REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

THE TABLE GROUP INC., represented by **MR. WALDEN CHU**, Petitioner,	CTA Case No. **11091**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: NOV 11 2025 ; 3:51 PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review with Urgent Motion to Suspend Collection of Taxes[1] filed by petitioner - The Table Group Inc. (**petitioner**), as represented by Mr. Walden Chu (**Chu**), pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised

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1 Filed on 27 February 2023, Division Docket, Volume I, pp. 7-34.

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

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Rules of the Court of Tax Appeals (**RRCTA**). The petition assails respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment dated 26 January 2023[4] (**FDDA**), demanding the payment of petitioner's supposed deficiency taxes amounting to ₱834,707,050.26, comprised of income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), final withholding VAT (**FWVAT**), documentary stamp tax (**DST**), registration fee, capital gains tax (**CGT**) and compromise penalty for the taxable year (**TY**) ended 31 December 2018. The breakdown of the alleged deficiency taxes is as follows:[5]

Tax Type/Fee	**Basic**	**Interest**	**Compromise Penalty**	**Total**
IT	₱246,883,670.58	₱119,721,670.39	-	₱366,605,340.97
VAT	88,196,445.97	45,088,922.79	-	133,285,368.76
EWT	303,200.06	358,474.19	-	661,674.25
FWVAT	1,166,067.02	601,882.26	-	1,767,949.28
DST	29,275,162.50	22,477,710.39	-	51,752,872.89
Registration fee	32,500.00	16,550.96	-	49,050.96
CGT	152,220,410.00	115,875,180.60	-	268,095,590.60
Compromise Penalty	-	-	₱12,489,202.55	12,489,202.55
Total				**₱834,707,050.26**

PARTIES OF THE CASE

Petitioner is a corporation duly organized under the laws of the Philippines with principal office address at Suite 1005, The Infinity Tower, 26th St., Bo. Fort Bonifacio, Fourth District, Taguig City.[6] It may be served with court orders and processes through its counsel of record, Campos Canobas Sy Selva Ligon Dato, with office address at West Tower 2106A, Tektite Towers, Exchange Road, Ortigas Center, Pasig City.[7] It is engaged in the manufacture and sale of all kinds of coffee, tea,

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(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 Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-1" / "R-11", BIR Records, pp. 725-731-A.

5 Summarized from the Final Decision on Disputed Assessment, id.

6 Paragraph 1, The Parties, Petition for Review, supra at note 1, p. 7.

7 Par. 2, id.

cocoa and other food and beverages. It also runs and maintains restaurants, coffee shops, pastry shops, refreshment parlors and other establishments serving different food and beverages. Additionally, it is engaged in the servicing, distribution and catering of all kinds of coffee, tea, cocoa and other food and beverages to different food chain businesses, including but not limited to cafes, restaurants, and convenience stores.[8]

On the other hand, respondent CIR is the head of the Bureau of Internal Revenue (**BIR**) who is tasked, among others, to collect all national internal revenue taxes, to refund taxes, fees or other charges, and to decide on disputed assessments and the penalties imposed thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended.[9] Respondent may be served with summons and other court processes at the BIR Litigation Division, Room 703, BIR Building, Diliman, Quezon City.[10]

FACTS OF THE CASE

On 29 July 2019, petitioner received Letter of Authority (**LOA**) No. LOA-125-2019-00000324/eLA201700018179[11], dated 09 July 2019, authorizing Revenue Officers (**ROs**) Ever San Pedro **(San Pedro),** Cheryl Arbues (**Arbues**) and Group Supervisor (**GS**) Ma. Daisy Dajao (**Dajao**) of Regular Large Taxpayer (**LT**) Audit Division 2 to examine/audit petitioner's internal revenue taxes for the period 01 January 2018 to 31 December 2018, or TY 2018.[12]

Relative to the LOA, petitioner received the "First Notice for the Presentation of Books of Accounts and other Accounting Records" dated 29 August 2019[13] (**First Notice**) on 24 October 2019. Thereafter, on 19 December 2019, it received the "Second and Final Notice for Presentation of Books of Accounts and other Accounting Records" dated 16 December 2019[14] (**Final Notice**).

[8] See Primary Purpose, Amended Articles of Incorporation, BIR Records, p. 66.

[9] Par. 1, Summary of Admitted and Stipulated Facts, Joint Stipulation of Facts & Issues (**JSFI**), Division Docket, Volume II, p. 532.

[10] Id.

[11] Exhibit "P-13" / "R-1", BIR Records, p. 1.

[12] Id.

[13] Exhibit "R-2", id., pp. 5-6.

[14] Exhibit "R-3", id., p. 4.

On 20 August 2021[15], petitioner also received the Notice of Discrepancy[16] (**NOD**) dated 16 August 2021 with Details of Discrepancies[17] which contained respondent's initial deficiency assessments against it in the amount of ₱792,953,018.76.

In the *interim* or on 14 October 2021, petitioner (through its representative, Minerva Valencia-Cornelio [**Cornelio**]) and respondent (through GS Dajao) executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC[18] (**waiver**) which extended the period of assessment until 31 December 2022.

On 16 November 2021, petitioner filed its Reply to the NOD[19] where it contested the deficiency tax assessments. In response thereto, respondent issued the Preliminary Assessment Notice (**PAN**) Part I[20] and PART II[21] both dated 23 February 2022, with Details of Discrepancies.[22] The PAN retained the basic tax assessments and adjusted the penalty interests, resulting thus in an increase in the alleged deficiency taxes amounting to ₱890,415,523.21.[23] Petitioner received the PAN on 24 February 2022.[24]

On 18 March 2022, petitioner filed its Reply to the PAN and reiterated its arguments (as stated in its Reply to the NOD).[25] It declared that: (1) some items may have resulted from timing differences; (2) the undeclared items were duly accounted for and reported; and (3) other tax assessments are contrary to law and prevailing BIR issuances.

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15 Receipt date is based on respondent's allegation made on Memorandum dated 31 January 2022, Exhibit "R-6", id., p. 629.
16 Exhibit "P-2" / "R-4", id., pp. 541-542.
17 Id., pp. 535-540.
18 Id., p. 2A.
19 Exhibit "P-3", id., pp. 570A-570E.
20 Exhibit "P-4" / "R-7", id., pp. 614-615A.
21 Id., pp. 612-613.
22 Exhibit "R-7-1", id., pp. 608-611.
23 Total amount lifted from the last par. of the Memorandum dated 31 January 2022, Exhibit "R-6", p. 624.
24 See written notations in Exhibit "P-4" / "R-7", supra at note 20, p. 615A; and id., p. 613.
25 Exhibit "P-5", id., pp. 640-643. Although the document states that it is a response to the Notice of Discrepancy (NOD), the amounts contested are from the Preliminary Assessment Notice (PAN) Part I and Part II dated 23 February 2022.

On 20 May 2022, respondent issued the Formal Letter of Demand (**FLD**) Part I[26], FLD Part II[27], Final Assessment Notices[28] (**FANs**) and Details of Discrepancies[29], which petitioner all received on the same day (of 20 May 2022).

In response to the FLD, petitioner filed its Protest[30] on 20 June 2022. There, petitioner requested that, since its supporting documents (to the Protest) are voluminous, the ROs can visit its office to conduct their examination.[31] In a letter dated 21 October 2022, respondent treated the Protest as a request for reinvestigation and granted the same.[32] He or she also requested for a schedule to visit petitioner's office for the examination of petitioner's documents.[33]

Petitioner claimed that respondent deemed that the former failed to reply to the latter's request for office visit[34], thus respondent later on upheld the tax deficiency assessments and issued the FDDA (dated 26 January 2023). According to petitioner, even without checking its supporting documents, respondent proceeded to demand the payment of the alleged deficiency taxes in the total amount of ₱834,707,050.26.[35] Petitioner received the FDDA on 27 January 2023.[36]

PROCEEDINGS BEFORE THE COURT

With its bid for reinvestigation with respondent yielding no result, petitioner filed the instant Petition for Review with an Urgent Motion to Suspend Collection of Taxes (**Urgent Motion**) on 27 February 2023.[37] In the petition, petitioner asked for the Court to cancel the FDDA and issue a temporary restraining order (**TRO**) or writ of preliminary

[26] Exhibit "P-6" / "R-9", id., pp. 691-694.
[27] Id., pp. 689-690.
[28] Exhibit "R-9-2" – "R-9-9", id., pp. 681-688.
[29] Exhibit "R-9-1", id., pp. 677-680.
[30] Exhibit "P-7", id., pp. 717-720.
[31] See last paragraph of the Protest dated 17 June 2022, id., p. 717.
[32] Exhibit "P-8", id., p. 723.
[33] See Letter dated 21 October 2022, id., p. 724.
[34] See second paragraph of the Memorandum addressed to Romeo D. Lumagui, Jr. dated 09 January 2023, id., p. 747.
[35] Supra at note 4.
[36] See Acknowledgment of Receipt, BIR Records, p. 731B,
[37] Supra at note 1.

injunction (**WPI**) against CIR. The case was raffled to the Second Division[38] and was docketed as CTA Case No. 11091.

In the petition, petitioner maintained that the deficiency tax assessments have no legal and factual bases. Being void, respondent should be restrained from collecting the subject taxes against it to prevent grave and irreparable damage.

In view of the Urgent Motion, the Court's Second Division directed respondent to file a comment thereto. Also, while the same was set for hearing, the Court refrained respondent from pursuing any administrative action against petitioner.[39] As for the petition, Summons[40] was issued.

Respondent filed a Comment[41] on the Urgent Motion and opposed the same, arguing that petitioner should not be entitled to the suspension of collection of taxes after it failed to establish that it has legal rights that should be protected from the alleged irreparable damage.

On the scheduled hearing for the Urgent Motion, petitioner, through counsel, informed the Court that it has no witnesses to present. Noting that there was also no collection enforcement from the BIR, petitioner moved to withdraw the Urgent Motion. The Court granted the same and directed respondent to file his or her Answer to the petition.[42]

Subsequently, on 11 April 2023, petitioner filed anew an "Urgent Motion to Suspend Collection for Taxes"[43] (**new Urgent Motion**) following the receipt of the Warrant of Distraint and/or Levy (**WDL**) No. 125-2023-015[44] dated 29 March 2023. The Court again directed respondent to file his or her comment on the new Urgent Motion and

38 Composed of (Ret.) Associate Justice Erlinda P. Uy, as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
39 See Resolution dated 10 March 2023, Division Docket, Volume I, pp. 227-228.
40 Id., p. 229.
41 See Comment (on Petitioner's Petition for Review with Urgent Motion to Suspend Collection of Taxes), id., pp. 230-241.
42 See Order dated 23 March 2023, id., p. 244.
43 Id., pp. 245-247.
44 BIR Records, p. 771.

set the same for hearing.[45] Respondent filed a Comment[46] on the new Urgent Motion which significantly reiterated all the arguments in the earlier comment.[47]

During the hearing for the new Urgent Motion, petitioner presented Oliver F. Modesto (**Modesto**), the Tax and Regulatory Permits' Manager. By way of direct examination, he testified through his Judicial Affidavit[48] and Supplemental Judicial Affidavit.[49]

Modesto testified that: (1) when respondent issued the NOD[50], petitioner, through the Reply[51], requested additional documents to determine the basis of the different tax assessments and ably prepare its defense thereto; (2) without responding to its request, respondent issued the PAN; (3) through its Reply[52] (to the PAN), petitioner again sought for evidence, such as the verified Summary List of Sales (**SLSs**) from third parties (to confirm respondent's alleged findings of discrepancies); (4) notwithstanding petitioner's previous requests, respondent nevertheless issued the FLD[53]; to which petitioner responded to with the filing of its Protest[54]; (5) respondent granted its request for reinvestigation but due to COVID 19 restrictions and infections, respondent's supposed office visits (for document examination) did not prosper[55]; (6) even without an actual reinvestigation, respondent issued the FDDA[56] which, according to petitioner, was riddled with numerous erroneous tax assessments; (7) one of the supposed erroneous assessments was the CGT which petitioner claimed to have already been paid as evidenced by a machine validated deposit slip[57] for a transaction with Sufficient Grace PTE, LTD.[58] (**Sufficient Grace**); (8) the transaction with Sufficient Grace also

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45 See Resolution dated 20 April 2023, Division Docket, Volume I, pp. 252-253.
46 See Comment (on Petitioner's Petition for Review with Urgent Motion to Suspend Collection of Taxes), id., pp. 330-340.
47 Supra at note 41.
48 Exhibit "P-13-Motion for Suspension", Judicial Affidavit of Mr. Oliver F. Modesto, Division Docket, Volume I, pp. 38-45.
49 Exhibit "P-16-Motion for Suspension", Supplemental Judicial Affidavit of Mr. Oliver F. Modesto, id., pp. 261-268.
50 Supra at note 16.
51 Supra at note 19.
52 Supra at note 25.
53 Supra at notes 26, 27, 28 and 29.
54 Supra at note 30.
55 See Annex "I", Division Docket, Volume II, p. 587.
56 Supra at note 4.
57 See Annex "J", Division Docket, Volume II, p. 591.
58 See also Deed of Absolute Sale between Table Group, Inc. and Sufficient Frace PTE. LTD executed on 10 October 2019, Annex "K", id., pp. 593-595.

pertains to the transaction with Southern Capital for which petitioner had undertaken to submit additional documents to prove the relationship of the two (2) Singaporean companies; (9) another erroneous deficiency assessment was for the VAT considering that the buyer in the assessed transaction is a VAT- exempt entity (as reflected on the Certificate of Registration and Tax Exemption[59] [**CRTE**]) awarded to Central Coffee and Tea Solutions (**Central Coffee**); and (**10**) he allegedly caused the preparation of the instant petition filed with this Court.

In addition, Modesto testified that: (1) a WDL was issued against petitioner; (2) should the WDL be enforced against petitioner, both the latter's cash (of ₱4,520,696.00) and total current assets (of ₱581,015,044.00) will be insufficient to satisfy the deficiency tax assessment; (3) petitioner then would have to liquidate a substantial portion of its assets, however, the same poses a "going concern" risk and will disrupt the company's daily operations; and (4) the collection of the alleged deficiency tax assessment will jeopardize petitioner's business interests.[60]

During the cross-examination, Modesto emphasized that although petitioner's total non-current assets of (₱2,288,816,738.00) appear sufficient to cover the alleged deficiency taxes of ₱800 million, it is difficult to convert them to cash. Modesto also relayed that (as of the hearing date), he really had no estimate of petitioner's non-current assets for TY 2022.[61]

On redirect examination, Modesto declared that petitioner could liquidate its assets to pay the alleged deficiency taxes. However, the same poses an adverse risk against the company and may result in the retrenchment of its employees.[62] No re-cross examination was conducted.[63]

After the conduct of the Commissioner's Hearing[64], petitioner filed its Formal Offer of Evidence (**FOE**) relative to its new Urgent

59 See Annex "L", id., p. 596.
60 Supra at note 49.
61 TSN dated 27 April 2023, pp. 8-10.
62 Id., pp. 10-11.
63 Id., p. 11.
64 See Commissioner's Report dated 28 April 2023, Division Docket, Volume I, pp. 346-347.

Motion[65], offering Exhibits "**P-13-motion**" to "**P-16-motion**", and sub-markings thereon.[66]

Prior to the resolution of the FOE and the new Urgent Motion, on 15 May 2023, respondent filed his or her Answer to the petition.[67] There, he or she averred that: (1) the deficiency taxes are based on credible and confirmed third-party sources considering that the information were obtained following the procedures under Revenue Memorandum Order (**RMO**) No. 46-2004[68]; (2) it is proper to disallow the deduction of the CGT from the gross income; (3) the presentation of the customer's CRTE does not automatically prove that the related sales are VAT exempt; (4) the findings on the IT, EWT, FWVAT, DST and CGT deficiency are duly supported with factual and legal bases; (5) petitioner is liable for registration fees and compromise penalty; and (6) respondent could not be faulted in issuing the deficiency tax assessment due to petitioner's failure to provide any supporting documents to the contrary.

Later, after respondent transmitted to the Court the BIR Records (consisting of one [1] folder)[69], the case was set for Pre-Trial Conference on 21 September 2023.[70] During the pendency of the case, pursuant to Administrative Circular No. 01-2023[71], the Court's Divisions were reorganized and the case was transferred to the First Division.[72]

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65 Id., pp. 350-352.

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Exhibit	Description
"P-13-motion"	Judicial Affidavit of Oliver F. Modesto
"P-13-a-motion"	Name and signature of Affiant Oliver F. Modesto on his Judicial Affidavit
"P-14"	Warrant of Distraint and/or Levy
"P-15-motion"	2021 Audited Financial Statements (AFS) of the Table Group Inc.
"P-16-motion"	Supplemental Judicial Affidavit of Oliver F. Modesto
"P-16-a-motion"	Name and signature of Affiant Oliver F. Modesto on his Supplemental Judicial Affidavit

67 Answer (Re: Petition for Review dated 27 February 2023), Division Docket, Volume I, pp. 413-435.

68 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

69 See Compliance filed on 26 May 2023, Division Docket, Volume I, pp. 442-444.

70 See Notice of Pre-Trial Conference, id., pp. 447-448.

71 Reorganizing the Divisions of the Court (following the retirement of then Associate Justice Erlinda P. Uy).

72 See Minute Resolution dated 29 May 2023, Division Docket, Volume I, p. 449.

Subsequently, after respondent filed a Comment[73], the Court, through the First Division[74], admitted the exhibits.[75] Acting on the pending incident, in the Resolution dated 12 July 2023[76], the Court granted petitioner's new Urgent Motion with the directive to post a bond equivalent to the alleged basic deficiency taxes of ₱518,077,456.13.

In resolving to favor petitioner's new Urgent Motion, the Court determined that the subject deficiency taxes are not yet delinquent since petitioner had timely availed the remedies to contest them. Having thus done the same, the issuance of the WDL was evidently premature. Moreover, it was observed that petitioner had raised respondent's lack of authority to assess its books relating to TY 2017. Hence, collection may not proceed thereon since the same may be invalidated later. Notwithstanding the grant of suspension of collection, the Court did not note any violation of petitioner's right to due process, thus, relinquishing any ground to dispense the bond. It explained –

> ...
>
> A perusal of petitioner's *Petition for Review* reveals that its arguments are primarily substantive. Other than assailing the finding of deficiency value-added tax ("**VAT**") for 2017, in which petitioner contends that such finding is void since the issued LOA does not cover it, petitioner does not forward any violation of its due process **to the extreme** in such character that would affect the entire assessment that would necessitate the dispensation of the bond requirement.[77]
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> ...

Thereafter, petitioner requested additional time to post a bond which the Court granted.[78] Despite being given an extended period to post the bond, petitioner failed to comply.[79]

Meanwhile, the proceedings continued. After the parties filed their Pre-Trial Briefs[80] and their Joint Stipulation of Facts and Issues[81]

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[73] See Comment (on Petitioner's Formal Offer of Evidence), id., pp. 437-440.

[74] Composed of Presiding Justice Roman G. Del Rosario as chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

[75] See Resolution dated 23 June 2023, Division Docket, Volume I, pp. 454-455.

[76] Id., pp. 458-469.

[77] Id., p. 467; Italics and emphasis in the original text.

[78] See Motion for Extension of Time to Post a Cash or Surety Bond, id., pp. 470-472.

[79] See Records Verification dated 14 September 2023, id., p. 481.

[80] Petitioner's Pre-Trial Brief, id., pp. 497-507; Respondent's Pre-Trial Brief, id., pp. 508-512.

[81] Id., Volume II, pp. 532-542.

(**JSFI**), which the Court approved on 18 October 2023[82], the Pre-Trial Order was issued on 17 January 2024.[83]

In the trial that ensued thereafter, petitioner presented John Martin Mengullo (**Mengullo**) as its lone witness. Through his Judicial Affidavit[84], Mengullo testified essentially on the same matters that Modesto had earlier testified on (during the hearing on the [new] Urgent Motion to Suspend). Particularly, he expounded on the ROs' authority to conduct an audit of petitioner's books that arose from an LOA which covered TY 2018.

On cross-examination, Mengullo clarified that despite petitioner's undertaking to submit additional documents to prove the relationship between Sufficient Grace and Southern Capital, it failed to proffer any. Moreover, Mengullo said that apart from the CRTE, petitioner also did not submit any additional document to prove the VAT-exempt status of Central Coffee.[85]

No redirect examination and re-cross examination followed.[86]

Pursuant to the First Division's Order dated 27 February 2024[87], petitioner filed its FOE with Motion to Admit[88] on 08 March 2024, offering Exhibits "**P-1**" to "**P-14**", inclusive of the sub-markings.[89] It

82 See Order dated 18 October 2023, id., p. 555A.
83 Id., pp. 560-576.
84 Exhibit "P-14", Judicial Affidavit of Mr. John Martin Mengullo, id., pp. 543-552.
85 TSN dated 27 February 2024, pp. 6-11.
86 Id., pp. 11-12.
87 Division Docket, Volume II, pp. 578-579.
88 Id., pp. 581-586.
89

Exhibit	Description
"P-1"	Final Decision on Disputed Assessment (FDDA)
"P-2"	Notice of Discrepancy dated 16 August 2021
"P-3"	Reply to the Notice of Discrepancy dated November 11, 2021
"P-4"	Preliminary Assessment Notice (PAN) Parts I & II dated 23 February 2022
"P-5"	Reply to the PAN dated 16 March 2022
"P-6"	Formal Letter of Demand (FLD) dated 20 May 2022
"P-7"	Protest against the FLD dated 17 June 2022
"P-8"	BIR Reply granting protest and request for reinvestigation dated 21 October 2022
"P-9"	Reply to the grant of reinvestigation with schedule of inspection dated 09 January 2023
"P-10"	Capital Gains Tax Return with Deposit Slip amounting to ₱156,419,969.31
"P-11"	Deed of Absolute Sale of Shares to Sufficient Grace PTE Ltd. dated 10 October 2019

moved that the provisionally marked documents (of Exhibits "**P-9**" to "**P-12**") be admitted as duplicates pursuant to Section 4(b) and (c)[90] of Rule 130 of the Rules on Evidence, as amended. Respondent objected to the admission of the provisionally marked documents for failure to present the originals for comparison.[91] On 06 May 2024, the First Division issued a Resolution[92] admitting petitioner's evidence, except Exhibit "**P-9**" to "**P-12**" for petitioner's failure to present the originals thereof.

For respondent's part, on 25 June 2024, he or she offered the testimony of the lone witness RO San Pedro. Through her Judicial Affidavit[93], she testified that: (1) she is one of the ROs who was authorized to conduct an audit of petitioner's books for TY 2018; (2) initially, petitioner failed to submit the required documents needed for the audit but after the issuance of the Final Notice, it was able to send most of the supporting documents; (3) upon examination of the furnished documents, petitioner was found to be liable for deficiency taxes as enumerated in the NOD; (4) they sent numerous confirmation requests to third parties to confirm petitioner's purchases; and (5) she recommended the issuance of the PAN, FLD, FANs and FDDA.

In her cross-examination, RO San Pedro clarified that although the LOA was issued for the audit of TY 2018, the assessments pertaining to TY 2017 were only discovered in 2018 based on the comparative figures in the Audited Financial Statements (**AFSs**) that petitioner submitted. RO San Pedro also explained that the confirmation requests were sent out to petitioner's suppliers to verify the purchases. The resulting

"P-12"	Subic Bay Metropolitan Authority (SBMA) Certificate of Registration and Tax Exemption (CRTE) of Central Coffee and Tea Solutions, Inc.
"P-13"	Letter of Authority (LOA) No. 125-2019-00000324 dated July 9, 2019
"P-14"	Judicial Affidavit of Mr. John Matrtin Mengullo dated 10 October 2023
"P-14-A"	Name and signature of Affiant Mr. John Martin Mengullo

90 **Sec. 4**. *Original of document*. —

...

(b) A "duplicate' is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(c) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.

91 See Comment (on Petitioner's Formal Offer of Evidence with Motion to Admit), Division Docket, Volume II, pp. 597-600.

92 Id., pp. 608-611.

93 Exhibit "R-13", Judicial Affidavit of Revenue Officer Ever C. San Pedro, id., Volume I, pp. 487-496.

assessment will be based on the supplier's responses to the said confirmation requests.[94]

On redirect examination, RO San Pedro explained that the assessments pertaining to 2017 transactions were extrapolated from the 2018 AFS.[95] No re-cross examination followed.[96]

Later, respondent CIR filed his or her FOE[97] consisting of Exhibits "**R-1**" to "**R-12**", inclusive of sub-markings.[98] Petitioner did not interpose

94 TSN dated 25 June 2024, pp. 7-10.
95 Id., p. 11.
96 Id.
97 Id., pp. 621-630.
98

Exhibit	Description
"R-1"	Letter of Authority with Serial Number eLA201700018179/LOA-125-2019-00000324 dated 9 July 2019
"R-1-1"	Checklist of Requirements
"R-2"	First Notice for the Presentation of Books of Accounts and other Accounting Records dated 29 August 2019
"R-3"	Second and Final Notice for Presentation of Books of Accounts and other Accounting Records dated 16 December 2019
"R-4"	Notice of Discrepancy dated 16 August 2021
"R-5"	Confirmation Letters dated August 12, 2021 for Macassar Holdings Inc.
"R-5-1"	Sworn Statement of Jerly Nayre, Treasurer of Macassar Holdings Inc.
"R-5-2"	Confirmation Letters dated August 12, 2021 for SM Prime Holdings
"R-5-3"	Confirmation Letters dated August 12, 2021 for Ali Commercial Center Inc.
"R-5-4"	Confirmation Letters dated August 12, 2021 for Ayala Land Inc.
"R-5-5"	Confirmation Letters dated August 12, 2021 for Pampanga Block Builders Inc.
"R-5-6"	Confirmation Letters dated August 12, 2021 for Quantum Foods Inc.
"R-5-7"	Confirmation Letters dated August 12, 2021 for First Asia Realty Development Corporation
"R-5-8"	Confirmation Letters dated August 12, 2021 for Masterpiece Asia Properties Inc.
"R-5-9"	Confirmation Letters dated August 12, 2021 for Macassar Holdings Inc.
"R-5-10"	Confirmation Letters dated August 12, 2021 for Fort Bonifacio Development Corporation
"R-5-11"	Confirmation Letters dated August 12, 2021 for Up North Property Holdings Inc.
"R-5-12"	Confirmation Letters dated August 12, 2021 for Natural Health.ph, Inc.
"R-5-13"	Confirmation Letters dated August 12, 2021 for Viviamo! Inc.
"R-5-14"	Confirmation Letters dated August 12, 2021 for Next Coffee Frontier, Inc.
"R-5-15"	Confirmation Letters dated August 12, 2021 for Distinto Beverage Solutions Inc.
"R-5-16"	Confirmation Letters dated August 12, 2021 for Shiela Manalo Bayani
"R-5-17"	Confirmation Letters dated August 12, 2021 for Nuvoland Philippines Inc.
"R-5-18"	Confirmation Letters dated August 12, 2021 for Taste Matters, Inc.
"R-5-19"	Confirmation Letters dated August 12, 2021 for IDC Manpower Services Inc.
"R-5-20"	Confirmation Letters dated August 12, 2021 for Nuevocenter Inc.
"R-5-21"	Confirmation Letters dated August 12, 2021 for Save Designbuild Enterprise Inc.
"R-5-22"	Confirmation Letters dated August 12, 2021 for Heritage 1963 Inc.
"R-5-23"	Confirmation Letters dated August 12, 2021 for Metro Central Luzon Foods Inc.
"R-5-24"	Confirmation Letters dated August 12, 2021 for Allied Metals Inc.
"R-5-25"	Confirmation Letters dated August 12, 2021 for The Daily Dairy Inc.
"R-6"	Memorandum dated 31 January 2022
"R-7"	Preliminary Assessment Notice dated 23 February 2022

any objection to the admission of the said exhibits.[99] Thus, in the Resolution dated 22 August 2024[100], the First Division admitted all of respondent's exhibits. Moreover, it granted the parties a period of 30 days within which to file their respective memoranda.

Petitioner filed its Memorandum[101] on 30 September 2024 while respondent filed his or her Memorandum[102] on 02 October 2024. On 11 November 2024, the present case was submitted for decision.[103]

ISSUE

Per the Pre-Trial Order, the parties put forward this lone issue for this Court's resolution —

> WHETHER PETITIONER, THE TABLE GROUP INC., IS LIABLE TO PAY THE ALLEGED DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), FINAL WITHHOLDING VAT (FWVAT), DOCUMENTARY STAMP TAX (DST), REGISTRATION FEE, CAPITAL GAINS TAX (CGT) AND COMPROMISE PENALTY FOR THE TAXABLE YEAR (TY) 2018 IN THE AMOUNT OF ₱834,707,050.26, INCLUSIVE OF SURCHARGES AND INTERESTS.[104]

"R-7-1"	Details of Discrepancies
"R-8"	Memorandum dated 04 April 2022
"R-9"	Formal Letter of Demand dated 20 May 2022
"R-9-1"	Details of Discrepancies
"R-9-2"	Final Assessment Notice dated 20 May 2022 for Income Tax
"R-9-3"	Final Assessment Notice for Value-Added Tax
"R-9-4"	Final Assessment Notice for Expanded Withholding Tax
"R-9-5"	Final Assessment Notice for Final VAT and other percentage taxes
"R-9-6"	Final Assessment Notice for Documentary Stamp Tax
"R-9-7"	Final Assessment Notice for Registration Fee
"R-9-8"	Final Assessment Notice for Capital Gains Tax
"R-9-9"	Final Assessment Notice for Miscellaneous Tax
"R-10"	Memorandum dated 09 January 2023
"R-11"	Final Decision on Disputed Assessment dated 26 January 2023
"R-12"	BIR Investigation Records

99 See Comment (on Respondent's Formal Offer of Evidence), Division Docket, Volume II, pp. 633-634.
100 Id., pp. 641-642.
101 Id., pp. 643-662.
102 Id., pp. 665-688.
103 See Minute Resolution dated 11 November 2024, id., p. 692.
104 See Issue to be Tried or Resolved, Pre-Trial Order, supra at note 83, p. 570.

ARGUMENTS

In support of the instant petition, petitioner maintains that the FDDA should be set aside and cancelled due to following:

1. The issued LOA only allows the assessment for TY 2018. Any assessment pertaining to TY 2017 is evidently issued in excess of the BIR officers' authority;

2. Respondent erroneously applied the provision of "deemed sale" under Section 106(B)[105] of the NIRC of 1997, as amended, to the former's inventories, unissued property, equipment and office units when it allegedly changed its line of business. *Per* respondent, as the materials and items used for coffee roasting could not be used in the business operations of a holding company, the same is considered as "transactions deemed sale". According to petitioner, it merely owns equity in Coffee Table, Inc. (**CTI**) and does not own the subject inventories. Moreover, *per* Section 4.106-8(b)(1)[106] of Revenue Regulations (**RR**) No. 16-2005[107], a change of control of a corporation through the acquisition of the controlling interest of such corporation by another stockholder does not result to any output tax.

---

[105] SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

...

(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

[106] SEC. 4.106-8. *Change or Cessation of Status as VAT-registered Person.*–

...

(b) Not subject to output tax

The VAT shall not apply to goods or properties existing as of the occurrence of the following:

(1) Change of control of a corporation by the acquisition of the controlling interest of such corporation by another stockholder or group of stockholders. The goods or properties used in business or those comprising the stock-in-trade of the corporation, having a change in corporate control, will not be considered sold, bartered or exchanged despite the change in the ownership interest in the said corporation.

[107] Consolidated Value-Added Tax Regulations of 2005.

3. The tax assessments resulting from third-party sources are void since these were not properly verified and confirmed pursuant to RMO No. 46-2004. Respondent merely presumed that the third-party information (**TPI**) is accurate without presenting the sworn statements of the third parties.

4. Although it was improper to claim the CGT as a deductible expense from the gross income, the same bears no impact since it was taxed using the Minimum Corporate Income Tax (**MCIT**) rate for TYs 2018 to 2020;

5. The assessed CGT for the transaction with Southern Capital was already paid and that the payment made for a transaction with Sufficient Grace actually pertains to the transaction with Southern Capital since they are related parties;

6. Respondent should have not imposed DST on debt instruments where the other transacting party is a bank, quasi-bank, non-bank financial intermediary, a finance company, and an insurance, fidelity, surety or annuity company considering it is the financial entities' responsibility to remit the payment of DST pursuant to RR No. 09-2000.[108] Relative thereto, the tax and interest expenses should have not been disallowed as deductible expenses;

7. As for FWVAT assessment, respondent has the burden of proof to show that petitioner had a transaction with nonresident foreign corporations (**NRFCs**) considering that it is difficult for petitioner to substantiate or prove something that is nonexistent or has not taken place;

8. Respondent should have not imposed VAT on a transaction with a buyer that is considered as a VAT-exempt entity as evidenced with a CRTE;

9. It is wrong for respondent to impose withholding taxes and disallow the several expenses as a deduction (from gross income) when petitioner has undertaken efforts to present the creditable withholding tax (**CWT**) certificates;

108 Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

10. The assessment for registration fees has no basis since the alleged branches operating under petitioner is still under verification; and

11. Due to the erroneous imposition and disallowances, petitioner is not liable for compromise penalties.

On the other hand, respondent reiterates all the arguments raised in the Answer. He or she counters further that due to petitioner's failure to substantiate its claim and submit the supporting documents (especially during the reinvestigation), the deficiency tax assessment should be maintained.

Respondent also asserts that petitioner failed to overturn the presumption of correctness and validity of the assessment. He or she underscores that all presumptions are in favor of the correctness of tax assessment and failure on the part of petitioner to satisfactorily overcome the same would mean that the presumption still stands. Consequently, the Court would be bound to uphold the assessment.

<u>RULING OF THE COURT</u>

Before We proceed to rule on the substantive issues, We deem it propitious to first determine whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

Section 11 of Republic Act (**RA**) No. 1125[109], as amended by RA 9282[110], in relation to Section 3(a), Rule 8 of the RRCTA, provides for the period when the taxpayer may invoke the CTA's jurisdiction in order to question the CIR's decision on a disputed assessment, to wit:

109 AN ACT CREATING THE COURT OF TAX APPEALS.

110 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> 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.**
>
> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[111]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received the FDDA on 27 January 2023[112], denying petitioner's Protest (after a request for reinvestigation was granted). Thus, it had 30 days from the said date, or until 26 February 2023, to file a Petition for Review with this Court. However, pursuant to Section 1[113], Rule 22 of the Rules of Civil Procedure, as amended, should the last day to file falls on a Saturday, Sunday or a

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111 Italics in the original text, emphasis and underscoring supplied.

112 Supra at note 36.

113 Sec. 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

holiday, time shall not run until the next working day. Considering that 26 February 2023 fell on a Sunday, the period to file shall not run until the next working day, or in this case, 27 February 2023.

As petitioner filed the instant Petition for Review on 27 February 2023[114], the same has been timely filed and the Court has acquired jurisdiction over the case.

Proceeding to the merits of the case and after a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds partial merit in the instant petition.

At the outset, it is observed that there is no violation of petitioner's right to due process. Both parties had been compliant with the procedural rules in the exercise of the taxpayer's remedies and the issuance of the tax notices and/or assessment. Although, it appears that most of the assessment items in the NOD, PAN, FLD and FDDA are identical despite petitioner's responses, the reiterations are caused by petitioner's repeated failure to submit supporting documents to prove its counter arguments.

It is apparent from the Reply to the NOD[115], Reply to the PAN[116] and Protest to the FLD[117] that petitioner undertook to provide documents such as the proof of payment of taxes, the CWT Certificates, the alleged timing differences in the recognition of sales and purchases, the improper recording of property and equipment (**PE**), the recording of the assessed items in the 2017 books, etc. However, despite its repeated commitment to submit these documents, petitioner did not do so. Further, even when respondent granted the request for reinvestigation and allowed petitioner to submit or present additional documents during the former's supposed office visit, the same also did not prosper. Thus, We cannot blame respondent for reiterating most of the deficiency tax assessments.

114 Supra at note 1.
115 Supra at note 19.
116 Supra at note 25.
117 Supra at note 30.

Moreover, the assessment was issued within the allowed prescriptive period. Sections 203 and 222(a) of the NIRC of 1997, as amended provide:

> ...
>
> SEC. 203. *Period of Limitation Upon Assessment.* – **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[118]
>
> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[119]
>
> ...

Based on the foregoing provisions, the prescriptive period for assessment of internal revenue taxes shall be three (3) years after the last day prescribed by law for the filing of the return, or on the date the return is filed (if made beyond the prescribed period). In case of a false or fraudulent return with intent to evade tax or failure to file a return, the prescriptive period for assessment, in such case, shall be ten (10) years after the discovery of the falsity, fraud or omission.

In the case at bar, petitioner is being assessed for internal revenue taxes for TY 2018. There being no allegation of a false or fraudulent return, the assessment against it should have been made within three

118 Emphasis supplied and italics in the original text.
119 Emphasis supplied and italics in the original text.

(3) years from the filing of its income tax return (**ITR**) on 26 June 2019[120], or until 26 June 2022. Considering that the FLD and FANs were issued on 20 May 2022, the IT deficiency assessment was validly made within the prescribed period to assess.

The same is true with the other tax deficiency assessments such as VAT, EWT, FWVAT and DST. Apart from the execution of the waiver[121] which extended the period of assessment until 31 December 2022, these were likewise affected with the BIR's COVID-19 issuances, particularly RR No. 07-2020[122], RR No. 10-2020[123], RR No. 11-2020[124], and RR No. 12-2020.[125] As a result, the prescriptive period for the assessment of the subject taxes were to be extended to a total of 420 days pursuant to RMC No. 136-2020[126], RMC No. 52-2021[127], RMC No. 80-2021[128], RMC No. 93-2021[129] and as clarified by Operations Memorandum No. 66-2022.[130]

We now proceed to the determination of whether the tax assessments are proper and valid.

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[120] See Annual Income Tax Return (BIR Form No. 1702-RT), BIR Records, pp. 384-401.

[121] Supra at note 18.

[122] Implementing Section 4 [z] of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act," particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes.

[123] Amends Section 2 of Revenue Regulations No. 7-2020 relative to extension of statutory deadlines and timelines for filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469.

[124] Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

[125] Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the o extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

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

[127] SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNA REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE IN METRO MANILA, BULACAN, CAVITE, LAGUNA, AND RIZAL (NCR PLUS), AND OTHER APPLICABLE JURISDICTIONS.

[128] Clarifying the Suspension of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Quarantine in Various Areas in the Country.

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

[130] Further Clarification on the Suspension of the Running of the Statute of Limitations on Assessment and/or Collection of Internal Revenue Taxes Under Sections 203 and 222 of the 1997 Tax Code, As Amended, in view of the Declaration of Enhanced Community Quarantine (ECQ)/Modified Enhanced Community Quarantine (MECQ).

I. DEFICIENCY INCOME TAX (IT)

Respondent assessed petitioner the amount of ₱366,605,340.97 composed of ₱246,883,670.58 basic deficiency IT and ₱119,721,670.39 interest, computed as follows:[131]

Taxable income per return				₱ -
Add: Discrepancies per reinvestigation				
Unaccounted Source of Cash				
Undeclared Purchases - SLP vs. AITEID	₱	4,791,277.69		
PPE per notes to AFS vs cash flows		920,333.00		
Undeclared revenues/receipts		99,185.92	₱ 5,810,796.61	
Disallowed expenses				
Unsupported purchases	₱	511,769,500.40		
Capital Gains Tax		152,220,410.00		
Other taxes - DST		16,150,290.00		
Unsupported interest expense		61,939,327.00		
Several expenses for non-withholding		40,037,231.24	₱ 782,116,758.64	₱ 787,927,555.25
Taxable income per reinvestigation				₱ 787,927,555.25
Income tax due				₱ 236,378,266.58
Less: Tax Credits/Payments			₱ -	
Less: Unsupported tax credits			10,505,404.00	10,505,404.00
Basic Tax Due				₱ 246,883,670.58
Add: Penalty				
12% Interest (04.16.19 to 04.30.23)				119,721,670.39
Total Amount Due				₱ 366,605,340.97

Respondent's computation of the deficiency IT is based on the following items of assessment:

Ref	Item	Amount
A	Unaccounted Source of Cash - Undeclared purchases - SLP vs. AITEID	₱ 4,791,277.69
B	Unaccounted Source of Cash - PPE per Notes to AFS vs cash flows	920,333.00
C	Undeclared Revenues / Receipts	99,185.92
D	Unsupported Purchases	511,769,500.40
E	Disallowed Capital Gains Tax	152,220,410.00
F	Unsupported Other Taxes – DST	16,150,290.00
G	Unsupported Interest Expense	61,939,327.00
H	Disallowed Costs & Expenses From Non-Withholding	40,037,231.24
I	Disallowed Creditable Withholding Taxes	10,505,404.00

A. *UNACCOUNTED SOURCE OF CASH - UNDECLARED PURCHASES - SLP VS. AUDIT INFORMATION, TAX EXEMPTION AND INCENTIVES DIVISION (AITEID) – ₱4,791,277.69*

[131] Exhibit "P-1" / "R-11", BIR Records, p. 731A

Respondent's assessment is allegedly based on the matching of petitioner's Summary List of Purchases (**SLP**) against the sale of petitioner's supplier, Macassar Holdings Inc., *per* TPI. Allegedly, it was found that the sale of petitioner's supplier is higher than petitioner's declared purchase[132], to wit:

TIN	REGISTERED NAME	SLP	Sales per AITEID	Undeclared Purchases
8076454	MACASSAR HOLDINGS INC	2,192,379.92	6,983,657.61	4,791,277.69
	Grand Total	2,192,379.92	6,983,657.61	4,791,277.69

From the pertinent documents in the BIR Records, the "preprocessed data" resembles what would be system-generated outputs from the BIR's matching of TPI. Loosely interpreted, another taxpayer's declarations (on its sales and purchases) are attributed to the taxpayer being audited (*i.e.*, the third party's sales to the said taxpayer as compared to the latter's declared purchases).

Verily, when an assessment is based on TPI, the investigating RO is required to prepare and send a confirmation request to the taxpayer serving as the TPI's source or coordinate with the Revenue District Office having jurisdiction over the TPI source for the preparation and issuance of a confirmation request. If the TPI source affirms amounts (in its reply to the confirmation request) aligning with the TPI, the RO must then obtain its sworn statement attesting to the veracity of the data provided.

RMO No. 46-2004[133] reads:

...

III. PROCEDURES

...

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

...

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132 Exhibit "R-9-1", id., p. 680.

133 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers. Italics in the original text and emphasis supplied.

2. **Require the taxpayer to execute a Sworn Statement** (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. **Obtain Sworn Statements from TPI sources** (Annexes "B" and "C") attesting to the veracity of the data provided.

    3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

    3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS.

    3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

    3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

    3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

    a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

    b. **Secure a sworn statement from the TPI** source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

    c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

...

Relatedly, RMO No. 13-2012[134] states:

> IV. GUIDELINES AND PROCEDURES
>
> ...
>
> D. *Investigating Offices*
>
> ...
>
> 9. **Send a Confirmation Request from TPI sources** attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").
>
> If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.**[135]
>
> ...

In *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*[136] (**MCC Transport**), the Supreme Court held that an unverified TPI may not validly serve as the factual basis of a tax assessment. The Supreme Court ruled thusly:

> ...
> Even assuming that the said RMO [No. 13-2012] is applicable, **the same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registered return cards**, which were not submitted as evidence in this case. Consequently, **the CTA *EB* was correct in not relying on the third-party information since unverified data cannot be considered as proper factual bases for the assessment against respondent.** In order to be valid, an assessment must be based on actual facts supported by credible evidence. Related thereto, the CTA *EB* was also correct in finding that petitioner failed to prove that respondent filed false or fraudulent returns.
> ...

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[134] Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

[135] Emphasis supplied and italics in the original text.

[136] G.R. No. 255382 (Notice), 28 June 2021; Citation omitted, emphasis supplied and italics in the original text.

Petitioner submits that the assessment is void since the supposed third-party sources were not verified. Likewise, respondent failed to present evidence that sworn statements of the third-party sources on the alleged discrepancies were obtained.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[137] (**Hantex**), the Supreme Court held that a tax assessment enjoys the presumption of correctness and regularity:

> ...
>
> We agree with the contention of the petitioner that, **as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence.** Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> ...

However, the Supreme Court likewise ruled that the presumption of correctness of a tax assessment cannot be predicated on another presumption but on actual facts. Thus, it was held in *Hantex*[138] that:

> ...
>
> However, **the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis.** In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a

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[137] G.R. No. 136975, 31 March 2005; Citations omitted, emphasis supplied and italics in the original text.

[138] Id.; Emphasis supplied and italics in the original text.

> deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*
>
> ...
>
> ... As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, **the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.**
>
> ...

The Court finds respondent's assessment against petitioner arising from TPI as null and void.

In assessing petitioner for unsupported purchases, respondent relied on confirmation letters sent to third-party sources to verify the alleged discrepancies found in petitioner's SLP and AITEID. However, the records do not show that respondent received valid sworn statements from third-party sources confirming the same. Exhibit "**R-5-1**"[139], which respondent submitted, could hardly be considered a valid sworn statement from a third-party source as it lacks the requisite notarization.

Thus, by virtue of the common provision found in the confirmation letters, respondent's finding of an undeclared source of cash amounting to ₱4,791,277.69 merely relied on the presumption that the amounts extracted from the database are correct since he or she did not receive any responses from the third parties. Hence, the Court cannot sustain this assessment item.

In fine, the amounts extracted from respondent's own database are self-serving and unsubstantiated. While an assessment made by respondent is generally accorded with the presumption of correctness, such presumption does not work when the assessment is not based on credible evidence, such as in this case.

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[139] BIR Records, p. 569A.

B. UNACCOUNTED SOURCE OF CASH - PROPERTY AND EQUIPMENT (PE) PER NOTES TO AUDITED FINANCIAL STATEMENTS (AFS) VS CASH FLOWS – ₱920,333.00

Respondent's verification showed that the additions to PE in petitioner's Notes to AFS for TY 2018 amounted to ₱81,183,782.00.[140] However, *per* petitioner's Statement of Cash Flows, additions to PE amounted to ₱80,263,449[141], resulting in a difference of ₱920,333.00. Respondent considered this as an unaccounted source of cash pursuant to Section 32[142] of the NIRC of 1997, as amended.

Petitioner alleges that the difference arose from inventory purchases made in 2017 that were transferred to PE.[143] However, upon perusal of the records, no document was proffered to support such claim. Surely, bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[144] As such, unsubstantiated by sufficient documentary evidence, the Court could not give credence to petitioner's claim.

It is settled that tax assessments are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[145] The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[146] Thus, the Court could only conclude that the assessment against petitioner for ₱920,333.00 shall remain.

C. UNDECLARED REVENUE/ RECEIPTS – ₱99,185.92

Respondent's assessment is based on a comparison of petitioner's output tax payable as of 31 December 2017 as against its VAT payable for

140 See Note 10 of the Audited Financial Statement (AFS) ending 31 December 2018, id., p. 430.
141 See Statement of Cash Flows, id., p. 460.
142 SEC. 32. *Gross Income*.
143 See Item B, Protest to the Formal Letter of Demand (**FLD**), BIR Records, p. 720.
144 *LNS International Manpower Services v. Armando C. Padua, Jr.*, G.R. No. 179792, 05 March 2010.
145 *Commissioner of Internal Revenue v. Hon. Raul M. Gonzales, Secretary of Justice, et al.*, G.R. No. 177279, 13 October 2010.
146 *Ferdinand R. Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997.

the 4th quarter of 2017, which revealed a discrepancy of ₱11,902.31. The resulting revenue/receipts on the said discrepancy amounted to ₱99,185.82. Respondent considered this as an undeclared revenue, assessed pursuant to Section 32[147] of the NIRC of 1997, as amended.

Petitioner alleges that respondent's assessment of this amount should be declared void, as it pertains to TY 2017.[148] Petitioner cites the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[149] where the Supreme Court held that an LOA should cover only a taxable period not exceeding one (1) TY.

The Court finds petitioner's argument impressed with merit.

Section C(3) of RMO No. 43-90[150] states:

> ...
> C. Other policies for issuance of L/As
> ...
>
> 3. **A Letter of Authority should cover a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.[151]
>
> ...

In *Commissioner of Internal Revenue v. De La Salle University, Inc.*[152], the Supreme Court elucidated the foregoing provision, to wit:

> ...
> What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. **It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified.** The

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[147] Supra at note 142.
[148] See Item C, Protest to the FLD, BIR Records, p. 720.
[149] G.R. No. 178697, 17 November 2010.
[150] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.
[151] Emphasis supplied.
[152] G.R. Nos. 196596, 198841 & 198941, 09 November 2016. Italics in the original text and emphasis supplied.

provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs.

Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit.

...

As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. **DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.**

...

Here, based on the records, the subject LOA did not specify TY 2017. In her Judicial Affidavit[153], respondent's lone witness herself, RO San Pedro, confirmed:

...

7. **Q: You mentioned that you were assigned to conduct an audit investigation of petitioner's books of accounts and other accounting records for the period 01 January 2018 to 31 December 2018. How was petitioner informed that the investigation was authorized?**

   A: The Letter of Authority with Serial Number eLA201700018179/ LOA-125-2019-00000324 dated 9 July 2019 was issued informing petitioner that an audit of its books of accounts and other accounting records **for taxable year 2018** will be conducted by the Bureau.[154]

...

RO San Pedro, while only specifying TY 2018, admitted that she used the comparative figures in the AFS 2018 to arrive at the assessment of ₱99,185.92 from TY 2017. In the cross-examination, RO San Pedro said –

[153] Exhibit "R-13", supra at note 93, p. 488.
[154] Emphasis in the original text and supplied.

...

ATTY. FULGENCIO III:
Q. In relation to the Letter of Authority and finally based on procedure, you mentioned in question and answer no. 45 of your Judicial Affidavit that after a Final Decision on Disputed Assessment was issued, in this Final Decision on Disputed Assessment which I now refer to as EDDA, are all the assessments therein only for taxable year 2018?

MS. SAN PEDRO:
A. **Meron, sir, 'yong mga 2017 na prior year income payments which arise lang kasi noong year under audit ko. Kung baga na-discover lang siya noong 2018.**

ATTY. FULGENCIO III:
Okay.

Q. Considering your answer, Madam Witness. As a Revenue Officer, can you rely on the 2018 LOA for these Assessments?

MS. SAN PEDRO:
A. Yes, sir. Kasi hindi ba iyong submission natin for the 2018 LOA comparative siya. Kung baga, we use the beginning and ending balances kaya nakita ko na that is from 2017, kaya nakasama yong 2017 issues.

ATTY. FULGENCIO III:
Okay. Thank you, ma'am.[155]

...

Indubitably, respondent assessed petitioner for amounts relating to TY 2017 by virtue of an LOA that only authorized the ROs and GS to examine petitioner's books of accounts for all internal revenue taxes for TY 2018. There being no LOA for TY 2017, any resulting assessment made for the said year is inevitably void.

D. UNSUPPORTED PURCHASES – SLP VS. AITEID – ₱511,769,500.40

Respondent's assessment is allegedly based on the matching of petitioner's SLP against the sale of petitioner's suppliers *per* TPI, where it revealed that purchases claimed by petitioner *per* SLP are higher than the declared sales of petitioner's suppliers *per* TPI. Respondent

155 TSN dated 25 June 2024, pp. 7-8; Emphasis supplied.

considered the difference as unsupported purchases and disallowed the amount pursuant to Section 34[156] of the NIRC of 1997, as amended.

As earlier stated, the assessment against petitioner arising from TPI, without the required sworn statements from the third parties (pursuant to RMO No. 46-2004) or the submission of the registered return card for confirmation requests sent through registered mail (pursuant to RMO No. 13-2012 and *MCC Transport*), is void.

As the records yield, apart from the confirmation requests[157], respondent failed to submit or present compliant sworn statements and registered return cards. Accordingly, this Court is constrained to strike down this assessment item.

E. DISALLOWED CAPITAL GAINS TAX (CGT) – ₱152,220,410.00

Respondent's verification disclosed that petitioner claimed CGT amounting to ₱152,220,410.00 as a deduction from gross income. Respondent argues that CGT, being in the nature of a final tax, should not be claimed as an expense deductible from gross income, hence, disallowed it pursuant to Section 34(C)(1)(a)[158] of the NIRC of 1997, as amended. To this, petitioner forwards no opposition and concedes that it was indeed erroneous to deduct a final tax as a deductible expense.[159] Nonetheless, the same assessment should not have a resulting tax liability considering that it used MCIT for TY 2018.

The Court agrees that the CGT claimed as a deductible expense by petitioner must be disallowed.

CGT, as a tax imposed on income, is a non-deductible expense under the relevant provision of Section 34 of the NIRC of 1997, as amended –

---

156 SEC. 34. *Deductions from Gross Income.*

157 Exhibits "R-5" to "R-5-25", BIR Records, pp. 546-570.

158 SEC. 34. *Deductions from Gross Income.* –

...

(C) *Taxes.* -

(1) *In General.* - Taxes paid or incurred within the taxable year in connection with the taxpayer's profession, trade or business, shall be allowed as deduction, except:

(a) The income tax provided for under this Title[.]

159 See Petitioner's Memorandum, Division Docket, Volume II, p. 655.

...

SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:

...

(C) *Taxes.* –

(1) *In General.* – Taxes paid or incurred within the taxable year in connection with the taxpayer's profession, trade or business, shall be allowed as deduction, except:

(a) The income tax provided for under this Title[.][160]

...

Nonetheless, as pointed out, petitioner has sustained a net taxable loss for TY 2018[161], and has accordingly paid MCIT for the same year.[162] Thus, the disallowance of the CGT may not have an impact on petitioner's tax liability should it still sustain a net taxable loss after the adjustments in the tax assessments have been made later.

F. UNSUPPORTED OTHER TAXES - DOCUMENTARY STAMP TAX (DST) – ₱16,150,290.00

Respondent's verification disclosed that, based on the BIR's Integrated Tax System (**ITS**), no DST payment was made for TY 2018. With this, the claimed expense of ₱16,150,290.00 was disallowed pursuant to Section 34(A)(1)(b)[163] of the NIRC of 1997, as amended.

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160 Emphasis supplied and italics in the original text.

161 BIR Records, p. 400.

162 Id.

163 SEC. 34. Deductions from Gross Income. –

...

(A) *Expenses.* –

(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –

...

(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) 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.

Petitioner contends that it entered into transactions with banks on loan instruments, and these banks already deducted the necessary DST on these instruments since they are the transacting party required by Section 3(c)(4)(a) of RR No. 09-2000[164] to remit the same.[165] Petitioner likewise argues that since the duty to remit taxes lies on the banking or financial institution, it is, but proper, that the entities burdened to remit the taxes must prove their duty and relieve the other party therefrom.

Section 3(c)(4)(a) of RR No. 09-2000 states that when one of the parties to a document or transaction subject to DST is a bank, quasi-bank or a non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company, the latter shall be responsible for the remittance of the DST –

> ...
> SEC. 3. *Mode of Payment and Remittance of the Tax.* –
> ...
>
> (c) *Person liable to remit the DST.* – In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:
> ...
>
> > (4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax** prescribed under Title VII of the Code: *Provided*, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:
> >
> > > (a) **A bank, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company**[.][166]
>
> ...

---

[164] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

[165] See Item F, Protest to the FLD, BIR Records, p. 720.

[166] Emphasis supplied and italics in the original text.

As earlier discussed, tax assessments are presumed correct.[167] The burden of proof is upon the taxpayer to show that the assessment is erroneous in order to relieve them from it.[168]

A perusal of the records reveals that petitioner failed to adduce any evidence to prove that the alleged loan transactions were made with banks, and that the banks remitted correctly the corresponding DST on the loan transactions. Hence, the Court could only conclude that the disallowance must be sustained.

G. UNSUPPORTED INTEREST EXPENSE – ₱61,939,327.00

Respondent disallowed the claimed interest expense for failure to submit proof of indebtedness pursuant to Section 34(B)[169] of the NIRC of 1997, as amended.

Sections 3 and 4 of RR No. 13-2000[170] provides for the requisites for deductibility of interest expense and the rules on the deductibility –

> ...
> **SEC. 3. *Requisites for Deductibility of Interest Expense.*** – In general, subject to certain limitations, the following are the requisites for the deductibility of interest expense from gross income, viz:
>
> (a) There must be an indebtedness;
> (b) There should be an interest expense paid or incurred upon such indebtedness;
> (c) The indebtedness must be that of the taxpayer;
> (d) The indebtedness must be connected with the taxpayer's trade, business or exercise of profession;
> (e) The interest expense must have been paid or incurred during the taxable year;
> (f) The interest expense must have been stipulated in writing;
> (g) The must be legally due;

---

167 *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, supra at note 137.

168 See *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc. and the Court of Tax Appeal*, G.R. No. L-68230, 25 November 1986.

169 SEC. 34. *Deductions from Gross Income.* –
...
(B) *Interest.*

170 Implementing Section 34(b) of the Tax Code of 1997 on the Requirements for Deductibility of Interest Expense from the Gross Income of a Taxpayer.

(h) The interest payment arrangement must not be between related taxpayers as mandated in Sec. 34(B)(2)(b), in relation to Sec. 36(B), both of the Tax Code of 1997;
(i) The interest must not be incurred to finance petroleum operations; and
(j) In case of interest incurred to acquire property used in trade, business or exercise of profession, the same was not treated as a capital expenditure.

SEC. 4. *Rules on the Deducibility of Interest Expense*. –

(a) *General Rule* - In general, the amount of interest expense paid or incurred within a taxable year on indebtedness in connection with the taxpayer's trade, business or exercise of profession shall be allowed as a deduction from the taxpayer's gross income.

...

In its Protest to the FLD, petitioner declared that it would provide loan agreements and/or promissory notes to prove the interest it has paid to banks.[171] However, contrary to petitioner's claim, the case records do not yield any loan agreements and/or promissory notes showing that petitioner indeed incurred indebtedness and that it complied with RR No. 13-2000. Thus, the Court finds that the assessment item must also be sustained.

Incidentally, the Court notes that petitioner only claimed ₱61,834,181.00 as its deductible interest expense for TY 2018.[172] With this, the disallowance shall then be limited to the said amount.

H. DISALLOWED COSTS AND EXPENSES FROM NON-WITHHOLDING – ₱40,037,231.14

Respondent's assessment of this item is based on a comparison of petitioner's income payments *per* AFS or Annual ITR as against the income payments subjected to EWT and final VAT and other percentage taxes *per* return/Alphalist, which disclosed non-withholding of the correct taxes amounting to ₱40,037,231.14, as follows:[173]

---

171 See Item G, Protest to the FLD, BIR Records, p. 719.
172 Line 15, Schedule 4 of the Annual Income Tax Return, id., p. 398.
173 Item No. 8, id., p. 679.

Nature of Income Payments	Rate	Amount Subject to Tax *per* Audit	Amount Subject to Tax *per* Returns	Amount NOT Subjected to Tax
Goods	1%	₱ 705,696,860.00[174]	₱ 675,376,853.86[175]	₱ 30,320,006.14
Final VAT & Other Percentage Tax	12%	17,570,604.63[176]	7,853,379.53[177]	9,717,225.10
		₱ 723,267,464.64	₱ 683,230,233.39	₱ 40,037,231.24

Respondent disallowed the expense pursuant to Section 34(K)[178] of the NIRC of 1997, as amended.

Notably, RA 11976[179], otherwise known as the Ease of Paying Taxes (or the **EOPT** law) repealed the entire provision of Section 34(K) of the NIRC of 1997, as amended. The effectivity of the repeal to ongoing audits has been clarified in RMC No. 60-2024[180] which provides –

> ...
>
> Since the EOPT Act took effect on January 22, 2024, a question arose if the repeal of the said provision may be applied to all assessed cases and on-going audits covering taxable periods prior to the effectivity of EOPT Act.
>
> In this regard, all concerned are hereby advised of the following policies and clarifications:
>
> 1. On all ongoing audit covering taxable period prior to January 1, 2024 — **expenses subject to withholding tax shall be allowed as deductions from gross income by the Revenue Officers (RO) only if the corresponding tax required to be withheld have been paid,** whether prior to audit or submission of the audit report to the Reviewing Office.

174 See Annex "A-8", amount under the column 1%, id., pp. 665-666.

175 See Line WC 158, Total of the Tax Base, id., pp. 206.

176 See Line 14, BIR Form No. 1601-FQ (Quarterly Remittance Return of Final Income Taxes Withheld) for the 1st Quarter of the Taxable Year 2018, id., p. 95.

177 Based on the 2018 Summary of Monthly Remittance Return of VAT & OPT Withheld, id., 93.

178 SEC. 34. *Deductions from Gross Income.* –

...

(K) *Additional Requirements for Deductibility of Certain Payments.* – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be 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, Sections 58 and 81 of this Code.

179 AN ACT INTRODUCING ADMINISTRATIVE TAX REFORMS, AMENDING SECTIONS 21, 22, 51, 56, 57, 58, 76, 77, 81, 90, 91, 103, 106, 108, 109, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 128, 200, 204, 229, 235, 236, 237, 238, 241, 243, 245, 248, AND 169; AND REPEALING SECTION 34(K) OF THE NATIONAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

180 Providing Clarifications and Guidance on Section 6 of Revenue Regulations No. 4-2024 on the Repeal of Section 34(K) of the National Internal Revenue Code of 1997, as Amended.

2. In a scenario where **taxpayer failed to withhold the tax required to be withheld on expenses subject to withholding tax and the taxpayer did not pay the same prior to submission of the audit report to the reviewing office, the RO has to recommend for the issuance of assessment notice both on income and withholding tax.** This is in line with the provisions of Revenue Regulations No. 6-2018.

3. On audit cases which are already submitted to the Reviewing Office

   a. Paid Case — same application stated under item 1 hereof;

   b. **Assessed Case — apply the requirement of deductibility under the then Section 34 (K) of the Tax Code, thus, assessment on both income tax and withholding tax shall be issued.**[181]

...

From the foregoing, should the taxpayer pay the withholding tax, the subject expenses shall be allowed as deduction from gross income otherwise, the said expenses shall be disallowed as deduction and the BIR shall issue the corresponding assessment notices.

In the case at bar, petitioner, in its Protest to the FLD, averred that settlement of the corresponding withholding tax in the amount of ₱303,200.06 for the income payments for goods not subjected to tax (of ₱30,320,006.14) will eliminate the disallowance of the said deductible cost pursuant to RR No. 06-2018.[182]

Section 2 of RR No. 06-2018[183] provides that a taxpayer's income payment may be deducted from the payor's gross income only if it is shown that income tax required to be withheld had been paid, to wit –

...

SEC. 2. Requirements for Deductibility of Certain Expenses. — RR No. 12-2013 is hereby revoked, in effect, reinstating the provisions stated under RR No. 14-2002, as amended by RR No. 17-2003 to read as follows:

---

181 Emphasis supplied.

182 See Item H, Protest to the FLD, BIR Records, p. 719.

183 Revoking Revenue Regulations (RR) No. 12-2013 Thereby Reinstating the Provisions of Section 2.58.5 of RR No. 14-2002, as Amended by RR No. 17-2003.

> Sec. 2.58.5. Requirements for Deductibility. — Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> A deduction will also be allowed in the following cases where no withholding of tax was made:
>
> (A) The payee reported the income and pays the tax due thereon and the withholding agent **pays the tax** including the interest incident to the failure to withhold the tax, and surcharges, if applicable, **at the time of the audit/ investigation or reinvestigation/reconsideration.**
>
> (B) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer **pays the tax**, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, **at the time of audit/ investigation or reinvestigation/ reconsideration.**
>
> (C) The withholding agent erroneously underwithheld the tax but **pays the difference between the correct amount and the amount of tax withheld** including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation or reinvestigation/ reconsideration.**[184]

...

From the foregoing, the withholding agent is given the final opportunity to pay the correct withholding tax only until the time of the audit or investigation or reinvestigation/reconsideration.

Here, despite petitioner's averment of settling the corresponding tax of ₱303,200.00, it failed to present any evidence showing that it properly withheld the said taxes, or that it paid the same during the audit or reinvestigation. Thus, the Court finds that the disallowance shall likewise remain.

On the other hand, for the income payments subjected to final IT amounting to ₱17,570,604.33, based on BIR Form No. 1601-FQ, petitioner withheld and paid the final taxes of 30% on the said amount as evidenced with the electronic filing and payment system (**eFPS**)

[184] Emphasis supplied.

confirmation page.[185] However, as respondent observed, petitioner only withheld VAT in the total amount of ₱7,853,379.53 based on BIR Forms No. 1600[186] for the months of January and February 2018. It failed to prove that it withheld VAT on the remaining amount of ₱9,717,225.10. Thus, there is basis for respondent's disallowance of the said amount on account of petitioner's failure to withhold the correct taxes thereon.

I. DISALLOWED CREDITABLE WITHHOLDING TAXES – ₱10,505,404.00

Respondent found that the tax credits that petitioner claimed *per* its ITR amounting to ₱10,505,404.00 were found to be without any support, hence it was disallowed pursuant to Section 58[187] of the NIRC of 1997, as amended, and Section 2.58.3[188] of RR No. 02-98[189], as amended.

In its Protest to the FLD, petitioner replied that it will provide CWT certificates to support its claim.[190] However, it did not proffer any documents even during the reinvestigation. Hence, the Court finds that the disallowed CWT shall be sustained.

Before We proceed with the computation, the Court notes that the deficiency assessment against petitioner did not consider the: (1) net taxable loss[191]; and (2) the total tax credits/payments declared by petitioner in its ITR for the TY 2018.[192] Hence, this shall be adjusted accordingly by this Court.

In sum, petitioner shall be held liable for basic deficiency IT in the amount of ₱2,303,531.00 computed as follows:

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185 eFPS Payment Details, BIR Records, p. 94.

186 See BIR Forms No. 1600, id., pp. 87-92.

187 SEC. 58. *Returns and Payment of Taxes Withheld at Source.*

188 SEC. 2.58.3. *Claim for Tax Credit or Refund.*

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

190 See Item H, Protest to the FLD, BIR Records, p. 719.

191 See Item 40, id., p. 400.

192 See Item 17, id., p. 401.

TABLE 1				
Taxable income (loss) per ITR[193]			₱	(332,337,769.00)
Add: Discrepancies per reinvestigation				
Unaccounted Source of Cash				
PE per notes to AFS vs. cash flows	₱ 920,333.00	920,333.00		
Disallowed expenses				
Capital Gains Tax	152,220,410.00			
Other taxes – DST	16,150,290.00			
Unsupported interest expense	61,834,181.00			
Several expenses for non-withholding	40,037,231.24	270,347,258.24		271,267,591.24
Taxable income per reinvestigation			₱	**(61,070,177.76)**
TABLE 2				
Total Gross Income per return[194]			₱	147,986,867.00
Discrepancies per reinvestigation				
Add: Unaccounted Source of Cash				
PE per notes to AFS vs. cash flows		₱ 920,333.00		920,333.00
Adjusted Gross Income			₱	148,907,200.00
Regular Corporate Income Tax (RCIT) (30% of Taxable income per reinvestigation)			₱	-
Minimum Corporate Income Tax (MCIT) (2% of Adjusted Gross Income)				2,978,144.00
Income Tax Due			₱	2,978,144.00
Income tax due			₱	2,978,144.00
Less: Tax Credits/Payments[195]		₱ 11,180,017.00		
Less: Unsupported tax credits		10,505,404.00		674,613.000
Adjusted Income tax due			₱	2,303,531.00
Less: Income tax paid				-
Basic Deficiency Income Tax			₱	**2,303,531.00**

As reflected in Table 1 above, after the necessary adjustments have been made, it is determined that petitioner still sustained a net taxable loss of ₱61,070,177.76, thus, We cannot apply the normal corporate IT rate. We shall then retain the use of the MCIT of 2% on petitioner's gross taxable income.

In Table 2, the only assessment item that will have an impact on petitioner's tax liability is the unaccounted cash of PE of ₱920,333.00. The other items of disallowed expenses will not have any bearing considering that MCIT is imposed on the gross taxable income, or the income before the deduction of the operating expenses.

II. DEFICIENCY VALUE ADDED TAX (VAT)

Respondent assessed petitioner the amount of ₱133,285,368.76 composed of ₱88,196,445.97 basic deficiency VAT and ₱45,088,922.79 interest, computed as follows:[196]

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193 Supra at note 191.
194 See Item 34, BIR Records, p. 400.
195 Supra at note 192.
196 Exhibit "R-11," Exhibit "P-1," BIR Records, p. 731.

Vatable receipts subject to 12% per VAT return			₱ 802,163,794.00
Add: Discrepancies per reinvestigation			
Unaccounted Source of Cash			
Undeclared Purchases - SLP vs. AITEID	₱ 4,791,277.69		
PPE per notes to AFS vs cash flows	920,333.00		
Undeclared revenues/receipts	99,185.92	₱ 5,810,796.61	
Deemed Sale			
Inventories	₱ 91,430,769.00		
Unissued Property and Equipment	19,670,466.00		
Office Units	89,828,760.00	200,929,995.00	
Unsupported exempt sales		9,061,278.00	215,802,069.61
Vatable receipts per reinvestigation			₱ 1,017,965,863.61
Output tax due			₱ 122,155,903.63
Less: Net Creditable input tax		₱ 99,759,277.09	
Less: Carry over to the next period	₱ 11,858,768.74		
Input tax allocable to exempt sales	887,857.57		
Unsupported input tax	61,412,340.05	74,158,966.36	25,600,310.73
VAT Payable			₱ 96,555,592.90
Less: VAT Payments per Return			8,359,146.93
Basic Tax Due			₱ 88,196,445.97
Add: Penalty			
12% Interest (01.26.19 to 04.30.23)			45,088,922.79
Total Amount Due			₱ 133,285,368.76

The computation by respondent of the deficiency VAT is based on the following items of assessment:

Ref	Item	Amount
A	Unaccounted Source of Cash - Undeclared purchases - SLP vs. AITEID	₱ 4,791,277.69
B	Unaccounted Source of Cash - PE *per* notes to AFS vs cash flows	920,333.00
C	Undeclared Revenues / Receipts	99,185.92
D	Deemed Sale (Inventories)	91,430,769.00
E	Deemed Sale (Unissued Property and Equipment)	19,670,466.00
F	Deemed Sale (Office Units)	89,828,760.00
G	Unsupported Exempt Sales	9,061,278.00
H	Input Tax Allocable to Exempt Sales	887,857.57
I	Unsupported input tax (SLP vs. AITEID)	61,412,340.05

Considering that the items on Unaccounted Source of Cash – Undeclared purchases – SLP vs. Audit Information, Tax Exemption and Incentives Division (AITEID) – ₱4,791277.69[197]; Unaccounted Source of Cash - Property and Equipment (PE) *per* Notes to Audited Financial Statements (AFS) vs. Cash Flows – ₱920,333.00[198]; and Undeclared Revenue/Receipts – ₱99,185.82[199]; were already discussed, We similarly uphold the findings therein for the VAT deficiency assessment.

[197] See at pp. 22-27.
[198] See at p. 28.
[199] See at pp. 28-31.

A. DEEMED SALE (INVENTORIES) - ₱4,791,277.69

Respondent's assessment arose from petitioner's disclosure that it sold almost half of its investment in CTI (one of its subsidiaries), thereby reducing its ownership from 99% (in Ty 2017) to 50% (in TY 2018).[200] Respondent claimed that there is a change in petitioner's line of business, that is, from coffee roasting to becoming a holding company. Thus, he or she imposed VAT on the inventories since these will no longer be used or utilized when petitioner operates as a holding company.

Petitioner counters that "transactions deemed sale" is inapplicable.[201] Citing Section 4.106-8(1) of RR No. 16-2005, output tax will apply when the change of business activity involves a change in the status of taxpayer, that is, from VATable to VAT-exempt. However, such is not the case here.

We find for petitioner.

Section 106(B) of the NIRC of 1997, as amended, provides for instances of transactions deemed as sale, *viz* –

> ...
>
> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> ...
>
> (B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:
>
> (1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;
>
> (2) Distribution or transfer to:
>
> > (a) Shareholders or investors as share in the profits of the VAT-registered persons; or
> >
> > (b) Creditors in payment of debt;

---

200 See Note 12 in the AFS ending 31 December 2018, id., pp. 428-429.

201 See Item M, Protest to the FLD, id., p. 719.

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

...

Here, respondent's assessment based on petitioner's alleged change in the line of business is without any factual basis. In the Amended Articles of Incorporation, apart from its primary purpose of engaging in the manufacture and selling of coffee products, petitioner is also allowed to invest in other corporations or businesses as provided under the secondary purposes thereof.[202] Thus, even if petitioner sold its shares or investment in its subsidiaries, such as CTI, the same does not deviate from its line of business. Neither can the sale of shares in CTI be treated as "transactions deemed sale" under retirement or cessation of business.

Section 4.106-7 of RR No. 16-2005[203], which implements Section 106(B) of the NIRC of 1997, as amended, identifies the circumstances under the retirement or cessation of business which will give rise to "transactions deemed sale" –

...

SEC. 4.106-7. *Transactions Deemed Sale.* –

(a) The following transactions shall be "deemed sale" pursuant to Sec. 106 (B) of the Tax Code:

...

(4) Retirement from or cessation of business with respect to all goods on hand, whether capital goods, stock-in-trade, supplies or materials as of the date of such retirement or cessation, whether or not the business is continued by the new owner or successor. The following circumstances shall, among others, give rise to transactions "deemed sale" for purposes of this Section;

i. Change of ownership of the business. There is a change in the ownership of the business when a single proprietorship incorporates; or the proprietor of a single proprietorship sells his entire business.

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202 See Secondary Purpose, Amended Articles of Incorporation, id., p. 65.
203 Supra at note 107.

ii. Dissolution of a partnership and creation of a new partnership which takes over the business.[204]

...

In the case of *Commissioner of Internal Revenue v. Magsaysay Lines, Inc., et al.*[205], the Supreme Court ruled that a change of ownership may only be considered as a "transactions deemed sale" if the same resulted from a retirement or cessation of business. The pertinent part provides –

> ...
> Section 4(E)(i) of R.R. No. 5-87 does classify as among the transactions deemed sale those involving "change of ownership of business." However, Section 4(E) of R.R. No. 5-87, reflecting Section 100 of the Tax Code, **clarifies that such "change of ownership" is only an attending circumstance to "retirement from or cessation of business**[,] with respect to all goods on hand [as] of the date of such retirement or cessation." Indeed, Section 4(E) of R.R. No. 5-87 expressly characterizes the "change of ownership of business" as only a "circumstance" that attends those transactions "deemed sale," which are otherwise stated in the same section.
>
> ...

Here, no such circumstances are present since petitioner did not cease to operate its business. Hence, without any factual and legal basis for the "transactions deemed sale", We shall strike down this VAT deficiency assessment.

B. DEEMED SALE (UNISSUED PROPERTY AND EQUIPMENT) – ₱19,670,466.00

This assessment also resulted from petitioner's alleged "transactions deemed sale". Following the above discussion, We are constrained to also strike down this deficiency VAT assessment.

C. DEEMED SALE (OFFICE UNITS) – ₱89,828,760.00

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204 Emphasis supplied and italics in the original text.

205 G.R. No. 146984, 28 July 2006; Citations omitted and emphasis supplied.

Similarly, as previously explained, this deficiency VAT assessment will also be cancelled for lack of factual and legal basis.

D. UNSUPPORTED EXEMPT SALES – ₱9,061,278.00

Respondent claims that petitioner failed to substantiate the exempt sales made to Central Coffee. On the other hand, petitioner claims that it proved that VAT-exempt status of Central Coffee. In the Protest to the FLD, it declared that it presented the CRTE from the Subic Bay Metropolitan Authority (**SBMA**) which shows that transactions made with Central Coffee are exempt from VAT.[206]

However, an examination of the records reveals that petitioner only submitted a photocopy of the CRTE[207] which the Court subsequently had denied[208] admission when it was offered as evidence. Thus, without any valid supporting document to prove the exempt sales made to Central Coffee, We shall uphold this deficiency VAT assessment.

E. INPUT TAX ALLOCABLE TO EXEMPT SALES – ₱887,857.57

Respondent extrapolated this amount by determining the ratio of the exempt sale of ₱9,061,278.00 to the alleged total gross receipts and multiplied the said amount with allowable input tax return.[209]

However, given the above determination that there is no exempt sale due to petitioner's failure to substantiate it, the input tax on the alleged exempt sale will no longer be deducted from the allowable input tax.

F. UNSUPPORTED INPUT TAX (SLP VS. AITEID) – ₱61,412,340.05

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206 See Item P, Protest to the FLD, BIR Records, p. 718.

207 Supra at note 59.

208 Supra at note 92.

209 See Annex "A-10.1", BIR Records, p. 592.

This deficiency assessment resulted from the alleged unsupported purchases of ₱511,769,500.40 under item D of the deficiency IT. Since We struck down the said assessment item[210], this VAT deficiency assessment must necessarily be cancelled as well.

Henceforth, petitioner's total deficiency VAT assessment is computed as follows:

Vatable receipts subject to 12% per VAT return				₱	802,163,794.00
Add: Discrepancies per reinvestigation					
Unaccounted Source of Cash					
PE per notes to AFS vs cash flows	₱	920,333.00			
Unsupported Exempt Sales		9,061,278.00	9,981,611.00	₱	9,981,611.00
Vatable receipts per reinvestigation				₱	812,145,405.00
Output tax due				₱	97,457,448.60
Less: Net Creditable input tax[211]	₱	99,759,277.09			
Less: Carry over to the next period[212]		11,858,768.74	87,900,508.35	₱	87,900,508.35
VAT Payable					9,556,940.25
Less: VAT Payments per Return[213]					8,359,146.93
Basic Tax Due				₱	1,197,793.32

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)

A. FAILURE TO WITHHOLD CORRECT EXPANDED WITHHOLDING TAX ON INCOME PAYMENTS – ₱303,200.06

In relation to Item H of the deficiency IT, or the disallowance of costs and expenses from non-withholding for ₱40,037,231.14, petitioner claimed that the payment of the withholding taxes of ₱303,200.06 will remove the said assessment item.[214] However, as discussed above, the records are bereft of any CWT certificates as petitioner failed to present any evidence showing that it properly withheld the said taxes, or that it paid the said withholding taxes during the audit. Thus, the deficiency assessment item shall likewise remain.

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210 See discussion in p. 31-32.
211 The amount is lifted from petitioner's 2018 VAT return summary, BIR Records, p. 245.
212 Id.
213 Id.
214 See Item S, Protest to the FLD, id., p. 718.

B. INTEREST ON LATE REMITTANCE ON PRIOR YEAR INCOME PAYMENTS – ₱204,066.45

Respondent alleged that petitioner failed to remit withholding taxes on the prior year's income payments on time, thus it imposed interest.

In relation to Item C of the deficiency IT, We reiterate that the subject LOA only authorizes the audit and examination of petitioner's books for TY 2018. Any resulting assessment coming from TY 2017 shall be cancelled. Accordingly, this assessment shall be struck down since it pertains to the prior year's income payments of TY 2017.

IV. DEFICIENCY FINAL WITHHOLDING VALUE-ADDED TAX (FWVAT)

A. FAILURE TO WITHHOLD CORRECT FINAL WITHHOLDING VALUE-ADDED TAX ON SOME INCOME PAYMENTS – ₱1,166,067.02

Based on the Details of Discrepancies, respondent claimed that petitioner failed to prove that it withheld the VAT of ₱1,166,067.02 from the income payments made to the NRFCs amounting to ₱9,717,225.10. Meanwhile, petitioner countered that no such payments were made to NRFCs.[215]

Petitioner's argument is without merit. In relation to Item H of Deficiency IT, We have already determined that petitioner withheld final taxes on the total income payments of ₱17,570,604.33 (based on the BIR Form No. 1601-FQ[216]). However, it only withheld and paid VAT for the partial income payments of ₱7,853,379.53. It did not present any additional documents to prove that it withheld VAT on the amount of ₱9,717,225.10. Thus, respondent is correct to have imposed the 12% deficiency final withholding VAT on the remaining amount, or a total of ₱1,166,067.02.

---

215 See Item U, Protest to the FLD, id., p. 718.

216 Supra at note 176.

V. DEFICIENCY DOCUMENTARY STAMP TAX (DST)

Respondent assessed petitioner with DST of ₱29,275,162.50 based on the loan availments of ₱3,889,922,143.00 and the advances to related parties of ₱13,443,240.00.[217] On the contrary, petitioner argues that the transacting parties in the loan availments are banks, thus, they are the parties responsible for remitting the DST.[218]

Despite petitioner's insistence that the transacting parties in the loan availments are banks, it failed to duly prove this claim. Similar in Item F of the deficiency IT where petitioner's non-submission of the proof of indebtedness with the banks led Us to sustain the disallowance of the interest expense, We shall also uphold respondent's DST deficiency assessment related to the loan availments.

For the advances made to related parties, in *San Miguel Energy Corporation v. Commissioner of Internal Revenue*[219], it was already ruled that the absence of debt instruments does not do away with the DST assessment since the same is imposed on the transaction and not on the document itself. The pertinent parts state –

> ...
> ***DST is imposable on advances extended to SMEC by its affiliates even in the absence of a debt instrument or formal loan document***
>
> SMEC was assessed for deficiency DST for its advances made from related parties in 2010. The deficiency DST was based on the Notes attached to the 2010 AFS of SMEC and San Miguel Corporation, a related party. SMEC paid under protest the assessed DST in the amount of PHP 16,611,637.05, inclusive of surcharge, interest, and compromise penalty. Thereafter, SMEC filed a claim for refund of the amount paid asserting its entitlement of the entire amount paid on protest on the ground that no DST is imposable on the subject transaction because there is no debt instrument or loan document evidencing the same.

217 See Annexes "A-14", "A-14.1" and "A-14.2", BIR Records, pp. 653-655.
218 See Item V, Protest to the FLD, id., p. 718.
219 G.R. No. 252083 (Notice), 04 December 2023; Citations omitted, italics and emphasis in the original text and supplied.

> SMEC is in error to insist that DST cannot be imposed on the advances extended by its affiliates in the absence of a formal debt instrument or loan document. As discussed, this issue raised by SMEC is not novel. The Court *en banc*, in *Filinvest*, affirmed the BIR's imposition of DST on the advances extended by a company to its affiliates which were indicated on mere instructional letters, journal, and cash vouchers. The Court said that these instructional letters, journal, and cash vouchers, evidencing intercompany advances fall within the meaning of loan agreements upon which DST may be imposed[.] ...
>
> ...
>
> Succinctly, *Filinvest* signifies that regardless of the nature of the document, DST is imposable as long as a loan agreement is clearly established.
>
> To be sure, *Filinvest* only acknowledged previous ruling of the Court on the nature of a DST. **In a string of cases, the Court has been consistent in its ruling that DST is not limited to the document embodying the enumerated transaction. By nature, DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. It is an excise tax because it is imposed on the transaction rather than on the document. Hence, in determining the propriety of the imposition of the DST, "the Court considers not only the document but also the nature and character of the transaction."** Undoubtedly, a loan agreement is among the transactions subject to DST under the 1997 Tax Code.
>
> ...

Here, petitioner did not contest the existence of the advances made to the related parties. Neither did it present any documents to show that it paid the related DST. Thus, We shall also sustain the deficiency assessment.

VI. REGISTRATION FEE

Respondent's assessment of the Annual Registration Fee (**ARF**) is based on a list which enumerates petitioner's alleged 65 branches. To this, petitioner merely replied that it paid the ARF for the head office.

Prior to EOPT, Section 236 of the NIRC of the 1997, as amended, states –

> ...
>
> Section 236. *Registration Requirements.* –
>
> ...
>
> (B) *Annual Registration Fee.* – An annual registration fee in the amount of Five hundred pesos (PhP500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid upon registration and every year thereafter on or before the last day of January: *Provided, however,* That cooperatives, individuals earning purely compensation income, whether locally or abroad, and overseas workers are not liable to the registration fee herein imposed.
>
> **The registration fee shall be paid to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.**[220]
>
> ...

From the foregoing, the ARF shall be duly paid to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

As it appears, petitioner did not deny the existence of the alleged 65 branches. Moreover, it did not present any proof that the ARF of the said 65 branches were already paid with the revenue district and/or city or municipality where they are located. It merely confirmed that the ARF of its head office is paid and that no branches are operating under its name.[221] Without any documents to support its claim and contest respondent's findings, We adhere to the principle that tax assessments are presumed correct and made in good faith.[222]

Although the EOPT has already repealed the requirement for paying ARF, as this assessment pertains to TY 2018, or prior to the effectivity of the EOPT, We shall nonetheless sustain the assessment of the ARF in the amount of ₱32,500.00.

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220 Emphasis supplied and italics in the original text.

221 See Item W, Protest to the FLD, BIR Records, p. 717.

222 *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, supra at note 137137.

VII. DEFICIENCY CAPITAL GAIN TAX (CGT)

Respondent averred that *per* AFS ending 31 December 2018, petitioner claimed that it paid or accrued a CGT in the amount of ₱152,220,410.00.[223] Allegedly, in TY 2018, petitioner sold 50% of its shares in CTI to Southern Capital which resulted in a gain of ₱450.25 million.[224] However, verification of CGT payments thru BIR's ITS disclosed that there was no payment made for the taxes thereon. Hence, respondent assessed the deficiency CGT pursuant to Section 56(A)(3)[225] of the NIRC of 1997, as amended.

In response thereto, petitioner submitted the Deed of Absolute Sale[226] between petitioner (as seller) and Sufficient Grace (as buyer), BIR Form No. 1707 or the CGT Return[227] and the Landbank BIR Payment slip[228] to substantiate the above sale. It maintains that it already paid the CGT.[229] Further, petitioner claims that Sufficient Grace is a related party of Southern Capital, thus the sale made to the former is connected to the latter entity (as disclosed in the AFS).

We find that petitioner failed to support its claim.

It is observed that the abovementioned documents (*e.g.* Deed of Sale, CGT Return and Landbank BIR Payment slip) were not admitted as petitioner's evidence for its failure to present the originals thereof for comparison. Thus, We cannot consider them in determining the propriety of petitioner's claim.

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223 See Note 29 of the AFS ending in 31 December 2018, BIR Records, p. 413.

224 See Note 12 of the AFS ending in 31 December 2018, id., pp. 428-429.

225 **SEC. 56.** *Payment and Assessment of Income Tax for Individuals and Corporations. –*
(A) *Payment of Tax. –*
...
(3) *Payment of Capital Gains Tax.* - The total amount of tax imposed and prescribed under Sections 24(C), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: *Provided*, That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required: *Provided, further*, That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, subject to the penalties prescribed under applicable provisions of this Code: *Provided, finally*, That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund of such tax upon verification of his compliance with the requirements for such exemption.

226 BIR Records, pp. 38-40.

227 Exhibit "P-10", Division Docket, Volume II, pp. 589-590.

228 Annex "J", id., p. 591.

229 See Item X, Protest to the FLD, BIR Records, p. 717.

Even assuming the said documents were to be admitted, they do not duly explain petitioner's assertion that Sufficient Grace and Southern Capital are related entities. Moreover, based on Mengullo's cross-examination, petitioner failed to submit additional evidence to prove that the payment of CGT for the sale made with Sufficient Grace actually pertains to the gain realized from the sale of shares to Southern Capital. The relevant parts state –

> ...
> ATTY. RAMO
> Q You answered in Question 23 that the deficiency capital gains tax for a transaction with Southern Capital is erroneous, correct?
>
> MR. MENGULLO
> A Yes.
>
> ATTY. RAMO
> Q You then mentioned in Question No. 27 that the named buyer in the transaction is Sufficient Grace PTE. Ltd. and that they are one and the same entity with Southern Capital, correct?
>
> MR. MENGULLO
> A Yes.
>
> ATTY. RAMO
> Q Did you submit proof before the BIR of the identity of the two corporations during the assessment?
>
> MR. MENGULLO
> A Yes.
>
> ATTY. RAMO
> Q What proof did you submit?
>
> MR. MENGULLO
> A Sir, can I request to view my Affidavit?
> ...
>
> ATTY. RAMO
> Q We are on Question No. 27.
>
> MR. MENGULLO
> A Yes, yes.

ATTY. RAMO
Q **Did you submit proof before the BIR of the identity of the two corporations during the assessment?**

MR. MENGULLO
A **We commit to present additional evidence to prove the relationship of Southern Capital and Sufficient Grace PTE Ltd.**

ATTY. RAMO
Q **So, you did not present such proof during the assessment?**

MR. MENGULLO
A **Yes.**[230]

...

As petitioner failed to submit any credible evidence to prove the payment of the CGT or establish the relationship of Sufficient Grace and Southern Capital, the *prima facie* correctness of the deficiency CGT assessment thus prevails.

VIII. COMPROMISE PENALTY

Respondent assessed petitioner with a compromise penalty consisting of: (1) ₱280,000.00 for: (*a*) failure to pay the correct taxes of IT, VAT, EWT, FWVAT, DST, registration fee and CGT; (*b*) failure to file Monthly Alphalist of Payees (**MAP**) and Summary Alphalist of Withholding Tax (**SAWT**); and (*c*) failure to secure permit to use a computerized accounting system (**CAS**); and (2) ₱12,209,202.55 arising from the latter's failure to transmit sales data coming from net income of TY 2016.

In relation to the discussion in Item C of the deficiency IT, the subject LOA only authorizes the audit and examination of the taxpayer's books for TY 2018. Hence, the alleged compromise penalty arising from assessment made on the net income of TY 2016 shall be cancelled.

As for the ₱280,000.00, in the Protest to the FLD, petitioner had agreed to pay the amount thereof.[231] In the case of *Wonder Mechanical*

[230] TSN dated 27 February 2024, pp. 7-8; Emphasis supplied.
[231] See Item Y in the Protest to the FLD, BIR Records, p. 717.

Engineering Corporation v. The Hon. Court of Tax Appeals, et al.[232], the Supreme Court held that a compromise penalty may not be imposed or collected without the agreement or conformity of the taxpayer. Considering that petitioner already agreed to pay the compromise penalty of ₱280,000.00, this amount shall then stand.

Verily, all presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment is based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax-initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.[233]

From the above disquisition, petitioner is liable to pay the total deficiency taxes of ₱328,608,702.79, inclusive of surcharge and deficiency interest (consisting of IT, VAT, EWT, FWVAT, DST and CGT); registration fee of ₱32,500.00 and compromise penalty of ₱280,000.00, computed as follows:

I. Description	**Amount**
Basic Deficiency IT	2,303,531.00
Add: Surcharge (25%)	575,882.75
Deficiency Interest (12%) (04.16.2019-04.30.2023)	1,117,812.08
Total Deficiency IT	**₱ 3,997,225.83**

II. Description	**Amount**
Basic Deficiency VAT	1,197,793.32
Add: Surcharge (25%)	299,448.33
Deficiency Interest (12%) (01.26.2019-04.30.2023)	612,745.12
Total Deficiency VAT	**₱ 2,109,986.77**

232 G.R. Nos. L-22805 & L-27858, 30 June 1975.

233 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan, et al.*, G.R. No. 232663, 03 May 2021.

III. Description	Amount
Basic Deficiency EWT	303,200.06
Add: Surcharge (25%)	75,800.02
Deficiency Interest (12%) (02.01.2019-04.30.2023)	154,507.43
Total Deficiency EWT	**₱ 533,507.51**

IV. Description	Amount
Basic Deficiency FWVAT	1,166,067.02
Add: Surcharge (25%)	291,516.76
Deficiency Interest (12%) (01.11.2019-04.30.2023)	602,265.63
Total Deficiency FWVAT	**₱ 2,059,849.41**

V. Description	Amount
Basic Deficiency DST	29,275,162.50
Add: Surcharge (25%)	7,318,790.63
Deficiency Interest (12%) (01.06.2019-04.30.2023)	15,168,544.47
Total Deficiency DST	**₱ 51,762,497.60**

VI. Description	Amount
Basic Deficiency CGT	152,220,410.00
Add: Surcharge (25%)	38,055,102.50
Deficiency Interest (12%) (01.26.2019-04.30.2023)	77,870,123.16
Total Deficiency CGT	**₱ 268,145,635.66**

VII. Description	Amount
Deficiency Registration Fee	**₱ 32,500.00**

VIII. Description	Amount
Deficiency Compromise Penalty	**₱ 280,000.00**

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner The Table Group Inc., represented by Mr. Walden Chu on 27 February 2023 is hereby **PARTIALLY GRANTED**. The deficiency tax assessment shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of ₱328,608,702.79, representing the basic deficiency taxes, inclusive of the 25% surcharge and 12% deficiency interest imposed thereon under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, respectively, computed until 30 April 2023. Additionally, a delinquency interest of 12% shall be imposed on the total deficiency taxes until payment thereof.

Furthermore, petitioner is **ORDERED TO PAY** respondent the deficiency registration fees of ₱32,500.00 and deficiency compromise penalty of ₱280,000.00.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

A T T E S T A T I O N

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
First Division Acting Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice