REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SPOUSES REMIGIO P. MAGAAN and LETICIA L. MAGAAN,
Petitioners,

-versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1338
(CTA Case No. 7866)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, *and*
Ringpis-Liban,
Manahan, JJ.

Promulgated:
JAN 11 2017 2:30 pm

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DECISION

BAUTISTA, J:

Submitted for decision of the Court of Tax Appeals ("CTA") *En Banc* under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the CTA*, as amended, is the Petition for Review of the Decision[2] dated March 9, 2015, and the Resolution[3] dated June 30, 2015, rendered by the CTA Second Division ("Court in Division") in CTA Case No. 7866.

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[1] "SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal."

[2] *Records, CTA Case No. 7866, Vol. 3, Decision,* pp. 1537-1575; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas, concurring.

[3] *Id., Resolution,* pp. 1622-1632; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas, concurring.

The dispositive portions of the Decision and the Resolution promulgated on March 9, 2015 and June 30, 2015, respectively, read as follows:

Decision dated March 9, 2015

WHEREFORE, premises considered, the instant Petition for Review is **DENIED.** Accordingly, petitioner spouses are liable for deficiency income tax and percentage tax for the years 1998, 1999 and 2000 in the aggregate amounts of P[hp]9,900,203.90 and P[hp]1,560,465.22, respectively, inclusive of the 50% surcharge imposed under Section 248(B) of the [1997 National Internal Revenue Code, as amended ("1997 NIRC)], summarized as follows:

DEFICIENCY INCOME TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	[Php] 1,171,570.00	[Php] 585,785.00	[Php] 1,757,355.00
1999	5,282,006.54	2,641,003.26	7,923,009.80
2000	146,559.40	73,279.70	219,839.10
Total	**[Php] 6,600,135.94**	**[Php]3,300,067.96**	**[Php] 9,900,203.90**

DEFICIENCY PERCENTAGE TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	[Php] 188,725.00	[Php] 94,362.50	[Php] 283,087.50
1999	815,625.24	407,812.62	1,223,437.86
2000	35,959.90	17,979.96	53,939.86
Total	**[Php] 1,040,310.14**	**[Php] 520,155.08**	**[Php] 1,560,465.22**

In addition, petitioner spouses are liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the [1997 NIRC], on the:

1. basic deficiency income taxes of P[hp]1,171,570.00, P[hp]5,282,006.54 and P[hp]146,559.40 for the years 1998, 1999 and 2000, respectively, computed from April 15, 1999, 2000 and 2001 until full payment thereof; and

2. basic deficiency percentage taxes of P[hp]188,725.00, P[hp]815,625.24 and P[hp]35,959.90 for the years 1998, 1999 and 2000, respectively, computed from January 25, 1999, 2000 and 2001 until full payment thereof; and

(b) Delinquency interest at the rate of 20% per annum on the total amounts due of P[hp]9,900,203.90 and P[hp]1,560,465.22 representing deficiency income tax and percentage tax, respectively and on the deficiency interest which have accrued as aforestated in (a) computed from January 5, 2009 until full payment thereof, pursuant to Section 249(C) of the [1997 NIRC].

SO ORDERED.[4]

Resolution dated June 30, 2015

WHEREFORE, in view of the foregoing, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[5]

On August 11, 2015, the Spouses Remigio P. Magaan and Leticia L. Magaan ("Spouses Magaan") filed a Petition for Review[6] with the CTA *En Banc,* docketed as CTA *EB* No. 1338, which prays for the Court *En Banc* to render a decision *(1)* reversing and setting aside the questioned March 9, 2015 Decision and June 30, 2015 Resolution; *(2)* declaring the deficiency income tax and percentage tax assessments, including increments, against petitioners void for lack of factual or legal basis, prescribed and for having been issued in violation of due process of law; and *(3)* ordering the cancellation of the said deficiency tax assessments.[7]

The Parties[8]

Petitioners reside at Lot 22, Block 13, Muralla Street, New Intramuros Village, Diliman, Quezon City.

Respondent Commissioner of Internal Revenue ("CIR") is the chief of the Bureau of Internal Revenue ("BIR"), the government

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[4] *Records, Vol. 3, Decision,* pp. 1574-1575; emphases retained.
[5] *Id., Resolution,* p. 1632; emphases retained.
[6] *Rollo, CTA EB No. 1338, Petition for Review,* pp. 6-208, with annexes.
[7] *Id.* at 43.
[8] *Records, Vol. 3, Decision, Statement of Facts,* pp. 1537-1538.

agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges; and the enforcement of all forfeitures, penalties and fines connected with such taxes. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

As stated in the Decision[9] dated March 9, 2015, the factual antecedents of this case are as follows:

> On November 9, 2005, a complaint-affidavit was filed with the Law Division of the BIR by a confidential informant, which was docketed as Confidential Information No. 641-2005, alleging information that petitioner spouses have operated financial companies known as IMILEC TRADEHAUS and L4R REALTY AND DEVELOPMENT CORPORATION since the year 1998; and that petitioner spouses earned from the informant alone more than P[hp]35,498,477.62 from April 1998 to January 2002, which were not duly covered in their income tax returns [("ITRs")].
>
> As a result, then BIR Commissioner Jose Mario Buñag issued Letter of Authority [("LOA")] No. 2001 00025876 on February 9, 2006 to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN (IMILEC TRADEHAUS)" authorizing his Revenue Officers [("ROs")] to examine/audit the addressees' books of accounts and other accounting records for internal revenue taxes covering taxable years 1998 to 2001. The LOA, together with an attached document listing the Tax Return Payments, Books of Accounts and Other Documents, Schedules to be Prepared and Worksheet to be Accomplished, was received by petitioner Remigio Magaan.
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> Petitioner Remigio P. Magaan received a Final Notice dated February 28, 2006, again addressed to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN (IMILEC TRADEHAUS)" issued by Atty. Arnel Guballa, Chief of the BIR National Investigation Division, giving them the last opportunity to present the desired records to the investigating team not later than ten (10) working days from receipt thereof.
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> On March 6, 2006, a Notice for an Informal Conference was issued against petitioner spouses.

[9] *Records, Vol. 3, Decision, Statement of Facts,* pp. 1538-1551.

Thereafter, petitioner spouses received a *Subpoena Duces Tecum* dated June 20, 2006, with the attached list of the desired documents to be presented, addressed to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN (IMILEC TRADEHAUS)" issued by Atty. James Roldan, in his capacity as Assistant Commissioner, BIR Legal Service, commanding them to appear before the Chief of the Prosecution Division at his office located at Room 704, 7th floor of the BIR National Office Building, Diliman, Quezon City on July 4, 2006 and to bring with them books of accounts and other accounting records for taxable years 1998, 1999, 2000 and 2001 as contained in the list of requirements attached thereto.

In response, petitioner Remigio Magaan sent a compliance letter dated July 3, 2006, claiming that they are not involved with IMILEC TRADEHAUS AND SERVICES CO., or in any of their business transactions.

On June 20, 2007, respondent issued a Preliminary Assessment Notice [("PAN")] with attached Details of Discrepancies assessing petitioner spouses of deficiency income and percentage taxes for the years 1998, 1999 and 2000 in the amounts of P[hp]20,773,278.63 and P[hp]1,981,362.40, inclusive of surcharges and interest.

In protest, petitioner spouses sent a letter dated October 16, 2007 assailing the PAN and also requesting copies of the checks covering the amounts allegedly received by them that were used as basis for the PAN.

On January 24, 2008, petitioner spouses received a letter dated January 7, 2008 from Atty. Celia C. King, Assistant Commissioner, BIR Enforcement Services, denying petitioner spouses' request that they be provided copies of the checks allegedly deposited in their bank accounts which were made the basis of the issuance of the PAN. In the said letter, Assistant Commissioner King, citing Section 270 of the [1997 NIRC], informed petitioner spouses that the requested documents, if furnished would divulge the identity of the informer and this would allegedly violate the said provision of the [1997 NIRC].

On February 5, 2008, petitioners filed a letter with the office of the BIR Enforcement Service, requesting reconsideration of Atty. Celia C. King's decision arguing, among others, that the informer has long been known and identified in the Joint Resolution dated August 7, 2007 of the

City Prosecutor's Office in I.S. Nos. 07-2551 and 07-2552. Thus, the confidentiality of the informer may no longer be invoked.

Thereafter, respondent, through BIR Deputy Commissioner Gregorio C. Cabantac, issued a Formal Letter of Demand with Audit Result/Assessment Notices [("FLD-FAN")] all dated July 28, 2008. The breakdown of the alleged deficiency taxes are as follows:

Assessment No. ES-IT-1998-0699

Deficiency Income Tax 1998			
Basic Deficiency Income Tax		[Php]	1,541,319.00
	Increments		
	Surcharge 50%		770,659.50
	Interest 20% 4-15-99 to 7-31 (111.5mos/12mos)		2,851,440.15
TOTAL DEFICIENCY INCOME TAX		**[PHP]**	**5,163,418.65**

Assessment No. ES-PT-1998-0700

Deficiency Percentage Tax 1998			
Basic Deficiency Percentage Tax		[Php]	145,860.00
Add:	Increments		
	Surcharge 50%		72,930.00
	Interest 20% 2-20-99 to 7-31-08 (113mos/12mos)		274,703.00
TOTAL DEFICIENCY PERCENTAGE TAX		**[PHP]**	**493,493.00**

Assessment No. ES-IT-1999-0701

Deficiency Income Tax 1999			
Basic Deficiency Income Tax		[Php]	4,850,045.13
	Increments		
	Surcharge 50%		2,425,022.57
	Interest 20% 4-15-00 to 7-31-08 (99.5mos/12mos)		8,042,991.51
TOTAL DEFICIENCY INCOME TAX		**[PHP]**	**15,318,059.21**

Assessment No. ES-PT-1999-0702

Deficiency Percentage Tax 1999			
Basic Deficiency Percentage Tax		[Php]	450,105.92
Add:	Increments		
	Surcharge 50%		225,052.96
	Interest 20% 2-20-00 to 7-31-08 (101mos/12mos)		757,678.30
TOTAL DEFICIENCY PERCENTAGE TAX		**[PHP]**	**1,432,837.18**

Assessment No. ES-IT-2000-0703

Deficiency Income Tax 2000			
Basic Deficiency Income Tax		[Php]	585,632.96
	Increments		
	Surcharge 50%		292,816.48
	Interest 20% 4-15-01 to 7-31-08 (87.5mos/12mos)		854,048.06
TOTAL DEFICIENCY INCOME TAX		**[PHP]**	**1,732,497.51**

Assessment No. ES-PT-2000-0704

Deficiency Percentage Tax 2000			
Basic Deficiency Percentage Tax		[Php]	63,385.50
Add:	Increments		
	Surcharge 50%		31,692.80
	Interest 20% 2-20-01 to 7-31-08 (89mos/12mos)		94,021.83
TOTAL DEFICIENCY PERCENTAGE TAX		**[PHP]**	**189,100.13**

On August 26, 2008, petitioner spouses then filed their letter-protest dated August 21, 2008, questioning the FLD-[F]AN and requesting reconsideration thereof.

On January 5, 2009, petitioner spouses received a Final Decision on Disputed Assessment [("FDDA")] dated October 7, 2008, denying their request for lack of factual and legal bases and demanding payment of their alleged deficiency taxes in the total amount of P[hp]24,329,405.68.

Aggrieved, petitioner spouses filed the instant Petition for Review on February 3, 2009.

Respondent filed her Answer on March 16, 2009, interposing the following special and affirmative defenses:

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On April 20, 2009, both petitioner spouses and respondent filed their respective Pre-Trial Briefs. Thereafter, both parties submitted their Joint Stipulation of Facts and Issues [("JSFI")] on May 21, 2009. In the Resolution dated May 25, 2009, the Court approved the JSFI, deemed the pre-trial terminated, and ordered the parties to proceed with trial and the initial presentation of petitioners' evidence. Thereafter, trial proceeded.

On November 17, 2009, petitioner spouses filed their Formal Offer of Documentary Evidence, offering Exhibits "A" to "V[,]" inclusive of sub-markings. Having no comment/objection from respondent, this Court in the January 20, 2010 Resolution, admitted petitioner spouses' exhibits except for Exhibits "F-5" to "H[,]" for petitioner spouses' failure to present the original documents for comparison. In the same Resolution, the initial presentation of evidence for respondent was likewise set on February 8, 2010.

Meanwhile, pursuant to CTA Administrative Circular No. 01-2010, the case was transferred to the Third Division on January 12, 2010.

During respondent's presentation of evidence, she filed a Submission of Affidavit of Witness Yolanda G. Maniwang on August 22, 2011, intending to present the latter as her witness and praying that Ms. Yolanda G. Maniwang's judicial affidavit be admitted. However, petitioner spouses filed their Comment/Opposition to the Offer of Testimony of Yolanda G. Maniwang on September 26, 2011, asserting the non-inclusion of Ms. Yolanda G. Maniwang in the list of witnesses in respondent's Pre-Trial Brief and the non-inclusion of documents/records sought to be identified by the intended witness for pre-marking before identification.

Thereafter, respondent filed her Reply (Re: Comment/Opposition to the Offer Testimony of Yolanda G. Maniwang arguing that she has the right to choose the evidence she intends to present, that she also made a reservation in her Pre-Trial Brief, and that her intended witness has personal knowledge of the documents identified in her judicial affidavit. In response, petitioner spouses filed their Rejoinder (To Respondent's Reply on the Comment/Opposition to the Offer of Testimony of Yolanda G. Maniwang) on October 21, 2011, reiterating their position that Ms. Yolanda G. Maniwang is the confidential informant whose role ended when the BIR examiners submitted their Investigation Report, thereby, disqualifying her to testify during trial.

In the November 9, 2011 Resolution, this Court allowed the presentation of Ms. Yolanda G. Maniwang's testimony reasoning that petitioner spouses prematurely raised the issue of competency since it is only after the witness is presented that the Court can judicially determine the issue of competency.

Petitioner spouses filed a Motion for Reconsideration on November 24, 2011, reiterating that divulging the informant's confidentiality will violate the principle of estoppel. Subsequently, respondent filed her Comment (Re: Motion for Reconsideration) on December 13, 2011, which petitioner spouses answered in their Reply (To Comment dated December 13, 2011) filed on December 29, 2011.

In the Resolution dated February 6, 2012, this Court denied petitioner spouses' motion, stating that once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable. Thus, respondent presented Ms. Yolanda G. Maniwang as witness and offered her testimony as evidence.

After completing the presentation of her evidence, respondent filed her Formal Offer of Documentary Evidence on January 10, 2013, offering Exhibits "1" to "153[,]" inclusive of sub-markings. In response thereto, petitioner spouses filed their Comment/Objection (To Respondent's Formal Offer of

Documentary Evidence) on February 1, 2013. Subsequently, in the February 21, 2013 Resolution, this Court admitted respondent's exhibits save for the following:

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Thereafter, respondent filed a Motion for Partial Reconsideration (Re: Resolution promulgated on February 21, 2013) on March 13, 2013, praying that the Resolution be reconsidered and the denied exhibits be admitted.

Meanwhile, on March 19, 2013, petitioner spouses filed a Motion asking this Court for leave to file a Formal Offer of Rebuttal Evidence and to admit the attached Formal Offer of Rebuttal Evidence, offering Exhibits "W[,]" "W-1[,]" and "W-2" as their additional evidence. In turn, respondent interposed no objection to petitioner spouses' motion in her Comment (Re: Petitioner's Formal Offer of Rebuttal Evidence dated 16 March 2013) filed on May 7, 2013.

On April 10, 2013, pursuant to CTA Administrative Circular No. 01-2013, reorganizing the three (3) divisions of the CTA, this case was transferred to the Second Division.

This Court, in the Resolution dated April 18, 2013, denied respondent's Motion for Partial Reconsideration, while granted petitioner spouses' Motion.

On May 7, 2013, respondent filed an Omnibus Motion for the reconsideration of the Court's resolution, for the setting of a Commissioner's hearing to mark the originals of the denied exhibits, and to allow respondent to file a Supplemental Formal Offer of Evidence. In the Resolution dated July 3, 2013, the Court admitted petitioner spouses' rebuttal evidence and granted respondent's omnibus motion; thus, scheduling a Commissioner's hearing solely for the purpose of marking the originals of respondent's denied exhibits.

After several requests for resetting, respondent finally presented Exhibits "38" to "59[,]" "61" to "114[,]" and "129[,]" which were marked as original checks as per Commissioner's Report dated November 25, 2013.

However, in the Resolution dated December 18, 2013, this Court noted respondent's failure to timely file her supplemental formal offer of evidence thereby considering her to have waived her right to formally offer her exhibits. This

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Court further ordered both parties to submit their respective memorandum within thirty (30) days from notice.

On February 24, 2014, petitioner spouses filed a Motion (to admit Memorandum) with their attached Memorandum, which the Court admitted in its February 27, 2014 Resolution. On the other hand, respondent failed to file her memorandum as per Records Verification dated March 25, 2014. Thus, in the April 8, 2014 Resolution, this Court deemed the case submitted for decision.

On March 9, 2015, the Court in Division promulgated the assailed Decision denying the Petition for Review and finding Spouses Magaan liable for deficiency income and percentage taxes for the years 1998, 1999 and 2000, inclusive of the 50% surcharge imposed under *Section 248(B) of the 1997 NIRC.*[10] They were also found liable to pay deficiency interest at the rate of twenty percent (20%) *per annum*, pursuant to *Section 249(B) of the 1997 NIRC;* and delinquency interest at the rate of twenty percent (20%) *per annum* on the total amounts due and the deficiency interest computed from January 5, 2009 until full payment, pursuant to *Section 249(C) of the 1997 NIRC.*

On April 6, 2015, petitioners filed a Motion for Reconsideration[11], which was denied by the Court in Division in its Resolution[12] dated June 30, 2015.

On August 11, 2015, petitioners filed the present Petition for Review[13], docketed as CTA *EB* No. 1338.

On September 3, 2015, petitioners filed a Motion to File Memorandum (to support the Petition for Review)[14] with attached Memorandum of Petitioners[15]. The Court *En Banc* resolved to grant the Motion in its Resolution[16] dated December 15, 2015, at the same time ordering respondent to file his comment to the Petition for Review.

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[10] *Records, Vol. 3, Decision,* pp. 1574-1575.
[11] *Id., Motion for Reconsideration,* pp. 1578-1615.
[12] *Id., Resolution,* pp. 1622-1632.
[13] *Rollo, Petition for Review,* pp. 6-208, with annexes.
[14] *Id.* at 214-215.
[15] *Id., Memorandum for Petitioners,* pp. 216-231.
[16] *Id.* at 243-244.

With the filing of respondent's Comment (Re: Petition for Review dated August 10, 2015)[17] on January 25, 2016, the Court *En Banc* resolved[18] to submit the case for decision on February 11, 2016; hence, this Decision.

The Issues

Petitioners alleged the following assignment of errors/main issues:[19]

1. WHETHER THE ASSAILED DECISION AND RESOLUTION SHOULD BE REVERSED; and

2. WHETHER THE DEFICIENCY TAX ASSESSMENTS AGAINST SPOUSES MAGAAN SHOULD BE CANCELLED.

With the following sub-issues:[20]

1. WHETHER THE DEFICIENCY TAX ASSESSMENTS AGAINST SPOUSES MAGAAN HAVE FACTUAL AND LEGAL BASES;

2. WHETHER THERE IS COMPETENT PROOF TO SHOW FALSE AND FRAUDULENT RETURN;

3. WHETHER THE RULING OF THE SUPREME COURT IN THE *LABORTE CASE* IS APPLICABLE IN THIS CASE;

4. WHETHER SPOUSES MAGAAN WERE DEPRIVED OF THEIR RIGHT TO DUE PROCESS OF LAW;

5. WHETHER PRESCRIPTION HAS ALREADY SET IN TO BAR THE DEFICIENCY TAX ASSESSMENTS AGAINST THE SPOUSES MAGAAN;

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[17] *Rollo*, pp. 245-248.
[18] *Id.* at 250-251.
[19] *Id., Petition for Review*, pp. 20-21.
[20] *Id.* at 21.

6. WHETHER THE ALLEGATIONS OF MS. YOLANDA MANIWANG IN HER JUDICIAL AFFIDAVIT ARE WORTHY OF FULL FAITH AND CREDIT; and

7. WHETHER THE PRESUMPTIONS OF CORRECTNESS OF ASSESSMENT AND REGULARITY IN THE PERFORMANCE OF DUTIES IS APPLICABLE TO THE CASE.

Petitioners' arguments[21]

Petitioners claim that fraud is never presumed, it must be proven by clear and convincing evidence; that *Exhibits* "F-1" and "F-2" prove that Imilec Trade Haus is owned by partners Rubilina M. Simbulan and Rosalina L. Joanino, and not by petitioners; that Rubilina M. Simbulan is not a puppet or dummy of petitioners; that respondent did not present any evidence that will prove that the checks were deposited to their account/s; that during the cross-examination, Ms. Maniwang admitted that the money was not deposited to the account of petitioners.

Petitioners contend that the Court erred in using the scale of preponderance of evidence, and not the higher scale of clear and convincing evidence in determining fraud; that mere photocopies of the checks were presented and offered in evidence and were not admitted by the Court; that it follows, therefore, that there is no evidence coming from said checks; that the Real Estate Mortgage ("REM") dated October 6, 1999 between Spouses Maniwang and Rubilina M. Simbulan and Rosalina L. Joanino and/or Remigio Magaan does not prove that Remigio Magaan was the actual lender to Ms. Maniwang; that in the judicial affidavit of Ms. Maniwang, the checks were issued to Rubilina M. Simbulan; that the REM dated April 4, 2001 executed between Spouses Maniwang and L4R Realty Development Corporation does not prove that Remigio Magaan was a lender to Ms. Maniwang; and that this REM is irrelevant to a deficiency assessment involving prior taxable years 1998, 1999 and 2000.

[21] *Rollo, Memorandum of Petitioners,* pp. 216-231.

Respondent's arguments[22]

Respondent CIR counter-argues that the Petition for Review is a mere reiteration of arguments that were already passed upon by the Court in Division; that competent evidence was presented to uphold the assessment against Spouses Magaan; that the elements for the application of the *Laborte Case* was sufficiently discussed in the assailed Decision; that Ms. Yolanda G. Maniwang's testimony was accurate and was not controverted by the spouses; that the presumption in favor of the correctness of tax assessments is applicable to all cases involving the good faith of tax assessors who are presumed to have taken into account all the facts to which their attention was called; that it is incumbent upon the taxpayer to prove the contrary; that failure to do so shall vest legality on respondent's actions and assessments; and that failure to present proof of error in the assessment will justify judicial affirmation of said assessment.

The Ruling of the Court En Banc

The Court *En Banc* finds merit in the Petition for Review.

It was erroneous to apply the ten (10)-year prescription period to assess since fraud was not proven.

As a general rule, the three (3) year prescriptive period for the assessment of taxes is provided under *Section 203 of the 1997 NIRC,* while the exception thereto, providing for a ten (10) year prescriptive period is mentioned under *Section 222* of the same Code. Said provisions read as follows:

> 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 begin after expiration of such period; *Provided,* That in a case where a return is filed beyond the period

[22] *Id., Comment (Re: Petition for Review dated August 10, 2015),* pp. 245-248; the CIR's arguments in his Comment were adopted since the Court *En Banc* did not require the parties to file a Memorandum.

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 is filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[23]

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SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[24]

In light of the foregoing provisions, *Section 203 of the 1997 NIRC* provides that the three-year prescriptive period to assess internal revenue taxes commences to run after the last day prescribed by law for the filing of the required return, except when the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed and that no proceeding in court may be filed without assessment for the collection of such taxes beyond the three (3) year prescriptive period. While *Section 222(a) of the 1997 NIRC* provides that the ten-year prescriptive period shall apply in the event that the taxpayer files a false or fraudulent return with intent to evade taxes; or the taxpayer fails to file a return.

The FLD[25] states that "the complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Schedules 1 and 2 of this letter of demand." A closer inspection of Schedules 1 and 2[26] (shown below) reveals that respondent assessed petitioners because there was "no return filed:"

[23] Underscoring ours.
[24] *Id.*
[25] *BIR Records, Exhibit "Q,"* pp. 550-552.
[26] *Id., Exhibits "21," and "21-A,"* pp. 518-519.

SCHEDULE 1
Taxable Year 1998
a. Income Tax
Undeclared Sales/Receipts in violation of Section[s] 31 and 32 of [the] 1997 NIRC[], details are as follows:

	Remigio	Leticia	Total
Payments received per information			9,862,000.00
Less: Principal payment			5,000,000.00
Undeclared receipts	2,431,000.00	2,431,000.00	4,862,000.00
Gross Income per investigation	2,431,000.00	2,431,000.00	4,862,000.00
Less: Exemption	32,000.00	32,000.00	64,000.00
Net Taxable Income	2,399,000.00	2,399,000.00	4,798,000.00
Tax due			
1st 500,000	124,999.00	125,000.00	249,999.00
Excess 1,899,000 x 34%	645,660.00	645,660.00	1,291,320.00
Total Tax Due	770,659.00	770,660.00	1,541,319.00
Less: Tax Paid (no return filed)	-	-	-
Basic Deficiency Income Tax	770,659.00	770,660.00	1,541,319.00
Surcharge (50%)	385,329.50	385,330.00	770,659.50
Interest 20% 04.15.99 to 07.31.08 (111.5/12 mos)	1,425,720.08	1,425,720.08	2,851,440.15
Total Deficiency Income Tax	**2,581,708.58**	**2,581,710.08**	**5,163,418.65**

b. Percentage Tax
In violation of Section 122 of [the] 1997 NIRC []

	Remigio	Leticia	Total
Gross Receipts (Interest)	2,431,000.00	2,431,000.00	4,862,000.00
Basic Deficiency Percentage Tax (3%)	72,930.00	72,930.00	145,860.00
Surcharge (50%)	36,465.00	36,465.00	72,930.00
Interest 20% 02.20.99 to 07.31.08 (113/12 mos)	133,097.25	133,097.25	274,703.00
Total Deficiency Percentage Tax	**242,492.25**	**242,492.25**	**493,493.00**

Taxable Year 1999
a. Income Tax
Undeclared Sales/Receipts in violation of Section[s] 31 and 32 of [the] 1997 NIRC[], details are as follows:

	Remigio	Leticia	Total
Payments received per information			
January to October			15,965,879.50
November to December			450,333.10
Total payments received in 1999			16,416,212.60
Less: Principal payment			1,412,681.90
Undeclared receipts	7,501,765.35	7,501,765.35	15,003,530.70
Gross income per investigation	7,501,765.35	7,501,765.35	15,003,530.70
Less: Exemption	32,000.00	32,000.00	64,000.00
Net Taxable Income	**7,469,765.35**	**7,469,765.35**	**14,939,530.70**
Tax due			
1st 500,000	125,000.00	125,000.00	250,000.00
Excess 6,969,765.35 x 33%	2,300,022.57	2,300,022.57	4,600,045.13
Total Tax Due	2,425,022.57	2,425,022.57	4,850,045.13
Less: Tax Paid (no return filed)	-	-	-
Basic Deficiency Income Tax	2,425,022.57	2,425,022.57	4,850,045.13
Surcharge (50%)	1,212,511.28	1,212,511.28	2,425,022.57
Interest 20% 04.15.99 to 07.31.08 (99.5/12 mos)	4,021,495.75	4,021,495.75	8,042,991.51
Total Deficiency Income Tax	7,659,029.60	7,659,029.60	15,318,059.21

b. Percentage Tax
In violation of Section 122 of [the] 1997 NIRC []

	Remigio	Leticia	Total
Gross Receipts (Interest)	7,501,765.35	7,501,765.35	15,003,530.70
Basic Deficiency Percentage Tax (3%)	225,052.96	225,052.96	450,105.92
Surcharge (50%)	112,526.48	112,526.48	225,052.96
Interest 20% 02.20.99 to 07.31.08 (101/12 mos)	378,839.15	378,839.15	757,678.30
Total Deficiency [Percentage] Tax	**716,418.59**	**716,418.59**	**1,432,837.18**

SCHEDULE 2
Taxable Year 2000
a. Income Tax
Undeclared Sales/Receipts in violation of Section[s] 31 and 32 of [the] 1997 NIRC[], details are as follows:

	Remigio	Leticia	Total
Payments received per information			5,700,171.12
Less: Principal payment			3,587,318.10
Undeclared receipts	1,056,426.51	1,056,426.51	2,112,853.02
Gross income per investigation	1,056,426.51	1,056,426.51	2,112,853.02
Less: Exemption	32,000.00	32,000.00	64,000.00
Net Taxable Income	1,024,426.51	1,024,426.51	2,048,853.02
Tax due			
1st 500,000	125,000.00	125,000.00	250,000.00
Excess 524,426.51 x 32%	167,816.48	167,816.48	335,632.96
Total Tax Due	292,816.48	292,816.48	585,632.96
Less: Tax Paid (no return filed)	-	-	-
Basic Deficiency Income Tax	292,816.48	292,816.48	585,632.96
Surcharge (50%)	146,408.24	146,408.24	292,816.48
Interest 20% 04.15.99 to 07.31.08 (87.5/12 mos)	427,024.03	427,024.03	854,048.06
Total Deficiency Income Tax	**866,248.76**	**866,248.76**	**1,732,497.51**

b. Percentage Tax
In violation of Section 122 of [the] 1997 NIRC[]

	Remigio	Leticia	Total
Gross Receipts (Interest)	1,056,426.51	1,056,426.51	2,112,853.02
Basic Deficiency Percentage Tax (3%)	31,692.80	31,692.80	63,385.50
Surcharge (50%)	15,846.40	15,846.40	31,692.80
Interest 20% 02.20.99 to 07.31.08 (89/12 mos)	47,010.91	47,010.91	94,021.83
Total Deficiency Percentage Tax	**94,550.11**	**94,550.11**	**189,100.13**

<u>**Summary of Deficiency Tax Assessment**</u>

	Basic	Surcharge	Interest	Total
Deficiency Income Tax				
1998	1,541,319.00	770,659.50	2,851,440.15	5,163,418.65
1999	4,850,045.13	2,425,022.57	8,042,991.51	15,318,059.21
2000	585,632.96	292,816.48	854,048.06	1,732,497.50
Total Deficiency Income Tax	**6,976,997.09**	**3,488,498.54**	**11,748,479.72**	**22,213,975.35**
Deficiency Percentage Tax				
1998	145,860.00	72,930.00	274,703.00	493,493.00
1999	450,105.92	225,052.96	757,678.30	1,432,837.18
2000	63,385.50	31,692.80	94,021.83	189,100.13
Total Deficiency Percentage Tax	**659,351.42**	**329,675.76**	**1,126,403.13**	**2,115,430.31**

The Court *En Banc* agrees with the Court in Division that petitioners did not fail to file the required returns, this is evidenced by the Certification[27] issued by the BIR confirming that Remigio Magaan with Taxpayer Identification Number ("TIN") 104-712-964 registered at RDO 29 and Leticia Magaan with TIN 137-594-769 registered at RDO 28 filed their ITRs. The Court in Division held:

> Since respondent only issued the FLD-AN on July 28, 2008, it is clear that it was [issued] beyond the three-year prescriptive period. Now, the question is whether petitioner spouses filed a false or fraudulent return with intent to evade tax, or failed to file a return, so as to excuse the said FLD-AN from the three-year prescriptive period.
>
> Anent respondent's assertion that petitioner spouses willfully failed to file their income tax and quarterly

[27] *BIR Records, Exhibit "11,"* p. 217.

percentage tax returns, this Court believes otherwise. Even though the best evidence to dispute said assertion is the production and presentation of petitioner spouses' tax returns, the Certification dated November 30, 2005 issued by the BIR's database, nonetheless, shows that petitioner spouses indeed filed income tax returns, value-added tax (VAT) returns, and withholding tax returns during taxable years 1998 to 2001 thereby negating respondent's assertion. Therefore, petitioner spouses did not fail to file their tax returns.

However, the Court *En Banc* finds that it was erroneous for the Court in Division to apply the ten-year period because of fraud, to wit:

> The only remaining ground for it to fall within the ambit of Section 222(a) of the NIRC of 1997, as amended, is whether petitioner spouses filed a false or fraudulent return with intent to evade tax. It must be stressed that respondent has been asserting since the onset that, based on a confidential information, petitioner spouses had received income from numerous checks issued to them by Ms. Yolanda G. Maniwang which were undeclared in their tax returns for taxable years 1998, 1999 and 2000. Thus, such underdeclaration of income/sales are considered fraud under Section 8 of Finance Regulations No. 1, to wit:
>
> > Section 8. Frauds upon and/or violation of the Internal Revenue Laws. - The following are some of the frauds and/or violation commonly committed against the internal revenue laws.
> >
> > 1. Underdeclaration of Sales
> > 2. Underdeclaration of Income
> > 3. False entries in the books of accounts
> >
> > xxx xxx xxx

Fraud implies intentional or deceitful entry with intent to evade the taxes due.[28] Hence, fraud must be accompanied by the intention to evade taxes. In another case, the Supreme Court has defined fraud as the deliberate or intentional evasion of the normal fulfilment of an obligation. Fraud is never presumed. It must be

[28] *Aznar v. Court of Tax Appeals*, G.R. No. 20569, August 23, 1974, 58 SCRA 519.

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alleged and proven and established by clear and convincing evidence.[29]

In addition, fraud is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage.[30] It includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[31] Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.[32]

While it is true that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong, but that the taxpayer is right; the same does not apply when there are allegations of fraud, as in the case at bar.[33] In civil tax fraud cases, the burden of proof is always on the CIR to prove that the taxpayer committed fraud intentionally.[34]

In *Spouses Nilo O. Ramos and Eliadora Ramos v. Raul Obispo and Far East Bank and Trust Company*[35], the Supreme Court held that:

> In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under *Section 1 of Rule 133 of the Revised Rules on Evidence.*
>
> Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."

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[29] *Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue,* G.R. No. L-13203, January 28, 1961, 1 SCRA 160.
[30] *Joson v. People of the Philippines,* G.R. No. 178836, July 23, 2008, 559 SCRA 550.
[31] *Id.*
[32] *Commissioner of Customs vs Court of Tax Appeals,* G.R. Nos. 171516-17, February 13, 2009.
[33] *Tan Guan v. Court of Tax Appeals,* G.R. No. L-23676, April 27, 1967, 19 SCRA 903.
[34] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[35] G.R. No. 193804, February 27, 2013, 692 SCRA 240.

> Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.
>
> As to fraud, the rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular. The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence. Moreover, fraud is not presumed - it must be proved by clear and convincing evidence.[36]

Applying the foregoing rulings of the Supreme Court to the instant case, the Court *En Banc* holds that respondent failed to establish that petitioners committed fraud with intent to evade tax. There was no evidence to prove that petitioners earned income based on the checks that were allegedly given to them by Ms. Maniwang, and that they intentionally filed a fraudulent ITR with intent to evade tax.

The assessments lack factual and legal basis, and are therefore void.

Section 228[37] *of the 1997 NIRC* provides that the taxpayers shall be informed in writing of the law and the facts on which the

[36] Underscoring ours.

[37] "Sec. 228. *Protesting of Assessment.* - When the Commissioner or his[/her] duly authorized representative finds that proper taxes should be assessed, he[/she] shall first notify the taxpayer of his[/her] 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.

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[/her] 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 said assessment is made; otherwise, the assessment shall be void. A closer look at the FLD reveals that respondent failed to provide details on how the figure assessed came about. It is worthy to note that the ITRs filed by petitioners were not even presented into evidence in order to support respondent's claim that the income tax and percentage tax returns filed for the taxable years 1998, 1999 and 2000 are false or fraudulent.

However, a closer inspection of Schedules 1 and 2[38] containing the details of discrepancies reveals that the assessments were made "based on information" without any elaboration as to the kind of information and how the figures were arrived at.

The Court *En Banc* notes that the checks[39] that were submitted before the Court show that from April 28, 1998 to October 26, 1999, the payee was Imilec Tradehaus. Remigio P. Magaan's name started to appear on the checks only on November 2, 1999 until April 18, 2000. Even then it was not issued in his name alone, but as a co-payee. Evident on the face of the checks that it was "pay to the order of Rubilina M. Simbulan and/or Remigio Magaan." The checks that were allegedly given by Ms. Maniwang to petitioners are summed up as follows:

YEAR	PAYEE		TOTAL
1998	Imilec TradeHaus/Imilec Trade Hauz Inc.	Php	8,774,500.00
Jan. 1 to Oct. 26 1999	Imilec TradeHaus		15,692,124.15
Nov. 2 to Dec. 1999	Rubilina Simbulan and/or Remigio Magaan		1,863,015.00
Jan. to April 2000	Rubilina Simbulan and/or Remigio Magaan		4,945,799.00

Evidence on record also reveal that the checks that were received by Remigio Magaan only amounted to Php6,808,814.00; that the said checks were issued pursuant to the Real Estate Mortgage[40] that was executed among Ms. Maniwang and Reynaldo V. Maniwang, as borrowers; Rubilina M. Simbulan, Roselita M. Joanino and Remigio Magaan, as lenders.

Respondent alleged that petitioners are the owners of Imilec Tradehaus, as well as the bank accounts/account numbers to which

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decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

[38] *BIR Records, Exhibit "21,"* pp. 518-519.

[39] *Records, Vol. 2, Exhibits "38" to "59,"* pp. 1139-1149; *Exhibits "61" to "137,"* pp. 1165-1204.

[40] *Id., Exhibit "36,"* pp. 1136-1138.

the checks were allegedly deposited; and that Rubilina Simbulan is just a dummy of Remigio Magaan. However, there was no explanation or evidence presented to prove these allegations.

In addition, during the cross examination[41] of Ms. Maniwang, she admitted that she has no proof that the account numbers, where the checks were allegedly deposited, belong to petitioners, *viz.:*

November 14, 2012

xxx xxx xxx

ATTY. SANTIANO
Q: I see. There are three (3) account[] number[s] appearing [on] the back [of] the various checks, do you have any direct proof to show that Planters Development Bank [A]ccount No. 01-40-01394-3... (interrupted by the Witness)

MRS. MANIWANG
A: May I see, sir, what exhibit?

ATTY. SANTIANO
Q: That is Exhibits ["]39["] and ["]50.["] Do you have any direct proof to show that the number belong[s] to the petitioner, and not to somebody else?

xxx xxx xxx

JUSTICE MANALASTAS
Do you have proof that this [A]ccount No. 01-40-01394-3 is the account of whom?

ATTY. SANTIANO
Remigio Magaan, your honors.

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
What is your proof?

MRS. MANIWANG
A: I have here the original checks validated by the bank.

JUSTICE MANALASTAS
Please show the account, does it show[] that this is the account of Mr. Magaan?

MRS. MANIWANG

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[41] *Transcript of Stenographic Notes ("TSN") for the November 14, 2012 and November 2012 Hearings, Cross Examination of respondent's witness*, pp. 153-162, and 8-18, 26.

A: Yes, your Honors.

JUSTICE MANALASTAS
May I see them?
(at this juncture[,] the checks were hand[ed] to the Court)
Not only the account number, it should state[] there that it is the account of Mr. Magaan.

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
Witness presenting... can I see[?]
Witnessing presenting [C]heck No. 000034227, there's nothing here that [] shows that it is the account of Mr. Magaan.

ATTY. SANTIANO
Q: Let me also ask you the same question, this time pertaining to another bank account, Metrobank Account No...[]

MRS. MANIWANG
A: There is [an] account number, your Honors.

JUSTICE MANALASTAS
How did you know, can I see?
(at this juncture the witness handed the check to the Clerk of Court to be given to the Court)
May I see[t]his [A]ccount [N]o. 01394-3?

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
Yes, this is just a number. How do you know that this is the account number of Mr. Magaan?

MRS. MANIWANG
A: It is validated by the bank, your Honors.

JUSTICE MANALASTAS
I know, I know. But how do you know that this is the account of Mr. Magaan[?] T]here is no name here.
Do you have any proof that this is the account of Mr. Magaan? The check is payable to Imilec Tradehaus. The check was deposited to [Account No.] 00001394-3, the account number written here at the back of the checks, this is only the account number, how do you know that this is the account of Mr. Magaan?

MRS. MANIWANG
A: I asked somebody from the bank [this] reliable info [but] they cannot give the certification.

JUSTICE MANALASTAS
They cannot give you a certification?

MRS. MANIWANG

A: They cannot give the certification

JUSTICE MANALASTAS
You just get the information from somebody in the bank?

MRS. MANIWANG
A: Yes, your Honors.

xxx xxx xxx

November 26, 2012

xxx xxx xxx

ATTY. SANTIANO
Q: Now, I ask you [], Madam Witness, can you please present the said check again?

M[R]S. MANIWANG
A: Yes, I have [it] here.

JUSTICE BAUTISTA
Can I also have a look [at] the check, Atty. Dan, after petitioner's counsel?

ATTY. SANTIANO
Q: Now, Madam Witness, is this the same Exhibit "133" of the respondent?

JUSTICE BAUTISTA
So, that's [a] different account number you mentioned earlier? It's [a] different account number? You deposited in Account No. 3-108035913, Miss, are you Ms. Maniwang? The face of the check has no mark from the bank. At the back, there is an indorsement that the check was deposited to Account No. 3-108035913?

M[R]S. MANIWANG
A: Yes, your Honors.

JUSTICE BAUTISTA
Account of whom?

M[R]S. MANIWANG
A: Imelec and Remigio Magaan.

JUSTICE BAUTISTA
Account of the corporation, not Magaan?

M[R]S. MANIWANG
A: That's the same, your Honors.

JUSTICE BAUTISTA
The same? How do you know that it's the same? Are you from the bank?

M[R]S. MANIWANG
A: No.

xxx xxx xxx

ATTY. SANTIANO
Q: Did you go to the bank to verify if indeed Planters Development Bank Account No. 01-40-013-94-3 belong[s] to the petitioner?

M[R]S. MANIWANG
A: Hindi po ako nagpunta, sir, sa... (Interrupted)

ATTY. SANTIANO
Q: How about Metrobank Account No. 3-10803591-3? Did you go to the bank to verify the ownership of this account?

M[R]S. MANIWANG
A: Meron po akong reliable info in the bank but they will not give me a certification because that's a secre[t].

ATTY. SANTIANO
Q: Madam Witness, my question is, did you go to the bank?

M[R]S. MANIWANG
A: Yes.

ATTY. SANTIANO
Q: What is your proof that you [went] to the bank?

M[R]S. MANIWANG
A: I have no proof, your Honors.

ATTY. SANTIANO
Q: All right. How about Metrobank Account No. 3-19801347-2? Did you... go to the bank to verify the ownership of this bank account number?

M[R]S. MANIWANG
A: I have reliable info in the bank... (Interrupted)

ATTY. SANTIANO
Q: Same answer as before?

M[R]S. MANIWANG
A: Yes.

xxx xxx xxx

ATTY. SANTIANO
You were asked by this representation, Madam Witness, if there are supporting company documents[,] particularly vouchers[,] that would support the checks that were issued to Imelec, Robilina Simbulan and/or Magaan, Simbulan alone and Magaan.
Q: May I have your answer again, Madam Witness?

M[R]S. MANIWANG

A: No voucher, sir.

xxx xxx xxx

In *Collector of Internal Revenue v. Benipayo*[42], the Court ruled that the assessment must be based on actual facts. Respondent could have exerted more effort in proving the allegations against petitioners. *Section 5*[43] *of the 1997 NIRC* grants the CIR the power to obtain information from any person in order to arrive at a correct assessment. The best evidence includes the corporate and accounting records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales. Such evidence also includes data, records, papers, documents or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and records, data, documents and information secured from government offices or agencies, such as the SEC, the

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[42] G.R. No. L-13656, January 31, 1962, 4 SCRA 182.

[43] "SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (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 incomes 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 of 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; and
>
> (E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.
>
> The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code."

Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.[44]

Aside from the checks that were presented by Ms. Maniwang, no other proof was presented by respondent to support his claims that petitioners had undeclared income.

The rule that assessments made by tax examiners are presumed correct does not apply when the assessment is arrived at arbitrarily.

In *CIR v. Hantex Trading Co., Inc.*[45], the Supreme Court held as follows:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a naked assessment, *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the

[44] *CIR v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[45] G.R. No. 136975, March 31, 2005, 454 SCRA 301.

> Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.
>
> xxx xxx xxx
>
> However, considering that it has been established that the petitioners assessment is barren of factual basis, arbitrary and illegal, such failure on the part of the respondent cannot serve as a basis for a finding by the Court that it is liable for the amount contained in the said assessment; otherwise, the Court would thereby be committing a travesty.[46]

In the instant case, the assessments of alleged deficiency income and percentage taxes of petitioners are unfounded and lack basis. Petitioners presented the Articles of Partnership of Imilec Tradehaus, showing that they are not partners of said corporation, as claimed by respondent. Respondent countered that the partners appearing in the Articles of Partnership are dummies of petitioners, without presenting any evidence to support this allegation. Moreover, petitioners' ITR were not even presented or used as a basis in order to come up with the computation of their alleged deficiency income and percentage taxes.

Indeed, tax assessments prepared by examiners are presumed correct and made in good faith. In the absence of proof of any irregularity in the performance of official duties, an assessment will not be disturbed. However, this a disputable presumption, and in order to determine that there was indeed good faith, it must be made in accordance with existing laws, rules and regulations.

The Supreme Court, in the case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[47], held that, to wit:

> In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor

[46] Underscoring ours.
[47] G.R. No. 197515, July 2, 2014, citing *Commissioner of Internal Revenue v. Metro Star Superama,* G.R. No. 185371, December 8, 2010, 637 SCRA 633, and *Commissioner of Internal Revenue v. Algue,* 241 Phil. 829.

> of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[48]

WHEREFORE, premises considered, the Petition for Review filed by Spouses Remigio P. Magaan and Leticia L. Magaan is hereby **GRANTED.** The Decision dated March 9, 2015 and the Resolution dated June 30, 2015 are **REVERSED** and **SET ASIDE.** Consequently, Assessment Nos. ES-IT-1998-0699, ES-PT-1998-0700, ES-IT-1999-0701, ES-PT-1999-0702, ES-IT-2000-0703 and ES-PT-2000-0704 are **CANCELLED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(joined PJ del Rosario's D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[48] Underscoring ours.

(joined PJ del Rosario's D.O.)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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SPOUSES REMIGIO P. MAGAAN and LETICIA L. MAGAAN, Petitioners,	**CTA EB No. 1338** (CTA Case No. 7866)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 11 2017 2:30pm

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I dissent in the *ponencia* in granting the present Petition for Review and reversing and setting aside the assailed Decision dated March 9, 2015 and Resolution dated June 30, 2015 of the Court in Division finding petitioners Remigio P. Magaan and Leticia L. Magaan liable for deficiency income tax and percentage tax for the years 1998, 1999 and 2000.

In reversing the assailed Decision[1] and Resolution,[2] the *ponencia* ruled that it was erroneous to apply the ten (10) year

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[1,2] **Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.**

prescriptive period instead of the three (3) year prescriptive period to assess taxes as respondent failed to prove that petitioners committed fraud with intent to evade taxes. It found that there is no evidence showing that petitioners earned income based on the checks issued to them by Ms. Yolanda Maniwang and that they intentionally filed fraudulent Income Tax Returns ("ITRs") with intent to evade tax.

A careful review of the records, however, shows that there is sufficient evidence, both testimonial and documentary, to prove that petitioners committed fraud by not declaring in their ITRs the interest income they earned from the interest-bearing loan which petitioner Remigio P. Magaan extended to Spouses Reynaldo and Yolanda Maniwang.

The existence of the aforementioned loan is evident from the notarized Real Estate Mortgage ("REM")[3] which petitioner Remigio P. Magaan executed with Spouses Maniwang as collateral for the loan. The REM clearly confirms that Mr. Remigio P. Magaan, together with Rubilina M. Simbulan and Rosalita M. Joanino, extended a loan in the amount of Five Million Pesos (₱5,000,000.00) to Spouses Maniwang **with stipulated interest of 5% per month**. To be sure, the REM, which is a notarized document, is entitled to full faith and credit upon its face without further proof of its authenticity. ***Gaw vs. Chua***[4] declares:

> "It is also worthy to note that both the Deed of Partition and the Deed of Sale were acknowledged before a Notary Public. **The notarization of a private document converts it into a public document, and makes it admissible in court without further proof of its authenticity. It is entitled to full faith and credit upon its face. A notarized document carries evidentiary weight as to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. Such a document must be given full force and effect absent a strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects recognized by law.** A public document executed and attested through the intervention of a notary public is, generally, evidence of the facts therein express in clear unequivocal manner." (Boldfacing supplied)

Furthermore, the unrebutted testimony of Ms. Maniwang established that she loaned money from petitioners and subsequently paid them by issuing a series of checks to Imilec Trade Hauz, Inc. ("Imilec"), as per instruction of petitioners themselves who claimed to

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[3] Exhibit "36", CTA Case No. 7866, Case Docket Volume 2, pp. 1133-1138.
[4] G.R. No. 160855, April 16, 2008.

be the owners thereof.[5] The issued checks, which were validated by the banks to have been deposited in the account of the payee, were offered and admitted into evidence.

Interestingly, petitioners never denied the existence of the said loan or the fact that they were subsequently paid by Ms. Maniwang through checks issued to Imilec. Petitioners also never questioned the authenticity of the REM. During his cross-examination, Mr. Magaan even admitted that he had in fact loaned money to Ms. Maniwang in 1999.[6]

In the absence of evidence refuting the version narrated by Ms. Maniwang, I submit that the Court in Division correctly gave weight and credit to respondent's testimonial and documentary evidence. The totality of the evidence shows that there is in fact undeclared interest income on the part of petitioners which makes the ITRs they filed with the BIR fraudulent. Needless to say, the ten (10) year prescriptive period under Section 222 of the NIRC, as amended, is necessarily applicable in this case.

For all the foregoing, I vote to DENY the Petition for Review and AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] *Sinumpang Salaysay ni Yolanda Maniwang*, pp. 663-701; Also quoted in p. 28 of the assailed Decision.
[6] TSN, Hearing dated June 8, 2009, CTA Case No. 7866, p. 46.