC-CTA later issued the "No Agreement To Mediate" dated November 25, 2020,[16] stating that the parties decided not to have their case mediated.

On October 19, 2020, the parties filed their Joint Stipulation of Facts and Issue,[17] which was approved in the Resolution dated October 29, 2020,[18] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated November 20, 2020 was then issued.[19]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Anna Marie S. De Chavez,[20] petitioner's President; (2) Ms. Reina Donna D. Famero,[21] petitioner's Accounting Staff; and (3) Ms. Honorata L. Paguio,[22] the Court-commissioned Independent Certified Public Accountant (ICPA).[23]

The Report of the ICPA was submitted to the Court on March 1, 2021.[24]

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[15] Order dated October 1, 2020, Docket, pp. 182 to0 183.
[16] Docket, p. 213.
[17] Docket, pp. 199 to 201.
[18] Docket, p. 203.
[19] Docket, pp. 205 to 212.
[20] Exhibit "P-14", Docket, pp. 482 to 500; Minutes of hearing held on, and Order dated, January 28, 2021, Docket, pp. 248 to 248-B, and 249 to 250, respectively.
[21] Exhibit "P-15", Docket, pp. 501 to 507; Minutes of hearing held on, and Order dated, June 29, 2021, Docket, pp. 303 to 311.
[22] Exhibit "P-17", Docket, pp. 287 to 300; Minutes of hearing held on, and Order dated, June 29, 2021, Docket, pp. 303 to 311.
[23] *Oath of Commission* dated January 28, 2021, Docket, p. 248-C; Minutes of hearing held on, and Order dated, January 28, 2021, Docket, pp. 248 to 248-B, and 249 to 250, respectively.
[24] Exhibit "P-18", Docket, pp. 263 to 273.

Petitioner filed its Formal Offer of Evidence on July 14, 2021,[25] to which respondent posted his Comment/Opposition (To Petitioner's Formal Offer of Evidence) on July 29, 2021.[26]

In the Resolution dated March 29, 2022,[27] the Court admitted petitioner's offered exhibits except for Exhibit "P-18-h-5-a-1", for not being found in the records.

Thereafter, petitioner filed its Partial Motion for Reconsideration with Motion to Transfer the Markings on April 20, 2022,[28] while respondent posted his Comment/Opposition (To Petitioner's Partial Motion for Reconsideration with Motion to Transfer the Markings) on May 17, 2022.[29] In the Resolution dated August 5, 2022,[30] the Court admitted Exhibit "P-18-h-5-a-1", but denied the admission of Exhibits "P-18-h-1.2-a-1n" to "P-18-h-1.2-a-1o", for not being found in the records.

Thus, petitioner filed its Partial Motion for Reconsideration on August 25, 2022,[31] while respondent posted his Manifestation (To Petitioner's Partial Motion for Reconsideration dated 23 August 2022) on September 12, 2022.[32] Petitioner also filed a Supplemental Formal Offer with Motion to Mark Additional Exhibits on August 30, 2022.[33] Respondent, however, failed to file comment thereon.[34]

Meanwhile, respondent filed his Motion for Reconsideration (of the Resolution dated 05 August 2022) on August 30, 2022,[35] while petitioner filed its Comment/Opposition (Re: CIR's Motion for Reconsideration dated 26 August 2022) on September 5, 2022.[36]

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[25] Docket, pp. 313 to 341.
[26] Docket, pp. 518 to 521.
[27] Docket, pp. 527 to 529.
[28] Docket, pp. 530 to 532.
[29] Docket, pp. 547 to 549.
[30] Docket, pp. 561 to 563.
[31] Docket, pp. 564 to 566.
[32] Docket, pp. 618 to 619.
[33] Docket, pp. 589 to 592.
[34] Records Verification Report dated September 29, 2022 issued by the Judicial Records Division of this Court, Docket, p. 621.
[35] Docket, pp. 583 to 585.
[36] Docket, pp. 611 to 614.

In the Resolution dated November 18, 2022,[37] the Court admitted Exhibits "P-18-h-1.2-a-1n" to "P-18-h-1.2-a-1o" and acting on petitioner's Supplemental Formal Offer with Motion to Mark Additional Exhibits, Exhibits "P-18-h-1.3-a-2" and "P-18-h-1.3-a-3" were likewise admitted.

For his part, respondent presented the testimony of RO Abdul Bashit B. Busran.[38]

Respondent's Formal Offer of Evidence was filed on December 13, 2022.[39] Petitioner filed its Comment/Objections (Re: CIR's Formal Offer of Exhibits) on December 19, 2022.[40] In the Resolution dated January 27, 2023,[41] the Court admitted all of respondent's offered exhibits.

The Memorandum (For the Respondent) was posted on March 15, 2023,[42] while the Memorandum (For the Petitioner) was filed on March 31, 2023.[43]

The present case was submitted for decision on April 18, 2023.[44]

THE ISSUE

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "Whether or not the petitioner is liable for deficiency income tax, value-added tax ('VAT'), expanded withholding tax ('EWT') and withholding tax on compensation ('WTC'), including interest and penalties for TY 2015 in the total amount of ₱21,301,082.49, plus interests and penalties."[45]

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[37] Docket, pp. 626 to 633.
[38] Exhibit "R-9", Docket, pp. 83 to 95; Minutes of the hearing held on, and Order dated, August 25, 2022, Docket, pp. 580 to 582.
[39] Docket, pp. 634 to 638.
[40] Docket, pp. 641 to 643.
[41] Docket, pp. 650 to 651.
[42] Docket, pp. 652 to 672.
[43] Docket, pp. 674 to 698.
[44] Minute Resolution dated April 18, 2023.
[45] Issue, JSFI, Docket, p. 200. *am*

Petitioner's arguments:

Petitioner argues that the right of respondent to issue tax deficiency assessments for VAT, EWT and WTC, for TY 2015 has already prescribed. If at all, petitioner avers that it may only be assessed for the fourth quarter of TY 2015 but maintains that said assessments have no bases in fact and in law.

Petitioner also considers the FAN and the assessment notices to be invalid for being unsigned.

Respondent's arguments:

Respondent contravenes the contention of petitioner and asserts that his right to assess petitioner's deficiency taxes for TY 2015 has not yet prescribed and that the assessment notices were issued within the three (3)-year prescriptive period provided under Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, in relation to Section 77(B) of the same Code.

As regards the allegation of petitioner that the assessment notices are unsigned, hence, invalid, respondent denies this and points to the records of the case showing that these were all signed by the Revenue Regional Director, Glen A. Geraldino, with initials of other revenue officials and employees who recommended their issuance.

Respondent also alleges that procedural due process was followed in the issuance of the subject assessments and that petitioner duly received the LOA, NIC, PAN, Assessment Notices and FAN and FDDA for TY 2015. He also claims that the PAN, FAN and FDDA contained the facts, law, rules and regulations on which the assessments were made and showed quite clearly that petitioner is liable for deficiency income tax and EWT arising from disallowed expenses due to non-withholding and for deficiency income tax and WTC arising from assessment of salaries and wages not subjected to withholding tax. Further, respondent reiterates the findings of the revenue examiners that petitioner is liable for deficiency income tax arising from Unsubstantiated Purchases and from income tax arising from Net Operating Loss Carry Over (NOLCO) and Excess Minimum Corporate Income Tax (MCIT) over Normal Corporate Income Tax (NCIT) carried over to the succeeding period. As regards the am findings of alleged VAT deficiency, respondent states that this arose from receipts not subject to VAT and input tax carried over to the succeeding period. Lastly, respondent also claims that petitioner failed to submit the necessary documents in relation to its Request for Reinvestigation within sixty (60) days from the date of filing of its Letter Protest, hence, the subject assessment became final and consequently lost its chance to further contest the subject assessments.

THE RULING OF THE COURT

We shall first resolve whether petitioner was able to file its appeal with this Court in the manner and within the period prescribed by relevant laws, which is determinative of our jurisdiction to take cognizance of this case.

Records show that petitioner received a FAN on December 28, 2018 and subsequently filed a protest/request for reinvestigation with the BIR on January 17, 2019. On December 17, 2019, respondent issued an FDDA and received by petitioner on December 20, 2019. On January 17, 2020, petitioner filed the instant Petition for Review with the Court.

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, gives the taxpayer a period of thirty (30) days from receipt of such decision within which to file an appeal with the Court and we quote:

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

Further, Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides as follows, and we quote:

"RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

> **SEC. 3**. *Who may appeal; period to file petition.* – (a) A party adversely affected by a **decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.** In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

Thus, petitioner had thirty (30) days from receipt of the said FDDA on December 20, 2019 within which to file its appeal before this Court. Correspondingly, the filing of the present Petition for Review on January 17, 2020, was timely made.

We now proceed to decide on the merits of the subject assessments.

As earlier stated, the FDDA found petitioner liable for deficiency income tax, VAT, EWT and WTC for TY 2015, detailed as follows:[46]

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

[46] Par. 6, JSFI, Docket, p. 200; Exhibits "P-12" and "R-8", BIR Records, pp. 309 to 314.

Petitioner primarily alleges that respondent's right to assess deficiency VAT, EWT and WTC for TY 2015 had already prescribed, hence cannot be a source of tax collection.

An analysis of the records of this case leads us to agree with the petitioner as to the assessments for deficiency VAT for the 1st to 3rd Quarters of TY 2015, and the assessments for deficiency EWT and WTC for the months of January to November 2015 as these were made beyond the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended, quoted 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 period: *Provided,* That 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. 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."

Based on the foregoing provision, it is clear that except as provided in Section 222 of the 1997 NIRC, as amended,[47] 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.[48] As a corollary thereto, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[49]

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[47] "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

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

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

For clarity, we shall primarily refer to the specific provisions of the law prescribing the period within which to file the pertinent tax returns *vis-à-vis* the date of filing of the said tax returns by petitioner, to adjudge the commencement and end of the three (3)-year prescriptive period under the afore-quoted Section 203 of the 1997 NIRC, as amended.

For filing of corporate income tax returns, Section 77(B) of the 1997 NIRC, as amended, is relevant and we quote:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* —
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The **final adjustment return shall be filed on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." (*Emphasis supplied*)

Thus, on the basis thereof, petitioner's Annual Income Tax Return for TY 2015 should be filed on or before **April 15, 2016**.

Anent the filing of quarterly VAT returns, we quote the applicable provision of Section 114(A) of the 1997 NIRC, as amended, as follows:

> "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 supplied*)

Based on the foregoing provision, petitioner's Quarterly VAT Returns for the four (4) quarters of TY 2015 should be filed on or before: (1) April 25, 2015, for the 1st quarter; (2) July 25, 2015, for the 2nd quarter; (3) October 25, 2015, for the 3rd quarter; and, (4) January 25, 2016, for the 4th quarter. *om*

With regard to the filing of withholding tax returns, Section 2.58(A)(2)(a) of RR No. 2-98, as amended, states:

> "Sec. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. —*
>
> (A) *Monthly return and payment of taxes withheld at source. –*
>
> 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." (*Emphases supplied*)

Thus, petitioner's remittance returns for the twelve (12) months of TY 2015 should be filed within ten (10) days after the end of each month, except for the month of December 2015, in which case the said tax return must be filed on or before January 15, 2016.

Correspondingly, for purposes of the subject tax assessments of deficiency income tax, VAT, EWT and WTC against petitioner for TY 2015, the end of the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended, if applicable, 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[50]	End of the three-year prescriptive period
Income Tax – for 2015	March 31, 2016[51]	April 15, 2016	April 15, 2019
VAT – 1st Quarter 2015	April 24, 2015[52]	April 25, 2015	April 25, 2018
VAT – 2nd Quarter 2015	July 16, 2015[53]	July 25, 2015	July 25, 2018
VAT – 3rd Quarter 2015	October 23, 2015[54]	October 25, 2015	October 25, 2018

[50] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[51] Exhibit "P-2", Docket, pp. 343 to 350.
[52] Exhibits "P-4" and "P-4-a", Docket, pp. 376 to 379.
[53] Exhibit "P-4.1", Docket, pp. 385 to 386.
[54] Exhibits "P-4.2" and "P-4.2-a", Docket, pp. 389 to 391.

VAT – 4th Quarter 2015	January 25, 2016[55]	January 25, 2016	January 25, 2019
EWT – January 2015	February 10, 2015[56]	February 10, 2015	February 10, 2018
EWT – February 2015	March 6, 2015[57]	March 10, 2015	March 10, 2018
EWT – March 2015	April 8, 2015[58]	April 10, 2015	April 10, 2018
EWT – April 2015	May 8, 2015[59]	May 10, 2015	May 10, 2018
EWT – May 2015	June 8, 2015[60]	June 10, 2015	June 10, 2018
EWT – June 2015	July 9, 2015[61]	July 10, 2015	July 10, 2018
EWT – July 2015	August 5, 2015[62]	August 10, 2015	August 10, 2018
EWT – August 2015	September 3, 2015[63]	September 10, 2015	September 10, 2018
EWT – September 2015	October 2, 2015[64]	October 10, 2015	October 10, 2018
EWT – October 2015	November 3, 2015[65]	November 10, 2015	November 10, 2018
EWT – November 2015	December 8, 2015[66]	December 10, 2015	December 10, 2018
EWT – December 2015	January 8, 2016[67]	January 15, 2016	January 15, 2019
WTC – January 2015	February 10, 2015[68]	February 10, 2015	February 10, 2018
WTC – February 2015	March 6, 2015[69]	March 10, 2015	March 10, 2018
WTC – March 2015	April 8, 2015[70]	April 10, 2015	April 10, 2018
WTC – April 2015	May 8, 2015[71]	May 10, 2015	May 10, 2018
WTC – May 2015	June 8, 2015[72]	June 10, 2015	June 10, 2018
WTC – June 2015	July 9, 2015[73]	July 10, 2015	July 10, 2018
WTC – July 2015	August 6, 2015[74]	August 10, 2015	August 10, 2018
WTC – August 2015	September 3, 2015[75]	September 10, 2015	September 10, 2018
WTC – September 2015	October 2, 2015[76]	October 10, 2015	October 10, 2018
WTC – October 2015	November 3, 2015[77]	November 10, 2015	November 10, 2018
WTC – November 2015	December 8, 2015[78]	December 10, 2015	December 10, 2018
WTC – December 2015	January 10, 2016[79]	January 15, 2016	January 15, 2019

In this case, the Assessment Notices and FAN were received by petitioner on December 28, 2018.[80] Hence, the assessments for deficiency VAT for the 1st to 3rd Quarters of 2015, and the assessments for deficiency EWT and WTC for the months of January to November 2015 were made beyond the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended.

55 Exhibit "P-4.3", Docket, pp. 394 to 395.
56 Exhibit "P-5", Docket, p. 398.
57 Exhibit "P-5.1", Docket, p. 400.
58 Exhibit "P-5.2", Docket, p. 402.
59 Exhibit "P-5.3", Docket, p. 404.
60 Exhibit "P-5.4", Docket, p. 406.
61 Exhibits "P-5.5" to "P-5.5-b", Docket, pp. 408 to 410.
62 Exhibits "P-5.6" and "P-5.6-a", Docket, pp. 412 to 413.
63 Exhibits "P-5.7" to "P-5.7-b", Docket, pp. 415 to 417.
64 Exhibits "P-5.8" and "P-5.8-a", Docket, pp. 419 to 420.
65 Exhibits "P-5.9" to "P-5.9-b", Docket, pp. 422 to 424.
66 Exhibits "P-5.10" and "P-5.10-a", Docket, pp. 426 to 427.
67 Exhibits "P-5.11" and "P-5.11-a", Docket, pp. 429 to 430.
68 Exhibits "P-6" and "P-6-a", Docket, pp. 437 to 438.
69 Exhibit "P-6.1", Docket, pp. 439 to 439-A.
70 Exhibits "P-6.2" and "P-6.2-a", Docket, pp. 440 to 441.
71 Exhibits "P-6.3" and "P-6.3-a", Docket, pp. 442 to 443.
72 Exhibits "P-6.4" and "P-6.4-a", Docket, pp. 444 to 445.
73 Exhibits "P-6.5" and "P-6.5-a", Docket, pp. 447 to 448.
74 Exhibits "P-6.6" and "P-6.6-a", Docket, pp. 449 to 451.
75 Exhibits "P-6.7" and "P-6.7-a", Docket, pp. 452 to 454.
76 Exhibits "P-6.8" and "P-6.8-a", Docket, pp. 455 to 457.
77 Exhibits "P-6.9" to "P-6.9-b", Docket, pp. 458 to 460.
78 Exhibits "P-6.10" and "P-6.10-a", Docket, pp. 461 to [461-A].
79 Exhibits "P-6.11" and "P-6.11-a", Docket, pp. 462 to 464.
80 Par. 4, JSFI, Docket, p. 200; Exhibit "P-10", Docket, pp. 472 to 480; Exhibit "R-4", BIR Records, pp. 266 to 274.

Respondent however contends that the assessments for deficiency VAT, EWT and WTC for TY 2015 were made within the extraordinary prescriptive period of ten (10) years to assess as provided in Section 222(a) of the 1997 NIRC, as amended. Respondent further states that during the presentation of evidence of petitioner, it was disclosed that there is a discrepancy of 182.43% in the total amount of sales reported by petitioner as compared to the total amount of sales per its Quarterly VAT Returns for 2015. Hence, there is a presumption of falsity of returns considering that there were receipts not subjected to VAT and there were items of deductions that petitioner failed to withhold the corresponding EWT and WTC. This circumstance, according to respondent justifies the application of the extraordinary prescriptive period of ten (10) years to assess pursuant to Section 222 of the 1997 NIRC, as amended.

The Court disagrees with respondent.

For assessments issued beyond the three (3)-year period, where fraud is being invoked, the factual basis must also be stated and communicated to the taxpayer.[81] Otherwise stated, to avail of the extraordinary period of assessment in Section 222(a) of the 1997 NIRC, as amended, the CIR should show that the facts upon which the fraud is based is communicated to the taxpayer. It is incumbent upon the CIR to clearly state the allegations of fraud committed by the taxpayer to serve the purpose of an assessment notice to aid the taxpayer in filing an effective protest. It is indispensable for the CIR to include the basis for its allegations of fraud in the assessment notice.[82]

In this case, neither the FAN nor the FDDA explicitly states that the applicable prescriptive period is ten (10) years set in Section 222 of the 1997 NIRC, as amended. We therefore find that said extraordinary prescriptive period cannot be made to apply to petitioner as it was not sufficiently informed that the extraordinary period laid down in Section 222 of the 1997 NIRC, as amended, would apply.

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[81] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[82] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

Consequently, only the following periods fall within the prescriptive period and will be the subject of this Court's decision, to wit:

VAT	4th Quarter
EWT	December 2015
WTC	December 2015

This Court also finds that respondent's right to assess petitioner's income tax deficiency for TY 2015, has not prescribed and will likewise be part of this Decision.

As regards the allegation that the assessment notices were unsigned, a perusal of the records of the case, particularly the BIR Records, belie the claim of petitioner and hence must be disregarded.

We now go into the details of the covered assessments.

I. Income Tax

Respondent assessed petitioner of basic deficiency income tax in the amount of ₱7,647,381.60, computed as follows:

Taxable Loss per return		₱(3,183,636.00)
Add: Adjustments/disallowances		
Disallowed expenses due to non-withholding	₱2,354,652.59	
Salaries and wages not subjected to Withholding Tax	151,460.92	
Unsubstantiated Purchases	22,985,158.50	25,491,272.01
Taxable Income		₱22,307,636.01
Add: NOLCO		3,183,636.00
Adjusted Taxable Income		₱25,491,272.01
Income Tax Due (30%)		7,647,381.60
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱30,309.00	
Payments per return	74,727.00	
Total	₱105,036.00	
Less: Excess MCIT carried over to Succeeding Period	105,036.00	0.00
Basic Tax Due		**₱7,647,381.60**

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Based on the foregoing, the assessment items are the following:

A. Disallowed expenses due to non-withholding	₱ 2,354,652.59
B. Salaries and wages not subjected to Withholding Tax	151,460.92
C. Unsubstantiated Purchases	22,985,158.50
D. NOLCO	3,183,636.00
E. Excess MCIT	105,036.00

A. Disallowed expenses due to non-withholding (₱2,354,652.59)

Based on the FDDA, respondent found that petitioner failed to withhold the appropriate withholding tax due on the above income payments, in violation of Section 34(K) of the 1997 NIRC, as amended, which expressly provides that expenses cannot be claimed as deductions from taxable income if the required withholding tax has not been remitted to the BIR.[83] As can be gleaned in the Details of Discrepancies attached to the FDDA, the disallowed expenses due to non-withholding in the amount of ₱2,354,652.59 are broken down, as follows:[84]

Income Payment Subject to EWT	Per ITR/AFS	Per 1601-E	Disallowed Expenses	EWT Rates	EWT Due
Professional fees	₱ 780,000.00	₱ 416,555.62	₱ 363,444.38	15%	₱ 54,516.66
Contractors & Purchase of Services					
Other Services	211,888.00				
Tracking and Freight	1,047,948.00				
Processing fees	22,812,638.45				
Subtotal	24,072,474.45	22,081,266.24	1,991,208.21	2%	39,824.16
Total	**₱24,852,474.45**	**₱22,497,821.86**	**₱ 2,354,652.59**		**₱94,340.82**

We shall discuss petitioner's arguments and supporting documents to resolve whether petitioner has proven that it is entitled to claim the above disallowances as deductions from its taxable income.

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[83] This was prior to the enactment of Republic Act (RA) 11976 or the Ease of Paying Taxes (EOPT) Law which took effect on January 22, 2024.

[84] Exhibits "P-12" and "R-8", BIR Records, pp. 309-314

1. Disallowed Professional fees (₱363,444.38)

According to petitioner, the amount of Professional Fees claimed as deductions per Income Tax Return ("ITR")/Audited Financial Statements ("AFS") in the amount of ₱780,000.00 is composed of the following:[85]

GPP Suppliers	**Amount**	**Exhibit Reference**
1. L.A. De Jesus and Associates, CPAs	₱ 335,000.00	"P-18-h-1.1-a-1" to "P-18-h-1.1-a-1k"; "P-18-h-1.1-a-2" to "P-18-h-1.1-a-2k"
2. JG Law	180,000.00	"P-18-h-1.1-b-1" to "P-18-h-1.1-b-1k"
3. Mamuri, Eisma & Associates, CPAs	25,000.00	"P-18-h-1.1-c-1" to "P-18-h-1.1-c-2"
Total Professional Fee – Exempt	**₱ 540,000.00**	
Non-GPP Suppliers		
1. Emmanuel D. Sarmiento	₱ 180,000.00	"P-18-h-1.2-a-1" to "P-18-h-1.2-a-1w"
2. Atty. Jose Vicente F. Jimenez	60,000.00	"P-18-h-1.2-b-1" to "P-18-h-1.2-b-1c"
Total Professional Fee – Taxable	**₱ 240,000.00**	
Total Professional Fees per ITR/AFS	**₱ 780,000.00**	

Petitioner contends that a portion of said income payments were made to General Professional Partnerships (GPPs) which are exempt from withholding, pursuant to Section 2.57.5 of RR No. 2-98, as amended by RR 14-02, in relation to Section 26 of the 1997 NIRC, as amended, to wit:

> "SEC. 26. *Tax Liability of Members of General Professional Partnerships.* — A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities."

> "Section 2.57.5. ***Exemption from Withholding***. – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

> xxx xxx xxx

[85] Par. 22.2, *Petition for Review,* Docket, p. 16. Cym

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

xxx xxx xxx

(4) General Professional Partnerships" (*Emphasis supplied*)

It is clear from the foregoing that income payments made to a GPP, as a juridical person, are exempt from income tax, *vis-à-vis* the EWT. The partners of said GPP are the ones liable in their individual capacities for the payment of income tax, pursuant to the afore-quoted Section 26 of the 1997 NIRC, as amended.

A careful examination of the pertinent documents [86] submitted by petitioner revealed the following information:

Income Payment	**Per ITR/AFS**	**Nontaxable**	**Taxable**	**Per 1601-E[87]**	**Disallowed Expenses**	**EWT Rates**	**EWT Due**
Professional fees (@10%)	₱ 780,000.00	₱ 540,000.00	₱ 240,000.00	₱ 225,000.00	₱ 15,000.00	10%	**₱ 1,500.00**
Other Services (@10%)	211,887.76	-	211,887.76	191,555.57	20,332.19	10%	**2,033.22**
Trucking and Freight	1,047,948.06	-	1,047,948.06	78,120.19	969,827.87	2%	**19,396.56**
Processing Fees	22,812,638.45	-	22,812,638.45	22,003,146.05	809,492.40	2%	**16,189.84**
Subtotal	*₱ 24,072,474.27*		*23,860,586.51*	*22,081,266.24*	*1,779,320.27*	*2%*	***35,586.40***
Total	**₱24,852,474.27**	**₱ 540,000.00**	**₱24,312,474.27**	**₱22,497,821.81**	**₱ 1,814,652.46**		**₱ 39,119.62**

Out of the recorded professional fees amounting to ₱780,000.00 per Annual ITR[88] and AFS[89], the amount of ₱540,000.00 represents payments to GPPs[90], as shown in their respective Articles of Partnership and Basis of Exemption[91], which are considered by law to be exempt from withholding taxes.

This Court concludes that petitioner was able to provide supporting documents to show that Professional Fees per AFS/ITR in the amount of ₱780,000.00 is indeed composed of ₱540,000.00 pertaining to income payments to GPPs.

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86 Exhibits "P-18-h-1.1-a"; "P-18-h-1.1-a-1" to "P-18-h-1.1-a-1k"; "P-18-h-1.1-a-2" to "P-18-h-1.1-a-2k"; "P-18-h-1.1-b"; "P-18-h-1.1-b-1" to "P-18-h-1.1-b-1k"; "P-18-h-1.1-c"; "P-18-h-1.1-c-1" to "P-18-h-1.1-c-2".
87 Exhibits "P-5" to "P-5.11".
88 Exhibit "P-2", Item 22 of Schedule 4, Docket, p. 346.
89 Exhibit "P-3", Docket, p. 372.
90 Exhibit "P-18-h-1.1".
91 Exhibits "P-18-h-1.3". "P-18-h-1.3-a", "P-18-h-1.3-a-1", and "P-18-h-1.3-b".

On the other hand, the remaining amount of ₱240,000.00 relates to income payments made to non-GPP services[92]. From the non-GPP fees, only ₱225,000.00 was paid[93] and was subjected to the corresponding withholding taxes during the year, as reflected in the Monthly Alphalist of Payees[94]. The remaining ₱15,000.00 allegedly pertains to a discrepancy representing professional fee paid to Mr. Jose Vicente Espino Jimenez accrued as of December 31, 2015[95] and whose withholding tax was allegedly remitted in February 2016[96].

Consequently, the discrepancy of ₱15,000.00 that was claimed as expense as of December 31, 2015, and from which no EWT was remitted during the year 2015, shall be disallowed as deduction from taxable income, and likewise, be subjected to deficiency EWT at the rate of 10%.

2. Disallowed Payments to Contractors and Purchase of Services (₱24,072,474.45)

With regard to the disallowed income payments to Contractors and Purchase of Services, petitioner claims that the amount per ITR/AFS of ₱24,072,474.45, as found by respondent, consists of the following:[97]

a.) Other Services		
Ramiro, Louella Alagar	₱ 130,612.24	
Saguinsin, Reynaldo	81,275.51	₱ 211,887.75
b.) Trucking freight		
RMA Cargo Logistics, Inc.		
Service charge	78,120.19	
Reimbursable charges	898,750.36	
All Ways International		
Reimbursable charges not subject to EWT	71,077.50	1,047,948.05
c.) Processing Fees		
Pulp Specialist Phils., Inc.	22,468,440.55	
Salinas, Clarita H.	344,197.70	22,812,638.45
Total fee per ITS/AFS		**₱ 24,072,474.45**

[92] Exhibit "P-18-h-1.2".
[93] Exhibits "P-18-h-1.2-a"; "P-18-h-1.2-a-1" to "P-18-h-1.2-a-1w" and "P-18-h-1.2-b"; "P-18-h-1.2-b-1" to "P-18-h-1.2-b-1c".
[94] Exhibits "P-5-a", to "P-5-11-b.
[95] Exhibit "P-18-h-1.2-b".
[96] Exhibit "P-18-h".
[97] Par. 22.4, Docket, pp. 16 to 17.

To reiterate, the examination of the pertinent documents[98] submitted by petitioner resulted to the following summary of findings:

Income Payment	Per ITR/AFS	Nontaxable	Taxable	Per 1601-E[99]	Disallowed Expenses	EWT Rates	EWT Due
Professional fees (@10%)	₱ 780,000.00	₱ 540,000.00	₱ 240,000.00	₱ 225,000.00	₱ 15,000.00	10%	**₱ 1,500.00**
Other Services (@10%)	211,887.76	-	211,887.76	191,555.57	20,332.19	10%	**2,033.22**
Trucking and Freight	1,047,948.06	-	1,047,948.06	78,120.19	969,827.87	2%	**19,396.56**
Processing Fees	22,812,638.45	-	22,812,638.45	22,003,146.05	809,492.40	2%	**16,189.84**
Subtotal	*₱ 24,072,474.27*		*23,860,586.51*	*22,081,266.24*	*1,779,320.27*	*2%*	***35,586.40***
Total	**₱24,852,474.27**	**₱ 540,000.00**	**₱24,312,474.27**	**₱22,497,821.81**	**₱ 1,814,652.46**		**₱ 39,119.62**

The Court after vouching the supporting documents such as the Check/Journal Vouchers or Official Receipts, and cross-referencing them with the reported amounts per Form No. 1601-E, revealed the following, thus:

a.) Other Outside Services

Per petitioner's AFS for TY ended December 31, 2015, the "Outside Services" amounting to ₱211,887.76 is reported under Note 15 – Operating Expenses. Based on the findings of the ICPA, the same is broken down as follows:[100]

Supplier	Amount
Ramiro, Louella A.	₱ 130,612.24
Saguinsin, Reynaldo L.	81,275.52
Total	**₱ 211,887.76**

The Court then verified whether said amounts were properly subjected to EWT.

- ***Supplier:*** ***Ramiro, Louella A.***

		Per Check Voucher				
Exhibit No.	**Date**	**Debit Account**	**Amount**	**Credit - Cash in Bank**	**Credit - Expanded Withholding Tax**	**Per 1601-E**
"P-18-h-3.1-a"	5/15/2015	Professional Fee	₱ 17,777.78	₱ 16,000.00	₱ 1,777.78	₱ 1,777.78
"P-18-h-3.1-a1"	6/15/2015	Professional Fee	17,777.78	16,000.00	1,777.78	1,777.78

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[98] Exhibits "P-18-h-1.1-a"; "P-18-h-1.1-a-1" to "P-18-h-1.1-a-1k"; "P-18-h-1.1-a-2" to "P-18-h-1.1-a-2k"; "P-18-h-1.1-b"; "P-18-h-1.1-b-1" to "P-18-h-1.1-b-1k"; "P-18-h-1.1-c"; "P-18-h-1.1-c-1" to "P-18-h-1.1-c-2".

[99] Exhibits "P-5" to "P-5.11".

[100] Exhibit "P-18-h-3".

"P-18-h-3.1-a2"	7/14/2015	Professional Fee	17,777.78	16,000.00	1,777.78	1,777.78
"P-18-h-3.1-a3"	8/13/2015	Professional Fee	17,777.78	16,000.00	1,777.78	1,777.78
"P-18-h-3.1-a4"	9/15/2015	Professional Fee	17,777.78	16,000.00	1,777.78	1,777.78
"P-18-h-3.1-a5"	10/14/2015	Professional Fee	17,777.78	16,000.00	1,777.78	1,777.78
"P-18-h-3.1-a6"	11/12/2015	Professional Fee	16,000.00	16,000.00	0.00	0.00
"P-18-h-3.1-a7"	12/14/2015	Salaries and Wages	16,000.00	16,000.00	0.00	0.00
TOTAL			**₱138,666.68**	**₱128,000.00**	**₱ 10,666.68**	**₱10,666.68**
Per FS/ITR (per ICPA, Exh. No. "P-18-h-3.1")			**130,612.24**			
Variance – per ICPA			**₱ 8,054.44**			

It can be gleaned from the foregoing that petitioner failed to subject the payments made in November and December 2015 to EWT, and that such payments pertaining to the month of December 2015 was recorded under Salaries and Wages account. Verily, only the amount of ₱106,666.68 was subjected to EWT. Consequently, the remaining expense amounting to ₱23,945.56 [101] shall be disallowed as deduction from gross income.

Of the remaining amount of ₱23,945.56, the corresponding EWT in the amount of ₱16,000.00 pertaining to transaction for the month of November 2015 could no longer be enforced considering that the same is already barred by prescription. Accordingly, only the remaining amount of ₱7,945.56 shall be subject to deficiency EWT.

- ***Supplier: Saguinsin, Reynaldo L.***

		Per Journal Voucher			
Exhibit No.	**Date**	**Debit**	**Amount**	**Credit - EWT**	**Per 1601-E**
"P-18-h-3.2-a"	8/11/2015	Professional Fee	₱ 6,666.67	₱ 666.67	₱ 666.67
"P-18-h-3.2-a1"	10/8/2015	Professional Fee	1,111.11	111.11	111.11
"P-18-h-3.2-a2"	12/11/2015	Professional Fee	4,444.44	444.44	444.44
"P-18-h-3.2-b"	6/16/2016	Professional Fee	36,850.00	3,350.00	-
"P-18-h-3.2-b1"	11/9/2015	Professional Fee	35,750.00	3,250.00	3,250.00
TOTAL			**₱ 84,822.22**	**₱ 7,822.22**	**₱ 4,472.22**
Per FS/ITR (per ICPA, Exh. No. "P-18-h-3.2")			**81,275.52**		
Variance			**₱ 3,546.70**		

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101 Per ITR ₱130,612.24 less per EWT Certificate ₱106,666.68.

It was found that the income payment in the amount of ₱36,850.00 is evidenced by a check voucher dated June 16, 2016, with a debit to Professional Fee. A short note in the Check Voucher states that it is an adjustment from a 2015 Journal Voucher which was not presented before the Court.

Since the check voucher is dated in the subsequent TY 2016, its inclusion is in the Financial Statements of TY 2016 and not in the year of assessment (i.e., TY 2015), hence, should be disregarded. Also, it must be noted that for the month of November 2015, considering that only the amount of ₱3,250.00 was withheld, only the professional fee in the amount of ₱32,500.00 was subjected to 10% EWT, while the other amount of ₱3,250.00 was not subjected to EWT.

In sum, only the amount of ₱44,722.22 was subjected to EWT, while the remaining amount of ₱36,553.30[102] was not subjected to EWT, thus, shall be disallowed as deduction from gross income.

Meanwhile, as regards the imposition of deficiency EWT, of the remaining amount of ₱36,553.30, as mentioned, the amount of ₱3,250.00 pertaining to transaction for the month of November 2015 cannot be subjected to deficiency EWT considering that the same is barred by prescription. Accordingly, only the remaining amount of ₱33,303.30 shall be subject to deficiency EWT.

To recapitulate, out of the claimed Other Outside Services of ₱211,887.75, the amount of ₱60,498.86 shall be disallowed as deduction from petitioner's gross income, while only the amount of ₱41,248.86 shall be subject to deficiency EWT, as determined below:

	Per ITR	**Per 1601-E**	**Disallowed Expense**	**Prescribed**	**Income Payments Still Subject to EWT**
Ramiro, Louella Alagar	₱ 130,612.24	₱ 106,666.68	₱ 23,945.56	₱ 16,000.00	₱ 7,945.56
Saguinsin, Reynaldo Luna	81,275.52	44,722.22	36,553.30	3,250.00	33,303.30
Total	**₱211,887.76**	**₱151,388.90**	**₱60,498.86**	**₱19,250.00**	**₱41,248.86**

[102] Per ITR ₱81,275.52 less per EWT Certificate ₱44,722.22. *am*

b.) Trucking and Freight

Per petitioner's AFS for TY 2015, "Reimbursable Trucking and Freight" amounting to ₱1,047,948.05 is reported under Note 15 – Operating Expenses, broken down[103] as follows:

Supplier	Reimbursable Charges	Brokerage Fee	Amount
RMA Cargo Logistics, Inc.	₱ 898,750.37	₱ 78,120.19	₱ 976,870.56
All Ways International	71,077.50		71,077.50
Total	**₱ 969,827.87**	**₱ 78,120.19**	**₱ 1,047,948.06**

Petitioner claims that a portion of its payments to RMA Cargo Logistics, Inc. and to All Ways International are reimbursements not subject to EWT. Petitioner cites BIR Ruling No. DA-115-06 where it was held that reimbursement of expenses, by its very nature is not income but merely a return of capital. As a return of capital, it is not income payment *per se*. Such being the case, it is not subject to income tax, and petitioner has no obligation to withhold taxes from said payments.

Upon examination, we find that petitioner failed to fully provide adequate supporting documents to prove its claims, as discussed below.

- ***Supplier:*** ***RMA Cargo Logistics, Inc.***

	Per Official Receipts			Per 1601-E	
Exhibit No.	**Receipt Amount (A)**	**EWT**	**Income Payment Based on OR/ Brokerage Fee**	**Income Payment**	**EWT declared**
"P-18-h-5-b-1"	₱ 25,443.77	₱ 462.61	₱ 23,130.70	₱ 23,130.70	₱ 462.61
"P-18-h-5-b-1a"	13,678.70	248.70	12,435.19		
"P-18-h-5-b-1b"	13,693.17	248.97	12,448.34	24,883.53	497.67
"P-18-h-5-b-1c"	5,469.99	99.45	4,972.58	4,972.58	99.45
"P-18-h-5-b-1d"	13,812.50	251.14	12,556.83		
"P-18-h-5-b-1e"	13,834.21	251.53	12,576.55	25,133.38	502.67
TOTAL	**₱ 85,932.34**	**₱1,562.40**	**₱ 78,120.19**	**₱ 78,120.19**	**₱1,562.40**

From the above table, it can be gleaned that the income payment amounts declared per Form No. 1601-E tie up with the amounts per Official Receipts (ORs) submitted before the Court.

103 Exhibit "P-18-h-5".

Consequently, the brokerage fee in the amount of ₱78,120.19 was properly subjected to EWT.

As regards the alleged reimbursable charges of ₱898,750.37, petitioner submitted in evidence the acknowledgement receipts issued by RMA Cargo, to wit:

Exhibit No.	A.R. No.	A.R. Date	Amount
"P-18-h-5-a-1a"	1589	June 18, 2015	₱ 140,017.79
"P-18-h-5-a-1b"	1604	June 20, 2015	60,283.06
"P-18-h-5-a-1c"	1605	June 24, 2015	80,000.00
"P-18-h-5-a-1d"	1771	Sept. 11, 2015	54,818.01
"P-18-h-5-a-1e"	1889	Nov. 11, 2015	142,471.59
"P-18-h-5-a-1f"	1916	Nov. 20, 2015	142,869.46
Sub-Total			**₱ 620,459.91**
Without Supporting Document			*278,290.46*
TOTAL			**₱ 898,750.37**

However, with only the acknowledgement receipts submitted, this Court cannot ascertain the actual nature of the expenses paid by petitioner. Absent any other evidence that would show that the said amount indeed pertains to reimbursable expenses, petitioner's contention remains uncorroborated, Therefore, for petitioner's failure to prove its reimbursable and non-taxable nature, the alleged reimbursable expense of ₱898,750.37 shall be disallowed as deduction from gross income.

Hence, considering that the right of the respondent to collect the corresponding EWT on the expenses pertaining to the amount of ₱620,459.91 is already barred by prescription, the corresponding EWT thereon cannot be enforced against petitioner. Consequently, only the expenses in the amount of ₱278,290.46 without supporting documents, which is deemed incurred in the month of December 2015, shall be subject to deficiency EWT.

- ***Supplier:*** ***All Ways International***

According to the ICPA Report, the Brokerage fees paid to All Ways International in the amount of ₱10,000.00[104], with the

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[104] Exhibit "P-18-h-4".

corresponding tax at 10%, was correctly declared, paid and remitted to the BIR and were duly supported by ORs[105].

The breakdown of the payments included in the ORs are as follows:

Exh.	O.R. No.	O.R. Date	Expense	Total Sales	Withholding Tax (10%)	O.R. Amount
P-18-h-4-a	0059	June 29, 2015	Brokerage Fees	₱ 5,000.00	₱ 500.00	₱ 4,500.00
			Reimbursable Charges	34,987.50	-	34,987.50
	Sub-total			**₱ 39,987.50**	**₱ 500.00**	**₱ 39,487.50**
P-18-h-4-a1	0060	Dec. 18, 2015	Brokerage Fees	₱ 5,000.00	₱ 500.00	₱ 4,500.00
			Reimbursable Charges	36,090.00	-	36,090.00
	Sub-total			**₱ 41,090.00**	**₱ 500.00**	**₱ 40,590.00**

It was observed, however, that petitioner failed to submit additional supporting documents to prove that the amounts of ₱34,987.50 and ₱36,090.00 were indeed actual reimbursements. Without adequate support, the nature of these payments cannot be ascertained, hence, the total amount of ₱71,077.50 should be **disallowed** as deductions from petitioner's gross income.

Nonetheless, considering that the right of the respondent to collect the corresponding EWT on the expenses amounting to ₱34,987.50 is likewise barred by prescription, the corresponding EWT thereon cannot be enforced against petitioner. Consequently, only the expenses of ₱36,090.00 incurred in the month of December 2015 shall be subject to deficiency EWT.

In fine, for petitioner's failure to prove that the total amount of ₱969,827.87 pertains to reimbursable expenses, the same shall be disallowed as deductions from its taxable income. However, only the amount of ₱314,380.46 shall be subject to deficiency EWT, to wit:

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105 Exhibits "P-18-h-4-a" to "P-18-h-4-a1".

	Per ITR	Per 1601-E	Disallowed Expense	Prescribed	Income Payments still subject to EWT
RMA Cargo Logistics, Inc.					
Service Charge subject to EWT	₱ 78,120.19	₱ 78,120.19	₱ -	₱ -	₱ -
Reimbursable Charges not subject to EWT	898,750.37		898,750.37	620,459.91	278,290.46
All Ways International					
Reimbursable Charges not subject to EWT	71,077.50		71,077.50	34,987.50	36,090.00
Total	**₱1,047,948.06**	**₱78,120.19**	**₱969,827.87**	**₱655,447.41**	**₱314,380.46**

c.) Processing Fees

- ***Supplier: Pulp Specialties Phils., Inc.***

An analysis of the documents presented resulted to the following findings:

Exhibit No.	Date	Amount (converted to Php) (A)	Per 1601-E		Difference (A - B)
			Income Payment (B)	EWT declared	
"P-18-h-6-a-1"	1/31/2015	₱ 7,112,025.00	₱ 7,112,025.00	₱ 142,240.50	₱ 0.00
"P-18-h-6-a-1a"	2/25/2015	171,682.35	171,682.35	3,433.65	0.00
"P-18-h-6-a-1b"	5/31/2015				0.00
"P-18-h-6-a-1c"	6/24/2015	7,547,229.00	7,547,229.00	150,944.58	0.00
"P-18-h-6-a-1d"	11/2/2015				0.00
"P-18-h-6-a-1e"	10/30/2015	6,828,012.00	6,828,012.00	136,560.24	0.00
No supporting documents		809,492.40			809,492.40
TOTAL		**₱22,468,440.75**	**₱ 21,658,948.35**		**₱809,492.40**

A review of the submitted documents reveals that the foregoing income payments were properly supported and the corresponding 2% EWT due thereon was remitted during the year, except for the income payment in the amount of ₱809,492.40, for which petitioner failed to provide supporting documents. Hence, the said amount shall be disallowed as a deduction from taxable income.

Furthermore, the Court finds that the amount of ₱809,492.40 is considered an income payment made during December 2015, hence, should be subject to deficiency EWT.

- ***Supplier: Salinas, Clarita H.***

		Per Official Receipts		Per 1601-E		
Exhibit No.	**Date**	**Receipt Amount (A)**	**Expanded Withholding Tax**	**Income Payment (B)**	**EWT Declared (C)**	**Difference (B – C = A)**
"P-18-h-6-b-1"	8/15/2015	₱186,453.09	Not shown	₱ 190,258.26	₱ 3,805.17	-
"P-18-h-6-b-1a"	12/2/2015	150,860.65	Not shown	153,939.44	3,078.79	-
TOTAL		**₱337,313.74**		**₱ 344,197.70**	**₱ 6,883.96**	-

It was noted that the ORs issued to petitioner show that the payments are considered zero-rated sales. Moreover, even though the EWT amount is not shown in the Official Receipts, it was determined that the EWT due was correctly declared in BIR Form No. 1601-E, as can be gleaned from the above table. Verily, petitioner was able to prove that the claimed expenses in the total amount of ₱344,197.70 were subjected to EWT during the year.

To summarize, petitioner's disallowed expenses due to non-withholding is determined to be in the amount of ₱1,854,819.13, viz:

Income Payment	Per ITR/AFS	Nontaxable	Taxable	Per 1601-E	Disallowed Expenses
Professional fees (@10%)	₱ 780,000.00	₱ 540,000.00	₱ 240,000.00	₱ 225,000.00	₱ 15,000.00
Other Services (@10%)	211,887.76	-	211,887.76	151,388.90	60,498.86
Trucking and Freight	1,047,948.06	-	1,047,948.06	78,120.19	969,827.87
Processing Fees	22,812,638.45	-	22,812,638.45	22,003,146.05	809,492.40
Total	**₱24,852,474.27**	**₱540,000.00**	**₱24,312,474.26**	**₱22,470,905.14**	**₱1,854,819.13**

B. Salaries and wages not subjected to Withholding Tax (₱151,460.92)

As stated in the Details of Discrepancies, respondent's reconciliation of salaries and wages accounted per ITR versus the amount reported per Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) resulted to a discrepancy amounting to ₱151,460.92 which was not subjected to withholding tax on compensation, and was thus, disallowed as deduction from Gross Income for Income

Tax purposes, pursuant to Section 34(K) of the 1997 NIRC, as amended, detailed as follows:

Salaries and Allowances per FS/ITR		₱ 4,102,334.80
Less: Salaries and wages per 1601-C		3,950,873.88
Salaries & Wages not subjected to withholding tax		**151,460.92**
Multiply by Average Withholding Rate:		
Tax due per 1601-C	₱ 1,018,968.25	
Taxable Salaries per 1601-C	3,823,914.48	26.65%
Basic Tax Due		**₱ 40,364.34**

On the other hand, petitioner presented a reconciliation to show that proper withholding was done on taxable compensation, hence:

Salaries and wages per ITR/AFS		
Salaries and wages	₱ 3,525,097.30	
13th month pay and bonuses	577,237.50	₱ 4,102,334.80
Salaries and wages per 1604-CF (Alphalist)		
Gross compensation per Schedule 7.3 of the Alphalist		4,103,177.70
Discrepancy		**₱(842.90)**

An examination of petitioner's ITR/AFS shows that the amount of salaries and wages reported therein is equal to the amount of gross compensation per Alphalist of Employees as of December 31, 2015,[106] which is in the amount of ₱4,102,334.80. Of the said amount, the taxable compensation is ₱3,789,360.73 only, with a corresponding withholding tax of ₱1,007,965.32.

On the other hand, the gross compensation per BIR Form No. 1601-C[107] amounts to ₱3,950,873.93, of which the taxable compensation is ₱3,823,913.93, with a corresponding withholding tax of ₱1,018,968.25, to wit:

Exhibit	TY 2015	Gross Compensation	Non-Taxable Compensation	Taxable Compensation	Tax Withheld
"P-6"	January	₱ 275,995.42	₱ 11,243.90	₱ 264,751.52	₱ 82,956.08
"P-6.1"	February	296,508.05	11,825.20	284,682.85	86,219.08
"P-6.2"	March	423,011.27	10,855.27	412,156.00	125,397.32
"P-6.3"	April	181,958.75	10,868.90	171,089.85	44,076.77
"P-6.4"	May	584,000.00	11,887.70	572,112.30	83,309.70

[106] Exhibit "P-6.12-a".
[107] Exhibits "P-6" to "P-6.11".

"P-6.5"	June	296,000.00	9,604.40	286,395.60	83,309.70
"P-6.6"	July	288,000.00	11,887.70	276,112.30	83,309.70
"P-6.7"	August	427,646.67	11,887.70	415,758.97	83,650.40
"P-6.8"	September	290,186.54	11,887.70	278,298.84	82,726.48
"P-6.9"	October	302,998.43	17,236.13	285,762.30	84,861.86
"P-6.10"	November	294,918.80	3,887.70	291,031.10	87,088.32
"P-6.11"	December	289,650.00	3,887.70	285,762.30	92,062.84
	Total	**₱3,950,873.93**	**₱ 126,960.00**	**₱3,823,913.93**	**₱1,018,968.25**

The fact that the amount remitted, as shown through bank receipts and eFPS confirmations, is greater than the amount that should have been made means petitioner paid more than what is due. Apparently, petitioner had an overpayment of ₱11,002.93. As such, respondent had no basis in disallowing the compensation in the amount of ₱151,460.92 as deduction from petitioner's gross income and subjecting the same to deficiency withholding tax on compensation. Accordingly, this item of assessment shall be cancelled.

C. Unsubstantiated Purchases (₱22,985,158.50)

Respondent's verification disclosed that petitioner did not provide supporting documents or evidence to support its purchases which formed part of its "Cost of Sales – Purchases – Raw Materials"[108] claimed as deduction against its gross income, in violation of Section 34(A)(1)(b) of the 1997 NIRC, as amended, thus, disallowed, *viz*:

Purchases per FS/ITR		₱ 26,264,147.50
Less: Purchases per audit		
March	₱ 643,572.00	
May	1,938,877.00	
June	696,540.00	3,278,989.00
Unsubstantiated Cost of Sales		**₱ 22,985,158.50**

The records show that the total purchases of ₱26,264,147.50 were made from the following:

[108] Note 14, Audited Financial Statements for year ended December 31, 2015, Exhibit "P-3".

Date	Suppliers	Amount	
Mar 26, 2015	Catanduanes Agro-Business	₱ 643,572.00	
Apr 19, 2015	Catanduanes Agro-Business	579,812.00	
Jul 28, 2015	Catanduanes Agro-Business	782,832.00	₱ 2,006,216.00
Jan 7, 2015	Manila Hemp Trading Corp.	1,321,771.50	
Jan 27, 2015	Manila Hemp Trading Corp.	1,322,716.50	
Feb 21, 2015	Manila Hemp Trading Corp.	1,318,810.50	
Mar 5, 2015	Manila Hemp Trading Corp.	1,351,776.00	
Mar 23, 2015	Manila Hemp Trading Corp.	1,357,920.00	
Apr 6, 2015	Manila Hemp Trading Corp.	1,352,160.00	
Apr 28, 2015	Manila Hemp Trading Corp.	1,349,216.00	
May 21, 2015	Manila Hemp Trading Corp.	1,349,344.00	
Jun 22, 2015	Manila Hemp Trading Corp.	1,350,816.00	
Jul 28, 2015	Manila Hemp Trading Corp.	1,483,475.00	
Aug 22, 2015	Manila Hemp Trading Corp.	1,478,365.00	
Sep 18, 2015	Manila Hemp Trading Corp.	1,475,145.00	
Oct 9, 2015	Manila Hemp Trading Corp.	1,484,455.00	17,995,970.50
Jan 24, 2015	Rodrigo S. Tan	264,962.00	
Apr 6, 2015	Rodrigo S. Tan	503,554.00	
Apr 21, 2015	Rodrigo S. Tan	515,423.00	
May 4, 2015	Rodrigo S. Tan	556,214.00	
May 11, 2015	Rodrigo S. Tan	567,572.00	
May 13, 2015	Rodrigo S. Tan	551,422.00	
May 25, 2015	Rodrigo S. Tan	555,852.00	
May 28, 2015	Rodrigo S. Tan	535,806.00	
Jun 6, 2015	Rodrigo S. Tan	546,092.00	
Jun 17, 2015	Rodrigo S. Tan	564,327.00	
Jun 29, 2015	Rodrigo S. Tan	528,497.00	
Jul 3, 2015	Rodrigo S. Tan	528,164.00	
Oct 5, 2015	Rodrigo S. Tan	44,076.00	6,261,961.00
Total Purchases			**₱ 26,264,147.50**

On the other hand, the findings of the ICPA show that the total purchases of petitioner during TY 2015 with supporting documents amounted to ₱27,139,798.00, broken down as follows:

Supplier's Name	Amount	Supporting Documents
Manila Hemp Trading	₱ 18,133,582	"P-18-e" to "P-18-e-1.12"
Enriquita Tan/Burauen Copra & Abaca Trading (BCAT)	7,000,000	"P-18-e-2" to "P-18-e-2.10"
Catanduanes Agro- Business and Development Corp.	2,006,216	"P-18-e-3" to "P-18-e.3.6"
Total	**₱ 27,139,798**	

According to the ICPA, the above purchases are supported by check vouchers (CVs), suppliers' sales invoices (SIs) and ORs. The ICPA noted that the actual amount of purchases with supporting documents is ₱875,650.50 higher compared to the purchases claimed as deduction in the ITR and reported in the AFS amounting to ₱26,264,147.50.

A verification of the foregoing supporting documents reveals that petitioner submitted VAT-registered SIs stamped with the word "Zero-Rated Sales" from Manila Hemp Trading[109] covering the amount of ₱18,133,582.00. Nonetheless, we shall consider only the claimed purchases from Manila Hemp Trading Corp. amounting to ₱17,995,970.50 as duly supported by documents.

Meanwhile, purchases from Catanduanes Agro-Business and Development Corp. are supported by VAT-registered SIs and check vouchers which indicate that the purchases are for either "Raw Materials" or "Advances to Suppliers". Moreover, there are no differences in terms of amount in the SIs and the corresponding CVs, *viz*:

	Sales Invoice				**Check Voucher**			
SUPPLIER	**EXHIBIT NO.**	**INVOICE NO.**	**DATE**		**EXHIBIT NO.**	**CHECK VOUCHER NO.**	**DATE**	**Amount**
CATANDUANES AGRO-BUSINESS AND DEVELOPMENT CO.	P-18-3-e-3.1	0052	3/23/2015		P-18-3-e-3.4	03/0044 Debit to Purchases – Raw Materials	3/26/2015	₱643,572.00
CATANDUANES AGRO-BUSINESS AND DEVELOPMENT CO.	P-18-3-e-3.2	0053	4/13/2015		P-18-3-e-3.5	04/0016 Debit to Advances – Suppliers	4/22/2015	579,812.00
CATANDUANES AGRO-BUSINESS AND DEVELOPMENT CO.	P-18-3-e-3.3	0056	7/4/2015		P-18-3-e-3.6	07/0011 Debit to Advances – Suppliers	7/7/2015	782,832.00
Total								**₱2,006,216.00**

It can be observed from the dates indicated in the supporting documents that petitioner still debits to "Advances – Suppliers" even though it has already received the goods from the suppliers, *i.e.,* SIs are dated earlier than the check vouchers. Therefore, even if these were not directly debited to "Purchases – Raw Materials", and instead debited to "Advances – Suppliers", the same can still be considered as Purchases. Moreover, it is worth noting that the SIs contain the nature, price and quantity of the goods issued to petitioner.

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109 Exhibit Nos. "P-18-e-1" and "P-18-e-1.1" to "P-18-e-1-1.12".

This Court also finds that the purchases from Enriquita Tan/Burauen Copra & Abaca Trading (BCAT) in the amount of ₱7,000,000.00 are supported by <u>Non-VAT SIs</u> and check vouchers indicating that the payments are "Advances to Suppliers". However, unlike the SIs from Catanduanes Agro-Business and Development Corp., the SIs from BCAT do not indicate the nature and quantity of the goods supposedly purchased by supplier, hence, the Court cannot ascertain whether said Advances constitute purchases of actual raw materials, or a deposit to supplier for future purchases.

Considering the foregoing, the Court disallows the portion of petitioner's purchases claimed as deductions from Gross Income amounting to ₱6,261,961.00 for failure of petitioner to prove that these are actual purchase of goods, *viz*:

Purchases per FS/ITR		₱ 26,264,147.50
Less: Purchases per audit		
Manila Hemp Trading	₱ 17,995,970.50	
Catanduanes Agro- Business and Development Corp.	2,006,216.00	20,002,186.50
Unsubstantiated Purchases		**₱ 6,261,961.00**

D. Net Operating Loss Carry-Over (NOLCO) (₱3,183,636.00)

Respondent's investigation discloses that petitioner's operation showed taxable income instead of net operating loss as previously claimed in its ITR. The tax benefit of this amount has already been forwarded to the succeeding periods as provided for under Section 34(D)(3) of the 1997 NIRC, as amended, and we quote:

> "SEC. 34. **Deductions from Gross Income**. - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx
>
> ***(D) Losses***. –
>
> ***3) Net Operating Loss Carry-Over***. - The net operating loss of the business or enterprise for **any taxable year** <u>/</u>

> **immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss**: *Provided, however,* That any net loss incurred in a taxable year during which the taxpayer was exempt from income tax shall not be allowed as a deduction under this Subsection: *Provided, further,* That a net operating loss carry-over shall be allowed only if there has been no substantial change in the ownership of the business or enterprise in that -xxx" (*Emphasis supplied*)

This Court agrees with the respondent.

Considering that the deficiency assessments made by respondent, as discussed above, are substantially tenable, we find that petitioner's operation did not result to a net loss, to wit:

Sales		₱ 66,351,051.00
Less: Cost of Sales	₱62,049,217.00	
Less: Unsubstantiated Purchases	6,261,961.00	55,787,256.00
Gross Income from Operation		**₱10,563,795.00**
Add: Other Taxable Income Not Subject to Final Tax		949,966.00
Total Gross Income		**₱11,513,761.00**
Less: Ordinary Allowable Itemized Deductions	₱ 8,435,436.00	
Disallowed Expenses due to non-withholding of tax	1,854,819.13	6,580,616.87
Taxable Income before Allowance for NOLCO		**₱ 4,933,144.13**
Less: Applied NOLCO – (NOLCO for TY 2012 - ₱15,179,346.34)		4,933,144.13
Adjusted Taxable Income after Allowance for NOLCO		**₱ -**
Add: NOLCO - TY 2015		3,183,636.00
Taxable Income/(Loss)		**₱ 3,183,636.00**

Accordingly, the net loss as declared by petitioner in its ITR in the amount of ₱3,183,636.00[110] is non-existent, thus, there is nothing that can be claimed as NOLCO for the three (3) immediately succeeding taxable years, in so far as TY 2015 is concerned.

However, as clearly shown in petitioner's ITR in the succeeding TY 2016, petitioner claimed as additional deductible expense from its total gross income, a total NOLCO of ₱16,246,827.00,[111] which includes the claimed NOLCO from TY 2015 in the amount of ₱3,183,636.00. Apparently, petitioner benefited from such NOLCO from TY 2015, where it was able to

[110] Item No. 40 of Exhibit "P-2", Docket, p. 344.
[111] Item 37, Part IV of Exhibit "P-18-f(2)"; Note 13 of AFS, Exhibit "P-3", Docket, p. 371.

save as much as 30% of the tax due in TY 2016. Accordingly, to recover such benefit, respondent's assessment of the same shall be sustained.

E. Excess Minimum Corporate Income Tax (MCIT) carried over to Succeeding Period (₱105,036.00)

According to respondent, the excess MCIT paid over NCIT was not allowed as tax credit against the computed deficiency Income Tax, considering that the said amount shall be carried over and credited against the NCIT for the three (3) immediately succeeding taxable years in compliance with the provision imposed under Section 27(E)(2) of the 1997 NIRC, as amended.[112]

We also agree with the respondent on this matter.

As presented below, we find that petitioner's NCIT is greater than its MCIT, to wit:

Sales		₱ 66,351,051.00
Less: Cost of Sales	₱62,049,217.00	
Less: Unsubstantiated Purchases	6,261,961.00	55,787,256.00
Gross Income from Operation		**₱10,563,795.00**
Add: Other Taxable Income Not Subject to Final Tax		949,966.00
Total Gross Income		**₱11,513,761.00**
Less: Ordinary Allowable Itemized Deductions	₱ 8,435,436.00	
Less: Disallowed Expenses due to non-withholding of tax	1,854,819.13	6,580,616.87
Taxable Income before Allowance for NOLCO		**₱ 4,933,144.13**
Less: Applied NOLCO – (NOLCO for TY 2012 - ₱15,179,346.34)		4,933,144.13
Adjusted Taxable Income after Allowance for NOLCO		**₱ -**
Add: NOLCO - TY 2015		3,183,636.00
Taxable Income/(Loss)		**₱ 3,183,636.00**
MCIT		*₱ 230,275.22*
NCIT		*₱ 955,090.80*
Tax Due		**₱ 955,090.80**
Less: Tax Credits/Payments		
Prior Year's Excess Credits other than MCIT	₱ 30,309.00	
Income Tax Payments under MCIT from Previous Quarter/s	640.00	
Income Tax Payments under MCIT per Annual ITR	74,087.00	
Total Tax Credits/Payments	₱ 105,036.00	
Less: MCIT for TY 2015 carried over to succeeding period	105,036.00	-
Basic Deficiency Tax Due		**₱ 955,090.80**

[112] Details of Discrepancies, FDDA, Exhibit "R-8", BIR Records, p.310.

Considering that petitioner's tax due is greater using the regular income tax rate rather than the MCIT, there is supposedly no MCIT to be carried forward to the next period. However, considering that petitioner had carried over the MCIT for TY 2015 in its ITR for TY 2016 in the amount of ₱105,036.00 and credited the same against the regular income tax due in TY 2016,[113] for which petitioner is not entitled to do so, it is but proper to recover that same amount by sustaining respondent's assessment.

In fine, petitioner is found liable for basic deficiency income tax covering TY 2015 amounting to ₱955,090.80, as computed above.

II. VALUE-ADDED TAX

Respondent assessed petitioner for basic deficiency VAT in the amount of ₱5,084,008.27, computed as follows:

Taxable Sales/Receipts per VAT Returns			0.00
Add:	Receipts not subjected to VAT		₱ 42,858,200.35
Adjusted taxable sales/receipts			₱ 42,858,200.35
Output tax due			₱ 5,142,984.04
Less:	Allowable Input Tax per audit	₱ 120,701.41	
	Input Tax carried over from Previous Quarter	5,241,474.83	
	Total	5,362,176.24	
	Less: Excess Input Tax Carried over to Succeeding Period	₱5,303,200.47	58,975.77
Basic tax due			**₱ 5,084,008.27**

It bears reiteration that since portions of respondent's assessment are barred by prescription, petitioner may only be assessed deficiency VAT for the period covering the 4th Quarter of TY 2015.

A. Receipts not subjected to VAT (₱42,858,200.35)

Per FDDA, respondent explains that the comparison of receipts computed based on the data reported per ITR against the amount of receipts subjected to VAT per VAT returns showed that there are receipts not subjected to VAT amounting

113 Line 1 of Schedule 8 and Line 4 of Schedule 7 "Exhibit P-18-f(6)"

to ₱42,858,200.35. Section 105 of the 1997 NIRC, as amended, states that *"Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and pay any person who imports goods is subject to the value-added tax (VAT) imposed in Sections 106 and 108 of this Code which is twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties."*

A perusal of Schedule 4 under the Details of Discrepancies attached to the FAN[114] reveals how the amount of ₱42,858,200.35 was arrived at, *viz*:

Sales per FS/ITR	₱ 66,351,051.00
Sales per VAT Returns	23,492,850.65
Receipts not subjected to VAT	**₱42,858,200.35**

Petitioner argues that the subject receipts refer to its export sales to Yamamoto-Tomo Menko, Ltd. Petitioner anchors its claim on Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, which provides that export sales by VAT-registered persons, such as petitioner, shall be subject to zero percent (0%) rate, to wit:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> "(A) *Rate and Base of Tax.* – x x x
>
> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> > "(a) *Export Sales.* –The term '**export sales**' means:
> >
> > "(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the foregoing, the following requisites must be met for petitioner's sales to be considered as zero-rated export sales, to wit:

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[114] Exhibit "P-10", Docket, p. 479.

1) There is a sale and actual shipment of goods from the Philippines to a foreign country; and,

2) The goods are paid for in acceptable foreign currency or its equivalent in goods or services, accounted for in accordance with the BSP rules and regulations.

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

1. Sales Invoice as proof of sale of goods;
2. The Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and,
3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended.

Upon review of the supporting documents, the Court finds that petitioner had direct export sales in TY 2015 to Yamamoto-Tomo Menko, Ltd. with office address located in 5-3-3 Soto-Kanda, Chiyoda- Ku, Tokyo Japan amounting to ₱66,351,051.41 which are properly and adequately supported by commercial invoices[115] and ORs[116] that are compliant with the invoicing requirements under Section 113 of the 1997 NIRC, as amended, as well as the related Bills of Lading.[117] Details of the export sales are summarized as follows:

SALES AMOUNT			SALES INV.		OFFICIAL RECEIPT		BILL OF LADING	
			NO.	DATE	NO.	DATE	NO.	DATE
USDollar	Rate	Pesos						
108,551.88	44.15	4,792,565.50	1526	02/09/2015	1026	02/09/2015	0985A00189	02/09/2015
111,750.00	44.15	4,933,762.50	1527	02/09/2015	1027	02/09/2015	0985A00189	02/09/2015
111,750.00	44.15	4,933,762.50	1528	02/09/2015	1028	02/09/2015	0985A00189	02/09/2015
111,750.00	44.15	4,933,762.50	1529	02/09/2015	1029	02/09/2015	0985A00189	02/09/2015

[115] Exhibits "P-18-g-1" to "P-18-g-1.14".
[116] Exhibits "P-18-g-3" to "P-18-g-3.14".
[117] Exhibits "P-18-g-2" to "P 18-g-2.7"

111,750.00	44.91	5,018,692.50	1530	06/11/2015	1030	06/11/2015	0985A00987	06/11/2015
112,275.00	44.91	5,042,270.25	1531	06/11/2015	1031	06/11/2015	0985A00987	06/11/2015
114,750.00	44.95	5,158,012.50	1532	06/19/2015	1032	06/19/2015	0985A01018	06/09/2015
114,750.00	44.95	5,158,012.50	1533	06/19/2015	1033	06/19/2015	0985A01018	06/09/2015
17,700.00	45.20	800,040.00	1534	06/16/2015	1034	06/16/2015	SITMNKBG0 00146	06/16/2015
57,577.50	46.73	2,690,596.58	1535	09/04/2015	1035	09/14/2015	0985A01506	09/03/2015
116,875.00	46.76	5,465,075.00	1536	11/05/2015	1036	11/05/2015	0985A01838	11/05/2015
115,871.88	46.76	5,418,169.11	1537	11/05/2015	1037	11/05/2015	0985A01838	11/05/2015
116,875.00	46.98	5,490,787.50	1538	11/13/2015	1038	11/13/2015	0985A01877	11/13/2015
109,879.38	46.98	5,162,133.27	1539	11/13/2015	1039	11/13/2015	0985A01877	11/13/2015
28,680.00	47.19	1,353,409.20	1540	12/11/2015	1041	12/28/2015	0985A02019	12/11/2015
1,460,785.64		**66,351,051.41**						

Furthermore, the export sales[118] were paid for in US Dollars as evidenced by Passbooks,[119] Application and Declaration for Remittance,[120] Bank Certification[121] and Debit Memo.[122] Moreover, the above aggregate sales figure is the same as the sales amount reflected in the Sales Schedule[123] and the Audited Financial Statements.

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

B. Input Tax Carried Over to Succeeding Period (₱5,303,200.47)

According to respondent, the excess input tax per VAT returns amounting to ₱5,303,200.47 was not applied against the output tax due in computing for deficiency VAT since this shall be carried over to the succeeding period/quarter(s) as provided under Section 110(B) of the 1997 NIRC, as amended. Hence, respondent treated the Input Tax Carried over to Succeeding Period from the assailed VAT Returns in the same manner as it treated the NOLCO and Excess MCIT carried over to the Succeeding Periods in the deficiency IT assessment.

This Court does not agree with the conclusion of respondent that petitioner has undeclared sales subject to 12% VAT. We hold that petitioner has no output VAT liability and in fact has excess input VAT that can still be carried over and can

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118 As summarized in Exhibit "P-18-g-4".
119 Exhibit "P-18-g-4.1".
120 Exhibits "P-18-g-4.2" to "P-18-g-4.2e".
121 Exhibit "P-18-g-4.3".
122 Exhibit "P-18-g-4.4".
123 Exhibit "P-18-g-5".

be utilized as tax credit in the succeeding periods pursuant to Section 108(B) of the 1997 NIRC, as amended.

In view of the foregoing, we find that respondent's VAT assessment should be cancelled.

III. EXPANDED WITHHOLDING TAX

Respondent assessed petitioner of basic deficiency EWT amounting to ₱94,340.82 for the latter's failure to withhold and remit the corresponding withholding tax due on income payments previously disallowed as deductions from Gross Income, in violation of Section 2.57.2 of RR No. 2-98, as amended.

As previously discussed, since portions of respondent's assessment are barred by prescription, petitioner may only be assessed, specifically for deficiency EWT, for its income payments dated December 2015.

To recall, the Court disallowed as deduction from gross income the income payments of ₱1,854,819.13 for petitioner's failure to subject the same to EWT. However, of the said amount, the income payments in the amount of ₱674,697.41 pertains to payments incurred during the period already barred by prescription, in so far as the assessment for EWT is concerned.

Accordingly, petitioner shall be held liable to pay the basic deficiency EWT amounting to ₱24,802.44 only, as calculated below:

	Disallowed Expense	Prescribed	Income Payments still subject to EWT	EWT Rate	EWT Due
Professional Fee					
Atty. Jose Vicente Jimenez	₱ 15,000.00	₱ -	₱ 15,000.00	10%	₱ 1,500.00
Sub-total	**15,000.00**	**-**	**15,000.00**		**1,500.00**
Other Services					
Ramiro, Louella Alagar	23,945.56	16,000.00	7,945.56	2%	158.91
Saguinsin, Reynaldo Luna	36,553.30	3,250.00	33,303.30	2%	666.07
Sub-total	**60,498.86**	**19,250.00**	**41,248.86**		**824.98**
Trucking and Freight					
RMA Cargo Logistics, Inc.					
Reimbursable Charges not subject to EWT	898,750.37	620,459.91	278,290.46	2%	5,565.81

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	All Ways International					-
	Reimbursable Charges not subject to EWT	71,077.50	34,987.50	36,090.00	2%	721.80
	Sub-total	**969,827.87**	**655,447.41**	**314,380.46**		**6,287.61**
Processing Fee						-
	Pulp Specialist Phils., Inc.	809,492.40	-	809,492.40	2%	16,189.85
	Salinas, Clarita H.	-	-	-	2%	-
	Sub-total	**809,492.40**	-	**809,492.40**		**16,189.85**
TOTAL		**₱ 1,854,819.13**	**₱674,697.41**	**₱1,180,121.72**		**₱24,802.44**

IV. WITHHOLDING TAX ON COMPENSATION

As stated in the Details of Discrepancies, respondent's investigation disclosed that petitioner failed to withhold and remit the corresponding withholding tax on salaries and wages previously disallowed as deduction from gross income resulting in a WTC deficiency in the amount of ₱40,364.34 pursuant to Section 2.57.2 of RR No. 2-98, as amended.

As discussed earlier under the portion of the deficiency tax assessment noted as "B. Salaries and Wages Not Subjected to Withholding Tax (₱151,460.92)", respondent had no basis in disallowing the compensation amounting to ₱151,460.92 as deduction from petitioner's gross income, thus, the corresponding assessment subjecting the same to deficiency withholding tax on compensation must fail. Accordingly, the present deficiency WTC assessment shall be cancelled.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2015 covering the deficiency VAT and WTC are **CANCELLED** and **SET ASIDE**, while the assessments for deficiency **Income Tax** and **EWT** are **UPHELD**, but with modification.

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

	Income Tax	EWT	Total
Basic deficiency tax	₱ 955,090.80	₱ 24,802.44	₱ 979,893.24
Add: Surcharge (25%)	238,772.70	6,200.61	244,973.31
Deficiency interest on:			
Income Tax			
20% from Apr. 16, 2016 to Dec. 31, 2017	327,085.89		327,085.89
(₱955,090.80 x 20% x 625/365 days)			
12% from Jan. 1, 2018 to Jan. 21, 2019			
(₱955,090.80 x 20% x 386/365 days)	121,204.95		121,204.95
EWT			
20% from Jan. 16, 2016 to Dec. 31, 2017			
(₱24,802.44 x 20% x 716/365 days)		9,730.71	9,730.71
12% from Jan. 1, 2018 to Jan. 21, 2019			-
(₱24,802.44 x 20% x 386/365 days)		3,147.53	3,147.53
Total deficiency tax due as of Jan. 21, 2019[124]	**₱1,642,154.34**	**₱43,881.29**	**₱1,686,035.63**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱1,686,035.63** as of January 21, 2019, as determined above, or equivalent to ₱554.31[125] per day, computed from January 22, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963, also known as TRAIN Law, as implemented by RR No. 21-2018.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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124 Due date as per Assessment Notice, Exhibits "R-4-C" and "R-4-A", BIR Records, pp. 272, 274.

125 ₱1,686,035.63 x 12% divided by 365 days.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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