REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CEBU AIR, INC., Petitioner,	**CTA CASE NO. 9106**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 27 2018 4:30 p.m.

x - x

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution are:

1. **Supplemental Formal Offer of Evidence for Petitioner**, filed on June 25, 2018, with respondent's **Comment Re: Supplemental Formal Offer of Evidence for Petitioner**, filed on July 2, 2018;

2. petitioner's **Motion for Reconsideration (of the Decision dated 11 January 2018)**, filed on January 26, 2018, with respondent's **Opposition Re: Petitioner's Motion for Reconsideration (of the Decision dated 11 January 2018)**, filed on March 8, 2018; and

3. respondent's **Motion for Partial Reconsideration Re: Decision dated 11**

> **January 2018**, filed on January 29, 2018, with petitioner's **Comment (to Respondent's Motion for Partial Reconsideration Re: Decision dated 11 January 2018)**, filed on February 19, 2018.

In the Resolution[1] dated May 29, 2018, the Court allowed petitioner to present and formally offer the documents attached to its motion for reconsideration. Accordingly, the resolution of the parties' motions for reconsideration was held in abeyance.

Subsequently, petitioner recalled its witness, Mr. Robin C. Dui, to the witness stand and formally offered its additional documentary exhibit in support of its motion for reconsideration.

Now, acting on the **Supplemental Formal Offer of Evidence for Petitioner**, with respondent's **Comment Re: Supplemental Formal Offer of Evidence for Petitioner**, the Court **ADMITS** Exhibits **"P-38"**, **"P-39"**, **"P-40"**, **"P-40-A"**, **"P-40-B"**, **"P-41"**, **"P-41-A"**, **"P-42"**, **"P-43"**, **"P-44"**, **"P-45"**, **"P-46"**, **"P-47"**, and **"P-47-A"**, subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

The Court shall now proceed to determine the merit of the parties' motions for reconsideration.

The parties seek reconsideration of the Court's Decision dated January 11, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. Accordingly, the assessment issued by respondent against petitioner for Improperly Accumulated Earnings Tax for taxable year 2010 is **SUSTAINED**. Thus, petitioner is **ORDERED TO PAY FORTY-NINE MILLION THREE HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED PESOS AND 88/100 (₱49,318,500.88)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

---

[1] Docket, vol. IV, pp. 1357 to 1359.

Taxable Income for 2010	₱ (533,255,953.00)
Add: Non-taxable Income and Income subjected to Final Tax	1,289,210,989.00
Income exempt from tax	6,663,510,001.00
Total	₱ 7,419,465,037.00
Add: Retained earnings from prior years	1,993,887,640.00
Less: Amount that may be retained	9,018,804,670.00
Improperly Accumulated Taxable Income	₱ 394,548,007.00
Multiply by tax rate	10%
Improperly Accumulated Earnings Tax	₱ 39,454,800.70
Add: Surcharge (25%)	9,863,700.18
Total Amount Due	**₱ 49,318,500.88**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic Improperly Accumulated Earnings Tax in the amount of ₱39,454,800.70 computed from January 15, 2012 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱49,318,500.88, and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from June 29, 2015 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended."

Petitioner anchors its arguments on the following grounds:

A. The assessment for deficiency 2010 Improperly Accumulated Earnings Tax (IAET) is null and void because the electronic letter of authority (eLA) offered in evidence by respondent was not validly served on petitioner or its authorized representative, and the said eLA does not authorize Revenue Officers Gisela R. Amodia, Emetria M. Ang and Group Supervisor Philips Ceasar N. Pardillo to conduct a tax audit and issue an assessment against petitioner for taxable year (TY) 2010;

B. The assessment of IAET on earnings of petitioner in 2010 is beyond the scope of the letter of authority for the year 2010 because such earnings become improperly accumulated only if not declared as dividends by the end of the year 2011. In any case, *JR* public records show that petitioner actually declared dividends of ₱1,833,709,650.00 in 2011; and

C. The evidence on record shows that petitioner is a publicly-held corporation which is exempt from IAET.

On the other hand, respondent assails the above-mentioned Decision on the ground that this Court erred in ruling that petitioner may retain its earnings up to the amount of ₱9,018,804,607.00 that resulted to a lower improperly accumulated earnings tax, and that the compromise penalty of ₱50,000 cannot be imposed to petitioner.

Petitioner duly received the electronic letter of authority (eLA) dated September 28, 2011.

Petitioner contends that Revenue Officer (RO) Lover L. Loveres' testimony cannot be considered evidence as to the truth of Ms. Cecile Codoy's manifestation that she was authorized to receive the eLA on behalf of petitioner. Petitioner argues that the fact that Ms. Codoy was present at the registered address of petitioner and that her signature appears on the eLA cannot give rise to any inference that she had the authority to receive notices on behalf of petitioner. Petitioner alleges that Ms. Codoy's authority cannot be inferred on the basis of the presumption that official duty has been performed, because it is a basic rule of evidence that a presumption cannot be based on another presumption. Petitioner insists that RO Loveres failed to exercise due diligence and act within the standards set by applicable revenue issuances; thus, regular performance of official duty cannot be presumed. Aside from the self-serving statement of RO Loveres, there is allegedly no concrete evidence on record that would support that Ms. Codoy verbally manifested to him her authority to receive the eLA. On the other hand, petitioner avers that it could present its monthly remittance to Philhealth, SSS, and Pag-ibig with list of employees, duly stamped received by government agencies and officials receipts, and alphalist of employees for taxable year (TY) 2011 duly certified by the Bureau of Internal Revenue (BIR) to support Mr. Dui's testimony that C. Codoy is not an employee of petitioner.

Petitioner states that no letter of authority (whether manually-issued or electronic) authorized Revenue Officers Gisela R. Amodia, Emeteria M. Ang and Group Supervisor Philips Ceasar N. Pardillo

(Amodia Group) to examine and assess petitioner for TY ending 31 December 2010. Petitioner points out that respondent merely offered in evidence a Memorandum of Assignment No. 123-13-05-00065 dated 2 May 2013 for the authority of the Amodia Group to assess the former. According to petitioner, even if the eLA was validly served to petitioner, the assessment for deficiency IAET should be declared null and void due to the absence of any eLA authorizing the Amodia Group to conduct the investigation and issue an assessment against the petitioner for the year 2010.

Respondent counter-argues that the eLA was duly served to petitioner and that the latter keenly participated in the audit and investigation. According to respondent, if petitioner indeed believed that the assessment proceedings were void, the latter should not have entertained the Revenue Officers and immediately asserted its right.

As regards the alleged lack of authority of the Amodia Group to examine petitioner's books of accounts, respondent argues that petitioner has raised this issue for the first time in its motion for reconsideration and was never mentioned in the Petition for Review nor in the Amended Petition for Review.

Petitioner's arguments lack factual basis.

Petitioner wants to impress upon this Court that Ms. Codoy was not connected with petitioner either as an employee or officer during the year 2011. As such, in order to prove the same, petitioner presented its alphabetical list of employees terminated before December 31, 2011[2], alphabetical list of employees as of December 31, 2011 with no previous employer within the year[3], alphabetical list of employees as of December 31, 2011 with previous employer within the year[4], alphabetical list of minimum wage earners as of December 31, 2011[5], and summary of contributions to the Home Development Mutual Fund or PAG-IBIG for the month of September 2011[6].

A careful scrutiny of the foregoing documents shows that Ms. Codoy's name could not be found therein.

---

[2] Exhibit "P-42", docket, vol. IV, pp. 1472 to 1512.
[3] Exhibit "P-43", docket, vol. IV, pp. 1513 to 1691.
[4] Exhibit "P-44", docket, vol. IV, pp. 1692 to 1693.
[5] Exhibit "P-45", docket, vol. IV, pp. 1694 to 1708.
[6] Exhibit "P-46", docket, vol. IV, pp. 1710 to 1765.

Notwithstanding, a thorough scrutiny and evaluation of the BIR records reveals that petitioner acted upon the document which Ms. Codoy received.

It is noteworthy that Ms. Codoy received some of the BIR correspondence for petitioner in 2011 and 2012, such as eLA 201000033121 dated September 28, 2011 on September 30, 2011[7], Final Notice dated January 9, 2012 on January 10, 2012[8], and Subpoena *Duces Tecum* dated May 22, 2012 on May 23, 2012[9]. Mr. Robin C. Dui, petitioner's witness, recognized through a Letter[10] dated October 25, 2012 the receipt of the Subpoena *Duces Tecum* dated May 22, 2012 made by Ms. Codoy, to wit:

> "In response to the unnumbered Subpoena *Duces Tecum* dated October 4, 2012, issued to Cebu Air, Inc. pertaining to Taxable Year 2010, please be informed that said Subpoena is just a replication of the previously issued Subpoena *Duces Tecum* No. 123-12-05-000004 dated May 22, 2012."

Mr. Dui also attached in the said letter a photocopy of the Transmittal Letter dated June 13, 2012, submitting petitioner's documents in compliance with the Subpoena *Duces Tecum* 123-12-05-000004 dated May 22, 2012 which Ms. Codoy received.[11]

Based on the foregoing, it is clear that Ms. Codoy had the authority then to receive petitioner's correspondence including the eLA.

Petitioner failed to prove that it is a publicly-held corporation.

Petitioner contends that Section 29(B)(2)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, exempts publicly-held corporations from the coverage of the IAET; however, the said law itself does not provide a definition of the term "publicly-held corporations" within the context of the IAET.

[7] Exhibit "R-1", BIR records, p. 1.
[8] BIR records, p. 5.
[9] BIR records, p. 184.
[10] BIR records, p. 188.
[11] BIR records, pp. 186 to 187.

According to petitioner, the Supreme Court defined a public company in the case of *Philippine Veterans Bank vs. Callangan*[12] as any corporation with a class of equity securities listed on an Exchange or with assets in excess of fifty million pesos (₱50,000,000.00) and having two hundred (200) or more holders, at least two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities. Petitioner insists that Revenue Regulations (RR) No. 2-2001 has adopted the definition of closely-held corporation under Section 127 of the NIRC of 1997, as amended. However, petitioner points out that the sentence "Domestic corporations not falling under the aforesaid definition are, therefore, publicly held corporations" in Section 4 of RR No. 2-2001 could not be found in Section 127 of the NIRC of 1997, as amended.

Petitioner also claims that Section 96 of the Corporation Code provides that a corporation listed in any stock exchange or makes an initial public offerings of any of its stock is not considered a close corporation. Petitioner stands that administrative or executive acts, orders and regulations are valid only when they are not contrary to the laws of the Constitution, thus, the definition of close corporations under Section 96 of the Corporation Code must be deemed written into RR No. 2-2001. Petitioner explains that even without applying the Grandfather Rule provided under RR No. 2-2001, it is exempted from IAET since its shares are listed and traded on the Philippine Stock Exchange (PSE). Petitioner further posits that even if the Grandfather Rule is applicable, the evidence on record sufficiently shows that it is a publicly-held corporation, thus, exempt from the IAET.

Respondent contradicts petitioner's arguments and asserts that the latter is a closely-held corporation, thus, it is subject to IAET. Respondent maintains his findings that petitioner permitted the accumulation of its earnings and profits, instead of having it distributed through dividend declaration; hence, petitioner is allegedly liable for deficiency IAET in the amount of ₱1,876,885,725.76.

Section 4 of the NIRC of 1997, as amended, provides:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and

[12] G.R. No. 191995, August 3, 2011.

original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

In relation thereto, Section 244 of the same law states:

"SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

Based on the foregoing, RR No. 2-2001 was issued by the Secretary of Finance, upon recommendation of the Commissioner, to prescribe the rules governing the imposition of Improperly Accumulated Earnings Tax provided in Section 29 of the NIRC of 1997, as amended.

Accordingly, the Court finds no valid reason not to apply the provisions of RR No. 2-2001 to this case, considering that the said RR has not been declared invalid or unconstitutional.

Being so, the Court reiterates its ruling in the assailed Decision, to wit:

"These pieces of evidence are not sufficient to prove that petitioner is a publicly-held corporation.

CP Air Holdings, Inc. held 63.361% of petitioner's outstanding shares of stocks in 2010. Also, the stockholders of CP Air Holdings (CP Air), Inc. in 2010 were JG Summit Holdings, Inc. (JG Summit) - 99.99%, John L. Gokongwei, Jr. - .0008%, James L. Go - .0008%, Lance Y. Gokongwei - .0008%, Johnson Robert G. Go, Jr. - .0008%, and Robina Y. Gokongwei-Pe - .0008%.

In 2010, JG Summit had the following stockholders holding bigger portion of its outstanding capital stocks:

1.	Gokongwei Brothers Foundation	29.381%
2.	PCD Nominee Corporation	16.051%
3.	RSB-TIG No. 030-46-000001-9	15.202%
4.	John Gokongwei	12.748%
		73.382%

However, petitioner has failed to present any evidence to show the numbers of stockholders of PCD Nominee Corporation and RSB-TIG No. 030-46-000001-9 in order for this Court to determine whether the fifty percent (50) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty individuals.

It is highly emphasized that for purposes of determining whether a corporation is a closely-held corporation, stock owned directly or indirectly by or for a corporation shall be considered as being owned proportionately by its shareholders, and at least the 50% in value of the outstanding capital stock or at least fifty percent (50) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty individuals."

The assessment of IAET on earnings of petitioner in 2010 is within the scope of the letter of authority for the year 2010. However, petitioner sufficiently proved that it declared and paid cash dividend to its shareholders.

Petitioner argues that the assessment of IAET on its earnings in 2010 is beyond the scope of the letter of authority for TY 2010 since the imposition of IAET on its earnings in 2010, if applicable, would only have accrued as of 31 December 2011 and become payable on 15 January 2012. Petitioner also asserts that as of December 31, 2010, there had yet no legal or factual basis to hold petitioner liable for IAET on earnings for 2010, because RR No. 2-2001 allows a corporation a period of one year following the close of the taxable year in which such income was earned to declare dividends. Petitioner explains that the unrestricted retained earnings of a corporation which are available for distribution as dividends in a given year would not be known until after its books of accounts are audited by an external auditor following the close of the taxable year. Thus, as of the end of every year, most corporations would allegedly not be in a position to know whether it has excess earnings or not; hence, they are given a reasonable period of one year from the close of taxable year within which to declare its excess profits as dividends.

On the other hand, respondent asserts that the assessment of IAET on petitioner's improperly accumulated earnings for TY 2010 is within the scope of the letter of authority.

After a careful evaluation of petitioner's arguments, the Court finds that the same are a mere rehash of the same facts and issues which have been thoroughly discussed by the Court in the assailed Decision, *viz*:

> "xxx. Section 6 of RR No. 2-2001 reads:
>
> > 'SEC. 6. *Period for Payment of Dividend/ Payment of IAET.* – The dividends must be declared and paid or issued not later than one year following the close of the taxable year, otherwise, the IAET, if any, should be paid within fifteen (15) days thereafter.'
>
> To reiterate, Section 29 of the NIRC of 1997 provides that an IAET equivalent to 10% of the improperly accumulated earnings shall be imposed on corporations that permit its earnings and profits to accumulate, instead of being distributed as dividends. Specifically, there is *prima facie* instance of accumulation of profits when a corporation allows its earnings to accumulate in excess of 100% of the paid-up capital, not otherwise intended for the reasonable needs of its business, which is also indicative of the purpose to avoid income tax upon shareholders.
>
> In this case, it must be noted that respondent found that petitioner had earnings in excess of 100% of its paid-up capital in taxable year 2010. Moreover, there is no showing that the accumulated earnings in 2010 are for the immediate and reasonable needs of its business.
>
> Truly, a corporation is given one (1) year following the close of the taxable year in which such income was earned to declare dividends. Nonetheless, petitioner failed to prove that it declared and paid or issued dividends before the taxable year 2011 ended. Therefore, the imposition of IAET on petitioner's accumulated income in taxable year 2010 is proper.

In any event, petitioner alleges that it is not liable for IAET on its earnings in 2010 because it declared a regular cash dividend in the amount of ₱2.00 per share and a special cash dividend in the amount ₱1.00 per share, or an aggregate amount of ₱1,833,709,650.00, to all stockholders of record as of 14 April 2011 and paid on 12 May 2011.

To prove the alleged dividend declaration, petitioner submitted the original or certified true copy (CTC) of the following documents to support its motion for reconsideration: *ge*

- Audited Financial Statements of Cebu Air, Inc. for the year ended December 31, 2011[13]
- Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) for the month of May 2011 relating to petitioner's cash dividends paid in 2011[14]
- Secretary's Certificate executed by Atty. Rosalinda F. Rivera on March 21, 2011 and attested by Mr. Lance Y. Gokongwei on the declaration of dividends approved by the Board of Directors on March 17, 2011[15]
- SEC Form 17-C filed by petitioner on March 18, 2011[16]

Upon examination of these pieces of evidence, the Court finds that the Parent Company Audited Financial Statements for the year ended December 31, 2011 (specifically, the Statement of Changes in Equity, the Cash Flows from Financing Activities, and Note 18 Equity, Notes to the Financial Statements), the Secretary's Certificate, and the SEC Form 17-C show that petitioner declared cash dividends on March 17, 2011 for shareholders on record as of April 14, 2011 and was paid on May 12, 2011.

On the other hand, the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) provided by petitioner for the month of May 2011 does not reflect the amount of ₱1,833,709,650.00 as the tax base, since cash dividends from domestic corporation paid to another domestic corporation are exempt from taxation.[17]

When these supporting documents are taken all together, it is sufficient to prove that petitioner declared and paid cash dividends to its shareholders.

Taking into consideration the cash dividends declared seasonably within the 1-year period from the end of the taxable year being assessed (*i.e.*, CY 2010), petitioner will no longer have improperly accumulated earnings for TY 2010, as shown in the computation below: *Je*

[13] Exhibit "P-38", docket, vol. IV, pp. 1189 to 1283.
[14] Exhibit "P-39", docket, vol. IV, p. 1285.
[15] Exhibit "P-40", docket, vol. IV, p. 1287.
[16] Exhibit "P-41", docket, vol. IV, pp. 1185 to 1188.
[17] Section 27(D)(4), NIRC of 1997, as amended.

Taxable Income for 2010	₱	(533,255,953.00)
Add: Non-taxable Income and Income Subject to Final Tax		1,289,210,989.00
Income exempt from tax		6,663,510,001.00
Total	₱	7,419,465,037.00
Add: Retained earnings from prior years		1,993,887,640.00
Less: Amount that may be retained		9,018,804,670.00
Cash Dividends declared on April 14, 2011		***1,833,709,650.00***
Improperly Accumulated Taxable Income	**₱**	**(1,439,161,643.00)**

Due to sufficiency of evidence presented, petitioner has proved that it declared cash dividends within one year from the close of the taxable year 2010. Consequently, petitioner is not liable for deficiency IAET for TY 2010.

Additional paid-in capital is excess capital over and above the par but should be included in the paid-in capital of petitioner for purposes of computing IAET

In his motion, respondent disagrees with the Court's ruling that the additional paid-in capital (APIC) is part of paid-up capital. Respondent contends that to consider the retained earnings reasonable for the needs of business, the amount retained should only be up to 100% of the paid-up capital or the amount contributed to the corporation representing the par value of the shares of stocks. Respondent explains that the 100% paid-up capital is the amount actually paid by the shareholders to petitioner which is equivalent to, but not more than, the par value of the subscribed or outstanding capital stocks. According to respondent, the retained earnings of petitioner exceeded the 100% of paid-up capital or the amount contributed to the corporation representing the par value of the shares of stock; thus, it is considered unreasonable for the needs of business and should be imposed a penalty tax of IAET. Respondent avers that 100% of the paid-up capital of petitioner cannot exceed ₱613,236,550.00 which represents the par value of its issued and outstanding shares. Respondent further claims that the capital in excess of the par value is considered premium or surplus which cannot be considered as part of the paid-up capital, thus, the excess capital over the par should be excluded. Respondent argues that if the definition of paid-up capital includes additional paid-in capital, the purpose for which IAET is imposed would have been defeated. Respondent stresses that IAET is in the nature of a penalty to the corporation for the improper accumulation of its earnings and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation.

Respondent posits that the non-retroactivity of rulings under Section 246 of the NIRC of 1997, as amended, is not applicable in the present case considering that Revenue Memorandum Circular (RMC) No. 35-2011 is a mere clarification of RR No. 2-2001. Allegedly, respondent simply interpreted the law on IAET of the Tax Code and RR No. 2-2001. Respondent states that RMC No. 35-2011 is an interpretation in the exercise of his quasi-legislative function that clarifies the term "amount that may be retained".

Likewise, respondent maintains that he correctly imposed a compromise penalty against petitioner.

However, petitioner contends that respondent's arguments did not raise any new, cogent or substantial ground to warrant reversal or modification of the Court's ruling that APIC is not earnings/profits of a corporation generated from the normal and continuous operations of the business and therefore may not be the proper subject of the IAET.

A careful evaluation of respondent's arguments shows that the same are a mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

The Court has already addressed in the assailed Decision why the APIC should be included in the Paid-up Capital of taxpayers for purposes of determining IAET, to wit:

> "Moreover, the Securities and Exchange Commission (SEC), in its *Guidelines on the Determination of Retained Earnings Available for Dividend Declaration*, has defined 'paid-in capital' to include APIC or premium, to wit:
>
> > *'Paid-in Capital* – the amount of outstanding capital stock and additional paid-in capital or premium paid over the par value of shares.'
>
> Simply put, the APIC is the amount of capital in excess of the par value of the company's shares. **If the APIC is to be excluded from the amount that may be retained, it would necessarily form part of the improperly accumulated earnings, which would then be subjected to IAET.** ✓

> Note that the **IAET is being imposed** in the nature of a penalty to the corporation **for the improper accumulation of its earnings**, and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation.
>
> Definitely, the **APIC are not earnings/profits of a corporation generated from the normal and continuous operations of the business**. xxx" *(Emphasis supplied.)*

Hence, the APIC should be included in the term "paid-up capital" provided in RR No. 2-2001 for purposes of determining the amount of earnings that may be accumulated for the reasonable needs of the business.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated 11 January 2018** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Reconsideration (of the Decision dated 11 January 2018)** is **GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated January 11, 2018 is hereby amended to read as follows:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for deficiency improperly accumulated earnings tax for taxable year 2010 in the amount of ₱1,876,885,725.76 is **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

SO ORDERED.

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

I concur:

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice