Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

VESTA PROPERTY HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9234

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 28 2017
3:10 p.m.

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DECISION

CASANOVA, *J.*:

This case is a Petition for Review[1], filed on January 11, 2016 pursuant to Section 7 of the Republic Act No. 1125, as amended. The subject of this petition is the Final Decision on Disputed Assessment (FDDA)[2] issued by respondent Commissioner of Internal Revenue, against Vesta Property Holdings, Inc. for deficiency Donor's Tax, plus 25% surcharge, 20% deficiency and delinquency interest covering the taxable year 2009 pursuant to Sections 100, 248 and 249 of the National Internal Revenue Code (NIRC) of 1997 as amended.

Petitioner Vesta Property Holdings, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at the 31st Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[3]

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[1] Docket, pp. 10-28.
[2] Exhibit "P-5".
[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket p. 201.

Respondent is Commissioner of Internal Revenue (CIR), the head of the Bureau of Internal Revenue (BIR), holding office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On September 11, 2009, petitioner sold two (2) parcels of land with a combined area of 404,691 square meters (sq.m.) located at Canlubang, Calamba, Laguna (hereinafter referred as the "Property").[4]

Petitioner sold the Property at a price equivalent to Eight Hundred Eighty Two Pesos (Php882.00) per square meter.[5]

Petitioner received a Letter of Authority (LOA) from the BIR covering the investigation/audit of its internal revenue taxes for taxable year 2009.[6]

On June 13, 2014 petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated June 11, 2014 covering the taxable year 2009.[7]

On June 30, 2014, petitioner, through a letter dated June 27, 2014, protested the deficiency donor's taxes in the PAN and informed respondent that it paid the other taxes (income tax, value added tax, and expanded withholding tax) included therein.[8]

On August 28, 2014, petitioner received Formal Letter Demand (FLD) from the respondent with the Final Assessment Notice (FAN) assessing petitioner of deficiency donor's tax, surcharge, interest and compromise penalty for taxable year 2009.[9]

On September 26, 2014, petitioner filed its protest to the FLD.[10]

On December 10, 2015, petitioner received the FDDA finding petitioner liable for deficiency donor's tax, surcharge, interest and compromise penalty for taxable year 2009 computed as follows[11]:

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[4] Exhibit "R-6" and Exhibit "P-1".
[5] Exhibit "R-6" and Exhibits "R-11" and "P-1".
[6] Par. 3, Admitted Facts, JSFI, Docket p. 200.
[7] Par. 4, Admitted Facts, JSFI, Docket p. 201.
[8] Par. 4, Joint Stipulation of Facts (JSF), JSFI, Docket p. 202.
[9] Par. 5, Admitted Facts, JSFI, Docket p. 201.
[10] Exhibit "R-13" and Exhibit "P-3".
[11] Exhibit "P-5".

Basic Deficiency Donor's Tax		P38,607,521.40
Add:	25% Surcharge	9,651,880.35
	Interest up to May 30, 2015	43,494,281.64
	Compromise	50,000.00
Total Amount Due		**P91,803,683.39**

In view of the above, petitioner filed the present Petition on January 11, 2016.

On April 15, 2016, respondent filed his Answer[12] after various motions for extension to file were granted by this Court.

The parties filed their respective Pre-Trial Briefs[13] on May 20, 2016 and the Pre-Trial Conference[14] was set on May 26, 2016.

On June 23, 2016, a Pre-Trial Order[15] was issued by this Court.

Subsequently on July 19, 2016, petitioner filed its Formal Offer of Evidence[16] consisting of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7" and "P-7-a", which were all admitted in a Resolution[17] dated August 11, 2016.

Likewise, on October 10, 2010, respondent filed its Formal Offer of Evidence[18], which were all admitted in a Resolution[19] dated October 27, 2016.

Thereafter, petitioner filed its Memorandum[20] on December 1, 2016, while respondent filed his Memorandum[21] on December 5, 2016.

[12] Docket, pp. 69-83.
[13] Docket, pp. 92-97; pp. 173-179.
[14] Docket, pp. 89-90.
[15] Docket, pp. 208 – 211.
[16] Docket, pp. 214-217.
[17] Docket, pp. 280.
[18] Docket, pp. 284-292.
[19] Docket, pp. 301-302.
[20] Docket, pp. 303-319.
[21] Docket, pp. 320-336.

The parties enumerated the following issues[22] for consideration of this Court:

1. Whether this Court has jurisdiction over the instant petition;

2. Whether a donation may be inferred or presumed even in an arm's length transaction on the basis of zonal values; and

3. Whether or not the assessment issued against petitioner for deficiency donor's tax for taxable year 2009 has factual and legal bases, i.e, whether or not petitioner is liable to pay the assessed deficiency Donor's Tax, plus 25% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997 as amended.

Petitioner claims that Section 100 of the NIRC is not applicable to transactions in the ordinary course of trade or business. Being an arm's length transaction between the petitioner and the buyer Ayala Land Inc., the same should not give rise to a donation.

Petitioner anchors its arguments on Department Order (DO) 50-2000 which states that the One Thousand Two Hundred Pesos (P1,200) per sq. m. zonal value applies if the following conditions are present (a) the property is located in Barangay Canlubang, (b) it is classified as for general purpose (GP); and (c) it is located along the road.

Petitioner contends that while the respondent found the property is located in Canlubang and the property at that time was classified as GP because it was undeveloped or raw land, respondent applied the P1,200.00 zonal value per sq.m. without considering that the property was an interior lot and not located along the road.[23]

Moreover, petitioner claims that in issuing the donor's tax assessment, respondent allegedly failed to consider the size of the property in determining its zonal or market value and disregarded the concept of an adjustment in accepted fair market value in cases of large tracts of land.[24]

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[22] JSFI, Docket, p. 202.
[23] Par. 23, Petitioner's Memorandum, Docket, pp. 317-318.
[24] Par. 18, Petitioner's Memorandum, Docket, pp. 314.

Finally, petitioner asserts that respondent failed to consider all the documents they had submitted during the reinvestigation, including a copy of the Deed of Sale covering the transaction to prove, among others, that the property was not along the road. Thus, the P1,200.00 zonal value should not be applied.[25]

Respondent, on the other hand argues that the instant petition is dismissible on the ground that this Court has no jurisdiction over the subject matter under Section 1, Rule 16 of the 1997 Rules of Civil Procedure.[26]

Respondent claims that the assessment has become final and executory after it filed allegedly failed to submit the supporting documents within sixty (60) days from filing of its protest against the FLD/FAN and requesting for reinvestigation on September 26, 2014.[27]

Assuming the Court has jurisdiction, respondent contends that the assessment was not based on presumption, but on Section 100 of the Tax Code[28].

Accordingly, the difference between the selling price of P882.00 per sq.m. and the zonal value of P1,200.00 per sq.m. is considered as donation pursuant to Sections 100 and 99 (B)[29] of the Tax Code.

Respondent further states that donation made between an individual and a business organization shall be considered as donation made to stranger in accordance with Section 10(B) of Revenue Regulations No. 02-2003.[30]

In addition, respondent contends that the arm's length transaction is not a defense in the application of Section 100 of the

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[25] Par. 19, Petitioner's Memorandum, Docket, pp. 316-317.
[26] Par. 2, Respondent's Memorandum, Docket, p. 322.
[27] Par. 7, Respondent's Memorandum, Docket p. 324.
[28] SEC. 100. Transfer for Less Than Adequate and Full Consideration. - Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.
[29] Section 99 (B) Tax Payable by Donor if Donee is a Stranger. - When the donee or beneficiary is stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts. For the purpose of this tax, a "stranger", is a person who is not a: (1) Brother, sister (whether by whole or half-blood), spouse, ancestor and lineal descendant; or (2) Relative by consanguinity in the collateral line within the fourth degree of relationship.
[30] Par. 21, Respondent's Memorandum, Docket p. 327.

Tax Code and that donative intent is not necessary for the application of the said provision.

Moreover, respondent asserts that he is authorized under Section 6 of the Tax Code to prescribe the fair market value of the real properties located in each particular zone.

Accordingly, since the fair market value determined by the Commissioner (zonal value amounting to ₱1,200.00 per sq.m.) is higher than the fair market value stated in the schedule of values of the Provincial and City Assessors, the value of the property should be the fair market value determined by the Commissioner.

Lastly, respondent contends that petitioner failed to prove that the entire property is all interior lots.

The Court has jurisdiction over the subject matter

Respondent anchors his argument that the Court has no jurisdiction over the instant petition on the following provisions:

> "**SEC. 228. Protesting of Assessment.**
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> xxx
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final**." (Emphasis supplied)
>
> "**Revenue Regulation 18-2013**
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> **3.1.4 Disputed Assessment.** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> xxx

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

xxx

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied."

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"Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

Respondent claims the Court's jurisdiction does not include cases where the assessment has already become final, executory, unappealable and incontestable.

Since petitioner has not allegedly submitted any relevant supporting documents, respondent now claims that the assessment has become final, executory and demandable, hence, unappealable.

We are not persuaded.

Based on the circumstances of the case, we cannot conclude that petitioner failed to submit relevant supporting documents that would render the assessment final since the copy of the Deed of Absolute Sale with Transfer Certificate of Title and Technical Description of the parcel of land showing the nature and condition of the subject property was already at the respondent's possession and, in fact, formed part of the respondent's records submitted as Exhibit "R-7".

The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted by a taxpayer. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[31]

Section 228 of the NIRC of 1997, as amended, states that if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

On December 10, 2015, petitioner received the FDDA finding petitioner liable for deficiency donor's tax, surcharge, interest and compromise penalty for taxable year 2009. The last portion of the FDDA states:

> *"This is our final decision. If you disagree, you or your authorized representative may appeal with the Court of Tax Appeals (CTA) within thirty (30) days from the date*

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[31] Commissioner of Internal Revenue vs. First Express Pawnshop Co., G. R. No. 172045-46, June 16, 2009.

> *of receipt hereof; otherwise, this decision* ***shall become final, executory and demandable.***"

Clearly, based on the above, petitioner had thirty (30) days from receipt of the said decision or until January 11, 2016 (January 10, 2016 being a Sunday) to file an appeal to this Court.

Thus, the instant petition was timely filed on January 11, 2016. Consequently, the tax assessment cannot be considered as final, executory and demandable.

2. <u>The Transaction is subject to Donor's Tax</u>

Citing the Code of Federal Regulations[32], which provides that a sale, exchange, or other transfer of property made in the ordinary course of business will be considered as made for an adequate and full consideration in money or money's worth, petitioner maintains that the transaction was made in the ordinary course of trade or business and that the transaction was an arm's length transaction.

Petitioner's contention is untenable.

In the case of *Republic of the Philippines vs. Manila Electric Company*, [33] it was held that American decisions and authorities are not per se controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions. Our laws must be construed in accordance with the intention of our lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto.

Section 100 of the NIRC of 1997, as amended, clearly states that a donor's tax can be imposed, even in the absence of a donative intent for as long as property is transferred for less than an adequate or full consideration, or with insufficient consideration. Said section reads:

> "**SEC. 100.** ***Transfer for Less Than Adequate and Full Consideration.*** - Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth,

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[32] Section 25.2512-8, Title 26, Chapter I, Subchapter B Part 25; Petitioner's Memorandum Docket, p. 308.
[33] G.R. Nos. 141314 & 141369, April 9, 2003, 401 SCRA 130, 134.

> then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

In the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and Commissioner of Internal Revenue*[34], the Supreme Court categorically held that "the absence of donative intent, if that be the case, does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law".

The legislative intent of the deemed gift provision under Section 100 of the NIRC of 1997, as amended, is to discourage the parties in a transaction from controlling their selling price in order to reduce the taxes to be paid to the government. Hence, Section 100 automatically treats the difference between the Fair Market Value (FMV) and selling price of the property as gift subject to donor's tax.

In the instant case, as stated in the Details of Discrepancies of the FLD, the subject lot, with an area of 404,691 sq.m. zonal value was sold by petitioner at P882.00 per sq.m. The difference between the zonal value and the selling price is considered as donation pursuant to Sections 100 of the NIRC of 1997, as amended. Likewise, the said difference is subject to Section 99(B) of the same Code and in accordance with Section 10(B) of Revenue Regulations No. 02-2003 dated December 16, 2002 which partly provides:

> "**(B) Tax payable by the donor if donee is a stranger**. - When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty per cent (30%) of the net gifts. For purposes of the donor's tax, a "stranger" is a person who is not a:
>
> (1) Brother, sister (whether by whole or half-blood), spouse, ancestor, and lineal descendant; or
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> (2) Relative by consanguinity in the collateral line within the fourth degree of relationship.
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> xxx xxx xxx

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[34] G. R. No. 210987, November 24, 2014.

> **<u>Donation made between business organizations and those made between an individual and a business organization shall be considered as donation made to a stranger.</u>**

After establishing that the transaction is subject to donor's tax, let us now discuss the basis in determining the FMV applicable to the subject property.

Respondent maintains that he is authorized to prescribe the fair market value of the real properties pursuant to Section 6(E) of the NIRC of 1997, as amended, to wit:

> "***SEC. 6 (E) Authority of the Commissioner to Prescribe Real Property Values.*** - The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be whichever is the higher of:
>
> (1) the fair market value as determined by the Commissioner, or
>
> (2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

The zonal value in Barangay Canlubang at the time of the subject sale, pursuant to Department Order No. 50-2000[35] are as follows:

STREET/ SUBDIVISION	VICINITY	CLASSIFICATION	3RD REV./ZV SQ.M
-	-	-	
All Other Streets	Along the Road	RR	2, 250.00
		CR	3,150.00
		I	2,500.00
		GP	1,200.00
		A50	700.00
	Interior Lot	RR	1,800.00
		A1	600.00

In this case, respondent used the zonal value of P1,200.00 per sq.m as the FMV of the subject lot. Petitioner, however, argues that

[35] Department of Finance Order No. 50-2000 entitled Implementation of the Revised Zonal Values of Real Properties in the Municipality of Calamba Laguna under the Jurisdiction of Revenue District Office No. 56 (Calamba, Laguna), Revenue Region No. 9 (San Pablo City) for Internal; June 16, 2000; Exhibit "P-4".

respondent failed to consider that the property was an interior lot and not located along the road.

Contrary to respondent's claim that petitioner failed to prove that the property was an interior lot at the time of the transaction, petitioner's witness, Ms. Rochelle Diaz, described the subject parcel of land as underdeveloped or raw land with no roads, and to prove the same, she cited the provision of the Deed of Absolute Sale which requires petitioner to construct concrete road access leading to the Sold parcels. Section 7 of the Covenant[36] reads:

> "7. COVENANTS
>
> xxx
>
> 7.1 The SELLER shall construct concrete road access from NUVALI Boulevard through the Western Section of the East West Road up to the Vesta Parkway by 30 April 2010. An extension of the East West Road shall be built from the intersection of the Vesta Parkway up to the entrance of the western portion of the Property by June 2010 as described in the map hereto as Annex "C". The SELLER shall also construct a drainage line xxx xxx. The SELLER shall provide temporary access to the Property for construction equipment/materials/infrastructure to the PURCHASER no later than 31 October 2009.
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> xxx

Under DO 50-2000, if no zonal value has been prescribed for a particular classification of real property in a particular street/ subdivision in a barangay, the zonal value prescribed for the same classification of real property located in an adjacent barangay of similar conditions must be applied.

Per perusal of the schedule of Zonal Values for Barangay Canlubang Municipality of Calamba[37], the only valuation provided for interior lot is for class "RR" valued at P1,800.00 and "A1" valued at P600.00 per sq. m. There was no valuation provided for Interior lot classified as "GP".

Petitioner failed to provide any document aside from the Deed of Sale and Technical Descriptions that could become the basis for the correct valuation of the property in question.

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[36] Exhibit "P-7-A".
[37] Exhibit "P-4".

It, likewise, failed to refer to any valuation of real property adjacent to barangay Canlubang with similar condition (i.e. interior lot-GP) to that of the subject property, which could justify its claim that the respondent failed to consider DO 50-2000, in ascertaining the correct fair market value of the subject real property.

Moreover, for purposes of computing any internal revenue tax, the value of the property shall be whichever is higher between the fair market value as determined by the Commissioner, or the fair market value as shown in the schedule of values of the Provincial and City Assessors[38].

Since the FMV of the subject lot is P1,200.00 per sq.m. as determined by the respondent Commissioner and no valuation was provided in the schedule of values under DO 50-2000 for Interior Lot classified for General Purpose, the value of the property would now be the value as determined by the Commissioner.

In *Collector of Internal Revenue vs. Bohol Land Transportation Co.*[39], the Court ruled that, since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments xxx, the trial court had no other alternative than to resort to the legal truism that all presumptions are in favour of the correctness of the tax assessments. The burden of proof is on the taxpayer to show the contrary.

Lastly, petitioner is liable to pay the twenty five percent (25%) surcharge and twenty percent (20%) deficiency interest pursuant to Sections 248 and 249 of the NIRC of 1997 as amended.

Likewise, petitioner is liable to pay the twenty five percent (25%) surcharge as penalty to be paid for its failure to file donor's tax return and to pay the tax thereon. Section 248(A)(1) of the NIRC of 1997, as amended, provides:

> "SEC. 248. Civil Penalties. -
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

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[38] Section 6(F) of the NIRC of 1997, as amended.

[39] G.R. Nos. L-13099 & L-13462, April 29, 1960.

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

xxx xxx xxx"

The twenty (20%) interest per annum is also imposed for failure of the petitioner to pay the tax within the time prescribed for its payment. Section 249 of the same Code provides:

"(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof."

Relative thereto, an examination of the said Code discloses that there are three (3) instances[40] where it defines the term "deficiency", and this relates to three (3) types of internal revenue taxes, namely, income tax, estate tax, and **donor's tax**.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Petitioner is **ordered to pay** the deficiency donor's tax of **P48,259,401.75** inclusive of 25% surcharges pursuant to Section 248(A)(1) of the NIRC of 1997 as amended, computed as follows:

Basic Deficiency Donor's Tax	P38,607,521.40
25% Surcharge	9,651,880.35
Total	**P48,259,401.75**

In addition, petitioner is **ordered to pay** deficiency interest of 20% per annum on the basic donor's tax due computed from the date prescribed for its payment until the full payment thereof pursuant to 249(A)(1) of the NIRC of 1997.

[40] Sections 56(B), 93 and 104 of the NIRC of 1997.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice