REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GRAND UNION SUPERMARKET, INC., *Petitioner,*	**CTA CASE NO. 10390**
	Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO, ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 22 2025 3:50 p.m.

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AMENDED DECISION

ANGELES, J.:

For the Court's resolution are the following:

(1) *Motion for Partial Reconsideration (Re: Decision dated 17 December 2024)*[1] filed by respondent via registered mail on January 13, 2025 **(Respondent's Motion for Partial Reconsideration)**, with petitioner's Comment/Opposition[2] thereto personally filed on January 27, 2025; and,

(2) *Motion for Partial Reconsideration*[3] filed by petitioner via registered mail on January 20, 2025 **(Petitioner's Motion for Partial Reconsideration).**

Respondent's Motion for Partial Reconsideration

[1] Docket – Vol. IV, pp. 1731 to 1746.
[2] Docket – Vol. IV, pp. 1803 to 1815.
[3] Docket – Vol. IV, pp. 1816 to 1864.

In his Motion, respondent moves for the partial reconsideration of the *Decision*[4] promulgated on December 17, 2024 **(assailed Decision)**.

First, respondent argues that the Court's power of judicial review over decisions of respondent in disputed assessments is appellate by nature; thus, the Court cannot rule on issues not raised at the administrative level, and petitioner should not be allowed to raise issues for the first time on appeal. Respondent explains that lawful remedies are available to petitioner to contest the deficiency tax assessment issued against it. As such, failure of petitioner to refute any findings in the assessment at the administrative level indicates petitioner's waiver of its defenses against such assessment.

Second, respondent alleges that the three (3) *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* **(subject Waivers)** executed by petitioner on various dates were perfectly valid; hence, the prescriptive period to assess was extended until December 31, 2017.

Third, respondent submits that petitioner is liable to pay deficiency income tax, Documentary Stamp Tax (DST), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and compromise penalty.

By way of comment, petitioner contends that the grounds raised by respondent in his Motion for Partial Reconsideration are mere rehash of the arguments found in his *Answer* dated March 8, 2021, which have already been fully addressed in the assailed Decision. Thus, the said Motion is a *pro forma* motion which does not merit consideration of the Court.

Citing several cases, petitioner argues that parties before the CTA may raise new matters not taken into consideration during the administrative proceedings. Hence, the ruling of the Court in the assailed Decision that it can rule on issues not raised at the administrative level is in accordance with law.

Petitioner likewise argues that some items of the assessment have already prescribed. Petitioner avers that at the time the first waiver was executed, the three (3) year period to assess deficiency EWT for the months of September 2011 up to April 2012 already prescribed. Moreover, petitioner asserts that it has no obligation to

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[4] Docket – Vol. IV, pp. 1681 to 1727.

detail each and every transaction which already prescribed; instead, it is respondent who must provide in specific detail the bases of his findings in the assessment for petitioner to have the opportunity to contest them.

Petitioner also maintains that the reduction of the amounts assessed for deficiency income tax and DST, and the cancellation of the assessments for deficiency VAT and EWT, are in accordance with law and evidence on record. Petitioner adds that it is not liable to pay compromise penalty absent a showing that it consented to pay it.

Anent respondent's *first* argument, the same cannot be sustained.

As aptly cited in the assailed Decision, Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) expressly provides that in deciding a case, the CTA may not limit itself to the issues stipulated by the parties but may also rule upon **related issues** necessary to achieve an orderly disposition of the case.

In *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*,[5] the Supreme Court clarified the parameters of the CTA's authority to pass upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues, to wit:

> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."
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> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that <u>**the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.**</u>
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> From the foregoing, <u>**the Court so holds that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for**</u>

[5] G.R. No. 249153, September 12, 2022.

> **reconsideration, respectively, only if two conditions concur: *one*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and *two*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.** *(Emphasis supplied)*

Based on the foregoing rule and jurisprudence, this Court was well-within its authority when it discussed and ruled upon issues on the validity of the subject Letter of Authority (LOA) and assessment, as such issues are **inextricably intertwined** with the stipulated issue of whether petitioner is liable to pay the amount of ₱1,700,394,334.31, representing alleged deficiency taxes, inclusive of penalties, surcharges, and interests, for fiscal year ending 31 August 2012.[6] As a void assessment bears no valid fruit,[7] this Court was duty-bound to first look into the validity and/or legality of the subject LOA and assessment, on the basis of the evidence already on record, before ruling on petitioner's liability to pay the amount indicated therein.

For these reasons, respondent may not simply limit this Court's power, authority, and prerogative to touch upon the validity and/or legality of the subject LOA and assessment, for mere failure of petitioner to raise such defenses at the administrative level.

As for respondent's *second* argument, the same likewise fails.

It must be pointed out that in the assailed Decision, the subject Waivers were deemed as validly executed; however, **the subject Waivers did not validly extend the assessment period for EWT for the months of September 2011 to April 2012 because at the time that the first Waiver was executed and later accepted on May 29, 2015, the right to assess EWT for the said months had already prescribed.** Consequently, insofar as the said months are concerned, there was no valid assessment period that the subject Waivers could have extended. Without such extension, any tax assessment issued for the said months is null and void, with no legal effect whatsoever. Surely, assessments that have prescribed are deemed void.[8]

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[6] *Joint Stipulation of Facts and Issues* dated September 30, 2021, Docket – Vol. II, p. 746.
[7] *CIR v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.
[8] *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.

Even assuming that the subject Waivers benefitted petitioner, as argued by respondent, such fact bears no consequence on the legal status and non-enforceability of the already prescribed assessments.

With respect to respondent's *third* ground for reconsideration, a careful examination of the same reveals that respondent **merely reiterated**, almost verbatim, with no substantial changes, the arguments raised in his *Answer* dated March 8, 2021, specifically pertaining to petitioner's income tax, DST, VAT, EWT, and Improperly Accumulated Earnings Tax (IAET) assessments.

In *Ortigas & Company Limited Partnership v. Velasco*,[9] the Supreme Court ruled that the Court is not obliged to address each and every argument raised in a Motion for Reconsideration, where the same consists of a mere reiteration or rehash of arguments already submitted to and considered by the Court in its judgment, *to wit:*

> *Effect, and Disposition of*
> *Motion for Reconsideration*
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

Further, in *Roque, Jr. v. Commission on Elections*,[10] the Supreme Court, in resolving the petitioners' Motion for Reconsideration, no longer belabored an argument that it found to be a mere rehash of the petitioners' previous position as found in their

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[9] G.R. Nos. 109645 & 112564 (Resolution), March 4, 1996.
[10] G.R. No. 188456 (Resolution), February 10, 2010.

memorandum, as such was already considered and addressed by the Court in its decision.

In this case, respondent's arguments specifically pertaining to petitioner's income tax, DST, VAT, EWT, and IAET assessments, being a mere rehash, have already been duly considered and adequately discussed in the assailed Decision. Thus, this Court finds no cogent reason to modify or reverse the assailed Decision on such grounds.

On respondent's insistence to impose compromise penalty on petitioner, it is already well-established that a compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer.[11] This is because a compromise, by its nature, is mutual in essence.[12] It is imposed when the taxpayer and the BIR agree to settle on a certain amount.

Records of this case do not show that an agreement was reached by the parties concerning any of petitioner's tax deficiencies as found in the Formal Letter of Demand (FLD)[13] dated November 21, 2017. Hence, respondent's imposition of compromise penalty on petitioner is baseless and must be deleted.

That petitioner failed to question, assail, or dispute the validity of the imposed compromise penalty at the administrative level is of no moment, as such failure does not have the effect of validating an imposition that has no legal basis.

Petitioner's Motion for Partial Reconsideration

In its own Motion, petitioner raises the following arguments: **(1)** the Court's finding that the LOA dated May 9, 2014 does not need to be revalidated, violates petitioner's due process rights under the 1987 Philippine Constitution; **(2)** the Court's finding that the FLD remains valid despite the invalidity of the Final Decision on Disputed Assessment (FDDA) is erroneous, and the case relied upon by the Court (*i.e., Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*[14]) does not apply to the present case; **(3)** the Court's finding that the FLD remains valid despite the presence of

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[11] *Wonder Mechanical Engineering Corp. v. Court of Tax Appeals*, G.R. Nos. L-22805 & L-27858, June 30, 1975.
[12] *San Miguel Corp. v. Commissioner of Internal Revenue*, G.R. No. 252083, December 4, 2023.
[13] Exhibits "P-4" and "R-5", Division Docket - Vol. I, p. 31.
[14] G.R. Nos. 215534 & 215557, April 18, 2016.

unauthorized Revenue Officers who recommended the same, is contrary to law and evidence on record, and to the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*;[15] **(4)** the Court's finding that the FLD contains definite assessments is erroneous, in view of the case of *Roca Security and Investigation Agency, Inc. v. Commissioner of Internal Revenue*;[16] **(5)** the Court's finding that the subject Waivers are valid is contrary to law and evidence on record, in view of Civil Service Commission (CSC) Resolution No. 93-5026; and, **(6)** the Court's finding that petitioner is liable for income tax, DST, and IAET deficiencies, as well as surcharges and interests on the same, are also contrary to law and evidence on record.

Petitioner is partly correct, but only as to its *sixth* argument.

The issue of constitutionality of RMC No. 23-2009 and RMO No. 44-2010 was belatedly raised

Anent petitioner's *first* argument, it is elementary that constitutional issues must be raised at the earliest opportunity, *i.e.*, in the pleadings before a competent court that can resolve the same, such that if it is not raised in the pleadings, it cannot be considered at the trial, and if not considered at the trial, it cannot be considered on appeal.[17]

In *Umali v. Guingona, Jr.*,[18] one of the issues before the Supreme Court was whether the petitioner can raise the issue of constitutionality of the Presidential Commission on Anti-Graft and Corruption in its motion for reconsideration of the decision of the Regional Trial Court of Makati. The Supreme Court categorically held that it was certainly too late to raise the said issue for the first time at such late stage of the proceedings.

Applying the foregoing jurisprudential precept, this Court shall not entertain petitioner's delayed invocation of the alleged constitutional infirmity of Revenue Memorandum Circular (RMC) No. 23-2009 dated April 16, 2009[19] and Revenue Memorandum Order (RMO) No. 44-2010 dated May 12, 2010,[20] for not being raised

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[15] G.R. No. 242670, May 10, 2021.
[16] CTA EB Case No. 1523 (CTA Case No. 8718) (Resolution), August 15, 2018.
[17] *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002.
[18] G.R. No. 131124, March 29, 1999.
[19] *Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.*
[20] *Electronic Issuance of Letters of Authority.*

at the earliest opportunity, and for being a mere afterthought of petitioner, conjured only after the Court had already rendered its decision for this case. Neither shall this Court sanction the use of a motion for reconsideration to introduce constitutional issues with respect to the said administrative issuances, only at this point, when petitioner was given every opportunity to raise such issues in its pleadings before the Court and during the trial.

Absent a declaration of unconstitutionality or illegality of RMC No. 23-2009 and RMO No. 44-2010, the same remain fully effective. Accordingly, the lack of revalidation of the LOA dated May 9, 2014, despite the lapse of the 120-day period, did not nullify the same.

The invalidity of the FDDA dated September 25, 2020 did not render the assessment void

Petitioner's *second* argument either fails to grasp the relevant legal principle, or serves only to obfuscate the issue before the Court.

In the *Liquigaz* case,[21] the Supreme Court proclaimed, in no unclear terms, that a decision of the CIR on a disputed assessment (*e.g.*, FDDA) **differs** from the assessment itself. Hence, the invalidity of the FDDA does not necessarily result in the invalidity of the assessment as found in the FLD. To expound, Section 228 of the National Internal Revenue Code (Tax Code) provides that the taxpayer shall be informed in writing of the law and the facts on which the **assessment** is made; otherwise, the **assessment** shall be void. Meanwhile, the Tax Code is silent as to the effect of a decision on a disputed assessment which fails to state the law and facts on which it is based. This silence is filled by Revenue Regulations (RR) No. 12-1999,[22] as amended, which states that the decision on a disputed assessment shall state the facts, the applicable law, rules and regulations, or jurisprudence on which such **decision** is based; otherwise, the **decision** shall be void. **Such nullity, however, does not extend to the nullification of the entire assessment.**[23]

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[21] *Supra*, note 14.
[22] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.
[23] *Supra*, note 14.

Relatedly, jurisprudence dictates that a valid final assessment must state the amount of tax due and a demand for payment thereof. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. It must be sent to and received by the taxpayer, and must demand payment of the tax due within a specific period.[24]

In this case, the FDDA dated September 25, 2020 failed to provide a proper demand for payment, as the period prescribed therein was impossible to comply with, having lapsed twenty-five (25) days prior to its issuance. Thus, the said FDDA was found to be infirm. **Nonetheless, following the doctrine laid down in the *Liquigaz* case, the infirmity of the FDDA, by itself, did not invalidate the FLD dated November 21, 2017, which clearly indicated a proper due date for payment of the taxes due therein (*i.e.*, December 31, 2017).** Thus, on this ground, the assessment remains valid, and petitioner's reliance on *Commissioner of Internal Revenue v. Maxicare Healthcare Corp.*,[25] is misplaced.

Revenue Officer Mendoza was duly authorized by a valid LOA to conduct the tax audit of petitioner

In relation to petitioner's *third* argument, the Court sees no reason for petitioner's professed confusion.

The pertinent portion of the *McDonald's* case[26] is reproduced, as follows:

> ***A. Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation***
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> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue

[24] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.
[25] G.R. No. 261065, July 10, 2023.
[26] *Supra*, note 15.

officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." **The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.**

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**

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Applying the above principles to the case at bar, **it is clear that Marcellano was not authorized under a new and separate, or amended, LOA to continue the audit or investigation of the respondent's books of accounts for C.Y. 2006.** The August 31, 2007 LOA was originally issued to revenue officers Eulema Demadura, Lover Loveres, Josa Gomez, and Ernalyn dela Cruz. The original revenue officer, Demadura, was transferred to another assignment. Pursuant to a mere referral memorandum, revenue officer Marcellano continued the audit of the respondent's books of accounts. No new LOA was issued in the name of Marcellano to conduct the audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. **Hence, the authority under which Marcellano continued the audit or investigation was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.**

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(Emphasis supplied)

It is clear from the above-cited case that only the Revenue Officers duly authorized and specifically identified in the LOA may conduct a valid tax audit or investigation on the taxpayer. Likewise, the identification in the LOA of the Revenue Officers who conducted the tax audit is required for a valid assessment. Thus, in the said case, since there was no showing that Revenue Officer Marcellano **(RO Marcellano)**, who conducted the investigation of the taxpayer's books of accounts and other accounting records, and who signed and submitted various letters, reports, and/or memoranda in connection with the subject audit, was authorized under the LOA dated August 31, 2007, the resulting deficiency VAT assessment was declared a nullity.[27]

Contrariwise, in the case at bar, Revenue Officer Mendoza **(RO Mendoza)** was authorized under the LOA dated May 9, 2014[28] to examine petitioner's books of accounts and other accounting records for fiscal year September 1, 2011 to August 31, 2012. Evidence presented established the extent of her participation in every stage of the assessment process, and failed to prove that her authority to participate as such was revoked at any point in time.

Therefore, while the ruling in the *McDonald's* case squarely applies to Revenue Officers Sudano, Anaban and Monforte, who prepared and signed the Audit Reports[29] and Memorandum dated November 6, 2017[30] without being authorized by a valid LOA, **such ruling cannot be applied to RO Mendoza, because unlike in the *McDonald's* case, her authority to audit petitioner remained valid and subsisting from the commencement of the assessment until its conclusion.**

There is nothing in the *McDonald's* case nor in other jurisprudence that states, whether expressly or impliedly, that the valid authority of a Revenue Officer to conduct and/or continue a tax audit, is nullified, revoked, or otherwise affected by the lack of authority of other Revenue Officers to do the same. There is no legal basis for such statement. Petitioner cannot insist on applying the ruling in the *McDonald's* case on all the Revenue Officers herein involved, where the factual circumstances surrounding one of them do not stand on all fours with the aforesaid case.

Accordingly, the Court shall not nullify the subject assessment on the ground of lack of authority of the Revenue Officers to conduct the tax audit of petitioner, because in truth and in fact, RO Mendoza who recommended the issuance of both the Preliminary Assessment

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[27] *Supra*, note 15.
[28] Exhibit "P-2", Docket, Vol. I, p. 311.
[29] Exhibit "R-12", BIR Records, Vol. I, pp. 146-151.
[30] Exhibit "R-10", BIR Records (Exhibit "R-12"), pp. 153-155.

Notice (PAN) and Final Assessment Notice (FAN)/FLD, had the requisite authority to do so.

Moving on to petitioner's *fourth* argument, suffice it to say that CTA decisions do not constitute binding precedents. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[31] Hence, contrary to petitioner's assertion, this Court is not bound to uphold the ruling in CTA EB Case No. 1523[32] in disposing of the instant case.

Furthermore, a perusal of the Resolution dated April 10, 2019[33] cited by petitioner, shows that although the decision in CTA EB Case No. 1523 was affirmed by the Supreme Court, such affirmation was **not** based on the CTA *En Banc*'s ruling on the indefiniteness of the amount of tax to be paid in the FLD dated April 12, 2013, but was based on some other ground. Thus, the said Resolution can hardly be used to support petitioner's contention on this score.

With respect to petitioner's *fifth* argument on the validity of the subject Waivers in relation to the authority of the BIR official who signed the same, it bears noting that such argument is essentially a mere rehash of petitioner's previous argument which was already duly considered and adequately discussed in the assailed Decision. Pursuant to the doctrine laid down in the *Ortigas* case,[34] therefore, this Court shall no longer belabor the very same points again.

Except for the deficiency income tax assessment, which shall be modified herein, the subject tax assessments must be sustained

Anent petitioner's *sixth* argument, petitioner is partly correct.

I. DEFICIENCY INCOME TAX

In the assailed Decision, petitioner was found liable to pay basic deficiency income tax of ₱10,187,196.99, which was computed

[31] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, 12 February 12, 2013.
[32] *Supra*, note 16.
[33] *Commissioner of Internal Revenue v. Roca Security and Investigation Agency, Inc.*, G.R. No. 241338 (Notice), April 10, 2019.
[34] *Supra*, note 9.

considering the disallowed creditable withholding taxes (CWTs) amounting to ₱10,058,844.09.[35]

Out of the said disallowed CWTs of ₱10,058,844.09, petitioner seeks reconsideration of the amount of ₱3,064,346.53, which was disallowed by the Court since the same pertained to period outside the scope of the subject fiscal year (FY) ending August 31, 2012 (September 2012).[36] Petitioner noted that the amount of ₱3,064,346.53 per Exhibit No. "P-90-14" pertained to the tax base for the income payments in the month of September 2012, and that the CWT corresponding to the said amount is only ₱15,321.73, which, at best, is the only amount that should have been deducted from the total CWTs that the Independent Certified Public Accountant (ICPA) examined.

The CWTs subject of petitioner's Motion deserves reconsideration.

As can be gleaned from the supporting *Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307)* for the period from July 1, 2012 to September 30, 2012, marked as Exhibit No. "P-90-14",[37] the amount of income payment for the 3rd month of the quarter (September 2012 in this case), is actually ₱3,064,346.53, which corresponds to CWT worth ₱15,321.73.[38] Thus, for Exhibit No. "P-90-14", only the amount of ₱15,321.73 shall be included in the disallowed CWTs pertaining to period outside the scope of the subject FY ending August 31, 2012.

Consequently, the total disallowed CWTs of ₱10,058,844.09 shall be reduced by ₱3,049,024.80, which is the difference between the ₱3,064,346.53 tax base initially disallowed and the ₱15,321.73 CWT that shall be disallowed, leaving the total disallowed CWTs in the amount of ₱7,009,819.29, as shown below:

Disallowed CWT per assailed Decision	₱ 10,058,844.09
Less: CWTs reconsidered	3,049,024.80
Disallowed CWTs as Adjusted	**₱7,009,819.29**

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[35] Docket – Vol. IV, pp. 1715 to 1716.
[36] See 3rd row of the table below the "CWTs pertaining to period outside the scope of the subject FY ending August 31, 2012", Docket – Vol. IV, p. 1714.
[37] USB (Exhibit "P-32-LLLL").
[38] Computation of corresponding CWT:

Income Payment for the 3rd Month of the Quarter	₱3,064,346.53
CWT rate per BIR Form 2307 [Total Tax Withheld per BIR Form 2307 of ₱54,601.44 divided by Total Income Payments of ₱10,920,284.68]	0.005
Tax Withheld for the 3rd Month of the Quarter	**₱ 15,321.73**

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Accordingly, all else being the same, save for the above reconsidered CWTs, petitioner's basic deficiency income tax liability for FY ending August 31, 2012, shall be adjusted to ₱7,138,172.19, computed as follows:

Taxable Income per ITR		₱ 47,329,850.76
Add: Adjustments		
Disallowed senior citizen's discount		427,843.00
Total adjusted taxable income		₱ 47,757,693.76
Tax Due (30%)		₱ 14,327,308.13
Less: Tax Credits/Payments per return		
Creditable tax withheld	₱12,397,079.76	
Tax Payments	1,801,875.47	
Total tax credits and payments per return	₱14,198,955.23	
Less: Adjustments		
Disallowed Creditable Withholding Tax as Adjusted	₱ 7,009,819.29	
Total Adjustments	₱ 7,009,819.29	7,189,135.94
Basic Deficiency Income Tax		**₱7,138,172.19**

II. DEFICIENCY DST

In the assailed Decision, petitioner was found liable to pay basic deficiency DST in the amount of ₱148,202.69, computed based on the following items:

Other receivables - non-trade (₱19,111,738.00 x 1.00/200)	₱ 95,558.69
Rent expenses/Lease	774.00
Rent Income	13,541.00
Increase in due to shareholders	120,329.00
Total DST Due	₱ 230,202.69
Less: DST Paid	82,000.00
Basic Deficiency DST	**₱148,202.69**

Petitioner argues that the finding of this Court that the assessed DST due on "Rent Expense" and "Rent Income," in the amounts of ₱774.00 and ₱13,541.00, shall not be disturbed for being undisputed, is erroneous because petitioner did in fact dispute the said assessment; that it was constrained to argue, without admitting, that the "Other receivables" pertained to non-trade receivables and advances to employees as it was the only thing it can do to contest the deficiency DST assessment, absent any other explanation in the Details of Discrepancies; that the Court erred in finding that petitioner did not present evidence to refute the assessed "increase in due to shareholder;" and that in the absence of the facts on which the CIR based its assessment, petitioner could only make assumptions as

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to what the former was specifically referring to and merely argued based on such assumptions.

Petitioner's arguments lack merit.

Contrary to its assertion, petitioner was apprised of the details of the DST assessment as the Details of Discrepancies attached to the FLD[39] shows the factual and legal bases thereof and how the DST assessment was arrived at. It was then incumbent upon petitioner to disprove with sufficient and competent evidence the assessments issued against it, which the latter failed to do.

While petitioner generally contested the entire DST assessment as lacking in factual basis, it did not specifically mention or provide any explanation on the assessed Rent Expense and Rent Income to warrant the cancellation of the same.

As to the "Other receivables," petitioner maintains that a portion thereof pertains to advances to employees, which are in the nature of salary advances, hence, not subject to DST. However, petitioner utterly failed to provide any proof to that effect.

Likewise, petitioner did not provide any evidence to prove the nature of the "increase in due to shareholder" to successfully controvert the assessment.

Verily, petitioner's mere statements do not hold water. It is a basic rule that mere allegation is not evidence and is not equivalent to proof.[40]

Considering that petitioner clearly failed to adduce evidence in support of its position, there is no reason to disturb the findings of the Court on the deficiency DST per the assailed Decision.

III. DEFICIENCY IAET

Petitioner insists that contrary to the finding of this Court that it failed to provide sufficient evidence to prove that the appropriation of retained earnings in the amount of ₱390,000,000.00 was done for its reasonable needs, petitioner duly proved that its appropriation of

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[39] BIR Records (Exhibit "R-12"), Folder 1 of 2, p. 167.
[40] *ECE Realty and Development Inc. vs. Rachel G. Mandap*, G.R. No. 196182, September 1, 2014, citing *Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., et. al*, G.R. No. 164437, May 15, 2009.

the said retained earnings back in the year 2010 was done to meet its reasonable needs, and that through the testimonies of its witnesses and the documents they identified, it presented sufficient evidence to prove that the appropriation of its retained earnings in the amount of ₱390,000,000.00 was done to meet its reasonable needs.

The Court is not persuaded.

Based on the Minutes of the Meeting of the Board of Directors of petitioner held on August 28, 2010,[41] and as disclosed in Note 14 of its 2010 Audited Financial Statement (AFS),[42] the Board of Directors resolved to approve the appropriation of ₱390,000,000.00 for its future expansion. However, the Court finds the said documents wanting in details of the alleged planned future expansion.

Petitioner also presented various documents consisting of construction related receipts, Note 8 of its 2012 AFS showing "Construction in progress" account, and testimonies attesting to the alleged utilization of the subject appropriated retained earnings for the reasonable needs of its business, particularly, for the purpose of completing the construction of additional stores. However, the records appear to bely petitioner's claim.

Per Note 8 of petitioner's 2012 AFS,[43] the "Construction in progress" account had no additions during FYs 2011 and 2012 and the balances appearing thereon are actually carried forward from FY ending August 31, 2010, which is the same FY when the appropriation of retained earnings was approved. Furthermore, per Note 17 of the said 2012 AFS,[44] the disclosed amount of retained earnings appropriation as of the end of FY 2012 is still ₱390,000,000.00. As such, it can be deduced that the costs related to the documents presented pertained to construction already in progress prior to the appropriation of the ₱390,000,000.00 retained earnings and do not represent the utilization of the said appropriation during FYs 2011 and 2012, and that the said appropriation was not for the reasonable needs of the business as the same remained unutilized as of the end of FY 2012.

In fine, the Court finds no cogent reason to reverse the deficiency IAET per the assailed Decision.

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[41] Exhibit "P-15", Docket – Vol. I, p. 456.
[42] Exhibit "P-16-A", Docket - Vol. I, p. 492.
[43] Exhibit "P-9", Docket – Vol. I, pp. 365.
[44] *Id.*, p. 372.

WHEREFORE, premises considered, the *Motion for Partial Reconsideration (Re: Decision dated 17 December 2024)*[45] filed by respondent is **DENIED** for lack of merit, while the *Motion for Partial Reconsideration*[46] filed by petitioner is **PARTIALLY GRANTED.**

Accordingly, the Court's Decision dated December 17, 2024 is hereby **AMENDED** to read as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.**
>
> The assessments issued by respondent against petitioner covering deficiency VAT, EWT and compromise penalties for FY ending 31 August 2012 are **CANCELLED** and **SET ASIDE.** However, the assessments for the same FY issued against petitioner covering deficiency income tax and DST are **AFFIRMED WITH MODIFICATIONS.**
>
> The deficiency IAET, likewise for the same FY, is **AFFIRMED.**
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱101,070,338.67**, inclusive of 25% surcharge and 20% deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC, as amended, computed as follows:

Particulars	Income tax	DST	IAET	Total
Basic Tax Due	₱ 7,138,172.19	₱ 148,202.69	₱ 40,110,373.29	₱ 47,396,748.17
Add: 25% Surcharge	1,784,543.05	37,050.67	10,027,593.32	11,849,187.04
20% Deficiency Interest:				
IT: From December 16, 2012 to December 31, 2017 [₱7,138,172.19 x 20% x 1,842/365 days]	7,204,664.75			7,204,664.75
DST: From September 6, 2012 to December 31, 2017 [₱148,202.69 x 20% x 1,943/365 days]		157,785.11		157,785.11
IAET: From to December 31, 2017 [₱40,110,373.29 x 20% x 1,568/365 days]			34,461,953.60	34,461,953.60
Total Amount Due as of December 31, 2017	**₱16,127,379.99**	**₱343,038.47**	**₱84,599,920.21**	**₱101,070,338.67**

[45] Docket – Vol. IV, pp. 1731 to 1746.
[46] Docket – Vol. IV, pp. 1816 to 1864.

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total unpaid deficiency taxes due as of December 31, 2017, in the amount of ₱101,070,338.67 or equivalent to ₱33,228.60[47] per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended by Republic Act (RA) No. 10963, also known as the TRAIN law and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED."

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

47 ₱101,070,338.67 x 12% / 365 days.

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Third Division Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice