REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PARITY PACKAGING CORPORATION,
Petitioner,

CTA *EB* NO. 1938
(CTA Case No. 9318)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1942
(CTA Case No. 9318)

-versus-

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

PARITY PACKAGING CORPORATION,
Respondent.

Promulgated:
AUG 26 2020 1:05 PM

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the consolidated Petitions for Review, respectively, filed by Parity Packaging Corporation (hereinafter referred to as "PPC") on 25 September 2018[1] and the Commissioner of Internal Revenue ("CIR") on

[1] See Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo*, pp. 1-68, with annexes.

12 October 2018,[2] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[3] Both parties seek the modification of the Decision promulgated on 20 June 2018,[4] and Resolution, dated 6 September 2018,[5] by the Second Division ("Court in Division") partially upholding the assessment against PPC for taxable year 2011.

The Parties

PPC is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at SMI 24 Fortune Avenue, Brgy. Fortune, Marikina City. It is duly registered with the Bureau of Internal Revenue ("BIR") as a Large Taxpayer with Tax Identification Number 004-464-749.

It is engaged in the business of manufacturing, preparing, buying, selling, and generally dealing at wholesale all kinds of printing, publishing, binding and engraving works, and designs, books, papers, catalogues, and stationary supplies, printing supplies, pads and stamps and to carry on a general business in monotyping, linotyping, electrotyping, color-typing, stencil press service, typesetting, composition, dies and advertising services; and to engage in and carry on the service as a commercial printer, bookbinder, engraver, photographic printer, stereotyper, electrotyper, lithographer and to undertake a general printing, engraving, lithographing business under specific contract or job orders from its clients.

The CIR is the chief of the BIR who is vested, among others, with the authority to administer and enforce the National Internal Revenue Code (hereinafter referred to as the "Tax Code") and other tax laws. He holds office at the BIR National Office Building, Diliman, Quezon City.

The Facts

On 12 April 2013, PPC received Letter of Authority ("LOA") No. LOA-116-2013-00000060 authorizing the examination of its books of accounts and other financial records for taxable year 2011.[6]

Meanwhile, on 17 September 2014, PPC executed a Waiver of Defense of Prescription and agreed to extend the prescriptive period to assess the same until 31 March 2015.[7]

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2 See Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo*, pp. 7-69 with annexes.
3 A.M. No. 05-11-07-CTA, 22 November 2005.
4 See Annex "A" of the Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo*, pp. 22-60; See Annex "A" of the Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo*, pp. 25-61.
5 *Ibid.*
6 *Ibid.*
7 *Ibid.*

On 13 March 2015, PPC received a Preliminary Assessment Notice ("PAN").[8]

Subsequently, on 31 March 2015, PPC received a Formal Letter of Demand ("FLD") with Details of Discrepancies and Assessment Notice Nos. IT-116-LOA-00000060-11-15-1573, VT-116-LOA-00000060-11-15-1574, WE-116-LOA-00000060-11-15-1575, WC-116-LOA-00000060-11-15-1576 dated 31 March 2015.[9] PPC filed its Protest to the FLD by way of request for reconsideration (hereinafter referred to as "Protest") on 29 April 2015.[10]

On 1 March 2016, PPC received the Final Decision on Disputed Assessment ("FDDA") dated 11 February 2016.[11] In the FDDA, the BIR partially found PPC's Protest meritorious and assessed PPC for the remaining deficiency taxes amounting to ₱11,218,897.63 for taxable year 2011, as follows:

Tax Type	Basic	Interest	Total
IT	₱ 2,268,054.09	₱ 1,795,283.88	₱ 4,063,337.97
VAT	3,453,924.41	3,578,507.46	7,032,431.87
WTC	60,230.10	62,897.69	123,127.79
TOTAL	**₱ 5,782,208.60**	**₱ 5,436,689.03**	**₱11,218,897.63**[12]

The IT assessment arose from the following items:[13]

A. Undeclared sales	₱ 5,881,234.85
B. Disallowed CWTs (unsupported)	8,089.00
C. Disallowed CWTs (prior years)	495,581.64

On the other hand, the VAT assessment was derived from the following items:[14]

A. Sales not subjected to VAT based on Accounts Receivable ("A/R") analysis	₱ 20,251,715.60
B. Undeclared sales	5,881,234.85

As for the WTC assessment, it arose from the discrepancy between PPC's taxable salaries and wages per its General Ledger as against the taxable compensation reported per its Monthly Remittance Return, or BIR Form 1601C, amounting to ₱200,767.01.[15]

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8 *Ibid.*
9 *Ibid.*
10 *Ibid.*
11 *Ibid.*
12 See Final Decision on Disputed Assessment dated 11 February 2016; Records, Vol. 2, pp. 481-487.
13 *Ibid.*
14 *Ibid.*
15 *Ibid.*

Aggrieved, PPC filed its original Petition for Review with the Court in Division on 31 March 2016.[16]

On 20 June 2018, the Court in Division rendered the assailed Decision,[17] to wit:

> "**WHEREFORE,** premises considered, the assessment issued by respondent against petitioner for CY 2011 covering deficiency income tax is **CANCELLED,** while the deficiency VAT and WTC assessments are **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of ₱7,999,517.87 for the taxable year 2011, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the NIRC of 1997, as amended, until December 31, 2017, computed as follows:

	VAT	**WTC**	**Total**
Basic Tax Due	₱ 2,428,086.68	₱ 1,779.96	₱ 2,429,866.64
Surcharge (25%)	607,021.67	444.99	607,466.66
Subtotal	₱ 3,035,108.35	₱ 2,224.95	₱ 3,037,333.30
Deficiency Interest (1-25-2012/1-11-2012 to 12-31-2017)			
(₱2,428,086.68 x 20% x 2,167 days/365)	2,883,103.47		2,883,103.47
(₱1,779.96 x 20% x 2,181 days/365)		2,127.17	2,127.17
Subtotal	₱ 5,918,211.82	₱ 4,352.12	₱ 5,922,563.94
Delinquency Interest (3-31-2016 to 12-31-2017)			
(₱5,918,211.82 x 20% x 640 days/365)	2,075,427.71		2,075,427.71
(₱4,352.12 x 20% x 640 days/365)		1,526.22	1,526.22
TOTAL	**₱ 7,993,639.53**	**₱ 5,878.34**	**₱7,999,517.87**

> In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid VAT of ₱3,035,108.35 and WTC of ₱2,224.95, representing basic deficiency tax and surcharge, as determined above, computed from January 1, 2018 until full payment thereof pursuant to

[16] See Annex "A" of the Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo,* pp. 22-60; See Annex "A" of the Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo,* pp. 25-61.

[17] *Ibid.*

Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

The assailed Decision was received by the CIR and PPC on 21 June 2018.[18]

On 5 July 2018, PPC filed a Motion for Partial Reconsideration (of the Decision promulgated on June 20, 2018).[19] In the said Motion, PPC asked the Court in Division to partially reconsider the assailed Decision and declare the entire deficiency tax assessment void.[20]

Meanwhile, on 6 July 2018, the CIR filed his Motion for Partial Reconsideration Re: Decision dated June 20, 2018.[21] In his Motion for Partial Reconsideration, the CIR prayed for the Court in Division to uphold the original assessment in the FDDA.[22]

Thereafter, PPC filed its Comment (on Respondent's Motion for Partial Reconsideration) on 23 July 2018.[23] The CIR did not file his Comment per the Court's Records Verification Report dated 6 August 2018.[24]

On 6 September 2018, the Court in Division issued the assailed Resolution denying the parties' respective Motions for Reconsideration.[25]

PPC received the assailed Resolution on 10 September 2018, while the CIR received it on 12 September 2018.[26]

Thereafter, on 25 September 2018, PPC filed the instant Petition for Review[27] with the Court *En Banc,* which was docketed as CTA *EB* No. 1938.

Meanwhile, the CIR filed a Motion for Extension of Time to File Petition for Review on 26 September 2018.[28] The CIR requested an additional period of fifteen (15) days from 27 September 2018 to file his Petition for

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18 See Records, Vol. 3, pp.1062-1063.

19 See Motion for Partial Reconsideration (of the Decision promulgated on June 20, 2018) dated 5 July 2018, Records Vol. 3, pp. 1064-1079.

20 *Ibid.*

21 See Motion for Partial Reconsideration Re: Decision dated June 20, 2018 dated 5 July 2018, Records, Vol. 3, pp. 1080-1088.

22 *Ibid.*

23 See Comment (on Respondent's Motion for Partial Reconsideration) dated 20 July 2018, Records, Vol. 3, pp. 1091-1095.

24 See Records, Vol. 3, p. 1096.

25 See Annex "B" of the Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo,* pp. 61-68; Annex "B" of the Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo,* pp. 62-69.

26 See Records Vol. 3, p. 1097.

27 See Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo,* pp. 1-68, with annexes.

28 See Motion for Extension of Time to File Petition for Review dated 26 September 2018, *EB* No. 1942 *Rollo*, pp.1-5.

Review or until 12 October 2018. The Motion was granted by the Court *En Banc* in a Minute Resolution.[29]

The CIR filed its Petition for Review on 12 October 2018, which was docketed as CTA *EB* No. 1942.[30]

Subsequently, CTA *EB* No. 1942 was consolidated with CTA *EB* No. 1938 on 16 October 2018.[31]

On 21 November 2018, PPC filed its Comment (on Commissioner of Internal Revenue's Petition for Review docketed as CTA *EB* Case No. 1942).[32] The CIR failed to file his Comment to PCC's Petition for Review per the Court's Records Verification Report dated 16 January 2019.[33]

On 7 March 2019, the Court promulgated a Resolution, referring the present case for mediation.[34] However, on 2 May 2019, the Court received the Mediator's Report[35] signed by Appellate Mediator Ret. Judge Nelson B. Bayot stating that the mediation was terminated for failure of both parties to come up with a Compromise Agreement.

Considering the same, the Court in a Resolution,[36] dated 7 August 2019, gave due course to the instant Petitions for Review and submitted the same for resolution. Hence this Decision.

The Assigned Errors

PPC raises the following issues for the Court *En Banc*'s resolution:[37]

> WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PPC'S SALES AMOUNTING TO ₱20,251,715.60 WERE NOT SUBJECTED TO VAT.
>
> WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PPC'S SALARIES AND WAGES IN THE AMOUNT OF ₱41,142.01 WERE NOT SUBJECTED TO WTC.

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29 See Minute Resolution dated 1 October 2018, *EB* No. 1942 *Rollo*.
30 See Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo*, pp. 7-69 with annexes.
31 See Minute Resolution dated 16 October 2018, *EB* No. 1938 *Rollo*, p. 69.
32 See Comment (on Commissioner of Internal Revenue's Petition for Review docketed as CTA EB Case No. 1942) dated 21 November 2018, *EB* No. 1938 *Rollo*, pp. 73-79.
33 See Records Verification Report dated 16 January 2019, *EB* No. 1938 *Rollo*, p. 80.
34 See Resolution dated 7 March 2019, *EB* No. 1938 *Rollo*, p. 82-84.
35 See Mediator's Report, *EB* No. 1938 *Rollo*, p. 87-92, with annexes.
36 See Resolution dated 7 August 2019, *EB* No. 1938 *Rollo*, p. 94-95.
37 See Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo*, pp. 1-68, with annexes.

WHETHER THE COURT IN DIVISION ERRED IN FINDING PPC LIABLE FOR THE ENTIRE VAT AND WTC ASSESSMENT DESPITE RULING THAT SPECIFIC PORTIONS OF THE SAID ASSESSMENT ALREADY PRESCRIBED.

WHETHER THE COURT IN DIVISION ERRED IN IMPOSING INTEREST ON PPC'S ALLEGED DEFICIENCY VAT AND WTC.

Meanwhile, the CIR advances the following issues:[38]

WHETHER THE COURT IN DIVISION ERRED IN GIVING CREDENCE TO THE SECRETARY'S CERTIFICATE AND CERTIFICATIONS SUBMITTED BY PPC, DATED 6 JANUARY 2011, IN SUPPORT OF THE CASH ADVANCES IT RECEIVED FROM ITS STOCKHOLDERS AMOUNTING TO ₱30,000,000.00, AND CANCELLING HIS VAT ASSESSMENT FOR UNDECLARED SALES.

WHETHER THE SAID CASH ADVANCE SHOULD BE SUBJECT TO DOCUMENTARY STAMP TAXES ("DST").

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PPC HAS NO UNSUPPORTED CWT;

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE CIR FAILED TO PROVIDE FACTUAL AND LEGAL BASES IN DISALLOWING PPC'S TAX CREDITS CREDITED OVER SUCCEEDING TAX QUARTERS IN THE AMOUNT OF ₱29,098,638.87;

WHETHER THE COURT IN DIVISION ERRED IN CANCELLING THE CIR'S DEFICIENCY VAT ASSESSMENT PERTAINING TO THE DISALLOWED TAX CREDITS IN THE AMOUNT OF ₱2,119.18; AND

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE CIR SHOULD HAVE CONSIDERED THE EMPLOYEE'S SHARE IN THE ECC, SSS, MEDICARE PREMIUM, AND PAG-IBIG FUND IN THE COMPUTATION OF PPC'S NON-TAXABLE COMPENSATION.

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[38] See Petition for Review dated 10 October 2018, *EB* No. 1942 *Rollo*, pp. 7-69 with annexes.

Arguments of the Parties

PPC's Arguments[39]

PPC counters the CIR's contention and argues that the VAT pertaining to its sales in the amount of ₱20,251,715.60 were already paid. It alleges that this fact is supported by the findings of the Court-commissioned Independent Certified Public Accountant ("ICPA") who was able to reconcile its accounts receivable transactions and conclude that it has no VAT liability for taxable year 2011.

As for PPC's deficiency WTC assessment, it explains that it has no WTC liability and even over-withheld payment in the amount of ₱822.64, as found by the ICPA. It also questions the Court in Division's use of the effective tax rate in the computation of its WTC assessment.

Further, PPC posits that the Court in Division erred in finding it liable for the entire amount of the deficiency VAT and WTC assessment even after ruling that part of the assessment had already prescribed. It maintains that the CIR should have computed its deficiency VAT on a quarterly and its deficiency WTC on a monthly basis instead of on an annual lump sum basis. Given the aforementioned, it should not be made to pay deficiency taxes that had already prescribed. At the very least, PPC contends that it should only be held liable for the pro-rated amount of the alleged VAT and WTC liability.

Finally, PPC pleads for the Court to cancel the interests for deficiency VAT and WTC, considering that the CIR failed to prove the validity of the assessment.

CIR's Arguments[40]

The CIR argues that the Court in Division erred in giving credence to the Secretary's Certificate and Certifications issued by PPC. He argues that the said documents are mere self-serving evidence that should not be given any weight and credence and, therefore, his VAT assessment pertaining to undeclared sales should have been upheld.

However, the CIR mentions that assuming the ₱30,000,000.00 is in the nature of a cash advance, such should be subject to Documentary Stamp Taxes, pursuant to Section 179 of the Tax Code.

Also, the CIR counters the assailed Decision finding PPC not liable for deficiency IT. He explains that the Court in Division erred in ruling that PPC's Creditable Withholding Tax ("CWT") were all supported by evidence. ɥ

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39 See Petition for Review dated 19 September 2018, *EB* No. 1938 *Rollo*, pp. 1-68, with annexes.
40 See Petition for Review dated 9 October 2018, *EB* No. 1937 *Rollo*, pp. 7-224, with annexes.

As for the assessment pertaining to the disallowed tax credits amounting to ₱29,098,638.87, and disallowed VAT credits amounting to ₱2,119,18, the CIR explains that contrary to the Court in Division's ruling, these amounts were added back in the computation of the assessment in determining the correct IT and VAT liability of PPC.

Lastly, with respect to the deficiency WTC assessment, he insists that the Court in Division should have upheld his computation finding PPC liable for WTC in the amount of ₱20,767.01.

The Ruling of the Court En Banc

After reviewing the records and considering the arguments of both parties, the Court *En Banc* finds no reason to disturb the assailed Decision and Resolution of the Court in Division.

PPC failed to prove with sufficient evidence that the VAT pertaining to its sales in 2008 and 2009 have already been paid.

Basic is the rule in evidence that the burden of proof lies on the party who asserts an allegation, not upon the other party who denies the same since by the nature of things, the party who denies a fact cannot produce any proof of it.[41] A mere allegation to a claim is insufficient. The claim must be substantiated by clear and convincing evidence.[42]

In this case, PPC faults the Court in Division for upholding the assessment of the CIR pertaining to its sales that were not allegedly subjected to VAT based on the CIR's Accounts Receivable analysis amounting to ₱20,251,715.60.

PPC explains that it was able to trace the said transactions with its sales to Tanduay in 2008 and 2009, which were only paid by the latter in 2011. However, since the Tanduay sales were treated by PPC as sales of goods, the VAT on these transactions were remitted to the BIR in 2008 and 2009, respectively.

PPC insists that this fact is supported by the ICPA who concluded that it has no VAT liability for taxable year 2011, after his examination of the following documents:

1. General Ledger-Accounts Receivable
2. Sales Journal Register 2011
3. Official Receipt Register 2011

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[41] MOF Company, Inc., v. Shin Yang Brokerage Corporation, G.R. No. 172822, 18 December 2009.
[42] Marina Port Services, Inc. v. American Home Assurance Corp., G.R. No. 201822, 12 August 2015.

4. General Journal Register – January 2011
5. General Journal Register – December 2011
6. Official Receipt Register 2011 Analysis
7. Sales Journal Register 2008 and 2009 Analysis
8. Sales Journal Register-December 2008
9. Sales Journal Register 2009
10. Summary List of Sales ("SLS") December 2008
11. SLS 2009
12. SLS 2011
13. Audited Financial Statements

The issue now for the Court *En Banc*'s consideration is whether the ICPA report and the aforementioned documents inspected by the ICPA constitutes clear and convincing evidence to prove that the VAT in PPC's sales to Tanduay were already paid in 2008 and 2009, warranting the cancellation of the assessment.

The Court *En Banc* finds these pieces of evidence insufficient.

At the onset, this Court stresses that it is not bound by the findings and conclusions made by the ICPA. ***Section 3, Rule 13 of RRCTA*** elucidates, to wit:

> "SEC. 3. Findings of independent CPA. - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **<u>The findings and conclusions of the independent CPA</u> may be challenged by the parties and <u>shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification</u>**."[43]

It is clear from the foregoing provision that the Court is mandated not to solely rely on the findings of the ICPA, but it also needs to conduct its own verification and appreciation of the pieces of evidence on record.

Based on the pieces of evidence submitted by PPC, none of these would prove that the VAT pertaining to the Tanduay sales were remitted in 2008 and 2009. As pointed out by the Court in Division, PPC should have submitted its proofs of VAT payment. These include its VAT returns, BIR payment confirmations and SLS for the said period. These documents are vital so that the Court can trace and verify if the VAT from the contested transactions have indeed been remitted.

Although PPC was able to offer its SLS for December 2008 and the entire taxable year of 2009 as evidence, these SLS, alone, are insufficient to prove that the VAT was indeed paid. The SLS is a breakdown of the sales and

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[43] Emphasis supplied.

output VAT declared by a taxpayer in its Tax Return for a certain quarter. However, this document, alone, does not prove payment. Without the VAT return and the BIR's payment confirmation, the Court has no way of verifying if, indeed, PPC paid the subject VAT.

Hence without such proof, the general rule that "tax assessments by tax examiners are presumed correct and made in good faith" stands.

The Supreme Court case of ***Takenaka Corporation Philippine Branch v. CIR***,[44] is illustrative of this point, to wit:

> "A.M. No. 05-11-07-CTA is clear. Any document presented by the ICPA, such as the AFS, is subject to verification. The findings and conclusions of the ICPA are not conclusive on the CTA; they are subject to further verification. Accordingly, petitioner's failure to present supporting documents for those items appearing in its AFS is fatal. It remains liable for the deficiency WTC.
>
> The Court also does not agree with petitioner's argument that the burden of proof shifted to respondent. **Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.**
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> **Having failed to substantiate with documentary evidence its claim that it properly remitted the deficiency EWT and WTC to the government, petitioner is liable for deficiency EWT in the amount of P1,922,787.07 and deficiency WTC in the amount of P1,409,420.98.**"[45]

Given the foregoing, this Court sustains the CIR's assessment and the Court in Division's finding that PPC is liable for VAT on its Tanduay sales.

PPC is liable to pay deficiency WTC in the amount of ₱1,779.96.

Before we resolve the issues raised by PPC regarding its deficiency WTC assessment, the Court *En Banc* will first resolve the issue raised by the CIR.

The CIR insists that the employee's contribution in the ECC, SSS, Medicare premiums and Pag-ibig fund are not non-taxable compensation. He asks the Court to uphold his original assessment.

The CIR is incorrect.

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44 G.R. No. 211589, 12 March 2018.
45 Emphasis supplied.

Section 32(b)(7)(f) of the Tax Code is clear that SSS, Medicare, and Pag-ibig contributions are excluded from gross income, to wit:

> "SEC. 32. Gross Income. – xxx (B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> **(f) GSIS, SSS, Medicare and Other Contributions. - GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individuals**."[46]

This has been reiterated by the Supreme Court in the case of ***Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue***,[47] to wit:

> "However, not all income payments to employees are subject to withholding tax. **The following allowances, bonuses or benefits, excluded by the NIRC of 1997, as amended, from the employee's compensation income, are exempt from withholding tax on compensation**:
>
> xxx xxx xxx
>
> 8. **GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees** [Section 32(B)(7)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(12) of RR No. 2-98];"[48]

Hence, based on the aforementioned provision and case law, the Court in Division is correct in excluding the SSS, Medicare, and Pag-ibig contributions in the computation of PPC's taxable compensation. With this issue settled, we shall now rule on the issues raised by PPC.

PPC pleads for the Court *En* Banc to adopt the computation of the ICPA finding it not liable for WTC. PPC directs this Court to the computation of the ICPA finding the same to have even over paid its WTC by ₱822.64.

As already discussed, the Court is not bound by the findings of the ICPA. The Court, notwithstanding the ICPA report, would have to perform its own independent evaluation of the pieces of evidence submitted by the parties.

In this case, the difference between the computation made by the Court in Division and the ICPA is based on: (a) items treated by the ICPA as non-taxable compensation but were disallowed by the Court in Division, and (2) certain items not considered by the ICPA, as follows:

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46 Emphasis Supplied.
47 G.R. Nos. 213446 & 213658, 3 July 2018.
48 Emphasis Supplied.

Non-Taxable Items	Assailed Decision	ICPA Report	Difference
Separation Pay	₱ 9,211,326.60	₱ 9,211,326.60	₱ -
13th Month Pay	244,242.39	257,242.39	(13,000.00)
Maternity and Sick Leave	27,196.15	-	27,196.15
Vacation Leave	146,568.39	-	146,568.39
De minimis Benefits	-	202,729.19	(202,729.19)
HDMF	14,825.00	14,825.00	-
ECOM	4,280.00	4,280.00	-
SSS	162,180.00	162,180.00	-
Medicare	38,175.00	38,175.00	-
SSS, HDMF, PHIC	159,625.00	159,625.00	-
Total Nontaxable Compensation	**₱10,008,418.53**	**₱ 10,050,383.18**	**₱ 41,964.65**

In the assailed Decision, the Court in Division disregarded a portion of the 13th month pay amounting to ₱13,000.00 which corresponds to an unaccounted difference between the amount reflected in PPC's T-Accounts amounting to ₱244,242.39 and Alphalist amounting to ₱257,242.39.

As for the *de minimis* benefits amounting to ₱202,729.19, the Court in Division disallowed the same since it was not supported by clear and convincing evidence. Hence, said amount was omitted in the computation of the non-taxable compensation.

To the mind of the Court, PPC failed to provide evidence or, at the very least, an explanation why this Court should overturn the findings of the Court in Division.

In ***Republic v. Team (Phils.) Energy Corp.,***[49] the Supreme Court highlighted the weight given to the findings of the Court in Division to wit:

> "... it is fundamental that the **findings of <u>fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion</u> considering that the members of the Division are in the best position to analyze the documents presented by the parties.**"[50]

Therefore, absent any proof of error, this Court sees no cogent reason not to affirm the computation made by the Court in Division, as follows:

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[49] G.R. No. 188016, 14 January 2015.
[50] Emphasis supplied.

Total salaries and wages	₱ 14,682,951.94
Total nontaxable compensation (see previous computation above)	10,008,418.53
Taxable Compensation	4,674,533.41
Total taxable compensation per Alphalist	4,633,391.40
Amount of compensation still subject to WTC	**₱ 41,142.01**

As for the applicable WTC tax rate, the Court in Division found that since the employees to whom the compensation pertained were not individually identified, it ruled to use the effective rate computed based on the total WTC paid divided by the total amount of taxable compensation reported during taxable year 2011, as shown below:

Total WTC paid	₱ 200,458.31	4.33%
Total taxable compensation	₱ 4,633,391.40	

PPC, however, alleges that the use of the effective rate has no basis in law and that the CIR should have indicated the applicable tax rate for each employee.

Again, the contention of PPC is without merit.

In numerous cases,[51] the CTA has used the effective tax rate computation in cases where: (1) the taxpayer's employees have different income brackets and (2) the employees to whom the assessed compensation pertained to were not individually identified.[52]

Considering that these conditions exist in this case, the Court *En Banc* deems it fit to adopt the same computation.

Moreover, we find nothing illogical with the use of the effective rate. For circumstances enumerated above, it is a fair and just manner of computing the WTC liability of a taxpayer since the effective rate approximates the average tax rate used by the taxpayer in the computation of its tax due.

Hence, considering that the Court in Division did not commit any error in its ruling, we sustain the assailed Decision assessing PPC for WTC amounting to ₱1,779.96.[53]

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51 Commissioner of Internal Revenue v. Asian Transmission Corporation, CTA EB No. 1519, 24 September 2018; 3M Philippines, Inc., v. Commissioner of Internal Revenue, CTA Case Nos. 9213 & 9214, 19 June 2019.

52 *Ibid.*

53 Amount of compensation still subject to WTC x Effective Tax Rate (₱41,142.01 x 4.33%).

The Court in Division is correct in upholding the entire VAT and WTC assessment of PPC.

PPC contests the assailed Decision and Resolution finding it liable for the entire VAT and WTC assessment despite the findings of the Court in Division that its VAT assessment for the 1st and 2nd Quarters of 2011 and its WTC assessment for the months of January to August have already prescribed.

Further, PPC argues that the CIR should have computed its assessment for VAT and WTC on a per quarter or monthly basis, respectively, citing ***Sections 6(A) and 203 of the Tax Code***, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.
>
> xxx xxx xxx
>
> SEC. 203. Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Finally, assuming that the Court *En Banc* finds the assessment valid, it insists that its deficiency taxes should have been pro-rated *i.e.* divide the deficiency VAT assessment into four quarters and the deficiency WTC into twelve months and only assess him for the months that have not yet prescribed.

We continue to sustain the assailed Decision and Resolution.

Nowhere in the above-quoted provisions does it state that the assessment for deficiency VAT and WTC should be made on a quarterly and monthly basis or on a per tax return basis. As found by the Court in Division, the provisions merely state when an examination may be authorized- which is after a return has been filed.

As observed by the Court in Division, the assessment was made in accordance with the Letter of Authority issued in this case, which is to conduct the audit investigation on PPC's books of accounts for the entire taxable year of 2011. Hence, we see no error when the BIR computed the assessment for the entire year of 2011.

As to the plea of PPC to pro-rate its tax liability, the Court finds no reason to grant the same. As discussed earlier, the presumption of tax assessments is that it is presumed correct and made in good faith, absent proof to the contrary.[54]

Thus, it is incumbent upon PPC to disprove the assessment by identifying which part of the assessment has already prescribed, and to present evidence to support the same, as ruled in ***Po v. Court of Tax Appeals***[55] citing ***Collector of Internal Revenue vs. Reyes***:[56]

> "Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is **incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession.** Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession."[57]

In this case, although PPC was able to establish the fact that a portion of the assessment had already prescribed, it failed to identify and prove the specific prescribed transactions in the assessment. Hence, without identifying which among the transactions of PPC have actually prescribed, the Court *En Banc* is constrained to uphold the entire assessment.

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54 Po v. Court of Tax Appeals, G.R. No. 81446, 18 August 1988.
55 *Ibid.*
56 Nos. L-11534 and L-11558, 25 November 1958.
57 Emphasis supplied.

This is in all fours with the case of ***Liquigaz Philippines Corporation v. Commissioner of Internal Revenue***,[58] where this Court ruled that it is incumbent upon the taxpayer to show which portion of said deficiency taxes pertain to the prescribed transactions, to wit:

> "LPC contends that it was erroneous for the Court in Division to impute the entire deficiency tax assessments to the unprescribed portion of taxable year 2006.
>
> We do not agree.
>
> **It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments. <u>In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.</u>**
>
> **<u>Correspondingly, while the Court in Division found that the CIR's right to assess LPC for deficiency VAT for the second quarter of 2006 and deficiency EWT and WTC for the months of January 2006 to September 2006 has prescribed, the burden is still upon LPC, as the taxpayer contesting the validity of the assessments issued by the CIR, to show which portion of said deficiency taxes pertain to the prescribed months.</u>** However, for its part, LPC merely alleges that "(t)he invoices, receipts, tax returns and other voluminous records presented by the petitioner would readily show that there were numerous transactions during the quarters/period covered by the assessments which had already prescribed", without identifying which of the said documents specifically show that the subject portion of the deficiency taxes fall under the months that have prescribed.
>
> **<u>Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof. In the absence of proof, the Court in Division had no alternative but to uphold the validity and correctness of the assessment and consider the entire assessment as pertaining to the unprescribed portion of taxable year 2006</u>**."[59]

Given the aforementioned reasons, the Court rules to uphold the assessment.

<u>The Court in Division correctly cancelled the VAT assessment pertaining to undeclared sales.</u>

In the assailed Decision and Resolution, the Court in Division cancelled the CIR's Income Tax and VAT assessment arising from PPC's alleged undeclared sales amounting to ₱5,881,234,85.

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[58] CTA E.B. Case Nos. 1117 and 1119, 21 September 2015.
[59] Emphasis supplied.

In support of the assessment, the CIR explained that upon the BIR's verification, it noted that PPC had a negative cash balance amounting to ₱5,881,234,85 for the month of January 2011, which it construed as PPC's undeclared sales.

On the one hand, PPC asserts that a negative balance does not necessarily equate to undeclared sales. PPC explains that the negative cash balance is due to the separation payments it made to its redundant employees. It clarifies that as a remedial measure to make its cash balance positive, its shareholders advanced cash to PPC amounting to ₱30,000,000.00. To support the cash advance, PPC presented its Secretary Certificate and Certifications dated 6 January 2011. The Court in Division found merit in PPC's explanation.

In the present Petition for Review, the CIR questions the Court in Division's reliance upon the Secretary Certificate and Certifications presented by PPC. The CIR argues that these documents are mere self-serving and should not be given any weight and credence.

However, assuming that this Court upholds the assailed Decision and Resolution, the CIR argues that the cash advance made by PPC's stockholders should be subject to documentary stamp tax, in accordance with ***Section 179 of the Tax Code***.

The CIR is mistaken.

First, the Secretary's Certificate presented by PPC is a notarized document and, therefore, is considered as a public document pursuant to ***Section 19(b), Rule 132 of the Rules of Court.***[60]

As discussed by the Supreme Court in ***Heirs of Teves v. Court of Appeals,***[61] public documents, such as the evidence presented by PPC, are presumed truthful as to its contents and are highly given weight and credence by the courts, unless clear and convincing proof is shown that the said document presented is false, to wit:

> "xxx The deeds are public documents and it has been held by this Court that **a public document executed with all the legal formalities is entitled to a presumption of truth as to the recitals contained therein. In order to overthrow a certificate of a notary public to the effect that the grantor executed a certain document and acknowledged the fact of its execution before him, mere preponderance of evidence will not suffice. Rather, the evidence must be so clear, strong and convincing as to exclude all reasonable dispute as to the falsity of the certificate.** When the evidence is conflicting, the certificate will be upheld. The appellate court's ruling that the evidence presented by plaintiffs-appellants does not constitute the clear, strong, and convincing evidence necessary to overcome

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[60] Lim v. People of the Philippines, G.R. No. 226590, 23 April 2018.
[61] G.R. No. 109963, 13 October 1999.

> the positive value of the extrajudicial settlements executed by the parties, all of which are public documents, being essentially a finding of fact, is entitled to great respect by the appellate court and should not be disturbed on appeal."[62]

In this case, the CIR failed to disprove with sufficient evidence the truthfulness of the Secretary's Certificate and Certificates dated 6 January 2011.

Second, the conclusion of the CIR that the negative balance on the taxpayer's General Ledger is tantamount to undeclared sales is not only illogical but baseless.

As correctly ruled by the Court in Division, a negative cash balance in the books of accounts only means that there are more cash disbursements as compared to cash receipts for a certain period. In this case, it shows that the BIR merely presumed that the negative balance on the General Ledger of PPC is in the nature of undeclared sales.

It should be noted that although a tax assessment has the presumption of correctness and regularity in its favor, it should be considered void if not supported by sufficient evidence or is based on mere presumptions. This rule was highlighted by the Supreme Court in ***Commissioner of Internal Revenue v. Hantex Trading***,[63] to wit:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> **However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the**

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[62] Emphasis supplied.
[63] G.R. No. 136975, 31 March 2005.

determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence."[64]

Finding the assessment without basis, such assessment in relation to the alleged undeclared sales of PPC should be cancelled and withdrawn.

As to PPC's supposed DST liability, the Court *En Banc* finds that it is already too late in the day to raise this as an issue, considering that the alleged DST liability is not part of the assessment of the CIR.

For an assessment for deficiency taxes to be considered valid, ***Section 228 of the Tax Code***[65] requires the CIR or his duly authorized agent to inform the taxpayer of the assessment in writing of the law and the facts on which it was made. Without such notice, any tax assessment against the taxpayer is deemed void.

Hence, without such required valid assessment, the Court cannot rule on the alleged deficiency DST without violating PPC's due process.

PPC has no unsupported CWT.

In maintaining the assessment for unsupported CWT, the CIR opined that based on his audit investigation, PPC was only able to submit its Certificate of Creditable Income Tax Withheld ("BIR Forms No. 2307") in the amount of ₱1,621,928.00 resulting to a difference of ₱8,089.00 which he disallowed pursuant to Section 58(B) of the Tax Code.

However, during trial, PPC was able to submit BIR Forms No. 2307 pertaining to the alleged unsupported CWT amounting to ₱8,089.00. Hence, we find no reason to uphold the assessment.

The Court in Division correctly ruled on the Disallowed Tax Credits over succeeding tax quarters of PPC amounting to ₱29,098,638.87.

A perusal of the FDDA shows that the Disallowed Tax Credits over succeeding tax quarters amounting to ₱29,098,638.87 (hereinafter referred to as "Disallowed Tax Credits") is not an assessment item. However, in the assailed Decision, the Court in Division noted that the CIR failed to factor in the Disallowed Tax Credits in the computation of PPC's alleged deficiency

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64 Emphasis supplied.

65 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:
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.

Income Tax Liability, which leads to the conclusion that he is in effect disallowing the same.

Finding no legal and factual bases to disallow the Disallowed Tax Credits, the Court in Division factored in or added back the Disallowed Tax Credit of PPC in the computation of the latter's Income Tax Liability.

The CIR now explains that contrary to the findings of the Court in Division, he added back the Disallowed Tax Credit in the computation of PPC's Income Tax Liability in the FDDA.

The CIR's position is without merit. A perusal of the FDDA shows the computation made by the CIR, indeed, failed to consider the Disallowed Tax Credit of PPC. Hence, this Court upholds the computation made by the Court in Division, to wit:

Sales		₱ 6,984,198.28
Less: Cost of Sales		22,023,698.02
Income from Operation		₱ (15,039,499.74)
Add: Other Taxable Income not Subjected to Final Tax		7,194,656.52
Total Gross Income		₱ (7,844,843.22)
Less: Allowable Deductions		8,313,430.70
Net Taxable Income		₱ (16,158,273.92)
Tax Due		-
Less: Tax Credits/Payments		
Prior year's excess tax credit	₱ 27,468,608.88	
Tax Credit claimed during the year	1,630,017.00	
Total	₱ 29,098,625.88	
Less: Disallowed CWT-Prior Years	495,581.64	
Excess Tax Credits/Overpayments		**₱ (28,603,044.24)**

Based on the foregoing computation, after considering the improper deduction of the Disallowed Tax Credits amounting to ₱29,098,638.87 and the assessment of the CIR pertaining to the disallowed CWT covering prior years amounting to ₱495,581.64, the Court finds that PPC has no Deficiency Income Tax Due and even has excess tax credits of ₱28,603,044.24.

The Court in Division correctly ruled to add back the disallowed excess input tax amounting to ₱2,119.18.

Similar to the case of the Disallowed Tax Credit, the CIR, in its computation of PPC's VAT liability deducted from its total input VAT an amount of ₱2,119.18 described in the FDDA as "Excess Input Tax," which effectively disallows the same.

Considering that the CIR failed to justify the reason for deducting the Excess Input Tax, the Court in Division added back the Excess Input Tax.

The CIR explains that he was able to add back the Excess Input Tax in the computation of PPC's VAT Liability, which after consideration of the FDDA was proven false.

Hence, after review of the records, the Court *En Banc* upholds the computation made by the Court in Division.

PPC is liable to pay deficiency and delinquency interests.

Having sustained the assessment against PPC, we find no merit to its argument that it is not liable to pay deficiency and delinquency interest.

Deficiency and delinquency interests are defined under ***Section 249 of the TRAIN Law***, to wit:

> (B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, **which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes sooner.**
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (1) The amount of the tax due on any return to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing **in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax**.[66]

In ***Takenaka Corporation Philippine Branch v. CIR.***,[67] the Supreme Court explained when deficiency and delinquency interest are imposed to a taxpayer, to wit:

> "The NIRC is clear. It imposes ***deficiency interest at the rate of 20% per annum on any deficiency in the tax due from the date prescribed for its payment under the relevant tax law until full payment thereof.*** In addition, the NIRC imposes **delinquency interest at the rate of 20% per annum on any deficiency tax, or any surcharge or interest thereon from its due date, appearing in the notice and demand of respondent, until the amount is fully paid.** Failure to pay the deficiency tax assessed,

[66] Emphasis supplied.
[67] G.R. No. 211589, 12 March 2018.

including any surcharge or interest thereon, within the time prescribed for its payment justifies the imposition of delinquency interest."[68]

Hence, considering that the Court in Division partially upheld the assessment of the CIR, we find PPC liable for both deficiency and delinquency interest. However, considering the effectivity of the TRAIN Law which prohibits the imposition of both interests, the computation of its interest starting 1 January 2018 will only be for delinquency interest at the rate of 12%.

WHEREFORE, premises considered, the instant Petitions for Review filed by the Parity Packaging Corporation and the Commissioner of Internal Revenue are hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 20 June 2018, and the Resolution, dated 6 September 2018, promulgated by the Court in Division are hereby **AFFIRMED** with **MODIFICATION** with regard to the computation of interest.

Parity Packaging Corporation is **ORDERED** to **PAY** the Bureau of Internal Revenue basic deficiency value-added tax and withholding tax on compensation, 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, until 31 December 2017, computed as follows:

	VAT	WTC	TOTAL
Basic Tax Due	₱2,428,086.68	₱1,779.96	₱2,429,866.64
Surcharge (25%)	607,021.67	444.99	607,466.66
Subtotal	**₱3,035,108.35**	**₱2,224.95**	**₱3,037,333.30**
20% Deficiency Interest: From 26 January 2012 to 31 March 2016 (P2,428,086.68 x 20% x 1527 days/365 days)	2,031,610.06	-	2,031,610.06
From 16 January 2012 to 31 March 2016 (P1,779.96 x 20% x 1537 days/365 days)	-	1,499.07	1,499.07
TOTAL AMOUNT DUE AS OF 31 MARCH 2016	**₱5,066,718.41**	**₱3,724.02**	**₱5,070,442.43**
20% Deficiency Interest: From 1 April 2016 to 31 December 2017 (P2,428,086.68 x 20% x 640 days/365 days)	851,493.41	-	851,493.41
From 1 April 2016 to 31 December 2017 (P1,779.96 x 20% x 640 days/365 days)	-	624.21	624.21
20% Delinquency Interest From 1 April 2016 to 31 December 2017 (P5,066,718.41 x 20% x 640 days/365 days)	1,776,821.80		1,776,821.80

[68] Emphasis supplied.

From 1 April 2016 to 31 December 2017 (P3,724.02 x 20% x 640 days/365 days)		1,305.96	1,305.96
Total	**₱7,695,033.62**	**₱5,654.19**	**₱7,700,687.81**

In addition, Parity Packaging Corporation is **ORDERED** to **PAY** delinquency interest at the rate of 12% on the total unpaid amount as of 31 March 2016[69] in the amount of ₱5,070,422.43 as determined above, computed from 1 January 2018 until full payment thereof.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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69 Deadline for payment stated in the FDDA, Exhibit "P-1".

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice