



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

DOMINGO F. ESTOMO,
 Petitioner,

G.R. No. 248971

Present:

- versus -

CAGUIOA, J.,
Chairperson,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

CIVIL SERVICE COMMISSION,
REGIONAL OFFICE NO. X, AS
REPRESENTED BY THE
REGIONAL DIRECTOR, CSC
REGION X,

Promulgated:

Respondent.

August 31, 2022

MisDcBatt

X-----X

DECISION

GAERLAN, J.:

This Petition for Review on *Certiorari*¹ assails the Decision² dated August 31, 2018 and the Resolution³ dated July 19, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 04284-MIN. The CA reversed the Decision⁴ dated August 8, 2013 of the Regional Trial Court (RTC) of Cagayan De Oro City, Branch 20, in Civil Case No. 98-123. In reversing the RTC Decision, the CA declared that the obligation of respondent Civil Service Commission (CSC) Regional Office No. X (CSC Region X), as represented by the Regional Director, CSC Region X, is deemed extinguished.⁵

¹ *Rollo*, p. 8-24.

² Id. at 28-43; penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring.

³ Id. at 45-47.

⁴ Id. at 115-119; penned by Presiding Judge Bonifacio M. Macabaya.

⁵ Id. at 42.

The Facts

On April 29, 1997, CSC Region X Director IV Vivencio N. Muego, Jr. sent a Notice/Letter of Award to Engr. Domingo F. Estomo (Estomo) of Domingo F. Estomo Trading & Construction, the pertinent portion reads:

In conformity with Resolution No. 01, s. 1997 of the PBAC, this Office and the amended implementing Rules and Resolutions x x x, the contract for complete construction of the third floor of CSC-X building IS HEREBY AWARDED to your firm in the amount of One Million Four Hundred Seventy Five Thousand Seven Hundred Eighty Nine Pesos & Seven Centavos (₱1,475,789.07), the following requirements to be completed within seven (7) days from receipt of this letter[.]⁶

On May 6, 1997, CSC Region X and Domingo F. Estomo Trading & Construction, represented by Estomo, executed a Contract For Works.⁷ Pursuant to the Notice to Commence Work,⁸ the project works commenced on May 8, 1997. The target date of completion was on October 5, 1997.⁹

Payments were made on a staggered basis:

Date	Voucher Number	Amount
July 14, 1997	2977003	₱251,808.46
August 15, 1997	2978001	₱287,474.41
September 26, 1997	2979014	₱372,824.63 ¹⁰

Estomo wrote several letters to CSC Region X regarding the extra works needed for the complete construction of the third floor of CSC-X building (project). The letter dated July 7, 1997 was about the additional wall partition, aluminum swing door, one unit septic tank, and the roofings. The extra works for the toilet concrete slabs were mentioned in the Letter dated July 15, 1997,¹¹ the kitchen cabinets on the Letter dated July 18, 1997,¹² and the baseboard walling discussed on the Letter dated July 23, 1997.¹³ On September 5, 1997,¹⁴ Estomo claimed that all extra works amounted to ₱206,008.66, broken down as follows:

⁶ Id. at 54.
⁷ Id. at 56-58.
⁸ Id. at 55.
⁹ Id.
¹⁰ Id. at 69.
¹¹ Id. at 60.
¹² Id. at 61.
¹³ Id. at 62.
¹⁴ Id. at 63.

1. Additional Wall Partition	₱17,947.43
2. Door 3 Aluminum Swing Door	₱28,473.83
3. Additional One Unit Septic Tank	₱22,343.37
4. Roofings	₱10,000.00
5. Toilet Concrete Slabs	₱10,026.75
6. Kitchen Cabinets	₱23,020.23
7. Endwall Roof Flashing	₱58,937.27
8. Base Board Walling	₱35,259.78
TOTAL EXTRA COST	₱ 206,008.66 ¹⁵

On the other hand, the following extra works were denied by Estomo due to financial constraints: (1) pebble finish at the front wall of the building; (2) fire escape; and (3) additional 400 amperes main breaker, including its accessories.¹⁶

In the meantime, Estomo invited the CSC inspectorate team to conduct a final inspection of the project on September 26, 1997.¹⁷ The CSC building was eventually inaugurated on October 6, 1997.¹⁸

On November 24, 1997, Estomo sent anew a demand letter, wherein the total extra works increased to ₱261,963.82:

1. Wood Partition	₱17,947.43
2. Door 3 Aluminum Swing Door	₱28,473.83
3. Additional One Unit Septic Tank	₱22,343.37
4. Roofings	₱10,000.00
5. Toilet Concrete Slabs	₱10,026.75
6. Kitchen Cabinets	₱23,020.23
7. [Acoustic] Board	₱14,415.04
8. Endwall Roof Flashing	₱58,937.27
9. Base Board Walling	₱35,259.78
10. Fixed Glass Window Field Office	₱8,100.10
11. Additional One Set Steel Awning Window – 4	₱11,155.25
12. CHD Walling	₱16,968.12
13. Painting wood partition	₱5,305.50
TOTAL EXTRA COST	₱261,963.82 ¹⁹ (Emphasis supplied)

Estomo sent several demand letters to the CSC. Likewise, he submitted the following documents requested by the CSC in its letter dated December 16,

¹⁵ Id.

¹⁶ Id. at 66.

¹⁷ Id. at 64.

¹⁸ Id. at 65.

¹⁹ Id. at 68.

1997: (1) Inspection Report; (2) Contractor Statement of Work Accomplished; (3) Progress Chart (S-Curve); (4) Statement of Time Elapsed and Percentage of Work Accomplished; (5) Certificate of Acceptance; and (6) Certificate of Project Completion.²⁰

On January 15, 1998, the CSC sent a letter to Estomo advising him to make the necessary rectification or completion of deficiencies as reflected in the Report of the Technical Committee of the City Engineering Office (CEO). According to the Report, some items in the project were defective, and were not in accordance with the specifications given by the CEO.²¹

On January 24, 1998, Estomo sent a final demand letter for the total amount of ₱604,278.60, representing the balance from the Contract for Works and the extra works.²² Estomo remained unpaid. Thus, he filed before the RTC a Complaint²³ for Specific Performance, Sum of Money plus Damages against the CSC.

In its Answer,²⁴ the CSC admitted the extra works, but denied their completion. The CSC averred that no turnover transpired, and that the keys to the building were delivered by Estomo merely for pre-audit inspection. The CSC maintained that it is willing to pay Estomo the total amount of ₱82,000.00 upon completion of the deficiencies and compliance by Estomo of the necessary documents required by the CEO which consists of the following: (1) photocopy of the voucher of preceding billing; (2) Contractor's Affidavit; (3) Certificate of Compliance to Republic Act (R.A.) No. 6685; (4) progress photographs; (5) approved as-built plans; and (6) revised PERT/CPM and prompt rectification of the specific deficiencies enumerated by the CEO Inspectorate Team.²⁵ For its counterclaim, the CSC prayed that Estomo be held liable for the following: (a) ₱2,500,000.00 for the uncompleted work and for having been deprived of the project; (b) ₱1,000,000.00 exemplary damages; and (c) liquidated damages equivalent to 15% of the total contract price in the Contract for Works.²⁶

Pre-trial was conducted.

²⁰ Id. at 73.

²¹ Id. at 29.

²² Id.

²³ Id. at 49-53.

²⁴ Id. at 78-83.

²⁵ Id. at 81 and 108-109.

²⁶ Id. at 30.

Motion for Partial Judgment on the Pleadings

Estomo filed a Motion for Partial Judgment on the Pleadings.²⁷ In the said Motion, Estomo averred that the CSC essentially admitted that the Contract for Works has been completed.²⁸ Thus, the only issue left to be resolved is that of the completion and cost of the extra works. Consequently, Estomo prayed for the payment of ₱323,314.75, representing the unpaid balance under the Contract for Works.²⁹

In its Order³⁰ dated March 6, 2000, the RTC found that the Motion for Partial Judgment on the Pleadings was not controverted by the CSC, to the effect that liability has been admitted, and that funds are available for its payment. Before payment can be made, Estomo must comply within 10 days the requirements mandated by Presidential Decree (P.D.) No. 1594,³¹ Government Accounting and Auditing Manual and Commission on Audit (COA) Circulars.³² Trial ensued.

On March 5, 2001, the CSC filed a Motion to Tender Payment in Court. The CSC alleged that Estomo's failure to comply with the above-enumerated documents made it impossible for the CSC to use the subject facilities or project, to the prejudice of the general public. As such, the CSC prayed to be allowed by the RTC to tender payment by way of escrow deposit, and to provisionally use the third floor premises of the CSC Region X Building. Evidenced by Official Receipt No. 1084353 dated March 7, 2001, the CSC tendered payment in Court by way of escrow deposit in the amount of ₱217,174.46,³³ computed as follows:

Contract for Works	₱ 1,475,789.07
Previous Payments made by the CSC:	
July 14, 1997	₱ 363,296.34
August 15, 1997	₱ 405,220.45
September 26, 1997	₱ 480,577.06
Balance for the Contract for Works	₱ 226,695.22
Balance for the extra works	₱ 144,735.98
Total balance (Contract for Works plus extra works)	₱ 371,431.20
Deductions:	
Tax	₱ 25,998.79
Recoupment Fee	₱ 31,766.36
Retention Fee	₱ 14,471.60

²⁷ Id. at 84-87.

²⁸ Id. at 84.

²⁹ Id. at 31.

³⁰ Id. at 88-89.

³¹ PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS; approved on June 11, 1978.

³² *Rollo*, p. 88.

³³ Id. at 94.

Deficiencies	₱ 82,000.00
Net	₱ 217,174.42³⁴

In the meantime, on March 13, 2001, the CSC received a folder containing the documents demanded from Estomo. Upon perusal of Cagayan de Oro City Engr. Jorie Bingona (City Engr. Bingona), the documents submitted were mutilated, and not properly signed by the concerned parties. Therefore, City Engr. Bingona requested Estomo and the CSC to determine together and submit a joint evaluation of the following: (1) actual accomplishment on the project; and (2) assessment whether the specifications are in accordance with the Contract for Works.³⁵

In an Order³⁶ dated March 21, 2001, the RTC granted the Motion To Tender Payment in Court filed by the CSC. Meanwhile, Estomo prayed for the release of the full amount tendered by the CSC.

The CSC filed another Motion. For this instance, it requested the RTC to direct Estomo to coordinate with the CEO for the processing and evaluation of the documents required for the final payment of the Contract for Works. Also, the CSC asked that the CEO be ordered to render a report on its evaluation of the documents submitted by Estomo.³⁷ The RTC denied the Motion. According to the RTC, it has no legal basis to order the CEO to render a report since the latter is not a party to the case.³⁸

As regards the release of the amount tendered by the CSC, the RTC noted that Estomo made the same prayer in his Motion for Partial Judgment on the Pleadings, the resolution of which was held in abeyance subject to Estomo's submission of some documents. This time, the documents were already submitted and marked in evidence, hence, the RTC finally granted Estomo's prayer, and allowed the release of the full amount tendered by the CSC.³⁹

Insistent, the CSC filed a Motion to Dismiss on the ground of lack of jurisdiction. The CSC averred that it is an incorporated government agency, which is immune from suit. It further alleged that the COA, and not the RTC, has jurisdiction over the subject matter of the claim. The CSC also questioned the release in favor of Estomo the full amount tendered and argued that only the sum of ₱97,060.19 pertaining to the original Contract for Works must be released.⁴⁰

³⁴ Id. at 107-109.

³⁵ Id. at 91-92.

³⁶ Id. at 90.

³⁷ Id. at 92.

³⁸ Id. at 96-97.

³⁹ Id. at 97.

⁴⁰ Id. at 95-97.

The RTC denied the Motion to Dismiss, and ruled that the CSC is estopped from raising the issue of lack of jurisdiction because it has actively taken part in every proceedings of the case since it was filed in 1998. The RTC emphasized that the immunity from suit of the State cannot be invoked to perpetrate an injustice, especially since in this case, the government has already benefited with the completion of the Contract for Works.⁴¹ Moreover, the CSC waived its immunity from suit when it filed a counterclaim.⁴² In the same Order, the RTC found that the full amount of ₱217,174.46 shall be released in favor of Estomo based on equity and fair play, and the principle of *quantum meruit* since the project was 95% completed.⁴³

Furthermore, the RTC held that there is no reason left to deny Estomo of the total amount tendered by the CSC. First, the CSC admitted the completion of the project. Second, the supporting documents were already submitted and marked in evidence. Finally, the interest of the government is more than sufficiently protected when the CSC deducted the 10% retention fee in the amount of ₱76,851.68, and ₱82,000.00 for the alleged deficiencies on the Contract for Works.⁴⁴ The dispositive portion of this Order dated February 8, 2002 reads:

WHEREFORE, [CSC]'s motion to dismiss is accordingly denied for want of merit. [O]n the other hand, [Estomo's] prayer for the release of the full amount of P217,174.46 (less the P97,060.19 already released) is hereby granted. Let the said amount be released to [Estomo] without further need of submission of the original copy of the pertinent receipt/s which are in the possession of defendant CSC, and, of course, without prejudice to further hearing and accounting by the parties with regard to the amount still due, if any, relative to the project subject-matter of this case.

SO ORDERED.⁴⁵ (Emphasis in the original)

The CSC filed another Motion for Reconsideration, which was denied by the RTC in its Order dated March 4, 2008.⁴⁶

Ruling of the RTC

Faced with the issue on the outstanding obligation of CSC to Estomo, the RTC mainly took into consideration the fact that the original Contract for Works and the subsequent extra works were already completed and used by the

⁴¹ Id. at 99.

⁴² Id. at 98.

⁴³ Id. at 100.

⁴⁴ Id.

⁴⁵ Id. at 100-101.

⁴⁶ Id. at 33.

CSC since 1997. As such, it is unjust not to require the CSC to pay its outstanding balance.

The RTC found that the balance from the original Contract for Works is ₱342,314.78 and the total cost for the extra works is ₱261,963.82. Thus “the total of [Estomo]’s claim representing the balance of the original and extra works is ₱604,278.60. Considering that x x x CSC made a tender of payment of ₱217,174.46 in [the] early year of 2002 which was already turned over to [Estomo] then, the remaining balance at present is in the amount of ₱387,104.14.”⁴⁷ Hence, in its Decision⁴⁸ dated August 8, 2013, the RTC disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [Estomo] and against the herein defendant [CSC]. Accordingly, defendant CSC is ordered to pay the plaintiff the following:

1. P387,104.14 representing the remaining outstanding obligation with legal interest of 6% per annum from the date of the filing of this case that is on February 20, 1998 and 12% per annum from the date the judgment becomes final and executory until its satisfaction.
2. P20,000.00 by way of reasonable attorney’s fees, and
3. The cost of the suit.

SO ORDERED.⁴⁹ (Emphases in the original)

A Motion for Reconsideration was filed by the CSC, but was denied in an Order dated November 4, 2014.⁵⁰

Undeterred, the CSC filed an appeal before the CA, where it mainly argued that the total amount of extra works and change order is ₱144,735.98, not ₱261,963.82, as evidenced by the CSC Resolution No. 97-1101 Re: Additional Work Order on the CSC Third Floor Extension dated November 28, 1997. The CSC also maintained that Estomo may only claim ₱371,411.20 from the Contract for Works after the remaining balance has been subjected to several deductions such as value added tax, recoupment fee, retention money and deficiencies. Further, the release of the amount of ₱217,174.16 by virtue of the RTC Order dated February 8, 2002 fulfilled the obligation of the CSC, consequently absolving the latter from any liability to Estomo. Lastly, the CSC

⁴⁷ Id. at 117.

⁴⁸ Id. at 115-119.

⁴⁹ Id. at 119.

⁵⁰ Id. at 123.

claims liquidated damages in the amount of ₱217,174.16 in view of Estomo's failure to complete the Contract for Works and extra works on time.⁵¹

Ruling of the CA

The CA partly granted the appeal filed by the CSC.⁵²

Evaluating Estomo's failure to substantiate his claim for the extra works, the CA noted that:

Estomo's demand for the payment of extra works in the amount of P261,963.82 is anchored on the letters dated July 7, 1997, July 15, 1997, July 18, 1997, July 23, 1997, September 5, 1997, September 23, 1997, November 3, 1997 and November 24, 1997 sent by him to the CSC. However, a perusal of these documents shows that the same were mere letters "requesting" or "suggesting" to the CSC the extra works needed to be done on the project. In fact, the letters were subject to the approval of the CSC as suggested by the phrases "*Your immediate action on this matter is highly appreciated*", "*For your comments and concurrence*", "*Please advise the undersigned*" and "*Your immediate action on this request is highly much appreciated*", among others. Since these letters were mere requests and there was no showing that the CSC approved the amounts indicated therein by Estomo, they cannot be made as basis for the amounts demanded by him.⁵³

On the other hand, the CSC was able to present Resolution No. 97-1101 dated November 28, 1997. The CA noted that the Resolution was executed on a date later than the letters of Estomo. Also, the said Resolution showed that the total approved amount of extra works and change order is ₱144,735.98 only.⁵⁴

As regards the remaining outstanding obligation due on the original Contract for Works, the CA found that the detailed computation of previous payments made by the CSC shows that the remaining balance due to Estomo is ₱371,431.20. When subjected to tax, recoupment fee, retention fee, and deficiencies, the net amount is ₱217,174.42. Meanwhile, Estomo failed to provide sufficient counter-argument as to the impropriety of the deductions, especially that of the deficiencies.⁵⁵

Moreover, the CA ruled that the obligation of the CSC to Estomo is deemed extinguished in as much as the amount of ₱217,174.46 paid by the

⁵¹ Id. at 127-128.

⁵² Id. at 42.

⁵³ Id. at 38.

⁵⁴ Id. at 39.

⁵⁵ Id. at 39-40.

4

former through escrow deposit was already released in favor of the latter.⁵⁶ The CA further held that contrary to the RTC Order dated August 8, 2013, Estomo has no right to receive the additional amount of ₱387,104.14 as it will only constitute unjust enrichment.⁵⁷

The CA, however, denied the claim for liquidated damages. While the Contract for Works states that the parties agree to pay liquidated damages in case of breach, the CSC did not show when the delay was incurred by Estomo. Neither did the CSC present the value of the completed portion of the project as verified by the office concerned.⁵⁸

The decretal portion of the CA decision reads:

WHEREFORE, the appeal is hereby PARTLY GRANTED. The Decision dated August 8, 2013 and the Order dated November 4, 2014 of the Regional Trial Court, 10th Judicial Region, Branch 20, Cagayan de Oro City in Civil Case No. 98-123 for “*Specific Performance, Sum of Money plus Damages*” is REVERSED. Defendant–appellant Civil Service Commission’s obligation to plaintiff-appellee Domingo Estomo is deemed EXTINGUISHED in as much as the money in the amount of P217,174.46 paid by the former through escrow deposit was already released and paid to the latter.

SO ORDERED.⁵⁹

Estomo filed his Motion for Reconsideration, but was eventually denied by the CA in its Resolution⁶⁰ dated July 19, 2019.

Undeterred, Estomo filed the present Petition for Review on *Certiorari*. In a Resolution⁶¹ dated October 2, 2019, the Court required the CSC to file its Comment. The CSC filed its Comment⁶² dated January 14, 2020. Estomo thereafter filed his Reply.⁶³

For the proper resolution of the instant case, the following issues must be resolved: (1) whether the case involves a question of fact, beyond the office of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court; (2) whether the deductions on the Contract for Works are valid; (3) whether Estomo is entitled to his claim for payment for extra works in the amount of

⁵⁶ Id. at 42.

⁵⁷ Id. at 40.

⁵⁸ Id. at 41.

⁵⁹ Id. at 42.

⁶⁰ Id. at 45-47.

⁶¹ Id. at 170-171.

⁶² Id. at 187-202.

⁶³ Id. at 209-212.

₱261,963.82; and (4) whether the retention money shall be released in favor of Estomo.

Ruling of the Court

I. Question of Fact

As a rule, issues dealing with the sufficiency of evidence and relative weight accorded to it by the lower courts cannot be raised in a Petition for Review on *Certiorari* under Rule 45. The Court does not review factual questions raised under Rule 45, which must be confined to questions of law. It is also not the function of the Court to analyze nor weigh all over again evidence already considered in the proceedings below.⁶⁴ Nevertheless, the Court has enumerated several exceptions to this rule. In *Alburo v. People*,⁶⁵ the Court declared that a review of the factual findings of the lower court is proper when, among other reasons, the findings of the CA are contrary to those of the trial court.⁶⁶

As applied, a careful re-examination of the evidence on record is necessary to determine whether it was the RTC or the CA that properly appreciated certain relevant facts, such as the previous payments made, the total cost for the extra works approved, the percentage of work actually completed, and the propriety of the deductions and retention fee withheld. There is a need to review the records to confirm whether Estomo, as he claims, is entitled to the balance of ₱387,102.58 plus legal interest, attorney's fees, and damages.

II. Propriety of the deductions in the original Contract for Works

It is argued that the contract price of ₱1,475,789.07 in the original Contract for Works only covers the "item, description, quantity, unit cost, and total cost"⁶⁷ of the materials used. The retention fee and the other deductions were, according to Estomo, made by the CSC unilaterally and without basis.

The Court does not agree.

The Contract for Works executed by the CSC and Estomo concerns a government infrastructure project, hence, governed by the provisions of Presidential Decree (P.D.) No. 1594⁶⁸ and its implementing rules and regulations (IRR). Accordingly, the Contract for Works expressly states:

⁶⁴ *Allarey v. Dela Cruz*, G.R. No. 250919, November 10, 2021.

⁶⁵ 792 Phil. 876 (2016).

⁶⁶ *Id.* at 889.

⁶⁷ *Rollo*, pp. 19-20.

⁶⁸ *Supra* note 31.

7. The Implementing Rules & Regulation of P.D. 1594, as amended, the guidelines regarding contract price adopted and approved by the government, the provision of P.D. 1870, and other laws, decrees and administrative issuance or government contracts, are hereby made part and will be applied in this Contract. x x x⁶⁹

Government infrastructure projects are paid on installments called progress payments made upon the request of the contractor once a month or for an accomplishment of at least ₱1 Million.⁷⁰ Estomo, as contractor, received a total amount of ₱912,107.44 from the three progress payments made by the CSC on July 14, 1997, August 15, 1997, and September 26, 1997.

As it turns out, the amount received by Estomo from each progress payment is the **net amount** calculated after deductions for retention money, recoupment, and tax. Below is the break down of the progress payments, as computed by the CSC:

Date of Payment	Gross Amount	Tax	Retention	Recoupment (Cash Advance)	Net Amount Released
July 14, 1997	₱363,296.34	₱ 19,816.16	₱36,329.63	₱55,342.09	₱251,808.46
August 15, 1997	₱405,220.45	₱ 21,881.90	₱40,522.05	₱55,342.09	₱287,474.41
September 26, 1997	₱480,577.06	₱ 28,834.62	-	₱78,917.81	₱372,824.63 ⁷¹
TOTAL	₱1,249,093.85	₱70,532.68			

The Court now proceeds to determine if the foregoing deductions were in accordance with the proper law, rules, and guidelines.

A. Retention Money

Retention money is a form of security which seeks to ensure that the work is satisfactorily done, and on schedule. It is withheld by the procuring entity (*i.e.*, the government) from progress payments due to the contractor to

⁶⁹ *Rollo*, p. 58.

⁷⁰ Item III, CI 5 — *Progress Payment*

1. Once a month or for an accomplishment of at least P1.0 million, the contractor may submit a request for payment for work accomplished. Such request for payment shall be verified and certified by the Government project engineer. Except as otherwise stipulated in the Instructions to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

2. The government shall have the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project. (IMPLEMENTING RULES AND REGULATIONS OF PRESIDENTIAL DECREE NO. 1594, AS AMENDED IN APRIL 1992).

⁷¹ *Rollo*, p. 108.

guarantee indemnity for uncorrected discovered defects and third-party liabilities in infrastructure projects.⁷²

The 1992 Implementing Rules and Regulations (1992 IRR) of P.D. No. 1594⁷³ states that progress payments are subject to retention money equivalent to ten percent (10%) of the total amount due to the contractor prior to any deduction:⁷⁴

CI 6 – RETENTION MONEY

1. Progress payments are subject to retention of ten percent (10%) referred to as the “retention money.” Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the Government, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.⁷⁵

Retention money is allowed only until 50% of the value of works are completed, and beyond this threshold, no additional retention shall be made.⁷⁶ It is intended to cover uncorrected discovered defects and third party liabilities and the total retention money shall then be due for release upon final acceptance of the works.⁷⁷

Here, the CSC correctly deducted the 10% retention money from the gross amount of the following progress payments due to Estomo: (1) ₱36,329.63 from the gross amount of ₱363,296.34 for the progress payment made on July 14, 1997; and (2) ₱40,522.05 from the gross amount of ₱405,220.45 for the progress payment dated August 15, 1997.

A total gross amount of ₱768,516.79,⁷⁸ comprising 52.075% of the original contract price, had been paid by the time of the second progress payment on August 15, 1997. In accordance with the 1992 IRR of P.D. No. 1594, no retention money was deducted from the gross amount of ₱480,577.06 on the progress payment dated September 26, 1997.

⁷² *Rivera v. People*, 749 Phil. 124, 150 (2014); *New Bian Yek Commercial, Inc. v. Office of the Ombudsman (Visayas)*, 596 Phil. 650, 656 (2009);

⁷³ As amended in April 1992. The prevailing rules during the performance and completion of the project.

⁷⁴ THE 1992 IRR OF P.D. NO. 1594, Item III, CI 6(1).

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ THE 1992 IRR OF P.D. NO. 1594, Item III, CI 6(2).

⁷⁸ The total sum of the gross amounts of ₱363,296.34 and ₱405,220.45, representing the progress payments made on July 14, 1997 and August 15, 1997, respectively.

Thus, the CSC correctly deducted the 10% retention money from the progress payments made until 50% of the value of the works.

B. Advance Payments/Recoupment

The 1992 IRR of P.D. No. 1594 allows the government to make advance payments to contractors in an amount equivalent to 15% of the total contract price, subject to recoupment from periodic progress billings submitted by the contractor:⁷⁹

CI 4 – ADVANCE PAYMENT

1. The Government shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

2. The advance payment shall be made only upon the submission to and acceptance by the Government of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.

3. The advance payment shall be repaid by the contractor by deducting 20% from his periodic progress payments, with the first repayment to be made when the contract value of the work executed and materials delivered shall equal or have exceeded twenty percent (20%) of the contract price and further refunds shall be done thereafter at monthly intervals. THE FIRST WORK ACCOMPLISHMENT EQUIVALENT TO 20% OF THE CONTRACT PRICE SHALL NOT BE SUBJECT TO THE 20% DEDUCTION.

Records show that on May 14, 1997, the CSC made an advance payment to Estomo in the amount of ₱221,368.35, which is within the 15% limit prescribed by the rules.⁸⁰ In turn, Estomo partially repaid the advance payment when the following amounts were deducted from the progress payments:

Date	Recoupment (Cash Advance)
July 14, 1997	₱ 55,342.09
August 15, 1997	₱ 55,342.09

⁷⁹ THE 1992 IRR OF P.D. NO. 1594, Item III, CI 4; *see also* *Abubakar v. People*, 834 Phil. 435, 478 (2018).
⁸⁰ 15% of the total contract price of ₱1,475,789.07 is equivalent to ₱221,368.36; *rollo*, p. 69.

September 26, 1997	₱ 78,917.81 ⁸¹
TOTAL	₱ 189,601.99

C. Withholding taxes

Anent the deductions made by CSC representing withholding taxes, the rates applied by CSC do not appear to conform with the prevailing and applicable tax rates at the time of the Contract for Works.

In 1997, when the Contract for Works was done and the three progress payments were made, the applicable law on withholding of value-added tax (VAT) is R.A. No. 8241,⁸² amending R.A. No. 7716.⁸³ R.A. No. 8241 came into effect on January 1, 1997.⁸⁴

Pertinently, Section 9 of R.A. No. 7716, as amended by Section 5 of R.A. No. 8241, imposes upon the government or any of its political subdivisions instrumentalities or agencies, including government-owned or -controlled corporations the duty to withhold VAT at the rate of 6% on gross receipts for services rendered by the contractor:

Sec. 9. Section 110(c) of the National Internal Revenue Code, is hereby further amended to read as follows:

‘(c) Withholding of Creditable Value-Added Tax. — **The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor:** Provided, however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): Provided, further, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose,

⁸¹ Id. at 106.

⁸² AN ACT AMENDING REPUBLIC ACT NO. 7716, OTHERWISE KNOWN AS THE EXPANDED VALUE-ADDED TAX LAW AND OTHER PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED; approved on December 20, 1996.

⁸³ AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, OTHERWISE KNOWN AS THE “EXPANDED VALUE-ADDED TAX (VAT) LAW”; approved on May 5, 1994.

⁸⁴ R. A. No. 8241, SEC. 14.

the payor or person in control of the payment shall be considered as the withholding agent.⁸⁵ (Emphasis and underscoring supplied)

Relatedly, Section 102 of the National Internal Revenue Code (NIRC), as amended⁸⁶ provides that VAT shall be levied, assessed and collected from the gross receipts derived from the sale or exchange of services, which includes those performed or rendered by construction and service contractors.

The tax deductions made by CSC on the three progress payments, are broken down as follows:

Date	Gross Amount	Tax	10% Retention Money
July 14, 1997	₱363,296.34	₱ 19,816.16	₱36,329.63
August 15, 1997	₱405,220.45	₱ 21,881.90	₱40,522.05
September 26, 1997	₱480,577.06	₱ 28,834.62	-

However, the CSC never provided an explanation or breakdown of its computation for the tax deducted from the progress payments. Nevertheless, the formula can be derived by working backwards given the foregoing amounts.

As it appears, the CSC withheld VAT computed at the then-prevailing rate of 6% on the progress payments after the 10% retention money was deducted from the gross amount.

In particular, for the **August 15, 1997** progress payment, the CSC arrived at the tax deduction of ₱ 21,881.90 with the following formula:

Gross Amount	₱405,220.45
Less: 10% Retention Money	<u>₱40,522.05</u>
Tax Base used by the CSC	₱364,698.4
x VAT rate	<u>6%</u>
Tax deducted from the August 15, 1997 Progress payment	<u>₱21,881.90</u>

For the **September 26, 1997** progress payment, the CSC arrived at the tax deduction of ₱ 28,834.62 with the following formula:

⁸⁵ See also Revenue Regulation No. 06-97 dated January 2, 1997.

⁸⁶ As amended by R.A. No. 7716, as amended by Sec. 5 of R.A. No. 8241.

J

Gross Amount	P480,577.06
Less: 10% Retention Money ⁸⁷	<u>0</u>
Tax Base used by the CSC	P480,577.06
x VAT rate	6%
Tax deducted from the September 26, 1997 progress payment	<u>P28,834.62</u>

However, with respect to **July 14, 1997** progress payment, there appears to be an incorrect computation prescinding from the foregoing formula applied by the CSC:

Gross Amount	P363,296.34
Less: 10% Retention Money	<u>P36,329.63</u>
Tax Base used by the CSC	P326,966.71
x VAT rate	6%
Tax deducted from the July 14, 1997 progress payment	<u>P19,618.00</u>

In order to determine whether the CSC properly applied the withholding tax rate of 6% on the **gross amount after the deductions were made for the retention money**, a brief discussion of the definition of “gross receipts” is warranted.

To recall, under Section 110(c) of the NIRC⁸⁸ government or any of its political subdivisions, instrumentalities or agencies, including GOCCs shall, before making payment on account of services rendered by contractors, deduct and withhold the VAT equivalent to 6% of the gross receipts for services rendered by contractors on every sale or installment payment.

“Gross receipts” for purposes of determining VAT is defined under Section 102 of the NIRC⁸⁹ as the “*the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.*”

Pursuant to this definition, the retention money is part of the contract price. Retention money is merely deducted and set aside by the by the government as a form of deposit or security, which upon final acceptance of the works will eventually be released to the contractor. Accordingly, it was

⁸⁷ No retention money was deducted for the third progress payment since the value of the works completed had already exceeded 50% completion.

⁸⁸ As amended by R.A. No. 7716, as amended by Sec. 5 of R.A. No. 8241.

⁸⁹ As amended by R.A. No. 7716, as amended by Sec. 5 of R.A. No. 8241.

incorrect for the CSC to compute the VAT withheld on the basis of the progress payment after the 10% retention money was deducted. By deducting the retention money from the tax base, the CSC effectively excluded it from the coverage of VAT, resulting in underpayment.

Thus, the CSC should have computed the amount of VAT to be withheld by applying the 6% VAT rate to the gross amount of each of the progress payments, without deducting the 10% retention money. The correct amount that CSC should have deducted from the progress payments for the withholding VAT are as follows:

Date	Gross Amount	Tax withheld by CSC	Correct VAT Amount	Underpayment
July 14, 1997	₱363,296.34	₱ 19,816.16	₱21,797.78	₱1,981.62
August 15, 1997	₱405,220.45	₱ 21,881.90	₱24,313.23	₱2,431.33
September 26, 1997	₱480,577.06	₱ 28,834.62	₱28,834.62	-

Since the progress payments have already been released to Estomo, the more practical remedy to resolve the issue of the underpayment is to withhold the corresponding 6% VAT on the retention money due to Estomo.

III. Balance for the extra works and the principle of *quantum meruit*

Per CSC Resolution No. 97-1101 Re: Additional Work Order on the CSC Third Floor Extension dated November 28, 1997, the approved total amount of extra works and change order amounted only to ₱144,735.98.⁹⁰ Estomo, on the other hand, claims ₱261,963.82 for the extra works⁹¹ based on the principle of *quantum meruit*.

A change order or extra work order may be issued only for works necessary for the completion of the project and, therefore, shall be within the general scope of the contract as bid and awarded.⁹² Given that a change order or extra work order involves a change in the original plans entailing additional costs to the government, the same is subject to certain conditions and regulations. In particular, a change order or extra work order may be issued by the implementing official after the same has been approved by the appropriate official if the amount of the extra work order is within the limits of the former's authority.⁹³

⁹⁰ Id. at 196.

⁹¹ Id. at 195.

⁹² P.D. No. 1594, SEC. 9.

⁹³ THE 1992 IRR OF P.D. NO. 1594, Item III, CI 1(2).

In addition, the 1992 IRR of P.D. No. 1594 explicitly provides that “under no circumstances shall a contractor proceed to commence work under any change order, extra work order or supplemental agreement unless it has been approved by the Secretary or his duly authorized representative.”⁹⁴

Estomo, indeed, wrote several requests for extra works since early July 1997, or at about the same time as the first progress billing. However, they were merely letters of request or of suggestions. The approval of the extra works only came later, on November 28, 1997, or about two months from the third progress billing. As correctly observed by the CA:

[T]he letters were subject to the approval of the CSC as suggested by the phrases “*Your immediate action on this matter is highly appreciated*”, “*For your comments and concurrence*”, “*Please advise the undersigned*” and “*Your immediate action on this request is highly much appreciated*”, among others.⁹⁵

Payments for extra works cannot be collected on the basis of letter requests and billings alone. The 1992 IRR of P.D. No. 1594 requires that request for payment by the contractor for any extra work shall be accompanied by a statement, *with approved supporting forms*, giving a detailed accounting and record of amount for which he claims payment. The cost of the extra works done shall be submitted at the intervals to be determined by the Project Engineer in a satisfactory form, which shall be approved or adjusted at once by the Government.⁹⁶ Aside from Estomo’s letter requests, no approved supporting forms were submitted.

⁹⁴ Item III, CI 3 of the 1992 IRR of P.D. No. 1594 provides:
CI 3 — *CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS*

1. Under no circumstances shall a contractor proceed to commence work under any Change Order, Extra Work Order or Supplemental Agreement unless it has been approved by the Secretary or his duly authorized representative. Exceptions to the preceding rule are the following:

a. The Regional Director may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:

(1) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or

(2) when time is of the essence;

provided, however, that such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the total original contract price, or P500,000 whichever is less;

provided, further, that immediately after the start of work, the corresponding Change/Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change/Extra Work Order may be made only after approval of the same by the Secretary or his duly authorized representative.

b. For a Change/Extra Work Order involving a cumulative amount exceeding fifteen percent (15%) of the original contract price or original adjusted contract price, no work thereon may be commenced unless said Change/Extra Work Order has been approved by the Secretary or his duly authorized representative.

⁹⁵ *Rollo*, p. 38.

⁹⁶ Item III, CI 2(3) of the 1992 IRR of P.D. No. 1594 states:

“The cost of the extra work done shall be submitted at the intervals to be determined by the Project Engineer in a satisfactory form which shall be approved or adjusted at once by the Government.

Of course there are exceptions, like in cases of emergency or when time is of the essence.⁹⁷ Even so, the Contract for Works subject of this case does not involve any of those two exception. The general rule of prior approval still applies.

When Estomo commenced with the extra works despite absence of approval or any timely response as regards his requests, he assumed the risk of disapproval and the consequent non-payment of the other contracting party, the CSC. True enough, only the amount of ₱144,735.98 was approved. Strict observance of the general rule on prior approval of extra works would have prevented the loss on Estomo's part.

In an unswerving effort to justify his claim, Estomo invoked the principle of *quantum meruit* to prevent any undue enrichment on the part of the government.⁹⁸ The Court does not subscribe to this argument.

In cases where the Court granted relief based on the principle of *quantum meruit*, the knowledge and consent of the contracting office or agency for the subject works were clearly established. Actual work and delivery of results were likewise acknowledged by the parties, or at least clear from the case records.⁹⁹

In *EPG Construction Co. v. Vigilar*,¹⁰⁰ the contractor was compensated based on the principle of *quantum meruit* for a housing project that had benefited both the government and the public. In the said case, the Court observed:

To begin with, petitioners-contractors assented and agreed to undertake additional constructions for the completion of the housing units, believing in good faith and in the interest of the government and, in effect, the public in general, that appropriations to cover the additional constructions and completion of the public works housing project would be available and forthcoming. On this particular score, the records reveal that **the verbal request and assurance of then DPWH Undersecretary Canlas led petitioners-contractors to undertake the completion of the government housing project, despite the absence of covering appropriations, written contracts, and certification of availability of funds, as mandated by law and pertinent auditing rules and issuances.** x x x.

Request for payment by the contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the contractor's statement for progress payment."

⁹⁷ THE 1992 IRR OF P.D. NO. 1594, Item III, CI 3(1)(a).

⁹⁸ *Rollo*, pp. 20-23.

⁹⁹ *F.L. Hong Architects and Associates v. Armed Forces of the Philippines*, G.R. No. 214245, September 19, 2017.

¹⁰⁰ 407 Phil. 58 (2001).

Further, petitioners-contractors sent to the DPWH Secretary a demand letter pressing for their money claims, on the strength of a favorable recommendation from the DPWH Assistant Secretary for Legal Affairs to the effect that implied contracts existed and that the money claims had ample basis applying the principle of *quantum meruit*. Moreover, as can be gleaned from the records, even the DPWH Auditor **interposed no objection to the payment of the money claims**, subject to whatever action the COA may adopt.¹⁰¹ (Emphases supplied)

Similarly in *Eslao v. Commission on Audit*,¹⁰² citing *Royal Trust Construction v. Commission on Audit*,¹⁰³ the Court discussed:

The work done by [the contractor] was impliedly authorized and later **expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment**. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund allotted by law to the Betis River project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. x x x

Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a *quantum meruit* basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination.¹⁰⁴ (Emphasis supplied)

Notably, the foregoing circumstances are wanting in the present case. To reiterate, Estomo commenced with the extra works without the approval of the CSC. In *EPG Construction Co. v. Vigilar*,¹⁰⁵ the contractor only agreed to undertake the additional construction pursuant to an implied contract with the concerned government agency. In the case of Estomo, he proceeded with the additional works over the repeated and vehement objections of the CSC considering that the additional works would exceeded the total amount of the contract price approved for the project. Whereas in *EPG Construction*, no objection was interposed by the concerned government agency.

In sum, the Court agrees with the CSC that the total cost for the extra works amount to only ₱144,735.98. Estomo's claim in the amount of ₱261,963.82 has no legal basis since the principle of *quantum meruit* does not apply.

¹⁰¹ Id. at 63-64.

¹⁰² 273 Phil. 97 (1991).

¹⁰³ G.R. No. 84202, November 23, 1988 (Resolution of the Supreme Court *En Banc*).

¹⁰⁴ *Supra* note 102, at 106-107.

¹⁰⁵ *Supra* note 100.

IV. Propriety of the deductions in the escrow deposit

To recall, the CSC provided for the following computation on how it arrived at the amount of ₱271,174.42 tendered in Court by way of escrow deposit on March 7, 2001:

Contract for Works	₱1,475,789.07
Previous Payments made by the CSC:	
July 14, 1997	₱ 363,296.34
August 15, 1997	₱ 405,220.45
September 26, 1997	₱ 480,577.06
Balance for the Contract for Works	₱ 226,695.22
Balance for the extra works	₱ 144,735.98
Total balance (Contract for Works plus extra works)	₱ 371,431.20
Deductions:	
Tax	₱ 25,998.79
Recoupment Fee	₱ 31,766.36
Retention Fee	₱ 14,471.60
Deficiencies	₱ 82,000.00
Net	₱ 217,174.42¹⁰⁶

Indeed, and as previously discussed, the Court upholds the position of the CSC as regards the balance for the extra works in the amount of ₱144,735.98.

The discussion on the propriety of the deduction for retention money, recoupment, and tax equally applies to the escrow deposit computed above.

Bear in mind, however, that the retention money is allowed only until 50% of the value of works are completed. Following this rule, the retention fee of ₱14,471.60 must be disallowed. As reflected in the above-quoted computation provided by the CSC, the retention money of ₱14,471.60 was deducted from the gross amount of ₱371,431.20. This gross amount represents the total balance for the original Contract for Works plus Extra Works. For the original Contract for Works, more than 50% of its value had already been paid by the time of the second progress payment on August 15, 1997, thus, no retention money was deducted on the third progress payment on September 26, 1997. More so, there is no reason to deduct retention money for the later payment on March 7, 2001. Concurrently, the Extra Works pertain to one and the same project as the Contract for Works. Hence, retention money from the gross amount of the Extra Works should not have been necessary.

¹⁰⁶ *Rollo*, pp. 107-108.

The deduction for recoupment was correctly made. A total of ₱221,368.35 cash advance was given to Estomo.¹⁰⁷ From the three progress payments dated (1) July 14, 1997; (2) August 15, 1997; and (3) September 26, 1997, Estomo has already repaid by way of deduction a total of ₱189,601.99. The remaining amount of ₱31,766.36 from the ₱221,368.35 cash advance was properly deducted from the escrow deposit made by the CSC on March 7, 2001.

As regards the deductions for tax purposes, the CSC deducted the amount of ₱25,998.79, equivalent to 7% of the gross amount of ₱371,431.20. In its Comment, the CSC merely claimed that “[Estomo] conveniently excluded the withholding tax in the computation of the amount he received from the CSC”. No other explanation was provided nor proof that the amount of ₱25,998.79 was paid to the proper taxing authority.

The Court takes this opportunity to clarify the deduction made and to provide context on the applicable tax regulations.

The escrow deposit, representing the payment for the balance in the Contract for Works and for the extra works done, was made on March 7, 2001. As such, the governing law is the National Internal Revenue Code of 1997 (1997 NIRC), which took effect on January 1, 1998.¹⁰⁸ In addition, the escrow deposit was made in 2001, or prior to the effectivity of R.A. No. 9337 on July 1, 2005. R.A. No. 9337 introduced several amendments to the 1997 NIRC.

Thus, the prevailing provision on withholding of VAT, when the escrow deposit was made on March 7, 2001, is Section 114 (c)¹⁰⁹ stating that the Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs shall, before making payment on account of each services rendered by contractors deduct and withhold the value-added tax due at the rate of **six percent (6%) on gross receipts** for services rendered by contractors on

¹⁰⁷ Id. at 69.

¹⁰⁸ R.A. No. 8424.

¹⁰⁹ Section 114 (c) of the 1997 NIRC (prior to the amendments introduced by R.A. 9337), reads:
SEC. 114. *Return and Payment of Value-added Tax.* —

x x x x

(C) *Withholding of Creditable Value-added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however*, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%); *Provided, further*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor.

In addition, the Bureau of Internal Revenue issued Revenue Regulation (RR) No. 02-98¹¹⁰ which implemented the provisions of the 1997 NIRC relative to the withholding on income subject to the expanded withholding tax, among others. RR No. 02-98 was explicitly made to govern the collection at source on income paid on or after January 1, 1998, which includes the escrow deposit.

Pertinently, Section 2.57.2(E) of RR No. 02-98 provides that income payments made to general building contractors shall be subject to 1% creditable withholding tax on the gross payments made:

SEC. 2.57.2. Income Payment 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:

x x x x

(E) Income payments to certain contractors — On gross payments to the following contractors, whether individual or corporate — One percent (1%).

x x x x

(2) General Building contractors — Those whose principal contracting business is in connection with any structure built, for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereto. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds, and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skills, powerhouse, power plants and other utility plants and installation, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.

From the foregoing provisions, the CSC was correct to deduct and withhold the following taxes: (1) 6% of the gross receipts representing VAT under Section 114(c) of the 1997 NIRC; and (2) 1% of the gross payments representing 1% of the expanded creditable withholding tax under Section 2.57.2(E) of RR No. 02-98.

¹¹⁰ 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 dated April 17, 1998.

D

Accordingly, the deduction of ₱25,998.79, equivalent to 7% of the gross amount of ₱371,431.20 was correctly made and in accordance with the law.

V. Release of the retention money

Estomo is entitled to the release of the retention money deducted from the progress payments made on (1) July 14, 1997; and (2) August 15, 1997.

Retention money is a form of security which seeks to ensure that the work is satisfactorily done, and on schedule. It is withheld by the procuring entity (*i.e.*, the government) from progress payments due to the contractor to guarantee indemnity for uncorrected discovered defects and third-party liabilities in infrastructure projects.¹¹¹ To recapitulate, the following retention money were deducted from the progress payments:

Date	Gross Amount	Retention
July 14, 1997	₱363,296.34	₱36,329.63
August 15, 1997	₱405,220.45	₱40,522.05
September 26, 1997	₱480,577.06 ¹¹²	-

In addition to the progress payments, the CSC tendered payment by way of escrow deposit with the RTC the amount of ₱217,174.16. As tendered, the escrow deposit represents the full payment for the Contract for Works, including the cost for the approved extra works and change order. Records show that the amount tendered is the net of the following:

Gross	₱371,411.00
Tax	₱25,999.00
Recoupment (Cash Advance)	₱31,766.00
Retention	₱14,472.00
Deficiencies	₱82,000.00
Net	₱217,174.00 ¹¹³

Despite the retention money, *deficiencies* in the amount of ₱82,000.00 were deducted as well. Upon further review of the records, it was shown that the said amount was to secure the completion of the defects discovered by the CEO.

In a letter dated December 17, 1997, the inspectorate team of the CEO communicated to City Engr. Bingona as follows:

¹¹¹ *New Bian Yek Commercial, Inc. v. Office of the Ombudsman (Visayas)*, 596 Phil. 650, 656 (2009).

¹¹² *Rollo*, p. 106. Emphasis supplied.

¹¹³ *Id.* at 128. Emphasis supplied.

This has reference to the inspection conducted by the undersigned on the Third Floor Extension of Civil Service [C]ommission Building Project, under contract with D.F. ESTOMO CONSTRUCTION. **Our findings indicate that the contractor has substantially completed the works, however, we observed that some items are defective and were not in accordance with the specifications given by this office, thus, we strongly recommend for completion/rectification prior to issuance of a certificate of final completion, [x x x.]**¹¹⁴ (Emphasis in the original)

On January 15, 1998, the CSC directed Estomo to rectify the defects within 15 days. The CSC likewise advised Estomo that the Certificate of Final Completion will only be issued after the defects have been rectified.¹¹⁵ Nonetheless, in a letter dated January 26, 1998, the CSC relayed to Estomo that:

it was willing to pay the balance under the contract upon completion of the **deficiencies in the amount of Eighty-Two Thousand Pesos (P82,000.00) discovered by the City Engineering Office Inspectorate Team** and upon submission of the necessary documents x x x.¹¹⁶ (Emphasis supplied)

Consistently, the CSC averred in its Motion for Reconsideration filed before the CA:

15. Clearly, [Estomo] did not complete the work he bound himself to do, and has not submitted up to the present the necessary documents as stated above. He has also not completed **the deficiencies in the amount of Eighty-Two Thousand Pesos (P 82,000.00)**.¹¹⁷ (Emphasis supplied)

It cannot escape the attention of the Court that the *deficiencies* in the amount of ₱82,000.00 **serve the same purpose** as that of the *retention money*. The IRR of P.D. No. 1594 mandates the release of the total retention money upon final acceptance of the works, free from any defect or deficiency as evidenced by the Certificate of Final Completion. Absent this key document, the retention money may not be released. By the same token, in this case of Estomo and the CSC, the *deficiencies* computed at ₱82,000.00 prevented the issuance of the Certificate of Final Completion.

To the Court, the interest of the government is sufficiently protected with the deduction of *deficiencies* computed at ₱82,000.00. Also worthy to note is the fact that the CSC had been in possession of the project since 1997, while the documents requested from Estomo had since been submitted and marked in evidence before the RTC.¹¹⁸ To further withhold the retention money would

¹¹⁴ Id. at 150.

¹¹⁵ Id. at 151.

¹¹⁶ Id.

¹¹⁷ Id. at 152.

¹¹⁸ Id. at 97.

sanction unjust enrichment in favor of the government, to the prejudice of Estomo.

Although Estomo is entitled to the release of his retention money for the progress payments made on July 14 and August 1997, as earlier discussed, the same should be subject to 6% VAT since they were excluded by the CSC from its computation of tax withheld.

Thus, the corresponding VAT underpayments shall be deducted from the retention money due to Estomo for the following progress payments:

Date	Gross Amount	Retention	Underpayment	Balance
July 14,1997	₱363,296.34	₱36,329.63	₱1,981.62	₱34,348.01
August 15,1997	₱405,220.45	₱40,522.05	₱2,431.33	₱38,090.72
September 26,1997	₱480,577.06	-	-	

Finally, Estomo's claim for damages and attorney's fees must fail for lack of merit.

In accordance with the ruling of the Court in *Nacar v. Gallery Frames*,¹¹⁹ legal interest of 12% *per annum* shall be imposed on the principal amount due from the time of judicial demand on February 4, 1998 until June 30, 2013. Thereafter, from July 1, 2013, until full satisfaction of the monetary award, the interest rate shall be 6% *per annum*.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated August 31, 2018 and the Resolution dated July 19, 2019 of the Court of Appeals in CA-G.R. CV No. 04284-MIN are **AFFIRMED** with **MODIFICATION**.

The Court hereby **DECLARES** the following:

1. The total contract price for the Contract for Works, including the extra works and change order, executed by respondent Civil Service Commission Regional Office No. X and petitioner Domingo F. Estomo, is One Million Six Hundred Twenty Thousand Five Hundred Twenty-Five and Five Centavos (₱1,620,525.05); and
2. The following deductions are valid:

¹¹⁹ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

- a) Withholding taxes in the amount of ₱25,998.79;
- b) Recoupment in the amount of ₱55,342.09 from the progress payment dated July 14, 1997;
- c) Recoupment in the amount of ₱55,342.09 from the progress payment dated August 5, 1997;
- d) Recoupment in the amount of ₱78,917.81 from the progress payment dated September 26, 1997;
- e) Recoupment in the amount of ₱31,766.00 from the escrow deposit made on March 7, 2001; and
- f) Deficiencies in the amount of ₱82,000.00 from the escrow deposit made on March 7, 2001.


Respondent Civil Service Commission Regional Office No. X is **ORDERED** to release in favor of petitioner Domingo F. Estomo the following:

1. Retention money in the amount of **₱34,348.01** from the progress payment dated July 14, 1997;
2. Retention money in the amount of **₱38,090.72** from the progress payment dated August 26, 1997; and
3. Retention money in the amount of **₱14,472.00** from the escrow deposit made on March 7, 2001.

The total monetary award shall be subject to interest rate of twelve percent (12%) *per annum* from the time of judicial demand on February 4, 1998 until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction.

The case is **REMANDED** to the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 20, for the proper computation of the total monetary award due to petitioner Domingo F. Estomo in accordance with this Decision.

SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

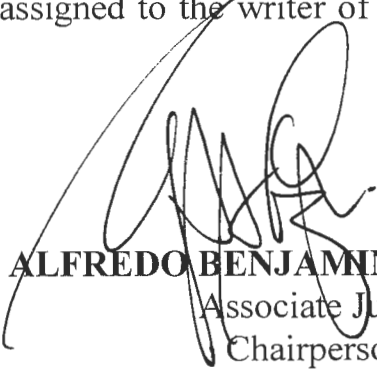

HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

1