Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ONE WORLD CONNECTIONS, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8820
For*:* Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JUN 21 2018 : 10:33a.m.

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DECISION

MINDARO-GRULLA, J.:

This case involves a Petition for Review[1] filed by One World Connections, Inc. against the Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, vol. I, pp. 14-49.

[2] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[3] Act Creating the Court of Tax Appeals.

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

[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally

Petitioner seeks the cancellation of the assessments issued by the Commissioner of Internal Revenue for taxable year 2007, covering deficiency expanded withholding tax (EWT) in the amount of ₱119,741.22, withholding tax on compensation (WTC) in the amount of ₱2,993,176.46, final withholding tax (FWT) in the amount of ₱24,169,831.67, and final withholding value-added tax (FWVAT) in the amount of ₱10,041,797.07, or a total of ₱37,324,546.42, inclusive of surcharge and interest.

Petitioner One World Connections, Inc. is a corporation duly registered and existing under Philippine laws, with principal office address at Units 3701 and 3801 Orient Square, Don Francisco Ortigas, Jr. Road, Ortigas Center, San Antonio, Pasig City. It is a Business Process Outsourcing company.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner received on January 21, 2009 a Letter of Authority (LOA) No. 00010438 dated January 12, 2009, which was accompanied by the First Request for the Presentation of Records.[7] Petitioner submitted the requested documents on January 28, 2009.[8] A Second Request for the Presentation of Records was received by petitioner on January 28, 2009.[9] In compliance with the said second request, petitioner submitted the required documents on March 3, 2009.[10]

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collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Petitioner's Memorandum, Docket, vol. IV, p. 2206.
[7] Exhibit "P-2", Docket, vol. I pp. 396-398.
[8] Exhibits "P-3" and "P-3-1", Docket, vol. I, pp. 754-755.
[9] Exhibits "P-4" and "P-4-1", Docket, vol. I, p. 401.
[10] Exhibits "P-5", and "P-5-1", Docket, vol. I, pp. 402-403.

On July 7, 2009, petitioner received a Notice for Informal Conference[11] dated June 29, 2009 alleging deficiency VAT, EWT, WTC, FWT, and FWVAT, which was replied to by petitioner on July 22, 2009.[12]

Sometime in 2010, petitioner filed with the Bureau of Internal Revenue an application for the change in registered address from 31F Wynsum Corporate Plaza, F. Ortigas Ave., Ortigas Center, Pasig City to its present principal office at Units 3701 and 3801 Orient Square, Don Francisco Ortigas, Jr. Ortigas Center, San Antonio, Pasig City. The BIR issued a Certificate of Registration (COR) on October 14, 2010 reflecting petitioner's new address.[13]

On December 17, 2010, petitioner received an undated Preliminary Assessment Notice (PAN)[14] for the alleged deficiency EWT, WTC, FWT, and FWVAT for calendar year 2007 amounting to ₱36,734,415.27. The PAN was served at the new registered business address as indicated in its new Certificate of Registration.

Petitioner filed its protest to the PAN on January 3, 2011.[15] On the same day, the BIR issued the Formal Letter of Demand (FLD) and Assessment/Demand Letter No. 043A-B267-07, which was received by petitioner on January 12, 2011,[16] reiterating the alleged deficiency taxes except for the adjustments in the amount of interest. The FLD provided the following computation:

I. Deficiency Expanded Withholding Tax

	Amount	**EWT Rate**	**EWT Due**
Income Payments to subcontractors	2,883,339.50	2%	57,666.79
Rental	7,156,487.40	5%	357,824.37
Expanded Withholding Tax Due			415,491.16
Less: Remittance			341,136.71
Deficiency EWT			74,354.45

[11] Exhibits "P-7" and "P-7-1", Docket, vol. I, pp. 756-768.
[12] Exhibits "P-8" and "P-8-1", Docket, vol. I, pp. 769-774.
[13] Exhibit "P-9", Docket, vol. I, p. 422.
[14] Exhibits "P-10" and "P-10-1", Docket, vol. I, p. 775-778.
[15] Exhibits "P-11" and "P-11-1", Docket, vol. I, pp. 427-439.
[16] Exhibits "P-12" and "P-12-1", Docket, vol. I, pp. 779-788.

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Add: 20% Interest p.a. (01.16.08 to 02.3.11)			45,386.77
TOTAL AMOUNT DUE			**119,741.22**

II. Deficiency Withholding Tax on Compensation

Withholding tax due on compensation		5,062,502.28
Less: Remittances		
2006 Adjustment	248,474.94	
Payment	3,203,860.89	
Total	3,452,335.83	
Less: Unsupported 2006 adjustment	248,474.94	3,203,860.89
Deficiency WTC		1,858,641.39
Add: 20% Interest p.a. (01.16.08 to 02.3.11)		1,134,535.07
TOTAL AMOUNT DUE		**2,993,176.46**

III. Deficiency Final Withholding Tax

	Amount	**FWT Rate**	**EWT Due**
Dividend payments to stockholders	17,631,503.00	10%	1,763,150.30
Income payments to non-resident foreign corporations	44,914,049.58	25%	11,228,512.40
Deficiency FWT			12,991,662.70
Add: 25% Surcharge	3,247,915.68		
Add: 20% Interest p.a. (01.16.08 to 02.3.11)	7,930,253.29		11,178,168.97
TOTAL AMOUNT DUE			**24,169,831.67**

IV. Deficiency Withholding Tax on VAT

	Amount	**FWVAT Rate**	**EWT Due**
Income payments to non-resident foreign corporations	44,914,049.58	12%	5,389,685.95
Deficiency FWVAT			5,389,685.95
Add: 25% Surcharge	1,347,421.49		
Add: 20% Interest p.a. (01.11.08 to 12.3.10)	3,304,689.63		4,652,111.12
TOTAL AMOUNT DUE			**10,041,797.07**

TOTAL DEFICIENCIES			**37,324,546.41**

Petitioner filed its protest to the FLD on February 11, 2011.[17] It disputed the assessed deficiency taxes and emphasized the alleged violation of its right to due process. Petitioner submitted additional documents on April 11, 2011.[18]

On May 18, 2011, petitioner was informed that its request for reinvestigation has been referred to the revenue officers of Revenue District Office (RDO) No. 43-A East Pasig.[19] Accordingly, petitioner, coordinated with the revenue officers and during various meetings, reiterated its defense against the assessed deficiency taxes.[20]

Petitioner received a Preliminary Collection Letter (PCL) dated April 1, 2014 from the BIR[21] on April 7, 2014, demanding the payment of ₱37,424,546.42 representing petitioner's tax deficiencies based on the FLD, inclusive of interest, surcharge, and compromise penalties. The PCL was personally served by the BIR at petitioner's new registered business address, even though the address indicated was its old office address.

In response, petitioner wrote to the Collection Division of Revenue Region No. 7 on April 16, 2014 to inform the office that the Final Decision on Disputed Assessment (FDDA) has not been issued.[22] As advised by the Collection Division, petitioner also wrote a letter to the Regional Director to reiterate the non-issuance of the FDDA rendering the issuance of the PCL premature and violative of its right to due process.[23] However, both letters were unheeded.

Petitioner personally inquired with the Office of the Regional Director of Revenue Region No. 7 with regard to the issuance of the PCL despite not having received a decision on its protest to the FLD. Petitioner then discovered that the BIR has already issued the FDDA on September 9, 2013, but was erroneously served at petitioner's old

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[17] Exhibits "P-13" and "P-13-1", Docket, vol. I, pp. 456-473.
[18] Exhibits "P-14" and "P-14-1", Docket, vol. I, pp. 496-500.
[19] Exhibits "P-15" and "P-15-1", Docket, vol. I, p. 789.
[20] Par. 14, Petitioner's Memorandum, Docket, vol. IV, p. 2211.
[21] Exhibits "P-16" and "P-16-1", Docket, vol. I, p. 790.
[22] Exhibits "P-17" and "P-17-1", Docket, vol. I, p. 668.
[23] Exhibits "P-18" and "P-18-1", Docket, vol. I, pp. 669-674.

address, as evidenced by the address appearing on the FDDA and the Registry Return Receipt.[24] Moreover, unlike all the other notices and correspondences, which were served to petitioner personally, the FDDA was served through registered mail.

Petitioner then received the FDDA on May 7, 2014 to avoid any further delay and to immediately take action to protect its interest.[25]

On the same day, petitioner also received a Final Notice Before Seizure (FNBS) dated April 28, 2014[26] requiring petitioner to settle the amount of ₱37,424,546.42 within ten (10) days from notice, otherwise, the BIR shall serve and execute the Warrants of Distraint and/or Levy and Garnishment already prepared to enforce the collection of petitioner's supposed unpaid account. Said notice was served at petitioner's new registered address, even though it was actually addressed to its old office.

Thus, petitioner filed the instant Petition for Review on May 15, 2014, praying for the annulment of the assessment based on the alleged repeated violation of due process in issuing the FLD, in the conduct of the reinvestigation, in the issuance of the collection notices, and in assessing deficiency taxes and compromise penalty.

On July 9, 2014, petitioner filed an Amended Petition for Review[27] to include the prescription of respondent's assessment for deficiency EWT, WTC, FWT, and FWVAT.

However, prior to the filing of the amended petition, respondent was able to file an Answer[28] on July 7, 2014 interposing the following special and affirmative defense:

> "19. The Assessment had become final and demandable. Paragraph 4 of Section 228 of the National Internal Revenue Code of 1997 provides that 'Such assessment may be protested administratively by filing a request for reconsideration or re-investigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by

[24] Exhibits "P-19", "P-19-1" and "P-19-2", Docket, vol. I, pp. 675-676.
[25] Par. 18, Petitioner's Memorandum, Docket, vol. IV, p. 2212.
[26] Exhibits "P-20" and "P-20-1", Docket, vol. I, p. 677.
[27] Docket, vol. II, pp. 823-862.
[28] Docket, vol. I, pp. 817-822.

implementing rules and regulations. Within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.' Assuming *arguendo*, without necessarily admitting, there was indeed a Protest filed by the Petitioner on 11 February 2011, Assessment Notice No. 43A-B267-07 had nonetheless become final and demandable in view of the failure of the Petitioner to file a judicial action with the Court of Tax Appeals within a period of thirty (30) days after the lapse of the one hundred eighty (180) day period reckoned from the submission of supporting documents to the protest, as provided under Section 228 of the National Internal Revenue Code of 1997. Under the said provision, it is provided that:

Section 228. Protesting an Assessment. –

'xxx xxx xxx

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

The Pre-Trial Briefs of petitioner and respondent were respectively filed on September 8 and 9, 2014.[29] The case was eventually set for Pre-Trial Conference on May 28, 2015.[30]

On June 22, 2015, the parties filed their Joint Motion for Approval of Stipulation of Facts and Simplification of Issues[31]. Thereafter, a Pre-Trial Order was issued by the Court on July 13, 2015.[32]

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

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[29] Docket, vol. II, pp. 1207-1230 and pp. 1231-1236, respectively.
[30] Notice of Pre-Trial Conference, Docket, vol. II, pp. 1296-1297.
[31] Docket, vol. II, pp. 1546-1557.
[32] Docket, vol. III, pp. 1561-1579.

Petitioner presented its President, Mr. Alexander P. Uy,[33] and its former Account Supervisor and Accounting Department Head, Ms. Rizza Despuig Francisco,[34] as witnesses. After presentation, marking, identification and formal offer, the Court admitted via Resolutions dated September 25, 2014[35] and May 24, 2016[36] all of petitioner's documentary evidence, except for Exhibits "P-6", "P-6-1", "P-17-1", "P-30", "P-30-5", and "P-38-2".

Petitioner's documentary evidence which were formally offered and admitted, are as follows:

Exhibit	Description
P-1	Certification dated 14 May 2014 consisting of two (2) pages (previously marked as Exhibit "A").
P-1-1	Signature appearing over the name "Raul G. Gerodias" on page 2 (previously marked as Exhibit "A-1").
P-2	Letter of Authority (LOA) for the taxable year ending 31 December 2007 dated 12 January 2009 with the attached First Request for the Presentation of Records consisting of three (3) pages (previously marked as Exhibit "B").
P-2-1	Receipt by the Company on 21 January 2009 (previously marked as Exhibit "B-1").
P-3	Transmittal letter dated 28 January 2009 consisting of two (2) pages (previously marked as Exhibit "C").
P-3-1	Receipt by Shirley Chappel on 28 January 2009 (previously marked as Exhibit "C-1").
P-4	Second Request for the Presentation of Records dated 28 January 2009 (previously marked as Exhibit "D").
P-4-1	Receipt by the Company on 28 January 2009 (previously marked as Exhibit "D-1").
P-5	Letter dated 24 February 2009 consisting of two (2) pages (previously marked as Exhibit "E").
P-5-1	Receipt by Shirley Chappel on 03 March 2009 appearing on page 2 (previously marked as Exhibit "E-1".
P-7	Notice of Informal Conference dated 29 June 2009 with attached documents (previously marked as Exhibit "G").
P-7-1	Receipt by the Company on 07 July 2009 (previously marked as Exhibit "G-1").
P-8	Letter dated 17 July 2009 with the attached letter dated 22 July 2009 consisting of six (6) pages (the letter dated 22 July 2009 was previously marked as Exhibit "H").
P-8-1	Receipt by Abdul Jalal Hilal on 20 July 2009 appearing on the letter dated 17 July 2009.

[33] Minutes of the Hearing dated September 8, 2015, Docket, vol. III, pp. 1601-1604.
[34] Minutes of the Hearing dated February 16, 2016, Docket, vol. III, pp. 1745-1750.
[35] Docket, vol. II, pp. 1242-1246.
[36] Docket, vol. IV, pp. 2065-2066.

P-9	Certificate of Registration (COR) dated 14 October 2010 (previously marked as Exhibit "I").
P-10	Preliminary Assessment Notice (PAN) consisting of two (2) pages, exclusive of attachments (previously marked as Exhibit "J").
P-10-1	Receipt by the Company on 17 December 2010 (previously marked as Exhibit "J-1").
P-11	Protest to the Preliminary Assessment Notice dated 30 December 2010 consisting of thirteen (13) pages, excluding attachments (previously marked as Exhibit "K").
P-11-1	Receipt by the Bureau of Internal Revenue (BIR) on 03 January 2011 (previously marked as Exhibit "K-1").
P-12	Assessment Notice/Demand No. 043A-B267-07 (FAN) consisting of ten (10) pages (previously marked as Exhibit "L").
P-12-1	Receipt by the Company on 12 January 2011 appearing on page 6 (previously marked as Exhibit "L-1").
P-13	Protest to the Assessment Notice/Demand No. 043A-B267-07 dated 10 February 2011 consisting of eighteen (18) pages, excluding attachments (previously marked as Exhibit "M").
P-13-1	Receipt by the BIR on 11 February 2011 (previously marked as Exhibit "M-1").
P-14	Letter dated 11 April 2011 consisting of five (5) pages (previously marked as Exhibit "N").
P-14-1	Receipt by the BIR on 11 April 2011 (previously marked as Exhibit "N-1").
P-15	Memorandum of Assignment dated 06 May 2011 (previously marked as Exhibit "O").
P-15-1	Receipt by the Company on 18 May 2011 (previously marked as Exhibit "O-1").
P-16	Preliminary Collection Letter dated 01 April 2014 (previously marked as Exhibit "P").
P-16-1	Address of the Company as "31/F Wynsum Corporate Plaza, F. Ortigas, Jr., Ortigas Center, Pasig City" (previously marked as Exhibit "P-1").
P-17	Letter dated 14 April 2014 (previously marked as Exhibit "Q").
P-18	Letter dated 22 April 2014 consisting of six (6) pages (previously marked as Exhibit "R").
P-18-1	Receipt by the BIR on 22 April 2014 (previously marked as Exhibit "R-1").
P-19	Final Decision on Disputed Assessment dated 09 September 2013 (FDDA, previously marked as Exhibit "S").
P-19-1	Address of the Company as "31st Floor Wynsum Corporate Plaza, F. Ortigas Road, Ortigas Center, Pasig City" (previously marked as Exhibit "S-1").
P-19-2	Registry Return Receipt (previously marked as Exhibit "S-2").
P-20	Final Notice Before Seizure dated 28 April 2014 (previously marked as Exhibit "T").
P-20-1	Address of OneWorld as "31/F Wynsum Corporate Plaza, F. Ortigas, Jr., Ortigas Center, Pasig City" (previously marked as Exhibit "T-1").

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P-21	2013 Audited Financial Statements of OneWorld consisting of twenty six (26) pages (previously marked as Exhibit "U").
P-21-1	Item "Total Equity (166,895,712)" appearing in the Statements of Financial Position – December 31, 2013 and 2012 appearing on page 8 (previously marked as Exhibit "U-1").
V	Judicial Affidavit of Mr. Uy dated 14 May 2014 consisting of thirteen (13) pages.
V-1	Signature appearing over the name "Alexander Uy" appearing on page 13.
P-22	Check voucher no. 0213 issued to Eastern Telecommunications Philippines, Inc. (ETPI)
P-22-1	Check voucher no. 0162 issued to Pacific Internet Philippines, Inc. (PIP)
P-22-2	Check voucher no. 1138 issued to Philippine Long Distance Telephone Company (PLDT).
P-22-3	Check voucher no. 0816 issued to Philippine Vending Corporation (PVC).
P-22-4	Check voucher no. 1141 issued to Plaza Ibarra.
P-22-5	Check voucher no. 0255 issued to Melody Bajelot (Bajelot).
P-22-6	Check voucher no. 0283 issued to Bajelot.
P-22-7	Check voucher no. 0428 issued to Bajelot.
P-22-8	Check voucher no. 0660 issued to Bajelot.
P-22-9	Check voucher no. 0848 issued to Stephanie I. Pira (Pira).
P-22-10	Check voucher no. 1217 issued to Mahalia Orbita (Orbita).
P-22-11	Check voucher no. 1193 issued to Orbita.
P-22-12	Check voucher no. 1194 issued to Violey L. Cayabyab (Cayabyab) and JC Santoyo (Santoyo).
P-22-13	Check voucher no. 1272 issued to Grace Yoma (Yoma).
P-22-14	Check voucher no. 1014 issued to Adel Ryan Apostol (Apostol).
P-22-15	Check voucher no. 0771 issued to Bernadette C. Lucanas (Lucanas).
P-22-16	Check voucher no. 0711 issued to John Paul D. Martinez (Martinez).
P-22-17	Check voucher no. 0731 issued to Vincent Domalaon (Domalaon).
P-22-18	Check voucher no. 0730 issued to Astro Randy Cunanan (Cunanan).
P-22-19	Check voucher no. 0792 issued to Dexter Manahan (Manahan).
P-22-20	Check voucher no. 0157 issued to Margarita Tangco (Tangco).
P-22-21	Check voucher no. 0222 issued to Tangco.
P-22-22	Check voucher no. 0304 issued to Tangco.
P-22-23	Check voucher no. 0397 issued to Margarita Tangco.
P-22-24	Check voucher no. 0443 issued to Margarita Tangco.
P-22-25	Check voucher no. 0576 issued to Margarita Tangco.
P-22-26	Check voucher no. 0664 issued to Margarita Tangco.
P-22-27	Check voucher no. 0783 issued to Margarita Tangco.

P-22-28	Check voucher no. 0869 issued to Margarita Tangco.
P-22-29	Check voucher no. 0979 issued to Margarita Tangco.
P-22-30	Check voucher no. 1083 issued to Margarita Tangco.
P-22-31	Check voucher no. 1190 issued to Margarita Tangco.
P-22-32	Check voucher no. 0498 issued to Hilario Y. Laygo (Laygo).
P-22-33	Check voucher no. 0770 issued to Laygo.
P-22-34	Check voucher no. 0683 issued to Laygo.
P-22-35	Check voucher no. 0654 issued to Laygo.
P-22-36	Check voucher no. 0713 issued to Laygo.
P-23	Philippine Health Insurance Corporation (PhilHealth) Contributions Payment Return No. 211277730.
P-23-1	PhilHealth Contributions Payment Return No. 206862763.
P-23-2	PhilHealth Contributions Payment Return No. 206862764.
P-23-3	PhilHealth Contributions Payment Return No. 214828819.
P-23-4	PhilHealth Contributions Payment Return No. 214949229.
P-23-5	PhilHealth Contributions Payment Return No. 214949230.
P-23-6	PhilHealth Contributions Payment Return No. 214828820.
P-23-7	PhilHealth Contributions Payment Return No. 215717541.
P-23-8	PhilHealth Contributions Payment Return No. 215717542.
P-23-9	PhilHealth Contributions Payment Return No. 215724979.
P-23-10	PhilHealth Contributions Payment Return No. 214828821.
P-23-11	PhilHealth Contributions Payment Return No. 216466453.
P-24	Social Security System (SSS) Special Bank Receipt No. 912757.
P-24-1	SSS Special Bank Receipt No. 520174.
P-24-2	SSS Special Bank Receipt No. 277291.
P-24-3	SSS Special Bank Receipt No. 539839.
P-24-4	SSS Special Bank Receipt No. 323961.
P-24-5	SSS Special Bank Receipt No. 488139.
P-24-6	SSS Special Bank Receipt No. 470638.
P-24-7	SSS Special Bank Receipt No. 448417.
P-24-8	SSS Special Bank Receipt No. 514876.
P-24-9	SSS Special Bank Receipt No. 515243.
P-24-10	SSS Special Bank Receipt No. 047953.
P-24-11	SSS Special Bank Receipt No. 450915.
P-25	Home Development Mutual Fund (Pag-IBIG) Receipt No. 1018440.
P-25-1	Pag-IBIG Fund Receipt No. 1035866.
P-25-2	Pag-IBIG Fund Receipt No. 1809371.
P-25-3	Pag-IBIG Fund Receipt No. 2255017.
P-25-4	Pag-IBIG Fund Receipt No. 2316705.
P-25-5	Pag-IBIG Fund Receipt No. 2774661.
P-25-6	Pag-IBIG Fund Receipt No. 3550610.
P-25-7	Pag-IBIG Fund Receipt No. 3568230.
P-25-8	Pag-IBIG Fund Receipt No. 4236312.
P-25-9	Pag-IBIG Fund Receipt No. 4676451.
P-25-10	Pag-IBIG Fund Receipt No. 5547780.
P-25-11	Pag-IBIG Fund Receipt No. 5564121.
P-26	Medical Services Marketing & Development Corporation (MedServ) Official Receipt No. 01942.

P-26-1	MedServ Official Receipt No. 04389.
P-26-2	MedServ Official Receipt No. 04824.
P-26-3	MedServ Official Receipt No. 02061.
P-26-4	MedServ Official Receipt No. 01513.
P-27	Equitable PCI Bank Foreign Telegraphic Transfer Form.
P-28	Comparative Audited Financial Statement (AFS) of petitioner for the years 2006 and 2007.
P-28-1	Signature over the name "Emmanuel Y. Mendoza".
P-29	2006 AFS of petitioner.
P-30-1	Co-Location, Facilities Management and Carrier Service Agreement with Access International, Inc. (Access).
P-30-2	License Agreement with US Colo, LLC. (US Colo).
P-30-3	Agreement for Professional Services with Network Telecom.
P-30-4	Agreement for Services – DNCSolution with PossibleNow.Com, Inc. (PossibleNow)
P-30-6	Service Agreement with Zone Telecom, Inc. (Zone Telecom).
P-31	Securities and Exchange Commission (SEC) Certificate of Non-Registration of SER Solutions, Inc. dated 21 May 2015
P-31-1	SEC Certificate of Non-Registration of Access International dated 21 May 2015
P-31-2	SEC Certificate of Non-Registration of USA Co. dated 21 May 2015
P-31-3	SEC Certificate of Non-Registration of US Colo dated 21 May 2015
P-31-4	SEC Certificate of Non-Registration of Network Telecom dated 21 May 2015
P-31-5	SEC Certificate of Non-Registration of Milberg Penn International Outsourcing, Inc. (MPI) dated 21 May 2015
P-31-6	SEC Certificate of Non-Registration of PossibleNow dated 21 May 2015
P-31-7	SEC Certificate of Non-Registration of Asianet dated 21 May 2015
P-31-8	SEC Certificate of Non-Registration of Zone Telecom dated 21 May 2015
P-32	Judicial Affidavit of Rizza Despuig Francisco (Ms. Francisco) dated 05 June 2015.
P-32-1	Ms. Francisco's signature appearing on the Judicial Affidavit dated 05 June 2015
P-33-1	Articles of Incorporation dated 13 October 1992 of Access.
P-33-3	Articles of Organization dated 31 March 2000 of US Colo.
P-33-5	Articles of Organization dated 30 July 2004 of MPI.
P-33-6	Certificate of Existence dated 24 August 2015 of PossibleNow.
P-33-7	Certificate of Continuing Registration dated 19 August 2015 and Certificate of Change of Name dated 21 January 2008 of Asia Netcom.
P-34	Certificate of Registration from Philippine Economic Zone Authority (PEZA) dated 06 March 2007.
P-34-1	Certification dated 28 March 2007 issued by PEZA
P-35	International Telegraphic Transfer to Access dated 24 October 2007.

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P-35-1	International Telegraphic Transfer to Access dated 05 September 2007.
P-35-2	International Telegraphic Transfer to Access dated 14 September 2007.
P-35-3	International Telegraphic Transfer to Access dated 26 July 2007.
P-35-4	International Telegraphic Transfer to Access dated 25 July 2007.
P-35-5	International Telegraphic Transfer to Access dated 17 July 2007.
P-35-6	International Telegraphic Transfer to Access dated 04 July 2007.
P-35-7	International Telegraphic Transfer to Access dated 25 June 2007.
P-35-8	International Telegraphic Transfer to Access dated 01 June 2007.
P-35-9	International Telegraphic Transfer to Access dated 25 May 2007.
P-35-10	International Telegraphic Transfer to Access dated 04 May 2007.
P-35-11	International Telegraphic Transfer to Access dated 27 April 2007.
P-35-12	International Telegraphic Transfer to Access dated 19 April 2007.
P-35-13	International Telegraphic Transfer to Access dated 23 March 2007.
P-35-14	International Telegraphic Transfer to Access dated 15 March 2007.
P-35-15	International Telegraphic Transfer to Access dated 05 March 2007.
P-35-16	International Telegraphic Transfer to Access dated 23 February 2007.
P-35-17	International Telegraphic Transfer to Access dated 22 January 2007.
P-35-18	International Telegraphic Transfer to Access dated 09 January 2007.
P-36	Telegraphic Transfer to US Colo dated 09 October 2007.
P-36-1	Telegraphic Transfer to US Colo dated 21 September 2007.
P-36-2	Telegraphic Transfer to US Colo dated 11 September 2007.
P-36-3	Telegraphic Transfer to US Colo dated 08 June 2007.
P-36-4	Telegraphic Transfer to US Colo dated 18 May 2007.
P-36-5	Telegraphic Transfer to US Colo dated 10 April 2007.
P-36-6	Telegraphic Transfer to US Colo dated 15 March 2007.
P-36-7	Telegraphic Transfer to US Colo dated 23 February 2007.
P-36-8	Telegraphic Transfer to US Colo dated 09 February 2007.
P-36-9	Telegraphic Transfer to US Colo dated 17 January 2007.
P-36-10	Telegraphic Transfer to US Colo dated 28 November 2006.
P-37	Telegraphic Transfer to Network Telecom dated 16 February 2007.

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P-37-1	Telegraphic Transfer to Network Telecom dated 09 January 2007.
P-38	Telegraphic Transfer to PossibleNow dated 19 December 2007.
P-38-1	Telegraphic Transfer to PossibleNow dated 12 December 2007.
P-38-3	Telegraphic Transfer to PossibleNow dated 27 July 2007.
P-38-4	Telegraphic Transfer to PossibleNow dated 12 June 2007.
P-38-5	Telegraphic Transfer to PossibleNow dated 10 May 2007.
P-38-6	Telegraphic Transfer to PossibleNow dated 10 April 2007.
P-38-7	Telegraphic Transfer to PossibleNow dated 09 March 2007.
P-38-8	Telegraphic Transfer to PossibleNow dated 16 February 2007.
P-38-9	Telegraphic Transfer to PossibleNow dated 09 February 2007.
P-39	Telegraphic Transfer to Zone Telecom dated 19 December 2007.
P-39-1	Telegraphic Transfer to Zone Telecom dated 14 November 2007.
P-39-2	Telegraphic Transfer to Zone Telecom dated 25 October 2007.
P-39-3	Telegraphic Transfer to Zone Telecom dated 21 June 2007.
P-40	Supplemental Judicial Affidavit of Ms. Francisco dated 11 February 2016.
P-40-1	Ms. Francisco's signature appearing on the Supplement Judicial Affidavit dated 11 February 2016.

On the other hand, respondent presented Revenue Officers Abdul Jalal Hilal and Ariel Trias as his witnesses.[37] And after the presentation, marking, identification, and formal offer, the Court admitted Exhibits "R-1", "R-2", "R-8", "R-10", "R-12", "R-13", "R-15", "R-16", "R-17", "R-18", "R-19", "R-19a", "R-20", and "R-20a" as respondent's evidence. The Court, however, denied Exhibits "R-3", "R-4", "R-5", "R6", "R-9", "R-11", and "R-14".

The admitted documentary evidence formally offered by the respondent are as follows:

Exhibit	**Description**
R-1	Letter of Authority No. 00010438 dated 12 January 2009 authorizing the audit investigation of the 2007 books of accounts and accounting records of the petitioner as found in page 149 of the BIR Records
R-2	Notice of Informal Conference or Post Reporting Notice issued to petitioner pursuant to LA No. 00010438, including attachments as found in pages 276 to 287 of the BIR Record

[37] Minutes of the Hearing dated July 5, 2016, Docket, vol. IV, pp. 2087-2089.

R-8	Petitioner's Audited Financial Statement for 2007 (pages 97-117 of BIR Records)
R-10	Bank Reconciliation Statement of petitioner as found in pages 183 to 206
R-12	Memorandum for the Regional Director as found in pages 311 to 313 of the BIR Records
R-13	Indorsement Letter of the District Office to the Assessment Division as found in page 306 of the BIR Records
R-15	Preliminary Assessment Notice and its attachments, issued by respondent to petitioner as found in page 343-346 of the BIR Records
R-16	Final Assessment Notice, Formal Letter of Demand and its attachments as found in pages 348-357 of the BIR Records
R-17	Respondent's Letter to Petitioner giving information that its request for re-investigation has been granted as found in pages 962 of the BIR Records
R-18	Memorandum for RDO Aninag as found in page 991 of the BIR Records
R-19	Judicial Affidavit of Abdul Jalal Hilal, the Revenue Officer who conducted the audit investigation
R-19-a	Signature of Revenue Officer Abdul Jalal Hilal on his Judicial Affidavit
R-20	Judicial Affidavit of Ariel Trias, the Revenue Officer who conducted re-investigation on the 2007 audit investigation of RDO 43-A
R-20-a	Signature of Revenue Officer Ariel Trias on his Judicial Affidavit

After various motions for extension of time, petitioner filed its Memorandum[38] by registered mail on May 29, 2017, which was received by the court on June 9, 2017; whereas respondent failed to file his memorandum as per Records Verification[39] dated May 22, 2017. Accordingly, the case was submitted for decision on June 22, 2017.

The parties submitted the following issue for this Court's resolution:

> Whether or not petitioner is liable for deficiency EWT, WTC, FWT, WT on VAT, and compromise penalty in the total amount of ₱37,424,546.42 for taxable year 2007.[40]

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[38] Docket, vol. IV, pp. 2206-2242.
[39] Docket, vol. IV, p. 2199.
[40] Par. 15, Joint Motion for Approval of Stipulation of Facts and Simplification of Issues, Docket, vol. II, pp. 1547-1548.

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The CTA, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction;[41] thus, it is necessary to determine first whether the Court has jurisdiction over the present case. Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*

Moreover, Section 228 of the National Internal Revenue Code of 1997, as amended, provides that a taxpayer may appeal before the CTA the decision of the BIR Commissioner within 30 days from the receipt of the decision, or from the lapse of the 180-day period provided by law, otherwise the decision shall become final, executory, and demandable.

Relative thereto are Sections 3.1.4 and 3.1.5 of Revenue Regulations (RR) No. 12-99 that provide for the same period within which to file an appeal before the CTA.

As pointed out by petitioner, it did not receive the FDDA dated September 9, 2013, which was addressed to and served at its old office. It was only on May 7, 2014, when petitioner personally claimed and received the FDDA that petitioner came to know about the decision of respondent. On the same date, petitioner also received the FNBS, which gave petitioner the last opportunity to settle its supposed tax liabilities within 10 days from receipt; otherwise, the BIR shall execute the warrants of distraint, levy, and garnishment.

[41] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.

Petitioner further argues that since it has not received the decision of respondent with regard to its protest, the FNBS was issued prematurely.

Respondent, on the other hand, maintains that the FLD has become final, executory, and demandable because of the failure of petitioner to file its appeal before the CTA within 30 days after the lapse of the 180-day period to decide on the protest, as provided by law.

Based on the evidence, petitioner received the FDDA only on May 7, 2014 by personally claiming it from the BIR Office. Thus, despite being dated September 9, 2013, respondent failed to show that the FDDA was actually received by petitioner when it was addressed and mailed to its old office.

The Supreme Court, in the case of *Republic of the Philippines vs. The Court of Appeals and Nielson & Company, Inc.*[42], held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Thus, upon denial by petitioner that it received the FDDA prior to May 7, 2014, the *onus probandi* was shifted to the BIR to prove by contrary evidence that the taxpayer received such in due course of mail.

The facts to be proved to raise this presumption are (a) the letter was properly addressed with postage prepaid and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie.[43]

In the present case, the letter was not properly addressed to petitioner's correct and registered principal office. As such, there can be no presumption that the FDDA was duly received by petitioner. Consequently, petitioner had 30 days from the actual receipt of the

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[42] G.R. No. L-38540, April 30, 1987.
[43] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, citing *Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965.

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FDDA or from May 7, 2014 to file its appeal before this Court. Hence, the petition was filed on time on May 15, 2014.

Anent the issue of due process, petitioner insists that respondent violated its right to due process several times, from the issuance of the FAN, the conduct of the investigation, and the issuance of the collection notices.

Petitioner argues that the FAN is invalid since it was issued on the same day petitioner filed its protest to PAN. Petitioner maintains that its right to due process was violated when respondent blatantly disregarded the merits of its reply to the PAN which is further highlighted by the fact that the allegations contained in the PAN and the FAN were not only similar but identical, only differing in interest and surcharges; thus, effectively depriving petitioner of the opportunity to be heard, inimical to the very essence of due process.

The Court disagrees.

It must be emphasized that all presumptions are in favor of the correctness of tax assessments.[44] The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[45]

It is a basic rule that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[46]

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[44] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

[45] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

[46] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006.

In this case, petitioner was afforded the opportunity to respond to the PAN and eventually protest the FAN. It is not the lack of opportunity to present its side, but respondent's alleged failure to consider its reply to the PAN that is being questioned by petitioner. The difference in the appreciation by respondent of petitioner's reply which led to respondent's assessment of petitioner's deficiency taxes is not violative of due process.

Respondent has the duty to receive clarifications, explanations and conjectures forwarded to him by the taxpayer, however, he does not have the duty to accept them on face value. The determination of the actual liability of a taxpayer in an assessment relies on respondent's appreciation of the evidence presented before him. And absent any arbitrariness, the presumption is that respondent has made the assessment based on his findings and in good faith.[47] Accordingly, it is up to petitioner to clearly show that the assessment was erroneous, in order to relieve itself from it.

This Court, in the case of *IDS Logistics (Phils.), Inc. vs. Commissioner of Internal Revenue*[48], discussed the due process rule in taxation in this wise:

> "Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulations, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that 'In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period . . . he should be informed of such fact and the report of investigation shall be given due course.'
>
> **The essential elements of due process are notice and opportunity to present one's side.** To begin with, petitioner had knowledge of the investigation being conducted

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[47] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7038, May 13, 2010.

[48] CTA Case No. 7540, May 20, 2010, citing *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, CTA Case No. 7397, April 9, 2008.

by the BIR on its tax liabilities for the taxable years 1982-1986, as evidence by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.

As the facts would demonstrate, **petitioner was never deprived of due process as it was fully appraised of the legal and factual bases of the assessment issued against it; which enabled the petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessment; and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.**" *(Emphasis supplied)*

Moreover, this Court has held in the case of *Keppel Fels Energy, Inc. vs. Commissioner of Internal Revenue*[49] that:

"Pursuant to Section 228 of the 1997 NIRC and RR 12-85, a protest against the PAN, unlike the protest against the FAN, is not indispensable. 'In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is the failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice.'

It is clear from the foregoing that what the law requires is the filing of the protest against the FAN, failure to do so will cause the same to become final and executory.

In the instant Petition, it is undeniable that the essential elements of due process which are notice and opportunity to be heard, were aptly accorded to petitioner. Although only a few days apart, both PAN and FAN were served upon it. That petitioner was not able to take advantage of the full fifteen (15)

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[49] CTA Case No. 6826, July 21, 2011.

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days given for it to file its Comment on the FAN cannot override the fact that petitioner was still given enough opportunity to defend itself against the assessments. To further bolster the fact that it has been given adequate opportunity to refute the charges against it, petitioner was able to timely file its administrative protest before the respondent. It was able to extensively discuss its position on the deficiencies being assessed against it. In sum, it is evident that petitioner's right to a hearing was sufficiently observed and protected."

Petitioner also argues that respondent's right to assess petitioner for alleged deficiency EWT, WTC, FWT, and FWVAT has already prescribed.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period within which respondent shall assess and collect internal revenue taxes, to wit:

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

Based on the foregoing provision, internal revenue taxes shall, as a rule, be assessed within three (3) years after the last day prescribed by law for the filing of return, or the actual filing thereof, whichever comes later.

In relation thereto, the time of filing of the EWT and FWT returns is provided for under Section 2.58 of Revenue Regulations (RR) No. 02-98, as amended by RR No. 17-03; while that of WTC under Section 2.81 of RR No. 02-98, as amended by RR No. 06-01; and that of FWVAT under Section 4.114-2 of RR No. 16-05 as amended by RR No. 04-07, which are all quoted hereunder:

"SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.* –

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

xxx xxx xxx

(2) WHEN TO FILE –

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

"SECTION 2.81. *Filing of Return and Payment of Income Tax Withheld on Compensation (Form No. 1601).* – Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; Provided, however, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five (5) days later than the deadlines set above."

"SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* –

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(b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as private corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

xxx xxx xxx

(2) Other services rendered in the Philippines by non-residents.

xxx xxx xxx

VAT withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Petitioner received the FLD, covering the following deficiency taxes for taxable year 2007, only on January 12, 2011:[50]

Tax Type	Amount Due
Expanded Withholding Tax	₱ 119,741.22
Withholding Tax on Compensation	2,993,176.46
Final Withholding Tax	24,169,831.67
Withholding Value-Added Tax	10,041,797.07
Total	**₱ 37,324,546.42**

However, petitioner did not present the pertinent tax returns. While respondent presented petitioner's Quarterly VAT Return (BIR Form No. 2250Q) for the first quarter of 2007 (Exhibit "R-4") and Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Forms No. 1601C) for January to December 2007 (Exhibit "R-9"), the same were denied admission by the Court for respondent's failure to present the originals thereof for comparison[51]. Without the returns, the Court cannot determine whether respondent's right to assess petitioner of deficiency EWT, WTC, FWT, and FVAT for

[50] Exhibits "P-12" to "P-12-1".
[51] Resolution dated March 27, 2017, Docket, vol. IV, p. 2186.

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taxable year 2007 has prescribed. That being the case, the assessments are presumed to have been issued within the prescriptive period.

The Court shall now proceed to discuss the merits of the case.

I. DEFICIENCY EWT – ₱119,741.22

Invoking Sections 251 and 255 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 2-98, as amended, respondent assessed petitioner of deficiency EWT in the amount of ₱119,741.22, computed as follows:[52]

	Amount	**EWT Rate**	**EWT Due**
Income payments to subcontractors	₱ 2,883,339.50	2%	₱ 57,666.79
Rental	7,156,487.40	5%	357,824.37
Expanded withholding tax due			₱ 415,491.16
Less: Remittance			341,136.71
Deficiency expanded withholding tax			₱ 74,354.45
Add: 20% Interest p.a. (01.16.08 to 2.3.11)			45,386.77
TOTAL AMOUNT DUE			**₱ 119,741.22**

1. Income payments to subcontractors

Upon identifying petitioner's income payments to certain contractors subject to two percent (2%) EWT and comparing these with those found in petitioner's Alphalist of Payees Subjected to EWT for taxable year 2007, respondent found discrepancies amounting to ₱192,287.32 with corresponding 2% EWT of ₱3,845.75, detailed as follows:[53]

	Per Assessment		**Per Alphalist**		**Difference**	
Income payments to subcontractors:	**Income Payment**	**EWT**		**EWT**		**EWT**
Armed Security and Dept. Agency	₱ 465,109.50	₱ 9,302.19	₱ 465,109.63	₱ 9,302.19	₱ (0.13)	₱ -
Bayan Telecom Inc.	541,750.00	10,835.00	541,750.00	10,835.00	-	-

[52] Exhibit "P-12", *supra*, pp. 785 and 787.
[53] Exhibit "R-2-1", BIR Records, pp. 276-279.

Carpetech	1,500.00	30.00	1,500.00	30.00	-	-
Copies Unlimited Photocopy	13,405.50	268.11	8,533.31	170.67	4,872.19	97.44
CWC International	12,258.00	245.16		-	12,258.00	245.16
Environment & Gen. Services, Inc.	164,523.00	3,290.46	164,915.71	3,298.31	(392.71)	(7.85)
Fizcon Enterprises	70,411.00	1,408.22	70,410.76	1,408.22	0.24	0.00
Imax Technologies, Inc.	105,063.00	2,101.26		-	105,063.00	2,101.26
JobsDB	40,000.00	800.00	40,000.00	800.00	-	-
Jobstreet	53,675.00	1,073.50	53,675.00	1,073.50	-	-
Kleen World	8,330.50	166.61	8,330.40	166.61	0.10	-
Manila Bulletin	176,490.00	3,529.80	176,490.00	3,529.80	-	-
Marsh Philippines, Inc.	16,156.00	323.12		-	6,156.00	323.12
Medical Services Marketing and Development Corporation	896,631.50	17,932.63	896,631.59	17,932.63	(0.09)	-
One R Enterprise Glass and Aluminum	19,678.50	393.57	19,678.57	393.57	(0.07)	-
PLDT	240,000.00	4,800.00	200,714.50	4,014.29	39,285.50	785.71
Salemaire Industries Corporation	2,500.00	50.00	2,500.00	50.00	-	-
United Termite Control and Wood	9,000.00	180.00	9,000.00	180.00	-	-
Verdadero Trading and Services	46,858.00	937.16	31,812.71	636.25	15,045.29	300.91
Total	**₱2,883,339.50**	**₱57,666.79**	**₱2,691,052.18**	**₱53,821.04**	**₱192,287.32**	**₱3,845.75**

Petitioner did not submit any document in support of the discrepancies noted. Consequently, the income payments of ₱192,287.32 shall be considered as subject to 2% EWT under Section 2.57.2(E)(4) of RR No. 2-98, as amended by RR Nos. 14-02, 17-03 and 30-03, in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[54]

2. Rental

An examination of the Alphalist shows that the income payments to Eastern Telecom Phils., Inc. (ETPI), Pacific Internet Philippines (PIP), and Philippine Long Distance Telephone Company (PLDT) were subjected to 2% EWT. Also, there were payments not subjected to EWT, as shown below:

Income Payments	Amount per Assessment	Amount per Alphalist	Difference
Eastern Telecom Phils., Inc.	₱ 299,534.20	₱ 298,609.20	₱ 925.00
Pacific Internet Philippines	800,559.60	707,116.40	93,443.20

[54] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

Philippine Vending Corporation	4,525.40	-	4,525.40
PLDT	92,350.60	-	92,350.60
Syntax System, Inc.	314,365.35	314,365.40	(0.05)
Wynsum Realty Development, Inc.	5,373,305.00	5,029,657.62	343,647.38
Maria Rose Liggayu	271,847.25	-	271,847.25
Total	**₱7,156,487.40**	**₱6,349,748.62**	**₱806,738.78**

Respondent posits that the payments to ETPI, PIP, and PLDT pertain to rental, which should be subject to five percent (5%) EWT.

Petitioner insists that these payments were correctly subjected to 2% EWT as these entities rendered purely internet services. Furthermore, it contends that the payment to Philippine Vending Corporation (PVC) in the amount of ₱4,525.42 for the use of a coffee vending machine is not subject to withholding tax.

RR No. 2-98, as amended by RR Nos. 14-02, 17-03 and 30-03, provides for the rules on withholding of tax on certain income payments, to wit:

> "Sec. 2.57.2. – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (C) Rentals
>
> (1) *Real properties.* — On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%);
>
> (2) *Personal properties.* – **On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) annually for the continued use or possession of personal property** used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity, except

those under financial lease arrangements with leasing and finance companies authorized to operate under Republic Act No. 8556 (Financing Company Act of 1998). – Five percent (5%)

xxx xxx xxx

(E) *Income payments to certain contractors.* – On gross payments to the following contractors, whether individual or corporate – **Two percent (2%)**

xxx xxx xxx

(4) *Other contractors* –

xxx xxx xxx

(m) Persons engaged in the sale of computer services, computer programmers, software/program developer/designer, **internet service providers**, web page designing, computer data processing, conversion or base services and other computer related activities;" *(Emphasis supplied)*

Be that as it may, petitioner failed to establish that the income payments to ETPI, PIP, and PLDT actually pertain to internet services rendered or that the income payment to PVC refers to rental of coffee vending machine. Without the related invoices and/or official receipts, the actual nature of these income payments cannot be ascertained. The vouchers[55], which were presented by petitioner, merely create a paper trail for its payment of the check. The same do not prove the fact of payment to a certain seller for a specific transaction. As held in the case of *Towne & City Development Corporation vs. Court of Appeals, et al.*[56], the vouchers remain a piece of paper having no evidentiary weight, to wit:

"xxx However, as correctly pointed out by the trial court which the appellate court upheld, vouchers are *not* receipts.

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[55] Exhibits "P-22" to "P-22-3", Docket, vol. III, pp. 1795-1798.
[56] G.R. No. 135043, July 14, 2004.

> It should be noted that a voucher is **not necessarily** an evidence of payment. It is merely a way or method of recording or keeping track of payments made. A procedure adopted by companies for the orderly and proper accounting of funds disbursed. Unless it is supported by an actual payment xxx, a voucher remains a piece of paper having no evidentiary weight. (Emphasis supplied)

A receipt is a written and signed acknowledgment that money has been or goods have been delivered, while a voucher is documentary record of a business transaction.

The references to alleged check payments in the vouchers presented by the petitioner do not vest them with the character of receipts. xxx"

Moreover, petitioner failed to withhold EWT on portion of its rental payments, as shown in the table above. Absent any documentary evidence to prove otherwise, petitioner shall likewise be assessed on the difference noted.

In fine, petitioner is liable for basic deficiency EWT in the amount of ₱74,354.45, as computed below:

	Amount	**EWT Rate**	**EWT Due**
Income payments to contractors not subjected to 2% EWT	₱ 192,287.32	2%	₱ 3,845.75
Rental payments to ETPI and PIP subjected to 2% EWT	1,005,725.60	3%	30,171.77
Rental not subjected to EWT	806,738.78	5%	40,336.94
Deficiency Expanded Withholding Tax			**₱ 74,354.45**

II. DEFICIENCY WTC – ₱2,993,176.46

Respondent assessed petitioner of deficiency WTC in the amount of ₱2,993,176.46, computed as follows:[57]

[57] Exhibit "P-12".

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Withholding tax due on compensation		₱ 5,062,502.28
Less: Remittances		
2006 Adjustment	₱ 248,474.94	
Payment	3,203,860.89	
Total	₱ 3,452,335.83	
Less: Unsupported 2006 adjustment	248,474.94	3,203,860.89
Deficiency withholding tax on compensation		₱ 1,858,641.39
Add: 20% Interest p.a. (01.16.08 to 2.3.11)		1,134,535.07
TOTAL AMOUNT DUE		**₱ 2,993,176.46**

1. Withholding tax due on compensation – ₱5,062,502.28

Respondent alleges that there is a difference, amounting to ₱6,882,865.18, between the salaries and benefits per Audited Financial Statements (AFS) and the total compensation per monthly tax returns, as shown below:[58]

Salaries and wages – cost of sales				₱ 33,754,233.00
Salaries and wages – operating expenses				11,961,994.00
Total salaries and wages per AFS				₱ 45,716,227.00
Total compensation per alphalist				38,833,361.82
Salaries not subjected to withholding tax				₱ 6,882,865.18
Multiply by withholding tax rate				13.13590%
Amount still due				₱ 904,126.29
Add: Withholding tax on compensation per alphalist			₱ 3,452,335.83	
Withholding tax on payment to:	Payment	Withholding tax		
Steven W. Satchell	₱ 1,942,825.49	₱ 586,704.16		
Timothy Heidel	481,220.00	119,336.00	706,040.16	4,158,375.99
Withholding tax due on compensation				**₱ 5,062,502.28**

Petitioner asserts that the AFS discloses both the taxable and non-taxable salaries and benefits, while the returns declare only the taxable compensation on which income tax was withheld.

A scrutiny of the Alphalist[59] reveals that the total compensation of ₱38,833,361.82 is, contrary to petitioner's assertion, comprised of both taxable and non-taxable, as broken down below:

[58] Exhibit "P-10".
[59] BIR Records, pp. 27-62.

	Terminated Before December 31 *Schedule 7.1*	**No Previous Employer** *Schedule 7.3*	**Total**
Non-taxable			
13th Month Pay & Other Benefits	₱ 1,159,192.73	₱ 1,549,713.33	₱ 2,708,906.06
SSS, GSIS, PHIC & Pag-Ibig Contributions and Union Dues	521,440.18	823,924.16	1,345,364.34
Salaries & Other Forms of Compensation	2,681,570.84	1,735,192.00	4,416,762.84
Sub-total	*₱ 4,362,203.75*	*₱ 4,108,829.49*	*₱ 8,471,033.24*
Taxable			
13th Month Pay & Other Benefits	₱ 215,079.48	₱ 548,878.86	₱ 763,958.34
Salaries & Other Forms of Compensation	12,673,535.10	16,924,835.14	29,598,370.24
Sub-total	*₱ 12,888,614.58*	*₱ 17,473,714.00*	*₱ 30,362,328.58*
Total	**₱17,250,818.33**	**₱21,582,543.49**	**₱38,833,361.82**

Petitioner contends that the assessed salaries represent the following benefits:

Benefits	**Amount**
Employer's share in PhilHealth, SSS, Pag-Ibig	₱ 2,297,059.00
Medical insurance (HMO)	896,631.00
Employees' activities	478,243.00
De minimis and other benefits (including manager's reimbursements)	3,210,931.00
Total	**₱ 6,882,865.00**

Pertinent provisions of RR No. 2-98 clearly provide that the *de minimis* benefits and certain income payments are not subject to withholding tax, to wit:

"SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* –

(A) *Compensation Income Defined.* – xxx

xxx xxx xxx

(3) *Facilities and privileges of a relatively small value.* – Ordinarily, facilities and privileges (such as entertainment, medical services, or so called 'courtesy' discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.

Where compensation is paid in property other than money, the employer shall make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the Commissioner.

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(B) *Exemptions from withholding tax on compensation.* – The following income payments are exempted from the requirement of withholding tax on compensation:

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(11) *Thirteenth (13th) month pay and other benefits.* –

(a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government, (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and

(b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices.

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The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

(12) *GSIS, SSS, Medicare and other contributions.* – GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees."

In relation thereto, RR No. 10-00 enumerates the *de minimis* benefits not subject to withholding tax, to wit:

"SECTION 1. Section 2.78.1(A)(3), (6)(b)(ii) and (7) of Revenue Regulations No. 2-98, as last amended by Revenue Regulations No. 8-2000, is hereby further amended to read as follows:

xxx xxx xxx

The following shall be considered as '*de minimis*' benefits not subject to income tax as well as withholding tax on compensation income of both managerial and rank and file employees:

(a) Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year and the monetized value of leave credits paid to government officials and employees;

(b) Medical cash allowance to dependents of employees not exceeding ₱750.00 per employee per semester of ₱125 per month;

(c) Rice subsidy of ₱1,000.00 or one (1) sack of 50-kg. rice per month amounting to not more than ₱1,000.00;

(d) Uniform and clothing allowance not exceeding ₱3,000 per annum;

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(e) Actual yearly medical benefits not exceeding ₱10,000 per annum;

(f) Laundry allowance not exceeding ₱300 per month;

(g) Employees achievement awards, *e.g.,* for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding ₱10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;

(h) Gifts given during Christmas and major anniversary celebrations not exceeding ₱5,000 per employee per annum;

(i) Flowers, fruits, books, or similar items given to employees under special circumstances, *e.g.,* on account of illness, marriage, birth of baby, etc.; and

(j) Daily meal allowance for overtime work not exceeding twenty five percent 25% of the basic minimum wage."

Employer's share in PhilHealth, SSS, Pag-Ibig. An examination of the official receipts[60] shows that petitioner remitted to the Philippine Health Insurance Corporation (PhilHealth), the Social Security System (SSS), and the Home Development Mutual Fund (HDMF) a total contribution of ₱3,642,328.38 representing the sum of the employees' share of ₱1,345,364.34 and employer's share of ₱2,297,059.00, detailed as follows:

Exhibit	O.R. No.	Date	Amount
Philippine Health Insurance Corporation			
"P-23"	211277730	2/9/2007	₱ 60,525.00
"P-23-1"	206862763	3/9/2007	56,450.00
"P-23-2"	206862764	4/10/2007	56,325.00
"P-23-3"	214828819	5/10/2007	60,500.00
"P-23-4"	214949229	6/8/2007	55,775.00
"P-23-5"	214949230	7/10/2007	50,888.00
"P-23-6"	214828820	8/10/2007	66,425.00
"P-23-7"	215717541	10/10/2007	61,375.00
"P-23-8"	215717542	10/10/2007	61,175.00

[60] Docket, vol. III, pp. 1832-1867.

"P-23-9"	215724979	11/8/2007	55,075.00
"P-23-10"	214828821	1/10/2008	59,050.00
"P-23-11"	216466453	12/10/2007	61,350.00
Subtotal – PhilHealth			***₱ 704,913.00***
Social Security System			
"P-24"	912757	2/9/2007	₱ 221,716.00
"P-24-1"	520174	3/9/2007	212,896.00
"P-24-2"	277201	4/10/2007	211,498.00
"P-24-3"	539839	5/10/2007	220,958.00
"P-24-4"	323961	6/8/2007	211,332.00
"P-24-5"	488139	7/10/2007	186,418.00
"P-24-6"	470638	8/10/2007	247,280.00
"P-24-7"	448417	9/10/2007	226,336.00
"P-24-8"	514876	10/10/2007	220,208.00
"P-24-9"	515243	11/9/2007	198,876.00
"P-24-10"	047953	12/11/2007	214,322.00
"P-24-11"	450915	1/10/2008	209,332.00
Subtotal – SSS			***₱ 2,581,172.00***
Home Development Mutual Fund			
"P-25"	1018440	2/15/2007	₱ 29,463.16
"P-25-1"	1035866	3/15/2007	29,600.00
"P-25-2"	1809371	4/16/2007	29,000.00
"P-25-3"	2255017	5/15/2007	30,701.02
"P-25-4"	2316705	6/15/2007	29,173.18
"P-25-5"	2774661	7/16/2007	25,126.44
"P-25-6"	3550610	8/16/2007	36,723.56
"P-25-7"	3568230	9/14/2007	31,200.00
"P-25-8"	4236312	10/24/2007	30,000.00
"P-25-9"	4676451	11/23/2007	27,906.02
"P-25-10"	5547780	12/21/2007	29,750.00
"P-25-11"	5564121	1/21/2008	27,600.00
Subtotal – HDMF/Pag-Ibig			***₱ 356,243.38***
Grand Total			**₱ 3,642,328.38**

Hence, pursuant to Section 2.78.1(B)(12) of RR No. 02-98, as amended, as quoted earlier, the assessment on the employer's share of ₱2,297,059.00 is cancelled.

Medical Insurance (HMO). Petitioner paid membership fees to Medical Services Marketing & Development Corporation for the medical insurance, as supported by the following receipts[61]:

Exhibit	O.R. No.	Date	Particulars	Amount

[61] Docket, vol. III, pp. 1868-1872.

"P-26"	01942	2/16/2007	HMO – Membership fee for the period December 1, 2006 to October 31, 2007	₱ 35,693.93
"P-26-1"	04389	12/7/2007	HMO – Payment for the period November 1, 2007 to October 31, 2008	47,373.57
"P-26-2"	04824	1/11/2008	Payment for additional membership fee	281,365.64
"P-26-3"	02061	3/9/2007	HMO – Membership fee for the period January 27 to October 31, 2007	27,036.43
"P-26-4"	01513	11/24/2006	Membership fee for the period November 1 to October 31, 2007	863,370.48
			Total	**₱1,254,840.05**

As cited earlier, RR No. 10-00 provides that actual yearly medical benefits not exceeding ₱10,000.00 are exempt from withholding tax. Relying only on the official receipts, the Court cannot ascertain whether the medical benefits received by each employee for taxable year 2007 did not exceed the said limit or threshold amount.

Employees' Activities. Petitioner claims that the "Employees' Activities", which are for the direct benefit of its employees and intended to promote company solidarity, were correctly excluded from the computation of taxable gross income under the NIRC of 1997, as amended. Section 32(B)(7)(e)(iv) of the NIRC of 1997, as amended, provides that the 13th month pay and *other benefits* received as a consequence of employer-employee relationship shall be excluded from the computation of gross income. Being excluded from gross income, it should not be subject to WTC as well.

Nonetheless, petitioner failed to prove that it actually incurred the assessed amount for said employees' activities. The check vouchers, as held earlier, have no evidentiary weight.

De minimis and other benefits. Petitioner points out that the BIR has consistently held in various BIR rulings that *de minimis* benefits which are facilities or privileges furnished as a means of promoting the health, goodwill, contentment, or efficiency of employees are exempt from the fringe benefits tax and income tax, as well as WTC. With respect to expenses (booked as salaries and benefits) incurred by the employer for its convenience or benefit,

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petitioner asserts that the same are also not subject to WTC, citing BIR Ruling No. DA 534-07 dated October 10, 2007.

Nevertheless, with only check vouchers at hand, the Court cannot ascertain the nature of the subject payments.

Payments to Satchell and Heidel. Petitioner argues that the subject payments were reimbursements for expenses incurred in providing services to petitioner. Such payments are considered mere return of capital or payment of costs incurred.

Even assuming that the payments to Satchell and Heidel can be considered as income payments, petitioner maintains that the same are not subject to WTC because the services were rendered outside of the Philippines. Under Section 25, in relation to Section 42, of the NIRC of 1997, as amended, a non-resident alien, whether or not engaged in trade or business in the Philippines, is subject to tax only on income from sources within the Philippines.

Be that as it may, the Court cannot confirm the nature of the subject payments. The Equitable PCI Bank Foreign Telegraphic Transfer Form[62] simply supports the fact of payment of $10,000.00 to Timothy Heidel. The same does not prove that the payments are merely reimbursements.

2. Unsupported 2006 adjustment – ₱248,474.94

Pursuant to Sections 81 and 83 of the NIRC of 1997 and Revenue Memorandum Order (RMO) No. 53-98, respondent disallowed the 2006 adjustments claimed by petitioner as tax credits for failure to substantiate the same.

Citing Section 3 of RR No. 12-99, petitioner argues that there was no sufficient explanation or justification on said finding, in violation of its right to due process, as quoted hereunder:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

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[62] Exhibit "P-27", Docket, vol. III, p. 1873.

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3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, **showing in detail, the facts and the law, rules and regulations, or jurisprudence** on which the proposed assessment is based xxx" *(Emphasis supplied)*

The Court does not agree.

In the Details of Discrepancies, respondent clearly stated the factual and legal bases of the assessment, to wit:

"b. Unsupported 2006 adjustment (P 248,474.94) – Verification disclosed that your claimed 2006 adjustments amounting to P 248,474.94 was not substantiated, hence, such was disallowed as tax credits pursuant to Sections 81 and 83 of the Tax Code of 1997, as amended and Revenue Memorandum Order No. 53-98."

Considering that petitioner failed to refute the disallowance, the same shall be sustained.

In fine, petitioner is liable for basic deficiency WTC in the amount of ₱1,556,902.01, computed as follows:

Salaries not subjected to WTC per assessment	₱ 6,882,865.18	
Less: Adjustment		
Employer's share in PhilHealth, SSS, Pag-Ibig	2,297,059.00	
Adjusted salaries not subjected to WTC	₱ 4,585,806.18	
Multiply by withholding tax rate	13.13590%	
Amount still due		₱ 602,386.91
Withholding tax on compensation per alphalist		3,452,335.83

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Withholding tax on payments to Satchell and Heidel		706,040.16
Withholding tax due on compensation		₱ 4,760,762.90
Less: Remittances		
2006 Adjustment	₱ 248,474.94	
Payment	3,203,860.89	
Total	₱ 3,452,335.83	
Less: Unsupported 2006 adjustment	248,474.94	3,203,860.89
Basic Deficiency WTC		**₱1,556,902.01**

III. DEFICIENCY FWT – ₱24,169,831.67

Respondent assessed petitioner of deficiency FWT in the amount of ₱24,169,831.67, computed as follows:[63]

	Amount	FWT Rate	FWT Due
Dividend payments to stockholders	₱ 17,631,503.00	10%	₱ 1,763,150.30
Income payments to non-resident foreign corporations (NRFCs)	44,914,049.58	25%	11,228,512.40
Deficiency final withholding tax			₱ 12,991,662.70
Add: 25% Surcharge	₱ 3,247,915.68		
20% Interest p.a. (01.16.08 to 2.3.11)	7,930,253.29		11,178,168.97
TOTAL AMOUNT DUE			**₱ 24,169,831.67**

1. Dividend Payments to Stockholders – ₱17,631,503.00

Respondent treated the payments made by petitioner to its shareholders as dividends subject to 10% FWT under Section 24(B)(2) of the NIRC of 1997, as amended, to wit:

"SEC. 24. *Income Tax Rates.* –

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –

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(B) *Rate of Tax on Certain Passive Income.* –

[63] Exhibit "P-12", Docket, vol. I, p. 785.

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> (2) *Cash and/or Property Dividends*. – A final tax at the following rates shall be imposed upon the cash and/or property dividends actually or constructively received by an individual from a domestic corporation or from a joint stock company, insurance or mutual fund companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account, or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer:
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> Six percent (6%) beginning January 1, 1998;
> Eight percent (8%) beginning January 1, 1999;
> Ten percent (10%) beginning January 1, 2000.
>
> *Provided, however*, That the tax on dividends shall apply only on income earned on or after January 1, 1998. Income forming part of retained earnings as of December 31, 1997 shall not, even if declared or distributed on or after January 1, 1998, be subject to this tax."

Petitioner, on the other hand, contends that the total amount of ₱17,631,503.00 paid to shareholders is not in the nature of dividend declaration, but payment for advances previously made by them.

In addition, petitioner avers that it had no retained earnings for distribution as dividends. For the years 2006 and 2007, it had substantial deficits of ₱2,938,951.00 and ₱37,692,875.00, respectively.

The assessment must be cancelled.

Pursuant to Section 73(A) of the NIRC of 1997, as amended, the term "dividends" for income tax purposes means any distribution made by a corporation to its shareholders out of its **earnings or profits** and payable to its shareholders, whether in money or in other property.

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As correctly pointed out by petitioner, its AFS[64] for the years 2006 and 2007 would reveal that it did not have unrestricted retained earnings as its operations resulted in net losses/deficits for both years. Hence, without the availability of unrestricted retained earnings, petitioner could not have declared and paid dividends to its shareholders.

Moreover, as shown in its Audited Balance Sheets[65] as of December 31, 2007 and 2006, petitioner reported the following balances of Due to Affiliates:

	2007	2006
Non-current Liabilities		
Due to Affiliates (Note 9)	₱ 6,407,476	₱ 25,252,549

Note 11[66] of petitioner's AFS for the year ended December 31, 2006 discloses that the Due to Affiliates of ₱25,252,549.00 consisted of non-interest bearing advances granted to petitioner by its directors, namely, Winston Uy and Alexander Uy, in the respective amounts of ₱24,337,066.00 and ₱915,483.00. These advances were partially paid in 2007 in the amount of ₱18,845,073.00 as can be seen from petitioner's Statement of Cash Flows for the year ended December 31, 2007.[67] It can then be concluded that the ₱17,631,503.00 payments to shareholders as found by respondent represent part of the ₱18,845,073.00 settlement of the Advances Due to Affiliates.

2. Income Payments to Non-Resident Foreign Corporations – ₱44,914,049.58

Respondent found that the income payments made by petitioner to the following non-resident foreign corporations (NRFCs) totaling ₱44,914,049.58 were not subjected to FWT:[68]

Paid to	Amount of Income Payment
One World Holdings	₱ 2,081,316.80
SER Solutions, Inc.	28,467,813.83
Access International	1,597,182.84

[64] Exhibits "P-28" and "P-29", Docket, vol. III, pp. 1880, 1881, 1897, and 1898.
[65] Exhibits "P-28" and "P-29", Docket, vol. III, pp. 1880 and 1897.
[66] Exhibit "P-29", Docket, vol. III, p. 1908.
[67] Exhibit "P-28", Docket, vol. III, p. 1883.
[68] Exhibit "P-12".

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USA Co.	45,158.40
US Colo	541,350.58
Network Telecom	163,728.92
MPI Outsourcing	851,288.94
Possible Now	658,821.99
Asianet	3,484,975.40
Zonetel	1,176,091.88
Teledata Com	5,846,320.00
Total	**₱44,914,049.58**

Petitioner argues that the services of the following NRFCs to petitioner were rendered outside the Philippines, hence, not subject to FWT:

SER SOLUTIONS, INC. (Virginia, USA)	Sale of software and rendition of SER Services in the United States (US) Office
ACCESS INTERNATIONAL (Nevada, USA)	International phone services provided in the US
USA CO.	Installation of server in the US
US COLO. LLC. (Nevada, USA)	Maintenance of server at 624 South Grand Avenue, Suite 1810, Los Angeles, California
NETWORK TELECOM	Leasing of telephone lines outside of the Philippines
MILBERG PENN INTERNATIONAL LLC. (New York, USA)	Maintenance of email domain outside the Philippines
POSSIBLENOW, INC. (Georgia, USA)	Internet-based software services such as DNCSolution, DNCInteractive, DNCNotification, EBRSolution
ASIA NETCOM ASIA PACIFIC COMMERCIAL LIMITED (Hongkong)	Leasing of private telephone lines outside the Philippines
ZONE TELECOM (New Jersey/California)	Dedicated voice services outside the Philippines

The Court partially upholds the assessment.

Section 23(F) of the NIRC of 1997, as amended, in relation to Section 42(A) of the same Code, states that a foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

To clearly establish non-liability of petitioner, the Court finds support in the "source of income" doctrine. In the case of

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Commissioner of Internal Revenue vs. Juliane Baier-Nickel[69], the "source of income" was explained by the Supreme Court, as follows:

> "xxx **'source of income' relates to the property, activity or service that produced the income.** With respect to rendition of labor or personal service, as in the instant case, **it is the place where the labor or service was performed that determines the source of the income**. There is therefore no merit in petitioner's interpretation which equates source of income in labor or personal service with the residence of the payor or the place of payment of the income.
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> xxx xxx xxx
>
> **The decisive factual consideration here is not the capacity in which respondent received the income, but the sufficiency of evidence to prove that the services she rendered were performed in Germany**. Though not raised as an issue, the Court is clothed with authority to address the same because the resolution thereof will settle the vital question posed in this controversy." *(Emphasis supplied)*

To prove that the subject income payments pertain to services rendered outside the Philippines, petitioner submitted the sales order form and service/license agreements it entered with the aforementioned NRFCs, to wit:

Description	**Exhibit No.**
SER Solutions, Inc. (SER) Standard Terms and Conditions – Telephony	"P-30"
Co-Location, Facilities Management and Carrier Service Agreement with Access International, Inc. (Access)	"P-30-1"
License Agreement with US Colo, LLC (US Colo)	"P-30-2"
Agreement for Professional Services with Network Telecom	"P-30-3"
Agreement for Services - DNCSolution with PossibleNow.Com, Inc. (PossibleNow)	"P-30-4"
Sales Order Form issued by Asia Netcom Asia Pacific Commercial Limited (Asia Netcom)	"P-30-5"
Service Agreement with Zone Telecom, Inc. (Zone Telecom)	"P-30-6"

[69] G.R. No. 153793, August 29, 2006.

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However, Exhibits "P-30" and "P-30-5" were denied admission by the Court in the Resolution[70] dated May 24, 2016. Thus, the Court cannot give credence to said exhibits. Also, the Court cannot give probative value to Exhibits "P-30-1" and "P-30-6" which were unsigned by the parties.

A scrutiny of Exhibits "P-30-2" to "P-30-4" shows that the following services with corresponding income payments of ₱1,363,901.49 were indeed rendered outside the Philippines, thus, not subject to Philippine income tax:

Services	**Supplier**	**Exhibit No.**	**Income Payments Per Assessment**
Maintenance of server at 624 South Grand Avenue, Suite 1810, Los Angeles, California	US Colo, LLC	"P-30-2"	₱ 541,350.58
Leasing of telephone lines outside of the Philippines	Network Telecom	"P-30-3"	163,728.92
Internet-based software services such as DNCSolution, DNCInteractive, DNCNotification, EBRSolution	PossibleNow.Com, Inc.	"P-30-4"	658,821.99
		Total	**₱1,363,901.49**

However, with regard to the remaining assessed income payments of ₱43,550,148.09 (₱44,914,049.58 less ₱1,363,901.49), in the absence of contrary evidence, the same shall be considered to have been derived by the NRFCs from services rendered within the Philippines, thus, subject to Philippine income tax.

Generally, the NRFC whether or not engaged in trade or business in the Philippines is subject to 35% income tax on gross income from all sources within the Philippines pursuant to Section 28(B)(1) of the NIRC of 1997, as amended, which states:

"SEC. 28. *Rates of Income Tax on Foreign Corporations.*

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(B) *Tax on Nonresident Foreign Corporation.* –

[70] Docket, vol. IV, p. 2066.

(1) *In General.* – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c): *Provided,* That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)."

In relation thereto, Section 57 of the NIRC of 1997, as amended, requires the payor-corporation, such as petitioner, to withhold the tax imposed under Section 28(B)(1) of the NIRC of 1997, as amended.

However, the foregoing tax imposition may be reduced to the extent required by any treaty obligation binding upon the Philippine government, pursuant to Section 32(B)(5) of the NIRC of 1997, as amended, which states:

"SEC. 32. *Gross Income.* –

xxx xxx xxx

(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(5) *Income Exempt under Treaty.* – Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines."

In the present case, respondent applied the lower rate of 25% pursuant to the tax treaty between the Philippines and the United States of America.[71]

[71] Exhibit "P-7".

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Thus, petitioner is liable for basic deficiency 25% FWT in the amount of ₱10,887,537.02, computed as follows:

Income payments to NRFCs per BIR's assessment	₱ 44,914,049.58
Less: Income payments derived from sources outside the Philippines	1,363,901.49
Adjusted taxable income payments to NRFCs	₱ 43,550,148.09
FWT rate	25%
Basic deficiency FWT	**₱ 10,887,537.02**

IV. DEFICIENCY FWVAT - ₱10,041,797.07

Petitioner's income payments to NRFCs in the amount of ₱44,914,049.58 were likewise assessed of deficiency FWVAT in the amount of ₱10,041,797.07, computed as follows:[72]

	Amount	**Tax Rate**	**Tax Due**
Income payments to NRFCs	₱44,914,049.58	12%	₱ 5,389,685.95
Deficiency withholding VAT			₱ 5,389,685.95
Add: 25% Surcharge	₱ 1,347,421.49		
20% Interest p.a. (01.16.08 to 2.3.11)	3,304,689.63		4,652,111.12
TOTAL AMOUNT DUE			**₱10,041,797.07**

To be liable for VAT, the NRFC should render service in the Philippines as provided for under Sections 105 and 108 of the NIRC of 1997, as amended:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> xxx xxx xxx

[72] Exhibit "P-12".

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The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business."

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* – xxx

xxx xxx xxx

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx"

In relation thereto, Section 4.114-2 of RR No. 16-05, as amended by RR No. 04-7, prescribes the withholding of 12% final VAT on other services rendered in the Philippines by non-residents, to wit:

"SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* –

xxx xxx xxx

(b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as private corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

xxx xxx xxx

(3) Other services rendered in the Philippines by non-residents."

As discussed earlier, petitioner failed to adduce sufficient evidence to overturn the presumption of the correctness of respondent's treatment of the income payments of ₱43,550,148.09 as

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pertaining to services rendered within the Philippines by NRFCs. Consequently, petitioner is liable for basic deficiency FWVAT in the amount of ₱5,226,017.77, computed as follows:

Income payments to NRFCs per BIR's assessment	₱ 44,914,049.58
Less: Income payments derived from sources outside the Philippines	1,363,901.49
Adjusted taxable income payments to NRFCs	₱ 43,550,148.09
FWVAT rate	12%
Basic deficiency FWVAT	**₱ 5,226,017.77**

V. COMPROMISE PENALTY – ₱100,000.00

Respondent imposed compromise penalties totaling ₱100,000.00 against petitioner for non/late filing/payment of FWT and FWVAT, to wit:[73]

Compromise penalty for:	**Amount**
Non/late-filing/payment of final withholding tax	₱ 50,000.00
Non/late-filing/payment of withholding tax on VAT	50,000.00
Total Amount Due	**₱ 100,000.00**

There being no mutual agreement between the parties, the Court cancels the above compromise penalties. Settled is the rule that the imposition of compromise penalties without the conformity of the taxpayer is illegal and unauthorized.[74] RMO No. 1-90 categorically provides that 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 suggested compromise penalty. Considering that petitioner did not pay the compromise penalties imposed by respondent, it clearly did not agree to settle the same.

WHEREFORE, premises considered, the assessments issued by respondent against petitioner for the calendar year 2007 covering deficiency EWT, WTC, FWT and FWVAT are **PARTIALLY UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWENTY-TWO MILLION ONE HUNDRED EIGHTY-ONE**

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[73] Exhibits "P-12" and "P-12-1".

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

THOUSAND FOURTEEN PESOS AND SIX CENTAVOS (₱22,181,014.06), representing basic deficiency EWT, WTC, FWT and FWVAT and 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	EWT	WTC	FWT	FWVAT	Total
Basic Tax	₱ 74,354.45	₱ 1,556,902.01	₱ 10,887,537.02	₱ 5,226,017.77	₱ 17,744,811.25
25% Surcharge	18,588.61	389,225.50	2,721,884.26	1,306,504.44	4,436,202.81
Total	**₱92,943.06**	**₱1,946,127.51**	**₱13,609,421.28**	**₱6,532,522.21**	**₱22,181,014.06**

Petitioner is also **ORDERED TO PAY** respondent the following deficiency and delinquency interest computed in accordance with the provision of Section 249 of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN):

(a) Deficiency interest at the rate of twelve percent (12%) per annum on the basic deficiency EWT, WTC and FWT computed from January 15, 2008, and FWVAT computed from January 10, 2008, the dates prescribed for their payment thereof until January 12, 2011, the date of petitioner's receipt of the FAN, pursuant to Section 249(B) of the NIRC of 1997, as amended by RA No. 10963; and

(b) Delinquency interest at the rate of twelve percent (12%) per annum on the total amount of ₱22,181,014.06 (basic EWT, WTC, FWT and FWVAT plus 25% surcharge) and on the 12% deficiency interest which have accrued as aforestated in (a) computed from February 3, 2011, the due date appearing in the FAN, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963.

SO ORDERED.

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

WE CONCUR:

With Concurring Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ONE WORLD CONNECTIONS, INC., Petitioner,	**CTA Case No. 8820**
	Members:
- versus -	**DEL ROSARIO, *P.J., Chairperson*** **UY, and** **MINDARO-GRULLA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 21 2018 , 10:33 a.m.

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CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in ruling that petitioner's right to due process was not violated but ***solely*** on the ground that there is nothing on record which would show, even remotely, that the protest to the Preliminary Assessment Notice (PAN), which petitioner filed with the Bureau of Internal Revenue (BIR) on January 3, 2011, was not considered by respondent prior to issuing the Final Assessment Notices (FAN) on the same date.

Considering that the probability that the protest to the PAN filed on January 3, 2011 was not considered prior to the issuance of the FAN on January 3, 2011 **is equal** to the probability that respondent evaluated the protest and after said evaluation still found sufficient basis to issue the FAN, the scales of justice must tilt in favor of respondent who is presumed to have regularly performed his duty in good faith in issuing the FAN by evaluating, among others, petitioner's protest to the PAN. It is a well-settled presumption that when a public officer acted in accordance with its official duty, such was regularly performed if not contradicted and overcome by credible evidence.[1]

All told, I CONCUR in the *result*.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] Section 3 (m), Rule 131, Rules of Court.