REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SOMNOMED PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10845**
	Members:
- versus -	**REYES-FAJARDO,** *Chairperson, and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 19 2026 2:00 p.m.

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review filed on April 27, 2022, by SomnoMed Philippines, Inc. seeks to withdraw and cancel the deficiency income tax (IT), expanded withholding tax (EWT), fringe benefit tax (FBT), and withholding tax on compensation (WTC) assessments, in the aggregate amount of ₱14,220,574.50,[1] inclusive of surcharges, interests, and compromise penalties for the fiscal year (FY) ending June 30, 2018.

FACTS

Petitioner SomnoMed Philippines, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 3rd Floor, Allegro Center, 2284 Chino Roces Avenue, Pasong Tamo Extension, Makati City 1231.[2]

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1 Prayer, Petition for Review, Docket - Vol. I, p. 20.

2 Par. 1, Admitted Facts, Joint Stipulation of Facts and Issue (JSFI), Docket - Vol. I, p. 333; and Exhibit "P-4," Docket - Vol. I, p. 53.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) and his authorized representatives, with authority, among others to examine taxpayers, assess the correct amount of tax and to abate or cancel tax liabilities when unjustly assessed.[3]

On July 1, 2021, petitioner received[4] Final Assessment Notices and Formal Letter of Demand with Details of Discrepancies (FANs/FLD),[5] issued by the Regional Director (RD) of Revenue Region No. 8A,[6] containing the following deficiency tax assessments, including surcharge and interest,[7] to wit:

Type of Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱2,126,679.06	₱711,767.44		₱2,838,446.50
EWT	524,083.03	188,497.59		712,580.62
WTC	927,911.76	340,149.57		1,268,061.33
FBT	5,821,336.40	2,093,778.03	1,455,341.60	9,370,486.03
			TOTAL	**₱14,189,574.50**

The FANs/FLD also imposed compromise penalties on the petitioner in the total amount of ₱31,000.00.[8]

On August 2, 2021, petitioner filed its Protest with Request for Reinvestigation[9] to said FANs/FLD.

On August 11, 2021, the RD granted petitioner's request for reinvestigation and instructed petitioner to submit supporting documents within sixty (60) days from the date of filing of protest.[10]

On September 29, 2021, petitioner submitted its additional supporting documents.[11]

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3 Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 333.

4 Exhibits "R-19-A," "R-14-A," "R-15-A," "R-16-A," "R-17-A," and "R-18-A," BIR Records, pp. 1403 - 1407.

Exhibit "P-8," Docket – Vol. I, pp. 64 to 76; Exhibits "R-11" to "R-18," BIR Records, pp. 1395 - 1406.

6 Exhibit "P-8," Docket – Vol. I, pp. 64 to 76; Exhibits "R-11" to "R-18," BIR Records, pp. 1395 - 1406.

7 See par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 334.

8 Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 334.

9 Exhibit "P-9," Docket – Vol. I, pp. 77 to 86; and Exhibit "R-20," BIR Records, pp. 1987 - 1996.

10 Par. 10, Petition for Review, vis-à-vis par. 7, Answer (With Special and Affirmative Defenses), Docket – Vol. I, pp. 8 and 142, respectively; Exhibit "P-10," Docket – Vol. I, pp. 89 to 90; and Exhibit "R-21," BIR Records, pp. 2006.

11 Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 334; Exhibit "P-11," Docket – Vol. I, pp. 91-110.

On April 27, 2022, without action from RD, petitioner filed its Petition for Review.[12]

On March 28, 2023, the Pre-Trial Conference was set and held.[13]

On April 27, 2023, the parties submitted their Joint Stipulation of Facts and Issues,[14] which was approved by the Court in a Resolution dated May 9, 2023.[15] The Pre-Trial Order dated June 23, 2023 was then issued.[16]

Trial ensued.

Petitioner presented: (1) Ms. Nenez Jo Dequina,[17] petitioner's General and Cost Accounting Officer; and (2) Ms. Carla A. Bawa,[18] the Court-commissioned Independent Certified Public Accountant (ICPA Bawa),[19] as its witnesses.

On October 19, 2023, petitioner filed its Formal Offer of Evidence,[20] to which respondent filed his Comment (To Petitioner's Formal Offer of Evidence dated October 19, 2023) on October 26, 2023.[21]

By Resolution dated January 18, 2024,[22] the Court admitted petitioner's offered exhibits, except Exhibit "P-20-3," for not being found in the records of the case.

On February 5, 2024, petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 18 January 2024),[23] to which

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12 Docket - Vol. I, pp. 6 - 24.
13 Notice of Pre-Trial Conference dated February 7, 2023, Docket - Vol. I, pp. 180 - 182; Minutes of the hearing held on, and Order dated, March 28, 2023, Docket - Vol. I, pp. 304 - 306, and 310 - 312.
14 Docket - Vol. I. pp. 333 - 336.
15 Docket - Vol. I, pp. 338.
16 Docket - Vol. I, pp. 341 - 364.
17 Exhibit "P-13," Docket - Vol. I, pp. 27 - 47; Minutes of the hearing held on, and Order dated, August 8, 2023, Docket - Vol. I, pp. 400, and 402 - 403, respectively.
18 Exhibit "P-69," Docket - Vol. I, pp. 468 - 490; Minutes of the hearing held on, and Order dated, October 4, 2023, Docket - Vol. I, pp. 492 - 494.
19 Oath of Commission dated August 8, 2023, Docket - Vol. I, pp. 401; and Minutes of the hearing held on, and Order dated, August 8, 2023, Docket - Vol. I, pp. 400, and 402 - 403, respectively.
20 Docket - Vol. I, pp. 495 to Vol. II, p. 524.
21 Docket - Vol. II, pp. 525 - 526.
22 Docket - Vol. II, pp. 530 - 531.
23 Docket - Vol. II, pp. 532 - 536.

respondent filed his Comment/Opposition [To Petitioner's Motion for Partial Reconsideration (of the Resolution dated 18 January 2024)] on February 20, 2024.[24]

By Resolution dated April 30, 2024,[25] the Court granted said Motion for Partial Reconsideration, and Exhibit "P-20-3" was admitted as petitioner's evidence.

Respondent presented Revenue Officer Genielee D. Pascasio (RO Pascasio).[26]

On July 23, 2024, respondent filed its Formal Offer of Evidence (With Attached Certified True Copy of "R-1"),[27] to which petitioner filed its Comment/Opposition (to Respondent's Formal Offer of Evidence dated 25 July 2024) on August 9, 2024.[28]

By Resolution dated November 8, 2024, the Court admitted all of respondent's offered exhibits.[29]

On December 12, 2024, petitioner filed its Memorandum,[30] while the respondent's Memorandum was posted on December 11, 2024.[31]

On January 20, 2025, the case was submitted for decision.[32]

ISSUE

Is petitioner liable for the assessed deficiency income tax and withholding tax for fiscal year 2018?[33]

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24 Docket - Vol. II, pp. 541 - 543.
25 Docket - Vol. II, pp. 549 - 551.
26 Exhibit "R-22," Docket - Vol. I, pp. 230 - 247; and Minutes of the hearing held on, and Order dated, July 4, 2024, Docket - Vol. II, pp. 552 - 554.
27 Docket - Vol. II, pp. 557 - 562.
28 Docket - Vol. II, pp. 566 - 577.
29 Docket - Vol. II, pp. 582 - 583.
30 Docket - Vol. II, pp. 584 - 635.
31 Docket - Vol. II, pp. 637 - 645.
32 Minute Resolution dated January 20, 2025, Docket - Vol. II, p. 649.
33 Issue, JSFI, Docket - Vol. I, p. 335.

ARGUMENTS

Petitioner contends that the Court acquired jurisdiction over the appeal. It maintains that respondent erroneously assessed deficiency IT, EWT, and WTC against petitioner for FY 2018. It further argues that respondent erroneously imposed compromise penalties against petitioner.

Respondent retorts that: (1) the burden of proof to establish the right to tax exemption lies with the taxpayer-claimant; (2) the assessments are presumed correct and official functions are regularly done; and (3) petitioner is liable for IT, EWT, WTC, FBT, and these tax liabilities are subject to imposition of statutory increments.

RULING

We partly grant the Petition.

First. Did We obtain jurisdiction over CTA Case No. 10845?

The answer is, Yes.

Petitioner filed its Petition for Review before this Court within the thirty (30)-day period, counted from the expiration of the one hundred eighty (180)-day period within which the Bureau of Internal Revenue (BIR) could have acted on the protest. Petitioner submitted its additional supporting documents relative to its request for reinvestigation on September 29, 2021.[34] Counting one hundred eighty (180) days, the RD had until March 28, 2022, to act thereon. There being no action from the RD, the protest is deemed denied. Timely enough, petitioner filed the Petition for Review on April 27, 2022, well within thirty (30) days from March 28, 2022, thus clothing the Court with jurisdiction over CTA Case No. 10845.

Section 7, in relation to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282,[35] provides:

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[34] *Supra* at note 11.

[35] An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

...

2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;

...

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, . . . 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.**[36]

In relation to the period fixed by law for action in case of disputed assessments, Section 228 of the National Internal Revenue Code of 1997 (NIRC), as amended, states:

SECTION 228. Protesting of Assessment.

...

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.

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 the one**

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[36] Emphasis ours.

> **hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable.[37]

To implement the remedy of the taxpayer in cases of inaction by CIR, Revenue Regulations (RR) No. 18-2013 was issued, to wit:

> 3.1.4 Disputed Assessment. — ...
>
> **If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted** from the date of filing of the protest in case of a request reconsideration; or **from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation**, the taxpayer may either: **(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period**; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

Indeed, if the CIR or his authorized representative failed to act upon the protest within one hundred eighty (180) days from submission of the required supporting documents, it is deemed a denial of the protest. The taxpayer then may appeal to the CTA within thirty (30) days from the lapse of said one hundred eighty (180)-day period. In this case, petitioner filed the Petition for Review on April 27, 2022, well within thirty (30) days from March 28, 2022, from the lapse of the one hundred eighty (180)-day period.

Next. Is petitioner liable for deficiency IT, EWT, WTC, FBT, covering FY 2018 as found by respondent?

Yes, albeit in part.

Our findings on each item of deficiency internal revenue tax, and corresponding justifications therefor, shall proceed in *seriatim*.

Petitioner is not liable for deficiency FBT.

Respondent assessed petitioner for 2018 deficiency FBT, as follows:[38]

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[37] Emphasis ours.

[38] Schedule 6, Annex A, Exhibit "P-8", Docket - Vol. I, pp. 70 and 75.

Disallowed Incentives due to non-withholding		₱ 12,370,403.61
Divided by: Percentage Divisor		68%
Grossed-Up Monetary Value		₱ 18,191,770.01
Multiplied by: FBT Rate		32%
Basic Tax Due		₱ 5,821,366.40
Add: 25% Surcharge	₱ 1,455,341.60	
12% Interest (08.01.2018 to 07.30.2021)	2,093,778.03	3,549,119.63
TOTAL AMOUNT DUE		**₱ 9,370,486.04**

The assessed amount for FBT is traced from the following accounts for incentives and bonuses:[39]

2018 Audited Trial Balance (Exhibit "P-26")			**2018 Audited Financial Statements** (Exhibit "P-25")	
Account Code	**Account Description**	**Amount**	**Presentation**	**Amount**
5-1080	Incentives / Bonuses	₱11,274,803.52	Part of Cost of sales – Direct Labor amounting to ₱89,337,617.00 with account codes 5-1080 and 5-1085 per **Table 18** of this ICPA report	₱12,370,403.61
5-1085	Incentives & Bonuses – Minimum	1,095,600.09		
Total		**₱12,370,403.61**		**₱12,370,403.61**

Respondent maintains[40] that petitioner failed to withhold FBT on the foregoing incentives totaling ₱12,370,403.61.

Petitioner counters that the amount pertains to payments of productivity bonuses, which were subjected to WTC.[41] It avers that it pays monthly performance bonuses pursuant to its Efficiency Productivity System (EPS), effective April 2010, which is "subject to withholding tax on compensation income on amounts in excess of *de minimis* threshold."[42] As proof, petitioner submitted SomnoMed Guidance Document on Productivity Point System.[43]

We cancel respondent's FBT assessment.

Section 33(B) and (C) of the NIRC, as amended, defines fringe benefit and provides instances when such benefits are not subject to FBT, to wit:

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39 Table 21, Exhibit "P-14," Docket - Vol. I, p. 429.

40 Annex A, Details of Discrepancies, Exhibit "P-8," Docket - Vol. I, p. 73, and Exhibit "R-13," BIR Records, p. 1798.

41 Exhibit "P-9," Docket - Vol. I, pp. 79 - 80.

42 Q&A 35 to 40, Exhibit "P-13," Docket - Vol. I, pp. 32 to 33. See also Exhibit "P-37," USB (Exhibit "P-70").

43 Exhibits "P-51" and "P-37," USB (Exhibit "P-70").

SEC. 33. *Special Treatment of Fringe Benefit.* -

(B) Fringe Benefit Defined. — For purposes of this Section, the term '**fringe benefit**' means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee **(except rank and file employees as defined herein)** such as, but not limited to, the following: ... [44]

(C) *Fringe Benefits Not Taxable.* - The following fringe benefits are not taxable under this Section:

(1) Fringe benefits which are authorized and exempted from tax under special laws;

(2) Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans;

(3) **Benefits given to the rank and file employees, whether granted under a collective bargaining agreement or not; and**

(4) ***De minimis* benefits as defined in the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.**[45]

RR No. 3-98,[46] which implements Section 33 of the NIRC, as amended, clarifies that FBT, "cover[s] only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file."

Relatedly, RR No. 1-2015[47] amended RR No. 3-98, by including benefits from productivity incentive schemes as *de minimis* benefits. Accordingly, productivity incentives granted to managerial or supervisory employees are exempt from FBT only up to the ₱10,000.00 annual ceiling (combined with CBA benefits). Any excess over said threshold no longer qualifies as *de minimis* and may be subject to FBT, *viz.*:

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44 Emphasis ours.
45 Emphasis ours.
46 IMPLEMENTING SECTION 33 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 RELATIVE TO THE SPECIAL TREATMENT OF FRINGE BENEFITS.
47 FURTHER AMENDMENTS TO REVENUE REGULATIONS NOS. 2-98 AND 3-98, AS LAST AMENDED BY REVENUE REGULATIONS NOS. 5-2008, 5-2011, WITH RESPECT TO "DE MINIMIS BENEFITS.

> ...
> *(C) Fringe Benefits Not Subject to Fringe Benefit Tax.* - ...
>
> (k) Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and **productivity incentive schemes** provided that the total annual monetary value received from both CBA and productivity incentive schemes combined, **do not exceed ten thousand pesos (Php10,000.00) per employee per taxable year;**

From the foregoing, the following legal parameters are drawn with respect to productivity incentives: (1) those granted to rank-and-file employees fall outside the coverage of FBT under Section 33 of the NIRC, as amended; and (2) those granted to supervisory or managerial employees may be subject to FBT.

A review of petitioner's evidence[48] shows that the bonuses granted are productivity incentives awarded to production employees who exceed the company's minimum output standards. The incentives are given to both rank-and-file, and supervisory employees, namely the Leadman, Section Head, and Production Supervisor.[49]

Despite this, RO Pascasio subjected the *entire* amount of productivity incentives granted to petitioner's employees to FBT, without regard to the statutory exclusion of rank-and-file employees from its coverage. More tellingly, RO Pascasio's testimony on record reveals a misunderstanding of the proper tax treatment of the productivity incentives:

Atty. Villavicencio:	In general, [*sic*] are productivity incentive schemes included as fringe benefit?
Witness:	No, attorney.
Atty. Villavicencio:	And what tax then, are productivity incentive scheme should be subjected to?
Witness:	This should be included in the, this will be included in the salary subjected to withholding tax and compensation.[50]

48 *Supra* at note 44.
49 Exhibit "P-37," USB (Exhibit "P-70").
50 TSN during the hearing held on July 4, 2024, pp. 9 - 10.

To be exact, she assessed the entire productivity incentives as fringe benefits subject to FBT. On the other hand, she stated that productivity incentives are not fringe benefits and should instead be treated as part of salary, subject to withholding tax on compensation.

This equivocation as to the proper tax treatment of productivity incentives, coupled with the failure to segregate the amounts attributable to rank-and-file and supervisory employees, impressed upon Our mind that respondent failed to sufficiently establish the legal and factual bases for the subject FBT assessment.

Meanwhile, petitioner, through the submission of its Guidance Document on Productivity Point System,[51] was able to establish that the benefits from the productivity incentive schemes cover both rank-and-file and supervisory employees. It is now incumbent upon respondent to prove that it correctly subjected the entirety of the productivity incentives to FBT.

Asian Transmission Corporation v. Commissioner of Internal Revenue (ATC)[52] instructs that "the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims..."

Contrary to the mandate of *ATC*, respondent did not offer evidence to demonstrate that the entire amount of productivity incentives was exclusively granted to managerial or supervisory employees, or that the same properly falls within the ambit of FBT. Such failure to present evidence is fatal respondent's cause.

To be clear, the presumption of the correctness of the assessment does not apply when it is arbitrarily issued, without foundation and rational basis.[53] Respondent's conundrum as to the proper tax treatment of the productivity incentives reveals lack of foundation and rational basis for the FBT assessment. *Ergo*, the presumption of correctness ordinarily accorded to tax assessments is inapplicable.

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51 *Supra* at note 44.

52 G.R. No. 242489, November 8, 2023, citing *Dizon v. Court of Tax Appeals*, G.R. No. 140944, April 30, 2008.

53 *Commissioner Of Internal Revenue v. Sps. Magaan*, G.R. No. 232663. May 03, 2021 citing *Commissioner of Internal Revenue v. Hontex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

All said, the FBT assessment cannot be sustained.

Petitioner is liable for deficiency income tax of ₱8,245.83.

Respondent assessed petitioner of 2018 deficiency IT amounting to ₱2,838,446.50, including increments, as follows:

Gross Income per return		₱ 33,320,544.00
Add: Adjustments/Disallowances		
Disallowed Fringe Benefits due to Non-Withholding	₱ 12,370,403.61	
Disallowed Direct Costs due to Non-Substantiation (Schedule 1)	12,373,369.15	
Disallowed Salaries, Wages and Benefits due to Non-Withholding (Schedule 2)	8,900,782.25	33,644,555.01
		₱ 66,965,099.01
Income Tax Due (5% of Gross Income)		₱ 3,348,254.95
Less: Tax Payments per returns	₱ 1,444,067.20	
2% Payable to LGU	221,960.00	
Total	₱ 1,666,027.20	
Less Disallowed Income Tax Payments (Schedule 3)	444,451.31	1,221,575.89
Basic Tax Due		₱ 2,126,679.06
Add: Interest (10.16.2018 to 07.30.2021)		711,767.44
TOTAL AMOUNT DUE		**₱ 2,838,446.50**

The assessment stemmed from four (4) items of disallowances, namely: (a) disallowed fringe benefits due to non-withholding; (b) disallowed direct costs due to non-substantiation; (c) disallowed salaries, wages, and benefits due to non-withholding; and (d) disallowed income tax payments. We address each in turn:

a. Disallowed fringe benefits due to non-withholding – ₱12,370,403.61

Respondent maintains[54] that petitioner failed to withhold FBT on the productivity incentives given, amounting to ₱12,370,403.61, contrary to Section 34(K)[55] of the NIRC, as amended. As this amount

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54 Annex A, Details of Discrepancies, Exhibit "P-8," Docket - Vol. I, p. 73, and Exhibit "R-13," BIR Records, p. 1798.

55 Section 34(K) of the NIRC, as amended, provides:
Additional Requirements for Deductibility of Certain Payments. — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code.

forms part of petitioner's total direct labor expenses, respondent disallowed it as a deduction from petitioner's gross income.

As previously resolved, petitioner is not liable for FBT on subject productivity incentives. Consequently, the corresponding disallowance for its alleged non-withholding lacks both factual and legal basis and must likewise be cancelled.

b. Disallowed Salaries, Wages, and Benefits due to Non-Withholding - P8,900,782.25

Respondent reconciled petitioner's Salaries, Wages and Benefits claimed per Income Tax Return (ITR) against the Monthly Remittance Returns of Income Taxes Withheld on Compensation of Employees, and found that ₱8,900,782.25 was not subjected to withholding tax, the details of which are as follows:[56]

Direct Labor		₱89,337,617.00	
Less: Incentives	₱12,370,403.61		
Government Contributions	4,447,229.15	16,817,632.76	₱ 72,519,984.24
Add: Salaries, Wages and Benefits per AFS[57]		₱ 9,575,639.00	
Less: Incentives	₱ 93,388.00		
Government Contributions	112,428.00	205,816.00	9,369,823.00
Total Salaries, Wages and Benefits per ITR/ AFS			₱ 81,889,807.24
Salaries, Wages and Benefits per 1601-C			
Taxable		₱50,360,891.81	
Non-Taxable		13,258,310.18	63,619,201.99
Total Salaries, Wages and Benefits not subjected to withholding			₱ 18,270,605.25
Less: Salaries, Wages and Benefits not claimed as deduction			9,369,823.00
Disallowed Salaries, Wages and Benefits due to Non-Withholding			**₱8,900,782.25**

Petitioner explains that the discrepancy arose because it remitted the WTC for the last three (3) months of FY 2018 using BIR Form 0605,[58] due to the unavailability of BIR Form 1601-C during that period.[59]

We cancel respondent's disallowance.

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56 Schedule 2, Annex - A, Exhibit "P-8," Docket - Vol. I, pp. 73 to 74, and Exhibit "R-13," BIR Records, pp. 1797-1798.
57 Audited Financial Statements.
58 Paragraph 39, Petition for Review, Docket - Vol. I, p. 16.
59 Q&A79, Exhibit "P-13," Docket - Vol. I, p. 40.

As an export manufacturing enterprise registered with the Philippine Economic Zone Authority (PEZA),[60] petitioner is granted a five percent (5%) Gross Income Tax (GIT) incentive.[61] Under this regime, petitioner's income tax is computed at five percent (5%) of its gross income, defined as gross sales or revenues less cost of sales or direct costs.

Section 3 of RR No. 11-2005, provides that under this regime, operating expenses are not deducted from gross sales or revenue to arrive at the gross income, *viz.*:

> SECTION 3. *Gross Income Earned* - For purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term **'gross income earned'** shall refer to **gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.**
>
> For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprises:
>
> 1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:
>
>   - Direct salaries, wages or labor expenses
>   - Production supervision salaries
>   - Raw materials used in the manufacture of products
>   - Decrease in Goods in Process Account (Intermediate goods)
>   - Decrease in Finished Goods Account
>   - Supplies and fuels used in production
>   - Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods
>   - Rent and utility charges associated with building, equipment and warehouses used in production
>   - Financing charges associated with fixed assets used in production the amount of which were not previously capitalized...[62]

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[60] Exhibit "P-2," Docket - Vol. I, p. 49.

[61] Paragraph 2, Petition for Review, Docket - Vol. I, p. 7. See also Section 24, Republic Act No. 7916.

[62] Emphasis ours.

From the foregoing, it is clear that operating expenses are not deductible in determining the tax base under the five percent (5%) GIT regime. *A fortiori*, any disallowance of such expenses does not affect taxpayer's income tax liability under such regime. Here, the subject disallowance was traced from petitioner's operating expenses.[63] Thus, it has no material effect to petitioner's income tax liability.

Besides, petitioner had an existing and unclaimed deduction of ₱9,369,823.00, sufficient to answer for respondent's entire disallowance of ₱6,405,453.67. ICPA Bawa's recomputation[64] is hereby adopted, to wit:

Direct Labor		₱89,337,617.00	
Less: Incentives	₱ -		
Government contributions	4,447,229.15	4,447,229.15	₱84,890,387.85
Add: Salaries, Wages and Benefits per AFS		9,575,639.00	
Less: Incentives	93,388.00		
Government contributions	112,428.00	205,816.00	9,369,823.00
Total Salaries, Wages and Benefits per ITR/AFS			94,260,210.85
Salaries, Wages and Benefits per BIR Form No. 1601-C and 0605			
Taxable		67,679,910.48[65]	
Non-Taxable		20,174,846.70[66]	87,854,757.18
Total Salaries, Wages and Benefits not subjected to Withholding			**6,405,453.67**
Less: Salaries, Wages and Benefits not claimed as deduction			**9,369,823.00**
Disallowed Salaries, Wages and Benefits due to Non-Withholding			**(₱2,964,369.33)**

For these reasons, this item of assessment should be cancelled for lack of factual and legal bases.

c. Disallowed Direct Costs due to Non-substantiation – ₱12,373,369.15

Respondent found that petitioner did not provide supporting documents to support the following expenses: (1) government contributions amounting to ₱4,447,229.15; and (2) meals amounting to ₱7,926,140.00. This resulted in the disallowance of direct costs totaling ₱12,373,369.15.[67] These amounts were culled from the petitioner's AFS, as follows:[68]

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63 Table 18, Exhibit "P-14," Docket - Vol. I, pp. 423 - 424.
64 Table 39, Exhibit "P-14," Docket - Vol. I, p. 441.
65 ₱50,360,891.81 plus ₱17,319,018.67 equals ₱67,679,910.48.
66 ₱13,258,310.18 plus ₱6,916,536.52 equals ₱20,174,846.70.
67 Schedule 1 Annex - A, Exhibit "P-8," Docket - Vol. I, p. 73, and Exhibit "R-13," BIR Records, p. 1798.
68 Table 30, Exhibit "P-14," Docket - Vol. I, p. 434.

2018 Audited Trial Balance (Exhibit "P-26")			2018 Audited Financial Statements (Exhibit "P-25")	
Account Code	**Account Description**	**Amount**	**Presentation**	**Amount**
5-5100	SSS Premium Expense	₱ 3,472,883.20	Part of Cost of sales - Direct Labor amounting to ₱89,337,617.00 with account codes 5-5100, 5-5200, 5-5300, and 5-5400 per Table 18 of this ICPA report	₱ 4,447,229.15
5-5200	ECC Premium Expense	82,500.00		
5-5300	PhilHealth Premium Expense	600,045.95		
5-5400	PAG-IBIG Fund Premium Expense	291,800.00		
Subtotal		*4,447,229.15*		*4,447,229.15*
5-1400	Meals (direct)	7,926,140.00	Cost of sales - Meals	7,926,140.00
Total		**₱12,373,369.15**		**₱12,373,369.15**

Government Contributions - ₱4,447,229.15

After examination of petitioner's accounts and documents,[69] ICPA Bawa found that ₱80,327.83 of petitioner's total government contributions reported in its AFS is unsubstantiated.[70] However, it was noted that petitioner's government contributions are not part of its direct costs but part of its operating expenses.[71] Hence, it does not have a material effect on the computation of the income tax under the five percent (5%) GIT regime. Accordingly, the disallowance lacks legal and factual basis and must be cancelled.

Meals - ₱7,926,140.00

Petitioner grants a free meal benefit pursuant to its Corporate Rules and Regulations on Free Meal Benefit dated July 1, 2013.[72] After ICPA Bawa's examination of petitioner's various official receipts (ORs) and invoices,[73] relative thereto, the latter's findings are as follows:[74]

	Summary of Verifications	**Annex Reference**	**Amount**
I.	*Properly substantiated*		
1.	Meals supported by original official receipts	*Annex 9.1*	₱1,991,923.00
2.	Meals supported by original official receipts with alteration and countersign on Petitioner's name	*Annex 9.2*	340,830.00
3.	Meals supported by original official receipts with alteration and countersign on Petitioner's address	*Annex 9.3*	4,762,700.00
4.	Meals supported by original official receipts with alteration and countersign on Petitioner's name and address	*Annex 9.4*	665,779.00

69 Table 32, Exhibit "P-14," Docket - Vol. I, p. 436. See also Annex 8, USB (Exhibit "P-70").
70 Table 34, Exhibit "P-14," Docket - Vol. I, p. 437. See also Annex 8, USB (Exhibit "P-70").
71 Table 18, Exhibit "P-14", Docket - Vol. I, pp. 423 - 424.
72 Exhibit "P-29", USB (Exhibit "P-70").
73 Exhibits "P-23" to "P-23-31," "P-46" to "P-46-17," "P-47" to "P-47-7," and "P-48" to "P-48-25," USB (Exhibit "P-70").
74 Table 35, Exhibit "P-14," Docket - Vol. I, pp. 437 to 438.

	Summary of Verifications	Annex Reference	Amount
Subtotal			*7,761,232.00*
II.	*Other Findings*		
1.	Meals supported by original official receipts with incomplete Petitioner's name and without Petitioner's address and TIN	*Annex 9.5*	3,400.00
2.	Meals supported by original sales invoice with incomplete Petitioner's name and without Petitioner's address and TIN	*Annex 9.6*	63,120.00
3.	Meals supported by original sales invoice not under Petitioner's name and without Petitioner's address and TIN	*Annex 9.7*	4,971.00
4.	Meals supported by original sales invoice without Petitioner's name, address and TIN	*Annex 9.8*	25,297.00
5.	Meals supported by original tape receipts without Petitioner's TIN	*Annex 9.9*	415.00
6.	Meals supported by original tape receipts without Petitioner's name, address and TIN	*Annex 9.10*	18,533.80
7.	Meals supported by unreadable tape receipt	*Annex 9.11*	254.00
8.	Meals supported by original delivery receipts	*Annex 9.12*	10,688.00
9.	No supporting documents available at the time of verification	*Annex 9.13*	38,229.20
Subtotal			*164,908.00*
TOTAL			**₱7,926,140.00**

The foregoing findings are in order.

Petitioner's meal expenses are part of petitioner's cost of sales, deductible from its gross income. It follows that meal expenses which are not properly substantiated should be disallowed. Thus, of the total disallowed meal expenses amounting to ₱7,926,140.00, ₱164,908.00, representing unsubstantiated meal expenses, should be disallowed.

d. Disallowed Income Tax Payments – ₱444,451.31

Respondent's verification of petitioner's claimed income tax payments per ITR against the BIR's Integrated Tax System records showed unsupported payments amounting to ₱444,451.31. Thus, respondent assessed the same pursuant to Sections 56 and 52 of the NIRC, as amended:[75]

Tax Paid per Return	₱ 1,444,067.20
Less: Amount paid per Audit	999,615.89
Disallowed Income Tax Payments	**₱ 444,451.31**

Petitioner contends that it properly paid its income taxes to the national government through the BIR and to the local government of

[75] Schedule 3 Annex A, Exhibit "P-8," Docket - Vol. I, p. 74, and Exhibit "R-13," BIR Records, p. 1797.

Makati City through its City Treasurer, pursuant to Section 24 of Republic Act No. 7916, or the Special Economic Zone Act of 1995.[76]

We share petitioner's view.

As evidenced by its Quarterly ITRs for FY 2018, and ORs issued by the City Treasurer of Makati City, petitioner has proven that the income tax liability for the subject taxable period has been paid to the BIR and Makati City:[77]

	Exhibit Reference	Remitted to BIR	Remitted to LGU
1st quarter of FY 2018			
Payment details with transaction number of 170377188	Exhibit "P-20"	₱158,971.91	
Payment supported by Official receipt no. MKTCF3502157	Exhibit "P-41"		₱105,981.27
2nd quarter of FY 2018			
Payment details with transaction number of 181763657	Exhibit "P-20-3"[78]	234,486.41	
Payment supported by Official receipt no. MKTCF3669267	Exhibit "P-41-1"		156,324.27
3rd quarter of FY 2018			
Payment details with transaction number of 183079722	Exhibit "P-20-2"	₱273,218.57	
Payment supported by Official receipt no. MKTCF3714593	Exhibit "P-41-2"		₱182,145.72
For the FY ending June 30, 2018			
Payment details with transaction number of 185287680	Exhibit "P-21"	332,939.00	
Payment supported by Official receipt no. MKTCF3812445	Exhibit "P-41-3"		221,959.62
Total		**₱999,615.89**	**₱666,410.88**

The foregoing shows payment of ₱999,615.89 to the BIR and ₱666,410.88 to Makati City, pursuant to Section 24 of RA No. 7916.[79] The discrepancy found by respondent pertains to payments made to

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76 Paragraphs 90 to 91, *Memorandum* for Petitioner, Docket - Vol. II, pp. 610 - 611.

77 Table 41, Exhibit "P-14," Docket - Vol. I, pp. 442 - 443.

78 Should be Exhibit "P-20-1."

79 SEC. 24. Exemption from National and Local Taxes.- Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;
b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

the Makati City Treasurer not reflected in the BIR's system. Hence, the disallowance of petitioner's income tax payments should be cancelled for lack of factual basis.

Summary of petitioner's income tax liability for FY ending June 30, 2018.

Considering that all of respondent's disallowances are cancelled, except for a reduced portion of disallowed direct costs due to the non-substantiation of meal benefits, petitioner is liable for deficiency income tax for FY ending June 30, 2018, in the reduced amount of ₱8,245.83, computed as follows:

Gross Income per return		₱ 33,320,544.00
Add: Adjustments/Disallowances		
Disallowed Direct Costs due to Non-Substantiation		164,908.00
		₱ 33,485,452.00
Income Tax Due (5% of Gross Income)		₱ 1,674,272.60
Less: Tax Payments per returns	₱ 999,615.89	
2% Payable to LGU	666,410.88	1,666,026.77
Basic Tax Due		**₱ 8,245.83**

Petitioner is liable for deficiency EWT of ₱413,300.70.

Respondent compared petitioner's income payments per Financial Statements (FS) and per BIR Form 1601-E and found discrepancies on withholding taxes on (1) rental payments to Allegro Resources Corporation (ARC); and (2) professional fees. This results in 2018 deficiency EWT in the total amount of ₱712,580.62, computed as follows:[80]

Income Payments	Per FS	Per 1601-E	Discrepancy	EWT Rate	EWT Due
Rent to Allegro Center per Audit	₱14,066,179.57	₱5,529,004.40	₱8,537,175.17	5%	₱ 426,858.76
Professional Fees	1,569,799.00	921,637.17	648,161.83	15%	97,224.27
Total	₱15,635,978.57	₱6,450,641.57	₱9,185,337.00		**₱524,083.03**
Add: Interest (08.01.2018 to 07.30.2021)					188,497.59
Total Amount Due					**₱712,580.62**

80 Schedule 4, Annex A, Exhibit "P-8," Docket – Vol. I, pp. 69 and 74.

Rent to ARC

Respondent found petitioner liable for deficiency EWT of ₱426,858.76, because it failed to withhold taxes on rental payments to ARC.

Petitioner explains that the amount of ₱14,066,179.57 reported in its FS represents payments consisting of office space rental, utilities, and refundable security deposits, as summarized below:[81]

Particulars	Income Payment (Gross Amount)	Income Payment (Net of EWT)
Office Space Rental	₱ 6,010,790.94	₱ 5,710,251.39 [82]
Utilities	7,550,723.82	7,399,709.34 [83]
Refundable Security Deposit	956,218.80	956,218.80
Total	**₱14,517,733.56**	**₱14,066,179.57** [84]

According to petitioner, respondent erroneously classified the entire amount paid to ARC as income payments subject to five percent (5%) EWT.[85] It likewise claims that respondent failed to consider EWT remittances made through BIR Form No. 0605 for February to May 2018.

Petitioner is partly correct.

To verify petitioner's claims, ICPA Bawa examined petitioner's purchase ledger for ARC for FY ending June 30, 2018.[86] She relied on the purchase ledger because the monthly alphalist of payees attached to the EWT returns was not submitted during verification, and petitioner represented that no alphalist filings were made for the period.[87] Based on the documents presented, she accounted for the amount of ₱14,066,179.53 as follows:[88]

Findings	Annex Reference	Tax Base [a]	EWT Rate [b]	EWT Withheld [c = a x b]	Amount recorded in Purchase Ledger [d = a – c]
I. Accounts subjected to 5% expanded withholding tax					
a. Supported by Official receipts and Billing statements	*Annex 11.1*	₱4,656,847.17	5%	₱232,842.36	₱4,424,004.81
b. Supported by Billing statements	*Annex 11.2*	1,353,943.77	5%	67,697.19	1,286,246.58

81 Paragraph 104, Memorandum for Petitioner, Docket - Vol. II, p. 615.
82 There is a footing error on this amount and it should be ₱5,710,251.42.
83 There is a footing error on this amount and it should be ₱7,399,709.35.
84 There is a footing error on this amount, and it should be ₱14,066,179.57.
85 Paragraph 105, Memorandum for Petitioner, Docket - Vol. II, p. 615.
86 Exhibit "P-38," USB (Exhibit "P-70").
87 Exhibit "P-14," Docket - Vol. I, p. 447.
88 Table 45, Exhibit "P-14," Docket - Vol. I, p. 448.

Findings	Annex Reference	Tax Base [a]	EWT Rate [b]	EWT Withheld [c = a x b]	Amount recorded in Purchase Ledger [d = a – c]
Subtotal		*6,010,790.94*		*300,539.55*	*5,710,251.39* [89]
II. Accounts subjected to 2% expanded withholding tax					
a. Supported by Official receipts and Billing statements	*Annex 11.3*	7,550,723.82	2%	151,014.48	7,399,709.34
Subtotal		*7,550,723.82*		*151,014.48*	*7,399,709.34* [90]
III. Accounts not subjected to expanded withholding tax as this pertains to refundable security deposits					
a. Supported by Acknowledgement Receipts and Lease Contracts	*Annex 11.4*	₱956,218.80			956,218.80
Subtotal		*956,218.80*			*956,218.80*
TOTAL		**₱14,517,733.56**		**₱451,554.03**	**₱14,066,179.53** [91]

Our examination thereof, bore the following findings:

First. The ₱956,218.80 refundable security deposits are not subject to withholding tax. Petitioner submitted acknowledgment receipts[92] and lease contracts[93] with ARC, which sufficiently establish that these amounts pertain to reservation and security deposits made to ARC. Hence, this amount should be excluded from the EWT computation.

Second. We cannot verify whether the two percent (2%) withholding tax on utility payments amounting to ₱7,399,709.34 was actually remitted to the BIR. Without the alphalist, We cannot determine whether the taxes withheld from these payments were properly remitted.[94]

Third. The EWT remittances made through BIR Form No. 0605 for February to May 2018, covered by petitioner's filing of BIR Form No. 1601-EQ for the 2nd quarter of 2018,[95] were already considered by respondent. However, the withholding tax remittances for the months of February to March 2018 cannot be verified without a breakdown or alphalist since only the amount of taxes remitted is indicated in the payment form.

89 There is a footing error on this amount, and it should be ₱5,710,251.42.
90 There is a footing error on this amount, and it should be ₱7,399,709.35.
91 There is a footing error on this amount, and it should be ₱14,066,179.57.
92 Exhibits "P-56" to "P-56-2," USB (Exhibit "P-70").
93 Exhibits "P-63" to "P-63-2," USB (Exhibit "P-70").
94 Exhibits "P-17" to "P-17-6," USB (Exhibit "P-70").
95 Exhibit "P-18," USB (Exhibit "P-70").

Based on the foregoing, a discrepancy of ₱7,580,956.37 remains, and petitioner is liable for deficiency EWT thereon amounting to ₱379,047.82:

Income payments to ARC for rent:	
Per FS	₱ 14,066,179.57
Per BIR Form 1601-E	5,529,004.40
Discrepancy	₱ 8,537,175.17
Less: Reservation and security deposits (Exhibits "P-56" to "P-56-2")	956,218.80
Unaccounted discrepancy	₱ 7,580,956.37
Multiplied by EWT Rate	5%
Basic deficiency EWT due	**₱ 379,047.82**

Professional Fees

Petitioner avers that of the amount of ₱1,569,799.00 professional fees reported in its AFS, ₱379,809.30 pertains to payments to general professional partnerships (GPPs) which are not subject to withholding tax. Further, respondent allegedly erroneously subjected all of the discrepancy found to fifteen percent (15%) EWT.[96]

Petitioner is partly correct.

An examination of petitioner's EWT remittance returns shows the following income payments to professionals (*i.e.*, lawyers, CPAs, Engineers) categorized according to the alphanumeric tax codes (ATC) and corresponding EWT rates:

Exhibit No.	Taxable Period	ATC WI011/WC010 10%	ATC WC011 15%	Total
"P-17"	Jul. 2017	₱ 50,582.00		₱ 50,582.00
"P-17-1"	Aug. 2017	76,749.00		76,749.00
"P-17-2"	Sept. 2017	25,591.47		25,591.47
"P-17-3"	Oct. 2017	51,508.00	₱ 410,702.73	462,210.73
"P-17-4"	Nov. 2017	50,365.00		50,365.00
"P-17-5"	Dec. 2017	140,580.00		140,580.00
"P-17-6"	Jan. 2018	50,508.67		50,508.67
"P-18"	Apr. to Jun. 2018	65,050.30		65,050.30
	Total	**₱ 510,934.44**	**₱ 410,702.73**	**₱ 921,637.17**

96 Paragraphs 119 and 120, Memorandum for Petitioner, Docket – Vol. II, p. 621.

To verify petitioner's claims, ICPA Bawa examined supporting documents and petitioner-prepared ledger details. She found that petitioner recorded professional fee payments totaling ₱1,569,799.31, broken down as follows:[97]

Findings	Annex Reference	Tax Base	EWT Rate	EWT Withheld per Petitioner-prepared working file	Amount recorded in Petitioner-prepared 2018 Ledger details
I. Accounts subjected to 15% expanded withholding tax					
a. Supported by Agreement letter	*Annex 12.1*	₱152,931.00	15%	₱26,777.10	₱152,931.00
b. Supported by Official Receipt and Statement of Account	*Annex 12.2*	410,000.00	15%	61,605.41	410,000.00
c. No available supporting documents at the time of verification	*Annex 12.3*	449,167.70	15%	60,083.11	449,167.70
Subtotal		*1,012,098.70*		*148,465.62*	*1,012,098.70*
II. Accounts subjected to 8% expanded withholding tax					
a. Supported by Deposit slips and Payment voucher	*Annex 12.4*	19,565.22	8%	1,565.22	19,565.22
b. Supported by Payment voucher	*Annex 12.5*	22,826.09	8%	1,826.09	22,826.09
c. Supported by Official Receipt	*Annex 12.6*	90,500.00	8%	7,240.00	90,500.00
Subtotal		*132,891.31*		*10,631.31*	*132,891.31*
III. Accruals not subjected to expanded withholding tax pertaining to "BDO Roxas Cruz Tagle & Co.," a General Professional Partnership (GPP)					
a. Supported by Petitioner-prepared 2018 Ledger details and scanned copies of BIR COR and SEC Registration of the GPP	*Annex 12.7*	₱379,809.30			₱379,809.30
Subtotal		*379,809.30*			*379,809.30*
IV. Accruals not subjected to expanded withholding tax pertaining to "Tanjuatco Macababbad and Associates," a General Professional Partnership (GPP)					
a. Supported by Petitioner-prepared 2018 Ledger details, photocopy of SEC Registration of the GPP and original copy of official receipt	*Annex 12.8*	40,000.00			40,000.00
Subtotal		*40,000.00*			*40,000.00*
V. Accounts not subjected to expanded withholding tax					
a. No available supporting documents at the time of verification	*Annex 12.9*	5,000.00			5,000.00
Subtotal		*5,000.00*			*5,000.00*
TOTAL		**₱1,569,799.31**		**₱159,096.93**	**₱1,569,799.31**

Our validation thereof disclosed that:

One. Petitioner's payment of ₱419,809.30 to GPPs,[98] are not subject to withholding tax pursuant to Section 26 of the NIRC, as amended, and Revenue Memorandum Circular (RMC) Nos. 3-2012 and 60-2014.

97 Table 48, Exhibit "P-14," Docket - Vol. I, pp. 449 - 450.

98 Consisting of payments to BDO Roxas Cruz Tagle & Co. and Tanjuatco Macababbad and Associates. Exhibits "P-39," "P-40," "P-49-3" and "P-28," USB (Exhibit "P-70").

Two. Petitioner failed to account for the remaining discrepancy between the professional fees reported in its financial statements and those reflected in its EWT remittance returns. Petitioner withheld taxes from professional fee payments totaling ₱1,144,990.01. However, petitioner's EWT remittance returns reflect only ₱921,637.17. The difference cannot be verified because petitioner failed to submit a breakdown or alphalist for the alleged remittances made through BIR Form No. 0605 for February and March 2018.

Therefore, petitioner is liable for 2018 deficiency EWT on the unaccounted discrepancy of ₱228,352.53, computed as follows:

Income payments to professionals:		
Per FS		₱ 1,569,799.00
Per BIR Form 1601-E		921,637.17
Discrepancy		₱ 648,161.83
Less: Payments to GPP		
Roxas Cruz Tagle & Co. (Exhibits "P-39" and "P-40")	₱ 379,809.30	
Tanjuatco Macababbad and Associates (Exhibits "P-28" and "P-49-3")	40,000.00	419,809.30
Unaccounted discrepancy		**₱228,352.53**
Multiplied by EWT Rate		15%
Basic deficiency EWT due		**₱ 34,252.88**

Summary of petitioner's EWT liability for FY ending June 30, 2018.

Considering the discussions on the rental payments to ARC and professional fees, petitioner is liable for 2018 deficiency EWT in the aggregate amount of ₱413,300.70:

Income Payments	Discrepancy	EWT Rate	EWT Due
Rent to Allegro Center per Audit	₱ 7,580,956.37	5%	₱ 379,047.82
Professional Fees	228,352.53	15%	34,252.88
Total	**₱7,809,308.90**		**₱413,300.70**

Petitioner is liable for deficiency WTC of ₱299,279.21.

Respondent assessed petitioner of 2018 deficiency WTC, because petitioner failed to withhold salaries, wages, and benefits, to wit:[99]

Disallowed Salaries, Wages and Benefits due to Non-Withholding		₱ 8,900,782.25
Multiplied by: Average Withholding Tax Rate		
Tax Withheld per 1601C	₱ 5,250,152.45	
Taxable Compensation	50,360,891.81	10.43%
Basic Tax Due		**₱ 927,911.76**
Add: 12% Interest (07.11.2018 to 07.30.2021)		340,149.57
TOTAL AMOUNT DUE		**₱1,268,061.33**

Respondent is partly correct.

ICPA Bawa traced the amount of disallowed salaries, wages, and benefits as follows:

Direct Labor		₱89,337,617.00	
Less: Incentives	₱ -		
Government contributions	4,447,229.15	4,447,229.15	₱84,890,387.85
Add: Salaries, Wages and Benefits per AFS		9,575,639.00	
Less: Incentives	93,388.00		
Government contributions	112,428.00	205,816.00	9,369,823.00
Total Salaries, Wages and Benefits per ITR/AFS			94,260,210.85
Salaries, Wages and Benefits per BIR Form No. 1601-C and 0605			
Taxable		67,679,910.48[100]	
Non-Taxable		20,174,846.70[101]	87,854,757.18
Total Salaries, Wages and Benefits not subjected to Withholding			6,405,453.67
Less: Salaries, Wages and Benefits not claimed as deduction			9,369,823.00
Disallowed Salaries, Wages and Benefits due to Non-Withholding			**(₱2,964,369.33)**

As found by ICPA Bawa, ₱6,405,453.67 of salaries, wages, and benefits were not subjected to WTC.[102]

In this regard, a portion thereof, amounting to ₱3,363,770.00, pertains to "6-2665 Staff Benefits - HMO," reflected under General and Administrative Expenses in petitioner's 2018 AFS. [103] Petitioner did not subject this amount to WTC as it does not form part of

99 Schedule 5, Annex A, Exhibit "P-8," Docket - Vol. I, pp. 70 and 74.
100 ₱50,360,891.81 plus ₱17,319,018.67 equals ₱67,679,910.48.
101 ₱13,258,310.18 plus ₱6,916,536.52 equals ₱20,174,846.70.
102 *Supra* at note 64.
103 Table 18, Exhibit "P-14," Docket - Vol. I, pp. 423 and 424, and Note 16, Note to Financial Statements, Exhibit "P-25," USB (Exhibit "P-70").

employees' compensation. Rather, it represents an expense incurred by petitioner; hence, it was subjected to two percent (2%) EWT. Petitioner submitted a corporate billing statement from Insular Health Care, Inc., amounting to ₱3,363,770.00[104] to substantiate the subject expense.

Summary of petitioner's WTC liability for FY ending June 30, 2018.

Considering the foregoing and the WTC remittances made by petitioner, including payments made through BIR Form No. 0605, petitioner is liable for deficiency WTC amounting to ₱299,279.21, recomputed as shown hereafter:

Disallowed Salaries, Wages and Benefits due to Non-Withholding			₱6,405,453.67
Less: Staff Benefits - HMO (Exhibit P-66)			3,363,770.00
Adjusted salaries, wages and benefits not subjected to WTC			₱3,041,683.67
Multiplied by: Average Withholding Tax Rate			
Tax Withheld per 1601C	₱5,250,152.45		
WTC paid through 0605	1,339,958.84	₱ 6,590,111.29	9.74%
Divided by Taxable Compensation		₱67,679,910.48	
Basic deficiency WTC Due			₱ 296,174.06
Add: Discrepancy found by ICPA Bawa (Table 17, Exhibit "P-14")			3,105.15
Total deficiency WTC Due			**₱299,279.21**

Petitioner is not liable to pay compromise penalties.

Respondent meted compromise penalties on the following alleged violations by petitioner,[105] to wit:

Nature of violation	Amount due
I. Failure to submit Summary List of Sales, Purchases, and Importations	₱25,000.00
II. Failure to file and submit Alphalist of Employees	1,000.00
III. Failure to file monthly list of payees subjected to withholding tax	4,000.00
IV. Failure to submit Inventory Listing	1,000.00
TOTAL	**₱ 31,000.00**

104 Exhibit "P-66," USB (Exhibit "P-70").
105 Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 334.

A compromise is, by its nature, mutual in essence.[106] It implies agreement. One party cannot impose it upon the other.[107] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

Conclusion

First. Petitioner is liable for ***basic deficiency internal revenue taxes*** in the total amount of ₱720,825.74:

Tax Type	Deficiency Tax Amount
IT	₱ 8,245.83
EWT	413,300.70
WTC	299,279.21
Total	**₱ 720,825.74**

Second. Petitioner is likewise liable to a penalty of ***25% surcharge*** imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the NIRC, as amended.[108]

Third. Moreover, petitioner is liable to pay ***deficiency interest*** at the rate of 12% per annum, computed from July 30, 2021[109] as the time prescribed to pay the total amount due under the Final Assessment Notices, until the full payment thereof, in accordance with Section 249(B) of the NIRC, as amended by RA No. 10963.

Fourth. Petitioner is liable to pay the aggregate amount of ₱1,161,996.09, consisting of basic deficiency tax, surcharge, and deficiency interest computed as of July 30, 2021, for FY ending June 30, 2018, as follows:

	Income Tax	**EWT**	**WTC**	**Total**
Basic Deficiency Tax	₱ 8,245.83	₱413,300.70	₱299,279.21	₱720,825.74
Add: Surcharge (25%)	2,061.46	103,325.17	74,819.80	180,206.43
Add: Deficiency Interest (12%) on:				
Income Tax				
(16-Oct-18 to 30-Jul-21)	2,762.47			2,762.47

106 Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

107 *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.

108 SEC. 248. *Civil Penalties.—*

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases: ...

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; ...

109 Exhibit "P-8," Docket - Vol. I, pp. 64 to 66, and Exhibits "R-14" to "R-16," BIR Records, pp. 1405 to 1406.

[₱8,245.83 x 12% x (1,019/365days)]				
Expanded Withholding Tax (01-Aug-18 to 30-Jul-21) [₱413,300.70 x 12% x (1,095/365days)]		148,788.25		148,788.25
Withholding Tax on Compensation (15-Jul-18 to 30-Jul-21) [₱299,279.21 x 12% x (1,112/365days)]			109,413.20	109,413.20
Total Amount Due - July 30, 2021	**₱13,069.76**	**₱665,414.12**	**₱483,512.21**	**₱1,161,996.09**

Fifth. Petitioner is liable for delinquency interest at the rate of 12% per annum on the respective total amounts due on July 30, 2021, computed from July 31, 2021 until full payment thereof pursuant to Section 249(C), as amended by RA No. 10963 and implemented by RR No. 21-2018.

WHEREFORE, the Petition for Review dated April 27, 2022, filed by SomnoMed Philippines, Inc., is **PARTIALLY GRANTED**.

Respondent's Fringe Benefit Tax assessment and the Compromise Penalties for FY ending June 30, 2018 are **CANCELLED** and **SET ASIDE**. On the other hand, respondent's assessments for deficiency Income Tax, Expanded Withholding Tax, and Withholding Tax on Compensation for FY ending June 30, 2018 are **UPHELD WITH MODIFICATION**. Thus, petitioner is **ORDERED TO PAY** respondent the following:

	Basic	Surcharge	Deficiency Interest	Total
IT	₱ 8,245.83	₱ 2,061.46	₱ 2,762.47	₱ 13,069.76
EWT	413,300.70	103,325.17	148,788.25	665,414.12
WTC	299,279.21	74,819.80	109,413.20	483,512.21
Total	**₱ 720,825.74**	**₱180,206.43**	**₱ 260,963.92**	**₱1,161,996.09**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱1,161,996.09** as of July 30, 2021, as determined above, or equivalent to the amount of ₱382.03[110] per day, computed from July 31, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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110 ₱1,161,996.09 multiplied by 12% divided by 365 days.

I CONCUR:

HENRY S. ANGELES
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
Chairperson

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 case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice