REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

TELSTRA INTERNATIONAL (AUS) LIMITED ROHQ, *Petitioner,*	**CTA Case No. 10655**
	Members:
-versus-	**REYES-FAJARDO,** *Chairperson and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	FEB 12 2026 2:24 p.m.

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DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review*[1] filed by Telstra International (AUS) Limited ROHQ (petitioner) against the Commissioner of Internal Revenue (CIR) (respondent), praying that the Final Decision on Disputed Assessment (FDDA) dated September 17, 2021,[2] which found petitioner liable for deficiency branch profit remittance tax (BPRT) covering Fiscal Year (FY) 2016, be reversed and set aside.

PARTIES

Petitioner is a corporation organized and existing under the laws of Australia. It is authorized to transact business in the Philippines as a regional operating headquarters (ROHQ) pursuant to SEC Registration No. FS200906708. The branch office is located at 15F Zuellig Bldg. Makati Avenue cor. Paseo de Roxas, Makati City.[3] Petitioner is a registered taxpayer at the Bureau of Internal Revenue (BIR) – Revenue District Office (RDO) No. 50, (South Makati) with Taxpayer Identification No. 274-970-706-000.[4]

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[1] Docket – Vol. 1, pp. 7 to 17.
[2] Exhibit "R-15," BIR Records, pp. 932 to 935.
[3] Stipulated Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 2, p. 657.
[4] *Id.*

Respondent is the duly appointed CIR, vested with authority, among others to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. Respondent holds office at the 5th Floor BIR National Office Building, Agham Road, Diliman Quezon City.[5]

Respondent is represented by the legal officers of the Legal Division, Revenue Region No. 8A – Makati City, with office address at Legal Division, 36F Export Bank Plaza Bldg., Sen. Gil Puyat Avenue cor. Chino Roces Avenue, Makati City, where summons, pleadings, notices and other processes of this Court may be served.[6]

ANTECEDENT FACTS

On August 23, 2017, Revenue Regional Director (RRD) of Revenue Region No. 8, Glen A. Geraldino, issued Letter of Authority (LOA) No. eLA201500050494, authorizing **Revenue Officer (RO) Philipp King Cartagena** and **Group Supervisor (GS) Marilou Courtez** to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period July 1, 2015 to June 30, 2016.[7]

The LOA was received by petitioner on September 5, 2017.[8]

On March 5, 2018, petitioner received a Notice of Informal Conference (NIC).[9]

Thereafter, on June 11, 2019, petitioner received a Preliminary Assessment Notice (PAN) dated May 17, 2019,[10] with attached Details of Discrepancies (DOD),[11] issued by RRD Glen A. Geraldino, finding petitioner liable for deficiency income tax (IT), value-added tax (VAT), fringe benefit tax (FBT), improperly accumulated earnings tax (IAET), and BPRT in the aggregate amount of Php192,086,551.29, inclusive of interest and surcharges.[12]

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[5] Stipulated Facts, *Joint Stipulation of Facts and Issues*, Docket – Vol. 2, p. 657.
[6] *Id*, p. 658.
[7] Exhibit "R-1," BIR Records, p. 404.
[8] Exhibit "R-1-1," BIR Records, p. 404.
[9] Par. 8, *Petition for Review*, Docket – Vol. 1, p. 9.
[10] Exhibit "R-12," BIR Records, unpaginated.
[11] Exhibit "R-12-2," BIR Records, unpaginated.
[12] Exhibit "R-12-3," BIR Records, unpaginated.

On June 26, 2019, petitioner filed its Reply to the PAN.[13]

Subsequently, on July 1, 2019, petitioner received a Formal Assessment Notice (FAN) dated June 26, 2019,[14] with attached DOD,[15] adjusting the assessments for deficiency IT, VAT, FBT, IAET, and BPRT to Php192,572,021.42, inclusive of interest, surcharges, and compromise penalties.[16]

On July 29, 2019, petitioner filed its Protest Letter and Request for Reinvestigation with BIR Revenue Region No. 8.[17]

On September 4, 2019, Revenue District Officer (RDO) Claire B. Corpus issued Memorandum of Assignment (MOA) No. RR8-050-PRO-090419-289 authorizing **RO Philipp King Cartagena** and **GS Praxedio F. Tulio II** to conduct the requested reinvestigation.[18]

Thereafter, on September 28, 2021, petitioner received the FDDA dated September 17, 2021,[19] which cancelled the assessments for deficiency IT, VAT, FBT and IAET. However, the assessment for deficiency BPRT was sustained and adjusted to Php34,875,018.52, inclusive of interest, surcharges, and compromise penalties.[20]

PROCEEDINGS BEFORE THIS COURT

On October 28, 2021, petitioner filed its *Petition for Review*.[21]

In the Resolution dated February 22, 2022,[22] the Court directed petitioner to submit proof of authority of Mr. Benjamin P. Romualdez to sign the Verification and Certification Against Forum Shopping (VCAFS) on behalf of petitioner.

Accordingly, on May 12, 2022, petitioner filed its *Compliance And Motion* attaching a copy of the Secretary's Certificate authorizing Mr. Benjamin P. Romualdez to sign the VCAFS on behalf of petitioner.

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[13] Par. 10, *Petition for Review*, Docket – Vol. 1, p. 9.
[14] Exhibit "R-13," BIR Records, unpaginated.
[15] Exhibit "R-13-2," BIR Records, unpaginated.
[16] Exhibit "R-13-4," BIR Records, unpaginated.
[17] Par. 12, *Petition for Review*, Docket – Vol. 1, p. 9.
[18] Exhibit "R-11," BIR Records, p. 861.
[19] Exhibit "R-15," BIR Records, pp. 932 to 935.
[20] Exhibit "R-15-1," BIR Records, p. 935.
[21] *Supra* note 1.
[22] Docket – Vol. 1, pp. 411 to 412.

Petitioner likewise requested an additional period of ten (10) days to submit the original apostilled Secretary's Certificate.[23]

On May 17, 2022, petitioner filed its *Compliance and Motion* submitting the original apostilled Secretary's Certificate authorizing Mr. Benjamin P. Romualdez to sign the VCAFS on petitioner's behalf.[24]

In the Resolution dated June 6, 2022,[25] the Court noted petitioner's *Compliance*.

On June 8, 2022, summons was issued to respondent.[26]

On July 13, 2022, respondent posted a *Motion for Extension of Time to File Answer*,[27] which the Court granted in the Resolution dated August 5, 2022.[28]

Thereafter, on August 12, 2022, respondent posted his *Answer (On the Petition for Review dated 28 October 2021)*.[29]

The Court noted respondent's *Answer* and referred the case for mediation proceedings before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) in the Resolution dated September 9, 2022.[30]

On September 9, 2022, respondent filed his *Compliance* and submitted the BIR Records of the case.[31]

On October 4, 2022, petitioner filed its *Urgent Motion to Reset Mediation Proceedings*,[32] which the Court granted in the Resolution dated October 7, 2022.[33]

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[23] Docket – Vol. 1, pp. 413 to 418.
[24] Docket – Vol. 1, pp. 420 to 425.
[25] Docket – Vol. 1, pp. 427 to 428.
[26] Docket – Vol. 1, p. 429.
[27] Docket – Vol. 1, pp. 432 to 434.
[28] Docket – Vol. 1, p. 437.
[29] Docket – Vol. 1, pp. 438 to 445.
[30] Docket – Vol. 2, p. 522.
[31] Docket – Vol. 2, p. 524.
[32] Docket – Vol. 2, pp. 526 to 529.
[33] Docket – Vol. 2, p. 531.

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Subsequently, on October 19, 2022, the PMC-CTA informed the Court that the parties decided not to have their case mediated by the PMC-CTA.[34]

The Court thereafter issued a *Notice of Pre-Trial Conference*[35] on November 11, 2022.

On February 10, 2023, petitioner filed its *Pre-Trial Brief*,[36] while respondent likewise filed his *Pre-Trial Brief*[37] on the same date. The Pre-Trial Conference was conducted on February 16, 2023.

On March 17, 2023, the parties filed their *Joint Stipulation of Facts and Issues*.[38]

On March 20, 2023, petitioner filed its *Motion to Admit Joint Stipulation of Facts and Issues*,[39] which the Court granted and approved in the Resolution dated March 31, 2023.[40]

During trial, petitioner presented the testimony of Chona M. Recto, its finance manager.[41]

On May 23, 2023, the Court issued the *Pre-Trial Order*.[42]

On May 29, 2023, petitioner filed its *Formal Offer of Evidence with Urgent Omnibus Motion (I) To Re-open Trial, (II) For Leave of Court to Present Additional Evidence, (III) To Defer Resolution of Petitioner's Formal Offer of Evidence*.[43]

On May 30, 2023, the case was transferred to the Third Division of this Court.[44]

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[34] Docket – Vol. 2, p.532.
[35] Docket – Vol. 2, pp. 536 to 538.
[36] Docket – Vol. 2, pp. 539 to 547.
[37] Docket – Vol. 2, pp. 548 to 552.
[38] Docket – Vol. 2, pp. 657 to 665.
[39] Docket – Vol. 2, pp. 666 to 668.
[40] Docket – Vol 2, pp. 684 to 685.
[41] Exhibits "P-10," Docket – Vol. 1, pp. 146 to 154; Minutes of the hearing held on, and Order dated, May 11, 2023, Docket – Vol. 2, pp. 697 to 699 and 700 to 701, respectively.
[42] Docket – Vol. 2, pp. 712 to 723.
[43] Docket – Vol. 2, pp. 726 to 734.
[44] Docket – Vol. 2, p. 724.

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On June 7, 2023, respondent filed his *Comment and Opposition (To Petitioner's Formal Offer of Evidence with Urgent Omnibus Motion dated May 29, 2023)* via accredited courier service provider.[45]

In the Resolution dated October 13, 2023,[46] the Court granted petitioner's *Urgent Omnibus Motion (I) To Re-open Trial, (II) For Leave of Court to Present Additional Evidence, (III) To Defer Resolution of Petitioner's Formal Offer of Evidence* and held in abeyance the resolution of petitioner's *Formal Offer of Evidence.*

On February 7, 2024, petitioner filed its *Manifestation with Formal Offer of Evidence.*[47] Respondent filed his *Comment and Opposition (To Petitioner's Manifestation with Formal Offer of Evidence dated February 7, 2024)*[48] on February 19, 2024.

The Court admitted all of petitioner's exhibits, except Exhibits "P-1" and "P-5," in the Resolution dated June 4, 2024.[49]

On August 14, 2024, respondent presented RO Praxedio F. Tulio II, who testified by way of *Judicial Affidavit* dated February 10, 2023.[50]

On September 4, 2024, respondent filed his *Formal Offer of Evidence,*[51] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated 4 September 2024)*[52] on September 23, 2024.

In the Resolution dated December 13, 2024, the Court admitted all of respondent's exhibits.[53]

On January 16, 2025, respondent filed his *Memorandum.*[54]

Thereafter, on February 3, 2025, petitioner filed its *Memorandum.*[55]

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[45] Docket – Vol. 2, pp. 735 to 741.
[46] Docket – Vol. 2, pp. 748 to 750.
[47] Docket – Vol. 2, pp. 751 to 757.
[48] Docket – Vol. 2, pp. 1031 to 1035.
[49] Docket – Vol. 2, pp. 1038 to 1039.
[50] Exhibit "R-17," Docket – Vol. 2, pp. 553 to 570; Minutes of the hearing held on, and Order dated, August 14, 2024, Docket – Vol. 2, pp. 1040 and 1041 to 1042, respectively.
[51] Docket – Vol. 2, pp. 1045 to 1054.
[52] Docket – Vol. 2, pp. 1055 to 1059.
[53] Docket – Vol. 2, pp. 1065 to 1066.
[54] Docket – Vol. 2, pp. 1068 to 1073.
[55] Docket – Vol. 2, pp. 1077 to 1093.

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The Court issued a Minute Resolution dated February 20, 2025[56] submitting the case for decision.

THE ISSUE

As stipulated by the parties, the sole issue for resolution by the Court is whether petitioner is liable to pay deficiency BPRT in the total amount of Php34,850,018.52 for the FY ended 30 June 2016.[57]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner argues that the assessment is void for want of a valid LOA. It argues that **RO Praxedio F. Tulio II**, who conducted the audit, was not named in the LOA and was only authorized through a MOA. According to petitioner, the LOA expressly authorized **GS Marilou Cortez** and **RO Philip King Cartagena**. Petitioner invokes *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[58] in arguing that the assessment is void.[59]

Petitioner further contends that the deficiency BPRT assessment is void for lack of factual and legal basis, and that the same is based merely on presumptions. It asserts that respondent's computation of the BPRT proceeds from the presumption that the amount of Php115,898,415.61 was not recorded in petitioner's retained earnings account. Petitioner alleges that from this presumption, respondent assumed such amounts constituted profits actually or constructively remitted to the head office, and thus subject to BPRT.[60]

Petitioner likewise maintains that it is not liable for BPRT. It emphasizes that Section 28(A)(5) of the National Internal Revenue Code of 1997 (Tax Code) imposes BPRT only on branch profits actually remitted to the head office. Petitioner asserts that for FY 2016, it neither actually remitted nor applied or earmarked any portion of its income for remittance to its head office. Therefore, petitioner argues that BPRT cannot be imposed.[61]

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[56] Docket – Vol. 2, p. 1096.
[57] Issue/s to be Tried or Resolved, *Pre-Trial Order*, Docket – Vol. 2, p. 759.
[58] G.R. No. 242670, May 10, 2021.
[59] *Memorandum*, Docket – Vol. 2, pp. 1079 to 1081.
[60] *Memorandum*, Docket – Vol. 2, pp. 1081 to 1082.
[61] *Memorandum*, Docket – Vol. 2, pp. 1082 to 1084.

Petitioner avers that no assignment of capital occurred that could be treated as constructive remittance subject to BPRT. Contrary to respondent's claim, petitioner points out that its Statement of Changes in Home Office on its audited financial statements, clearly show that there were no changes in the assigned capital account for FY 2016. Accordingly, there was no transfer of net income to petitioner's assigned capital account, and consequently, no constructive remittance to the head office.[62]

Petitioner emphasizes that BPRT cannot be imposed solely because income was earned. It maintains that Section 28(A)(5) of the Tax Code to requires that there must be actual remittance of profits or earmarking of profits. Petitioner thus argues that the mere existence of income, absent proof of remittance or earmarking, does not justify the imposition of BPRT.[63]

Respondent's counter-arguments

Respondent maintains that the deficiency BPRT assessment is valid, correct, and not based on presumptions. He invokes the settled rule that tax assessments by tax examiners are presumed correct and made in good faith, and thus enjoy the presumption of regularity. Accordingly, respondent argues that petitioner has the burden to prove that the assessment made by the RO was merely based on presumptions. He asserts that petitioner merely alleges, without proof, that the assessment was based on presumptions.[64]

Respondent further contends that petitioner is liable for deficiency BPRT. He argues that during the investigation, the RO determined that branch profits amounting to Php115,898,415.61 were not reflected as part of petitioner's retained earnings account. Respondent posits that the absence of this amount from retained earnings indicates that such profits were either actually or constructively remitted to petitioner's head office. On this basis, respondent concludes that petitioner is subject to BPRT.[65]

Respondent likewise asserts that petitioner's claim of no actual remittance or earmarking of profits constitutes an insufficient denial and is an admission. He argues that petitioner failed to account for or substantiate the whereabouts of the alleged unaccounted branch profits, and such failure leads to the conclusion that the profits were

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[62] *Memorandum*, Docket – Vol. 2, pp. 1084 to 1085.
[63] *Memorandum*, Docket – Vol. 2, pp. 1085 to 1086.
[64] *Memorandum*, Docket – Vol. 2, pp. 1069 to 1070.
[65] *Memorandum*, Docket – Vol. 2, p. 1070.

remitted to the head office without a paper trail. Respondent thus maintains that petitioner is subject to deficiency BPRT.[66]

RULING OF THE COURT

The *Petition for Review* is granted.

The CTA has jurisdiction over the present appeal.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, vests in the Court of Tax Appeals (CTA) exclusive appellate jurisdiction over decisions of the CIR, to wit:

> SEC. 7. Jurisdiction – The CTA shall exercise:
>
> 1. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (Emphasis supplied)

In addition, Section 11 of RA No. 1125, as amended, expressly provides that a taxpayer adversely affected by a decision, ruling, or inaction of the CIR may elevate the matter to the CTA within the period prescribed by law, thus:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act

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[66] *Memorandum*, Docket – Vol. 2, pp. 1070 to 1071.

> thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*. (Emphasis supplied)

However, when a taxpayer files a petition for review before the CTA without validly contesting the assessment with the CIR, the appeal is premature and the CTA has no jurisdiction.[67]

The procedure for protesting an assessment is specifically governed by Section 228 of the Tax Code. Under the said provision, a taxpayer is given the opportunity to file either a request for reconsideration or reinvestigation within thirty (30) days from receipt of the FAN:

> 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:
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** (Emphasis supplied)

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[67] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 239464, May 10, 2021.

In the present case, petitioner received the FAN dated June 26, 2019[68] with attached DOD[69] on July 1, 2019.[70] Consequently, pursuant to Section 228 of the Tax Code, petitioner had thirty (30) days, or until July 31, 2019, within which to file its protest. Records show that petitioner filed its Protest Letter and Request for Reinvestigation with BIR Revenue Region No. 8 on July 29, 2019.[71] Thereafter, petitioner filed its Supplemental Protest Letter and Submission of Additional Supporting Documents on September 26, 2019.[72] Thus, petitioner timely filed its protest to the FAN.

Consistent with the foregoing, Section 3.1.4 of RR No. 12-99, as amended, expressly provides that when a taxpayer's protest is denied by the CIR's duly authorized representative, the taxpayer is afforded the option to either appeal to the CTA or to elevate the matter to the CIR by way of a request for reconsideration within thirty (30) days from receipt of the decision, thus:

> Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 1.1.4 **Disputed Assessment**. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> xxx xxx xxx
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either**: (i) **appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision**; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner. (Emphasis supplied)

Here, petitioner received the FDDA dated September 17, 2021 on September 28, 2021.[73] Accordingly, petitioner had thirty (30) days, or

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[68] Exhibit "R-13," BIR Records, unpaginated.
[69] Exhibit "R-13-2," BIR Records, unpaginated.
[70] Exhibit "R-13-4," BIR Records, unpaginated.
[71] Par. 12, *Petition for Review*, Docket – Vol. 1, p. 9.
[72] Par. 14, *Petition for Review*, Docket – Vol. 1, p. 9.
[73] Exhibit "R-15," BIR Records, pp. 932 to 935.

until October 28, 2021, within which to either appeal to the CTA or to file a request for reconsideration with respondent. On October 28, 2021, petitioner filed the present petition.[74] Consequently, the appeal was timely filed and the Court properly acquired jurisdiction over the case.

The RO had authority to conduct the audit.

Petitioner invokes *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[75] (McDonald's case) to support its claim that the FAN is void on the theory that **RO Praxedio F. Tulio II** was not validly authorized by a LOA to conduct the audit.

Petitioner's argument is untenable.

In the McDonald's case, the Supreme Court categorically declared that:

> The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands xxx that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
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> xxx xxx xxx
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since

[74] *Supra* note 1.
[75] G.R. No. 242670, May 10, 2021.

> it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

Nonetheless, the doctrine laid down in the McDonald's case cannot be applied to the present case, as the factual circumstances materially differ from that case.

In the McDonald's case, all ROs originally named in the LOA were entirely replaced by a new RO who was authorized only through a MOA to continue the audit which resulted in the issuance of a Formal Letter of Demand (FLD). In view of these circumstances, the Supreme Court held that the assessment was void since the audit was conducted by an RO who lacked the requisite authority under a valid LOA.

In contrast, in this case, LOA No. eLA201500050494 dated August 23, 2017 explicitly authorized **RO Philipp King Cartagena** and **GS Marilou Courtez** to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period July 1, 2015 to June 30, 2016.[76] The subsequent MOA dated September 4, 2019 merely authorized **RO Philipp King Cartagena** and **GS Praxedio F. Tulio** to conduct the reinvestigation requested by petitioner.[77]

During clarificatory questioning, **RO Praxedio F. Tulio II** admitted in open court that the MOA dated September 4, 2019 referred to the second MOA, and that he had earlier been authorized under a MOA continue the investigation from the former assigned group supervisor.[78]

Be that as it may, the undisputed fact remains that **RO Philipp King Cartagena**, who was expressly named and authorized in the LOA, continued to be authorized to conduct the audit. Only **GS Marilou Cortez** was replaced by **GS Praxedio F. Tulio II**. Thus, not all of the ROs named in the LOA were substituted, and the authority conferred by the LOA to **RO Philipp King Cartagena** was not divested.

Accordingly, since an RO validly named in the LOA continued to conduct the audit, the McDonald's case does not apply.

Petitioner is not liable for deficiency BPRT.

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[76] Exhibit "R-1," BIR Records, p. 404.
[77] Exhibit "R-11," BIR Records, p. 861.
[78] Transcript of Stenographic Notes – August 14, 2024, pp. 9 to 10.

Petitioner maintains that it is not liable for BPRT because it neither actually remitted profits nor applied or earmarked any profits for remittance to its home office for FY 2016. Petitioner likewise asserts that no constructive remittance occurred that would subject it to BPRT.

Conversely, respondent argues that unaccounted branch profits amounting to Php115,898,415.61 were allegedly not reflected in petitioner's retained earnings account. Thus, respondent concludes that such profits were actually or constructively remitted to petitioner's head office and are therefore subject to BPRT.

The Court finds petitioner's position meritorious. Section 28(A)(5) of the Tax Code expressly provides:

> **Section 28.** *Rates of Income Tax on Foreign Corporations.* -
>
> (A) Tax on Resident Foreign Corporations. -
>
> (5) Tax on Branch Profits Remittances. - **Any profit remitted by a branch to its head office shall be subject to a tax of fifteen (15%) which shall be based on the total profits applied or earmarked for remittance** without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: provided, that interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines. (Emphasis supplied)

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[79]

Apply the foregoing provision, BPRT may only be imposed if there is either:

1. Actual remittance of branch profits to the head office; or

[79] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

2. Application or earmarking of profits for remittance to the head office.

In *Bank of America NT & SA v. Court of Appeals*,[80] the Supreme Court explained the rationale and nature of the BPRT, thus:

> The remittance tax was conceived in an attempt to equalize the income tax burden on foreign corporations maintaining, on the one hand, local branch offices and organizing, on the other hand, subsidiary domestic corporations where at least a majority of all the latter's shares of stock are owned by such foreign corporations. Prior to the amendatory provisions of the Revenue Code, local branches were made to pay only the usual corporate income tax of 25%-35% on net income (now a uniform 35%) applicable to resident foreign corporations (foreign corporations doing business in the Philippines). While Philippine subsidiaries of foreign corporations were subject to the same rate of 25%-35% (now also a uniform 35%) on their net income, dividend payments, however, were additionally subjected to a 15% (withholding) tax (reduced conditionally from 35%). In order to avert what would otherwise appear to be an unequal tax treatment on such subsidiaries *vis-a-vis* local branch offices, a 20%, later reduced to 15%, profit remittance tax was imposed on local branches on their remittances of profits abroad. But this is where the tax *pari-passu* ends between domestic branches and subsidiaries of foreign corporations.

In the present case, petitioner was able to prove that no profits were remitted to its home office for FY 2016. Note 3 of petitioner's Statements of Financial Position for the year ended June 30, 2016 explains how transactions relating to the Home Office account are recorded:[81]

> **NOTES TO FINANCIAL STATEMENTS**
>
> **3. Summary of Significant Accounting Policies**
>
> <u>Home Office Account</u>
> Home Office account increases when assets and capital are received by the ROHQ from the Home Office Account. It is reduced by expenses incurred by the Home Office on behalf of the ROHQ and remittances made by the ROHQ to the Home Office. **The accumulated earnings of the ROHQ, which are the cumulative profits for the period as reported in the statement of comprehensive income, are reflected as part of the Home Office account and is reduced by remittances to the Home Office.** Home Office account may also include effect of changes in accounting policy as may be required by the provisions of new accounting standards and interpretations. (Emphasis supplied)

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[80] G.R. No. 103092, July 21, 1994.
[81] Exhibit "P-4," Docket – Vol. 2, p. 815.

Thus, the foregoing accounting policy clearly demonstrates that any remittance made to the Home Office necessarily results in a reduction of the Home Office account. More specifically, the accumulated earnings component of the Home Office account is increased by the recognition of net income by the branch, and is correspondingly decreased by remittances to the Home Office.

Petitioner's Statement of Changes in Home Office Account for the Years ended 30 June 2016 and 2015 reflects the following:[82]

	Assigned Capital	Actuarial Loss on Retirement Obligation	Employee Share Plan Reserve	Accumulated Earnings	Total
Balances at 30 June 2014	Php9,566,066	-	Php1,110,974	Php189,640,352	Php200,317,392
Pre-based Payment Expense	-	-	102,637	-	102,637
Increase in assigned capital	122,245,774	-	-	-	122,245,774
Net income for the year	-	-	-	87,337,611	87,337,611
Other comprehensive income	-	-	-	-	-
Total comprehensive income	-	-	-	87,337,611	87,337,611
Balances at 30 June 2015	Php 131,881,840	-	Php1,213,611	Php276,977,963	Php410,003,414
Share-based payment expense	-	-	802,702	-	802,702
Net income for the year	-	-	-	70,052,174	70,052,174
Acturial loss on retirement obligation	-	(1,456,235)	-	-	(1,456,235)
Total comprehensive income (loss)	-	(1,456,235)	-	70,052,174	70,052,174
Balances at 30 June 2016	**Php 131,881,840**	**(1,456,235)**	**Php2,016,313**	**Php347,030,137**	**Php479,402,055**

From the foregoing, it is evident that petitioner's Home Office account increased from Php410,003,414.00 at the beginning of FY 2016 to Php479,402,055.00 as of June 30, 2016. Similarly, the Accumulated Earnings account increased from Php276,997,963.00 to Php347,030,137.00 during the same period. The increases negate any claims that petitioner remitted profits to its home office.

This conclusion is further bolstered by the testimony of Ms. Chona M. Recto, petitioner's Finance Manager, during clarificatory questioning by the Court:[83]

JUSTICE MANAHAN:
How often does your regional office remit the amount due to the home office? Do you remit an amount? How often, how regular do you remit an amount due to your home office or head office?

MS. CHONA M. RECTO:
We are not remitting any (interrupted).

JUSTICE MANAHAN:

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[82] Exhibit "P-4-a," Docket – Vol. 2, p. 833.
[83] Transcript of Stenographic Notes – May 11, 2023, pp.

You are not remitting?

MS. CHONA M. RECTO:
No.

JUSTICE MANAHAN:
So, it's like a one-way account. It's the head office that just remits an amount to the branch?

MS. CHONA M. RECTO:
Yes.

JUSTICE MANAHAN:
So, there was never an occasion in the past that you have remitted branch profits to your head office?

MS. CHONA M. RECTO:
No remittance, Your Honors.

JUSTICE MANAHAN:
So, there was never an occasion in the past that you have remitted branch profits to your head office?

MS. CHONA M. RECTO:
No remittance, Your Honors.

JUSTICE MANAHAN:
Can you explain your answer in Question A17 where you made mention about a constructive unaccounted profits or actually or constructively remitted. You were quoting the respondent here. You can refer to your Judicial Affidavit. What do you mean here by constructive remittance?

MS. CHONA M. RECTO:
That's also our question, Your Honors, when we provided the supplemental [protest] wherein they constructively or they made an, how do you call it? An accounting, wherein, they made an extraction of the account wherein they were [sic] provided us an amount which is not supported by any remittances or rather any document coming from our accounting records.

JUSTICE MANAHAN:
So, your company does not resort to any netting or offsetting arrangement. For example, there are some payables that Telstra Limited ROHQ Accounts Payable to the head office and instead of remitting that payment, they are just offset against your retained earnings.

MS. CHONA M. RECTO:
Attorney, the offsetting is not encouraged from my end. They are always recording at gross.

Accordingly, petitioner sufficiently demonstrated that no actual remittance of profits occurred in FY2016. Consequently, no BPRT may be imposed.

It bears emphasis that a review of the DOD[84] attached to the FAN dated June 26, 2019,[85] which was reiterated in the FDDA dated September 17, 2021,[86] shows the BIR's assessment for deficiency BPRT:

DETAILS OF DISCREPANCIES

xxx xxx xxx

V. BRANCH PROFIT REMITTANCE TAX

- **Basic Tax Due, P17,384,762.32** – Further investigation revealed that branch profits amounting to P115,898,415.61 were not taken into consideration as part of the retained earnings account for which evidence points that such unaccounted profits were actually or constructively remitted to your head office; hence you are assessed pursuant to Section 28 of the 1997 NIRC as implemented by Revenue Regulations No. 2-2001.

Schedule 5:

Taxable Income	P204,049,591.00
Less: Income Tax Paid	18,099,001.39
Net Income After Tax	P185,950,589.61
Add: Retained Earnings, Beg.	276,977,963.00
Total	P462,928,552.61
Less: Retained Earnings, End	347,030,137.00
Profit Remitted	P115,898,415.61
Multiplied by: Tax rate	15%
Basic Branch Profit Remittance Tax	P17,384,762.34
Less: Basic Branch Profit Remittance Tax Paid	-
Basic Tax Due	**P17,384,762.34**

The Supreme Court has repeatedly held that assessments must be based on facts and not mere presumptions.[87] In the present case, the BIR simply presumed remittance of profits to petitioner's home office from the alleged absence of amounts in the retained earnings, without proof of actual or constructive remittance.

Neither did respondent establish constructive remittance. Respondent failed to prove that petitioner applied or earmarked profits

[84] Exhibit "R-13-2," BIR Records, unpaginated.
[85] Exhibit "R-13," BIR Records, unpaginated.
[86] Exhibit "R-15," BIR Records, p. 933.
[87] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021; *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005; *The Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962.

for remittance to its home office. On the contrary, petitioner demonstrated that its Home Office account consistently increased even beyond FY 2016, reaching Php576,530,151.00, Php644,291,393.00, and Php659,264,186.00 at the end of FYs 2017, 2018 and 2019, respectively.[88] These increasing balances negate any claim of constructive remittance as remittances would necessarily have resulted in a diminution of the Home Office account.

Accordingly, petitioner cannot be held liable for deficiency BPRT for FY 2016.

Petitioner is not liable for compromise penalties.

The FDDA dated September 17, 2021 adjusted the amount of petitioner's compromise penalties to Php25,000.00.[89] However, Revenue Memorandum Order (RMO) No. 7-2015 categorically provides that compromise penalties are imposable only in cases involving criminal violations of the Tax Code. As the present case involves no criminal violation, respondent cannot impose compromise penalties.

Thus, the compromise penalties are ordered deleted from the FDDA dated September 17, 2021.

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

Accordingly, the FDDA dated September 17, 2021, assessing petitioner for deficiency branch profit remittance tax in the total amount of Php34,875,018.52, inclusive of interest, surcharges, and compromise penalties, for FY 2016, is **REVERSED** and **SET ASIDE**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

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[88] Exhibit "P-7," Docket – Vol. 2, p. 875; Exhibit "P-8," Docket – Vol. 2, p. 911; Exhibit "P-9," Docket – Vol. 2, p. 973.
[89] Exhibit "R-15," BIR Records, p. 932.

I CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice
Special Third Division Chairperson

CERTIFICATION

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

MA. BELEN RINGPIS-LIBAN
Presiding Justice