REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

JULITA CAMPOS BENEDICTO (as Administratrix and Legal Representative of the Intestate Estate of Deceased Roberto S. Benedicto),
Respondent.

C.T.A. EB NO. 529
(C.T.A. Case No. 6847)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
MAR 0 1 2010 10:01 a.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as

[1] *Rollo*, C.T.A. EB No. 529 (C.T.A. Case No. 6847), pp. 7 – 58, with Annexes.

amended by Republic Act Nos. 9282 and 9503, as well as Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision[2] dated April 2, 2009 rendered by the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6847, which cancelled Assessment Notice No. FAC-1-90-92-003066 assessing herein respondent Julita Campos Benedicto (as administratrix and legal representative of the intestate estate of her deceased husband, Roberto S. Benedicto), deficiency income tax amounting to PhP183,334,238.92, inclusive of surcharge and interest for taxable year 1990; and
2. the Resolution[3] of the Court in Division promulgated on August 13, 2009, which denied the Commissioner of Internal Revenue's Motion for Reconsideration for lack of merit.

Antecedent Facts

The relevant facts, as culled from the records and the assailed Decision of the Court in Division are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), discharging his functions as such, and whose office address is at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

Respondent Julita Campos Benedicto ("Mrs. Benedicto") is the duly appointed administratrix of the intestate estate of her late husband, Roberto S.

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[2] Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring; *Rollo*, pp. 21 – 53.
[3] *Rollo*, pp. 66 – 69.

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Benedicto[4] ("Mr. Benedicto") and is prosecuting this action in her capacity as such administratrix and in her own name, as authorized by Section 3, Rule 3, and Section 2, Rule 87 of the Revised Rules of Court.

This case is an off-shoot of Executive Order Nos. 1, 2, 14 and 14-A issued by then President Corazon C. Aquino in 1986 to recover the ill-gotten wealth amassed by former President Ferdinand E. Marcos, members of his immediate family, close relatives, subordinates, business associates, dummies, agents or nominees. Mr. Benedicto was identified as one of the business associates/cronies of former President Marcos. Thus, the Presidential Commission on Good Government ("PCGG") ran after his assets, including his deposits in Swiss Credit Bank with Account No. 402 109-52 in the amount of US$22,269,722.53 and in Swiss Bank Corporation with Account No. CO-055.289.0, in the amount of US$9,635,000.00, totalling US$31,904,722.53.[5] The Swiss deposits became the subject of a request by the Republic of the Philippines, thru the PCGG, of international legal cooperation and freeze order in 1986.

On July 16, 1990, a Compromise Agreement[6] was executed between Mr. Mateo Caparas as PCGG Chairman and Mr. Benedicto in Berne, Switzerland, wherein it was agreed upon that the Swiss cases involving Mr. Benedicto's bank deposits shall be terminated with the withdrawal by Mr. Benedicto of his opposition to and the appeals filed against the grant of international legal cooperation as requested by the Philippine authorities from Switzerland; and on the part of the Republic of the Philippines, by a request to the Swiss Authorities to unfreeze all

[4] Said Estate is pending settlement with the Regional Trial Court of Manila, Branch 21, in Special Proceedings No. 00-97505.
[5] *Rollo*, p. 43.
[6] *BIR Records*, pp. 84 – 86.

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assets (deposits) with the Swiss Federal and Cantonal authorities in order to comply with the Agreement. It was also agreed upon that the PCGG shall grant Mr. Benedicto immunity from civil, criminal and tax liabilities over his forty nine percent (49%) share in the Swiss deposits amounting to US$15,633,722.53 in consideration of his having ceded to the Republic of the Philippines, fifty one percent (51%) of the total amount of the said deposits.

On January 4, 1991, the CIR wrote a letter addressed to Mr. Benedicto, proposing to assess the latter "deficiency income tax for 1986" purportedly based on the amount of US$15,633,722.53 described as "unfreezed to Roberto S. Benedicto."[7]

This was followed by a letter[8] dated December 10, 1991, where the CIR revised his tentative proposed assessment by changing mainly (1) the name of the taxpayer from Roberto S. Benedicto to "spouses Roberto S. Benedicto and Julita C. Benedicto"; (2) the year of alleged deficiency in income tax payment from "deficiency in income tax payment for 1986" to "deficiency income tax for 1990"; (3) the amount of the income allegedly being assessed from "PhP320,960,323.54" to "PhP370,040,784.76"; and (4) the "total deficiency tax" from "PhP345,645,138.42" to "PhP183,334,238.95."

The CIR eventually issued Assessment Notice FAC-1-90-92-003066 and Notice to Taxpayer dated June 17, 1992, for alleged deficiency income tax for the year 1990 in the amount of PhP183,334,238.93, computed as follows:[9]

Tax Due	P129,394,757.56
Surcharge	32,348,689.49
Interest	21,565,792.06
Compromise	25,000.00

[7] *Records*, C.T.A. Case No. 6847, pp. 28 – 29.
[8] *Id.*, at pp. 30 – 31.
[9] *BIR Records*, p. 204.

Total Amount Due	P183,334,238.95
The tax due of P129,394,757.56 is computed, as follows:	
1990 net loss per return	(329,477.45)
Add: Undeclared income $15,633,324.24 (P23.67)	370,040,784.76
Total	P369,711,307.31
Less: Personal exemption	12,000.00
Net taxable income per investigation	P369,699,307.31
Income tax due thereon 35%	P129,394,757.56

In the said Assessment Notice, the name of the taxpayer was changed again from "spouses Roberto S. Benedicto and Julita C. Benedicto" to only "Roberto S. Benedicto."[10]

On August 20, 1992, Mr. Benedicto, through his counsel, protested and requested for a reconsideration of the assessment[11] which the CIR denied in a Decision dated December 8, 1999.[12]

Aggrieved, Mr. Benedicto, through counsel, filed a Petition for Review on January 19, 2000, before the Court in Division and the case was docketed as C.T.A. Case No. 5998.

On May 15, 2000, Mr. Benedicto died.[13] On August 2, 2000, Mrs. Benedicto was appointed as administratrix and legal representative of the intestate estate of her deceased husband.[14]

[10] *Records*, at pp. 32 – 33.
[11] *Id.*, at pp. 45 – 53.
[12] *Id.*, at pp. 54 – 57.
[13], *Id.*, at p. 60.
[14] *Id.*, at p. 61.

On October 20, 2000, Mrs. Benedicto filed with the CIR a request for reinvestigation of the contested assessment[15] which the CIR granted, subject to the requirement that the same is authorized by the Court.

Upon Mrs. Benedicto's motion, the Court in Division promulgated a Resolution in C.T.A. Case No. 5998 which stated that "this case is considered **DISMISSED WITHOUT PREJUDICE** to the refiling of the Petition should the need arise."[16]

As a consequence, a reinvestigation of the assessment was conducted by the BIR. However, the CIR still affirmed the assessment[17] which prompted Mrs. Benedicto to re-file her Petition for Review with the Court in Division on January 14, 2004 and the case was docketed as C.T.A. Case No. 6847.

On March 19, 2004, the CIR filed his Answer[18] where he alleges, among others, that the BIR is not taxing the share in the agreement as income from abroad, but as ill-gotten wealth amassed in the Philippines during the reign of then President Marcos and hidden in a foreign country to escape taxation. He likewise avers that the grant by the PCGG of immunity from taxation to Mr. Benedicto over the latter's 49% share in the US$15,633,722.53 in consideration of his having ceded to the Government 51% of said amount pursuant to the Compromise Agreement entered into between him and the PCGG on July 16, 1990, does not preclude the respondent from assessing him the taxes due on such amount retained by him. He further asserts that the availment of various Tax Amnesty Programs covering untaxed income prior to 1972 up to 1980 does not relieve herein taxpayer from the questioned

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[15] *Records*, pp. 58 – 59.
[16] *Id.*, at p. 65.
[17] *Id.* at pp. 22 – 27.
[18] *Id.*, at, pp. 80 – 89.

tax liability since it is apparent from the tax amnesties availed of that the disputed funds were not declared therein, hence, not covered by the immunity provided for in the tax amnesty.

Subsequently, trial on the merits ensued, after which, the case was submitted for decision on April 8, 2008.

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

FACTUAL ISSUES

I

WHAT IS THE BASIS OF THE RESPONDENT'S[19] CONTENTION THAT THE PETITIONER[20] HAS RECEIVED AN AMOUNT IN THE YEAR 1990 FROM ANY SOURCE AND IF SO, HOW MUCH WAS RECEIVED?

II

WHAT IS THE BASIS OF THE RESPONDENT'S ASSUMPTION THAT THE AMOUNT CONSTITUTES 'INCOME' WITHIN THE MEANING OF THE TERM UNDER THE INTERNAL REVENUE CODE?

LEGAL ISSUES

I

WHEN A BANK DEPOSIT IS UNFROZEN IN A FOREIGN LAND AND THE SAME IS DIVIDED INTO TWO PARTS [NOT NECESSARILY EQUAL] WITH THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES GETTING ONE PART AND A FILIPINO NATIONAL GETTING THE OTHER PART, DOES THE LATTER PART AUTOMATICALLY BECOME SUBJECT TO PHILIPPINE TAX? IF SO, AS WHAT?

[19] Herein petitioner.
[20] Herein respondent.

II

WHETHER OR NOT THE CONTESTED ASSESSMENT IS BARRED BY PRESCRIPTION.

III

WHETHER OR NOT THE CONTESTED ASSESSMENT WAS ISSUED IN VIOLATION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS.

IV

WHETHER OR NOT THE CONTESTED ASSESSMENT VIOLATES THE TAXPAYER'S CONSTITUTIONAL RIGHT TO EQUALITY AND UNIFORMITY IN TAXATION.

V

WHETHER OR NOT THE TAX IMMUNITY GRANTED TO BENEDICTO SPOUSES UNDER THE COMPROMISE AGREEMENT IS VALID AND BINDING ON THE PHILIPPINE GOVERNMENT.

VI

WHETHER OR NOT AN ASSESSMENT FOR ALLEGED DEFICIENCY INCOME TAX CAN BE ISSUED AGAINST A TAXPAYER WHO HAS AVAILED OF THE IMMUNITIES IN TAX AMNESTY DECREES NOS. 23, 157, 631 AND 1840.

The Court in Division synthesized the foregoing issues into the principal issue of whether or not Mrs. Benedicto as administratrix of her deceased husband's estate, is liable for deficiency income tax for taxable year 1990, in the amount of PhP183,334,238.92, inclusive of surcharge, interest and compromise penalty.

In a Decision dated April 2, 2009, the Court in Division held that Mrs. Benedicto is not liable for deficiency income tax for taxable year 1990 based on the following findings:

1. the Compromise Agreement dated July 16, 1990 is clear that it is Mr. Benedicto, and not the Marcoses, who owns the Swiss deposit accounts;

2. Mr. Benedicto's act in entering into the said Compromise Agreement with the Republic of the Philippines only affirmed his ownership of the Swiss deposits for the simple reason that no person would acquiesce to any concession over such huge dollar deposits if he did not in fact own them;

3. Before the Compromise Settlement was entered into, said Swiss deposit accounts were all in the name of Mr. Benedicto and presumed to be legitimately acquired by him. Through the compromise settlement, Mr. Benedicto got a portion of what previously belonged to him. Clearly, the portion given to him is not his income, but a mere return of his capital. Accordingly, the portion of the Swiss deposit accounts awarded to Mr. Benedicto, as a result of the Compromise Agreement dated July 16, 1990, is not subject to income tax; and

4. If there would be any amount of the Swiss deposits that may be subjected to income tax, the same pertains only to the interest income component of said deposits, for the interest income earned by said Swiss deposits is a gain derived from capital, or a flow of wealth. However, considering that in Assessment Notice No. FAC-1-90-92-003066, the interest income component was not identified and segregated from the principal amount, there is no way for the Court to determine said interest income. The Court, therefore, has no alternative, but to cancel and set aside the subject assessment.

Based on the foregoing, the Court in Division disposed of the case in this wise:

> **WHEREFORE,** the instant Petition for Review is hereby **GRANTED.** The assailed Decision dated December 22, 2003 of then Commissioner of Internal Revenue Guillermo L. Parayno is hereby **REVERSED AND SET ASIDE.** Accordingly, Assessment Notice No. FAC-1-90-92-003066 assessing petitioner Julita Campos Benedicto (as Administratrix and Legal Representative of the Intestate Estate of Deceased Roberto S. Benedicto), of deficiency income tax of P183,334,238.92, inclusive of surcharge and interest for taxable year 1990, is hereby ordered **CANCELLED AND SET ASIDE.**
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> **SO ORDERED.**[21]

Dissatisfied, the CIR moved for reconsideration of the foregoing Decision but the Court in Division stood pat on its ruling and denied the motion in its Resolution dated August 13, 2009.

The Issue

Hence, this recourse to the *Court En Banc* where the CIR alleges that the Honorable Court in Division erred when it held that Mrs. Benedicto is not liable for deficiency income tax for taxable year 1990 in the amount of PhP183,334,238.92, inclusive of surcharge, interest and compromise penalty.

The CIR's Arguments

The CIR avers that the PCGG has no power to grant tax exemptions even under the cover of its authority to compromise ill-gotten wealth cases based on the ruling of the Supreme Court in *Republic v. Sandiganbayan, G.R. No. 152154, July 15, 2003.*

He also asserts that he was able to firmly establish that the late Mr. Benedicto amassed great wealth that is greatly disproportionate to the salary of a public

[21] *Rollo*, p. 52.

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servant and maintains that the 49% share of Mr. Benedicto which is the subject of Assessment Notice No. FAC-1-90-003066 dated June 17, 1992, arose from the income he received in taxable year 1990 by virtue of the Compromise Agreement.

Mrs. Benedicto's Counter-arguments

In her Comment,[22] Mrs. Benedicto contends that the subject assessment shows on its face that it was for alleged deficiency income tax but the CIR did not even attempt to explain how the alleged income was realized or earned by the deceased taxpayer.

Mrs. Benedicto likewise submits that contradicting his own assessment, the CIR now argues that the fund being assessed represents ill-gotten wealth of the deceased taxpayer and invokes Republic Act ("R.A.") No. 1370.[23] However, the CIR did not present any evidence proving how much was the legitimate capital of the taxpayer which is indispensable if he wants to show the portion of the assets which are beyond the taxpayer's means to acquire. Furthermore, the declaration and forfeiture of ill-gotten wealth requires an appropriate court petition and judicial declaration of the ill-gotten nature of the wealth. No such petition was filed.

Mrs. Benedicto further points out that the petition contains ample mention of the powers of the PCGG but the CIR fails to make any case as to how those powers affect the validity of the subject assessment.

The Ruling of the Court En Banc

The Petition for Review lacks merit.

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[22] *Rollo*, pp. 73 – 79.

[23] R.A. No. 1370 is stated in the Petition and Comment but it should be R.A. 1379 which is *entitled "An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee And Providing for the Proceedings Therefor."*

The bone of contention here is whether the portion of the Swiss deposits received by Mr. Benedicto, as a result of the Compromise Agreement dated July 16, 1990 between the PCGG and Mr. Benedicto, is subject to income tax.

Before resolving this issue, the Court *En Banc* shall first look into the historical backdrop which led to the present controversy. In the case of ***Chavez v. Presidential Commission on Good Government***,[24] the Supreme Court narrated that:

> Upon the departure from the country of the Marcos family and their cronies in February 1986, the new government headed by President Corazon C. Aquino was specifically mandated to "[r]ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and [to] protect the interest of the people through orders of sequestration or freezing of assets or accounts." Thus, President Aquino's very first executive orders (which partook of the nature of legislative enactments) dealt with the recovery of these alleged ill-gotten properties.
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> Executive Order No. 1, promulgated on February 28, 1986, only two (2) days after the Marcoses fled the country, created the PCGG which was primarily tasked to assist the President in the recovery of vast government resources allegedly amassed by former President Marcos, his immediate family, relatives and close associates both here and abroad.
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> Under Executive Order No. 2, issued twelve (12) days later, all persons and entities who had knowledge or possession of ill-gotten assets and properties were warned and, under pain of penalties prescribed by law, prohibited from concealing, transferring or dissipating them or from otherwise frustrating or obstructing the recovery efforts of the government.
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> On May 7, 1986, another directive (EO No. 14) was issued giving additional powers to the PCGG which, taking into account *the overriding considerations of national interest and national survival*, required it to achieve expeditiously and effectively its vital task of recovering ill-gotten wealth.

As previously mentioned, Mr. Benedicto was identified as one of the "cronies" of former President Marcos. Thus, on June 30, 1987, the PCGG filed in the Sandiganbayan, Civil Case No. 0034, entitled "Republic of the Philippines vs.

[24] G.R. No. 130716, December 9, 1998, 299 SCRA 744, 767-768.

Roberto S. Benedicto, et al." to recover from the defendants (including Mr. Benedicto) their alleged ill-gotten wealth consisting of funds and other property which they supposedly amassed through breach of trust and abuse of the prerogatives of public office, and in violation of the Constitution and the laws of the land.[25]

On July 16, 1990, a Compromise Agreement was executed in Berne, Switzerland between PCGG Chairman, Mr. Mateo Caparas, and Mr. Benedicto, the provisions of which are as follows:

> This agreement is hereby made by and between the Republic of the Philippines through the Presidential Commission on Good Government, represented by its Chairman, Mr. Mateo Caparas, on one side, and former Ambassador Roberto S. Benedicto, on the other side.
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> The Parties mentioned heretofore have agreed as follows:
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> 1. The parties agree to dispose of the assets in the following deposit accounts:
>
> (i.) Swiss Credit Bank, Account No. 402-109-52
> (ii.) Swiss Bank Corporation, CO-055.289-0
>
> The parties hereby instruct their Representatives to implement this agreement in conjunction with the Swiss Federal and Cantonal Authorities as well as with the banks involved.
>
> 2. Mr. Roberto S. Benedicto shall withdraw the opposition and appeals filed against granting international legal cooperation as requested by the Philippine authorities from Switzerland as of today.
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> 3. The Republic of the Philippines requests the Swiss Authorities to unfreeze all assets with the Swiss Federal and Cantonal Authorities in order to comply with this agreement. The Republic of the Philippines specifically agrees to the withdrawal of the portion of Mr. Benedicto's share in the above-mentioned accounts, while Mr.

[25] Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC, and Teofisto T. Guingona, Jr. v. Presidential Commission on Good Government, G.R. Nos. 87710 and 96087, March 31, 1992, 207 SCRA 663.

Benedicto specifically waives any rights to the remainder of the aforementioned accounts.

4. This settlement is a compromise agreement and shall in no way be considered as an admission of any guilt or liability whatsoever as Mr. Roberto S. Benedicto is taking the position that he acquired legally all funds that are covered by this agreement. This agreement is no determination of any illegality of the funds that are covered by this agreement.

5. With the signature and execution of this agreement both Parties agree and confirm that they have no further claims against each other as far as funds located in Switzerland in the name of or to the benefit of Ambassador Roberto S. Benedicto are concerned.

6. If, at a later stage, it shall be discovered that Mr. Roberto S. Benedicto as of the date of this agreement has assets in Switzerland other than those mentioned in paragraph 1 above, then such assets shall belong 100 percent to the Republic of the Philippines. This agreement, however, shall not prevent Mr. Roberto S. Benedicto to bring any assets to Switzerland in the future.

7. The Republic of the Philippines through the Presidential Commission on Good Government, represented by Mr. Mateo Caparas, who confirms to have been granted the required authority, herewith grants irrevocably full immunity from civil, criminal and tax liabilities of Mr. Roberto S. Benedicto as far as the funds mentioned above and the related facts are concerned in consideration for the information furnished by Mr. Roberto S. Benedicto and his readiness to testify in relation to the said funds.

8. All disputes arising out of this agreement shall be exclusively decided by an arbitration tribunal of three arbitrators according to the Cantonal Rules of Arbitration of March 27, 1969. Each party shall nominate one arbitrator within one month after notification that one party seeks arbitration. These arbitrators shall then nominate the chairman of the arbitration tribunal. The seat of the arbitration tribunal shall be Berne.

9. This agreement shall be signed in duplicate and governed under Swiss Law.

The existence of foregoing Compromise Agreement was confirmed by PCGG Executive Director, Tereso L. Javier on April 19, 2001.[26]

[26] *Records*, p. 186.

On November 3, 1990, the PCGG executed another Compromise Agreement[27] with Mr. Benedicto in Singapore, ceding to the latter a substantial part of his assets and granting him immunity from further prosecution. It was subsequently approved by the Sandiganbayan and declared valid by the Supreme Court in the case of ***Republic v. Sandiganbayan,***[28]*viz.*:

> **The compromise agreement involved in these petitions is the third one in a series of global settlements effected between the Republic and respondent Benedicto.** In March, 1990 the cases brought by the Republic against Benedicto in the United States were settled through a plea bargaining agreement approved by the New York Court and a "Settlement and Partial Release of Claims" approved by the California Court of Los Angeles. **On July 20 and 23, 1990, the cases in Switzerland involving Benedicto's bank deposits in that country were settled by another agreement between the Republic and Benedicto.** In fact, as early as December, 1986, the PCGG and Benedicto had already entered into temporary arrangements covering the management and operations of Benedicto's media business - BBC Channel 2, IBC Channel 13, Sining Makulay (CATV), and the Daily Express. **No questions have been raised against the first two settlements.** The management issue at Broadcast City was decided by this Court in Benedicto vs. Board of Administrators of Television Stations RPN, BBC and IBC (207 SCRA 659 [1992]).
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> xxx xxx xxx
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> Under the compromise agreement, Benedicto and his group-controlled corporations ceded to the government certain pieces of property listed in Annex A of the agreement and assigned or transferred whatever rights he may have, if any, to the government over all corporate assets listed in Annex B of the agreement (pp. 115-125, Rollo in G.R. No. 108292).
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> The PCGG in turn, lifted the sequestrations over the property listed in Annex C (p. 125, Rollo) as well as other assets mentioned in the agreement. The Government also extended absolute immunity to Benedicto, members of his family, and officers and employees of the listed corporations such that there would be no criminal investigation or prosecution for acts or omissions prior to February 25, 1986 that may be alleged to have violated penal laws, including Republic Act No. 3019, in relation to the acquisition of the assets under the agreement.

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[27] *BIR Records,* pp. 68 – 78.
[28] G.R. Nos. 108292, 108368, 108548049, 108550, September 10, 1993, 226 SCRA 314.

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The authority of the PCGG to enter into compromise agreements in civil cases and to grant immunity, under certain circumstances, in criminal cases is now settled and established. In Republic of the Philippines and Jose O. Campos, Jr. vs. Sandiganbayan, et al. (173 SCRA 72, [1989]), this Court categorically stated that amicable settlements and compromises are not only allowed but actually encouraged in civil cases. A specific grant of immunity from criminal prosecutions was also sustained. In Benedicto vs. Board of Administrators of Television Stations RPN, BBC, and IBC (207 SCRA 659 [1992]), **the Court ruled that the authority of the PCGG to validly enter into compromise agreements for the purpose of avoiding litigation or putting an end to one already commenced was indisputable.** The Court took cognizance of the fact that the compromise agreement which is now the subject of the present petitions was pending before the Sandiganbayan for determination and approval and, therefore, dismissed the petition directed against the agreement's implementation and enforcement.

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The compromise agreement was the result of a long drawnout process of negotiations with each party trying to come out as best as it could. There can be no question of its being freely and voluntarily entered into by the then PCGG Chairman with full authority from the Commission itself.

The Sandiganbayan had ample opportunity to examine the validity of the compromise agreement and to look into any iniquitous or illegal features, express, implied, or hidden. Two years elapsed from the time the agreement was executed up to the time it was judicially approved. The joint motion to approve the compromise agreement filed by the PCGG and Benedicto dated November 22, 1990 was followed seven days later by an opposition from Solicitor General Frank Chavez. Comments, replies, various motions, a temporary restraining order of the Court in Guingona vs. PCGG and our decision in that case - 207 SCRA 659 (1992), memoranda, hearings set for August 11, 1992, September 1, 1992, and September 17, 1992, oppositions, manifestations, and the September 17, 1992 resolution of the Sandiganbayan preceded its now questioned October 2, 1992 decision. Every question regarding the legality and propriety of the compromise agreement was fully threshed out before the Sandiganbayan by the parties. We are not dealing with the usual compromise agreement perfunctorily submitted to a court and approved as a matter of course. **The PCGG-Benedicto agreement was thoroughly and, at times, disputatiously discussed before the respondent court. There could be no deception or misrepresentation foisted on either the PCGG or the Sandiganbayan.** *(Boldfacing supplied)*

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It is well to note that in the afore-quoted decision, the Supreme Court categorically stated that no questions were raised against the Compromise Agreement involving Mr. Benedicto's Swiss deposits.

Moreover, the CIR's reliance on the case of ***Chavez v. Presidential Commission on Good Government***[29] is misplaced. Said case involved the General and Supplemental Agreement dated December 28, 1993, between the PCGG and the Marcos heirs which the Supreme Court declared null and void for having legal flaws, one of which is as follows:

> Second, under Item No. 2 of the General Agreement, the PCGG commits to exempt from all forms of taxes the properties to be retained by the Marcos heirs. This is a clear violation of the Constitution. The power to tax and to grant tax exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies. Section 28 (4), Article VI of the Constitution, specifically provides: "No law granting any tax exemption shall be passed without the concurrence of a majority of all the Member of the Congress." The PCGG has absolutely no power to grant tax exemptions, even under the cover of its authority to compromise ill-gotten wealth cases.
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> Even granting that Congress enacts a law exempting the Marcoses from paying taxes on their properties, such law will definitely not pass the test of the equal protection clause under the Bill of Rights. Any special grant of tax exemption in favor only of the Marcos heirs will constitute class legislation. It will also violate the constitutional rule that "taxation shall be uniform and equitable."[30]

Assuming *arguendo* that the PCGG's grant of immunity from civil, criminal and tax liabilities to Mr. Benedicto in the July 13, 1990 Compromise Agreement is invalid, the same is irrelevant here considering that the basis of the Decision of the Court in Division in canceling the subject Assessment for deficiency income tax is not the tax immunity of Mr. Benedicto's 49% share in the Swiss deposits. Rather, the Court in Division ruled that the cession of the 49% share to Mr. Benedicto is a return

[29] *Supra* note 24.
[30] *Supra* note 24, p. 774.

of capital which is not taxable. And the Court *En Banc* affirms such ruling and quotes with approval the disquisition of the Court in Division:

> The compromise settlement is a win-win formula entered into by the parties in order to save both parties from the rigors of a protracted litigation aimed at resolving the issue on whether the Swiss deposit accounts are ill-gotten wealth or not. Before the compromise settlement was entered into, said Swiss deposit accounts were all in the name of Mr. Benedicto and presumed to be legitimately acquired by him. **Through the compromise settlement, Mr. Benedicto got a portion of what previously belonged to him. Clearly, the portion given to him is not his income, but a mere return of his capital.** Income is any wealth which flows into the taxpayer other than a mere return of capital *(Fisher vs. Trinidad, 43 Phil. 973)*. Income is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is gain derived and severed from capital, from labor or from both combined *(Commissioner of Internal Revenue vs. The Court of Appeals, 301 SCRA 173)*.
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> The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of service rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. Capital is wealth, while income is the service of wealth *(Madrigal vs. Rafferty, 38 Phil. 418)*. This distinction between income and capital is important because while income is subject to income tax, capital is not subject to income tax *(Commissioner of Internal Revenue vs. The Court of Appeals, supra, p. 174)*.
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> **As a matter of fact, by agreeing to surrender US$16,271,000.00 of his wealth to the government, Mr. Benedicto deprived himself of the opportunity to recover his entire capital. Here, as a result of the compromise settlement, Mr. Benedicto did not become richer than he was before.** Accordingly, the portion of the Swiss deposit accounts awarded to Mr. Benedicto, as a result of the Compromise Agreement dated July 16, 1990, is not subject to income tax.
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> **If there would be any amount of the Swiss deposits that may be subjected to income tax, the same pertains only to the interest income component of said deposits**, for the interest income earned by said Swiss deposits is a gain derived and severed from capital, or a flow of wealth. Under *Section 29 of the NIRC of 1977, as amended*, "Gross income means all income from whatever source derived, including (but not limited to) the following items: . . . (4) interest". In the case of *Commissioner of Internal Revenue vs. Japan Air Lines, Inc., 202 SCRA 455*, the words 'income from any source whatever' disclose a legislative policy to include all income not

> expressly exempted within the class of taxable income under our laws. Thus, interest income earned from deposits abroad of a Filipino citizen, is therefore, part of his gross income, subject to 1% to 35% income tax under *Section 21 (a) of the NIRC of 1977, as amended.*
>
> **However, considering that in Assessment Notice No. FAC-1-90-92-003066, the interest income component was not identified and segregated from the principal amount, there is no way for the Court to determine said interest income**. The Court, therefore, has no alternative, but to cancel and set aside Assessment Notice No. FAC-1-90-92-003066.
>
> From the foregoing, it is evident that petitioner is not liable for deficiency income tax for taxable year 1990.[31] *(Boldfacing supplied)*

However, the CIR insists that he is not taxing the share as income but as ill-gotten wealth under R.A No. 1379[32] and claims that he firmly established that Mr. Benedicto amassed great wealth that is greatly disproportionate to the salary of a public servant.

As aptly pointed out by the Court in Division in its assailed Resolution, no evidence was presented by the CIR to prove that Mr. Benedicto amassed great wealth that is greatly disproportionate to the salary of a public servant.[33]

Furthermore, the declaration and forfeiture of ill-gotten wealth pursuant to R.A. No. 1379 requires an appropriate court petition and judicial declaration of the ill-gotten nature of the wealth, *viz.*:

> SECTION 2. Filing of petition. — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of

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[31] *Rollo*, pp. 49 – 52.
[32] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee And Providing for the Proceedings Therefor.
[33] *Rollo*, p. 68.

this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

xxx xxx xxx

SECTION 3. The petition. – The petition shall contain the following information:

(a) The name and address of the respondent.
(b) The public officer or employment he holds and such other public offices or employment which he has previously held.
(c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments.
(d) A description of said property, or such thereof as has been identified by the Solicitor General.
(e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property, and
(f) Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.

No such petition was filed against Mr. Benedicto. Instead, the PCGG filed a civil case with the Sandiganbayan which eventually led to the aforementioned Compromise Agreements with Mr. Benedicto. In ***Republic v. Sandiganbayan (Second Division)***,[34] the Supreme Court emphasized the reason for the settlements:

> Finally, it is apropos to stress that **the Compromise Agreement in Civil Case No. 0034 envisaged the immediate recovery of alleged ill-gotten wealth without further litigation by the government, and buying peace on the part of the aging Benedicto. Sadly, that stated objective has come to naught** as not only had the litigation continued to ensue, but, worse, private respondent Benedicto passed away on May 15, 2000, with the trial of Civil Case No. 0034 still in swing, so much so that the late Benedicto had to be substituted by the administratrix of his estate. *(Boldfacing supplied)*

[34] G.R. No. 129406, March 6, 2006, 484 SCRA129.

In fine, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution of the Court in Division.

WHEREFORE, the Petition for Review is hereby **DISMISSED.** Accordingly, the impugned Decision of the Court in Division dated April 2, 2009 and its Resolution promulgated on August 13, 2009 in C.T.A. Case No. 6847 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice