REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PROVINCIAL GOVERNMENT OF NUEVA VIZCAYA, represented by Governor **CARLOS M. PADILLA** in his official capacity as the Local Chief Executive of the Province, **RHODA S. MORENO** in her official capacity as the Provincial Treasurer of Nueva Vizcaya, and **YUNISA D. PATRICIO** in her official capacity as the Provincial Accountant of Nueva Vizcaya, Petitioner, - versus - **HON. CAESAR R. DULAY,** in his official capacity as the Commissioner of the Bureau of Internal Revenue, Respondent.	**CTA CASE NO. 10553**

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PROVINCIAL GOVERNMENT OF NUEVA VIZCAYA, represented by Governor **CARLOS M. PADILLA** in his official capacity as the Local Chief Executive of the Province, **RHODA S. MORENO** in her official capacity as the Provincial Treasurer of Nueva Vizcaya, and **YUNISA D. PATRICIO** in her official capacity as the Provincial Accountant of Nueva Vizcaya, Petitioner,	**CTA CASE NO. 10554**

- versus -

HON. CAESAR R. DULAY, in his official capacity as the Commissioner of the Bureau of Internal Revenue,
Respondent.

Members:

RINGPIS-LIBAN, P.J., *Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, JJ.

Promulgated:
JUL 2 0 2026

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DECISION

RINGPIS-LIBAN, *P.J.:*

THE CONSOLIDATED CASES

The consolidated *Petitions for Review* pray for the cancellation and withdrawal of the assessment[s] for alleged deficiency withholding tax on compensation (WTC) for taxable years 2014 and 2015 in the amounts of [₱592,913.78[1] and 635,897.50,[2] respectively, and interests in the amounts of] ₱2,683,502.30 and ₱2,781,971.15, respectively.[3]

THE PARTIES

Petitioner Provincial Government of Nueva Vizcaya (petitioner Provincial Government) is a political subdivision of the Government created by law which is herein represented by the Governor Carlos M. Padilla as the Local Chief Executive of the Province, with office address at the Sangguniang Panlalawigan Building, Capitol Compound, Bayombong, Nueva Vizcaya.[4]

Petitioners Rhoda S. Moreno and Yunisa D. Patricio are respectively sued in their official capacity as the Provincial Treasurer and Provincial Accountant of Nueva Vizcaya.[5]

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[1] Exhibit "P-9", BIR Records for CTA Case Nos. 10554 (Exhibit "R-21), pp. 151a to 151b.
[2] Exhibit "P-1", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), pp. 409A to 409B.
[3] Refer to Summary of the Case, Pre-Trial Order dated July 2, 2024, Docket (CTA Case Nos. 10553 and 10554) – Vol. II, p. 543.
[4] The Parties, *Petition for Review,* vis-à-vis par. 1, *Answer,* Docket (CTA Case No. 10553) – Vol. I, pp. 14 and 323, respectively; The Parties, *Petition for Review,* vis-à-vis par. 1, *Answer,* Docket (CTA Case No. 10554) – Vol. I, pp. 14 and 213, respectively.
[5] The Parties, *Petition for Review,* vis-à-vis par. 1, *Answer,* Docket (CTA Case No. 10553) – Vol. I, pp. 14 and 323, respectively; The Parties, *Petition for Review,* vis-à-vis par. 1, *Answer,* Docket (CTA Case No. 10554) – Vol. I, pp. 14 and 213, respectively.

Respondent Caesar R. Dulay is sued in his official capacity as the Commissioner of the Bureau of Internal Revenue (BIR) who is empowered to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

A. CTA Case No. 10553 (Taxable Year 2015)

On December 1, 2015, the *Sangguniang Panlalawigan* of Nueva Vizcaya enacted *Appropriation Ordinance No. 2015-356*,[7] granting Calamity Relief Assistance (CRA) to all qualified officials and employees, including consultants and heads of national agencies directly involved in the implementation of programs of the Provincial Government of Nueva Vizcaya. Section 3 of the said *Ordinance* states that such *"relief and aid shall not be construed as a taxable income, bonus, allowance or incentive of the recipients as contemplated under the National Internal Revenue Code."*[8]

Believing that the said *Ordinance* is valid and a proper basis for not withholding taxes from the grant received by the officials and personnel, petitioners, through the Provincial Accounting Office, did not withhold the same.[9]

On October 17, 2019, petitioner Provincial Government of Nueva Vizcaya received the *Preliminary Assessment Notice* (PAN), issued by respondent on September 30, 2019, relative to its deficiency WTC for taxable year 2015 in the amount of ₱998,216.57.[10] Likewise, on October 17, 2019, respondent issued the PAN dated September 30, 2019 relative to the interest and penalties on the deficiency WTC for taxable year 2015, in the amount of ₱2,768,732.82.[11]

Petitioners submitted their written response to the above-stated PANs through the letter dated October 31, 2019, filed on November 18, 2019.[12]

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[6] The Parties, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket (CTA Case No. 10553) – Vol. I, pp. 14 to 15, and 323, respectively; The Parties, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket (CTA Case No. 10553) – Vol. I, pp. 15 and 213, respectively.
[7] Exhibit "P-3", Docket (CTA Case No. 10553) – Vol. II, pp. 601 to 605.
[8] Exhibit "P-3", Docket (CTA Case No. 10553) – Vol. II, at p. 604.
[9] Statement of Facts, *Petition for Review*, vis-à-vis par. 2, *Answer*, Docket (CTA Case Nos. 10553) – Vol. I, pp. 9 to 10, and 323, respectively.
[10] Par. 2, Joint Stipulations of Facts, *Joint Stipulations of Facts and Statement of Issues (for Petitioners & Respondent)* JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-4", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), p. 370.
[11] Par. 3, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-5", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), p. 369.
[12] Exhibit "P-6", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), p. 379.

On November 20, 2019, petitioners received the *Formal Letter of Demand* (FLD), with *Details of Discrepancies*, and *Assessment Notice* (FAN), all dated November 11, 2019,[13] assessing petitioner Provincial Government of Nueva Vizcaya for the deficiency WTC, in the total amount of ₱998,216.57, for taxable year 2015. On the same day, petitioners received a separate FLD, with *Details of Discrepancies*, and FAN,[14] of the same date and for the same taxable period, which were issued against Provincial Governor Carlos M. Padilla, petitioner Rhoda S. Moreno, as Provincial Treasurer, and Mr. Dominador P. Dacumos, then the Provincial Accountant, assessing them of interests for the unpaid WTC.

Thereafter, the *Position Paper of the Provincial Local Government of Nueva Vizcaya Relative to the Tax Amnesty Program of the Bureau of Internal Revenue* dated May 26, 2020 was filed on even date.[15]

In the *Memorandum* dated July 6, 2020 for the OIC-Regional Director of Revenue Region No. 03,[16] signed by Attorney Ernesto B. Guzman, Jr., and recommended and approved by Chief Cornelio Chito M. Dela Peña and OIC-Regional Director Josephine S. Virtucio, both of the Legal Division of BIR Revenue Region No. 03, they agreed to: (1) reduce the assessed deficiency WTC, duly supported by verified disbursement vouchers; (2) not hold the Provincial Governor liable for the assessed deficiency tax and penalties; (3) still hold petitioners Provincial Accountant and Provincial Treasurer, being the designated withholding agents of petitioner Provincial Government, equally and personally liable with petitioner Provincial Government for the assessed WTC and penalties, pursuant to Revenue Memorandum Order (RMO) No. 8-2003, as amended.

On March 11, 2021, petitioners received the *Final Decision on Disputed Assessment* (FDDA) dated February 23, 2023 addressed to petitioner Provincial Government of Nueva Vizcaya, for deficiency WTC in the amount of ₱635,897.50 for taxable year 2015.[17] They also received the FDDA dated February 23, 2023 addressed to petitioner Rhoda S. Moreno, as the Provincial Treasurer, and Mr. Dominador F. Dacumos, as then Provincial Accountant, for interests in the amount of ₱2,781,971.15, for the same taxable year.[18]

A. <u>CTA Case No. 10554 (Taxable Year 2014)</u>

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[13] Exhibit "R-7", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), pp. 386 to 386-A; and par. 7, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415.

[14] Exhibit "R-8", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20"), p. 386; and par. 7, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415.

[15] Exhibit "P-7", Docket (CTA Case No. 10553) – Vol. II, pp. 616 to 620.

[16] Exhibit "P-8", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20"), p. 399.

[17] Exhibit "R-10", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20"), pp. 409-A to 409-B; and par. 10, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 416.

[18] Exhibit "P-2", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20"), pp. 408A to 408C; and par. 10, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 416.

On December 17, 2014, the *Sangguniang Panlalawigan* of Nueva Vizcaya enacted Appropriation Ordinance No. 2014-323,[19] granting Economic Relief Assistance (ERA) to all qualified elective officials, permanent, co-terminous, contract of service and casual employees in the Provincial Government, including consultants and heads of national agencies directly involved in the implementation of programs of the latter. Section 3 of the said Ordinance reads:

> "**SECTION 3.** The Economic Relief Assistance (ERA) is a relief and aid to the officials and personnel in the Provincial Government, hence, this aid shall not be construed as a taxable income, bonus, allowance or incentive of the recipients as contemplated under the National Internal Revenue Code of 1997."[20]

Pursuant to the said Ordinance, petitioners, through the Provincial Accounting Office, did not withhold the corresponding taxes from the ERA granted to the aforementioned officials and employees believing in all honesty that the Ordinance is valid and proper basis for not withholding taxes from the grant received by them.[21]

On December 12, 2019, petitioners received the PAN relative to deficiency WTC for taxable year 2014 in the amount of ₱1,139,678.86, issued by respondent on December 11, 2019.[22] They also received the PAN relative to the penalties on deficiency WTC of the petitioner Provincial Government for taxable year 2014 in the amount of [₱2,754,122.55].[23]

Petitioners responded to the said PANs in the letter dated December 23, 2019 on January 9, 2020.[24]

Thereafter, the FLDs/FANs covering the deficiency tax [and penalties] for taxable year 2014 were received by petitioners on December 27, 2019.[25]

On January 31, 2020, petitioners filed their *Letter of Protest,* dated January 23, 2020, against the subject FLDs/FANs.[26]

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[19] Exhibit "P-11", Docket (CTA Case No. 10553) – Vol. II, pp. 629 to 633.
[20] Exhibit "P-11", Docket (CTA Case No. 10553) – Vol. II, at p. 632.
[21] Statement of Facts, *Petition for Review*, vis-à-vis par. 2, *Answer*, Docket (CTA Case No. 10554) – Vol. I, pp. 10, and 213, respectively.
[22] Par. 4, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-12", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 85a to 85c.
[23] Par. 5, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-13", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 86a to 86e.
[24] Exhibit "P-14", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 100a to 100e.
[25] Par. 6, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 102a to 106.
[26] Exhibit "P-15", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 115a to 115h.

Subsequently, on March 11, 2021, petitioners received the FDDA for deficiency tax in the amount of ₱592,913.78 for taxable year 2014.[27] On the same date, petitioners received the FDDA for interest on deficiency WTC in the amount of ₱2,683,502.30 for taxable year 2014.[28]

On May 16, 2024, petitioner Provincial Accountant issued a *Certification*[29] certifying that the Provincial Government Unit of Nueva Vizcaya has remitted to the BIR for the ERA for calendar year (CY) 2014 the amount of ₱4,391,449.90 and CRA for CY 2015 the amount ₱5,346,327.25.

PROCEEDINGS BEFORE THIS COURT

A. <u>CTA Case No. 10553 (For taxable year 2015)</u>:

On May 25, 2021, petitioners posted their *Petition for Review*,[30] praying that judgment be rendered canceling the assailed FDDAs dated February 23, 2021, which impose penalties on deficiency tax for taxable year 2015 and, thereafter, rule that petitioners Provincial Treasurer and Provincial Accountant shall not be held liable for the payment of deficiency tax and the corresponding penalties as the non-withholding of taxes was made in good faith pursuant to Section 3 of Appropriation Ordinance No. 2015-356, and that the imposition of penalties be condoned/withdrawn as the non-withholding of the tax was not deliberate and not attended by bad faith.

On June 16, 2021, Atty. Danilo B. Fernando, Clerk of Court, issued a letter[31] requiring petitioners' counsel to pay the deficiency filing fees in the amount of ₱2,919.19. Petitioner's counsel then posted a letter on June 18, 2024,[32] attaching therewith photographs of the eight (8) postal money orders payable to the Court.

Similarly, in the Resolution dated June 30, 2021,[33] the Court, among others, informed petitioners that the *Petition for Review* is not compliant with Section 6, Rule 7 of A.M. No. 19-10-20-SC. Thus, it required petitioners to submit the requirements stated therein,[34] with within five (5) days from notice.

[27] Par. 8, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 416; Exhibit "P-9", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 151a to 151b.
[28] Par. 9, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 416; Exhibit "P-10", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 150a to 150c.
[29] Exhibit "P-19", Docket (CTA Case No. 10553) – Vol. II, p. 663.
[30] Docket (CTA Case No. 10553) – Vol. I, pp. 8 to 21.
[31] Docket (CTA Case No. 10553) – Vol. I, pp. 50 to 51.
[32] Docket (CTA Case No. 10553) – Vol. I, pp. 54 to 56.
[33] Docket (CTA Case No. 10553) – Vol. I, pp. 66 to 67.
[34] (a) Names of witnesses who will be presented to prove a party's claim or defense; (b) Summary of the witnesses' intended testimonies, provided that the judicial affidavits of said witnesses shall be attached to the pleading and form an integral part thereof. xxx (c) Documentary and object evidence in support of the allegations contained in the pleading.

Thereafter, on July 21, 2021, petitioners posted a *Manifestation with Motion for Extension of Time to Comply with the June 30, 2021 Resolution of the Honorable Court,*[35] praying that their *Manifestation* be considered and that their *Motion for Extension of Time* be granted.

In the Resolution dated November 5, 2021,[36] the Court noted petitioners' counsel's June 18, 2021 letter, and ordered petitioners to submit one (1) additional copy of the *Compliance*, with attached *Judicial Affidavit of Rhoda S. Moreno* and the *Manifestation with Motion for Extension of Time to Comply with the June 30, 2021 Resolution of the Honorable Court.* Petitioners posted their *Compliance* dated March 15, 2022 on March 16, 2022.[37] The Court noted petitioners' *Compliance* dated March 15, 2022, and granted their *Motion for Extension of Time* in its Resolution dated April 18, 2022.[38]

On April 25, 2022, petitioners posted an *Omnibus Motion for the Suspension of the Collection of Tax, to Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy,*[39] praying for the issuance of an Order: (1) suspending the collection of tax; (2) dispensing with the bond requirement; and (3) lifting the *Warrant of Distraint and Levy*. Respondent filed his *Comment/Opposition (Re: Omnibus Motion for the Suspension of the Collection of Tax, To Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy)* on June 7, 2022.[40]

At the hearing held for the said *Motion to Suspend Collection* on June 9, 2022, petitioner presented the testimonies of the following individuals: (1) Ms. Yunisa D. Patricio,[41] Provincial Accountant; and (2) Ms. Rhoda S. Moreno,[42] Provincial Treasurer.

Petitioners posted their *Formal Offer of Evidence* on June 23, 2022.[43] Respondent, however, failed to file his comment thereon.[44] In the Resolution dated November 23, 2022,[45] the Court admitted all of petitioners' offered exhibits. Thereafter, the Court granted petitioners' *Omnibus for the Suspension of the Collection of Tax, to Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy,* and suspended the collection of taxes in its Resolution dated March 17, 2023.[46]

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[35] Docket (CTA Case No. 10553) – Vol. I, pp. 154 to 158.
[36] Docket (CTA Case No. 10553) – Vol. I, pp. 165 to 167.
[37] Docket (CTA Case No. 10553) – Vol. I, pp. 168 to 171.
[38] Docket (CTA Case No. 10553) – Vol. I, pp. 210 to 212.
[39] Docket (CTA Case No. 10553) – Vol. I, pp. 213 to 226.
[40] Docket (CTA Case No. 10553) – Vol. I, pp. 284 to 293.
[41] Exhibit "P-2", Docket (CTA Case No. 10553) – Vol. I, pp. 230 to 242; Minutes of the hearing held on, and Order dated, June 9, 2022, Docket (CTA Case No. 10553) – Vol. I, pp. 296 to 298.
[42] Exhibit "P-1", Docket (CTA Case No. 10553) – Vol. I, pp. 243 to 255; Minutes of the hearing held on, and Order dated, June 9, 2022, Docket (CTA Case No. 10553) – Vol. I, pp. 296 to 298.
[43] Docket (CTA Case No. 10553) – Vol. I, pp. 309 to 316.
[44] Records Verification Report dated October 11, 2022 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10553) – Vol. I, p. 349.
[45] Docket (CTA Case No. 10553) – Vol. I, pp. 352 to 354.
[46] Docket (CTA Case No. 10553) – Vol. I, pp. 366 to 373.

In the meantime, on August 1, 2022, respondent filed his *Answer*,[47] interposing the following special and affirmative defenses, to wit: (1) petitioners are liable for deficiency tax and penalties; (2) petitioners' reliance on good faith does not exempt them from payment of WTC; (3) petitioners admitted in the present *Petition for Review* the non-withholding of tax on compensation and that they merely relied on Appropriation Ordinance No. 2015-356; (4) the Bureau is not bound by the said Appropriation Ordinance No. 2015-356, considering that it contravenes the NIRC of 1997, as amended, in relation to Revenue Regulations (RR) No. 08-98, as amended; (5) pursuant to RMO No. 8-2003, as reiterated by Revenue Memorandum Circular (RMC) No. 23-2012, and further amended by RMO No. 23-2014, petitioners, by virtue of the offices they hold as withholding agents of the Provincial Government are obligated to withhold and, therefore, cannot deny that they are liable for the deficiency tax assessed for taxable year 2015.

Petitioners subsequently filed, *via* private courier, their *Motion for Consolidation with Motion to Adopt June 9, 2022 Proceedings in CTA Case No. 10553* on September 28, 2022,[48] praying for the Court to consolidate CTA Case Nos. 10553 and 10554, and to adopt as part of the proceedings in CTA Case No. 10554 the June 9, 2022 proceedings and the June 22, 2022 *Formal Offer of Evidence* in CTA Case No. 10553. During the hearing held on September 29, 2022, the Court granted petitioner's *Motion for Consolidation with Motion to Adopt June 9, 2022 Proceedings in CTA Case No. 10553*.[49]

On October 26, 2022, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder.[50]

B. <u>CTA Case No. 10554 (For taxable year 2014):</u>

Petitioners posted their *Petition for Review* on May 25, 2021,[51] praying that judgment be rendered: (1) nullifying the FLDs/FANs dated December 27, 2019, as they were issued in violation of Section 228 of the NIRC and in transgression of their right to due process; (2) canceling the FDDA on deficiency tax for taxable year 2014 in the amount of ₱592,913.78, issued by electronic Letter of Authority No. eLA201100071513/LOA-014-2016-00000002 dated May 10, 2016, and the FDDA for interest on deficiency WTC for taxable year 2014 in the amount of ₱2,683,502.30, covered by the same LOA, as the assessment upon which they were based under the FLDs/FANs dated December 27, 2019, are considered null and void for it was issued in violation of Section 228 of the NIRC and the right to due process; or (3) in the alternative, assuming that there is a valid assessment, that the Provincial Treasurer and Provincial Accountant shall not be held liable for the payment of

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[47] Docket (CTA Case No. 10553) – Vol. I, pp. 323 to 331.
[48] Docket (CTA Case No. 10553) – Vol. I, pp. 336 to 341.
[49] As per Resolution dated November 23, 2022, Docket (CTA Case No. 10553) – Vol. I, at p. 353.
[50] *Compliance* dated October 24, 2022, Docket (CTA Case No. 10553) – Vol. I, pp. 344 to 346.
[51] Docket (CTA Case No. 10554), pp. 8 to 26.

deficiency tax and the corresponding penalties, as the non-withholding of taxes was made in good faith pursuant to Section 3 of the Appropriation Ordinance No. 2014-323, and that the imposition of penalties be condoned/withdrawn, as the non-withholding of the tax was not deliberate and not attended by bad faith.

On June 16, 2021, the Clerk of Court issued a letter,[52] requiring petitioners' counsel to pay the deficiency filing fees stated therein. Petitioners' counsel posted a letter on June 18, 2021,[53] attaching therewith photographs of the eight (8) separate postal money orders payable to this Court. In the Resolution dated June 29, 2021,[54] the Court ordered petitioners to submit the following: (a) proof of the date of their receipt of the assailed 1st FDDA and (b) payment, in eight (8) separate postal money orders, of the full amount of filing fees (₱2,913.32), both within ten (10) days from notice. Petitioners posted their *Compliance* dated June 21, 2022, on June 23, 2022.[55]

In the Resolution dated May 26, 2022,[56] the Court, among others, noted petitioners' counsel's compliance with Atty. Danilo B. Fernando's June 16, 2021 letter and petitioners' partial compliance with the Court's June 29, 2021 Resolution.

On April 25, 2022, petitioners posted an *Omnibus for the Suspension of the Collection of Tax, to Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy*,[57] praying for the Court to issue an Order: (1) suspending the collection of tax; (2) dispensing with the bond requirement; and (3) lifting the *Warrant of Distraint and Levy*. Respondent filed his *Comment/Opposition (Re: Omnibus Motion for the Suspension of the Collection of Tax, To Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy dated 25 April 2022)* on August 10, 2022.[58]

At the hearing held on September 29, 2022,[59] for the said *Omnibus for the Suspension of the Collection of Tax, to Dispense with Bond Requirement, and to Lift Warrant of Distraint and Levy*, petitioners' counsel manifested that he sent *via* licensed courier on September 27, 2022, a *Motion* seeking the consolidation of this case with CTA Case No. 10553 and the adoption of the June 9, 2022 proceedings in CTA Case No. 10553 in the present case. Thus, upon the Court's verification that petitioners have already rested their case and that a *Formal Offer of Evidence* has already been submitted relative to their *Motion for Suspension of Collection of Tax* in CTA Case No. 10553, and there being no

52 Docket (CTA Case No. 10554), pp. 73 to 74.
53 Docket (CTA Case No. 10554), pp. 199 to 201.
54 Docket (CTA Case No. 10554), pp. 77 to 78.
55 Docket (CTA Case No. 10554), pp. 155 to 158.
56 Docket (CTA Case No. 10554), pp. 153 to 154.
57 Docket (CTA Case No. 10554), pp. 87 to 100.
58 Docket (CTA Case No. 10554), pp. 171 to 180.
59 Minutes of the hearing held on, and Order dated, September 29, 2022, Docket (CTA Case No. 10554), pp. 210 to 212.

objection from respondent's counsel, the Court: (i) granted petitioners' *Omnibus Motion for Consolidation*; (ii) submitted the instant FOE for resolution; and (iii) ordered the evidence presented in the *Motion for Suspension of Collection* be reproduced and adopted in the present case.

On October 4, 2022, respondent filed *his Answer*,[60] interposing the following special and affirmative defenses, to wit: (1) petitioners are liable for deficiency tax and penalties; (2) petitioners' reliance on good faith does not exempt them from payment of WTC; (3) petitioners admitted to the non-withholding of tax on compensation on its *Petition* and that they merely relied on Appropriation Ordinance No. 2014-323; (4) respondent is not bound by the said Appropriation Ordinance No. 2014-323, as it contravenes the NIRC of 1997, as amended, specifically Sections 80 and 81 thereof, in relation to RR No. 02-98, as amended; and (5) pursuant to RMO No. 8-2003, as reiterated by RMC No. 23-2012, and further amended by RMO No. 23-2014, petitioners, by virtue of the offices they hold, are designated as withholding agents of the Provincial Government; hence, they are obligated to withhold pursuant to Sections 78 and 79 of the NIRC of 1997, as amended.

On October 26, 2022, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder.[61]

For the consolidated cases:

The Pre-Trial Conference was initially set on October 20, 2022,[62] but was later reset to, and held on, May 21, 2024.[63] Prior thereto, respondent filed his *Consolidated Pre-Trial Brief* on February 26, 2024,[64] while the *Pre-Trial Brief (for Petitioners)* was submitted *via* accredited courier on May 16, 2024.[65]

On June 20, 2024, the parties submitted their *Joint Stipulations of Facts and Statement of Issues (for Petitioners & Respondent)*,[66] which was admitted and approved by the Court in its Resolution dated June 28, 2024,[67] thereby deeming

[60] Docket (CTA Case No. 10554), pp. 213 to 221.
[61] *Compliance* dated October 24, 2022, Docket (CTA Case No. 10554), pp. 223 to 225.
[62] Notice of Pre-Trial Conference dated August 15, 2022, Docket (CTA Case No. 10553) – Vol. I, pp. 333 to 334.
[63] Resolution dated November 23, 2022, Docket (CTA Case No. 10553) – Vol. I, pp. 352 to 354; petitioners' *Urgent Ex-Parte Motion to Cancel and Reset Hearing* dated March 1, 2023, Docket (CTA Case No. 10553) – Vol. I, pp. 355 to 358; Resolution dated March 7, 2023, Docket (CTA Case No. 10553) – Vol. I, p. 363; Notices of Resetting dated April 25, 2023, July 18, 2023, and October 23, 2023, Docket (CTA Case No. 10553) – Vol. I, pp. 374 to 377; petitioners' *Urgent Ex-Parte Motion to Cancel and Reset Hearing* dated October 18, 2023, Docket (CTA Case No. 10553) – Vol. I, pp. 378 to 381; petitioners' *Urgent Ex-Parte Motion to Cancel and Reset Hearing* dated February 26, 2024, Docket (CTA Case No. 10553) – Vol. I, pp. 389 to 391; Minute Resolution dated February 28, 2024, Docket (CTA Case No. 10553) – Vol. II, p. 393; Minutes of the hearing held on, and Order dated, May 21, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 409 to 413.
[64] Docket (CTA Case No. 10553) – Vol. I, pp. 384 to 387.
[65] Docket (CTA Case No. 10553) – Vol. II, pp. 395 to 403.
[66] Docket (CTA Case No. 10553) – Vol. II, pp. 414 to 423.
[67] Docket (CTA Case No. 10553) – Vol. II, p. 440.

the termination of the Pre-Trial. The Pre-Trial Order dated July 2, 2024 was then issued.[68]

As trial ensued, petitioners presented their testimonial and documentary evidence. They offered the testimonies of the following individuals, namely: (1) Ms. Rhoda S. Moreno,[69] Provincial Treasurer; and (2) Ms. Yunisa D. Patricio,[70] then Assistant Provincial Accountant, and presently Provincial Accountant.

On September 6, 2024, petitioners posted their *Formal Offer of Evidence*.[71] Respondent submitted his *Comment (On Petitioner[']s' Formal Offer of Evidence)* on September 30, 2024.[72] In the Resolution dated November 27, 2024,[73] the Court admitted petitioners' offered exhibits, *except* Exhibits "P-2", "P-4", "P-5", "P-9", "P-10", "P-12", "P-13", and "P-18", for failure to submit the duly marked exhibits.

Respondent's counsel manifested during the hearing held on November 28, 2024, that she will no longer present any witness in this case.[74]

Thereafter, upon petitioners' *Motion for Reconsideration (of the Court's November 27, 2024 Resolution)*, which was posted on December 3, 2024,[75] and respondent having failed to file a comment thereon,[76] the Court, in the Resolution dated April 8, 2025,[77] admitted Exhibits "P-2", "P-4", "P-5", "P-9", "P-10", "P-12", "P-13", and "P-18"; and gave parties a period of thirty (30) days from notice to file their memoranda.

On May 26, 2025, respondent filed a *Manifestation,*[78] stating that he will adopt the arguments stated in the *Answers* for CTA Case Nos. 10553 & 10554 in place of the *Memorandum*; while the *Memorandum (for the Petitioners)* was posted on June 11, 2025.[79]

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[68] Docket (CTA Case No. 10553) – Vol. II, pp. 543 to 549.
[69] *Judicial Affidavit of Rhoda S. Moreno* dated June 26, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 445 to 469; Minutes of the hearing held on, and Order dated, July 2, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 550 and 551-A, respectively.
[70] *Judicial Affidavit of Yunisa D. Patricio* dated August 6, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 562 to 585; Minutes of the hearing held on, and Order dated, August 13, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 558 to 560.
[71] Docket (CTA Case No. 10553) – Vol. II, pp. 577 to 595.
[72] Docket (CTA Case No. 10553) – Vol. II, pp. 670 to 672.
[73] Docket (CTA Case No. 10553) – Vol. II, pp. 677 to 678.
[74] Minutes of the hearing held on, and Order dated, November 28, 2024, Docket (CTA Case No. 10553) – Vol. II, pp. 679 to 681.
[75] Docket (CTA Case No. 10553) – Vol. II, pp. 683 to 688.
[76] Records Verification dated February 13, 2025, issued by the Judicial Records Division of this Court, Docket (CTA Case No. 10553) – Vol. III, p. 691.
[77] Docket (CTA Case No. 10553) – Vol. III, pp. 694 to 696.
[78] Docket (CTA Case No. 10553) – Vol. III, pp. 698 to 700.
[79] Docket (CTA Case No. 10553) – Vol. III, pp. 712 to 730.

The present consolidated cases were considered submitted for decision on June 30, 2025.[80]

THE STIPULATED ISSUES

The parties submit the following issues for this Court's resolution, to wit:

> "1. Whether or not petitioners are liable to the Withholding Tax on Compensation for taxable years 2014 and 2015;
>
> 2. Whether or not petitioners can be held personally liable for the unwithheld taxes, penalties and interests for taxable years 2014 and 2015; and
>
> 3. Whether or not the presumption of validity and regularity is applicable to Appropriation Ordinance Numbers 2014-323 and 2015-356."[81]

Petitioner's arguments:

Petitioner argues that Appropriation Ordinance Nos. 2014-323 and 2015-356 expressly provide for tax exemptions that justify the non-withholding of taxes by petitioners Provincial Accountant and Provincial Treasurer, and thus they should not be made liable for the deficiency tax and penalties, as they acted in utmost good faith in implementing the said Ordinances; that the assailed FDDAs for the 2014 ERA dated February 23, 2021 are void as the assessment (FLDs/FANs) upon which they were based are null and void for being issued beyond the prescriptive period; and that FLDs/FANs dated December 27, 2019 are void for being prematurely issued in violation of Section 228 of the NIRC effectively denying petitioner's right to due process.

Respondent's counter-arguments:

Respondent contends that petitioners are liable for WTC; that petitioners' reliance on good faith does not exempt them from paying WTC; that petitioners admitted to the non-withholding of tax on compensation and merely relied on Appropriation Ordinance No. 2014-323; that respondent is not bound by the said Appropriation Ordinance No. 2014-323 as it contravenes the NIRC of 1997, as amended, specifically Sections 80 and 81 thereof, in relation to RR No. 02-98, as amended; and that pursuant to RMO No. 8-2003, as reiterated by RMC No. 23-2012, and further amended by RMO No. 23-2014, petitioners, by virtue of the offices they hold, are designated as

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[80] Minute Resolution dated June 30, 2025.
[81] Joint Statement of Issues, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 416.

withholding agents of the Provincial Government, hence, they are obligated to withhold pursuant to Sections 78 and 79 of the NIRC of 1997, as amended.

THE COURT'S RULING

The *Petition for Review* for CTA Case No. 10053 is partially granted; while the *Petition for Review* for CTA Case No. 10554 is granted.

CTA Case No. 10053

Petitioner Provincial Government of Nueva Vizcaya is liable to pay the assessed deficiency WTC, as well as the corresponding surcharges, interests, and penalties therefor for taxable year 2015.

Records reveal that in the FDDA dated February 23, 2021,[82] respondent assessed petitioner Provincial Government of Nueva Vizcaya of deficiency WTC in the reduced amount of ₱635,897.50, in view of the subsequent remittances made by the latter. Pertinent portions of the said FDDA are herein quoted for ready reference, to wit:

> **"WITHHOLDING TAX - COMPENSATION (WC)**
>
> ❖ Failure to withhold the correct Withholding Tax on Compensation in the amount of P5,831,557.05 in violation of Sections 80 and 81 of the National Internal Revenue Code (NIRC) of 1997, as amended, and implemented by Revenue Regulation No. 02-98, as amended. Based on the Audit Observation Memorandum Report issued by the Commission on Audit, the Provincial Government failed to withhold taxes on the Collective Negotiation Agreement (CNA) Incentives amounting to P36,887,000.00 and Calamity Relief Assistance (CRA) of P57,854,690.00 of employees.
>
> As a result of the evaluation and after considering the subsequent tax remittances made by the Provincial Government, the deficiency Withholding Tax on Compensation is hereby reduced

Deficiency WHT on Compensation per issued Final Assessment Notice	P	998,216.57

[82] Exhibit "P-1", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), pp. 409-A to 409-B.

Less: Subsequent remittances dated:				
10/31/2019	P	213,888.57		
12/09/2019		128,605.85		
05/29/2020		19,824.65		362,319.07
Amount Still Due & Collectible			**P**	**635,897.50"**

Based on the above-stated FDDA,[83] the assessed deficiency WTC in the amount of ₱635,897.50 against petitioner Provincial Government, arose from failure to withhold taxes on the following: (1) Collective Negotiation Agreement (CNA) Incentives in the amount of ₱36,887,000.00; and (2) Calamity Relief Assistance (CRA) in the amount of ₱57,854,690.00.

Regarding the alleged failure to withhold taxes on the CNA Incentives, it suffices to state that the issue was uncontested, as petitioners adduced no evidence to challenge the validity or impropriety of the assessment on this item. Because this remained undisputed, the CNA Incentives in the amount of ₱36,887,000.00 are properly subjected to WTC.

In the other FFDA issued on February 23, 2021,[84] respondent held petitioners Provincial Treasurer and Provincial Accountant liable, together with petitioner Provincial Government, liable to pay the corresponding interests on the deficiency WTC, computed as follows:

"Adjusted Withholding Tax Due Per Audit	P	26,339,578.14
Less: Taxes Withheld and Remitted Per Alphalist		20,528,638.08
Deficiency Withholding Tax on Compensation	P	5,831,557.05

	Payment	Remaining Unpaid Deficiency Withholding Tax	Interest Due thereon		Total
			20%	12%	
	-	5,831,557.05			
20% interest p.a. (01/15/16 to 12/31/17)	-	5,831,557.05	2,319,663.80	-	2,319,663.80
12% interest p.a. (01/01/18 to 01/09/18)	-	5,831,557.05	-	19,438.52	19,438.52
12% interest p.a. (01/10/18 to 06/24/18)	1,030,082.96	4,801,474.09	-	265,681.57	265,681.57
12% interest p.a. (06/25/18 to 11/05/18)	3,596,719.55	1,204,754.54	-	53,812.37	53,812.37
12% interest p.a. (11/06/18 to 10/30/19)	206,537.97	998,216.57	-	119,453.25	119,453.25
12% interest p.a. (10/31/19 to 11/15/19)	213,888.57	784,328.00)	-	3,921.64	3,921.64
Amount Still Due and Collectible			**2,319,663.80**	**462,307.35**	**2,781,971.15**

[83] Exhibit "P-1", BIR Records for CTA Case No. 10553 (Exhibit "R-20"), pp. 409A to 409B.
[84] Exhibit "P-2", BIR Records for CTA Case Nos. 10553 (Exhibit "R-20), pp. 408A to 408C.

As for the CRA, petitioners admit that they did not withhold the supposed taxes from the amounts thereof which were granted to their qualified officials and employees, including consultants and heads of National Agencies directly involved in implementing the programs of the Provincial Government, by virtue of the tax exemption granted by the legislative body of the Province, the *Sangguniang Panlalawigan*, through Appropriation Ordinance No. 2015-356, particularly Section 3 thereof, which states that the ERA "shall not be construed as taxable income xxx as contemplated under the NIRC".[85]

Respondent, on the other hand, argues that the BIR is not bound by the said Ordinance as it contravenes the NIRC of 1997, as amended, particularly, Sections 80 and 81 thereof, in relation to RR No. 2-98, as amended.[86] Citing also the provision of Section 5, Article X of the Constitution, respondent insists that the power to tax of the local government units (LGUs) is subject to limitations set forth by Congress.[87]

The Court finds the assessment for deficiency WTC against petitioner Provincial Government of Nueva Vizcaya in order.

The resolution of the present controversy lies on the validity of Section 3 of Appropriation Ordinance No. 2015-356, which reads as follows:

> "Section 3. The Calamity Release Assistance (CRA) is a relief and aid to the officials and personnel in the Provincial Government, hence, **this aid shall not be construed as a taxable income, bonus, allowance or incentive of the recipients as contemplated under the National Internal Revenue Code of 1997**." *(Emphasis added)*

In *City of Batangas vs. JG Summit Petrochemical Corporation, et al.*,[88] the Supreme Court said:

> "**Local ordinances, however, laudable their objectives might be, are not to contravene State-enacted legislation.** Local government units merely derive their power from the State legislature; as such, they cannot regulate activities already allowed by statute.
>
> xxx xxx xxx

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[85] Pars. 2 to 3, *Memorandum (for the Petitioners),* Docket (CTA Case Nos. 10553 & 10554) – Vol. III, pp. 719 to 720.
[86] Par. 14, *Answer,* Docket (CTA Case No. 10553) – Vol. I, p. 323.
[87] Refer to pars. 15 to 17, *Answer,* Docket (CTA Case No. 10553) – Vol. I, pp. 327 to 328.
[88] G.R. Nos. 190266-67, March 15, 2023.

In *City of Manila v. Laguio, Jr.*,[89] **the requisites for a valid ordinance, in the words of this Court are 'well-established,'** to wit:

> A long line of decisions has held that **for an ordinance to be valid,** it must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, **it must also conform to the following substantive requirements: (1) must not contravene** the Constitution or **any statute**; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable. (Citations omitted)

Foremost of these requisites is that the <u>ordinance must not contravene</u> the Constitution or <u>any statute</u>. Local government units, while empowered to enact local legislation for the general welfare of their constituents, remain mere agents of the State. Consequently, 'municipal ordinances are inferior in status and subordinate to the laws of the state.' Local government units have no power to regulate conduct already regulated by the state legislature." *(Emphases and underscoring added)*

Thus, for a local ordinance to be valid, it must, *inter alia*, not contravene any statute.

Section 3 of Appropriation Ordinance No. 2015-356 contravenes a statute—the NIRC of 1997. Section 4 (first paragraph) of the said Code reads, in part, as follows:

> "SEC. 4. *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."

It is clear from the foregoing provision that the power to interpret the provisions of the NIRC of 1997 and other tax laws is under the **exclusive and original jurisdiction** of the Commissioner of Internal Revenue (CIR), subject to review by the Secretary of Finance. To be sure, by law, an LGU has no such power to do so. Thus, it is the CIR, not the *Sanggunian* of any LGU, who has

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89 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*].

the exclusive and original jurisdiction to interpret whether a particular "assistance", such as the CRA, to be given to the officials and personnel in the concerned LGU, constitute or be treated as taxable income, bonus, allowance or incentive, for purposes of the imposition of the income tax under the NIRC of 1997. Simply put, a *Sanggunian* of an LGU cannot legally declare that the said "assistance" is not within the purview of the term "taxable income" under the NIRC of 1997, as it is not duly authorized to do so.

In the same vein, Section 3 of Appropriation Ordinance No. 2015-356 contravenes Sections 31 and 32(A)(1) of the NIRC of 1997, to wit:

> "SEC. 31. *Taxable Income Defined.* – The term **'taxable income'** means the pertinent items of **gross income specified in this Code**, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws." *(Emphasis and underscoring added)*
>
> "SEC. 32. *Gross Income.* –
>
> (A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income derived from whatever source, including (but not limited to) the following items:**
>
> (1) **Compensation for services in whatever form paid**, including, but not limited to fees, salaries, wages, commissions, and similar items;" *(Emphasis added)*

The foregoing definitions provided by the NIRC of 1997 cannot simply be brushed aside by the *Sanggunian* of petitioner Provincial Government of Nueva Vizcaya, via the promulgation of Section 3 of Appropriation Ordinance No. 2015-356.

Pursuant to RMO No. 23-2014 (under Part III thereof) which was promulgated by then CIR Kim S. Jacinto-Henares, compensation for services *"also includes allowances, bonuses, and other benefits of similar nature received by officials and employees of the Government of the Republic of the Philippines or any of its branches, agencies and instrumentalities, its political subdivisions".*

In *Confederation For Unity, Recognition and Advancement of Government Employees (COURAGE), et al. vs. Commissioner, Bureau of Internal Revenue, et al., et seq.* (the "*COURAGE* case"),[90] the Supreme Court held that:

[90] G.R. Nos. 213446 and 213658, July 3, 2018.

"**Compensation income is the income of the individual taxpayer arising from services rendered pursuant to an employer-employee relationship. Under the NIRC of 1997, as amended, <u>every form of compensation for services, whether paid in cash or in kind, is generally subject to income tax and consequently to withholding tax</u>. The name designated to the compensation income received by an employee is immaterial.** Thus, salaries, wages, emoluments and honoraria, **<u>allowances</u>**, commissions, fees, (including director's fees, if the director is, at the same time, an employee of the employer/corporation), bonuses, fringe benefits (except those subject to the fringe benefits tax under Section 33 of the Tax Code), pensions, retirement pay, and other income of a similar nature, **constitute compensation income that are <u>taxable and subject to withholding</u>.**" *(Emphases and underscoring added)*

The fact that the recipients of the CRA are employees of petitioner Provincial Government of Nueva Vizcaya (a political subdivision of the Republic of the Philippines) was testified to by petitioner Rhoda S. Romero, *viz.*:

"Q7: What are these 2014 ERA and <u>2015 CRA</u> that you are referring to madam witness?

A7: <u>These are financial aid and relief granted to qualified employees of the Provincial Government ma'am.</u> In particular, on December 17, 2014, the Provincial Government of Nueva Vizcaya through its Sangguniang Panlalawigan (SP) issued **Appropriation Ordinance No. 2014-323 granting Economic Relief Assistance (2014 ERA)** to all qualified elective officials and employees of the Provincial Government. <u>The same grant and relief were also given to qualified officials and employees by virtue of</u> **<u>Appropriation Ordinance No. 2015-356 which grants the Calamity Relief Assistance (2015 CRA)</u>**. xxx."[91]

Considering that the recipients of the CRA are employees of petitioner Provincial Government of Nueva Vizcaya, and that there being no indication that the said allowance fall under the category of non-taxable compensation income,[92] the CRA is subject to WTC. Parenthetically, withholding tax is a

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[91] *Judicial Affidavit of Rhoda S. Moreno* dated June 26, 2024, Docket (CTA Case No. 10553) – Vol. II, at p. 454.
[92] Section IV of RMO No. 23-2014 enumerates the non-taxable compensation income, to wit:

"**IV. NON-TAXABLE COMPENSATION INCOME** –Subject to existing laws and issuances, the following income received by officials and employees in the public sector are not subject to income tax and withholding tax on compensation:

method of collecting tax in advance and a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee.[93]

Relative thereto, it must be emphasized that **as an employer**, government offices including government-owned or controlled corporations, as well as **provincial**, city and municipal **governments are constituted as**

A. Thirteenth (13th) Month Pay and Other Benefits not exceeding Thirty Thousand Pesos (P30,000.00) paid or accrued during the year. Any amount exceeding Thirty Thousand Pesos (P30,000.00) are taxable compensation. This includes:

1. Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686 *('An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1988')*;
2. Benefits received by employees pursuant to Presidential Decree No. 851 *('Requiring All Employers to Pay Their Employees a 13th Month Pay')*, as amended by Memorandum Order No. 28, dated August 13, 1986;
3. Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;
4. Other benefits such as Christmas bonus, productivity incentives bonus, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by officials and employees of government offices, including the additional compensation allowance (ACA) granted and paid to all officials and employees of the National Government Agencies (NGAs) including state universities and colleges (SUCs),government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs) and Local Government Units (LGUs).

B. Facilities and privileges of relatively small value or *'De Minimis Benefits'* as defined in existing issuances and conforming to the ceilings prescribed therein;

C. Fringe benefits which are subject to the fringe benefits tax under Section 33 of the NIRC, as amended;

D. Representation and Transportation Allowance (RATA) granted to public officers and employees under the General Appropriations Act;

E. Personnel Economic Relief Allowance (PERA) granted to government personnel;

F. The monetized value of leave credits paid to government officials and employees;

G. Mandatory/compulsory GSIS, Medicare and Pag-Ibig Contributions, *provided that,* voluntary contributions to these institutions in excess of the amount considered mandatory/compulsory are not excludible from the gross income of the taxpayer and hence, not exempt from Income Tax and Withholding Tax;

H. Union dues of individual employees;

I. Compensation income of employees in the public sector with compensation income of not more than the Statutory Minimum Wage (SMW) in the non-agricultural sector applicable to the place where he/she is assigned;

J. Holiday pay, overtime pay, night shift differential pay, and hazard pay received by Minimum Wage Earners (MWEs);

K. Benefits received from the GSIS Act of 1997, as amended, and the retirement gratuity/benefits received by government officials and employees under pertinent retirement laws;

L. All other benefits given which are not included in the above enumeration but are exempted from income tax as well as withholding tax on compensation under existing laws, as confirmed by BIR."

[93] Refer to *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

withholding agents for purposes of the creditable tax required to be withheld from compensation paid for services of its employees.[94]

In the *COURAGE* case, the Supreme Court held as follows:

> "The withholding tax system was devised for three primary reasons, namely: (1) to provide the taxpayer a convenient manner to meet his probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.
>
> Section 79(A) of the NIRC of 1997, as amended, states:
>
> > SEC. 79. Income Tax Collected at Source. –
> >
> > (A) *Requirement of Withholding.* – Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, **every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.**
>
> In relation to the foregoing, Section 2.78 of RR No. 2-98, as amended, issued by the Secretary of Finance to implement the withholding tax system under the NIRC of 1997, as amended, provides:
>
> > SECTION 2.78. *Withholding Tax on Compensation.* — The withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income. **It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent.**
>
> Section 2.78.3 of RR No. 2-98 further states that the term employee 'covers ***all*** *employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political*

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[94] Section III (first paragraph), RMO No. 23-2014 (This Section was declared valid by the Supreme Court in *Confederation For Unity, Recognition and Advancement of Government Employees (COURAGE), et al. vs. Commissioner, Bureau of Internal Revenue, et al., et seq.,* G.R. Nos. 213446 and 213658, July 3, 2018).

> *subdivision thereof or any agency or instrumentality*'; while an employer, as Section 2.78.4 of the same regulation provides, 'embraces not only an individual and an organization engaged in trade or business, but also *includes an organization exempt from income tax, such as charitable and religious organizations, clubs, social organizations and societies, as well as the Government of the Philippines, including agencies, instrumentalities, and political subdivisions.*'
>
> **The law is therefore clear that withholding tax on compensation applies to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions. The Government, as an employer, is constituted as the withholding agent, mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees.**" *(Emphasis added)*

Based on the foregoing jurisprudential pronouncements, it is clear that the Government (including *inter alia*, political subdivisions), as an employer, is constituted as the withholding agent, who is mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees. Such being the case, **petitioner Provincial Government of Nueva Vizcaya, being an employer, is constituted as the withholding agent**, who is mandated to deduct, withhold and remit the corresponding tax on the CRA given to its officials and employees in 2015.

Pertinently, the liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. **Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties.**[95] In *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation*,[96] the Supreme Court explained:

> "It thus becomes important to note that under Section 53 (c) of the NIRC, **the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax'** and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. **The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be**

[95] *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.*, supra.
[96] G.R. No. 66838, December 2, 1991, 281 Phil. 425 (1991).

> **finally found to be less than the amount that should have been withheld under the law.**" *(Emphases added)*

Correspondingly, it is petitioner Provincial Government of Nueva Vizcaya, as the constituted withholding agent, who should be made **personally liable** for the tax which was not withheld from the CRA given to its officials and employees. It should also be subject to, and liable for, the deficiency withholding tax assessments, surcharges and penalties, if any, which are found after a valid tax investigation. As such, petitioners Provincial Treasurer and Provincial Accountant cannot be held personally liable for the payment thereof.

Such being the case, the FDDA dated February 23, 2023 addressed to petitioner Provincial Government of Nueva Vizcaya, for deficiency WTC in the amount of ₱635,897.50 for taxable year 2015, must be upheld; while the FDDA dated February 23, 2023 addressed to petitioner Rhoda S. Moreno, as the Provincial Treasurer, and Mr. Dominador F. Dacumos, as then the Provincial Accountant, for interests in the amount of ₱2,781,971.15, for the same taxable year, must be withdrawn and set aside.

CTA Case No. 10054

The FLDs/FANs dated November 20, 2019 for CTA Case No. 10554 covering the taxable year 2014 were not issued in accordance with law.

Section 228 of the NIRC of 1997, reads, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx"

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[97] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[98] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement. Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void but also finds no validation in any provision in the Tax Code.[99]

To implement the above-quoted Section 228, Section 3 of RR No. 12-99,[100] as amended by RR No. 18-2013,[101] provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX 'A' hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within

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[97] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[98] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[99] Refer to *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[100] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[101] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision." *(Emphases added)*

Based on the foregoing provisions, it is evident that if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, respondent or his duly authorized representative shall issue to the taxpayer a PAN, containing the proposed assessments, and the facts, law, rules and regulations or jurisprudence on which the proposed assessment is based.[102] Upon receipt of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply. Moreover, it is only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN, as categorically ruled in *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue,*[103] citing *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,*[104] to wit:

> "In the very recent case *of Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.**'
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> xxx xxx xxx

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[102] Refer to *Commissioner of Internal Revenue vs. Unioil Corp.,* supra, citing *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, 821 Phil. 664 (2017).
[103] G.R. No. 249153, September 12, 2022.
[104] G.R. No. 222476, May 5, 2021.

As the Court also held in *Yumex*, '[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.' 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response." *(Emphasis added)*

Records show that the PANs for deficiency WTC and penalties for taxable year 2014, issued by respondent on December 11, 2019, were received by the Office of the Governor of the Province of Nueva Vizcaya on December 12, 2019.[105] Pursuant to the said PANs and Section 3 of RR No. 12-99, as amended, petitioner had fifteen (15) days from notice, or until December 27, 2019, within which to respond or reply to the said PANs. Records, however, show that the subject FLDs/FANs for taxable year 2014 were issued and received by petitioners on December 27, 2019,[106] which was the supposed last day for petitioners to file their response or reply to the PANs.

Correspondingly, the premature issuance by respondent of the subject FLDs/FANs on December 27, 2019, prior to the lapse of the fifteen (15)-day period given to petitioner to respond to the PANs, as mandated under Section 228 of the NIRC of 1997 and RR No. 12-99, as amended by RR No. 18-2013, deprives petitioners of the opportunity to dispute the PANs and to present evidence against it.

The Supreme Court has consistently held that, between the power of the State to tax and the individual's right to due process, the scale favors the right of the taxpayer to due process.[107]

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[108] Furthermore, a void assessment bears no valid fruit.[109] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

In view of the nullity of the subject tax assessment, as above discussed, this Court finds it unnecessary to address the remaining issues or matters raised in the present case.

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105 Par. 4, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-12", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 85a to 85c; Par. 5, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; Exhibit "P-13", BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 86a to 86e.

106 Par. 6, Joint Stipulations of Facts, JSFSI, Docket (CTA Case No. 10553) – Vol. II, p. 415; BIR Records for CTA Case No. 10554 (Exhibit "R-21"), pp. 102a to 106.

107 *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

108 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.

109 *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

Correspondingly, the assessed deficiency WTC and interests in the respective amounts of ₱592,913.78 and ₱2,683,502.30 for taxable year 2014, must be cancelled and set aside.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* for CTA Case No. 10553 is **PARTIALLY GRANTED**; while the *Petition for Review* for CTA Case No. 10554 is **GRANTED**.

Accordingly, the FDDA dated February 23, 2023 addressed to petitioner Provincial Government of Nueva Vizcaya, for deficiency WTC in the amount of ₱635,897.50 for taxable year 2015, is hereby **UPHELD**; while the FDDA dated February 23, 2023 addressed to petitioner Rhoda S. Moreno, as the Provincial Treasurer, and Mr. Dominador F. Dacumos, as then the Provincial Accountant, for interests in the amount of ₱2,781,971.15, for the same taxable year, is **WITHDRAWN** and **SET ASIDE**.

Petitioner Provincial Government of Nueva Vizcaya is then **ORDERED TO PAY** respondent the total amount of **₱3,840,256.24** for taxable year 2015, inclusive of the 25% surcharge imposed under Sections 248(A)(3) of the NIRC of 1997, as amended, and 20% deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, computed until May 29, 2020, as follows:

Assessment No. R3-WC-019-005			**Total**
Basic Deficiency WTC per issued FAN			₱ 998,216.57
Add: 25% Surcharge			249,554.14
Less: Remittance 10/31/2019			(213,888.57)
Less: Remittance 12/09/2019			(128,605.85)
Amount Still Due as of December 11, 2019 (on Basic and 25% Surcharge)			**₱ 905,276.29**
Less: Remittance 05/29/2020			(19,824.65)
Remaining Unpaid Deficiency as of May 29, 2020 (on Basic and 25% Surcharge)			**₱ 885,451.64**
Add: 12% Delinquency Interest (12/12/19 to 05/29/20) [₱905,276.29 x 12% x 170/365 days]			50,596.26
Amount Still Due as of May 29, 2020 (on Basic and 25% Surcharge)			**₱ 936,047.90**
Assessment No. R3-WC-019-004			
	Installment Payment	**Remaining Unpaid Deficiency Withholding Tax**	**Total**
Deficiency WTC	-	₱5,831,557.05	
20% Deficiency Interest (01/16/16 to 12/31/17) [₱5,831,557.05 x 20% x 716/365 days]	-	5,831,557.05	₱ 2,287,887.59
12% Deficiency Interest (01/01/18 to 01/10/18) [₱5,831,557.05 x 12% x 10/365 days]	-	5,831,557.05	19,172.24
12% Deficiency Interest (01/11/18 to 06/25/18) [₱4,801,474.09 x 12% x 166/365 days]	₱1,030,082.96	4,801,474.09	262,042.09

12% Deficiency Interest (06/26/18 to 11/06/18) [₱1,204,754.54 x 12% x 134/365 days]	3,596,719.55	1,204,754.54	53,075.21
12% Deficiency Interest (11/07/18 to 10/31/19) [₱998,216.57 x 12% x 359/365 days]	206,537.97	998,216.57	117,816.90
12% Deficiency Interest (11/01/19 to 12/09/19) [₱784,328.00 x 12% x 39/365 days]	213,888.57	784,328.00	10,056.59
12% Deficiency Interest (12/10/19 to 12/11/19) [₱655,722.15 x 12% x 2/365 days]	128,605.85	655,722.15	431.16
Deficiency Interest Due as of December 11, 2019			**₱2,750,481.78**
Add: 12% Delinquency Interest (12/12/19 to 05/29/20) [₱2,750,481.78 x 12% x 170/365 days]	19,824.65	635,897.50	153,725.56
Amount Still Due as of May 29, 2020			**₱2,904,207.34**
Total Amount Still Due as of May 29, 2020 [₱936,047.90 add ₱2,904,207.34]			**₱3,840,256.24**

In addition, petitioner Provincial Government of Nueva Vizcaya is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) *per annum* on the unpaid deficiency tax due of ₱3,635,933.42[110] as of May 29, 2020, as determined above, or equivalent to ₱1,195.38[111] per day, computed from May 30, 2020 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulation No. 21-2018.

On the other hand, the assessment issued by respondent against petitioners Provincial Government of Nueva Vizcaya, Rhoda S. Moreno, and Dominador F. Dacumos, on their alleged deficiency WTC in the total amount of ₱3,276,416.08, inclusive of interest, for taxable year 2014, is **CANCELLED** and **SET ASIDE**.

[110] Sum of ₱885,451.64 and ₱2,750,481.78, remaining unpaid deficiency as of May 29, 2020 (on basic and 25% surcharge) and deficiency interest due as of December 11, 2019.

[111] ₱3,635,933.42 x 12% / 365 days.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice