REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2150** (CTA Case No. 9255)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
NCR CEBU DEVELOPMENT CENTER, INC., Respondent.	Promulgated: FEB 10 2021 3:36 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Special Third Division's Decision dated 04 April 2019[1] and Resolution dated 12 September 2019[2], respectively, in CTA Case No. 9255 entitled *NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review on 18 October 2019[3] pursuant to Section 3(b)[4], Rule 8, in relation to Section

---

[1] Division Docket, Volume X, pp. 4673-4704; Penned by Associate Justice Esperanza R. Fabon-Victorino (retired) with Associate Justice Ma. Belen M. Ringpis-Liban, concurring.

[2] Id., pp. 4759-4763.

[3] *Rollo*, pp. 7-17.

[4] **Sec. 3**. *Who may appeal; period to file petition.*

...

2(a)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

Petitioner is the duly-appointed CIR with office address at the 5th Floor, Bureau of Internal Revenue (**BIR**), National Office Building, BIR Road, Diliman, Quezon City. He is vested with authority to administer and enforce all laws pertaining to internal revenue taxes and has jurisdiction to decide refunds and disputed tax assessments.[7]

Respondent NCR Cebu Development Center, Inc. (**respondent/NCR Cebu**) is a corporation organized and existing under the laws of the Philippines, with principal office located in e-Office Building, Asiatown, I.T. Park, Apas, Cebu City.[8] It is registered with the BIR with Taxpayer Identification Number (**TIN**) 228-442-028-000.[9]

FACTS OF THE CASE

On 04 November 2011, respondent received Letter of Authority (**LOA**) No. LOA-123-2011-00000034, dated 20 October 2011[10], from the BIR Large Taxpayers District Office – Cebu, covering the taxable period of 01 January 2010 to 31 December 2010.[11]

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
...

6 A.M. No. 05-11-07-CTA.

7 Paragraphs 1 and 2, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume VI, p. 2682.

8 Exhibit "P-2", id., Volume IX, p. 4130. See, however, Certificate of Registration marked as Exhibit "P-14" (infra at note 9) where respondent's registered address is indicated as "Asia Tower, Apas, Cebu City 6000".

9 Exhibit "P-14", id., p. 4554.

10 The Court *En Banc* notes, however, that in the JSFI filed by the parties, the date of LOA No. 123-2011-00000034 is indicated as 20 October 2013.

11 Paragraph 3, JSFI, id., Volume VI, p. 2682.

On 25 October 2013, respondent's President, Jaideep Agrawal, executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" to extend the period of prescription until 30 June 2014.[12]

On 09 May 2014, respondent received a Preliminary Assessment Notice (**PAN**) dated 06 May 2014, with Details of Discrepancies, and was informed that after investigation, the BIR found deficiency income tax (**IT**), value-added tax (**VAT**), withholding tax-final (**FWT**), withholding tax-VAT (**WVAT**), withholding tax-expanded (**EWT**), documentary stamp tax (**DST**), and other miscellaneous taxes for the year 2010.[13] On 22 May 2014, respondent submitted its Reply to the PAN contesting the said findings of deficiency taxes, interest and compromise penalties.[14]

Thereafter, on 23 June 2014, respondent received the Formal Letter of Demand (**FLD**) and Assessment Notices dated 20 June 2014.[15] On 23 July 2014, respondent filed its protest disputing the tax, interest and penalty assessments alleged and demanded in the FLD and Assessment Notices.[16]

On 17 June 2015, respondent received the BIR's Final Decision on Disputed Assessment (**FDDA**).[17]

On 16 July 2015, respondent filed a Request for Reconsideration with petitioner to contest the decision of his authorized representative.[18] On the same day, respondent paid the deficiency assessments involving EWT, withholding tax on compensation (**WTC**), DST and the penalty for alleged failure to include the TINs of seven (7) employees in the Alphalist.[19]

On 07 January 2016, respondent received petitioner's Final Decision (**Final Decision**) of even date and the same covered

---

[12] Paragraph 4, id., p. 2683.
[13] Paragraph 5, id.
[14] Dated 21 May 2014, Paragraph 6, id.
[15] Paragraph 7, id.
[16] Paragraph 8, id., p. 2684.
[17] Paragraph 9, id.
[18] Paragraph 10, id.
[19] Paragraph 11, id.

deficiency assessments for IT, VAT, FWT, WVAT and other miscellaneous taxes.[20]

On 04 February 2016, respondent paid the deficiency IT and VAT in the total amount of ₱1,026,804.92, inclusive of interest computed until 04 February 2016 and compromise penalty.[21] Likewise, respondent paid the deficiency VAT in the amount of ₱12,763,059.57, inclusive of interest computed until 04 February 2016, surcharge and compromise penalty.[22]

PROCEEDINGS BEFORE THE THIRD DIVISION

Unsatisfied, on 09 February 2016[23], respondent filed its prior Petition for Review questioning petitioner's Final Decision. On 08 April 2016, petitioner filed his Answer.[24] The parties then submitted their respective Pre-Trial Briefs[25] and the Joint Stipulation of Facts and Issues[26] (**JSFI**). The Third Division subsequently issued the Pre-Trial Order on 26 August 2016.[27]

After presenting the testimonies of its witnesses, respondent filed its Offer of Documentary Evidence on 20 June 2017.[28] Over petitioner's objection, the Third Division resolved to admit all of respondent's documentary evidence, except Exhibit "P-1-b"[29], for failure to present its original for comparison, and Exhibit "P-3-a"[30], for failure of the exhibit formally offered and identified to correspond with the document actually marked. The Third Division noted that the document formally offered and marked as Exhibit "P-3-a" is described as "Certificate of No Business Registration of NCR (Beijing) Financial Equipment System Company Limited" while the document actually is a

---

20 Paragraph 12, id.
21 Paragraph 13, id., p. 2685.
22 Paragraph 14, id.
23 Id., Volume I, pp. 10-34.
24 Id., pp. 386-403.
25 Id., pp. 442-449 (for petitioner); id., pp. 472-490 (for respondent).
26 Id., Volume VI, pp. 2682-2696.
27 Id., pp. 2713-2722.
28 Id., Volume IX, pp. 4101-4112.
29 Attestation executed by Maria Victoria D. Sarmiento dated 11 August 2016, id., pp. 4117-4118.
30 Described as Certificate of No Business Registration of NCR (Beijing) Financial Equipment System Company Limited, id., p. 4134.

"Certification of Non-Registration of NCR Beijing Sales and Marketing".

Respondent filed a Motion for Partial Reconsideration[31] (**MPR**) but the same was denied in a Resolution dated 22 November 2017.[32] Respondent thus filed a Tender of Excluded Evidence[33] stating that had the Third Division allowed the admission of Exhibits "P-1-b" and "P-3-a", they would have corroborated other admitted evidence such that: (1) respondent's loan to NCR Corporation (Philippines), Inc. was not done in the course of respondent's trade or business or a transaction incidental thereto; and, (2) NCR (Beijing) Financial Equipment System Company Limited (**NCR Beijing**), a foreign affiliate of respondent, is a non-resident foreign corporation not engaged in trade or business in the Philippines.

On 04 December 2017, petitioner presented the testimony[34] of his lone witness, Revenue Officer Angelita A. De Guzman (**RO De Guzman**), and filed his own Formal Offer of Evidence[35] (**FOE**) thereafter. The Third Division thereafter admitted all its evidence.[36]

On 21 February 2018, respondent filed its Memorandum[37] while petitioner failed to do so.[38]

On 04 April 2019, the Special Third Division[39] issued the assailed Decision[40], the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.**

---

[31] Filed on 30 August 2017, id., Volume X, pp. 4570-4578.
[32] Id., pp. 4596-4599.
[33] Id., pp. 4610-4614.
[34] Judicial Affidavit of Revenue Officer Angelita A. De Guzman, id., Volume I, pp. 426-441.
[35] Id., Volume X, pp. 4602-4609.
[36] Resolution dated 12 January 2018, id., pp. 4625-4626.
[37] Id., pp. 4634-4667.
[38] Records Verification Report dated 22 February 2018, id., p. 4668.
[39] The Third Division was reconstituted after the issuance of the CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court."
[40] Supra at note 1.

> Accordingly, the assessment for miscellaneous taxes (compromise penalty) is **CANCELLED** and **SET ASIDE**.
>
> On the other hand, the deficiency withholding tax-final and withholding tax-VAT are **AFFIRMED but with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱2,280,882.09**, representing basic deficiency withholding tax-final and withholding tax-VAT and the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed on the deficiency withholding tax-final and withholding tax-VAT under Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as determined below:
>
> ...
>
> In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the total amount due of ₱1,449,886.24 as of January 7, 2016, as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by Revenue Regulations No. 21-2018.
>
> **SO ORDERED.**
>
> ...

In the assailed Decision, the Special Third Division found that respondent's payees are its non-resident foreign corporation affiliates (**foreign affiliates**), namely:

1. NCR Corporation;
2. NCR Beijing Financial Equipment System Company Limited;
3. NCR Korea Ltd.;
4. NCR Corporation India Pvt Ltd.;
5. NCR Malaysia Sdn Bhd;
6. NCR Singapore Pte Ltd.;
7. NCR Australia Pty Limited;
8. NCR Asia Pacific Pte Ltd.;
9. NCR Thailand Ltd.; and,
10. NCR Japan Ltd.

Except for NCR Beijing (where the SEC Certification[41] submitted by respondent pertained to NCR Beijing Sales and Marketing), the Special Third Division found that all are non-resident foreign corporations not engaged in business in the Philippines, as evidenced by the twin requirements of SEC Certifications of Non-Registration of Company[42] as well as Certificates of Registration.[43]

As to its finding that the services were performed outside the Philippines, the Special Third Division gave credence to the Certifications on Offshore Services[44] executed by the authorized representatives of respondent's foreign affiliates where it was commonly stated that "no physical work was conducted in the Philippines, as all the services rendered by the Corporation or its employees and representatives, as summarized in Appendix A attached hereto, were performed outside the Philippines and are not effectively connected to a permanent establishment in the Philippines".

Moreover, respondent's Debit Notes[45] uniformly stated that the "[s]ervices were rendered within the country location of the servicing NCR entities".

The Special Third Division, however, found no merit on respondent's insistence that the software license fees paid in the amount of ₱1,535,286.00 are not subject to tax. According to it, no sufficient evidence was offered to prove that the recipient of its payments are foreign corporations not engaged in business in the Philippines and the services were performed outside the Philippines.

Lastly, the Special Third Division likewise cancelled the imposition of compromise penalties in the amount of ₱100,000.00 absent any showing that respondent agreed to pay the same.

---

41 Exhibit "P-3-a", id., Volume IX, p. 4134.

42 Exhibits "P-3", "P-3-b", "P-3-c", "P-3-d", "P-3-e", "P-3-f", "P-3-g", "P-3-h" and "P-3-i", id., pp. 4133 and 4134-4142.

43 Exhibits "P-4", "P-4-a", "P-4-b", "P-4-c", "P-4-d", "P-4-e", "P-4-f", "P-4-g", "P-4-h" and "P-4-i", id., pp. 4143-4264.

44 Exhibits "P-6" to "P-6-i", id., pp. 4275, 4346, 4353, 4360, 4370, 4416, 4470, 4476, 4483 and 4488.

45 Exhibit "P-8", id., pp. 4497-4500; id., Volume X, pp. 4501-4513.

In sum, the Special Third Division partially upheld the assessment for FWT and WVAT but *only* insofar as respondent's failure to withhold from its payment of software license fees.

On 29 April 2019, petitioner filed an MPR[46], with respondent's Opposition filed on 14 May 2019.[47] The Court, however, denied the said MPR in the now assailed Resolution of 12 September 2019.[48]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Adamant of his position, petitioner filed with the Court *En Banc* the instant Petition for Review[49] in his bid to have the assailed Decision and Resolution set aside. On 02 December 2019, respondent posted its Comment[50] which the Court received on 05 December 2019. When referred to the Philippine Mediation Center Unit for conciliation proceedings, the parties decided not to have their case mediated.[51] Thus, on 11 February 2020, the instant Petition for Review was submitted for decision.[52]

Petitioner raises the following grounds in support of this Petition for Review:

> I.
>
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT [RESPONDENT NCR CEBU DEVELOPMENT, INC.] IS NOT LIABLE FOR DEFICIENCY WITHHOLDING TAX-FINAL (FWT) AND DEFICIENCY WITHHOLDING TAX-VALUE-ADDED TAX (WVAT) FROM SERVICE FEES PAID TO NCR GROUP.
>
> II.
>
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT [RESPONDENT NCR CEBU DEVELOPMENT, INC.] IS NOT LIABLE FOR COMPROMISE PENALTIES IN THE AGGREGATE AMOUNT OF ₱100,000.00.

---

46 Id., Volume X, pp. 4705-4713.
47 Id., pp. 4717-4734.
48 Supra at note 2.
49 Supra at note 3.
50 *Rollo*, pp. 63-93.
51 PMC-CTA Form No. 6 - No Agreement to Mediate dated 21 January 2020, id., p. 98.
52 Id., pp. 100-101.

ARGUMENTS

Petitioner argues that respondent failed to obtain a tax treaty relief in order for the transaction to be exempt from withholding tax, in accordance with Revenue Memorandum Order (**RMO**) No. 1-2000[53] which states in part that "... it is to the best interest of both the taxpayer and the Bureau of Internal Revenue that any availment of the tax treaty provisions be preceded by an application for tax treaty relief with the International Tax Affairs Division (**ITAD**). In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (*i.e.*, claim for tax refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and/or paying the tax liability covered by the tax treaty."

According to petitioner, by applying for an ITAD ruling, the BIR would have been able to verify the surrounding circumstances behind such transactions. Similarly, it would have been the proper authority to conclude whether these transactions are subject or not to Philippine tax pursuant to the provisions of the applicable treaties. With respondent's failure to comply with the requirements laid down in RMO 1-2000, it could not invoke its exemption to withhold the proper final tax related to its foreign transactions.

As to the Special Third Division's refusal to hold respondent liable for compromise penalties, petitioner claims that the imposition is proper and with basis since respondent failed to register as a VAT taxpayer. Corollary thereto, respondent likewise failed to file its VAT returns as well as to submit its Summary List of Sales and Purchases. As result, respondent should have been made liable to pay the following penalties in accordance with RMO 19-2007[54]:

Nature of Violation	Amount of Suggested Penalty
Non-registration of VAT tax type	₱25,000.00
Non-filing of VAT return	25,000.00
Non-submission of Summary List of	50,000.00

[53] Procedures for Processing Tax Treaty Relief Application.
[54] The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

Nature of Violation	Amount of Suggested Penalty
Sales and Purchases	
Total Penalties	**₱100,000.00**

In further support thereof, respondent cites the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation*[55] (**Filinvest**), where the Supreme Court upheld the imposition thereof pursuant to Section 250[56] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

On the other hand, respondent contends that this Petition for Review is a mere rehash of petitioner's MPR which has already been duly passed upon by the Court in Division, as evidenced by the fact that petitioner merely replaced the word "respondent" with "petitioner" in the instant Petition for Review. As petitioner failed to raise any new, substantial or compelling reason to warrant the partial reversal of the assailed Decision and Resolution, a dismissal of petitioner's present recourse would be in order.

Respondent adds that the subject Petition for Review suffers from a grave procedural defect as petitioner failed to include a concise statement of complete facts as well as the issues involved in the case, required by Section 6[57], Rule 43 of the Rules of Court, which warrants the dismissal thereof pursuant to Section 7[58] of the same rule.

---

[55] G.R. No. 163653, 19 July 2011.

[56] **Sec. 250.** *Failure to File Certain Information Returns.*- In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, One thousand pesos (1,000) for each failure: Provided, however, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed Twenty-five thousand pesos (P25,000).

[57] **Sec. 6.** *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[58] **Sec. 7.** *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Respondent likewise maintains that it is not obliged to withhold taxes arising from payments of service fees to its affiliates for services rendered outside the Philippines, on the basis of the NIRC of 1997, as amended, and not of a tax treaty.

Lastly, respondent asserts that the imposition of compromise penalties is bereft of legal basis. The ruling in *Filinvest* should be read not in isolation but in the context of the nature of a compromise penalty which is imposed to avoid prosecution for violations of the NIRC of 1997, as amended. Respondent thus maintains that the same may not be imposed without the consent of the taxpayer.

RULING OF THE COURT *EN BANC*

After a thorough review of the records of this case, the Court *En Banc* finds that a partial modification of the assailed Decision would be in order.

PAYMENT OF FEES TO FOREIGN CORPORATIONS FOR SERVICES RENDERED OUTSIDE THE PHILIPPINES ARE NOT SUBJECT TO INCOME TAX (AND CONSEQUENTLY, TO FINAL WITHHOLDING TAX) AS WELL AS WITHHOLDING VALUE-ADDED TAX.

In the instant Petition for Review, petitioner mainly contends that, since respondent failed to secure a tax treaty relief under RMO 1-2000, respondent cannot invoke its exemption to withhold taxes relative to its payment to its affiliates. On the other hand, according to respondent, since the said fees were paid for the services rendered abroad, the same are not subject to Philippine tax.

We agree with respondent.

It must be noted that respondent's justification not to withhold tax for its payment of service fees to its foreign affiliates is anchored on the pertinent provisions of the NIRC of 1997, as amended, and not on any tax treaty provisions.

Section 23(F) of the NIRC of 1997, as amended, provides:

> ...
>
> **Sec. 23.** *General Principles of Income Taxation in the Philippines.* – Except when otherwise provided in this Code:
>
> ...
>
> (F) 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.
>
> ...

Based on the afore-cited provision, it is clear that a foreign corporation is taxable only for its income from sources within the Philippines.

As to the determination of whether the income, particularly that of compensation for services, is from sources within or without the Philippines, Section 42(A)(3) and (C)(3) of the NIRC of 1997, as amended, provides guidance as follows:

> ...
>
> **Sec. 42.** *Income from Sources Within the Philippines.* –
>
> (A) *Gross Income From Sources Within the Philippines.* – The following items of gross income shall be treated as gross income from sources within the Philippines:
>
> ...
>
> (3) *Services.* – Compensation for labor or personal services performed in the Philippines;
>
> ...
>
> (C) *Gross Income From Sources Without the Philippines.* – The following items of gross income shall be treated as income from sources without the Philippines:
>
> ...
>
> (3) Compensation for labor or personal services performed without the Philippines;
>
> ...

Simply put, compensation for services performed in the Philippines is treated as an income from sources within the Philippines, while those performed outside of it are considered income from sources without the Philippines.

Thus, based on the aforementioned principles, it can be deduced that a foreign corporation is taxable only for its income from the services it performed within the Philippines. Needless to state, foreign corporations are not subject to income tax for their income from services performed outside the Philippines.

In this case, respondent has sufficiently proven that the recipients of its payment of service fees are foreign corporations whose services were performed outside the Philippines.

To recall, respondent was able to establish that the recipient of its payment of service fees, except NCR Beijing, are foreign corporations, as evidenced by their respective SEC Certifications of Non-Registration of Company.[59] Thus, these foreign affiliates shall be taxable only on their income from sources within the Philippines.

In addition, respondent was also able to demonstrate that the services performed by such foreign corporations were performed outside the Philippines, as shown by the Certifications on Offshore Services[60] stating that no physical work was conducted in the Philippines, as all the services rendered were performed outside the Philippines and are not effectively connected to a permanent establishment in the Philippines. The fact that the services were performed outside the Philippines was further corroborated by the pertinent Debit Notes[61] where it was also provided that services were rendered within the country location of the servicing entities.

In *Commissioner of Internal Revenue v. Juliane Baier-Nickel as represented by Marina Q. Guzman (Attorney-in-fact)*[62], the Supreme Court ruled:

---

59 Supra at note 41.
60 Supra at note 43.
61 Supra at note 44.
62 G.R. No. 153793, 29 August 2006; Citation omitted and emphasis supplied.

> ...
>
> The important factor therefore which determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, **but the place where the services were actually rendered.**
>
> ...
>
> The Court reiterates the rule that "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.**
>
> ...

Based on the foregoing, it is clear that the payments to respondent's foreign affiliates, except NCR Beijing, for services rendered outside of the Philippines, are not subject to income tax, and consequently, to FWT.

As to petitioner's assessment of WVAT on respondent's payment of service fees to the same foreign affiliates, the Special Third Division likewise correctly cancelled the same.

Section 108 of the NIRC of 1997, as amended, partly provides:

> ...
>
> **Sec. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> ...

> 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...[63]
>
> ...

In the same manner, Section 4.114-2 of Revenue Regulations (**RR**) No. 16-2005[64], as amended, which serves as the basis for the imposition of WVAT on payments to non-residents, provides:

> ...
>
> **SEC. 4.114-2.** *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* –
>
> ...
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as **private corporations**, 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:
>
> (1) Lease or use of properties or property rights owned by non-residents; and
>
> (2) Other services **rendered in the Philippines** by non-residents.[65]
>
> ...

Based on the foregoing, it is likewise clear that WVAT may only be imposed upon payments to non-residents for the services rendered in the Philippines. As discussed above, respondent was able to sufficiently establish that the services rendered by its foreign affiliates were performed outside the Philippines. Thus, the Special Third Division correctly cancelled the assessment insofar as the imposition of WVAT upon the payment of service fees for services rendered outside the Philippines.

In any case, petitioner's insistence of the need to priorly apply for tax treaty relief deserves no consideration. Verily, in *Deutsche Bank*

---

63 Emphasis supplied.
64 Consolidated Value-Added Tax Regulations of 2005.
65 Emphasis supplied.

AG Manila Branch v. Commissioner of Internal Revenue[66], the Supreme Court already ruled that those who are entitled to the benefit of a treaty cannot be totally deprived thereof for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief, *viz*:

> ...
>
> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.
>
> The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**
>
> ...

DESPITE ITS FINDING THAT RESPONDENT FAILED TO SUBMIT A CERTIFICATION OF NON-REGISTRATION OF COMPANY FOR NCR BEIJING FINANCIAL EQUIPMENT SYSTEM COMPANY LIMITED, THE SPECIAL THIRD DIVISION NEVERTHELESS CANCELLED THE ASSESSMENT RELATIVE TO THE PAYMENT OF SERVICE FEES TO THE SAID ENTITY.

[66] G.R. No. 188550, 19 August 2013; Emphasis supplied.

It must be recalled that the Special Third Division did not consider one of the recipients of respondent's payment of service fees, particularly, NCR Beijing, as a "non-resident foreign corporation not engaged in business" because the SEC Certificate of Non-Registration submitted by respondent with respect to it in fact pertains to "NCR Beijing Sales and Management."

Despite such finding, the Special Third Division nevertheless cancelled the entire assessment for FWT insofar as the payment of the service fees to its foreign affiliates is concerned, which includes the payment to NCR Beijing.

From the above holding of the Special Third Division, the Court *En Banc* takes exception.

As discussed above, foreign corporations are taxable only on their income from sources within the Philippines.

In NCR Beijing's case, respondent failed to prove that the former is a foreign corporation as it did not submit the pertinent SEC Certification of Non-Registration which could have shown that the said corporation is not registered in the Philippines.

Section 22(C) and (D) of the NIRC of 1997, as amended, provides:

> ...
>
> Sec. 22. *Definitions.* - When used in this Title:
>
> (C) The term '*domestic*', when applied to a corporation, means created or organized in the Philippines or under its laws.
>
> (D) The term '*foreign*', when applied to a corporation, means a corporation which is not domestic.[67]
>
> ...

Obviously, a foreign corporation is negatively defined as one which is not domestic. As such, a party who claims a corporation to be

[67] Italics in the original text.

foreign must prove it to be such foreign corporation, *not* a domestic corporation.

A Certification of Non-Registration of Company from the SEC would have shown that a certain corporation is not registered as a corporation in the Philippines. Thus, for respondent's failure to submit such certification with respect to NCR Beijing, the Court *En Banc* cannot ascertain if NCR Beijing is indeed *not* a domestic corporation. The omission on respondent's part is fatal to its claim that NCR Beijing is a foreign corporation that is taxable only for its income from sources within the Philippines.

To the mind of the Court, while respondent was able to produce the foreign registration document of NCR Beijing[68], such could not dispel the possibility that the latter is registered in the Philippines. Hence, it was imperative for respondent to produce such document inasmuch as it was able to do so for its other foreign affiliates.

The Court *En Banc* also notes that respondent filed a Tender of Excluded Evidence insofar as Exhibit "P-3-a" or the SEC Certificate of Non-Registration for "NCR Beijing Sales and Marketing" is concerned, arguing in its MPR[69] that the discrepancy in the names of the foregoing entities is a mere clerical error.

We uphold the Special Third Division's denial of the admission of the said document, as it was correctly ruled that there is nothing in the record that shows that the two corporations are in reality one and the same entity. In fact, respondent offered no explanation other than its bare allegation that such discrepancy resulted merely from a clerical error.

The Court *En Banc* could not simply lend credence to the respondent's contention that the same arose from a mere clerical error. Where there are obvious differences in their respective corporate names ("NCR Beijing Financial Equipment System Company Limited" *vis-à-vis* "NCR Beijing Sales and Marketing"), claiming mere clerical error as reason is not persuasive or good enough to justify the

---

68 Exhibit "P-4-a", Division Docket, Volume IX, pp. 4193-4199.
69 Supra at note 30.

confusion that resulted from these two (2) seemingly distinct corporate names.

Inasmuch as NCR Beijing cannot be considered as a foreign corporation because there is no showing that it is not created or organized in the Philippines or under its laws, the assessment item with respect to respondent's payment of service fees to the former must necessarily be upheld.

In *Bonifacia Sy Po v. Honorable Court of Tax Appeals, et al.*[70], the Supreme Court ruled:

> ...
>
> In the case of *Collector of Internal Revenue vs. Reyes*, we ruled:
>
> > **Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession.** Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession.
>
> **Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise.** In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.
>
> ...

As borne by the Schedule of Service Fees[71] which respondent offered as evidence, the payment to NCR Beijing for the services rendered by the latter amounted to ₱1,013,440.00 for the year 2010. Thus, respondent should be additionally held liable for basic FWT in

---

[70] G.R. No. 81446, 18 August 1988; Citations omitted and emphasis supplied.
[71] Exhibit "P-7", Division Docket, Volume IX, p. 4496.

the amount of ₱304,032.00 pursuant to the subject assessment, computed as follows:

Amount paid to NCR Beijing	₱1,013,440.00
Tax rate	30%
Basic tax due	**₱304,032.00**

While we find it proper to uphold the assessment for FWT (relative to the payment of service fees to NCR Beijing), We cannot rule in the same manner with respect to the WVAT.

As discussed above, it is imperative that the service is rendered in the Philippines before the transaction may be subject to WVAT. Since respondent was able to prove that the services were rendered by NCR Beijing outside the Philippines, as evidenced by the Certifications on Offshore Services[72] and Debit Notes[73], the same is not subject to WVAT.

In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[74], where the Destination Principle and the Cross Border Doctrine were explained in part, the Supreme Court stated:

> ...
>
> ...**According to the Destination Principle, goods and services are taxed only in the country where these are consumed.** In connection with the said principle, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Hence, **actual export of goods and services from the Philippines to a foreign country must be free of VAT**, while those destined for use or consumption within the Philippines shall be imposed with [12] % VAT.
>
> ...

In sum, the Court *En Banc* could only reinstate the assessment for FWT on respondent's payment of service fees to NCR Beijing in the

72 Supra at note 43.
73 Supra at note 44.
74 G.R. Nos. 141104 & 148763, 08 June 2007; Citations omitted and emphasis supplied.

basic amount of ₱304,032.00, but it shall uphold the Special Third Division's cancellation of the assessment insofar as WVAT is concerned.

RESPONDENT CANNOT BE HELD LIABLE FOR COMPROMISE PENALTIES IN THE ABSENCE OF ITS CONSENT TO SUCH IMPOSITION.

Petitioner further insists that respondent should be held liable for compromise penalties as a result of its failure to register as a VAT entity, file its VAT returns and submit its Summary List of Sales/Purchases. He further argues that compromise penalty is imposed not only for the settlement of criminal liability but also for certain violations of the NIRC of 1997, as amended.

We do not agree.

In *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*[75] **(Lianga Bay)**, the Supreme Court held:

> ...
> As to the "compromise penalty" of P300.00 also sought to be imposed, there is no basis therefor, and, as the Court of Tax Appeals finally declares, "**the imposition of the same without the conformity of the taxpayer is illegal and unauthorized** (Coll. v. U.S.T., 104 Phil. 1062, Phil. Int. Fair v. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962)."
> ...

Similarly, in *Dr. Felisa L. Vda. De San Agustin, in Substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin v. Commissioner of Internal Revenue*[76] **(Dr. Felisa L. Vda. De San Agustin)**, the Supreme Court further held:

[75] G.R. No. L-35266, 21 January 1991; Emphasis supplied.
[76] G.R. No. 138485, 10 September 2001; Emphasis supplied.

> ...
>
> The Court of Tax Appeals correctly held that **the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence.** The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.
>
> ...

Based on the foregoing pronouncements, it is clear that a compromise penalty may not be imposed without the assent of the taxpayer.

The Court *En Banc* is not unaware of the decision of the Supreme Court in *Filinvest* where it was mentioned that "[t]he imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof 'in case of each failure to file an information or return, statement or list, or keep any record or supply any information required' on the date prescribed therefor".[77]

However, We are of the opinion that *Filinvest* is not a binding precedent insofar as the question on the propriety of the imposition of a compromise penalty even without the consent of the taxpayer is concerned, inasmuch as the same was not squarely put in issue in the said case.

In *Filinvest*, the issues therein revolved around: (1) whether the advances extended to affiliates are taxable; (2) whether the exchange of shares of stock for property among affiliates met all the requisites for the non-recognition of gain; (3) whether the letters of instruction or cash vouchers extended to affiliates are deemed loan agreements subject to DST; and, (4) whether the gain on dilution as a result of the increase in the value in shareholdings is taxable.

It is clear from the foregoing that the issue on the propriety of the imposition of a compromise penalty was not raised as an issue in *Filinvest*; thus, the same could not be considered as a binding precedent in relation to the aforementioned issue.

---

[77] Supra at note 54.

In *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue*[78], the Supreme Court ruled:

> ...
>
> The basic rule is that past decisions of this Court be followed in the adjudication of cases. **However, for a ruling of this Court to come within this rule (known as *stare decisis*), the Court must categorically rule on an issue expressly raised by the parties; it must be a ruling on an issue directly raised.** When the court resolves an issue merely *sub silentio, stare decisis* does not apply on the issue touched upon.
>
> In fact, the same argument was struck down by this court in *San Roque-Taganito*. There, we held that, "[a]ny **issue, whether raised or not by the parties, but not passed upon by the court, does not have any value as a precedent.**"
>
> ...

On the contrary, in *Lianga Bay* and *Dr. Felisa L. Vda. De San Agustin,* the question on the propriety of the imposition of a compromise penalty without the consent of the taxpayer was squarely put in issue in these cases. As such, the Court *En Banc* holds that *Lianga Bay* and *Dr. Felisa L. Vda. De San Agustin* are the ones that should be considered as binding precedents insofar as the said question is concerned. Thus, in the absence of respondent's conformity, petitioner cannot impose the compromise penalty against it.

WHEREFORE, with the foregoing premises, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated 04 April 2019 of the Special Third Division in CTA Case No. 9255, entitled *NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue* is **AFFIRMED WITH MODIFICATION**.

Respondent NCR Cebu Development, Center, Inc. is thus **ORDERED TO PAY** the increased amounts of **₱2,705,052.94** and **₱651,781.31**, representing basic deficiency final withholding tax and withholding value-added tax, respectively, plus 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon,

---

[78] G.R. No. 204277, May 30, 2016; Citations omitted, emphasis in the original text and supplied.

under Sections 248(A)(3), 249(B) and (C) of the National Internal Revenue Code of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

	FWT	WVAT	TOTAL
Basic Tax Due	₱764,617.80	₱ 184,234.32	₱948,852.12
Surcharge (25%)	191,154.45	46,058.58	237,213.03
Deficiency Interest (20%) until 07 January 2016			
FWT 01/11/2011 to 01/07/2016 (₱764,617.80 x 20% x 1,823 days/365 days)	763,779.86		763,779.86
WVAT 01/11/2011 to 01/07/2016 (₱184,234.32 x 20% x 1,823 days/365 days)		184,032.42	184,032.42
Total Amount Due, 07 January 2016	**₱1,719,552.11**	**₱414,325.32**	**₱2,133,877.43**
20% Deficiency Interest from 08 January 2016 until 31 December 2017			
FWT 01/08/2016 to 12/31/2017 (₱764,617.80 x 20% x 724 days/365 days)	303,333.31		303,333.31
WVAT 01/08/2016 to 12/31/2017 (₱184,234.32 x 20% x 724 days/365 days)		73,088.03	73,088.03
20% Delinquency Interest from 08 January 2016 until 31 December 2017			
FWT 01/08/2016 to 12/31/2017 (₱1,719,552.11 x 20% x 724 days/365 days)	682,167.52		682,167.52
WVAT 01/08/2016 to 12/31/2017 (₱414,325.32 x 20% x 724 days/365 days)		164,367.96	164,367.96
Total	**₱2,705,052.94**	**₱651,781.31**	**₱3,356,834.25**

In addition, respondent is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by Revenue Regulations No. 21-2018[79], on said deficiency taxes based on the following principal amounts:

Final Withholding Tax	**₱1,719,552.11**
Withholding Value-Added Tax	**₱414,325.32**

[79] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

Further, *other than* the amounts stated herein, petitioner or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent arising from the Final Decision dated 07 January 2016 for taxable year 2010.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice