REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

DHL SUPPLY CHAIN PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10722

Members:

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

Promulgated:
DEC 07 2022 4:1 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that the *Final Decision on Disputed Assessment* ("FDDA") dated December 27, 2021, finding petitioner liable for alleged deficiency improperly accumulated earnings tax ("IAET") in the aggregate amount of Php3,912,854.72, inclusive of twenty-five percent (25%) surcharge, twelve percent (12%) interest, and compromise penalty amounting to Php40,000.00, be cancelled and withdrawn.

In the *Supplemental Petition for Review*, petitioner seeks that the *Warrant of Distraint and/or Levy* ("WDL") dated March 10, 2022 and *Writ of Garnishment* ("WG") dated March 23, 2022 be declared void, invalid, and cancelled and withdrawn.

Likewise, in the event that the subject assessment is declared by this Court as illegal or invalid, respondent and the Bureau of Internal Revenue ("BIR") be ordered to refund or issue a tax credit certificate to petitioner the total amount garnished from its bank account in the amount of Php3,912,854.72.[1]

The Facts

Petitioner DHL Supply Chain Phils., Inc. is a corporation duly organized and existing under Philippine laws.[2] It is primarily engaged in the business of providing total supply chain solutions to customers which encompasses the complete supply chain cycle, from and including inbound to manufacturing, consulting, delivery to and from locations designated by its customers within the Philippines, warehousing, until after sales support.[3]

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, BIR Road, Quezon City.[4]

On July 3, 2019, petitioner received the *Letter of Authority* ("LOA") No. eLA201700005652 dated June 26, 2019 from the BIR Large Taxpayers Service ("LTS") Regular LT Audit Division 2,[5] authorizing Revenue Officers Zenaida Paz, Edna Cau, Ma. Salud Maddela and Group Supervisor ("GS") Teresita Villamor, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period January 1, 2017 to December 31, 2017, signed by Officer-In-Charge ("OIC") – Assistant Commissioner of the Large Taxpayers Service, Teresita M. Dizon.

Respondent issued the *Notice of Discrepancy* dated October 12, 2020,[6] which was received by petitioner on October 19, 2020.[7]

Respondent, thereafter, issued the *Preliminary Assessment Notice* ("PAN") on March 1, 2021,[8] stating that after investigation, there has been found due from petitioner deficiency income tax, value-added tax ("VAT"), withholding tax on compensation, expanded withholding tax ("EWT"), fringe benefits tax ("FBT"),

---

1 Statement of the Case, Pre-Trial Order dated May 18, 2023, Docket – Vol. 3, pp. 1680 to 1681.
2 Exhibits "P-1" and "P-1-A", Docket – Vol. 5, pp. 2377 to 2392.
3 Exhibit "P-1-A", Docket – Vol. 5, p. 2380.
4 Par. 1, Admitted Facts by the Petitioner and Respondent, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 3, p. 1637.
5 Exhibit "P-2", Docket – Vol. 5, p. 2393; Exhibit "R-1", BIR Records (Exhibit "R-11"), p. 2; Pars. 2 and 12, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, pp. 1637 and 1640, respectively.
6 Par. 3, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1639;
7 Exhibit "P-4", Docket – Vol. 5, pp. 2395 to 2405.
8 Par. 4, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1639.

documentary stamp tax ("DST"), IAET, and compromise penalty, for the calendar year ending December 31, 2017, in the aggregate amount of Php65,825,950.63, inclusive of surcharges and interests.[9]

Petitioner filed its reply letter to the PAN on March 31, 2021.[10]

The *Formal Letter of Demand/Final Assessment Notice* ("FLD/FAN") dated June 8, 2021 was issued with reduced deficiency taxes and with increments.[11]

Petitioner then paid, on June 30 2021, the total amount of Php3,901,209.04, inclusive of interests, representing payment for the following, to wit:

Tax Type	Basic Tax	Interest	Total
Income tax	Php 319,162.10	Php122,877.41	Php 42,039.51[12]
VAT	140,264.44	57,746.87	198,011.31[13]
WTC	799,053.73	331,607.30	1,130,661.03[14]
EWT	1,034,959.61	429,508.24	1,464,467.85[15]
FBT	128,987.74	53,529.91	182,517.65[16]
DST	175,218.00	73,293.69	248,511.69[17]
Compromise penalties			235,000.00[18]
TOTAL AMOUNT PAID			**Php3,901,209.04**

On July 7, 2021, petitioner filed its protest letter (*Request for Reinvestigation*) of even date,[19] wherein it submitted proof of payment of deficiency income tax, VAT, WTC, EWT, FBT, DST, and compromise penalty, in the aggregate amount of Php3,901,209.04. Petitioner also stated its grounds for protesting the findings of deficiency IAET.

Thereafter, on July 8, 2021, petitioner submitted a supplemental letter of even date.[20]

N

9 Exhibit "P-5", Docket – Vol. 5, pp. 2406 to 2415.
10 Exhibit "P-6", Docket – Vol. 5, pp. 2416 to 2425.
11 Par. 5, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1639.
12 Exhibits "P-7" to "P-9", Docket – Vol. 5, pp. 2426 to 2428.
13 Exhibits "P-10" to "P-12", Docket – Vol. 5, pp. 2429 to 2431.
14 Exhibits "P-13" to "P-15", Docket – Vol. 5, pp. 2432 to 2434.
15 Exhibits "P-16" to "P-18", Docket – Vol. 5, pp. 2435 to 2437.
16 Exhibits "P-19" to "P-21", Docket – Vol. 5, pp. 2438 to 2440.
17 Exhibits "P-22" to "P-24", Docket – Vol. 5, pp. 2441 to 2443.
18 Exhibits "P-25" to "P-27", Docket – Vol. 5, pp. 2444 to 2446.
19 Exhibit "P-29", Docket – Vol. 5, pp. 2463 to 2468.
20 Exhibit "P-30", Docket – Vol. 5, pp. 2469 to 2470.

On January 4, 2022, petitioner received the FDDA dated December 27, 2021, signed by then Commissioner Caesar R. Dulay assessing deficiency IAET in the aggregate amount of Php3,912,854.72, inclusive of surcharge, interest and compromise penalty,[21] to wit:

Tax Type	Basic tax	Interest from January 16, 2019 to February 28, 2022	Surcharge	Compromise Penalty	Total
IAET	Php2,384,322.30	Php892,451.84	Php596,080.58		Php3,872,854.72
Compromise penalty				Php40,000.00	40,000.00
TOTAL AMOUNT DUE	**Php2,384,322.30**	**Php892,451.84**	**Php596,080.58**	**Php40,000.00**	**Php3,912,854.72**

Respondent sought to collect from petitioner the disputed assessment subject of this appeal and issued a *Warrant of Distraint and/ or Levy* (BIR Form No. 1301) dated March 10, 2022.[22]

Petitioner filed the present *Petition for Review* on February 2, 2022.[23]

On May 2, 2022, respondent filed his *Answer*,[24] interposing the following special and affirmative defenses, to wit: (1) the assessment on IAET is valid there being no retroactive effect in the enactment of Republic Act ("RA") No. 11534; (2) petitioner is liable for IAET; and (3) petitioner is liable to pay the compromise penalties.

In the Resolution dated May 18, 2022,[25] 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 June 23, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated July 12, 2022,[26] stating that the parties decided not to have their case mediated.

[21] Par. 6, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1639; Exhibit "P-31", Docket – Vol. 5, pp. 2471 to 2476.
[22] Par. 7, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1639.
[23] Docket – Vol. I, pp. 6 to 45.
[24] Docket – Vol. 2, pp. 743 to 761.
[25] Docket – Vol. 2, pp. 764 to 765.
[26] Docket – Vol. 2, p. 795.

In the meantime, on May 31, 2022, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder with 1072 pages.[27]

On June 22, 2022, petitioner filed a *Request for Admission*, requesting Revenue Officer ("RO") Zenaida T. Paz to admit the documents attached to the same and relevant matters of fact described therein.[28] Petitioner then filed on September 23, 2022 a *Manifestation with Motion*,[29] stating, among others, that petitioner's counsel has not received any comment from respondent on its *Request for Admission* as ordered by the Court in the Resolution dated July 26, 2022[30], and that respondent is deemed to have waived his right to file his comment. Thus, petitioner prays that the Court grant the said *Manifestation with Motion* and direct RO Zenaida T. Paz to answer its *Request for Admission*. Respondent, however, failed to file his comment on petitioner's *Request for Admission*.[31] In the Resolution dated October 27, 2022,[32] the Court noted petitioner's *Manifestation with Motion* and reiterated its July 26, 2022 Resolution ordering respondent to file his comment on the *Request for Admission* within five (5) days from notice.

Thereafter, on November 18, 2022, respondent filed a *Motion to Admit Attached Opposition (to Petitioner's Request for Admission)*,[33] with attached *Comment/Opposition (Request for Admission)*.[34] On November 24, 2022, petitioner filed its *Comment/Opposition (To: Respondent's Motion to Admit Attached Opposition)*.[35] In the Resolution dated January 19, 2023,[36] the Court granted respondent's *Motion to Admit Attached Opposition (to Petitioner's Request for Admission)* and noted respondent's *Comment/Opposition (Request for Admission)*.

In the meantime, petitioner filed on July 19, 2022 a *Motion, with Leave of Court, to Admit Attached Supplemental Petition for Review*,[37] with attached *Supplemental Petition for Review*;[38] to which respondent filed his *Comment/Opposition (on Petitioner's Supplemental Petition for Review)* on August 17, 2022.[39] In the Resolution dated September 13, 2022,[40] the Court granted petitioner's *Motion, with Leave of Court, to Admit Attached Supplemental Petition for Review*; admitted the *Supplemental*

[27] *Compliance* dated May 31, 2023, Docket – Vol. 2, pp. 771 to 773.
[28] Docket – Vol. 2, pp. 779 to 781.
[29] Docket – Vol. 2, pp. 987 to 990.
[30] Docket – Vol. 2, pp. 975 to 976.
[31] Records Verification Report dated September 28, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 991.
[32] Docket – Vol. 2, pp. 1002 to 1003.
[33] Docket – Vol. 2, pp. 1006 to 1009.
[34] Docket – Vol. 2, pp. 1011 to 1017.
[35] Docket – Vol. 2, pp. 1018 to 1020.
[36] Docket – Vol. 2, pp. 1022 to 1025.
[37] Docket – Vol. 2, pp. 796 to 799.
[38] Docket – Vol. 2, pp. 800 to 821.
[39] Docket – Vol. 2, pp. 977 to 982.
[40] Docket – Vol. 2, pp. 985 to 986.

Petition for Review; noted respondent's *Comment/Opposition (on Petitioner's Supplemental Petition for Review)*; and ordered respondent to file a Supplemental Answer to the Supplemental Petition for Review, within twenty (20) days from notice.

Thus, on October 10, 2022, respondent filed his *Answer (to the Supplemental Petition for Review dated July 15, 2022)*,[41] interposing the following special and affirmative defenses, to wit: (1) the Warrants of Distraint and/or Levy and Garnishment were validly issued; (2) petitioner is liable for IAET; and (3) the issue on prescription can no longer be raised on the ground of laches. The Court noted the said *Answer* in the Resolution dated October 27, 2022.[42]

The Pre-Trial Conference was set and held on March 2, 2023.[43] Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 14, 2023,[44] while the *Pre-Trial Brief (For the Petitioner)* was submitted on February 21, 2023.[45]

On March 28, 2023, the parties filed their *Joint Stipulation of Facts and Issues*,[46] which was admitted and approved by this Court in its Minute Resolution dated April 4, 2023,[47] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated May 18, 2023 was then issued.[48]

Subsequently, on May 25, 2023, petitioner filed a *Motion for Correction of the Pre-Trial Order dated May 18, 2023*,[49] which the Court granted in its Resolution dated September 7, 2023.[50] Thus, the Court let the Pre-Trial Order dated May 18, 2023 be corrected as prayed for by petitioner. In the Resolution dated September 15, 2023,[51] the Pre-Trial Order was deemed corrected, as discussed in the Resolution dated September 7, 2023.

On June 8, 2023, petitioner filed a *Motion to Take Judicial Notice*,[52] praying that the Court grant the same and enter/issue an Order or Resolution taking judicial notice that (a) Norges Bank Investment Management is a non-resident

---

[41] Docket – Vol. 2, pp. 992 to 999.
[42] Docket – Vol. 2, pp. 1002 to 1003.
[43] Notice of Pre-Trial Conference dated January 26, 2023, Docket – Vol. 3, pp. 1484 to 1485; Minutes of the hearing held on, and Order dated, March 2, 2023, Docket – Vol. 3, pp. 1608 and 1610 to 1612, respectively.
[44] Docket – Vol. 3, pp. 1522 to 1526.
[45] Docket – Vol. 3, pp. 1533 to 1571.
[46] Docket – Vol. 3, pp. 1637 to 1653.
[47] Docket – Vol. 3, p. [1678].
[48] Docket – Vol. 3, pp. 1680 to 1705.
[49] Docket – Vol. 3, pp. 1707 to 1712.
[50] Docket – Vol. 4, pp. 1787 to 1794.
[51] Docket – Vol. 4, p. 1798.
[52] Docket – Vol. 4, pp. 1746 to 1751.

foreign entity owned by the Norwegian Government through its Central Bank; and (b) Norway's sovereign wealth fund is being managed by Norges Bank Investment Management. Respondent then filed his *Comment (Re: Motion to Take Judicial Notice)* on July 11, 2023.[53] In the Resolution dated September 7, 2023,[54] the Court denied the *Motion to Take Judicial Notice.*

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Atty. Shiela May A. Suarez,[55] petitioner's Corporate Secretary; (2) Mr. Jeremy C. Adrados,[56] petitioner's Senior Finance Manager – Controlling and Budgeting; (3) Ms. Maria Cecilia N. Capistrano,[57] petitioner's Senior Finance Manager – Accounting & Accounting Governance; (4) Ms. Rowena M. Pineda,[58] petitioner's Senior Accounting & Tax Officer; (5) Mr. John Christian B. Sabal,[59] the Court-commissioned Independent Certified Public Accountant (ICPA);[60] and (6) Atty. Royce Nieville P. Abes,[61] petitioner's external counsel.

The *Amended ICPA Report* was submitted on September 27, 2023.[62]

On November 14, 2023, the *Formal Offer of Evidence (for the Petitioner)* was filed.[63] Petitioner also filed on November 16, 2023 a *Manifestation (Re: Submission of Formal Offer of Evidence)*,[64] which the Court noted in the Resolution dated January 24, 2024.[65] In the same Resolution, the Court directed petitioner and the ICPA, Mr. John Christian B. Sabal, to submit hard copies of Exhibits "P-1" to "P-158" (together with its sub-markings), and the soft copy of the ICPA Report and the corresponding annexes and/or schedules in Microsoft Word or Excel

---

53 Docket – Vol. 4, pp. 1774 to 1777.
54 Docket – Vol. 4, pp. 1787 to 1794.
55 Exhibit "P-72", Docket – Vol. 6, pp. 2852 to 2859; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. 4, p. 1780 to 1781.
56 Exhibit "P-73", Docket – Vol. 6, pp. 2860 to 2864; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. 4, p. 1780 to 1781.
57 Exhibit "P-70", Docket – Vol. 6, pp. 2814 to 2847; Minutes of the hearing held on, and Order dated October 17, 2023, Docket – Vol. 5, pp. 2303 to 2305.
58 Exhibit "P-71", Docket – Vol. 6, pp. 2848 to 2851, Minutes of the hearing held on, and Order dated, October 17, 2023, Docket – Vol. 5, pp. 2303 to 2305.
59 Exhibit "P-374", Docket – Vol. 4, pp. 1803 to 1807; Minutes of the hearing held on, and Order dated October 17, 2023, Docket – Vol. 5, pp. 2303 to 2305.
60 *Oath of Commission* dated July 13, 2023, Docket – Vol. 4, p. 1779; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. 4, pp. 1780 to 1781.
61 Exhibits "P-157" and "158", Docket – Vol. 6, pp. 3042 to 3056; Minutes of the hearing held on, and Order dated October 17, 2023, Docket – Vol. 5, pp. 2303 to 2305.
62 Exhibit "P-373", Docket – Vol. 5, pp. 2266 to 2294.
63 Docket – Vol. 5, pp. 2307 to 2358.
64 Docket – Vol. 5, pp. 2360 to 2361.
65 Docket – Vol. 5, pp. 2368 to 2370.

format, respectively, within five (5) days from receipt thereof. In the meantime, respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on December 13, 2023.[66]

In the Resolution dated February 13, 2024,[67] the Court ordered petitioner to comply with the Resolution dated January 24, 2024, within five (5) days from notice, considering that it failed to comply with the said Resolution; otherwise, petitioner's *Formal Offer of Evidence* will be submitted for resolution without the Exhibits required by the Court in its Resolution dated January 24, 2024.

Subsequently, on February 16, 2024, petitioner filed its *Compliance (To: Resolution dated January 24, 2024)*,[68] submitting one set of original hard copies of Exhibits "P-1" to "P-158" (together with its sub-markings) and one USB containing the soft copies of the *Amended ICPA Report* in MS Word format and corresponding schedule in MS Excel format.

On February 28, 2024, petitioner filed a *Motion for Reconsideration to the Resolution dated February 13, 2024*,[69] to which respondent filed his *Comment (Re: Petitioner's Motion for Reconsideration dated 28 February 24)* on April 1, 2024.[70]

In the Resolution dated May 27, 2024,[71] the Court admitted petitioner's offered exhibits; noted petitioner's *Compliance (To: Resolution dated January 24, 2024)*; and granted and noted petitioner's *Motion for Reconsideration to the Resolution dated February 13, 2024.*

For his part, respondent offered the testimony of RO Zenaida T. Paz.[72]

On July 19, 2024, the *Respondent's Formal Offer of Evidence* was filed,[73] to which petitioner filed its *Comment to Respondent's Formal Offer of Evidence* on July 23, 2024.[74] In the Resolution dated October 2, 2024,[75] the Court admitted respondent's offered exhibits.

66 Docket – Vol. 5, pp. 2362 to 2364.
67 Docket – Vol. 5, p. 2372.
68 Docket – Vol. 5, pp. 2374 to 2376.
69 Docket – Vol. 6, pp. 3057 to 3062.
70 Docket – Vol. 6, pp. 3077 to 3079.
71 Docket – Vol. 6, pp. 3084 to 3087.
72 Exhibit "R-12", Docket Vol – 3, pp. 1512 to 1521; Minutes of the hearing held on, and Order dated, July 9, 2024, Docket – Vol. 6, pp. 3088 and 3090, respectively.
73 Docket – Vol. 6, pp. 3091 to 3098.
74 Docket – Vol. 6, pp. 3100 to 3103.
75 Docket – Vol. 6, pp. 3106 to 3107.

Petitioner's Memorandum was filed on November 6, 2024,[76] while respondent's *Memorandum* was submitted on November 13, 2024.[77]

The present case was submitted for decision on November 26, 2024.[78]

The Issue

As stipulated by the parties, the main issues for this Court's resolution are as follows:

> "1. Whether the petitioner is liable to pay deficiency Improperly Accumulated Earnings Tax (IAET) and Miscellaneous Tax (Compromise Penalties) in the amount of Three Million Nine Hundred Twelve Thousand Eight Hundred Fifty-Four Pesos and Seventy-Two Centavos (Php3,912,854.72) plus additional interest for taxable year 2017;
>
> 2. Assuming that the assessment of IAET per FLD/FAN and FDDA is cancelled and declared invalid, whether petitioner is entitled to a refund or issuance of tax credit certificate equivalent to the garnished amount of P3,912,854.72."[79]

Petitioner's arguments:

Petitioner argues that the FLD/FAN and FDDA which assessed it for IAET is invalid and erroneous since the assessment was issued and served several months after the effectivity of the repeal of Section 29 of the National Internal Revenue Code ("NIRC") of 1997, as amended; that the inclusion of "retained earnings" from prior years in computing petitioner's deficiency IAET is erroneous and invalid; that the grandfather rule or stock attribution rule is applicable in determining whether petitioner is considered publicly held corporation; that the grandfather rule is applicable in this case; that petitioner is exempted from the imposition of IAET since its ultimate parent company, Deutsche Post AG, is construed as a publicly-held corporation whose shares are listed and traded on the Frankfurt Stock Exchange; that considering the shareholders of petitioner's ultimate parent company, consisting of banks and non-banks financial intermediaries are considered to indirectly hold 50.16% of the outstanding capital stock of petitioner, are exempt from IAET, petitioner is

[76] Docket – Vol. 6, pp. 3109 to 3145.
[77] Docket – Vol. 6, pp. 3148 to 3170.
[78] Minute Resolution dated November 26, 2024, Docket – Vol. 6.
[79] Issues To Be Tried or Resolved, JSFI, Docket – Vol. 3, p. 1641.

ergo exempt from the imposition of IAET; that the amount of Php23,843,223.00 that respondent considered as improperly accumulated taxable income as of December 31, 2017 has no basis, considering that petitioner has other capital deductions for reasonable needs of business or reasonably anticipated needs for the accumulation of earnings or profits that respondent failed to consider; that the imposition of compromise penalty has no basis; that the IAET which is subject of the present assessment never became delinquent and there was thus no basis for respondent or his authorized representative to institute the collection of remedies such as WDL and WG; that its right to due process was trampled upon the issuance of WDL and WG since the collection of taxes will be enforced despite the fact that it had timely questioned the assessment before this Court; that petitioner is not liable for deficiency IAET per FDDA and plus additional interest, if any; and that petitioner is entitled to the refund or issuance of tax credit equivalent to the garnished amount of Php3,912,854.72 in the event that the subject IAET assessment is declared as illegal or invalid by the Court.

Respondent's counter-arguments:

Respondent contends that the Court has no jurisdiction over petitioner's motion for refund of amount collected; that the assessment on IAET is valid there being no retroactive effect in the enactment of RA No. 11534; that petitioner is liable for IAET; and that petitioner is liable to pay the compromise penalties.

Discussion/Ruling

The present *Petition for Review* and *Supplemental Petition for Review* are meritorious.

Section 8 of RA No. 11534 applies prospectively.

Petitioner argues that Section 8 of RA No. 11534[80] or the CREATE Act expressly repealed the imposition of IAET and that the said law took effect on April 11, 2021 after its publication on March 27, 2021. As such, it claims that starting from the effectivity of RA No. 11534 on April 11, 2021, respondent is now precluded from making assessment for IAET. Considering that respondent issued the FLD/FAN containing the assessment for IAET on June 10, 2021,

[80] AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER PURPOSES. Otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or "CREATE".

then, petitioner contends that the FLD/FAN and FDDA which assessed petitioner for IAET is invalid and erroneous since the assessment was issued and served several months after the effectivity of the repeal of Section 29 of the NIRC of 1997, as amended.

On the other hand, respondent avers that with the enactment of the CREATE Act, he can no longer impose IAET for the taxable years covered by the said Act. Respondent stresses that CREATE was not yet existing in taxable year 2017. As such, petitioner should have paid IAET for that period.

The Court agrees with respondent.

In the case of *Spouses Curata, et al. vs. Philippine Ports Authority, et. al.,*[81] the Supreme Court reiterated the principle that statutes operate prospectively, *viz.*:

> "It is well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward)."

In this case, there is no showing that the legislature intended for the repeal to apply retroactively. Hence, the general rule stands.

Relative thereto, Section 6 of Revenue Regulations ("RR") No. 5-2021,[82] clarified the fiscal or taxable years when IAET shall no longer be imposed, to wit:

> "SECTION 6. Improperly Accumulated Earnings Tax. — The improperly accumulated earnings tax shall no longer be imposed on corporations upon the effectivity of the CREATE onwards. This shall apply to the entire taxable year for all fiscal years/taxable years ending after the effectivity of CREATE."

---

[81] G.R. Nos. 154211-12, 158252, 166200, 168272, 170683 and 173392, June 22, 2009, citing *Lintag vs. National Power Corporation*, G.R. No. 158609, July 27, 2007.

[82] SUBJECT: Implementing the New Income Tax Rates on the Regular Income of Corporations, on Certain Passive Incomes, Including Additional Allowable Deductions from Gross Income of Persons Engaged in Business or Practice of Profession Pursuant to Republic Act (RA) No. 11534 or the "*Corporate Recovery and Tax Incentives for Enterprises Act*" (CREATE), Which Further Amended the National Internal Revenue Code (NIRC) of 1997.

Considering that the subject IAET assessment involves taxable year 2017, the IAET may still be imposed on petitioner, so long as it has improperly accumulated taxable income.

The formula for computing the improperly accumulated taxable income does not include prior years based on the NIRC of 1997.

Petitioner submits that the inclusion of "retained earnings" from prior years in computing its deficiency IAET is erroneous and invalid. It asserts that Section 29(D) of the NIRC of 1997 provides the exact formula in calculating the IAET, and Section 5 of RR No. 2-2001 provides for the formula on how to determine if there is an improperly accumulated taxable income. However, petitioner points out that Revenue Memorandum Circular ("RMC") No. 35-2011 altered the formula in determining the improperly accumulated taxable income by including retained earnings from the prior year. According to petitioner, by including retained earnings from prior year in the formula in computing IAET, the BIR effectively expanded or altered the provision of Section 29(D) of the NIRC of 1997. Petitioner contends that the plain meaning rule or *verba legis* principle should be applied such that where the words of the statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Respondent counters that the imposition of IAET is to deter taxpayers from accumulating earnings by not declaring dividends and effectively deferring payment of taxes on dividends and effectively deferring payment of taxes on dividends which should have already been paid to the government upon declaration. According to respondent, in reading both Section 29(B) of the NIRC of 1997 and Section 42 of the Revised Corporation Code,[83] the earnings

---

[83] SEC. 42. *Power to Declare Dividends.* — The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, property, or in stock to all stockholders on the basis of outstanding stock held by them: *Provided*, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholders until their unpaid subscription is fully paid: *Provided, further*, That no stock dividend shall be issued without the approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.

Stock corporations are prohibited from retaining surplus profits in excess of one hundred percent (100%) of their paid-in capital stock, except: (a) when justified by definite corporate expansion projects or programs approved by the board of directors; or (b) when the corporation is prohibited under any loan agreement with financial institutions or creditors, whether local or foreign, from declaring dividends without their consent, and such consent has imposable by IAET is the retained earnings and not the earnings for just one taxable year.

The Court agrees with petitioner.

Section 29(D) of the NIRC of 1997 provides the formula for the computation of the improperly accumulated taxable income, as follows:

> "(D) *Improperly Accumulated Taxable Income.* – For purposes of this Section, the term 'improperly accumulated taxable income' means taxable income adjusted by:
>
> (1) Income exempt from tax;
> (2) Income excluded from gross income;
> (3) Income subject to final tax; and
> (4) The amount of net operating loss carry-over deducted;
>
> And reduced by the sum of:
>
> (1) Dividends actually or constructively paid; and
> (2) Income tax paid for the taxable year.
>
> *Provided, however,* That for corporations using the calendar year basis, the accumulated earnings tax shall not apply on improperly accumulated income as of December 31, 1997. In the case of corporations adopting the fiscal year accounting period, the improperly accumulated income not subject to this tax, shall be reckoned, as of the end of the month comprising the twelve (12)-month period of fiscal year 1997-1998."

However, RMC No. 35-2011 issued on March 14, 2011,[84] apart from reiterating the formula as laid out in the NIRC of 1997, added the following illustration on the computation of improperly accumulated taxable income (IATI), adding the retained earnings from prior years:

---

not yet been secured; or (c) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is need for special reserve for probable contingencies.

84 SUBJECT: Clarification of Issues Concerning the Imposition of Improperly Accumulated Earnings Tax Pursuant to Section 29 of the Tax Code of 1997, in relation to Revenue Regulations Nos. 2-2001.

Taxable Income for the year (e.g., 2010)		P xxxx
Add:		
(a) Income subjected to Final Tax	P xxx	
(b) NOLCO	xxx	
(c) Income exempt from tax	xxx	
(d) Income excluded from gross income	xxx	xxxx
		P xxxx
Less:		
Income Tax paid	P xxx	
Dividends declared/paid	xxx	xxxx
Total		P xxxx
Add: Retained Earnings from prior years		
Accumulated Earnings as of December 31, 2010		
Less: Amount that may be Retained (100% of Paid-Up Capital as of December 31, 2010)		xxxx
IATI		P xxxx

In *Basilan Estates, Inc. vs. The Commissioner of Internal Revenue, et al.* (*Basilan Estates* case),[85] the Supreme Court *En Banc* stated that previous accumulations of earnings should be considered in determining unreasonable accumulations for the year concerned, to wit:

> "Petitioner questions why the examiner covered the period from 1948-1953 when the taxable year on review was 1953. The surplus of P347,507.01 was taken by the examiner from the balance sheet of petitioner for 1953. To check the figure arrived at, the examiner traced the accumulation process from 1947 until 1953, and petitioner's figure stood out to be correct. There was no error in the process applied, for previous accumulations should be considered in determining unreasonable accumulations for the year concerned. 'In determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, **it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not reasonably be necessary.**"[86]

85 G.R. No. L-22492, September 5, 1967.
86 *Emphasis supplied.*

Moreover, in *The Manila Wine Merchants, Inc. vs. The Commissioner of Internal Revenue*,[87] the Supreme Court reiterated its position in the *Basilan Estates* case in resolving whether the twenty five percent (25%) penalty tax imposed under Section 25 of the NIRC of 1939, can be imposed on an improper accumulation in 1957 despite the fact that the accumulation occurred in 1951, as follows:

> "Finally, petitioner asserts that the surplus profits allegedly accumulated in the form of U.S.A. Treasury shares in 1951 by it (petitioner) should not be subject to the surtax in 1957. In other words, petitioner claims that the surtax of 25% should be based on the surplus accumulated in 1951 and not in 1957.
>
> This is devoid of merit.
>
> **The rule is now settled in Our jurisprudence that undistributed earnings or profits of prior years are taken into consideration in determining unreasonable accumulation for purposes of the 25% surtax**. The case of *Basilan Estates, Inc. vs. Commissioner of Internal Revenue* further strengthen this rule, and We quote:
>
> 'Petitioner questions why the examiner covered the period from 1948-1953 when the taxable year on review was 1953. The surplus of P347,507.01 was taken by the examiner from the balance sheet of the petitioner for 1953. To check the figure arrived at, the examiner traced the accumulation process from 1947 until 1953, and petitioner's figure stood out to be correct. There was no error in the process applied, for previous accumulations should be considered in determining unreasonable accumulation for the year concerned. 'In determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not reasonably be necessary.'''[88]

Notably, the above-cited cases were penned and promulgated prior to the effectivity of the NIRC of 1997. However, the NIRC of 1939 differs from the NIRC of 1997 in relation to the provisions for the imposition of the IAET. For

---

[87] G.R. No. L-26145, February 20, 1984.
[88] *Emphasis supplied.*

easy reference and comparison, both pertinent provisions are reproduced in full below, *viz.*:

Section 25 of the NIRC of 1939[89]	Section 29 of the NIRC of 1997
SEC. 25. *Additional tax on corporations improperly accumulating profits or surplus.* — (a) *Imposition of tax.* — **If any corporation**, except banks, insurance companies, or personal holding companies, whether domestic or foreign, **is formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or members or the shareholders or members of another corporation, through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there is levied and assessed against such corporation, for each taxable year, a tax equal to twenty-five per centum of the undistributed portion of its accumulated profits or surplus** which shall be **in addition to the tax imposed by section 24**, and **shall be computed**, collected and paid **in the same manner** and subject to the same provisions of law, including penalties, **as that tax**. (b) *Prima facie evidence.* — The fact that any corporation is a mere holding company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members. Similar presumption will lie in the case of an investment company where at any time during the taxable year more than fifty per centum in value of its outstanding stock is owned, directly or indirectly by one person. (c) *Evidence determinative of purpose.* — The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary. *(Emphases ours)*	SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.* – (A) *In General.* – **In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.** (B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* – (1) *In General.* – The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed. (2) *Exceptions.* – The improperly accumulated earnings tax as provided for under this Section shall not apply to: (a) Publicly-held corporations; (b) Banks and other nonbank financial intermediaries; and (c) Insurance companies. (C) *Evidence of Purpose to Avoid Income Tax.* – (1) *Prima Facie Evidence.* – The fact that any corporation is a mere holding company or investment company shall be *prima facie* evidence of a purpose to avoid the tax upon its shareholders or members. (2) *Evidence Determinative of Purpose.* – The fact that the earnings or profits of a corporation are

[89] Commonwealth Act No. 466, AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES.

	permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary. **(D) *Improperly Accumulated Taxable Income.* – For purposes of this Section, the term 'improperly accumulated taxable income' means taxable income adjusted by:** **(1) Income exempt from tax;** **(2) Income excluded from gross income;** **(3) Income subject to final tax; and** **(4) The amount of net operating loss carry-over deducted;** **And reduced by the sum of:** **(1) Dividends actually or constructively paid; and** **(2) Income tax paid for the taxable year.** *Provided, however,* That for corporations using the calendar year basis, the accumulated earnings tax shall not apply on improperly accumulated income as of December 31, 1997. In the case of corporations adopting the fiscal year accounting period, the improperly accumulated income not subject to this tax, shall be reckoned, as of the end of the month comprising the twelve (12)-month period of fiscal year 1997-1998. (E) *Reasonable Needs of the Business.* – For the purpose of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business." *(Emphases added)*

It is clear from the foregoing that the legislature intended to provide a definite formula for the computation of the improperly accumulated taxable income.

A plain reading of Section 29 of the NIRC of 1997 shows that the computation for the determination of the IAET was already particularized by the law. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis.* It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim, *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[90]

The same formula is reiterated in Section 5 of RR No. 2-2001,[91] with the addition of deducting the amount reserved for the reasonable needs of the business, to wit:

> "SEC. 5. *Tax Base of Improperly Accumulated Earnings Tax.* - For corporations found subject to the tax, the *'Improperly Accumulated Taxable Income'* for a particular year is first determined by adding to that year's taxable income the following:
>
> a. **income exempt from tax;**
> b. **income excluded from gross income;**
> c. **income subject to final tax; and**
> d. **the amount of net operating loss carry-over (NOLCO) deducted.**
>
> **The taxable income as thus determined shall be reduced by the sum of:**
>
> a. **income tax paid/payable for the taxable year;**
> b. **dividends actually or constructively paid/issued from the applicable year's taxable income;**
> c. **amount reserved for the reasonable needs of the business as defined in these Regulations emanating from the covered year's taxable income.**
>
> The resulting *'Improperly Accumulated Taxable Income'* is thereby multiplied by 10% to get the Improperly Accumulated Earnings Tax (IAET)."[92]

Notably, the deduction of the amount reserved for the reasonable needs of the business from the determination of the tax base finds basis in Section

[90] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.
[91] SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.
[92] *Emphasis supplied.*

29(C)(2) of the NIRC of 1997, in relation to Section 29(E), which provide as follows:

> "(C) *Evidence of Purpose to Avoid Income Tax.* –
>
> (1) *Prima Facie Evidence.* – The fact that any corporation is a mere holding company or investment company shall be *prima facie* evidence of a purpose to avoid the tax upon its shareholders or members.
>
> (2) *Evidence Determinative of Purpose.* – **The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax** upon its shareholders or members **unless the corporation**, by the clear preponderance of evidence, **shall prove to the contrary**.
>
> xxx xxx xxx
>
> (E) *Reasonable Needs of the Business.* – For the purpose of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business."[93]

Based on the foregoing provisions, the accumulation of earnings or profits beyond the reasonable needs of the business is determinative of the corporation's purpose to avoid the tax unless it proves the contrary. Logically, the earnings accumulated for reasonable needs of the business or the reasonably anticipated needs of the business are excluded from the determination of the tax base of the IAET.

Hence, the addition of the retained earnings from prior years in RMC No. 35-2011, which finds no basis in Section 29 of the NIRC of 1997, is unwarranted.

The time-honored doctrine, in case of conflict, is that the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute.[94] Thus, if a discrepancy occurs between the basic law and an implementing rule or

---

[93] *Emphasis supplied.*

[94] *Felix B. Perez and Amante G. Doria vs. Philippine Telegraph and Telephone Company and Jose Luis Santigao,* G.R. No. 152048, April 7, 2009.

regulation, it is the former that prevails, because the law cannot be broadened by a mere administrative issuance — an administrative agency certainly cannot amend an act of Congress.[95]

Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out.[96] Particularly, administrative issuances such as revenue memorandum circulars cannot amend nor modify the law.[97]

In *Manila Peninsula Hotel, Inc. vs. Commissioner of Internal Revenue*,[98] the Supreme Court cited the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue,*[99] wherein it upheld the nullification of RMC No. 7-85 because it was contrary to the express provision of Section 230 of the 1977 NIRC. In so doing, the Supreme Court said that the BIR did not simply interpret the law, instead, it legislated guidelines contrary to the statute passed by Congress. Thus, the Court then held as follows:

> "It bears repeating that Revenue [Memorandum Circulars] are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, **courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.**"[100]

Also, in *Saint Wealth Ltd. vs. Bureau of Internal Revenue, et al.,*[101] the Supreme Court *En Banc* declared certain parts of RMC No. 102-2017 and RMC No. 78-

---

95 *MCC Industrial Sales Corporation vs. Ssangyong Corporation,* G.R. No. 170633, October 17, 2007.

96 *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations", Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares and Revenue District Officer (RDO) Ricardo B. Espiritu vs. First E-Bank Tower Condominium Corp., et seq.,* G.R. Nos. 215801 and 218924, January 15, 2020.

97 *ING Bank N.V., engaged in banking operations in the Philippines as ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue,* G.R. No. 167679, April 20, 2016.

98 G.R. No. 229338, April 17, 2024.

99 361 Phil. 916 (1999).

100 *Emphasis supplied.*

101 G.R. Nos. 252965 and 254102, December 7, 2021.

2018 as invalid and unconstitutional for being issued without any statutory basis and for encroaching upon legislative power to enact laws.

Applying the foregoing jurisprudential pronouncements in the present case, We hold that the formula as presented in RMC No. 35-2011 finds no basis in law, and thus, should not be applied in the present case.

Petitioner failed to establish that it is a publicly-held corporation not subject to IAET.

Respondent contends that petitioner failed to substantiate that Deutsche Post AG, its ultimate parent company, is publicly-held corporation, thus, IAET was imposed pursuant to Section 29 of the Tax Code, as amended, computed as follows:[102]

Taxable Income for the year			P	147,866,612.00
Add: Adjustments				
Income subjected to final tax	P	123,892.00		
NOLCO		0.00		
Income exempt from tax		0.00		
Income excluded from gross income		0.00		123,892.00
Total			P	147,990,504.00
Less: Income Tax Paid	P	44,359,984.00		
Cash dividends declared in 2017		81,282,000.00		125,641,984.00
Total			P	22,348,520.00
Add: Retained Earnings from prior years				158,323,703.00
Accumulated Earnings as of Dec. 31, 2017			P	180,672,223.00
Less: Appro. RE - for business expansion	P	50,000,000.00		
Amount that may be retained (100% of the paid-up capital as of 12/31/2017)		94,829,000.00		
Cash dividends declared and paid in 2018		12,000,000.00		156,829,000.00
Improperly Accum. Taxable Income as of 12/31/2017			P	23,843,223.00
Improperly Accumulated Earnings Tax (10%)			P	2,384,322.30

[102] Exhibit "P-28", Docket – Vol. 5, at p. 2454.

The above computation was reiterated in the FDDA,[103] which stated that petitioner's counsel failed to substantiate that petitioner is qualified for the "Grandfather's Rule", and that petitioner's counsel had not presented any jurisprudence that the "Grandfather's Rule" is still in effect to prove a domestic company is considered publicly-held since its ultimate parent is a publicly listed company at the place where it was incorporation, thus, IAET was imposed pursuant to Section 29 of the Tax Code, as amended.

On the other hand, petitioner claims that it is exempt from the imposition of IAET as its ultimate parent is a publicly-held corporation, and further claims that the thirty-six (36) shareholders that hold 50.16% of its ultimate parent's outstanding capital stock are non-resident banks and non-resident financial institutions.

The Court is not convinced.

Section 29 of the NIRC of 1997 reads, in part, as follows:

> "SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.* —
>
> (A) *In General.* — In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.
>
> (B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* —
>
> (1) *In General.* — The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

---

103 Exhibit "P-31", Docket – Vol. 5, at p. 2473.

(2) *Exceptions.* — **The improperly accumulated earnings tax as provided for under this Section shall not apply to:**

(a) Publicly-held corporations;

(b) Banks and other non-bank financial intermediaries; and

(c) Insurance companies.

xxx xxx xxx."[104]

Relative thereto, Section 4 of RR No. 2-2001 provides for the coverage and exemptions of IAET, to wit:

"SEC. 4. Coverage. The 10% Improperly Accumulated Earnings Tax (IAET) is imposed on improperly accumulated taxable income earned starting January 1, 1998 by domestic corporations as defined under the Tax Code and which are classified as closely-held corporations. Provided, however, that Improperly Accumulated Earnings Tax **shall not apply** to the following corporations:

a. **Banks and other non-bank financial intermediaries;**

xxx xxx xxx

c. **Publicly-held corporations;**

xxx xxx xxx

For purposes of these Regulations, closely-held corporations are those corporations **at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for <u>not more than</u>**

[104] *Emphasis supplied.*

<u>**twenty (20) individuals**</u>. **Domestic corporations <u>not falling under the aforesaid definition are, therefore, publicly-held corporations</u>**.

For purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:

1. *Stock Not Owned by Individuals.* – Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.

2. *Family and Partnership Ownership.* – An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family, or by or for his partner. For purposes of this paragraph, the 'family of an individual' includes his brothers or sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants.

3. *Option to Acquire Stocks.* – If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option and each one of a series of option shall be considered as an option to acquire such stock.

4. *Constructive Ownership as Actual Ownership.* – Stock constructively owned by reason of the application of paragraph (1) or (3) hereof shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by the individual by reason of the application of paragraph (2) hereof shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

Provided, however, that a branch of a foreign corporation is not covered by these Regulations, the same being a resident foreign corporation."[105]

---

105 *Emphasis and undercoring supplied.*

Pursuant to the above provision, to be classified as closed or publicly held, the stockholdings of a corporation are ultimately traced to the individual shareholders. Closely-held corporations are those corporations at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. Stated differently, **a publicly-held corporation** is a corporation at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by at least **twenty-one (21) or more individuals**.

In other words, to determine whether a corporation is publicly-held, such that the IAET will not apply to it, it is necessary to ultimately trace its shareholdings to the individual shareholders of its parent company.

In this case, petitioner presented the following documents to prove that its ultimate parent, Deutsche Post AG, is a publicly listed company in the Frankfurt Stock Exchange:

1. *Print-out of the website of Frankfurt Stock Exchange*,[106] to prove that Deutsche Post AG is listed in the Frankfurt Stock Exchange in Germany;

2. *Certificate of Authentication dated December 17, 2021*,[107] containing an untranslated certification from the District Court of Bonn of the Federal Republic of Germany; and

3. *Confirmation letter dated December 3, 2021*,[108] signed by Benjamin Heinke, Legal Counsel of Deutsche Post DHL Group, stating that Deutsche Post AG is a German stock company listed at Frankfurt Stock Exchange.

Additionally, petitioner offered and presented the print-out of the excel list of top 36 shareholders of Deutsche Post AG to prove and show the top 36 shareholders that owned 50.16% of the outstanding capital stock of Deutsche Post AG,[109] which allegedly shows that the number of entities or individuals owning directly or indirectly with at least 50.16% voting power or investment

[106] Exhibits "P-41" and "P-42-B", Docket – Vol. 5, pp. 2516 to 2519 and 2523 to 2526, respectively.
[107] Exhibit "P-42", Docket – Vol. 5, pp. 2520 to 2521.
[108] Exhibit "P-42-A", Docket – Vol. 5, p. 2522.
[109] Exhibit "P-54", same as Exhibit "P-59", Docket - Vol. 5, pp. 2734 and 2743, respectively.

power numbered more than 21, or specifically, 36, and the *Certificate of Authentication,* dated November 26, 2021 containing a certification with attached excerpt of the Notes to the Financial Statements of Deutsche Post AG.[110]

As stated earlier, a corporation is considered publicly-held if at least fifty percent (50%_ in value of the outstanding capital or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote in a corporation is owned directly or indirectly by at least twenty-one (21) or more individuals.

Petitioner anchors its argument on the print-out of the excel list of top 36 shareholders of Deutsche Post AG. However, petitioner failed to demonstrate how the information reflected on the excel print out was generated and how the said information could be relied upon as true.

In this case, petitioner's Senior Finance Manager - Accounting & Accounting Governance, Ms. Maria Cecilia N. Capistrano, testified that the top 36 shareholders of Deutsche Post AG owned 50.16% of Deutsche Post AG's outstanding capital stock and that they are comprised mostly of non-resident investment managers and hedge funds. Thus, petitioner's witness states that applying the definition of a closely-held corporation where at least fifty percent (50%) of the outstanding capital stock is not owned directly or indirectly by or for not more than 20 individuals, Deutsche Post AG is not a closely-held corporation. Hence, petitioner's witness concluded that petitioner is also a publicly-held corporation, which is exempt from the imposition of IAET.[111]

In this regard, petitioner's witness merely detailed the basis for her above testimony as follows:

> "**Q68:** ***You mentioned in your Answer No. 44 that the top 36 shareholders of Deutsche Post AG owned 50.16% of its outstanding capital stock. What is your proof, if any, to support such claim?***
>
> A68: The photocopy of the print-out of the excel list of top 36 shareholders of Deutsche Post AG that shows that the top 36 shareholders owned 50.16% of the outstanding capital stock of Deustche Post AG.
>
> **Q69:** ***I am showing to you this document, previously marked as Exhibit "P-54", with sub-marking. What***

[110] Exhibit "P-55" to "P-55-C", Docket – Vol. 5, pp. 2735 to 2739.
[111] Q&A No. 44, Exhibit "P-70", Docket – Vol. 6, p. 2828.

> ***relation has this document to the photocopy of the print-out of the list of top 36 shareholders that you mentioned?***
>
> A69: The document marked as **Exhibit 'P-54'** is the photocopy of the print-out of the excel list of top 36 shareholders of Deutsche Post Ag that shows that the top 36 shareholders owned 50.16% of the outstanding capital stock of Deutsche Post AG.
>
> xxx xxx xxx"[112]

It is a basic rule in evidence that a witness can testify only on the facts that he/she knows of his/her own personal knowledge, *i.e.*, those which are derived from his/her own perception.[113] A witness may not testify as to what he/she merely learned from others either because he/she was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[114] Hearsay evidence is evidence, not of what the witness knows himself/herself but, of what he/she has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements.[115]

Moreover, Section 1, Rule 3 of the Rules on Electronic Evidence provide that when a rule of evidence refers to the term writing, document, record, instrument, memorandum, or any form of writing, such term shall include an electronic document. The Rules on Electronic Evidence require that an electronic document be authenticated in the manner prescribed by the Rules of Court. Section 1, Rule 9 thereof provides:

> "Rule 9
> METHOD OF PROOF
>
> Section 1. *Affidavit evidence.* — All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein."

---

112 Q&A Nos. 68 to 69, Exhibit "P-70", Docket – Vol. 6, p. 2837.
113 Section 22, Rule 130 of the Rules of Court.
114 *Jallaludin Abdulrahman Gulam vs. Spouses Catalino and Ricarda Santos*, G.R. No. 151458, August 31, 2006.
115 *Primo C. Miro, in his capacity as Deputy Ombudsman for the Visayas vs. Marilyn Mendoza Vda. De Erederos, Catalina Alingasa and Porferio I. Mendoza*, G.R. Nos. 172532 and 172544-45, November 20, 2013.

In *RCBC Bankard Services Corporation vs. Moises Oracion, Jr. and Emily L. Oracion*,[116] the Supreme Court has declared:

"xxx the Court cannot just concede that the pieces of documentary evidence in question are indeed electronic documents, which according to the Rules on Electronic Evidence are considered functional equivalent of paper-based documents and regarded as the equivalent of original documents under the Best Evidence Rule if they are print-outs or outputs readable by sight or other means, shown to reflect the data accurately.

For the Court to consider an electronic document as evidence, it must pass the test of admissibility. According to Section 2, Rule 3 of the Rules on Electronic Evidence, '[a]n electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is **authenticated in the manner prescribed by these Rules**.'

Rule 5 of the Rules on Electronic Evidence lays down the authentication process of electronic documents. Section 1 of Rule 5 imposes upon the party seeking to introduce an electronic document in any legal proceeding the burden of proving its authenticity in the manner provided therein. Section 2 of Rule 5 sets forth the required proof of authentication:

SEC. 2. *Manner of authentication.* — Before any private electronic document offered as authentic is received in evidence, **its authenticity must be proved by any of the following means:**

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or

---
[116] G.R. No. 223274, June 19, 2019.

> (c) **by other evidence showing its integrity and reliability to the satisfaction of the judge.**

As to method of proof, Section 1, Rule 9 of the Rules on Electronic Evidence provides:

> SECTION 1. *Affidavit of evidence.* — **All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.**

Evidently, **petitioner could not have complied with the Rules on Electronic Evidence because it failed to authenticate the supposed electronic documents through the required affidavit of evidence.** As earlier pointed out, what petitioner had in mind at the inception (when it filed the complaint) was to have the annexes admitted as duplicate originals as the term is understood in relation to paper-based documents. Thus, the annexes or attachments to the complaint of petitioner are inadmissible as electronic documents, and they cannot be given any probative value.

Even the section on **'Business Records as Exception to the Hearsay Rule' of Rule 8 of the Rules on Electronic Evidence requires authentication by the custodian or other qualified witness:**

> SECTION 1. *Inapplicability of the hearsay rule.* — A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other

qualified witnesses, is excepted from the rule on hearsay evidence.

In the absence of such authentication through the affidavit of the custodian or other qualified person, the said annexes or attachments cannot be admitted and appreciated as business records and excepted from the rule on hearsay evidence. Consequently, the annexes to the complaint fall within the Rule on Hearsay Evidence and are to be excluded pursuant to Section 36, Rule 130 of the Rules."[117]

Evidently, petitioner could not have complied with the Rules on Electronic Evidence because it failed to authenticate the supposed photocopy of the excel print-out through the required affidavit of evidence.

Petitioner also submitted excerpts from the Notes to the Financial Statements of Deutsche Post AG, as identified by its witness, Ms. Capistrano:

"**Q71: Aside from the print-out of the excel list of top 36 shareholders of Deutsche Post AG, what additional supporting document/s do you have that will show the shareholder structure of Deutsche Post AG as of December 31, 2017?**

A71: The consularized or certificate of authentication, dated November 26, 2021 issued by the signing officer of the Consulate General of the Philippines at Frankfurt, Germany containing a certification by the District Court of Bonn of the Federal Republic of Germany with attached excerpt of the Notes to the Financial Statements of Deutsche Post AG, particularly Note 27 entitled "Subscribed capital" and excerpt of the management report, particularly entitled 'Deutsche Post Share'.

The said document has a descriptive discussion of the shareholder structure of Deutsche Post AG as of December 31, 2017, as well as graph of the shareholder structure showing the percentage of ownership of kfW at 20.7%, institutional investors at 68.2% and private investors at 11.1%.

[117] *Emphasis supplied.*

> ***Q72: I am showing to you this document, previously marked as Exhibit 'P-55', with sub-marking. What relation has this document to the consularized excerpt of the Notes to the Financial Statements of Deutsche Post AG that you mentioned in your Answer No. 71?***
>
> A72: The document marked as **Exhibit 'P-55'** is the photocopy of the consularized or certificate of authentication, dated November 26, 2021 issued by the signing officer of the Consulate General of the Philippines at Frankfurt Republic of Germany with attached excerpt of the Notes to the Financial Statements of Deutsche Post AG, particularly Note 27 entitled 'Subscribed capital' (sub-marked as **Exhibit 'P-55-A')** and excerpt of the management report, particularly entitled 'Deutsche Post Share' (sub-marked as **Exhibit 'P-55-B'**) with a graph of the shareholder structure showing the percentage of ownership (sub-marked as **Exhibit 'P-55-C'**)."[118]

An examination of Exhibit "P-55" with its sub-markings shows that the share structure presented is generalized, and does not provide the information of the individual shareholders that would tend to prove that the number of individuals owning directly or indirectly with at least 50.16% voting power or investment power numbered more than 21.

Thus, the Court cannot consider petitioner as a publicly-held corporation exempt from the imposition of IAET.

Petitioner was able to prove that the accumulation of profits and earnings is required to meet reasonable needs of the business.

In its *Memorandum*, petitioner argues that respondent failed to consider as a deduction, the reasonable needs of its business or reasonably anticipated needs that the petitioner's payment in year 2018 of its bank load with The Hongkong and Shanghai Banking Corporation Limited – Philippine Branch amounting to Php50,000,000.00. Allegedly, the bank loan has a term of six (6) months with a fixed interest ranging from 4.75% to 5.40%. Petitioner cites Note 9 of the Notes to its Audited Financial Statement for the calendar year 2017 which shows that petitioner has an outstanding bank loan in the amount of Php35,000,000.00.

[118] Q&A Nos. 71 to 72, Exhibit "P-70", Docket – Vol. 6, p. 2838.

To bolster its claim, petitioner submitted the *Certification* dated March 13, 2019 issued by The Hongkong and Shanghai Banking Corporation Limited – Philippine Branch,[119] which states that it has fully paid its loan obligations to the Bank under Loan Facility.

Petitioner further contends that respondent failed to consider as a deduction, the reasonable needs of its business or reasonably anticipated needs of petitioner's acquisition of property and equipment or capital expenditure in the amount of Php81,514,986.00 in 2018. Petitioner cites Note 6 of the Notes to its Audited Financial Statements for the calendar year 2018.[120]

On the other hand, respondent alleges that petitioner failed to show proof that the appropriation of earnings is necessary for the business. In this regard, respondent claims that petitioner did not introduce the issue of its bank loans and property acquisition when it protested the assessment, and is now barred from raising these issues upon appeal to this Court. Respondent further claims that during trial, petitioner's witnesses only introduced alleged internal budgets, and that during cross examination, petitioner's witnesses were not able to confirm if the purposes for retention of earnings in relation to the budget prepared actually materialized. Respondent avers that petitioner did not appropriate retained earnings for its alleged business purposes based on its Audited Financial Statements.

The Court disagrees with respondent.

At the outset, cases filed before this Court are litigated *de novo*.[121] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to this Court all evidence required for the successful prosecution of its claim.[122] The Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case. Thus, respondent's contention that petitioner can no longer raise the issue on appeal is bereft of merit.

Section 29(E) of the NIRC of 1997 defines reasonable needs of the business as one that "includes the reasonably anticipated needs of the business." In explaining the concept of IAET and ascertaining what constitutes as "reasonable needs of the business", Sections 2 and 3 of RR No. 2-2001 are instructive, to wit:

---

[119] Exhibit "P-56", Docket – Vol. 5, p. 2740.
[120] Exhibit "P-62" and "P-62-A", Docket – Vol. 5, pp. 2804 to 2805.
[121] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.
[122] *Id.*; *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, et seq.*, G.R. No. 206079-80 and 206309, January 17, 2018.

"SEC. 2. *Concept of Improperly Accumulated Earnings Tax (IAET).* — Pursuant to Section 29 of the Code, there is imposed for each taxable year, in addition to other taxes imposed under Title II of the Tax Code of 1997, a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders. The rationale is that if the earnings and profits were distributed, the shareholders would then be liable to income tax thereon, whereas if the distribution were not made to them, they would incur no tax in respect to the undistributed earnings and profits of the corporation. Thus, a tax is being imposed in the nature of a penalty to the corporation for the improper accumulation of its earnings, and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation.

The touchstone of the liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, **if the failure to pay dividends is due to some other causes, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose would not generally make the accumulated or undistributed earnings subject to the tax**. However, if there is a determination that a corporation has accumulated income beyond the reasonable needs of the business, the 10% improperly accumulated earnings tax shall be imposed.

SEC. 3. *Determination of Reasonable Needs of the Business.* — 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 the 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 prove an immediate**

r

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 purpose 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 accumulations 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."[123]

Relative thereto, Revenue Audit Memorandum Order ("RAMO") No. 1-00 or the *Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000)"* dated March 17, 2000, provides:

"*XI. Audit of Minimum Corporate Income Tax and Improperly Accumulated Earnings Tax*

xxx xxx xxx

[123] *Emphasis supplied.*

B. Improperly Accumulated Earnings Tax

In accordance with Section 29 (A) of the Tax Code, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income is imposed for each taxable year on the improperly accumulated taxable income of each corporation identified under Section 27 (B) of the Tax Code.

The improperly accumulated earnings tax shall be determined as follows:

xxx xxx xxx

2. **Determine the reasonableness of the accumulation of profits or earnings and if the same is required for the purposes of the business, considering all the circumstances of the case.**

xxx xxx xxx

2.3 Require the taxpayer to submit documentary proof negating the clear preponderance of evidence that the profits were permitted to accumulate beyond the reasonable needs of the company's business. The accumulation of surplus for the reasonable needs of the business is not prevented if the purpose is not to prevent the imposition of the tax upon the shareholders. Undistributed income may be considered as properly accumulated in the following cases:

a. The profit is retained for working capital needed by the business;

b. **The profit is invested in additions to plants, facilities and activities reasonably required by the business provided that the plans for expansion or improvement must be definite, concrete and capable of fulfillment and not what may be characterized as nebulous plans for future action.**

c. The accumulation of earnings is in accordance with contract obligations placed to the credit of a sinking fund for the purpose of retiring bonds.

d. The profit is intended as reserves to meet competition, for anticipated losses or reverses in business, and to meet business hazards and emergencies."[124]

In *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[125] the Supreme Court found that the taxpayer was able to prove that it had accumulated its earnings for a reasonable purpose, citing that the controlling intention of the taxpayer at the time of accumulation is determinative of whether profits are accumulated for the reasonable needs of the business:

> "According to Sec. 29(C)(2) of the NIRC, '[t]he fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.' RR No. 2-2001 expounded on this, as follows:
>
> > SECTION 7. *Determination of Purpose to Avoid Income Tax*. — The fact that a corporation is a mere holding company or investment company shall be *prima facie* evidence of a purpose to avoid the tax upon its shareholders or members. Likewise, the fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members. In both instances, the corporation may, by clear preponderance of evidence in its favor, prove the contrary.
> >
> > For purposes of these Regulations, the term '*holding or investment company*' shall refer to a corporation having practically no activities except holding property, and collecting the income therefrom or investing the same.
> >
> > The following are *prima facie* instances of accumulation of profits beyond the reasonable needs of a business and indicative of purpose to avoid income tax upon shareholders:

[124] *Emphasis supplied.*
[125] G.R. No. 222476, May 5, 2021.

xxx xxx xxx

c. **Accumulation of earnings in excess of 100% of paid-up capital, not otherwise intended for the reasonable needs of the business as defined in these Regulations.**

In order **to determine whether profits are accumulated for the reasonable needs of the business as to avoid the imposition of the improperly accumulated earnings tax, the controlling intention of the taxpayer is that which is manifested at the time of accumulation**, not subsequently declared intentions which are merely the product of afterthought. A speculative and indefinite purpose will not suffice. The mere recognition of a future problem or the discussion of possible and alternative solutions is not sufficient. Definiteness of plan/s coupled with action/s taken towards its consummation are essential.'

xxx xxx xxx

For its part, respondent was able to prove that it had accumulated its earnings from previous years for a reasonable business purpose. Respondent needed funds for a new project, *i.e.*, the manufacture of Heat Run Oven-Controlled Rack, which started commercial operations in June 2007 and was also duly registered with the PEZA. Respondent had to acquire new machinery and equipment as well as a separate exclusive building space for the project. Petitioner did not cross-examine respondent's witness on this matter or present evidence to refute that respondent's accumulated income was actually for a reasonable need in its business operations."[126]

Pursuant to the aforequoted paragraph XI(B)(2)(2.3) of RAMO No. 1-00, to determine the reasonableness of the accumulation of profits or earnings, the taxpayer is required to submit documentary proof negating the clear preponderance of evidence that the profits were permitted to accumulate beyond the reasonable needs of the company's business. The accumulation of surplus for the reasonable needs of the business is not prevented if the purpose is not to prevent the imposition of the tax upon the shareholders. Undistributed income

[126] *Emphasis supplied.*

may be considered as properly accumulated if the profit is **invested in additions to plants, facilities and activities reasonably required by the business.**

In order not to be subjected to IAET, petitioner should be able to prove that the accumulated earnings are for the reasonable needs of the business.

The records show that petitioner's Board of Directors authorized the release of the appropriated retained earnings of Php24 Million out of the Php74 Million appropriated on July 20, 2015.[127] Consequently, a balance of Php50 Million in appropriated retained earnings remained earmarked for business expansion. Hence, petitioner was able to prove its intention to retain profits for the reasonably anticipated needs, if not the reasonable needs of the business.

In the present case, petitioner is NOT liable for IAET, as it did not incur any improperly accumulated taxable income for the year 2017, as shown in the computation below:

Taxable income for the year		Php147,866,612.00
Add: Adjustments		
Income subjected to final tax		123,892.00
Total		Php147,990,504.00
Less:		
Income tax paid	Php44,359,984.00	
Cash dividends declared in 2017	81,282,000.00	125,641,984.00
Taxable Income		Php22,348,520.00
Less:Remaining amount reserved for reasonable needs of the business		50,000,000.00
Amount Subject to IAET		- **Php27,651,480.00**

Petitioner is not liable for the compromise penalty imposed.

Respondent is also imposing against petitioner compromise penalty in the amount of Php40,000.00 for failure to pay the correct IAET, pursuant to the schedules of suggested compromise rate prescribed under Revenue Memorandum Order ("RMO") No. 7-2015 and in relation to Section 255 of the NIRC.[128]

[127] Exhibit "P-369", USB (Exhibit "P-375").
[128] Exhibit "P-28", Docket – Vol. 5, at p. 2454; Exhibit "P-31", Docket – Vol. 5, at p. 2474.

However, such imposition cannot be sustained. Under RMO No. 7-2015,[129] "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer" in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[130] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[131]

The Court has jurisdiction over petitioner's motion for refund and the refund of the amount of Php3,912,854.72, garnished and collected by the BIR, is in order.

Respondent contends that the Court has no jurisdiction over petitioner's motion for refund of amount collected. He avers that as a remedy for the collection of final deficiency taxes related to petitioner's assessment case, petitioner prayed for the refund of its payment. Respondent states that refund of taxes collected must be made first, through an administrative claim for refund, and then, a judicial claim for refund. He adds that petitioner did not file any claim for refund before the BIR before it proceeded with its prayer for refund in the instant case. Hence, according to respondent, petitioner cannot resort to a judicial claim for the refund of taxes it already paid. It should have first filed its administrative claim for refund.

On the other hand, petitioner claims that it is entitled to the refund or issuance of tax credit equivalent to the garnished amount of Php3,912,854.72 in the event that the subject IAET assessment is declared as illegal or invalid by this Court.

Petitioner avers that respondent admitted in the parties' JSFI filed on March 28, 2023, that the respondent had garnished the amount of

129 SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

130 *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

131 *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

Php3,912,854.72 from petitioner's bank account with UnionBank of the Philippines (UnionBank), West Service Road Branch, to wit:

> "10. The garnished amount of P3,912,854.72 was debited against petitioner's bank account with Unionbank of the Philippines, West Service Road Branch and a Manager's check was issued and released to Mr. Carlo Alfredo F. Cayco, Revenue Officer II of the LT Collection Enforcement Division of the Bureau of Internal Revenue."[132]

Petitioner further argues that respondent has the obligation to return what the BIR erroneously or illegally collected or acquired without just or legal ground from the petitioner.

The Court agrees with petitioner.

In support of its claim, petitioner submitted the following evidence to prove that the BIR garnished and collected the amount of Php3,912,854.72:

1. WG dated March 23, 2022 showing a total assessment amount of Php3,872,854.72, with the instruction to collect the compromise penalties amounting to Php40,000.00;[133]

2. Petitioner's UnionBank passbook, showing the withdrawal amount of Php3,912,854.72 on May 30, 2022;[134]

3. UnionBank, West Service Road Branch letter dated May 13, 2022 to the BIR stating that petitioner has deposited funds in their account, and that UnionBank has garnished the amount of Php3,912,854.72;[135]

4. BIR letter dated May 18, 2022 to UnionBank, West Service Road Branch, requesting that since the petitioner has deposit account with the said bank in an amount sufficient to cover the assessed amount per the FDDA, that a check be issued and be made payable to the BIR;[136]

---

[132] Par. 10, Admitted Facts by the Petitioner and Respondent, JSFI, Docket – Vol. 3, p. 1640.
[133] Exhibit "P-64", Docket – Vol. 6, p. 2807.
[134] Exhibits "P-65" to "P-65-A-1", Docket – Vol. 6, pp. 2808 to 2809.
[135] Exhibits "P-66" to "P-66-B", Docket – Vol. 6, p. 2810.
[136] Exhibit "P-67", Docket – Vol. 6, p. 2811.

5. *Acknowledgement Receipt* dated June 3, 2022 showing the Manager's Check with the amount of Php3,912,854.72 paid to the order of the BIR, signed received by Mr. Cayco;[137] and

6. The BIR's *Lifting of Warrant of Garnishment* dated June 10, 2022, stating that the taxpayer has paid the amount of the deficiency taxes of Php3,912,854.72 in full, hence, the WG is lifted and considered without force and effect.[138]

Notably, the present *Petition for Review* was filed on February 2, 2022,[139] respondent then subsequently issued the WDL on March 10, 2022,[140] and the WG on March 23, 2022,[141] leading petitioner to file a *Supplemental Petition for Review* on July 19, 2022,[142] praying that the WDL and the WG be declared void, invalid, and cancelled and withdrawn.

In *Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*,[143] the Supreme Court ruled that it is logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of the tax due or refundable, to wit:

> "Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.

[137] Exhibits "P-68" to "P-68-A", Docket – Vol. 6, p. 2812.
[138] Exhibit "P-69", Docket – Vol. 6, p. 2813.
[139] Docket – Vol. I, pp. 6 to 45.
[140] Exhibit "P-63", Docket – Vol. 6, p. 2806.
[141] Exhibit "P-64", Docket – Vol. 6, p. 2807.
[142] Docket – Vol. 2, pp. 800 to 821.
[143] G.R. No. 106611, July 21, 1994.

> **Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.**
>
> In fact, as the Court of Tax Appeals itself has heretofore conceded, **it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them is one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would be necessary to determine how much the Government is entitled to collect as taxes.** This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein."[144]

The same principle applies in this case. To require petitioner to first file an administrative claim for refund with the respondent before this Court can grant its claim for refund after the Court has found that the assessment should be cancelled, which is the basis for such case for refund of erroneously paid taxes, would be unduly burdensome.

Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate for the Court to directly grant petitioner's claim for refund based on its finding that petitioner is not liable for IAET as it did not incur any improperly accumulated taxable income.

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* and *Supplemental Petition for Review* are **GRANTED**.

Accordingly, the FDDA dated December 27, 2021 finding the petitioner liable for alleged deficiency IAET in the aggregate amount of Php3,912,854.72, inclusive of twenty-five percent (25%) surcharge, twelve percent (12%) interest

---

[144] *Emphasis supplied.*

and compromise penalty amounting to Php40,000.00 is **CANCELLED** and **SET ASIDE**.

Moreover, the WDL dated March 10, 2022 is **CANCELLED** and **WITHDRAWN**. However, petitioner's prayer that the WG dated March 23, 2022 be declared void, invalid and cancelled and withdrawn, is deemed **MOOT**, considering that the said WG was already lifted and considered without force and effect pursuant to the BIR's *Lifting of Warrant of Garnishment* dated June 10, 2022.

Finally, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner the garnished amount of **Php3,912,854.72**, which was debited against petitioner's bank account with UnionBank, and paid to the BIR.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(*on leave*)
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice