22-000168-0077

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10839

KALAYAAN ENGINEERING COMPANY INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. JONELLE ELLINE A. MAGALONG
Bureau of Internal Revenue - Revenue Region 8A
36th Floor, Legal Division, Export Bank Plaza Building
313 Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

HECHANOVA BUGAY VILCHEZ & ANDAYA-RACADIO
Ground Floor, Salustiana D. Ty Tower
104 Paseo de Roxas Avenue
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **October 29, 2025**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 30, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

KALAYAAN ENGINEERING COMPANY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10839

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* filed by petitioner, Kalayaan Engineering Company Inc. (petitioner), praying that, after trial on the merits, judgment be rendered cancelling the deficiency assessment on Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), Documentary Stamp Tax (DST), and Compromise Penalty, for the taxable period January 1, 2016 to December 31, 2016, in the total amount of ₱31,547,253.48.[1]

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration OCN No. 048RC20220000000259, with Taxpayer Identification Number (TIN) 000-126-408-00000,

[1] Docket – Vol. I, p. 22, *Petition for Review*, Prayer.
[2] *Id.* at 30–36, Exhibit "P-2".

and has its registered address at 4253 Emilia St., Palanan 1235 City of Makati.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR or respondent), vested with the authority to act as such, including, among others, the power to authorize the examination of taxpayers' books of accounts and to issue and decide deficiency assessments of internal revenue taxes.[4]

THE FACTS

On September 18, 2017, petitioner received *Letter of Authority* (LOA) No. AUDM35/014060/2017/ eLA201500048959 dated September 6, 2017, [5] authorizing Revenue Officer (RO) Kharima M. Simbanatao and Group Supervisor (GS) Conchita Ladrera to examine its books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2016.[6]

On February 1, 2019, petitioner received an undated *Notice for Informal Conference.*[7]

Thereafter, on July 31, 2019, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated July 26, 2019, with attached *Details of Discrepancies,* [8] informing petitioner that after investigation, there has been found due from it, deficiency Income Tax, VAT, WTC, EWT, DST, and compromise penalty totaling ₱44,901,072.47, inclusive of increments, for TY 2016.

On September 12, 2019, petitioner received the *Formal Letter of Demand and Assessment Notices* (FLD/FAN) Parts I and II with *Details of Discrepancies,* dated September 10, 2019,[9] assessing petitioner of internal revenue taxes and compromise penalty in the aggregate amount of ₱45,276,644.01 for TY 2016.

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[3] *Id.* at 519 and 37-39, *Joint Stipulation of Facts and Issue* (JSFI), Stipulation of Facts, par. 2; and, Exhibit "P-3", respectively.
[4] *Id.* at 7 & 312, *Petition for Review,* par. 4, which was not specifically denied in *Answer,* par. 7.2, respectively, and therefore deemed admitted.
[5] *Id.* at 7 & 312, *Petition for Review,* par. 5 *vis-à-vis Answer,* par. 8, respectively.
[6] Exhibits "P-4" and "R-1" to "R-1-B", BIR Records – Folder 6 of 6 (Exhibit "R-8"), p. 2.
[7] *Id.* at 706, Exhibit "R-2".
[8] Docket – Vol. I, pp. 7 & 312, *Petition for Review,* par. 6 *vis-à-vis Answer,* par. 8 respectively; Exhibits "P-5" and "R-4-A to "R-4-G", BIR Records – Folder 6 of 6 (Exhibit "R-8").
[9] *Id., Petition for Review,* par. 7 *vis-à-vis Answer,* par. 8, respectively; Exhibits "P-6" and "R-5-A" to "R-5-M", BIR Records – Folder 6 of 6 (Exhibit "R-8").

On October 11, 2019, petitioner filed a *Protest and Request for Re-investigation.*[10]

On March 21, 2022, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated March 10, 2022,[11] which adjusted the deficiency tax assessment against petitioner in the total amount of ₱31,547,253.48, inclusive of increments, computed as follows:

Tax Type	Basic Deficiency Tax	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱15,987,742.02	₱ –	₱10,508,983.74	₱ –	₱26,496,725.76
VAT	80,372.30	–	56,353.09	–	136,725.39
WTC	2,143,099.06	–	1,514,378.38	–	3,657,477.44
EWT	369,764.77	–	261,286.93	–	631,051.70
DST	308,567.00	77,141.75	219,564.44	–	605,273.19
Compromise Penalty	–	–	–	20,000.00	20,000.00
TOTAL	**₱18,889,545.15**	**₱77,141.75**	**₱12,560,566.58**	**₱20,000.00**	**₱31,547,253.48**

On April 19, 2022, petitioner filed the present *Petition for Review.*[12]

On July 1, 2022, within the period granted by the Court,[13] respondent filed his *Answer*,[14] raising special and affirmative defenses, to wit: (a) petitioner failed to present relevant documents; and (b) petitioner's claim should be dismissed due to insufficiency of evidence.

On July 13, 2022, respondent transmitted the *BIR Records* of the case, consisting of 2,669 pages divided into six (6) parts.[15]

In a Resolution dated July 14, 2022,[16] the parties were directed to appear personally, or through their authorized representative/s, before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on August 11, 2022. However, mediation was declared unsuccessful per the *Mediator's Report* dated January 10, 2023, submitted on January 11, 2023.[17]

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10 Exhibit "P-7", BIR Records – Folder 5 of 6 (Exhibit "R-8"), pp. 751–766.

11 Docket – Vol. I, pp. 7 & 312, *Petition for Review*, par. 9 vis-à-vis *Answer*, par. 8, respectively; Exhibits "P-8" and "R-7", BIR Records – Folder 1 of 6 (Exhibit "R-8"), pp. 2587–2593.

12 Docket – Vol. I, pp. 6–25.

13 *Id.* at 304–306, & 310, Respondent's *Motion for Extension of Time to File Answer* dated May 30, 2022, and Resolution dated June 20, 2022, respectively.

14 *Id.* at 311–319.

15 *Id.* at 376, *Compliance* dated July 11, 2022.

16 *Id.* at 378.

17 *Id.* at 403.

On March 7, 2023, petitioner filed an *Urgent Omnibus Motion to Suspend Collection of Taxes and to Lift Warrant of Distraint and/or Levy & Garnishment.*[18] Respondent submitted his *Comment/Opposition via* accredited courier on March 27, 2023.[19]

At the hearing held on March 30, 2023, petitioner presented the testimony of its Finance and Accounting Manager, Ms. Mercedita J. Pascual.[20]

On April 14, 2023, petitioner filed its *Formal Offer of Evidence to the Urgent Motion to Suspend Collection of Taxes.*[21] Respondent filed his *Comment/Opposition (on Petitioner's Formal Offer of Evidence dated April 14, 2023)* on April 27, 2023.[22]

In a Resolution dated July 21, 2023,[23] the Court:

1. Admitted petitioner's offered exhibits for its *Urgent Omnibus Motion, except* Exhibits "P-8" and "P-15", for petitioner's failure to submit the originals for comparison, and Exhibit "P-15-A", for petitioner's failure to submit the duly marked exhibit;

2. Partially granted petitioner's *Urgent Omnibus Motion*;

3. Suspended the collection of the alleged deficiency taxes, subject to the posting of the bond by petitioner;

4. Ordered respondent to lift and set aside the *Warrant of Distraint and/or Levy* (WDL) dated February 8, 2022;

5. Enjoined respondent, his representatives, agents, or other persons acting on his behalf from executing, enforcing, implementing, or otherwise giving effect to said WDL, and from pursuing any administrative action for collection of petitioner's alleged taxes subject of the present case unless subsequently ordered by the Court; and

6. Directed petitioner to post the required cash and surety bond stated therein.

On August 18, 2023, petitioner filed a *Partial Motion for Reconsideration*,[24] praying that the Resolution dated July 21,

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[18] *Id.* at 416–424.
[19] *Id.* at 481–484.
[20] *Id.* at 462-466 and 488-494, Exhibit "P-14"; Minutes of the hearing held on, and Order dated, March 30, 2023, respectively.
[21] *Id.* at 507–509.
[22] *Id.* at 513–515.
[23] Docket – Vol. II, pp. 558–569.
[24] *Id.* at 601–606.

2023 be modified, and the bond requirement for the lifting of the WDL and *Garnishment* dated February 8, 2023 be removed. Respondent filed his *Comment/Opposition (on Petitioner's Partial Motion for Reconsideration dated 18 August 2023)* on August 29, 2023.[25]

In a Resolution dated October 26, 2023,[26] the Court:

1. Denied petitioner's *Partial Motion for Reconsideration* for lack of merit; and

2. Gave petitioner a new and non-extendible period of ten (10) days to post a cash or surety bond equivalent to the amount of the basic deficiency taxes claimed.

Due to petitioner's failure to post the required bond despite notice,[27] the Court, in its Resolution dated December 1, 2023,[28] recalled and set aside the Resolution dated July 21, 2023, granting petitioner's *Urgent Omnibus Motion.*

On November 15, 2023, petitioner submitted a copy of its *Petition for Certiorari with Prayer for Temporary Restraining Order/Writ of Preliminary Injunction*[29] filed before the Supreme Court, praying that: (1) the Resolutions dated July 21, 2023 and October 26, 2023 be modified, and the bond requirement for the lifting of the WDL and Garnishment dated February 8, 2023 be removed; and (2) that a Temporary Restraining Order/Writ of Preliminary Injunction be issued to enjoin this Court from implementing the said Resolutions.

Meanwhile, the Pre-Trial Conference was held on March 30, 2023.[30] Prior thereto, *Petitioner's Pre-Trial Brief*[31] and *Respondent's Pre-Trial Brief*[32] were both submitted on March 24, 2023.

On April 28, 2023, the parties submitted their *Joint Stipulation of Facts and Issues,*[33] which was approved by the Court in its Resolution dated May 23, 2023,[34] thereby

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[25] *Id.* at 626–629.
[26] *Id.* at 646 649.
[27] *Id.* at 725, Records Verification dated November 22, 2023 issued by the Judicial Records Division of this Court.
[28] *Id.* at 885-B.
[29] *Id.* at 726–742.
[30] Docket – Vol. I, p. 412, Resolution dated January 20, 2023; 413–415, Notice of Pre-Trial Conference dated January 26, 2023; 488–494, Minutes of the hearing held on, and Order dated, March 30, 2023.
[31] *Id.* at 445–449.
[32] *Id.* at 451–458.
[33] *Id.* at 519–525.
[34] *Id.* at 529–530.

terminating the Pre-Trial. The Pre-Trial Order dated August 4, 2023 was then issued.[35]

Trial ensued, during which both parties presented and offered their respective testimonial and documentary evidence.

Petitioner presented the testimonies of two witnesses: (1) Ms. Mercedita J. Pascual,[36] AVP-Finance and Administration; and (2) Mr. Wilfrido C. Rodriguez,[37] the Court-commissioned Independent Certified Public Accountant (ICPA).[38]

The *Report* of the ICPA was filed on November 8, 2023.[39]

On January 29, 2024, *Petitioner's Formal Offer of Evidence* was filed,[40] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Evidence) via* accredited courier on February 5, 2024.[41] In a Resolution dated April 17, 2024,[42] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-12916," "P-12930," "P-12935," and "P-12936," for not being found in the records of the case.

Respondent, for his part, presented the testimony of RO Kharima M. Simbanatao.[43]

On July 19, 2024, respondent filed his *Formal Offer of Evidence,*[44] to which petitioner submitted its *Comment To Respondent's Formal Offer of Evidence dated July 19, 2024,* on July 29, 2024.[45] In a Resolution dated September 6, 2024,[46] the Court admitted all of respondent's offered exhibits.

Respondent's Memorandum[47] and *Petitioner's Memorandum*[48] were both filed on October 14, 2024.

[35] Docket – Vol. II, pp. 572–583.
[36] Exhibit "P-11", Docket – Vol. I, pp. 159–169; Docket – Vol. II, pp. 587–588, Order dated, August 9, 2023.
[37] Exhibit "P-18", Docket – Vol. II, pp. 685–690; Docket – Vol. II, pp. 886-A to 886-B, Order dated January 23, 2024.
[38] *Id.* at 636 and 637-638, *Oath of Commission* dated September 21, 2023 and Order dated September 21, 2023, respectively.
[39] *Id.* at 652–682, Exhibit "P-30".
[40] *Id.* at 888–898.
[41] *Id.* at 900–902.
[42] *Id.* at 909–911.
[43] Id. at 915–928 and 936–938, Exhibit "R-9" and Minutes of the hearing held on, and Order dated, July 16, 2024, respectively.
[44] *Id.* at 941–947.
[45] *Id.* at 951–957.
[46] *Id.* at 964–965.
[47] *Id.* at 967–974.
[48] *Id.* at 967–983.

The case was submitted for decision on November 7, 2024.[49]

THE ISSUE

As stipulated by the parties, the sole issue for resolution is:

> WHETHER PETITIONER IS LIABLE FOR DEFICIENCY ASSESSMENT ON IT, VAT, WC, WE, DST, AND COMPROMISE PENALTY IN THE TOTAL AMOUNT OF ₱31,547,253.48.[50]

Petitioner's arguments:

Petitioner submits that the deficiency Income Tax be withdrawn and cancelled based on the following:

1. Sales/receipts not subjected to income tax – ₱29,040,527.07

   Petitioner claims that while such amount was received by petitioner during the taxable year, the same does not constitute unreported revenues/undeclared income for income tax purposes as this amount represents sales already reported as income under the accrual method in the previous years (booked as receivables in previous years but collected in the current period).[51]

2. Disallowed expenses – ₱5,541,117.20

   Petitioner asserts that such disallowance is erroneous as the payments thereon were made to validly registered taxpayers, and that all expenses claimed are properly substantiated.[52]

3. Salaries and wages not subjected to withholding tax – ₱17,208,835.34

   Petitioner contends that the subject adjustment is improper as respondent merely considered the

[49] *Id.* at 987, Notice of the Resolution dated November 7, 2024.
[50] Docket – Vol. II, p. 579, Pre-Trial Order; Docket – Vol. I, p. 519, JSFI, Issue.
[51] Docket – Vol. II, p. 974, *Petitioner's Memorandum*, par. 43.
[52] *Id.* at 974, *Petitioner's Memorandum*, par. 46.

returns pertaining to its head office in Makati, when in fact, it likewise files and remits withholding tax on compensation in its branch office in Cebu, for its Cebu-based employees; and that respondent failed to take into account the other non-taxable compensation consisting of *de minimis* benefits and non-taxable bonuses.[53]

4. Disallowance of creditable taxes withheld – ₱450,597.84

Petitioner insists that its documents will bear that all creditable taxes applied against income tax payable in the current period were in order and, thus, should not have been disallowed.[54]

5. Excess Minimum Corporate Income Tax (MCIT) over Normal Income Tax –₱970,541.00; and Excess credit carried over to succeeding period – ₱13,695,667.00

Petitioner disagrees with such disallowances as no less than the CTA has ruled that excess tax credits (whether excess MCIT or excess Creditable Withholding Tax [CWT]) carried over by a taxpayer to the succeeding taxable years should not be disallowed in the current year's tax audit since any benefit that may be derived from the carry-over will pertain to the succeeding taxable year.[55]

Petitioner also submits that the deficiency VAT assessment should be set aside, withdrawn, and cancelled, for having no basis in fact and in law, as petitioner has supporting documents that could substantiate its input VAT claims. These include those payments/expenses cited by the BIR as the cause of these disallowances.[56]

Petitioner likewise insists that the deficiency EWT has no basis for failure of respondent to consider the following: (a) the nature of the payments which were not subjected to withholding tax; and (b) the amounts reflected in the income statement in the current period for financial statement purposes under the accrual method of accounting (*e.g.* rental) for which the pertinent withholding taxes had already been withheld and remitted in prior periods in accordance with Section 2.57.4 of

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[53] *Id.* at 975, *Petitioner's Memorandum*, pars. 48–49.
[54] *Id.* at 975, *Petitioner's Memorandum*, par. 53.
[55] *Id.* at 976, *Petitioner's Memorandum*, par. 57.
[56] *Id.* at 977–978, *Petitioner's Memorandum*, pars. 64–65.

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Revenue Regulations (RR) No. 2-98, as amended. On the alleged unwithheld taxes applicable to payments for the purchase of goods, petitioner claims that these payments were actually the amount of materials reported by petitioner as part of its Cost of Sales/Services in its Income Tax Return (ITR) and Income Statement. These materials were sourced from petitioner's inventory, for which withholding taxes had already been paid and remitted in the preceding period.[57]

As for the deficiency WTC, petitioner reiterates its explanation and defenses stated in the above-stated deficiency Income Tax.[58]

Petitioner also disagrees with the DST assessment on the following grounds: (1) the amount of ₱11,114,140.00 under "Due to Related Parties" constitute payments on outstanding accounts, for which DST had already been paid; (2) the amount of ₱46,762,077.00 under "Increase in Borrowings" constitutes amounts due to financial institutions for which DST has already been withheld from loan proceeds or paid for by said financial institution; and (3) the amount of ₱3,837,061.00 under "Advances to Officers" does not constitute loans subject to DST but constitutes amounts which were advanced for the purchases of goods and services to be liquidated by said officers.[59]

Lastly, petitioner claims that it has timely filed the required BIR Form for DST and, thus, the compromise penalty has no basis.[60]

Respondent's counter-arguments:

Respondent contends that petitioner's claims should be dismissed due to insufficiency of evidence; that respondent fully complied with the due process requirement under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013; that petitioner is liable for the deficiency Income Tax, VAT, WTC, EWT, DST, and compromise penalty; and that the necessity of proving that the tax assessment is invalid lies with the party assailing the validity of the assessment.

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57 *Id.* at 978–979, *Petitioner's Memorandum*, pars. 69–73.
58 *Id.* at 980, *Petitioner's Memorandum*, par. 78.
59 *Id.* at 981, *Petitioner's Memorandum*, par. 82.
60 *Id.* at 982, *Petitioner's Memorandum*, par. 85.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The Petition for Review is timely filed.

Before delving into the merits, the Court must first determine whether it has jurisdiction to take cognizance of the present *Petition for Review*.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[61] as amended by RA No. 9282,[62] vests in the CTA exclusive appellate jurisdiction over decisions and inactions of the CIR, *viz.*:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] 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;
>
> (2) **Inaction by the [CIR] 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, ... *(Emphasis supplied)*

Complementing this, Section 11 of RA No. 1125, as amended, prescribes the period to file an appeal:

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

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[61] An Act Creating the Court of Tax Appeals, June 16, 1954.

[62] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are likewise provided under Section 3(a)(1) and (2), Rule 4[63] and Section 3(a), Rule 8[64] of the Revised Rules of the Court of Tax Appeals (RRCTA). Clearly, the CTA has jurisdiction over appeals from decisions of the CIR, provided the appeal is filed within thirty (30) days from petitioner's receipt of such decision.

Here, petitioner received the FDDA on March 21, 2022. Counting 30 days therefrom, petitioner had until April 20, 2022 to file an appeal with this Court. Thus, the instant *Petition for Review* filed on April 19, 2022, was timely.

Petitioner is liable for deficiency Income Tax for the taxable year 2016.

Per the FDDA, respondent assessed petitioner of deficiency Income Tax amounting to ₱26,496,725.76, including increments, for the TY 2016, thus:[65]

Taxable income per return			₱1,332,321.00
Add: Discrepancies per investigation			
Sales not subjected to income tax		₱29,040,527.07	
Disallowed expenses (Annex A)		5,541,117.20	
Salaries and wages not subjected to withholding Tax		17,208,835.34	51,790,479.61
Taxable Income per investigation			₱53,122,800.61
Income Tax Due			₱15,936,840.18
Less: Total tax credits/payments		₱15,065,904.00	
Less: Discrepancies per investigation			
Disallowed creditable taxes withheld (Annex B)	₱450,597.84		

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[63] SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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;
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action:

[64] 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.

[65] Exhibits "P-8" and "R-7", BIR Records – Folder 1 of 6 (Exhibit "R-8"), p. 2593.

Excess Minimum Corporate Income Tax (MCIT) over normal income tax	970,541.00		
Excess credit carried over to the succeeding period	13,695,667.00	15,116,805.84	(50,901.84)
Basic tax due			₱15,987,742.02
Add: Interest 20% (Apr.16, 2017 to Dec. 31, 2017)		₱ 2,277,705.71	
Interest 12% (Jan. 1, 2018 to Apr. 15, 2022)		8,231,278.03	10,508,983.74
TOTAL AMOUNT DUE			**₱26,496,725.76**

The following items, which are addressed in detail hereafter, comprise the foregoing assessment:

a) Sales/Receipts not subjected to Income Tax	₱29,040,527.07
b) Disallowed Expenses	₱ 5,541,117.20
c) Salaries and Wages not subjected to Withholding Tax	₱17,208,835.34
d) Disallowed Creditable Taxes Withheld	₱ 450,597.84
e) Excess MCIT over Normal Income Tax	₱ 970,541.00
f) Excess Credit Carried Over to Succeeding Period	₱13,695,667.00

a) <u>Sales/Receipts not subjected to Income Tax – ₱29,040,527.07</u>

Respondent's examiner found sales/receipts that are allegedly not subjected to income tax, computed as follows:[66]

Sales/Receipts per VAT Return		₱648,268,484.28
Add: Accounts Receivable, end (₱319,865,563.00/1.12)		285,594,252.68
Deferred Revenue, beg.		42,668,273.00
Total		₱976,531,009.96
Less: Accounts Receivable, beg. (₱182,622,525.00/1.12)	₱163,055,825.89[67]	
Deferred Revenue, end	60,559,872.00[68]	
Sales/Receipts per Income Tax Return (ITR)	723,874,785.00[69]	947,490,482.89
Sales/Receipts not subjected to Income Tax		**₱29,040,527.07**

From the foregoing computation, it is clear that respondent compared petitioner's sales per VAT Returns with its sales per ITR, including petitioner's collection from accounts receivable and realized deferred revenue, to arrive at the sales not subjected to income tax.

Petitioner avers that respondent failed to consider that sales reported for VAT purposes do not necessarily equal the amount of sales reported for income tax purposes,[70] and while

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66 Schedule I, Annex A, Exhibits "P-6" and "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").
67 Refer to Exhibits "P-5" and "R-4-B", BIR Records – Folder 6 of 6 (Exhibit "R-8").
68 *Id.*
69 *Id.*
70 Docket – Vol. II, p. 973, *Petitioner's Memorandum*, par. 36.

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the amount of ₱29,040,527.07 was received by petitioner during the TY 2016, the same does not constitute unreported revenues/undeclared income for income tax purposes as this amount represents sales already reported as income in the previous years.[71]

Petitioner further claims that respondent "might have overlooked the fact that not all receipts received by the Petitioner from its clients constitute income for the taxable period".[72] Petitioner continues that the advances received from its clients (usually in the form of mobilization fees) do not constitute revenue or income at the point of receipt. Further, as an entity engaged in long-term construction contracts, it is required to report its income on the basis of the percentage of completion pursuant to Section 48 of the NIRC of 1997, as amended.[73] It likewise contends that it reports its income on an accrual basis, which means that income earned and accrued during the taxable year is reported as revenue, whether collected in said year or not.[74]

On the other hand, all of petitioner's receipts on its service contracts, regardless of whether they pertain to past, present, or future sales, are reported in its VAT Returns in the period when these are received.[75]

Notably, the ICPA verified petitioner's general ledger of accounts receivable and deferred revenue and revenue accounts, together with *Billing Statements, Sales Invoices* (SIs), *Official Receipts* (ORs), and other supporting documents.[76]

Taking into consideration the contract sales, sale of materials, downpayment, and retention, adjustments for recoupment of downpayment, retention, withholding tax, revenue and downpayment, and job in progress, VAT, and accounts payable,[77] the ICPA's findings on the verification of petitioner's accounts receivable are as follows:[78]

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[71] *Id.* at 974, *Petitioner's Memorandum*, par. 43.
[72] *Id.* at 972, *Petitioner's Memorandum*, par. 32.
[73] *Id.* at 972, *Petitioner's Memorandum*, pars. 33–34.
[74] *Id.* at 973–974, *Petitioner's Memorandum*, pars. 38 & 42.
[75] *Id.* at 973, *Petitioner's Memorandum*, par. 35.
[76] Exhibits "P-112" to "P-899", Annexes "A-1" to "A-6", USB (Exhibit "P-30-B"); Exhibit "P-30", Docket – Vol. II, pp. 655–661.
[77] Docket – Vol. II, at pp. 655–657, Exhibit "P-30.
[78] *Id.* at 657, Exhibit "P-30".

Table 10:

Particulars	Reference	Amount
Beginning Balance, Per Audited Financial Statements (AFS)	Exhibit "P-10"	₱182,622,525.00
Billings and SIs	Table 5	761,480,444.82
Adjustments on billings	Table 6	(138,464,407.31)
Receipts	Table 7	(603,121,623.60)
Adjustments on receipts	Table 8	(10,071,369.86)
Adjustments	Table 9	127,419,993.76
Ending Balance		**319,865,562.81**
Ending Balance, Per AFS	Exhibit "P-10"	**319,865,563.00**
Difference		**₱0.19**

Similarly, the ICPA's findings on the verification of petitioner's deferred revenue account, including adjustments, are summarized below:[79]

Table 11:

Particulars	Reference	Amount
Beginning Balance, Per AFS	Exhibit "P-10"	₱42,668,273.00
Down payment billings	Table 5	50,637,284.03
Recoupment of down payment on contract sales subject to VAT from billings	Table 6	(72,951,320.28)
Recoupment of down payment on contract sales is not subject to VAT from billings	Table 6	(1,920,000.00)
Downpayment adjustment on billings	Table 6	8,631.00
Recoupment of down payment from collection receipts	Table 8	(1,287,337.02)
Adjustments from accounts receivable	Table 9	45,923,747.90
Recoupment of down payment from sales receipts	Annex D-1	(21,301,094.89)
Down payment from sales receipts subject to VAT	Annex D-2	17,160,671.13
Down payment from sales receipts not subject to VAT	Annex D-3	1,890,000.00
Adjustments	Annex F	(480,265.90)
Ending Balance		**60,348,588.97**
Ending Balance, Per AFS	Exhibit "P-10"	**60,559,872.00**
Difference		**₱211,283.03**

Finally, for petitioner's revenue account, the ICPA reported the following findings:[80]

Table 12:

Particulars	Reference	Amount
Revenue from billings of contract sales subject to VAT	Table 5	₱565,849,467.64

[79] *Id.* at 658, Exhibit "P-30".
[80] *Id.* at 659, Exhibit "P-30".

Revenue from billings of contract sales not subject to VAT	Table 5	26,545,195.77
Revenue from billings of sale of materials subject to VAT	Table 5	3,518,669.90
Revenue from billings of sale of materials not subject to VAT	Table 5	50,917.86
Revenue adjustments from billings	Table 6	(3,370.94)
Revenue adjustments from collection receipts of billings	Table 8	(5,241,145.67)
Revenue from sales receipts	Table 9	176,144,808.63
Adjustments	Annex E	(321,484.86)
Total revenue from billings and receipts		**766,543,058.33**
Per AFS	Exhibit "P-10"	**766,543,058.00**
Difference		**₱0.33**

While the ICPA "found no exception on the recognition of revenue during TY 2016 using the accrual method of accounting",[81] petitioner is correct in stating that sales per VAT Returns do not necessarily equal sales per ITR for various reasons, such as the use of the accrual method of accounting and the percentage of completion revenue recognition. However, petitioner still failed to clearly account for the difference found by respondent. In fact, the ICPA found a discrepancy in the revenue amounts reported in the *Audited Financial Statements* (AFS) and ITR:[82]

Table 13:

Particulars	**Reference**	**Amount**
Revenue per AFS	Exhibit "P-10"	₱766,543,058.00
Revenue per ITR	Exhibit "P-9"	723,874,785.00
Difference		**₱42,668,273.00**

The Court emphasizes that tax assessments by tax examiners are presumed correct and made in good faith and that the taxpayer has the duty to prove otherwise.[83] In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed because presumptions are in favor of the correctness of tax assessments.[84]

Hence, for petitioner's failure to overcome the presumption of regularity in the performance of respondent's duties, the

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81 *Id.*
82 *Id.*
83 *Cagayan Robina Sugar Milling Co. v. Court of Appeals,* G.R. No. 122451, October 12, 2000 [Per J. Quisumbing, Second Division]
84 *Sy Po v. Honorable Court of Tax Appeals,* G.R. No. 81446, August 18, 1988 [Per J. Sarmiento, Second Division].

assessment of sales/receipts not subjected to income tax in the amount of ₱29,040,527.07 is upheld.

b) Disallowed Expenses - ₱5,541,117.20

Per the FLD/FAN, respondent's investigation of the alphalist of payees from whom taxes were withheld disclosed that some payees are registered in the BIR ITS Database as local employees under Executive Order (EO) No. 98 and One-Time-Transaction (ONETT), while others have invalid or incorrect TINs. Hence, transactions with the aforesaid payees are considered unsupported with ORs/SIs pursuant to Section 34(A) of the NIRC of 1997, as amended. Further investigation of respondent disclosed that the claimed miscellaneous expense in the amount of ₱2,000,000.00 paid to the City of Taguig is not supported by any official receipt.[85] In the FDDA, the amount is adjusted from ₱10,822,471.90 to ₱5,541,117.20 to reflect the expenses duly substantiated with relevant documents.[86]

The ICPA reports that the breakdown of the foregoing disallowed expenses as shown in Annex A of the FDDA[87] actually sum up to the amount of ₱5,602,076.00, as shown below:[88]

Table 20:

Particulars	Reference	Amount
With available supporting documents	**Annex G-1**[89]	₱3,098,559.17
Without available supporting documents	**Annex G-2**	2,503,517.96
Total		**₱5,602,077.13**

Further verification by the Court shows that only the following expenses amounting to ₱184,050.43 are substantiated with sufficient evidence, such as ORs or other adequate records pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended:

Exhibit No.	Supplier's Name	Invoice Date	OR/Invoice Number	Amount of Income Payment
"P-1850"	MERALCO	Apr. 27, 2016	EB Inv. 4146043899929	₱818.99
"P-1869"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Jan. 21, 2016	OR 7849053	3,991.93

85 Annex A, Exhibits "P-6" & "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").
86 Exhibits "P-8" and "R-7", BIR Records – Folder 1 of 6 (Exhibit "R-8"), p. 2591.
87 Exhibit "P-110", USB (Exhibit "P-30-B").
88 Exhibit "P-30", Docket – Vol. II, p. 661.
89 Exhibits "P-1850" to "P-2012", USB (Exhibit "P-30-B").

"P-1870"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Jan. 21, 2016	OR 7849051	3,701.16
"P-1871"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Jan. 21, 2016	OR 7849055	108.51
"P-1872"	ALAN C. DAVID MANAGEMENT AND HOLDING COMPANY, INC.	Jan. 1, 2016	OR 0001810	6,842.11
"P-1874"	CITY OF SAN FERNANDO WATER DISTRICT	Jan. 9, 2016	BILL 20160109118202	187.00
"P-1876"	ALAN C. DAVID MANAGEMENT AND HOLDING COMPANY, INC.	Feb. 27, 2016	OR 0001819	6,842.11
"P-1877"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Feb. 15, 2016	SOA 9191483	138.17
"P-1880"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Apr. 16, 2016	SOA 9342309	4,854.88
"P-1881"	SAN FERNANDO ELECTRIC LIGHT AND POWER CORP.	Apr. 16, 2016	SOA 9342100	5,004.10
"P-1882"	CITY OF SAN FERNANDO WATER DISTRICT	Apr. 9, 2016	BILL 20160409134078	682.24
"P-1884"	ANGELES ELECTRIC CORPORATION	Jun. 20, 2016	OR 26939094	2,490.82
"P-1885"	SAN FERNANDO ELECTRIC LIGHT & POWER CO., INC.	Jun. 7, 2016	OR 8212286	5,339.92
"P-1888"	CITY OF SAN FERNANDO WATER DISTRICT	Jun. 8, 2016	BILL 20160608134078	3,025.56
"P-1889"	BALIBAGO WATERWORKS SYSTEM, INC.	Jun. 8, 2016	SOA 3359171	1,789.90
"P-1890"	SAN FERNANDO ELECTRIC LIGHT & POWER CO., INC.	Jun. 16, 2016	SOA 9493994	5,224.12
"P-1892"	ANGELES ELECTRIC CORPORATION	Sep. 21, 2016	SOA 28831510	3,975.89
"P-1896"	SAN FERNANDO ELECTRIC LIGHT & POWER CO., INC.	Feb. 15, 2016	SOA 9551011	4,132.12
"P-1897"	SAN FERNANDO ELECTRIC LIGHT & POWER CO., INC.	Feb. 16, 2016	SOA 9154141	4,854.93
"P-1898"	NELSON MARICEL CANTANERO	Jan. 20, 2016	OR 0156	3,684.21
"P-1900"	ALAN C. DAVID MANAGEMENT AND HOLDING COMPANY, INC.	Jan. 29, 2016	OR 0001818	6,842.11
"P-1903"	CITY OF SAN FERNANDO WATER DISTRICT	Feb. 8, 2016	BILL 20160208134014	6,009.09
"P-1904"	BALIBAGO WATERWORKS SYSTEM, INC.	Nov. 8, 2016	SOA 3748481	2,051.01
"P-1905"	ANGELES ELECTRIC CORPORATION	Dec. 22, 2016	OR 27595307	3,315.94
"P-1908"	MERALCO	Jan. 13, 2016	EB Inv. 4116011102036	188.88
"P-1913"	MERALCO	May 19, 2016	OR 1462296	3,286.02
"P-1914"	MERALCO (TAGAYTAY EXTENSION OFFICE)	Jan. 6, 2016	OR 0001328924	233.39
"P-1915"	MERCANTILE STORE GROUP INC.	Jan. 30, 2016	AR 000121611	645.19
"P-1916"	MERCANTILE STORE GROUP INC.	Mar. 2, 2016	AR 000126675	983.88
"P-1918"	REESE DORMITORY	Jun. 8, 2016	OR 7002	31,500.00
"P-1919"	REESE DORMITORY	Jul. 2, 2016	OR 7049	10,500.00
"P-1920"	REESE DORMITORY	Sep. 1, 2016	OR 7217	10,500.00
"P-1921"	REESE DORMITORY	Oct. 2, 2016	OR 7270	10,500.00
"P-1923"	MERALCO	Mar. 22, 2016	OR 0001418569	361.89
"P-1924"	MERALCO	Feb. 14, 2016	EB Inv. 4116021098315	549.94
"P-1926"	GT WATER CORP.	Mar. 9, 2016	OR 1044952	426.73
"P-1929"	AUTOSTAR TRADING CO.	Oct. 20, 2016	SI 002812	4,732.14

"P-1931"	MERALCO	Jun. 23, 2016	OR 1486402	4,032.26
"P-1932"	MERALCO	Jul. 11, 2016	OR 1501463	5,148.87
"P-1948"	MERALCO	Oct. 6, 2016	OR 1566888	5,588.23
"P-1949"	MERALCO	Oct. 6, 2016	OR 1566887	1,738.81
"P-1950"	MERALCO	Oct. 17, 2016	OR 1574586	289.10
"P-1951"	MERALCO	Oct. 17, 2016	OR 1574585	925.26
"P-1961"	MERALCO	Nov. 25, 2016	OR 1603940	1,013.55
"P-1962"	MERALCO	Nov. 25, 2016	OR 1603939	321.73
"P-1963"	MERALCO	Nov. 25, 2016	OR 1603938	597.02
"P-1964"	MERALCO	Nov. 25, 2016	OR 1603937	125.03
"P-1972"	ZAMBALES I ELECTRIC COOPERATIVE	Sep. 7, 2016	BILL 1608056363	2,305.29
"P-1973"	MERALCO	Nov. 25, 2016	INV 4246112843825	1,650.40
TOTAL				**₱184,050.43**

The rest of the subject disallowed expenses are either unsubstantiated as found by the ICPA (in the amount of ₱2,503,517.96) or supported by mere acknowledgement receipts, voucher payable, cash disbursement vouchers, or petty cash vouchers, which are not considered as proper documents in substantiating expenses under Section 237 of the NIRC of 1997, as amended, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.
>
> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

As regards the evidentiary value of vouchers in proving the expenses incurred, the Court reiterates its stand that the same should be validated with ORs to be given probative value, as

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upheld and affirmed by the Supreme Court in *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*,[90] thus:

> From the foregoing provision of law, a person who is subject to an internal revenue tax shall issue receipts, sales or commercial invoices, prepared at least in duplicate. **The provision likewise imposed a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which the invoice or receipt was issued. The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of accounts are subjected to a tax audit examination, all entries therein could be shown as adequately supported and proven as legitimate business transactions.** Hence, petitioner's claim that the NIRC of 1977 did not require substantiation requirements is erroneous.
>
> **In order that the cash vouchers may be given probative value, these must be validated with official receipts.**
>
> ....
>
> Petitioner's management and professional fees were disallowed as these were supported merely by **cash vouchers**, which the Court's Division correctly **found to have little probative value**. (*Emphases supplied*)

Thus, this item of assessment is maintained in the reduced amount of ₱5,357,066.77, computed as follows:

Disallowed expenses per FDDA	₱5,541,117.20
Less: Substantiated expenses	184,050.43
Adjusted disallowed expenses	**₱5,357,066.77**

c) <u>Salaries and wages not subjected to withholding tax - ₱17,208,835.34</u>

In the course of his audit, respondent compared the amounts of salaries and wages paid by petitioner per its ITR for the TY 2016, with the total salaries and wages reported in its alphalist, and disallowed the difference as salaries and wages not subjected to withholding tax, thus:[91]

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[90] G.R. No. 173373, July 29, 2013 [Per J. Bersamin, First Division].
[91] Schedule 3, Annex A, Exhibits "P-6" and "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").

Salaries, Wages and Benefits - Direct Cost	₱288,360,512.00	
Salaries and Allowances-Operating	35,875,203.00	₱324,235,715.00
Per Alphalist		
With no previous employer		
Non-taxable	₱ 22,069,356.75	
Taxable	125,316,096.19	
Terminated before December 31		
Non-taxable	2,287,489.64	
Taxable	9,812,798.72	
Minimum Wage Earners	147,541,138.36	307,026,879.66
Disallowed Salaries and Wages due to Non-Withholding		**₱17,208,835.34**

Petitioner argues that respondent failed to consider its remittances from its Cebu Branch, and the *de minimis* benefits and non-taxable bonuses.[92]

Relative thereto, the ICPA reports his findings as follows:[93]

Table 22:

Particulars	Reference	Amount
Per AFS		
Cost of service – direct labor	Exhibit "P-10"	₱288,360,512.00
General and administrative expenses – Salaries and wages and bonuses	Exhibit "P-10"	35,875,203.00
Salaries and wages charged under the acquisition of property, plant, and equipment (PPE)	Annex O-3	387,652.38
Total salaries and wages per AFS		**324,623,367.38**
Per Alphalist of Employees		
Makati alphalist schedule 7.1		
Non-taxable	Exhibit "P-51"	974,834.60
Taxable	Exhibit "P-51"	5,311,232.89
Makati alphalist schedule 7.3		
Non-taxable	Exhibit "P-52"	17,878,933.77
Taxable	Exhibit "P-52"	98,682,393.90
Makati alphalist schedule 7.5		
Minimum wage earners	Exhibit "P-53"	134,577,889.93
Cebu alphalist schedule 7.1		
Non-taxable	Exhibit "P-69"	938,088.87
Taxable	Exhibit "P-69"	4,876,132.00
Cebu alphalist schedule 7.3		
Non-taxable	Exhibit "P-70"	4,190,425.60
Taxable	Exhibit "P-70"	26,633,702.30
Cebu alphalist schedule 7.5		
Minimum wage earners	Exhibit "P-71"	12,963,248.43
Total gross compensation per alphalist		**307,026,882.29**
Difference		**₱17,596,485.09**

[92] Docket – Vol. II, p. 975, *Petitioner's Memorandum*, pars. 48–49.
[93] *Id.* at 662–663, Exhibit "P-30".

It is noted that the difference found by the ICPA is similar to the difference found by respondent, except for the salaries and wages charged under the acquisition of property, plant, and equipment (PPE) of ₱387,652.38. Thus, contrary to petitioner's allegation, it is clear that respondent did include in the computation petitioner's *de minimis* benefits and non-taxable bonuses and its remittances from its Cebu Branch.

However, the ICPA found that petitioner's salaries and wages account per AFS/ITR include payments to subcontractor, employer's share in the Social Security System (SSS), Home Development Mutual Fund (HDMF), Philippine Health Insurance Corporation (PHIC) for jobs in progress, maternity benefit, and medical and dental benefits, as shown below:[94]

Table 23:

Particulars	Amount
Cost of service	
Job in progress – labor	₱266,208,925.45
Job in progress – subcontractor[95]	4,591,573.34
Job in progress – SSS/HDMF/PHIC employer's share[96]	17,560,012.78
General and administrative expenses	
Salaries and wages	35,581,459.36
Maternity benefit	45,684.71
Medical and dental[97]	248,058.61
Total	**324,235,714.25**
Per ITR/AFS (Exhibits P-9 and P-10)	**324,235,715.00**
Difference	**(₱0.75)**

Income payments made to subcontractors[98] are subject to 2% creditable withholding tax, while the employer's share in the SSS, HDMF, and PHIC[99] are not subject to withholding tax on compensation. On the other hand, maternity benefits[100] are advanced by petitioner to its employees in behalf of the SSS, while medical and dental[101] are expenses reimbursed by petitioner to its employees. These income payments are not included as part of gross compensation in the alphalist of employees.[102]

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94 *Id.* at 663, Exhibit "P-30".
95 Exhibits "P-2132" to "P-2163", Annex I-1, USB (Exhibit "P-30-B").
96 Exhibits "P-2013" to "P-2052", "P-2053" to "P2090", and "P-2091" to "P-2131", Annexes H-1 to H-3, USB (Exhibit "P-30-B").
97 Exhibits "P-2164" to "P-2199", Annexes K-1 to K-2, USB (Exhibit "P-30-B").
98 Annex I, Exhibit "P-30", Docket – Vol. II, p. 665.
99 Annex H, Exhibit "P-30", Docket – Vol. II, p. 664.
100 Annex J, Exhibit "P-30", Docket – Vol. II, p. 665.
101 Annex K, Exhibit "P-30", Docket – Vol. II, p. 665.
102 Exhibit "P-30", Docket – Vol. II, pp. 664–665.

The Court agrees with the foregoing findings. Verification by the ICPA of the foregoing expenses shows that remittances to the SSS, HDMF, and PHIC, in the total amount of ₱19,404,366.21, vis-à-vis the amount recorded in Job in progress - SSS/HDMF/PHIC employer's share in the amount of ₱17,560,012.78, yield a difference of ₱1,844,553.43. The discrepancy is accounted for as employer's share recorded under the General and Administrative Expenses in the AFS, acquisition of PPE, and others.[103]

As to the substantiation of the subject reconciling items, the ICPA findings are summarized as follows:

ICPA Report[104]	Description	With supporting documents	Without supporting documents	Total
Annex H	Job in progress - SSS/HDMF/PHIC employer share	₱17,900,770.36	₱(340,757.58)	₱17,560,012.78
Annex I	Job in progress - Subcontractor	4,372,074.15	219,499.19	4,591,573.34
Annex J	Maternity benefit	-	45,684.71	45,684.71
Annex K	Medical and dental	208,920.16	39,138.45	248,058.61
	TOTAL	**₱22,481,764.67**	**₱(36,435.23)**	**₱22,445,329.44**

Considering the foregoing, the computation of salaries and wages not subjected to withholding tax should be determined as follows:

Per AFS/ITR:		
Cost of service		
Job in progress - labor	₱266,208,925.45	
Job in progress - subcontractor	219,499.19	
General and administrative expenses		
Salaries and wages	35,581,459.36	
Maternity benefit	45,684.71	
Medical and dental	39,138.45	₱302,094,707.16
Per Alphalist		₱307,026,879.66
Salaries and Wages due to Non-Withholding		**₱(4,932,172.50)**

Thus, the disallowance of salaries and wages should be cancelled for lack of factual basis.

d) Disallowed creditable taxes withheld – ₱450,597.84

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[103] Docket – Vol. II, p. 664, Exhibit "P-30", Tables 25 and 26.
[104] USB (Exhibit "P-30-B").

Respondent disallowed petitioner's creditable withholding taxes amounting to ₱450,597.84 for being supported by *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307) dated in the TYs 2015 and 2017.[105]

Petitioner, however, argues that "the creditable taxes which were claimed against income tax payable for the period under review consist of creditable taxes which can be properly deducted from said tax payable", and that its documents will show that the same should not have been disallowed.[106]

The ICPA found that out of the ₱450,597.84 disallowed CWT, only ₱115,468.40 is supported by BIR Form No. 2307, but is dated outside of TY 2016.[107]

Verification by the Court reveals that the supported CWTs are all for the period January to March 2017.[108] Relative thereto, Section 2.58.3(A) of RR No. 2-98, provides:

> SEC. 2.58.3. *Claim for Tax Credit or Refund.* —
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

Applying the foregoing provision, petitioner's CWT supported by BIR Form No. 2307 for the period January to March 2017 are allowed as a tax credit in the period in which income was earned or received. Petitioner did not submit any explanation or other supporting documents to prove that the corresponding income of the subject CWT was earned or received in the TY 2016. Hence, the disallowance should be maintained.

e) <u>Excess MCIT over Normal Income Tax - ₱970,541.00</u>
f) <u>Excess Credit Carried-over to succeeding period - ₱13,695,667.00</u>

In computing petitioner's adjusted tax credits and payments, respondent deducted the excess MCIT over normal income tax in the amount of ₱970,541.00 and excess creditable taxes carried over to the succeeding period of ₱13,695,667.00

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105 Annex A, Exhibits "P-6" and "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").
106 Docket – Vol. II, p. 975, *Petitioner's Memorandum*, pars. 52–53.
107 Table 29, Exhibit "P-30", Docket – Vol. II, p. 666.
108 Exhibits "P-2200" to "P-2217", Annex L-1, USB (Exhibit "P-30-B").

from petitioner's total tax credits for the year 2016 amounting to ₱15,065,904.00. Respondent's reason for the disallowance is that these amounts shall be carried over to the succeeding taxable year when they are credited against petitioner's income tax liabilities.[109]

The ICPA verified the utilization of the foregoing tax credits in the succeeding taxable periods and reported his findings, summarized as follows:[110]

Exhibit No.	"P-9"	"P-101"	"P-102"	"P-103"
Taxable Year	**2016**	**2017**	**2018**	**2019**
Income Tax due (regular rate)	₱ 1,370,237.00	₱13,767,495.00	₱ 7,002,773.00	₱ 9,766,840.00
Less: Current year tax credits	15,065,904.00	9,260,685.00	17,986,489.00	13,101,508.00
Tax payable/(Excess current year tax credits)	₱(13,695,667.00)	₱4,506,810.00	₱(10,983,716.00)	₱ (3,334,668.00)
Less: Prior year excess tax credits	-	13,695,667.00	9,188,857.00	20,172,573.00
Excess tax credits carried over to succeeding years	₱(13,695,667.00)	₱(9,188,857.00)	₱(20,172,573.00)	₱(23,507,241.00)

The Court notes that petitioner did not utilize the excess of the MCIT over normal income tax as credit against its tax liabilities for the succeeding three (3) taxable years.[111] After the lapse of the 3-year period, the excess MCIT over normal income tax asset loses its creditability.[112] In this case, since petitioner did not use the excess of MCIT over normal income tax as tax credit, there is no reason for respondent to disallow the same.

On the other hand, the excess CWT is used as credit against its tax liabilities in the TYs 2017 and 2021, as shown previously and hereafter:[113]

Exhibit No.	"P-104"	"P-105"	"P-106"
Taxable Year	**2020**	**2021**	**2022**
Income Tax due (regular rate)	₱ 4,839,125.00	₱ 9,474,997.00	₱ 3,836,824.00
Less: Current year tax credits	7,335,590.00	8,728,701.00	9,567,291.00

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109 Annex A, Exhibits "P-6" & "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").
110 Tables 30–36, Exhibit "P-30", Docket – Vol. II, at pp. 666–668.
111 Line 4, Schedule 7 – Tax Credits/Payments, Exhibits "P-101" to "P-103", USB (Exhibit "P-30-B").
112 Sec. 2.27(E)(7), Revenue Regulations (RR) No. 9-98 states:
"(7) *Accounting treatment of the excess minimum corporate income tax paid* — Any amount paid as excess minimum corporate income tax shall be recorded in the corporation's books as an asset under account title 'deferred charges-minimum corporate income tax'. This asset account shall be carried forward and may be credited against the normal income tax due for a period not exceeding three (3) taxable years immediately succeeding the taxable year/s in which the same has been paid. **Any amount of the excess minimum corporate income tax which has not or cannot be so credited against the normal income taxes due for the 3-year reglementary period shall lose its creditability.** Such amount shall be removed and deducted from 'deferred charges-minimum corporate income tax' account by a debit entry to 'retained earnings' account and a credit entry to 'deferred charges-minimum corporate income tax' account since this tax is not allowable as deduction from gross income it being an income tax." (Emphasis supplied)
113 Tables 30–36, Exhibit "P-30", Docket – Vol. II, at pp. 666–668.

Tax payable/(Excess current year tax credits)	₱ (2,496,465.00)	₱ 746,296.00	₱ (5,730,467.00)
Less: Prior year excess tax credits	23,507,241.00[114]	26,003,706.00	25,257,410.00
Excess tax credits carried over to succeeding years	₱(26,003,706.00)	₱(25,257,410.00)	₱(30,987,877.00)

Hence, respondent is correct in disallowing petitioner's excess CWT carried over to the succeeding taxable period. This is to ensure that petitioner will not benefit twice from the same tax credits [*i.e.*, (a) as deduction from the assessed deficiency income tax; and (b) as credit against its income tax liability in the succeeding taxable periods]. Although the subject disallowed excess CWT is not fully utilized as of the TY 2022, the tax credits remain in petitioner's ITR which is readily available for use whenever petitioner has income tax liabilities.

In sum, the total deficiency Income Tax assessment for TY 2016 should be adjusted in the amount of ₱9,799,335.29 computed as follows:

Taxable Income (Loss) per return			₱1,332,321.00
Add: Adjustments/disallowances			
Sales/Receipts not subjected to Income Tax (Schedule 1)		₱29,040,527.07	
Disallowed Expenses (Annex B)		5,357,066.77	34,397,593.84
Taxable Income			₱35,729,914.84
Tax Due			₱10,718,974.45
Less: Credits/Payments			
Creditable Taxes Withheld		₱15,065,904.00	
Less: Disallowed Creditable Taxes Withheld	₱450,597.84		
Excess Credit Carried Over to Succeeding Period	13,695,667.00	14,146,264.84	919,639.16
Basic Deficiency Income Tax			**₱9,799,335.29**

Petitioner is liable for the deficiency VAT for the TY 2016.

Respondent assessed petitioner of deficiency VAT amounting to ₱136,725.39, including increments, for the TY 2016, thus:[115]

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[114] The "Prior Year's Excess Credits Other Than MCIT" (Line 44, Part IV) shown in the 2020 *Annual Income Tax Return* (ITR) [Exhibit "P-104"] is ₱23,507,242.00. However, the overpayment (Line 20, Part II) shown in the 2019 Annual ITR (Exhibit "P-103") is actually ₱23,507,241.00. Hence, the difference of ₱1.00 in the prior year excess tax credits for 2020, 2021 and 2022 Annual ITR.

[115] Exhibits "P-8" and "R-7" to "R-7-C", BIR Records – Folder 1 of 6 (Exhibit "R-8"), p. 2592.

Taxable receipts subject to 12% per VAT return		₱623,554,262.88
Output Tax Due		₱74,826,511.55
Less: Allowable input tax per audit		
Input tax from the current period	₱46,991,088.77	
Less: Disallowed input tax (Annex A)	80,372.30	46,910,716.47
VAT Payable		₱27,915,795.08
Less: VAT Payments per returns		27,835,422.78
Basic VAT Due		₱80,372.30
Add: Interest 20% (Jan. 26, 2017 to Dec. 31, 2017)	₱14,973.47	
Interest 12% (Jan. 1, 2018 to Apr.15, 2022)	41,379.62	56,353.09
TOTAL AMOUNT DUE		**₱136,725.39**

Notably, the foregoing assessment is comprised solely of the disallowed input taxes amounting to ₱80,372.30 for being unsubstantiated. This is in relation to the disallowed expenses for the Income Tax assessment of ₱5,541,117.20 for being unsupported. The disallowed input taxes are as follows:[116]

TIN	Taxpayer/Payee	Income Payment	Input Taxes Claimed
402-887-570-0000	Dimson Marlou	₱8,679.00	₱1,041.43
313-158-725-000	Tabuada, Ronnie	527,841.50	63,340.98
154-504-656-000	AMC Rewinding and Battery Charging		125.89
117-703-762-000	Angels Burger		39.00
276-746-601-000	Argie Bakeshop	625.00	75.00
008-128-484-000	Armorcon Systems Builders Corp	131,250.00	15,750.00
000-082-588	Golden Cup Exim Marketing Corp.		1,875.34
TOTAL		**₱668,395.50**	**₱80,372.30**

It is further noted that the total input taxes claimed should be ₱82,247.64. However, respondent only assessed the amount of ₱80,372.30, which excludes the input taxes claimed from Golden Cup Exim Marketing Corp. of ₱1,875.34. As such, the Court is constrained to recognize the assessed amount of ₱80,372.30.

In this case, petitioner did not submit documents to refute the said disallowance.[117] Thus, respondent's deficiency VAT assessment in the amount of ₱136,725.39 is upheld.

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116 Exhibit "P-110", USB (Exhibit "P-30-B").
117 Exhibit "P-30", Docket – Vol. II, p. 668.

Petitioner is not liable for the deficiency WTC for the TY 2016.

This item of assessment arises from respondent's findings of salaries and wages not subjected to withholding tax and is related to the deficiency Income Tax assessment:[118]

Disallowed Salaries and Wages due to Non-Withholding		₱17,208,835.34
Multiplied by: Average Withholding Rate		
Tax withheld per the alphalist of employees	₱12,950,826.67	12.45348%
Taxable salaries per the alphalist of employees	₱103,993,626.79	
Basic Deficiency Withholding Tax on Compensation		**₱2,143,099.06**

Consistent with and based on its earlier discussion herein, this Court finds that the disallowance of the subject salaries and wages should be cancelled. Consequently, the deficiency WTC assessment should likewise be cancelled for lack of factual basis.

Petitioner is liable for the deficiency EWT for the TY 2016.

Respondent's examiner allegedly found that petitioner failed to remit the correct EWT on its income payments, as shown hereunder:[119]

	Per FS/ITR	Per Alphalist	Discrepancy	Rate	EWT Due
Rental					
Cost	₱3,231,940.00				
Operating	656,666.00				
Subtotal	₱3,888,606.00	₱3,256,850.40	₱631,755.60	5%	₱31,587.78
Professional Fees	₱468,228.00	102,225.60	366,002.40	10%	36,600.24
Payments to Supplier of Goods					
Acquisition of PPE	₱19,284,603.00				
Materials, Supplies, and Facilities	332,918,332.00				
Office Supplies	754,149.00				
Subtotal	₱352,957,084.00				
Less: Importations, other than capital goods	7,206,333.34				
	₱345,750,750.66	315,593,075.50	30,157,675.16	1%	301,576.75
Total					**₱369,764.77**

[118] Schedule 3, Annex A, Exhibits "P-6" and "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").
[119] Schedule 4, Annex A, Exhibits "P-6" and "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").

In assailing the assessed EWT, petitioner claims that respondent failed to consider, among others, the amounts reflected in the income statement in the current period for financial statement purposes under the accrual method of accounting (*e.g.*, rental) for which the pertinent withholding taxes had already been withheld and remitted in prior periods (*i.e.*, the prior year), in accordance with Section 2.57.4 of RR No. 2-98, as amended.[120]

As for the alleged unwithheld taxes on payments for professional fees, petitioner claims that these payments were made to professional partnerships that are not subject to income tax.[121]

Regarding the alleged unwithheld taxes applicable on payments for the purchase of goods, petitioner avers that some of these payments pertain to the amount of materials reported by petitioner as part of its cost of sales/services in its ITR and income statement, and sourced from its inventory, for which withholding taxes had already been paid and remitted in the preceding period.[122]

The ICPA examined petitioner's documents and reported his findings as follows:[123]

f. Without withholding tax on income payments

Table 45:

Particulars	**Reference**	**Amount of Income Payment**	**Should be Tax Withheld**	**Tax Withheld Per Alphalist of Payees**	**Difference**
Rental	**Annex M-2**	₱912,706.57	₱ 45,635.33	₱–	₱45,635.33
Professional fee	**Annex N-3**	1,500.00	150.00	–	150.00
Acquisition of PPE (1%)	**Annex O-6**	1,708,517.45	17,093.19	–	17,093.19
Acquisition of PPE (2%)	**Annex O-7**	353,155.87	7,063.12	–	7,063.12
Materials, supplies, and facilities	**Annex P-5**	17,335,001.05	173,350.05	–	173,350.05
Office supplies	**Annex Q-3**	94,731.95	947.33	–	947.33
Total		**₱20,405,612.89**	**₱244,239.02**	**₱–**	**₱244,239.02**

. . . .

[120] Docket – Vol. II, p. 979., *Petitioner's Memorandum*, par. 70.
[121] *Id.* at 979, *Petitioner's Memorandum*, par. 71.
[122] *Id.* at 979, *Petitioner's Memorandum*, par. 72.
[123] Exhibit "P-30", Docket – Vol. II, at pp. 670–672.

A.3) I also noted some transactions that do not have available supporting documents during my verification.

Table 46:

Particulars	**Reference**	**Amount of Income Payment**[124]
Rental	**Annex M**	₱ 2,143,382.50
Professional fees	**Annex N**	42,784.03
Acquisition of PPE	**Annex O**	1,986,050.17
Materials, supplies, and facilities	**Annex P**	10,880,302.83
Office supplies	**Annex Q**	210,274.63

....

From the foregoing, the ICPA found that income payments amounting to ₱20,405,612.89 were not subjected to withholding tax, and income payments in the amount of ₱15,262,794.16 are not substantiated (a total of ₱35,668,407.05 income payments). However, respondent only found income payments not subjected to withholding tax in the amount of ₱31,155,433.16:

Particulars	**Amount of Income Payment**
Rental	₱ 631,755.60
Professional fees	366,002.40
Payments to the supplier of goods	30,157,675.16
TOTAL	**₱31,155,433.16**

Hence, for petitioner's failure to sufficiently disprove respondent's findings, the Court is constrained to uphold respondent's assessment of deficiency EWT in the amount of ₱369,764.77.

Petitioner is liable for deficiency DST for the TY 2016.

Respondent allegedly found that petitioner has related party transactions, increase in borrowings, and advances to officers, which were not subjected to DST:[125]

[124] With a total of ₱15,262,794.16.
[125] Schedule 5, Annex A, Exhibits "P-6" & "R-5-E", BIR Records – Folder 6 of 6 (Exhibit "R-8").

Due to related parties	₱11,114,140.00
Increase in borrowings	46,762,077.00
Advances to officers	3,837,061.00
Total	61,713,278.00
Multiply by DST Rate	P1.00/P200.00
Basic Tax Due	**₱ 308,567.00**

Petitioner avers that respondent's assessment is erroneous and improper for the following reasons:[126]

(a) The amount of Php11,114,140.00 under 'Due to Related Parties' constitutes payments on outstanding accounts, for which DST had already been paid;

(b) The amount of Php46,762,077 under Increase in Borrowings constitutes amounts due to financial institutions for which DST has already been withheld from loan proceeds or paid for by said financial institution;

(c) The amount of Php3,837,061.00 under 'Advances to Officers' does not constitute loans subject to DST but constitute amounts which were advanced for the purchases of goods and services to be liquidated by said officers. Under Section 9 of Revenue Regulations 13-2004, these transactions are exempt from DST.

Due to related parties – ₱11,114,140.00

An examination by this Court of petitioner's AFS shows the following:[127]

LIABILITIES	**2016**	**2015**
Current Liabilities		
Borrowings	₱65,783,407.00	₱18,361,429.00
Trade and other payables	192,575,764.00	145,662,456.00
Deferred revenue	60,559,872.00	42,668,273.00
Other current liabilities	45,728,713.00	31,318,071.00
Total	₱364,647,756.00	₱238,010,229.00
Non-current Liabilities		
Borrowings	₱249,230.00	₱909,131.00
Accrued retirement benefits	42,709,650.00	35,306,242.00
Deferred tax liabilities	176,647.00	688,253.00
Due to related parties	4,576,520.00	9,567,726.00
Total	₱47,712,047.00	₱46,471,352.00
TOTAL LIABILITIES	**₱412,359,803.00**	**₱284,481,581.00**

[126] Docket – Vol. II, p. 981, *Petitioner's Memorandum*, par. 82.
[127] Exhibit "P-10", USB (Exhibit "P-30-B"); BIR Records – Folder 6 of 6 (Exhibit "R-8"), p. 638.

Note 18 of the *Notes to Financial Statements* shows the following significant transactions of petitioner with related parties:[128]

a. Advances to officers

2016	Nature of Transactions	Balance at Beginning of Period	Amount of transactions	Outstanding balance
Directors/Shareholders	Loans	5,757,301	(3,837,061)	1,920,240
2015				
Directors/Shareholders	Loans	7,080,703	(1,323,402)	5,757,301

b. Due to related parties

2016	Nature of Transactions	Balance at Beginning of Period	Amount of transactions	Outstanding balance
Directors/Shareholders	Loans	5,570,772	(994,252)	4,576,520
Directors/Shareholders	Dividends payable	3,996,954	(3,996,954)	-
Key management personnel	Compensation to key management personnel	-	9,489,888	-
Affiliate	Rent	-	630,000	-
2015				
Directors/Shareholders	Loans	4,917,371	653,401	5,570,772
Directors/Shareholders	Dividends payable	1,693,881	2,303,073	3,996,954
Directors/Shareholders	Deposit for future subscription	3,800,000	(3,800,000)	-
Key management personnel	Compensation to key management personnel	-	9,741,093	-
Affiliate	Rent	-	630,000	-

From the foregoing, it is clear that the amount ₱11,114,140.00 comes from the following items, to wit:[129]

Decrease in loans from directors and shareholders	₱994,252.00
Compensation to key management personnel (KMP)	9,489,888.00
Rent to affiliate	630,000.00
Total	**₱11,114,140.00**

[128] Exhibit "P-10", USB (Exhibit "P-30-B"); BIR Records – Folder 6 of 6 (Exhibit "R-8"), pp. 608–609.
[129] See also Table 48, Exhibit "P-30", Docket – Vol. II, p. 673.

The ICPA verified the amount ₱994,252.00, and his findings are as follows:[130]

Table 49:

Particulars	**Reference**	**Amount**
Advances	**Annex R-1**	(₱2,900,000.00)
Payment of advances	**Annex R-2**	3,800,000.00
Adjustments	**Annex R-3**	94,252.56
Total		**₱994,252.56**

The advances amounting to **₱2,900,000.00** is subject to DST.

The payments and adjustments cannot be subject to DST pursuant to Section 179 of the NIRC of 1997, as amended, which provides:

> SEC. 179. *Stamp Tax on All Debt Instruments.* — **On every original issue of debt instruments**, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: .... (*Emphasis supplied*)

From petitioner's *Notes to Financial Statements*, it is clear that it has an outstanding balance on loan from directors and shareholders as of the end of the TY 2015 in the amount of ₱5,570,772.00. This means that the original issuance of the debt instruments was made in the TY 2015 and prior thereto. However, the examination of petitioner's books is only for the period January 1, 2016 to December 31, 2016, as per No. LOA No. AUDM35/014060/2017/eLA201500048959 dated September 6, 2017.[131]

Likewise, compensation paid to key management personnel amounting to ₱9,489,888.00 is not subject to the DST, but to the WTC. The ICPA verified this amount to petitioner's *Alphalist of Employees*[132] and reported the following findings:[133]

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130 Docket – Vol. II, pp. 673–674, Exhibit "P-30".
131 Exhibits "P-4" and "R-1", BIR Records – Folder 6 of 6 (Exhibit "R-8"), p. 2.
132 Exhibits "P-51" to "P-53", USB (Exhibit "P-30-B").
133 Exhibit "P-30", Docket – Vol. II, p. 674.

Table 50:

Line	TIN	KMP	Amount
31	189-171-548-0000	ARIVARA, ROMELL ABRANTES	₱1,054,115.30
115	909-126-962-0048	CATALAN, ELEAZAR LAZARTE	682,339.03
259	102-377-763-0000	LAHOZ, JOSE ANTONIO OLIVER	1,616,480.28
260	105-818-325-0000	LAHOZ, RICARDO VERZOSA	1,813,505.75
261	131-242-953-0000	LAHOZ, VICTORINO BENJAMIN VERZOSA	1,825,858.25
337	198-034-817-0000	NAZARETA, FELIPE ICUTANIM	697,927.60
374	149-274-618-0000	PASCUAL, MERCEDITA JIMENO	885,894.04
395	118-082-406-0000	PROBADORA, ARNEL BELARMINO	1,007,919.69
Total Per Alphalist			**9,584,039.94**
Per AFS (Exhibit P-10)			**9,489,888.00**
Difference			**₱94,151.94**

On the other hand, the ICPA is correct to note that the loans incurred in the TY 2016 amounting to ₱2,900,000.00 are subject to DST. Unfortunately, petitioner did not submit any convincing evidence to support its allegation that DST thereon has been paid. The ICPA also noted that there were no available supporting documents for petitioner's rent to affiliate in the amount of ₱630,000.00. Thus, these transactions should indeed be assessed of deficiency DST.

Increase in borrowings - ₱46,762,077.00

Anent the increase in borrowings, the amount of ₱46,762,077.00 was computed from the net increase of petitioner's current and non-current borrowings, thus:[134]

	2016	2015	Increase/ (Decrease)
Borrowings - Current	₱65,783,407.00	₱18,361,429.00	₱47,421,978.00
Borrowings - Non-current	249,230.00	909,131.00	(659,901.00)
Net Increase	**₱66,032,637.00**	**₱19,270,560.00**	**₱46,762,077.00**

The ICPA verified the foregoing amounts picked up by respondent from petitioner's AFS for the TY 2016, thus:[135]

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[134] Exhibit "P-10", USB (Exhibit "P-30-B"); BIR Records – Folder 6 of 6 (Exhibit "R-8"), p. 638.
[135] Exhibit "P-30", Docket – Vol. II, p. 674.

Table 51:

Particulars	Reference	Amount
Loans availed	**Annex S-1**	(₱116,000,000.00)
Loan payments	**Annex S-2**	69,000,000.00
Adjustments – amortization of discount	**Annex S-3**	237,923.97
Total		**(₱46,762,076.03)**

However, as previously intimated, payments and adjustments are not subject to DST pursuant to Section 179 of the NIRC, as amended, since the said provision covers only *"every original issue of debt instruments"*.

The ICPA also verified petitioner's loans availed in the TY 2016 amounting to ₱116,000,000.00 with its related promissory notes, which shows that DST were already deducted from the loan proceeds.[136] However, further verification by this Court shows the following:

Exhibit No.	Financial Institution	Loan Amount
DST not deducted from proceeds of loan		
"P-12907"	China Bank	₱10,000,000.00
Supported by journal vouchers only		
"P-12910"	Metropolitan Bank and Trust Co.	10,000,000.00
"P-12911"	Metropolitan Bank and Trust Co.	10,000,000.00
"P-12912"	Metropolitan Bank and Trust Co.	12,000,000.00
"P-12913"	Metropolitan Bank and Trust Co.	2,000,000.00
Total		**₱44,000,000.00**

From the foregoing, petitioner failed to prove that the DST on loans availed in the amount of ₱44,000,000.00 were already paid or deducted from the proceeds. Hence, the same should be assessed of deficiency DST.

Advances to officers - ₱3,837,061.00

From petitioner's Note 18 of *Notes to Financial Statements*, the amount ₱3,837,061.00 represents a decrease in the account advances to officers, to wit:[137]

	2016	2015	Decrease
Advances to Officers	₱1,920,240.00	₱5,757,301.00	₱3,837,061.00

[136] Annex S-1, Exhibit "P-30", USB (Exhibit "P-30-B").
[137] Exhibit "P-10", USB (Exhibit "P-30-B"); BIR Records – Folder 6 of 6 (Exhibit "R-8"), p. 615.

The ICPA found that the subject advances "are not loans but adjustments of the excess or over of the advances received subject for liquidation. An adjustment was also posted to close the retention payable to advances to officers account":[138]

Table 52:

Particulars	Reference	Amount
Advances subject for liquidation – excess of funds	**Annex T-1**	₱1,053.00
Advances to an affiliate – CHILLEX INT'L. PHILS., INC.	**Annex T-2**	20,589.68
Adjustment to close retention payable to CHILLEX INT'L. PHILS., INC.	**Annex T-3**	(3,858,203.40)
Total		**(₱3,836,560.72)**

Further verification by this Court reveals that only advances subject for liquidation-excess of funds in the amount of ₱1,053.00 are supported by cash disbursement vouchers, petty cash vouchers and SIs or receipts, while advances to an affiliate – Chillex International Phils., Inc. (Chillex) are not substantiated. To reiterate, adjustment to close retention payable to Chillex is not subject to DST pursuant to Section 179 of the NIRC of 1997, as amended.

In sum, petitioner is liable for deficiency DST on the following transactions in the adjusted amount of ₱237,752.95, computed as follows:

Due to related parties:		
Advances made in 2016	₱2,900,000.00	
Rent to affiliate	630,000.00	₱ 3,530,000.00
Increase in borrowings:		
Loans availed		44,000,000.00
Advances to an affiliate – Chillex Int'l. Phils., Inc.		20,589.68
TOTAL		₱47,550,589.68
Multiply by DST Rate		₱1.00/200.00
Basic deficiency DST		**₱ 237,752.95**

Mr

[138] Exhibit "P-30", Docket – Vol. II, p. 675.

Petitioner is not liable for compromise penalty.

In the FDDA, respondent imposed compromise penalty in the amount of ₱20,000.00, for the alleged failure of petitioner to file DST.[139]

However, such imposition cannot be sustained.

Under Revenue Memorandum Order No. 7-2015,[140] "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer" in the event that a taxpayer refuses to pay the same. It is well-settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[141] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[142] Thus, the said imposition must be cancelled.

To recapitulate, petitioner is liable for the following deficiency taxes for the taxable year 2016 in the total amount of ₱10,487,225.31, summarized as follows:

Tax Type	Basic Deficiency
Income Tax	₱9,799,335.29
VAT	80,372.30
EWT	369,764.77
DST	237,752.95
Total	**₱10,487,225.31**

In addition to the foregoing basic deficiency taxes, petitioner is liable to a penalty of 25% surcharge imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, which provides:

SEC. 248. *Civil Penalties.* —

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139 Exhibits "P-8" and "R-7", BIR Records – Folder 1 of 6 (Exhibit "R-8"), p. 2592.

140 The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

141 *The Philippines International Fair, Inc. v. The Collector of Internal Revenue*, G.R. Nos. L-12928 & L-12932, March 30, 1962 [Per J. Dizon, *En Banc*].

142 *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1991 [Per J. Narvasa, First Division].

> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> ....
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;

Moreover, in accordance with Section 249(B) of the NIRC of 1997, as amended, petitioner is liable to pay deficiency interest at the rate of 20% *per annum* computed from the date prescribed for its payment until the full payment thereof. However, with the effectivity of RA No. 10963, or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, on January 1, 2018, the 20% deficiency interest shall be computed until December 31, 2017 only.

The TRAIN Law amended (i) the interest rates in Section 249 of the NIRC; (ii) the computation of deficiency interest from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by respondent, whichever comes earlier; and (iii) provides that the deficiency and delinquency interest prescribed under subsections (B) and (C) thereof shall not be imposed simultaneously.

The *Assessment Notices* bear the date October 10, 2019[143] as the time prescribed to pay the total amount due.

Likewise, pursuant to Section 249(C) of the NIRC of 1997, as amended, petitioner is liable to pay delinquency interest at the rate of 12% *per annum* computed from October 11, 2019 until full payment thereof.

Thus, for the TY 2016, petitioner is liable to pay the aggregate amount of ₱16,860,345.72, consisting of basic deficiency Income Tax, VAT, EWT, and DST, surcharge, and deficiency interest computed as of October 10, 2019 as follows:

	Income Tax	VAT	EWT	DST	TOTAL
Basic tax due	₱ 9,799,335.29	₱ 80,372.30	₱ 369,764.77	₱ 237,752.95	₱ 10,487,225.31
Add: 25% Surcharge	2,449,833.82	20,093.08	92,441.19	59,438.24	2,621,806.33
20% Deficiency Interest:					

[143] Exhibits "R-5-G", "R-5-H", "R-5-J", and "R-5-K", BIR Records – Folder 6 of 6 (Exhibit "R-8").

(Apr. 18, 2017[144] to Dec. 31, 2017) [₱9,799,335.29 x 20% x (258/365days)]	1,385,330.69				1,385,330.69
(Jan. 26, 2017 to Dec. 31, 2017) [₱80,372.30 x 20% x (340/365days)]		14,973.47			14,973.47
(Jan. 21, 2017[145] to Dec. 31, 2017) [₱369,764.77 x 20% x (345/365days)]			69,900.74		69,900.74
(Jan. 6, 2017 to Dec. 31, 2017) [₱237,752.95 x 20% x (360/365days)]				46,899.21	46,899.21
12% Deficiency Interest:					
(Jan. 1, 2018 to Oct. 10, 2019) [₱9,799,335.29 x 12% x (648/365days)]	2,087,661.13				2,087,661.13
[₱80,372.30 x 12% x (648/365days)]		17,122.60			17,122.60
[₱369,764.77 x 12% x (648/365days)]			78,775.09		78,775.09
[₱237,752.95 x 12% x (648/365days)]				50,651.15	50,651.15
Total deficiency interest	*3,472,991.82*	*32,096.07*	*148,675.83*	*97,550.36*	*3,751,314.08*
Total Amount Due	**₱15,722,160.93**	**₱132,561.45**	**₱610,881.79**	**₱394,741.55**	**₱16,860,345.72**

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

Accordingly, the compromise penalty in the amount of ₱20,000.00, imposed for the alleged failure of petitioner to file Documentary Stamp Tax, and the deficiency assessment for Withholding Tax on Compensation for taxable year 2016, are **CANCELLED** and **SET ASIDE**.

However, the deficiency assessments for Income Tax, Value-Added Tax, Expanded Withholding Tax, and Documentary Stamp Tax for TY 2016 are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the total amount of **₱16,860,345.72**, representing deficiency taxes, inclusive of surcharge and interest, broken down as follows:

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144 April 15, 2017, the last day for filing and paying the 2016 income tax return fell on a Saturday, hence, due date is moved to the next working day, *i.e.*, April 17, 2017.

145 Petitioner is an electronic filing and payment system (eFPS) filer; hence, pursuant to Section 2.58 of RR No. 2-98, as amended by RR No. 17-2003, paying the December 2016 EWT due *via* the eFPS shall be five (5) days later than the January 15 of the following year, *i.e.*, January 20, 2017.

Tax Type	Basic Deficiency	Surcharge	Interest	Total
Income Tax	₱ 9,799,335.29	₱ 2,449,833.82	₱ 3,472,991.82	₱ 15,722,160.93
VAT	80,372.30	20,093.08	32,096.07	132,561.45
EWT	369,764.77	92,441.19	148,675.83	610,881.79
DST	237,752.95	59,438.24	97,550.36	394,741.55
Total	**₱10,487,225.31**	**₱2,621,806.33**	**₱3,751,314.08**	**₱16,860,345.72**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% *per annum* on the total amount due of **₱16,860,345.72** reckoned from October 11, 2019 until full payment, equivalent to ₱5,543.13[146] per day, pursuant to Section 249(C) of the NIRC of 1997, as amended by TRAIN Law and implemented by RR No. 21-2018.

Finally, pursuant to Section 13 of RA No. 9282, and considering that this Decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to enforce collection through distraint and levy upon petitioner's goods, chattels, effects, personal property (including stocks, securities, debts, credits, bank accounts, and other interests), and/or real property, in sufficient quantity to satisfy the tax liability and any increments due to delinquency.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

146 ₱16,860,345.72 multiplied by 12% divided by 365 days.

ATTESTATION

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
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