REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CAGAYAN DE ORO DOCTORS INC. (MADONNA AND CHILD HOSPITAL),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9260

Members:

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

Promulgated:

FEB 05 2020 4:16 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's "***Motion for Reconsideration (with Supplemental Formal Offer of Evidence)***"[1] filed on September 10, 2019, without respondent's Comment, despite due notice.[2] In the said Motion, petitioner prays for reconsideration of the Court's Decision dated August 5, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. The assessments issued by respondent against petitioner for taxable year 2010 covering deficiency VAT and EWT are **UPHELD.** Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **₱18,217,296.15,** representing deficiency VAT and EWT, inclusive of the twenty-five percent (25%) surcharge and

[1] Docket, pp. 519 to 526.
[2] Docket, p. 531.

twenty percent (20%) deficiency interest and delinquency interest imposed under Section 249 (B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	EWT	TOTAL
Basic Tax Due	₱365,610.50	₱4,852,187.71	₱5,217,798.21
Add: 25% Surcharge	91,402.63	1,213,046.93	1 ,304,449.55
Add: 20% Deficiency interest			
Deficiency interest from January 26, 2011 to February 17, 2016 [₱365,61 0.50 X 20% X 1849/365 days]	₱370,418.53		370,418.53
Deficiency interest from January 16, 2011 to February 17, 2016 [₱4,852,187.71 x 20% 1859/365 days]		4,942,584.63	4,942,584.63
Total Amount Due, February 17, 2016	**₱827,431.65**	**₱11,007,819.27**	**₱11,835,250.92**
Add: Deficiency interest from February 18, 2016 to December 31, 2017 (683 days)			
[₱365,610.50 x 20% X 683 I 365 days]	136,828.48		136,828.48
[₱4,852, 187.71 X 20% X *683* I 365 days]		1,815,914.63	1,815,914.63
Add: Delinquency Interest from February 18, 2016 to December 31, 2017			
[₱827,431.65 X 20% X 683/365 days]	309,663.46		309,663.46
[₱11,007,819.92x 20% x 683/365 days]		4,119,638.66	4,119,638.66
Total Amount Due, as of December 31, 2017	**₱1,273,923.59**	**₱16,943,372.56**	**₱18,217,296.15**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of February 17, 2016 in the amount of **₱11,835,250.92**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED."

In support of its Motion, petitioner argues that:

1. The Billing Statement found in the BIR Records shows the amount of Professional Fees for December 2010.

2. The CTA Rules may be relaxed, considering evidence based on undisputed facts in the Supplemental FOE are attached in the Motion.

3. Apart from the Professional Fees for December 2010, the EWT assessment for the other months have already prescribed.

4. The EWT assessment lacks factual and legal basis and the defective Details of Discrepancies are violative of RR 12-99, resulting in a denial of due process.

5. There was neither full nor substantial compliance with Section 228 of the NIRC and RR 12-99 with regard to EWT assessment.

6. Finally, its periodic EWT remittances were based on the monthly professional fees that were actually collected from or paid by in-patients during the year for the total amount of ₱20,423,281.85. To subject the entire amount credited to Professional Fees based on its Billing Register, even if only a portion of them was settled by patients in 2010 is unjust. The obligation of the petitioner to withhold is triggered upon payment by the said patients, otherwise, there is no duty to do so.

THE COURT'S RULING

Notwithstanding the liberal application of procedural rules in the Court of Tax Appeals, as invoked by petitioner, the instant Motion will nevertheless be denied.

The CTA is not governed strictly by technical rules of evidence, and considering respondent's failure to object thereto, Exhibit "P-32" to "P-32-C" stated in petitioner's* Supplemental Formal Offer of Evidence *are admitted.

In the case of *Commissioner of Internal Revenue vs. De La Salle University, Inc.,*[3] the Supreme Court held that it is justifiable to admit a party's formal offer of supplemental evidence, considering that: 1) the failure of the other party to object to the offered evidence renders it admissible; and 2) the CTA is not governed strictly by the technical rules of evidence, to wit:

> "First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.
>
> The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a

[3] G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

> party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.
>
> As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice. The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the formal offer, admission and evaluation of the supplemental evidence were all *fait accompli.*
>
> We clarify that while the Commissioner's failure to promptly object had no bearing on the materiality or sufficiency of the supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.
>
> Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, without prompt objection from the Commissioner, was thus justified.
>
> Notably, this Court had in the past admitted and considered evidence attached to the taxpayer's motion for reconsideration.

In this case, this Court notes that despite the period granted to the respondent, he failed to file a comment to petitioner's Motion for Reconsideration, or object to its Supplemental Formal Offer of Evidence, as stated in Records Verification Report dated November 12, 2019. Thus, in view of respondent's failure to object to the subject evidence, and the fact that this Court is not strictly governed by the technical rules of evidence, Exhibits "P-32" to "P-32-C" are hereby admitted.

Petitioner failed to submit further documentary evidence to substantiate or corroborate the details appearing in its Billing Register-In Patient, marked as Exhibits "P-32" to "P-32-C."

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Although Exhibits "P-32" to "P-32-C," subject of petitioner's Supplemental Formal Offer of Evidence, are admitted, the admission is still subject to this Court's final determination of its probative value.

After careful examination and consideration of petitioner's additional evidence, this Court finds that the schedule of the "Billing Register-In Patient," marked as Exhibits "P-32" to "P-32-C," is self-serving, and thus cannot be relied upon by the Court.

A summary alone is not sufficient to verify or substantiate the actual amounts of professional fees alleged to be shown in the said schedule. Thus, the same has no probative value, as no additional and adequate documentary evidence was presented to prove that the amount of ₱4,168,283.10 is indeed the portion of professional fees for December 2010, aside from the said Billing Register.

Petitioner was not denied due process.

Petitioner argues that the EWT assessment lacks factual and legal basis, resulting in a denial of due process.

We disagree.

Section 228 of the NIRC of 1997 reads in part:

> "**SEC. 228.** ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> x x x x x x x x x
>
> 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."

In relation thereto, Section 3 of RR No. 12-99 provides as follows:

> "**SECTION 3.** ***Due process requirement in the Issuance of a deficiency tax assessment***. —
>
> x x x x x x x x x

> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof) x x x."

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.[4] This is in keeping with the constitutional principle that no person shall be deprived of property without due process.[5]

As stated in the assailed Decision, respondent has sufficiently provided factual and legal bases for the subject tax assessments, while petitioner failed to discharge its burden to overturn the disputable presumption of correctness of the subject tax assessment.

For easy reference, pertinent portions of the Details of Computation and Details of Discrepancies, appended to the Amended Formal Letter of Demand[6] dated January 13, 2014, is quoted hereunder, to wit:

"DETAILS OF COMPUTATION

Expanded Withholding Tax	
Total Professional Fees per Billing Statement	₱52,771,199.91
Less: Total Professional Fees subjected to Expanded Withholding Tax	20,423,281.85
Total Professional Fees not subjected to EWT	32,347,918.06
Multiply by Withholding Tax Rate	15%
Total	4,852,187.71
Add: 20% Interest p.a. (01.16.11 – 02.15.14)	2,993,733.35
Total Expanded Withholding Tax Due and Payable	₱7,845,921.06

x x x x x x x x x

DETAILS OF DISCREPANCIES

x x x x x x x x x

[4] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.
[5] *Id.*
[6] Exhibit "P-9", Docket, pp. 364 to 366.

2. ***Withholding tax – expanded deficiency.*** Sec. 2.57.2 (A) of Revenue Regulations No. 2-98 provides that there shall be withheld a creditable income tax on professional fees or services rendered by individuals at a rate of 15%, if the gross income for the current year exceeds ₱720,000.00; or 10% if otherwise.

Furthermore, in order to determine the applicable tax rate of 10% or 15% to be applied/withheld by the withholding agent, every individual professional/talent/ corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR), by submitting a notarized sworn declaration xxx copy furnished all the current payors of the declaration duly stamped received by the BIR. Sworn declaration may likewise be filed by the income payor on behalf of the professionals/talents/director's whose services were being rendered exclusively to the aforesaid payor. The disclosure shall be filed on June 30 of each year or within fifteen (15) days after the end of the month the professionals/talents/director's income reaches ₱720,000.00, whichever comes earlier. In case his total gross income is less than ₱720,000.00 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches ₱720,000.00. The payee- professionals/talents/director shall furnish each payor a copy of the BIR duly stamp received sworn declaration not later than five (5) days from the receipt by the BIR. ***In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%."***

From the foregoing, it is clear that the pertinent facts and law or regulation on which the assessment for EWT was made, is indicated with sufficient clarity, in compliance with Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99.

A review of the records, show that petitioner had several correspondences[7] with the BIR, indicating it had multiple opportunities to intelligently address and deny the findings of the BIR, but opted not to do so. On the contrary, it raised the issue with regard to the sufficiency of the factual and legal basis of the subject

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[7] Exhibits "P-6," " P-8," "P-10," and "P-24," Docket, pp. 357 to 361, 362 to 364, 369 to 371, 397 to 398.

assessment only before this Court, choosing to focus solely on the issue on the receipt of the subject assessments. Correspondingly, it cannot be said that petitioner was denied due process in this case.

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice