

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL
REVENUE,
Petitioner,

CTA EB No. 2500
(CTA Case No. 9431)

Present:

-versus-

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

FIRST PHILIPPINE UTILITIES
CORPORATION,
Respondent.

Promulgated:
MAY 24 2023

2:30 pm

X -----X

DECISION

DEL ROSARIO, PJ:

Before this Court is a Petition for Review posted *via* registered mail on July 26, 2021 by the Commissioner of Internal Revenue, praying that the Court *En Banc* reverse and set aside the Decision dated September 29, 2020 and the Resolution dated March 22, 2021 promulgated by the Court of Tax Appeals (CTA) Third Division¹ in CTA Case No. 9431, entitled *First Philippine Utilities Corporation vs. Commissioner of Internal Revenue*, which granted respondent's Petition for Review, cancelled and set aside the deficiency income tax, value-added tax, documentary stamp tax, and compromise penalty assessments for taxable year 2012 against respondent First Philippine Utilities Corporation in the amount of ₱100,884,707.73.

¹ Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.

91

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 2 of 16

The dispositive portions of the assailed Decision and assailed Resolution of the Court in Division read:

September 29, 2020 Decision:

"WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Consequently, Respondent's deficiency assessments for income tax, VAT, DST, and compromise penalty against Petitioner in the amount of Php100,884,707.73, inclusive of penalties and interest, for taxable year 2012, are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

March 22, 2021 Resolution:

"WHEREFORE, premises considered, Respondent's 'Motion for Reconsideration (Re: Decision promulgated 23 September 2020)' is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As Commissioner, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR. The Commissioner holds office at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.²

Respondent First Philippine Utilities Corporation is duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 6th Floor, Benpres Building, Meralco Avenue cor. Exchange Road, Pasig City.³

² Par. 2, Summary of Admitted Facts, Joint Stipulation of Fact and Issues (JSFI), *CTA Division Docket*, Vol. 1, p. 269.

³ Par. 1, *id.*, *CTA Division Docket*, Vol. 1, p. 270.

09

THE FACTS⁴

The facts of the case as found by the Court in Division are as follows:

"Respondent issued *Letter of Authority* ('LOA') No. LOA-43A-2013-00000272 dated July 12, 2013, authorizing the conduct of an audit of its taxable records for taxable year 2012. The said LOA was signed by OIC-Regional Director Jonas DP. Amora, and was received by Petitioner on July 16, 2013.

Thereafter, Respondent issued the *Preliminary Assessment Notice* ('PAN') on December 04, 2015, informing Petitioner that it was found liable for deficiency income tax in the amount of Php92,615,265.14, VAT amounting to Php1,312,835.88, and DST totalling Php5,863,690.07, inclusive of increments, for taxable year 2012.

Petitioner filed its reply to the PAN on December 17, 2015, arguing that the preliminary assessment is bereft of legal and factual bases.

Respondent issued the *Formal Letter of Demand with Final Assessment Notice* ('FLD-FAN') on December 22, 2015. The FLD-FAN contains deficiency tax assessments for income tax, VAT, and DST, for taxable year 2012, in the total amount of Php100,884,707.73, inclusive of interests and penalties, broken down as follows:

Tax Type	Amount
Income tax	Php93,639,916.54
VAT	1,326,957.29
DST	5,917,833.90
Total	Php100,884,707.73

On January 20, 2016, Petitioner filed its *Protest to the Assessment*, arguing against the BIR's findings and praying that Respondent's deficiency tax assessments be cancelled, for lack of factual and legal bases.

Claiming inaction on the part of Respondent, Petitioner filed the present *Petition for Review* on August 17, 2016. The instant case was initially raffled to this Court's First Division.

Respondent then filed his *Answer* on December 05, 2016.

On December 16, 2017, Respondent elevated the entire *BIR Records* of the present case consisting of one folder, pre-numbered from pages 1 to 525.

⁴ The Commissioner of Internal Revenue was the respondent; and First Philippine Utilities Corporation was the petitioner in CTA Case No. 9431.



DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 4 of 16

The Pre-Trial Conference was initially set on March 30, 2017. However, the same was reset to, and held on, May 24, 2017. In the meantime, the *Pre-Trial Brief for Petitioner* was filed on March 24, 2017, while *Respondent's Pre-Trial Brief* was submitted on March 27, 2017.

The parties submitted their *Joint Stipulation of Facts & Issues* ('JSFI') on June 19, 2017, which was approved by this Court in the Resolution dated June 23, 2017. The Pre-Trial Order was issued on July 21, 2017, deeming the termination of the Pre-Trial.

Trial ensued.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Victoria A. Martinez, former Vice President of Petitioner assigned to handle the accounting operations of the latter; and (2) Ms. Carminda B. Miranda, Petitioner's accountant.

On August 03, 2018, Petitioner filed its *Formal Offer of Evidence*, Respondent failed to file his comment thereto. Thus, in the Resolution dated January 23, 2019, this Court admitted all of Petitioner's exhibits.

Meanwhile, in the Order dated October 01, 2018, the present case was transferred to the Third Division of this Court.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of his sole witness, Revenue Officer Renato M. Atos.

On April 10, 2019, Respondent filed his *Formal Offer of Evidence*. Petitioner failed to file its comment thereto. In the Resolution dated June 17, 2019, the Court likewise admitted all of Respondent's formally offered exhibits.

Petitioner's *Memorandum* was filed on September 16, 2019. Respondent, however, failed to file his memorandum.

In the Resolution dated September 20, 2019, the present case was deemed submitted for decision."⁵ (*Citations omitted*)

On September 29, 2020, the Court in Division rendered the assailed Decision⁶ granting respondent's Petition for Review.

On November 9, 2020, petitioner filed a "Motion for Reconsideration (Decision dated 29 September 2020)".⁷

⁵ Court in Division's September 29, 2020 Decision, *CTA En Banc Docket*, pp. 17 to 19.

⁶ Annex "A", *CTA En Banc Docket*, pp. 15 to 62.

M

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 5 of 16

On March 22, 2021, the Court in Division issued the assailed Resolution⁸ denying petitioner's "Motion for Reconsideration (Decision dated 29 September 2020)" for lack of merit.

On July 8, 2021, petitioner filed a "Motion for Extension of Time to File Petition for Review" before the Court *En Banc*.⁹ The same was granted in the Minute Resolution¹⁰ dated July 12, 2021, and petitioner was given until July 24, 2021, within which to file his Petition for Review.

Petitioner posted the present Petition for Review¹¹ *via* registered mail on July 26, 2022.¹²

With the filing of petitioner's "Comment (to petitioner's Petition for Review dated July 26, 2021)"¹³ on August 14, 2021, the case was referred for mediation to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on March 31, 2022.¹⁴

As the parties decided not to have their case mediated by the PMC-CTA,¹⁵ the Petition for Review was submitted for decision on May 25, 2022.¹⁶

THE ISSUE

Whether or not the Court in Division erred in granting the Petition for Review in CTA Case No. 9431 and cancelling/withdrawing the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) with Details of Discrepancies issued against respondent, assessing it for deficiency income tax, value-added tax (VAT) and documentary stamp tax (DST), and compromise penalty for the taxable year 2012 in the amount of ₱100,884,707.73, inclusive of interests and penalties.¹⁷

⁷ CTA Division Docket, Vol. 2, pp. 978 to 984.

⁸ Annex "B", CTA *En Banc* Docket, pp. 63 to 68.

⁹ CTA *En Banc* Docket, pp. 1 to 2.

¹⁰ CTA *En Banc* Docket, p. 3.

¹¹ CTA *En Banc* Docket, pp. 4 to 13.

¹² July 24, 2021 fell on a Saturday; while July 25, 2021 fell on a Sunday.

¹³ CTA *En Banc* Docket, pp. 149 to 167.

¹⁴ Resolution, CTA *En Banc* Docket, pp. 169 to 170.

¹⁵ No Agreement to Mediate, CTA *En Banc* Docket, p. 171.

¹⁶ CTA *En Banc* Docket, pp. 173 to 174.

¹⁷ Petition for Review, CTA *En Banc* Docket, p. 8.

01

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 6 of 16

PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner raises the following arguments in support of his Petition for Review:

1. The interest income not subjected to income tax in the amount of ₱179,288,707.67 must be added back to the taxable income of respondent as it failed to prove that the said interest income was subjected to final withholding tax;
2. Respondent's Income Tax Return (ITR) reveals that it was not in a net loss position. Thus, respondent's net operating loss carry over (NOLCO) in the amount of ₱165,722,261.00, which was carried over to succeeding periods and from which respondent derived the corresponding tax benefit, must be added back to respondent's taxable income for the taxable year 2012;
3. Respondent's excess minimum corporate income tax (MCIT) in the amount of ₱123,060.00 and tax credits in the amount of ₱432,509.00 must be disallowed as credits against respondent's income tax due as the same were carried over and credited against respondent's income tax due for the succeeding periods;
4. Respondent's service income in the amount of ₱6,927,843.75, which was not fully declared in respondent's ITR for taxable year 2012, is subject to 12% VAT pursuant to Section 108 of the NIRC of 1997, as amended; and,
5. Tax assessments are presumed to be correct and there is a presumption of regularity in the performance of the Revenue Officer's duty to investigate respondent for its internal revenue tax liabilities.

Respondent's arguments

Respondent, on the other hand, counter-argues that:

1. The Court in Division was correct in holding that respondent's interest income from money market placements, being passive income, were correctly held by



DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 7 of 16

the Court in Division as not subject to regular corporate income tax. Said passive income are subject to final withholding tax at the rate of twenty percent (20%) which must be withheld by the banks as payors thereof;

2. The Court in Division was correct in ruling that respondent validly claimed NOLCO as a deduction from its gross income;
3. The Court in Division did not err in finding that there is no basis for petitioner to disallow as credits against respondent's income tax due for taxable year 2012 the MCIT and excess tax credits of respondent, albeit the same were carried over to succeeding periods; and,
4. The Court in Division was correct in holding that there is no basis for petitioner to assess respondent for deficiency VAT on its service income.

RULING OF THE COURT *EN BANC*

***The Petition for Review was
timely filed before the Court En
Banc***

The Court *En Banc* shall first determine whether the present Petition for Review was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

"SEC. 3. Who may appeal; period to file petition. – xxx

xxx

xxx

xxx

(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)"

01

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 8 of 16

Records show that petitioner received the assailed Resolution on June 24, 2021.¹⁸ Petitioner had fifteen (15) days from June 24, 2021 or until July 9, 2021 within which to file his Petition for Review before the Court *En Banc*. With the filing of a "Motion for Extension of Time to File Petition for Review" on July 8, 2021,¹⁹ petitioner was given until July 24, 2021²⁰ (which fell on a Saturday) within which to file his Petition for Review. The Petition for Review was timely filed on **July 26, 2021**.²¹

The Court in Division was correct in cancelling and setting aside the FAN and FLD issued against respondent for taxable year 2012

As correctly pointed out by respondent, petitioner's arguments in its Petition for Review are mere rehash of the arguments raised in his Motion for Reconsideration filed before the Court in Division which were adequately passed upon by the Court in Division in the assailed Resolution. Nonetheless, the Court *En Banc* will address petitioner's arguments to put to rest the issues it reiterated.

A. Interest income from money market placement is subject to final withholding tax and not to regular corporate income tax; the liability to withhold the final tax rests upon the banks as payors of the interest income

To recall, in the FAN and FLD, petitioner was of the position that the subject interest income is not a passive income that should be subject to the final tax but to the regular corporate income tax.

The Court in Division found and declared in the assailed Decision that respondent did not dispute the fact that the assessed interest income amounting to ₱179,288,707.67 arose from

¹⁸ CTA Division Docket, Vol. 2, unpaginated.

¹⁹ *Supra* Note 9.

²⁰ *Supra* Note 10.

²¹ *Supra* Notes 11 and 12.



DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 9 of 16

investments on money market placements to various banks for calendar year ending December 31, 2012.²²

In his Motion for Reconsideration of the assailed Decision and in the subject Petition for Review, petitioner changed his theory for the subject item of assessment. Petitioner is no longer insisting that the interest income is an ordinary income that should have been subjected to regular corporate income tax. Instead, petitioner is arguing anew that respondent failed to prove that the said interest income was subjected to final withholding tax. Petitioner has effectively admitted that the said interest income is indeed a passive income subject to final withholding tax, albeit the fact of withholding has not been proven by respondent.

It is settled that a party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.²³

Thus, the Court cannot allow petitioner to change his theory, and rule on the merits of the new theory. Having initially assessed respondent for regular corporate income tax on the basis of his position that the interest income is an ordinary income, petitioner (who conceded in the present appeal as well as in the Motion for Reconsideration of the assailed Decision that the interest income is a passive income subject to final withholding tax) can no longer insist that respondent be subjected to regular corporate income tax on said interest income as it failed to prove that said interest income have been subjected to final withholding tax. The Court cannot sanction this last-minute effort on the part of the petitioner to save the subject item of assessment from being cancelled.

Even assuming *arguendo* that petitioner is allowed to belatedly raise the issue of respondent's failure to prove that the interest income was subjected to final withholding tax, the Court *En Banc* finds the same bereft of merit.

²² CTA *En Banc* Docket, p. 31.

²³ *Philippine Ports Authority vs. City of Iloilo*, G.R. No. 109791, 14 July 2003.



DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 10 of 16

Below is the breakdown of respondent's interest income that had already been subjected to final withholding tax as computed by independent external auditors:²⁴

Audited Interest Income for Year 2012	
Short-term cash investments	₱174,003,788.99
Cash Deposits in banks	17,153.06
Total interest income subject to final tax	174,020,942.05
Add: Interest Income from Unicapital Corporation	5,303,298.70
Total Interest Income per Audited Financial Statements	₱179,324,240.75

Records show that the foregoing interest income came from cash deposits and short-term cash investments with banks.²⁵ Interest income earned from any money market placement and bank deposit is considered as passive income subject to final withholding tax pursuant to Section 24(B)(1) of the NIRC of 1997, as amended. Petitioner committed a mistake when it subjected the same to regular corporate income tax at the rate of thirty percent (30%) under Section 32(A)(2) of the NIRC of 1997, as amended when it should have been subjected to a final withholding tax at the rate of twenty percent (20%).

Truth to tell, it is not respondent's duty to pay the final withholding tax. The payors, as the withholding agent²⁶ are the ones mandated by law to collect the final withholding tax and remit the same to the BIR. Section 2.57(A) of Revenue Regulations No. 02-98 states:

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax.*- **Under the final withholding tax system[,] the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.** The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.

xxx

xxx

xxx"

²⁴ Exhibit "P-31", CTA Division Docket, p. 566.

²⁵ Exhibit "P-19", CTA Division Docket, p. 757; Exhibit "P-20", CTA Division Docket, p. 777.

²⁶ *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011.

01

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 11 of 16

In the case at bar, the withholding agents are banks, namely, Philippine National Bank, Rizal Commercial Banking Corporation, and Unicapital Corporation as they are the payors of respondent's interest income. It is their duty to withhold the final tax on respondent's interest income and remit the same to the BIR. Thus, there is no basis to insist that respondent is liable for any deficiency income tax arising from its failure to prove that the interest income was subjected to final withholding tax.

***B. The item of assessments
on NOLCO, MCIT and excess
tax credits were properly
cancelled by the Court in
Division***

Net Operating Loss Carry Over

In both the Preliminary Assessment Notice (PAN) and the FAN, petitioner claimed that respondent's operations showed taxable income instead of net operating loss as claimed by the latter in its ITR.

The pertinent portion of this item of assessment as disclosed in the Details of Discrepancies reads as follows:

"Net Operating Loss Carry-Over (NOLCO), P165,722,261.00

– Investigation disclosed that your operation showed taxable income instead of net operating loss as previously claimed in your ITR. The tax benefit of this amount has already been forwarded to succeeding periods as provided for under Section 34 (D) (3) the NIRC, as amended, to wit:

"The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss."

Petitioner's investigation indeed disclosed that respondent had an adjustment in the taxable income amounting to ₱200,451,070.14 composed of undeclared service income, interest income not subjected to income tax, and non-deductible expenses amounting to ₱1,624,544.75, ₱179,288,707.67 and ₱19,537,817.72, as shown below:



DECISION

Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation
CTA EB No. 2500 (CTA Case No. 9431)
Page 12 of 16

I. **INCOME TAX**

Taxable Income per Income Tax Return (ITR)		₱(165,722,261.00)
Add: Adjustments per investigation:		
Undeclared Service Income (Schedule 1)	₱1,624,544.75	
Interest Income not subjected to Income Tax	179,288,707.67	
Non-deductible Expenses (Schedule 2)	19,537,817.72	200,451,070.14
Total		₱34,728,809.14
Add: Net Operating Loss Carry-Over (NOLCO)		165,722,261.00
Adjusted Taxable Income		₱200,451,070.14

The adjusted taxable income amounting to ₱200,451,070.44 can be recomputed by adding the sum of both the undeclared service income and interest income not subjected to income tax which is ₱180,913,252.42 to the total gross income per ITR amounting to ₱6,152,989.00, and deducting the non-deductible expenses of ₱19,537,817.72 from the total itemized deductions per ITR amounting to ₱20,574,137.00. After effecting such adjustments, the total net taxable income is now at ₱186,029,922.14. Adding the NOLCO for the current taxable year in the amount of ₱14,421,148.00 would result to an adjusted taxable amount of ₱200,451,070.14, as computed below:

	Per ITR	Per CIR's adjustments	Adjusted
Total Gross Income	6,152,989.00	180,913,252.42	187,066,241.42
Less:			
Regular Allowable Itemized Deductions	20,574,137.00	(19,537,817.72)	1,036,319.28
Allowance for NOLCO	151,301,113.00	-	-
Total Itemized Deductions	171,875,250.00		1,036,319.28
Net Taxable Income	(165,722,261.00)		186,029,922.14
Add: NOLCO for 2012		14,421,148.00	14,421,148.00
Adjusted Taxable Income			200,451,070.14

By arguing that the tax benefit of the NOLCO in the total amount of ₱165,722,261.00 has already been forwarded to succeeding periods, petitioner is effectively claiming that the net taxable income (or loss in this case) as per ITR in the same amount was forwarded as NOLCO in the next taxable period.

The Court finds petitioner's claim unmeritorious.

Such claim is contrary to Schedule 1A in the ITR, which reveals that as of 2012, there is no balance shown under the "Net Operating Loss (Unapplied)" column. Thus, respondent could not have forwarded the entire amount of ₱165,722,261.00 to taxable year 2013, viz.:

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Year Incurred	Amount	Applied Current Year	Expired	Net Operating Loss (Unapplied)
2009	50,766,794.00	50,766,794.00	-	-
2010	100,534,319.00	100,534,319.00	-	-
2011	-	-	-	-
2012	14,421,148.00	14,421,148.00	-	-

In arguing that the amount of ₱165,722,261.00 was forwarded to the succeeding taxable years, petitioner simply relied on the fact that respondent disclosed in its ITR a net operating loss of ₱165,722,261.00. The Court finds that the net operating loss in the current year is actually reflected as NOLCO in the ITR for the succeeding taxable year. While it is possible that respondent may have forwarded the same amount in the succeeding taxable year, petitioner, however, failed to consider Schedule 1A of the ITR which specifically covered matters on NOLCO. As shown in the above table, the accumulated NOLCO amounting to ₱165,722,261.00 were all applied in the current year. Thus, there is no unapplied NOLCO as of the end of taxable year 2012.

The Court *En Banc* notes that respondent erroneously applied in the current year the NOLCOs from taxable years 2009 and 2010 amounting to ₱50,766,794.00 and ₱100,534,319.00, respectively. Notably, the current taxable year yielded a net operating loss before NOLCO of ₱14,421,148.00. There is no taxable income against which those available NOLCOs from taxable years 2009 and 2010 may be applied. The proper treatment for such NOLCOs is to report them as expired NOLCOs. In any case, it is correct that there is no balance reported as unapplied NOLCO as of taxable year 2012.

Absent any ITR for taxable year 2013 showing that respondent reported the amount of ₱165,722,261.00 as available NOLCO, respondent could not be said to have benefited twice by applying the NOLCOs in the current taxable year and by reporting the same as available NOLCOs in the succeeding taxable year. In sum, it is erroneous for petitioner to claim that the tax benefit arising from the NOLCOs were forwarded to the succeeding taxable years.

Minimum Corporate Income Tax

Anent petitioner's argument that the MCIT and the excess tax credits must be disallowed considering that they were already

01

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 14 of 16

forwarded to the succeeding taxable years, the Court finds the same untenable.

The Court agrees with the findings of the Court in Division which held that no substantial adjustment can be made on the items of gross income. Consequently, respondent's net loss from operations shall remain unadjusted. Considering that respondent incurred net loss from its operations, the MCIT still applies pursuant to Section 27(E)(1) of the NIRC of 1997, as amended. Notably, the tax benefit from the MCIT will redound to the succeeding years. It is incorrect for petitioner to disallow the MCIT when the taxpayer did not even benefit from it during the taxable year.

Excess Tax Credits

As for the excess tax credits carried over to succeeding periods, the Court finds that they are automatically allowed as tax credits against petitioner's income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess tax credits arose pursuant to Section 2.58.3(C) of Revenue Regulations No. 2-98. Again, the Court reiterates that respondent incurred net loss in the current taxable year; thus, respondent could not have benefitted from the excess tax credits during the taxable year.

In sum, the disallowances of the excess MCIT over the regular corporate income tax and excess tax credits carried forward to succeeding periods amounting to ₱123,060.00 and ₱432,509.00, respectively, lack factual and legal bases.

***C. The VAT assessment on
service income, which is
actually an interest income,
was properly cancelled by
the Court in Division***

Petitioner reiterates its argument that the service income in the amount of ₱6,927,843.75 should be subjected to VAT.

The Court *En Banc* finds that respondent is not subject to VAT on the alleged service in the amount of ₱6,927,843.75.

01

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*

CTA EB No. 2500 (CTA Case No. 9431)

Page 15 of 16

As found by the Court in Division, the amount of ₱6,927,843.75 comprises of gross receipts from interest income during the taxable year 2012. There is nothing on record which would show that respondent is a lending company that earned aforesaid interest income in the ordinary course of business. Thus, there is no basis to assess respondent for deficiency VAT on the aforesaid interest income.

All told, the Court *En Banc* finds no justifiable reason to reverse or set aside the assailed Decision and assailed Resolution of the Court in Division which cancelled the subject FAN and FLD issued against respondent for taxable year 2012.

WHEREFORE, in light of the foregoing, the Petition for Review posted on July 26, 2021 by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The Decision dated September 29, 2020 and Resolution dated March 22, 2021 of the Court in Division in CTA Case No. 9431 are **AFFIRMED**.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency income tax, value-added tax, documentary stamp tax and compromise penalty assessments issued against First Philippine Utilities Corporation, arising from the Formal Letter of Demand and Final Assessment Notice dated December 22, 2015 in the aggregate amount of ₱100,884,707.73, inclusive of interests and penalties, for taxable year ended December 31, 2012. The order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

DECISION

*Commissioner of Internal Revenue vs. First
Philippine Utilities Corporation*
CTA EB No. 2500 (CTA Case No. 9431)
Page 16 of 16

WE CONCUR:



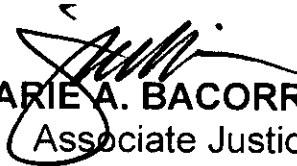
ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE

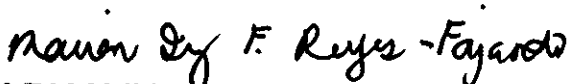
CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE

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