

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB NO. 2449

(CTA Case No. 9248)

-versus-

**WESTERN MINDANAO
POWER CORPORATION,**

Respondent.

x- - - - - x

**WESTERN MINDANAO
POWER CORPORATION,**

Petitioner,

CTA EB NO. 2457

(CTA Case No. 9248)

Present:

-versus-

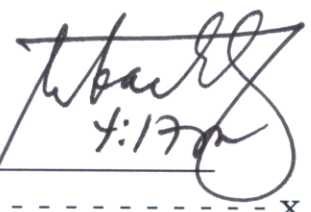
**DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

FEB 20 2023




x- - - - - x

D E C I S I O N

MANAHAN, J.:

For decision before the Court *En Banc* are the following:

1. Petition for Review, docketed as CTA EB No. 2449, filed by the Commissioner of Internal Revenue (CIR); and, 

2. Petition for Review, docketed as CTA EB No. 2457, filed by Western Mindanao Power Corporation (WMPC).

Both parties are assailing the Decision dated June 29, 2020 and Resolution dated February 10, 2021 of the CTA 3rd Division in CTA Case No. 9248, partially cancelling the assessments for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), final tax, documentary stamp tax (DST), and compromise penalties for calendar year 2012. The dispositive portion of the assailed Decision states:


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

Accordingly, petitioner [WMPC] is **ORDERED TO PAY the amount of THIRTY EIGHT MILLION SIX HUNDRED FORTY SIX THOUSAND THIRTY ONE PESOS AND 44/100 (P38,646,031.44)** representing deficiency VAT and EWT for calendar year 2012, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to the amendment under the TRAIN Law, computed as follows:

	<u>VAT</u>	<u>EWT</u>	<u>TOTAL</u>
Basic Tax Due	14,319,068.64	1,353,224.56	15,672,293.20
25% Surcharge	3,579,767.16	338,306.14	3,918,073.30
Sub-Total	17,898,835.80	1,691,530.70	19,590,366.50
20% Deficiency Interest:			
26-Jan-13 to 23-Dec-15 ¹ (14,319,068.64 x 20% x 1062/365)	8,332,521.04		8,332,521.04
16-Jan-13 to 23-Dec-15 (1,353,224.56 x 20% x 1072/365)		794,880.40	794,880.40
Total Amount Due, Dec. 23, 2015	26,231,356.84	2,486,411.10	28,717,767.94
20% Deficiency Interest:			
24-Dec-15 to 25-Aug-16 ² (14,319,068.64 x 20% x 246/365)	1,930,131.99		1,930,131.99
24-Dec-15 to 25-Aug-16 ³ (1,353,224.56 x 20% x 246/365)		182,407.26	182,407.26

¹ FDDA was received on Dec. 23, 2015, Exhibit "P-9", Docket - Vol. 4, pp. 2134 to 2136.

² Date of Payment: August 25, 2016, Exhibits "P-105" and "P-105-a", CD.

³ Date of Payment: August 25, 2016, Exhibits "P-106" and "P-106-a", CD. 

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20% Delinquency Interest:			
24-Dec-15 to 25-Aug-16 (26,231,356.84 x 20% x 246/365)	3,535,843.17		3,535,843.17
26-Aug-16 to 31-Dec-17 (26,231,356.84 less 666,339.50 ⁴ = 25,565,017.34 x 20% x 493/365)	6,906,056.74		6,906,056.74
24-Dec-15 to 25-Aug-16 (2,486,411.10 x 20% x 246/365)		335,154.59	335,154.59
26-Aug-16 to 31-Dec-17 (2,486,411.10 less 2,335,702.67 ⁵ = 150,708.43 x 20% x 493/365)		40,711.92	40,711.92
Sub-total Amount Due, December 31, 2017	38,603,388.74	3,044,684.87	41,648,073.61
Less Payment made on August 25, 2016	666,339.50	2,335,702.67	3,002,042.17
Total Amount Due, Dec. 31, 2017	37,937,049.24	708,982.20	38,646,031.44

In addition, petitioner [WMPC] is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of August 26, 2016 in the amount of **P25,715,725.77**⁶, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by Revenue Regulations No. 21-2018.

SO ORDERED.⁷

The parties' respective Motions for Partial Reconsideration were denied in the Resolution dated February 10, 2021.⁸

FACTS

The CTA 3rd Division recounts the facts, as follows:⁹

Petitioner Western Mindanao Power Corporation [WMPC] is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 4th Floor, Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City. It is a registered taxpayer of the Bureau of Internal Revenue ("BIR"), Large Taxpayers Service ("LTS"), as shown by its

⁴ Amount Paid on August 25, 2016.

⁵ Amount Paid on August 25, 2016.

⁶ Only the remaining VAT (Php25,565,017.34) and EWT (Php150,708.43) **DUE** as of August 26, 2016 shall computed until full payment thereof.

⁷ EB Docket, pp. 47-49.

⁸ EB Docket, pp. 51-57.

⁹ EB Docket, pp. 28-30. *GM*

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Certificate of Registration dated January 17, 2000, with Taxpayer's Identification No. 004-661-556-000.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to pertinent provisions of the National Internal Revenue Code of 1997 and other tax laws, rules and regulations.


On May 8, 2014, the BIR Large Taxpayers Service Excise, LT Excise audit Division 1, issued a *Letter of Authority* authorizing RO Ma. Cleofas Magat, Lilian Yvette Marie Aspiras, Julius Rex Bungabong, Roque Gildo Ganaden and Group Supervisor Teresita Villamor to examine petitioner [WMPC]'s books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes for the period January 1, 2012 to December 31, 2012.

Thereafter, petitioner [WMPC] executed two waivers, as follows: the first *Waiver of the Statute of Limitation Under the National Internal Revenue Code* executed on January 8, 2015, extending the period to assess until June 30, 2015; and the second *Waiver of the Statute of Limitation Under the National Internal Revenue Code* executed on May 18, 2015, extending the period to assess until December 31, 2015.

On July 31, 2015, petitioner [WMPC] received a copy of respondent [CIR]'s *Preliminary Assessment Notice (PAN)* alleging that petitioner [WMPC] is liable for alleged deficiency Income Tax, Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), Final Tax, Documentary Stamp Tax (DST), and administrative penalties for the Calendar Year (CY) 2012 in the aggregate amount of ₱124,064,343.74 (inclusive of interest until July 31, 2015).

On August 14, 2015, petitioner [WMPC] filed a *Reply* to respondent [CIR]'s PAN stating that the PAN has no basis both in law and in fact and requesting its withdrawal and cancellation.

On September 18, 2015, petitioner [WMPC] received a copy of respondent [CIR]'s *Formal Letter of Demand (FLD)* with its corresponding *Final Assessment Notices (FAN)* demanding payment of alleged deficiency Income Tax, VAT, WTC, EWT, Final Tax, DST and administrative penalties for the CY 2012 in the total amount of ₱77,352,390.68.

On October 16, 2015, petitioner [WMPC] filed with the BIR Large Taxpayers Service (LTS) a *Request for* 

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Reinvestigation requesting that the FLD issued against petitioner [WMPC] for alleged deficiency taxes for CY 2012 be voided, cancelled and withdrawn for lack of factual and legal bases. Petitioner [WMPC] allegedly submitted on December 15, 2015 the supporting documents relating to its *Request for Reinvestigation*.

Thereafter, petitioner [WMPC] received a *Final Decision on Disputed Assessment (FDDA)* on December 23, 2015, demanding payment on the alleged Income Tax, VAT, WTC, EWT, Final Tax, DST and administrative penalties for the CY [2012] in the total amount of ₱50,968,525.45, broken down as follows:

	Basic Tax	Surcharge	Interest	Compromise	Total Increments	Total
Income Tax	10,230,861.15		5,454,590.63		5,454,590.63	15,685,451.78
VAT	20,798,877.52		12,000,667.41		12,000,667.41	32,799,544.93
Compensation	91,062.49		53,040.78		53,040.78	144,103.27
EWT	855,136.71		498,087.85		498,087.85	1,353,224.56
Final Tax				30,548.66	30,548.66	30,548.66
DST	438,344.00	109,586.00	257,722.25		367,308.25	805,652.25
Compromise				150,000.00	150,000.00	150,000.00
Total	32,414,281.87	109,586.00	18,264,108.92	180,548.66	18,554,243.58	50,968,525.45


On January 22, 2016, WMPC filed its Petition for Review before the CTA 3rd Division.

Meanwhile, on August 25, 2016, WMPC paid through the BIR's electronic Filing and Payment System (eFPS), the amount of Php4,395,710.19, composed of: (1) Php666,339.50 as payment for the components of the deficiency VAT assessment, such as VAT on Sale of Fixed Asset, VAT on Interest Income and VAT on Other Income; and (2) Php2,335,702.67 and Php1,393,668.03 as payment for the deficiency EWT and DST assessments for CY 2012, respectively.¹⁰

After trial, the Court in Division rendered the assailed Decision on June 29, 2020. The parties' respective Motions for Partial Reconsideration were denied in the Resolution dated February 10, 2021.

The CIR filed his Petition for Review which was docketed as CTA EB No. 2449, while the Petition for Review filed by WMPC was docketed as CTA EB No. 2457. In a Minute Resolution dated July 5, 2021, the cases were consolidated.¹¹

¹⁰ Par. 15, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, CTA Case No. 9248, Vol. 3, p. 1279.

¹¹ EB Docket, CTA EB No. 2449, p. 64. 

On November 5, 2021, WMPC filed its *Comment (Re: Petition for Review dated March 5, 2021)*.¹² Despite notice, the CIR failed to file his comment.¹³

On December 14, 2021, the cases were referred to mediation,¹⁴ however, WMPC refused mediation and the cases were sent back to Court.¹⁵

Hence, the case was submitted for decision on March 1, 2022.¹⁶

ISSUES

The CIR submits the following grounds for CTA EB No. 2449:


- I. WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL. PETITIONER RENDERED A FINAL DECISION ON DISPUTED ASSESSMENT, HENCE, THE HONORABLE COURT'S JURISDICTION BECOMES STRICTLY APPELLATE IN NATURE.
- II. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENT ISSUED AGAINST RESPONDENT BASED ON ITS UNDECLARED SALES REPRESENTING UNDECLARED PURCHASES MUST BE CANCELLED.
- III. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT WITHHOLDING TAX ON COMPENSATION SHOULD BE CANCELLED.
- IV. THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS NOT LIABLE

¹² EB Docket, pp. 69-88.

¹³ EB Docket, Records Verification dated November 11, 2021, p. 89.

¹⁴ EB Docket, pp. 91-93.

¹⁵ EB Docket, p. 94.

¹⁶ EB Docket, pp. 98-100. 

FOR FINAL TAX AND COMPROMISE
PENALTIES.¹⁷


WMPC submits the following grounds for CTA EB No. 2457:

- I. THE CTA-DIVISION ERRED IN UPHOLDING THE VALIDITY OF THE FLD;
- II. THE CTA-DIVISION ERRED IN HOLDING THAT PETITIONER HAD OTHER INCOME SUBJECT TO VAT;
- III. THE CTA-DIVISION ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR UNREMITTED OUTPUT TAX; AND
- IV. THE CTA-DIVISION ERRED IN IMPOSING DEFICIENCY AND DELINQUENCY INTEREST ON THE EWT TIMELY PAID BY THE PETITIONER.

CIR's arguments in CTA EB No. 2449

The CIR states that since a Final Decision on Disputed Assessment (FDDA) was issued, the jurisdiction of the Court of Tax Appeals (CTA) shifts from a trial court to a court exercising judicial review, becoming strictly appellate in nature. Thus, it was erroneous for the CTA to rule on matters that were never substantiated in the administrative level. The CIR further avers that documents presented only at the judicial level should not be given any probative value by the CTA.

The CIR argues that the assessments for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and final tax are supported by factual and legal bases, pointing out the findings based on verification and examination of WMPC's tax returns, financial statements, summary lists, and information extracted from WMPC's suppliers. The CIR argues that WMPC was not able to overturn these deficiency assessments which enjoy the presumption of correctness.

¹⁷ EB Docket, CTA EB No. 2449, Petition for Review, pp. 10-11. 

WMPC's arguments in CTA EB No. 2457

WMPC states that the Formal Letter of Demand (FLD) is void for lacking a definite amount of tax liability, since it contains a statement that the total amount due will be adjusted if paid beyond the date specified, citing *Commissioner of Internal Revenue v. Fitness By Design, Inc.*¹⁸ (*Fitness case*).

WMPC states that it did not have other income of Php1,778,872.30 which pertains to a reversal of an accrued commitment fee relating to a loan executed with Union Bank of the Philippines. Petitioner also states that it does not have unremitted output tax amounting to Php13,717,950.29, arguing that it exclusively sells electricity to the National Power Corporation (NPC)/ Power Sector Assets and Liabilities Management (PSALM). WMPC further asserts that the basis for the assessment was different in the FDDA, compared to the previous findings in the PAN and FAN.

Finally, WMPC states that the CTA 3rd Division should not have imposed deficiency and delinquency interest on the EWT timely paid.

RULING OF THE COURT

The Petitions for Review were timely filed.

Pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b),¹⁹ the parties had fifteen (15) days from receipt of the assailed Resolution, within which to file their respective Petitions for Review.


The CIR received the assailed Resolution dated February 10, 2021 on February 23, 2021.²⁰ Thus, he had until March

¹⁸ G.R. No. 215957, November 9, 2016.

¹⁹ Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

²⁰ Docket, CTA Case No. 9248, Vol. V, p. 2736. 

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CTA EB Nos. 2449 & 2457 (C.T.A. Case No. 9248)

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10, 2021 within which to file his appeal. On March 9, 2021, the CIR filed his *Motion for Extension of Time to File Petition for Review*²¹ praying for an additional fifteen (15) days, or until March 25, 2021, within which to file his appeal. This was granted in the Minute Resolution dated March 10, 2021.²²

On March 25, 2021, the CIR posted his Petition for Review, which was received by the Court on May 20, 2021. Hence, the Petition for Review in CTA EB No. 2449 is timely filed.

WMPC received the assailed Resolution dated February 10, 2021 on March 16, 2021. Thus, WMPC had until March 31, 2021, within which to file an appeal.

The Courts were physically closed from March 25, 2021 to May 14, 2021,²³ with the Court resuming operations only on May 17, 2021.²⁴

On March 30, 2021, WMPC filed its *Motion for Extension of Time to File Petition for Review* through electronic mail. The same *Motion* was also personally filed on May 17, 2021.

In the interest of justice, the WMPC was granted an additional period of fifteen (15) days from May 17, 2021, or until June 1, 2021, within which to file its Petition for Review.²⁵ Hence, WMPC's Petition for Review in CTA EB No. 2457, was timely filed on May 31, 2021.


The Court will now proceed to discuss each of the Petitions for Review.

²¹ EB Docket, CTA EB No. 2449, pp. 1-5.

²² *Id.*, p. 6.

²³ Announcement Re: Physical Closure of NCJR Courts, Nearby Provinces on March 25-26, 2021, dated March 25, 2021; Re: Physical closure of courts in the National Capital Judicial Region and nearby provinces from March 29-31, 2021 and throughout the Holy Week, dated March 27, 2021; Administrative Circular No. 15-2021 Re: Extension of the Physical Closure of Courts and the Filing Periods for Pleadings and Other Court Submissions in Light of the Enhanced Community Quarantine from April 5 to April 11, 2021; Administrative Circular No. 21-2021 Re: Extension of Physical Closure of Courts; Administrative Circular No. 22-2021 Re: Physical Closure of Courts in Enhanced Community Quarantine and Modified Enhanced Community Quarantine Areas; and, Administrative Circular No. 29-2021 Re: Work Arrangements in Courts on 3-14 May 2021.

²⁴ Administrative Circular No. 33-2021 Re: Court Operations Starting 17 May 2021.

²⁵ EB Docket, CTA EB No. 2457, Resolution dated June 28, 2021, pp. 75-78. 

EB Case No. 2449

The CIR argues that the CTA 3rd Division erred in ruling on matters that were not substantiated in the administrative level, and that since an FDDA was rendered, the jurisdiction of the CTA becomes strictly appellate in nature.

We disagree.

Section 8 of Republic Act No. 1125, as amended, specifically states that the CTA is a court of record, to wit:

SECTION 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.


In the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,²⁶ the Supreme Court stated:

The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. xxx

xxx

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

As to the CIR's other arguments, the Court finds that the same are mere re-statements of the arguments already presented in his Answer and Motion for Partial

²⁶ G.R. Nos. 206079-80 and 206309, January 17, 2018. 

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Reconsideration before the CTA 3rd Division, which were sufficiently passed upon and extensively discussed in the assailed Decision and Resolution. The CIR does not point out any specific errors supposedly made by the CTA 3rd Division in its findings of facts and conclusions. Absent any showing that the factual findings of the CTA 3rd Division were irregular or erroneous, there is no reason to reverse the same.

Thus, the Petition for Review, docketed as CTA EB No. 2449 is denied.

EB Case No. 2457

WMPC's arguments are also identical to the arguments in its *Motion for Partial Reconsideration* before the CTA 3rd Division.

The Court reiterates that the *Fitness case* does not apply to the instant case. Unlike the *Fitness case* which did not specify a due date, the FLD/FAN²⁷ issued to petitioner contained a due date, which is September 30, 2015. With said due date, together with the computation of tax liability up to September 30, 2015, there is a definite amount of tax liability and definite demand to pay.

Any statement that the interest will be adjusted if paid before or beyond the due date serves merely to remind the taxpayer of the adjustment of interest due if not paid on the due date.

As to the findings of Other Income amounting to Php1,778,585.69 which was not subjected to VAT, WMPC reiterates its arguments that it is a mere reversal of accrued commitment fee relating to a loan executed with Union Bank of the Philippines (UBP). The CTA 3rd Division held that examination of the Journal Voucher,²⁸ Journal Voucher Register,²⁹ and General Ledger Book³⁰ does not show proof that said entries pertain to the loan executed by WMPC with UBP. A careful examination of the foregoing items shows that while they refer to a "commitment fee", there is no definite

²⁷ Division Docket, CTA Case No. 9248, Vol. 4, Exhibit "P-6", pp. 2106-2120.

²⁸ *Id.*, Vol. 4, Exhibit "P-151", pp. 2520-2521.

²⁹ *Id.*, Vol. 4, Exhibit "P-152", pp. 2522-2523.

³⁰ *Id.*, Vol. 4, Exhibit "P-153", pp. 2524-2525. *am*

DECISION

CTA EB Nos. 2449 & 2457 (C.T.A. Case No. 9248)

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indication that it relates to the loan executed with UBP. Thus, the findings of the CTA 3rd Division is affirmed.

As to the alleged unremitted Output Tax amounting to Php13,717,950.29, WMPC repeats its arguments that it sells exclusively to NPC and PSALM, thus there is no output VAT due from it other than the 5% VAT withheld by the buyer. WMPC also argues that the basis for the said findings in the PAN and FAN was the comparison of WMPC's VAT returns and VAT official receipts, while the basis in the FDDA, and as found by the CTA 3rd Division refers to comparison between WMPC's audited financial statements and accruals for October 26 to November 25, 2012.

An examination of the PAN,³¹ FLD/FAN,³² and FDDA³³ and their respective details of discrepancies shows that the basis for this finding was not a comparison of VAT returns and VAT official receipts, contrary to WMPC's allegations. The details of discrepancies for the PAN and FLD/FAN both state:

5. Unremitted Output Tax (P13,717,950.29) – Verification of AR, end as compared to Gross Output Tax per Notes to FS disclosed that there was unremitted output tax in the amount of P13,717,950.29.³⁴

The details of discrepancy of the FDDA states as follows:

5. Unreported Output Tax (P13,717,950.29) – Upon verification with the Audited FS of WMPC it was noted that there was Output Tax of P40,631,044.71 (Gross of P2,877,000.00 Input VAT and Withholding VAT of P16,851,000.00), when compared to the 12% VAT accruals for October 26-November 25, 2012 (for PSI Nos. 211-214)) there was a difference of P13,717,950.29, considered as unreported Output Tax.³⁵


Based on the foregoing, the Court finds that WMPC was properly informed of the basis of this assessment. We also affirm the CTA 3rd Division's findings that WMPC failed to refute the said items.

³¹ *Id.*, Vol. 4, Exhibit "P-4", pp. 2091-2098.

³² *Id.*, Vol. 4, Exhibit "P-6", pp. 2106-2113.

³³ *Id.*, Vol. 4, Exhibit "P-9", pp. 2134-2136.

³⁴ *Id.*, Vol. 4, pp. 2097 and 2112.

³⁵ *Id.*, Vol. 4, p. 2135. 

Finally, WMPC also states that the CTA 3rd Division erred in imposing deficiency and delinquency interest on the deficiency EWT assessment considering that it timely paid Php2,355,702.67 on August 25, 2016.

The Court finds that the August 25, 2016 payment of Php2,335,702.67 was considered in the CTA 3rd Division's computation of the remaining deficiency EWT due.

However, the Court finds that there was an error in the basic deficiency EWT used in the computation. The FDDA contained a basic deficiency EWT of only Php855,136.71, while the computation used the total deficiency EWT of Php1,353,224.56, which already included interest. Thus, there is a need to recompute the deficiency EWT, as follows:

	EWT
Basic Tax Due	Php 855,136.71
25% Surcharge	213,784.18
Sub-total	1,068,920.89
20% Deficiency Interest January 16, 2013 to December 23, 2015 (855,136.71 x 20% x 1072/365)	502,304.96
Total amount due, December 23, 2015	1,571,225.85
20% Deficiency Interest December 24, 2015 to August 25, 2016 (855,136.71 x 20% x 246/365)	115,267.74
20% Delinquency Interest December 24, 2015 to August 25, 2016 (1,571,225.85 x 20% x 246/365)	211,792.63
TOTAL AMOUNT DUE, AUGUST 25, 2016	Php 1,898,286.23
Payment on August 25, 2016	2,335,702.67
EWT Due (Overpayment)	(Php 437,416.44)

Based on the foregoing, WMPC made an overpayment of Php437,416.44. Consequently, no remaining deficiency EWT is due from WMPC.


Based on the foregoing, the Petition for Review docketed as CTA EB No. 2457 is partially granted.

WHEREFORE, the Petition for Review, docketed as CTA EB No. 2449, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit. *OM*


The Petition for Review, docketed as CTA EB No. 2457, filed by Western Mindanao Power Corporation, is **PARTIALLY GRANTED**.

Accordingly, the Decision and Resolution of the CTA 3rd Division in CTA Case No. 9248 are **AFFIRMED** except with respect to the deficiency Expanded Withholding Tax which is **CANCELLED**.


SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

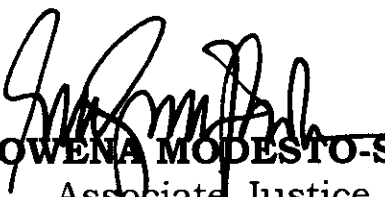
WE CONCUR:


(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


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

Lanee S. Cui-David
LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
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

DR

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

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(CTA Case No. 9248)

- versus -

WESTERN MINDANAO POWER
CORPORATION,

Respondent.

X ----- X
WESTERN MINDANAO POWER
CORPORATION,

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(CTA Case No. 9248)

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID,
FERRER-FLORES, JJ.

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

FEB 20 2023

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of Associate Justice Catherine T. Manahan, which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in **CTA EB No. 2449**, and partially granted the Petition for Review filed by Western Mindanao

Power Corporation (WMPC) and cancelled the deficiency expanded withholding tax (EWT) assessment in **CTA EB No. 2457**.

In addition to the *ponencia's* findings, I wish to expound on the inapplicability of the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Fitness by Design, Inc. ("Fitness by Design")*¹ in these consolidated cases.

Fitness by Design was parenthetical in saying that a demand by government for the taxpayer to pay deficiency tax liabilities must specify the definite amount sought to be collected, failing which, the demand would be violative of the taxpayer's right to due process. A comparison of the wordings in the respective Formal Letters of Demand (FLDs) in *Fitness by Design* and this case shows:

Final Assessment Notice (FAN) in <i>Fitness by Design</i>	FLD in this case
Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004.	Please note that the interest and total amount due will have to be adjusted if paid beyond September 30, 2015.

While the wordings in the FLDs appear similar, the manner by which interest was computed in *Fitness by Design* and in the present case is **DIFFERENT**. *Fitness by Design* **does not indicate the date when interest commences to run, while the present case does, viz.:**

FAN in <i>Fitness by Design</i>	FLD in this case
Value Added Tax	II. VALUE ADDED TAX
Unreported Sales xxx	Taxable Base per VAT Returns (Tax at 12%) xxx
Output Tax (10%) xxx	Add: Adjustments
Add: Surcharge (50%) xxx	A. CAATTS Discrepancies xxx
Interest (20% per annum) until 4-15-04 xxx	xxx xxx
Deficiency VAT xxx	B. Per Audit xxx
	xxx
	Taxable Base per Audit xxx
	OUTPUT TAX
	xxx xxx
	Add: Penalties
	20% Interest fr. 1.23.13 – 09.30.15 xxx
	Total Deficiency VAT xxx

¹ G.R. No. 215957, November 9, 2016.

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In the present case, the FLD states that the interest was computed from **January 23, 2013** until the due date for its payment on **September 30, 2015**. Thus, the FLD categorically provides for the specific reckoning point or date when interest commences to run, and WMPC may be able to compute the interest payable if and when it decides to pay the assessed deficiency VAT on or before the due date for payment.

Since adjustment of the amount due becomes indispensable if payment is made by WMPC beyond or after September 30, 2015, the date as to when interest begins to run is crucial and of much significance to WMPC's right to be informed of the exact amount it is liable to pay.

Financial matters, more so computation of interest, involve technical and skill-based concepts that require proper guidance in their application in pragmatic terms. The FLD in this case specifies the manner by which the amount of interest was arrived at, and provided a formula for which interest may be computed if payment is made before or after the due date. As WMPC was adequately apprised of the exact manner in computing the interest or any adjustment thereto, WMPC's right to due process was not violated. Hence, the VAT assessment issued against WMPC is valid.

ALL TOLD, I totally *CONCUR* in the *ponencia*.


ROMAN G. DEL ROSARIO
Presiding Justice