REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES), INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5664

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 04 2000

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DECISION

This petition seeks to review the decision of Respondent dated April 29, 1998, denying Petitioner's protest against an Assessment Notice, dated August 18, 1992 and designated as Assessment No. FAS-1-89-92-003567, allegedly representing deficiency surtax on Petitioner's extraordinary gains for taxable year 1989 amounting to ₱61,412,726.25, inclusive of surcharge and interests.

Petitioner is a corporation duly organized and existing under Philippine laws with address at the 6th Floor, 6750 Ayala Avenue, Makati C ty, Metro Manila. It is engaged in the importation, processing, refining and marketing of petroleum products in the Philippines.

On August 27, 1992, Petitioner received the above-mentioned assessment notice, dated August 18, 1992, together with a demand letter of even date (Annexes C & C-1 of Petition).

In a letter dated September 18, 1992, and received by Respondent's office on the same day, Petitioner protested said assessment notice on two grounds, *viz*: (1) that it was issued without complying with the provisions of Section 229 of the Tax Code, as amended, and its implementing rules, Revenue Regulations No. 12-85, governing the issuance of assessment notices; and (2) that the assessment notice has no legal and factual basis.

As to the second ground, Petitioner further alleged that it had to speculate on the reasons behind the issuance of such assessment notice because the same failed to indicate just exactly why it was liable for surtax on extraordinary gains in 1989.

Elaborating on the merits of its protest, Petitioner asserted, *inter alia*, in this wise, to quote:

x-x-x x-x-x x-x-x

> Under the implementing regulations it is also clear in Sec. 1 that first a notice for informal conference shall be sent to the taxpayer accompanied by a summary of findings which shall be the basis for the informal conference. Following the informal conference, the Commissioner or his duly authorized representative, if he finds that taxes should be assessed shall again notify the taxpayer in writing. This notice is called the Pre-Assessment Notice. The taxpayer is given fifteen (15) days from receipt to make a reply. It must be noted that under Section 4 of the aforequoted regulations, the taxpayer is allowed to examine the records of the case and to present his arguments in writing. Only then, can the Commissioner or his authorized representative on the basis of the evidence on record, decide whether or not to approve the report as prelude to the issuance of the corresponding assessment. A subsequent notice is then required to notify the taxpayer of the fact that he either failed to respond to the pre-assessment notice or that his response is without merit.

x-x-x x-x-x x-x-x

> **Caltex did not receive the initial notice required under Sec. 1 of the regulations for an informal conference. Neither did it receive a summary of the examiner's report or findings. It did not also receive**

a pre-assessment notice and it did not have the opportunity to look at the notice indicating the amount of tax due and the additional surcharge and interest.

The legal basis for assessing a surtax on extraordinary gains in 1989 is not at all mentioned in the assessment notice or letter. Neither is there any indication in the letter how the assessment was arrived at or where did the figures used in computing the tax come from. Nothing at all.

x-x-x x-x-x x-x-x

Assuming for argument sake that Caltex gained certain amounts from the price increase orders in August 15, 1989 and November 29, 1989, there is absolutely no legal basis for assessing any extraordinary gains tax from Caltex for reasons discussed hereunder.

First, PD 1889 which is the most recent law levying a surtax on extraordinary gains from petroleum products does not apply to the ERB price increase orders of August 15 and November 29, 1989.

x-x-x x-x-x x-x-x

Since x-x-x it is clear that PD 1889 cannot be made to apply to any extraordinary gains that accrued subsequent to its promulgation particularly the price increase orders in 1989 which is more than 5 years past the promulgation of PD 1889.

Second, no implementing revenue regulations were ever issued by the Bureau prior to making this subject assessment when previously the Bureau had always issued implementing revenue regulations to prescribe the guidelines for the calculation of the surtax due from previous price increases. x-x-x

x-x-x x-x-x x-x-x

Third, if this subject assessment for alleged extraordinary gains arose from the price increase order in August 15, 1989, then this assessment has already prescribed beyond three (3) year period of prescription since Caltex received this assessment only on August 27, 1992.

x-x-x x-x-x x-x-x

(Petitioner's Letter of Protest; Docket, pp. 38-40; Emphasis supplied)

On July 21, 1998, Petitioner received Respondent's letter dated April 29, 1998, denying said protest with finality. Hereunder quoted are pertinent portions of the administrative decision, to wit:

"x-x-x x-x-x x-x-x

In Assailing the above assessment, you contend that:

1. The assessment is arbitrary having been issued without complying with Section 229 cf the National Internal Revenue Code, as amended and Revenue Regulations No. 12-85 which govern the issuance of assessment notices;

2. The assessment has no legal and factual basis.

Our records show, however, that pre-assessment notice dated April 20, 1990 with Annexes was sent to you covering your surtax for extraordinary gains as of August 15, 1989, and that you failed to respond to our notice. x-x-x

We likewise find no merit to your argument that P.D. 1889 x-x-x cannot be made to apply to any extraordinary gains that accrued subsequent to its promulgation particularly the price increase orders in 1989 which is more than five years past the promulgation of the Decree.

x-x-x x-x-x x-x-x

Unless otherwise revoked, altered or amended, it is our stand that P.D. 1889 is still the applicable law to the windfall profit that oil companies realized as a result of the oil price increases as authorized by the Energy Regulatory Board.

Contrary to your claim that the assessment in question is arbitrary for lack of implementing revenue Regulations, it is believed that said regulation is necessary only if there are provisions in the Decree that are ambiguous and susceptible to different and conflicting interpretations. As it is, the law clearly defines what constitutes ordinary gain and likewise states in clear language the basis of computing the surtax thereon. x-x-x.

> Finally, x-x-x It is the stand of this Office that the right of the Commissioner to assess the windfall profit tax, as in the case of 25% surtax imposed on unreasonably accumulated surplus profits of corporations under then Section 25 of the Tax Code, as amended, is imprescriptible and there is no limit on the right of the Commissioner to assess the same. (CIR vs. Ayala Securities Corporation L-29425, November 21, 1980; United Equipment & Supply Co., vs. Commissioner .R. No. L-35653, October 25, 1972).
>
> x-x-x x-x-x x-x-x
>
> (Docket, pp. 32-34; Emphasis supplied)

On August 7, 1998, Petitioner elevated its case before this Court pursuant to the 30-day prescriptive period for making an appeal, as provided under Section 229 of the old Tax Code.

At bar, Petitioner contends that Respondent erred in not applying the rulings of the Court of Tax Appeals in the cases of **Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5132, promulgated on May 6, 1997** and **Pilipinas Shell Petroleum vs. Commissioner of Internal Revenue, CTA Case No. 4780, promulgated on August 9, 1996**, wherein the Honorable Court ruled that oil companies may no longer realize windfall profits in the context of P.D. 1889 after the establishment of the oil price stabilization fund.

Petitioner further argues that Respondent committed an error in ignoring the opinion issued by the Secretary of Justice in the case of **Petron Corporation vs. Bureau of Internal Revenue, OSJ No. 92-03 dated May 20, 1996**, which concluded that Petitioner oil company did not derive profit from the ERB price increase order issued after the effectivity of P.D. No. 1956 and LOI No. 1441.

It is also the contention of Petitioner, assuming *arguendo,* that P.D. No. 1889 is applicable, Respondent still erred in ruling that the right to assess surtax of 65% on extraordinary gains pursuant thereto is imprescriptible because the same has in fact prescribed; that Respondent was wrong in ruling that despite the absence of a corresponding implementing BIR Revenue Regulations, Presidential Decree No. 1889 constituted the legal basis for the assessment for surtax on extraordinary gains allegedly realized by it as a result of the Energy Regulatory Board's (ERB) orders for price increases dated August 15, 1989 and November 29, 1989, respectively; and lastly, that Respondent erred in ruling that the subject assessment was issued in accordance with the provisions of Section 229 of the Tax Code, as amended, and Revenue Regulations No. 12-85 and, therefore, not arbitrary.

By way of special and affirmative defenses in his answer, Respondent asserts that the rulings enunciated in CTA Case No. 4780, CTA Case No. 5132 and DOJ Case No. 92-03 have been reversed by the Honorable Court of Appeals in **Caltex [Phils.], Inc. vs. Court of Tax Appeals, CA-GR Sp No. 35699, April 6, 1998**; that the law that is applicable to the windfall profits realized by oil companies as a result of the oil price increases of August 15, 1989 and November 29, 1989 is Presidential Decree No. 1889 which imposes a surtax of 65% on extraordinary gains from petroleum products sold after November 3, 1983 citing said Caltex [Phils.], Inc. vs. CTA; that investigation has disclosed that Petitioner realized extraordinary gains as a result of the oil price increases of August 15, 1989 and November 29, 1989, thus, it is liable for the 65% surtax imposed under P.D. No. 1889; that the right of the government to assess the surtax on extraordinary gains under P.D. No. 1889 is imprescriptible as in the case of the 25% surtax imposed on unreasonably accumulated profits of corporations under then Sec. 25 of the Tax Code, citing the case of **Commissioner of Internal Revenue vs. Ayala Securities Corp., 101 SCRA 23 [1980]**; that the assessment was issued in accordance with law and regulations; and lastly, that all presumptions are in favor of the correctness of tax assessments as enunciated in the cases of **Interprovincial Autobus Co., Inc. vs.**

Collector of Internal Revenue, 98 Phil. 290 and Avelino vs. Collector of Internal Revenue, 8 SCRA 572.

As jointly stipulated by the parties, the pertinent issues confronting this Court are the following, to wit:

> 1. Whether or not there is factual and legal basis for Respondent's assessment for surtax on alleged extraordinary gains for taxable year 1989 under P.D. No. 1889 considering the effectivity of P.D. No. 1956 and LOI No. 1441;
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> 2. Whether or not P.D. No. 1889 is a valid basis for the 1989 surtax assessment despite the absence of specific revenue regulations applicable to ERB price increase order of August 15, 1989 and November 29, 1989;
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> 3. Assuming arguendo that P.D. No. 1889 is applicable, whether or not Respondent's right to assess the aforesaid surtax has prescribed; and
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> 4. Whether or not subject assessment was made arbitrarily.

By and large, the gist of the issues this Court is to tackle is not a case of first impression. In the case of **Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5132, promulgated on May 6, 1997**, this Court ruled, in this wise:

> "x-x-x Furthermore, We are guided by the decision promulgated by this Court in the case entitled **"Pilipinas Shell Petroleum v. Commissioner of Internal Revenue, CTA Case No. 4780, August 9, 1996"** involving exactly a similar issue regarding extraordinary gains.
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> Our decision in this aforecited Pilipinas Shell case (CTA Case No. 4780) gave special emphasis on the explanation made by Chairman Tantiongco as to the reason why oil companies may no longer realize windfall profits or extraordinary gains after the issuance of Presidential

Decree No. 1956 on October 10, 1984, which created the Oil Price Stabilization Fund or OPSF and We quote, thus:

> To explain further his point, Mr. Tantiongco testified that before the introduction of the OPSF on October 15, 1984 by Presidential Decree No. 1956, it is possible for the oil companies to get windfall profit because increase in prices are calculated based on the lowest inventory of the oil companies and the effectivity of the increase approximate that period. The oil companies will be realizing gain because the products they are selling then was out of the crude imported in previous period which was at low price. However, it is different after the effectivity of PD 1956 and the subsequent issuance of LOI 1441 on November 20, 1984 (T.S.N. pp. 76-77, January 9, 1995). In an answer to the question why oil companies may no longer realize windfall profits in the context of P.D. 1889 after the establishment of the OPSF, Mr. Tantiongco states as follows:
>
> > "A. Because the adjustment in the netback now is based on their actual importation. So the Energy Regulatory Board gathered all the documents from the Bureau of Customs, from the Department of Energy which approves the importation of the oil companies and at the same time from the submission of the oil companies together with their documents or receipts they received from the Bureau of Customs. So the netback is adjusted based on the actual cost of the importation. And whatever adjustment in the pump price is reflected only on the OPSF and not in the netback of the oil companies. Although that adjustment is reflected in the wholesale posted price, the composition of the wholesale posted price whether upward or downward after the OPSF is created is directly absorbed by the Oil Price Stabilization Fund. (T.S.N. January 9, 1995, pp. 78 to 79.)"

x-x-x x-x-x x-x-x

The situation contemplated by P.D. 1889 is not entirely analogous to the instant case as can be clearly seen from the facts earlier discussed. A review of the history surrounding the issuance of P.D. 1889 on July 23, 1983, would reveal that its purpose was to impose a surtax on the profits obtained by the oil companies by reason of an oil price increase which enabled them to dispose of their old stocks purchased at the old rate, by selling them at the increased price due to the oil price hike resulting in extraordinary gain or windfall profit. **The prevailing circumstances were different at the time of the price increase authorized on August 15, 1989. During this time, Presidential Decree No. 1956 (issued on October 10, 1984) was already in existence.** P.D. 1956 created the Oil Price Stabilization Fund or the OPSF, the purpose of which was clearly enunciated in said decree and We quote:

> "The Fund created herein shall be used to reimburse the oil companies for cost increases on crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil."

x-x-x x-x-x x-x-x

The situation in the present case does not however preclude any kind of profit whatsoever. It must be remembered that one of the components of the wholesale posted price is the ad valorem tax which in this case increased to .81 centavos. Respondent failed to consider the ad valorem tax component in her assessment, nevertheless this particular component is of significance because ad valorem taxes are paid fifteen (15) days from date of removal of petroleum products from the place of production in accordance with Section 127(a) of the Tax Code. It follows then that the ad valorem taxes paid by the oil companies when they acquired these petroleum products were still at the old rate prior to the increase, therefore when they subsequently sold these products at the increased price, profits were realized with respect to this particular component. In the aforecited case of **Pilipinas Shell Petroleum v. Commissioner of Internal Revenue, CTA Case No. 4780, August 9, 1996**, this Court upheld Respondent's assessment of Petitioner's tax liabilities for extraordinary gain due to the increase in the ad valorem tax component of the WPP. We quote a portion of said case entitled **Pilipinas Shell Petroleum vs. Commissioner of Internal Revenue, CTA Case No. 4780, dated August 9, 1996,** thus:

> "x x x. The Respondent is correct in assessing Petitioner for 65% surtax on extraordinary gain covering

> tax paid petroleum products because the taxes on those products have already been paid at the old rate as required by law and when sold at the higher pump price Petitioner certainly benefited by the increase in ad valorem tax. The increase in ad valorem tax goes to the Petitioner as the law requires payment of the tax within fifteen (15) days from the date of removal of petroleum products from the place of production (Section 127[a] National Internal Revenue Code). These stocks are stored in unbonded installations or depots ready for marketing and are not subjected again to the payment of the higher tax rate. To the extent of this unbonded or tax paid stocks, this Court believes Petitioner is liable to 65% surtax for extraordinary gain pursuant to PD 1889. In fact, Petitioner failed to dispute this finding of the Respondent."
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> (Emphasis supplied)

Based on the rationale established in the preceding Pilipinas Shell Petroleum Corporation case, this Court is not ready to depart from the wisdom it has so pronounced inasmuch as the legal milieu and the nature of the business involved therein are squarely on all fours with the facts and issues obtaining in the case at bar.

It is to be noted that pursuant to Section 2 of P.D. No. 1889, the "extraordinary gains" being assessed by Respondent was calculated by simply getting the difference between the approved wholesale posted price of refined petroleum products immediately before the authorized price increases and the new posted prices multiplied by the number of units of petroleum products existing as of the day of effectivity of the price increases.

With the advent of P.D. No. 1956, as amended by E.O. No. 137, however, the wholesale posted price or WPP of petroleum products had been completely redefined by the interplay of three components, namely, the Oil Price Stabilization Fund or OPSF, the ad valorem tax and company netback.

The OPSF component reimbursed oil companies for cost increases on crude oil and petroleum products importations as a result of exchange rate adjustment and/or increase in the world market prices of crude oil while the ad valorem tax component is prescribed by the Tax Code, as amended, and goes to the Government. The company netback component on the other hand goes to the company and is comprised of the landed cost, oil company expenses and margin **(Petitioner's memorandum, Docket, p. 438)**.

Petitioner elucidated on the mechanics of the major components of WPP, thus:

> "1.5 In the above formula, the WPP, the company netback and the ad valorem are always positive. Because of the very nature of the OPSF as a buffer against price fluctuations, the OPSF component, in the above formula or equation, may either be positive or negative.
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> A positive OPSF means that that portion of the WPP which is allocated by the ERB to the OPSF component is, instead of going to the oil companies, is contributed by the oil companies to the OPSF. Thus, in a positive OPSF, the WPP is allocated and goes to: 1) the oil company as company netback; 2) the government as ad valorem tax; and 3) the OPSF as a positive contribution. Simply, put, a positive OPSF in the above formula or equation means that the oil companies contribute to the OPSF for every liter of petroleum products sold by them.
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> On the other hand, a negative OPSF in the above formula or equation means that the oil companies are withdrawing from the OPSF for every liter of petroleum products sold by them. This happens when the WPP set by the ERB is less than the sum total of the company netback plus the ad valorem tax.
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> x-x-x x-x-x x-x-x
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> Any increase in the **expenses** of the oil companies (i.e., increase in processing and refining, marketing and operating/administrative expenses) or in the **margin** of the oil companies x-x-x cannot be recovered from the OPSF. These items may be recovered by the oil companies by petitioning the ERB for an increase in WPP of petroleum products. This was what Caltex did in its petitions with the ERB which resulted in the Auust 15, [1989] ERB Order."
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> (Petitioner's memorandum, Docket, pp. 439 & 441)

It is clear from the above explanation by the Petitioner that any increase in WPP does not exactly translate to profit taking. The OPSF and ad valorem components do not go into the coffers of the Petitioner but instead to such fund as established by P.D. No. 1956 and to the Government as tax collected, respectively.

Likewise, the company netback in this case is a mere reimbursement or recovery of Petitioner's costs. Witness Atty. Joselia J. Poblador testified on the grounds relied upon by Petitioner in its application for an increase of oil prices filed before the ERB, thus:

> "Q. Ms. Witness, why did Petitioner Caltex apply for application for an increase of oil prices at that time?
>
> A. At that time, Caltex was constrained to apply for price increases in the prices of crude oil. Second, to recover the cost of the additional ad valorem tax that was due on the increase in the netback as a result of the increase in the price of crude oil. Because at that time, the Internal Revenue Code pays (sic) the value of the ad valorem tax on the netback that is part of the petroleum products price. And thirdly, Caltex was constrained to recover additional increase cost in lead chemicals and catalyst needed in the refining of its petroleum products."
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> (TSN, May 3, 1999, p. 17; underscoring supplied)

As stated in the aforementioned Pilipinas Shell Petroleum Corporation case (CTA Case No. 5312), however, oil companies are not without liability for extraordinary gains. With respect to the ad valorem tax component, it has been established therein that in accordance with Section 127(a) of the Tax Code, as amended, such tax is paid fifteen (15) days from date of removal of petroleum products from the place of production. Hence, it was concluded that since the ad valorem tax paid by oil companies when they acquired petroleum products was still pegged at the old rate prior to the increase in prices, profit was subsequently realized when they subsequently sold said products at ERB increased prices.

A cursory look into the evidence at bar, however, would only render any attempt to compute extraordinary gains on the ad valorem tax component futile and nugatory. This is so because of the admitted absence of Petitioner's BIR records on the subject assessment **(Joint Stipulation of Facts and Issues, pp. 9-10; Docket pp. 260-261)**. While it is a basic principle in taxation that an assessment enjoys the presumption of correctness and good faith **(Interprovincial Autobus Co., Inc. vs. Collector , 98 Phil. 290)**, it is equally true, however, that an assessment should not be based on presumptions no matter how logical the presumption might be and that in order to stand the test of judicial scrutiny the assessment must be based on actual facts **(Collector vs. Benipayo, 4 SCRA 182)**. This Court is therefore left with no alternative but to deny the validity of the assessment in so far as ad valorem tax is concerned in view of the lack of documentary evidence to support it.

Anent the second issue, this Court finds P.D. No. 1889 to be complete in itself for purposes of computing the 1989 extraordinary gains of the Petitioner as a result of ERB price increase orders of August 15, 1989 and November 29, 1989, without the further need of specific revenue regulations. As correctly observed by the Respondent, Sections 1 and 2 of said Decree amply prescribes the basis for the computation, to wit:

> "Section 1. Surtax on Extraordinary Gains; Rate of Tax. - In addition to the income tax imposed under Title II of the National Internal Revenue Code, there is hereby imposed **a surtax of sixty-five (65%) per cent on extraordinary gains realized by oil companies as a result of price increases authorized for petroleum products**, which surtax shall be allowed as part of the cost of petroleum products sold **on or after** November 3, 1983."

"Section 2. Computation of Extraordinary Gains. - The extraordinary gains shall be **measured by the difference between the approved wholesale posted price of refined petroleum products immediately before the authorized price increases and the new posted price multiplied by the number of units of petroleum products existing as of the day of effectivity of the price increases**."

(Underscoring and emphasis supplied)

Going into the third issue, this Court believes that the subject assessment has not prescribed at all in view of the fact that Petitioner omitted to file any return on surtax on extraordinary gains for the year 1989. Petitioner's non-filing of the return falls under Section 223 of the Tax Code, as amended, regarding the *exceptions* to the regular three-year period for assessment and collection as provided under Section 203 of the Tax Code, as amended. Said Section 223 provides a prescription period of ten years for such omission.

With respect to the last issue, this Court is of the opinion that herein Respondent committed an arbitrary act tantamount to a violation of Petitioner's right to procedural due process when the former issued the assessment in question. Petitioner has assiduously denounced the lack of prior notice for an informal conference and a pre-assessment notice attending the issuance of the assailed assessment, as required under BIR Revenue Regulations No. 12-85 which was issued pursuant to Section 229 of the Tax Code, as amended. Inexplicably, records bear that Respondent did nothing to disprove Petitioner's alleged non-receipt of notices. Jurisprudence tells Us that it is incumbent upon the Respondent to prove by competent evidence that such notices were indeed received by Petitioner, thus:

"x-x-x In *Republic vs. Court of Appeals*, 149 SCRA 351, the Supreme Court held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption,

> subject to controversy and a direct denial thereof **shifts the burden on the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. A similar issue was tackled in the case entitled *Commissioner of Internal Revenue vs. Arnoldus Woodworks Int'l. and the Court of Tax Appeals, CA R SP No. 34019, September 14, 1995; Commissioner of Internal Revenue vs. Paseo Insurance Agency, Inc. and CTA, CA R SP No. 33526 February 24, 1995.*" (Tax Law and Jurisprudence by Vitug and Acosta, pp. 292-293; Underscoring and Emphasis supplied)

Respondent's penchant for disregarding procedural due process is further aggravated by his actuation at bar. This particularly refers to his attempt to mislead this Court by citing in his Memorandum filed on *December 14, 1999* (Docket, p.472 at pp. 474-475), a related decision of the Honorable Court of Appeals involving the same parties, which however, had been amended and decided in favor of herein Petitioner. The decision referred to is entitled **Caltex (Philippines), Inc. vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. SP No. 35699, promulgated on April 6, 1998 (originally CTA Case No. 4711)** which initially denied the petition for review filed by the Petitioner but on motion for reconsideration, was subsequently granted in an amended decision promulgated on *June 11, 1999*, the dispositive portion of which declared as null and void the assessment for surtax on extraordinary gains issued by the Respondent against the Petitioner. It is worthy to note that a little more than six months had elapsed from the time the decision was promulgated on June 11, 1999 and Respondent's citation thereof in his Memorandum filed on December 14, 1999. The said decision of the Court of Appeals promulgated on June 11, 1999 became final and executory with an Entry of Judgment dated September 24, 1999. Respondent is warned to be more prudent and careful to consider the accuracy of all facts and attendant circumstances in pleadings filed before this Court.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. The decision of the Respondent, dated April 29, 1998, is hereby **REVERSED** and **SET ASIDE**. Accordingly, **Assessment Notice, dated August 18, 1992, with number FAS-1-89-92-003567** and in the amount of **₱61, 412,726.25** is hereby declared **NULL AND VOID, CANCELLED AND WITHOUT FORCE AND EFFECT** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge