REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO., Petitioner,	**CTA CASE NO. 8604**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 16 2016 10:45 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Before this Court is the Petition for Review filed by G & W Architects, Engineers and Project Consultants Co. on January 25, 2013, seeking the cancellation of the assessment issued against it for alleged deficiency income tax and value-added tax (VAT) in the amounts of ₱518,268,999.15 and ₱181,317,267.09, respectively, for taxable year 2007.

STATEMENT OF FACTS

Petitioner G & W Architects, Engineers and Project Consultants Co. is a partnership whose purpose is to engage in the general practice of Architecture and Construction and to purchase, own, hold, manage, lease, and operate any and all kinds of properties.[1]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to decide, approve, and reverse assessments of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Letter Notice (LN) No. 030-RLF-07-00017 dated July 16, 2009 was issued to petitioner by the Letter Notice Task Force (LNTF) of the BIR due to alleged discrepancies as disclosed by the computerized matching conducted by the BIR on information or data provided by third-party sources against petitioner's declarations per VAT Returns for taxable year ended December 31, 2007.[2]

Subsequently, Letter of Authority (LOA) No. 00017191 dated May 11, 2010 was issued authorizing the conduct of an investigation or examination of petitioner's books of accounts and other accounting records and the corresponding pre-processed data under Tax Reconciliation System (TRS) for the period covering January 1, 2007 to December 31, 2007.[3]

Thereafter, a Preliminary Assessment Notice (PAN) dated December 26, 2011 was issued against petitioner.[4]

Respondent then issued the assailed Formal Assessment Notice (FAN) dated February 15, 2012[5], finding petitioner liable to pay deficiency income tax and deficiency VAT due to the discrepancy that resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching-BOC Data Program as declared in the tax returns.

Petitioner filed its protest[6] against the FAN on May 2, 2012 and submitted its supporting documents on June 29, 2012[7]. *gr*

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[1] Exhibit "P-1", docket, vol. II, pp. 672-680.
[2] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. II, p. 630.
[3] Par. 3, Summary of Admitted Facts, JSFI, docket, vol. II, p. 631.
[4] Par. 4, Summary of Admitted Facts, JSFI, docket, vol. II, p. 631.
[5] Exhibit "R-9", BIR Records, pp. 415-419.
[6] Exhibit "P-21", docket, vol. II, pp. 786-793.
[7] Exhibit "P-22", docket, vol. II, pp. 794-796.

Due to respondent's inaction on the protest, petitioner filed the instant Petition for Review before this Court on January 25, 2013[8].

Respondent filed her Answer[9] to the Petition for Review and interposed the following Special and Affirmative defenses:

> "5. Respondent hereby reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses
>
> **<u>ARGUMENTS AND DISCUSSIONS</u>**
>
> ACTS WHICH CIRCUMVENT OR NEGATE THE PAYMENT OF JUST TAXES ARE CONSIDERED INIMICAL TO NATIONAL INTEREST WHICH SHOULD NEVER BE COUNTENANCED BY THIS HONORABLE COURT.
>
> 6. Preliminarily, it is an undisputed fact that petitioner engages in a Build-To-Own (BTO) concept of pooling of owners' funds for the construction of condominium units on behalf of the fund owners.
>
> 7. The strength of petitioner's arguments are based solely on alleged favorable BIR Rulings as enumerated in its petition for review. However, it bears emphasizing that said BIR Rulings were issued with a specific collatilla, to wit:
>
> > 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'
>
> 8. Subsequently, RMC 55-2010 was issued upon investigation that the facts are not as represented by herein petitioner in their request for ruling. It was found that the transactions entered into by petitioner relative to

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[8] Docket, vol. I, p. 6.
[9] Docket, vol. I, pp. 276-287.

its Build-to-Own concept should be treated as pre-selling/selling and therefore subject to Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST).

9. The aforesaid Revenue Memorandum Circular stated verbatim:

xxx xxx xxx

10. Verily, the abandonment of the BIR rulings were succinctly discussed in RMC 55-2010. Any action to circumvent the mandate of the law, by allowing the scheme implemented by petitioner, is tantamount to giving undue benefits to a party to the prejudice of the government. To rule otherwise would provide an opportunity for circumventing the law.

11. In sum, petitioner has come up with an innovative way to circumvent the imposition of applicable taxes and obtain an exemption. While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade the payment of just taxes. Acts which circumvent or negate any of the provisions of the law pertinent to the collection of taxes shall be considered inimical to the national interest.

12. Petitioner further declares that it was not informed of the implementation of RMC 55-2010. However, it bears stressing that Revenue Memorandum Circulars are issued simply to restate and then clarify the prevailing position and ruling of the BIR. The subject-RMC in particular merely interpreted an existing law which had already been in effect and which was not set to be amended. Hence, notice is not a pre-requisite before said RMC takes effect.

PETITIONER CONTROVERTED ITS STATUS AS A GENERAL PROFESSIONAL PARTNERSHIP (GPP) BY EXCEEDING THE EXERCISE AND PRACTICE OF ITS PROFESSION, HENCE IS

LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX.

13. Furthermore, petitioner contends that it is a General Professional Partnership, hence, is exempt from Income Tax.

14. However, as above-discussed, petitioner was engaged in a Build-To-Own concept. It undertakes the responsibility to build/construct/develop a condominium project, and as such it can reasonably be expected that petitioner, while registered as a general professional partnership of architects, is really doing business as a real estate developer.

15. Besides, there is no such profession as a project manager, in contrast to other professions such as lawyers, doctors, accountants, engineers, architects, teachers and the like which are registered professions as authorized by an appropriate regulatory body.

16. Petitioner obtained BIR Ruling DA-(C-014) 070-10 as a group of architects in a general professional partnership. Exercise or practice of a profession beyond or in excess of its professional competence does not exempt a general professional partnership, like petitioner in this case, from payment of just taxes.

17. Hence, petitioner is liable for the assessed income tax liability from the transactions it entered into while building condominium units.

ANY DIMINUTION OF POWER TO TAX STRICTLY CONSTRUED AGAINST THE TAXPAYER AND IN FAVOR OF THE TAXING AUTHORITY.

18. The Honorable Supreme Court has laid down the rule that 'as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or

its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied.' (84 C.J.S. pp. 659-800). More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer (Acting Commissioner of Customs v. Manila Electric Co. et al., 69 SCRA 469 [1977] and Commissioner of Internal Revenue v. P.J. Kiener Co. Ltd., et al., 65 SCRA 142 [1975]).

19. Thus, any doubt whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority.

> It is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.

20. Petitioner's contention that it was not subject to creditable withholding tax or capital gains tax, value-added tax (VAT) and Documentary Stamp Tax (DST), except the ₱15.00 DST on contractual agreements, amounts to a claim of tax exemption. The cardinal rule in taxation is exemptions are highly disfavored and whoever claims an exemption must justify his right by the clearest grant of organic or statute law. Petitioner must point to a specific provision of law granting the tax exemption. The tax exemption cannot arise by mere implication and any doubt about whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority.

GUIDELINES IN DETERMINING THE FACTUAL AND LEGAL BASES RELATIVE TO AN ASSESSMENT BY LETTER NOTICE WHERE FAITHFULLY OBSERVED.

21. As provided for under the existing Revenue Memorandum Order (RMO) on RELIEF/SLSP System xxx and RMO on TPM-BOC Data Program, xxx taxpayers with discrepancy on their sales and/or purchases (domestic or imported) shall be notified of such findings through the issuance of a Letter Notice

22. The deficiency income and value added taxes shall be computed using the formulas prescribed in the attached Computation Sheets for Discrepancy on Sales and/or purchases [Local and/or Imported] (Annexes 'C', 'C-1', or 'C-2') and the corresponding payment shall be made using BIR Form No. 0611-A. This is in compliance with the 'no-contact-audit approach' policy laid down under RMO No. 42-2003, as amended by RMO No. 46-2004, where the Revenue Officer has no opportunity to examine the records of the taxpayer for purposes of determining his true tax liabilities, but his deficiency tax liabilities are determined using information from third party sources.

23. The ***'no-contact-audit approach'*** includes the process of computerized matching of sales and purchases data contained in the Schedule of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

24. Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of Letter Notice (LN) by the Commissioner.

25. The foregoing paragraphs of various RMO's issued as guidelines in implementing a Letter Notice glaringly offers an immediate understanding of the assessment process. The Revenue Officer concerned need not inspect petitioner's financial records as alleged in the

instant petition for review. The investigation begins by matching data pursuant to the *'no-contact-approach'* policy, and the deficiency taxes are computed using the prescribed forms similar to those used in assessing petitioner.

26. Verily, the data collected from RELIEF and TPM-BOC reveals the transactions entered into by petitioner and served as basis for the computation for its assessed deficiency taxes.

27. Even petitioner acknowledged that they were land sales of FBDC to G & W because FBDC declared output VAT from its sale of land in the name of G & W, a result of the aforesaid matching of sales and purchases of taxpayers subject to a Letter Notice.

28. The above-mentioned under-declaration of local purchases is hereunder shown, thus:

A. LOCAL PURCHASES (VAT & IT)

Per Summary List of Sales submitted by petitioner's Suppliers	₱356,045,481.18
Adjustment per evaluation	₱ 23,083,765.33
Under-declaration of Local Purchases	₱332,961,715.85

29. Hence, petitioner was assessed income tax and value added tax in accordance with Section 31, 106 and 108 of the Tax Code, as amended, and RMO No. 32-2007. These provisions of the Tax Code suffice given the fact that Letter Notices assess only Income and Value-Added Tax deficiencies.

30. The amounts as reflected in the Assessment Notices were derived by working-back the above-underdeclaration of Local Purchases. Further, ratios used were based on petitioner's financial statements.

31. Therefore, the assertion that the assessment made was bereft of factual and legal bases deserves scant consideration considering that the procedure pursuant to

assessments by Letter Notice were followed. The figures were never presumed and/or estimated because they were collected from matching data inquiries and computed using the form prescribed by RMO 32-2007.

32. Besides, even granting, without conceding, that the foregoing figures in the assessment were mere estimates, the case of *Marcos II vs. Court of Appeals* decided by the Supreme Court is instructive on the issue, viz:

> In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. **Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.** The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. **Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.** In this instance, petitioner has not pointed out one single provision in the Memorandum of the Special Audit Team which gave rise to the questioned assessment, which bears a trace of falsity. Indeed the petitioner's attack on the assessment bears mainly on the alleged improbable and unconscionable amount of taxes charged. But mere rhetoric cannot supply the basis for the charge of impropriety of the assessment made.

33. Henceforth, the assailed-assessment should be upheld as the rules, procedure or guidelines in determining the deficiency taxes of petitioner were complied with. Thus, negating any factor of an arbitrary and capricious manner of assessment. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.

THE ASSESSMENT WAS MADE WITHIN THE PRESCRIPTIVE PERIOD UNDER SECTION 222 OF THE TAX CODE ON FRAUDULENT ASSESSMENTS

34. Petitioner argued that the period within which to assess it of its deficiency tax liabilities has already prescribed based on Section 203 of the Tax Code:

xxx xxx xxx

35. Based on the above-cited provision particularly on the emphasis supplied thereon, it can be obviously perceived that petitioner glossed on the fact the same provision provided for an exemption detailed in Section 222 of the Tax Code, thus:

xxx xxx xxx

36. In the instant case, the falsity, fraud or omission was discovered only after conducting an investigation pursuant to a Letter Notice (LN) No. 030-RLF-07-00017 dated 28 July 2009. It can be safely expected that discovery be reckoned on the date of the LN since an LN is borne by discrepancies from matching data inquiries used by the BIR.

37. As such it is well within the ten (10) year period within which to assess cases of false or fraudulent return. Verification disclosed a discrepancy in petitioner's local purchases resulting in the Reconciliation of Listing for Enforcement (RELIEF) *and* Third Party Matching – Bureau of Customs (TPM-BOC) Data Program as declared in petitioner's income tax returns.

38. Likewise, Section 248 (B) of the National Internal Revenue Code of 1997 (the Tax Code), as amended, provides:

xxx xxx xxx

39. The above-discussed scheme carried-out by petitioner readily exposed it from undeniable under-declarations tantamount to fraudulent filing of its tax returns for the year 2007.

40. Thusly, the above-stated under-declaration reflects sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return. Such substantial under-declaration rendered petitioner's tax return filed for calendar year 2007 as a false or fraudulent return prescribed by Section 248(B) of the National Internal Revenue Code of 1997, as amended, thus creating *prima facie* evidence of a false [or] fraudulent return.

THE PRESUMPTION UNDER THE LAW IS IN FAVOR OF CORRECTNESS OF THE ASSESSMENT.

41. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (*Sy Po vs. Court of Tax Appeals, 164 SCRA 524*). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

42. Worth of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands:*

> 'Tax assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the

> performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"

On May 20, 2013, the Court issued the Notice of Pre-Trial Conference and set the pre-trial conference on June 20, 2013.[10] Accordingly, petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were both filed on July 26, 2013.[11]

The parties later filed their Joint Stipulation of Facts and Issues[12] on October 3, 2013.

Upon the termination of the pre-trial, the Court issued the Pre-Trial Order[13] on October 9, 2013 and set the initial presentation of petitioner's evidence.

During the hearing held on November 4, 2013[14], petitioner presented its witness, Arch. Gilbert C. Yu, who testified on direct examination by way of his Amended Judicial Affidavit[15] dated September 12, 2013.

After the marking, identification, and formal offer of petitioner's exhibits,[16] the Court admitted Exhibits "P-1" to "P-23" as petitioner's evidence pursuant to the Court's Resolution[17] dated January 15, 2014.

On the other hand, during the hearing held on February 10, 2014, respondent's first witness, Atty. Christina C. Barroga, completed her testimony by way of Judicial Affidavit filed on August 28, 2013.[18] Respondent also presented as witness, Mr. Ellsworth W. Chiu, who testified on direct examination by way of a Judicial Affidavit and

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[10] Docket, vol. I, p. 289.
[11] Docket, vol. I, pp. 306-315 and 583-589.
[12] Docket, vol. II, pp. 630-636.
[13] Docket, vol. II, pp. 640-643.
[14] Minutes of the hearing, docket, vol. II, p. 922.
[15] Exhibit "P-23", docket, vol. II, pp. 655-671.
[16] Petitioner's Formal Offer of Documentary Evidence filed on November 25, 2013, docket, vol. II, pp. 930-941.
[17] Docket, vol. II, pp. 983-984.
[18] Minutes of the February 10, 2014 Hearing, docket, vol. II, p. 986; Exhibit "R-13", docket, vol. I, pp. 605-613.

Supplemental Judicial Affidavit filed on August 28, 2013 and April 3, 2014, respectively.[19]

As to respondent's documentary evidence, the Court admitted the exhibits marked, identified, and formally offered as Exhibits "R-1" to "R-13-a", "R-15", and "R-17" to "R-19-a", as per Resolution[20] dated October 13, 2014. The Court later admitted Exhibit "R-16" as per Resolution[21] dated December 15, 2014; while Exhibit "R-14" was admitted via Resolution[22] dated July 29, 2015.

Thereafter, the Court declared the instant case submitted for decision on September 18, 2015, considering the filing of the Memorandum for the Petitioner[23] on January 20, 2015 and the Report of the Court's Judicial Records Division dated September 11, 2015 that respondent failed to file her Memorandum.[24]

STATEMENT OF ISSUES

The parties submitted the following issues[25] for the Court's resolution:

1. Whether or not the tax deficiency assessment is null and void because the FAN was issued beyond the mandatory 3-year period and for failure to provide factual and legal bases of the assessment in violation of Sec. 228 of the Tax Code; and

2. Whether or not the petitioner is liable for ₱181,317,267.09 and ₱518,268,999.15 representing the deficiency income tax and value added tax, respectively, for taxable year 2007.

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[19] Exhibits "R-18" and "R-19", docket, vol. I and II, pp. 614-621 and 999-1003.
[20] Docket, vol. III, pp. 1140-1141.
[21] Docket, vol. III, pp. 1153-1155.
[22] Docket, vol. III, pp. 1216-1218.
[23] Docket, vol. III, pp. 1156-1179.
[24] Docket, vol. III, p. 1220.
[25] Issues to be Resolved, JSFI, docket, vol. II, p. 631.

DISCUSSION/RULING

The assessment complied with Section 228 of the NIRC of 1997, as amended, which requires that the assessment must state the facts and the law upon which it is based.

Petitioner directs the Court's attention to the FAN and claims that it does not provide any facts or legal basis that may remotely link petitioner to the taxes for which it is being assessed.

Petitioner maintains that despite the statement that the discrepancy in the taxes due resulted from the "Reconciliation Listing for Enforcement (RELIEF) and Third Party Matching-BOC Data Program", respondent failed to comply with the mandatory due process requirement of the BIR's data-matching process pursuant to Revenue Memorandum Order (RMO) No. 46-2004.

According to petitioner, respondent's witness confirmed that there was a total failure to comply with the mandatory requirement of obtaining sworn statements from third-party informants attesting to the veracity of the data provided.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, that a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.** Jz

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

The law requires that the taxpayers should be informed of the legal and factual bases of the assessment. However, the assessment notices need not be a full narration of the facts and laws on which the assessment is based. As long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[26]

The Details of Discrepancy attached to the assessment stated that the assessment was the result of the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching-BOC Data Program as declared in petitioner's tax returns. The Details of Discrepancy also provided the computation as to how the alleged under-declaration on purchases was derived by respondent, *i.e.*, from the difference between the amount of purchases per summary list of sales submitted by petitioner's suppliers and the amount of purchases per returns filed by petitioner.

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[26] *Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999.

In view thereof, it is clear that petitioner was informed of the factual and legal bases of the assessment and was given the opportunity to contest same. Thus, there is no reason for this Court to sustain petitioner's allegation that the assessment notice was void for failure to state the assessment's factual basis inasmuch as it was based on the examination by respondent of petitioner's tax returns and the summary list of sales submitted by petitioner's suppliers as stated in the subject tax assessment.

However, as to whether respondent can rely solely on the information resulting from the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching-BOC Data Program shall be addressed in the succeeding discussion.

Respondent based the assessed amount on unverified information.

Revenue Officer (RO) Ellsworth W. Chiu, the Revenue Examiner assigned by the Letter Notice Task Force (LNTF) of the BIR to conduct the investigation of petitioner's books of accounts and accounting records, testified that a Letter Notice[27] was issued to petitioner by the LNTF of the BIR due to a generated discrepancy in the amount of ₱699.586.266.24 based on the under-declaration of local purchases and additional gross income covering three (3) parcels of land from Fort Bonifacio Development Corporation (FBDC) in the year 2007.[28]

According to RO Chiu, the discrepancies as disclosed by computerized matching conducted by the BIR on information/data provided by third-party sources against petitioner's declarations per VAT Returns for taxable year 2007 were presented to petitioner. The LOA[29] was served to petitioner on June 11, 2010 for the conduct of an investigation/examination of petitioner's book of accounts and other accounting records and corresponding pre-processed data under the Tax Reconciliation System (TRS) for the period January 1, 2007 to December 31, 2007.

Thereafter, petitioner received a Notice of Informal Conference.[30]

[27] Exhibit "R-1", BIR Records, p. 287.
[28] Exhibit "R-18", Judicial Affidavit of RO Ellsworth W. Chiu, docket, vol. II, pp. 614-621.
[29] Exhibit "R-3", BIR Records, p. 280.
[30] Exhibit "R-4", BIR Records, p. 357.

RO Chiu likewise stated that he conducted further investigation on the discrepancies pertaining to petitioner's local purchases and found that the parcels of land where condominiums were built were bought in the name of the condominium corporations which at the time of purchase were not yet in existence, as evidenced by the Certificate of Incorporation of Grand Hamptons Towers I and II.

RO Chiu also noticed that the members of the Board of Directors of these condominium corporations[31] (Grand Hamptons Towers I and II) were identical and surprisingly include one of petitioner's partners[32], Mr. Gilbert C. Yu. This development led the investigation to the conclusion that the Build-To-Own concept was a scheme to avoid proper declaration of taxes.

He then recommended the issuance of the PAN and, later, the FAN.

The FAN details the deficiency income tax and VAT assessments for taxable year 2007 as follows:

DEFICIENCY VALUE-ADDED TAX	
Discrepancy per Letter Notice (Purchases)	
Local Purchases	₱ 332,961,715.85
Importations	-
Total	332,961,715.85
Divide by Cost of Sales Ratio	32.85%
Additional Taxable Sales	1,013,582,087.82
Multiply by Gross Profit Rate	67.15%
Additional Gross Income	680,620,371.97
Multiply by VAT Rate	12%
Deficiency VAT	81,674,444.64
Add: 50% Surcharge	40,837,222.32
20% interest p.a. Up to (8/31/2011)	58,805,600.14
TOTAL AMOUNT DUE	₱ 181,317,267.09

DEFICIENCY INCOME TAX	
Net Taxable Income	₱ 380,496.14
Add: Additional Gross Income	680,620,371.97
Total Taxable Income	681,000,868.11
Multiply by Normal Income Tax Rate	35%
Adjusted Income Tax Due	238,350,303.84
Less: Income Tax Due per ITR	133,174.00
Deficiency Income Tax	238,217,129.84

[31] Exhibit "R-6", BIR Records, pp. 261-275.
[32] Exhibit "P-1", docket, vol. II, pp. 942-949.

Add: 50% Surcharge	119,108,564.92
20% interest p.a. Up to (8/31/2011)	160,943,304.39
TOTAL AMOUNT DUE	₱ 518,268,999.15

In the Details of Discrepancies attached to the FAN, there is a finding of under-declaration of petitioner's purchases which resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third-Party Matching–BOC Data Program as declared in its tax returns. The assessment was made pursuant to Sections 31, 106, and 108 of the NIRC of 1997, as amended, and RMO No. 32-2007.

Based on the records, respondent discovered that the purchases of petitioner as per the Details of Taxpayer's Suppliers Records for 2007 show a total of ₱356,045,481.18 as compared to the total amount of purchases as per the schedule of purchases in respondent's computer database, to wit:

A. LOCAL PURCHASES (VAT and IT)

Per Summary List of Sales submitted by Suppliers	₱356,045,481.18
Adjustments per evaluation	23,083,765.33
Under-declaration of Local Purchases	₱332,961,715.85

From the foregoing, the basis for the income tax assessment and the VAT assessment issued by respondent is the finding that petitioner under-declared its purchases and that petitioner is engaged in the sale of condominium units considering that one of the members of the Board of Directors and one of petitioner's partners are the same.

Petitioner opposes the assessment issued by respondent, alleging that it did not engage in any selling activity which may be subject to VAT and income tax. Contrary to respondent's allegation that petitioner acknowledged that the alleged undeclared purchases pertain to land sales of FBDC, petitioner claims that it did not acquire the land or the condominium units constructed thereon. According to petitioner, the alleged undeclared purchase of the land from the FBDC were undertaken by the individual unit owners of the condominium projects and petitioner only assisted in the acquisition of the land pursuant to contracts to manage and execute the construction of the Grand Hamptons Place Condominium.

Petitioner presented the said Contracts to Manage executed with its clients [33] and the corresponding Depository and Disbursing Agreement between the said clients and Banco De Oro Universal Bank[34].

In the Contract to Manage, the clients engage the services of petitioner as project manager and as trustee of the subject land. The clients further irrevocably name, appoint and constitute petitioner as their true and lawful attorney-in-fact to prepare or cause the preparation of all the necessary documents for the purchase of the subject land and the subsequent registration thereof in its name for the benefit of the clients and to apply for the issuance of individual Condominium Certificates of Title in its name, with the proper Registry of Deeds.

The fund for the project contributed by the client is called the construction funding, which shall be payable to an Account, to be delivered by the client to petitioner together with the signed copies of the Depository and Disbursing Agreement which Account shall be held and managed by the Banco de Oro Universal Bank Trust Banking Group for the clients' benefit.

In relation thereto, Depository and Disbursing Agreements were executed between Banco de Oro Universal Bank Trust Banking Group and the clients, which provide as to how the funds in the Account shall be distributed.

The stipulations in the said agreements state that the fund in the said Account shall be used for the necessary payments in connection with the construction and development of the project and the purchase of the land where the condominium building will be situated. Petitioner shall provide photocopies of source documents to the bank for each disbursement instruction. The source documents shall include but not be limited to bills, invoices, certifications of indebtedness issued by petitioner and other evidence of indebtedness in relation to services rendered or materials procured for the project.

Considering the foregoing, petitioner claims that it is not the one who bought the land and that it is not engaged in the selling of condominium units.

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[33] Exhibits "P-3" to "P-3-B", docket, vol. II, pp. 682-709.
[34] Exhibits "P-4", "P-4-A", and "P-4-B", docket, vol. II, pp. 710-721.

Petitioner also points out that it relied on the validity of BIR Rulings that ruled that the implementation of the projects was not subject to VAT and income tax.

To counter this allegation, respondent presented the testimony of Assistant Revenue District Officer (RDO) Christina C. Barroga, stating that she was the one who conducted the investigation regarding petitioner's Build-To-Own scheme. According to Assistant RDO Barroga, the said BIR Ruling was nullified by Revenue Memorandum Circular (RMC) No. 55-2010.

Perusal of the records shows that the assessment issued by respondent against petitioner anchored mainly on the finding of undeclared purchases of petitioner.

However, as pointed out by petitioner and as admitted by respondent's witness, the said undeclared purchases which allegedly resulted from third-party information matching were all unverified.

In the cross-examination of respondent's witness, RO Chiu, during the hearing held on April 7, 2014, RO Chiu made the following statements:[35]

"JUSTICE MANALASTAS:
Q: Mr. Witness, the question is, do you also verify the information given by the supplier because you are saying that you are matching the information by the taxpayer and the supplier, and if there are discrepancies, you'll have the taxpayer to explain, and the question is, do you also verify the information given by the supplier?

WITNESS:
A: Your Honor, we also wrote letters to the suppliers, like the Fort Bonifacio to present to us all the possible receipts but they failed to...(*interrupted*)

Q: **Before you wrote to the taxpayers you verify first to the supplier?**

[35] Transcript of Stenographic Notes taken on April 7, 2014, pp. 22-23 and 25.

A: Yes, your Honors.

JUSTICE CASTANEDA:
Q: What was the reply of the supplier?

WITNESS:
A: The reply, your Honors, is that, that they are not in the position to give us some informations regarding those receipts.

JUSTICE MANALASTAS:
Q: **So no informations were given?**

WITNESS:
No, your Honors.

xxx xxx xxx

ATTY. LUGTU:

xxx xxx xxx

Q: Mr. witness, moving into your *Supplemental Judicial Affidavit*, so again, one of the fact that you've taken in consideration was the **unverified Computer Generated Data**?

A: Yes, ma'am." *(Emphasis supplied)*

Petitioner further contends that respondent likewise failed to comply with the guidelines as to the verification of the findings in the Letter Notice due to third-party information discrepancies.

The pertinent portions of Revenue Memorandum Order Nos. 32-07 and 46-04 state: *gr*

"SUBJECT: *Prescribing Guidelines and Procedures in Handling 2006 Letter Notices Generated Thru Reconciliation of Listing for Enforcement System (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC) Data Program*

xxx xxx xxx

IV. GUIDELINES AND PROCEDURES

xxx xxx xxx

19. Follow, wherever applicable, the procedures prescribed under RMO Nos. 30-2003, 42-2003, 24-2004 and 34-2004, as amended by RMO Nos. 46-2004, 32-2005 and 21-2006, insofar as the verification of the actions on LN discrepancy are concerned.

xxx xxx xxx"

"REVENUE MEMORANDUM ORDER NO. 46-04

SUBJECT: *Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers*

xxx xxx xxx

III. PROCEDURES

xxx xxx xxx

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

1. Evaluate the merits of the taxpayer's Protest by:

1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

1.2 Reconciling the Schedule of Sales/Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers/Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (e.g. sales invoices, official receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided."

While there is no showing from the above guidelines that the sworn statements from the third-party information sources are indispensable and mandatory, the fact remains that the amounts of undeclared purchases found by respondent were admittedly unverified. Thus, the same casts doubts as to the reliability and correctness of the findings of deficiency taxes assessed by respondent. ℊℯ

The presumption of correctness of the assessment against petitioner cannot be made to rest on another presumption, which is the presumption that the undeclared purchases translated into undeclared income or additional taxable sale.

The basis of the assessment issued by respondent is the Details of Taxpayer's Suppliers Records for 2007, showing that petitioner has a total of ₱356,045,481.18 purchases as compared to the total amount of purchases as per the schedule of purchases in respondent's computer database.

To prove the factual basis of the assessment, respondent presented the Schedule of petitioner's suppliers for 2007[36] and the schedule of petitioner's purchases for 2007[37]. Respondent also presented the Article of Incorporation and 2008 Financial Statements (FS) of Grand Hamptons I Condominium Corporation, Grand Hamptons II Condominium Corporation[38], and petitioner's FS[39]. From the foregoing, respondent found out that one of the members of the Board of Directors of the corporation is also one of petitioner's partners. Petitioner likewise presented the testimony of Assistant RDO Barroga who testified that petitioner is engaged in the selling of condominium units.

Based on the above information, respondent assessed petitioner of deficiency income tax and deficiency VAT, citing as its legal basis Sections 31, 106, and 108 of the NIRC of 1997, as amended; the pertinent portions of which state:

> "SEC. 31. *Taxable Income Defined.* – The term '*taxable income*' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.
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> xxx xxx xxx

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[36] Exhibit "R-14", BIR Records, pp. 284-286.
[37] Exhibit "R-15", BIR Records, p. 326.
[38] Exhibits "R-6" and "R-17", BIR Records, pp. 223-268.
[39] Exhibit "R-16", BIR Records, pp. 341-352.

SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%) after any of the following conditions has been satisfied:

xxx xxx xxx

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange or services, including the use or lease of properties: *Provided*, That the President, upon recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

xxx xxx xxx"

Aside from the fact that the information in the above schedules presented by respondent was unverified, it can be inferred that respondent presumed that the said **unverified** undeclared purchases are part of petitioner's cost which eventually translated into sales/income and that these sales/income pertain to the alleged sale of condominium units in Grand Hamptons Towers I and II.

As to petitioner's deficiency income tax, let it be noted that the three elements in the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[40] Income tax is assessed on income received from any property, activity or service.[41] Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an under-declaration of purchases.[42]

In this case, the assessment made by respondent and the testimony of her witness would show that respondent merely presumed that the alleged undeclared purchases are part of petitioner's cost which translated into profit or income. Thus, respondent's assessment was not based on **undeclared income actually received by petitioner.**

Now, as regards respondent's assessment for deficiency VAT, it must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor".

Also, under Section 108 of the NIRC of 1997, as amended, VAT is assessed on the "gross receipts derived from the sale or exchange of services". Significantly, the law defines "gross receipts" as:

> "... 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."

Clearly, VAT can be imposed only when it is shown that the taxpayer received an amount of money or its equivalent from its sale, barter or exchange of goods or properties, or from sale or exchange of services, and not when there are under-declared purchases.

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[40] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[41] *Ibid.*
[42] *Philippine Daily Inquirer, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7853, February 16, 2012.

At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. [43]

While there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the under-declared purchases translated and would automatically result in profit, undeclared income or additional taxable sales which would in turn increase petitioner's income tax and VAT liability.

Therefore, the Court finds that respondent's assessment lacks factual or legal basis.

Respondent should have fully utilized the powers granted by the law in obtaining the best evidence or other information to sufficiently support the assessment issued against petitioner.

Respondent should always be reminded of the broad powers granted by law to be exercised for the determination of the proper amount of taxes to be imposed, as provided under Section 5(A) to (D) of the NIRC of 1997, as amended:

> "SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – xxx
>
> (A) To examine any book, paper, record or other data which may be relevant or material to such inquiry;

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[43] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, citing *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.

> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross income of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
>
> (C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;
>
> (D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; xxx"

Moreover, in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[44], the Supreme Court ruled as follows:

> "The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology,

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[44] G.R. No. 136975, March 31, 2005.

there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*

In *Campbell, Jr. v. Guetersloh*, the United States (U.S.) Court of Appeals (5th Circuit) declared that it is the duty of the Commissioner of Internal Revenue to **investigate any circumstance which led him to believe that the taxpayer had taxable income larger than reported**. Necessarily, this inquiry would have to be outside of the books because they supported the return as filed. He may take the sworn testimony of the taxpayer; **he may take the testimony of third parties; he may examine and subpoena, if necessary, traders' and brokers' accounts and books and the taxpayer's book accounts. The Commissioner is not bound to follow any set of patterns**. The existence of unreported income may be shown by any practicable proof that is available in the circumstances of the particular situation. Citing its ruling in *Kenney v. Commissioner*, the U.S. appellate court declared that where the records of the taxpayer are manifestly inaccurate and incomplete, **the Commissioner may look to other sources of information to establish income made by the taxpayer during the years in question."**

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The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. **However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously**." *(Emphasis supplied)*

In this case, respondent should have exerted her best effort in gathering information from other sources to verify the alleged undeclared purchases, to establish that the said undeclared purchases translated into sales, and to establish that the transaction between petitioner and the unit owners is a sale of condominium units. Instead, respondent chose to resort to presumptions and heavily relied on the results of the unverified third-party matching and RELIEF program.

Also, while respondent has the power to assess petitioner on the best evidence obtainable and may resort to the exercise of its powers under Section 5 of the NIRC of 1997, as amended, and to approximation in the calculation of the taxes due, the same should not be arrived at arbitrarily and capriciously.

Considering the above discussions, the Court finds that the assessment has no factual and legal bases and should therefore be cancelled.

Since the falsity of petitioner's tax returns for 2007 was not clearly established, the three-year period prescribed under Section 203 in relation to Section 222 of the NIRC of 1997, as amended, shall be the prescriptive period applicable in this case.

Petitioner alleges that the deficiency tax assessment is null and void because the assessment was issued beyond the 3-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended. Petitioner further claims that there is no fraudulent return filed because it only relied on the validity of BIR Rulings saying that the implementation of the projects was not subject to VAT and income tax.

Petitioner asserts that even assuming that the BIR Rulings were validly revoked, the revocation cannot be retroactively applied if it is prejudicial to the taxpayer.

Respondent counter-argues that the falsity, fraud or omission was discovered only after conducting an investigation pursuant to Letter Notice No. 030-RLF-07-00017 dated July 16, 2009. Consequently, the period of ten (10) years as provided under Section

222 of the NIRC of 1997, as amended, shall be applicable, to be reckoned from the date of discovery of the discrepancy, which is the date of the Letter Notice.

Respondent likewise points out that the under-declaration reflects sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return. Such substantial under-declaration rendered petitioner's tax return filed for calendar year 2007 as a false or fraudulent return pursuant to Section 248(B) of the NIRC of 1997, as amended, thus creating *prima facie* evidence of a false or fraudulent return.

Considering the Court's finding that the falsity of petitioner's income tax and VAT returns for taxable year 2007 was not clearly established, the period within which to assess internal revenue taxes shall be governed by Section 203 of the NIRC of 1997, as amended, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

It is clear from the foregoing that the three-year period to assess internal revenue taxes commences from the date of actual filing of the return; or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The instant Petition for Review involves the assessment issued by respondent against petitioner for alleged deficiency income tax and deficiency VAT for taxable year 2007.

As regards petitioner's income tax, the return is required to be filed and the payment is to be made on or before the fifteenth (15th) day of April.[45] The Annual Income Tax Return for taxable year 2007 was filed on April 11, 2008.[46] Hence, counting from the last day required by law to file the return, respondent had until April 15, 2011 within which to assess petitioner for deficiency income tax for taxable year 2007. Clearly, the deficiency income tax assessment issued by respondent in 2012 was issued beyond the 3-year period provided by law.

On the other hand, the law requires that the VAT Return must be filed quarterly within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer.[47]

Records reveal that petitioner filed its Quarterly VAT Returns covering the four quarters of taxable year 2007 on April 24, 2007[48], on July 23, 2007[49], on October 25, 2007[50], and on January 22, 2008[51], respectively. Hence, respondent had until April 25, 2010, July 25, 2010, October 25, 2010, and January 25, 2011 within which to assess petitioner for deficiency VAT for the four quarters of taxable year 2007. The FAN was issued on February 15, 2012. As a result, the assessment was issued beyond the 3-year prescriptive period provided by law.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income tax and deficiency VAT assessments for taxable year 2007 issued against petitioner are hereby **CANCELLED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[45] In accordance with Section 77(B) of the NIRC of 1997, as amended.
[46] Exhibit "P-16", docket, vol. II, pp. 968-970.
[47] Section 114 of the NIRC of 1997, as amended by Republic Act No. 9337.
[48] Exhibit "P-17", docket, vol. II, p. 971.
[49] Exhibit "P-18", docket, vol. II, pp. 972-973.
[50] Exhibit "P-19", docket, vol. II, pp. 974-975.
[51] Exhibit "P-20", docket, vol. II, pp. 976-977.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice