REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

THAI AIRWAYS INTERNATIONAL PUBLIC COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8597

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 10 2017
3:34 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J.*:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration**, filed on October 26, 2016, without respondent's comment despite due notice as per Records Verification dated December 7, 2016; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision dated September 16, 2016)**, filed on October 27, 2017, with petitioner's **Opposition (To Respondent's Motion for Partial Reconsideration)**, filed on December 28, 2016.

Petitioner assails the Court's Decision dated September 16, 2016 on the following grounds:

> I. Petitioner should not have been held liable to pay deficiency income tax in the total amount of ₱2,142,919.75 and the corresponding surcharge and interest thereon;
>
> II. Petitioner should not have been held liable to pay deficiency value added tax in the total amount of ₱1,100,598.81 and the corresponding surcharge and interest thereon; and
>
> III. Petitioner should not have been held liable to pay expanded withholding tax in the total amount of ₱966,401.22 and the corresponding surcharge and interest thereon.

On the other hand, respondent argues that the Court erred in partially granting the Petition for Review.

Respondent's motion for reconsideration pertains to the ruling of the Court on deficiency income tax, deficiency fringe benefit tax (FBT), deficiency withholding tax on compensation (WTC), and deficiency expanded withholding tax (EWT); while petitioner prays for reconsideration of the ruling on deficiency income tax, deficiency value-added tax (VAT), and deficiency EWT.

A. Deficiency Income Tax

In the motion, respondent contends that the rule is well-settled that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the alleged duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, the alleged assessment duly made by a Bureau of Internal Revenue examiner, and approved by the superior officers will not be disturbed. Thus, respondent stands that the assessment contained in the Formal Letter of Demand is imbued with factual and legal bases.

Respondent also claims the following:

> *a) Petitioner under-declared its revenue in the amount of ₱64,316,514.11 for taxable year 2008 for failure to support its claim of non-revenue passengers;*

There are allegedly unsupported non-revenue passengers amounting to ₱64,316,514.11 as shown in the flown revenue schedule. The alleged amount of the non-revenue passengers is based on the average amount per flight destination and classification of passengers using the adult rate. Respondent assents with petitioner that non-revenue passengers shall not be given value for purposes of computing the taxable base subject to tax in consonance with

Revenue Regulation (RR) No. 15-2002. However, sufficient documents must be presented to show that those passengers are indeed non-revenue passengers. Respondent expresses that identification and supporting documents are very important to determine the veracity of petitioner's claim; otherwise, this will open the gates for fraud to evade payment of taxes.

b) The underdeclared revenue on rebooking fee in the amount of ₱137,796.00 must be included in the computation of gross income tax.

It is alleged by respondent that petitioner agreed with the former's findings but computed the tax liability based on 1.5% rate plus interest. Respondent insists that the tax rate must be 2.5% instead of 1.5% for failure of petitioner to submit a written application availing the tax treaty with the International Tax Affairs Division (ITAD).

c) The underdeclared commission paid to brokers in the amount of ₱4,369,695.63 must be included in the computation of gross income.

Respondent avers that the undeclared commission paid to brokers as indicated in the journal vouchers, was still part of the total remittance to petitioner and formed part of the gross amount subject to tax whether it was reflected in the ticket or not.

d) The underdeclared commission paid to brokers in the amount of ₱9,796,614.39 must be included in the computation of gross income tax.

Respondent claims that the unaccounted source of cash in the amount of ₱9,796,614.39 was the difference between alphalist and financial statement. Petitioner has allegedly stated during informal conference that the discrepancy was brought about by a clerical error; while during preliminary assessment notice, petitioner has mentioned that the discrepancy was due to the fact that the salaries of Expat Officers were paid in Thailand and were not reported as part of locally paid expenses but were subject to withholding tax. As such, respondent posits that such inconsistency on petitioner's contention without any supporting evidence to any of its claim cannot be given weight and credence.

Petitioner opposes the above arguments and alleges that it presented sufficient evidence to support and substantiate the identities/personalities of the non-revenue passengers, which the Court affirmed in the assailed Decision that the amount of ₱64,316,514.11 indeed pertained to non-revenue passenger tickets for the year 2008. It is also claimed by petitioner that the Court correctly cancelled the deficiency income tax assessment for lack of factual basis in the amount of ₱4,369,695.63 and ₱9,796,614.39, representing the commission paid to brokers and unaccounted source of cash, respectively.

Also, petitioner argues that the Court correctly applied the ruling made by the Supreme Court in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* with respect to the availment of tax treaty relief.

After a careful evaluation of the foregoing arguments, the Court finds that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision. Thus, a further discussion on the said arguments is unnecessary.

On the other hand, both petitioner and respondent seek reconsideration of the Court's ruling on the storage fee in the amount of ₱14,309,779.86.

Petitioner does not dispute the portion of the assailed Decision ordering petitioner to pay deficiency income tax amounting to ₱164,904.22, a surcharge of ₱41,226.05, and interest of ₱129,266.57 and ₱259,559.86 or a total of ₱594,956.70. However, petitioner contests the Court's finding that the former is liable for 35% tax on storage income amounting to ₱5,651,472.94 or a tax liability of ₱1,978,015.33. Allegedly, the Court has ruled that petitioner failed to prove that the amount ₱5,651,472.94 referred to cargo sales instead of storage fees due to petitioner's failure to formally offer certain documents such as supporting invoices and official receipts. Petitioner alleges that its export billing statement, which was marked and admitted in evidence as Exhibit "P-20-3", enumerated the cargo sales amounting to ₱5,651,472.94. Petitioner also claims that the said cargo sales were supported by the testimony of Mr. Moises Visperas Jr. and corroborated by the testimony of Mr. Wilfrido C. Rodriguez, the Independent Certified Public Accountant (ICPA). Petitioner posits that the cargo sales were adequately explained in the ICPA Report, and all exhibits that were examined by the ICPA were included in the ICPA Report as Annexes.

However, respondent claims that the said fee in the amount of ₱14,309,779.86 is a revenue not forming part of the Gross Philippine Billings (GPB), thus, subject to the regular rate of 35%. Respondent claims that petitioner submitted photocopy of invoices/statements and accordingly claimed that only ₱3,520,183.78 was for storage fee while the amount of ₱10,789,596.08 was for cargo sales. Respondent points out that petitioner partially admitted its tax liability and paid the amount of ₱1,973,328.43 on April 18, 2012. Further, since the amount of ₱10,789,596.08 was not supported by original documents, respondent cannot allegedly validate the truthfulness of petitioner's contention.

Petitioner's contention is partly meritorious.

The ruling of the Supreme Court in the case of *Dizon vs. Court of Tax Appeals*[1] is instructive in applying the exception to the general rule that evidence not formally offered cannot be considered by the Court, to wit:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
>
> > **SEC. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after Vda. de Oñate, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:
>
> > From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of

[1] G.R. No. 140944, April 30, 2008.

> the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.**

From the foregoing declaration, however, it is clear that Vda. de Oñate is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

Apparently, the evidence not formally offered may be admitted and considered by the Court provided the said evidence has been duly identified by testimony duly recorded, and has been incorporated in the records of the case.

In the instant case, the invoices and official receipts have already been marked as petitioner's Exhibits "18 to 18.11" and submitted to this Court. Also, Mr. Rodriguez, the ICPA, has identified the said exhibits in his Judicial Affidavit[2] dated February 3, 2014. However, Exhibits "18 to 18.11" have not been formally offered.

Accordingly, although Exhibits "18 to 18.11" have not been formally offered in evidence, the Court may consider the same since the said exhibits were duly identified by Mr. Rodriguez and were submitted to this Court which

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[2] Exhibit "P-29", docket, vol. 2, p. 514.

formed part of the records of this case. Thus, it is deemed just to apply in this case the exception to the general rule in Section 34 of Rule 132 of the Rules of Court.

A scrutiny of the official receipts marked as Exhibits "18.1" to "18.11" and a schedule marked as Exhibit "18" shows that the amount of ₱5,651,472.94 pertains to petitioner's cargo sales for the period February 1-15, 2008 and not storage income as assessed by respondent. Hence, the applicable tax rate thereon is the 1.5% GPB tax and not the regular income tax rate of 35%.

However, considering that petitioner failed to prove that the said cargo sales of ₱5,651,472.94 already formed part of its ₱2,737,205,642.79 Gross Philippine Billings (GPB) per Flown Revenue schedules subjected to the 1.5% GPB tax, petitioner shall still be held liable to pay deficiency 1.5% GPB tax on the amount of ₱5,651,472.94.

Accordingly, petitioner's deficiency income tax liability for taxable year (TY) 2008 is reduced to ₱249,676.31, as computed below:

Taxable Gross Philippine Billings		₱2,731,350,151.17
Add: Underdeclaration of Gross Philippine Billings	₱ 5,855,491.63	
Cargo Sales	10,789,596.08	16,645,087.71
Total Taxable Gross Philippine Billings		₱2,747,995,238.88
Multiply by Preferential Tax Treaty Rate		1.50%
Tax Due on Gross Philippine Billings		₱ 41,219,928.58
Less: Tax Paid		
Excess from Previous year	₱ 448,817.77	
Cash paid- First three quarters	9,085,828.97	
Cash payment – Fourth quarter	31,435,605.53	40,970,252.27
Tax Basic Deficiency Income Tax		**₱ 249,676.31**

Further, it is to be noted that petitioner does not dispute the portion of the 1.5% deficiency GPB tax pertaining to the amounts of ₱5,855,491.63 and ₱5,138,123.14 representing under-declaration of Gross Philippine Billings and cargo sales to Deutsche Bank, respectively, totaling ₱10,993,614.77.[3] In fact, petitioner has attached in its motion the Payment Form (BIR Form No. 0605) with corresponding EFPS Payment Form and Confirmation (Annexes "A", "A-1" to "A-3") [4] showing payment to the BIR on October 21, 2016 of the amount of ₱594,956.70,[5] which consisted of the following:

[3] Petitioner's Motion for Partial Reconsideration, p. 9, docket, vol. 2, p. 969.
[4] Docket, vol. 2, pp. 972 to 975.
[5] Petitioner's Motion for Partial Reconsideration, p. 9, docket, vol. 2, p. 969.

Basic Tax (1.5% of ₱10,993,614.77)		₱ 164,904.22
Surcharge		41,226.05
Interest	₱ 129,266.57	
	259,559.86	388,826.43
Total Amount Paid		**₱ 594,956.70**

After petitioner submitted the certified true copies of the aforementioned documents, the Court admitted the same to form part of the records of this case.[6]

With the foregoing payment, petitioner's basic deficiency income tax due for taxable year 2008 amounts to only ₱84,772.09[7] representing 1.5% GPB tax on cargo sales of ₱5,651,472.94.

In addition thereto, petitioner is still liable to pay the amount of ₱111,931.79 representing surcharge, deficiency interest, and delinquency interest pursuant to Sections 248(A)(3), 249(B), and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, computed as follows:

Basic Deficiency Income Tax		₱ 164,904.22
Add: 25% Surcharge	₱ 41,226.06	
20% Deficiency Interest		
from April 15, 2009 to December 10, 2012		
(₱164,904.22 x 20% x 1,335/365)	120,628.57	
From December 10, 2012 to October 21, 2016		
(₱164,904.22 x 20% x 1,411/365)	127,495.81	
20% Delinquency Interest from Dec. 10, 2012 to Oct. 21, 2016		
on basic deficiency Income Tax and surcharge		
[(₱164,904.22 + ₱41,226.06)] x 20% x 1,411/365	159,369.77	
on deficiency interest due for April 15, 2009 to Dec. 10, 2012		
(₱120,628.57 x 20% x 1,411/365)	93,264.06	541,984.27
Total Amount Due		₱ 706,888.49
Less: Payment om October 21, 2016		
Basic Tax	₱ 164,904.22	
Surcharge	41,226.05	
Interest	388,826.43	594,956.70
Amount Still Due		**₱111,931.79**

[6] Resolution dated July 10, 2017.
[7] *₱249,676.31 less ₱164,904.22.*

B. Deficiency Value-Added Tax

Petitioner contends that it should not have been held liable for deficiency VAT because it did not perform warehousing services, and could not have rendered such services because it does not own, lease, manage, or operate any warehouse facility in the Philippines. According to petitioner, the share in storage fees received by petitioner from the warehousing company is allegedly a mere incidental to its operation as an airline while awaiting release/loading of imported cargo and outgoing cargo of shippers. Petitioner points out that being an international airline, it is non-VAT registered; thus, petitioner is subject to percentage tax instead of VAT. Petitioner argues that the fee paid by Peoples Air Cargo & Warehousing Co., Inc. representing the 20% share of storage fees received and earned by the latter should not be considered a warehousing fee but merely an incidental fee similar to rebooking fee which is currently subject to 3% percentage tax under Revenue Regulation (RR) No. 11-2011. Assuming for the sake of argument that the said fee is not merely an incidental share in storage fee, petitioner avers that it should be classified as rental. Thus, no VAT deficiency allegedly exists.

The Court disagrees with petitioner.

Section 10 of RR No. 15-02 provides that "gross receipts" for the purpose of determining Common Carrier's Tax shall be the same as the tax base for calculating Gross Philippine Billings Tax (GPB) as provided under Section 5 thereof, to wit:

> SECTION 5. *Determination of Gross Philippine Billings.* —
>
> (a) In computing for "Gross Philippine Billings", there shall be included the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents:
>
> xxx xxx xxx
>
> The gross revenue for freight or cargo and mail shall be determined based on the revenue realized from the carriage thereof. **The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting therefrom the amount of discounts granted** which shall be validated using the monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS)

> for airway bills issued through their cargo agents or the monthly reports prepared by the airline themselves or by their general sales agents for direct issues made. The amount realized for mails shall, on the other hand, be determined based on the amount as reflected in the cargo manifest of the carrier.

It is clear from the foregoing that only those receipts reflected on the airway bills shall be included for purposes of computing the Common Carriers Tax under Section 118 of the NIRC of 1997, as amended. Considering that the 20% share of the storage fees were collected by petitioner from People's Air Cargo & Warehousing Co., Inc. as shown in the receipts[8] issued by petitioner to the latter, the same do not fall under the afore-quoted definition of GPB.

As discussed in the assailed Decision, the said storage fees/income are subject to 12% VAT pursuant to Section 108 of the NIRC of 1997, as implemented by Section 4.108-1, 108-2 and 108-3 of RR No. 16-05.

It must be stressed, however, that out of the assessed storage fees/income of ₱14,309,779.86, petitioner was able to establish that the amounts of ₱5,138,123.14 and ₱5,651,472.94 totaling ₱10,789,596.08 pertain to petitioner's cargo sales subject to 3% Common Carriers Tax or Percentage Tax under Section 118(A) of the NIRC of 1997, as amended, instead of 12% VAT. Hence, petitioner is liable for deficiency 12% VAT on the remaining amount of ₱3,520,183.78.

Accordingly, petitioner is liable for deficiency VAT and Percentage tax liabilities for taxable year 2008 in the modified amounts of ₱422,422.05 and ₱2,337,509.93, respectively, computed as follows:

<u>DEFICIENCY VAT</u>

Storage Fees/Income	₱ 3,520,183.78
Output Tax	₱ 422,422.05
Less: Input tax	-
Deficiency VAT	**₱ 422,422.05**

<u>DEFICIENCY PERCENTAGE TAX</u>

Taxable Net Income	₱ 2,731,350,151.17
Add: Underdeclaration of Revenue	5,855,491.63

8 Exhibits "P-21" and "P-21-1" to "P-21-2", docket, vol. 1, p. 329 and pp. 330 to 331.

Cargo sales	10,789,596.08
Total Taxable Income	₱ 2,747,995,238.88
Multiply by Tax Rate	3%
Percentage Tax Due	₱ 82,439,857.17
Less: Payment Per Returns	80,102,347.24
Basic Deficiency Percentage Tax	**₱ 2,337,509.93**

Nevertheless, petitioner has assented to its deficiency percentage tax liability of ₱2,167,965.74 as it paid on October 21, 2016 the amount of ₱7,800,422.90,[9] which consisted of the following:

Basic Tax		₱ 2,167,965.74
Surcharge		541,991.43
Interest	₱ 1,687,400.15	
	3,403,065.58	5,090,465.73
Total Amount Paid		**₱ 7,800,422.90**

The photocopies of the Payment Form (BIR Form No. 0605) and EFPS Payment Form and Confirmation supporting the amount of ₱7,800,422.90 have been attached in petitioner's motion as Annexes "B", "B-1" to "B-3"[10].

Subsequently, petitioner submitted the certified true copies of the aforesaid documents on May 25, 2017, in compliance with the Court's Resolution[11] dated May 10, 2017. The said documents were likewise admitted to form part of the records of this case.[12]

With the foregoing payment, petitioner's basic deficiency percentage tax due for taxable year 2008 amounts to only ₱169,544.19[13] which pertains to its cargo sales of ₱5,651,472.94.

Aside from the basic deficiency percentage tax due in the amount of ₱169,544.19, petitioner's is still liable to pay the amount of ₱1,661,420.91 pursuant to Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency Percentage Tax		₱ 2,167,965.74
Add: 25% Surcharge	₱ 541,991.44	

[9] Petitioner's Motion for Partial Reconsideration, p. 9, docket, vol. 2, p. 969.
[10] Docket, vol. 2, pp. 976 to 979.
[11] Docket, vol. 3, pp. 1029 to 1030.
[12] Resolution dated July 10, 2017.
[13] *₱2,337,509.93 less ₱2,167,965.74.*

20% Deficiency Interest		
from January 25, 2009 to December 10, 2012		
(₱ 2,167,965.74 x 20% x 1,415/365)	1,680,915.90	
From December 10, 2012 to October 21, 2016		
(₱ 2,167,965.74 x 20% x 1,411/365)	1,676,164.20	
20% Delinquency Interest from Dec. 10, 2012 to October 21, 2016		
on basic deficiency Income Tax and surcharge		
[(₱2,167,965.74 + ₱541,991.44)] x 20% x 1,411/365	2,095,205.25	
on deficiency interest due for Jan. 25, 2009 to Dec. 10, 2012		
(₱1,680,915.90 x 20% x 1,411/365)	1,299,601.28	7,293,878.07
Total Amount Due		₱ 9,461,843.81
Less: Payment on October 17, 2016		
Basic Tax	₱2,167,965.74	
Surcharge	541,991.43	
Interest	5,090,465.73	7,800,422.90
Amount Still Due		**₱1,661,420.91**

C. Deficiency Fringe Benefit Tax

Respondent contends that petitioner's allegation that rent-a-car charges were taken from actual payment instead of the correct period of their use of vehicles as shown in fringe benefits tax lacks basis because petitioner merely showed a computation without any supporting documents to support the latter's claim.

Petitioner, however, claims that there is no need to respond to the other items raised by the respondent which was already clearly ruled upon by the Court.

Contrary to respondent's claim, the Court has already ruled based on the documents presented by petitioner, which were marked as Exhibits "P-25", "P-25-2", "P-25-3", "P-25-4", "P-25-6", "P-25-8", "P-25-10", "P-26", "P-26-1", "P26-2", and "P-26-4", that the monetary value of the fringe benefit on the house rent and car rental of its employees shall be based on the actual usage thereof for taxable year 2008 that amounted to ₱1,579,500.00 and ₱490,000.00, respectively.[14] Thus, respondent's allegation regarding the matter has no merit.

D. Deficiency Withholding Tax on Compensation

Respondent contends that petitioner failed to show any factual proof to support that the difference of the salaries and wages per Alphalist and financial statement is brought about by Expat Officers' salaries paid in Thailand.

[14] Pages 49 to 50 of the Decision, docket, vol. 2, pp. 956 to 957.

Respondent insists that a compromise penalty of ₱3,000.00 was still part of the assessment for failure of petitioner to file accurate information on the remittance.

Petitioner expresses that it need not respond to respondent's argument because it was already ruled upon by the Court in the assailed Decision.

Perusal of the above shows that the argument raised by respondent is a mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision. Therefore, there is no need for the Court to further discuss on the said argument.

E. Deficiency Expanded Withholding Tax

Petitioner claims that the matter pertaining to the EWT assessment was adequately explained in the ICPA Report and the said report included all the exhibits that were examined by the ICPA as annexes thereto. It is alleged by petitioner that the Court should have considered not only the documentary evidence but also the testimonial evidence presented which were equally, if not, more persuasive. Petitioner points out that respondent failed to rebut the evidence that the former presented.

As discussed earlier, the evidence not formally offered may be admitted and considered by the court provided the said evidence has been duly identified by testimony duly recorded, and has been incorporated in the records of the case.

The ICPA submitted the following exhibits:

Particulars	**Reference Exhibit**
1) Payments to Air Transportation Office (ATO)	Exhibit Nos. "31.2 - 31.2.1" and "31.2.2 - 31.2.27"
2) Additional Payments to ATO	Exhibit Nos. "31.3" and "31.3.1 - 31.3.25"
3) Payments to Outsourced Services (security agency)	Exhibit Nos. "31.4" and "31.4.1 - 31.4.23"
4) Reimbursement of expat expenses	Exhibit Nos. "31.5" and "31.5.1 - .31.5.41"
5) Credit card fees	Exhibit No. "31.6"
6) Expenses paid to sales team	Exhibit Nos. "31.7 - 31.7.1"
7) Expenses paid for repairs of vehicle	Exhibit No. "31.8"
8) Expenses paid for admin services	Exhibit Nos. "31.9.1 - 31.9.5"
9) Expenses paid for transportation expenses	Exhibit No. "31.10"
10) Expenses for ground handling expenses	Exhibit Nos. "31.11 - 31.11.5"
11) Expenses paid for representation expenses	Exhibit No. "31.12"
12) Expenses paid for claims re damaged cargo	Exhibit No. "31.13"

Although the same were not formally offered, these exhibits were submitted to this Court and were likewise identified in the ICPA Report which was also identified by petitioner's witness, Mr. Wilfrido C. Rodriguez[15]; thus, the said exhibits shall be considered in the Court's determination of petitioner's deficiency EWT liability.

In ascertaining petitioner's deficiency EWT liability, the Court found that only items No. 1— Payments to Air Transportation Office, No. 2 — Additional Payments to ATO, and No. 3 –Payments to Outsourced Services (security agency) were properly and adequately supported by billing invoices and official receipts.

Anent Item No. 1 –Income Payments to ATO, these are supported by Billing Statements submitted by petitioner, detailed as follows:

Exhibit Nos.	**Account No.**	**Amount**
Exhibit 31.2.3	2215	₱ 1,852,642.40
Exhibit 31.2.4 and Exhibit 31.2.5	2215	1,850,822.75
Exhibit 31.2.7	2215	1,739,739.94
Exhibit 31.2.9	2215	1,930,564.38
Exhibit 31.2.11	2215	2,100,104.80
Exhibit 31.2.13	2215	1,959,532.75
Exhibit 31.2.15	2215	1,994,681.60
Exhibit 31.2.17	2215	2,163,624.17
Exhibit 31.2.19	2211	2,019,525.67
Exhibit 31.2.21	2211	2,172,707.70
Exhibit 31.2.23	2211	2,018,629.74
Exhibit 31.2.25	2215	2,041,313.54
Exhibit 31.2.27	2215	1,908,157.79
Per Supports		**₱ 25,752,047.23**

Moreover, Item No. 2 –Additional Payments to ATO amounting to ₱6,210,863.11 were found to be income payments doubly recorded in the books of petitioner, hence, twice subjected to EWT per respondent's assessment. These were recorded both under Account #2215 – Navigation Fees Control and Account #2211 – Fixed Handling Fees Control[16]:

Exhibit Number	**Payee**	**Account Code**	**PV No.**	**Amount**
31.2.19	Air Transportation Office (ATO)	2211	63728	₱ 2,019,525.67
31.2.21	Air Transportation Office (ATO)	2211	63898	2,172,707.70
31.2.23	Air Transportation Office (ATO)	2211	64209	2,018,629.74
TOTAL				**₱ 6,210,863.11**

[15] Exhibit "P-29", Judicial Affidavit of Wilfrido C. Rodriguez, docket, vol. 2, pp. 506-521; 516.
[16] See highlighted amounts in Exhibit "31.2.1".

The 2% deficiency EWT assessment on the foregoing income payments of ₱25,752,047.23 and ₱6,210,863.11 shall be cancelled considering that ATO, being a national government office, is exempt from EWT, pursuant to Section 2.57.5 of RR No. 2-98, as amended, to wit:

> "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:
>
> (A) National government and its instrumentalities, including provincial, city or municipality governments; xxx"

Meanwhile, with regard to petitioner's payments for security services to Trifecta Security Services amounting to ₱144,982.20, the Court found that these were erroneously classified by respondent as Commission subject to 10% EWT. Pursuant to Section 2.57.2(E)(4)(g) of RR No. 02-98, as amended by RR No. 17-03, such income payments are subject to 2% EWT:

> "SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (E) *Income payments to certain contractors* — On gross payments to the following contractors, whether individual or corporate — Two percent (2%).
>
> xxx xxx xxx
>
> (4) *Other contractors* —
>
> (g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;"

It is also to be noted that the folder containing the alleged supporting documents for Reimbursements of Expat Expenses (Exhibit Nos. "31.5" and "31.5.1 - .31.5.41") actually contain journal vouchers and official receipts for income payments made to Trifecta Security Services which is a different expense altogether. Hence, the Court finds it proper to disallow the same.

Furthermore, the rest of the expenses were supported by mere petitioner-prepared internal schedules. It should be noted that such do not have probative value without corroborating third-party evidence (i.e., official receipts, commercial invoices). Since petitioner failed to present evidence such as invoices and official receipts in support of the schedules, we cannot verify the amounts and nature of the transactions and their appropriate tax implications.

After considering the supporting documents for Payments to Air Transportation Office and the Payments to Outsourced Services (security agency), which were disallowed in the assailed Decision, the Court sustains respondent's basic deficiency EWT assessment for taxable year 2008, but in the reduced amount of **₱315,544.43**, as computed below:

	Amount	**Rate**	**EWT Due**
Rental	₱ 22,393,567.12	5%	₱ 1,119,678.36
Contractor	207,443,545.88		
Less: Payments to ATO not subject to EWT	*(25,752,047.23)*		
Payments to ATO doubly subjected to EWT by respondent	*(6,210,863.11)*		
Add: Payments to Trifecta Security Services erroneously subject to 10% EWT	*144,982.20*		
	175,625,617.74	2%	3,512,512.35
Professional fee	2,142,718.02	10%	214,271.80
Professional fee	373,500.00	15%	56,025.00
Top 10T Corp. (Services)	2,753,296.66	2%	55,065.93
Top 10T Corp. (Purchases)	271,708,863.79	1%	2,717,088.64
Commission/broker	144,982.20		
Less: Payments to Trifecta Security Services	*(144,982.20)*	-	
Allowances paid to gov't. Employees	4,043,906.00	15%	606,585.90
Total	₱478,896,487.13		8,278,328.34
Less: Payment			₱ 7,965,683.55
Basic Deficiency EWT			**₱ 315,544.43**

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision dated September 16, 2016)** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated September 16, 2016 is hereby amended to read as follows:

"**WHEREFORE**, premises considered, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency Withholding Tax on Compensation (₱3,000.00) and Fringe Benefits Tax (₱685,941.15) are **CANCELLED and WITHDRAWN**.

However, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax are **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱1,240,353.45** representing basic deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax and the twenty five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱1,773,352.70** representing twenty percent (20%) deficiency and delinquency interest on the partial payments made on October 21, 2016 or in the aggregate sum of **₱3,013,706.15**, computed as follows:

Type of Tax	Basic Tax	25% Surcharge	Total
Income Tax	₱ 84,772.09	₱ 21,193.02	₱ 105,965.11
Value-Added Tax	422,422.05	105,605.51	528,027.56
Percentage Tax	169,544.19	42,386.05	211,930.24
Expanded Withholding Tax	315,544.43	78,886.11	394,430.54
Sub-Total	**₱ 992,282.76**	**₱ 248,070.69**	**₱1,240,353.45**
20% Deficiency and Delinquency Interest on the partial payments made on October 21, 2016			
Income Tax			₱ 111,931.79
Percentage Tax			1,661,420.91
Sub-Total			**₱1,773,352.70**
Total			**₱3,013,706.15**

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency Income Tax, Value-Added Tax, Percentage Tax and Expanded Withholding Tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency interest computed from
Income Tax	₱ 84,772.09	April 15, 2009
Value-Added Tax	422,422.05	January 25, 2009
Percentage Tax	169,544.19	January 25, 2009
Expanded Withholding Tax	315,544.43	January 12, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,240,353.45 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from December 10, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice