REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

3D NETWORKS PHILIPPINES, INC., Petitioner,	**CTA Case No. 10981**
	Present:
vs.	**RINGPIS-LIBAN**, *P.J., Chairperson,* **MODESTO-SAN PEDRO**, and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 11 2026 3:45 p.m.

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DECISION

FERRER-FLORES, J.:

At bar is a **Petition for Review** filed on September 19, 2022 by petitioner **3D Networks Philippines, Inc.** praying for the Court to declare as null and void the Warrant of Distraint and/or Levy (WDL) No. RR8A-WDI-2022-08-442 issued against petitioner's alleged deficiency tax assessments for fiscal year (FY) ending March 31, 2018 amounting to **₱43,804,236.65**.

THE PARTIES

Petitioner is a corporation organized and existing under and by virtue of Philippine law, with principal office address at Unit D, 10th Floor Chatham House, 116 Valero Street, Salcedo Village, Barangay Bel-Air, Makati City 1227. Petitioner's Country Accountant, Ms. Dolores Eliza C. Agustin, is the representative of the petitioner in the instant case.[1]

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[1] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 325.

Respondent is being sued in his official capacity as the duly appointed **Commissioner of Internal Revenue (CIR)** who is vested, among others, with authority to administer and enforce national internal revenue laws.[2]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 29, 2018, petitioner received the Letter of Authority (LOA), including its Checklist of Requirements for Audit, dated October 24, 2018, with LOA No. eLA201600032614, signed by Glen A. Geraldino, Regional Director of Revenue Region No. 8 – Makati City, authorizing Revenue Officer (RO) Ray Emmanuel Virgines and Group Supervisor Ma Carmen Sy of Revenue District Office (RDO) No. 050 – South Makati, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes, including documentary stamp tax (DST) and other taxes, for the period April 1, 2017 to March 31, 2018.[3]

Subsequently, on June 20, 2019, petitioner received the Notice for Informal Conference signed by Revenue District Officer Claire B. Corpus, finding petitioner liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT or WE), withholding tax on compensation (WTC), Final Withholding Tax (FWT or WF), Final Withholding of VAT (FWVAT or WG), and DST, for FY ending March 31, 2018.[4]

On June 24, 2020, petitioner then received the two-part Preliminary Assessment Notice (PAN), with attached Details of Discrepancies dated June 10, 2020, showing the following deficiency taxes, to wit:[5]

Tax Type	Basic Tax	Interest	Total
Income tax	₱ 11,421,491.00	₱ 2,921,398.36	₱ 14,342,889.36
VAT	17,946,445.14	5,068,272.78	23,014,717.92
EWT	426,456.97	121,134.47	547,591.45[6]
WTC	67,024.77	26,751.15	93,775.91[7]
FWT	2,173,968.60	1,168,165.65	3,342,134.25
FWVAT	869,587.44	467,266.26	1,336,853.70
DST	184,518.00	99,452.67	283,970.67
Compromise Penalty			90,000.00
Total	**₱ 33,089,491.92**	**₱ 9,872,441.34**	**₱ 43,051,933.26**

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2 Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. I, pp. 325 to 326.

3 Par. 17, *Petition for Review*, vis-à-vis par. 13, *Answer*, Docket – Vol. I, pp. 10 and 277, respectively; Exhibit "P-3", Docket – Vol. I, pp. 45 to 46; Exhibit "R-1", BIR Records (Exhibit "R-18"), pp. 1 to 2.

4 Par. 22, *Petition for Review*, vis-à-vis par. 13, *Answer*, Docket – Vol. I, pp. 11 and 277, respectively; Exhibit "P-8", Docket – Vol. I, pp. 54 to 60; Exhibit "R-2", BIR Records (Exhibit "R-18").

5 Par. 24, *Petition for Review*, vis-à-vis par. 13, *Answer*, Docket Vol. I, pp. 11 to 12 and 277, respectively; Exhibits "P-9", "P-9-a", and "P-9-b", Docket – Vol. I, pp. 61 to 71; Exhibit "R-3", BIR Records (Exhibit "R-18"), pp. 386 to 396.

6 Total is actually ₱547,591.44.

7 Total is actually ₱93,775.92.

On July 24, 2020, petitioner received Parts I and II of the Formal Letter of Demand (FLD), with Details of Discrepancies, and Assessment Notices, all dated July 17, 2020,[8] assessing petitioner for the following:

Tax Type	Basic Tax	Interest	Total
Income tax	₱ 11,421,491.00	₱ 2,921,398.36	₱ 14,342,889.36
VAT	17,946,445.14	5,068,272.78	23,014,717.92
EWT	426,456.97	121,134.47	547,591.45[9]
WTC	67,024.77	26,751.15	93,775.91[10]
FWT	2,173,968.60	1,168,165.65	3,342,134.25
FWVAT	869,587.44	467,266.26	1,336,853.70
DST	184,518.00	99,452.67	283,970.67
Compromise Penalty			90,000.00
Total	**₱ 33,089,491.92**	**₱ 9,872,441.34**	**₱ 43,051,933.26**

Petitioner filed its protest letter to the FLD, by way of a request for reconsideration, on August 20, 2020.[11]

Thereafter, the Bureau of Internal Revenue (BIR), through Regional Director Maridur V. Rosario, issued the Final Decision on Disputed Assessment (FDDA) dated January 28, 2022,[12] finding petitioner still liable for the following deficiency taxes, to wit:

Tax Type	Basic Tax	Surcharge	Interest	Total
Income tax	₱ 8,383,869.00		₱ 3,679,714.56	₱ 12,063,583.56
VAT	17,794,420.04		8,283,911.93	26,078,331.97
EWT	222,240.06		113,747.12	335,987.18
FWT	2,173,968.60	₱ 543,492.15	1,022,777.78	3,740,238.53
FWVAT	869,587.44	217,396.86	409,111.11	1,496,095.41
Compromise Penalty				90,000.00
Total	**₱ 29,444,085.14**	**₱ 760,889.01**	**₱ 13,509,262.50**	**₱ 43,804,236.65**

On August 19, 2022, the BIR constructively served the WDL dated August 10, 2022 to Ms. Dolores Eliza C. Agustin, alleging the sum of ₱43,804,236.65 as delinquent internal revenue taxes, shown hereunder:[13] m

8 Exhibits "P-10" to "P-10-j", Docket – Vol. I, pp. 72 to 90; Exhibit "R-4" to "R-12", BIR Records (Exhibit "R-18"), pp. 401 to 419.
9 Total is actually ₱547,591.44.
10 Total is actually ₱93,775.92.
11 Exhibit "P-11", Docket – Vol. I, pp. 91 to 129.
12 Exhibit "R-14", BIR Records (Exhibit "R-18"), pp. 442 to 445.
13 Par. 13, *Petition for Review*, vis-à-vis par. 10, *Answer*, Docket – Vol. I, pp. 9 and 276, respectively; Exhibit "P-2", Docket – Vol. I, p. 44; Exhibit "R-17", BIR Records (Exhibit "R-18"), p. 468.

ASSESSMENT/ DEMAND NO.	DATE ISSUED	KIND OF TAX	YEAR	AMOUNT
FDDA-052-RR8A-RDO50-FY03/31/2018-ELA NO. 201600032614-A.N. 077	Jan. 28, 2022	Income tax	FY ending Mar. 31, 2018	₱ 12,063,583.56
		VAT		26,078,331.97
		EWT		335,987.18
		FWT		3,740,238.53
		WG		1,496,095.41
		Compromise penalty		90,000.00
			TOTAL	**₱ 43,804,236.65**

PROCEEDINGS BEFORE THIS COURT

Aggrieved, petitioner filed the present *Petition for Review* on September 19, 2022.[14]

Respondent, on the other hand, filed his *Answer* on February 6, 2023.[15] The *BIR Records* were thereafter transmitted on February 21, 2023, consisting of one folder and one bound book entitled "Protest Letter of 3D Network Philippines, Inc." (pages 1-149).[16]

The Pre-Trial Conference was initially set on April 27, 2023,[17] but was later reset to, and held on, July 20, 2023.[18] Prior thereto, petitioner's *Pre-Trial Brief Ad Cautelam* was submitted on July 14, 2023,[19] while respondent's *Pre-Trial Brief* was filed via accredited courier and received by the Court on July 18, 2023.[20]

On August 22, 2023, the parties filed their *Joint Stipulation of Facts and Issues*,[21] which was admitted and approved by the Court in its Resolution dated September 4, 2023,[22] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 13, 2023 was then issued.[23]

In the meantime, petitioner filed a *Motion to Refer the Case to Mediation Center* on July 14, 2023.[24] During the Pre-Trial Conference held on July 20, 2023,[25] the Court granted the said *Motion*, and the parties were directed to appear before the Mediation Center on August 9, 2023.

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14 Docket – Vol. I, pp. 6 to 43.
15 Docket – Vol. I, pp. 275 to 289.
16 *Submission of BIR Records* dated February 21, 2023, Docket – Vol. I, p. 292.
17 Notice of Pre-Trial Conference dated February 20, 2023, Docket – Vol. I, pp. 293 to 294.
18 Notice of Resetting dated April 20, 2023, Docket – Vol. I, p. 296; Minutes of hearing held on, and Order dated, July 20, 2023, Docket – Vol. I, pp. 321 and 323 to 324, respectively.
19 Docket – Vol. I, pp. 298 to 307.
20 Docket – Vol. I, pp. 313 to 318.
21 Docket – Vol. I, pp. 325 to 332.
22 Docket – Vol. I, p. 390.
23 Docket – Vol. I, pp. 402 to 406.
24 Docket – Vol. I, pp. 309 to 311.
25 Minutes of hearing held on, and Order dated, July 20, 2023, Docket – Vol. I, pp. 321 and 323 to 324, respectively.

Considering that the parties failed to reach an amicable settlement,[26] within the extended period granted,[27] the Court issued the Resolution dated January 11, 2024,[28] reinstating the court proceedings of the present case. The *Mediator's Report* was then submitted on January 16, 2024,[29] stating that there was an "*Unsuccessful Mediation*".

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

Petitioner offered the testimony of Ms. Dolores Eliza C. Agustin,[30] its Country Accountant and representative for this case.

On May 15, 2024, *Petitioner's Formal Offer of Evidence* was filed,[31] to which respondent filed his *Comment/Opposition To Petitioner's Formal Offer of Evidence* on May 30, 2024.[32] Subsequently, petitioner filed a *Reply with Leave (Re: Respondent's Comment/Opposition dated 29 May 2024)* on June 18, 2024.[33] In the Resolution dated July 30, 2024,[34] the Court admitted petitioner's offered exhibits, except Exhibit "P-12" for failure of petitioner to present the original for comparison.

For his part, respondent presented the testimony of RO Corina Bianca R. Marañon.[35]

On October 15, 2024, *Respondent's Formal Offer of Evidence* was filed,[36] to which petitioner filed via accredited courier its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 14 October 2024)* on October 24, 2024.[37] In the Resolution dated December 4, 2024,[38] the Court admitted all of respondent's offered exhibits.

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26 Records Verification dated November 30, 2023 issued by this Court's Judicial Records Division, Docket – Vol. I, p. 420.

27 *Request for Extension* submitted to the Court on October 5, 2023, signed by Retired Associate Justice Amelia R. Cotangco-Manalastas, Mediator, *et al.*, requesting for a final extension until November 18, 2023 to give the parties additional time within which to reach an amicable settlement, Docket – Vol. I, p. 399; Minute Resolution dated October 10, 2023, Docket – Vol. I, p. 400; parties' *Joint Motion for Extension of Mediation Period* dated October 17, 2023, likewise moving for an additional period until November 18, 2023 to allow the parties to amicably settle the case, Docket – Vol. I, pp. 407 to 409; Minutes of hearing held on, and Order dated, October 19, 2023, Docket – Vol. I, pp. 418 to 419.

28 Docket – Vol. I, pp. 422 to 423.

29 Docket – Vol. I, p. 424.

30 Exhibit "P-15", Docket – Vol. I, pp. 144 to 161; Minutes of the hearing held on, and Order dated, April 30, 2024, Docket – Vol. II, pp. 446 and 448-A to 448-B, respectively.

31 Docket – Vol. II, pp. 449 to 454.

32 Docket – Vol. II, pp. 456 to 458.

33 Docket – Vol. II, pp. 460 to 465.

34 Docket – Vol. II, pp. 592 to 593.

35 Exhibit "R-20", Docket – Vol. I, pp. 336 to 344; Minutes of the hearing held on, and Order dated, October 1, 2024, Docket – Vol. II, pp. 595 to 597.

36 Docket – Vol. II, pp. 599 to 604.

37 Docket – Vol. II, pp. 606 to 612.

38 Docket – Vol. II, pp. 625 to 626.

The *Memorandum for the Petitioner* was submitted on January 15, 2025,[39] while respondent filed his *Memorandum* on February 6, 2025 via accredited courier.[40]

The instant case was submitted for decision on February 11, 2025.[41]

THE STIPULATED ISSUE

The lone issue to be resolved by the Court, as stipulated by the parties, is whether petitioner is liable for deficiency income tax, VAT, EWT, FWT, FWVAT, and compromise penalty in the aggregate amount of ₱43,804,236.65 inclusive of penalties and interest.[42]

Petitioner's arguments:

Petitioner argues that it cannot be made liable to pay the supposed deficiency taxes since respondent's resort to substituted service of the FDDA was improper as the BIR and Barangay Bel-Air were informed of the transfer of business address of petitioner. Notwithstanding the service of the FDDA, the WDL is void for being issued prematurely; hence, petitioner cannot be made to pay the supposed deficiency taxes. Lastly, the deficiency assessments issued are void since petitioner was not properly informed of the law and facts on which the assessment was made which would enable intelligent protest and appeal and in fact was arbitrarily arrived at.

Respondent's counter-arguments:

In refutation, respondent contends that substituted service of Assessment Notices is allowed and sanctioned by Revenue Regulations (RR) No. 18-2013,[43] as amended by Revenue Memorandum Order (RMO) No. 40-2019.[44] Respondent likewise claims that the assessment contains legal and factual bases and that petitioner was sufficiently informed thereof. Similarly, the WDL was validly issued. Even lending credence to petitioner's argument that the WDL was improperly served or was issued prematurely, this does not affect the validity of the assessment contained in the FLD. For respondent, considering that petitioner belatedly filed the

[39] Docket – Vol. II, pp. 628 to 656.
[40] Docket – Vol. II, pp. 660 to 671.
[41] Minute Resolution dated February 11, 2025, Docket – Vol. II, p. 674.
[42] Statement of Issue, JSFI, Docket – Vol. I, p. 326.
[43] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.
[44] SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013, May 30, 2019.

present *Petition for Review*, the Court lacks jurisdiction to take cognizance of the case.

THE COURT'S RULING

The present *Petition for Review* is **partly** meritorious.

The Court has jurisdiction over the case

In questioning the validity of the WDL, petitioner invokes Sections 7 and 11 of Republic Act (RA) No. 1125,[45] as amended by Section 7(a)(1) of RA No. 9282,[46] and Section 3(a)(1) of Rule 4 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals. Peitioner, thus, submits that the Court has jurisdiction to determine the validity of a WDL, as this matter falls under "other cases" arising under the National Internal Revenue Code (NIRC) or related laws administered by the BIR.

The Court agrees with petitioner.

Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, provides, in part, as follows:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; *(Emphasis and underscoring added)*

From the above, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[47] M

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45 AN CREATING THE COURT OF TAX APPEALS.

46 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

47 *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

In *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)* [*Manila Doctors Hospital* case],[48] the said jurisdiction of the Court on "other matters" was reiterated by the Supreme Court in this wise:

> The CIR assails the jurisdiction of the CTA to hear the present case. The CIR argues that the reliance on the WDL as the basis for the MMS' Petition for Review was misplaced since the FDDA should be the basis for the action in the CTA.
>
> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also 'other matters' arising under the NIRC:
>
> xxx xxx xxx
>
> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*,[49] the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.**[50] *(Emphasis and underscoring added)*

Clearly, the validity of a WDL is an issue that falls under "other matters arising under the National Internal Revenue Code" that is within the jurisdiction of this Court to decide upon. In the present case, in addition to the subject deficiency tax assessments, petitioner assails the validity of the WDL dated August 10, 2022,[51] issued by the BIR, the same then can be taken cognizance of by this Court. It should be noted that the WDL constitutes an act of respondent on "other matters" arising under the NIRC, which, pursuant to the *Manila Doctors Hospital* case,[52] may be the subject of an appropriate appeal before this Court.[53]

Relative thereto, Section 11 of RA No. 1125, as amended by RA No. 9282, states, in part, as follows:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the

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[48] G.R. No. 255473, February 13, 2023.
[49] G.R. No. 258947, March 29, 2022.
[50] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[51] Exhibit "P-2", Docket – Vol. I, p. 44; Exhibit "R-17", BIR Records (Exhibit "R-18"), p. 468.
[52] G.R No. 255473, February 13, 2023.
[53] Refer to *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R Nos. 201398-99 and 201418-19, October 3, 2018.

> 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. *(Emphases added)*

Thus, petitioner had 30 days from receipt of the WDL on August 19, 2022,[54] or until September 19, 2022,[55] within which to file its appeal before this Court. Accordingly, the filing of the present *Petition for Review* on September 19, 2022[56] was timely made, and correspondingly vests jurisdiction to this Court to take cognizance of the same.

The FDDA was not properly served

As to the FDDA being served through substituted service, petitioner submits that resort to such method was improper as it never received the subject FDDA despite its personnel reporting at its official business address at Chatham House. Petitioner avers that the change of address was duly reported to and recorded by Barangay Bel-Air and the BIR, as seen in BIR Form Nos. 1905 and 2303.

Petitioner contends that, given the change in business address and notice to both Barangay Bel-Air and the BIR, the substituted service made to Barangay Bel-Air after the alleged failed attempt to serve the FDDA to the old office of petitioner at Unit A 4/F 8747 Lepanto Bldg., Paseo de Roxas, Makati City is contrary to the provisions of RR No. 18-2013 which states that: "Substituted service can be resorted to when the party is not present at the registered or known address." By virtue of BIR Form Nos. 1905 and 2303 both dated May 28, 2021, the registered address of petitioner in so far as the BIR is concerned is at Unit D 10/F Chatham House St. Salcedo Village Bel-Air 1209 City of Makati NCR, Fourth District Philippines.

On the other hand, respondent avers that the FDDA dated January 28, 2022 was served by substituted service by leaving a copy of the FDDA with Brgy. Captain Constancia Q. Lichauco, Brgy. Captain of Barangay Bel-Air, Makati City after personally observing that petitioner was not present at its registered address and as witnessed by two disinterested witnesses – Paz Ortega and Warren Licauco. He claims that personal service of the assessment is not practicable since petitioner was not present at its registered address. Hence, the substituted service of the FDDA is sanctioned. While it may be true that the FDDA is addressed to Unit A 4/F, 8747 Lepanto Bldg., Paseo de Roxas, Makati City, it is undeniable that the FDDA was served by substituted service at Brgy. Bel-Air, Makati City.

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[54] Par. 13, *Petition for Review*, vis-à-vis par. 10, *Answer*, Docket – Vol. I, pp. 9 and 276, respectively; Exhibit "P-2", Docket – Vol. I, p. 44; Exhibit "R-17", BIR Records (Exhibit "R-18"), p. 468.

[55] September 18, 2022 (the 30th day) fell on a Sunday.

[56] Docket – Vol. I, pp. 6 to 43.

The Court finds that the FDDA was improperly served.

Section 3.1.7 (formerly Section 3.1.6) of RR No. 12-99,[57] as amended by RR No. 18-2013,[58] and renumbered by RR No. 7-2018,[59] clearly states the modes of service of, *inter alia*, the FDDA, to wit:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.7[60] ***Modes of Service.*** – **The notice** (PAN/FLD/FAN/**FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**
>
> (i) **The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found.** A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**
>
> (ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

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57 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

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

60 Formerly Section 3.1.6 under RR No. 18-2013 but was renumbered to Section 3.1.7 pursuant to Section 2 of RR No. 7-2018. However, under RMO No. 40-2019, the said section was still referred to as Section 3.1.6.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

<u>If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses</u>.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) xxx xxx xxx

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company **who received the same and such other relevant information.** The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

xxx xxx xxx. *(Emphases and underscoring added)*

Relative thereto are the provisions of RMO No. 40-2019 dated May 30, 2019,[61] which provides as follows:

II. Guidelines and Procedures

[61] SUBJECT: Prescribing the Procedures for the Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of Revenue Regulations (RR) No. 18-2013.

1. **The assessment notice shall be served to the taxpayer through personal service by delivering personally a copy of the assessment notice at his registered or known address or wherever he may be found.** A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

2. **In case personal service is not possible, the assessment notice shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address.**

    2.1 Substituted service shall be done as follows:

    2.1.1 The assessment notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

    2.1.2 If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

    2.1.3 If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

    2.1.4 If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.

    2.1.5 Should the party be found at his registered or known address or any other place but refuses to receive the assessment notice, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.

    'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

xxx xxx xxx

4. **For assessment notices that are served to the taxpayer through personal or substituted service, the following statement shall be indicated at the lower portion of the notice:**

ACKNOWLEDGEMENT OF RECEIPT

(To be accomplished by recipient)

____
Date of Receipt

____________________ Printed Name, with Position/Designation/ Relationship if Made on Behalf of the Taxpayer Named in the Assessment Notice	____________________ Signature of Person Acknowledging Receipt
____________________ Printed Name and Position of Barangay Official	____________________ Signature of Barangay Official
____________________ Signature Over Printed Name of Witness	____________________ Signature Over Printed Name of Witness

(To be accomplished by the server)

Please check: ☐ No person found in the taxpayer's registered or known address
☐ Party refused to receive the assessment notice

I hereby certify that the original copy of this <u>(PAN/FLD/FAN/FDDA)</u> was duly served by me, same having been received by ________________ on the date mentioned above.

____
Signature Over Printed Name of the Revenue Officer Who Served the Assessment Notice

5. Personal or substituted service of assessment notice shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

6. **In compliance with Section 3.1.6 (iii) of Revenue Regulations No. 18-2013, the server shall prepare the following written reports in triplicate copies, which shall be under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information.**

    6.1 **Report on Personal/Substituted Service** (Annex A)

    xxx xxx xxx *(Emphases and underscoring added)*

Based on the foregoing provisions, the assessment notices, *i.e.*, PAN/FLD/FAN/FDDA, may be served through certain modes: (1) primarily, through personal service by delivering personally a copy of the notice to the party at the party's registered or known address or wherever the party may be found; and, in case personal service is not practicable, the notice shall be served either: (2) by substituted service, or, (3) by mail.

Substituted service can be resorted to only: (1) when the party is not present at the registered or known address; (2) if no person is found in the party's registered or known address; and, (3) when the party is found therein, but refuses to receive the notice.

If the party is not present, the notice may be left at the party's registered or known address, with his/her/its clerk or with a person having charged thereof. If no person is found in the party's registered or known address or should the party be found at the registered or known address but refuses to receive the notice, the ROs concerned shall bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence or refusal, as the case may be; and such fact shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses. In the latter two cases, the notice shall be given to the said barangay official.

Relative to the foregoing disquisition, the Court finds that respondent failed to comply with the procedures for properly effecting the substituted service of the FDDA.

At the outset, respondent failed to establish that personal service was not practicable or not possible, such that service of the FDDA by substituted service was warranted under the circumstances.

In this case, respondent's witness, RO Corina Bianca R. Marañon, merely testified as to the substituted service of the FDDA as follows:

> **37.** **Q:** What happened thereafter?
>
> **A:** *Based on records*, on 28 January 2022, a Final Decision on Disputed Assessment was issued and constructively served to the Punong Barangay of Brgy. Bel-Air, Makati City, Con[s]tancia Lichauco on 08 February 2022 as shown in the Acknowledgment of Receipt (of the FDDA)[62]

Upon examination of the said *Acknowledgment of Receipt* dated February 8, 2022,[63] attached to the FDDA, the same shows that it was served to Constancia Q. Lichauco, with the "Position of Barangay Official" filled out as "Punong Barangay" and witnessed by Paz Ortega and Warren Lxxx.[64]

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62 Q&A No. 37, Exhibit "R-20", Docket – Vol. I, p. 342.
63 Exhibit "R-15", BIR Records (Exhibit "R-18"), p. 446.
64 Last name written is illegible.

Moreover, the check box for "No person found in the taxpayer's registered or known address" was marked. The substituted service was effected by a certain RO Genielee Pascasio.

As pointed out by petitioner, its address indicated on the FDDA dated January 28, 2022 is "Unit A 4/F 8747 Lepanto Bldg. Paseo de Roxas, Makati City".[65] Petitioner, however, already transferred its office to Unit D, 10/F Floor Chatham House, 116 Valero St., Salcedo Village, Bel-Air, 1209, City of Makati, NCR Fourth District Philippines, as shown on its Application for Registration Information Update/Correction/Cancellation (BIR Form No. 1905) filed on May 28, 2021,[66] and BIR Certificate of Registration issued to petitioner, generated on May 28, 2021.[67]

From the foregoing, and based on the parties' arguments, it is not even clear where respondent actually attempted to serve the FDDA, i.e., whether at petitioner's old address at Lepanto Bldg., or at its new address at Chatham House. Petitioner can only assume that respondent erroneously attempted to serve the FDDA at its old address, since the WDL was still addressed at its old address.[68] Assuming respondent attempted to personally serve the FDDA at petitioner's old registered address, then, the substituted service was improper as petitioner already updated its registered address with the BIR.

On the other hand, respondent alleges that, while the FDDA was not addressed to the new address of petitioner, still, it was served to petitioner at its new address.[69] Petitioner's witness, Ms. Agustin, testified that although petitioner adopted a hybrid work arrangement due to the pandemic, it ensured that its offices were manned with personnel every business day.[70] Hence, there was no reason for respondent to effect a substituted service of the FDDA since petitioner was present at its registered address. Respondent failed to prove that petitioner was not present at its new registered address.

Indeed, respondent failed to prove that no person was found in petitioner's registered address such that substituted service was warranted, and that RO Pascasio, who served the FDDA, brought punong barangay Lichauco and the two disinterested witnesses, Paz Ortega and Warren Lxxx, to petitioner's registered address so that they may personally observe and attest to such absence. Notably, neither the said RO who effected the service of the FDDA, nor the barangay official and the two disinterested witnesses, were presented to testify for this case.

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65 Exhibit "R-14", BIR Records (Exhibit "R-18"), at p. 445.
66 Exhibit "P-13", Docket – Vol. I, pp. 132 to 134.
67 Exhibit "P-14", Docket – Vol. I, pp. 135 to 137.
68 Par. 36, *Memorandum for the Petitioner*, Docket – Vol. II, p. 637.
69 Par. 10, respondent's *Memorandum*, Docket – Vol. II, pp. 661 to 662.
70 Q&A Nos. 53 to 54, Exhibit "P-15", Docket – Vol. I, p. 159.

Moreover, aside from the *Acknowledgment of Receipt*, Section 3.1.7 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, requires that *"[The server] shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information,"* which refers to Annex "A" of RMO No. 40-2019, or the Report on Personal/Substituted Service. This Report, however, was not presented in evidence.

Strict compliance with the requirements of substituted service is essential in ensuring the right of the taxpayer to due process.[71]

Evidently, respondent failed to observe the requirements necessary to validly effect the substituted service of the subject FDDA. Thus, the FDDA is void.

A void FDDA does not ipso facto render the assessment void

In *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*,[72] the Supreme Court held that a void FDDA does not *ipso facto* render the assessment void, to wit:

> The CIR and Liquigaz are at odds with regards to the effect of a void FDDA. Liquigaz harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA. On the other hand, the CIR believes that a void FDDA does not *ipso facto* result in the nullification of the assessment.
>
> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an 'assessment' from a 'decision.' In *St. Stephen's Association v. Collector of Internal Revenue*, the Court has long recognized that a 'decision' differs from an 'assessment,' to wit:
>
>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector

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[71] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

[72] G.R. Nos. 215534 and 215557, April 18, 2016.

> to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review '*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment . . .*'
>
> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide.**
>
> xxx xxx xxx
>
> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. **Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.** *(Emphases added)*

It this, thus, settled that the invalidity of the FDDA does not necessarily result to the invalidity of the tax assessments. Accordingly, the

FLD dated July 17, 2020 issued against petitioner remains valid, there being no indication that it is otherwise.

The subject WDL was <u>not</u> issued prematurely

Petitioner claims that, as per RMO No. 35-2019, a WDL or any other collective measure of the BIR may only be issued if the FAN is unprotested or the FDDA is unappealed. Accordingly, petitioner argues that any WDL arising from a void FDDA is likewise void. Petitioner submits that respondent effectively prevented it from resorting to all available remedies allowed by law and cornered it to proceed with all available remedies after the issuance of the WDL, which includes the filing of the instant *Petition* before this Court. Consequently, the WDL was allegedly issued prematurely and thus void.

This Court disagrees.

Section 6(A) of the NIRC of 1997, as amended by RA No. 10963,[73] reads as follows:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed <u>shall be paid upon notice and demand from the Commissioner or from his duly authorized representative</u>.**
>
> xxx xxx xxx. *(Emphasis and underscoring added)*

[73] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Thus, once a tax or deficiency tax assessment has been issued by the BIR after the examination of the taxpayer, such taxpayer so assessed, upon notice and demand from respondent or his duly authorized representative, is under obligation to pay the said assessment.

The "notice and demand" referred to under the above-quoted Section 6(A) is consistent with the jurisprudential definition of an "assessment", *viz.*:

> In the context in which it is used in the NIRC, **an assessment is a <u>written notice and demand</u> by the Bureau of Internal Revenue on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.**"[74] *(Emphasis and underscoring added)*
>
> "**An assessment contains not only a computation of tax liabilities, <u>but also a demand for payment</u> within a prescribed period.** It signals the time when the penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine the remedies thereon, due process requires that it must be served on and received by the taxpayer."[75] *(Emphasis and underscoring added)*
>
> "An assessment fixes and determines the tax liability of a taxpayer. **As soon as it is served, <u>an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded</u>.**[76] *(Emphasis and underscoring added)*

Hence, a tax assessment, which is duly issued by the BIR and duly served upon the concerned taxpayer, creates an obligation upon the latter to pay the assessed tax.

And in case the said taxpayer fails to fulfill its obligation to pay the assessed tax, Section 205 of the NIRC of 1997, as amended, then provides for the remedies available to the government for the collection thereof. Said provision reads, in part, as follows:

> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – **The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto <u>resulting from delinquency</u>** shall be:
>
> (a) **By distraint** of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, **and by levy** upon real property and interest in or rights to real property; and
>
> (b) By civil or criminal action.

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74 *Adamson, et al. vs. Court of Appeals, et al., et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009.

75 *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, June 29, 1999.

76 *Callanta, et al. vs. Office of the Ombudsman, et al.*, G.R. Nos. 115253-74, January 30, 1998.

> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
>
> xxx xxx xxx. *(Emphasis and underscoring added)*

To be sure, Section 205 requires delinquency, meaning **the taxpayer must have failed to pay the assessed tax within the period stated in the notice and demand.**[77] Thus, in case of such failure to pay, the BIR may commence the collection of the assessed tax by, *inter alia*, distraint and/or levy.

Correspondingly, as applied to this case, and on the basis of the foregoing provisions and jurisprudential pronouncements, in case of petitioner's failure to pay the assessed deficiency taxes, plus interest, per the FLD/Assessment Notices dated July 17, 2020 within the period stated therein (*i.e.*, on or before August 17, 2020),[78] the BIR or respondent *may* already begin to collect the said assessed amount—this notwithstanding the pendency of the protest with respondent. Such being the case, there can be no merit in the contention of petitioner that the issuance of the subject WDL is premature.

The foregoing disquisitions are even reinforced by the ruling made by the Supreme Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division and QL Development, Inc.,*[79] regarding the prescription of tax collection. It held:

> Section 203 of the NIRC, as amended, which provides for the prescriptive period in the assessment and collection of internal revenue taxes, reads:
>
>> 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

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[77] *People of the Philippines vs. Joel C. Mendez, et seq.*, G.R. Nos. 208310-11 and 208662, March 28, 2023.

[78] Exhibits "P-10" to "P-10-j", Docket – Vol. I, pp. 72 to 90; Exhibit "R-4" to "R-12", BIR Records (Exhibit "R-18"), pp. 401 to 419.

[79] G.R. No. 258947, March 29, 2022.

> before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

In *CIR v. United Salvage and Towage (Phils.), Inc.,*[80] the Court held that **in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes**, thus:

> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of *Batas Pambansa Blg.* 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run **on the date the assessment notice had been released, mailed or sent to the taxpayer.**

Applying the foregoing ruling, the Court holds that the CTA Division erred when it applied the five-year period to collect taxes. The five-year period for the collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:

> SEC. 222. *Exceptions as to Period of Limitation Upon 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.
>
> x x x x
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in **paragraph (a) hereof** may be collected by distraint or levy or by a proceeding in court **within five (5) years** following the assessment of the tax. (Emphasis supplied)

[80] G.R. No. 197515, July 2, 2014.

> **Here, given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had <u>another three years to initiate the collection of taxes by distraint or levy</u>** or court proceeding. Accordingly, the FAN/FLD was mailed on December 12, 2014, the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce collection of the assessed deficiency taxes. xxx.
>
> In an attempt to convince this Court that its right to collect the deficiency taxes had not yet prescribed, the CIR avers that the FDDA received by QLDI effectively operate as a collection letter for the satisfaction of deficiency tax liabilities.
>
> The Court finds no merit in the CIR's assertion.
>
> To reiterate, **the CIR's collection efforts are initiated by distraint, levy,** or court proceeding. **The distraint and levy proceedings are validly begun or commenced by the issuance of a warrant of distraint and levy and service thereof on the taxpayer.** And a judicial action for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. xxx.
>
> At this juncture, the Court ought to reiterate that **while taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite and infinite periods to assess and collect alleged unpaid taxes.** Certainly, it is an injustice to leave taxpayers in perpetual uncertainty whether they will be made liable for deficiency or delinquent taxes. xxx. *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that when the BIR validly issues an assessment within the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended, it has another three years from the date the assessment notice had been released, mailed or sent to the concerned taxpayer, within which to initiate the collection of the assessed tax by distraint, levy, or court proceeding. As a corollary, if the said three-year period to collect the assessed tax lapses, the BIR may no longer collect the said tax to the detriment of the government.

Considering that petitioner received the FLD and Assessment Notices dated July 17, 2020 on July 24, 2020,[81] and the deficiency tax assessments stated therein were eventually adjusted in the FDDA dated January 28, 2022,[82] and it has not paid the assessed deficiency taxes stated therein, the BIR is mandated to commence or initiate the tax collection process within the three-year prescriptive period **or until July 24, 2023**, lest they would be remiss in their duty to do so. Hence, it was correct for the BIR or

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81 Par. 25, *Petition for Review*, vis-à-vis par. 13, *Answer*, Docket – Vol. I, pp. 12 to 13 and 277, respectively; Exhibits "P-10" to "P-10-j", Docket – Vol. I, pp. 72 to 90; Exhibit "R-4" to "R-12", BIR Records (Exhibit "R-18"), pp. 401 to 419.

82 Exhibit "R-14", BIR Records (Exhibit "R-18"), pp. 442 to 445.

respondent to issue the assailed WDL dated August 10, 2022 and to constructively serve the same on petitioner on August 19, 2022.[83]

Petitioner is liable for deficiency income tax, VAT, EWT, WTC, FWT, and FWVAT for FY ending March 31, 2018

Based on the FLD,[84] petitioner was assessed of deficiency income tax, VAT, EWT, WTC, FWT, FWVAT, DST and compromise penalty for FY 2018, in the aggregate amount of ₱43,051,933.26, including surcharges, interests and penalty, summarized as follows:

Tax Type	Basic Tax	Interest	Total
Income Tax	₱ 11,421,491.00	₱ 2,921,398.36	₱ 14,342,889.36
VAT	17,946,445.14	5,068,272.78	23,014,717.92
EWT	426,456.97	121,134.47	547,591.45[85]
WTC	67,024.77	26,751.15	93,775.91[86]
FWT	2,173,968.60	1,168,165.65	3,342,134.25
FWVAT	869,587.44	467,266.26	1,336,853.70
DST	184,518.00	99,452.67	283,970.67
Compromise Penalty			90,000.00
Total	**₱ 33,089,491.92**	**₱ 9,872,441.34**	**₱ 43,051,933.26**

I. Deficiency Income Tax

Petitioner was assessed deficiency income tax for FY 2018 in the amount of ₱14,342,889.36, computed as follows:[87]

I. INCOME TAX		
Taxable Income (Loss) per return		₱ (1,709,790.00)
Add: Adjustments/disallowances		
Disallowed Expenses due to Non-withholding (Schedule 1)	₱23,458,678.43	
Undeclared Income (Schedule 2)	4,141,419.27	
Unsupported Expenses (Schedule 3)	10,471,539.00	38,071,636.70
Taxable Income		₱ 36,361,846.70
Add: Net Operating Loss Carry Over		1,709,790.00
Adjusted Taxable Income		**₱38,071,636.70**
Basic Deficiency Income Tax		₱ 11,421,491.00
Less: Tax Credits/Payments		
Prior Year's Credits	₱2,758,312.00	
Creditable Tax Withheld	2,109,342.00	
Total	₱4,867,654.00	

[83] Par. 13, *Petition for Review*, vis-à-vis par. 10, *Answer*, Docket – Vol. I, pp. 9 and 276, respectively; Exhibit "P-2", Docket – Vol. I, p. 44; Exhibit "R-17", BIR Records (Exhibit "R-18"), p. 468.
[84] Exhibit "R-4", BIR Records (Exhibit "R-18"), pp. 407 to 411.
[85] Total is actually ₱547,591.44.
[86] Total is actually ₱93,775.92.
[87] Exhibit "R-4", BIR Records (Exhibit "R-18"), at p. 411.

Less: Adjustments/disallowances			
Excess MCIT over NCIT carried over to succeeding period	₱ 693,297.18		
Excess credits carried forward to succeeding period	4,174,356.82	4,867,654.00	-
Basic Tax Due			₱ 11,421,491.00
Add: Interest 12% (07.16.18 to 08.31.20)			2,921,398.36
TOTAL AMOUNT DUE			**₱14,342,889.36**

From the foregoing, the deficiency income tax assessment arose from the following items:[88]

a. Disallowed Expenses due to non-withholding	₱	23,458,678.43
b. Undeclared Income	₱	4,141,419.27
c. Unsupported Expenses	₱	10,471,539.00
d. Net Operating Loss Carry-Over (NOLCO)	₱	1,709,790.00
e. Excess Minimum Corporate Income Tax (MCIT) over Normal Corporate Income Tax (NCIT) carried over to succeeding period	₱	693,297.18
f. Excess credits carried over to succeeding period	₱	4,174,356.82

a. Disallowed Expenses due to non-withholding – ₱23,458,678.43

Respondent's verification disclosed that petitioner has not withheld the appropriate withholding tax due on its income payments enumerated hereunder amounting to ₱23,458,678.43. Section 34(K) of the NIRC of 1997, as amended, expressly provides that "*...any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code.*" Hence, the aforementioned expenses have been disallowed by respondent as deduction against petitioner's Gross Income pursuant to the above provision of the law. Computation of the disallowed expenses due to non-withholding is shown in the Details of Discrepancies as follows:[89]

Income Payments Subject to EWT	**Per ITR/AFS**	**Per 1601-E**	**Disallowed Expenses**	**EWT Rate**	**EWT Due**
Purchase of Services / Contractors					
Domestic Purchases					
- services	₱ 35,278,825.98	₱ 27,812,972.72	₱ 7,465,853.26	2%	₱ 149,317.07
Purchase of Goods	₱ 88,076,085.67	₱ 73,081,300.00	₱ 14,994,785.67	1%	₱ 149,947.86
Rentals					
Prepayments (Note 7)	₱ 844,103.00				

[88] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), pp. 404 to 406.
[89] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 406.

Direct Charges-Rental	1,210,904.00				
Rental	2,689,797.00				
Subtotal	₱ 4,744,804.00	₱ 3,220,009.00	₱ 1,524,795.00	5%	₱ 76,239.75
Commissions	2,316,666.00	2,209,140.00	107,526.00	10%	10,752.60
Professional Fees	638,097.00	428,275.50	209,821.50	10%	20,982.15
Subtotal	₱ 131,054,478.65	₱ 106,751,697.22	₱ 24,302,781.43		**₱407,239.42**[90]
Less: Prepayments (Note 7)			844,103.00		
Disallowed Expenses due to Non-withholding			**₱ 23,458,678.43**		

Petitioner argues that the amounts used by the BIR in the column per *Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)* [*BIR Form No. 1601-E*] were wrong and erroneous. It alleges that the total income payments it actually declared on its BIR Form No. 1601-E for FY 2018 aggregates to ₱116,940,574.24 as compared to the income payments of ₱106,751,697.22 used by the BIR in the assessment resulting in a total difference of ₱10,188,877.02, as follows:[91]

Particulars	Per Petitioner	Per BIR	Difference
Goods	₱ 76,983,523.00	₱ 73,081,300.00	₱ 3,902,223.00
Services	33,101,587.64	27,812,972.72	5,288,614.92
Rentals	3,900,700.60	3,220,009.00	680,691.60
Professional Fees	638,097.00	428,275.50	209,821.50
Commissions	2,316,666.00	2,209,140.00	107,526.00
Total	**₱ 116,940,574.24**	**₱ 106,751,697.22**	**₱ 10,188,877.02**

Per examination of the BIR records, the income payments per BIR Form No. 1601-E are as follows:[92]

Month	Goods	Services	Rentals	Professional Fees	Commissions	Total
April	₱29,949,258.00	₱540,512.72	₱209,463.40	₱36,607.10	₱ -	**₱30,735,841.22**
May	1,728,495.00	1,381,838.00	353,577.60	110,685.80	-	**3,574,596.40**
June	2,303,113.00	1,305,728.00	422,913.40	64,107.30	-	**4,095,861.70**
July	1,224,901.00	2,599,541.00	335,921.00	31,250.10	-	**4,191,613.10**
August	11,265,570.00	7,093,192.50	282,226.40	141,875.10	-	**18,782,864.00**
September	9,853,208.00	2,826,891.50	420,772.60	8,928.60	-	**13,109,800.70**
October	1,720,175.00	739,986.00	316,988.20	-	-	**2,777,149.20**
November	6,499,287.00	829,942.00	329,479.40	22,321.50	-	**7,681,029.90**
December	8,537,293.00	10,495,341.00	548,667.00	12,500.00	2,209,140.00	**21,802,941.00**
Total	**₱73,081,300.00**	**₱27,812,972.72**	**₱3,220,009.00**	**₱428,275.50**	**₱2,209,140.00**	**₱106,751,697.22**

Notably, no BIR Form No. 1601-E was filed for the months of January, February, and March of FY 2018.

[90] Total is actually ₱407,239.43.
[91] Exhibit "P-11", Docket – Vol. I, at p. 94.
[92] BIR Records (Exhibit "R-18"), pp. 45 to 53.

Based on the BIR records, petitioner used BIR Form No. 0605 for its remittances of EWT for the months of January, February and March 2018 as a transitory procedure on the implementation of the Tax Reform for Acceleration and Inclusion (TRAIN) law. The BIR, thus, adjusted the disallowed expenses due to non-withholding in the reduced amount of ₱13,333,270.83 to reflect the payments made by petitioner, as follows:[93]

Income Payments Subject to EWT	Per ITR/AFS	Per 1601-E	Disallowed Expenses	EWT Rates	EWT Due
Purchase of Goods	₱88,076,085.67	₱ 76,983,523.00	₱ 11,092,562.67	1%	₱110,925.63
Purchase of Services/Contractors					
Domestic Purchases - services	₱35,278,825.98	33,101,587.72	2,177,238.26	2%	43,544.77
Rentals					
Prepayments (Note 7)	₱ 844,103.00				
Direct Charges-Rental	1,210,904.00				
Rental	2,689,797.00				
Subtotal	₱ 4,744,804.00	₱ 3,900,700.60	844,103.40	5%	42,205.17
Commissions	2,316,666.00	2,295,160.80	21,505.20	10%	2,150.52
Professional Fees	638,097.00	596,132.70	41,964.30	10%	4,196.43
Subtotal	₱131,054,478.65	₱116,877,104.82	₱ 14,177,373.83		**₱203,022.51**[94]
Less: Prepayments (Note 7)			844,103.00		
Total			**₱13,333,270.83**		

However, failure on the part of petitioner to present proof as to the allegations made makes the same nothing but self-serving arguments. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[95]

Consequently, the disallowed expenses due to non-withholding shall be upheld but in the reduced amount of ₱13,333,270.83.

b. Undeclared Income – ₱4,141,419.27

The BIR's comparison of the amount of sales reported in petitioner's Summary Alphalist of Withheld Taxes (SAWT) as against the purported Sales per Income Tax Return (ITR) disclosed a discrepancy of ₱4,141,419.27, which were not subjected to income tax. Hence, petitioner

93 *Reviewer's Evaluation on the Results of Reconsideration*, BIR Records (Exhibit "R-18"), at p. 436.
94 Total is actually ₱203,022.52.
95 *Real vs. Belo*, G.R. No. 146224, January 26, 2007.

was assessed pursuant to the provision of Section 32 of the NIRC of 1997, as amended, computed as follows:[96]

Schedule 2

Sales per SAWT (BIR Form 2307)		
May 2017	₱	8,127,102.38
June 2017		17,074,694.87
August 2017		32,120,408.64
September 2017		7,064,515.26
November 2017		564,105.04
December 2017		46,549,628.10
February 2018		8,685,692.45
March 2018		1,805,955.53
Total Sales per SAWT (BIR Form 2307)	₱	121,992,102.27
Less: Sales and Receipts per ITR		117,850,683.00
Undeclared Income	**₱**	**4,141,419.27**

Petitioner argues that the comparison of sales per SAWT versus ITR is inappropriate considering that it records its sales and declares the same for income tax purposes upon the delivery or upon actual sale of the goods to its customers. Some customers, however, only issue the corresponding Creditable Withholding Tax Certificate (BIR Form No. 2307) upon payment of the goods.[97]

Petitioner claims that the assessment made by the BIR from comparing the SAWT versus ITR is inaccurate since there is a timing difference on the declaration of sales for income tax purposes and the utilization of the corresponding creditable withholding tax certificate in the ITR.[98]

Regrettably, petitioner failed to present evidence to show that indeed the ₱4,141,419.27 difference merely arose from the timing difference in its recognition of income as declared in its ITR *vis-à-vis* as contained in the SAWT of its customers. Neither did petitioner prove that the subject discrepancy was reported as income and accordingly subjected to income tax in any other fiscal year. Consequently, this portion of the assessment must be upheld.

96 *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 405.
97 Exhibit "P-11", Docket – Vol. I, at p. 101.
98 Exhibit "P-11", Docket – Vol. I, at p. 101.

c. *<u>Unsupported Expenses – ₱10,471,539.00</u>*

The BIR's audit disclosed that petitioner has not provided supporting documents or evidence to support its expenses amounting to ₱10,471,539.00 in violation of Section 34(A)(1)(b) of the NIRC of 1997, as amended. Hence, the said amount has been disallowed as deduction from petitioner's Gross Income pursuant to the said provision of the law. The unsupported expenses are listed as follow:[99]

Schedule 3:

Service Fee	₱ 6,946,562.00
Interest	1,462,797.00
Retirement benefit expense	723,610.00
Staff Medical	406,630.00
Penalties	350,861.00
Dues and Subscription	532,023.00
Others	49,056.00
Unsupported Expenses	**₱10,471,539.00**

i. *Service fee - ₱6,946,562.00*

Petitioner claims that the service fee of ₱6,946,562.00 refers to management, consultancy and technical services fees paid to its foreign subsidiaries abroad, as follows:[100]

3D Networks Singapore Ltd.	₱	5,340,669.00
Planet One Pte Ltd		1,905,893.00
Fedsoft Philippines Inc.		(300,000.00)
Total	**₱**	**6,946,562.00**

3D Networks Singapore PTE Ltd. and Planet One PTE Ltd. are allegedly foreign affiliates of petitioner. Petitioner further claims that these entities are non-resident foreign corporations (NRFCs), as they were incorporated and are based in Singapore.[101]

Petitioner argues that the service fees charged by the foreign affiliates were supported with debit notes and were duly recorded in the ledger submitted to the BIR.[102]

[99] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 405.
[100] Exhibit "P-11", Docket – Vol. I, at p. 106; Annex "L", BIR Records – Binder, pp. 90 to 95.
[101] Exhibit "P-11", Docket – Vol. I, at p. 106; Annexes "N", "O", and "P", BIR Records – Binder, pp. 98 to 112.
[102] Exhibit "P-11", Docket – Vol. I, at p. 107.

Per examination of the records, the Court cannot ascertain the veracity of petitioner's claim since petitioner did not submit the claimed debit notes, invoices and general ledger related to the unsupported service fee. Hence, this part of assessment shall be sustained.

ii. Interest Expense - ₱1,462,797.00

Petitioner claims that the interest expense amounting to ₱1,462,797.00 pertains to the interest incurred on a loan to 3D Networks International. The loan has a principal amount of ₱82,027,203.85 with an agreed annual interest rate of 2%, which was reflected as loans payable in the balance sheet as of March 31, 2018, and was adequately disclosed under Notes 12 of the Audited Financial Statements (AFS).[103]

Petitioner invokes Section 34(B)(1) of the NIRC of 1997, as amended, which provides that the amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income.[104]

The Court is not convinced.

The loan agreement simply established the existence of a loan. With only this document at hand, the Court cannot ascertain the nature of the assessed interest expense. Likewise, petitioner did not submit any voucher, receipt or ledger from which the Court can verify the fact of assessed unsupported interest expense. Hence, this part of the assessment shall be upheld.

iii. Retirement Benefit Expense - ₱723,610.00

Petitioner claims that the retirement benefit expense is valid and duly supported with an actuarial report from an accredited actuarial company and invokes Section 34(A)(1)(J) of the NIRC of 1997, as amended, which provides that an employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees shall be allowed as a deduction, in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year.[105]

The assessment is improper.

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[103] Exhibit "P-11", Docket – Vol. I, at p. 108; Annex "S", BIR Records – Binder, pp. 137 to 143.
[104] Exhibit "P-11", Docket – Vol. I, at p. 108.
[105] Exhibit "P-11", Docket – Vol. I, at pp. 107 to 108.

The assessed amount of ₱723,610.00 pertains to the accrued retirement benefit cost recognized by the petitioner in its AFS for the FY 2018.

Per Note 18 of the AFS,[106] petitioner has an unfunded, non-contributory defined benefit retirement plan covering its permanent employees. Costs are determined in accordance with the actuarial studies made for the plan using the projected unit credit method. The retirement benefit is solely based on the requirement under RA No. 7641 which is equivalent to one-half month's salary for every year of service, with six months or more service considered as one year. Petitioner's latest actuarial valuation was conducted as of March 31, 2018. The following table shows the reconciliation of the net retirement benefit liability and its components:

		2018		2017
Defined Benefit Obligation, Beg.	₱	2,383,277.00	₱	2,261,724.00
Included in Profit or Loss		723,610.00		694,201.00
Included in Other Comprehensive Income		(901,399.00)		(572,648.00)
Defined Benefit Obligation, End	**₱**	**2,205,488.00**	**₱**	**2,383,277.00**

Accounting for defined benefit plans requires an actuarial valuation using the projected unit credit method. This includes attributing retirement benefit to periods of employee service and making actuarial assumptions. The assessed amount can be established by the Amended PAS 19(R) Actuarial Valuation Report of E.M. Zalamea Actuarial Services, Inc. as of valuation date March 31, 2018.[107] As such, the assessment for unsupported retirement benefit expense should be cancelled.

iv. Staff Medical - ₱406,630.00

Petitioner claims that the subject expense pertains to medical assistance extended to its employees. According to petitioner, the total medical expense of ₱406,629.81 is broken down as follows:[108]

Avega Managed Care, Inc.	₱	393,500.06
Mercury Drug		1,360.99
Medicine Claim by Employees		11,768.76
Total	**₱**	**406,629.81**

Petitioner claims that Avega Managed Care, Inc., its health care provider, provides preventive and out-patient care to its employees based on

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106 BIR Records (Exhibit "R-18), p. 263.
107 Annex "F", BIR Records – Binder, pp. 67 to 81.
108 Exhibit "P-11", Docket – Vol. I, at p. 108.

the Supplement to the Group Corporate Agreement[109] between the petitioner and Avega Managed Care, Inc.[110] It further claims that the above expenses of ₱1,360.99 and ₱11,768.76 are considered *de minimis* benefits since they involve relatively small value and ares provided as a means of promoting the health of its employees.[111]

The Court finds that the assessment must be sustained.

Pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, no deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records, the amount of expense being deducted, and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. Hence, petitioner needs to present sufficient supporting documents to establish the validity of such expense in accordance with Section 34(A)(1)(b) in relation to Section 34(A)(1)(a) of the NIRC of 1997, as amended.

Petitioner, however, failed in this regard. While it was able to present the Supplement to the Group Corporate Agreement[112] between petitioner and Avega Managed Care, Inc. and a snapshot of the general ledger,[113] the purported supporting official receipts or sales invoices from which the claimed expenses were based cannot be found in the records of the case. The Court cannot verify the nature and actual payment of the expenses indicated therein based on the agreement and summary alone.

Thus, for petitioner's failure to present sufficient and convincing evidence to support its claim, the findings of the respondent as to this item of assessment shall be deemed proper. It is well settled that tax assessments by tax examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[114]

v. Penalties - ₱350,861.00

Petitioner claims that this alleged unsupported expense pertains to interest penalties and surcharge for late filing of BIR tax returns.[115]

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[109] Annex "R", BIR Records - Binder, pp. 127 to 136.
[110] Exhibit "P-11", Docket – Vol. I, at p. 108.
[111] Exhibit "P-11", Docket – Vol. I, at p. 108.
[112] Annex "R", BIR Records - Binder, pp. 127 to 136.
[113] Exhibit "P-11", Docket – Vol. I, at pp. 109 to 110.
[114] *Sy Po vs. Honorable Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007.
[115] Exhibit "P-11", Docket – Vol. I, at p. 110.

As have been previously discussed, expenses should be supported by either official receipts or invoices in order to be deductible for the taxable period. In this case, petitioner merely provided a schedule[116] to support such transactions instead of their respective official receipts or invoices, or in this case, the BIR tax returns filed and paid for the penalties.

Consequently, the assessment of BIR should be upheld for petitioner's failure to comply with the substantiation requirements under the NIRC of 1997, as amended.

vi. Dues and Subscriptions - ₱532,023.00

Petitioner claims that the dues and subscriptions amounting to ₱532,023.00 refer to association dues paid to is lessor, Zamcore Realty and Development Corp. Further, its lease agreement requires it to pay monthly association dues to cover for the maintenance, security, and other basic services for the upkeep of the building.[117]

Petitioner invokes Section 34 (A)(1)(a)(iii) of the NIRC of 1997, as amended, which provides that a reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user or possessor, shall be allowed as a deduction from gross income.[118]

The Court is not persuaded.

The lease agreement[119] only shows the obligation of the petitioner to pay monthly association dues, but by itself is not sufficient substantiation. Petitioner should have presented the invoice or receipt from the lessor (or the condominium corporation) from which the Court can verify and ascertain that such association dues or fees were incurred and paid for. Petitioner did not present any additional evidence to prove deductibility of the said amount. Accordingly, the Court finds the ₱532,023.00 disallowance in order.

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116 Exhibit "P-11", Docket – Vol. I, at p. 111.
117 *Id.*
118 *Id.*
119 Annexes "Q1" and "Q2", BIR Records - Binder, pp. 113 to 126.

vii. Others - ₱49,056.00

Petitioner claims that the "others expenses" amounting to ₱49,056.00 refer to miscellaneous expenses consisting of notarial fees, license fees, and other petty expense, which are necessary expenses required for the daily conduct of its business.[120]

The Court is not convinced.

The foregoing expenses cannot be considered as allowable deductions from petitioner's gross income. Apart from its schedule, no other evidence was presented to justify the same. Moreover, the schedule is self-serving, unless corroborated by other supporting documents, which petitioner utterly failed to submit. Hence, there is no way by which the Court can determine petitioner's compliance with the substantiation requirement under the NIRC of 1997, as amended. In fine, the respondent's finding is presumed correct and made in good faith and the taxpayer has the duty to prove otherwise. The disallowance shall, thus, remain for failure to meet the substantiation requirements under Section 34(A)(1)(b) of the NIRC of 1997, as amended.

In summary, the remaining disallowed unsupported expenses amounted to ₱9,747,929.00, computed as follows:

Service Fee	₱	6,946,562.00
Interest		1,462,797.00
Staff Medical		406,630.00
Penalties		350,861.00
Dues and Subscriptions		532,023.00
Others		49,056.00
Unsupported Expenses	**₱**	**9,747,929.00**

d. <u>NOLCO – ₱1,709,790.00,</u>
e. <u>Excess MCIT over NCIT carried over to succeeding period - ₱693,297.18</u>, and
f. <u>Excess credits carried over to succeeding period - ₱4,174,356.82</u>

BIR's investigation disclosed that petitioner's operation showed taxable income instead of net operating loss, amounting to ₱1,709,790.00, as previously claimed in its ITR. The tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997, as amended.[121] m

[120] Exhibit "P-11", Docket – Vol. I, at p. 112.
[121] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 405.

The excess Minimum Corporate Income Tax (MCIT) paid amounting to ₱693,297.18 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 Normal Corporate Income Tax (NCIT) for the three immediately succeeding taxable years in compliance with the provision imposed under Section 27(E)(2) of the NIRC of 1997, as amended.[122]

On the other hand, excess tax credit carried over to the succeeding period in the amount of ₱4,174,356.82 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of the NIRC of 1997, as amended.[123]

The Court finds the disallowance proper.

Petitioner failed to present the subsequent quarterly and annual ITRs to prove that the NOLCO was not deducted from the gross income of the succeeding taxable periods and that the MCIT and excess credits were not carried over and credited by petitioner against its regular corporate income tax. Hence, these disallowances are sustained.

Proceeding therefrom, a re-computation of petitioner's alleged deficiency income tax is shown below:

Taxable Income (Loss) per return			₱ (1,709,790.00)
Add: Adjustments/disallowances			
Disallowed Expenses due to Non-withholding		₱13,333,270.83	
Undeclared Income		4,141,419.27	
Unsupported Expenses		9,747,929.00	27,222,619.10
Taxable Income			₱ 25,512,829.10
Add: Net Operating Loss Carry Over			1,709,790.00
Adjusted Taxable Income			**₱27,222,619.10**
Basic Deficiency Income Tax			₱ 8,166,785.73
Less: Tax Credits/Payments			
Prior Year's Credits		₱2,758,312.00	
Creditable Tax Withheld		2,109,342.00	
Total		₱4,867,654.00	
Less: Adjustments/disallowances			
Excess MCIT over NCIT carried over to succeeding period	₱ 693,297.18		
Excess credits carried forward to succeeding period	4,174,356.82	4,867,654.00	-
Basic Tax Due			**₱8,166,785.73**

[122] *Id.*
[123] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 404.

II. Deficiency VAT

Petitioner was assessed deficiency VAT for FY 2018 in the amount of ₱23,014,717.92, computed as follows:[124]

II. VALUE ADDED TAX			
Taxable sales/receipts per VAT return			₱112,866,059.71
Add: Adjustments/disallowances			
Undeclared Sales (Schedule 4)		₱4,141,415.86	
Unsupported zero-rated sales (Schedule 5)		1,235,641.17	
Receipts Not Subjected to VAT (Schedule 6)		20,822,629.63	26,199,686.66
Taxable sales/receipts as adjusted			₱139,065,746.37
Output Tax Due			₱ 16,687,889.56
Less: Allowable input tax per audit			
Input Tax from current period		₱14,802,589.40	
Input Tax Carried Over From Previous Quarter		12,453,462.23	
Total		27,256,051.63	
Less: Adjustments/disallowances			
Disallowed Input Tax	₱14,802,589.40		
Excess Input Tax Carried Over to Succeeding Period	13,712,017.80	28,514,607.20	(1,258,555.57)
Basic VAT Due			₱17,946,445.14[125]
Add: Interest 12% (01.26.18 to 08.31.20)			5,068,272.78
TOTAL AMOUNT DUE			**₱23,014,717.92**

From the foregoing, the deficiency VAT assessment arose from the following items:

a. Undeclared Sales	₱ 4,141,415.86
b. Unsupported zero-rated sales	1,235,641.17
c. Receipts Not Subjected to VAT	20,822,629.63
d. Disallowed Input Tax	14,802,589.40
e. Excess Input Tax Carried Over to Succeeding Period	13,712,017.80

a. Undeclared Sales – ₱4,141,415.86

The BIR's comparison of the amount of Sales reported in petitioner's SAWT as against the purported Sales per VAT Returns disclosed a discrepancy of ₱4,141,415.86, a clear indication of under declaration of petitioner sales, hence, assessed pursuant to the provision of Sections 105

[124] Exhibit "R-4", BIR Records (Exhibit "R-18"), at p. 410.
[125] Total is actually ₱17,946,445.13.

and 106 of the NIRC of 1997, as amended. The discrepancy of ₱4,141,415.86 is computed as follows:[126]

Schedule 4:

Sales per SAWT (BIR Form 2307)		
May 2017	₱	8,127,102.38
June 2017		17,074,694.87
August 2017		32,120,408.64
September 2017		7,064,515.26
November 2017		564,105.04
December 2017		46,549,628.10
February 2018		8,685,692.45
March 2018		1,805,955.53
Total Sales per SAWT (BIR Form 2307)	₱	121,992,102.27
Less: Sales and Receipts per VAT Returns		117,850,686.41
Undeclared Sales	**₱**	**4,141,415.86**

Petitioner attributes the discrepancy of ₱4,141,415.86 to timing difference.[127] Unfortunately, petitioner failed to present evidence to show that indeed such discrepancy merely arose from the timing difference in its recognition of sales as declared in its VAT returns *vis-à-vis* as contained in the SAWT of its customers. Consequently, this part of the assessment shall be subjected to deficiency VAT.

b. *Unsupported zero-rated sales – ₱1,235,641.17*

The BIR's verification disclosed that petitioner failed to present evidences to substantiate its claims of having zero-rated sales amounting to ₱1,235,641.17, hence, such sales are now subjected to VAT pursuant to Section 105 of the NIRC of 1997, as amended, in relation to Sections 4.106-5 and 4.113-1 of RR No. 16-2005. Unsupported zero-rated sales amounting to ₱1,235,641.17 are listed as follows:[128]

Schedule 5:

AAC OPTICS PHILS INC.	₱169,100.00
BOUNTY FRESH FOOD INC.	10,352.25
CEBU CITY MARRIOT HOTEL	19,524.69
FRONTIER ORTIGAS HOTEL AND RESORT CORP.	69,857.20
MARRIOT HOTEL MANILA	776,060.92
MULTICARE PHARMACEUTICALS PHILIPPINES	13,846.11

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[126] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 404.
[127] Exhibit "P-11", Docket – Vol. I, at pp. 115 to 117.
[128] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 404.

INC.	
PACIFIC SEA BPO SERVICE INC.	176,900.00
Unsupported zero-rated sales	**₱1,235,641.17**

Based on the BIR records, petitioner provided PEZA Certificates[129] to prove that its sales were in fact made to PEZA registered enterprises, hence, the BIR adjusted the unsupported zero-rated sales to ₱113,580.25, as follows:[130]

Schedule 2:

Unsupported zero-rated sales per FLD/FAN		₱1,235,641.17
Less: Adjustments		
AAC Optics Phils Inc.	₱169,100.00	
Marriot Hotel Manila	776,060.92	
Pacific Sea BPO Services Inc.	176,900.00	1,122,060.92
Unsupported zero-rated sales per Reconsideration		**₱113,580.25**

Petitioner, however, failed to submit supporting documents for the remaining disallowed zero-rated sales amounting to ₱113,580.25. Hence, the assessed unsupported zero-rated sales shall be reduced to ₱113,580.25.

c. *Receipts not subjected to VAT – ₱20,822,629.63*

The BIR compared petitioner's sales per VAT returns and sales per ITR and AFS which disclosed an undeclared taxable income, amounting to ₱20,822,629.63; thus, it was assessed pursuant to Sections 105 and 108 of the NIRC of 1997, as amended. The receipts not subjected to VAT were computed as follows:[131]

Schedule 6:

Sales per ITR	₱	28,270,009.00
Add: Receivable, beg. (₱44,920,888.00/1.12)		40,107,935.71
Subtotal		68,377,944.71
Less: Receivable, end (₱21,599,539.00/1.12)		19,285,302.68
Collections per Audit	₱	49,092,642.04[132]
Sale of Goods per ITR		89,580,674.00
Sales/Receipts Subject to VAT	₱	138,673,316.04
Less: Sales and Receipts per VAT Returns		117,850,686.41
Receipts Not Subjected to VAT	**₱**	**20,822,629.63**

[129] Annexes "G", "H", and "I", BIR Records – Binder, pp. 82 to 85.

[130] *Reviewer's Evaluation on the Results of Reconsideration*, BIR Records (Exhibit "R-18"), pp. 434 to 435.

[131] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 403.

[132] Total is actually ₱49,092,642.03.

Petitioner claims that the BIR construed it as being engaged in the service industry and subjected its gross receipts to VAT. Petitioner further avers that it is into information and communication technology and its business involves the selling of equipment, hardware and software; hence, it issues VAT sales invoice to its customers at the time of sale while it issues collection receipt upon receipt of payments from its customers.[133]

Petitioner states that, based on Revenue Memorandum Circular No. 22-06, sale of goods shall accrue upon the consummation of sales, regardless of whether or not the consideration was actually received. Moreover, there is no discrepancy in the sales declared per AFS/ITR *vis-à-vis* sales declared per VAT returns:[134]

Sales declared per AFS/ITR			₱	117,850,683.00[135]
Sales declared per VAT Returns				
VATable Sales	₱	112,866,059.00		
Zero Rated Sales		4,984,626.00		117,850,685.00[136]
Discrepancy			₱	**(2.00)**[137]

In this instance, the Court agrees with petitioner. The BIR incorrectly presumed that all collections or receipts of the petitioner are subject to VAT, without due consideration of the nature of petitioner's business. Hence, the assessment is invalid and erroneous.

Prior to the implementation of the Ease of Paying Taxes (EOPT) Act,[138] the general rule was that VAT on sale of goods or properties was levied, assessed, and collected based on the gross selling price or gross value in money of the goods or properties sold. In contrast, VAT on services was levied, assessed, and collected based on gross receipts derived from services rendered.

In this case, the BIR failed to properly distinguish between sales of goods and services, and instead imposed VAT on all collections/receipts indiscriminately. Such treatment is contrary to prevailing tax laws and regulations at the time. Accordingly, the subject assessment shall be cancelled.

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[133] Exhibit "P-11", Docket – Vol. I, at p. 119.
[134] Exhibit "P-11", Docket – Vol. I, at pp. 119 to 120.
[135] *Statement of Comprehensive Income*, BIR Records (Exhibit "R-18"), p. 207; Schedule 1, Lines 1, 2 and 6, BIR Records (Exhibit "R-18"), p. 298.
[136] ₱117,850,686.41 per BIR Records (Exhibit "R-18"), p. 353.
[137] *Rounding-Off Differences.*
[138] Republic Act No. 11976, took effect on January 22, 2024.

d. <u>Disallowed Input Tax – ₱14,802,589.40</u>

The BIR's verification disclosed that the purchases which are the sources of input tax claimed during the year did not conform with the invoicing requirements required by RR No. 16-2005. Respondent states that the official receipts/sales invoices presented during the conduct of its investigation did not show the complete information required, hence, input taxes amounting to ₱14,802,589.40 have been disallowed in accordance with the provision of the said RR in relation to Section 110 of the NIRC of 1997, as amended, in relation to Sections 113 and 237 of the same Code.[139]

Petitioner asserts that the BIR did not provide the composition and breakdown of the disallowed input tax of ₱14,802,589.40 and, therefore, the assessment is null and void.[140]

However, upon examination of the records provided by the respondent, the Court determined that the ₱14,802,589.40[141] disallowance arose from the purchases claimed by petitioner in its summary list of purchases, summarized as follows:

2017 April to June[142]	₱	7,408,132.54
2017 July to September[143]		26,029,002.93
2017 October to December[144]		81,597,784.13
2018 January to March[145]		8,319,102.16
Total Purchases reported per SLP	**₱**	**123,354,021.76**
Total Input VAT	**₱**	**14,802,482.61**[146]

Petitioner's contention that the assessment is baseless does not hold water. Respondent only based its assessment on the documents provided by the petitioner as seen in the above table. Petitioner did not even exhaust all its means to substantiate the disallowed input tax and directly claims the nullity of the assessment. Since petitioner failed to refute the assessed item, petitioner's defenses were not duly proven or have remain unsubstantiated. Thus, this part of assessment shall be retained.

e. <u>Excess Input Tax Carried Over to Succeeding Period – ₱13,712,017.80</u>

139 *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 403.
140 Exhibit "P-11", Docket – Vol. I, at p. 120.
141 With only ₱106.79 difference.
142 BIR Records (Exhibit "R-18"), pp. 182 to 184.
143 BIR Records (Exhibit "R-18"), pp. 177 to 181.
144 BIR Records (Exhibit "R-18"), pp. 173 to 176.
145 BIR Records (Exhibit "R-18"), pp. 169 to 171.
146 ₱123,354,021.76 multiplied by 12%.

The BIR disallowed the excess input tax amounting to ₱13,712,017.80 by not applying it against the output tax in computing deficiency VAT since it shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the NIRC of 1997, as amended.[147]

Notwithstanding that there is an accumulated and excess input VAT of ₱13,712,017.80 by the 4th quarter of FY 2018,[148] petitioner failed to prove that such excess input VAT has not been applied against its output VAT liability in the subsequent periods. Hence, the deduction made by the BIR is also proper.

In view of the foregoing discussions, the computation for deficiency VAT for FY 2018 is as follows:

Taxable sales/receipts per VAT return				₱112,866,059.71
Add:	Adjustments/disallowances			
	Undeclared Sales		₱4,141,415.86	
	Unsupported zero-rated sales		113,580.25	4,254,996.11
Taxable sales/receipts as adjusted				**₱117,121,055.82**
Output Tax				₱14,054,526.70
Less:	Input tax from current period		₱14,802,589.40	
	Input tax Carried Over From Previous Quarter		12,453,462.23	
	BIR adjustment		17,377.78[149]	
	Total		₱27,273,429.41	
	Less: Adjustments/disallowance			
	Disallowed Input Tax	₱14,802,589.40		
	Excess Input Tax Carried Over to Succeeding Period	13,712,017.80	28,514,607.20	(1,241,177.79)
Basic VAT Due				**₱15,295,704.49**

III. Deficiency EWT

Finding that petitioner failed to withhold/remit the corresponding withholding tax due on income payments previously disallowed as deductions from gross income, respondent assessed petitioner of deficiency EWT for FY 2018 in the amount of ₱547,591.45, pursuant to Section 2.57.2 of RR No. 2-98, as amended, computed as follows:[150]

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[147] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 403.

[148] BIR Records (Exhibit "R-18"), p. 353.

[149] *Based on the Respondent's Evaluation, the Petitioner paid ₱17,377.78, hence net creditable input taxes were adjusted.* BIR Records (Exhibit "R-18"), p. 430; Annex "J", BIR Records – Binder, pp. 86 to 87.

[150] Exhibit "R-4", BIR Records (Exhibit "R-18"), at pp. 406 and 410.

Basic Tax Due (Schedule 1)		₱ 407,239.42
Add: Basic Tax Still Due for late filing of returns (Schedule 7)		19,217.55
Total Basic Tax Due		426,456.97
Add: Interest 20% (07.13.17 to 12.31.17) (₱19,217.55)	₱ 1,811.19	
Interest 12% (01.01.18 to 08.31.20) (₱19,217.55)	2,306.11	
Interest 12% (04.11.18 to 08.31.20) (₱407,239.42)	117,017.18	121,134.47[151]
TOTAL AMOUNT DUE		**₱547,591.45**

a. *Disallowed Expenses due to non-withholding – ₱407,239.42*

Following the findings in the **I. Deficiency Income Tax** under a. Disallowed Expenses due to non-withholding – *₱23,458,678.43*, the disallowed expenses due to non-withholding were reduced to ₱13,333,270.83. Hence, the deficiency EWT shall also be reduced to the amount of ₱203,022.51, to reiterate:[152]

Income Payments Subject to EWT	**Per ITR/AFS**	**Per 1601-E**	**Disallowed Expenses**	**EWT Rates**	**EWT Due**
Purchase of Goods	₱88,076,085.67	₱ 76,983,523.00	₱ 11,092,562.67	1%	₱110,925.63
Purchase of Services/Contractors					
Domestic Purchases - services	₱35,278,825.98	33,101,587.72	2,177,238.26	2%	43,544.77
Rentals					
Prepayments (Note 7)	₱ 844,103.00				
Direct Charges-Rental	1,210,904.00				
Rental	2,689,797.00				
Subtotal	₱ 4,744,804.00	₱ 3,900,700.60	844,103.40	5%	42,205.17
Commissions	2,316,666.00	2,295,160.80	21,505.20	10%	2,150.52
Professional Fees	638,097.00	596,132.70	41,964.30	10%	4,196.43
Subtotal	₱131,054,478.65	₱116,877,104.82	₱ 14,177,373.83		**₱203,022.51**
Less: Prepayments (Note 7)			844,103.00		
Total			**₱13,333,270.83**		

b. *Basic Tax Still Due for late filing of returns – ₱19,217.55*

The BIR's verification disclose that petitioner belatedly filed certain returns in relation to RR No. 26-2002,[153] which provides for the staggered

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151 Total is actually ₱121,134.48.

152 *Reviewer's Evaluation on the Results of Reconsideration*, BIR Records (Exhibit "R-18"), at p. 436.

153 SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification, December 5, 2002.

filing of returns for taxpayer enrolled in the electronic filing and payment system (eFPS) based on industry classification. The BIR stated that the due date for filing was July 11, 2017, and that petitioner filed its June 2017 BIR Form No. 1601-E only on July 12, 2017. Hence, the BIR avers that petitioner remains liable for deficiency EWT in the amount of ₱19,217.55, pursuant to Section 79(A) of the NIRC of 1997, as amended, and implemented under Section 2.78 of RR No. 2-98, as amended. The basic tax still due is computed as follows:[154]

Schedule 7:

		June
Basic Tax Due for June Return	₱	76,702.09
Add: Surcharge		19,175.52
Interest 20% (07.12.17)		42.03
Total	₱	95,919.64
Less: Payments		76,702.09
Basic Tax Still Due	**₱**	**19,217.55**

Petitioner claims that it is engaged in information and technology activities classified under Group C, specifically under the category of "Computer & Related Activities" in the eFPS. Hence, its filing on July 13, 2017 was not late.[155]

The petitioner's primary line of business is "Other Wholesaling" (PSIC 46900 Non-specialized wholesale trade), as expressly indicated in its BIR Certificate of Registration (BIR Form No. 2303).[156] Pursuant to RR No. 26-2002, taxpayers enrolled in the eFPS are classified according to their registered primary line of business. Taxpayers engaged in wholesale trade activities, including those classified under "Other Wholesaling," fall under Business Industry Group C. Under the same regulation, eFPS taxpayers classified under Group C are allowed to file their monthly withholding tax returns on or before the 13th day of the month following the applicable taxable period.

Records clearly show that petitioner filed its June 2017 BIR Form No. 1601-E on July 12, 2017,[157] which is well within the prescribed due date. Accordingly, no deficiency EWT may be assessed on this ground.

In view of the foregoing discussions, the basic deficiency EWT for FY 2018 is ₱203,022.51.

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[154] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 403.
[155] Exhibit "P-11", Docket – Vol. I, at p. 126.
[156] Exhibit "P-14", Docket – Vol. I, at p. 136.
[157] BIR Records (Exhibit "R-18"), p. 51.

IV. Deficiency WTC

The BIR verified that there were certain returns which petitioner belatedly filed in relation to RR No. 26-2002, which provides for the staggered filing of returns of taxpayer enrolled in the eFPS based on industry classification. The due date of filing was on June 11, 2017, however, petitioner's May 2017 BIR Form No. 1601-C was filed on June 14, 2017. Hence, petitioner is still liable to pay the deficiency WTC amounting to ₱67,024.77, pursuant to Section 79(A) of the NIRC of 1997, as amended, and as implemented under Section 2.78 of the RR No. 2-98, as amended. Accordingly, the BIR assessed petitioner deficiency WTC in the total amount of ₱93,775.91, computed as follows:[158]

				May
Basic Tax Due			₱	266,347.75
Add: Surcharge				66,586.94
Interest 20% (06.12.17 - 06.14.17)				437.83
Total			₱	333,372.52
Less: Payments				266,347.75
Basic Tax Still Due			**₱**	**67,024.77**
Add: Interest 20% (06.15.17 to 12.31.17)	₱	7,492.08		
Interest 12% (01.01.18 to 08.31.20)		19,259.06		26,751.15[159]
TOTAL AMOUNT PAYABLE			**₱**	**93,775.91**

Petitioner voluntarily paid for the assessed deficiency WTC. Hence, this part of assessment is cancelled.[160]

V. Deficiency FWT, and
VI. Deficiency FWVAT

The deficiency FWT and FWVAT include basic tax due, surcharges and interests in the amounts of ₱3,342,134.25 and ₱1,336,853.70, respectively, computed as follows:[161]

V. FINAL WITHHOLDING TAX				
Basic Tax Due (Schedule 9)			₱	2,173,968.60
Add: Surcharge (25%)	₱	543,492.15		
Interest 12% (04.11.18 to 08.31.20)		624,673.50		1,168,165.65
TOTAL AMOUNT DUE			₱	**3,342,134.25**

[158] Exhibit "R-4", BIR Records (Exhibit "R-18"), at pp. 402 and 410.
[159] Total is actually ₱26,751.14.
[160] *Reviewer's Evaluation on the Results of Reconsideration*, BIR Records (Exhibit "R-18"), at p. 434; Annex "K", BIR Records – Binder, pp. 88 to 89.
[161] Exhibit "R-4", BIR Records (Exhibit "R-18"), at p. 410.

VI. FINAL WITHHOLDING VAT				
Basic Tax Due (Schedule 10)			₱	869,587.44
Add: Surcharge (25%)	₱	217,396.86		
Interest 12% (04.11.18 to 08.31.20)		249,869.40		467,266.26
TOTAL AMOUNT DUE			**₱**	**1,336,853.70**

The BIR's verification disclosed that petitioner failed to withhold and remit the FWT on its income payments to NRFCs. Hence, petitioner was assessed deficiency FWT in the amount of ₱2,173,968.60, pursuant to Section 2.57.1 of RR No. 2-98, as amended, and Section 4.114(A)(3) of RR No. 2-98, as amended by Section 7 of RR No. 14-02. The deficiency FWT as reflected in the *Details of Discrepancies* is as follows:[162]

Schedule 9:

Regional service expenses - 3D Networks Group	₱	5,340,669.00
Regional service expenses - Planet One Pte Ltd		1,905,893.00
Total Services by NRFC	₱	7,246,562.00
Multiplied by: Final Withholding Tax Rate		30%
Basic Final Withholding Tax Due	**₱**	**2,173,968.60**

Likewise, based on the *Details of Discrepancies*, the income payments made to NRFCs are also subject to FWVAT in the amount of ₱869,587.44, pursuant to Section 4.114(A)(3) of RR No. 2-98, as amended by Section 7 of RR No. 14-02, computed as follows:[163]

Schedule 10:

Total Services by NRFC (Schedule 8)	₱	7,246,562.00
Multiplied by: Final Withholding of VAT Rate		12%
Basic Final Withholding of Value Added Tax Due	**₱**	**869,587.44**

To support its claim, petitioner submitted a memorandum that governs the provision of management, consultancy and technical services.[164]

Petitioner alleges that it should not be held liable for FWT and FWVAT on its regional service expenses which refers to management, consultancy and technical services fees paid to its foreign affiliates abroad. According to the petitioner, the services rendered include Human Resource matters; Legal matters; Information Support and business enquiry; Business Management and Marketing; Financial, Accounting, Treasury and Logistic

[162] *Details of Discrepancies*, Exhibit "R-4", BIR Records (Exhibit "R-18"), p. 402.
[163] *Id.*
[164] Annex "L", BIR Records – Binder, pp. 90 to 95.

matters; Technical Consulting Services; and, Customer Support Services. It asserts that the regional expenses were performed and conducted abroad.[165]

Petitioner avers that its foreign affiliates, 3D Networks International PTE Ltd and Planet One PTE Ltd., were incorporated and based in Singapore and were not registered in the Philippine Securities and Exchange Commission (SEC) to conduct business in the Philippines.[166]

After a thorough analysis of the evidence presented by petitioner, the Court is not convinced that the services performed by these foreign affiliates were all rendered abroad. The Court has no way of determining what actually were the services provided by "3D Networks Group" and "Planet One PTE Ltd." and where they were rendered since the memorandum failed to state the location and administration of these services.

Moreover, the Court is not convinced with petitioner's argument that the income generated by "3D Networks Group" and "Planet One PTE Ltd." from the regional services it rendered to petitioner are not subject to income or withholding tax because "3D Networks Group" and "Planet One PTE Ltd." are NRFC not registered with the Philippine SEC to conduct business in the Philippines. Petitioner did not even submit any Certificate of Non-Registration of Company issued by the Philippine SEC to prove that these foreign affiliates have no registered business in the Philippines. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[167]

Consequently, the assessed basic deficiency FWT and FWVAT in the amounts of ₱2,173,968.60 and ₱869,587.44, respectively, shall be upheld.

VII. Deficiency DST

The BIR's verification disclosed that petitioner failed to pay the DST of One Peso (₱1.00) for each Two Hundred Pesos (₱200.00), or fractional part thereof, imposed on its loan receivables, amounting to ₱184,518.00. Hence, the petitioner was assessed deficiency DST for FY 2018 in the total amount of ₱283,970.67, pursuant to Section 179 of the NIRC of 1997, as amended. Respondent's computation of the deficiency DST is shown below:[168]

Loan Receivables	₱	36,903,553.00
DST Rate		P1.00/P200.00

[165] Exhibit "P-11", Docket – Vol. I, at p. 127.
[166] *Id.*; Annexes "N", "O", and "P", BIR Records – Binder, pp. 98 to 112.
[167] *Castillo vs. Republic of the Philippines, et al.*, G.R. No. 214064, February 6, 2017.
[168] Exhibit "R-4", BIR Records (Exhibit "R-18"), at pp. 401 to 402 and 410.

Basic Tax Due (Schedule 11)		₱	**184,518.00**
Add: Surcharge (25%)	₱ 46,129.50		
Interest 12% (04.06.18 to 08.31.20)	53,323.17		99,452.67
TOTAL AMOUNT DUE		**₱**	**283,970.67**

Petitioner admits that it failed to pay the above DST and paid the total amount payable; hence, this part of assessment is cancelled accordingly.[169]

VIII. Compromise Penalty

Petitioner is not liable for the compromise penalty imposed.

In lieu of instituting criminal action, respondent is imposing against petitioner the following compromise penalties:[170]

Nature of Violation	Violated Provision	Amount Due
Failure to file and pay final withholding tax	Section 2.57.1, RR 2-1998	₱ 40,000.00
Failure to file and pay final withholding of VAT	RR 16-2005, Section 106/108	30,000.00
Failure to file and pay documentary stamp tax	Section 179 & 200, NIRC	20,0000.00
Total		**₱90,000.00**

Such imposition, however, cannot be sustained. Under RMO No. 7-2015,[171] "compromise penalties are only amounts suggested in settlement of criminal liability, and may not, therefore, be imposed or exacted on the taxpayer" in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[172] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[173]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.**

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169 *Reviewer's Evaluation on the Results of Reconsideration*, BIR Records (Exhibit "R-18"), p. 434; Annex "M", BIR Records – Binder, pp. 96 to 97.

170 Exhibit "P-10-i", Docket – Vol. I, at pp. 83 to 84; Exhibit "R-4", BIR Records (Exhibit "R-18"), pp. 407 to 408.

171 SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code, January 22, 2015.

172 *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

173 *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

Accordingly, respondent's assessments against petitioner for deficiency withholding tax on compensation and documentary stamp tax in the amounts of ₱93,775.91 and ₱283,970.67, respectively, and imposition of compromise penalty in the amount of ₱90,000.00 for fiscal year (FY) ending March 31, 2018 are **CANCELLED** and **SET ASIDE**. However, the assessments for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT) and final withholding of VAT (FWVAT) for FY ending March 31, 2018 are **UPHELD WITH MODIFICATIONS**.

Consequently, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱40,586,548.20**, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income tax	VAT	EWT	FWT	FWVAT	TOTAL
Basic Tax	₱8,166,785.73	₱15,295,704.49	₱203,022.51	₱2,173,968.60	₱869,587.44	₱26,709,068.77
Add: 25% Surcharge	2,041,696.43	3,823,926.12	50,755.63	543,492.15	217,396.86	6,677,267.19
Add: 12% Deficiency Interest						
Income tax: From July 17, 2018 to Aug. 17, 2020 [₱8,166,785.73 x 12% x 763/365 days]	2,048,632.61					2,048,632.61
VAT: From Apr. 26, 2018 to Aug. 17, 2020 [₱15,295,704.49 x 12% x 845/365 days]		4,249,272.43				4,249,272.43
EWT: From May 1, 2018 to Aug. 17, 2020 [₱203,022.51 x 12% x 840/365 days]			56,067.59			56,067.59
FWT: From May 1, 2018 to Aug. 17, 2020 [₱2,173,968.60 x 12% x 840/365 days]				600,372.70		600,372.70
FWVAT: From Apr. 11, 2018 to Aug. 17, 2020 [₱869,587.44 x 12% x 860/365 days]					245,866.91	245,866.91
Total Amount Due – August 17, 2020[174]	**₱12,257,114.77**	**₱23,368,903.04**	**₱309,845.73**	**₱3,317,833.45**	**₱1,332,851.21**	**₱40,586,548.20**

y

[174] Exhibits "R-5" to "R-12", BIR Records (Exhibit "R-18"), p. 408.

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total unpaid deficiency taxes due with the amount of ₱40,586,548.20 as of August 17, 2020, or equivalent to ₱13,343.52[175] per day, computed from August 18, 2020 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as TRAIN, and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distrain any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
W/ due respect, pls see DO

[175] ₱40,586,548.20 x 12% / 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

3D NETWORKS PHILIPPINES, INC,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10981

Promulgated:

FEB 11 2026 3:40 p.m.

x - x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

The present Decision upholds the deficiency income tax, VAT, EWT, FWT, and FWVAT assessments, with modifications, and cancels the deficiency WTC and DST assessments for the FY ending March 31, 2018. In ruling so, it held that the WDL was not prematurely issued, finding the collection remedy resorted to by respondent valid.

I respectfully disagree with my esteemed colleague's disposition on two points:

1.) The WDL was prematurely issued; and

2.) The merits of the deficiency tax assessments are not yet ripe for the Court's determination.

The WDL was prematurely issued.

I respectfully disagree with my esteemed colleague's finding that the WDL was not prematurely issued despite the fact that the subject deficiency tax assessments were not yet delinquent.

The Decision holds that in case of petitioner's failure to pay the assessed deficiency taxes per the FLD/Assessment Notices within the period stated therein, the BIR or respondent may already begin to collect the said assessed amount—notwithstanding the pendency of the protest with respondent.

However, this goes against the ruling in *Commissioner of Internal Revenue vs. Stradcom Corporation*,[1] where it was held that before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become delinquent. As to delinquency, the Court, citing *Revenue Regulations (RR) No. 17-86*, held that this refers to taxes due from a taxpayer who failed to pay the same within the time prescribed for its payment, that arises from (1) a self-assessed tax, whether or not a tax return was filed, or (2) *a deficiency assessment issued by the BIR which has become final and executory*.

Meanwhile, *Revenue Memorandum Order ("RMO") No. 011-14, dated February 7, 2014*,[2] provides for the instances when a deficiency tax assessment becomes final and executory, to wit:

> b. deficiency assessment issued by the Bureau, which became final and executory due to any of the following applicable instances:
>
> b.1 Failure to file a request for reinvestigation/reconsideration within thirty (30) days from receipt of the Final Assessment Notice (FAN);
>
> b.2 Failure to submit documents in support of the request for reinvestigation within sixty (60) days from filing of the request;
>
> b.3 Failure to appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the decision denying the request for reinvestigation/reconsideration or in case of inaction on the part of the Bureau, from the lapse of the one hundred eighty (180) days from the submission of the required documents;
>
> b.4 Failure to appeal CTA's decision on the case with the higher court as a result of which the decision became final and executory; and
>
> b.5 Decision/Resolution by the CTA/Supreme Court (SC) in favor of the BIR which became final and executory.

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1 G.R. No. 255520, April 21, 2025.

2 Policies, Guidelines and Procedures in the Periodic Clean-Up of Accounts Receivable/Delinquent Accounts.

In this case, there was no failure on the part of petitioner to file a protest, by way of a request for reconsideration, within 30 days from receipt of the FLD/Assessment Notice. This renders the subject deficiency tax assessment not final and executory, and, therefore, not yet delinquent.

While an FDDA was issued on petitioner's protest, the same was rendered void due to improper service. Considering that, essentially, there was no FDDA issued here, petitioner's protest against the FLD/Assessment Notice still remained pending. The subject assessment has consequently not attained finality, and the assessed deficiency taxes have not yet become delinquent.

There being no delinquent taxes in this case, respondent was not yet authorized to initiate any summary collection remedies against petitioner. The WDL was prematurely issued.

The merits of the deficiency tax assessments are not yet ripe for the Court's determination.

At the outset, the prayer of petitioner is for the Court to declare the WDL as null and void. Notably, it did not seek for the consequent cancellation of the deficiency tax assessment upon which the WDL was based. To my mind, what petitioner essentially brought forth before the Court is only to rule upon the validity of the collection remedy resorted to by respondent and not the assessment itself.

It is true that the lone issue stipulated in this case is to determine whether petitioner is liable for deficiency income tax, VAT, EWT, FWT, FWVAT and compromise penalty. Despite such, I find it improper for the Court to rule on its merits considering that petitioner is still essentially waiting for respondent's decision on the disputes it raised against the deficiency tax assessments against it. On this respect, there is yet no decision on a disputed assessment which is appealable before the Court under *Section 7(a)(1)*[3] *of Republic Act No. 9282* ("*the CTA Law*"). Thus, as far as the deficiency tax assessment is concerned, the CTA has no jurisdiction over the same. It would be an error for the Court to rule upon its merits even if the issue was stipulated by the parties. ✓

[3] SEC. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue

On the other hand, there was a prematurely issued WDL, which can properly be the subject of an appeal before the Court based on the same *Section 7(a)(1)*, under the term "other matters", as already established by jurisprudence.[4]

The *collection efforts*, however, as embodied by the assailed WDL, are a different matter altogether. Indeed, the present Petition calls for the voiding of the WDL only, not of the FLD/Assessment Notice in general. To my mind, the fact that in praying for the nullification of the WDL only, petitioner acknowledges the proper process of disputing assessments under *RR No. 12-99, as amended by RR No. 18-13,* and reserves its right to choose which remedy to avail of once the FDDA has been properly served to it

As *RR No. 12-99, as amended by RR No. 18-13*, provides, if the taxpayer's protest is denied, in whole or in part, by respondent's duly authorized representative, the taxpayer may *either*: (1) appeal to the CTA within 30 days from the date of receipt of the decision on the disputed assessment; or (2) elevate his protest through request for reconsideration to respondent within 30 days from date of receipt of the said decision.

To delve on the merits of the assessments at this point would effectively pre-empt petitioner in choosing which remedy to avail of. Meanwhile, the Court cannot simply assume that, by stipulating on the issue on the validity of the assessment, petitioner-taxpayer herein chooses to avail of the first remedy as provided under *RR No. 12-99, as amended*, as, in doing so, the Court would erroneously assume jurisdiction over an assessment which is not yet ripe for determination.

Accordingly, I **VOTE** to **GRANT** the Petition for Review and declare the WDL No. RR8A-WDL-2022-08-442 issued against petitioner's alleged deficiency tax assessments for the FY ending March 31, 2018 as **NULL** and **VOID**. Consequently, respondent and his authorized representatives must be ordered to **CEASE** and **DESIST** from enforcing any collection measures against petitioner while the disputed deficiency tax assessments had not yet become final and executory.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[4] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, *Commissioner of Internal Revenue v. Transfield Philippines, Inc.*, G.R. No. 211449, January 16, 2019, and *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, September 16, 2020.