REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

MINDANAO MINERAL PROCESSING REFINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9643

Members:

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

Promulgated:

MAY 19 2021
9:28 a.m.

x - x

DECISION

RINGPIS-LIBAN, *J.*:

The Petition for Review prays that the Court render judgment ordering the cancellation and withdrawal of Respondent's assessment against Petitioner for alleged deficiency income tax, final withholding tax (FWT), withholding value-added tax (VAT), and administrative penalties, for fiscal year (FY) July 1, 2011 to June 30, 2012, in the total amount of ₱1,916,761,894.96, inclusive of surcharges and interest.[1]

THE PARTIES

Petitioner Mindanao Mineral Processing & Refining Corporation is a corporation duly organized and existing under Philippine laws,[2] and duly registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 006-380-842-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions,

[1] Summary of the Case, Pre-Trial Order dated August 29, 2018, Docket – Vol. 4, p. 1691.
[2] Exhibit "P-4", Docket – Vol. 4, p. 1985.
[3] Exhibit "P-5", Docket – Vol. 4, p. 1991.

duties and responsibilities of said Office, including the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.[4]

THE FACTS

On April 17, 2013, Petitioner received the Letter of Authority (LOA) No. LOA-121-2013-00000067 dated April 12, 2013 from the BIR Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Leonila Manuel, Alexander Atienza, Saidamen Marohombsar, Vilma Chua, and Group Supervisor (GS) Ronaldo Camba of the Excise Large Taxpayers Audit Division 1 (ELTAD 1), to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the FY July 1, 2011 to June 30, 2012.[5]

Petitioner, through its President, Atty. Raul C. Villanueva, executed on September 23, 2014, a Waiver of the Defense of Prescription under the Statute of Limitations, which was accepted by Respondent through Officer-in-Charge (OIC) Assistant Commissioner (ACIR) of the LTS, Mr. Nestor S. Valeroso, on September 28, 2014.[6] In this Waiver, Petitioner consented to the assessment and/or collection of taxes due after investigation not later than December 31, 2015.

On September 22, 2015, another Waiver of the Defense of Prescription under the Statute of Limitations was executed by Petitioner, again through its President, which was accepted by Respondent through ACIR Valeroso on October 13, 2015.[7] With this Waiver, the period to assess and/or collect was extended until December 30, 2016.

On December 1, 2016, Petitioner received the Preliminary Assessment Notice (PAN) dated October 17, 2016 from BIR LTS ELTAD 1, assessing Petitioner for alleged deficiency income tax in the amount of ₱2,158,747,852.20, deficiency expanded withholding tax (EWT) in the amount of ₱47,433,765.61, deficiency final withholding tax (FWT) in the amount of ₱621,051,630.81, deficiency withholding VAT in the amount of ₱281,640,089.54, deficiency documentary stamp tax (DST) in the amount of ₱96,189,293.70, deficiency excise tax in the amount of ₱18,852,522.89, and administrative penalties in the amount of ₱300,00.00, for the FY ending June 30, 2012.[8]

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[4] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts & Issues* (JSFI), Docket – Vol. 4, p. 1592.
[5] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 4, pp. 1592 to 1593.
[6] Exhibit "P-6", Docket – Vol. 4, p. 1992; Refer also to Par. 12(a), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1594.
[7] Exhibit "P-7", Docket – Vol. 4, p. 1993; Refer also to Par. 12(b), Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1594.
[8] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1593.

Thereafter, on December 16, 2016, Petitioner, through its external counsel at the time, Bernaldo Directo & Po Law Offices (BDP Law), filed its Reply to the PAN, captioned as "Re: Protest to Preliminary Assessment Notice (PAN)" and dated December 14, 2016, whereby Petitioner set forth its grounds for the cancellation of the alleged deficiency tax assessments provided in the PAN.[9]

On December 27, 2016, Petitioner received a Formal Letter of Demand (FLD) with attached Details of Discrepancies, and Final Assessment Notice (FAN), both dated December 19, 2016.[10] The FLD assessed Petitioner for alleged deficiency taxes for FY ending June 30, 2012 in the total amount of ₱3,282,922,429.99, inclusive of surcharges, interest and penalties, broken down as follows:[11]

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱1,182,742,368.74	-	₱1,016,186,320.10	-	₱2,198,928,688.84
EWT	25,289,693.91	-	23,003,228.42	-	48,292,922.33
FWT	331,118,675.50	-	301,181,918.54	-	632,300,594.04
Withholding VAT	132,498,076.54	33,124,519.13	120,518,798.39	-	286,141,394.06
DST	44,210,205.00	11,052,551.25	42,503,569.96	-	97,766,326.21
Excise Tax	10,007,520.15		9,184,984.25	-	19,192,504.40
Compromise	-	-	-	₱300,000.00	300,000.00
Total Amount	**₱1,725,866,539.84**	**₱44,177,070.38**	**₱1,512,578,819.66**	**₱300,000.00**	**₱3,282,922,429.88**

Petitioner, through BDP Law, then filed its Protest, by way of a Request for Reinvestigation dated January 20, 2017 with the LTS on January 26, 2017.[12] Subsequently, Petitioner submitted the documents in support of its protest to the BIR on March 23, 2017.[13]

On July 7, 2017, Petitioner received Respondent's undated Final Decision on the Disputed Assessment (FDDA) with corresponding assessment notices dated June 16, 2017,[14] assessing Petitioner for alleged deficiency taxes for FY July 1, 2011 to June 30, 2012, in the total amount of ₱2,030,842,530.88, inclusive of surcharges, interest and penalties. The said amount of ₱2,030,842,530.88 is broken down as follows:[15]

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱791,502,833.04	-	₱758,541,618.87	-	₱1,550,044,451.91
EWT	12,738,149.37	-	12,633,452.25	-	25,371,601.62
FWT	125,796,246.70	-	126,899,117.91	-	252,695,364.61
Withholding VAT	50,369,105.02	₱12,592,276.26	50,810,697.16	-	113,772,078.44
DST	39,464,681.00	9,866,170.25	39,378,183.06	-	88,709,034.31

[9] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1593.
[10] Par. 8, Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1593.
[11] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 4, pp. 1593 to 1594.
[12] Par. 10, Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1594.
[13] Exhibit "P-37", Docket – Vol. 6, p. 2621.
[14] Exhibit "P-3", Docket – Vol. 4, pp. 1965 to 1982.
[15] Par. 11, Stipulation of Facts, JSFI, Docket – Vol. 4, p. 1594.

Admin. Penalty	-	-	-	₱250,000.00	250,000.00
Total Amount	**₱1,019,871,015.13**	**₱22,458,466.51**	**₱988,263,069.25**	**₱250,000.00**	**₱2,030,842,530.88**

However, records show that prior to such receipt of the FDDA, *i.e.*, on June 29, 2017, Petitioner had already paid the said total amount of ₱25,371,601.62, covering the assessed deficiency EWT, including the corresponding interest thereto.[16] Also, on the same date and on July 11, 2017, Petitioner respectively paid the amounts of ₱9,866,170.13 and ₱78,842,863.09, as payment for assessed deficiency DST, including the surcharge and interest imposed thereto.[17]

Petitioner filed the instant Petition for Review on August 7, 2017.[18]

On October 30, 2017, Respondent filed his Answer (Re: Petition for Review dated 07 August 2017),[19] interposing the following defenses:

a) the Waivers executed by Petitioner's President, Atty. Raul Villanueva, are valid, despite not being authorized by a Board Resolution since he is considered a responsible officer under the NIRC of 1997, as amended;

b) Atty. Villanueva's authority to represent Petitioner cannot be denied since he executed the Waivers voluntarily and even Petitioner's representative, Bernaldo Directo & Po Law Offices, made the necessary transmission of the Waivers to Respondent which were duly signed and notarized;

c) Petitioner is estopped from assailing the apparent authority of Atty. Villanueva as to innocent third persons dealing in good faith with him, especially after benefiting from the effects of the waiver of the defense of prescription;

d) the period of Respondent to assess was validly extended to not later than 30 December 2016;

e) Respondent furnished Petitioner's authorized representative, Bernaldo Directo & Po Law Offices, copies of the accepted Waivers, and even sent the BIR Large Taxpayers Service its authorization letter;

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[16] Exhibits "P-38" and "P-38-a", Docket – Vol. 6, pp. 2622 to 2623.
[17] Exhibits "P-39", "P-39-a", "P-40", "P-40-a", and "P-40-b", Docket – Vol. 6, pp. 2624, and 2626 to 2627, respectively.
[18] Docket – Vol. 1, pp. 10 to 70.
[19] Docket – Vol. 1, pp. 344 to 364.

f) Respondent is not responsible for any alleged misconduct of the employees of Petitioner's authorized representative in misplacing the copies of the signed Waivers;

g) the assessments were issued in accordance with applicable laws and regulations and the FAN/FLD contained the factual and legal bases thereof, specifically:

1. Deficiency Income Tax – ₱1,550,044.451.91

   i. Per investigation, Petitioner's net taxable income in the amount of ₱2,637,171,392.60 with approved Income Tax Holiday (ITH) is subjected to regular income tax;

   ii. Petitioner's ITH entitlement had been effectively voided because of its misrepresentation in regard to the start date of its commercial operation, which is a ground for cancellation of petitioner's Board of Investments (BOI) registration;

   iii. Audited Financial Statements and the corresponding Annual Income Tax Return show that Petitioner was already in operation prior to July 1, 2009;

   iv. Due to its ITH being voided, Petitioner's total income for the fiscal period is subject to regular income tax rate of thirty (30%) percent pursuant to the provision of Section 27 (A) of the NIRC of 1997, as amended;

   v. Petitioner's registered activities on which its ITH was premised, are being performed by Philsaga Mining Corporation (PMC) under a Management Service Agreement, hence, subjecting Petitioner's income to the regular income tax rate of 30%;

   vi. Petitioner financed principally, if not wholly, the business operation of PMC, even granting non-interest bearing cash advances to PMC for working capital requirements and assuming PMC's financial obligations to other parties;

   vii. Petitioner is an adjunct, business conduit or alter ego of PMC, created to merely evade the payment of correct taxes, hence, they may be regarded as one and the same entity under the doctrine of 'piercing the veil of corporate entity' and both their income is subject to the normal income tax rate of 30% pursuant to Section 27 (A) of the NIRC of 1997;

1. The two corporations have the same set of officers and/or board of directors which enable PMC to actually direct and manage the corporate affairs of Petitioner;

2. Petitioner's parent company is Medusa Mining Limited (MML) and PMC is ultimately owned by MML, also;

3. Petitioner financed the operations as well as the expansion programs and purchase of equipment of PMC;

4. Petitioner pays for the accounts of PMC and vice versa; and

5. The bulk of the business of PMC is being channeled through Petitioner.

viii. Unapplied Input Tax of ₱1,171,384.20 arising from the purchase of processing plant representing amortized portion of the 12% VAT included in the capitalized processing plant was disallowed pursuant to BIR Ruling No. 123-2013 which says that unutilized input taxes attributable to zero-rated sales can be recovered only through the application for refund or tax credit. Accumulated and unapplied input tax arising from purchase of goods and services may not be treated as deductible expense for income tax purposes;

ix. The total amount of ₱1,171,384.20 representing amortized portion of the 12% VAT tax included in the capitalized processing plant was disallowed pursuant to Section 110 (A) of the NIRC of 1997, as amended, which provides that where the aggregate acquisition costs of depreciable assets for a calendar month exceeds ₱1,000,000.00 excluding VAT component, input taxes therefrom shall be spread evenly over the month of acquisition and the succeeding 59 months;

2. Expanded Withholding Tax - ₱25,371,501.62

i. income payments in the amount of ₱456,677,447.11 were not subjected to EWT pursuant to Secs. 57 and 58 of the NIRC of 1997, as amended, in relation to RR Nos. 2-98, 17-2003, 30-2003 and 6-2012;

ii. income payments subject to EWT are as follows:

1. Income payment pertaining to purchases of goods (acquisition of property plant and equipment) is subject to 1% withholding tax - ₱53,464,600.00;

2. Income payment on local purchases of services (ancillary cost, treatment charge, management fee, agency fees, communication, acquisition of property plant and equipment) is subject to 2% EWT was reduced to ₱417,675,445.00;

3. Rental fees and purchase of broken ore from PMC (less depreciation recovery cost) is subject to 5% EWT - ₱137,105,438.88;

4. Professional Fee is subject to 10% EWT which per FAN was increased by ₱458,940.17. Consultancy fee originally assessed 15% withholding tax. - ₱2,773,625.83;

5. Income payment on professional and management fees assessed with 15% EWT - ₱1,464,491.41;

6. Others – Non-Resident-25% - ₱85,458.00

3. Deficiency Final Tax – ₱252,695,364.61

i. Petitioner was assessed a total deficiency Final Tax in the amount of ₱632,300,594.04 with interest computed until January 31, 2017. A review of the alpha list of payees, general ledger detail and the schedule of back charges and other payments Petitioner made to MML revealed the following:

1. Payments made to Peter S. Alphonso, a nonresident Australian appointed as the Company Treasurer (Non-resident Alien Individual Not Engaged in Trade or Business Within the Philippines) – ₱672,457.00. While ₱170,982.00 was subjected to final tax rate of twenty-five percent (25%) imposed on non-resident alien individual not engaged in trade or business within the Philippines, the balance of ₱501,475.00 was subjected to only ten percent (10%) tax, instead of

the fifteen percent (15%) required under the NIRC of 1997, as amended;

2. Management Service Fee to Medusa Mining Limited – ₱82,453,562.00. For the supervision and operation of the mineral processing and refining activities, total fees paid were assessed a Final Tax of thirty percent (30%) pursuant to Sections 28 (B) and 57(A) of the NIRC of 1997, as amended, in relation to Section 2.57 (A) of Revenue Regulations 2-98;

ii. Other Income Payment to Non-Resident Foreign Corporation (MML) ₱336,616,522.84. Payments to MML consisting of back charges, management fees and other income payment owed by PMC Final Tax of thirty percent (30%) were assessed pursuant to Secs. 28 (B) and 57 (A) of the NIRC of 1997, as amended, in relation to Section 2.57 (A) of RR 2-98, as its withholding agent;

4. Deficiency Withholding VAT - ₱113,772,079.44
   i. Payments made to Peter Alphonso (₱672,457.00) and Management Fees paid to MML (₱82,453,562.00) and other payments to NRFC (MML/NRFC) for ₱336,616,522.84, such services having been rendered in the Philippines, were subject to VAT pursuant to Section 108 of the NIRC of 1997, as amended and as implemented by section 4.114-2 (b) (2) of RR 16-2005, as amended;

5. Deficiency DST – ₱88,709,034.31
   i. DST was assessed based on disclosure in Notes 13.01 and 13.02 of the Audited Financial statements, cash advances granted to and from related party in the amount of ₱5,689,154,678.00 and ₱3,152,886,030.00, respectively, for working capital requirements, settlements of financial obligations to other parties as well as funds for exploration and evaluation expenditures and the acquisition of property, plant and equipment. Said assessment was reduced by the amount already subjected to DST in the amount of ₱924,094,328.00 and the amount of ₱25,010,355.00 taken up twice in the computation per FAN;

6. Administrative Penalties- ₱250,000.00
   i. Surcharge of 25% was imposed for Petitioner's failure to file the required DST returns and remittance return for withholding VAT on income payments to nonresident

alien individual not engaged in trade and business and non-resident foreign corporation, for services rendered in the Philippines, and pay the corresponding tax due therefrom, pursuant to Section 248 (A) of the NIRC, as amended;

ii. interest at the rate of 20% per annum on the basic deficiency taxes, computed from the dates said taxes were due pursuant to Section 249 (B) of the NIRC of 1997, as amended; and

iii. compromise penalties were also imposed for deficiency taxes in accordance with the provision of sections 248 and 249 of the Tax code as amended and as implemented by RMO 19-2007, as amended by RMO 7-2015.

The pre-trial conference was initially set on April 3, 2018,[20] but was eventually reset to and held on July 17, 2018.[21] Prior thereto, Petitioner's Pre-Trial Brief was filed on May 4, 2018;[22] while Respondent's Pre-Trial Brief was submitted on July 12, 2018.[23]

On August 2, 2018, the parties submitted their Joint Stipulation of Facts & Issues (JSFI) via Petitioner's Urgent Motion to Admit the Attached Joint Stipulation of Facts & Issues.[24] In the Resolution dated August 6, 2018,[25] the Court granted the said Urgent Motion, and admitted the said JSFI as part of the record of this case.

On August 10, 2018, Respondent submitted the BIR Records of the case.[26]

Subsequently, the Court issued the Pre-Trial Order dated August 29, 2018,[27] deeming the termination of the Pre-Trial Conference.

Trial ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely:

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[20] *Notice of Pre-Trial Conference* dated November 16, 2017, Docket – Vol. 1, pp. 372 to 373.
[21] Resolution dated May 4, 2018, Docket – Vol. 4, p. 1542; Minutes of the hearing held on, and Order dated, July 17, 2018, Docket – Vol. 4, pp. 1565 to 1567.
[22] Docket – Vol. 4, pp. 1522 to 1539.
[23] Docket – Vol. 4, pp. 1559 to 1563.
[24] Docket – Vol. 4, pp. 1589 to 1607.
[25] Docket – Vol. 4, p. 1610.
[26] *Compliance* dated August 8, 2018, Docket – Vol. 4, pp. 1611 to 1612.
[27] Docket – Vol. 4, pp. 1691 to 1706.

(1) Ms. Geraldine C. Rivera,[28] Petitioner's Finance Officer; (2) Ms. Lynn M. Salipuran,[29] Corporate Accountant of Philsaga Mining Corporation; (3) Mr. Abraham I. Pestaño,[30] Petitioner's Accounting & Tax Compliance Assistant Manager; (4) Atty. Pepito G. Po,[31] a partner of BDP Law; and (5) Atty. Maria Myla S. Maralit,[32] the Court-commissioned Independent Certified Public Accountant (ICPA).[33]

On April 10, 2019, Petitioner's Formal Offer of Evidence was filed.[34] Subsequently, Respondent filed his Comment Re: Petitioner's Formal Offer of Evidence on April 22, 2019.[35] In the Resolution dated August 1, 2019,[36] this Court admitted Petitioner's exhibits, *except* for Exhibit "P-15-g", for failure to attach the certified true copy thereof to the duly marked exhibit.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of RO Leonila DC. Manuel.[37]

On November 4, 2019, Respondent's Formal Offer of Documentary Evidence was filed;[38] and on November 15, 2019, Petitioner filed its Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 31 October 2019).[39] In the Resolution dated December 17, 2019,[40] the Court resolved to admit all of Respondent's documentary evidence; and gave the parties a period of thirty (30) days from notice to file their respective memoranda.

Respondent's Memorandum was filed on January 24, 2020,[41] while the Memorandum (for Petitioner) was posted on March 9, 2020.[42]

The present case was deemed submitted for decision on June 26, 2020.[43]

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[28] Exhibits "P-48", and "P-48-b", Docket – Vols. 3 and 4, pp. 1024 to 1045, and 1820 to 1828, respectively; Minutes of the hearing held on, and Order dated, November 20, 2018, Docket – Vol. 4, pp. 1830 to 1832.
[29] Exhibits "P-49", and "P-49-2", Docket – Vols. 1 and 4, pp. 392 to 404, and 1836 to 1843, respectively; Minutes of the hearing held on, and Order dated, December 11, 2018, Docket – Vol. 4, pp. 1847 to 1849.
[30] Exhibit "P-50", Docket – Vol. 2, pp. 798 to 820; Minutes of the hearing held on, and Order dated, January 22, 2019, Docket – Vol. 4, pp. 1850 to 1851.
[31] Exhibit "P-51", Docket – Vol. 4, pp. 1507 to 1514; Minutes of the hearing held on, and Order dated, February 26, 2019, Docket – Vol. 4, pp. 1858 to 1859.
[32] Exhibit "P-52", Docket – Vol. 4, pp. 1860 to 1877; Minutes of the hearing held on, and Order dated, March 26, 2019, Docket – Vol. 4, pp. 1895 to 1897.
[33] *Oath of Commission* dated October 16, 2018, Docket – Vol. 4, p. 1741; Minutes of the hearing held on, and Order dated, October 16, 2018, Docket – Vol. 4, pp. 1738, and 1742 to 1743, respectively.
[34] Docket – Vol. 4, pp. 1898 to 1929.
[35] Docket – Vol. 4, pp. 2691 to 2692.
[36] Docket – Vol. 6, pp. 2697 to 2699.
[37] Exhibit "R-18", Docket – Vol. 4, pp. 1547 to 1558; Minutes of the hearing held on, and Order dated, October 24, 2019, Docket – Vol. 6, pp. 2702 to 2704.
[38] Docket – Vol. 6, pp. 2705 to 2713.
[39] Docket – Vol. 6, pp. 2716 to 2729.
[40] Docket – Vol. 6, pp. 2732 to 2733.
[41] Docket – Vol. 6, pp. 2734 to 2758.
[42] Docket – Vol. 6, pp. 2776 to 2847.
[43] Resolution dated June 26, 2020, Docket – Vol. 6, p. 2882.

THE ISSUES

The issues submitted by the parties to be resolved by this Court are as follows:[44]

A. Whether or not Respondent's right to assess Petitioner for deficiency taxes for the subject period has already prescribed;

B. Whether or not the assessments for deficiency income tax, FWT, Withholding VAT, and compromise penalties totaling ₱1,916,761,894.96, inclusive of surcharges and interests, should be cancelled and withdrawn for lack of factual and legal basis; and

C. Whether Petitioner is liable to pay the aggregate amount of ₱2,030,842,530.88 representing deficiency Income Tax, EWT, Final Tax, Withholding VAT, DST, Compromise Penalties for the subject period, as well as 25% Surcharge and 20% Deficiency and Delinquency interest.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that Respondent's right to assess it for alleged deficiency taxes for the fiscal period July 1, 2011 to June 30, 2012 has already prescribed; and that even assuming arguendo that the Waivers are valid, the assessments should still be cancelled for utter lack of factual or legal basis.

On the other hand, Respondent counters that the Waivers are valid; and that Petitioner is liable to pay the deficiency assessment.

THE RULING OF THE COURT

The instant Petition for Review is partly meritorious.

The assessment has not yet prescribed. Petitioner is already estopped from questioning the subject Waivers.

Petitioner insists that the Waivers are null and void for having failed to comply with the requirements enumerated in Section 222(b) of the NIRC of 1997, as amended, as amplified by Revenue Memorandum Order (RMO) No.

[44] JSFI, Docket - Vol. 4, pp. 1594 to 1595.

20-90 dated April 4, 1990,[45] and Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001.[46] Therefore, according to Petitioner, the Waivers did not extend the period to assess given to Respondent.

We disagree. Petitioner is already estopped from questioning the validity of the Waivers.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[47] the Supreme Court ruled as follows:

> "RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR, and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223(b) of the 1977 Tax Code.[48] **RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.**
>
> **The Court disagrees.**
>
> Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that **'an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.**
>
> Estoppel is clearly applicable to the case at bench. **RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, <u>then it should not have paid the reduced amount of taxes in the revised assessment</u>. RCBC's subsequent action effectively belies its insistence that the waivers are invalid.** The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. **Thus, RCBC is estopped from questioning**

[45] Subject: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.
[46] Subject: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.
[47] G.R. No. 170257, September 7, 2011.
[48] Now Section 222(b) of the NIRC of 1997.

the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear." *(Emphases and underscoring added)*

Just as in the foregoing case, the payment by Petitioner of the subject deficiency EWT and DST, including the increments thereto,[49] belies its insistence that the Waivers are invalid. Had Petitioner truly believed that to be so and that the subject tax assessments were issued beyond the prescriptive period, then it should not have paid the said deficiency EWT and DST, as well as the increments thereon. By virtue of the said tax payments, Petitioner is estopped from questioning the validity of the said Waivers. To hold otherwise and allow Petitioner to deny Respondent's right to collect the same would run counter to the principle of equity.

Consequently, the Waivers are considered valid, and therefore the BIR's period to assess was validly extended until December 31, 2016.[50] Since the FLD/FAN was issued on December 19, 2016 and was received by Petitioner on December 27, 2016, it is clear that the period to assess by Respondent has not prescribed.

The determination of the propriety of the subject tax assessments.

The FLD[51] assessed Petitioner for the following alleged deficiency taxes for taxable period ending June 30, 2012 in the total amount of ₱3,282,922,429.88, inclusive of surcharge, interest and compromise penalties, broken down as follows:

	Basic	Surcharge	Interest	Compromise Penalties	Total
Income Tax	₱ 1,182,742,368.74	₱ -	₱ 1,016,186,320.10	₱ -	₱ 2,198,928,688.84
EWT	25,289,693.91	-	23,003,228.42	-	48,292,922.33
FWT	331,118,675.50	-	301,181,918.54	-	632,300,594.04
Final Withholding VAT	132,498,076.54	33,124,519.13	120,518,798.39	-	286,141,394.06
DST	44,210,205.00	11,052,551.25	42,503,569.96	-	97,766,326.21
Excise Tax	10,007,520.15	-	9,184,984.25	-	19,192,504.40
Compromise Penalties	-	-	-	300,000.00	300,000.00
Total	**₱1,725,866,539.84**	**₱44,177,070.38**	**₱1,512,578,819.66**	**₱300,000.00**	**₱3,282,922,429.88**

[49] Exhibits "P-38" and "P-38-a", Docket – Vol. 6, pp. 2622 to 2623; Exhibits "P-39", "P-39-a", "P-40", "P-40-a", and "P-40-b", Docket – Vol. 6, pp. 2624, and 2626 to 2627, respectively.
[50] Exhibits "P-6" and "P-7", Docket – Vol. 4, pp. 1992 to 1993.
[51] Exhibits "P-1" and "R-13", BIR Records – Folder 4, pp. 10 to 35.

On July 7, 2017, Petitioner received the FDDA,[52] where it was assessed for alleged deficiency taxes for FY July 1, 2011 to June 30, 2012 in the reduced amount of ₱2,030,842,530.88, inclusive of surcharge, interest and compromise penalty, broken down as follows:

	Basic	Surcharge	Interest	Compromise Penalties	Total
Income Tax	₱ 791,502,833.04	₱ -	₱ 758,541,618.87	₱ -	₱ 1,550,044,451.91
EWT	12,738,149.37	-	12,633,452.25	-	25,371,601.62
FWT	125,796,246.70	-	126,899,117.91	-	252,695,364.61
Withholding VAT	50,369,105.02	12,592,276.26	50,810,697.16	-	113,772,078.44
DST	39,464,681.00	9,866,170.25	39,378,183.06	-	88,709,034.31
Compromise Penalties	-	-	-	250,000.00	250,000.00
Total	**₱1,019,871,015.13**	**₱22,458,446.51**	**₱988,263,069.25**	**₱250,000.00**	**₱2,030,842,530.88**[53]

Nevertheless, and as already noted, on June 29, 2017, Petitioner paid the amount of ₱25,371,601.62 covering the assessed deficiency EWT, including the corresponding interest thereon.[54] On June 29, 2017 and July 11, 2017, Petitioner also paid the amounts of ₱9,866,170.13 and ₱78,842,863.09, totaling ₱88,709,033.22, which covered the assessed deficiency DST, including the surcharge and interest imposed thereon.[55]

Thus, the instant appeal covers only the assessments for deficiency income tax, FWT, withholding VAT, and compromise penalties, for FY ended June 30, 2012.

DEFICIENCY INCOME TAX:

Respondent assessed Petitioner with deficiency income tax amounting to ₱1,550,044,451.91, broken down as follows:[56]

Net Taxable Income per ITR	₱ -
Add/Deduct:	
Net taxable income with approved ITH subjected to regular income tax per investigation	2,637,171,392.60
Unapplied input tax arising from purchase of processing plant	1,171,384.20
Taxable Income per ITR	₱ 2,638,342,776.80
Tax Rate	30%
Basic Tax	**₱ 791,502,833.04**
Add:	
Interest – until July 31, 2017	758,541,618.87

[52] Exhibit "P-3", Docket – Vol. 4, pp. 1965 to 1982; Exhibit "R-15", BIR Records – Folder 1, pp. 770 to 781.
[53] This should be ₱2,030,842,530.89.
[54] Exhibits "P-38" and "P-38-a", Docket – Vol. 6, pp. 2622 and 2623.
[55] Exhibits "P-39" to "P-40-a", Docket – Vol. 6, pp. 2624 to 2628.
[56] Exhibit "P-3", Docket – Vol. 4, pp. 1965 to 1972.

AMOUNT DUE	**₱ 1,550,044,451.91**

A. Net taxable income with approved ITH subjected to normal income tax per investigation - ₱2,637,171,392.60

Respondent's grounds for subjecting Petitioner's net taxable income amounting to ₱2,637,171,392.60 to the 30% regular corporate income tax (RCIT), may be summarized as follows:

1) Petitioner misrepresented the date of start of its commercial operations in 2009 resulting to the automatic cancellation of its BOI registration and entitlement to ITH incentive for FY 2012; and

2) Petitioner is a mere adjunct business conduit or alter ego of PMC, hence, shall be treated as one and same entity, pursuant to the doctrine of piercing the veil of corporate entity.

Petitioner refuted these grounds and argued that its revenues for the FY July 1, 2011 to June 30, 2012 should not be subjected to the 30% RCIT, considering that during the said period, it was still enjoying its status as a BOI-registered enterprise entitled to the ITH incentive under EO No. 226. According to Petitioner, it was registered with the BOI as a New Domestic Producer of Gold Bullion on a Pioneer Status (with Non-Pioneer Incentives) for the period July 1, 2009 to June 30, 2013.

Petitioner even pointed out that the BOI confirmed its ITH entitlement for the FY ended 30 June 2012 in a letter dated September 1, 2015, and another letter to the Assistant Commissioner of the BIR Assessment Service bearing the same date.[57]

We rule in favor of Petitioner.

In the subject FDDA,[58] Respondent stated the following:

"1. **Your ITH entitlement had been effectively voided because of your misrepresentation in regard to the start of your commercial operation, which misrepresentation is a ground for cancellation of your BOI registration as provided under item 1 of the General Terms and Conditions of BOI's Project Approval Sheet.**

xxx xxx xxx

[57] Exhibits "P-20" and "P-20-a", Docket – Vol. 5, pp. 2179 and 2181.

[58] Exhibit "P-3", Docket – Vol. 4, at p. 1967; Exhibit "R-15", BIR Records – Folder 1, at p. 779.

Based on the documents gathered during initial investigation and the additional documents presented during reinvestigation: Audited Financial Statements Fiscal Year June 30, 2009 with comparative figures for FY June 2008, Annual Income Tax Return for Fiscal Year Ending June 30, 2009 and BOI's Project Approval Sheet, it was proven that your Company's start of commercial operation was not only July 2009 contrary to the sworn statement submitted to Board of Investments. **For this reason, your Income Tax Holiday entitlement had been effectively voided because of your misrepresentation in regard to the start of your commercial operation, which misrepresentation which misrepresentation is a ground for cancellation of your BOI registration as provided under item 1 of the General Terms and Conditions of BOI's Project Approval Sheet. Your total income for the fiscal period is now subject to regular income tax rate of thirty (30%) percent pursuant to the provision of Section 27 (A) of the National Internal Revenue Code as amended.**

2. **Your registered activities; exploration, mining, quarrying and processing of minerals in which your Income Tax Holiday was premised, are being performed by Philsaga Mining Corporation (PMC) based on contracts and agreements between your Company and PMC, hence, your entitlement was denied and all your income shall be subject to the regular income tax rate of 30% as pursuant to Section 27 (A) of the National Internal Revenue Code, as amended.**

xxx xxx xxx

In reiteration, since your Company is an adjunct, business conduit or alter ego of Philsaga Mining Corporation, both the income of your Company and Philsaga Mining Corporation should be subject to the normal income tax rate of 30% pursuant to Section 27 (A) of the National Internal Revenue Code, as amended." *(Underscoring added)*

We disagree.

Article 7(8) of EO No. 226, otherwise known as the *"Omnibus Investments Code of 1987"*, reads:

"ARTICLE 7. *Powers and Duties of the Board.* **The Board shall be responsible for the regulation and promotion of investments in the Philippines.** It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its power and perform its duties, which shall be as follows:

x x x x x x x x x

(8) **After due notice, cancel the registration or suspend the enjoyment of incentives of any registered enterprise** and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties, for (a) failure to maintain the qualifications required by this Code for registration with the Board or (b) **for violation** of any provisions of this Code, of the rules and regulations issued under this Code, **of the terms and conditions of registration**, or of laws for the protection of labor or of the consuming public: *Provided*, That registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstated as a registered enterprise by the Board;" *(Emphases added)*

Based on the foregoing provision, the power to cancel the registration or suspend the enjoyment of incentives of any registered enterprise for, *inter alia*, violation of the terms and conditions of registration, is explicitly vested on the BOI, and such power shall be exercised only "[a]fter due notice". The said power is clearly premised on the BOI's mandate to be the government office **"responsible for the regulation and promotion of investments in the Philippines."**

Respondent's act of declaring Petitioner's ITH as having been voided, is *ultra vires* as this power is reserved exclusively for the BOI. As such, the assessment of Petitioner's income tax liability on this basis is in error.

In *Villegas, et al. vs. Subido, et al.*,[59] the Supreme Court said:

"xxx. Nothing is better settled in the law than that a public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with

[59] G.R. No. L-26534, November 28, 1969.

> the responsibility of discharging its functions. **As such there is no presumption that they are empowered to act. <u>There must be a delegation of such authority, either express or implied</u>. <u>In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity</u>.** That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: 'It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute.' Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid." *(Emphases and underscoring added)*

The power to cancel Petitioner's BOI registration on the supposed ground of misrepresentation and on the basis of the principle of piercing the veil of corporate fiction, or on any ground for that matter, has *not* been vested, by law, on Respondent. There is no law which grants such power to Respondent, even when it comes to assessing internal revenue taxes. Before a registered enterprise is deprived of its ITH incentive, it is the BOI who must first exercise its quasi-judicial or administrative adjudicatory power over the case.

In this case, not only was there an encroachment of the quasi-judicial or administrative adjudicatory power vested on the BOI, Petitioner was likewise deprived of due process, since it was not given an opportunity to be heard before its registration was cancelled and its ITH voided.

The inevitable conclusion, therefore, is that the subject income tax assessments must be cancelled for lack of legal basis. There being no showing that the BOI cancelled the BOI registration of Petitioner, it is still entitled to ITH on 100% of its net taxable income for FY ended 2012.

B. Unapplied input tax arising from purchases of goods - ₱1,171,384.20

Respondent's verification disclosed that there were additions to Petitioner's "Processing Plant" in the amount of ₱54,664,600.00, which incurred corresponding input taxes of ₱5,856,921.43. According to Respondent, BIR Ruling No. 123-2013 dated March 25, 2013, as circularized by RMC 57-2013, emphasized that:

1. unutilized creditable input VAT attributable to zero-rated sales can only be recovered through the application for refund of tax credit;

2. no other mode of recovering unapplied input taxes; and

3. may not be treated outright as a deductible expense for income tax purposes.[60]

Thus, the amount of ₱1,171,384.20 allegedly representing the amortized portion of the ₱5,856,921.43 input tax, which was capitalized and formed part of Petitioner's "Processing Plant" was disallowed by Respondent from Petitioner's deductible expenses.[61]

On the other hand, Petitioner asserts that the disallowance is manifestly erroneous, considering that it was premised on the assumption that its income for the FY ended June 30, 2012 should be subject to the 30% RCIT, when such income was covered by its ITH incentive.

Petitioner is correct. As earlier discussed, Petitioner is entitled to ITH on 100% of its net taxable income for FY ended 2012. As such, even if the unapplied input taxes were disallowed as an expense, the same would have no effect since Petitioner has no income tax liability for FY 2012.

DEFICIENCY FWT:

Respondent assessed Petitioner for deficiency FWT amounting to ₱252,695,364.61, the details of which are as follows:[62]

	Income Payment	**Rate**	**FWT**
Other Income Payment to Non-Resident Alien Individual Not Engaged in Trade or Business (NRANETB) within the Philippines	₱ 672,457.00	25.0%	₱ 168,114.25
Management Service Fees paid to Medusa Mining Limited (MML), a Non-Resident Foreign Corporation (NRFC)	82,453,562.00	30.0%	24,736,068.60
Other Income Payment to MML (NRFC)	336,616,522.84	30.0%	100,984,956.85
Tax due			**₱125,889,139.70**
Less: Payment[63]			92,893.00
Basic Deficiency FWT			**125,796,246.70**
Add: Interest – until July 31, 2017			126,899,117.91
AMOUNT DUE			**₱252,695,364.61**

A. Other Income Payment to NRANETB - ₱672,457.00

[60] Respondent's *Memorandum*, Docket – Vol. 6, p. 2748.
[61] Exhibit "P-3", Docket – Vol. 4, pp. 1971 to 1972.
[62] Exhibit "P-3", Docket – Vol. 4, pp. 1973 to 1974.
[63] Exhibit "P-1", BIR Records – Folder 4, p. 34.

Respondent's review of Petitioner's alpha list of payees from whom taxes were withheld disclosed that there were payments made to a certain Mr. Peter S. Alphonso, a nonresident Australian appointed as Petitioner's Treasurer, amounting to ₱672,457.00. Of this amount, according to respondent, ₱170,982.00 was subjected to the final tax rate of twenty-five percent (25%) imposed on a nonresident alien individual not engaged in trade or business within the Philippines under Section 25(B) of the NIRC of 1997, as amended, in relation to Section 2.57(A) of RR No. 02-98. Moreover, Respondent found that the balance of ₱501,475.00 was subjected to ten percent (10%) tax, which falls short by fifteen percent (15%) of the tax required under the same provision of the NIRC of 1997, as amended.[64]

Petitioner, on the other hand, asserts that it withheld the correct taxes from its payments made to Mr. Alphonso, as substantiated by BIR Forms 1601-F and 1601-E[65] presented during the course of trial.[66]

The Court upholds the assessment.

In spite of the evidence Petitioner presented to show that it paid the correct taxes on the income payments made to Mr. Peter S. Alphonso, it failed to provide any explanation for applying only a 10% tax rate to the amount of ₱501,475.00, instead of the 25% final tax rate. As such, the subject withholding tax assessment must not be disturbed.

B. Management Service Fees paid to MML (NRFC) - ₱82,453,562.00

In reference to the Management Service Agreement (MSA) between Petitioner and MML/NRFC, Petitioner's ultimate parent, Respondent found that for the fiscal period under audit, Petitioner paid to MML total fees amounting to ₱82,453,562.00 for the supervision and operation of Petitioner's mineral processing and refining activities. Thus, a final tax of thirty percent (30%) was assessed thereon, pursuant to Sections 28(B) and 57(A) of the NIRC of 1997, as amended, in relation to Section 2.57(A) of RR No. 02-98.[67]

However, Petitioner argues that Section 28 of the NIRC of 1997, as amended, provides that only income earned by a nonresident foreign corporation from sources within the Philippines shall be subject to income tax.

[64] Exhibit "P-3", Docket – Vol. 4, p. 1973.
[65] Exhibits "P-41" to "P-44-g", Docket – Vol. 6, pp. 2629 to 2684.
[66] Petitioner's *Memorandum*, Docket – Vol. 6, pp. 2836 to 2837.
[67] Exhibit "P-3", Docket – Vol. 4, p. 1974.

Petitioner states that as a non-resident foreign corporation, MML is taxable only on income derived from sources within the Philippines, pursuant to Section 28(B) of the NIRC of 1997, as amended.

Petitioner explains that pursuant to the MSA[68] executed by MML and Petitioner on 9 July 2007, MML provides various services related to the management and business operations of Petitioner throughout the term of the contract. However, Article II of the foregoing Agreement clearly states that all of the services thereunder are to be performed or carried out by MML outside the Philippines, particularly in its home office in Australia, to wit:

> "II. SCOPE OF SERVICES OF THE FIRST PARTY
>
> The scope of the services covers technical and administrative support for the primary tasks and includes but not (sic) limited to the fields of project development, financing and controlling as applicable for the purposes of centralized coordination and consultations. Specifically, First Party shall provide the following services:
>
> (a) To provide general administration and planning services;
> (b) To provide business planning and coordination services;
> (c) To provide corporate finance advisory services;
> (d) To provide business development services;
> (e) To provide marketing services;
> (f) To determine operating policy, the maintenance of assets and any other matters affecting the business operations of the Second Party;
> (g) To carry out all programs contemplated by the annual operating budget and to determine related policies;
> (h) To hire such persons or organizations as the First Party may deem necessary to provide services, supplies and advice with respect to the operation of the Second Party (including, without prejudice to the generality of the foregoing, accountants, lawyers, consultants, and other service providers) provided that such services are previewed in the approved budget;
> (i) To provide any other related services.
>
> **The foregoing services shall be carried out by the First Party in its home office in Australia** and shall perform its duties (sic) under this Agreement according to the best accepted professional standards."[69] *(Emphasis added)*

[68] Exhibit "P-45", Docket – Vol. 6, pp. 2685 to 2688.
[69] Exhibit "P-45", Docket – Vol. 6, p. 2686.

Petitioner argues that it is obvious from the nature of the foregoing tasks included in the scope of services to be rendered by MML that all are susceptible of being effectively rendered offshore. In fact, it is imperative for several services to be actually rendered offshore, specifically, coordination services, business development services, and marketing services. According to Petitioner, it cannot be denied that 100% of its output is required to be exported pursuant to the terms and conditions of its BOI registration, and its records bear out that it had indeed sold 100 % of its output abroad. Thus, it escapes logic for MML to render business development, coordination services, and marketing services in the Philippines.

Petitioner further avers that the rest of the services can be rendered anywhere else, based solely on financial and operational information/data that is transmitted to them electronically. However, in the case of MML, these services are, in fact, done offshore.

Petitioner posits that since the services rendered by MML to Petitioner under the MSA are carried out entirely in MML's home office in Australia, the management service fees received by MML as remuneration for such services are considered as income from sources outside the Philippines, and are therefore exempt from both Philippine income tax and withholding tax.[70]

We agree with Petitioner.

It is undisputed that MML is an NRFC. Thus, any income earned by MML from the Philippines, as such, is to be taxed pursuant to Section 28(B)(1) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> x x x x x x x x x
>
> (B) *Tax on Nonresident Foreign Corporation.* -
>
> (1) *In General.* - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines **shall pay a tax** equal to thirty-five percent (35%) **of the gross income received during each taxable year from all sources within the Philippines**, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c):

[70] Petitioner's Memorandum (Pars. 129 to 134), Docket – Vol. 6, pp. 2837 to 2839.

Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)." *(Emphasis added)*

Accordingly, an NRFC is only taxed on its income derived within the Philippines. Relative thereto, the source of an income is the property, activity or service that produced the income. For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines.[71]

Moreover, Section 42(C)(3) of the NIRC of 1997 provides that compensation for labor or personal services performed without the Philippines are treated as income from sources without the Philippines. 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.[72]

Being an NRFC, MML is taxable only on its income derived within the Philippines. Thus, the only issue is the place where the management services were performed by MML in order to determine whether or not the management fees paid by Petitioner to MML must be subject to Philippine income tax.

On this aspect, Respondent was incorrect in his assessment. The MSA[73] executed by MML and Petitioner, designated as First Party and Second Party, respectively, clearly provides that the services contemplated therein are to be performed by the former in its home office in Australia. Since the management fees paid as compensation for the labor or personal services rendered by MML to Petitioner were performed outside the Philippines, then such management fees were properly treated as income from sources without the Philippines in accordance with Section 42(C)(3) of the NIRC of 1997. Consequently, the management fees paid by Petitioner to MML cannot fall within the scope of Section 28(B)(1) of the NIRC of 1997, as amended, as the same do not represent income derived by an NRFC within the Philippines, and thus, cannot be subjected to Philippine taxes.

Correspondingly, Respondent's FWT assessment on the management fees paid to MML cannot prosper and must therefore be cancelled.

C. Other income payment to MML (NRFC) - ₱336,616,522.84

[71] *Commissioner of Internal Revenue vs. British Overseas Airways Corp.*, G.R. Nos. L-65773-74, April 30, 1987.
[72] *Commissioner of Internal Revenue vs. Baier-Nickel*, G.R. No. 153793, August 29, 2006.
[73] Exhibit "P-45", Docket – Vol. 6, pp. 2685 to 2688.

Respondent further found that in addition to the management fees, Petitioner paid MML for back charges, management fees, and other income payment owed by PMC. Thus, a final tax of thirty percent (30%) on these payments was likewise assessed pursuant to Sections 28(B) and 57(A) of the NIRC of 1997, as amended, in relation to Section 2.57(A) of RR No. 02-98.

Respondent stresses that Section 57(A) of the NIRC of 1997 requires the payor-corporation (herein Petitioner) to withhold the income tax imposed on a nonresident foreign corporation (such as MML) under Section 28(B)(1) of the same NIRC.[74]

However, Petitioner clarifies that these payments actually represent fees or payments due from PMC and not Petitioner – under certain contracts or agreements executed between PMC and such NRFCs. Petitioner avers that it merely functioned as a pass-through entity between PMC and its nonresident foreign suppliers/vendors. Specifically, Petitioner would allegedly receive the income payments from PMC and simply remit such income payments to PMC's nonresident foreign suppliers/vendors, for and on behalf of PMC.

While Petitioner conceded that it had physical possession of the income payments due to the NRFC suppliers (which income is the source of the payment of the FWT), it contends that it simply held and remitted such payments to PMC's NRFC suppliers for and on behalf of PMC. That such payments allegedly pertain to payables due from and expenses of PMC (and not Petitioner) is further evidenced by the fact that (i) the services or activities performed by the NRFC suppliers are not related to any of Petitioner's business activities; (ii) the contracts/agreements covering such services were executed exclusively between PMC and the NRFC suppliers, and (iii) the related expenses pertaining to these services or activities were recorded in the books of PMC and not those of Petitioner. Thus, according to Petitioner, since the said income payments were not allegedly its expenses, Petitioner believes it should not be held liable for the withholding taxes due thereon.

Moreover, Petitioner contends that even assuming *arguendo* that such income payments are actually expenses of Petitioner and/or that Petitioner (and not PMC) was in fact the party to the agreements with the NRFC suppliers concerned, it would appear that Respondent's computation of Petitioner's alleged deficiency FWT is erroneous, as it was based on the total income payments due to such NRFC suppliers for both (i) the sale of tools, equipment, and materials, which is clearly not subject to FWT under RR No. 02-98, and (ii) the services performed by such suppliers under various service agreements. Petitioner then argues that since Respondent failed to identify and segregate the portion of the total income payments specifically pertaining to the NRFC suppliers' sale of tools, equipment and materials, which is not subject to FWT,

[74] Exhibit "P-3", Docket – Vol. 4, p. 1974.

Respondent clearly used the incorrect tax base for purposes of computing the alleged FWT due.[75]

The Court finds the assessment in order.

It must be emphasized that Petitioner did not show any proof to support its argument that the income payments made to MML, an NRFC, were not from its own account and that it did not benefit from the services rendered by MML.

Furthermore, the Court-commissioned ICPA, R.G. Manabat & Co., represented by Atty. Maria Myla S. Maralit, found in its review of the MSA between Petitioner and MML[76] and the MSA[77], and the Agency Agreement[78] between Petitioner and PMC that these contracts do not state any agreement among Petitioner, PMC, and MML, that Petitioner should act as a mere pass-through entity between PMC and MML with the obligation to remit the income payments of PMC to MML.[79]

Petitioner's bare allegation is far from sufficient for the Court to rule in its favor. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[80] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[81]

Likewise, Petitioner did not refute Respondent's finding that the services rendered by MML were performed in the Philippines. As such, the income payments amounting to ₱336,616,522.84 are subject to Philippine income tax in accordance with Section 28(B)(1) of the NIRC of 1997, as amended.

With the aforesaid income payments being subject to Philippine income tax, the same fall within the scope of the withholding tax system under Section 57 of the NIRC of 1997, as implemented by RR No. 02-98.

Moreover, even granting that the subject income payments do not represent Petitioner's own expenses or were not from its own account but were merely received from PMC, and eventually remitted to MML for and in behalf of PMC, it is still liable to withhold the corresponding income tax on such income payments, pursuant to Section 2.57.3 of RR No. 02-98, as amended by RR No. 30-03, which provides as follows:

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[75] Petitioner's *Memorandum* (Pars. 137 to 139), Docket – Vol. 6, pp. 2840 to 2841.
[76] Exhibit "P-45", Docket – Vol. 6, pp. 2685 to 2688.
[77] Exhibit "P-252".
[78] Exhibit "P-190".
[79] Exhibit "P-53" (ICPA Report, Item No. 5(b)(ii)(2)), Docket – Vol. 4, pp. 1808 to 1809.
[80] *Real vs. Belo*, G.R. No. 146224, January 6, 2007.
[81] *LNS International Manpower Services v. Padua, Jr.*, G.R. No. 179792, March 5, 2010.

"Sec. 2.57.3. *Persons required to deduct and withhold.* —

x x x x x x 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."

Accordingly, even if the income payments did not redound to Petitioner's benefit, Petitioner, being the agent of PMC, is the entity obligated under RR No. 02-98, as amended by RR No. 30-03, to withhold the corresponding tax from such income payments for and on behalf of PMC.

Since Petitioner failed to satisfactorily refute Respondent's finding that it is the income-payor for the assessed transactions, Petitioner is thus liable as a withholding agent, pursuant to Section 57(A) of the NIRC of 1997,[82] as implemented by Section 2.57(A) of RR No. 02-98,[83] thereby properly subjecting the income payments amounting to ₱336,616,522.84 to FWT rate of 30%.

Considering the foregoing, the deficiency FWT assessment must be upheld, but in the reduced basic deficiency FWT of ₱101,060,178.10, computed as follows:

	Income Payment	**Rate**	**FWT**
Other income payment to NRANETB	₱ 672,457.00	25%	₱ 168,114.25
Management fees paid to MML (NRFC)	-	30%	-
Other income payment to MML (NRFC)	336,616,522.84	30%	100,984,956.85
Tax Due			**₱101,153,071.10**

[82] "SEC. 57. Withholding of Tax at Source. -
(A) Withholding of Final Tax on Certain Incomes. - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code."

[83] "SECTION 2.57. Withholding of Tax at Source. —
(A) Final Withholding Tax. — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income."

Less: Payment			92,893.00
Basic Amount Due			**₱101,060,178.10**

DEFICIENCY WITHHOLDING VAT:

Respondent assessed Petitioner for deficiency withholding VAT amounting to ₱113,772,078.44, with the following details, to wit:[84]

Other income payment to NRANETB	₱ 672,457.00
Management fees paid to MML (NRFC)	82,453,562.00
Other income payment to MML (NRFC)	336,616,522.84
Total	₱ 419,742,541.84
Tax rate	12%
Basic Deficiency Withholding VAT	**₱ 50,369,105.02**
Add: Surcharge	12,592,276.26
Interest - until July 31, 2017	50,810,697.16
AMOUNT DUE	**₱113,772,078.44**

This assessment was based on the same finding under the deficiency FWT assessment on the basis that Petitioner made income payments to an NRANETB and NRFC, for services rendered in the Philippines, namely, Mr. Peter Alphonso, in the amount of ₱672,457.00, and MML, in the amounts of ₱82,453,562.00 and ₱336,616,522.84, respectively.

It is Respondent's opinion that such services, being rendered in the Philippines, are subject to VAT, pursuant to Section 108 of the NIRC of 1997, as amended. Moreover, Respondent is of the view that Section 4.114(A)(2)(b) of RR No. 02-98, as amended, and Section 4.114-2(b)(2) of RR No. 16-2005, as amended, require private corporations, whether large or non-large taxpayers to withhold the VAT of twelve percent (12%), with respect to payments made to non-residents, for services rendered in the Philippines.[85]

A. Other income payment to NRANETB - ₱672,457.00

Petitioner refutes Respondent's imposition of final withholding VAT on income payments made to Mr. Peter S. Alphonso, arguing that under Section 109(W) of the NIRC of 1997, as amended, and Section 4.109-1(B) of RR No. 16-2005, a person or entity who, in the course of his trade or business, (i) sells, barters, exchanges, or leases goods or properties, or (ii) renders services not falling under any of the services/transactions specifically mentioned under the

[84] Exhibit "P-3", Docket – Vol. 4, p. 1975.
[85] Exhibit "P-3", Docket – Vol. 4, p. 1975.

foregoing provisions, is exempt from VAT if his gross annual sales and/or receipts do not exceed the threshold amount of ₱1,919,500.00.

Petitioner avers that in the case of Mr. Alphonso, an Australian national, his Philippine income amounted only to ₱327,646.50, for the FY ended June 30, 2012, which clearly falls below the threshold amount of ₱1,919,500.00 under Section 109(W) of the NIRC of 1997, as amended, and Section 4.109-1(B) of RR No. 16-2005. Thus, according to Petitioner, Mr. Alphonso is exempt from VAT and consequently, from the final withholding VAT; and that Respondent's assessment against Petitioner for deficiency FWVAT on payments to Mr. Alphonso should be cancelled for being bereft of any factual or legal basis.[86]

We, however, uphold the assessment.

Section 4.109.1(B)(1)(v) of RR No. 16-05, as amended by RR No. 16-11, provides that:

> "SECTION 4.109-1. *VAT-Exempt Transactions.* —
>
> x x x x x x x x x
>
> (B) *Exempt transactions.* —
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:
>
> x x x x x x x x x
>
> (v) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (₱1,919,500.00); *Provided*, every three (3) years thereafter, the amount shall be adjusted to its present value using the Consumer Price Index, as published by the NSO; *Provided, further*, that such adjustment shall be published through revenue regulations to be issued not later than March 31 of each year;
>
> For purposes of the threshold of ₱1,919,500.00, the husband and the wife shall be considered separate taxpayers. **However, the aggregation rule for each taxpayer shall apply. For instance, if a professional, aside from the practice of his profession, also derives revenue from other lines of business which are otherwise subject to VAT, the same shall be combined for purposes of determining whether the threshold has been**

[86] Petitioner's *Memorandum* (Pars. 143 to 144), Docket – Vol. 6, p. 2842.

exceeded. Thus, the VAT-exempt sales shall not be included in determining the threshold." (*Emphasis supplied*)

At initial glance, it may be conceded that the assessed income payments made to Mr. Peter S. Alphonso amounting to ₱672,457.00 did not exceed the VAT-exempt threshold under Section 4.109.1(B)(1)(v) of RR No. 16-05, as amended. However, this is only on the basis of the income payments made by Petitioner during the taxable period being assessed. This does not preclude Mr. Alphonso from having other sources of income in the Philippines during the taxable periods 2011 and 2012 apart from Petitioner, which must be aggregated for purposes determining whether the threshold has been exceeded in accordance with Section 4.109.1(B)(1)(v) of RR No. 16-05, as amended – a fact which should have been demonstrated by Petitioner to the Court in order to dispense any doubt as to its liability on the withholding VAT.

Furthermore, Petitioner did not present other evidence to support its allegation that Mr. Alphonso's entire Philippine income amounted only to ₱327,646.50 for the FY ended June 30, 2012.

Once again, Petitioner's bare allegation is far from sufficient for the Court to rule in its favor. Since Petitioner failed to present proof to support its arguments, the subject withholding VAT assessment must subsist.

B. Management fees paid to MML (NRFC) - ₱82,453,562.00

As earlier discussed under the deficiency FWT assessment, the management services provided by MML to Petitioner were performed in Australia.

Relative thereto, Section 108(B)(1) of the NIRC of 1997, as amended, provides that:

"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 twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of **all kinds of services in the Philippines** for others xxx." *(Emphasis added)*

Accordingly, a sale of service is subject to VAT only if it is performed in the Philippines. Since the management services of MML were not performed in the Philippines, the corresponding management fees amounting to ₱82,453,562.00 cannot be subjected to VAT. As such, the deficiency withholding VAT assessment thereon must be cancelled.

C. Other income payment to MML (NRFC) - ₱336,616,522.84

Also as earlier discussed under the deficiency FWT assessment, Petitioner failed to establish that the assessed income payments to MML, an NRFC, amounting to ₱336,616,522.84 arose from mere pass-through transactions and that the same is on and for the account of PMC, and not of Petitioner. Hence, Petitioner is still considered as the income-payor for the assessed transactions. Furthermore, since it was not disputed that MML's services were performed in the Philippines, the assessed income payments are thus subject to VAT pursuant to Section 108(A) of the NIRC of 1997, as amended.

Consequently, as the income-payor for the subject transactions, Petitioner is thus likewise liable for the withholding VAT, pursuant to Section 4.114-2(b)(3) of RR No. 16-05, which provides:

> "SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
>
> xxx xxx xxx
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold ten percent (12%) VAT with respect to the following payments:
>
> xxx xxx xxx
>
> (3) **Other services rendered in the Philippines by non-residents.**" *(Emphasis added)*

Thus, Respondent's deficiency withholding VAT assessment on other income payments to MML, an NRFC, amounting to ₱336,616,522.84, must be sustained.

In summary, Petitioner is liable for deficiency withholding VAT in the reduced basic tax amount of ₱40,474,677.58, computed as follows:

Other income payment to NRANETB	₱ 672,457.00
Management fees paid to MML (NRFC)	-
Other income payment to MML (NRFC)	336,616,522.84
Total	₱ 337,288,979.84
Tax Rate	12%
Basic Withholding VAT	**₱40,474,677.58**

COMPROMISE PENALTY:

As already stated, Petitioner was assessed with compromise penalty amounting to ₱250,000.00 for deficiency taxes in accordance with the provisions of Sections 248 and 249 of the NIRC of 1997, as amended and as implemented by RMO 19-2007, as amended by RMO 7-2015.[87]

The Court cancels the said assessment.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[88] Under RMO 7-2015, a compromise penalty is only an amount suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[89] Absent a showing that Petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[90]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.

The assessments issued by Respondent against Petitioner for FY ended 2012, covering deficiency income tax and compromise penalties are **CANCELLED and SET ASIDE**. Further, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from taking any further action against Petitioner as regards the cancelled assessments.

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[87] Exhibit "P-3", Docket – Vol. 4, p. 1976.
[88] *The Philippine International Fair, Inc. vs. The Collector of Internal Revenue, et. al.* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[89] *Phil. International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.
[90] *Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1999, 193 SCRA 92-93.

However, the deficiency FWT and withholding VAT are **UPHELD IN PART**. Accordingly, Petitioner is **ORDERED TO PAY** Respondent the aggregate amount of **₱362,895,837.42**, inclusive of the 25% surcharge, 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:

	FWT	WVAT	Total
Basic Tax Due	₱101,060,178.10	₱ 40,474,677.58	₱141,534,855.68
25% Surcharge	25,265,044.53	10,118,669.40	35,383,713.93
20% Deficiency Interest from July 10, 2012 to July 7, 2017			
(₱101,060,178.10 x 20% x 1,823/365 days)	100,949,427.22		100,949,427.22
(₱40,474,677.58 x 20% x 1,823/365 days)		40,430,321.77	40,430,321.77
Total Amount Due as of July 7, 2017	**₱227,274,649.85**	**₱91,023,668.75**	**₱318,298,318.60**
20% Deficiency Interest from July 8, 2017 to December 31, 2017			
(₱101,060,178.10 x 20% x 177/365 days)	9,801,452.89		9,801,452.89
(₱40,474,677.58 x 20% x 177/365 days)		3,925,489.28	3,925,489.28
20% Delinquency Interest from July 8, 2017 to December 31, 2017			
(₱227,274,649.85 x 20% x 177/365 days)	22,042,527.68		22,042,527.68
(₱91,023,668.75 x 20% x 177/365 days)		8,828,048.97	8,828,048.97
Total Amount Due as of December 31, 2017	**₱259,118,630.42**	**₱103,777,207.00**	**₱362,895,837.42**

In addition, petitioner is **ORDERED TO PAY** Respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes due of ₱318,298,318.60 as of July 7, 2017, as determined above, or an amount of ₱104,646.02[91] per day, from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Ma. Belen s

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[91] ₱318,298,318.60 x 12%/365 days.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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.

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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.

ROMAN G. DEL ROSARIO
Presiding Justice