REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

OFFICEMETRO PHILIPPINES, INC. (formerly REGUS CENTRES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8382

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 3 2014
2:36 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

This *Petition for Review*[1] filed by petitioner Officemetro Philippines, Inc. (formerly Regus Centres, Inc.) seeks to reverse and set aside the Final Decision on Disputed Assessment (FDDA) dated October 24, 2011 and the accompanying Amended Assessment Notices issued by respondent Commissioner of Internal Revenue, finding petitioner liable for deficiency expanded withholding tax (EWT), deficiency final withholding of value-added tax (VAT), and deficiency final withholding tax (FWT) in the aggregate amount of ₱16,912,587.17 covering taxable year 2005.

Petitioner Officemetro Philippines, Inc. is a duly organized domestic corporation with address at 28th Floor, Tower 2, the Enterprise Center, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.[2]

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[1] Docket, pp. 7-19.
[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 106.

Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 7, 2006, respondent issued Letter of Authority No. 00046120[3] authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for taxable year 2005.

On July 13, 2009, petitioner received a Preliminary Assessment Notice (PAN),[4] to which it filed a Letter of Protest[5] dated July 28, 2009.

On September 23, 2009, petitioner received a Formal Assessment Notice (FAN) with attached Details of Discrepancies and Assessment Notices,[6] which petitioner likewise protested[7] on October 23, 2009.

On October 24, 2011, respondent issued the assailed FDDA for taxable year 2005[8], finding petitioner liable for deficiency EWT in the amount of ₱1,210,746.16, deficiency final withholding of VAT in the amount of ₱4,201,938.52, deficiency FWT in the amount of ₱11,499,902.49, and a compromise penalty of ₱50,000.00.

This prompted petitioner to file the instant Petition for Review on November 23, 2011, praying to set aside the assessments of respondent in her FDDA dated October 24, 2011 and the attached Amended Assessment Notices.

In her *Answer,*[9] respondent claims, among others, that petitioner failed to submit documents to substantiate the

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[3] Exhibit "1", BIR Records, p. 1.
[4] Exhibit "A", docket, pp. 304-308.
[5] Exhibit "E", docket, pp. 328-339.
[6] Exhibit "B", docket, pp. 309-316.
[7] Exhibit "F", docket, pp. 340-351.
[8] Exhibit "D", docket, pp. 318-327.
[9] Docket, pp. 84-88.

allegations in its Petition for Review. For her, petitioner's Service Agreement with Regus Centres Pty. Ltd. is insufficient to prove that the services covered by the said agreement were performed outside the Philippines. She maintains that the license fee for the year 2005 amounts to ₱11,382,358.41 while the management fee amounts to ₱5,934,951.59. She also points out that taxes are the lifeblood of the government, hence, should be calculated without unnecessary hindrance. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.

After the pre-trial conference, the parties filed their Joint Stipulation Facts and Issues[10] on April 25, 2012.

On May 14, 2012, petitioner, through a *Manifestation*[11] dated May 10, 2012, informed the Court that on March 13, 2012, the Securities and Exchange Commission (SEC) approved its application to change corporate name from Regus Centres, Inc. to Officemetro Philippines, Inc., as evidenced by its Certificate of Filing of Amended Articles of Incorporation[12] and Certificate of Revision of the Title of the Amended By-Laws.[13]

On August 16, 2012, the Court, at the instance of petitioner, issued an *Amended Pre-Trial Order.*[14]

During the trial, petitioner presented two (2) witnesses, namely: 1) Gemma B. Perez, its Accountant; and 2) Maria Gracia L. Morfe, the Court-commissioned Independent Certified Public Accountant.

By way of a Judicial Affidavit,[15] witness **Gemma B. Perez** testified that as petitioner's accountant, she handles its financial records. On July 13, 2009, petitioner received a PAN dated July 13, 2009 for taxable year 2005 from the BIR, which it protested on July 28, 2009. This was followed by a

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[10] Docket, pp. 106-109.
[11] Docket, pp. 118-119.
[12] Docket, p. 120.
[13] Docket, p. 121.
[14] Docket, pp. 238-243.
[15] Docket, pp. 149-153.

FAN received on September 23, 2009, to which petitioner again protested on October 23, 2009.

Acting on their protest, respondent issued a Letter dated March 28, 2011, indicating the revised deficiency tax assessments. On April 29, 2011, petitioner formally responded to this letter attaching thereto additional documents.

In a letter dated May 30, 2011, Revenue District Officer (RDO) Gerry O. Dumayas disallowed petitioner's letter dated April 29, 2011 and forwarded the docket to the Assessment Division for the issuance of the FDDA.

On October 24, 2011, respondent issued the assailed FDDA for taxable year 2005 against petitioner.

ICPA **Maria Gracia L. Morfe**, also by way of a Judicial Affidavit,[16] declared that her audit of petitioner's accounting records and documents reveals the need to adjust the following: 1) respondent's deficiency EWT assessment to Two Hundred Seventy Seven Thousand Six Hundred Twenty Seven and 64/100 Pesos (₱277,627.64); 2) the Final Withholding of VAT to Four Million Five Hundred Eighty Four Thousand Two Hundred Seventy Six and 79/100 Pesos (₱4,584,276.79); and 3) the Deficiency FWT Assessment to Twelve Million Five Hundred Sixty Thousand Four Hundred Seventy One and 44/100 Pesos (₱12,560,471.44).

On December 12, 2012, petitioner moved to present additional witness and for time to file its *Formal Offer of Evidence.*[17] To abbreviate the proceedings, respondent agreed to stipulate that petitioner's Exhibits "B", "C", "J", "H", "K", "N" and "O" could not be located despite diligent efforts.[18]

[16] Docket, pp. 273-275.
[17] Docket, pp. 281-283.
[18] Docket, pp. 281-283.

In a *Manifestation*[19] dated March 12, 2013, petitioner informed the Court that it had ceased operation. Further, it had entered into a Compromise Settlement with respondent and paid through Electronic Filing and Payment System (EFPS) forty percent (40%) of the basic tax assessed in the assailed FDDA, as well as the compromise penalty of ₱50,000.00.

In the Resolution[20] dated March 19, 2013, petitioner was deemed to have rested its case.

For her defense, respondent presented Revenue Officers Roleo A. Legarda and Jose R. Magsambol III.

Roleo A. Legarda, also executed a Judicial Affidavit,[21] through which he declared that by virtue of a Letter of Authority (LOA) No. 00046120 dated November 7, 2006, he investigated petitioner's internal revenue taxes for taxable year 2005. In relation thereto, he prepared a Memorandum Report dated October 28, 2008 recommending the issuance of a PAN which was served upon petitioner on July 13, 2009. This was followed by Assessment Notices dated September 23, 2009 together with the FAN of even date with corresponding Details of Discrepancies received by petitioner through its representative Cielo Tobias, on September 23, 2009.

Revenue Officer **Jose R. Magsambol III**, also by way of Judicial Affidavit,[22] testified that he received a Memorandum with Ref. No. 047-0110-B-017 dated February 16, 2010, directing him to continue the audit and investigation of petitioner's request for reinvestigation of its internal revenue taxes for the taxable year 2005 pursuant to Tax Verification Notice No. 00166688 dated November 13, 2009. In his Memorandum dated April 11, 2011, he recommended the issuance of the FDDA. On October 24, 2011, an Amended Assessment Notices together with the FDDA and Details of Discrepancies, both dated October 24, 2011, were received by petitioner, based on their records.

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[19] Docket, pp. 408-409.
[20] Docket, p. 424.
[21] Docket, pp. 391-397.
[22] Docket, pp. 399-404.

On July 12, 2013, respondent was deemed to have rested her case.[23]

THE ISSUES

The parties presented the following issues[24] for the resolution of the Court:

> 1. Whether or not Petitioner is liable for deficiency expanded withholding tax amounting to One Million Two Hundred Ten Thousand Seven Hundred Forty-Six Pesos and 16/100 (Php1,210,746.16) for taxable year 2005.
>
> 2. Whether or not Petitioner is liable for deficiency final withholding of value-added tax amounting to Four Million Two Hundred One Thousand Nine Hundred Thirty-Eight Pesos and 52/100 (Php4,201,938.52) for taxable year 2005.
>
> 3. Whether or not Petitioner is liable for deficiency final withholding tax amounting to Eleven Million Four Hundred Ninety-Nine Thousand Nine Hundred Two Pesos and 49/100 (Php11,499,902.49) for taxable year 2005.

THE COURT'S RULING

The most critical issue in an assessment case is the timeliness of the filing of the petition for review. On the matter, the Court is guided by the provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997, which provides as follows:

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[23] Resolution, docket, pp. 485-486.
[24] Docket, p. 108.

SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

Pursuant to the above provision, a taxpayer may file an administrative protest, within thirty (30) days from receipt of the assessment. If the protest is denied, the aggrieved taxpayer may appeal to this Court, within thirty (30) days from receipt of the adverse decision; otherwise, the decision shall become final, executory and demandable.

Record shows that petitioner received the assailed FDDA on the same day it was issued on October 24, 2011. Hence, petitioner seasonably filed the instant Petition for Review on November 23, 2011, the last day for filing the appeal.

The Court will now address the stipulated issues.

I. DEFICIENCY EXPANDED WITHHOLDING TAX

Respondent assessed petitioner of deficiency EWT in the amount of ₱1,210,746.16, inclusive of interest, computed as follows:

Basic Tax Still Due	₱ 556,998.17
Add: Interest (01.16.06 to 11.28.11)	653,747.99
Total Amount Due	**₱1,210,746.16**

Respondent alleged that petitioner failed to pay the appropriate EWT on certain income payments in violation of Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended. These income payments included rentals, professional fees, purchase of services, and purchase of goods.

On March 28, 2011, respondent issued a revised assessment[25] in response to petitioner's protest letters dated October 23, 2009[26] and March 18, 2010[27]. The reinvestigation resulted in the cancellation of the

[25] Exhibit "J", docket, pp. 376-378.
[26] Exhibit "F", docket, pp. 340-351.
[27] Exhibit "G", docket, pp. 352-359.

assessments on professional fees and purchase of goods leaving the assessments on rentals and purchase of services at reduced amounts summarized as follows:

Rental	₱ 441,051.59
Purchase of Services	115,946.58
Total EWT still due	**₱556,998.17**

A. RENTAL

As presented in the Details of Discrepancies[28] of the FDDA, respondent computed the rental amount subject to EWT as follows:

Rental per Audited Financial Statements (AFS)	₱63,106,033.35
Less: Increase in Accrued Rental	24,054,976.00
Amount of Rental subject to EWT	39,051,057.35
EWT Rate	5%
EWT Due	1,952,552.87
Less: Amount remitted per BIR Form No. 1604E	1,511,501.28
EWT still due	**₱ 441,051.59**

Based on record, the amount of Rental allegedly subject to EWT consists of the following:[29]

Conventional Rent	₱ 14,107,320.00
Conventional Rent (AJE)	23,339,579.79
Part guaranteed rent	10,206,000.00
Conventional Rent, adj to UK GAAP	96,552.00
Pt guaranteed rent, adj to UK GAAP	(761,669.76)
Pt guaranteed rent, adj to UK GAAP (AJE)	1,373,302.24
Turnover rent, adj to UK GAAP	4,374,000.00
Property Services Charges	8,850,170.00
Parking Cost	1,520,779.26
Total	**₱63,106,033.53**
Less: Increase in Accrued rent	24,054,976.00
Amount of Rental subject to EWT	**₱39,051,057.18**

[28] Exhibit "D", docket, p. 321.
[29] Exhibit "H", docket, pp. 369-370.

Petitioner asserts that out of the reported rental of ₱63,106,033.53 per Audited Financial Statement (AFS), the property services charges in the amount of ₱8,850,170.00 represent payments for condominium dues which are not taxable income of a condominium corporation, consequently not subject to withholding tax. In other words, it should be excluded from the rental amount subject to EWT.

The Court agrees with petitioner. Condominium dues billed to the company are not subject to EWT.

The BIR in its various rulings,[30] held that association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purpose(s), *viz.*, to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and amenities for their members, and from which the corporation could not realize any gain or profit as a result of their receipt thereof, must not be included in said corporation's gross income. This means that the same are not subject to income tax and to withholding tax.

To prove the said condominium dues, petitioner submitted various copies of The Enterprise Center's invoices and Philamlife Tower Condominium Corporation's official receipts and statements of accounts, as well as petitioner's payment vouchers evidencing payment of its condominium dues. However, only the amount of ₱4,882,800.00, as determined below, is duly substantiated by invoices and official receipts:

SUPPLIER	EXHIBIT NO.	AMOUNT
The Enterprise Center	R1-1	₱ 196,680.00
The Enterprise Center	R2-1	196,680.00
The Enterprise Center	R3-1	196,680.00
The Enterprise Center	R4-1	196,680.00
The Enterprise Center	R5-2	196,680.00

[30] BIR Ruling [DA-(C-239) 612-09] dated October 19, 2009; BIR Ruling No. [DA-(C-182) 468-09] dated August 18, 2009; BIR Ruling [DA-(C-162) 427-09] dated July 31, 2009; BIR Ruling No. [DA-(C-032) 137-09] dated March 5, 2009; BIR Ruling No. [DA-(C-016) 079-08] dated July 28, 2008; BIR Ruling No. 018-05 dated September 16, 2005; BIR Ruling [DA-304-04] dated June 2, 2004

The Enterprise Center	R6-1	196,680.00
The Enterprise Center	R7-1	196,680.00
The Enterprise Center	R8-1	196,680.00
The Enterprise Center	R9-1	196,680.00
The Enterprise Center	R10-1	196,680.00
Philamlife Tower Condominium Corp.	R11	972,000.00
Philamlife Tower Condominium Corp.	R12	972,000.00
Philamlife Tower Condominium Corp.	R13	972,000.00
TOTAL		**₱4,882,800.00**

The amount of ₱4,882,800.00, representing payments for condominium dues, should be excluded from total rental subject to EWT. In fine, petitioner is liable for deficiency EWT on Rental in the amount of ₱196,911.59, computed as follows:

Amount of Rental subject to EWT per BIR	₱39,051,057.35
Less: Substantiated Condominium dues	4,882,800.00
Adjusted amount of rental subject to EWT	34,168,257.35
EWT rate	5%
EWT due	1,708,412.87
Less: Amount remitted per BIR Form No. 1604E	1,511,501.28
EWT still due	**₱ 196,911.59**

B. PURCHASE OF SERVICES

Based on the assailed FDDA, petitioner has deficiency EWT on its purchase of services, detailed as follows:

	Per FDDA
Accounts per FS:	
Communication	₱ 15,282,383.00
Utilities	6,274,944.00
Others	3,388,783.91
Repairs and Maintenance	981,283.00
Outside Services	575,477.00
Insurance	501,600.00
Miscellaneous	1,070,651.55
Total	**₱28,075,122.46**
Multiply by EWT rate	2%

EWT due	561,502.45
Less: Amount remitted per BIR Form No. 1604E	445,555.87
EWT still due	**₱ 115,946.58**

Significantly, petitioner did not refute respondent's findings that the above income payments of ₱28,075,122.46 should be subjected to EWT, hence, it shall be upheld in line with the principle that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of tax assessment unless proven otherwise.[31]

In sum, petitioner is liable to pay basic deficiency expanded withholding tax in the amount of ₱312,858.17, as summarized below:

EWT on	
Rental	₱ 196,911.59
Purchase of Services	115,946.58
Total	**₱312,858.17**

II. DEFICIENCY FINAL WITHHOLDING OF VALUE-ADDED TAX

Respondent assessed petitioner of deficiency final withholding of VAT in the amount of ₱4,201,938.52, inclusive of increments, computed as follows:

Basic Tax Still Due (Schedule 2)		₱ 1,731,731.00
Add: 25% Surcharge	₱ 432,932.75	
Interest (01.11.06 to 11.28.11)	2,037,274.77	2,470,207.52
Total Amount Due		**₱4,201,938.52**

The amount of basic tax due was computed based on the following:

[31] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, et al.*, G.R. No. 177279, October 13, 2010

Management Fees	₱ 2,544,695.00
License Fees	14,772,615.00
Total Fees	**17,317,310.00**
Tax Rate	10%
Final Withholding of VAT	**₱ 1,731,731.00**

Respondent held that petitioner failed to withhold and remit the corresponding final VAT arising from payment of management fees of ₱2,544,695.00 and license fees of ₱14,772,615.00 made to non-resident foreign corporation, in clear violation of Section 4.114 of Revenue Regulations No. 2-98, as amended by Section 7 of Revenue Regulations No. 14-02, in relation to Sections 108 and 114(C) of the NIRC of 1997, as amended.

A. MANAGEMENT FEES

Petitioner explains that its payments for management fees were made in relation to the Intercompany Services Agreement between petitioner and Regus Centres Pty. Ltd. (RCPL), a non-resident foreign corporation established under the laws of Australia; whereby the said agreement covers intercompany services such as information technology, marketing, public relations, property, finance, human resources, training and sales support, but none of the intercompany services were rendered in the Philippines by RCPL or by RCPL Personnel.

Petitioner asserts that under Section 4.114 of RR No. 2-98, as amended by Section 7 of RR No. 14-02, only payments to non-residents for services rendered **in the Philippines** are subject to final withholding of value-added tax.

The pertinent parts of Section 4.114 of RR No. 2-98, as amended by Section 7 of RR No. 14-02, read as follows:

> Sec. 4.114. *Withholding of Value Added Tax. -*
>
> xxx xxx xxx

> (A) *Rates and basis of value-added tax to be withheld.* – The gross payments made by the government to sellers of goods and services shall be subject to withholding tax at the rates herein prescribed
>
> xxx xxx xxx
>
> (3) *Payments for services rendered in the Phils. by non-residents* –

For lease or use of property or property rights owned by non-residents in the Phils. (final)	10%
xxx xxx xxx	
Other services rendered in the Phil. by non-residents (final)	10%

To support its claim, a copy of the Certification[32] executed by William Willems, Director of Regus Centres Pty. Ltd. and the Intercompany Services Agreement[33] entered by and between Regus Centres Pty. Ltd. and petitioner, were adduced. Scrutiny of the said documents however manifests that they do not prove petitioner's assertion that the services were actually performed by non-resident foreign corporation outside the Philippines. For petitioner's failure to present clear and convincing evidence to support its stand and to refute respondent's findings, the assessment for withholding of VAT on management fees should be upheld.

B. LICENSE FEES

Petitioner as well finds erroneous the deficiency VAT on its payment of license fees on the full amount of

[32] Exhibit "N", docket p. 381.
[33] Exhibit "O", docket, pp. 383-389.

₱14,772,615.00 as the amount paid as license fee for 2005 was only ₱11,171,801.00.

However, as clearly stated in Note 12 of its Financial Statements, petitioner had a *non-exclusive license agreement with Regus Management Limited which granted petitioner the right to establish and operate a Regus business center in the Philippines. In consideration for the use of license, petitioner pays license fee equivalent to 9% of its gross annual service income. The* ***Total license fee amounts to ₱14,772,615 in 2005***.[34]

Aside from its self-serving assertion, petitioner did not offer any documentary evidence to prove that the amount of license fees paid is only ₱11,171,801.00. Consequently, the assessment for withholding of VAT on license fees should also be upheld.

Accordingly, respondent's assessment against petitioner for basic deficiency withholding of VAT in the aggregate amount of ₱1,731,731.00, as computed below, should be sustained:

Management Fees	₱ 2,544,695.00
License Fees	14,772,615.00
Total Fees	**₱17,317,310.00**
Tax Rate	10%
Final Withholding of VAT	**₱ 1,731,731.00**

III. DEFICIENCY FINAL WITHHOLDING TAX

Respondent assessed petitioner of deficiency final withholding tax in the amount of ₱11,499,902.49, with increments, as follows:

Basic Tax Still Due		₱ 4,744,774.10
Add: 25% Surcharge	₱1,186,193.53	
Interest (01.16.06 to 11.28.11)	5,568,934.86	6,755,128.39
Total Amount Due		**₱ 11,499,902.49**

w/

[34] BIR Records, p. 17.

The FWT due on various payments to non-resident foreign corporations was assessed pursuant to Section 2.57.1 of Revenue Regulations No. 2-98, as computed below:

	AMOUNT	**TAX RATE**	**TAX DUE**
Management Fees	₱ 5,934,951.59	32%	₱ 1,899,184.51
License Fees	11,382,358.41	25%	2,845,589.60
Total	**₱17,317,310.00**		**₱ 4,744,774.11**

A. MANAGEMENT FEES

As earlier discussed, the management fees pertain to payments made to non-resident foreign corporation, but since petitioner was not able to prove that the services were performed outside the Philippines, the same shall be treated as income derived from sources within the Philippines by such non-resident foreign corporation. Consequently, it shall be subject to FWT of thirty-two percent (32%), in accordance with Section 28 of the NIRC of 1997, in relation to Section 2.57.1 of RR No. 2-98.

B. LICENSE FEES

Both in the PAN[35] and in the FAN,[36] respondent assessed petitioner's license fees at the rate of 32%. Petitioner stressed that the license fees are in relation to the Intercompany License Agreement between the company and Regus Management Limited, a non-resident foreign corporation established under the laws of the United Kingdom. The license fees, being in the nature of royalties earned by Regus Management Limited for the use of the intellectual property, the marks, the confidential data and the information transferred by Regus Management Limited, should be subject to the reduced tax rate under paragraph 2 of Article 11 of the Philippines-United Kingdom (UK) Tax Treaty, to wit:

[35] Exhibit "A"
[36] Exhibit "B"

ARTICLE XI
ROYALTIES

xxx xxx xxx

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall not exceed:

a. 15 per cent of the gross amount of royalties, where the royalties are paid:

xxx xxx xxx

b. In all other cases, 25 per cent of the gross amount of the royalties.

As shown in the foregoing table, license fees are subject to 25% tax rate.

Based on the foregoing, the management and license fees should amount to ₱2,544,695.00 and ₱14,772,615.00, respectively. Accordingly, petitioner's deficiency final withholding tax shall be adjusted as follows:

	AMOUNT	TAX RATE	TAX DUE
Management Fees	₱ 2,544,695.00	32%	₱ 814,302.40
License Fees	14,772,615.00	25%	3,693,153.75
Total	**₱17,317,310.00**		**₱4,507,456.15**

IV. COMPROMISE PENALTY

The compromise penalty imposed by respondent in the amount of ₱50,000.00 should be cancelled since petitioner already settled it on March 1, 2013.[37]

[37] Docket, p. 416

V. OTHERS - PETITIONER'S OFFER OF COMPROMISE SETTLEMENT

Based on record, petitioner proposed a compromise settlement with respondent in view of its cessation of operations and alleged doubtful validity of the assessments, by paying 40% of the basic deficiency taxes assessed as a final settlement of its tax liability for taxable year 2005. On March 1, 2013, petitioner paid the said 40% of the basic taxes assessed indicated in the assailed FDDA, as well as the compromised penalty of ₱50,000.00, through EFPS, detailed as follows:

	ASSESSED AMOUNT	**40%**
EWT	₱ 556,998.17	₱ 222,799.27
FW of VAT	1,731,731.00	692,692.40
FWT	4,744,774.10	1,897,909.64
Total	**₱7,033,503.27**	**₱2,813,401.31**
Compromise Penalty		50,000.00
Total		**₱2,863,401.31**

Section 204(A) of NIRC of 1997, as amended however requires that the said proposed compromise settlement be approved by the Evaluation Board, to wit:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* —
>
> The Commissioner may —
>
> (A) Compromise the payment of any internal revenue tax when —
>
> > (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
> >
> > (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> **Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners**. (*Emphasis supplied*)

From the foregoing, it is clear that the Evaluation Board's prior approval is condition *sine qua non* to the perfection and consummation of any compromise where the settlement offer is less than the prescribed minimum rates or where the basic assessed tax exceeds ₱1 Million, as in this case.

It appears however that the Evaluation Board is yet to act on petitioner's application for compromise settlement. Thus, in the absence of such approval, the payment made by petitioner is considered as initial payment on its assessed deficiency taxes.

WHEREFORE, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**.

Accordingly, the assessment covering deficiency expanded withholding tax, deficiency final withholding of value added tax and deficiency final withholding tax for taxable year 2005 is **UPHELD** and petitioner is **ORDERED TO PAY** the modified amount of ₱18,770,754.40, inclusive of surcharges and interests imposed under Sections 248(A)(3), 249(B) and 249(C)(3) of the NIRC of 1997, computed as follows:

		Expanded Withholding Tax	Final Withholding of VAT	Final Withholding Tax	Total
Basic Tax Due		₱ 312,858.17	₱ 1,731,731.00	₱ 4,507,456.15	₱ 6,552,045.32
Add: 25% Surcharge on the Basic tax Due		78,214.54	432,932.75	1,126,864.04	1,638,011.33
Total		**₱ 391,072.71**	**₱ 2,164,663.75**	**₱ 5,634,320.19**	**₱ 8,190,056.65**
Add:	**Deficiency Interest**				-
	EWT: From Jan 11, 2006 to Nov 24, 2011 [₱312,858.17 x 20% x 2,144 days/365 days]	367,544.06			367,544.06
	FWVAT: From Jan 15, 2006 to Nov 24, 2011 [₱1,731,731.00 x 20% x 2,140 days/365 days]		2,030,632.52		2,030,632.52
	FWT: From Jan 11, 2006 to Nov 24, 2011 [₱4,507,456.15 x 20% x 2,144 days/365 days]			5,295,334.79	5,295,334.79
	EWT: From Nov 25, 2011 to Mar 1, 2013 [₱312,858.17 x 20% x 463 days/365 days]	79,371.69			79,371.69
	FWVAT: From Nov 25, 2011 to Mar 1, 2013 [₱1,731,731.00 x 20% x 463 days/365 days]		439,337.78		439,337.78
	FWT: From Nov 25, 2011 to Mar 1, 2013 [₱4,507,456.15 x 20% x 463 days/365 days]			1,143,535.45	1,143,535.45
	Delinquency Interest on the Basic & Surcharge				
	From Nov 24, 2011 to Mar 1, 2013				
	EWT: [₱391,072.71 x 20% x 464 days/365 days]	99,428.90			99,428.90
	FWVAT: [₱2,164,663.75 x 20% x 464 days/365 days]		550,358.35		550,358.35
	FWT: [₱5,634,320.19 x 20% x 464 days/365 days]			1,432,506.61	1,432,506.61
	Delinquency Interest on the Deficiency Interest				
	From Nov 24, 2011 to Mar 1, 2013				
	EWT: [₱367,544.06 x 20% x 464 days/365 days]	93,446.82			93,446.82
	FWVAT: [₱2,030,632.52 x 20% x 464 days/365 days]		516,281.36		516,281.36
	FWT: [₱5,295,334.79 x 20% x 464 days/365 days]			1,346,320.73	1,346,320.73

Total Deficiency & Delinquency Interest	**639,791.47**	**3,536,610.01**	**9,217,697.58**	**13,394,099.06**
TOTAL	**₱1,030,864.18**	**₱5,701,273.76**	**₱14,852,017.77**	**₱21,584,155.71**
Less: 40% Payment	222,799.27	692,692.40	1,897,909.64	2,813,401.31
AMOUNT OF TAXES STILL DUE	**₱ 808,064.91**	**₱5,008,581.36**	**₱12,954,108.13**	**₱18,770,754.40**

In addition, petitioner shall **PAY** respondent the following deficiency and delinquency interests on the remaining unpaid deficiency taxes:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the remaining basic deficiency EWT of ₱90,058.90,[38] FWVAT of ₱1,039,038.60,[39] and FWT of ₱2,609,546.51,[40] or in the aggregate amount of ₱3,738,644.01, computed from March 2, 2013 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

(b) delinquency interest at the rate of 20% *per annum* on the total deficiency taxes of ₱5,376,655.34, representing the total unpaid basic deficiency EWT, FWVAT and FWT of ₱3,738,644.01 and twenty-five percent (25%) surcharge of ₱1,638,011.33, computed from March 2, 2013 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

(c) delinquency interest at the rate of 20% *per annum* on the 20% deficiency interest which has accrued as afore-stated in (a), computed from March 2, 2013 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[38] ₱312,858.17 less ₱222,799.27
[39] ₱1,731,731.00 less ₱692,692.40
[40] ₱4,507,456.15 less ₱1,897,909.64

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice