



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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The NATIONAL TOBACCO
ADMINISTRATION (NTA),
represented by Ms. CRISTINA C.
LOPEZ, Manager, Administrative
Department; Ms. MA. TERESA B.
LAUDENCIA, Manager, Finance
Department; Mr. REYNALDO R.
AQUINO, Budget Officer V,
Finance Department; and Ms.
ELVIRA R. PARAS, Human
Resource Management Officer V,
Administrative Department,
Petitioners,

G.R. No. 217915

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,*
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,**
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,***
GAERLAN,
ROSARIO,
LOPEZ, J., and
DIMAAMPAO, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:
October 12, 2021

X-----*[Signature]*-----X

DECISION

INTING, J.:

Before the Court are the following petitions:

- 1) Petition¹ for *Certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction (Main Petition) filed by National Tobacco Administration (NTA)

* On official leave.

** On official leave.

*** On official leave.

¹ *Rollo*, pp. 3-15.

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assailing the Decision No. 2013-157² dated October 7, 2013 and the Resolution³ dated March 9, 2015 of the Commission on Audit (COA) – Commission Proper (COA Proper).

- 2) Petition in Intervention with Manifestation⁴ filed by NTA-Isabela Branch Office (NTA-Isabela) questioning the Decision No. 2014-447⁵ dated December 29, 2014 and the Resolution⁶ dated November 9, 2015 of the COA Proper.

The assailed COA Proper rulings upheld the disallowance of Collective Negotiation Agreement (CNA) incentives to NTA employees.

The Antecedents

The present petitions stem from three Notices of Disallowance (ND) issued by the COA against the following NTA offices:

- Petitioner NTA National Office (NTA-National)
 1. ND 10-002(10)⁷ dated June 29, 2010; and
 2. ND 10-006(10)⁸ dated August 11, 2010.
- Petitioner-intervenor NTA-Isabela
 1. ND 2011-10-01⁹ dated June 28, 2012.

NTA is a government-owned and -controlled corporation (GOCC) created and organized pursuant to Executive Order Nos. 116¹⁰ and 245,¹¹ Series of 1987.

² *Id.* at 16-24; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon; and attested by Director IV and Commission Secretariat Fortunata M. Rubico.

³ *Id.* at 33.

⁴ *Id.* at 236-242.

⁵ *Id.* at 249-252; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Jose A. Fabia; and attested by Director IV and Commission Secretariat Nilda B. Plaras.

⁶ *Id.* at 243.

⁷ *Id.* at 70-71.

⁸ *Id.* at 76-78.

⁹ *Id.* at 310-311.

¹⁰ The Reorganization Act of the Ministry of Agriculture and Food, approved on January 30, 1987.

¹¹ Entitled, "Implementing the Consolidation of All Tobacco Agencies and the Creation of The National Tobacco Administration, Prescribing Its Charter and For Other Purposes," approved on July 24, 1987.

On December 19, 2002, NTA and the Employees Association of the National Tobacco Administration (EANTA), the sole and exclusive negotiating representative of NTA's rank-and-file employees, entered into a CNA¹² effective for a period of five years (2002 CNA): The 2002 CNA provided for a monetary benefit, viz.:

ARTICLE XXIV
SIGNING BONUS

SIGNING BONUS. – In recognition of this occasion whereby the AGENCY forges this historic and first Agreement with the certified negotiating agent of its rank and file employees, a signing bonus in an amount to be agreed between the AGENCY and the ASSOCIATION subject to the availability of savings and in accordance with existing guidelines.¹³

Subsequently, the parties executed a renegotiated CNA¹⁴ on March 25, 2010, effective for a period of another five years (2010 CNA). It included a stipulation for a CNA Signing Incentive in favor of all the rank-and-file employees and management officials in the amount of ₱50,000.00 each, to wit:

ARTICLE XXIII
CNA SIGNING INCENTIVE

SECTION 1. CNA SIGNING INCENTIVE – In recognition of the AGENCY's untiring efforts, through the stewardship of its incumbent Administrator, the Honorable Carlitos S. Encarnacion, in expanding the regulatory authority of the NTA, from a purely service-oriented into a viable government corporate entity, as acknowledged by the private sector, which translates into realizing additional corporate income from the imposition of import and export regulatory fees, as well as, income from the establishment of income generating priority projects and pioneering ventures, and of having and maintaining harmonious relationship between the Management and employees, achieving good governance, teamwork, effective and efficient partnership, the AGENCY shall grant a CNA Signing Incentive of an amount of FIFTY THOUSAND PESOS (PhP50,000.00), to all its rank-and-file employees and management official.

¹² *Rollo*, pp. 34-44.

¹³ *Id.* at 42.

¹⁴ *Id.* at 45-58.

The 50% of the CNA Signing Incentive shall be released upon signing of this AGREEMENT and the remaining 50% shall be released upon further determination of corporate savings, subject to availability of funds.¹⁵

NTA-National, as well as its Branch Offices, particularly NTA-Isabela, relied on these provisions in releasing CNA Signing Incentives to its respective employees.

a) NTA-National

On the same day of the 2010 CNA's execution, NTA-National paid CNA Signing Incentives amounting to ₱405,000.00 in favor of its employees.¹⁶ Within the next three months, it released additional incentives in the aggregate amount of ₱4,325,000.00.¹⁷

Upon post-audit, COA Audit Team Leader Divina M. Telan issued Audit Observation Memorandum No. (AOM) 10-002¹⁸ dated May 17, 2010 addressed to NTA Administrator Atty. Carlitos S. Encarnacion (Atty. Encarnacion) finding, among others, that the CNA Signing Incentive is tantamount to a signing bonus, and thus, not allowed in audit.¹⁹

In this regard, the COA Audit Team advised the NTA Management to observe strictly the provisions of Department of Budget and Management (DBM) Budget Circular No. 2006-1²⁰ on the grant of CNA Incentives.

Based on the above-mentioned findings, the COA Audit Team issued ND 10-002(10) dated June 29, 2010 and ND 10-006(10) dated August 11, 2010 to disallow NTA-National's payments of incentives in the aggregate amount of ₱4,325,000.00, broken down as follows:

¹⁵ *Id.* at 56.

¹⁶ *Id.* at 203.

¹⁷ The total aggregate amount came from the total release from March to May 2010 amounting to ₱2,175,000.00 and the subsequent release on June 28, 2010 amounting to ₱2,150,000.00 of the National Tobacco Administration (NTA), *id.*

¹⁸ *Id.* at 59-62.

¹⁹ *Id.* at 59 and 62.

²⁰ Grant of Collective Negotiation Agreement (CNA) Incentive dated February 1, 2006, *id.* at 287-294.

ND	Issuance Date	Disbursement Date	Amount of		Total
			NTA-N* Employees	BOD** Members	
10-002(10)	June 29, 2021	March 25, 2010	₱405,000		
		May 06, 2010	1,620,000		
		May 11, 2010		₱150,000	
			₱2,025,000	₱150,000	₱2,175,000
10-006(10)	August 11, 2010	June 28, 2010	2,000,000	150,000	2,150,000
			₱4,025,000	₱300,000	₱4,325,000

*NTA-National (NTA-N)

**NTA Board of Directors (BOD)

The COA Auditor provided similar discussions in the two NDs, viz.:

First, in general, the COA Auditor disallowed the amounts due to a *lack of funding source* as required under Item 7.0 of DBM Budget Circular No. 2006-1 dated February 1, 2006, viz.:

1. Although there were savings of P181,943,786.00 from the expenditure budget for CYs 2007-2009, said amount was utilized to cover the deficiency in Personal Services (PS) of P210,349,641.00, still leaving a deficit balance of P28,405,855.00 for PS alone;
2. The unexpended balance of P7,983,632.00 from the Capital Outlay budget in 2009 out of the P184,280,000.00 released in 2007 could not be utilized for CNA since it was intended for a specific purpose;
3. The cash balance of P2,413,391.00 derived from other income is not considered as source of operating income under the same circular hence cannot be utilized also as a source of savings for the CNA Incentive; x x x²¹

²¹ In the Decision No. 2013-157 dated October 7, 2013, the Commission on Audit (COA) - Commission Proper summarized the COA Auditor's explanations, *id.* at 18.

Second, more particularly, the COA Auditor disallowed the payments to BOD members because the officials were not rank-and-file personnel or EANTA members.²²

Thus, the COA Auditor held the following NTA-National personnel liable for the disallowances: (a) Elvira R. Paras, Reynaldo R. Aquino, Myrna C. Ramos, Cristina C. Lopez, Myrna C. Ramos, and Teresa B. Laudencia as *certifying officers*; (b) Atty. Encarnacion, NTA Administrator, as *approving officer*; and (c) all NTA employees and BOD members who received the disallowed CNA incentives as *payees*.²³

In the meantime, the COA issued a Notice of Finality of Decision in relation to ND 10-002(10) dated June 29, 2010. Nonetheless, NTA-National appealed both NDs to the COA Director.²⁴

b) NTA-Isabela

During the pendency of NTA-National's appeal, the COA Auditor issued ND 2011-10-01²⁵ dated June 28, 2012 to disallow incentives released by NTA-Isabela on March 29, May 17 and July 1, 2010 in the aggregate amount of ₱1,300,000.00.

Similar to the NDs issued against NTA-National, the COA Auditor found the incentives released by NTA-Isabela to be *lacking of funding source*.²⁶

The COA Auditor held the following NTA-Isabela personnel liable for the disallowance: (a) Rogelio T. Tarun and Lorelie B. Figarola as *certifying officers*; (b) Herman C. Torres as *approving officer*; and (c) all NTA-Isabela personnel who received such incentives as *payees*.

Aggrieved, NTA-Isabela also appealed to the COA Director.²⁷

²² *Id.* at 71 and 77.

²³ See Notices of Disallowance, *id.* at 70-71, 76-78, 310-311.

²⁴ *Id.* at 16.

²⁵ *Id.* at 310-311.

²⁶ *Id.* at 310.

²⁷ See Appeal Memorandum dated November 28, 2012, *id.* at 334-342. COA Director assigned to COA Regional Office (RO) No. 2.

Ruling of the COA Director

a) NTA-National's appeal.

On July 22, 2011, the COA Director affirmed ND 10-006(10) dated August 11, 2010.²⁸ On the other hand, the Decision no longer dealt with ND 10-002(10) dated June 29, 2010 in view of the Notice of Finality of Decision issued previously.

b) NTA-Isabela's appeal.

On the other hand, on November 15, 2013,²⁹ the COA Director affirmed ND 2011-10-01 dated June 28, 2012. She emphasized that NTA-Isabela failed to present evidence to establish that the payments of incentives were sourced from savings obtained from the time the 2010 CNA was signed. She added that, in particular, it was doubtful that NTA generated "savings" as a result of "cost-cutting measures and system improvement agreed to be undertaken by the management and employees" from which it could have derived its payment of CNA incentives.³⁰

Further, the COA Director declared that even those who were not rank-and-file employees such as Herman C. Torres, Department Manager III and other non rank-and-file employees were also paid the incentive at ₱50,000.00 each.³¹

Undaunted, NTA-National and NTA-Isabela elevated the cases to the COA Proper *via* separate Petitions for Review.³²

Ruling of the COA Proper

The COA Proper denied/dismissed NTA-National and NTA-Isabela's petitions, respectively.

²⁸ *Id.* at 16.

²⁹ In COA RO Decision No. 2013-(2013-01)-28, *id.* at 396-400.

³⁰ *Id.* at 399.

³¹ *Id.*

³² See Petition for Review dated January 10, 2014 of NTA-Isabela, *id.* at 322-333.

a) *Decision No. 2013-157 dated October 7, 2013 in re: NTA-National.*

In affirming the COA Director's ruling, the COA Proper ratiocinated as follows: *first*, NTA did not have net savings for CY 2007-2009 that would serve as the funding source for the CNA incentive. *Second*, even assuming that the CNA incentive was on account of the 2002 CNA, the payments must still be disallowed because: (a) the "Signing Bonus" stipulated in the 2002 CNA, the only cash incentive therein, is proscribed by DBM Budget Circular No. 2006-1 and the Court's ruling in *SSS v. COA*; (b) The 2002 CNA expired in 2007. Section 11, Public Sector Labor-Management Council (PSLMC) Resolution No. 2, Series of 1991 provides that a CNA shall in no case have a lifetime of more than three years.³³

NTA-National moved³⁴ for reconsideration but the COA Proper denied it.³⁵

b) *Decision No. 2014-447 dated December 29, 2014 in re: NTA-Isabela.*

On the other hand, the COA Proper dismissed NTA-Isabela's petition for having been filed out of time. It found that NTA-Isabela appealed the disallowance to the COA Director 161 days after receiving the ND. Thus, it had only 19 days from receipt of the COA Director's adverse ruling, or until December 15, 2013, to appeal it to the COA Proper. However, it filed its petition only on January 16, 2014. Without a timely appeal, it is clear that the COA Director's ruling lapsed into finality.³⁶

The COA Proper also denied NTA-Isabela's motion for reconsideration.³⁷

³³ *Id.* at 22.

³⁴ See Verified Motion for Reconsideration dated November 8, 2013, *id.* at 25-31.

³⁵ *Id.* at 33.

³⁶ *Id.* at 250-251.

³⁷ See Resolution dated November 9, 2015, *id.* at 243.

NTA-National and NTA-Isabela filed the present actions in view of the above-mentioned COA Proper adverse rulings.

Arguments

In its petition, *NTA-National* imputes grave abuse of discretion upon the COA Proper based on the following grounds: *first*, for considering the subject incentives as a Signing Bonus and disregarding the 2002 CNA's existence; *second*, for not appreciating the reduction in NTA's prior years' losses to have satisfied the condition under DBM Circular No. 2006-1 in the grant of CNA Incentives; *third*, for declaring the 2002 CNA as automatically terminated after three years; and *fourth*, for not appreciating good faith on the part of NTA's representatives to justify the grant.³⁸

For its part, *NTA-Isabela* seeks to intervene in the case instituted by NTA-National (Main Petition) instead of filing a separate petition. It adopts NTA-National's allegations, issues, and arguments.³⁹

Counter-Arguments

On the other hand, the COA, represented by the Office of the Solicitor General (OSG), maintains that the payments were correctly disallowed because: *first*, the CNA Incentives granted by NTA-National fall within the "Signing Incentive" granted under Article XXIII of the 2010 CNA, and thus, prohibited;⁴⁰ and *second*, the incentives were not sourced from savings of released maintenance and other operating expenses.⁴¹

Issue

The Court shall resolve whether the COA Proper gravely abused its discretion when it upheld the disallowances relative to the payment of CNA Signing Incentive in favor of NTA officials, employees, and members of the governing Board for CY 2007 to 2009.

³⁸ *Id.* at 6.

³⁹ *Id.* at 239.

⁴⁰ *Id.* at 206.

⁴¹ *Id.* at 212.

The Court's Ruling

The Main Petition and Petition in Intervention are bereft of merit.

I. The arguments do not raise bona fide imputations of grave abuse.

At the outset, the Court emphasizes that the power to review COA decisions via Rule 64 petitions is limited to jurisdictional errors or grave abuse of discretion.⁴² The Court generally upholds the COA's ruling, especially in the clear absence of grave abuse on its part.⁴³

Corollary thereto, grave abuse of discretion on the part of the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.⁴⁴

In the present case, NTA-National anchors its grave abuse accusations on the COA Proper's supposed failure to consider the existence of the 2002 CNA and misappreciation of evidence tending to show that NTA-National complied with the conditions of granting CNA Incentives and that its officers acted in good faith. However, these are not *bona fide* imputations of grave abuse. At best, the arguments raise mere errors of judgment. These are beyond the scope of the Court's review sought through a petition for *certiorari* under Rule 64.⁴⁵

At any rate, after a judicious scrutiny of the *rollo*, the Court finds that the assailed COA Proper rulings are in accord with the prevailing rules and jurisprudence.

⁴² See *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713 (2016).

⁴³ See *Ramiscal v. Commission on Audit*, 819 Phil. 597 (2017).

⁴⁴ See *Abpi v. Commission on Audit*, G.R. No. 252367, July 14, 2020, citing *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97, 107 (2015).

⁴⁵ *Zamboanga City Water District v. Commission on Audit*, G.R. No. 218374, December 1, 2020; see also *Ramiscal v. Commission on Audit*, *supra* note 43.

To recall, subject of the present controversy are three separate NDs: *ND 10-002(10)* and *ND 10-006(10)* issued against NTA-National, and *ND 2011-10-01* issued against NTA-Isabela. The issues arising from these disallowances shall be discussed jointly below.

II. ND 10-002(10), dated June 29, 2010 (in re: NTA-National) is already final and executory.

It is noteworthy that while NTA-National continues to resist both NDs issued against it, ND 10-002(10)'s finality is no longer disputed. As observed by the COA Proper, the COA Director ruled only to the extent of ND 10-006(10) in view of a Notice of Finality of Decision in relation to ND 10-002(10).⁴⁶ To be sure, that NTA-National did not even bother to append copies of the Notice of Finality of Decision; and the COA Director's ruling tends to show that it has not put ND 10-002(10)'s finality in issue.

Thus, there is no reason to overturn ND 10-002(10)'s final and executory character.

III. COA properly disallowed the CNA signing incentive for being violative of DBM Budget Circular No. 2006-1.

a) The cash incentive under the 2002 CNA was a Signing Bonus prohibited by the regulations.

NTA-National denies that the subject payments were in the nature of a *signing bonus*. It claims that: (a) while the incentives were released in 2010, on the very same day the 2010 CNA was signed, the subject incentive was granted on account of the 2002 CNA covering prior years' savings from 2007 until 2009; and (b) the use of the term "signing" in Article XXIII in the renegotiated 2010 CNA to describe the incentive was inadvertent. It could not have been a signing bonus taken that the 2010 CNA was not yet effective during the calendar years in

⁴⁶ *Rollo*, pp. 16-17.

consideration or from 2007 until 2009.⁴⁷

To the Court's mind, the petitioner relies on the 2002 CNA but denies that the incentives had been signing bonuses. These are conflicting positions.

First, the 2002 CNA provides for only one type of cash incentive, which, under Article XXIV, was expressly referred to as a "Signing Bonus." *Second*, the parties intended the incentive to be given "in recognition of the occasion whereby the AGENCY forges the historic and first Agreement with the certified negotiating agent of its rank-and-file employees."

Nomenclature aside, the Article XXIV incentive is clearly in the nature of a *prohibited signing bonus* as declared in *Social Security System v. Commission on Audit*⁴⁸ and mandated in PSLMC Resolution No. 04-02.

The Court reiterated this prohibition in the case of *Manila International Airport Authority v. Commission on Audit*⁴⁹ (*MIAA*) with antecedents similar to the instant case. In *MIAA*, the amount of ₱30,000.00 was given as a CNA signing bonus to each employee and member of its Board of Directors. Like NTA, *MIAA* claimed that its Board of Directors labeled the benefit "as a signing bonus by mistake or inadvertence in good faith".

Notably, NTA-National recognized the legal impediment imposed in *Social Security System v. Commission on Audit*. In fact, it admits that it refrained (prior to 2010) from granting incentives under the aforementioned provision due to this ruling.⁵⁰ At the risk of repetition, the Court emphasizes that while the 2002 CNA provides for a cash incentive, the only monetary benefit stipulated therein contravenes jurisprudence and the regulations. There is no other provision in this CNA that could justify a grant of monetary incentives. That NTA-National still invokes the 2002 CNA and insists on the legality of the incentives is an absurdity.

⁴⁷ *Id.* at 7.

⁴⁸ 433 Phil. 946 (2002).

⁴⁹ 681 Phil. 644 (2012).

⁵⁰ *Rollo*, p. 4-5.

b) *NTA-National failed to establish that the incentives were paid out of "savings."*

NTA-National insists that it complied with the conditions for the grant of CNA Incentives, *viz.*:

21. At the outset, the Audit Team Leaders may be correct in their audit findings that the NTA have incurred losses in terms of net income in CYs 2008 and 2009. However, they failed to appreciate that in 2008[,] the net loss was PhP83,302,363.00 and that in 2009[,] the net loss was decreased to PhP66,421,569.00 or a difference of PhP16,880,794.00. It must be emphasized that DBM circulars pertaining to the grant of CNA incentives does not require actual savings to be realized. It also considers reduction losses based on prior years financial statements for a certain government entity to be entitled to the incentive.

22. The appreciation of reduction in income loss is very crucial in this case because no other than Budget Circular 2006-1 specifically recognized the special case of GOCCs and GFIs, which consistently incur operating losses. *The only condition precedent is that the current year's (2009) operating losses should have been minimized or reduced compared to the prior year's (2008) level*, the pertinent provisions of [DBM Budget Circular] No. 2006-1 is hereunder quoted, as follows:

"6.2 The Employees' Organization Management Consultative Committee or similar body in GOCCs and GFIs shall determine if the employees concerned are entitled to the CNA Incentive based on compliance with the following conditions, pursuant to Section [3], PSLMC Resolution No. 02, s. 2003:

a. x xx. For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's level;

x xx." (*emphasis, ours*)⁵¹ (Underscoring omitted; italics in the original and supplied.)

In other words, NTA-National makes it appear that the reduction of operating losses *alone* is sufficient justification for the grant of CNA Incentives.

⁵¹ *Id.* at 8.

This is a selective and skewed interpretation of the guidelines.

Item 6.2 of DBM Circular No. 2006-1, a portion of which has been cited by the petitioner, is a mere restatement of Section 3 of PSLMC Resolution No. 02-03. The source is reproduced here *in full*:

Section 3. The CNA Incentive may be granted *if all the following conditions are met by the GOCC/GFI*:

- a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the [DBM]/Office of the President for the year; For GOCCs/GFIs, which by nature of their functions consistently incur operating losses, the current year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's level;
- b) Actual operating expenses are less than the DBM approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and
- c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of [RA] 7656 dated November 9, 1993. (Italics supplied.)

Verily, the rules allow even GOCCs that have accumulated operating losses to grant CNA Incentives. However, to justify the grant, said GOCC must *establish* that in the year under review: (1) it has reduced its accumulated prior years' losses; *and* (2) it incurred actual operating expenses *less than* the amount budgeted for that year.

Stated differently, there must be a *favorable variance* between the GOCC's actual and budgeted operating expenses, such that the GOCC must have "saved money" by incurring/spending less than what it expected to. If the GOCC does not generate *savings*, it will have no funds from which it could source the payment of CNA Incentives. Where there is no savings, the grant of incentives is unjustified.⁵²

⁵² Section 5 of Public Sector Labor-Management Council (PSLMC) Resolution No. 02-03 provides, "[o]nly savings from operating expenses, as referred to in Section 3 above, generated after the

This rule is amplified in Section 4 of Administrative Order No. 135,⁵³ which reads:

SECTION 4. *Savings as Source*. — The CNA Incentive shall be sourced only from the savings generated during the life of the CNA.

Precisely, COA's primary legal justification in disallowing the subject payments is the *lack of funding source* of NTA's grant of CNA Incentives as required by DBM Budget Circular No. 2006-1, *viz.*:

7.0 Funding Source

7.1 The CNA Incentive shall be sourced solely from the savings released *Maintenance and Other Operating Expenses (MOOE) allotments for the year under review*, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated *out of the cost-cutting measures identified in the CNAs* and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

7.1.3 Such savings shall be *net of the priorities in the use* thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personnel benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE

signing of the CNA, shall be used for the CNA Incentive. Specifically, savings refer to the difference between the approved COB level and actual expenses incurred, free of any obligation or encumbrance and which are no longer intended for specific or mandatory purpose/s. x x x"

Section I of PSLMC Resolution No. 04-02 also provides, "[i]n recognition of the joint efforts of labor and management to achieve all planned targets, programs and services approved in the budget of the agency at a lesser cost, CNA Incentive may be provided in the CNA. To ensure that funds are available and still all planned targets, programs and services approved in the budget of the agency are achieved, only savings generated after the signing of the CNA may be used for the CNA Incentive." Section 3 of Administrative Order No. (AO) 135 provides further, "[t]he CNA Incentive shall be sourced only from the savings generated during the life of the CNA."

⁵³ Entitled, "Authorizing the Grant of Collective Negotiation Agreement (CNA) Incentive to Employees in Government Agencies," approved on December 27, 2005.

items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred, and

- 7.1.4 The basic rule that augmentation can be done only if there is deficiency in specific expenditure items, should be strictly observed.
- 7.2 National government agencies may use any free portion of their respective allocation for payment of the CNA Incentive or, if necessary, may request the release of cash allocation from the [DBM].
- 7.3 GOCCs/GFIs and LGUs may pay the CNA Incentive from savings *in their respective approved corporate operating budgets or local budgets*.
- 7.4 NGAs shall submit to DBM a report on the utilization of savings for the payment of the CNA Incentive.⁵⁴ (Italics supplied.)

Taking together the applicable regulations, “*savings*” as a sufficient source of funds for the payment of CNA Incentives shall, at least, refer to: *first*, an excess of actual operating expenses per audited financial statements over the approved level of uses in the corporate operating budget (COB);⁵⁵ *second*, released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA;⁵⁶ *third*, those generated out of the cost-cutting measures identified in the CNAs and supplements thereto;⁵⁷ and *fourth*, the net amount after deducting other items in the GOCC’s priorities, such as budgetary deficiencies that need to be covered through augmentation.⁵⁸

In this regard, NTA-National claims⁵⁹ that it had available savings from calendar years 2007, 2008, and 2009, computed as follows:

CY	APPROVED LEVEL OF USES IN THE	ACTUAL OPERATING EXPENSES	SAVINGS
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⁵⁴ *Rollo*, pp. 293-294.

⁵⁵ Section 3(b), PSLMC Resolution No. 02-03. See also Item 5.2, Department of Budget and Management (DBM) Budget Circular No. 2006-1.

⁵⁶ Item 7.1, DBM Budget Circular No. 2006-1.

⁵⁷ Item 7.1.1, DBM Budget Circular No. 2006-1.

⁵⁸ Items 7.1.3 and 7.1.4, DBM Budget Circular No. 2006-1.

⁵⁹ *Rollo*, p. 9.

	COB	(as audited)	
2007	PhP535,081,068.00	PhP279,324,767.00	<u>PhP255,756,301.00</u>
2008	PhP387,391,000.00	PhP237,724,438.00	<u>PhP149,666,562.00</u>
2009	PhP612,329,000.00	PhP234,277,965.00	<u>PhP378,051,035.00⁶⁰</u>

However, the mere excess of actual operating expenses over the approved level of uses in the COB does not give rise to *savings* from which a grant of CNA Incentives may be sourced. NTA-National failed to establish that such excess is derived from released MOOE allotments for 2007, 2008, and/or 2009.

Verily, the COA identified that NTA had MOOE allotments from these years. However, NTA also had fund deficiencies in Personal Services amounting to ₱92,518,623, ₱53,671,003, and ₱64,160,015⁶¹ in 2007, 2008, and 2009, respectively. Following the procedure under DBM Budget Circular No. 2006-1,⁶² the surplus in MOOE shall be augmented first to cover these deficiencies, *viz.*:

	2007	2008	2009
MOOE:			
DBM Approved COB	116,253,068	119,373,000	115,000,000
Less Actual Expenditure*	45,990,027	72,032,960	50,659,295
Savings from MOOE	70,263,041	47,340,040	64,340,705
Personal Services Fund Deficiency	(92,518,623)	(53,671,003)	(64,160,015)
(Deficit)/Savings	(22,255,582)	(6,330,963)	₱180,690 ⁶³

*Per Audit

The NTA-National, at its convenience, relied on three years' worth of financial data but did not even bother to specify the "year under review."⁶⁴ At any rate, contrary to what NTA-National leads the Court to believe, it is clear from the COA's findings⁶⁵ that NTA did not yield sufficient savings in any given year to fund the aggregate incentives amounting to ₱4,325,000.00.

⁶⁰ *Id.*

⁶¹ *Id.* at 21.

⁶² Items 7.1.3 and 7.1.4, DBM Budget Circular No. 2006-1.

⁶³ *Rollo*, p. 21.

⁶⁴ Item 7.1, DBM Budget Circular No. 2006-1.

⁶⁵ *Rollo*, p. 21.

Moreover, “*savings*” cannot be made to refer to just any perceived improvement or positive outcome in a GOCC’s overall performance. It must be *actual*—one that is “real or substantial, or something that exists presently in fact, as opposed to something that is merely theoretical, possible, potential or hypothetical.”⁶⁶

Foremost, CNA Incentives are intended to reward labor and management’s joint efforts to attain more efficient and viable operations.⁶⁷ Whether the parties have in fact achieved these objectives shall be determined by the criteria and benchmark *expressly stipulated* by the parties in the CNA, particularly the provisions on the improvement of income and productivity, streamlining of systems and procedures, and cost-cutting measures to be undertaken.⁶⁸

The Court carefully reviewed both the 2002 CNA and 2010 CNA, as well as other relevant submissions, but there are no specific cost-cutting measures or any plan to improve NTA operations’ efficiency and viability identified therein. At this point, it is uncertain whether cost-cutting measures were installed and/or implemented or, much more, whether NTA actually reduced its costs and generated the savings required to establish a funding source for its CNA Incentives.

Consequently, a grant of CNA Incentives cannot be justified under either version of CNA.

IV. The payees are liable to return the incentives received.

The petitioner invokes good faith on the part of its official and employees in declining liability to return the disallowed amount. However, the defense of good faith is not available to the recipients of a disallowed amount.⁶⁹

⁶⁶ *Araullo, et al. v. President Aquino III, et al.*, 737 Phil. 457, 584 (2014), citing *Sanchez, et al. v. Commission on Audit*, 575 Phil. 428, 454 (2008).

⁶⁷ Section 1, PSLMC Resolution No. 02-03.

⁶⁸ See Section 3, AO 135; see also Section 2, PSLMC Resolution No. 02-03; Item 7.1.1, DBM Budget Circular No. 2006-1.

⁶⁹ See *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019.

It is already settled that the payment of compensation and benefits that are disallowed subsequently for being unlawful is an erroneous payment. It follows then that the government employee who received the payment by mistake has the *quasi-contractual obligation* to return it to the government.⁷⁰ On the other hand, the recipient may be excused from this liability provided that: (a) he establishes that the amounts they received were “genuinely given in consideration of services rendered,” or (b) the Court decides to do so “based on undue prejudice, social justice considerations, and other *bona fide* exceptions” as the factual circumstances in the case may warrant.⁷¹

The Court finds no reason to exempt herein *payees* from their liability. To stress, NTA-National’s payment of incentives is *devoid of legal basis*,⁷² inasmuch as it was released despite: (a) the absence of sufficient savings, and (b) flagrant violations of the relevant rules and regulations. Certainly, the illegal disbursement cannot be regarded as a consideration genuinely given as compensation for services rendered.⁷³

In view of this, the *approving and certifying officers* are left to answer for the *net disallowed amount*, if any.⁷⁴

V. ND 2011-10-01 dated June 28, 2012 (in re: NTA-Isabela) is already final and executory.

The COA Proper, in its decision subject of the Petition in Intervention, dismissed NTA-Isabela’s petition for review for being filed beyond the reglementary period of appeal under Section 3, Rule VII of the 2009 Revised Rules of Procedure of the COA,⁷⁵ in relation to Section

⁷⁰ *National Transmission Corp. v. Commission on Audit*, G.R. No. 232199, December 1, 2020.

⁷¹ *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

⁷² In *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, the Court ruled, “[s]ince no legal basis for the grant of additional honoraria has been established, it would be an unjust enrichment to allow the members of the governing boards to retain what they had received. Instead, they should be considered trustees of the disallowed amounts, holding them for the benefit of the government, regardless of any good faith defenses they may raise. Respondent, therefore, correctly ordered the refund.”

⁷³ See *Land Bank of the Philippines v. Commission on Audit*, G.R. No. 213409, October 5, 2021; see also *Abellanos v. COA*, G.R. No. 185806, November 17, 2020.

⁷⁴ The *net disallowed amount* refers to the “total disallowed amount minus the amounts excused to be returned by the payees.” See *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

⁷⁵ Section 3, Rule VII of the Revised Rules of Procedure of the COA states:

Section 3. *Period of Appeal* – The appeal shall be taken within the time remaining of

22.1 of the Rules and Regulations on Settlement of Accounts.⁷⁶ Inasmuch as NTA-Isabela does not refute the fact of late filing, it is certain that the disallowance already lapsed into finality.

Based on this consideration, the COA Proper did not commit grave abuse of discretion when it dismissed NTA-Isabela's petition outright for being filed out of time. To be sure, when the ND 2011-10-01 lapsed into finality upon NTA-Isabela's failure to file a timely appeal, the COA Proper could no longer take cognizance of their petition.⁷⁷

A final and executory disallowance is unalterable, immutable and, no longer subject to appeal, revision, or modification even by the Court.⁷⁸

WHEREFORE, the petition for *certiorari* is **DISMISSED**. The Decision No. 2013-157 dated October 7, 2013 and the Resolution dated March 9, 2015 of the Commission on Audit, Commission Proper, which upheld the Notice of Disallowance No. 10-005(10) dated August 11, 2010 amounting to ₱2,150,000.00 is **AFFIRMED**. All payees are **DIRECTED to RETURN** what they had individually received. The approving and certifying officers shall be solidarily liable for the net disallowed amount, if any.

The petition in intervention is **DENIED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice


the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's Decision.

⁷⁶ Section 22.1 of Rules and Regulations on Settlement of Accounts states: “[a] decision of the Commission Proper, ASB, Director or Auditor upon any matter within their respective jurisdiction; if not appealed as herein provided, shall become final and executory.”

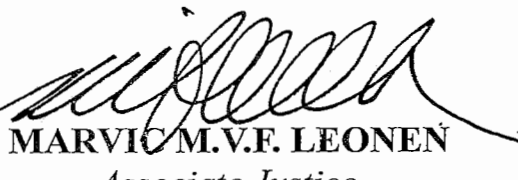
⁷⁷ See *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222129, February 2, 2021.

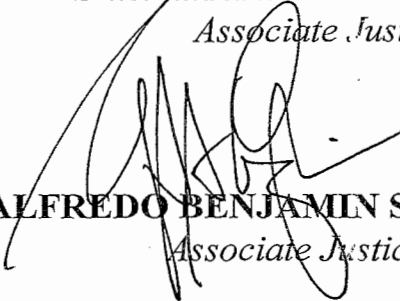
⁷⁸ *Id.*; See also *Escarez v. Commission on Audit*, G.R. Nos. 217818, 218334, 219979, 220201 & 222118 (Notice), May 31, 2016.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

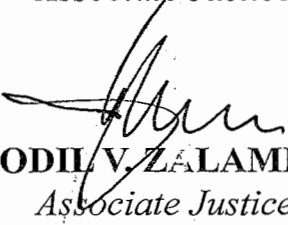

MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

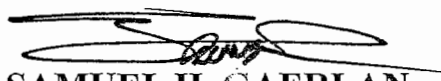

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ROSMARI D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

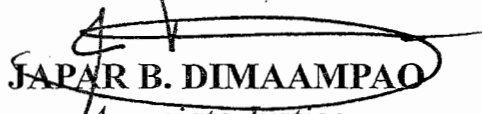

RODIL V. ZALAMEDA
Associate Justice

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MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

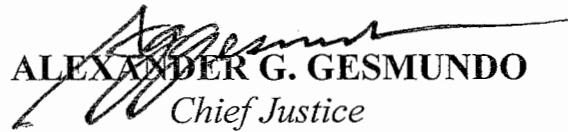

RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice

