REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

LIQUIGAZ PHILIPPINE CORPORATION,	**CTA CASE NO. 8141**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 18 2019 1:35 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted before this Court are the following, *viz.*:

1. Respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated on 26 June 2019)**, filed on July 12, 2019, with petitioner's **Comment (On Respondent's Motion for Partial Reconsideration dated 09 July 2019)**, filed on August 6, 2019;

2. Petitioner's, **Motion for Reconsideration (Of the Decision dated 26 June 2019),** without respondent's comment as per Records Verification Report dated August 22, 2019; and,

3. Petitioner's **Manifestation (Of the Decision dated 26 June 2019)**, filed on October 15, 2019.

Both parties seek reconsideration of this Court's Decision dated June 26, 2019, the dispositive portion of which reads as follows:

"**WHEREFORE,** premises considered the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency WTC, EWT and FBT assessments issued by respondent against petitioner covering the period January 1, 2005 to December 31, 2005 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **EIGHTY-FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND THIRTY PESOS AND TWENTY-SEVEN CENTAVOS (P84,715,030.27)** inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	WTC	EWT	FBT	TOTAL
Basic Tax Due	₱ 2,366,836.98	₱ 2,668,836.06	₱ 9,496,143.36	₱ 14,531,816.40
25% Surcharge	591,709.25	667,209.02	2,374,035.84	3,632,954.10
20% Deficiency Interest				
from 01/12/06 to 07/01/10				
[₱2,366,836.98 x 20% x 1631/365 days]	2,115,238.97			2,115,238.97
from 01/12/06 to 06/30/08				
[₱2,668,836.06 x 20% x 900/365 days]		1,316,138.33		1,316,138.33
from 01/25/06 to 06/30/08				
[₱9,496,143.36 x 20% x 887/365 days]			4,615,385.84	4,615,385.84
Total Amount Due ,06/30/08 and 07/1/10	**₱5,073,785.19**	**₱4,652,183.41**	**₱16,485,565.04**	**₱26,211,533.64**
20% Deficiency Interest				-
from 07/2/10 to 12/14/12				-
[₱2,366,836.98 x 20% x 897/365 days]	1,163,316.59			1,163,316.59
from 07/01/08 to 12/31/17				-
[₱2,668,836.06 x 20% x 3471/365 days]		5,075,906.83		5,075,906.83
[₱9,496,143.36 x 20% x 3471/365 days]			18,060,884.17	18,060,884.17
20% Delinquency Interest				-
from 07/1/10 to 12/14/12				-
[₱5,073,785.19 x 20% x 897/365 days)	2,493,800.17			2,493,800.1
from 07/1/08 to 12/31/17				-
[₱4,652,183.41 x 20% x 3471/365 days]		8,848,070.47		8,848,070.47
[₱9,728,090.24 x 20% x 3471/365 days]			31,354,189.73	31,354,189.73
Total Amount Due, 12/14/12 and 12/31/17	₱8,730,901.95	₱ 18,576,160.70	₱ 65,900,638.94	₱ 93,207,701.59
Less: Payment made on 12/14/12	8,492,671.32			8,492,671.32
Amount Still Due, 12/14/12 and 12/31/17	**₱ 238,230.63**	**₱18,576,160.70**	**₱65,900,638.94**	**₱84,715,030.27**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due of ₱17,718,862.32[1] as of June 30, 2008 and

[1] Total Amount Due of ₱26,211,533.64 less Payment made of ₱8,492,671.32.

July 1, 2010, 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 (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

I. Respondent's Motion for Partial Reconsideration

Respondent moves for partial reconsideration of the above Decision based on the following grounds:

I.

The Court erred in ruling that petitioner is not liable for the basic deficiency expanded withholding tax (EWT) for taxable year 2005 in the entire amount of ₱3,675,048.75[2].

II.

The Court erred in ruling that petitioner is not liable to pay compromise penalty in the aggregate amount of ₱95,000.00.

In the assailed Decision, this Court held that petitioner is only liable to pay basic deficiency expanded withholding tax (EWT) in the amount of ₱2,668,836.06 and not the entire amount of ₱3,675,048.75. This Court ruled that the cancellation and/or modification of the audit findings for the subject income payments were justified based on the documents presented by petitioner during the trial, as examined by the court-commissioned Independent Certified Public Accountant (ICPA).

In his Motion, respondent maintains that during the audit, petitioner failed to justify the reduction in the above amount. He reiterates that line by line analysis of petitioner's income payments per Financial Statements/ Income Tax Return/ Trial Balance compared with the Alphalist of BIR Form 1601E disclosed that there were income payments in SLP that were partially or not subjected to expanded withholding tax, all in violation of Revenue Regulations (RR) No. 2-98[3], as amended.

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[2] ₱5,535,890.35 (is already inclusive of Interest & Compromise Penalty).

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

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Citing the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Island*[4], respondent argues that 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. Thus, respondent insists that the basic deficiency EWT in the entire amount of ₱3,675,048.75 should be upheld.

With regard to this Court's ruling that petitioner is not liable to pay compromise penalty, respondent claims that the imposition of compromise penalty was validly made pursuant to Revenue Memorandum Order (RMO) Nos. 19-2007[5] and 7-2015[6] or "The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code". He continues that the compromise penalty is not only for settlement of criminal liability but also for certain violations of the National Internal Revenue Code (NIRC) as well. As such, by failing to file the Alphalist of income recipients for EWT, the Alphalist of Employees, and the information return as mandated by the NIRC, respondent's imposition of compromise penalty is warranted.

On the other hand, in its comment, petitioner point out respondent's attributions of alleged errors are misplaced. Petitioner clarifies that the assailed Decision did not entirely cancel the deficiency EWT on commissions and broker's fee but only reduced the same. The reduction was brought about by the findings that petitioner was able to subject the commissions to 2% EWT and the insurance cost was already subjected to 2% EWT. Thus, petitioner claims that it cannot be made to pay the entire EWT when it had already withheld 2% EWT on these.

More so, the same goes with the EWT on Purchases of Goods, Professional Fees, Wharfages Fees, and Arrastre Charges. Petitioner maintains that their cancellation was due to the fact that it was able to substantiate the same, and were properly substantiated and paid, as stated by the ICPA.

Lastly, as to the cancellation of the Compromise Penalty, petitioner maintains that since there is no showing of mutual agreement for the

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[4] G.R. No. 134062, April 17, 2007.
[5] The Consolidated Revised Schedule of Compromise Penalties for violations of the National Internal Revenue Code.
[6] Prescribes and implements the revised consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

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payment of compromise penalty, or of petitioner's refusal to pay the said deficiency taxes, the same was correctly cancelled.

This Court finds for the petitioner.

Time and again, this Court held that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[7]

Accordingly, during the proceedings before this Court, petitioner was able to substantiate/provide documents that warranted the cancellation and/or modification of the deficiency EWT assessment. Equally, petitioner's failure to submit documents in the administrative level is not fatal to the case in judicial level, as such are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial.

Lastly, as to respondent's assertions that petitioner is liable to pay compromise penalty, this Court reiterates its ruling that compromise penalties could not be imposed against petitioner for it never consented to the said imposition. It has been held that compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. Thus, the imposition of the same without the conformity of the taxpayer should be removed.

II. Petitioner's Motion for Reconsideration

Petitioner moves for reconsideration of the assailed Decision based on the following grounds:

A.

> The Honorable Court seriously erred in finding that petitioner is liable to pay deficiency expanded withholding taxes ('EWT') of ₱2,668,836.06.

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[7] *Commissioner of Internal Revenue vs. Union Cement Corporation,* CTA EB No. 895 (CTA Case No. 6842), March 22, 2013; citing *Rafael Arsenio S. Dizon, et al. vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

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i. The amount of ₱456,950.84 should not be subjected to EWT at 10% considering that these were payments for services and not commissions.

ii. Income payments made to foreign brokers whose services were rendered outside the Philippines should not be subjected to EWT.

iii. Broker's fees in the amount of ₱1,100,196.63 paid and withheld with EWT in the subsequent year should be deducted from the assessment.

iv. The assessed amount of ₱77,259.75, *[₱45,579.95]* and ₱57,717.45 representing liquidated advances should be cancelled.

v. The interest expense on loans of ₱18,909,525.88 should be removed from the assessment considering that the said interest expense had been reported subjected to proper income tax by the income payee.

B.

The Honorable Court seriously erred in finding that petitioner is liable to pay deficiency fringe benefit tax (FBT) of ₱9,496,143.36

i. The amount of ₱915,758.40 under the account Rest Hotel – Abroad should not be subjected to FBT as these represented business expenses of petitioner.

After due consideration of the arguments presented by petitioner, this Court still finds no merit it its Motion.

***A.i** Without convincing evidence to the contrary, the amounts of ₱456,950.84 and ₱135,756.49 are deemed commissions paid to commercial brokers subject to 10% EWT.*

In the assailed Decision, this Court upheld the deficiency 10% EWT assessment on the amounts of ₱456,950.84 and ₱135,756.49, explaining the reason thereof as follows:

"With regard to the amount of ₱456,950.84 under 1.3.1 above, the ICPA reported that this pertains to purchases of services, which were traced to petitioner's Alphalist of Payees in 2005. Based on the documents presented, the income payments of ₱456,950.84 subjected to 2% EWT can be broken down as follows:

	Supplier	Amount subject to EWT	EWT Withheld (2%)	Exhibit Reference
1	Glen Solis	12,895.00	257.90	AAAAA-1
2		4,034.50	80.69	AAAAA-10
3		4,052.50	81.05	AAAAA-11
4		3,994.50	79.89	AAAAA-14
5		12,545.00	250.91	AAAAA-20
Sub-total		*37,522.00*	*750.44*	
6	Sojits Philippines	77,543.70	1,550.87	AAAAA-3
7		49,479.60	989.59	AAAAA-7
8		36,145.20	722.90	AAAAA-13
9		45,337.20	906.74	AAAAA-19
10		63,488.70	1,269.77	AAAAA-24
Sub-total		*271,994.40*	*5,439.87*	
11	Aristeo Castillo	54,101.92	1,082.04	AAAAA-4
12		26,371.58	527.43	AAAAA-17
13		27,631.19	552.62	AAAAA-22
Sub-total		*108,104.69*	*2,162.09*	
14	Mega Metro Manila Gas Corp.	18,354.09	367.08	AAAAA-6
15		20,975.66	419.51	AAAAA-23
Sub-total		*39,329.75*	*786.59*	
TOTAL		**₱ 456,950.84**	**₱ 9,138.99**	

The Court finds that these income payments are actually commissions paid to brokers that are taxable at 10% EWT, pursuant to Section 2.57.2 (G) of RR No. 02-98, as amended, which states:

'(G) *Income payments to certain brokers and agents.*—On gross commissions or service fees of customs, insurance, stock, real estate, immigration and commercial brokers and fees of agents of professional entertainers—Ten percent (10%);'

The supporting documents clearly state that payments made to the above individuals are for commissions at a rate based on their contract with petitioner, hence, falls under the purview of commercial brokers.

Therefore, since petitioner has already remitted 2% EWT on the income payments of ₱456,950.84, it shall only be liable for the remaining 8% EWT, or the amount of ₱36,556.07 (₱456,950.84 x 8%).

As to the income payments amounting to ₱135,756.49 classified under 1.3.2 and described by the ICPA as pertaining to purchases of services, with withholding taxes per General Ledger (GL) but not reflected in the Alphalist of Payees in 2005, the same is broken down as follows:

	Supplier	Amount subject to EWT	Exhibit Reference
1	Maria Cindy Lim	10,335.00	AAAAA-2
2	Marissa Villanueva Manalo	40,161.49	AAAAA-5
		38,790.00	AAAAA-8
		10,970.00	AAAAA-12
		5,542.50	AAAAA-15
		14,037.50	AAAAA-16
		7,970.00	AAAAA-18
		7,950.00	AAAAA-21
TOTAL		**₱ 135,756.49**	

A perusal of the supporting documents reveals that these represent payments to sales agents, which are subject to 10% EWT under Section 2.57.2 (G) of RR No. 02-98, as amended. Therefore, the deficiency EWT assessment on the amount of ₱135,756.49 is sustained."[8] *(Citations omitted)*

In its Motion, petitioner argues that though denominated as commissions, the very nature of these income payments arose from rendition of services by suppliers. On one hand, a commissions/broker's fee is defined as a charge by the broker to execute transaction. On the other, service fee is paid on the rendition of service.

The Court is not convinced.

[8] *Decision, pp. 14-16,* docket (vol. 4).

In the case of *Nichimen Corporation (Manila Branch) vs. The Hon. Court of Appeals, et al.*[9], a commercial broker include "**all persons**, other than importers, manufacturers, producers, or bona fide employees, **who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together**, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchant."

As such, a broker, in general, is a middleman who acts for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; he is, in more ways than one, an agent of both parties. His task is to bring the parties together and to get them to come to an agreement. A basic characteristic of a broker is that he acts not for himself, but for a third person, regardless of whether the fee paid to him is a fixed amount, regular or not, or whether the act performed by him can be performed by the principal or not.[10]

In the present case, petitioner presented Exhibits "AAAAA-1" to "AAAAA-24" to support the commissions it construed as payments for services subject to 2% EWT. However, per this Court's examination, it is clear that the subject payments fall within the purview of commissions paid to commercial brokers. In fact, the supporting document for each payee/broker is worded as follows, thus:

Supplier	Statement in Sales Invoice/Request for Payment	Exhibit
Glen Solis	"This commission payment is for Glen Solis (third party) participation in getting Tann Philippines, Inc. LPG supply arrangement with Liquigaz. Please find below details of said commission. xxx"	AAAAA-1.1
Sojits Philippines Corporation	"Based from Liquigaz agreement with Nissho Iwai Corporation as regarded with the participation of Nissho Iwai Corporation, now known as Sojits Philippines Corporation, on the negotiation and subsequently approval by Takata Philippines Corporation a commission of Php 0.50 per kilogram of LG LPG delivered to Takata for the first year of supply and Php 0.30/kg thereafter for the contract duration. Please find below details of said commission. xxx"	AAAAA-3.2
Aristeo Castillo	"Request for Payment of Commission For Engr. Aris Castillo	AAAAA-5.1

[9] G.R. No. 139674, March 6, 2002
[10] *Ibid.*

	This is to formally request for the processing and releasing of the above subject covering our LPG deliveries and sales transaction of LPG small and bulk cylinder deliveries for the following accounts: xxx"	
Mega Metro Manila Gas Corporation	"Subject: Sales Commission of Mr. Constancio D. Francisco (PSS) This is to formally request for the processing and releasing of the above subject covering our LPG deliveries and sales transaction from July 03, 2004 to December 14, 2004 to Philippines Special Services Corporation. Based on the agreement between Liquigaz and Mega Metro Manila Gas Corporation represented by Mr. Iam McCracken and Mr. C. Francisco, respectively, Mega Metro Manila Gas Corporation is entitled to a Php 0.50 /kg on all LPG deliveries made to PSSC."	AAAAA-23.1
Maria Cindy Lim	"Based from LiquiGaz MOA with Ms. Maria Cindy C. Lim wherein LPC appoint Ms. Lim as Sales Agent for the sale of LiquiGaz LPG to some agreed Industrial client/s, LPC shall give Ms. Lim a commission of Php0.50 per kilogram of LIquiGaz LPG delivered to and paid by the client, net of tax. This commission is due from LPG delivered to Formosa Ceramic and Tiles Mfg. Corp."	AAAAAA-2.1
Marissa Villanueva Manalo	"This commission payment is for the participation of Teddy Limfuenco (third party) in LiquiGaz LPG supply arrangement with Ramcar Group of Batteries. Said commission payment is to be deposited in the account of Marissa Villanueva Manalo, account number 0090113791 Insular Savings Bank. This is highly confidential."	AAAAA-21.2

Indeed, the above sales invoices and requests for payment provide enough details to indicate that the commissions amounting to ₱456,950.84 and ₱135,756.49, respectively, pertain to services rendered by the involved brokers/sales agents. Therefore, without convincing evidence to the contrary, this Court maintains its ruling in the assailed Decision.

***A.ii** The amount of ₱292,801.53 allegedly representing income payments to non-resident foreign brokers whose services were*

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rendered outside the Philippines should be subjected to EWT in the absence of supporting documents.

In the assailed Decision, this Court found that all of the supporting documents pertain only to one domestic supplier, Manik's Inc., which is contrary to petitioner's claim that the income payments in the sum of ₱292,801.53 were made to non-resident foreign brokers.

In its Motion, petitioner reiterates that evidence on record shows these income payments were made to non-resident foreign brokers not doing business in the Philippines.

Nevertheless, this Court finds no merit in petitioner's argument, since this Court already evaluated the relevant supporting documents presented, and also, no additional documents were submitted to strengthen petitioner's contention.

A.iii. *The deficiency 10% EWT assessment on the broker's fees amounting to ₱1,100,196.53 remains.*

Petitioner insists that contrary to this Court's findings, the 2006 Alphalist of Payees evidenced by Exhibits "AA" to "AA-2" sufficiently demonstrates that the broker's fees of ₱1,100,196.53 were already subjected to EWT in the said year. Petitioner asserts that such evidence showing a payment for the same amount exactly matches with respondent's findings in the Final Assessment Notice (FAN), which therefore means that such amount was already subjected to EWT.

This Court does not agree.

Upon re-examination of Exhibits "AA" to "AA-2"[11] representing BIR Form No. 1604-E or the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax for the taxable year 2006 with the corresponding Alphalist of Payees, this Court did not find the exact amount of ₱1,100,196.53, contrary to petitioner's allegation.

[11] CD Exhibit.

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A.iv. *The deficiency 1% EWT assessment on liquidated employee advances pertaining to purchases of Small Equipment and Materials (₱77,259.75), Small Office Equipment (₱45,579.95) and Printed Papers, Docs, Books (₱57,717.45) remains.*

Petitioner argues that the advances were incurred by its employees in the performance of their duties and, thus, not subjected to EWT or withholding tax on compensation. Petitioner insists that by its very nature, reimbursement of expenses is not income but merely a return of capital. No taxable income would arise from such payment. Accordingly, said reimbursement is not subject to withholding tax.

The Court finds that the arguments raised by petitioner had already been sufficiently passed upon in the assailed Decision. To reiterate, Section 2.57.3 of RR No. 02-98, as amended by RR No. 30-03, provides as follows:

> **Sec. 2.57.3.** *Persons required to deduct and withhold. —*
>
> x x x
>
> Agents, employees or any person purchasing goods or services/paying for and in behalf of the aforesaid withholding agents shall likewise withhold in their behalf, provided that the official receipts of payment/sales invoice shall be issued in the name of the person whom the former represents and the corresponding certificate of taxes withheld (BIR Form No. 2307) shall immediately be issued upon withholding of the tax.

From the foregoing, employees are required to withhold on income payments made by them on behalf of their employer. Since the subject reimbursements were made on purchases of goods and services and petitioner did not submit proof that such purchases were from non-regular suppliers, this Court sustains the deficiency EWT on the advances to employees in the amounts of ₱77,259.75, ₱45,579.95 and ₱57,717.45.

A.v. *The deficiency 2% EWT assessment on the interest expense*

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on loans of ₱18,909,525.88 still stands.

In the assailed Decision it was held that, under Section 2.57.2(M) of RR No. 02-98, as amended, and as clarified by Revenue Memorandum Circular (RMC) No. 72-04, interest on loans, service fees, and other charges are considered as payments for services rendered, hence, subject to 2% EWT. Consequently, petitioner is liable to pay the deficiency 2% EWT imposed on interest payments of ₱18,909,525.88.

Conversely, petitioner cites Section 5 of RR No. 30-2003, which states that:

> "All income payments which are required to be subjected to withholding of income tax shall be subject to corresponding withholding tax rate to be withheld by the person having control over the payment, and who, at the same time claims the expenses."

Petitioner claims that there are two (2) requirements in order for the income payor to be obliged to withhold taxes: (a) the income payor has control over the income payment; and (b) the income payor claims the income payment as expenses. The use of the conjunction "AND" denotes that the two requisites must all be present in order for the obligation to accrue.

In the present case, while petitioner claimed the interest on loans as a deductible expense, petitioner did not have control in the payment of such interest. As proven during trial, the banks automatically debited the interest from the bank account of petitioner. Such scheme divested petitioner from any control as to the payment of the interest expense. Absent this requisite, petitioner asserts that it does not have the obligation to subject withholding taxes on the interest payments debited by the income recipient.

Continuing thereon, petitioner argues that assessing it with deficiency EWT on the interest payments would amount to double taxation on the same transaction. These interest payments formed part of the gross receipts of the bank which had certainly been subjected to income tax. This being the case, petitioner strongly believes that compelling it to pay EWT on the same subject would be tantamount to double taxation.

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This Court finds petitioner's argument untenable.

In reality, petitioner, as a Top Ten Thousand Corporation (TTC), is liable to withhold 2% creditable withholding tax from the bank for its interest payments, as mandated by Revenue Regulations No. 17-2003[12], and clarified by RMC No. 72-2004, to wit:

> "Q18. Is payment of interest on bank loans by the TTC/GO/LT and other fees paid to the bank subject to the 2% EWT?
>
> A18. Yes. However, payment of interest to OBUs/FCDUs shall be subject to final withholding tax of 10%.
>
> Q19. Is the payment of the principal and interest on loans, service fees and other charges considered as income extended by local banks, quasi-banks and other financial institutions to the TTC/GO/LT subject to the 2% EWT?
>
> A19. **Only the interest payments on loans, service fees and other charges considered as income are considered payment for services rendered, hence, subject to 2% EWT.** Payment corresponding to the principal amount is not subject to EWT." (*Emphasis ours*)

As stated by this Court in the assailed Decision, it is petitioner's responsibility, as a withholding agent, to make arrangements with the creditor bank that the amount which the latter would automatically debit from petitioner's account should be net of the 2% EWT.

As such, contrary to petitioner's claim, there is no double taxation to speak of. As a matter of fact, if petitioner had duly withheld the corresponding 2% EWT from its interest payments, and timely remitted the same to the BIR, then the financial institutions being taxed for the interest income received would have been able to use the 2% tax withheld as income tax credits.

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[12] (M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

Supplier of goods — One percent (1%)
Supplier of services — Two percent (2%)
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B. *The amounts of ₱915,758.40 and ₱5,591,106.28 representing non-rank and file employees' travel expenses should be subjected to FBT.*

The Decision assailed held that the expenses in the amounts of ₱915,758.40 and ₱5,591,106.28 should be subjected to FBT as these represented non-rank and file employees' travel expenses, which is one of the fringe benefits enumerated under Section 33(B) of the NIRC of 1997, as amended.

Petitioner disagrees with the said finding arguing that both amounts pertain to expenses for hotel accommodations and travel costs incurred by petitioner in sending its executives and employees abroad to attend business meetings and conferences.

Petitioner cites Section 34(A)(1) of the NIRC of 1997, as amended, which provides that travel expenses here and abroad, can be deducted as ordinary and necessary expenses paid or incurred in carrying on or which are directly attributable to the development, management, operation and/or conduct of the trade or business of the taxpayer.

This Court is not swayed.

Scrutiny of the documents presented by petitioner to support its claim that the travel expenses are ordinary and necessary expenses, reveal that they are insufficient. None of the said supporting documents (airplane tickets, hotel invoices, trip itineraries, electronic mail correspondences, and invoices from tour agencies) would tend to prove that the travel was necessary for the furtherance of petitioner's business. Nor would it show that the trip was an ordinary expense, meaning, that which is part of petitioner's trade or industry, such as for trainings and the like which are directly attributable to the development, management, operation and/or conduct of the trade or business of the taxpayer.

In view of the above discussions, this Court finds that both petitioner and respondent failed to raise any substantial matter, or compelling reason, to justify the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated on 26 June**

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2019), and petitioner's **Motion for Reconsideration (Of the Decision dated 26 June 2019)**, are both **DENIED** for lack of merit.

While, on the other hand, petitioner's **Manifestation (Of the Decision dated 26 June 2019)** is hereby **NOTED.**

SO ORDERED.

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

I concur:

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