REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GOLDEN DONUTS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10336

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
JAN 03 2025
1:48 p.m.

x- -x

R E S O L U T I O N

MANAHAN, J.:

This resolves the following:

1. Petitioner's **Motion for Reconsideration (of the Decision dated 30 July 2024)**[1] filed on August 20, 2024, seeking for reconsideration of this Court's *Decision* dated July 30, 2024 (Assailed Decision) and cancellation of respondent's deficiency assessments on its Income Tax (IT), Value-Added Tax (VAT), Final Tax (FT), Expanded Withholding Tax (EWT), and Documentary Stamp Tax (DST) for taxable year (TY) 2010 in the amount of Php159,296,703.65; and

2. Respondent's **Motion for Partial Reconsideration (Re: Decision dated 30 July 2024)**[2] filed on August 22, 2024, seeking for partial reversal and setting aside of the Assailed Decision and to render a new one denying petitioner's Petition for Review.

Petitioner Golden Donuts, Inc. (GDI) argues that the subject assessment was null and void for want of authority of the Revenue Officers (ROs) and Group Supervisor (GS) to

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[1] Docket, CTA Case No. 10336, Vol. V, pp. 3295-3334.
[2] *Id.*, pp. 3337-3346.

examine its 2010 book of accounts as the authorization Letter dated March 27, 2013 signed by Mr. Cesar D. Escalada, Chief, Large Taxpayer (LT) Regular Audit Division 1 is not the equivalent of a Letter of Authority (LOA).

Petitioner further argues that the mandatory requisites for a valid assessment are not present in this case as the Formal Letter of Demand (FLD) and the Assessment Notices failed to indicate a definitive amount of tax liabilities and clear and categorical demand for payment as required under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, and Revenue Regulations (RR) No. 12-99, and that the Final Decision on Disputed Assessment (FDDA) does not indicate a valid due date for payment.

Petitioner insists that it has sufficient unutilized Net Operating Loss Carry-over (NOLCO) credits from TY 2007 to offset the deficiency IT.

Respondent, in his *motion,* argues that the deficiency assessment issued against petitioner is correct. On the other hand, petitioner, in its **Comment/ Opposition (Respondent's Motion for Partial Reconsideration Re: Decision dated 30 July 2024)** filed on September 24, 2024, counters that such assessment was intrinsically void due to the absence of authority of the revenue officers and group supervisors to examine its 2010 book of accounts, and non-compliance with the mandatory requirements of a valid assessment such as the definite computation of tax liability and lack of due date in the FLD, FDDA and Assessment Notice.

The Ruling

This Court shall determine first whether the instant Motion was filed on time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.-* **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

The records of the instant case reveal that petitioner and respondent received their respective copies of the Assailed Decision on August 6, 2024 and August 7, 2024.

In accordance with the abovementioned provision of the RRCTA, petitioner and respondent had fifteen (15) days from receipt of notice of said decision within which to file their respective motions for reconsideration. Petitioner had fifteen (15) days from August 6, 2024, or until August 21, 2024, while respondent had fifteen (15) days from August 7, 2024, or until August 22, 2024, to file said motions. Thus, the filing of their respective motions on August 20, 2024 and August 22, 2024 were on time.

Petitioner's Motion for Reconsideration

Petitioner insists that the subject assessments are null and void since the ROs who continued the audit have no written authority.

As discussed in the Assailed Decision, the Letter of Authority (LOA) No. 116-2011-00000151 (eLA201100003039) dated October 6, 2011 designated ROs Riza Budaño, Aurora Pelayo, Olivia Aviles, Olivia Sison, Rogelio Gonzales and Group Supervisor Marivic Bautista of LT Regular Audit Division 1, to examine petitioner GDI's books of accounts for the period January 1, 2010 to December 31, 2010.

In Memorandum dated October 14, 2014 (for the issuance of the Preliminary Assessment Notice)[3] and Memorandum (for the issuance of FLD),[4] Ms. Budaño was the only remaining RO from the originally named ROs in the said LOA, and who eventually signed the same.

However, such will not invalidate the assessment. As long as any one of the original ROs named in the LOA was among those who conducted the tax examination/audit and signed the report of their findings, the assessment is valid because such RO has the proper authority to conduct such investigation.

Petitioner argues that respondent failed to indicate a definitive amount of tax liabilities and clear and categorical demand for payment by using the phrase "Please note that the

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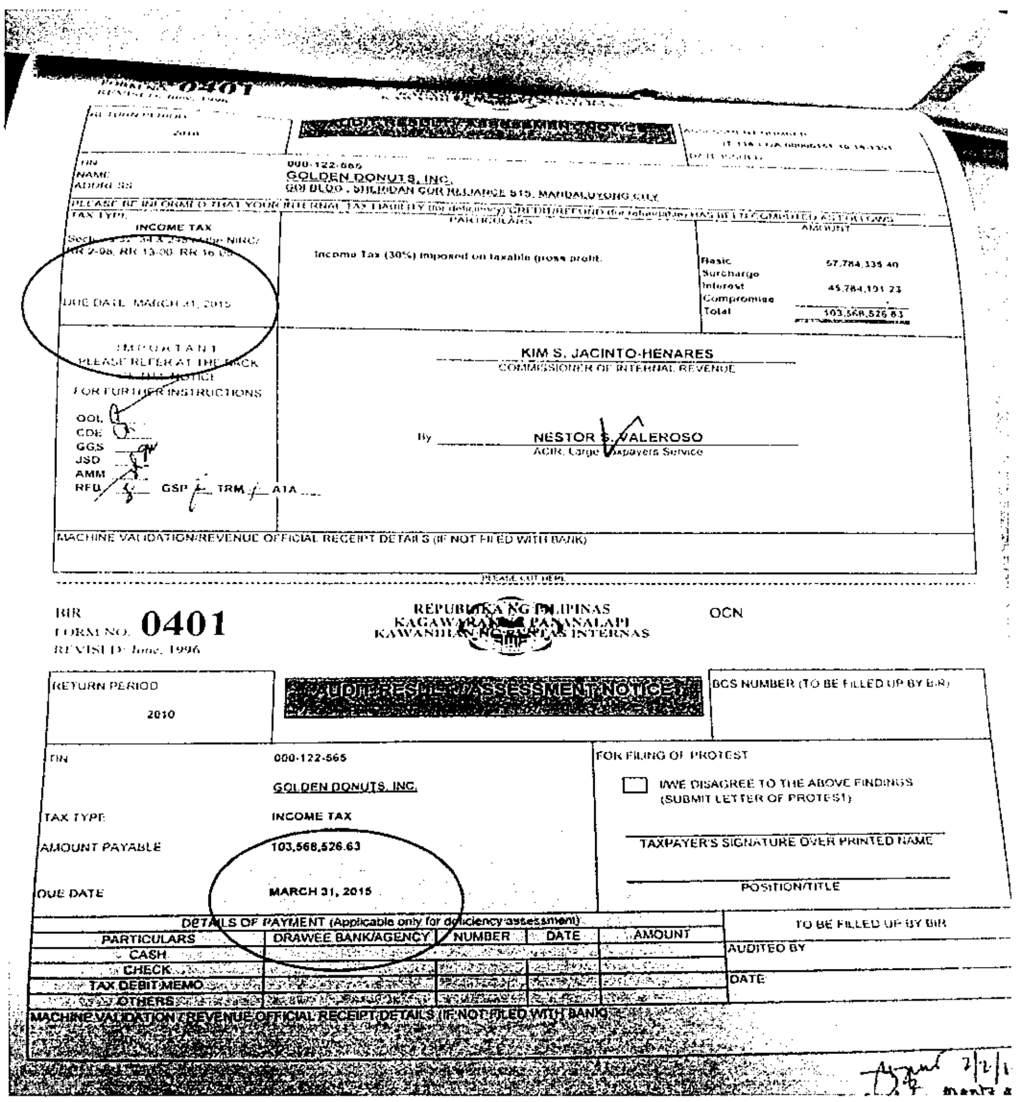
[3] BIR Records, Exhibit "R-7", pp. 1498-1507.
[4] *Id.*, Exhibit "R-10", pp. 1634-1646.

interest and total amount due will have to be adjusted if paid beyond" a certain date.

Petitioner should be reminded that the use of such phrase does not in any way affect the definite amount of assessment in the PAN as well as in the FLD. It merely informs the taxpayer that the interest computed therein shall be adjusted if the payment shall be made beyond the due date as indicated in the Assessment Notices.

Petitioner also argues that the assessment is invalid due to lack of due date in the FLD, FDDA and Assessment Notice.

However, such allegation is belied by the Assessment Notices[5] issued by respondent, as shown in the encircled portions below:



FORM NO. 0401

RETURN PERIOD 2010

TIN 000-122-565
NAME GOLDEN DONUTS, INC.
ADDRESS GOLDLOO, SHERIDAN COR RELIANCE STS. MANDALUYONG CITY

TAX TYPE INCOME TAX

RR 2-98, RR 13-00, RR 16-05

Income Tax (30%) imposed on taxable gross profit.

Basic	57,784,335.40
Surcharge	
Interest	45,784,191.23
Compromise	
Total	103,568,526.63

DUE DATE MARCH 31, 2015

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By NESTOR S. VALEROSO
ACIR, Large Taxpayers Service

OOL
CDE
GGS
JSD
AMM
RFD GSP TRM ATA

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR FORM NO. 0401
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD 2010

BCS NUMBER (TO BE FILLED UP BY BIR)

TIN 000-122-565
GOLDEN DONUTS, INC.
TAX TYPE INCOME TAX
AMOUNT PAYABLE 103,568,526.63
DUE DATE MARCH 31, 2015

FOR FILING OF PROTEST
I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)
TAXPAYER'S SIGNATURE OVER PRINTED NAME
POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT
CASH				
CHECK				
TAX DEBIT MEMO				
OTHERS				

TO BE FILLED UP BY BIR
AUDITED BY
DATE

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

[5] BIR Records, pp. 1663-1668.

RETURN PERIOD 2010

TIN 000-122-565
NAME GOLDEN DONUTS, INC.
ADDRESS

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY ...

TAX TYPE DOCUMENTARY STAMP TAX

DUE DATE MARCH 31, 2015

IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

DST on loans & issued capital stocks	
Basic	61,818.12
Surcharge	
Interest	52,333.70
Compromise	
Total	114,151.82

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

By NESTOR S. VALEROSO
ACIR Large Taxpayers Service

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AMM
RFB GSP TRM ATA

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

BIR FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

RETURN PERIOD 2010

ASSESSMENT NOTICE

BCS NUMBER (TO BE FILLED UP BY BIR)

TIN 000-122-565
GOLDEN DONUTS, INC.
TAX TYPE DOCUMENTARY STAMP TAX
AMOUNT PAYABLE: 114,151.82
DUE DATE MARCH 31, 2015

FOR FILING OF PROTEST
☐ I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)
TAXPAYER'S SIGNATURE OVER PRINTED NAME
POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)					TO BE FILLED UP BY BIR
PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	
CASH					AUDITED BY
CHECK					
TAX DEBIT MEMO					DATE
OTHERS					

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

JEFFREY G. MANZANO 2/2/15

It is very clear from the Assessment Notices that the due date for payment of said tax liabilities was on March 31, 2015.

Petitioner further insists that if the available NOLCO credits from TY 2010 are offset against the total adjustment per audit sustained by this Honorable Court, petitioner is not liable to pay any additional IT for the said year.

Considering that the deficiency IT assessments made by the respondent, as discussed in the assailed Decision, are substantially tenable, the Court finds that petitioner's operations did not result in a net loss during the TY 2010.

Accordingly, the net loss as declared by the petitioner in its 2010 Annual Income Tax Return (ITR) is non-existent and thus, there is nothing that can be claimed as NOLCO in TY 2010.

Respondent's Motion for Partial Reconsideration

A review of the subject assessment reveals the following: INCOME TAX.

IT-1.1 Undeclared Royalty.

The Court maintains its findings that the undeclared royalty income cannot be assessed against the petitioner because this assessment item only appeared for the first time in the FDDA[6] stage, and nowhere to be found during the PAN[7] and FLD[8] stages.

To allow respondent to incorporate new assessments in the FDDA would deprive the taxpayer of its right to due process and would put the latter at the mercy of the former. Hence, this particular assessment item should be cancelled for being issued contrary to the guidelines of RR No. 12-99, as amended by RR No. 18-2013.

IT-2 – Discrepancy in Ending Inventory.

Respondent stated in its motion that the changes in the amounts of inventories were not properly substantiated with valid documents, hence, disallowed pursuant to Section 364(A)(1)(b) of the Tax Code.

The Court reiterates that the changes in the amounts of inventories were re-computed based on the voluminous invoices and official receipts of petitioner's suppliers,[9] and the following valid documents:

a. 2010 Audited Financial Statements (AFS)[10];
b. 2009 Filed Inventory List[11];
c. 2010 Filed Inventory List[12];
d. 2009 Inventory Count Sheet[13];

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[6] Docket, Vol. I, Exhibit "P-17", pp. 152 to 162.
[7] *Id.*, Exhibit "P-12", pp. 87 to 99.
[8] Docket – Vol. I, Exhibit "P-15", pp. 121 to 136.
[9] USB, Exhibits "P-17-A.1" to "P-17-AG.10-ICPA", "P-18.A.1-ICPA" to "P-18-AL.12-ICPA", "P-19-A" to "P-19-FN-ICPA", "P-20-A" to "P-20-FR.5-ICPA".
[10] USB, Exhibits "P – 12 – A-ICPA" to "P-12-AP-ICPA".
[11] USB, Exhibits "P-15-A-ICPA" to "P-15-AE – ICPA".
[12] USB, Exhibits "P-16-A-ICPA" to "P-16-AE – ICPA".
[13] USB, Exhibits "P-17-AA.1-ICPA" to P-17-AG.10-ICPA".

e. 2010 Inventory Count Sheet[14];
f. 2009 Inventory Schedule per type[15];
g. 2010 Inventory Schedule per type[16];
h. 2009 Schedule of Ending Inventory (Boxes and Other Dining Suppliers - 2010) [17];
i. 2010 Schedule of Ending Inventory (Boxes and Other Dining Suppliers - 2010) [18];
j. 2009 Schedule of Purchases (Boxes and Dining Supplies)[19];
k. 2010 Schedule of Purchases (Boxes and Dining Supplies)[20];
l. 2009 Supporting Documents for Boxes and Other Dining Supplies [21];
m. 2010 Supporting Documents for Boxes and Other Dining Supplies [22];
n. Reconciliation of ITR and Inventory list.

IT-4 – Income Payments Not Subjected to EWT.

Respondent's arguments in its motion regarding income payments not subjected to EWT are mere rehash of its arguments in the FLD and FDDA that were exhaustively discussed and already passed upon in the assailed Decision. It would just be a futile and inutile exercise on our part to address them anew.

IT-5 and IT-6 – Additional Income on Undeclared Sales per SLS, SAWT & LN data.

Respondent's arguments in its motion regarding additional income on undeclared sales per SLS, SAWT & LN Data are mere rehash of its arguments in the FLD and FDDA that were exhaustively discussed and already passed upon in the assailed Decision, hence, no need to discuss anew.

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[14] USB, Exhibits "P-18-AA.1-ICPA" to P-18-AL.10-ICPA".
[15] USB, Exhibit "P-43-A-ICPA", Annex C – ICPA of the ICPA Report.
[16] USB, Exhibit "P-43-A-ICPA", Annex D – ICPA of the ICPA Report.
[17] USB, Exhibit "P-43-A-ICPA", Annex E – ICPA of the ICPA Report.
[18] USB, Exhibit "P-43-A-ICPA", Annex F – ICPA of the ICPA Report.
[19] USB, Exhibit "P-43-A-ICPA", Annex G – ICPA of the ICPA Report.
[20] USB, Exhibit "P-43-A-ICPA", Annex H – ICPA of the ICPA Report.
[21] USB, Exhibits "P-19-A-ICPA" to "P-19-FN-ICPA".
[22] USB, Exhibits "P-20-A -ICPA" to "P-20-FR.5-ICPA".

Respondent also stated in its motion that negative confirmation letters were sent to various taxpayer to confirm the third-party information (TPI). However, respondent did not indicate specific details to these confirmation letters such as exhibit numbers, etc. In the absence of confirmation requests and third-party certifications, the additional income on undeclared sales based on TPI is unverified and not founded on facts.

As regards the Marketing Support Fund in the amount of ₱8,000,000.00 granted by Coca-Cola Bottlers Philippines, Inc. to the petitioner in 2010, the Court upheld respondent's assessment for lack of details of the "Marketing Support" account, to wit:

Undeclared Sales	₱8,000,000.00
Multiply by GP Rate	12.29%
Additional Taxable Income	₱ 983,200.00

VALUE ADDED TAX

Respondent's arguments in its motion regarding the undeclared sales per reconciliation of Summary List of Sales (SLS), Summary Alphalist of Withholding Tax (SAWT) & Letter Notice (LN) Data and additional sales on undeclared purchases per Summary List of Purchases (SLP), 1604E & LN Data are mere rehash of its arguments in the FLD and FDDA that were exhaustively discussed and already passed upon in the assailed Decision. It would then be futile on our part to address them anew.

Respondent also stated in its motion that negative confirmation letters were sent to various taxpayer to confirm the third-party information. However, respondent did not indicate specific details to these confirmation letters such as exhibit numbers, etc. In the absence of confirmation requests and third-party certifications, the undeclared sales based on TPI is unverified and not founded on facts.

Respondent just rehashed its arguments regarding the Collections for Nationwide Advertising and Promotions Program amounting to ₱129,323,118.54. The latter were exhaustively discussed and already passed upon in the assailed Decision, hence, no need to discuss anew.

With regard to Unsupported input tax per SLP and Summary List of Invoice (SLI) versus Value-Added Tax Return (VATR) amounting to ₱16,950,527.75, respondent claims in its motion that petitioner failed to provide supporting documents. On the contrary, per the assailed Decision, petitioner was able to provide the following sufficient documents which were examined by the Independent Certified Public Accountant (ICPA) and the Court:

a. 2010 Quarterly VAT Returns (2550Q)[23];
b. 2010 Sales Transaction, Reconciliation of Listing for Enforcement[24];
c. 2010 Purchase Transaction, Reconciliation of Listing for Enforcement[25];
d. Imports Transaction, Reconciliation of Listing for Enforcement[26];
e. 2010 Unsupported Input VAT Reconciliation Schedule[27]; and
f. 2010 Supporting Documents for Unsupported Input VAT in SLS [28].

FINAL TAX/EXPANDED WITHHOLDING TAX

Respondent's arguments in its motion are mere rehash of its arguments against FLD and FDDA that were exhaustively discussed and already passed upon in the assailed Decision, hence, no need to discuss anew.

DOCUMENTARY STAMP TAX

Respondent stated in its motion that there were no documents to support that DST was already collected on the original issue of the debt instrument.

Upon further investigation, petitioner continuously failed to provide proof that the DST due on the original issue of the debt instruments or the non-current portion of the finance lease and lease contract was indeed collected.

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[23] USB, Exhibits "P-7-A.1-ICPA" to "P-M.3-ICPA".
[24] USB, Exhibits "P-24-A-ICPA" to "P-24-AA-ICPA".
[25] USB, Exhibits "P-31-A-ICPA" to "P-31-MS-ICPA".
[26] USB, Exhibits "P-35-A-ICPA" to "P-35-B-ICPA".
[27] USB, Annex M- ICPA.
[28] USB, Exhibits "P-36-A.1-ICPA" to P-36-C.71-ICPA".

Petitioner only submitted schedule of DST payments[29], statement of account, and official receipts[30] as proof of DST payments amounting to ₱14,870.34. Without the DST Returns and existing Lease Contracts with its detailed reconciliation, the Court cannot verify whether DST were already collected on the original issue of the debt instruments or the non-current portion of the finance lease and lease contracts.

Hence, respondent's assessment on DST deficiency is upheld amounting to ₱46,947.15, computed as follows:

Source	Particulars	Amount	DST
AFS Note 25	Obligation Under Finance Lease:		
	Current Portion	2,020,470.00	₱10,102.35
	Non-Current Portion	814,554.00	4,072.77
	Lease Contract:		
Per TB	Prepaid Rent	3,268,210.75	
Per TB	Advance Rental	357,791.84	
Per TB	Deposit-Rentals	7,330,854.42	
Per TB	Prepaid Rent-NonCurrent	618,349.70	
AFS Note 17	Rent Expense	31,068,770.00	
AFS Note 18	Rent Expense	4,997,391.00	
		47,641,367.71	47,642.37
DST Due			61,817.49
DST Payment			14,870.34
DST Still Due			₱46,947.15

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (of the Decision dated 30 July 2024)* is hereby **DENIED** but respondent's *Motion for Partial Reconsideration (Re: Decision dated 30 July 2024)* is **PARTIALLY GRANTED**.

Accordingly, the Court's Decision dated July 30, 2024 is hereby amended to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency IT, VAT, FT, and DST for CY 2010 are to be **UPHELD IN PART**, while the assessment on EWT shall be **CANCELLED**. Accordingly, petitioner is **ORDERED TO PAY**

[29] USB, Annex O-ICPA.
[30] USB, Exhibits "P -39-A.1-ICPA" to "P-39-AB.2-ICPA".

respondent the aggregate amount of FORTY-ONE MILLION EIGHT HUNDRED FIFTY THREE THOUSAND TWENTY PESOS (₱41,853,020.00), inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	IT	VAT	FT	DST	TOTAL
Basic Tax Due	₱3,099,889.60	₱7,958,625.86	₱798.26	₱ 46,947.15	₱11,106,260.87
Add: 25% Surcharge	774,972.40	1,989,656.47	199.57	11,736.79	2,776,565.22
20% Deficiency Interest Apr. 16, 2011 to Mar. 31, 2015 *(₱3,099,889.60 x 20% x 1446 / 365)*	2,456,131.70				2,456,131.70
20% Deficiency Interest Jan. 26, 2011 to Mar. 31, 2015 *(₱7,958,625.86 x 20% x 1526 /365)*		6,654,719.49			6,654,719.49
20% Deficiency Interest Jan. 16, 2011 to Mar. 31, 2015 *(₱798.26 x 20% x 1536/365)*			671.85		671.85
20% Deficiency Interest Jan. 16, 2011 to Mar. 31, 2015 *(₱42,256.03 x 20% x 1536/365)*				39,512.78	39,512.78
Total Amount Due, Mar. 31, 2015	₱6,330,993.70	₱16,603,001.81	₱1,669.68	₱98,196.72	₱23,033,861.91
20% Deficiency Interest Apr. 01, 2015 to Dec. 31, 2017					
(₱3,099,889.60 x 20% x 1006 /365)	1,708,761.06				1,708,761.06
(₱7,958,625.86 x 20% x 1006 /365)		4,387,056.23			4,387,056.23
(₱798.26 x 20% x 1006/365)			440.03		440.03
(₱42,256.03 x 20% x 1006/365)				25,878.81	25,878.81
20% Delinquency Interest Apr. 01, 2015 to Dec. 31, 2017					
(₱6,483,864.97 x 20% x 1006 /365)	3,489,851.87				3,489,851.87
(₱16,603,001.81 x 20% x 1006 /365)		9,152,120.45			9,152,120.45
(₱1,669.68x 20% x 1006/365)			920.38		920.38
(₱88,384,.56 x 20% x 1006/365)				54,129.26	54,129.26
Total Amount Due, Dec. 31, 2017	**₱11,529,606.64**	**₱30,142,178.49**	**₱3,030.08**	**₱178,204.79**	**₱41,853,020.00**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of March 31, 2015, in the amount of ₱23,033,861.91 or equivalent to ₱7,572.78[31] per day, computed from January 1, 2018 until

[31] ₱23,033,861.91 x 12% / 365.

full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018."

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice