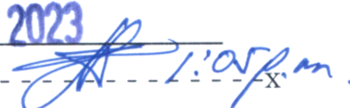
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DONATO C. CRUZ TRADING CORP., Petitioner,	**CTA EB NO. 2573** (CTA Case No. 9721)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 25 2023



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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking to reverse and set aside the Decision[1] dated March 19, 2021 ("Assailed Decision") and Resolution[2] dated February 07, 2022 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), ordering Petitioner to pay Respondent basic deficiency Expanded Withholding Tax ("EWT") and penalties for late payments of Withholding Tax on Wages and Value-Added Tax ("VAT"), respectively, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the

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[1] Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justice Juanito C. Castañeda, Jr. concurring; Docket, pp. 435-462.

[2] Penned by Associate Justice Jean Marie A. Bacorro-Villena, with Associate Justices Juanito C. Castañeda, Jr. and Lanee S. Cui-David concurring; Docket, pp. 477-482.

National Internal Revenue Code ("NIRC") of 1997, as amended, respectively, computed until December 31, 2017. In addition, petitioner was ordered to pay delinquency interest at the rate of twelve percent (12%) computed from January 01, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act ("R.A.") No. 10963, also known as Tax Reform for Acceleration and Inclusion ("TRAIN Law") and as implemented by Revenue Regulations ("RR") No. 21-2018, on said deficiency taxes.

The Parties

Petitioner is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has its principal office at 158-C, Philsugen Road, Singcang, Bacolod City, Negros Occidental.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested with the authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.[4]

The Facts

The facts as found by the Second Division are as follows:

> "On 07 September 2007, respondent issued Letter of Authority (LOA) No. 00074813 against petitioner, authorizing the examination of petitioner's books and records for tax deficiencies for taxable year (TY) 2006.
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> On 19 February 2008, Officer in-Charge, Regional Director Rodita B. Galanto 5 (OIC-RD Galanto), revalidated the said LOA citing petitioner's failure to submit complete documents needed for the audit investigation.
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> On 22 September 2008, respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancy showing petitioner's liability for deficiency EWT and VAT, and penalties in the total amount of [Php]5,425,284.46.
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> Thereafter, on 20 January 2009, petitioner received a Formal Letter of Demand (FLD) and Final Assessment Notices (FANs). Subsequently, it also received a First and Second Notice

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3 Docket, Decision dated March 19, 2021, p. 436.
4 *Id.*

to pay deficiency taxes dated 08 September 2010 and 22 October 2010, respectively.

On 23 January 2009, petitioner filed its protest against the FLD and FANs. Later, on 21 May 2009, the BIR issued revised FANs computing anew petitioner's liabilities at [Php]5,518,918.97. Petitioner then filed another protest on 07 June 2009. Nevertheless, on 13 December 2012, it received a Final Decision on Disputed Assessment (FDDA) dated 26 November 2012. It then filed a request for reconsideration with respondent who, on 24 October 2017, issued his Final Decision dated 04 October 2017, denying petitioner's request."[5]

The Proceedings in the Second Division

On 23 November 2017, Petitioner filed a "Petition for Review" with the court *a quo* in its bid to reverse Respondent's assessment.[6]

On March 19, 2021, the Second Division promulgated the Assailed Decision, the dispositive portion of which reads:

"**WHEREFORE**, the foregoing considered, petitioner Donato C. Cruz Trading Corp.'s Petition for Review filed on 23 November 2017 is hereby **PARTIALLY GRANTED**. The Bureau of Internal Revenue's assessment pursuant to Letter of Authority No. 00074813 shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of [Php]20,936,310.18, [Php]33,082.23 and [Php]80,859.58, representing basic deficiency Expanded Withholding Tax and penalties for late payments of Withholding Tax on Wages and Value-Added Tax, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248 (A) (3), 249 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

	EWT	**WTW**	**VAT**	**TOTAL**
Basic Deficiency	3,263,373.00			3,263,373.09
Surcharge (25%)	815,843.27			815,843.27
Deficiency Interest (20%) until January 29, 2009				
EWT — 1/16/07 to	1,332,171.48			1,332,171.48

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[5] *Id.*, Decision dated March 19, 2021, Facts of the Case, 436-437.

[6] *Id.*, Decision dated March 19, 2021, Proceedings Before the Court, p. 437.

1/29/09 ([Php]3,263,373.09 x 20% x 726 days/365 days)				
Adjustments *Plus:* Interest on paid undisputed assessment items — 1/16/07 to 1/9/09 ([Php]33,113.37 x 20% x 725 days/365 days)	13,154.62			13,154.62
Interest and surcharge on late payments	737.21	11,877.84	29,031.82	41,646.87
Total Amount Due as of January 29, 2009	**5,425,279.67**	**11,877.84**	**29,031.82**	**5,466,189.33**
Deficiency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT — 1/30/09 to 12/31/17 ([Php]3,263,373.09 x 20% x 3,258 days/365 days)	5,825,791.52			5,825,791.52
Delinquency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT — 1/30/09 to 12/31/17 ([Php]5,425,279.67 x 20% x 3,258 days/365 days)	9,685,238.99			9,685,238.99
WTW — 1/30/09 to 12/31/17 ([Php]11,877.84 x 20% x 3,258 days/365 days)		21,204.39		21,204.39
VAT — 1/30/09 to 12/31/17 ([Php]29,031.82 x 20% x 3,258 days/365 days)			51,827.76	51,827.76
Total Amount Due as of December 31, 2017	**20,936,310.18**	**33,082.23**	**80,859.58**	**21,050,251.99**

In addition, petitioner is ORDERED TO PAY delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to 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) and as implemented by RR 21-2018, on said deficiency taxes based on the following principal amounts:

Expanded Withholding Tax	[Php]5,425,279.67
Penalties on Withholding Tax on Wages	11,877.84
Penalties on Value Added Tax	29,031.82

SO ORDERED."[7]

Aggrieved, Petitioner filed a "Motion for Reconsideration"[8] *via* registered mail on June 03, 2021, which the Second Division denied in the Assailed Resolution, to wit:

"**WHEREFORE**, the foregoing considered, petitioner's Motion for Reconsideration filed on 03 June 2021 is hereby **DENIED** for lack of merit. Accordingly, the Court's Decision dated 19 March 2021 is **AFFIRMED**.

SO ORDERED."[9]

The Proceedings in the Court of Tax Appeals En Banc

On March 04, 2022, Petitioner filed the present "Petition for Review"[10].

On March 25, 2022, the Court issued a Resolution[11] ordering Respondent to comment on the "Petition for Review" within ten (10) days from notice.

On May 05, 2022, the Judicial Records Division issued a Records Verification Report stating that Respondent failed to file his comment to the petition.[12]

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7 *Id.*, Decision dated March 19, 2021, pp. 460-462.
8 *Id.*, pp. 463-469.
9 *Id.*, Resolution dated February 07, 2022, p. 481.
10 Rollo, pp. 1-12. Record shows that Petitioner received the February 07, 2022 Resolution on February 17, 2022; Docket, p. 476.
11 *Id.*, pp. 84-85.
12 *Id.*, p. 86.

On May 27, 2022, the Court issued a Resolution[13] referring the case to mediation with the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA").

Noting the PMC-CTA's Form No. 6 - No Agreement to Mediate stating that the parties decided not to have the case mediated, the Court issued a Resolution[14] on September 13, 2022, submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following issues in its petition:

1) Whether or not the Second Division erred in finding that the Letter of Authority ("LOA") was valid without a dry seal;

2) Whether or not the Second Division erred in finding that Respondent's personal service of the notice of designation as withholding agent was validly served upon Petitioner through its accounting clerk;

3) Whether or not the Second Division erred in finding that Petitioner is obliged to withhold despite Respondent's failure to notify it to withhold upon issuance of Revenue Memorandum Circular ("RMC") No. 44-2007; and

4) Whether or not the Second Division erred in computing the deficiency and delinquency interests.[15]

The Arguments of Parties

First, Petitioner posits that the LOA itself provides that it is void in the absence of a dry seal. Since there was admission that there is no dry seal in the LOA, the same is invalid.

Petitioner also points out that the Notice of Designation as Withholding Agent was not validly served to the corporation. According to Petitioner, the Second Division erroneously ruled that Respondent sent the Notice of Designation as Withholding Agent by mail, and thereafter presumed that Petitioner received the same. As proven, the said notice was personally served

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[13] *Id.*, pp. 88-90.
[14] *Id.*, pp. 93-94.
[15] *Id.*, "Petition for Review" dated March 04, 2022, Assignment of Errors, p. 4.

upon Petitioner's accounting clerk, who did not state her authority to receive the same.

Additionally, Petitioner contends that the assessments against it are void since Respondent failed to notify Petitioner to withhold upon the issuance of RMC No. 44-2007.

Lastly, Petitioner avers that the Second Division should not impose twenty percent (20%) deficiency interest after the issuance of the Formal Letter of Demand ("FLD") and that the base amount for the computation for the delinquency interest should be the basic deficiency tax.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration", on February 07, 2022. Petitioner received said Resolution on February 17, 2022.[16] Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 04, 2022 within which to file its petition for review.

On March 04, 2022, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction over the case.

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16 Docket, p. 476.

17 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
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> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

18 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected 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. (Rules of Court, Rule 42, sec. 1a)

19 A.M. No. 05-11-07-CTA, November 22, 2005.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the arguments in the instant Petition for Review had been fully and exhaustively resolved by the Court in Division in the Assailed Decision. Be that as it may, and if only to put Petitioner's mind to rest and for purposes of emphasis, the Court *En Banc* will discuss them anew.

The LOA is valid

Petitioner points out that the LOA No. 00074813 itself states that "[it] becomes void...if dry seal of BIR office is not present". Petitioner states that since there was no dry seal upon visual examination of the LOA, then it is invalid.

A dry seal is an official indication of the authenticity and completeness of a particular document. Upon closer inspection of the LOA being contested, the Court concludes that Petitioner failed to substantiate its claim. In particular, the BIR's seal is conspicuously printed and placed beside the signature of Regional Director ("RD") Esmeralda M. Tabule.

Even assuming that the stamped impression of the BIR's seal is absent, We are one with the Second Division that LOA No. 00074813 remains valid. Nowhere in existing jurisprudence and in BIR Revenue Audit Memorandum Order (RAMO) No. 1-00[20] mandates that a LOA must bear a dry seal in order to be valid. In fact, Revenue Memorandum Order (RMO) No. 019-09[21] provides that an LOA "shall remain to be valid and enforceable even without the mark of the BIR dry seal as long as the [LOA] is authentic and duly issued by the authorized revenue official." In this case, RD Tabule is authorized under

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20 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), March 17, 2000.

2. Serving of Letter of Authority

2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued.

21 2009 Audit Program for Revenue District Offices, May 28, 2009.

Section 10(c)[22] of the NIRC of 1997, as amended, to issue letters of authority for the examination of taxpayers.

The Notice of Designation as Withholding Agent was served to Petitioner

Under Section 2.57.2 (M) of RR No. 2-98[23], as amended by RR No. 17-2003[24], the taxpayer should be first informed as a top ten thousand (10,000) private corporation before it may be subjected to EWT on its income payments made to their local/resident supplier of goods and services, to wit:

> "(M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines.
>
> Supplier of goods — One percent (1%)
>
> Supplier of services — Two percent (2%)
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> Top ten thousand (10,000) private corporations shall include a corporate taxpayer who has been determined and notified by the Bureau of Internal Revenue (BIR) as having satisfied any of the following criteria:

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22 SEC. 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

xxx xxx xxx

(c) Issue Letters of authority for the examination of taxpayers within the region.

23 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

24 Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes, March 31, 2003.

xxx xxx xxx

> **A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.**
>
> Any corporation which has been duly classified and notified as large taxpayer by the Commissioner pursuant to RR 1-98, as amended, shall be automatically considered one of the top ten thousand (10,000) private corporations, **provided, however, that its authority as a withholding agent shall be effective only upon receipt of written notice from the Commissioner that it has been classified as a large taxpayer, as well as one of the top ten thousand (10,000) private corporations**, for purposes of these regulations."[25]

In order to prove that Petitioner was notified as a top ten thousand (10,000) private corporation, Respondent presented a Letter[26] dated February 17, 2004 addressed to Petitioner with subject: "Designation as Withholding Agent".

Even so, Petitioner declares that Liezel C. Bullahan, the one who signed the said Letter as the recipient, was not authorized to receive the said Notice of Designation, and as such the requisite notification to the taxpayer did not arise.

We analyze.

The law and BIR issuances are silent on how to serve the "Notice of Designation as Withholding Agent". Simply put, there is no law or rule which unequivocally states who can receive the said notice in case of corporate taxpayers. All the same, the Court recognizes the importance of the Notice of Designation as Withholding Agent" and as such shall apply the same rules on service of a notice of assessment under RR No. 12-99[27].

Section 3.1.4 of RR No. 12-99 provides that the assessment shall be sent to the taxpayer either by personal delivery or registered mail. Additionally, if personal delivery was made, the person receiving should note his or her (a)

[25] *Emphasis and underscoring supplied.*
[26] BIR Records, Exhibit "R-7", p. 156.
[27] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 06, 1999.

name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, and (d) date of receipt, *viz.*:

> "3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

In this case, Respondent's witness, Revenue Officer Edna T. Posecion, testified that she personally delivered the letter to Petitioner.[28] Meanwhile, on the bottom left-hand side of the Notice of Designation as Withholding Agent dated February 17, 2004, there was a notation that the same was received by a certain Liezel C. Bullahan, Petitioner's accounting clerk, on April 22, 2004.[29] Although there was no visible annotation of her authority to receive the said letter, We find the statement of her connection with Petitioner (*i.e.*, accounting clerk) as substantial compliance. As an accounting clerk, it is highly likely that she knows and would be able to appreciate the significance of a letter/notice from the BIR and her receipt thereof. Considering this, we find the requisites under Section 3.1.4 of RR No. 12-99 on personal delivery complied with.

Also, Petitioner's reliance on the Concurring Opinion of Associate Justice Catherine T. Manahan in the case of *Commissioner of Internal Revenue v. Ithiel Corporation*[30] is misplaced for it has a different factual *milieu*. In that case, Associate Justice Manahan declared that personal service of the assessment to a security guard who is not an employee of the taxpayer constitutes an invalid service. In the case at bar however, Petitioner readily admitted that Ms. Bullahan was an employee of the company.[31]

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[28] Docket, Exhibit "R-17", Supplemental Judicial Affidavit of Revenue Officer Edna T. Posecion, Question No. 13, p. 2.
[29] BIR Records, Exhibit "R-7", p. 156.
[30] CTA EB CASE NO. 1551 (CTA Case No. 8689), November 17, 2017.
[31] Docket, Exhibit "P-1", Judicial Affidavit (For Witness: Ruby Tania C. Cruz), Question No. 26, pp. 117-118.

All in all, We find Petitioner's assertion that Ms. Bullahan was not authorized to receive the Notice of Designation as Withholding Agent as a belated attempt of Petitioner to excuse its failure to withhold.

Petitioner's obligation to withhold on its income payments finds basis under Section 2.57.2 (M) of RR 2-98, as amended, and not under Section 2.57.2 (S)

To emphasize, withholding under Section 2.57.2 (M) of RR No. 2-98, as amended by RR No. 17-2003, is distinct and separate from withholding under Section 2.57.2 (S). The former refers to withholding of tax on income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax, while the latter pertains to withholding of tax on income payments made to suppliers of agricultural products. Sections 2.57.2 (M) and (S) of RR No. 2-98, as amended by RR No. 17-2003, provides:

> "Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
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> xxx xxx xxx
>
> (M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods — One percent (1%)
>
> Supplier of services — Two percent (2%)
>
> xxx xxx xxx

> (S) Income payments made to suppliers of agricultural products. — Income payments made to regular agricultural suppliers such as those, but not limited to, payments made by hotels, restaurants, resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine food products dealers and all other establishments, except for income payments to casual agricultural suppliers where the annual gross purchases therefrom do not exceed P20,000 — One Percent (1%)
>
> xxx xxx xxx"

The withholding of tax under 2.57.2 (S) was suspended upon the effectivity of RR No. 03-2004[32] on March 01, 2004, to wit:

> "SECTION 3. Suspension. — In view of the foregoing, the implementation of **the above-quoted Section 2.57.2 (S) of Revenue Regulations Nos. 2-98, as amended, <u>is hereby suspended until further notice</u>**."[33]

Nevertheless, the provision under Section 2.57.2 (M) remained in operation. Since the withholding of tax pursuant to the sections above are not correlated with each other, a taxpayer who is a top ten thousand (10,000) private corporation is legally bound to withhold on its income payments to its suppliers, including agricultural suppliers, notwithstanding the suspension under RR No. 03-2004. Otherwise stated, the income tax of agricultural suppliers is not exempt from withholding tax if the sales were made to a top ten thousand (10,000) private corporation. The BIR clarified this principle when it issued RMC No. 44-07[34] in July 06, 2007. The said issuance provides:

> "In the light of the above clarification, there is no ground by which agricultural suppliers can claim that they are exempt from the imposition of withholding tax on their sales to top 10,000 private corporations and/or to the government by virtue of the suspension granted by RR 3-2004. In fine, RR 3-2004 did not in any way affect the taxability of agricultural suppliers for withholding tax purposes, insofar as their dealings with the top

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[32] Suspending the Implementation of Withholding Tax on Income Payments Made to Suppliers of Agricultural Products Under Section 2.57.2(S) of Revenue Regulations 2-98, as Amended by RR 17-2003, Further Amended by RR 30-2003 and 1-2004, March 01, 2004.

[33] *Emphasis and underscoring supplied.*

[34] Clarifying the Taxability of Agricultural Suppliers for Withholding Tax Purposes in Respect to Sales Made to Top 10,000 Corporations and to the Government in Relation to Revenue Regulations No. 3-2004 Which Suspended the Implementation of Withholding Tax on Income Payments Made to Suppliers of Agricultural Products Under Section 2.57.2 (S) of Revenue Regulations (RR) No. 2-98, as Amended, July 06, 2007.

10,000 private corporations and/or with the government are concerned."

Petitioner however insists that it should have been notified first of RMC No. 44-2007 before it can be liable for withholding under Section 2.57.2 (M), citing *Kerry Food Ingredients Cebu, Inc. v. Commissioner of Internal Revenue*[35] ("*Kerry v. CIR*").

Petitioner's argument is faulty for two (2) reasons.

First, Petitioner cannot invoke the Decision rendered in *Kerry v. CIR* because it was declared in no uncertain terms in *Commissioner of Internal Revenue v. San Roque Power Corporation*[36] that decisions of this Court do not constitute as binding precedents, to wit:

> "Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."

Considering that only decisions of the Supreme Court can be cited as binding precedents, Petitioner's reliance on the said decision is misguided.

And second, We agree with the court *a quo* that RMC No. 44-2007 is a mere interpretative regulation.

There are two (2) kinds of administrative issuances: (1) legislative rule, and (2) interpretative rule. Basically, a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof; while an interpretative rule is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[37]

We cannot consider RMC No. 44-2007 as a legislative rule because it is not in the nature of subordinate legislation, and it is not designed to implement the NIRC of 1997, as amended, by providing the details thereof. It merely reiterates and clarifies the effect of RR No. 3-2004 as well as the liability of withholding agents falling under Section 2.57.2 (M) of RR 2-98, as amended.

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[35] C.T.A. Case No. 8593, February 09, 2016.
[36] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.
[37] *See* BPI Leasing Corporation v. The Honorable Court of Appeals, Court of Tax Appeal and Commissioner of Internal Revenue, G.R. No. 127624, November 18, 2003.

To reiterate, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance.

In conclusion, even if the withholding of tax under 2.57.2 (S) was suspended upon the effectivity of RR No. 3-2004, Petitioner is still required to withhold tax from its suppliers under Section 2.57.2 (M).

The Second Division properly computed the deficiency and delinquency interests

The relevant provisions of the NIRC of 1997, as amended, on civil penalties, particularly on deficiency and delinquency interest, state:

> 'Sec. 249. **Interest.** –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (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 **<u>from the date prescribed for its payment</u>** until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> xxx xxx xxx
>
> (3) **<u>A deficiency tax, or any surcharge or interest thereon</u>** on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected **<u>on the unpaid amount</u>**, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."[38]

On the other hand, TRAIN Law, which took effect on January 01, 2018, provides the following amendment:

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[38] *Emphasis and underscoring supplied.*

"**Section 75.** Section 249 of the NIRC, as amended, is hereby further amended to read as follows:

'SEC. 249. Interest.—

'(A) In General.— There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: Provided, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

'(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 earlier.

'(C) Delinquency Interest.— x x x

'x x x.'"

To summarize, Sections 248 and 249 of the NIRC of 1997, as amended by TRAIN Law, provides the following interests, as civil penalty, in addition to the basic deficiency tax liability:

1) **Deficiency interest** at the rate of twenty percent **(20%)** per annum **on the basic deficiency tax** <u>computed from the date prescribed for payment until December 31, 2017</u> pursuant to Section 249(B);

2) **Delinquency interest** at the rate of twenty percent **(20%)** per annum **on the unpaid amount** [*i.e.*, basic deficiency tax + twenty five percent (25%) surcharge + twenty percent (20%) deficiency interest which have accrued as afore-stated in (1)], <u>computed from the notice and demand of the Commissioner until December 31, 2017</u> pursuant to Section 249(C); and

3) **Delinquency interest** at the rate of twelve percent **(12%)** per annum **on the unpaid amount** (*i.e.*, basic deficiency tax + twenty five percent (25%) surcharge + twenty percent (20%) deficiency interest which have accrued as afore-stated in (1)], computed from January 01, 2018 until the amount is fully paid pursuant to the relevant provisions of the TRAIN Law.

For this reason, the Court finds Petitioner's arguments – that the twenty percent (20%) deficiency interest should not be imposed after the issuance of the FLD and that the base amount for the computation for the delinquency interest should be the basic deficiency tax, lacking in merit. As it happens, the method by which the Second Division computed Petitioner's tax liability was derived not only pursuant to the provisions above of the NIRC of 1997, as amended, but also in accordance with RR No. 21-18[39], the regulations implementing the provisions on deficiency and delinquency interest.

In view of all the foregoing, We see no reason to reverse the conclusion and ruling of the Second Division.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on March 04, 2022 is **DENIED** for lack of merit. Accordingly, the March 19, 2021 Decision and February 07, 2022 Resolution in CTA Case No. 9721 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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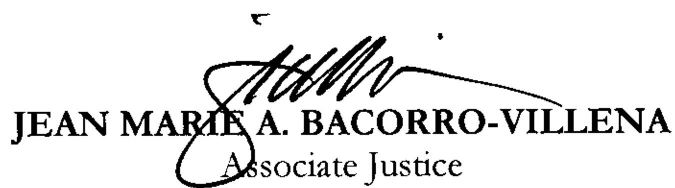
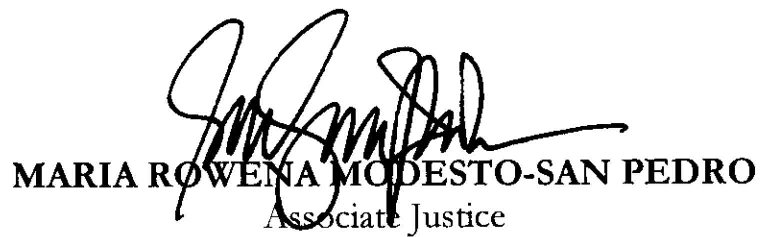
[39] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as Amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)", September 14, 2018.

CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Official Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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

ROMAN G. DEL ROSARIO
Presiding Justice