Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8336

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 2 0 2014
10:40 a.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by petitioner-Kabalikat Para Sa Maunlad Na buhay, Inc., seeking the cancellation and withdrawal of respondent's assessments for deficiency income tax, value-added tax and expanded withholding tax for the calendar year ended December 31, 2006, in the aggregate amount of P91,275,747.55, inclusive of interest, surcharge and compromise penalty.

Petitioner is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 12 San Francisco Street, Karuhatan, Valenzuela City, Philippines.[2]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the

[1] Docket (Vol. I), pp. 6-40
[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues ("JSFI"), Docket (Vol. I), p. 186

power to decide disputed assessments and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 (the "Tax Code") and other tax laws, rules and regulations.[3]

On November 27, 1986, petitioner was registered as a non-stock, non-profit civic organization with the Securities and Exchange Commission ("SEC") under SEC Registration No. 136770.[4]

On October 8, 2001, petitioner obtained a ruling from the Bureau of Internal Revenue ("BIR"), Revenue Region No. 5 which confirmed that petitioner is a corporation organized for civic purposes as contemplated under Section 30(G), Tax Code and that it is exempt from payment of income tax or income received by it as such organization.[5]

In 2006, petitioner amended the Second Article of its Articles of Incorporation to include micro-finance operations as one of its purposes. Petitioner was, subsequently, issued a Certificate of Filing of Amended Articles of Incorporation by the SEC on November 17, 2006.[6]

On October 26, 2009, petitioner received a copy of respondent's Preliminary Assessment Notice dated October 19, 2009, wherein respondent informed petitioner of its alleged deficiency income tax, value-added tax ("VAT") and expanded withholding tax ("EWT") for calendar year ("CY") 2006 in the aggregate amount of Php78,380,415.03, broken down as follows[7]:

Nature of Tax	Amount		
	Basic	**Interest & Penalties**	**Total**
Income Tax	Php 23,038,457.05	Php10,774,744.00	Php33,813,201.05
VAT	25,365,653.48	19,024,240.37	44,389,893.85
EWT	110,770.13	66,550.00	177,320.13
Total			**Php78,380,415.03**

[3] Par. 2, Ibid, pp. 186-187
[4] Par 3, Id., p. 187
[5] Par. 4, Id.
[6] Pars. 5 & 6, Id. p. 188
[7] Par. 7, Id., pp. 188-189

On November 10, 2009, petitioner filed a Position Letter against the Preliminary Assessment Notice wherein petitioner prayed for the cancellation and withdrawal of the proposed assessments.[8]

On December 28, 2009, petitioner and respondent executed a Waiver of the Defense of Prescription under the Statute of Limitations ("Waiver") extending the period for the assessment of petitioner's deficiency tax liabilities for CY 2006 until December 31, 2010.[9]

On November 25, 2010, petitioner received copies of respondent's Final Assessment Notices ("FAN") and Formal Letter of Demand ("FLD"), all dated November 18, 2010, demanding payment of petitioner's alleged deficiency income tax, VAT and EWT for CY 2006 in the aggregate amount of Php91,275,747.55, inclusive of interest, surcharge and compromise penalties.[10]

On September 16, 2011, petitioner filed the instant Petition for Review to appeal respondent's denial of its protest on deficiency income tax, value-added tax and expanded withholding tax.

On November 22, 2011, respondent filed thru registered mail her Answer To The Petition for Review[11] interposing the following Special and Affirmative Defenses, to wit:

> "A. The FANs and the FLDs were issued within the period allowed by law.
>
> B. Micro Financing activities-not primary purpose and registered activity.
>
> C. Petitioner is liable to pay deficiency income tax and deficiency value-added tax.
>
> D. Petitioner is liable to pay deficiency expanded withholding tax on income payments.
>
> E. Imposition of Compromise Penalty-Valid."

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[8] Par. 8, Id., p. 189
[9] Par. 9, Ibid
[10] Par. 10, Ibid
[11] Docket (Vol. I), pp. 124-141

A Notice of Pre-Trial Conference[12] was issued by this Court on December 2, 2011 setting the case for pre-trial conference on January 19, 2012 at 1:30 p.m. which was subsequently cancelled and reset to February 2, 2012 at 1:30 p.m. per Order[13] dated January 6, 2012.

Petitioner filed its Pre-Trial Brief[14] on January 30, 2012 while respondent filed her Respondent's Pre-Trial Brief[15] on January 13, 2012.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues.[16]

After presentation of its evidence, petitioner filed its Formal Offer of Documentary Evidence[17] on December 11, 2012 with respondent's Comment[18] (Re: Petitioner's Formal Offer of Evidence) filed on December 21, 2012.

In a Resolution[19] promulgated on January 17, 2013, this Court admitted all of petitioner's exhibits except for Exhibits "A", "I" and "V-1" for not being identified during trial.

After completion of the testimony of her witnesses, Carmela Burgonio and Angelita M. Saloritos, Respondent's Formal Offer of Evidence[20] was filed on March 21, 2013 with petitioner's Comment[21] (On Respondent's Formal Offer of Evidence) filed on April 2, 2013.

In a Resolution[22] promulgated on April 17, 2013, this Court admitted Exhibits "1", "2", "3", "4", "4-a", "4-b", "5", "6", "8" and "9" but denied admission of Exhibits "7", "7-a", "7-b", "7-c" and "7-d" for the documents described in respondent's "FORMAL OFFER OF DOCUMENTARY EVIDENCE" do not correspond to the documents identified by respondent's witness and the documents duly marked and submitted to this Court. The parties were, likewise, required to file their respective memorandum within thirty (30) days from notice of the resolution.

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[12] Ibid, p. 143
[13] Ibid, p. 160
[14] Ibid, pp. 161-180
[15] Ibid, pp. 156-159
[16] Ibid. pp. 186-194
[17] Ibid, pp. 313-323
[18] Docket (Vol. II), pp. 602-604
[19] Ibid, pp. 605-606
[20] Ibid, pp. 672-677
[21] Ibid, pp. 721-722
[22] Ibid, pp. 724-725

On May 7, 2013, respondent filed a Motion for Partial Reconsideration with Manifestation[23] seeking partial reconsideration of this Court's Resolution promulgated on April 17, 2013 denying respondent's Exhibits "7", "7-a", "7-b", "7-c" and "7-d".

On May 28, 2013, petitioner filed its Comment (On Respondent's Motion for Partial Reconsideration)[24].

In a Resolution[25] promulgated on June 7, 2013, this Court resolved to grant respondent's Motion and admitted Exhibits "7", "7'a", "7-b", "7-c" and "7-d" and the parties were, again, given thirty (30) days from notice, to file their respective memorandum.

On July 15, 2013, petitioner filed its Memorandum[26] while respondent filed her Memorandum for the Respondent[27] on July 26, 2013.

The case was considered submitted for decision per Resolution[28] dated July 31, 2013.

The parties, in their Joint Stipulation of Facts and Issues, agreed that the main issue to be resolved in this case is:

> "Whether or not petitioner is liable for deficiency income tax, VAT and EWT for CY 2006 in the amount of P48,514,880.00 plus surcharge and interests as provided under Sections 248 and 249, Tax Code.
>
> The foregoing issue may be broken down in the following sub-issues:
>
> 1. Whether or not the Waiver executed by the parties for petitioner's deficiency tax liabilities for CY 2006 is valid.

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[23] Ibid, pp. 726-729
[24] Id., pp. 732-733
[25] Id., pp. 735-737
[26] Id., pp. 744-786
[27] Id., pp. 787-802
[28] Id., p.804

2. Whether or not respondent's right to assess petitioner's alleged deficiency income tax, VAT and EWT for CY 2006 had already prescribed.

3. Whether or not petitioner's income from micro-financing activities is exempt from income tax under Section 30(G), Tax Code.

4. Whether or not petitioner's micro-financing activities are subject to VAT.

5. Whether or not the deficiency EWT assessment against petitioner for CY 2006 is valid.

6. Whether or not the assessment for compromise penalty is valid."

We shall first resolve the following sub-issues:

"1. Whether or not the Waiver executed by the parties for petitioner's deficiency tax liabilities for CY 2006 is valid.

2. Whether or not respondent's right to assess petitioner's alleged deficiency income tax, VAT and EWT for CY 2006 had already prescribed."

A perusal of the records of the case disclosed that petitioner was assessed for deficiency income tax, value-added tax (VAT) and expanded withholding tax for calendar year 2006, through a Preliminary Assessment Notice dated October 26, 2009, in the aggregate amount of P78,380,415.03.

Petitioner, however, posits that the assessments made by respondent had already prescribed because the waiver which it executed on December 28, 2009 is null and void because of the following infirmities:

"(a) The tenor of the Waiver varies significantly from what is required by RMO No. 20-90, because the subject Waiver speaks of a request for extension of time within which to submit the required documents whereas the Waiver required by RMO No. 20-90 deals with approval by the CIR of the taxpayer's request for re-investigation and/or reconsideration of its pending internal revenue case;

(b) Petitioner was not provided a copy of the duly executed Waiver, as shown by the lack of acknowledgment receipt on the original copy of the Waiver found in the BIR records; and

(c) The Waiver did not specify the amounts of tax assessed from petitioner.

Section 203 of the 1997 Tax Code (the "Tax Code'), as amended, requires that an assessment for deficiency taxes shall be issued by the respondent within three (3) years from filing of return. Any assessment notice issued beyond three (3) years shall not be valid except in cases falling under Section 222 of the Tax Code.

Sections 203 and 222 are hereunder respectively quoted, 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."

"**SEC. 222. Exceptions as to Period of Limitations 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.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, but the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitations as prescribed in paragraph (a) hereof, may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five(5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceeding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."

Except for the deficiency VAT which petitioner claims its income is not subject to considering that "it engages in micro-finance activities in furtherance of its social welfare purpose and not in pursuit of business or profit[29], below is a tabulation showing the dates when petitioner filed its Income Tax Returns and Monthly Remittance Returns of Income Taxes Withheld (Expanded) for CY ending December 31, 2006 as well as the last day respondent is allowed to assess petitioner:

	Last Day To File Return	Date Filed	Last Day To Assess
1. Income Tax Return for CY 2006[30] 2. Monthly Remittance	April 15, 2007	April 16, 2007	April 16, 2010

[29] Par. 72, Memorandum, Id., pp. 778-779; Protest Letter dated December 22, 2010 (Exh. "F")

Return of Creditable Income Taxes Withheld (Expanded)			
January[31] 2006	February 10, 2006	February 10, 2006	February 10, 2009
February[32]	March 10, 2006	March 10, 2006	March 10, 2009
March[33]	April 10, 2006	April 10, 2006	April 10, 2009
April[34]	May 10, 2006	May 9, 2006	May 10, 2009
May[35]	June 10, 2006	June 8, 2006	June 10, 2009
June[36]	July 10, 2006	July 10, 2006	July 10, 2009
July[37]	August 10, 2006	August 7, 2006	August 10, 2009
August[38]	September 10, 2006	September 8, 2006	September 10, 2009
September[39]	October 10, 2006	October 9, 2006	October 10, 2009
October[40]	November 10, 2006	November 9, 2006	November 10, 2009
November[41]	December 10, 2006	December 8, 2006	December 10, 2009
December[42]	January 25, 2007	January 10, 2007	January 25, 2010

On November 18, 2010, respondent issued the Notices of Assessment[43] and Formal Letters of Demand[44].

Clearly, from the above tabulation, respondent's right to assess petitioner for deficiency income tax and expanded withholding tax (EWT) all for calendar year 2006 had already prescribed.

However, a Waiver of Defense of Prescription under the Statute of Limitations of the National Revenue Code[45] (the "Waiver") was executed by petitioner and respondent on December 28, 2009, wherein the prescriptive period for the assessment of petitioner's deficiency tax liabilities for CY 2006 was extended until December 31, 2010. It is, thus, imperative for Us to rule first on whether or not the Waiver executed by petitioner on December 28, 2009, is valid and, thus, had effectively extended the prescriptive period for respondent to assess petitioner for its alleged deficiency income tax and EWT for CY 2006.

[30] Exhibit "H"
[31] Exhibit "K"
[32] Exhibit "L"
[33] Exhibit "M"
[34] Exhibit "N"
[35] Exhibit "O"
[36] Exhibit "P"
[37] Exhibit "Q"
[38] Exhibit "R"
[39] Exhibit "S"
[40] Exhibit "T"
[41] Exhibit "U"
[42] Exhibit "V"
[43] Exhibits "E", "E-1" and "E-2"
[44] Exhibits "E-3", "E-4" and "E-5"
[45] Exhibit "W"

In the more recent case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[46] the Supreme Court ruled in this wise:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after _____ 19 ____', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filed up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

[46] G.R. No. 178087, May 5, 2010

> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

A perusal of the Waiver executed by petitioner reveals the following:

1. The original copy of the Waiver in the BIR records submitted to this Court, does not indicate the date of acceptance by Jaime B. Santiago, Regional Director. While the Waiver was notarized on December 28, 2009, the Acknowledgment portion thereof shows that it was only the Deputy Executive Director of Kabalikat, Liza D. Eco, who personally appeared before the Notary Public.

As the Supreme Court has ruled in the case of Philippine Journalists, Inc. vs. Commissioner of Internal Revenue[47] that the waiver is in fact and in law an agreement between the taxpayer and the BIR, Regional Director Jaime B. Santiago, who signed for and in behalf of the BIR, should have, likewise, personally appeared before the notary public to acknowledge that the execution of the waiver is his free and voluntary act.

2. Nor was it also indicated therein the fact of receipt by the petitioner of its file copy. As correctly pointed out by petitioner, respondent failed to prove that she was able to furnish petitioner with a copy thereof. She neglected to counter petitioner's allegations by not presenting any evidence to show that petitioner, indeed, received a copy of said waiver. As a matter of fact, the records reveal that respondent opted not to offer the assailed Waiver as one of her exhibits in her Formal Offer of Documentary Evidence[48] to refute petitioner's claim that it was not furnished a copy of said Waiver.

Having said defects, no valid agreement between petitioner and respondent can, thus, be construed to have taken place. A waiver is not a

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[47] G.R. No. 162852, December 16, 2004
[48] Docket, pp. 672-677

unilateral act of the taxpayer or the BIR, it is a bilateral agreement between two parties that the period to issue an assessment and collect the taxes due is extended to a date certain.[49] Consequently, the period to assess was not extended and respondent's right to assess petitioner for its alleged deficiency income tax and EWT for CY 2006 has already prescribed.

We go now to the sub-issues on whether or not petitioner's income from microfinancing activities is exempt from income tax under Section 30(G) of the Tax Code; and, whether or not petitioner's micro-financing activities are subject to VAT.

Petitioner's micro-financing activity is subject to VAT.

Petitioner argues that being a civic organization, it is exempted from imposition of income tax under Section 30(G)[50] of the NIRC of 1997, as amended. Likewise, under BIR Ruling dated October 8, 2001 and Revenue Regulations (RR) No. 14-2007, the income it derived from its microfinance activities as a Non-Government Organization (NGO) is exempted from income tax.

It claims further that for a sale of service to be subjected to VAT, it must: (a) pertain to services (such as those by lending investors) rendered in the Philippines for others for a fee, remuneration or consideration; and (b) done in the course of trade or business of the taxpayer. Thus, if the sale of service is not in pursuit of a commercial or economic activity, the sale of said service is not subject to VAT such as petitioner's undertaking.

This Court does not agree.

VAT is a form of sales tax. It is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. It is an indirect tax, which may be shifted or passed on to the buyer, transferee or lessee of goods, properties or services.

While it is true that Section 30(G) exempts, among others, the income received by civic league or organization not organized for profit but operated

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[49] Supra, note 47
[50] SEC. 30 Exemption from Tax on Corporations – The following organizations shall not be taxed under this Title in respect to income received by them as such: x x x x x x

exclusively for the promotion of social welfare, a perusal of the said Section shows that the same is exempted only for taxes imposed under the Title upon which the said Section belongs. Thus:

> "**SEC. 30** ***Exemptions from Tax on Corporations*** – The following organizations shall not be taxed under this Title in respect to income received by them as such." (Underscoring Ours)

In other words, Section 30(G) exempts petitioner only for taxes on income under TITLE II of the Tax Code of 1997, as amended; Whereas, VAT is found under TITLE IV of the same Tax Code.

Similarly, Section 5 of RR No. 14-2007 only exempts NGOs from payment of income taxes and not VAT, to wit:

> "**SECTION 5.** ***Tax Treatment of Microfinance Services Rendered by Non-Government Organizations -***
>
> All NGOs falling under the enumeration of Section 30 of the Tax Code of 1997, as amended, are exempt from income taxes, in respect of income received by them as such. However, income of such NGOs from microfinance activities and which are not in respect of their registered activities covered by Section 30 of the Tax Code of 1997, as amended, regardless of the disposition made of such income, shall be subject to tax under the Tax Code of 1997, as amended.
>
> Similarly, non-stock, non-profit NGOs, whether or not engaged in microfinance activities are still also required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding as specified in Revenue Memorandum Circular No. 76-2003." (Underscoring Ours)

With regard to petitioner's contention that for a sale of service to be subjected to VAT it must be made for a fee or remuneration and must be done in the course of trade or business, this Court sees the same as impressed with no merit.

Section 105 of the Tax Code, as amended, explains that the phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity, to wit:

> "**SEC. 105. *Persons Liable*.** – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> xxx xxx xxx
>
> The phrase *"in the course of trade or business"* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income whether or not it sells exclusively to members or their guests), or government entity." (Underscoring Ours)

As can be gleaned above, the provision clarifies that even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto.[51]

In the case of *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*,[52] the Supreme Court addressed the issue at hand and ruled that:

> "COMASERCO contends that the term 'in the course of trade or business' requires that the 'business' is carried on with a view to profit or livelihood. It avers that the activities of the entity must be profit-oriented. COMASERCO submits that it is not motivated by profit, as defined by its primary purpose in the articles of incorporation, stating that it is operating 'only on reimbursement-of-cost basis, without any profit.' Private

[51] CIR vs. CA, et al., G.R. No. 125355, March 30, 2000
[52] Ibid

> respondent argues that profit motive is material in ascertaining who to tax for purposes of determining liability for VAT.
>
> We disagree.
>
> x x x x x x x x x.
>
> Contrary to COMASERCO's contention the above provision [Section 105 of the NIRC of 1997] clarifies that even *non-stock, non-profit*, organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. <u>The term 'in the course of trade or business' requires the regular conduct or pursuit of a commercial or an economic activity regardless of whether or not the entity is profit-oriented</u>.
>
> x x x x x x x x x
>
> <u>Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides services for a fee, remuneration or consideration, then the service rendered is subject to VAT</u>." (Underscoring Ours)

Consequently, the mere fact that petitioner earns interest even at a "minimal rate"[53] is enough for it to be subjected to VAT. In fact, Section 108 of the NIRC of 1997, as amended, defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration."

All told, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly, stated in the language of the law; it cannot be merely implied therefrom.[54] That having been said, Section 109 of

[53] Page 17 of petitioner's Memorandum, Docket, p. 760

[54] Paseo Realty & Development Corp. vs. CA, et al., G.R. 119286, October 13, 2004; CIR vs Solidbank Corporation, G.R. No. 148191, November 25, 2003

the Tax Code, as amended, specifically enumerates the transactions exempted from VAT. As such:

> "**SEC. 109.** ***Exempt Transactions***. – (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> (A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
>
> 'Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state;
>
> (B) Sale or importation of fertilizers, seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);
>
> (C) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines: Provided, That such goods are exempt from customs duties under the Tariff and Customs Code of the Philippines;
>
> (D) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery, other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to persons coming to settle in the Philippines, for their own use and not for sale, barter or exchange, accompanying such persons, or arriving within ninety (90) days before or after their arrival, upon the production of evidence satisfactory to the Commissioner, that such persons are actually coming to settle in the Philippines and that the change of residence is bona fide;

(E) Services subject to percentage tax under Title V;

(F) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugarcane into raw sugar;

(G) Medical, dental, hospital and veterinary services except those rendered by professionals;

(H) Educational services rendered by private educational institutions, duly accredited by the Department of Education (DEPED), the Commission on Higher Education (CHED), the Technical Education And Skills Development Authority (TESDA) and those rendered by government educations institutions;

(I) Services rendered by individuals pursuant to an employer-employee relationship;

(J) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;

(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;

(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

(M) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;

(N) Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development

Authority: Provided, That the share capital contribution of each member does not exceed Fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;

(O) Export sales by persons who are not VAT-registered;

(P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, residential lot valued at One million five hundred thousand pesos (P1,500,000) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (P2,500,000) and below: Provided, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);

(Q) Lease of a residential unit with a monthly rental not exceeding Ten thousand pesos (P10,000) *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);

(R) Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements;

(S) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations;

(T) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations;

(U) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries; and

> (V) Sale or lease or goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of One million five hundred thousand pesos (P1,500,000): Provided, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO);
>
> (2) A VAT-registered person may elect that Subsection (1) not apply to its sale of goods or properties or services: Provided, That an election made under this Subsection shall be irrevocable for a period of three (3) years from the quarter the election was made."

Unfortunately, however, the micro-financing services rendered by petitioner do not fall within the exemptions enumerated in the afore-cited Section.

Clearly, therefore, petitioner's microfinance activities are subject to income tax and VAT as discussed above.

We shall now proceed to determine whether respondent's assessment of petitioner's deficiency VAT for CY2006 is valid.

Records show that petitioner was assessed by respondent for deficiency VAT for CY 2006, through a Notice of Assessment[55] and Formal Letter of Demand[56], both dated November 18, 2010, in the amount of P51,238,620.02.

A Waiver of Defense of Prescription Under the Statute of Limitations[57] was executed by petitioner and respondent on December 28, 2009.

To reiterate, under Sec. 203 of the 1997 Tax Code, an assessment for deficiency taxes shall be issued by respondent within three (3) years after the last day prescribed by law for the filing of the return.

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[55] Exhibit "E"
[56] Exhibit "E-3"
[57] Supra, note 45

Section 114(A) of the 1997 Tax Code provides the time for the filing of quarterly return and payment of VAT. Section 114(A) reads as follows:

"***SEC. 114. Return and Payment of Value-Added Tax.*** –

(A) In General – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

x x x x x x x x x."

Thus, the following tabulation will show whether the assessment for petitioner's deficiency VAT for CY 2006 has not yet prescribed.

	Last Day to File Return	**Last Day to Assess**
1st Quarter 2006	April 25, 2006	April 25, 2009
2nd Quarter 2006	July 25, 2006	July 25, 2009
3rd Quarter 2006	October 25, 2006	October 25, 2009
4th Quarter 2006	January 25, 2007	January 25, 2010

Clearly, from the above tabulation, respondent's right to assess petitioner for deficiency VAT for CY 2006 had, likewise, prescribed as the period to assess was not extended due to infirmities in the Waiver executed by petitioner and respondent on December 28, 2009, thus rendering the Waiver null and void.

WHEREFORE, the Petition for Review is hereby **GRANTED**. The assessments issued by respondent CIR to petitioner for deficiency income tax, VAT and Expanded Withholding Tax (EWT) for CY 2006 in the aggregate amount of P91,275,747.55, inclusive of interest, surcharge and compromise penalties are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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's Division.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice