REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

DAVAO CITY FOOD INDUSTRIES, INC., *Petitioner,*	**CTA CASE NO. 9013**
- versus -	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 14 2018 12:48 p.m.

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DECISION

BAUTISTA, J.:

The Case

This case involves a Petition for Review[1], which seeks to cancel and withdraw the deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), documentary stamp tax ("DST"), and final withholding tax ("FWT") assessments issued by respondent against petitioner for calendar year ("CY") 2011 in the total amount of Php17,236,148.10, inclusive of interests, surcharges, and penalties.[2]

The Parties

Petitioner Davao City Food Industries, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered principal office address at Victoria Plaza,

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[1] *Records, CTA Case No. 9013, Vol. 1, Petition for Review ("PFR")*, pp. 6-149, with annexes.

[2] *Id.* at 6-7, 39.

JP Laurel Avenue, Bajada, Davao City.[3] It is authorized by the Securities and Exchange Commission to transact business in the Philippines under SEC Registration No. AS92001173 dated January 1, 1992.[4]

On the other hand, respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of his office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")*[5] and other tax laws, rules, and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

The Facts

On June 7, 2013[7], the BIR issued Letter of Authority ("LOA") No. LOA-123-2013-00000004 authorizing Revenue Officers Bianca Bess Bureros and Vivian Pollisco and Group Supervisor Alicia Socorro Abutazil to examine petitioner's books of accounts and accounting records for all internal revenue taxes for CY 2011.[8] Petitioner received the LOA on July 1, 2013.[9]

On September 2, 2014[10], the BIR issued a Preliminary Assessment Notice ("PAN") finding petitioner liable for deficiency income tax, VAT, EWT, DST, and FWT for CY 2011 in the aggregate amount of Php16,867,856.60, inclusive of interest and compromise.[11] Petitioner received the PAN on September 8, 2014.[12]

On September 17, 2014, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the

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[3] *Records, Vol. 2, Joint Stipulation of Fact ("JSF") 2, par. 1,* pp. 776-778. Noted by the Court (*see Records, Vol. 2, Resolution,* p. 788).
[4] *Id.*
[5] *Republic Act No. 8424,* as amended (1997).
[6] *Records, Vol. 1, JSF, Statement of Facts, par. 1,* p. 445.
[7] *Bureau of Internal Revenue ("BIR") Records, Letter of Authority ("LOA"),* p. 727.
[8] *Records, Vol. 1, JSF, Statement of Facts, par. 2,* pp. 445-446.
[9] *BIR Records, LOA,* p. 727.
[10] *Id., Exhibit "R-6," Preliminary Assessment Notice ("PAN"),* pp. 882-893.
[11] *Records, Vol. 1, JSF, Statement of Facts, par. 3,* p. 446.
[12] *BIR Records, Exhibit "R-6," PAN,* p. 893.

National Internal Revenue Code (the "Waiver").

On September 29, 2014[13], the BIR issued a Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices (the "FAN") finding petitioner liable for deficiency income tax, VAT, EWT, DST, and FWT for CY 2011 in the aggregate amount of Php17,236,148.10, inclusive of interest and compromise.[14] Petitioner received the FAN on October 8, 2014.[15]

On November 6, 2014, petitioner filed its protest letter to the FAN and requested for a reinvestigation of the same.[16]

On February 17, 2015, petitioner received the Final Decision on Disputed Assessment ("FDDA") issued by the BIR finding petitioner liable for deficiency income tax, VAT, EWT, DST, and FWT, with compromise penalties, for CY 2011 in the aggregate amount of Php17,236,148.10.[17]

Aggrieved, on March 19, 2015, petitioner filed the present Petition for Review[18].

After being granted extensions,[19] respondent filed his Answer[20] on May 19, 2015.

Respondent's Pre-Trial Brief[21] was filed on July 10, 2015 while petitioner submitted its Pre-Trial Brief[22] on September 17, 2015. Thereafter, a pre-trial conference was held on September 22, 2015.[23] Together, the parties filed their Joint Stipulation of Facts[24] on October

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[13] *BIR Records, Exhibit "R-8," Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices ("FAN"),* pp. 908-924.
[14] *Records, Vol. 1, JSF, Statement of Facts, par. 4,* pp. 446-447.
[15] *BIR Records, Exhibit "R-8," FAN,* p. 924.
[16] *Petitioner's Formal Offer of Evidence ("FOE"), Box 2, Exhibit "P-84," Protest to the FAN; BIR Records, Protest to the FAN,* pp. 939-1062.
[17] *BIR Records, Exhibit "R-10," Final Decision on Disputed Assessment ("FDDA"),* pp. 1225-1233.
[18] *Records, Vol. 1, PFR,* pp. 6-149, with annexes.
[19] *Records, Vol. 1, Motion for Extension of Time to File Answer,* pp. 152-155; *Records, Vol. 1, Resolution,* p. 157; *Records, Vol. 1, Urgent Motion for Extension of Time to File Answer,* pp. 158-161.
[20] *Records, Vol. 1, Answer,* pp. 162-179.
[21] *Id., Respondent's Pre-Trial Brief,* pp. 206-214.
[22] *Id., Pre-Trial Brief with Motion for Commissioning of Independent Certified Public Accountant,* pp. 233-245.
[23] *Id., Minutes of Hearing dated September 22, 2015,* p. 443.
[24] *Id., JSF,* pp. 445-455.

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2, 2015, which was adopted by the Court in the Pre-Trial Order[25] issued on November 16, 2015.

Petitioner proceeded with the presentation of its evidence. To this end, the following witnesses appeared: *(1)* Ms. Cristina S. Cañizares, petitioner's Head of Accounting;[26] *(2)* Ms. Cornelia M. Naguit, Director of Finance - General Accounting of Golden Arches Development Corporation ("GADC");[27] and *(3)* Ms. Madonna Mia S. Dayego, the Court-commissioned Independent Certified Public Accountant ("ICPA").[28]

Thereafter, petitioner filed its Formal Offer of Evidence[29] on June 17, 2016 wherein it offered ***Exhibits* "P-1," "P-1-a," "P-3," "P-3-1," "P-4," "P-5," "P-6," "P-6-a," "P-7," "P-7-a," "P-8" to "P-79," "P-80," "P-80-1," "P-80-2," "P-81," "P-81-1," "P-81-2," "P-82," "P-82-1," "P-82-2," "P-83," "P-83-1," "P-83-2," "P-84," "P-85," "P-85-a," "P-86," "P-86-a," "P-87," "P-87-a," "P-92," "P-92-1" to "P-92-4," "P-93," "P-94," "P-95," "P-95-1" to "P-95-690," "P-96," "P-96-1" to "P-96-728," "P-97," "P-98," "P-99," "P-99-1" to "P-99-9," "P-100," "P-101," "P-101-1" to "P-101-34," "P-102," "P-102-1," "P-103," "P-103-1" to "P-103-4," "P-104," "P-104-1," "P-104-2," "P-105," "P-105-1" to "P-105-47," "P-106," "P-107," "P-107-1" to "P-107-30," "P-108," "P-108-1" to "P-108-33," "P-109," "P-109-1" to "P-109-86," "P-110," "P-111," "P-111-1" to "P-111-693," "P-124," "P-125," "P-125-1" to "P-125-73," "P-126," "P-126-1" to "P-126-12," "P-127," "P-127-1" to P-127-7," "P-128," "P-128-1" to "P-128-3," "P-130," "P-131," "P-131-1" to "P-131-50," "P-132," "P-132-1" to "P-132-79," "P-133," "P-133-1" to "P-133-19," "P-134," "P-134-1" to "P-134-78," "P-135," "P-135-1" to "P-135-76," "P-136," "P-136-1" to "P-136-16," "P-137," "P-137-1" to "P-137-49," "P-138," "P-138-1" to "P-138-204," "P-139," "P-139-1" to "P-139-43," "P-140," "P-140-1" to "P-140-166," "P-141," "P-142," "P-143," "P-143-1" to "P-143-31," "P-144," "P-144-1," "P-144-2," "P-145," "P-145-1" to "P-145-31," "P-146," and "P-146-1" to "P-146-12."** Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence)[30] on June 20, 2016. In a

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[25] *Records, Vol. 1, Pre-Trial Order ("PTO")*, pp. 476-486.
[26] *Records, Vol. 1, Minutes of Hearing dated February 22, 2016*, p. 500; *Records, Vol. 2, Minutes of Hearing dated April 18, 2016*, p. 661; *Records, Vol. 1, Exhibit "P-1," Judicial Affidavit of Witness Cristina S. Cañizares*, pp. 247-398, with annexes.
[27] *Records, Vol. 2, Minutes of Hearing dated April 18, 2016*, p. 661; *Records, Vol. 1, Exhibit "P-3," Judicial Affidavit of Witness Cornelia M. Naguit*, pp. 416-425.
[28] *Records, Vol. 2, Minutes of Hearing dated May 16, 2016*, p. 775; *Records, Vol. 2, Exhibit "P-87," Judicial Affidavit of Independent Certified Public Accountant Madonna Mia S. Dayego*, pp. 760-774.
[29] *Records, Vol. 2, Formal Offer of Evidence*, pp. 795-820.
[30] *Id., Comment (Re: Petitioner's Formal Offer of Evidence)*, pp. 821-824.

Resolution[31] dated July 12, 2016, the Court admitted all of petitioner's evidence, subject to its final evaluation and/or appreciation of their probative value to the issues involved in the case.

Respondent then proceeded with the presentation of his evidence. In this regard Ms. Alicia Socorro T. Abutazil, the group supervisor authorized to conduct the examination and investigation of petitioner's books of accounts for CY 2011, appeared.[32]

On November 22, 2016, respondent filed his Formal Offer of Documentary Evidence[33] wherein he offered ***Exhibits* "R-1," "R-1-a," "R-1-b," "R-2," "R-3," "R-4," "R-4-a," "R-5," "R-6," "R-7," "R-8," "R-8-a" to "R-8-e," "R-9," "R-10," "R-11," and "R-11-a."** Petitioner submitted its Comment/Opposition (Re: Respondent's Formal Offer of Documentary Evidence)[34] on December 12, 2016. In a Resolution[35] dated March 23, 2017, the Court admitted all of respondent's evidence, likewise subject to its final evaluation and/or appreciation of their probative value to the issues involved in the case.

After being granted an extension,[36] petitioner filed its Memorandum[37] on June 19, 2017; however, respondent failed to file his memorandum despite notice.[38]

On June 27, 2017, the Court issued a Resolution[39] submitting the case for decision; hence, this Decision.

The Issues[40]

The issues for consideration of this Court are, as follows:

WHETHER RESPONDENT'S RIGHT TO ASSESS

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[31] *Records, Vol. 2, Resolution,* pp. 834-836.
[32] *Records, Vol. 2, Minutes of Hearing dated November 21, 2016,* p. 839; *Records, Vol. 1, Exhibit "R-11," Judicial Affidavit of Revenue Officer Alicia Socorro T. Abutazil,* pp. 220-227.
[33] *Records, Vol. 2, Formal Offer of Documentary Evidence,* pp. 841-849.
[34] *Id., Comment/Opposition (Re: Respondent's Formal Offer of Documentary Evidence),* pp. 850-853.
[35] *Id., Resolution,* pp. 858-859.
[36] *Records, Vol. 2, Motion for Extension of Time to File Memorandum,* pp. 861-863; *Records, Vol. 2, Resolution,* p. 866.
[37] *Records, Vol. 2, Memorandum,* pp. 867-911.
[38] *See Records, Vol. 2, Records Verification Report,* p. 860.
[39] *Records, Vol. 2, Resolution,* p. 913.
[40] *Id., Vol. 1, PTO, Issues,* pp. 479-480.

PETITIONER FOR DEFICIENCY TAXES FOR CY 2011 HAS PRESCRIBED;

WHETHER THE ASSESSMENT FOR DEFICIENCY INCOME TAX, VAT, EWT, DST, AND FWT SHOULD BE CANCELLED AND WITHDRAWN FOR BEING DEVOID OF ANY LEGAL AND/OR FACTUAL BASIS; AND

WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX, VAT, EWT, DST, AND FWT FOR CY 2011 IN THE AMOUNT OF PHP17,236,148.10, AS WELL AS DEFICIENCY AND DELINQUENCY INTERESTS, AS PROVIDED IN *SECTIONS 248 AND 249 OF THE 1997 NIRC.*

The main issue to be resolved by this Court is whether the deficiency tax assessments made by respondent against petitioner for CY 2011 are valid.

Petitioner's Arguments[41]

Petitioner argues that respondent's right to assess petitioner for deficiency taxes for CY 2011 has prescribed, considering the Waiver petitioner executed was defective as the copy thereof in petitioner's possession was not signed by respondent nor any of his authorized representatives; and did not state the date of acceptance, as prescribed under *Revenue Memorandum Order ("RMO") No. 20-90*[42].

Petitioner likewise contends that the assessments for deficiency income tax, VAT, EWT, DST, and FWT should be cancelled and withdrawn for being devoid of any legal and/or factual basis. To this end, petitioner posits that: *(1)* the FDDA it received was null and void for its failure to state the factual and legal bases for the assessments which therefore constitutes a violation of petitioner's right to due process; *(2)* the alleged undeclared sales of petitioner was only the result of an erroneous disclosure in petitioner's Audited Financial Statements ("AFS") for CY 2011; *(3)* the VAT assessment has no legal or factual basis; *(4)* no DST is due on trade payables for management services; *(5)* advertising expenses do not constitute royalties for which

[41] *Records, Vol. 2, Memorandum, Discussion,* pp. 873-909.
[42] April 4, 1990.

FWT is due; and *(6)* petitioner is not liable for deficiency or delinquency interests.

Respondent's Counter-Arguments[43]

Respondent counters that petitioner's contention of prescription and execution of an invalid Waiver is inappropriate; and that petitioner cannot impugn the validity of the Waiver which it executed. Respondent likewise claims that he observed both procedural and substantive due process in the issuance of the assessments against petitioner, in accordance with law, rules, and jurisprudence. Finally, respondent argues that, in fact, petitioner was able to protest the assessment as the PAN, the FAN, and the FDDA sufficiently stated the facts and the law on which the assessments were based.

The Ruling of the Court

The Court holds that the assessments against petitioner for deficiency taxes are partially valid.

The defective Waiver did not toll the running of the three (3)-year period to assess petitioner.

Petitioner argues that the Waiver executed in the present case was defective. Consequently, the assessments issued by respondent for deficiency taxes have already expired. The Court holds that, indeed, the Waiver executed in the present case was infirm; hence, the same did not toll the running of the three (3)-year period to assess petitioner.

Section 203 in relation to *Section 222(b) of the 1997 NIRC* provides that internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or the day the return was filed, whichever comes later, unless the CIR and the taxpayer timely agree in writing to extend the period to assess. The relevant provisions state:

> Sec. 203. *Period of Limitation Upon Assessment and*

[43] *Records, Vol. 1, Answer, Special and Affirmative Defenses,* pp. 165-176.

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> *Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where the 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.
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> xxx xxx xxx
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> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
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> xxx xxx xxx
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> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> xxx xxx xxx[44]

The exception to the three (3)-year prescriptive period for assessment of taxes refers to the execution by the CIR and the taxpayer of a valid Waiver of the Statute of Limitations. The Supreme Court, in *CIR v. Kudos Metal Corporation*[45], provided the guidelines for the execution of a valid Waiver, as follows:

> Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19__", which

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[44] Underscoring ours.
[45] G.R. No. 178087, May 5, 2010, 620 SCRA 232.

indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[46]

In *Philippine Journalists, Inc. v. CIR*[47], the Supreme Court held that the guidelines for the execution of a Waiver must be strictly complied with as it is a derogation of the taxpayer's right against unreasonable investigation, thus:

The NIRC, under Section 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable

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[46] Underscoring ours.
[47] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

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investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subject to further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. v. Ablaza*:

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RMO No. 20-90 implements these provisions of the NIRC relating to the period of prescription for the assessment and collection of taxes. A cursory reading of the Order supports petitioner's argument that the RMO must be strictly followed, thus:

xxx xxx xxx

A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. RMO No. 20-90 explains the rationale of a waiver:

xxx xxx xxx[48]

Accordingly, prevailing jurisprudence mandates the strict observance of the guidelines provided in *RMO No. 20-90* and *Revenue Delegation Authority Order ("RDAO") No. 05-01*[49] as regards the execution of Waivers. Care should be taken, however, in the application of the aforementioned general rule (*i.e.*, strict observance

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[48] Underscoring ours.
[49] August 2, 2001.

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of the tax regulations as regards the execution of Waivers) considering that the Supreme Court carved out an exception to the strict application of *RMO No. 20-90* and *RDAO No. 05-01* in the case of *CIR v. Next Mobile, Inc.*[50] (the "*Next Mobile* case").

In the *Next Mobile* case, the Supreme Court held that while faithful compliance with the provisions of *RMO No. 20-90* and *RDAO No. 05-01* must be observed in order for a Waiver to be valid and binding, the equitable principles of *in pari delicto,* unclean hands, and estoppel should be applied such that the validity of defective Waivers should be upheld in keeping with the lifeblood theory of taxation. The relevant discussion of the Supreme Court reads:

> The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO [No.] 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.
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> *First,* the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto,* the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
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> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.
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> *Second,* the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from

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[50] G.R. No. 212825, December 7, 2015.

their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO [No.] 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.

In the present case, a review of the evidence presented by the parties reveals that the application of the general rule, insofar as the strict observance of the applicable tax regulations is required, should be applied; and not the exception as embodied in the *Next Mobile* case. In contrast to the *Next Mobile* case, only one Waiver was executed by the parties in the present case. Further, the parties cannot be considered *in pari delicto* as the defects in the present case can only be attributable to respondent. Specifically, the Court notes that there are infirmities in the Waiver executed. *First,* petitioner's copy of the Waiver does not bear the signature of the CIR or his duly authorized representative and the date of such acceptance.[51] However, the Waiver attached to the BIR Records indicates that the same was signed by the CIR's duly authorized representative and the latter's date of acceptance.[52] *Second,* petitioner's receipt of the duly accepted Waiver was not indicated on the original copy of the Waiver attached to the docket of the case.[53] In fact, it would appear that the BIR retained all the copies of the Waiver as the BIR Records show that three (3) original copies of the Waiver were attached therein.

Having found the Waiver in the present case defective due to respondent's actions, it follows that the period to assess granted to respondent was not extended. Notwithstanding that the prescriptive period for respondent to assess petitioner for CY 2011 was not extended, however, the Court finds that some of the deficiency tax assessments made against petitioner were timely made.

The following assessments against petitioner for CY 2011 have not yet prescribed: income tax, VAT, August to December EWT, DST, and FWT.

The assessments made against petitioner for CY 2011 cover the following taxes: income tax, VAT, EWT, DST, and FWT. Following *Section 203 of the 1997 NIRC,* the prescribed due dates for filing of the respective returns - which shall be used as bases for the counting of the three (3)-year prescriptive period - shall vary.

With regard to the income tax assessment, *Section 77(B) of the 1997 NIRC* provides that the filing of the Income Tax Return ("ITR") shall be on or before the fifteenth (15th) day of April, or the fifteenth

[51] *Petitioner's FOE, Box 2, Exhibit "P-5."*
[52] *BIR Records, Waiver,* p. 936.
[53] *Id.*

(15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be, to wit:

> Sec. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
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> xxx xxx xxx
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> (B) Time of Filing the Income Tax Return. – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.[54]

On the other hand, with regard to the VAT assessment, *Section 114(A) of the 1997 NIRC* provides that the filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter, as follows:

> Sec. 114. *Return and Payment of Value-added Tax.* –
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.[55]

Meanwhile, with regard to the withholding tax assessments, *Revenue Regulations ("RR") No. 02-98, as amended*[56] provides that, as a rule, the filing of withholding tax returns shall be made within ten (10) days after the end of each month except for taxes withheld for December, the return for which must be filed by January 15 of the following year. However, if the taxpayer avails of the electronic filing and payment ("eFPS"), the filing of the withholding tax returns shall be made, as a rule, five (5) days later than the deadlines set for manual filing. The relevant provisions of *RR No. 02-98* provide:

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[54] Underscoring ours.
[55] Underscoring ours.
[56] April 17, 1998.

Sec. 2.58. *Returns and Payment of Taxes Withheld at Source.*

(A) Monthly return and payment of taxes withheld at source. -

xxx xxx xxx

(2) WHEN TO FILE

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payment should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above.[57]

Finally, with regard to the DST assessment, *Revenue Memorandum Circular No. 01-98, as amended*[58] provides that the DST return shall be filed within five (5) days from the close of the month when the taxable document was made, as follows:

(19) The documentary stamp tax return shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

Based on the foregoing prescriptive periods, the relevant dates for the determination of the timeliness of the income tax, VAT, and EWT assessments against petitioner for CY 2011 are summarized in the table below. The Court notes, however, that petitioner failed to present its original returns for the following taxes: second to fourth quarter

[57] Underscoring ours.
[58] January 2, 1998.

VAT and August EWT. In this regard, the Court shall consider the filing of the amended returns as the date of filing of the return for purposes of computing the three (3)-year prescriptive period to assess.

TAX RETURN	MODE OF FILING	DATE OF ACTUAL FILING	LAST DAY TO FILE RETURN	LAST DAY TO ASSESS
Income Tax - Annual filing				
Annual ITR[59]	eFPS	April 12, 2012	April 15, 2012	**April 15, 2015**
VAT - Quarterly filing				
1st Quarter[60]	eFPS	January 3, 2012	April 26, 2011	**January 3, 2015**
2nd Quarter (Amended)[61]	eFPS	January 3, 2012	July 25, 2011	**January 3, 2015**
3rd Quarter (Amended)[62]	eFPS	January 3, 2012	October 25, 2011	**January 3, 2015**
4th Quarter (Amended)[63]	eFPS	May 2, 2012	January 25, 2012	**May 2, 2015**
EWT - Monthly filing[64]				
January[65]	Manual	February 10, 2011	February 10, 2011	February 10, 2014
February[66]	Manual	March 10, 2011	March 10, 2011	March 10, 2014
March[67]	Manual	April 11, 2011[68]	April 10, 2011	April 11, 2014
April[69]	Manual	May 10, 2011	May 10, 2011	May 10, 2014
May[70]	Manual	June 9, 2011	June 10, 2011	June 10, 2014
June[71]	Manual	July 11, 2011[72]	July 10, 2011	July 11, 2014
July[73]	eFPS	August 12, 2011	August 13, 2011	August 13, 2014
August (Amended)[74]	eFPS	January 30, 2012	September 13, 2011	**January 30, 2015**
September[75]	eFPS	October 13, 2011	October 13, 2011	**October 13, 2014**
October[76]	eFPS	November 14, 2011[77]	November 13, 2011	**November 14, 2014**
November[78]	eFPS	December 14, 2011	December 13, 2011	**December 14, 2014**
December[79]	eFPS	January 13, 2012	January 13, 2012	**January 13, 2015**[80]

Guided by the foregoing dates, it is clear that only the following assessments for CY 2011 were timely made, considering the FAN was issued on September 29, 2014: income tax, first to fourth quarter VAT, and August to December EWT; while the CIR's right to assess EWT for January to July has prescribed.

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[59] *Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-1."*
[60] *Petitioner's FOE, Box 1, Folder 1, Exhibit "P-92-1;" BIR Records,* pp. 645-644.
[61] *Petitioner's FOE, Box 1, Folder 1, Exhibit "P-92-2;" BIR Records,* pp. 643-642.
[62] *Petitioner's FOE, Box 1, Folder 1, Exhibit "P-92-3;" BIR Records,* pp. 641-640.
[63] *Petitioner's FOE, Box 1, Folder 1, Exhibit "P-92-4;" BIR Records,* pp. 639-638.
[64] Pursuant to *RR No. 26-02* (December 5, 2002), taxpayers engaged in retail sale - such as petitioner in the present case - belong to Group C and should file their returns via eFPS thirteen (13) days following the end of the month.
[65] *BIR Records,* p. 598.
[66] *Id.* at 597.
[67] *Id.* at 596.
[68] April 10, 2011 fell on a Sunday.
[69] *BIR Records,* p. 595.
[70] *Id.* at 594.
[71] *Id.* at 593.
[72] July 10, 2011 fell on a Sunday.
[73] *BIR Records,* pp. 580-579.
[74] *Id.* at 578-577.
[75] *Id.* at 576-575.
[76] *Id.* at 574-573.
[77] November 13, 2011 fell on a Sunday.
[78] *BIR Records,* pp. 572-571.
[79] *Id.* at 570-569.
[80] Base dates underscored, prescription dates after the date of issuance of the FAN in bold.

Insofar, however, as the DST and FWT assessments are concerned, the ten (10)-year prescriptive period under *Section 222(a) of the 1997 NIRC*[81] applies as there is no showing that petitioner filed any return for the said deficiency tax assessments. Consequently, the DST and FWT assessments were timely made.

Petitioner is not liable for deficiency EWT and FWT as the same are without basis; however, petitioner is liable for deficiency income tax, VAT, and DST as the same are partially valid.

The Court shall now discuss each item of assessment *in seriatim.*

INCOME TAX

In arriving at the deficiency income tax assessment of Php968,451.52, respondent included in the computation *(1)* disallowed expenses not subjected to withholding tax, *(2)* a discrepancy of sales *per* ITR against VAT Returns, and *(3)* disallowed amortization expenses for petitioner's failure to provide supporting documents. Below is respondent's detailed computation of the alleged deficiency income tax:[82]

INCOME TAX	
Taxable Income *per* Income Tax Return	Php 6,875,752.00
Adjustment *per* Audit	
Disallowed Expenses not Subjected to Withholding Tax	156,950.50
Discrepancy of amount of sales *per* ITR and VAT Returns	1,914,850.67
Disallowed Amortization Expense (unsupported)	9,166.75
Total	Php 8,956,719.92

[81] The relevant provision states:

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.

[82] *Records, Vol. I, FDDA,* pp. 46-47; *Records, Vol. I, Formal Letter of Demand ("FLD"),* p. 60.

Income Tax Due	Php 2,687,015.98
Income Tax Paid	2,061,589.53
Tax Deficiency	Php 625,426.45
Add: Interest (Up to October 31, 2014)	318,025.07
Compromise	25,000.00
TOTAL INCOME TAX DEFICIENCY	**PHP 968,451.52**

1. Disallowed Expenses not Subjected to Withholding Tax - Php156,950.50.

A comparison of income payments subject to withholding tax claimed *per* AFS/ITR as against the Alphalist disclosed that petitioner has not subjected to withholding tax expenses amounting to Php156,950.50; hence, the same is disallowed pursuant to *Section 34(K) of the 1997 NIRC.*

2. Discrepancy of Amount of Sales *per* ITR and VAT Returns - Php1,914,850.67.

Respondent assessed petitioner for income tax deficiency pertaining to the difference of Php1,914,850.67 resulting from the BIR's comparison of petitioner's quarterly VAT returns (BIR Form No. 2550Q) for CY 2011[83] against the annual ITR for CY 2011[84] and petitioner's disclosure in Note 19[85], Supplementary Information Required under *RR No. 15-10*[86] of the AFS for CY 2011, details as follows:

PARTICULARS	**AMOUNT**
Vatable Sales *per* VAT Returns	Php 128,421,932.67
Inventory Transfers (Transactions Deemed Sale)	(1,744,064.00)
Non-Products Sales	(3,700,000.00)
Sales for Income Tax Purposes	Php 122,977,868.67
Add: Exempt Sales *per* Note 19 of the AFS	4,860,112.00
Alleged Total Sales *per* BIR Audit	Php 127,837,980.67
Net Sales *per* AFS/ITR	125,923,130.00
UNDECLARED SALES *PER* BIR	**PHP 1,914,850.67**

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[83] *Petitioner's FOE, Box 1, Folder 1, Exhibits "P-92-1" to "P-92-4."*
[84] *Id., Folder 7, Exhibits "P-103-1 (5/20)," 2011 ITR line 16C.*
[85] *Id., Exhibits "P-103-2 (28/29)."*
[86] November 25, 2010.

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Petitioner alleged that the undeclared sales pertain to its sales to senior citizens ("SC") and/or persons with disability ("PWD"), which are VAT exempt pursuant to *RR No. 7-10*[87]. Petitioner also explained that the amount of exempt sales that was disclosed in Note 19 of the AFS for CY 2011[88] (marked as *Exhibit* "P-103-2") was only a result of miscalculation.

Further, petitioner posits that for CY 2011, it granted the twenty percent (20%) discount to its SC and PWD customers in the total amount of Php583,213.43 based on its Control Account Ledger - Main Store-SC Discount ("SCD") Expense[89] and Control Account Ledger-Satellite Store-SC Discount Expense[90]. In determining the gross amount of exempt sales to be disclosed in petitioner's AFS for CY 2011, petitioner erroneously used the 12% VAT rate as a divisor instead of the discount rate of 20% resulting to the following:

PARTICULARS	EXHIBIT	AMOUNT
Total Discount Granted	P-99-5/P-99-6	Php 583,213.42
Divided by VAT Rate		12%
Total		Php 4,860,111.83
Amount Disclosed in AFS, Note 19	P-103-2	4,860,112.00
ROUNDING OFF DIFFERENCE		**PHP (0.17)**

According to petitioner, the amount of exempt sales that should have been disclosed in Note 19 of the CY 2011 AFS is Php2,916,067.10, as computed below:

PARTICULARS	EXHIBIT	AMOUNT
Total Discount Granted	P-99-5/P-99-6	Php 583,213.42
Divided by Discount Rate		20%
CORRECT AMOUNT OF EXEMPT SALES		**PHP2,916,067.10**

Upon verification of petitioner's Summary of Cash Sheets for CY 2011, the Court found that petitioner incurred SCD expenses of Php402,934.05[91] and Php180,279.37[92] for main store and satellite store, respectively, broken down as follows:

[87] July 20, 2010.
[88] Marked as *Exhibit "P-103-2."*
[89] *Petitioner's FOE, Box 1, Folder 6, Exhibit "P-99-5."*
[90] *Id., Exhibit "P-99-6."*
[91] *Id., Exhibit "P-99."*
[92] *Id.*

SUMMARY OF SCD EXPENSE IN DAILY CASH SHEETS MAIN AND SATELLITE STORES FOR THE YEAR 2011				
PERIOD	MAIN STORE		SATELLITE STORE	
Jan-11	Php	33,988.09	Php	12,769.65
Feb-11		32,625.37		12,419.91
Mar-11		37,499.84		16,985.62
Apr-11		34,392.47		13,308.13
May-11		33,203.33		16,611.10
Jun-11		32,341.27		14,990.53
Jul-11		33,311.94		16,363.30
Aug-11		35,346.96		14,535.71
Sep-11		17,237.13		14,418.47
Oct-11		32,184.97		14,826.98
Nov-11		40,494.83		12,139.10
Dec-11		40,307.85		20,910.87
	Php	402,934.05	Php	180,279.37
TOTAL	**PHP**			**583,213.42**

The said SCD expenses were traced to Summary of Comparison of Daily Sales with SCD Tracking Sheets (Main Store[93] and Satellite Store[94]), Summary of Daily Cash Sheets[95], Daily Cash Sheets[96], and Control Account Ledger (Main Store[97] and Satellite Store[98]). Upon examination of these documents, the Court holds that petitioner was able to prove that its SCD expenses for the main and satellite stores amounted to Php583,213.42. Consequently, the corresponding exempt sales related to these SCD expenses is Php2,916,067.10 (Php583,213.42/20%). However, a difference of Php29,194.23 remains unaccounted; thus, its corresponding income tax due of Php8,758.27 should be enforced, computed as follows:

PARTICULARS	AMOUNT
Vatable Sales *per* VAT Returns	Php 128,421,932.67
Inventory Transfers (Transactions Deemed Sale)	(1,744,064.00)
Non-Products Sales	(3,700,000.00)
Sales for Income Tax Purposes	Php 122,977,868.67
Add: Correct Exempt Sales	2,916,067.10
Total Sales	Php 125,893,935.77
Net Sales *per* AFS/ITR	125,923,130.00
Undeclared Sales	Php 29,194.23

[93] *Petitioner's FOE, Box 1, Folder 6, Exhibit "P-97,"* pp. 1-7.
[94] *Id., Exhibit "P-98,"* pp. 1-7.
[95] *Id., Exhibit "P-99."*
[96] *Id., Folders 3-6, Exhibits "P-96-1" to "P-96-728."*
[97] *Id., Folder 6, Exhibit "P-99-5."*
[98] *Id., Exhibit "P-99-6."*

Income Tax Rate		30%
INCOME TAX DUE	**PHP**	**8,758.27**

3. Disallowed Amortization Expense (Unsupported) - Php9,166.75.

Unsupported amortization expense amounting to Php9,166.75 was disallowed by respondent pursuant to *Section 34(b) of the 1997 NIRC,* which states that:

> xxx no deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence xxx.

Petitioner alleged that it paid the amount of Php7,899.14, as evidenced by a Unionbank e-mail of EFPS payment advice[99] and BIR Form No. 0605[100] consisting of the following details:

ITEM	AMOUNT	
Basic Tax	Php	3,886.09
Interest		3,013.05
Compromise		1,000.00
TOTAL	**PHP**	**7,899.14**

Upon examination of the said documents, however, this Court cannot conclude if such payment actually pertains to income tax due on disallowed amortization expense of Php9,166.75. Thus, respondent's assessment on unsupported amortization expenses remains.

From the foregoing, the Court holds that petitioner is still liable for basic deficiency income tax of Php59,729.51, computed as follows:

INCOME TAX		
Taxable Income *per* Income Tax Return	Php	6,875,752.00
Adjustment *per* Audit		
Disallowed Expenses not Subjected to Withholding Tax		156,950.50

[99] *Petitioner's FOE, Box 1, Folder 11, Exhibit "P-128-1(2/2)."*
[100] *Id., Exhibit "P-128-1(1/2)."*

Discrepancy of amount of sales *per* ITR and VAT Returns		29,194.23
Disallowed Amortization Expense (unsupported)		9,166.75
Total	Php	7,071,063.48
Tax Rate		30%
Income Tax Due	Php	2,121,319.04
Income Tax Paid		2,061,589.53
INCOME TAX DEFICIENCY	**PHP**	**59,729.51**

VALUE-ADDED TAX

Petitioner was assessed by respondent for deficiency VAT for CY 2011 in the amount of Php13,373,090.88, including increments, computed as follows:

VALUE ADDED TAX				
Gross Receipts *per* VAT Returns			Php	128,421,932.67
Output VAT Due				15,410,631.92
Input *per* VAT Returns		Php 11,598,331.51		
Less:				
Adjustment *Per* Audit	Purchases			
Disallowed inputs on purchases from Havi Food (Result of verification of big ticket items-no sales declared by Havi Food to DCFI)	Php 9,688,383.36	1,162,606.00		
Wrong invoicing requirements-ORs have no TIN of Payee	6,087,207.93	730,464.95		
Inputs claimed on unregistered invoices issued by Golden Archers on purchases of goods	44,955,264.09	5,394,631.69		
Disallowed inputs-non-VAT items/supported by JV only	6,247,131.58	749,655.79	Php	3,560,973.08
VAT Payable *Per* Audit				11,849,658.84
VAT Paid *Per* Returns				3,295,892.43
Balance			Php	8,553,766.41
Interest (Jan. 26, 2012 to October 31, 2014)				4,729,178.25
Interest on unpaid VAT due of Php267,397.25)-April 26, 2011 to Jan. 25, 2012				40,146.22
Compromise				50,000.00
TOTAL VAT DEFICIENCY			PHP	13,373,090.88

1. **Disallowed inputs on purchases from Havi Food Services, Inc. ("Havi") (result of verification of big ticket items – no sales to petitioner were declared by Havi) – Php1,162,606.00.**

Respondent disallowed input VAT amounting to Php1,162,606.00 on purchases of petitioner amounting to Php9,688,383.36 from Havi because it was not duly supported with invoices. Allegedly, this is a result of big ticket items inquiry wherein it was revealed that Havi did not declare any sale to

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petitioner, but the latter has purchases from Havi in its Summary List of Purchases ("SLP"). However, even though petitioner has payments to Havi, there were no official receipts ("ORs") presented to support inputs claimed on the said purchases.

Petitioner explained that the alleged non-reporting by Havi of its sales to petitioner is irrelevant and is not a basis under the law for a disallowance of input VAT for payment of services from Havi. Petitioner argued further that its input VAT should not be disallowed for Havi's failure to indicate petitioner's Tax Identification Number ("TIN") in the ORs issued by the former to the latter for the following reasons:

1. The mandatory obligation to indicate the TIN of the buyer is lodged by law to the seller, not the purchaser; and

2. The rationale for issuance of receipts has been duly satisfied.

Petitioner also argued that based on its books, it only claimed input VAT amounting to Php157,290.90 for the delivery services of Php1,310,762.16 from Havi, which was supported with Service Invoices[101], Delivery Receipts[102], Cash Disbursement Voucher[103], and ORs[104]. Havi, on the other hand, issued certifications[105] on the said service delivery fees charged to petitioner, broken down as follows:

PARTICULARS	EXHIBIT	AMOUNT		INPUT VAT	
Service Fees from HAVI *per* OR:					
Main Store	P-105-25 to 36	Php	1,025,614.99	Php	123,073.23
Satellite Store	P-105-37 to 47		285,147.17		34,217.67
TOTAL		**PHP**	**1,310,762.16**	**PHP**	**157,290.90**

All ORs[106] presented supporting the input VAT of Php157,290.90 shall be disallowed for non-compliance with the substantiation requirements under *Sections 110(A)* and *113(A) and (B) of the 1997 NIRC*, in relation to *Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended*, for the following reasons:

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[101] *Petitioner's FOE, Box 2, Exhibits "P-10" to "P-21" and "P-46" to "P-53."*
[102] *Id., Box 1, Folder 8, Exhibits "P-111-70" to "P-111-170."*
[103] *Id., Box 2, Exhibits "P-22" to "P-33."*
[104] *Id., Exhibits "P-34" to "P-45."*
[105] *Id., Exhibits "P-8" and "P-9."*
[106] *Id., Exhibits "P-34" to "P-45."*

1. Petitioner's TIN was not indicated in the ORs; and

2. Input VAT was not separately indicated.

A further examination of the documents presented reveals that petitioner did not present its SLP to refute respondent's assessment on disallowed input VAT amounting to Php1,162,606.00 accrued from purchase of services amounting to Php9,688,383.36 from Havi.

Also, the Court notes that Havi made several service delivery transactions to petitioner, as evidenced by delivery receipts[107]. However, petitioner only submitted delivery receipts with delivery dates from December 15, 2010 to February 09, 2011.

For easy reference, the Court will take the data for January 2011. Petitioner alleged that it incurred service fees of Php103,404.00 and Php20,328.00 for a total quantity of 2,946, for Main and Satellite stores, respectively, as supported by service invoices[108] and ORs[109]. The same amounts were reflected in Havi's certification[110], computed as follows:

DETAILS	MAIN STORE	SATELLITE STORE	TOTAL
Total Quantity	2,462	484	2,946
Cost *per* Case	Php 42.00	Php 42.00	
TOTAL (VAT INCLUSIVE)	**PHP 103,404.00**	**PHP 20,328.00**	

However, a study of the delivery receipts[111] with delivery dates from January 5, 2011 to January 31, 2011 reveals that petitioner incurred a total delivery quantity of 5,280 from Havi. By comparing the delivery quantity of 5,280 *per* delivery receipts against delivery quantity of 2,946 *per* petitioner's declaration, petitioner has undeclared service fees. In addition, petitioner did not submit all the delivery receipts covered by the assessment period (*i.e.*, CY 2011). Consequently, petitioner failed to dispute

[107] *Petitioner's FOE, Box 1, Folder 8, Exhibits "P-111-70" to "P-111-170."*
[108] *Id., Box 2, Exhibits "P-10" and "P-46."*
[109] *Id., Exhibit "P-34."*
[110] *Id., Exhibits "P-8" and "P-9."*
[111] *Id., Box 1, Folder 8, Exhibits "P-111-101" to "P-111-153."*

respondent's allegation, thus, the assessment on disallowed input VAT from Havi purchases amounting to Php1,162,606.00 is sustained.

2. Disallowed input VAT due to wrong invoicing requirements - Php730,464.95.

Respondent disallowed input VAT claimed by petitioner amounting to Php730,464.95 on its purchases from its parent company GADC, because the ORs issued by GADC in favor of petitioner did not manually indicate petitioner's TIN.

Petitioner explained that its input VAT should not be disallowed for GADC's failure to indicate petitioner's TIN in the ORs issued by the former to the latter because: *(1)* the mandatory obligation to indicate the TIN of the buyer is lodged by law to the seller, not the purchaser; and *(2)* the rationale for issuance of receipts has been duly satisfied.

Petitioner alleged that the BIR erroneously used as basis for the disallowance of input VAT the amount paid by petitioner as reflected in the ORs. The actual cost of purchases and corresponding input VAT are summarized as follows:

EXHIBIT	PARTICULARS	AMOUNT	INPUT VAT
P-107	Purchases of Goods	Php 3,066,784.93	Php 368,014.17
P-109	Purchases of Services	2,224,958.65	266,972.23
	Total	Php 5,291,743.58	Php 634,986.40
P-106	*Per* BIR	6,087,207.93	730,464.95
	DIFFERENCE	**(PHP 795,464.35)**	**(PHP 95,478.55)**

An examination of the sales invoices[112], in support of the purchases of goods with a corresponding input VAT of Php368,014.17, reveals that said sales invoices complied with *Section 113 of the 1997 NIRC* regarding the invoicing and accounting requirements of a VAT-registered person.

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[112] *Petitioner's FOE, Box 1, Folder 7, Exhibits "P-107-12" to "P-107-30."*

On the other hand, all the ORs[113] in support of the purchases of services with a corresponding VAT of Php266,972.23 reveal that petitioner's TIN was not indicated and/or the VAT was not separately indicated.

With regard to the difference of Php795,464.35 with a corresponding VAT of Php95,478.55 that respondent erroneously captured in the ORs resulting in the overstatement of the assessment, only the amount of Php39,799.62 with a corresponding VAT of Php4,775.95 was proven to be erroneously taken, computed as follows:

EXHIBIT	DATE	*PER* BIR	*PER* OR	DIFFERENCE
P-108-4	3/10/2011	Php 22,343.15	Php 22,543.15	(Php 200.00)
P-108-5	5/13/2011	95,968.53	95,968.93	(Php 0.40)
P-108-8	5/13/2011	95,700.98	35,700.98	Php 60,000.00
P-108-11	5/13/2011	79,879.80	99,879.80	(Php 20,000.00)
P-108-24	10/6/2011	25,186.29	25,186.27	Php 0.02
		Php 319,078.75	Php 279,279.13	Php 39,799.62
VAT Rate				12%
TOTAL				**PHP 4,775.95**

Therefore, respondent's assessment on disallowed input VAT due to wrong invoicing requirements is affirmed but in the reduced amount of Php357,674.83 [Php730,464.95 less (Php368,014.17 less Php4,775.95)].

3. Disallowed input VAT due to unregistered invoices, incomplete details on invoices, and/or VAT portion of the invoice merely handwritten - Php5,394,631.69.

Respondent alleged that the permit number and/or Computerized Accounting System ("CAS") accreditation number, quantity, unit cost, and description of the merchandise or nature of service purchased were not indicated in the invoices issued by GADC. Respondent further posits that the VAT portion of sales were not originally indicated in the invoice, but

[113] *Petitioner's FOE, Box 1, Folder 7, Exhibits "P-108-1" to "P-108-33."*

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written only by petitioner's employee upon receipt of the said invoice.

Petitioner argued that the indication of the CAS accreditation number was not a required part of the invoice in CY 2011 - it was only made mandatory on May 2, 2013 under *RMO No. 12-13*. Petitioner also disputes respondent's allegations that the invoices had incomplete details, and that the VAT portion was merely handwritten by its employees.

Petitioner also claims that the BIR erroneously used the base amount of Php44,955,264.09[114] in computing the disallowed input VAT of Php5,394,631.69[115] (Php44,955,264.09 x 12%) because it is already inclusive of VAT.

An examination of the sales invoices[116] presented reveals that the majority of the computerized sales invoices presented complied with the invoicing requirements pursuant to *Section 113 of the 1997 NIRC*. Although the CAS accreditation number was not indicated in the actual invoice, petitioner was able to provide the "Permit to Use Computerized Accounting System or Components Thereof" with Permit No. LTDO-CBA-0510-122-00054 dated May 7, 2010.[117] Thus, petitioner was allowed by respondent to use a computerized accounting system prior to the assessment period.

Upon further scrutiny of the sales invoices, the Court agrees with petitioner that respondent erroneously used the amount of Php44,955,264.09 in computing the disallowed input VAT of Php5,394,631.69 because the said amount (Php44,955,264.09) already includes VAT.

However, the disallowance on input VAT amounting to Php313,398.7704 is sustained for reasons stated hereunder:

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[114] *Petitioner's FOE, Box 1, Folder 8, Exhibit "P-110."*
[115] *Id.*
[116] *Id., Exhibits "P-111-1" to "P-111-69."*
[117] *Records, Vol. 1, PFR, Annex "I," Permit to Use Computerized Accounting System or Components Thereof*, pp. 96-104.

INVOICE		VAT AMOUNT	REASON
DATE	NUMBER		
12/21/2010	MV00085512[118]	Php 130,381.5036	Outside the period of Claim
12/28/2010	MV00085648[119]	108,285.7305	Outside the period of Claim
12/31/2010	MV00085779[120]	74,731.5363	Outside the period of Claim
TOTAL		PHP 313,398.7704	

Consequently, the assessment on disallowed input VAT remains in the reduced amount of Php313,398.77.

4. Disallowed input VAT on purchases of non-VAT items and/or supported by Journal Vouchers only - Php749,655.79.

Respondent disallowed input VAT amounting to Php706,066.86 on purchases attributed to non-VAT items; however, petitioner has not submitted documents to support its claim. In addition, input VAT amounting to Php43,588.93 was also disallowed because it was only supported by journal entries.

Petitioner argued that they have sufficient documents, such as invoices and/or VAT ORs, in support to VAT-exempt purchases.

The Court notes that petitioner only submitted ORs[121] to refute the assessment on disallowed input VAT on non-VAT purchases. An examination of these ORs reveals that these transactions do not indicate non-VAT/exempt purchases; thus, the assessment on disallowed input VAT amounting to Php706,066.86 stays.

With regard to input VAT in the amount of Php43,588.93, the Court finds that petitioner sufficiently provided documents[122] proving that such tax deficiency has already been paid; therefore, this assessment is cancelled.

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[118] *Petitioner's FOE, Box 1, Folder 8, Exhibit "P-111-1."*
[119] *Id., Exhibit "P-111-2."*
[120] *Id., Exhibit "P-111-3."*
[121] *Id., Box 2, Folder 1, Exhibits "P-132-39" to "P-132-75," "P-133-12" to "P-133-19," and "P-134-50" to "P-134-78."*
[122] *Petitioner's FOE, Box 1, Folder 11, Exhibit "P-128-2 (1/2);" Petitioner's FOE, Box 1, Folder 11, Exhibit "P-128-2 (2/2)."*

As discussed, the Court holds petitioner liable for basic deficiency VAT in the reduced amount of Php3,056,154.57, computed as follows:

VALUE ADDED TAX		
Gross Receipts *per* VAT Returns		Php 128,421,932.67
Output VAT Due		15,410,631.92
Input *per* VAT Returns	Php 11,598,331.51	
Less:		
Adjustment *Per* Audit		
Disallowed inputs on purchases from Havi Food (Result of verification of big ticket items-no sales declared by Havi Food to DCFI)	1,162,606.00	
Wrong invoicing requirements-ORs have no TIN of Payee	357,674.95	
Inputs claimed on unregistered invoices issued by Golden Archers on purchases of goods	313,398.77	
Disallowed inputs-non-VAT items	706,066.86	Php 9,058,584.92
VAT Payable *Per* Audit		Php 6,352,047.00
VAT Paid *Per* Returns		3,295,892.43
DEFICIENCY VAT		**PHP 3,056,154.57**

EXPANDED WITHHOLDING TAX

Petitioner was assessed for basic deficiency EWT amounting to Php23,437.72 on purchases not subjected to withholding tax.

The Court, however, notes that petitioner settled the basic deficiency EWT due amounting to Php23,437.72 and the equivalent interest and compromise penalty amounting to Php19,340.94 and Php2,000.00, respectively. In support of such payment, petitioner presented BIR Form No. 0605[123] and Unionbank EFPS Epayment Advice[124]. Consequently, the Court shall no longer consider the assessment on deficiency EWT.

DOCUMENTARY STAMP TAX

DST is assessed on the following, among others: loan agreements, advances from parent company, and rent payable on non-cancellable operating lease due within the year, pursuant to *Section 179 of the 1997 NIRC* which states that "on every original issue of debt instruments, there shall be collected a documentary stamp tax of One Peso on each Two hundred, or fractional part thereof xxx" and *Section*

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[123] *Petitioner's FOE, Box 1, Folder 11, Exhibit "P-128-3(1/2)."*
[124] *Id., Exhibit "P-128-3(2/2)."*

194 of 1997 NIRC which provides that "on lease agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portion thereof, there shall be collected a documentary stamp tax of three pesos for the first two thousand pesos, of fractional part thereof, and additional one peso for every one thousand pesos or fractional part thereof in excess of the first two thousand pesos for each year of the term of the said contract or agreement." In this regard, respondent assessed petitioner for deficiency DST, as follows:

DOCUMENTARY STAMP TAX			
Staff Loan Agreement (Note 13) in relation to Mgt. labor (Note 11)			Php3,302,961.00[125]
Advances from Parent Co. *per* Statement of Cash Flows			900,346.00[126]
Total			Php 4,203,307.00
DST Due (Php4,203,307.00/200)			Php 21,017.00
Rent payable on non-cancellable operating lease due within the year - Php5.6M (Note 11)[127]			
DST Due	Php2,000.00 5,598,000.00	Php3.00 5,598.00	5,601.00
TOTAL DST DUE			**PHP 26,618.00**

Petitioner argued that respondent's assessment with respect to *(1)* staff loan agreement in relation to management labor as discussed in Note 11 of the AFS for CY 2011[128] and *(2)* advances from GADC as disclosed in the petitioner's Statement of Cash Flows for CY 2011[129] totaling Php4,203,307.00 do not constitute as loan agreements. Petitioner explained that these consist of expenses for management services pertaining to the operations of the McDonald's store, which are related to salaries and wages for the labor of store managers seconded by GADC during CY 2011.

1. **Staff Loan Agreement (Note 13) in relation to Management Labor (Note 11) - Php3,302,961.00.**

A study of petitioner's AFS for CY 2011 shows that Management Labor amounting to Php3,302,961.00[130] forms part

[125] *Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-2(22/29)."*
[126] *Id., Exhibit "P-103-2(6/29)."*
[127] *Id., Exhibit "P-103-2(21/29)."*
[128] Marked as *Exhibit "P-103-2(20/29)" to "P-103-2(22/29)."*
[129] Marked as *Exhibit "P-103-2(6/29)."*
[130] *Petitioner's FOE, Box 1, Folder 7, Exhibits "P-103-2(21/29)" and "P-103-2(22/29)."*

of the Cost of Sales in the amount of Php79,462,090.00[131], broken down as follows:

COST OF SALES		
Cost of Inventory (see Notes 7 and 11)	Php	55,652,155.00
Personnel Cost (see Notes 11 and 15)		9,843,940.00
Depreciation and Amortization (see Note 8)		7,772,770.00
Management Labor (see Note 11)		**3,302,961.00**
Utilities		2,890,264.00
TOTAL	**PHP**	**79,462,090.00**

In its Notes to the AFS, it is indicated that Management Labor is a staff loan agreement between petitioner and GADC. Under this agreement, petitioner will be charged for the fixed amount of remuneration of the personnel provided by GADC[132].

Clearly, the management labor is not a form of monetary loan agreement but a staff loan agreement that constitute salaries and wages. Therefore, DST assessment on management labor amounting to Php3,302,961.00 is cancelled.

2. Advances from Parent Company *per* Statement of Cash Flows – Php900,346.00.

Per audited Statements of Financial Position for CY 2011, Advances from Parent Company is a current liability, non-interest bearing, and payable on demand[133]; thus, a form of debt instrument subject to DST. Consequently, the assessment on advances from parent company amounting to Php900,346.00 is sustained.

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[131] *Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-2(4/29);" Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-2(22/29)."*
[132] *Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-2(21/29)."*
[133] *Id., Exhibit "P-103-2(3/29)."*

3. Rent Payable on Non-Cancellable Operating Lease Due Within the Year - Php5.6M (Note 11).

An examination of petitioner's AFS shows that the rent payable on non-cancellable operating lease due within the year amounting to Php5.6M already forms part of the rental expense for CY 2011 amounting to Php9,985,591.00[134] for which the corresponding DST was already declared/filed with respondent as evidence by BIR Form No. 2000[135]. Therefore, this assessment is cancelled.

Consequently, the Court holds that petitioner is still liable for deficiency DST in the amount of Php4,502.00 from Advances from Parent Co. in the amount of Php900,346.00, computed as follows:

DOCUMENTARY STAMP TAX	
Advances from Parent Co. *per* Statement of Cash Flows	Php 900,346.00
DST DUE (PHP900,346.00/200)	**PHP 4,502.00**

FINAL WITHHOLDING TAX

Respondent assessed petitioner for deficiency FWT in the amount of Php2,801,801.20, inclusive of increments, for advertising expense without supporting documents and variable rent paid to GADC on top of the fixed rent, computed as follows:

FINAL WITHHOLDING TAX		
Royalties Expense		Php 7,232,834.00
Adjustments: Advertising expense paid to Golden Archers parent company with no supporting docs hence treated as royalty		6,450,536.06
Variable rent paid to Golden Archers on top of the fixed rent paid		5,160,428.91
Total		Php 18,843,798.97
Less: Amount subjected to 20% final tax *per* return	Php 859,362.76	
Royalty equivalent to 5% of sales exempt from FWT	6,296,156.50	7,155,519.26
Total payment subject to FWT		Php 11,688,279.71
Final Withholding Tax Due on Royalty		Php 2,337,655.94
Add: Final Withholding Tax on dividends paid to individuals		122,500.00
Total		Php 2,460,155.94
Less: Final Withholding Tax Remitted	Php 294,372.56	
EWT remitted on Ads (2%) and Rent Exp. (5%)	387,032.17	Php 681,404.73
Balance		Php 1,778,751.21
Add: Interest (January 11, 2012 to October 31, 2014)		998,049.99

[134] *Petitioner's FOE, Box 1, Folder 7, Exhibit "P-103-2(21/29)."*
[135] *Id., Box 2, Folder 5, Exhibits "P-146" to "P-146-12(2/2)."*

N

Compromise	25,000.00
TOTAL FWT DEFICIENCY	PHP 2,801,801.20

Petitioner argued that the advertising fees paid to GADC should not be treated as royalty payments subject to 20% FWT on the ground that the advertising fees are collected under the License Agreement[136] dated December 20, 1992.

With regard to variable rent, petitioner explained that respondent has no personality to question the interpretation of the lease agreement between petitioner and GADC. Petitioner explained further that the BIR admitted that the variable rent of 4% of gross sales is stipulated as rental payments under the lease agreement; hence, the BIR cannot insist that these are royalty payments when the parties to the contract clearly agree for such to constitute as rental payments.

1. **Advertising expense paid to GADC without supporting documents - Php6,450,536.06.**

The Schedule of Advertising, Royalty and Rental Payments[137] shows that petitioner incurred advertising expenses amounting to Php5,001,625.40 and Php1,448,910.70 for the main and satellite stores, respectively. Advertising expenses are collected under the License Agreement between petitioner and GADC. As argued by respondent, petitioner provided no evidence to prove that such amount was actually spent for advertisement. However, an examination of the documents presented by petitioner, such as the Schedule of Advertising Fees, the Royalty and Rental Payments[138], the Summary of Advertising Fees, the Royalty and Rental Payments[139], the Customer Billing Statement[140], the Summary of Customer Billing Statements Traced to ORs[141], the ORs[142], and the Control Account Ledger[143] reveals that the amount of Php6,450,536.06 constitutes a valid advertising expense properly booked by petitioner.

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[136] *Petitioner's FOE, Box 1, Exhibit "P-82."*
[137] *Id., Folder 11, Exhibit "P-124."*
[138] *Id.*
[139] *Id., Exhibit "P-125."*
[140] *Id., Exhibits "P-125-1" to "P-125-72."*
[141] *Id., Exhibit "P-126."*
[142] *Petitioner's FOE, Box 1, Folder 11, Exhibits "P-126-1," to "P-126-12."*
[143] *Id., Exhibits "P-127-1" to "P-127-2."*

N

Accordingly, this assessment is cancelled.

2. Variable rent paid to GADC on top of the fixed rent - Php5,160,428.91.

As stated in the FDDA[144], petitioner's explanation on variable rent was found to be meritorious and was given favorable consideration; hence, this assessment is likewise cancelled.

COMPROMISE PENALTY

Respondent imposed compromise penalties on the deficiency income tax, VAT, EWT, DST, and FWT in the aggregate amount of Php108,000.00.

In the case *Felisa L. Vda. De San Agustin v. CIR*[145], the Supreme Court held that a compromise, by its nature, is mutual in essence. Thus, the imposition of a compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[146]

In the case at bar, no document was presented in Court that would indicate that both parties agreed to enter into a compromise agreement. Accordingly, the imposition of a compromise penalty has no basis and is illegal and unauthorized. Thus, petitioner should not be subjected thereto.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent's deficiency EWT and FWT assessments for CY 2011 are hereby **CANCELLED** and **WITHDRAWN**. On the other hand, respondent's deficiency income tax, VAT, and DST assessments for CY 2011 is **UPHELD IN PART**. Consequently, petitioner is **ORDERED TO PAY** respondent the amount of Php3,900,482.60, representing basic deficiency income tax, VAT, and DST, and the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*, computed as follows:

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144 *Records, Vol. 1, FDDA*, p. 53; *BIR Records, FDDA*, p. 1212.
145 G.R. No. 138485, September 10, 2001, 364 SCRA 802.
146 *CIR v. Lianga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

TAX TYPE	BASIC TAX DUE	25% SURCHARGE	TOTAL
Income	Php 59,729.51	Php 14,932.38	Php 74,661.89
VAT	3,056,154.57	764,038.64	3,820,193.21
DST	4,502.00	1,125.50	5,627.50
TOTAL	**PHP 3,120,386.08**	**PHP 780,096.52**	**PHP 3,900,482.60**

In addition and in light of *Republic Act ("RA") No. 10963*[147], otherwise known as the *"Tax Reform for Acceleration and Inclusion"* or the *"Train Law"* which took effect on January 1, 2018, petitioner is **ORDERED TO PAY:**

a. Deficiency interest amounting to Php3,697,439.52 at the rate of twenty percent (20%) *per annum* on the basic deficiency taxes computed from April 16, 2012, January 26, 2012, and January 6, 2012 for Income Tax, for VAT and for DST, respectively, until December 31, 2017, pursuant to *Section 249(B) of the 1997 NIRC*, computed as follows:

DEFICIENCY INTEREST		
Basic Income Tax Due	Php 59,729.51	
Deficiency Interest Rate	20%	
Total	Php 11,945.90	
Multiplied by Period (5 years and 259 days)	5.709589	
Total Deficiency Interest on Income		Php 68,206.19
Basic VAT Due	Php3,056,154.57	
Deficiency Interest Rate	20%	
Total	Php 611,230.91	
Multiplied by Period (5 years and 339 days)	5.9287671	
Total Deficiency Interest on VAT		Php 3,623,845.73
Basic DST Due	Php 4,502.00	
Deficiency Interest Rate	20%	
Total	Php 900.40	
Multiplied by Period (5 years and 359 days)	5.9835616	
Total Deficiency Interest on DST		Php 5,387.60
TOTAL DEFICIENCY INTEREST		**PHP3,697,439.52**

[147] July 24, 2017.

b. Delinquency interest amounting to Php4,358,917.28 at the rate of twenty percent (20%) *per annum* on the total amount of Php3,900,482.60 and on the deficiency interest which have accrued as aforestated in (a), computed from February 17, 2015[148] until December 31, 2017, pursuant to *Section 249(C) of the 1997 NIRC*, as follows:

DELINQUENCY INTEREST	
Basic Tax Due Plus Surcharge	Php 3,900,482.60
Deficiency Interest	3,697,439.52
Total	Php 7,597,922.12
Multiplied by Delinquency Interest Rate	20%
Total	Php 1,519,584.42
Multiplied by Period (2 years and 317 days)	2.868493
TOTAL DELINQUENCY INTEREST	**PHP 4,358,917.28**

c. Delinquency interest at the rate of twelve percent (12%) *per annum* from January 1, 2018 until full payment on the total amount of Php3,900,482.60 and on the deficiency interest which have accrued as aforestated in (a), pursuant to *Section 249 of the 1997 NIRC, as amended by Section 75 of RA No. 10963.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[148] *Records, Vol. 1, FDDA*, p. 53; *BIR Records, FDDA*, pp. 1211-1219.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice