REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

IBMS TECHNOLOGY PHILS. CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10606

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUL 30 2024
4:10 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that the Court:

1. render the *Letter of Authority* (LOA) No. 050-2018-00000048 dated August 22, 2018 and/or the examination, audit and assessment based thereof void; and

2. cancel and/or withdraw the *Formal Assessment Notice* (FAN) dated December 22, 2020, covering deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), and compromise penalty, in the amounts of ₱69,097,592.80, ₱45,989,801.06, ₱1,199,233.29, ₱8,549,483.52 and ₱50,000.00, respectively, inclusive of increments for the taxable period 2017, issued by Maridur V. Rosario, Regional Director of Revenue Region No. 8A, Makati City.[1]

[1] Statement of the Case, Pre-Trial Order dated November 10, 2022, Docket – Vol. I, p. 298.

THE PARTIES

Petitioner IBMS Technology Phils. Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address located at Unit 2207 Cityland 10, Tower 2, H.V. Dela Costa St., Salcedo Village, Makati City.[2]

Respondent, the Commissioner of Internal Revenue, Mr. Caesar R. Dulay, is the Chief of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, among others, under Philippine laws.[3]

THE FACTS OF THE CASE

On August 22, 2018, respondent issued the LOA No. LOA-050-2018-00000048/SN:eLA201500088318,[4] authorizing Revenue Officer (RO) Angeline Ifurung and Group Supervisor (GS) Praxedio II Tulio of Revenue District No. 050-South Makati, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2017 to December 31, 2017.

On August 26, 2020, petitioner received an undated *Notice for Informal Conference* (NIC).[5]

In reply to the said NIC, petitioner wrote the letter dated August 28, 2020,[6] addressed to the Regional Director, on September 1, 2020, stating that the NIC emanates from an invalid LOA, as continuing the audit beyond the prescribed period of 180 calendar days without a revalidated LOA renders the conduct of the audit without authority.

Thereafter, respondent issued the *Preliminary Assessment Notice* (PAN) dated November 23, 2020, with *Details of Discrepancies*.[7]

On December 23, 2020, petitioner received the FAN (Part I and II)

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[2] Par. 1, Parties, *Petition for Review*, vis-à-vis par. 5, *Answer (with Special and Affirmative Defenses)*, Docket – Vol. I, pp. 10 and 91, respectively.

[3] Par. 2, Parties, *Petition for Review*, vis-à-vis par. 6, *Answer (with Special and Affirmative Defenses)*, Docket – Vol. I, pp. 10 and 91, respectively.

[4] Exhibit "P-1", Docket – Vol. I, p. 375; Exhibit "R-2", BIR Records (Exhibit "R-1"), p. 462.

[5] Par. 1, Statement of the Facts and of the Case Common to All Issues/Causes of Action, *Petition for Review*, vis-à-vis par. 7, *Answer (with Special and Affirmative Defenses)*, Docket – Vol. I, pp. 10 and 91, respectively; Exhibits "P-2" and "R-4", BIR Records (Exhibit "R-1"), p. 837.

[6] Exhibit "P-3", Docket – Vol. I, p. 29.

[7] Exhibit "P-4", Docket – Vol. I, pp. 376 to 385; Exhibits "R-6" to "R-9", BIR Records (Exhibit "R-1"), pp. 896 to 906.

dated December 22, 2020, with *Details of Discrepancies* and *Assessment Notices.*[8]

Petitioner then filed a *Request for Reinvestigation* against the FAN on January 21, 2021,[9] and submitted its supporting documents on March 18, 2021.[10]

On October 14, 2021, petitioner filed the present *Petition for Review.*[11]

Within the period granted by the Court,[12] respondent posted his *Answer (with Special and Affirmative Defenses)* on February 10, 2022,[13] interposing the following special and affirmative defenses, to wit: (1) the assessment of deficiency taxes of the petitioner emanates from a valid LOA; (2) the non-revalidation of the LOA does not affect its validity and enforceability, hence, the assessments issued against the petitioner are valid; (3) the assessment notices were issued in accordance with law, rules and jurisprudence; (4) petitioner was informed and afforded opportunity to controvert the findings of deficiency taxes; and (5) the assessment of deficiency income tax, VAT, EWT, IAET and compromise penalty has factual and legal bases.

On March 11, 2022, respondent submitted the *BIR Records* of this case, consisting of one (1) folder and two (2) green envelopes, with 1040 pages, consecutively numbered from pages 1 to 1040.[14]

In the Resolution dated March 14, 2022,[15] the parties were ordered to immediately proceed and to personally appear or through their authorized representative before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on April 19, 2022. However, the PMC-CTA issued the *No Agreement to Mediate* dated April 27, 2022.[16]

The Pre-Trial Conference was initially set on August 2, 2022,[17] but was later reset to, and held on, August 16, 2022.[18] Prior thereto, respondent filed his

[8] Par. 1, Material Dates, *Petition for Review*, vis-à-vis par. 2, *Answer (with Special and Affirmative Defenses)*, Docket – Vol. I, pp. 9 and 90, respectively; Exhibit "P-5", Docket – Vol. I, pp. 30 to 43; Exhibits "R-11-a" to "R-15", BIR Records (Exhibit "R-1"), pp. 976 to 990.

[9] Par. 4, Statement of the Facts and of the Case Common to All Issues/Causes of Action, *Petition for Review*, vis-à-vis par. 10, *Answer (with Special and Affirmative Defenses)*, Docket – Vol. I, pp. 11 and 92, respectively; Exhibit "P-6", Docket – Vol. I, pp. 386 to 404.

[10] Exhibit "P-7", Docket – Vol. I, pp. 405 to 500 and Docket – Vol. 2, pp. 501 to 1234.

[11] Docket – Vol. I, pp. 9 to 23.

[12] Respondent's *Motion for Extension of Time to File Answer* dated December 31, 2021, Docket – Vol. I, pp. 82 to 85, and Resolution dated March 2, 2022, Docket – Vol. I, p. 89.

[13] Docket – Vol. I, pp. 90 to 109.

[14] *Compliance* (undated), Docket – Vol. I, p. 173.

[15] Docket – Vol. I, pp. 171 to 172.

[16] Docket – Vol. I, p. 175.

[17] Resolution dated May 5, 2022, Docket – Vol. I, pp. 177 to 178.

[18] Petitioner's *Motion to Reset Pre-Trial Conference* dated July 12, 2022, Docket – Vol. I, pp. 179 to 180, and Resolution dated July 20, 2022, Docket – Vol. I, p. 186; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket – Vol. I, pp. 206 and 208 to 209, respectively.

Pre-Trial Brief on August 12, 2022,[19] while the *Pre-Trial Brief (For the Petitioner)* was submitted on August 15, 2022.[20]

During the Pre-trial Conference, the parties were directed to submit their *Joint Stipulation of Facts and Issues* (JSFI). However, the parties failed to submit the same.[21] Thus, in the Resolution dated October 10, 2022,[22] the Court resolved that the parties were deemed to have waived the filing of their JSFI, and ordered them to submit a list of all their pre-marked documentary exhibits within five (5) days from notice.

Respondent filed his *Compliance (Re: Order dated 10 October 2022)* on October 14, 2022,[23] while petitioner submitted its *Compliance with Manifestation* on October 19, 2022.[24] The Pre-Trial Order dated November 10, 2022 was then issued.[25]

Trial then ensued, with both parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimony of its Finance Associate, Ms. Regine F. Nonato.[26]

On March 31, 2023, petitioner filed *via* accredited courier its *Formal Offer of Evidence with Manifestation*,[27] to which respondent submitted his *Comment/Opposition (Re: Petitioner's Formal Offer with Manifestation)* on May 3, 2023.[28] In the Resolution dated June 29, 2023,[29] the Court admitted petitioner's offered exhibits, *except* the following:

1. Exhibits "P-8 to P-8-7", "P-9", "P-63", "P-71", "P-72", "P-73", "P-73-1", "P-75 to P-98", "P-100 to P-123", "P-125 to P-130", "P-132 to P-134", "P-137 to P-139", "P-141 to P-45", "P-147 to P-157", "P-168", "P-170-1", "P-171-1", "P-172-1 to P-172-4", "P-173-1 to P-173-9", "P-174-1", "P-175-1", "P-176-1", "P-177-1", "P-178-1 to P-178-3", "P-179-1 to P-179-2", "P-180-1", "P-181-1", "P-182-1 to P-182-5", "P-183-1 to P-183-2", "P-184-1", "P-185-1 to P-185-2", "P-186-1", "P-

[19] Docket – Vol. I, pp. 188 to 195.
[20] Docket – Vol. I, pp. 197 to 203.
[21] Records Verification Report dated September 28, 2022 issued by this Court's Judicial Records Division, Docket – Vol. I, p. 210.
[22] Docket – Vol. I, pp. 213 to 214.
[23] Docket – Vol. I, pp. 215 to 222.
[24] Docket – Vol. I, pp. 224 to 230.
[25] Docket – Vol. I, pp. 298 to 307.
[26] Exhibit "P-346" (deemed marked as such per Resolution dated June 29, 2023, Docket – Vol. III, at p. 1267), Docket – Vol. I, pp. 357 to 374; Minutes of hearing held on, and Order dated, February 28, 2023, Docket – Vol. III, pp. 1237 to 1238.
[27] Docket – Vol. III, pp. 1239 to 1254.
[28] Docket – Vol. III, pp. 1257 to 1261.
[29] Docket – Vol. III, pp. 1265 to 1268.

187-1 to P-187-3", "P-188-1", "P-190-1" "P-191-1", "P-192-1", "P-193-1", "P-194-1", "P-195-1 to P-195-8", "P-196-1", "P-197-1", "P-198-1", "P-200-1 to P-200-5", "P-201-1", "P-202-1 to P-202-2", "P-203-1", "P-205-1", "P-206-1 to P-206-4", "P-207-1", "P-208-1", "P-209-1", "P-210-1", "P-211-1", "P-212-1 to P-212-10", "P-213-1", "P-214-1", "P-215-1", "P-216-1", "P-217-1", "P-218-1", "P-219-1", "P-220-1", "P-222-1", "P-223-1", "P-235-1", "P-236-1", "P-237-1", "P-242-1", "P-247-1", "P-268-1 to P-268-2", "P-269-1", "P-270-1"' "P-271-1", "P-272-1", "P-274-1", "P-275-1", "P-276-1",' "P-277-1", "P-278-1", "P-291-1", "P-295-1", "P-296-1 to P-296-2", "P-297-1", "P-298-1", "P-299", "P-299-1 to P-299-2", "P-304-1", "P-319-1", "P-326-1", and "P-331-1", for failure to present the originals for comparison;

2. Exhibits "P-131", "P-135", "P-140", "P-224", "P-225", "P-226", "P-227", "P-228", "P-229", "P-230", "P-231", "P-232", "P-233", "P-234", "P-235", "P-236", "P-237", "P-238", "P-239", "P-240", "P-241", and "P-242", for not being found in the records;

3. Exhibit "P-14", for failure to identify and for not being found in the records; and

4. Exhibits "P-136" and "P-158 to P-167", for failure to present the original for comparison and to correspond with the document actually marked.

Petitioner then filed its *Motion for Partial Reconsideration With Tender of Excluded Evidence and Manifestation* on July 25, 2023,[30] to which respondent filed *via* accredited courier his *Comment/Opposition (Re: Petitioner's Motion for Partial Reconsideration with Tender of Excluded Evidence and Manifestation)* on August 24, 2023.[31] In the Resolution dated October 12, 2023,[32] the Court: (i) noted petitioner's *Tender of Excluded Evidence and Manifestation;* and (ii) partially granted petitioner's *Motion for Partial Reconsideration*, admitting Exhibits "P-8 to P-8-7", "P-73", and "P-73-1", but still denying the admission of the following:

1. Exhibits "P-9", "P-63", "P-71", "P-72", "P-75 to P-98", "P-100 to P-123", "P-125 to P-130", "P-132 to P-134", "P-137 to P-139", "P-141 to P-45", "P-147 to P-157", "P-168", "P-170-1", "P-171-1", "P-172-1 to P-172-4", "P-173-1 to P-173-9", "P-174-1", "P-175-1", "P-176-1", "P-177-1", "P-178-1 to P-178-3", "P-179-1 to P-179-2", "P-180-1", "P-181-1", "P-182-1 to P-182-5", "P-183-1 to P-183-2", "P-184-1", "P-185-1 to P-185-2", "P-186-1", "P-187-1 to P-187-3", "P-188-1", "P-190-

[30] Docket – Vol. III, pp. 1269 to 1274.
[31] Docket – Vol. III, pp. 1286 to 1289.
[32] Docket – Vol. III, pp. 1294 to 1298.

1", "P-191-1", "P-192-1", "P-193-1", "P-194-1", "P-195-1 to P-195-8", "P-196-1", "P-197-1", "P-198-1", "P-200-1 to P-200-5", "P-201-1", "P-202-1 to P-202-2", "P-203-1", "P-205-1", "P-206-1 to P-206-4", "P-207-1", "P-208-1", "P-209-1", "P-210-1", "P-211-1", "P-212-1 to P-212-10", "P-213-1", "P-214-1", "P-215-1", "P-216-1", "P-217-1", "P-218-1", "P-219-1", "P-220-1", "P-222-1", "P-223-1", "P-235-1", "P-236-1", "P-237-1", "P-242-1", "P-247-1", "P-268-1 to P-268-2", "P-269-1", "P-270-1", "P-271-1", "P-272-1", "P-274-1", "P-275-1", "P-276-1", "P-277-1", "P-278-1", "P-291-1", "P-295-1", "P-296-1 to P-296-2", "P-297-1", "P-298-1", "P-299", "P-299-1 to P-299-2", "P-304-1", "P-319-1", "P-326-1", and "P-331-1", for failure to present the originals for comparison; and

2. Exhibits "P-136" and "P-158 to P-167", for failure to present the originals for comparison.

For his part, respondent presented the testimony of RO Angeline S. Ifurung.[33]

On February 14, 2024, respondent filed *via* accredited courier his *Formal Offer of Evidence*,[34] to which petitioner submitted its *Comment/Opposition (To respondent's Formal Offer of Evidence)* on March 1, 2024.[35] In the Resolution dated June 3, 2024,[36] the Court admitted all of respondent's exhibits.

Respondent's Memorandum was filed *via* accredited courier on July 8, 2024,[37] while petitioner submitted its *Memorandum* on July 22, 2024.[38]

The case was considered submitted for decision on August 5, 2024.[39]

THE STIPULATED ISSUE

The parties agreed during the Pre-Trial Conference to the following issue for this Court's resolution, to wit:

> "Whether or not petitioner is liable to pay the assessed deficiency income tax, Value-Added Tax, Expanded Withholding Tax and Improperly Accumulated Earnings Tax and Compromise Penalty, in the amount of PhP69,097,592.80, PhP45,989,801.06,

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[33] Exhibit "R-18", Docket – Vol. I, pp. 110 to 125; Minutes of the hearing held on, and Order dated, January 30, 2024, Docket – Vol. III, pp. 1305 to 1306.
[34] Docket – Vol. III, pp. 1307 to 1314.
[35] Docket – Vol. III, pp. 1319 to 1327.
[36] Docket – Vol. III, pp. 1329 to 1330.
[37] Docket – Vol. III, pp. 1333 to 1345.
[38] Docket – Vol. III, pp. 1348 to 1369.
[39] Minute Resolution dated August 5, 2024.

PhP1,199,233.29, PhP8,549,483.52, and PhP50,000.00, respectively, inclusive of increments for the taxable year 2017."[40]

Petitioner's arguments:

Petitioner argues that the LOA dated August 22, 2018, as well as the NIC, PAN and FAN, were not properly served to the authorized representative of the petitioner, hence, void; that respondent violated his own guidelines and procedures under Revenue Memorandum Order (RMO) No. 45-2010, as the latter failed to issue the required Second Notice, Final Notice and Subpoena to petitioner; that respondent's right to assess petitioner of deficiency income tax, EWT, VAT and IAET had already prescribed, except for the last quarter of the income tax, December 2017 of the EWT, and 4th quarter of the VAT; that respondent violated petitioner's constitutional right to speedy disposition of cases due to the inordinate delay in the issuance of the NIC, the PAN and FAN; that even granting, for the sake of argument, that the LOA, the examination, audit and assessment are valid, petitioner is not liable for the deficiency taxes as enumerated in the FAN.

Respondent's counter-arguments:

Respondent contends that failure to revalidate petitioner's LOA does not affect its validity nor the assessment made pursuant thereto; that the assessment notices were issued in accordance with law, rules and jurisprudence, as petitioner was informed and afforded opportunity to controvert the findings of deficiency taxes; that petitioner is liable for the deficiency income tax, VAT, EWT, IAET, and compromise penalty, for taxable year 2017; and that the necessity of proving that the tax assessment is invalid lies with the party assailing the validity of the assessment.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The LOA, NIC, PAN and FAN issued by respondent were properly served to petitioner.

Petitioner argues that the LOA, NIC, PAN and FAN were not properly served to the authorized representative of petitioner and, thus, should be considered void and produces no effect.[41]

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[40] Statement of Issue, Pre-Trial Order dated November 10, 2022, Docket – Vol. I, p. 299.
[41] Discussion/Arguments, petitioner's *Memorandum*, Docket – Vol. III, p. 1351.

The Court disagrees.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended mandates the following, *viz.*:

> "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." (*Emphases added)*

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.[42] 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.[43] 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.[44] 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.[45]

In this regard, Section 3.1.7 (formerly Section 3.1.6) of Revenue Regulations (RR) No. 12-99,[46] as amended by RR No. 18-2013,[47] and renumbered by RR No. 7-2018,[48] states:

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

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

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

[45] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).

[46] 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.

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

[48] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

"3.1.7[49] ***Modes of Service.*** – **The notice (PAN/FLD/FAN/**FDDA) **to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

(i) The notice shall be served through **personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found**. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address** under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the

[49] As renumbered pursuant to Section 2 of RR No. 7-2018.

bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(ii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

xxx xxx xxx." *(Emphases and underscoring added)*

From the foregoing, BIR notices may be served through certain modes: (1) primarily, through personal service by delivering personally to the party a copy of the notice; and in case personal service is not practicable, the notice shall be served either: (2) by substituted service, or (3) by mail.

Further, substituted service may be availed of only when it is shown that personal service is not practicable. It is further provided that substituted service can be resorted to when the party is not present at the registered or known address by leaving the assessment notices at the party's registered address, with the "party's clerk" or with a "person having charge" thereof. In case no person is found in the address or if the party refuses to receive the notice, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence or refusal; and that such fact shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

In this case, petitioner insists that the LOA, NIC, PAN and FAN respectively received by Mr. John Anthony Hagosojos, Mr. Rogie Jamot, Ms. Agnes Modio, and Mr. Rico G. Caño, were not properly served as they are not authorized representative/s of petitioner to receive the same and, thus, said notices should accordingly be considered void and without effect. For easy reference, a table is herein provided showing the recipients and the date of receipt of the said documents:

Document	*Received by*	*Position*	*Date of Receipt*
LOA dated August 22, 2018[50]	John Anthony Hagosojos		September 10, 2018
undated NIC[51]	Rogie Jamot		August 26, 2020
PAN dated November 23, 2020[52]	Ma Agnes Modio	Purchasing Officer	November 26, 2020
FAN dated December 22, 2020[53]	Rico G. Caño	Asst. Logistic	December 23, 2020

Considering that the said documents were received by petitioner through the above-mentioned individuals, there is no doubt that the service of the same was done through substituted service. As pointed our earlier, such service may be done by leaving the notice at the party's registered address, with the latter's clerk or with person having charged thereof.

But in this case, despite the receipt of the said notices by an unauthorized individual, petitioner's witness, Ms. Nonato, admitted that the same were still received by petitioner. Pertinent portions of Ms. Nonato's testimony are quoted hereunder:[54]

> "Atty. Rosario: Thank you, Your Honor. Good morning Ms. Nonato. Sa sagot mo sa Question No. 9 ng yung Judicial Affidavit sinabi mo dito na naka-receive kayo ng Notice of Informal Conference, tama po ba?
>
> Witness: Tama po.
>
> Atty. Rosario: Okay, at sinabi mo rin sa sagot mo sa Question No. 6 ng yung Judicial Affidavit na may pinadala sa inyong Letter of Authority, tama po ba?
>
> Witness: Tama po.

[50] Exhibit "R-2", BIR Records (Exhibit "R-1"), p. 462.
[51] Exhibits "P-2" and "R-4", BIR Records (Exhibit "R-1"), p. 837.
[52] Exhibits "R-6" to "R-9", BIR Records (Exhibit "R-1"), pp. 896 to 906.
[53] Exhibits "R-11-a" to "R-15", BIR Records (Exhibit "R-1"), pp. 977 to 990.
[54] Transcript of the Stenographic Notes (TSN) during the hearing held on February 28, 2023, pp. 10 to 13, and 15 to 16.

Atty. Rosario:	At ito ay para sa audit ng inyong books of accounts and accounting records for taxable year 2017, tama po?
Witness:	Opo.
Atty. Rosario:	So ibig sabihin natanggap ng petitioner itong Letter of Authority, tama po?
Witness:	Opo.
Atty. Rosario:	Alam mo ba kung kailan ito natanggap ng petitioner?
Witness:	September 2018 po.

xxx xxx xxx

Atty. Rosario:	Maliban sa Letter of Authority meron pa bang ibang dokumento pina-receive ang BIR sa petitioner? Meron pa bang ibang dokumento maliban sa Letter of Authority?
Witness:	Pagkatapos po ng Letter of Authority po yung notice po yun na po yung na-receive.
Atty. Rosario:	Ms. Witness kasama ng Letter of Authority meron pa bang ibang dokumentong pinadala or pina-receive si BIR?
Witness:	Wala na po pagkatapos po nun 2020 na po yung next na pinadala po.
Atty. Rosario:	Sa iyong sagot sa Question No. 5 ng iyong Judicial Affidavit sinabi mo dito na ikaw ang may kustodiya ng mga financial records ng IBMS tama po ba?
Witness:	Opo.
Atty. Rosario:	At maari ko bang malaman Ms. Witness if may partisipasyon ka sa mga pagsulat ng petitioner kay BIR?
Witness:	Ang ginawa po kasi namin is yung pagre-ready po nung mga kuwan po mga kailan na ni-request ng BIR po.
Atty. Rosario:	So nag-request ang BIR kay petitioner ng mga dokumento, tama po?
Witness:	Opo nagpadala din po kami pagkatapos po nung Notice for Informal Conference po.
Atty. Rosario:	Pagkatapos ng Notice for Informal Conference?
Witness:	Opo.

xxx xxx xxx

Atty. Rosario:	Ms. Witness sinabi mo rin sa iyong Judicial Affidavit na nakatanggap ang petitioner ng Preliminary Assessment Notice, tama po ba?
Witness:	Tama po.
Atty. Rosario:	At ito ay nasa inyong records, tama po? Yes or no Ms. Witness?
Witness:	Nandito po.
Atty. Rosario:	At sinabi mo rin sa iyong Judicial Affidavit na nakatanggap ang petitioner ng Formal Assessment Notice, tama po ba?
Witness:	Tama po."

Evidently, petitioner received the subject LOA, NIC, PAN and FAN, notwithstanding the fact that the same were allegedly not received by its duly authorized representative/s.

Further, RO Ifurung testified that petitioner did not "raise the issue that it did not receive the LOA, NIC, and the PAN in this case", and that "there is no issue on the receipt of the LOA, NIC, PAN and FAN".[55] Thus, it is of no moment if the persons who received the said notices are not the duly authorized representative of petitioner.

Moreover, no evidence was presented by petitioner to prove the fact that they are not duly authorized to receive any letters or communications on behalf of petitioner. Thus, petitioner's bare allegations, unsubstantiated by evidence, are not equivalent to proof.[56]

The foregoing facts clearly demonstrate that petitioner was not deprived of due process, as it was fully apprised of the legal and factual bases of the assessments issued against it.

The absence of the issuance of the First Notice, Second Notice and Final Notice, and Subpoena does not render the subject assessments void.

Petitioner argues that the conduct of the examination, audit and assessment are void due to respondent's failure to issue the required Second

[55] TSN during the hearing held on January 30, 2024, p. 41.
[56] *Singson vs. Spouses Carpio*, G.R. No. 238714, August 30, 2023.

Notice, Final Notice and Subpoena to petitioner for the submission/presentation of its books of accounts, records and documents as enumerated in respondent's own Checklist of Requirements and as required under RMO No. 45-2010.[57]

The Court again disagrees.

RMO No. 45-2010[58] was issued to prescribe the policies and guidelines in cases where the taxpayer refuses to produce documents or records requested and the issuance of *subpoena duces tecum* (SDT) to compel non-cooperative taxpayers to comply, to wit:

> "1. **If the taxpayer, upon receipt of the (1) Letter of Authority (LA) and checklist of presentation of the requirements for the audit**, or (2) access to records request, the Revenue Officer (RO) concerned shall **send a <u>First Notice</u>**, signed by himself and/or his group supervisor, to the taxpayer, after ten (10) calendar days from receipt of the LA and checklist of requirements/access to records request, **demanding the taxpayer to furnish to the RO the requirements previously requested**.
>
> 2. However, **if the taxpayer ignores the First Notice and continues to disregard the demand for the submission of the required documents, a <u>Second and Final Notice</u>**, signed by the Head of Office concerned, **shall be sent to the taxpayer** after ten (10) calendar days from receipt of the First Notice.
>
> 3. If, after the taxpayer's receipt of the Second and Final Notice, said **taxpayer still refuses to comply with the requirements of the notice**, the Head of Office shall **request for the issuance of a <u>subpoena duces tecum</u> (SDT)** from the Legal Service (National Office), Legal Division (Regional Office), or any other authorized office, after ten (10) calendar days from receipt of the Second and Final Notice.
>
> xxx xxx xxx" *(Emphases and underscoring added)*

Based on the foregoing, it is clear that the issuance of a First Notice, Second and Final Notice and SDT, as the case may be, is prescribed when the taxpayer refuses to produce documents or records requested, hence, the issuance thereof is not required all the time during an audit.

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[57] Pars. 12 and 16, Discussion/Arguments, petitioner's *Memorandum*, Docket -- Vol. III, pp. 1353 to 1355.

[58] SUBJECT: Revised guidelines in the requests for the production of the books of accounts and/or other records and documents and in the issuance of Subpoena Duces Tecum for failure of taxpayers to Comply with the requests.

In this case, there is no showing that petitioner ignored, disregarded or refused to produce the documents or records requested by the BIR that would necessitate the issuance of a First Notice, Second and Final Notice and SDT to compel petitioner to comply with such request. In fact, after the issuance of the LOA,[59] together with *Checklist of Requirements*,[60] petitioner submitted documents to respondent, which was confirmed by petitioner's witness, to wit:[61]

"Atty. Rosario: At maari ko bang malaman Ms. Witness if may partisipasyon ka sa mga pagsulat ng petitioner kay BIR?

Witness: Ang ginawa po kasi namin is yung pagre-ready po nung mga kuwan po mga kailan na ni-request ng BIR po.

Atty. Rosario: So nag-request ang BIR kay petitioner ng mga dokumento, tama po?

Witness: Opo nagpadala din po kami pagkatapos po nung Notice for Informal Conference po.

xxx xxx xxx

Atty. Rosario: Meron kayaong pina-receive na mga books of accounts and other accounting records sa BIR, tama po?

xxx xxx xxx

Justice San Pedro: Overruled, the witness may answer. Repeat the question please. Nagpadala kayo ng mga dokumento sa BIR?

Atty. Rosario: Tama po?

Witness: Tama po."

Moreover, there are documents found in the *BIR Records*.[62] Although there was no transmittal letter included therein, hence, there was no proof whether these documents were submitted by petitioner or from the BIR's records,[63] the fact remains that there are documents or records of petitioner in the BIR Records, and as explained by respondent's witness, there is no need to

[59] Exhibit "P-1", Docket – Vol. I, p. 375; Exhibit "R-2", BIR Records (Exhibit "R-1"), p. 462.
[60] Exhibit "R-3", BIR Records (Exhibit "R-1"), pp. 460 to 461.
[61] TSN during the hearing held on February 28, 2023, pp. 13 to 15.
[62] BIR Records (Exhibit "R-1"), pp. 463 to 793.
[63] TSN during the hearing held on January 30, 2024, p. 19.

send another notice to the taxpayer if the documents are already substantial to make an assessment.[64] Even granting that petitioner refused or failed to comply with the request to produce documents, Section 6(B) of the NIRC of 1997 authorizes respondent to assess proper tax on the best evidence available, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) xxx xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> xxx xxx xxx"

Hence, it was erroneous for petitioner to state that issuance of the Second Notice, Final Notice and Subpoena to petitioner for the submission/presentation of its books of accounts, records and documents as mandated under RMO No. 45-2010 is part of the entire process. Correspondingly, there was no blatant violation of petitioner's constitutional right to due process.

Petitioner was not and was never deprived of its constitutionally protected right to speedy disposition of cases when the subject NIC, PAN and FAN were issued more than two (2) years from the date of the issuance of the LOA.

Petitioner alleges that under RMO No. 19-2015, the report of investigation/verification of cases covered by electronic *Letter of Authorities* (eLAs) shall be submitted by the RO within 180 calendar days only. But in the present case, respondent accordingly served the LOA on September 10, 2018, the NIC on August 26, 2020, the PAN on November 26, 2020, and the FAN on December 23, 2020. These alleged services of the NIC, PAN, and FAN were only made after more than two (2) years from the issuance of the LOA on August 22, 2018. Thus, petitioner is of the considered view that the inordinate

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[64] TSN during the hearing held on January 30, 2024, p. 12.

delay in the conduct of the examination, audit and the issuance of the NIC, PAN and FAN violates its right to due process of law and the speedy disposition of cases.[65]

Respondent, on the other hand, argues that the failure to revalidate petitioner's LOA does not affect its validity nor the assessment made pursuant to the same.

The Court agrees with respondent.

While it is true that in RMO No. 19-2015,[66] there is indeed a prescribed 180-day period for regional cases within which to submit a report of investigation/verification,[67] there is nothing, however, therein that states that in case the 180-day period to submit the said report of investigation is not observed, the LOA issued will be a nullity. In fact, in the same issuance, it was clearly stated that the failure to render a report of investigation/verification within the time frame shall not nullify the eLA, to wit:

> "28. **Failure on the part of the RO to render a report of investigation/verification within the time frame prescribed above shall not nullify the eLA**. The eLA is enforceable even if it remains outstanding beyond the time frame for submission of report of investigation/verification by the RO assigned to the case, subject to the period of limitation under Sections 203 and 222 of the Tax Code of 1997, as amended. **However, the RO who fails to submit the report investigation/verification shall be subject to any applicable administrative sanction.**" *(Emphases added)*

It should likewise be noted that the requirement of revalidation of LOAs for failure to complete audit was already withdrawn beginning June 1, 2010, pursuant to RMO No. 44-2010,[68] the pertinent portion of which reads:

> "8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded.** However, the failure of the RO to complete the audit within the prescribed period shall

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[65] Pars. 30 to 33, Discussion/Arguments, petitioner's *Memorandum*, Docket – Vol. III, pp. 1359 to 1360.
[66] SUBJECT: BIR Audit Program
[67] Item III.25, Revenue Memorandum Order (RMO) No. 19-2015.
[68] SUBJECT: Electronic Issuance of Letters of Authority

be subject to the applicable administrative sanctions." *(Emphasis added)*

Moreover, the above provision was reiterated in RMO No. 19-2015 in this wise:

> "29. **As stated in Item Number IV.8 of RMO No. 44-2010, it is reiterated that pending eLAs as of the effectivity of the said Order shall no longer be revalidated.** In case the report of investigation cannot be rendered within the prescribed period, the concerned RO shall prepare a monthly progress report starting from the time such audit report should have been rendered stating therein the reason for the delay in the submission of the report of investigation duly noted by his GS and approved by the RDO/LTD/LTAD. The said progress report/s shall be attached to the docket of the case." *(Emphasis added)*

Thus, as correctly argued by respondent, the lapse of the 180-day period under RMO No. 19-2015, and the failure to revalidate the LOA, are of no moment, as the same will not have the effect of nullifying the subject tax assessments. Consequently, petitioner's claim that it was deprived of its constitutionally protected right to speedy disposition of cases when the subject NIC, PAN and FAN were issued two (2) years from the date of the issuance of the LOA has no leg to stand on.

Respondent's right to assess petitioner has already prescribed for the deficiency VAT for the 1st to 3rd quarters of taxable year 2017, and the deficiency EWT for the months of January to November of taxable year 2017.

Petitioner claims that respondent's right to assess petitioner's income tax, EWT, VAT and IAET had already prescribed, except for the last quarter of the income tax, December 2017 of the EWT and 4th quarter of VAT for 2017.

Section 203 of the NIRC of 1997, 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-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." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that except as provided in Section 222 of the NIRC of 1997, internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[69] As a corollary, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[70]

By way of an exception, under Section 222 of the NIRC of 1997, there are instances when the government may assess pertinent taxes against taxpayers even beyond the said three (3)-year prescriptive period. Said provision reads as follows:

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

xxx xxx xxx."

In view thereof, the Court shall refer to the specific provisions of the law or regulations prescribing the period within which to file the pertinent tax returns vis-à-vis the actual date of filing of the said tax returns by petitioner, to

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[69] Refer to *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[70] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

adjudge the commencement and end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 for the present case.

Pursuant to Section 77(B) of the NIRC of 1997, the filing of corporate income tax final adjustment return shall be on or before the 15th day of April, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be, to wit:

> "(B) *Time of Filing the Income Tax Return.* — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be."

Notably, petitioner's final adjustment return or Annual Income Tax Return (ITR) for taxable year 2017, must have been filed on or before April 15, 2018.

With respect to the filing of VAT returns, Section 114(A) of the NIRC of 1997, as amended, and as implemented by Section 4.114-1 of RR No. 16-2005,[71] provides that every person liable to pay VAT shall file a return of its quarterly gross sales or receipts within twenty-five (25) days following the close of the taxable quarter. Said Section 114(A) provides:

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

Moreover, Section 4.114-1 of RR No. 16-2005 states:

> "SECTION 4.114-1. *Filing of Return and Payment of VAT.* —
>
> (A) *Filing of Return.* — **Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of**

[71] SUBJECT: Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

Quarterly VAT Return. The term 'taxable quarter' shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (*i.e.,* the calendar quarter or fiscal quarter).

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter." *(Emphasis added)*

Based on the foregoing provisions, petitioner's *Quarterly VAT Returns* for the four (4) quarters of taxable year 2017 should have been filed on or before: (1) April 25, 2017, for the 1st quarter; (2) July 25, 2017, for the 2nd quarter; (3) October 25, 2017, for the 3rd quarter; and (4) January 25, 2018, for the 4th quarter, respectively.

With regard to withholding taxes, Section 2.58 of RR No. 2-98,[72] as amended by RR No. 17-2003,[73] provides that the filing of withholding tax returns shall be made within ten (10) days after the end of each month, except for taxes withheld for the month of December, the return for which must be filed by January 15 of the following year. However, for taxpayers who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon *via* the EFPS shall be five (5) days later than the abovementioned deadlines, unless the EFPS regulations provide for different deadline dates. The relevant provisions of RR No. 2-98, as amended, read:

"Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. –

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

(1) xxx xxx xxx

(2) *WHEN TO FILE* –

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72 SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

73 SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

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

xxx xxx xxx

(b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates** and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." *(Emphases added)*

Relative thereto, Section 7 of RR No. 9-2001,[74] as amended by RR No. 26-2002,[75] provides for the staggered *filing* of returns of taxpayers enrolled in the EFPS based on industry classification. For petitioner, whose Line of Business is "OTHER COMPUTER RELATED ACTIVIES",[76] and thus, classified under Group C, its monthly EWT Returns shall be filed thirteen (13) days after the end of each month, to wit:

"Section 7. TIME OF FILING OF RETURN. — **For purposes of filing returns under the EFPS**, the taxpayers classified under the following business industries shall be **required to file the Monthly Withholding Tax Returns**, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage Tax Returns, on or before the dates prescribed and presented herein-below:

BUSINESS INDUSTRY	MONTHLY WITHHOLDING TAX RETURNS	xxx

[74] SUBJECT: Electronic Filing of Tax Returns and Payment of Taxes.
[75] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.
[76] Refer to Exhibits "P-15" to "P-26-3", Docket – Vol. I, p. 460 to Docket – Vol. 2, p. 536.

	EXCEPT WITHHOLDING OF VALUE ADDED TAX	
xxx	xxx	xxx
Group C Retail Sale Wholesale Trade and Commission Trade Sale, Maintenance, Repair of Motor Vehicle, Sale of Automotive Fuel Collection, Purification and Distribution of Water **Computer and Related Activities** Real Estate Activities	• **Thirteen (13) days following end of the month.**	xxx

xxx xxx xxx" *(Emphases added)*

However, Revenue Memorandum Circular (RMC) No. 2-2003[77] clarified that RR No. 26-2002 speaks only of *e-filing* and, therefore, due dates on the payment of taxes remain unaffected by the said regulations.[78] Hence, for December EWT Returns which are due for e-filing on January 11-15 shall no longer have an additional five (5)-day grace period. Nonetheless, since RR No. 26-2002 speaks only of e-filing of returns, the payment of the tax due thereon shall still follow the deadline set [*i.e.*, additional five (5) days from due date, which is on January 20 of the following year].[79]

Thus, petitioner's EWT returns for the twelve (12) months of taxable year 2017 should be filed within thirteen (13) days after the end of each month, but payment thereof should be made fifteen (15) days after the end of each month, except for taxes withheld for the month of December, which shall be filed on or before January 20, 2018.

Moreover, the assessment contemplated in Sections 203 and 222 of the NIRC refers to the service of the FAN upon the taxpayer.[80]

Correspondingly, for purposes of the subject tax assessments of deficiency income tax, VAT and EWT against petitioner for taxable year 2017, the end of the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended, is respectively determined as follows:

[77] SUBJECT: Clarifying Certain Issues Relative to the Staggered Filing of Returns Pursuant to Revenue Regulations No. 26-2002.
[78] Q&A No. 4, RMC No. 2-2003.
[79] Refer to Q&A No. 3, RMC No. 2-2003.
[80] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

BIR Form No.	Exhibit No.	Period Covered	Date of Actual Filing	Last Day Prescribed by Law for Filing the Return	Three (3) year Prescriptive Period to Assess	Date of Receipt of FAN
Income Tax						
1702-RT[82]	"P-10" to "P-10-2"[83]	Taxable Year 2017	Apr. 16, 2018	Apr. 16, 2018[84]	Apr. 16, 2021	
Value-Added Tax (VAT)						
2550-Q[85]	"P-51"[86]	1st Quarter	Apr. 22, 2017	Apr. 25, 2017	Apr. 25, 2020	
	"P-52"[87]	2nd Quarter	July 25, 2017	July 25, 2017	Jul. 25, 2020	
	"P-53"[88]	3rd Quarter	Oct. 19, 2017	Oct. 25, 2017	Oct. 25, 2020	
	"P-54"[89]	4th Quarter	Jan. 25, 2018	Jan. 25, 2018	Jan. 25, 2021	
Expanded Withholding Tax (EWT)						
1601-E[90]	"P-15" to "P-15-3"[91]	January	Feb. 13, 2017	Feb. 13, 2017	Feb. 13, 2020	
	"P-16" to "P-16-3"[92]	February	Mar. 10, 2017	Mar. 13, 2017	Mar. 13, 2020	
	"P-17" to "P-17-3"[93]	March	Apr. 11, 2017	Apr. 17, 2017[94]	Apr. 17, 2020	Dec. 23, 2020[81]
	"P-18" to "P-18-3"[95]	April	May 13, 2017	May 15, 2017[96]	May 15, 2020	
	"P-19" to "P-19-3"[97]	May	June 13, 2017	June 13, 2017	June 13, 2020	
	"P-20" to "P-20-3"[98]	June	July 12, 2017	July 13, 2017	July 13, 2020	
	"P-21" to "P-21-3"[99]	July	Aug. 10, 2017	Aug. 14, 2017[100]	Aug. 14, 2020	
	"P-22" to "P-22-3"[101]	August	Sept. 11, 2017	Sept. 13, 2017	Sept. 13, 2020	
	"P-23" to "P-23-3"[102]	September	Oct. 10, 2017	Oct. 13, 2017	Oct. 13, 2020	
	"P-24" to "P-24-3"[103]	October	Nov. 10, 2017	Nov. 13, 2017	Nov. 13, 2020	
	"P-25" to "P-	November	Dec. 6, 2017	Dec. 13, 2017	Dec. 13, 2020	

81 Exhibits "R-11-a" to "R-11-e" and "R-15", BIR Records (Exhibit "R-1"), pp. 986 to 990 and 976, respectively.
82 *Annual Income Tax Return.*
83 Docket – Vol. I, pp. 438 to 446.
84 April 15, 2018, fell on a Sunday.
85 *Quarterly Value-Added Tax Return.*
86 Docket – Vol. 2, pp. 597 to 598.
87 Docket – Vol. 2, pp. 599 to 600.
88 Docket – Vol. 2, pp. 601 to 602.
89 Docket – Vol. 2, pp. 603 to 604.
90 *Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded).*
91 Docket – Vol. I, pp. 460 to 461.
92 Docket – Vol. I, pp. 469 to 471.
93 Docket – Vol. I, pp. 472 to 474.
94 April 13 and 14, 2017 are holidays (Holy Thursday and Good Friday).
95 Docket – Vol. I, pp. 478 to 480.
96 May 13, 2017 fell on a Saturday.
97 Docket – Vol. I, pp. 484 to 486.
98 Docket – Vol. I, pp. 493 to 495.
99 Docket – Vol. 2, pp. 502 to 504.
100 August 13, 2017 fell on a Sunday.
101 Docket – Vol. 2, pp. 509 to 511.
102 Docket – Vol. 2, pp. 515 to 517.
103 Docket – Vol. 2, pp. 521 to 523.

	25-3"[104]					
	"P-26" to "P-26-3"[105]	December	Jan. 15, 2018	Jan. 15, 2018[106]	**Jan. 15, 2021**	

Correspondingly, since the FAN dated December 22, 2020 was received by petitioner on December 23, 2020,[107] the assessments for the 1st to 3rd quarter VAT, and the EWT for the months of January to November, for taxable year 2017, have already prescribed. Thus, respondent's assessments thereon are considered void on the ground of prescription.

It is noted that while the assessment covering the months of January to November for taxable year 2017 had already prescribed, petitioner was unable to point out which portion of the assessment pertains thereto, hence, the entire EWT assessment shall be considered as pertaining to the month of December 2017.

Petitioner is still liable for deficiency income tax, VAT, EWT and IAET, for taxable year 2017.

As pointed out earlier, respondent assessed petitioner of deficiency income tax, VAT, EWT and IAET, in the respective amounts of ₱69,097,592.80, ₱45,989,801.06, ₱1,199,233.29, and ₱8,549,483.52, inclusive of increments, and compromise penalty of ₱50,000.00 for failure to file and pay IAET for the taxable year 2017, summarized as follows:

Tax Type	Basic Deficiency Tax	Surcharge	Interest	Total
Income Tax	₱ 51,757,965.38	-	₱ 17,339,627.42	₱ 69,097,592.80
VAT	33,783,362.96	-	12,206,438.10	45,989,801.06
EWT	878,814.95	-	320,418.34	1,199,233.29
IAET	5,720,238.09	₱ 1,430,059.52	1,399,185.91	8,549,483.52
Compromise				50,000.00
Total	**₱92,140,381.38**	**₱1,430,059.52**	**₱ 31,265,669.77**	**₱ 124,886,110.67**

I. Income Tax

Petitioner was assessed of deficiency income tax in the amount of ₱69,097,592.80, computed as follows:

Taxable Income (Loss) per return	₱ 58,242,537.00
Add: Adjustments/disallowances	

[104] Docket – Vol. 2, pp. 527 to 529.
[105] Docket – Vol. 2, pp. 534 to 536.
[106] January 13, 2018 fell on a Saturday.
[107] Exhibits "R-11-a" to "R-11-e" and "R-15", BIR Records (Exhibit "R-1"), pp. 986 to 990 and 976 respectively.

Disallowed Expenses due to Non-withholding	₱ 29,067,239.34	
Undeclared Receipts	119,811,294.00	
Disallowed Purchases	21,731,187.86	
Gain on sale not subjected to Income Tax	335,000.00	
Overclaimed Depreciation Expense	807,907.79	
Disallowed Representation and Entertainment Expense	773,921.95	172,526,550.94
Adjusted Taxable Income		₱ 230,769,087.94
Income Tax Due		69,230,726.38
Less: Tax Credits/Payments		
Payments	14,118,130.00	
Creditable Tax Withheld	3,354,631.00	17,472,761.00
Basic Tax Due		₱ 51,757,965.38
Add: Interest 12% (04.16.18 to 01.29.21)		17,339,627.42
TOTAL AMOUNT DUE		**₱69,097,592.80**

The deficiency income tax was based on the following grounds:

A. Disallowed expenses due to non-withholding	₱ 29,067,239.34
B. Undeclared Receipts	119,811,294.00
C. Disallowed Purchases	21,731,187.86
D. Gain on sale not subjected to Income Tax	335,000.00
E. Overclaimed Depreciation Expense	807,907.79
F. Disallowed Representation and Entertainment Expense	773,921.95

The merits of the above-mentioned grounds are addressed one by one below.

A. Disallowed expenses due to non-withholding

According to respondent, a comparison of the expenses reported in the *Financial Statements* (FS) and ITR with those listed in the petitioner's *Alphalist* of withholding tax returns revealed discrepancies totaling ₱29,067,239.34 in expenses that were not subjected to withholding tax,[108] as computed below:[109]

Income Payments	Per FS/ITR	Per Alphalist	Discrepancy	EWT rate	EWT due
Commission	₱5,935,600.00	₱478,556.30	₱5,457,043.70	10%	₱545,704.37
Director's Fee	666,667.00	-	666,667.00	15%	100,000.05
Purchase of Goods – Top 20,000 Corporation					
Materials	101,014,292.00	79,285,862.36	21,728,429.64	1%	217,284.30
Office Supplies	966,713.00	-	966,713.00	1%	9,667.13
Fuel and Oil	248,386.00	-	248,386.00	1%	2,483.86
Additions to PPE	367,524.55	-	367,524.55	1%	3,675.25

[108] Par. 37.1, respondent's *Answer (With Special and Affirmative Defenses)*, Docket – Vol I, p. 101.
[109] Exhibit "P-5-1", Docket – Vol. I, p. 33.

Total	₱109,199,182.55	₱79,764,418.68	₱29,434,763.89	₱878,814.95
Less: Additions to PPE			367,524.55	
Disallowed Expense due to Non-Withholding			**₱29,067,239.34**	

Consequently, respondent disallowed the above-stated expenses for alleged failure to withhold and remit the tax due thereon under Section 34(K) of the NIRC, as amended.

Petitioner, however, avers that it religiously withheld and remitted the withholding taxes for Commissions, Director's Fees and Purchase of Goods (Materials, Office Supplies, Fuel and Oil). To prove the said expenses, petitioner claims that it submitted the appropriate BIR Form No. 2307 and/or other competent pieces of evidence (*e.g.*, BIR Form No. 1604-E, Official Receipts, Check Vouchers & Ledger of Expenses, *etc.)*, when it filed its *Request for Reinvestigation* with the BIR.

Moreover, petitioner posits that considering that the disallowed expense amounting to ₱29,067,239.34 are ordinary and necessary expenses paid or incurred by petitioner during the taxable year 2017 in carrying out company operations, and the tax required to be deducted and withheld has been paid, the said disallowed expense should instead be allowed as deduction, and any assessment attributed thereto should be cancelled.[110]

To substantiate that it properly withheld the applicable withholding tax on its income payments, petitioner submitted its *Monthly Remittance Return of Creditable Income Taxes Withheld Expanded* (BIR Form No. 1601-E),[111] and *Annual Information Return of Creditable Income Taxes Withheld* (BIR Form No. 1604-E),[112] along with attached *Alphalist of Payees*[113] for taxable year 2017.

With respect to the director's fees assessed in the amount of ₱666,667.00, the Court notes an excerpt from the *Alphalist of Payees*[114] reflecting the names of individual payees under ATC Code [WI010],[115] with a total amount of ₱666,666.01,[116] listed below:

Sequence No.	Name of Payee	Amount of income payment	Rate	Amount of Tax Withheld
26	De Guzman, Edwin F.	₱ 11,111.10	10%	₱ 1,111.11
90	Teng, Tian	11,111.10	10%	1,111.11
101	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
102	Vicente, Myra R.	11,111.10	10%	1,111.11

[110] Par 7.1(A), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 13 to 14.
[111] Exhibits "P-15" to "P-26-4", Docket – Vol. I, pp. 460 to 500 and Docket – Vol. 2, pp. 501 to 540.
[112] Exhibit "P-66", Docket – Vol. 2, pp. 617 to 619.
[113] Exhibit "P-66-1", Docket – Vol. 2, pp. 620 to 668.
[114] *Id.*, at pp. 667 to 668.
[115] EWT – professional/talent fees paid to juridical persons/individuals (lawyers, CPAs, *etc.*)
[116] There is a ₱0.99 discrepancy noted which can be considered immaterial.

103	Vicente, Ornan S.	11,111.10	10%	1,111.11
136	De Guzman, Edwin F.	11,111.10	10%	1,111.11
242	Teng, Tian	11,111.10	10%	1,111.11
260	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
261	Vicente, Myra R.	11,111.10	10%	1,111.11
262	Vicente, Ornan S.	11,111.10	10%	1,111.11
309	De Guzman, Edwin F.	11,111.10	10%	1,111.11
411	Teng, Tian	11,111.10	10%	1,111.11
422	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
423	Vicente, Myra R.	11,111.10	10%	1,111.11
424	Vicente, Ornan S.	11,111.10	10%	1,111.11
663	De Guzman, Edwin F.	11,111.10	10%	1,111.11
664	De Guzman, Edwin F.	11,111.10	10%	1,111.11
890	Teng, Tian	11,111.10	10%	1,111.11
891	Teng, Tian	11,111.10	10%	1,111.11
904	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
905	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
906	Vicente, Myra R.	11,111.10	10%	1,111.11
907	Vicente, Myra R.	11,111.10	10%	1,111.11
908	Vicente, Ornan S.	11,111.10	10%	1,111.11
909	Vicente, Ornan S.	11,111.10	10%	1,111.11
1042	De Guzman, Edwin F.	11,111.10	10%	1,111.11
1253	Teng, Tian	11,111.10	10%	1,111.11
1265	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
1266	Vicente, Myra R.	11,111.10	10%	1,111.11
1267	Vicente, Ornan S.	11,111.10	10%	1,111.11
1331	De Guzman, Edwin F.	11,111.10	10%	1,111.11
1489	Teng, Tian	11,111.11	10%	1,111.11
1505	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
1506	Vicente, Myra R.	11,111.10	10%	1,111.11
1507	Vicente, Ornan S.	11,111.10	10%	1,111.11
1546	De Guzman, Edwin F.	11,111.10	10%	1,111.11
1633	Teng, Tian	11,111.10	10%	1,111.11
1648	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
1649	Vicente, Myra R.	11,111.10	10%	1,111.11
1650	Vicente, Ornan S.	11,111.10	10%	1,111.11
1692	De Guzman, Edwin F.	11,111.10	10%	1,111.11
1795	Teng, Tian	11,111.10	10%	1,111.11
1807	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
1808	Vicente, Myra R.	11,111.10	10%	1,111.11
1809	Vicente, Ornan S.	11,111.10	10%	1,111.11
1847	De Guzman, Edwin F.	11,111.10	10%	1,111.11
1932	Teng, Tian	11,111.10	10%	1,111.11
1948	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
1949	Vicente, Myra R.	11,111.10	10%	1,111.11
1950	Vicente, Ornan S.	11,111.10	10%	1,111.11
2001	De Guzman, Edwin F.	11,111.10	10%	1,111.11
2144	Teng, Tian	11,111.10	10%	1,111.11
2155	Vicente, Jeffrey S.	11,111.10	10%	1,111.11
2156	Vicente, Myra R.	11,111.10	10%	1,111.11
2157	Vicente, Ornan S.	11,111.10	10%	1,111.11
2204	De Guzman, Edwin F.	11,111.10	10%	1,111.11
2305	Teng, Tian	11,111.10	10%	1,111.11
2318	Vicente, Jeffrey S.	11,111.10	10%	1,111.11

2320	Vicente, Myra R.	11,111.10	10%	1,111.11
2321	Vicente, Ornan S.	11,111.10	10%	1,111.11
	Total	**₱666,666.01**		**₱66,666.60**

Given that the assessed amount can be sufficiently traced to the submitted *Alphalist of Payees*,[117] the Court finds that the cancellation of the assessment pertaining to the director's fees amounting to ₱666,667.00 is appropriate.

On the other hand, although petitioner submitted its *Alphalist of Payees* and BIR Form Nos. 1601-E and 1604-E, it failed to provide any explanation or supporting documents to reconcile the discrepancies concerning commission, materials, office supplies, and fuel and oil expenses. Thus, in the absence of sufficient substantiation, the assessed amount of ₱28,400,572.34[118] still stands.

B. Undeclared Receipts

Respondent assessed petitioner for undeclared receipts by comparing the grossed-up value of creditable taxes withheld at the 1% rate, totaling ₱3,354,631.00,[119] against the sales reported in the ITR,[120] which amounted to ₱215,651,806.00,[121] as shown in the computation below:[122]

Creditable Taxes Withheld	₱3,354,631.00
Divided by EWT Rate	1%
Total Sales per BIR Form No. 2307	**335,463,100.00**
Less: Sales per FS/ITR	215,651,806.00
Undeclared Receipts	**₱119,811,294.00**

Petitioner argues that it had religiously declared its income or receipts for the taxable period 2017, and that its income for taxable year 2017 is only ₱215,651,806.00. Petitioner likewise claims that its creditable withholding tax per BIR Form No. 2307 amounting to ₱3,354,631.00 were withheld by its diverse clients based on various rates of 1%, 2%, 3%, and 10%.

Petitioner further claims that the appropriate and other competent pieces of evidence (*e.g.*, BIR Form No. 2307, Contracts/Purchase Orders/Statement of Accounts, Official Receipts, etc.) were submitted to the respondent when it filed its *Request for Reinvestigation*.

[117] Exhibit "P-66-1", Docket – Vol. 2, at pp. 667 to 668.
[118] Sum of discrepancies for commission of ₱5,457,043.70, materials of ₱21,728,429.64, office supplies of ₱966,713.00, and fuel and oil of ₱248,386.00.
[119] Schedule 7, Lines 5 and 6, Exhibit "P-10", Docket – Vol. I, p. 443.
[120] Par. 37.2, respondent's *Answer (With Special and Affirmative Defenses)*, Docket – Vol I, p. 101.
[121] Schedule 1, Exhibit "P-10", Docket – Vol. I, p. 440.
[122] Exhibit "P-5-2", Docket – Vol. I, p. 34.

Hence, petitioner believes that any assessment attributable to the alleged undeclared receipts amounting to ₱119,811,294.00 should be cancelled as there were no such undeclared receipts.[123]

Based on records, petitioner's total creditable taxes withheld amounting to ₱3,354,631.00,[124] as declared in the petitioner's Annual ITR, were supported by *Certificate of Creditable Tax Withheld at Source* (BIR Form No. 2307), reflecting the related total income payments of ₱190,582,432.91, as shown below:

Exhibit	Reference	Payor's Name	Amount of income payment	Rate	Amount of Tax Withheld
"R-1"	BIR Records (Green Envelope 2), p. 442	ATENEO DE MANILA UNIVERSITY	₱111,607.14	2%	₱2,232.14
"R-1"	BIR Records (Green Envelope 2), p. 441	ATENEO DE MANILA UNIVERSITY	3,895,089.11	2%	77,901.78
"R-1"	BIR Records (Green Envelope 2), p. 440	CASTLETOWN HOUSE BUSINESS CORP	3,214,625.86	2%	64,292.52
"R-1"	BIR Records (Green Envelope 2), p. 439	CHBCNET	634,826.28	2%	12,696.53
"R-1"	BIR Records (Green Envelope 2), p. 438	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	817,500.00	2%	16,350.00
"R-1"	BIR Records (Green Envelope 2), p. 437	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	5,546,802.00	2%	110,936.04
"R-1"	BIR Records (Green Envelope 2), p. 436	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	1,848,473.50	2%	36,969.47
"R-1"	BIR Records (Green Envelope 2), p. 436	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	100,000.00	1%	1,000.00
"R-1"	BIR Records (Green Envelope 2), p. 435	DATALEC TECHNOLOGY CORPORATION	55,357.17	2%	1,107.14
"R-1"	BIR Records (Green Envelope 2), p. 434	DHL GLOBAL FORWARDING PHILIPPINES, INC.	26,770.41	2%	535.41
"R-1"	BIR Records (Green Envelope 2), p. 434	DHL GLOBAL FORWARDING PHILIPPINES, INC.	42,857.14	1%	428.57
"R-1"	BIR Records (Green Envelope 2), p. 433	FILINVEST LAND, INC.	803,571.00	1%	8,035.71
"R-1"	BIR Records (Green Envelope 2), p. 432	HEVA MANAGEMENT & DEV'T CORP. (GAISANO SORSOGON)	1,031,250.00	2%	20,625.00
"R-1"	BIR Records (Green Envelope 2), p. 431	HEVA MANAGEMENT & DEV'T CORP. (GAISANO SORSOGON)	883,928.50	2%	17,678.57
"R-1"	BIR Records (Green Envelope 2), p. 430	HEVA MANAGEMENT & DEV'T CORP. (GAISANO SORSOGON)	736,607.00	2%	14,732.14
"R-1"	BIR Records (Green Envelope 2), p. 429	HOLY CROSS OF DAVAO COLLEGE INC.	267,857.14	2%	5,357.14
"R-1"	BIR Records (Green Envelope 2), p. 423	HOLY CROSS OF DAVAO COLLEGE INC.	491,071.43	2%	9,821.43
"R-1"	BIR Records (Green Envelope 2), p. 422	IBM PHILIPPINES, INC.	5,253,571.50	2%	105,071.43
"R-1"	BIR Records (Green Envelope 2), p. 428	MANULIFE DATA SERVICES, INC.	784,705.00	2%	15,694.10

[123] Par. 7.2(A), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, p. 17.
[124] Schedule 7, Lines 5 and 6, Exhibit "P-10", Docket – Vol. I, p. 443.

"R-1"	BIR Records (Green Envelope 2), p. 427	MICROSOFT PHILIPPINES INC.	2,559,279.44	1%	25,592.79
"R-1"	BIR Records (Green Envelope 2), p. 426	MICROSOFT PHILIPPINES INC.	472,969.06	2%	9,459.38
"R-1"	BIR Records (Green Envelope 2), p. 425	MULTISTYLE SPECIALIST INC.	41,872,435.54	1%	418,724.36
"R-1"	BIR Records (Green Envelope 2), p. 424	SAMSUNG ELECTRONICS PHILIPPINES CORPORATION	29,500.00	1%	295.00
"R-1"	BIR Records (Green Envelope 2), p. 424	SAMSUNG ELECTRONICS PHILIPPINES CORPORATION	285,000.00	2%	5,700.00
"R-1"	BIR Records (Green Envelope 2), p. 421	SANDZ SOLUTIONS PHILIPPINES INC.	114,952.79	2%	2,299.06
"R-1"	BIR Records (Green Envelope 2), p. 420	TPPH-FHCS, INC.	408,783.90	2%	8,175.68
"R-1"	BIR Records (Green Envelope 2), p. 419	WPP MARKETING COMMUNICATIONS, INC. - MILLWARD BROWN PHILIPPINES	572,418.85	2%	11,448.38
		Subtotal – 1st Quarter	**₱72,861,809.76**		**₱1,003,159.77**
"R-1"	BIR Records (Green Envelope 2), p. 417	ATENEO DE MANILA UNIVERSITY	285,714.28	2%	5,714.29
"R-1"	BIR Records (Green Envelope 2), p. 416	ATENEO DE MANILA UNIVERSITY	23,204.73	2%	464.09
"R-1"	BIR Records (Green Envelope 2), p. 415	ATENEO DE MANILA UNIVERSITY	13,210.64	2%	264.21
"R-1"	BIR Records (Green Envelope 2), p. 414	ATENEO DE MANILA UNIVERSITY	111,607.14	2%	2,232.14
"R-1"	BIR Records (Green Envelope 2), p. 413	ATENEO DE MANILA UNIVERSITY	71,428.57	2%	1,428.57
"R-1"	BIR Records (Green Envelope 2), p. 412	BUSINESS PROCESS OUTSOURCING INT'L INC.	7,700.00	2%	154.00
"R-1"	BIR Records (Green Envelope 2), p. 411	CASTLETOWN HOUSE BUSINESS CORP.	1,348,202.54	2%	26,964.05
"R-1"	BIR Records (Green Envelope 2), p. 410	CASTLETOWN HOUSE BUSINESS CORP	1,825,131.65	2%	36,502.63
"R-1"	BIR Records (Green Envelope 2), p. 409	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	249,034.00	2%	4,980.68
"R-1"	BIR Records (Green Envelope 2), p. 408	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	5,439,742.00	2%	108,794.84
"R-1"	BIR Records (Green Envelope 2), p. 407	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	715,879.50	2%	14,317.59
"R-1"	BIR Records (Green Envelope 2), p. 406	DB SCHENKER GLOBAL SERVICES ASIA PACIFIC INC	1,480,000.00	2%	29,600.00
"R-1"	BIR Records (Green Envelope 2), p. 405	DB SCHENKER GLOBAL SERVICES ASIA PACIFIC INC	1,110,000.00	2%	22,200.00
"R-1"	BIR Records (Green Envelope 2), p. 404	FILINVEST LAND, INC.	1,651,785.50	2%	33,035.71
"R-1"	BIR Records (Green Envelope 2), p. 403	HONDA PHILIPPINES, INC.	17,000.00	2%	340.00
"R-1"	BIR Records (Green Envelope 2), p. 402	MANULIFE DATA SERVICES, INC.	379,464.50	2%	7,589.29
"R-1"	BIR Records (Green Envelope 2), p. 400	MICROSOFT PHILPPINES INC.	94,593.81	2%	1,891.88
"R-1"	BIR Records (Green Envelope 2), p. 401	MULTISTYLE SPECIALIST INC.	38,607,097.99	2%	772,141.96
"R-1"	BIR Records (Green	TELEPHILIPPINES INC.		2%	

	Envelope 2), p. 399		5,593,613.00		111,872.26
"R-1"	BIR Records (Green Envelope 2), p. 398	TELEPHILIPPINES INC.	909,141.50	2%	18,182.83
"R-1"	BIR Records (Green Envelope 2), p. 397	THAKRAL INFOTECH INC.	150,000.00	2%	3,000.00
"R-1"	BIR Records (Green Envelope 2), p. 396	TOWERS WATSON ASIA PACIFIC SHARED SERVICE CENTER	41,780.90	2%	835.62
"R-1"	BIR Records (Green Envelope 2), p. 395	TOWERS WATSON ASIA PACIFIC SHARED SERVICE CENTER	41,781.00	2%	835.62
"R-1"	BIR Records (Green Envelope 2), p. 394	TOWERS WATSON GLOBAL BUSINESS SERVICES INC.	44,353.61	2%	887.07
"R-1"	BIR Records (Green Envelope 2), p. 418, Item 34	TOWERS WATSON GLOBAL BUSINESS SERVICES INC.	44,353.61	2%	887.07
"R-1"	BIR Records (Green Envelope 2), p. 392	TPPH-FHCS, INC.	348,873.33	2%	6,977.47
		Subtotal – 2nd Quarter	**₱60,604,693.80**		**₱1,212,093.87**
"R-1"	BIR Records (Green Envelope 2), p. 389	8INFINITY BUILDERS CORP.	8,474.49	2%	169.49
"R-1"	BIR Records (Green Envelope 2), p. 388	8INFINITY BUILDERS CORP.	133,928.57	2%	2,678.57
"R-1"	BIR Records (Green Envelope 2), p. 387	ATENEO DE MANILA UNIVERSITY	527,142.85	2%	10,542.86
"R-1"	BIR Records (Green Envelope 2), p. 386	ATENEO DE MANILA UNIVERSITY	11,377,765.24	2%	227,555.30
"R-1"	BIR Records (Green Envelope 2), p. 385	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	1,393,377.00	2%	27,867.54
"R-1"	BIR Records (Green Envelope 2), p. 384	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	1,693,420.00	2%	33,868.40
"R-1"	BIR Records (Green Envelope 2), p. 383	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	2,964,452.00	2%	59,289.04
"R-1"	BIR Records (Green Envelope 2), p. 382	DATALEC TECHNOLOGY CORPORATION	13,839.25	2%	276.79
"R-1"	BIR Records (Green Envelope 2), p. 381	FILINVEST LAND, INC.	16,518.00	2%	330.36
"R-1"	BIR Records (Green Envelope 2), p. 380	IBM PHILIPPINES, INC.	1,753,697.50	2%	35,073.95
"R-1"	BIR Records (Green Envelope 2), p. 379	MANULIFE DATA SERVICES, INC.	683,571.50	2%	13,671.43
"R-1"	BIR Records (Green Envelope 2), p. 378	MANULIFE DATA SERVICES, INC.	330,357.00	2%	6,607.14
"R-1"	BIR Records (Green Envelope 2), p. 377	MANULIFE DATA SERVICES, INC.	2,128,500.00	2%	42,570.00
"R-1"	BIR Records (Green Envelope 2), p. 376	MANULIFE DATA SERVICES, INC.	269,242.00	2%	5,384.84
"R-1"	BIR Records (Green Envelope 2), p. 375	MANULIFE DATA SERVICES, INC.	81,619.50	2%	1,632.39
"R-1"	BIR Records (Green Envelope 2), p. 374	MANULIFE DATA SERVICES, INC.	273,958.00	2%	5,479.16
"R-1"	BIR Records (Green Envelope 2), p. 373	NCR CEBU DEVELOPMENT CENTER, INC.	40,000.00	2%	800.00
"R-1"	BIR Records (Green Envelope 2), p. 372	POINTWEST INNOVATIONS CORPORATION	1,394.28	2%	27.89
"R-1"	BIR Records (Green Envelope 2), p. 371	ROXACO-VANGUARD HOTEL CORP.	2,450,000.00	2%	49,000.00

		Subtotal – 3rd Quarter	**₱26,141,257.18**		**₱522,825.15**
"R-1"	BIR Records (Green Envelope 2), p. 369	8INFINITY BUILDERS CORP.	44,642.86	2%	892.86
"R-1"	BIR Records (Green Envelope 2), p. 368	8INFINITY BUILDERS CORP.	125,000.00	2%	2,500.00
"R-1"	BIR Records (Green Envelope 2), p. 367	8INFINITY BUILDERS CORP.	267,857.14	2%	5,357.14
"R-1"	BIR Records (Green Envelope 2), p. 366	8INFINITY BUILDERS CORP.	23,000.00	2%	460.00
"R-1"	BIR Records (Green Envelope 2), p. 365	ATENEO DE MANILA UNIVERSITY	865,764.80	2%	17,315.30
"R-1"	BIR Records (Green Envelope 2), p. 364	ATENEO DE MANILA UNIVERSITY	2,127,182.29	2%	42,543.65
"R-1"	BIR Records (Green Envelope 2), p. 363	CONCENTRIX DAKSH SERVICES PHILIPPINES CORP.	2,286,677.50	2%	45,733.55
"R-1"	BIR Records (Green Envelope 2), p. 362	CONCENTRIX DAKSH SERVICES PHILIPPINES CORPORATION	1,408,520.00	2%	28,170.40
"R-1"	BIR Records (Green Envelope 2), p. 361	CONCENTRIX DAKSH SERVICES PHILIPPINES CORPORATION	2,132,989.50	2%	42,659.79
"R-1"	BIR Records (Green Envelope 2), p. 360	IBM PHILIPPINES, INC.	8,639,180.00	2%	172,783.60
"R-1"	BIR Records (Green Envelope 2), p. 359	INTELENET GLOBAL PHILIPPINES, INC.	69,177.83	2%	1,383.56
"R-1"	BIR Records (Green Envelope 2), p. 358	SAMSUNG ELECTRONICS PHILIPPINES CORPORATION	29,500.00	1%	295.00
"R-1"	BIR Records (Green Envelope 2), p. 357	SAMSUNG ELECTRONICS PHILIPPINES CORPORATION	35,000.00	2%	700.00
"R-1"	BIR Records (Green Envelope 2), p. 356	CASTLETOWN HOUSE BUSINESS CORP.	2,737,697.23	2%	54,753.94
"R-1"	BIR Records (Green Envelope 2), p. 355	DATALEC TECHNOLOGY CORPORATION	71,428.58	2%	1,428.57
"R-1"	BIR Records (Green Envelope 2), p. 354	DB SCHENKER GLOBAL SERVICES ASIA PACIFIC INC	740,000.00	2%	14,800.00
"R-1"	BIR Records (Green Envelope 2), p. 353	EM-AMEN COMMUNICATORS, INC.	22,321.43	1%	223.21
"R-1"	BIR Records (Green Envelope 2), p. 352	HONDA PHILIPPINES, INC.	86,754.51	2%	1,735.09
"R-1"	BIR Records (Green Envelope 2), p. 351	HONDA PHILIPPINES, INC.	173,509.01	2%	3,470.18
"R-1"	BIR Records (Green Envelope 2), p. 350	IBM PHILIPPINES, INC.	8,705,000.00	2%	174,100.00
"R-1"	BIR Records (Green Envelope 2), p. 349	MICROSOFT PHILPPINES INCORPORATION	242,322.69	1%	2,423.23
"R-1"	BIR Records (Green Envelope 2), p. 348	NEXUS TECHNOLOGIES, INC.	34,311.50	2%	686.23
"R-1"	BIR Records (Green Envelope 2), p. 347	TOWERS WATSON ASIA PACIFIC SHARED SERVICES CENTER	106,835.31	2%	2,136.71
		Subtotal – 4th Quarter	**₱30,974,672.18**		**₱616,552.01**
		Grand Total	**₱190,582,432.92**		**₱3,354,630.80**

Respondent's assessment arose by taking the grossed-up value of petitioner's tax credits during the year presuming that the income payments were subject to a uniform rate of 1%, automatically resulting to a higher tax base amount, then compared it with the income declared by petitioner in its Annual ITR. Based on the certificates found in the records of the case, petitioner's tax credits were withheld by its clients using the tax rates of 1% and 2%, as correctly pointed out by petitioner, thereby reflecting the actual income payments of ₱190,582,432.92. Apparently, the income payments per certificates, as used by respondent in its comparison and as basis of its assessment, is actually lower than the income payments declared by petitioner in its Annual ITR. As such, the Court finds that petitioner had no undeclared income subject to income tax and that respondent's assessment lacks factual basis and, thus, must be cancelled.

C. Disallowed Purchases

The alleged disallowed purchases amounting to ₱21,731,187.86 resulted from the respondent's comparison of the petitioner's purchase of materials recorded under Cost of Sales in the ITR with the total purchases reported in the VAT returns, computed as follows:[125]

Purchases of Materials per FS/ITR	₱101,014,292.00
Less: Purchase of Materials per VAT returns	79,283,104.14[126]
Disallowed Purchases	**₱21,731,187.86**

Petitioner avers that the purchases of materials claimed as cost of sales per ITR are ordinary and necessary expenses paid or incurred by the petitioner in carrying out its operations for taxable year 2017, and that the tax required to be deducted and withheld had been paid.

Petitioner also claims that the VAT returns are only among the many bases for the expenses of the petitioner.

Similarly, petitioner claims that the appropriate BIR Form No. 2307 and other competent pieces of evidence (*e.g.*, BIR Form No. 1604-E, BIR Form No. 2307, BIR Form No. 2550-M, BIR Form No. 2550-Q, Official Receipts, Check Vouchers & Ledger of Expenses, etc.) were submitted to respondent when it filed its Request for Reinvestigation.

Thus, petitioner believes that considering that the disallowed purchases amounting to ₱21,731,187.86 are ordinary and necessary expenses paid or incurred during taxable year 2017 in carrying out its operations, and that the tax

[125] Exhibit "P-5-4", Docket – Vol. I, p. 34.
[126] Exhibit "P-68", Docket – Vol. 2, pp. 673 to 703.

required to be deducted and withheld has been paid, therefore, the said amount should be allowed as deduction, and any assessment attributed thereto should be cancelled.[127]

While the Court agrees with the petitioner's position that the VAT returns are not the sole basis for determining purchases, it remains incumbent upon petitioner to substantiate and account for the discrepancy identified by the respondent, amounting to ₱21,731,187.86, through the submission of supporting documents.

Records show that the petitioner submitted its general ledger of expenses[128] related to purchases of goods other than capital goods, totaling ₱79,283,104.14, which aligns exactly with the amount declared in its VAT returns. However, petitioner failed to account for or reconcile the remaining discrepancy of ₱21,731,187.86.

It bears emphasis that, for business expenses to be deductible for income tax purposes, they must comply with the substantiation requirements set forth under Section 34(A)(1)(b) of the NIRC of 1997, which states:

> "(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

In fine, it is proper to sustain the disallowance of purchases amounting to ₱21,731,187.86, due to petitioner's failure to account and substantiate the said amount.

D. Gain on Sale not subjected to Income Tax

According to respondent, a gain on sale was reported by the petitioner in its audited FS amounting to ₱335,000.00, but was not reported in its annual ITR. Respondent opined that such gain is considered taxable income under Section 31, in relation to Section 32 of the NIRC of 1997, as amended.[129]

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[127] Par. 7.1(C), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 15 to 16.
[128] Exhibit "P-68", Docket – Vol. 2, pp. 673 to 703.
[129] Par. 37.4, respondent's *Answer (With Special and Affirmative Defenses)*, Docket – Vol I, p. 101.

On the other hand, petitioner argues that the alleged gain on sale amounting to ₱335,000.00 is a sale of capital asset subject to 6% capital gains tax as provided under Section 39 of the NIRC, as amended. Petitioner posits that the alleged non-reporting of the said gain on sale in the Annual ITR does not mean that the appropriate tax has not been paid. Hence, petitioner avers that the assessment attributed to such gain on sale should be cancelled.[130]

It is worth noting that Section 2.57(A) of RR No. 2-98 provides that, under the final withholding tax system, the amount of income tax withheld by the withholding agent shall constitute the full and final payment of the income tax due from the payee on such income. Furthermore, the said regulations states that the payee is not required to file an ITR with respect to income that has been subjected to final withholding tax.

In this case, considering that the alleged gain arose from the sale of a capital asset, which is classified as income subject to final tax, such income need not be reported in the petitioner's ITR. However, records show that petitioner failed to present competent evidence to substantiate its claim that the transaction involved a capital asset and that the corresponding capital gains tax was duly paid and remitted. At the very least, petitioner should have submitted proof of payment and remittance of the capital gains tax (*i.e.,* BIR Form Nos. 1706 or 1707) to support its assertion. Indeed, allegations are not evidence, and without evidence, bare allegations do not prove facts.[131]

Accordingly, the assessment on the gain from sale not subjected to income tax in the amount of ₱335,000.00 is sustained.

E. Overclaimed Depreciation Expenses

According to respondent, a verification disclosed that petitioner claimed depreciation expense in excess of the ceiling prescribed by the RR No. 12-2012. Hence, the excess depreciation expense amounting to ₱807,907.79 is disallowed pursuant to Section 34(F) of the NIRC, as amended.[132] The computation of the overclaimed depreciation expense is shown below:[133]

Cost of Transportation Equipment as of 12.31.2017	₱7,827,645.09
Less: Threshold allowed by RR No. 12-2012	2,400,000.00
Excess Transportation Equipment	**₱5,427,645.09**
Depreciation on Transportation Equipment	₱1,165,149.04
Multiplied by: ₱5,427,645.09 / ₱7,827,645.09	69.34%
Overclaimed Depreciation Expense	**₱807,907.79**

[130] Par. 7.1(D), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, p. 16.
[131] *Sabellina vs. Buray et al.*, G.R. No. 187727, September 2, 2015.
[132] Par. 37.4, respondent's *Answer (With Special and Affirmative Defenses)*, Docket – Vol I, p. 102.
[133] Exhibit "P-5-5", Docket – Vol. I, p. 34.

Petitioner argues that it has five (5) vehicles reported in its audited FS. Further, petitioner posits that Section 3(B) of RR No. 12-2012 allows a threshold of ₱2,400,000.00 per official or employee. According to petitioner, its reported vehicles are being used by at least five (5) of its officials and/or employees to carry out its business operation. Thus, the allowable threshold for these vehicles should be ₱12,000,000.00.

Petitioner likewise claims it submitted competent pieces of evidence (*e.g.*, Certificate of Registration and Official Receipts, etc.) when it filed its *Request for Reinvestigation.*[134]

Pursuant to Section 3(B) of RR No. 12-2012,[135] only one (1) vehicle for land transportation is allowable for depreciation per official or employee, provided that the acquisition cost of the said vehicle does not exceed ₱2,400,000.00.

For easy reference, Section 3 of RR No. 12-2012 which sets forth the guidelines on the deductibility of depreciation expenses for vehicles used in business operations, is reproduced below:

> "A. No deduction from gross income for depreciation shall be allowed unless the taxpayer substantiates the purchase with sufficient evidence, such as official receipts or other adequate records which contain the following, among others:
>
> i. Specific Motor Vehicle Identification Number, Chassis Number, or other registrable identification numbers of the Vehicle;
>
> ii. The total price of the specific Vehicle subject to depreciation; and
>
> iii. The direct connection or relation of the Vehicle to the development, management, operation, and/or conduct of the trade or business or profession of the taxpayer;
>
> B. **Only one Vehicle for land transport is allowed for the use of an official or employee, the value of which should not exceed Two Million Four Hundred Thousand Pesos (Php2,400,000.00);**" *(Emphasis added)*

[134] Par. 7.1(E), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, p. 16.
[135] SUBJECT: Deductibility of Depreciation Expenses as it Relates to Purchase of Vehicles and Other Expenses Related Thereto, and Input Taxes Allowed Therefor

Based on the above-cited regulations, in order for a vehicle to qualify for depreciation, petitioner must establish the following: (1) that the purchase of vehicle is duly substantiated; (2) that the cost of each vehicle assigned to its employees must not exceed the ₱2,400,000.00 threshold; and (3) that only one (1) vehicle for land transport per official or employee may be claimed for depreciation.

To support its claim, petitioner submitted before this Court *Certificates of Registration* (CRs), showing the specific identification details of the vehicle (*i.e.,* the engine number, chassis number, and plate number) and the corresponding *Official Receipts* (ORs),[136] issued by the Land Transportation Office, reflecting the payment details of the registration fees corresponding to the vehicles.

Notwithstanding the presentation of the said documents, petitioner still failed to present proof that the acquisition cost of the subject vehicles did not exceed the ₱2,400,000.00 threshold, and that only one (1) vehicle was assigned per official or employee. Petitioner should have at least submitted a sales invoice or deed of sale to prove the vehicle's purchase price. Without such evidence, petitioner cannot prove that there is no overclaimed depreciation expense under RR No. 12-2012.

Accordingly, the Court finds that the disallowance of the overclaimed depreciation expense amounting to ₱807,907.79 is proper for failure of petitioner to substantiate its claim.

F. Disallowed Representation and Entertainment Expense

Respondent disallowed petitioner's representation and entertainment expenses amounting to ₱773,921.95 on the ground that it exceeded the allowable limit of one percent (1%) of net revenue, in accordance with Section 34(A)(1)(a)(iv) of the NIRC, as implemented by RR No. 10-2002, computed as follows:[137]

Representation and Entertainment per ITR		₱2,930,440.00
Less: Allowable Representation and Entertainment		
Net Sales	₱215,651,805.00	
Multiply by: Allowable Rate 1% Services	.01	2,156,518.05
Disallowed Representation and Entertainment Expense		**₱773,921.95**

Petitioner posits that the representation and entertainment expense were incurred by petitioner during the taxable year 2017 under Section 34(A)(1)(a)(iv) of the NIRC and that it is within the maximum allowance. Thus,

[136] Exhibits "P-8-1" to "P-8-7", Docket – Vol. III, pp. 1278 to 1281.
[137] Exhibit "P-5-6", Docket – Vol. I, p. 35.

the disallowed representation and entertainment expense should be allowed as deduction and any assessment attributed thereto should be cancelled, especially so that it submitted competent pieces of evidence such as Official Receipts, Check Vouchers, Disbursement Journals, etc. when it filed its *Request for Reinvestigation.*[138]

The Court is not convinced with petitioner's contention.

Section 34(A)(1)(a)(iv) of the NIRC of 1997 authorizes the imposition of a ceiling on the deductibility of entertainment, amusement, and recreation expenses. This is implemented by Section 5 of RR No. 10-2002,[139] which prescribes the following ceilings: (1) for taxpayer engaged in sale of goods or properties, the deduction for entertainment, amusement, and recreation expense should not exceed 0.50 percent of net sales (*i.e.,* gross sales less sales returns/allowances and sales discounts); and (2) for taxpayers engaged in sale of services, including exercise of profession and use or lease of properties, the deduction for entertainment, amusement, and recreation expense should not exceed 1% of net revenue (*i.e.,* gross revenue less discounts).

Records show that the petitioner failed to explain its claim or provide supporting documents to justify the representation and entertainment expense. Mere assumptions that the claimed amount falls within the allowable ceiling are insufficient.

To reiterate, bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[140] Accordingly, the disallowance of ₱773,921.95 is hereby sustained.

In fine, petitioner is liable for basic deficiency income tax of ₱15,614,577.08, computed as follows:

Taxable Income (Loss) per return		₱ 58,242,537.00
Add: Adjustments/disallowances		
Disallowed Expenses due to non-withholding	₱28,400,572.34	
Disallowed Purchases	21,731,187.86	
Gain on sale not subjected to Income Tax	335,000.00	
Overclaimed Depreciation Expense	807,907.79	
Disallowed Representation and Entertainment	773,921.95	52,048,589.94
Adjusted Taxable Income		**₱110,291,126.94**
Multiplied by Income Tax Rate		30%
Income Tax Due		**₱ 33,087,338.08**

[138] Par. 7.1(F), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 16 to 17.
[139] SUBJECT: Implementing the Provisions of Section 34(A)(1)(a)(iv) of the Tax Code of 1997, Authorizing the Imposition of a Ceiling on "Entertainment, Amusement and Recreational Expenses"
[140] *Ermelinda C. Manaloto, et al. vs. Ismael Veloso III*, G.R. No. 171365, October 6, 2010.

Less: Tax Credits/Payments		
Income tax payments	14,118,130.00	
Creditable Tax Withheld	3,354,631.00	17,472,761.00
Basic Deficiency Income Tax		**₱ 15,614,577.08**

II. VAT

Petitioner was assessed of deficiency VAT in the amount of ₱45,989,801.06,[141] computed as follows:

Taxable sales/receipts per VAT return		₱ 158,807,539.95
Add: Adjustments/disallowances		
Undeclared Receipts	₱119,811,294.84	
Unsupported Zero-rated sales	56,844,265.21	176,655,560.05
Taxable sales/receipts as adjusted		**₱335,463,100.00**
Output Tax Due		₱ 40,255,572.00
Less: Allowable input tax per audit		
Input tax from current period	₱ 11,933,378.33	
Input tax carried over from previous period	18,261,516.03	
Total	₱ 30,194,894.36	
Less: Input tax carried forward to succeeding period	12,135,122.79	
Disallowed Input Taxes	12,584,695.74	5,475,075.82
VAT Payable		₱ 34,780,496.18
Less: VAT payments per audit		997,133.22
Basic Tax Due		₱ 33,783,362.96
Add: Interest 12% (01.26.18 to 01.29.21)		12,206,438.10
TOTAL AMOUNT DUE		**₱45,989,801.06**

The assessment of deficiency value added tax was based on the following grounds:

A. Undeclared receipts	₱119,811,294.84
B. Unsupported Zero-rated sales	56,844,265.21
C. Input tax carried forward to the succeeding period	12,135,122.79
D. Disallowed input taxes	12,584,695.74

A. Undeclared Receipts

Respondent, upon verification, alleged that petitioner failed to declare the amount of ₱119,811,294.84 as gross sales, and consequently, such gross sales were not subjected to VAT pursuant to Section 108 of the NIRC, as amended. The computation of the total undeclared receipts is shown below:[142]

[141] Exhibit "P-5", Docket – Vol. I, at p. 31.
[142] Exhibit "P-5-3", Docket – Vol. I, p. 35.

Total Sales per BIR Form 2307	₱335,463,100.00
Less: Sales per VAT Returns	215,651,805.16
Undeclared Receipts	**₱119,811,294.84**

To reiterate, in the above discussion under Part I, Section B, petitioner claims the following: (1) it had religiously declared its income or receipts for the taxable period 2017; (2) its income for taxable year 2017 is only ₱215,651,806.00; (3) its creditable withholding tax per BIR Form No. 2307 amounting to ₱3,354,631.00 were withheld by its diverse clients based on various rates of 1%, 2%, 3%, and 10%; and (4) the appropriate and other competent pieces of evidence (*e.g.,* BIR Form No. 2307, Contracts/Purchase Orders/Statement of Accounts, Official Receipts, etc.) were submitted to the respondent when it filed its *Request for Reinvestigation.*

As discussed under Part I, Section B, We find that petitioner had no undeclared income and that respondent's assessment is void for lack of factual basis, thus the deficiency VAT assessment pertaining thereto must likewise be cancelled.

B. Unsupported Zero-rated Sales

Respondent alleged that petitioner failed to present evidence or supporting documents to substantiate its claimed zero-rated sales amounting to ₱56,844,265.21, as required under Section 108(B)(2) of the NIRC, as amended.

On the contrary, petitioner argues that its sales amounting to ₱56,844,265.21 pertains to zero-rated transactions/sales as these are transactions made to Philippine Economic Zone Authority (PEZA) -registered ecozone IT (Export) Enterprises, such as Concentrix Daksh Services Philippines Corporation (with Registration Certificate No. 03-25-IT), DB Schenker Global Services Asia Pacific, Inc. (with Registration Certificate No. 15-195), NCR Cebu Development Center, Inc. (with Registration Certificate No. 04-05-IT), and Towers Watson Global Business Services, Inc. (with Registration Certificate No. 11-110-IT), among others, in accordance with Sections 4.106-6 and 4.108-6 of RR No. 16-2005, as amended.

Moreover, petitioner claims that it likewise submitted PEZA Certificates, Contracts/Purchase Orders, Official Receipts, and the like, when it filed its *Request for Reinvestigation.*[143]

To prove that its clients are PEZA-registered entities, petitioner submitted relevant PEZA Certifications as enumerated below:

[143] Part. 7.2(B), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 17 to 18.

Exhibit	Customer Name	Certificate No.	Validity
"P-55"[144]	Concentrix Daksh Services Philippines Corporation formerly IBM Daksh Business Process Services Philippines, Incorporated	2017-1651	Year 2017
"P-56"[145]	Concentrix Services Corporation formerly Synnex-Concentrix Corporation; Link2support, Inc.	2017-2158 update No. 0027	Year 2017
"P-57"[146]	Concur (Philippines), Inc.	2017-2446	Year 2017
"P-58"[147]	DB Schenker Global Services Asia Pacific, Inc.	2017-1366	Year 2017
"P-59"[148]	NCR Cebu Development Center, Inc.	2017-1952	Year 2017
"P-60"[149]	Pointwest Innovations Corporation	2017-1406	Year 2017
"P-61"[150]	Telco Services International Pty. Ltd. – Branch Office	2017-0422	Year 2017
"P-62"[151]	Telephilippines Incorporated	2017-0839	Year 2017
"P-64"[152]	TPPH-CRM, Inc. formerly Aegis Services Philippines, Inc.	2017-0840	Year 2017
"P-65"[153]	TPPH-FHCS, Inc. formerly Aegis People Support, Inc.	2017-0861	Year 2017
"R-1"[154]	Towers Watson Global Business Services, Inc.	2017-0649	Year 2017

Consequently, based on the evidence submitted, the petitioner's sale should be properly classified as either "considered export sale" under Section 106(A)(2)(a)(5) (for sale of goods) or Section 108(B)(3) (for sale of services) of the NIRC of 1997, as amended, rather than as "effectively zero-rated sale of services to non-resident affiliates" under Section 108(B)(2) of the same code.

To determine whether petitioner's sales are subject to VAT at zero percent (0%) under Section 106(A)(2)(a)(5) or Section 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5 and 4.108-5 of RR No. 16-2005, as amended by RR No. 04-07, the following essential elements must be present, to wit:

1. the sale was made by a VAT registered person; and

2. there was sale of goods or services to an entity entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

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[144] Docket – Vol. 2, p. 605.
[145] Docket – Vol. 2, p. 606.
[146] Docket – Vol. 2, p. 607.
[147] Docket – Vol. 2, p. 608.
[148] Docket – Vol. 2, p. 609.
[149] Docket – Vol. 2, p. 610.
[150] Docket – Vol. 2, p. 611.
[151] Docket – Vol. 2, p. 612.
[152] Docket – Vol. 2, p. 615.
[153] Docket – Vol. 2, p. 616.
[154] BIR Records (Green Envelope 2), p. 448.

With respect to the *first* essential element, the Court notes that petitioner did not submit its Certificate of Registration (BIR Form No. 2303) to establish that it is a VAT-registered person. However, a review of the ORs and *Billing Statements*[155] submitted to the Court reveals that a VAT Registration Taxpayer Identification Number (TIN) 213-004-699-000 is indicated therein. The same TIN number appears on the FAN issued by respondent. As such, petitioner qualifies as a VAT-registered person for purposes of this determination.

As for the *second* essential element, a VAT-registered person asserting VAT zero-rating on its sales must submit, among others, the following documentary evidence:

1. the sales invoice or official receipts as proof of sale of goods or services; and

2. proof of entitlement to zero-rating under the Omnibus Investment Code or other special laws.

As shown in the table above, petitioner submitted various PEZA *Certifications* issued to its customers, thereby satisfying the requirement for the *second* type of supporting document. Accordingly, only sales made to customers with valid PEZA Certifications may be classified as sales subject to VAT zero-rating.

With respect to the *first* type of supporting document, petitioner presented various ORs with the corresponding *Billing Statements*[156] to support its alleged zero-rated sales.

A review of the submitted ORs and corresponding *Billing Statements* shows that petitioner was able to substantiate only ₱50,058,398.01 of its claimed zero-rated sales, out of the total reported amount of ₱56,844,265.21. Accordingly, the unsubstantiated portion amounting to ₱6,785,867.20 is sustained.

Further examination shows that the sales in the amount of ₱4,252,762.82 must be disallowed due to the absence of PEZA *Certifications*, as itemized below:

Sales not supported by PEZA Certifications to validate zero-rating eligibility

[155] Exhibits "P-170" to "P-344", Docket – Vol. 2, pp. 794 to 1233. (Except those denied as per Resolutions dated June 29, 2023 and October 12, 2023, Docket – Vol. III, pp. 1265 to 1268 and 1294 to 1298, respectively).
[156] *Id.*

Exhibit No.	Reference	Customer Name	Amount of Sales
"P-191"	Docket - Vol. 2, p. 856	Concentrix Services Phils. (Minacs Group Inc)	₱ 14,500.00
"P-193"	Docket - Vol. 2, p. 861	Results Manila, Inc.	12,500.00
"P-194"	Docket - Vol. 2, p. 863	Results Manila, Inc.	12,500.00
"P-208"	Docket - Vol. 2, p. 904	TSD Global Inc.	12,500.00
"P-253"	Docket - Vol. 2, p. 990	TPPH Phils. Inc.	226,973.23
"P-254"	Docket - Vol. 2, p. 992	Pt. Sentosa Agung Mulya	1,357,525.00
"P-257"	Docket - Vol. 2, p. 997	Results Manila, Inc.	12,500.00
"P-286"	Docket - Vol. 2, p. 1069	Oceana Gold (Phils) Inc.	28,000.00
"P-298"	Docket - Vol. 2, p. 1102	TSD Global Inc.	25,000.00
"P-306"	Docket - Vol. 2, p. 1129	KMC Mag Solutions, Incorporated	10,000.00
"P-309"	Docket - Vol. 2, p. 1140	SCGS (Malaysia) SDN BHD	1,173,088.62
"P-328"	Docket - Vol. 2, p. 1186	SCGS (Malaysia) SDN. BHD	1,137,686.81
"P-338"	Docket - Vol. 2, p. 1219	Emirates	18,297.60
"P-339"	Docket - Vol. 2, p. 1221	Globe	17,049.85
"P-340"	Docket - Vol. 2, p. 1222	Intelenet Global Phils, Inc.	69,177.83
"P-341"	Docket - Vol. 2, p. 1224	SCGS (Malaysia) SDN BHD	94,213.88
"P-344"	Docket - Vol. 2, p. 1232	TSD Global Inc.	31,250.00
		Total	**₱4,252,762.82**

In addition, the amount of ₱25,466,216.93 must also be disallowed for failure to comply with the invoicing requirements prescribed under Section 113 (A) and (B) of the NIRC, as amended, and as implemented by Section 4.113-1 of RR No. 16-2005, as amended. The specific grounds for disallowance are detailed below:

1. Zero-rated sales supported by ORs that fail to specify the nature of the service, which is non-compliance to invoicing requirements			
Exhibit No.	**Reference (Docket)**	**Customer Name**	**Amount of Zero-rated Sales**
"P-170"	Vol. 2, p. 794	Telephilippines Inc.	₱ 1,007,239.87
"P-171"	Vol. 2, p. 796	Concentrix Daksh Serv. Phils. Corp.	157,500.00
"P-172"	Vol. 2, p. 798	Concentrix Daksh Serv. Phils. Corp.	91,000.00
"P-173"	Vol. 2, p. 803	Concentrix Daksh Serv. Phils. Corp.	764,235.02
"P-174"	Vol. 2, p. 813	Synnex Corporation/Concentrix Serv Corp.	60,867.55

"P-175"	Vol. 2, p. 815	Concentrix Services Corp.	200,000.00
"P-176"	Vol. 2, p. 817	Concentrix Services Corp.	35,000.00
"P-177"	Vol. 2, p. 819	Concentrix Services Corp.	120,000.00
"P-178"	Vol. 2, p. 821	Concentrix Services Corp.	340,000.00
"P-179"	Vol. 2, p. 825	Telephilippines Inc.	425,000.00
"P-180"	Vol. 2, p. 828	Telephilippines Inc.	42,500.00
"P-181"	Vol. 2, p. 830	Telephilippines Inc.	76,089.57
"P-182"	Vol. 2, p. 832	Concentrix Daksh Services Phils. Corp.	924,082.73
"P-183"	Vol. 2, p. 838	Concentrix Services Corp.	552,000.00
"P-184"	Vol. 2, p. 841	NCR Cebu Development Center Inc.	12,172.00
"P-185"	Vol. 2, p. 843	Concentrix Services Corp.	642,000.00
"P-186"	Vol. 2, p. 846	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	408,783.90
"P-187"	Vol. 2, p. 848	Concentrix Daksh Serv. Phils. Corp.	71,891.06
"P-188"	Vol. 2, p. 852	Pointwest Innovations Corporation	19,111.27
"P-190"	Vol. 2, p. 855	Concentrix Daksh Services Phils. Corp.	42,500.00
"P-192"	Vol. 2, p. 858	Concentrix Daksh Services Phils. Corp.	100,000.00
"P-195"	Vol. 2, p. 865	Concentrix Daksh Services Phils. Corp.	4,660,000.00
"P-196"	Vol. 2, p. 874	Telephilippines Inc.	64,208.19
"P-197"	Vol. 2, p. 876	Pointwest Innovations Corporation	140,000.00
"P-200"	Vol. 2, p. 881	Concentrix Daksh Serv ices Phils. Corp.	886,802.05
"P-201"	Vol. 2, p. 887	Concentrix Daksh Serv ices Phils. Corp.	90,000.00
"P-202"	Vol. 2, p. 889	Concentrix Daksh Serv ices Phils. Corp.	360,000.00
"P-203"	Vol. 2, p. 891	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	122,000.00
"P-205"	Vol. 2, p. 894	Concentrix Daksh Services Phils. Corp.	94,577.56
"P-206"	Vol. 2, p. 896	Concentrix Daksh Services Phils. Corp.	171,302.05
"P-207"	Vol. 2, p. 902	Towers Watson Global Business Services	44,353.61
"P-209"	Vol. 2, p. 906	DB Schenker Global Services Asia Pacific Inc	335,000.00
"P-210"	Vol. 2, p. 908	DB Schenker Global Services Asia Pacific Inc	1,480,000.00
"P-211"	Vol. 2, p. 910	DB Schenker Global Services Asia Pacific Inc	1,110,000.00
"P-212"	Vol. 2, p. 912	Concentrix Daksh Services Phils. Corp.	2,762,500.00
"P-213"	Vol. 2, p. 923	Concur (Philippines) Inc	61,658.75
"P-214"	Vol. 2, p. 925	Concentrix Daksh Services Phils. Corp.	86,000.00
"P-215"	Vol. 2, p. 927	Towers Watson Global Business Services, Inc.	44,353.61
"P-216"	Vol. 2, p. 929	Concentrix Daksh Services Phils. Corp.	70,000.00
"P-217"	Vol. 2, p. 931	Concentrix Daksh Services Phils. Corp.	478,000.00
"P-218"	Vol. 2, p. 933	Pointwest Innovations Corp.	19,111.27
"P-219"	Vol. 2, p. 935	Telephilippines Inc.	105,369.86
"P-220"	Vol. 2, p. 937	Telephilippines Inc.	109,876.93
"P-222"	Vol. 2, p. 940	Concentrix Daksh Services Phils. Corp.	94,577.56
"P-223"	Vol. 2, p. 942	Concentrix Daksh Services Phils. Corp.	35,402.99
"P-268"	Vol. 2, p. 1029	Concentrix Services Corporation	102,177.53
"P-269"	Vol. 2, p. 1032	Concentrix Services Corporation	381,616.34
"P-270"	Vol. 2, p. 1034	Concentrix Services Corporation	480,000.00
"P-271"	Vol. 2, p. 1036	Concentrix Services Corporation	30,240.00
"P-272"	Vol. 2, p. 1038	Concentrix Services Corporation	30,240.00
"P-273"	Vol. 2, p. 1040	Concentrix Services Corporation	15,507.69
"P-274"	Vol. 2, p. 1041	Concentrix Services Corporation	15,507.69
"P-275"	Vol. 2, p. 1043	Concentrix Services Corporation	14,206.51

"P-276"	Vol. 2, p. 1045	Concentrix Services Corporation	115,000.00
"P-277"	Vol. 2, p. 1047	Concentrix Services Corporation	42,000.00
"P-278"	Vol. 2, p. 1049	Concentrix Services Corporation	17,000.00
"P-291"	Vol. 2, p. 1085	Pointwest Innovations Corporation	25,000.00
"P-295"	Vol. 2, p. 1095	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	745,539.60
"P-296"	Vol. 2, p. 1097	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	523,969.08
"P-297"	Vol. 2, p. 1100	Concentrix Daksh Services Phils. Corp.	10,828.50
"P-304"	Vol. 2, p. 1121	DB Schenker Global Services Asia Pacific Inc	370,000.00
"P-326"	Vol. 2, p. 1181	Concentrix Daksh Services Phils. Corp.	4,500.00
		Subtotal	**₱ 22,440,400.34**

2. Sales supported by Official Receipts (ORs) that fail to indicate the transactions as zero-rated, which is non-compliance to the invoicing requirements

Exhibit No.	Reference	Customer Name	Amount of Zero-rated Sales
"P-330"	Vol. 2, p. 1194	Concentrix Daksh Services Phils. Corp.	₱ 49,500.00
"P-331"	Vol. 2, p. 1196	Concentrix Daksh Services Phils. Corp.	729,778.69
"P-332"	Vol. 2, p. 1201	Concentrix Daksh Services Phils. Corp.	105,968.78
"P-333"	Vol. 2, p. 1204	Concentrix Daksh Services Phils. Corp.	20,000.00
"P-334	Vol. 2, p. 1206	Concentrix Daksh Services Phils. Corp.	67,500.00
"P-335"	Vol. 2, p. 1208	Concentrix Daksh Services Phils. Corp.	1,092,688.77
"P-336"	Vol. 2, p. 1212	Concentrix Daksh Services Phils. Corp.	123,730.35
"P-337"	Vol. 2, p. 1214	Concentrix Services Corporation	656,500.00
"P-342"	Vol. 2, p. 1227	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	139,650.00
"P-343"	Vol. 2, p. 1230	TPPH FHCS INC. (Formerly Aegis Peoples Support Inc)	40,500.00
		Subtotal	**₱ 3,025,816.59**
		Grand Total	**₱ 25,466,216.93**

In sum, of the claimed zero-rated sales amounting to ₱56,844,265.21, only the amount of ₱20,339,418.26 is eligible for VAT zero-rating. This amount is supported by valid ORs and corresponding PEZA *Certifications*, computed as follows:

Total reported zero-rated sales – per VAT returns		₱56,844,265.21
Less: Unaccounted/unsupported zero-rated sales		(6,785,867.20)
Substantiated zero-rated sales		**₱50,058,398.01**
Less: Exceptions noted		
Sales not supported by PEZA Certifications to validate zero-rating eligibility	(4,252,762.82)	
Zero-rated sales supported by ORs that fail to specify the nature of service, which is non-compliance to invoicing requirements	(22,440,400.34)	
Sales supported by ORs that fail to indicate the transactions as zero-rated,	(3,025,816.59)	(29,718,979.75)

which is non-compliance to the invoicing requirements		
Total valid zero-rated sales		**₱20,339,418.26**

Consequently, due to lack of proper substantiation, the total amount of disallowed zero-rated sales is reduced to ₱36,504,846.95.[157]

C. Input tax Carried Forward to the Succeeding Period

According to respondent, the excess input tax amounting to ₱12,135,122.79 was not applied against the allowable input tax in computing the deficiency VAT since it will be carried over to the succeeding quarters as provided under Section 110(B) of the NIRC, as amended.

Petitioner argues that the alleged excess input tax was applied against the allowable input tax in accordance with Section 110(B) of the NIRC, as amended, which allows carry over of excess input tax to the succeeding quarters.[158]

Section 110(B) of the NIRC of 1997, as amended, provides that if the input tax exceeds the output tax, the excess can be carried over to the succeeding quarter(s). Since the excess input tax may be used to offset the petitioner's output tax in subsequent periods, it may redound to the benefit of the petitioner in such future periods. Accordingly, it is incumbent upon the petitioner to prove that the excess input tax was not utilized in the succeeding quarter(s).

In this case, however, petitioner failed to provide clear and convincing evidence to establish that the excess input tax was not carried over or applied in the succeeding periods. Thus, respondent is correct in disallowing petitioner's input tax carried over to the succeeding taxable period. This is to ensure that petitioner will not benefit twice from the same input tax credits: (1) as deduction from the assessed deficiency VAT; and (2) as credit against its output tax liability in the succeeding taxable quarters/periods.

D. Disallowed Input Tax

Respondent disallowed the input tax of ₱651,317.41,[159] which pertains to the alleged excess transportation equipment earlier discussed under Part I, Section E of the income tax assessment amounting to ₱5,427,645.09.

[157] Unsupported zero-rated sales per FAN of ₱56,844,265.21 less valid zero-rated sales of ₱20,339,418.26; Sum of unaccounted/unsupported zero-rated sales of ₱6,785,867.20 and total exceptions noted of ₱29,718,979.75.

[158] Par. 7.2(C), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, p. 18.

[159] Excess transportation equipment of ₱5,427,645.09 multiplied by 12% VAT.

Also, respondent disallowed petitioner's input tax for the current period amounting to ₱11,933,378.33 due to the petitioner's failure to present evidence or supporting documents to substantiate the claim, in accordance with Section 110 of the NIRC, as amended, in relation to Sections 113 and 237 of the same Code, computed as follows:[160]

Cost of Transportation Equipment as of 12.31.2017	₱7,827,645.09
Less: Threshold allowed by RR No. 12-2012	2,400,000.00
Excess Transportation Equipment	₱5,427,645.09
Multiplied by: VAT rate	12%
Disallowed input tax on excess transportation equipment	₱651,317.41
Add: Unsupported input tax claimed for the year	11,933,378.33
Disallowed Input Taxes	**₱12,584,695.74**

To reiterate, petitioner argues that Section 3(B) of RR No. 12-2012 provides a threshold of ₱2,400,000.00 per official or employee. Accordingly, the allowable threshold should be ₱12,000,000.00, considering that at least five (5) vehicles were utilized by its officials and/or employees in the conduct of its business operations.

Moreover, petitioner claims that based on its records all input taxes claimed were supported by appropriate documents such as BIR Form No. 2550-M, BIR Form No. 0605, BIR Form No. 1604-E, BIR Form No. 2307, ORs, and Check Vouchers & Ledger of Expenses, etc., which were all submitted to respondent when it filed its *Request for Reinvestigation.*[161]

Notably, the excess transportation equipment amounting to ₱5,427,645.09, as reflected in the above computation, pertains to the portion of the acquisition cost that exceeds the ₱2,400,000.00 threshold. Thus, the depreciation expense attributable to said excess is not allowable as a deductible expense, pursuant to the provisions of RR No. 12-2012.

Moreover, as previously discussed in Part I, Section E, petitioner failed to substantiate its compliance with these two (2) requirements: (1) that the acquisition cost of the vehicle did not exceed ₱2,400,000.00; and (2) that only one vehicle was assigned per official or employee. In the absence of such substantiation, the depreciation expense attributable to the excess cost is not allowable as a deductible expense under the provisions of RR No. 12-2012. Likewise, the input taxes on the purchase of non-depreciable vehicles — ₱5,427,645.09 in this case— and all input taxes on maintenance expenses incurred thereon are likewise disallowed for taxation purposes, pursuant to Section 3(E) of RR No. 12-2012. Accordingly, the assessment is sustained.

[160] Exhibit "P-5-8", Docket – Vol. I, p. 36.
[161] Par. 7.2(D), Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 18 to 19.

Therefore, in view of the petitioner's failure to provide sufficient documentation, the disallowance of input taxes amounting to ₱651,317.41 is likewise sustained.

As to the alleged unsupported input tax claim amounting to ₱11,933,378.33, petitioner submitted its VAT *Reconciliation of Listing for Enforcement* (VAT RELIEF)[162] for taxable year 2017, covering purchases of goods other than capital goods, which reflected a total input tax of ₱9,513,974.37. However, aside from this submission, petitioner failed to provide supporting documents to fully reconcile and substantiate the total input tax claimed in its VAT returns. In view of this failure to sufficiently substantiate the claimed amount, the disallowance of the input tax remains warranted.

To recapitulate, the assessment for basic deficiency VAT is sustained **but** in the reduced amount of ₱16,965,277.38, as computed below:

Taxable sales/receipts per VAT return		₱ 158,807,539.95
Add: Adjustments/disallowances		
Unsupported Zero-rated sales	36,504,846.95	36,504,846.95
Taxable sales/receipts as adjusted		**₱195,312,386.90**
Output Tax Due		₱ 23,437,486.43
Less: Allowable input tax per audit		
Input tax from current period	11,933,378.33	
Input tax carried over from previous period	18,261,516.03	
Total	30,194,894.36	
Less: Input tax carried forward to succeeding period	12,135,122.79	
Disallowed Input Tax	12,584,695.74	5,475,075.83
VAT Payable		₱ 17,962,410.60
Less: VAT payments per audit		997,133.22
Basic deficiency VAT due		**₱ 16,965,277.38**

III. EWT

As earlier discussed, respondent finds that petitioner failed to withhold and remit the correct withholding tax due on income payments disallowed as deductions from gross income, computed as follows:[163]

Income Payments	Per FS/ITR	Per Alphalist	Discrepancy	EWT rate	EWT due

[162] Exhibit "P-68", Docket – Vol. 2, pp. 673 to 703.
[163] Exhibit "P-5-1", Docket – Vol. I, p. 33.

Commission	₱5,935,600.00	₱478,556.30	₱5,457,043.70	10%	₱545,704.37
Director's Fee	666,667.00	-	666,667.00	15%	100,000.05
Purchase of Goods – Top 20,000 Corporation					
Materials	101,014,292.00	79,285,862.36	21,728,429.64	1%	217,284.30
Office Supplies	966,713.00	-	966,713.00	1%	9,667.13
Fuel and Oil	248,386.00	-	248,386.00	1%	2,483.86
Additions to PPE	367,524.55	-	367,524.55	1%	3,675.25
Total	₱109,199,182.55	₱79,764,418.68	₱29,434,763.89		**₱878,814.95**

As discussed in Part I, Section A, the Director's Fee amounting to ₱666,667.00 can be traced to the submitted Alphalist.[164] Accordingly, the assessed EWT on the said director's fee amounting to ₱100,000.05, should be cancelled.

However, petitioner failed to explain or submit supporting documents to reconcile the discrepancies relating to commission, materials, office supplies, fuel and oil expenses, and additions to PPE. As a result, the assessed EWT amounting to ₱778,814.90 should be sustained.

In sum, petitioner is liable for basic deficiency EWT in the amount of ₱778,814.90, computed as follows:

Income Payments	Amount	Tax Rate	EWT Due
Commission	₱ 5,457,043.70	10%	₱545,704.37
Purchase of Goods – Top 10,000 Corporation			
Materials	21,728,429.64	1%	217,284.29[165]
Office Supplies	966,713.00	1%	9,667.13
Fuel & Oil	248,386.00	1%	2,483.86
Additions to PPE	367,524.55	1%	3,675.25
Total	**₱29,434,769.89**		**₱778,814.90**

IV. IAET

Respondent alleged that verification revealed that petitioner's retained earnings exceeded one hundred percent (100%) of its paid-up capital, indicating an accumulation of earnings beyond the reasonable needs of the business, purportedly to avoid tax liability on its shareholders.

As a result, petitioner was assessed a ten percent (10%) IAET amounting to ₱5,720,238.09, pursuant to Section 29 of the NIRC, as amended, and RR

[164] Exhibit "P-66-1", Docket – Vol. 2, at pp. 667 to 668.

[165] Not rounded-off to the nearest peso, since the total basic EWT assessment of ₱878,814.95 less cancelled EWT assessment for Director's Fee of ₱100,000.05 is ₱778,814.90.

No. 2-2001, as clarified by Revenue Memorandum Circular (RMC) No. 35-2011, computed as follows:[166]

Taxable Income for the taxable year		₱ 58,242,537.00
Less: Income tax paid	₱17,472,761.10	
Dividends paid	17,000,000.00	34,472,761.10
Total		₱ 23,769,775.90
Add: Retained earnings from prior years		43,592,605.00
Accumulated Earnings as of taxable year		₱ 67,362,380.90
Less: Amount that may be retained		10,160,000.00
Improperly Accumulated Earnings		₱ 57,202,380.90
Multiply by: IAET Rate		10%
Improperly Accumulated Earnings Tax		**₱ 5,720,238.09**

Petitioner contends that its prior years' retained earnings were duly appropriated for the acquisition of land or property to be used as office space, citing the high cost of rentals in Makati City, as well as for its planned business expansion. Such appropriation was accordingly made in line with the reasonable and/or immediate needs of the corporation, as recognized under RR No. 2-2001, RMC No. 35-2011, Section 29 of the NIRC, the Corporation Code, and applicable jurisprudence (CTA Case No. 8295; G.R. No. 108067, January 20, 2000).

Moreover, petitioner asserts that the subject assessment has already been addressed in the assessments for taxable years 2014 and 2015, which are the subject of CTA Case Nos. 9970 and 10177.[167]

Section 3 of RR No. 2-2001[168] provides the basis for determining the reasonable needs of the business and enumerates the instances in which the accumulation of earnings is deemed to be for the reasonable needs of the business, as quoted below:

> "SEC 3. *Determination of Reasonable Needs of the Business.* – An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all circumstances of the case. **To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, these Regulations hereby adhere to the so-called 'Immediacy Test' under American jurisprudence as adopted in this jurisdiction. Accordingly, the term '*reasonable needs of the business*' are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to**

[166] Exhibit "P-5", Docket – Vol. I, at p. 36.
[167] Par. 7.4, Grounds/Discussion, *Petition for Review*, Docket – Vol. I, pp. 19 to 20.
[168] SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.

For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:

a. Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulation taken from other years;
b. Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;
c. **Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;**
d. Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;
e. Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;
f. In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence." *(Emphases added)*

To support its claim, petitioner submitted the following documents: (1) Board Resolution No. 2014-01 dated April 25, 2014,[169] authorizing the appropriation of ₱20,321,708.00 for future expansion and asset acquisitions, such as the purchase of land or property for office space, transportation or vehicles for mobility of personnel and logistics, and/or office equipment; (2) a duly notarized Secretary's Certificate dated March 18, 2021,[170] attesting to the approval of Board Resolution No. 2014-01; and (3) a Market Value Appraisal Report dated February 17, 2016.[171]

[169] Exhibit "P-69", Docket – Vol. 2, p. 704.
[170] Exhibit "P-70", Docket – Vol. 2, p. 705.
[171] Exhibit "P-73", Docket – Vol. 2, pp. 708 to 709.

A review of the foregoing documents reveals that as early as 2014, petitioner appropriated its retained earnings without presenting clear and convincing evidence of the implementation of its intended land acquisition. While a market value appraisal report exists for the prospective property, there is no evidence that the acquisition was actually consummated. Additionally, no evidence was presented to show that vehicles or office equipment were actually acquired for the said purpose.

Notably, Section 7 of RR No. 2-2001 provides that "a speculative and indefinite purpose will not suffice. Definiteness of plan/s coupled with action/s taken towards its consummation are essential."

On the basis of the foregoing, petitioner failed to pass the so-called "Immediacy Test", which construed the words '*reasonable needs of the business*' to mean the immediate needs of the business. Consequently, petitioner is liable to pay the deficiency IAET of ₱5,720,238.09.

To recapitulate, petitioner is liable for the following basic deficiency taxes for the taxable year 2017:

Type of Tax	Basic Deficiency
Income tax	₱ 15,614,577.08
VAT	16,965,277.38
EWT	778,814.90
IAET	5,720,238.09
TOTAL	**₱39,078,907.45**

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

> "SEC. 248. *Civil Penalties.* —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx."

Moreover, in accordance with Section 249(B) of the NIRC of 1997, petitioner is liable to pay deficiency interest at the rate of 20% per annum computed from the date prescribed for its payment until the full payment thereof. However, with the effectivity of Republic Act (RA) No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Law, on January 1, 2018, the 20% deficiency interest shall be computed until December 31, 2017 only, while the rate of 12% per annum shall be imposed starting January 1, 2018 until full payment of the deficiency taxes due.

Notably, the TRAIN Law amended (1) the interest rates in Section 249 of the NIRC, (2) the computation of deficiency interest from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier, and (3) provides that the deficiency and delinquency interest prescribed under Subsections (B) and (C) thereof shall not be imposed simultaneously.

In the present case, the *Assessment Notices* attached to the FAN indicate the date January 29, 2021[172] as the time prescribed to pay the total amount due found in respondent's assessment.

Likewise, pursuant to Section 249(C) of the NIRC of 1997, petitioner is liable to pay delinquency interest at the rate of 12% per annum computed from January 29, 2021 until full payment thereof.

Consequently, petitioner is liable to pay the aggregate amount of ₱61,898,607.80, consisting of basic deficiency taxes, surcharges, and deficiency interest computed as of January 29, 2021, detailed as follows:

	Income Tax	VAT	EWT	IAET	Total
Basic Tax Due	15,614,577.08	16,965,277.38	778,814.90	5,720,238.09	39,078,907.45
Add: 25% Surcharge	3,903,644.27	4,241,319.35	194,703.73	1,430,059.52	9,769,726.87
Subtotal	**19,518,221.35**	**21,206,596.73**	**973,518.63**	**7,150,297.61**	**48,848,634.32**
Add: 12% Deficiency Interest					
IT: from Apr. 17, 2018 to Jan. 29, 2021 (₱15,614,577.08 x 12% x 1,019 days/365)	5,231,097.22				5,231,097.22
VAT: from Jan. 26, 2018 to Jan. 29, 2021 (₱16,965,277.38 x 12% x 1,100 days/365)		6,135,387.98			6,135,387.98
EWT: from Jan. 23, 2018 to Jan. 29, 2021 (₱778,814.90 x 12% x 1,103 days/365)			282,421.75		282,421.75
IAET: from Jan. 16, 2019 to Jan. 29, 2021 (₱5,720,238.09 x 12% x 745 days/365)				1,401,066.53	1,401,066.53
Total Amount Due	**₱24,749,318.57**	**₱27,341,984.71**	**₱1,255,940.38**	**₱8,551,364.14**	**₱61,898,607.80**

[172] Exhibit "P-5", Docket – Vol. I, pp. 39 to 43.

In addition, petitioner is liable for delinquency interest at the rate of 12% per annum on the respective total amounts still due on January 29, 2021, computed from January 30, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by TRAIN Law and implemented by RR No. 21-2018.

Petitioner, however, is not liable to pay the subject compromise penalty.

Petitioner cannot be held liable to pay the compromise penalty in the amount of ₱50,000.00 as stated in FAN (Part II) dated December 22, 2020.[173] It must be stressed that a compromise is, by its nature, mutual in essence.[174] It implies agreement. One party cannot impose it upon the other.[175] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[176] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

ACCORDINGLY, the present *Petition for Review* is **PARTIALLY GRANTED**.

The subject compromise penalty being imposed amounting to ₱50,000.00, as reflected in the FAN (Part II) dated December 22, 2020 issued against petitioner for taxable year 2017 is **CANCELLED** and **SET ASIDE**.

However, respondent's assessments for deficiency income tax, VAT, EWT and IAET, as stated in the FAN (Part I) dated December 22, 2020, for taxable year 2017 are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱61,898,607.80**, representing deficiency taxes for taxable year 2017, inclusive of the 25% surcharge and the 12% deficiency interest computed as of January 29, 2021, respectively imposed under Section 248(A)(3) and Section 249(B) of the NIRC of 1997, as amended by TRAIN Law, as follows:

Tax Type	Basic	Surcharge	Deficiency Interest	Total
Income Tax	₱ 15,614,577.08	₱ 3,903,644.27	₱ 5,231,097.22	₱ 24,749,318.57
VAT	16,965,277.38	4,241,319.35	6,135,387.98	27,341,984.71

[173] Exhibit "P-5", Docket – Vol. 2, at p. 32.
[174] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[175] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[176] Refer to Part III.5, RMO No. 7-2015.

EWT	778,814.90	194,703.73	282,421.75	1,255,940.38
IAET	5,720,238.09	1,430,059.52	1,401,066.53	8,551,364.14
Total	**₱39,078,907.45**	**₱9,769,726.87**	**₱13,049,973.48**	**₱61,898,607.80**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total amount due of **₱61,898,607.80** as of January 29, 2021, as determined above, or equivalent to ₱20,350.23[177] per day, from January 30, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by TRAIN Law and implemented by RR No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

[177] ₱61,898,607.80 multiplied by 12% divided by 365 days.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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