REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FIRST PHILIPPINE ELECTRIC CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case NO. 9199

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA,*
and
MANAHAN, *JJ.*

Promulgated:

FEB 0 8 2019
10:25 a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

This involves a Petition for Review[1] under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court

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* Designated as a special member as per OPJ Memorandum dated January 18, 2019.

[1] Docket, CTA Case No. 9199, Vol. I, pp. 10-53.

[2] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments.

[3] Rule 4 Jurisdiction of the Court
Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters

of Tax Appeals (RRCTA). The petition is filed by First Philippine Electric Corporation praying that a judgment be rendered declaring null and void the deficiency tax assessments for income tax, value added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WC), documentary stamp tax (DST), and fringe benefits tax (FBT) in the aggregate amount of Php12,754,942.85 for taxable year 2009.

THE FACTS

Petitioner is a holding company managing corporations primarily devoted to electrics, electricals, and electronics, and registered with the Securities and Exchange Commission (SEC) with Company Registration No. A199811805.[4]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. In his official capacity, respondent has the power to decide disputed assessments, refunds of all internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR. Respondent may be served with summons and other court processes at 5th Floor, Bureau of Internal Revenue Building, Agham Road, Diliman, Quezon City.[5]

On May 25, 2010, petitioner, through its duly authorized representative, Jose Chito Valdellon, received a Letter of Authority No. LOA-116-2010-00000052 (LOA),[6] dated May 14, 2010, together with a Letter and Checklist of Requirements requesting the submission of certain documents.[7]

On January 9, 2013, Ms. Trinidad C. Binua (Ms. Binua), petitioner's VP Controller, executed a Waiver (the First Waiver)[8] to suspend the operation of the Statute of Limitations until June 30, 2013. The First Waiver was accepted by Officer-in-Charge Assistant

arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[4] Docket, Vol. II, Joint Stipulation of Facts and Issues (JSFI), p. 528.
[5] Docket, Vol. II, JSFI, p. 529.
[6] Docket, Vol. III, Exhibit "P-31", p. 944.
[7] Docket, Vol. II, JSFI, p. 529.
[8] Docket, Vol. III, Exhibit "P-32", p. 945.

Commissioner for Large Taxpayers Services Alfredo V. Misajon (OIC-ACIR Misajon)[9] on January 15, 2013.

On February 8, 2013, petitioner received a Notice of Informal Conference (NIC)[10] dated February 7, 2013.[11]

On May 22, 2013, Ms. Binua, petitioner's VP Controller executed another Waiver (the Second Waiver)[12] to extend the suspension of the operation of the Statute of Limitations until December 31, 2013. It was accepted by OIC-ACIR Misajon on May 29, 2013.[13]

On July 25, 2013, petitioner filed its response[14] to the NIC.[15]

On November 11, 2013, Mr. Arthur A. De Guia, petitioner's President, executed a subsequent Waiver (the Third Waiver)[16] to further suspend the original period until March 31, 2014. OIC-ACIR Misajon accepted the Third Waiver on November 13, 2013.[17]

On January 10, 2014, petitioner received a copy of a Preliminary Assessment Notice (PAN)[18] dated January 9, 2014 stating that after investigation, petitioner has been found liable for deficiency income tax, VAT, WC, EWT, DST, and FBT for taxable year 2009.[19]

On January 24, 2014, petitioner filed a reply[20] to the PAN with corresponding supporting documents, which opposed the assessments contained in the PAN.[21]

On February 21, 2014, petitioner received a copy of the Formal Letter of Demand with Final Assessment Notice (FLD/FAN),[22] finding petitioner liable for deficiency income tax, VAT, WC, EWT, DST and

[9] Docket, Vol. II, JSFI, p. 529.
[10] Docket, Vol. III, Exhibit "P-35", p. 948.
[11] Docket, Vol. II, JSFI, p. 529.
[12] Docket, Vol. III, Exhibit "P-33", p. 946.
[13] Docket, Vol. II, JSFI, p. 529.
[14] Docket, Vol. III, Exhibit "P-36", p. 956.
[15] Docket, Vol. I, PFR, p. 13.
[16] Docket, Vol. III, Exhibit "P-34", p. 947.
[17] Docket, Vol. II, JSFI, p. 529.
[18] Docket, Vol. III, Exhibit "P-37", pp. 962-967.
[19] Docket, Vol. II, JSFI, p. 529.
[20] Docket, Vol. III, Exhibit "P-38", pp. 968-971.
[21] Docket, Vol. I, Petition for Review (PFR), p. 13.
[22] Docket, Vol. III, Exhibit "P-39", pp. 972-986.

FBT for taxable year 2009 in the sum of Php25,515,586.20, inclusive of interests and penalties.[23]

On March 21, 2014, petitioner filed its protest[24] to the assessments, with supporting documents attached, assailing the deficiency assessments in the FLD/FAN and requesting that the same be cancelled.[25]

On May 19, 2014, petitioner filed a supplemental protest[26] dated May 16, 2014 and submitted additional supporting documents to the BIR within sixty (60) days from the date it filed the initial protest and submitted the first set of documents in support of its position.[27]

On October 16, 2015, petitioner received a copy of the Final Decision on Disputed Assessments (FDDA) dated October 2, 2015.[28] The FDDA assessed petitioner for deficiency tax in the aggregate amount of Php12,754,942.85, as follows:

I. Deficiency on Income Tax – IT-116-LOA-00000052-9-15-1962			
Taxable income per return			P (37,350,819.00)
Add(less) adjustment			
Unaccounted salaries and wages	Schedule 1	P 2,526,990.34	
Undeclared Sales	Schedule 2	3,945,489.28	
Undeclared purchases	Schedule 3	88,285.29	
Expenses not subjected to EWT	Schedule 4	2,699,601.74	
NOLCO		37,350,819.00	46,611,185.65
Adjusted net income			P 9,260,366.65
Tax due			P 2,778,110.00
Less: Payments			-
Tax still due and payable			P 2,778,110.00
Add: Interest (computed up to 7.31.2015)		P 2,940,990.96	
Compromise Penalty		25,000.00	2,965,990.96
Total amount due – income tax			P 5,744,100.96

II. Deficiency on Value Added Tax VT-116-LOA-00000052-9-15-1963			
Sales per VAT			P 59,601,492.59
Add: Other income/adjustment			
Undeclared Sales	Schedule 2	3,945,489.28	
Undeclared purchases	Schedule 3	88,285.29	4,033,774.57
Total			P 63,635,267.16
Less: Zero rated Sales			12,315,000.00
Total Vatable Income per Audit			P 51,320,267.16
Rate			12%
OUTPUT TAX PER AUDIT			P 6,158,432.06

[23] Docket, Vol. II, JSFI, pp. 529-530.
[24] Docket, Vol. III, Exhibit "P-40", pp. 987-989.
[25] Docket, Vol. I, PFR, p. 14.
[26] Docket, Vol. III, Exhibit "P-41", pp. 991-996.
[27] Docket, Vol. I, PFR, p. 14.
[28] Docket, Vol. II, JSFI, p. 530.

Less: INPUT TAX PER AUDIT				2,663,407.79
VAT PAYABLE PER AUDIT			P	3,495,024.27
Less: VAT paid per return				3,050,019.25
Deficiency Tax			P	445,005.02
Add: Interest (computed up to 7.31.2015)		P 490,746.63		
Compromise Penalty		16,000.00		506,846.63
TOTAL AMOUNT DUE-VAT			P	951,851.65

III. Deficiency on Expanded Withholding Tax-WE-116-LOA-00000052-9-15-1964

Basic Tax due-EWT	Schedule 4			P	144,210.45
Add: Interest (computed up to 7.31.2015)		P 159,856.30			
Interest on late remittance		80,713.93	P 240,570.23		
Compromise Penalty			16,000.00		256,570.23
Total Deficiency tax - EWT				P	400,780.68

IV. Deficiency on Withholding Tax on Compensation -WC-116-LOA-00000052-9-15-1965

Basic Tax due – Compensation	Schedule 5		P	768,149.84
Add: Interest (computed up to 7.31.2015)		P 851,488.83		
Compromise Penalty		20,000.00		871,488.83
			P	1,639,638.67

V. Deficiency on Documentary Stamp Tax – DS-116-LOA-00000052-9-14-321

Basic Tax due - DST		P	1,851,951.72
Add: Interest (computed up to 7.31.2015)	P 2,063,023.48		
Compromise Penalty	25,000.00		2,088,023.48
Total Deficiency Tax-DST		P	3,939,975.20

VI. Deficiency on Fringe Benefit Tax – WR-116-LOA-00000052-9-14-322

Late Remittance of FBT	1st Qtr.	2nd Qtr.	TOTAL
Basic	P 94,041.66	P 94,041.66	-
Surcharge	P 23,510.41	P 23,510.41	P 47,020.83
Interest	6,132.03	1,442.83	7,574.86
Compromise penalty	12,000.00	12,000.00	24,000.00
Total Increments	P 41,642.45	P 36,953.25	P 78,595.69

On November 13, 2015, the present Petition for Review was filed with this Court. The Petition prays that the assessments be declared null and void. Petitioner argues that respondent's right to assess deficiency taxes for year 2009 has already prescribed; that it was not accorded due process; and, that the assessments have no merit.

Within the extended periods granted by this Court,[29] respondent filed his Answer[30] on February 1, 2016.

[29] Docket, Vol. I, Orders dated December 11, 2015 and January 21, 2016, respectively, pp. 240 and 247.
[30] Docket, Vol. I, pp. 248-273.

The parties filed their Joint Stipulation of Facts and Issues (JSFI)[31] on May 2, 2016, which was approved and adopted in the Court's Pre-Trial Order (PTO)[32] dated May 6, 2016.

In the meantime, petitioner filed its Motion for Commissioning of Independent Certified Public Accountant[33] on April 25, 2016, which was granted during the hearing[34] on June 27, 2016.

During trial, petitioner presented its witnesses: (1) Ms. Trinidad C. Binua;[35] (2) Atty. Esmeraldo C. Amistad;[36] and (3) Atty. Adan T. Delamide.[37] Petitioner filed its Formal Offer of Evidence (FOE)[38] on November 22, 2016, with respondent's Comment (Re: Petitioner's Formal Offer of Evidence),[39] filed on November 24, 2016. The Court resolved petitioner's FOE on January 24, 2017, with several exhibits being denied admission.[40] Petitioner filed its Motion for Partial Reconsideration (Re: Resolution dated January 24, 2017),[41] which was partially granted in the Court's Resolution dated March 22, 2017.[42]

On May 29, 2017, respondent presented his lone witness, Revenue Officer Olivia S. Sison.[43] Thereafter, respondent filed his Formal Offer of Evidence[44] on June 1, 2017, with petitioner's Comment and/or Objection (to Respondent's Formal Offer of Evidence)[45] filed on June 9, 2017. On October 12, 2017, the Court resolved respondent's FOE and admitted all of the offered exhibits.[46]

Within the extended period granted by this Court,[47] respondent filed his Memorandum[48] on December 18, 2017, while petitioner filed

[31] Docket, Vol. II, pp. 528-538.
[32] Docket, Vol. II, pp. 540-547.
[33] Docket, Vol. II, pp. 518-521.
[34] Docket, Vol. II, Minutes of Hearing, p. 566.
[35] Docket, Vol. I, Exhibit "P-47" Judicial Affidavit of Ms. Trinidad C. Binua, pp. 305-324.
[36] Docket, Vol. I, Exhibit "P-48" Judicial Affidavit of Atty. Esmeraldo C. Amista, pp. 462-470.
[37] Docket, Vol. II, Judicial Affidavit of Atty. Adan T. Delamide, pp. 709-725.
[38] Docket, Vol. III, pp. 855-878.
[39] Docket, Vol. III, pp. 1041-1043.
[40] Docket, Vol. III, pp. 1066-1068.
[41] Docket, Vol. III, pp. 1071-1075.
[42] Docket, Vol. III, pp. 1086-1088.
[43] Docket, Vol. III, Exhibit "R-17" Judicial Affidavit of Revenue Officer Olivia S. Sison, pp. 1053-1061.
[44] Docket, Vol. III, pp. 1097-1103.
[45] Docket, Vol. III, pp. 1110-1112.
[46] Docket, Vol. III, pp. 1114-1115.
[47] Docket, Vol. III, Orders dated November 21, 2017, November 24, 2017, and January 4, 2018, pp. 1120, 1125, and 1153.
[48] Docket, Vol. III, pp. 1126-1148.

its Memorandum[49] on January 10, 2018. Hence, the case was deemed submitted for decision on January 22, 2018.[50]

THE ISSUE

The parties submit the sole issue stated below for resolution of this Court, to wit:

> Whether or not petitioner is liable for deficiency income tax, VAT, EWT, WC, DST and FBT for taxable year 2009 in the aggregate amount of Php12,754,942.85, inclusive of interest and penalties pursuant to Sections 248 and 249 of the Tax Code.[51]

Petitioner's Arguments

Petitioner argues that the assessments have prescribed and that even prior to the execution of the first waiver, respondent's right to assess certain periods of VAT, EWT, and WC has already prescribed. Petitioner also argues that the waivers were not validly executed because there was no board resolution authorizing the signatory to sign the waivers; and, that the revenue officer who accepted the waivers is not authorized to do so.

Petitioner also argues that the audit was not completed within the 120-day period provided in the BIR General Audit Procedures and Documentation and that the revenue officer failed to have the LOA revalidated after the expiration of the said 120-day period. Petitioner also argues that the LOA issued to it was never replaced by an electronic LOA (eLOA), despite the mandatory requirement in Revenue Memorandum Order (RMO) No. 69-2010; and that such failure to replace the LOA with an eLOA rendered the assessments void because the revenue officers conducting the audit did not have the proper authority.

Petitioner also states that its right to speedy disposition of cases was violated considering that the LOA was issued on May 14, 2010, yet the PAN was only issued on January 9, 2014.

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[49] Docket, Vol. III, pp. 1154-1210.
[50] Docket, Vol. III, p. 1211.
[51] Docket, Vol. II, JSFI, p. 531.

As to the items of assessment giving rise to deficiency income tax, petitioner states that it does not have unaccounted Salaries and Wages, Undeclared Sales, nor Undeclared Purchases. Petitioner also states it properly withheld all taxes due on its income payments, thus there is no basis for the assessment due to the disallowance of certain expenses for failure to withhold the necessary taxes.

Petitioner also argues against the assessment for deficiency VAT considering that the assessment largely arose from the alleged Undeclared Sales and Purchases.

With respect to the assessment for EWT, petitioner alleges that respondent did not provide a clear breakdown of the alleged deficiency EWT, thus, petitioner was not informed of the legal and factual bases upon which the assessment was made rendering the said assessment void.

As to WC, petitioner again argues that it has no undeclared Salaries and Wages, and that respondent did not provide the basis for using the rate 0.30398 in computing the deficiency WC.

Petitioner also contests the assessment for deficiency DST on the advances received from petitioner's parent company; that advances are not in the context of a loan subject to DST; and, that subjecting the advances to DST would result to double taxation considering that petitioner already paid DST on the original issuance of shares when the said advances were converted into equity through subscription of additional shares.

Finally, petitioner argues that it is not liable for compromise penalty as it has not consented to the imposition thereof.

Respondent's Counter-Arguments

Respondent argues that the waivers were duly executed by petitioner's VP-Controller Trinidad C. Binua, and President Arthur A. De Guia, respectively. Such waivers were duly accepted by a duly authorized BIR official when then Officer-In-Charge – Assistant Commissioner (OIC-ACIR) Alfredo V. Misajon accepted said waivers pursuant to Revenue Delegation Authority Order (RDAO) No. 04-07.

Respondent also states that the execution of the waivers were beneficial to the petitioner by providing it enough time to gather its voluminous records; that it is absurd and unfair to let the petitioner question the validity of the waiver which it benefited from, when the PAN, FLD/FAN proved to be adverse to the petitioner; and that petitioner's failure to question the validity of the waivers at the administrative level operates as an estoppel on its part to question the said waivers before the Court.

Respondent also states that the assessments were issued in compliance with BIR rules and regulations and that the LOA was validly served upon petitioner. Respondent also states that the absence of an eLOA did not invalidate the assessment against petitioner considering that there is an LOA that is validly issued and duly received by petitioner. Respondent also denies that petitioner was deprived of its right to speedy disposition of cases considering that it was petitioner who sought the extension of the period for assessment in order to be able to submit documents to refute the result of the audit and investigation.

With respect to the assessments, respondent maintains that the discrepancies which gave rise to the tax assessments were not satisfactorily explained by petitioner, nor has petitioner presented proof to substantiate its arguments.

As to the imposition of compromise penalties, respondent agrees that the same cannot be imposed without the consent of the taxpayer and that the same were included in the assessment merely as a suggestion to petitioner to pay it in lieu of criminal prosecution.

THE COURT'S RULING

The Petition for Review is partially meritorious.

The Petition for Review was timely filed.

Petitioner received the FLD/FAN on February 21, 2014, and filed its protest on March 21, 2014. Petitioner also filed its supplemental protest on May 19, 2014. On October 16, 2015, petitioner received the FDDA. Counting thirty (30) days from October 16, 2015, petitioner had until November 15, 2015 to file its appeal to the CTA. Thus, the petition for review filed on November 13, 2015 was timely filed.

The audit and investigation were conducted pursuant to a valid LOA.

Petitioner cites RMO No. 69-2010[52] to support its argument that the LOA is defective because it was not replaced with an eLOA. The RMO provides:

> 6. All LAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new eLA form (BIR Form No. 1966).
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> 7. All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation, subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order.

Petitioner's argument is untenable.

It is true that RMO No. 69-2010 requires that manual LOAs be retrieved and replaced with the new eLOA. However, nowhere in RMO No. 69-2010 does it state that the conduct of the audit pursuant to the previously-issued manual LOA will be invalidated if the said manual LOA is not replaced with an eLOA.

Petitioner also argues that an essential requirement for the validity of the LOA is for the revenue officer to conduct the audit and submit the required report of investigation within one hundred twenty (120) days from the date of receipt of the LOA by the taxpayer. Thus, petitioner points out that instant case, the revenue officer had only until September 22, 2010 to conduct the audit, and clearly the audit

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[52] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.

was not completed within the said period. The revenue officer's failure to have the LOA revalidated is fatal to the audit conducted against the petitioner.

Petitioner's position is unmeritorious.

Petitioner cites the Taxpayer Bill of Rights, particularly on the BIR General Audit Procedures and Documentation to support its position on the requirement for revalidation of an LOA, which states:

> 6. *How much time does a Revenue Officer have to conduct an audit?* ***A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation.***[53] *(Emphasis and underscoring supplied)*

The abovequoted provision does not state that the LOA or the audit is invalidated for failure to revalidate the LOA. In fact, Revenue Memorandum Circular (RMC) No. 23-2009[54] provides for the effects of such failure to revalidate the LOA, as follows:

> ...Failure on the part of the RO to request for the revalidation of the LA or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary. (*Underscoring supplied*) g

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[53] Docket, Vol. I, PFR, p. 29, citing Bureau of Internal Revenue, Taxpayer Bill of Rights, at http://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html#general-audit-procedures-and-documentation (last accessed August 17, 2015)

[54] Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division, April 16, 2009.

Thus, the LOA is valid notwithstanding the failure to replace the same with an eLOA and despite the fact that the investigation and audit lasted more than 120 days without the said LOA being revalidated.

The period for assessment of certain taxes had prescribed even prior to the execution and acceptance of the 1st waiver.

Section 203 of the 1997 National Internal Revenue Code, as amended (NIRC) provides for a three-year period within which an assessment may be made. It provides:

> **SEC. 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (*Underscoring supplied*)

In the present case, petitioner is assessed for deficiency income tax, VAT, EWT, WC, DST, and FBT for taxable year 2009. The FLD/FAN was issued and received on February 21, 2014 which is clearly beyond the three-year prescriptive period for assessing taxable year 2009.

The three-year prescriptive period may be extended by agreement of the parties, pursuant to Section 222(b) of the NIRC, which states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

xxx xxx xxx

(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.

The abovequoted provision refers to the Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC (waiver). It is undisputed that three (3) waivers were executed by petitioner and respondent covering all internal revenue taxes for taxable year 2009, with the following details:

	Date Executed	Date Accepted	Period Extended Until
1st waiver[55]	1/9/2013	1/15/2013	6/30/2013
2nd waiver[56]	5/22/2013	5/29/2013	12/31/2013
3rd waiver[57]	11/11/2013	11/13/2013	3/31/2014

As stated in Section 222(b), the extended period must be agreed upon by the Commissioner and the taxpayer before the expiration of the time prescribed. Thus, the date of execution by the taxpayer and acceptance by the Bureau of the waiver must both be before the expiration of the time prescribed or period agreed upon.[58]

Petitioner's date of filing of various returns and the corresponding prescriptive periods for the assessed taxes for taxable year 2009 are presented below:

[55] Docket, Vol. III, Exhibit "P-32", p. 945.
[56] Docket, Vol. III, Exhibit "P-33", p. 946.
[57] Docket, Vol. III, Exhibit "P-34", p. 947.
[58] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 10, 2010.

Tax Type	Period Covered	Date Return was Filed	Deadline for Filing	Last Day to Issue a Valid Assessment	Status and/or Effect of 1st Waiver executed on January 9, 2013 and accepted on January 15, 2013
Income tax[59]	2009	4/13/2010	4/15/2010	4/15/2013	Timely waiver
VAT[60]	1st Quarter	4/24/2009	4/25/2009	4/25/2012	Prescribed
	2nd Quarter	7/24/2009	7/25/2009	7/25/2012	Prescribed
	3rd Quarter	10/23/2009	10/25/2009	10/25/2012	Prescribed
	4th Quarter	1/25/2010	1/25/2010	1/25/2013	Timely waiver
WC[61]	January	2/10/2009	2/11/2009	2/11/2012	Prescribed
	February	3/10/2009	3/11/2009	3/11/2012	Prescribed
	March	4/8/2009	4/11/2009	4/11/2012	Prescribed
	April	5/11/2009	5/11/2009	5/11/2012	Prescribed
	May	6/10/2009	6/11/2009	6/11/2012	Prescribed
	June	7/10/2009	7/11/2009	7/11/2012	Prescribed
	July	8/10/2009	8/11/2009	8/11/2012	Prescribed
	August	9/10/2009	9/11/2009	9/11/2012	Prescribed
	September	10/9/2009	10/11/2009	10/11/2012	Prescribed
	October	11/10/2009	11/11/2009	11/11/2012	Prescribed
	November	12/10/2009	12/11/2009	12/11/2012	Prescribed
	December	1/14/2010	1/11/2010	1/29/2013	Timely waiver
	December (amended)[62]	1/29/2010			
EWT[63]	January	2/10/2009	2/11/2009	2/11/2012	Prescribed
	February	3/10/2009	3/11/2009	3/11/2012	Prescribed
	March	4/8/2009	4/11/2009	4/11/2012	Prescribed
	April	5/11/2009	5/11/2009	5/11/2012	Prescribed
	May	6/10/2009	6/11/2009	6/11/2012	Prescribed
	June	7/10/2009	7/11/2009	7/11/2012	Prescribed
	July	8/10/2009	8/11/2009	8/11/2012	Prescribed
	August	9/10/2009	9/11/2009	9/11/2012	Prescribed
	September	10/9/2009	10/11/2009	10/11/2012	Prescribed
	October	11/10/2009	11/11/2009	11/11/2012	Prescribed
	November	12/10/2009	12/11/2009	12/11/2012	Prescribed
	December	1/14/2010	1/11/2010	1/14/2013	Prescribed

Based on the foregoing table, the assessments for VAT for the 1st to 3rd quarters of 2009, WC for January to November 2009, and EWT for January to December 2009 have already prescribed even prior to the execution and acceptance of the 1st waiver. In other words, the 1st waiver can validly extend the period of assessment for income tax, VAT 4th quarter, and WC for December 2009 only. gr

[59] Docket, Vol. III, Exhibit "P-2", pp. 891-893.
[60] Docket, Vol. III, Exhibits "P-3" to "P-6", pp. 894-900.
[61] Docket, Vol. III, Exhibits "P-7" to "P-18", pp. 901-921.
[62] BIR Records, p. 77.
[63] Docket, Vol. III, Exhibits "P-19" to "P-30", pp. 922-943.

The waivers validly extended the period for assessment considering that the parties are *in pari delicto*.

Petitioner questions the validity of the waivers stating that there was no board resolution authorizing the signatory to sign the waivers on behalf of the petitioner and that the revenue officer who accepted the waivers is not authorized to accept the waivers.

The general rule is that waivers must strictly follow the procedures and guidelines provided in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, otherwise, the waiver is invalid and does not extend the period for assessment.[64] However, in *Commissioner of Internal Revenue v. Next Mobile, Inc.* (*Next Mobile* case),[65] 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, an exception must be made when the circumstances warrant, in keeping with the lifeblood theory of taxation.[66]

In *Next Mobile*, the taxpayer executed five (5) waivers without presenting the authority of the signatory. The BIR also violated its own rules when it received and accepted the said waivers without verifying the signatory's authority. The Court held that both parties knew the infirmities of the waivers yet continued to deal with each other on the strength of said waivers without rectifying the infirmities. The Court held that the taxpayer's act of impugning the waivers after it has benefitted therefrom is an act of bad faith. On the other hand, the BIR's negligence is so gross that it amounts to malice and bad faith. Thus, the Court held that both parties were at fault, and that the taxpayer was estopped from questioning the validity of the waiver.[67]

In the instant case, petitioner executed three (3) waivers. The first two (2) were signed by petitioner's Vice-President-Controller, Ms. Trinidad C. Binua; and, the third waiver was signed by petitioner's President, Mr. Arthur A. De Guia. Petitioner states that these signatories were not authorized by petitioner to act on its behalf. Clearly, petitioner violated RMO No. 20-90 which states that in case of

[64] *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010, in relation to *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[65] G.R. No. 212825, December 7, 2015.
[66] *First Sumiden Circuits, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 8924, January 3, 2018.
[67] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

a corporate taxpayer, the waiver must be signed by its responsible officials, and RDAO No. 05-01 which requires the presentation of a written and notarized authority to the BIR.[68]

Likewise, the BIR defied its own rules and was remiss in performing its functions with respect to these waivers. Under RDAO No. 05-01, it is the duty of the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized. In this case, the BIR failed three times to perform its duties.[69] The BIR did not verify nor secure a copy of the notarized authority of the taxpayer's signatory to the waiver. Further, the Court notes that the BIR accepted the waivers despite the same having been notarized without the presentation of the requisite identity documents, said portion having been left blank in the subject waivers. Thus, the BIR also failed to comply with its duty to refuse acceptance of the waiver when it is not duly notarized.

Thus, the parties were clearly both aware of the infirmities of the waivers, yet they continued their dealings with each other on the strength of such waivers.

The Court also finds petitioner in bad faith when it impugns the authority of its own signatory after it has benefited from the extended period of assessments. It must be remembered that by virtue of these waivers, petitioner was given an opportunity to gather and submit documents to substantiate its claims before the BIR, to postpone the payment of taxes, and, to contest and negotiate the assessment against it.[70] Petitioner also never raised the invalidity of the said waivers before BIR, merely raising said argument on its appeal to the Court.

Considering the foregoing, the Court finds that the parties are *in pari delicto* and that petitioner is estopped from raising an objection

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[68] *First Philippine Holdings Corp., v. Commissioner of Internal Revenue*, CTA Case No. 8991, March 9, 2017 Resolution.
[69] *Id.*
[70] *First Sumiden Circuits, Inc. v. Commissioner of Internal Revenue,* CTA Case No. 8924, January 3, 2018.

against the validity of the waivers. Thus, applying the *Next Mobile* case, the waivers are considered valid and extended the period of assessment.

The assessments for deficiency income tax, VAT, and EWT are cancelled.

As earlier discussed, the assessments for VAT 1st to 3rd quarters, WTC for January to November, and EWT for January to December have already prescribed prior to the execution and acceptance of the 1st waiver. However, petitioner failed to specify which portion of said deficiency taxes pertain to the prescribed months. Consequently, the Court shall impute the entire deficiency tax assessments to the unprescribed portion of the deficiency assessments for taxable year 2009 for VAT and WTC.[71] With respect to the deficiency DST, it is unquestionable that the prescriptive period for its assessment is within ten (10) years from discovery of the omission in accordance with Section 222 of the NIRC.

Thus, the Court will examine the following remaining assessments:

Deficiency income tax	Php 5,744,100.96
Deficiency VAT	951,851.65
Deficiency WTC	1,639,638.67
Deficiency DST	3,939,975.20
Increments for late remittance of FBT	78,595.68
Total	**Php12,534,162.15**

I. Compromise Penalties – Php320,000.00

At the outset, the Court cancels the following compromise penalties imposed on all the assessed deficiency taxes:

Deficiency income tax	Php 25,000.00
Deficiency VAT	16,000.00
Deficiency EWT	16,000.00
Deficiency WTC	20,000.00

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[71] *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8612, February 3, 2017, citing *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*, CTA EB Case Nos. 1117 and 1119, September 21, 2015.

Deficiency DST	25,000.00
Increments for late remittance of FBT	24,000.00
Total	**Php126,000.00**

Pursuant to Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[72] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[73]

II. Deficiency Withholding Tax on Compensation – Php1,639,638.67

The assessment for deficiency WTC was computed as follows:

Basic Tax due – Compensation Schedule 5		P 768,149.84
Add: Interest (computed up to 7.31.2015)	P 851,488.83	
Compromise Penalty	20,000.00	871,488.83
TOTAL AMOUNT DUE - WTC		P 1,639,638.67

The basic WTC due was computed as follows:

Unaccounted salaries and wages	P 2,526,990.34
Rate	0.30398
Basic tax due – Compensation	P 768,149.84

The Details of Discrepancies[74] show how the unaccounted salaries and wages was computed, as follows:

Per Financial Statement		
Direct labor		55,868,281.00

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[72] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[73] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.,* G.R. No. L-35266, January 21, 1991.
[74] BIR Records, FDDA Details of Discrepancies, p. 1313.

Add: Non-deductible expense	18,207,288.00	
Beginning (accrual)	12,229,241.00	30,436,529.00
Total		86,304,810.00
Less: End (accrual)		22,317,863.00
Adjusted salaries and wages		63,986,947.00
Per Alphalist		
7.3	58,460,007.33	
7.4	2,999,949.33	61,459,956.66
Unaccounted salaries and wages		2,526,990.34

The Court-commissioned ICPA, Atty. Adan T. Delamide, reconciled the total compensation expense declared in the 2009 Audited Financial Statements (AFS), amounting to Php 74,557,682.97,[75] with the amounts declared as Salaries and Wages in the monthly BIR Form Nos. 1601-C filed by petitioner for 2009, amounting to Php61,086,910.62.[76]

Total Salaries & Wages as per FS		**P74,557,682.97**[77]
Less: Salaries & Wages not subject to withholding taxes on compensation:		
SSS, Philhealth, HDMF, and other contributions	P 258,145.94	
Fringe Benefits	490,881.69	
Medical Hospitalization	661,636.17	
Employee Insurance	223,969.17	
Training and Seminars	84,478.79	
Company Activities	743,430.91	
Pension Expense	168,600.00	
ESOP	967,499.83	
Other Employee related cost	1,504,650.98	(5,103,293.48)
Cost of Sales and Services:		
Accrual of 13th Month Pay	783,000.00	
Accrual of Variable Incentive Pay	3,009,600.00	
Accrual of P/S	460,900.00	
FAG of Seconded Personnel	180,900.00	(4,434,400.00)
Cost of Management Fees		
Shared Services from FPMTC	140,275.10	
Accrual of 13th Month Pay	1,192,000.00	
Accrual of Variable Incentive Pay	3,163,000.00	
Accrual of P/S	790,400.00	
FAG of Seconded Personnel	66,600.00	
Accrual for OMD-EU	1,000,000.00	
Caje & Paje Entry	127,500.00	(6,479,775.10)
Salaries Expense and Provision for Bonuses		
Shared Services from FPMTC	807,557.71	
Accrual of 13th Month Pay	1,748,800.00	
Accrual of Variable Incentive Pay	6,742,400.00	
Accrual of P/S	231,400.00	

[75] Notes 13 and 14, 2009 AFS, Exhibit "P-52", p. 25.
[76] Docket, Vol. III, Exhibits "P-7" to "P-17", pp. 901-921.
[77] Difference due to rounding off.

FAG of Seconded Personnel	107,400.00	
Terminal Pay	179,334.38	(9,816,892.09)
Add Expenses other than Salaries & Wages Subject to Withholding Tax on Compensation		
Professional Fees	126,078.22	
Other Professional Fees not subject to EWT	(69,437.81)	
Accrued Liabilities	7,365,401.50	
Advances from FPWC	814,984.23	
Amendment (December 2009)	4,126,562.18	12,363,588.32
Total Salaries & Wages as per Alphalist/1601-C		**P61,086,910.62**

However, the Court finds that the nature of each reconciling item was not explained. Thus, the Court cannot verify whether each item submitted as a reconciling item must be declared as part of employees' compensation for WTC purposes or not.

Furthermore, petitioner did not explain the difference of Php373,046.03, which arose between the total compensation of Php61,459,956.66 based on BIR records versus the amount that petitioner declared in its WTC returns which is only Php61,086,910.63.

Considering the foregoing, the Court finds that petitioner failed to discharge its burden of proof in refuting the assessment against it. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[78]

While petitioner failed to refute the said assessment for deficiency WTC, the Court also finds the need to correct the effective compensation tax rate used by the CIR.

Dividing the total withholding tax on compensation paid amounting to Php18,569,082.77 by the total amount of compensation of Php61,086,910.63 as declared in the monthly BIR Form No. 1601-C yields an effective rate of 30.398%, which was used by respondent in computing the deficiency WTC due.

However, in order to arrive at a valid estimation of the effective rate of withholding tax on compensation, the appropriate tax base to be used should be the total amount of taxable gross compensation reported during the taxable year and not the total amount of compensation. But since petitioner did not present its alphalist for the

[78] *Real v. Belo*, G.R. No. 146224, January 26, 2007.

year 2009, the Court cannot properly determine how much of the total amount of compensation of Php61,086,910.63 is taxable.

Using the information from respondent's computation showing that breakdown of taxable and non-taxable compensation amounting to Php60,793,146.14 and Php666,810.52, respectively, totaling Php61,459,956.66, the effective rate is computed as follows:

Alphalist	Total Non-Taxable Compensation Income	Total Taxable Compensation Income	Total
Sch. 7.3 - With no Previous Employers	P 649,485.52	P 57,810,521.81	P 58,460,007.33
Sch. 7.4 - With Previous Employers Within the year (PRESENT only)	17,325.00	2,982,624.33	2,999,949.33
Total	**P666,810.52**	**P60,793,146.14**	**P61,459,956.66**

Total withholding tax on compensation	₱18,569,082.77
Divided by: Total taxable gross income	60,793,146.14
Effective tax rate	**30.545%**

Based on the foregoing, the revised assessment using the effective tax rate of 30.545%, results to a higher basic deficiency WTC, as follows:

	CIR effective tax rate	Court effective tax rate
Unaccounted salaries and wages	P 2,256,990.34	P 2,526,990.34
Rate	30.398%	30.545%
Basic tax due - Compensation	**P 768,149.84**	**P 771,861.56**

III. Deficiency Income Tax – Php5,744,100.96
IV. Deficiency VAT – Php951,851.65

Respondent assessed petitioner for deficiency income tax and VAT, computed as follows: jr

Taxable income per return			P (37,350,819.00)
Add (less): Adjustment			
Unaccounted salaries and wages	Schedule 1	P 2,526,990.34	
Undeclared sales	Schedule 2	3,945,489.28	
Undeclared purchases	Schedule 3	88,285.29	
Expenses not subject to EWT	Schedule 4	2,699,601.74	
NOLCO		37,350,819.00	46,611,185.65
Adjusted net income			**P 9,260,366.65**
Tax due			**P 2,778,110.00**
Less: Payments			-
Tax still due and payable			2,778,110.00
Add: Interest (computed up to 7.31.2015)		2,940,990.96	
Compromise penalty		25,000.00	2,965,990.96
TOTAL AMOUNT DUE - INCOME TAX			**P 5,744,100.96**

Sales per VAT return			P 59,601,492.59
Add: Other income/adjustment			
Undeclared sales	Schedule 2	P 3,945,489.28	
Undeclared purchases	Schedule 3	88,285.29	4,033,774.57
Total			63,635,267.16
Less: Zero rates sales			12,315,000.00
Total VATable income per audit			**51,320,267.16**
Rate			12%
Output tax per audit			**P 6,158,432.06**
Less: Input tax per audit			2,663,407.79
VAT payable per audit			3,495,024.27
Less: VAT paid per return			3,050,019.25
Deficiency tax			445,005.02
Add: Interest (computed up to 7.31.2015)		490,746.63	
Compromise penalty		16,000.00	506,846.63
TOTAL AMOUNT DUE - VAT			**P 951,851.65**

It can be observed that the composition of deficiency VAT and deficiency income tax arose from the following components:

A. Unaccounted salaries and wages	P 2,526,990.34
B. Undeclared sales	3,945,489.28
C. Undeclared purchases	88,285.29
D. Expenses not subject to EWT	2,699,601.74
E. NOLCO	37,350,819.00

A. Unaccounted salaries and wages – Php2,526,990.34

As discussed above, petitioner was unable to refute respondent's finding of deficiency WTC. As such, the consequential disallowance of the corresponding expense for income tax purposes must be upheld for failure to comply with Section 34(K) of the NIRC.

B. Undeclared sales – Php3,945,489.28

Respondent states that verification of petitioner's sales per books against the data from the third-party information (RELIEF) and the Summary Alphalist of Withholding Taxes (SAWT) shows that there is a discrepancy on sales per attached Schedule 2[79] (shown below), and should be added in the computation of income tax pursuant to Section 32 of the NIRC.[80] The same is also in violation of Sections 106, 107 and 108 of the NIRC.[81]

TIN OF CUSTOMER	REGISTERED NAME	SLS		SAWT	DIFF PER SLS VS SAWT
		TAXABLE SALES	OUTPUT TAX		
319657	FIRST ELECTRO DYNAMICS CORPORATION	495,247.08	59,429.65		
319657	FIRST ELECTRO DYNAMICS CORPORATION	519,482.33	62,337.88		
319657	FIRST ELECTRO DYNAMICS CORPORATION	743,704.67	89,244.56		
319657	FIRST ELECTRO DYNAMICS CORPORATION	2,154,387.50	258,526.50		
		3,912,821.58	469,538.59	4,819,198.61	(906,377.03)
6034569	FIRST PHILEC MANUFACTURING TECHNOLOGIES CORP.	728,733.33	87,448.00		
6034569	FIRST PHILEC MANUFACTURING TECHNOLOGIES CORP.	858,032.42	102,963.89		
6034569	FIRST PHILEC MANUFACTURING TECHNOLOGIES CORP.	28,138.00	3,376.56		
		1,614,903.75	193,788.45	4,654,016.00	(3,039,112.25)
TOTAL					(3,945,489.28)

Petitioner in its Memorandum, presented the following arguments: *ge*

[79] BIR Records, p. 1269.
[80] BIR Records, Exhibit "R-13", FLD Details of Discrepancies, p. 608.
[81] BIR Records, Exhibit "R-13", FLD Details of Discrepancies, p. 606.

"97. The amount respondent considers as Undeclared Sales is a result of the erroneous appreciation of the documents submitted by Petitioner, on one hand, and [First Electro Dynamics Corporation] FEDCOR and [First Philec Manufacturing Technologies Corporation] FPMTC, on the other.

98. Respondent attributes what it alleges to be undeclared sales through comparison of Petitioner's Summary List of Sales (SLS) with its Summary of Withholding Tax. The resulting difference of P3,945,489.28 was then treated as unreported income subject to income tax. The variance caused by the third-party information relied upon by respondent can be readily explained by the difference in accounting methods employed by petitioner vis-à-vis FEDCOR and FPMTC. In keeping with its system of reporting income on an accrual basis, the amounts representing consultancy and management fees formed part of the entry "Revenues" in petitioner's ITR for taxable year 2009. However, while these amounts represent accrued income, they remained uncollected in 2009.

99. Timing considerations must be taken into account when dealing with entities employing varying accounting methods. Respondent evidently failed to do so when it relied on the SLS in assessing petitioner. .... While the income per SAWT is based on the accrual method of accounting, the amount in the SLS contains only the revenues actually collected."[82]

The Court partially agrees with petitioner.

We find it improper for respondent to rely solely on the declaration of sales in the SLS and SAWT. For VAT purposes, petitioner declares its sales based on gross receipts actually or constructively received during the taxable quarter for the services performed or to be performed for another person.[83] For items declared in the SAWT, the income payee declares the income received from and the corresponding tax withheld by its income payors, which are required

[82] Docket, Vol. III, Petitioner's Memorandum, pp. 1187-1188.
[83] NIRC, Section 108.

to declare their income payments and subject the same to withholding tax at the time an income is paid or payable, whichever comes first.[84]

Based on the foregoing, it is expected that there will be a resulting difference between the sales (gross receipts) declared for VAT purposes and the income receipts declared in the SAWT.

The Summary of SAWT[85] shows the following income received from FEDCOR and FPMTC:

	1	2	3	4	Total
First Electro Dynamics Corp.			2,154,387.53		2,154,387.53
First Electro Dynamics Corp.				569,349.40	569,349.40
First Electro Dynamics Corp.			178,640.27		178,640.27
First Electro Dynamics Corp.			131,352.87		131,352.87
First Electro Dynamics Corp.			309,993.14		309,993.14
First Electro Dynamics Corp.			152,154.20		152,154.20
First Electro Dynamics Corp.		132,764.00			132,764.00
First Electro Dynamics Corp.		225,342.47			225,342.47
First Electro Dynamics Corp.		134,902.53			134,902.53
First Electro Dynamics Corp.	112,028.27				112,028.27
First Electro Dynamics Corp.	405,843.73				405,843.73
First Electro Dynamics Corp.	312,440.20				312,440.20
Subtotal	***830,312.20***	***493,009.00***	***2,926,528.01***	***569,349.40***	***4,819,198.61***
First Philec Manufacturing Tech. Corp.				2,728,642.00	2,728,642.00
First Philec Manufacturing Tech. Corp.			428,898.00		428,898.00
First Philec Manufacturing Tech. Corp.		973,587.00			973,587.00
First Philec Manufacturing Tech. Corp.	522,889.00				522,889.00
Subtotal	***522,889.00***	***973,587.00***	***428,898.00***	***2,728,642.00***	***4,654,016.00***
Total	**1,353,201.20**	**1,466,596.00**	**3,355,426.01**	**3,297,991.40**	**9,473,214.61**

The above amounts were traced to the respective Statements of Account (SOA) issued by petitioner to FEDCOR and FPMTC pertaining

[84] Revenue Regulations No. 2-98, Sec. 2.57.4.
[85] BIR Records, p. 1269a.

to management fees for the year 2009 and BIR Form No. 2307 issued for taxable year 2009, as shown below:

Management Fee for the Month of	Amount Per SOA	SOA No.	SOA Date	Exhibit No.	Income Payment per BIR Form No. 2307	Exhibit No.
FEDCOR						
January 2009	P 264,042.52	114	3/13/2009	P-108	P 312,440.20	P-80
February 2009	321,660.00	116	3/30/2009	P-109	405,843.73	P-81
March 2009	244,728.76	119	4/16/2009	P-110	112,028.27	P-82
April 2009	111,880.00	130	5/14/2009	P-111	134,902.53	P-83
May 2009	258,320.36	146	6/22/2009	P-112	225,342.47	P-84
June 2009	122,689.65	152	7/17/2009	P-113	132,764.00	P-85
July 2009	142,816.64	155	7/27/2009	P-114	152,154.20	P-86
August 2009	134,029.66	178	9/25/2009	P-115	131,352.87	P-87
September 2009	185,300.00	181	10/15/2009	P-116	178,640.27	P-88
October 2009	194,800.00	187	11/18/2009	P-117		
November 2009	188,800.00	193	12/15/2009	P-118	569,349.40	P-91
December 2009	185,750.46	203	1/12/2010	P-119		
December 2009 (Professional Fees)	2,154,387.50	200	12/28/2009	P-120	2,154,387.53	P-89
August to September 2009	-	-	-	-	309,993.14	P-90
Total FEDCOR	***P4,509,205.55***				***P4,819,198.61***	
FPMTC						
January 2009	P -					
February 2009	349,709.00	122	4/16/2009	P-102	P 522,889.00	P-92
March 2009	173,180.00	121	4/16/2009	P-60		
April 2009	68,299.00	131	5/14/2009	P-61		
May 2009	418,033.00	147	6/22/2009	P-103	2,728,642.00	P-93
June 2009	487,255.00	153	7/17/2009	P-63		
July 2009	370,778.00	156	7/27/2009	P-64		
August 2009	23,044.00	179	9/25/2009	P-104	973,587.00	P-94
September 2009	35,076.00	190	11/18/2009	P-105		
October 2009	28,138.00	188	11/18/2009	P-65		
November 2009	403,180.00	194	12/15/2009	P-106	428,898.00	P-95
December 2009	2,297,324.00	202	1/12/2010	P-107		
Total FPMTC	***P4,654,016.00***				***P4,654,016.00***	

It can be observed that for FEDCOR, there is a difference of Php 309,993.14 (Php4,819,198.61-4,509,205.55) between the total SOAs for the year 2009 and the total amount reflected in the BIR Form No. 2307. Petitioner explained that this amount was due to double issuance of BIR Form No. 2307 for the months of August and September 2009 as evidenced by Exhibits "P-87" and "P-88".

After excluding the double take up of tax credits as discussed above, the difference between the SLS and SAWT with respect to FEDCOR should by P596,383.97, as computed below:

Income from FEDCOR per SLS	P 3,912,821.58
Corrected income from FEDCOR per SAWT	4,509,205.55
Alleged undeclared sales from FEDCOR	P (596,383.97)

Petitioner satisfactorily showed that the income receipts declared in the SAWT pertains to the income earned during the year 2009, regardless of when it is collected. The amounts of Php4,509,205.00 and Php4,654,016.00 were declared in the 2009 Audited Financial Statement (AFS), as Management and Professional Fees from FEDCOR and FPMTC, respectively, during the year 2009.[86] These amounts formed part of the total Revenues from Management and Professional Fees which were declared in both the 2009 AFS[87] and Annual Income Tax Return (AITR).[88]

Petitioner also presented the official receipts it issued to FEDCOR and FPMTC which served as basis for the declaration of gross receipts in its 2009 VAT returns and matched them with the corresponding SOAs, as shown below:

Management Fee for the Month of	Amount	SOA No.	SOA Date	Exhibit No.	SLS	OR No.	OR Date	Exhibit No.
FEDCOR								
-	P 407,764.71		None		P 407,764.71	125	3/12/2009	P-58
February 2008	519,482.35	58	4/17/2008	P-56	519,482.35	123	2/9/2009	P-56
March 2008	495,247.06	60	4/17/2008	P-55	495,247.06	122	1/29/2009	P-55
August 2008	335,940.00	86	9/26/2008	P-57	335,940.00	124	3/12/2009	P-57
December 2009 (Professional Fees)	2,154,387.50	200	12/28/2009	P-120	2,154,387.50		none	
Total FEDCOR	***P3,912,821.62***				***P3,912,821.62***			
FPMTC								
March 2009	P 173,180.00	121	4/16/2009	P-60	P 173,513.32	126	7/8/2009	P-60
April 2009	68,299.00	131	5/14/2009	P-61	68,298.58	127	7/8/2009	P-61
June 2009	487,255.00	153	7/17/2009	P-63	858,032.47	137	10/7/2009	P-64
July 2009	370,778.00	156	7/27/2009	P-64				
October 2009	28,138.00	188	11/18/2009	P-65	28,137.80	138	12/18/2009	P-65
-			None		487,254.77	128	7/29/2009	P-62
Total FPMTC	***P1,127,650.00***				***P1,127,982.17***			

[86] Exhibit "P-52", 2009 Audited Financial Statements (AFS), Note 12, p. 24.
[87] Exhibit "P-52, 2009 AFS, Statement of Income.
[88] Docket, Vol. III, Exhibit "P-2" 2009 Annual Income Tax Return, Line 17, p. 891.

Gross Receipts from FEDCOR

From the above data, the total gross receipts from FEDCOR for the year 2009 amounting to Php3,912,821.62 is attributable to both 2008 and 2009 income, as shown below:

Gross receipts from 2008 income:		
OR No. 125 dated 3/12/2009	P 407,764.71	
OR No. 123 dated 2/9/2009	519,482.35	
OR No. 122 dated 1/29/2009	495,247.06	
OR No. 124 dated 3/12/2009	335,940.00	P 1,758,434.12
Gross receipts from 2009 income		2,154,387.50
Total gross receipts from FEDCOR in 2009		**P3,912,821.62**

It can be observed that the gross receipt from FEDCOR amounting to Php407,764 has no supporting SOA, hence, it cannot be verified if said amount actually pertains to 2008 income. However, it can be confirmed from the records that the gross receipts in 2009 pertaining to 2008 income amounts to Php1,758,434.12, which includes the amount of Php407,764.71, is indeed attributable to the 2008 income from FEDCOR, as computed below:

Management and professional fees during 2008[89]	P 4,455,360.00
Less: Advances to FEDCOR as of 12/31/2009 (Management Fees for 2008)[90]	
(₱3,020,556.74 / 1.12)	2,696,925.66
2009 Gross receipts from FEDCOR pertaining to 2008 management fees	**P1,758,434.34**[91]

On the other hand, out of the Php4,509,205.47 total 2009 income from FEDCOR, only Php2,154,384.50 was collected in the same year, hence, there remains an uncollected amount of Php2,354,817.97 (Php4,509,205.47 -2,154,384.50) as of December 31, 2009. However, petitioner's Advances to FEDCOR as of December 31, 2009 pertaining to 2009 management fees only amounted to Php200,430.55, exclusive of VAT. As such, there is an unaccounted gross receipts or collection amounting to Php2,154,387.50, computed below:

[89] Exhibit "P-52", 2009 AFS, Note 12, p. 24.
[90] BIR Records, p. 463.
[91] Rounding off difference of ₱0.22.

Management and professional fees during 2009	P 4,509,205.55
Less: Advances to FEDCOR as of 12/31/2009 (Management Fees for 2009)[92]	
(₱224,482.22 / 1.12)	200,430.55
Should be gross receipts from FEDCOR pertaining to 2009 management fees	**P4,308,774.00**
Less: Gross receipts per SLS with respect to FEDCOR's 2009 management fees	2,154,387.50
Unaccounted gross receipts or collection	**P2,154,387.50**

The unaccounted gross receipts of Php2,154,387.50 was not explained by petitioner. It may then be concluded that these unaccounted gross receipts were collected in 2009 but not reported by petitioner in its SLS and VAT returns. However, considering that unaccounted gross receipts of Php2,154,387.50 will result to a higher assessment, the deficiency VAT assessment is upheld but only to the extent of the corrected amount of Php596,383.97.

However, the corresponding assessment for deficiency income tax must be cancelled considering that petitioner properly accounted for its income from FEDCOR during 2009 and therefore had no undeclared sales.

Gross receipts from FPMTC

Out of the total gross receipts from FPMTC during 2009 amounting to Php1,615,236.94, only Php1,127,982.17 can be clearly attributable to the 2009 income. However, the gross receipts amounting to Php487,254.77 cannot be ascertained as to which year the corresponding income was earned.

Even if it can be observed that petitioner did not generate income from FPMTC during 2008, it cannot be assumed that there was no income earned from FPMTC in the years prior to 2008 and 2009 which are still uncollected in 2009.

Further, as can be confirmed from the records, out of the total income from FPMTC earned in 2009 amounting to Php4,654,308.00, only Php3,526,324.60 remains uncollected as of December 31, 2009. The amount of gross receipts during 2009 which corresponds to

[92] BIR Records, p. 463.

income earned in the same year amounts to Php1,127,983.40, as shown below:

Management and professional fees during 2009[93]	P 4,654,308.00
Less: Advances to FPMTC as of 12/31/2009 (Management Fees for 2008)[94]	
(₱3,949,483.55 / 1.12)	3,526,324.60
Gross receipts from FPMTC pertaining to 2009 management fees	**P1,127,983.40**

Except for the amount of Php487,254.77, petitioner was able to fully and properly account for its gross receipts from the income earned from FPMTC in 2009, hence, there are no undeclared sales from FPMTC which can be subjected to deficiency VAT. The assessment over the same must therefore be cancelled.

Records reveal that the Php487,254.77 was part of the VATable Sales totaling Php39,494,006.49 declared in the 3rd Quarterly VAT Return. However, it must be recalled that respondent's right to assess the 1st to 3rd quarters of 2009 has already prescribed. Thus, any assessment arising from the unaccounted gross receipts of Php487,254.77 must also be cancelled.

With respect to the assessment for deficiency income tax, petitioner failed to account for the gross receipts of Php487,254.77, and did not give any explanation nor evidence with respect thereto. Thus, the assessment for deficiency income tax on the undeclared sales of Php487,254.77 must be upheld.

C. Undeclared purchases – Php88,285.29

Respondent states that comparison of petitioner's purchases per books and RELIEF shows a difference which should also be added to the computation of income. The same is also in violation of Sections 106, 107 and 108 of the NIRC.

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[93] Exhibit "P-52", 2009 AFS, Note 12, p. 24.
[94] BIR Records, p. 463.

SLP				RELIEF					UNDECLARED PURCHASES
REGISTERED NAME	TIN OF VENDOR	GOODS OTHER THAN CAPITAL GOODS	INPUT TAX	OWNERS REGISTERED OR INDIVIDUAL	OWNERS TIN	SALES SUBJECT TO VAT	GROSS SALES OF SELLER	INPUT TAX	
	-	-	-	SUPERGUARD SECURITY CORPORATION	331452			4,076.52	(33,971.01)
	-	-	-	FIRST PHIL. HOLDINGS CORPORATION	288698	32,760.00	32,760.00	3,931.20	(32,760.00)
HONDA CARS MAKATI INC	226229	674,107.08	80,892.85	HONDA CARS MAKATI INC	220239	690,275.66	690,275.66	82,833.08	-
FOCUS GLOBAL INC.	101499	(10,848.25)	(1,301.79)			-	-	-	(10,848.25)
	-	-	-	GRIFFIN SIERRA TRAVEL INC.	171716	8,008.58	8,008.58	961.03	(8,008.58)
	-	-	-	PIONEER INSURANCE AND SURETY CORPORATION	541177	1,715.30	1,715.30	205.84	(1,715.30)
	-	-	-	5TH AVENUE DIGITRONIX INC.	235857300	982.14	982.14	117.86	(982.14)
NEXUS TECHNOLOGIES INC.	4471397	16,071.42	1,928.57	NEXUS TECHNOLOGIES INC.	4471397	16,071.43	16,071.43	1,928.57	(0.01)
TOTAL		679,330.25	81,519.63	TOTAL		783,784.12	783,784.12	94,054.09	88,285.29

Petitioner asserts that undeclared purchases, if any, would not result to deficiency income tax.

The Court agrees. In the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an underdeclaration of purchases.[95] Even assuming that there is undeclared income, there are also payments or expenses which were unreported. If this is the case, the undeclared income would be effectively offset with the consideration of the related expenses.[96]

Even when taxable income is imputed on the amount of Php88,285.29 as undeclared purchases, petitioner is also entitled to claim the corresponding deduction in the same amount in the nature of direct cost or operating expense. Thus, no gain or profit resulted from the transaction which can be subjected to the imposition of income tax.

With respect to the subject VAT assessment, it must be remembered that under Section 106(A) of the NIRC, VAT is assessed on the "*gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor*". *gu*

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[95] *Commissioner of Internal Revenue v. Philippine Daily Inquirer,* CTA EB No. 905, November 4, 2013.
[96] *East Asia Power Resources Corp. v. Commissioner of Internal Revenue,* CTA Case No. 8182, January 15, 2014.

Also, under Section 108 of the NIRC, VAT is assessed on the "*gross receipts derived from the sale or exchange of services.*" Significantly, the law defines "gross selling price" and "gross receipts" as follows:

> ..."gross selling price" means the total amount of money or its equivalent which the purchases pays or is obligated to pay the seller in consideration of the sale, barter or exchange of the goods or properties, excluding value-added tax."
>
> ..."gross receipts" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared purchases. In other words, VAT is imposed when one sells, not when one purchases.

As such, the deficiency income tax and VAT assessments on the alleged undeclared purchases are cancelled.

D. Expenses not subject to EWT – Php2,699,601.74

Respondent presents the following computation of the expenses allegedly not subjected to EWT:

Income Payments	Per ITR/FS		Per Alphalist	Discrepancy	Rate	EWT Due
CONTRACTOR						
Other outside services	841,438.00					
Janitorial	285,900.00					
Communication, light and water	527,197.72					
Advertising	97,088.00					

Income Payments	Per ITR/FS		Per Alphalist	Discrepancy	Rate	EWT Due
Research & development	12,543.78					
Miscellaneous	458,620.92					
Bank charges	242,075.00					
Insurance	223,969.00	2,688,832.42	2,648,010.00	40,822.42	0.02	816.45
CONSULTANCY (15%)						
Professional fee	4,709,940.00					
Directors fee	164,000.00					
Advances-prof. fee	2,000,725.52	6,874,665.52	6,874,665.52	-	0.15	-
CONSULTANCY (10%)						
Consultancy charge to salaries and wages	1,124,327.17					
Advances-prof. fee	1,417,319.40	2,541,646.57	1,243,799.80	1,297,846.77	0.10	129,784.68
RENTAL						
Rental	2,752,449.00					
Transportation and travel	365,379.12					
Miscellaneous	252,541.28	3,370,369.40	3,370,369.40	-	0.50	-
PAYMENT OF GOODS TO TOP 10T CORP.						
Communication, light and water	1,475,457.00					
Repairs and maintenance	155,799.00					
Representation	59,139.00					
Office supplies	337,623.00					
Purchase of add'l fixed assets	3,946,207.00					
Advances-purch. of capital asset	1,685,323.55	7,659,548.55	6,298,616.00	1,360,932.55	0.01	13,609.33
		23,135,062.46	20,435,460.72	2,699,601.74		144,210.45

Consultancy (10%) and Payment of Goods to Top 10,000 Corp.

Petitioner states that it is unaware of how respondent arrived at the deficiency EWT since no clear breakdown was provided in the FDDA. A review of the PAN, FLD and FDDA would reveal that the FDDA is the first instance wherein the items above were raised by respondent.

We agree with petitioner.

The expenses arising from Consultancy (10%) and Payment of Goods to Top10T Corp. with income payments amounting to Php1,297,846.77 and Php1,360,932.55, respectively, were not assessed in the FLD as disallowed expenses for failure to subject such items to EWT. Given that said assessment only arose in the FDDA, petitioner can no longer fully avail of the administrative remedies to effectively dispute it. To allow respondent to incorporate new assessments only in the FDDA would be offensive to the basic rules of fair play, justice, and due process. To allow the same would certainly render meaningless the protection afforded by Section 228 of the 1997 NIRC.

Hence, this particular item of assessment is cancelled.

Contractor

Respondent disallowed expenses from contractors amounting to Php861,054.00 for failure to subject the same to EWT. After re-investigation, respondent lowered the amount disallowed in the FDDA to Php40,822.42, detailed as follows:

Income Payments	Amount
CONTRACTOR	
Per ITR/FS:	
Other outside services	P 841,438.00
Janitorial	285,900.00
Communication, light and water	527,197.72
Advertising	97,088.00
Research & development	12,543.78
Miscellaneous	458,620.92
Bank charges	242,075.00
Insurance	223,969.00
Total	**P2,688,832.42**
Per Alphalist	**P2,648,010.00**
Discrepancy	**P 40,822.42**

Petitioner did not submit any documents to refute this remaining disallowance in the FDDA, hence, the assessment must not be disturbed.

E. Net Operating Loss Carry Over (NOLCO) – Php37,350,819.00

This item of assessment is cancelled.

The governing law regarding NOLCO is Section 34(D)(3) of the NIRC, which provides as follows: gr

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

xxx xxx xxx

(D) *Losses.* –

xxx xxx xxx

(3) *Net Operating Loss Carry-over.* – **The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss**; xxx

xxx xxx xxx

For purposes of this Subsection, **the term 'net operating loss' shall mean the excess of allowable deduction over gross income of the business in a taxable year**: xxx (*Emphasis supplied*)

Based on the foregoing, it is clear that a net operating loss, which is defined as "*the excess of allowable deduction over gross income of the business in a taxable year,*" may be carried over to the next three (3) consecutive years, and may be made as a deduction from gross income for such periods.

It must be noted that the NOLCO involved in this case was incurred in the taxable year 2009 as shown in petitioner's AITR, the same taxable year covered by the present assessment.[97] Thus, it is improper to disallow the said NOLCO because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year/s. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

F. Disallowed tax credits - Php17,189,336.00
G. Disallowed input tax credits – Php333,588.39

Respondent did not provide any legal basis for the disallowance of said tax credits in the FLD or in the FDDA. This renders the disallowance null and void.

Summarizing the foregoing findings, it is found that petitioner is not liable for any deficiency income tax and VAT, computed below:

Taxable income per return		P (37,350,819.00)
Add (less): Adjustment		
Unaccounted salaries and wages	P 2,526,990.34	
Undeclared sales	487,254.77	
Undeclared purchases	-	
Expenses not subject to EWT	40,822.42	
NOLCO	-	3,055,067.53
Adjusted net income		**P (34,295,751.47)**
Tax due		**P (10,288,725.44)**
Less: Tax credits/payments		17,189,336.00
Tax still due and payable		**P (27,478,061.44)**

Sales per VAT return		P 59,601,492.59
Add: Other income/adjustment		
Undeclared sales	₱596,383.97	
Undeclared purchases	-	596,383.97
Total		60,197,876.56
Less: Zero rates sales		12,315,000.00
Total VATable income per audit		**47,882,876.56**
Rate		12%
Output tax per audit		**P 5,745,945.19**
Less: Input tax per audit		2,663,407.79
Excess input VAT carried over to next period		333,588.39
VAT payable per audit		2,748,949.01
Less: VAT paid per return		3,050,019.25
VAT overpayment		**P (301,070.24)**

[97] Docket, Vol. III, Exhibit "P-2", 2009 AITR, Line 23B and Schedule 5A, pp. 891 and 893.

V. Deficiency Documentary Stamp Tax – Php3,939,975.20

Respondent states that petitioner failed to pay the corresponding DST Due from Related Parties, and Non-interest-bearing advances.

Account Title	Amount	Rate	Tax Due
Due from related parties	14,953,731.11	1/200	74,768.66
Non-interest-bearing advances	355,436,613.00	1/200	1,777,183.07
Total	370,390,344.11		1,851,951.72

Petitioner argues against the foregoing assessment by stating that the Due from related parties of Php14,953,731.11, even if considered as loans, should not be imposed DST for the reason that it was incurred prior to the promulgation of *Commissioner of Internal Revenue v. Filinvest Development Corporation*,[98] which affirmed the imposition of DST on inter-office memos documenting lending between affiliated parties. Petitioner states that applying the *Filinvest* case to the instant case would violate the doctrines of prospective application of laws and non-retroactivity of rulings.

This Court disagrees.

The Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[99] As aptly held by the Supreme Court in the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[100] to wit:

> "Petitioner VGPC also argues that Aichi should be applied prospectively and, therefore, should not be applied

[98] G.R. Nos. 163653 and 167689, July 19, 2011.
[99] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, November 21, 2017; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, 676 SCRA 325; *Eagle Realty Corporation v. Republic*, G.R. No. 151424, July 31, 2009, 594 SCRA 555; *Castro v. Deloria*, G.R. No. 163586, January 27, 2009, 577 SCRA 20; *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, G.R. No. 172409, February 4, 2008, 543 SCRA 666; *Pesca v. Pesca*, G.R. No. 136921, April 17, 2001, 356 SCRA 588; *Re: Resolution Granting Automatic Permanent Total Disability Benefits to Heirs of Justices and Judges Who Die in Actual Service*, A.M. No. 02-12-01-SC, November 24, 2004, 443 SCRA 549; *Columbia Pictures, Inc. v. Court of Appeals*, G.R. No. 110318, August 28, 1996, 261 SCRA 144; *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506; *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956, 100 Phil. 501.
[100] G.R. No. 197525, June 4, 2014, 725 SCRA 130, 147.

to the present case. This position cannot be given consideration.

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. **The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith**." (*Emphasis supplied*)

The retroactive application of jurisprudence was also treated in *Accenture, Inc. v. Commissioner of Internal Revenue*[101] where the Supreme Court upheld the Court of Tax Appeal's application of the pronouncements in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (2007)[102] as basis in ruling that Accenture's services would qualify for zero-rating under Section 108(b) of the 1997 NIRC [formerly Section 102(b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. It was held that:

"Moreover, **even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application**. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. **It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the**

[101] G.R. No. 190102, July 11, 2012, 676 SCRA 325, 339.
[102] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

> **interpreted law carried into effect**." *(Emphasis supplied)*

On December 23, 1993, it will be recalled that Section 180 (now Section 179) was incorporated in the NIRC, through Republic Act No. (RA) 7660. On January 1, 1998, the same Section 180 was carried over in RA 8424. Then on February 17, 2004, Section 180 was amended through RA 9243 and renumbered as the present Section 179 of the 1997 NIRC.

Accordingly, the Supreme Court's 2011 interpretation of this provision of law in *Filinvest* became part of the NIRC as early as December 23, 1993, the date the statute was enacted, until the present.

Considering that the 2011 *Filinvest* interpretation of Section 180 of the NIRC (now Section 179) was deemed constituted as part of the NIRC since December 23, 1993 until the present, therefore, the same may be applied to this case without violating the principle on non-retroactivity of laws and rulings.

In the case of *The People of the Philippines v. Jose Jabinal y Carmen,*[103] the Supreme Court ruled that prospective effect applies only to decisions enunciating new doctrines:

> "Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system xxx.' **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of legal maxim '*legis interpretatio legis vim obtinet*' — the interpretation placed upon the written law by a competent court has the force of law.** The doctrine laid down

[103] G.R. No. L-30061, February 27, 1974, 55 SCRA 607, 612.

> in *Lucero* and *Macarandang* was part of the jurisprudence, hence of the law, of the land, at the time appellant was found in possession of the firearm in question and when he [was] arraigned by the trial court. **It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society." (*Emphasis supplied*)

With respect to Non-interest-bearing advances of Php355,436,613.00, petitioner argues that the same was picked up from petitioner's books for the year 2008 and is outside the period covered by the assessment.

On this point, we agree with petitioner.

This Court cancels the DST assessment over the Non-interest-bearing advances amounting to Php355,436,613.00. Respondent picked up the said amount in petitioner's 2009 AFS, which shows the comparative balances in 2008. As disclosed in Note 12 of the 2009 AFS, the amount of Php355,436,613.00 pertains to "Transactions during the year 2008. Thus, these transactions are already beyond the ambit of respondent's power to assess pursuant to LOA No. LOA-116-2010-00000052 which covers only the period January 1, 2009 to December 31, 2009.

VI. Increments for Late Payment of Fringe Benefits Tax – Php78,795.68

Respondent states that upon verification of petitioner's returns and payments, it was found that the 1st and 2nd quarters of FBT were filed late. Hence, the following increments were imposed:

	1	2	Total
Basic	94,041.66	94,041.66	-
Surcharge	23,510.41	23,510.41	47,020.82
Interest	6,132.03	1,442.83	7,574.86
Compromise penalty	12,000.00	12,000.00	24,000.00
Total increments	41,642.44	36,953.24	78,595.68

The assessment was reiterated in the FDDA since petitioner did not protest the same.

Considering that petitioner did not contest nor protest the above assessment, the assessment must be upheld.

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. The assessments against petitioner for taxable year ended December 31, 2009 covering deficiency income tax, VAT and EWT are **CANCELLED** and **SET ASIDE.** However, the assessments for taxable year ended December 31, 2009 covering deficiency withholding tax on compensation, DST and increments for late payment of FBT are **AFFIRMED** but with adjustments.

Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **₱3,361,472.36**, inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, deficiency and delinquency interest imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017,[104] and increments for late payment of FBT, computed as follows:

	WTC	DST	TOTAL
Basic	₱ 771,861.56	₱ 74,768.66	₱ 846,630.22
Surcharge (25%)	192,965.39	18,692.17	211,657.56
Deficiency Interest (1/15/2010 to 10/16/2015) [₱771,861.56 x 20% x 2,101 days/365]	888,592.40		975,078.23
Deficiency Interest (1/5/2010 to 10/16/2015) [₱74,768.66 x 20% x 2,111 days/365]		86,485.83	
Total amount due - October 16, 2015[105]	**₱1,853,419.35**	**₱179,946.66**	**₱2,033,366.01**
Deficiency Interest (10/17/2015 to 12/31/2017)			
[₱771,861.56 x 20% x 807 days/365]	341,310.84		374,372.92
[₱74,768.66 x 20% x 807 days/365]		33,062.09	
Delinquency Interest (10/17/2015 to 12/31/2017)			
[₱1,853,419.35 x 20% x 807 days/365]	819,566.80		899,137.74

[104] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.
[105] Date of receipt of FDDA, JSFI, Docket, Vol. II, p. 530.

[₱179,946.66 x 20% x 807 days/365]		79,570.93	
Total amount due	**₱3,014,297.00**	**₱292,579.67**	**₱3,306,876.67**

Increments for late remittance of FBT	*1st Qtr*	*2nd Qtr*	*Total*
Basic	₱ 94,041.66	₱ 94,041.66	₱ 188,083.32
Surcharge (25%)	₱ 23,510.42	₱ 23,510.42	₱ 47,020.83
Interest for late remittance	6,132.03	1,442.83	7,574.86
Subtotal	**₱ 29,642.45**	**₱ 24,953.25**	**₱ 54,595.69**
Total amount due - December 31, 2018			**₱3,361,472.36**

In addition, petitioner is liable to pay delinquency interest at the rate of 12%[106] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of October 16, 2015 amounting to ₱1,853,419.35 for WTC and ₱179,946.66 for DST, or in the aggregate amount of ₱2,033,366.01, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

[106] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FIRST PHILIPPINE ELECTRIC CORPORATION, *Petitioner,*	**CTA Case No. 9199**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson,* **MINDARO-GRULLA,*** *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 08 2019 10:25 a.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.*:

I concur with the cancellation of the assessments for deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2009. I also concur with the ruling affirming the assessments for deficiency withholding tax on compensation (WTC) and increments for late payment of fringe benefit tax (FBT).

However, I respectfully dissent to the ruling that the WTC assessment may be raised from Php768,149.84 to Php771,861.56 due to the Court's findings that the effective compensation tax rate should be 30.545% instead of 30.398%[1] as used by the CIR.

Furthermore, I also respectfully dissent to the majority's position that a Supreme Court ruling decided in 2011 should apply to transactions which occurred in 2009, thus holding petitioner liable for deficiency DST on its Due From Related Parties account amounting to Php14,953,731.11 or deficiency DST liability of Php74,768.66.

* Designated as a special member as per OPJ Memorandum dated January 18, 2019.
[1] Decision, p. 21.

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[2], the Supreme Court ruled in this wise:

> When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "all loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.
>
> xx xxx xxx
>
> Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.

The majority reasons that the *Filinvest* decision merely interpreted and applied Section 179 of the 1997 National Internal Revenue Code (NIRC), effectively forming part of the law as of the date of its enactment. Hence, the majority ruled that *Filinvest* is deemed effective from the time of enactment of the NIRC, and covers transactions even prior to 2011 when *Filinvest* was promulgated.

It is this legal conclusion that I respectfully disagree with, and proffer, instead, the view that the power to tax must be construed strictly against the government,[3] and any retroactive application of the *Filinvest* doctrine violates the taxpayer's constitutional rights to equity and due process.

There is no question that *Filinvest* provides the current interpretation of the DST provision on loan agreements, which now includes "inter-company advances covered by inter-office memos". However, prior to the afore-quoted decision of the Supreme Court, the prevailing legal milieu was that "inter-office memos" covering intercompany advances were not considered loan agreements subject to the documentary stamp tax (DST) based on various BIR Rulings issued by the respondent, decisions of this Court and more significantly the decision of the Court of Appeals (CA) in the case entitled *Commissioner of*

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[2] G.R. Nos. 163653 and 167680, July 19, 2011.
[3] *Republic of the Philippines vs. Intermediate Appellate Court and Sps. Antonio and Clara Pastor*, G.R. No. 69344, April 26, 1991.

Internal Revenue vs. Filinvest Development Corp.[4] In short, the doctrine enunciated by the Supreme Court in the *Filinvest* case was not controlling at the time herein petitioner entered into such transactions in 2009. In fact, petitioner faithfully relied on the pronouncements made by the respondent and the CA on a similar matter, thus prompting non-payment of said DST.

Article 8 of the Civil Code[5] expressly provides that judicial decisions applying or interpreting the laws shall form part of the legal system of the Philippines. Corollarily, Article 4 of the Civil Code[6] mandates the non-retroactivity of laws, unless expressly provided. The principle of prospectivity has also been applied to judicial decisions which although in themselves not laws, are nevertheless evidence of what the laws mean.[7] The reason for this is obvious – it will be inequitable and against the principles of fair play to penalize a taxpayer who relied on the pronouncements of the respondent who is authorized under the law to interpret tax statutes,[8] and from which taxpayers are enjoined to follow. In the absence of a definitive Supreme Court decision interpreting the often vague provisions of the 1997 NIRC on transactions which are subject to DST, the higher interests of justice should compel us not to apply a (fairly) recent Supreme Court decision retroactively to a time period where the CIR himself held and pronounced a contrary view.

The character of BIR Rulings, CTA decisions and the aforementioned decision of the CA all issued prior to the 2011 *Filinvest* case adhered to the theory that "inter-office memos" covering intercompany advances were not loan agreements subject to DST.

It should also be noted that RMC No. 48-2011, which implements the doctrine laid down in the *Filinvest* case, was only issued on October 6, 2011.

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[4] C.A. -G.R. SP No. 74510, January 26, 2005.

[5]"Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

[6] "Article 4. – Laws shall have no retroactive effect, unless the contrary is provided."

[7] Albino S. Co vs. Court of Appeals and People of the Philippines, G.R. 100776, October 28, 1993.

[8] Section 4 of the 1997 NIRC.

"*Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*- The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

xxx xxx xxx

Section 246 of the NIRC provides:

> SEC. 246. ***Non- Retroactivity of Rulings***. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application** if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (*Emphasis supplied*)

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*[9], the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now Section 246 of NIRC as to respondent's rulings or circulars, *viz*:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. *Non-retroactivity of rulings*. — Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue *shall not be given retroactive application if the relocation, modification, or reversal will be prejudicial to the taxpayers*, except in the following cases: (a) where the taxpayer deliberately mis-states or omits material facts from his return or any document required of him by the Bureau of Internal Revenue: (b)

[9] G.R. No. L-52306, October 12, 1981.

> where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. (*italics for emphasis*)
>
> **It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers**. <u>The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334</u>. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them. (*Emphasis and underscoring ours*)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*[10], it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.*
>
> The applicable law is Sec. 246 of the Tax Code which provides -
>
>> Sec. 246. *Non-retroactivity of rulings.*- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the

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[10] G.R. No. 117982, February 6, 1997.

> taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.
>
> Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax. *(Underscoring ours)*

In the consolidated cases of *CIR vs. San Roque Power, Taganito Mining Corp vs. CIR and Philex Mining Corp vs. CIR* [11], the Supreme Court recognized the good faith of the taxpayers who relied on previous rulings which turn out to be erroneous under a recent interpretation:

> Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, **should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court**. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. (emphasis supplied)

More recently, the Supreme Court cited equity and compassionate social justice in declaring that its ruling on a BIR Revenue Memorandum Order (RMO) is to be given only prospective effect:

> As a final point, the Court cannot turn a blind eye to the adverse effects of this Decision on ordinary government employees, including petitioners herein, who relied in good faith on the belief that the appropriate taxes on all the income they receive from their respective employers are withheld and paid. Nor does the Court ignore the situation of the relevant officers of the different departments of government that had believed, in good faith, that there was no need to withhold the taxes due on the compensation received by said ordinary

[11] G.R. Nos. 187485,196113 and 197156, February 12, 2013.

> government employees. Thus, as a measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice*, that its ruling on the validity of Sections III and IV of the assailed RMO is given only prospective effect.[12]

While the abovequoted decision specifically stated that its prospectivity applies only *pro hac vice*, the interests of equity and social justice must also be protected in the instant case. Since the retroactive application of the *Filinvest case* as well as RMC No. 48-2011 will surely prejudice the interest of the petitioner, and other taxpayers in the same situation, which have relied on the previous BIR rulings, rules and regulation on the non-taxability of the inter-office memos covering advances granted to affiliated corporation, I vote that the *Filinvest* case be applied prospectively for fairness, equity and compassionate social justice.

WHEREFORE, I vote to partially grant the Petition for Review. However, I vote that the assessment for deficiency WTC be maintained at Php768,149.84 and the deficiency DST for taxable year 2009 amounting to Php74,768.66 be cancelled.

CATHERINE T. MANAHAN
Associate Justice

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[12] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. v. Commissioner, Bureau of Internal Revenue and the Secretary, Department of Finance/Judge Armando A. Yanga and Cristina Carmela I. Japzon v. Hon. Commissioner Kim S. Jacinto-Henares*, G.R. Nos. 213446 and 213658, July 3, 2018.