REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6847

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 0 2 2009

11:00 a.m.

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Capital is the tree, while income is the fruit; labor is the tree, while income is the fruit; the fact is capital is the fund, while income is the flow from that fund *(Madrigal vs. Rafferty, 38 Phil 418)*.

THE CASE

This is a *Petition for Review* filed on January 14, 2004 by Julita Campos Benedicto (hereafter "petitioner"), which seeks to set aside and reverse the Decision dated December 22, 2003 of then Commissioner of

Internal Revenue Guillermo L. Parayno, affirming the validity of Assessment Notice No. FAC-1-90-92-003066, assessing her deceased husband of deficiency income tax of P183,334,238.92, inclusive of surcharge and interest, for taxable year 1990.

THE PARTIES

Petitioner is the duly appointed administratrix of the Intestate Estate of the late Roberto S. Benedicto, which is pending settlement with the Regional Trial Court of Manila, Branch 21, in Special Proceedings No. 00-97505; 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.*

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

THE FACTS

The facts of the case, as stipulated by the parties, are as follows:

> " 2. That this is an action filed in accordance with Republic Acts Nos. 1125 and 8424 to set aside the Decision of the respondent promulgated on December 22, 2003 and attached as Annex 'A' of the Petition.

3. That the petition was seasonably filed in compliance with Republic Acts Nos. 1125 and 8424.

4. That on January 4, 1991, the respondent wrote a letter addressed to the late Roberto S. Benedicto proposing to assess the latter 'deficiency income tax for 1986' allegedly based on the amount of US$15,633,722.53 described as 'unfreezed to Roberto S. Benedicto'. The proposed assessment is contained in two letters attached as Annexes 'B' and 'B-1' of the petition.

5. That in another letter dated December 10, 1991, the respondent revised his tentative proposed assessment by, among others:

> 5.1. changing the name of the taxpayer from Roberto S. Benedicto to 'spouses Roberto S. Benedicto and Julita C. Benedicto';
>
> 5.2. changing the year of alleged deficiency in income tax payment from 'deficiency in income tax payment for 1986' to 'deficiency income tax for 1990';
>
> 5.3. changing the amount of the income allegedly being assessed from 'P320,960,323.54' to 'P370,040,784.76'; and
>
> 5.4. reducing the 'total deficiency tax' from 'P345,645,138.42' to 'P183,334,238.95'.

The revised tentative assessment and accompanying letter are attached as Annexes 'C' and 'C-1' of the Petition;

6. That the respondent subsequently issued an assessment for alleged deficiency income tax for the year 1990 in the amount of P183,334,238.93, wherein the name of the taxpayer was changed *again* from 'spouses Roberto S. Benedicto and Julita C. Benedicto' to only 'Roberto S. Benedicto'. The assessment is attached as Annex 'D-1' of

the Petition while the Transmittal letter is attached as Annex 'D'.

7. That on August 20, 1992, petitioner asked for a reconsideration of the assessment. Copy of the request for reconsideration is attached as Annex 'F' of the Petition.

8. That the respondent denied the request for reconsideration of the taxpayer in a Decision dated December 8, 1999, and copy of which is attached as Annex 'G' of the Petition.

9. That on January 19, 2000, the petitioner filed a Petition for Review before this Honorable Court and the case was docketed as C.T.A. Case No. 5998.

10. That on October 20, 2000, the petitioner filed with the respondent a request for reinvestigation of the contested assessment and a copy of the request is attached as Annex 'H' of the Petitioner.

11. That the respondent granted the request for the conduct of a reinvestigation subject to the requirement that the same is authorized by this Honorable Court.

12. That upon motion of the petitioner, this Honorable Court promulgated a Resolution in C.T.A. Case No. 5998 which states -

> 'Accordingly, this case is considered DISMISSED WITHOUT PREJUDICE to the refiling of the petition should the need arise.'

thereby giving way to a reinvestigation of the assessment which was actually conducted during which the parties had 'several conferences', the petitioner submitted 'various documents' and alternative options for tax collection were discussed.

13. That on December 22, 2003, the respondent promulgated the Decision which affirmed the assessment and copy of which is attached as Annex 'A' of the Petition."

On March 19, 2004, respondent filed his *Answer* alleging the following special and affirmative defenses:

"8. He reiterates and repleads the preceding paragraphs of this answer as a part of his Special and Affirmative Defenses.

9. 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.

10. The assessment has not prescribed.

Petitioner alleges that the fund which is the subject of the assessment cannot refer to income in 1990 because the assessed amount consists of ill-gotten wealth amassed here in the Philippines during the reign of then Pres. Marcos and hidden in a foreign country to escape taxation. Since the late Pres. Marcos stepped down in 1986, more than six years have lapsed when the assessment was issued.

The records of the case revealed that with Mr. Roberto S. Benedicto's failure to declare for taxation purposes his share of the compromise settlement, he filed a false or fraudulent return for the year 1990. Such being the case, instead of the three (3) year period provided under Sec. 203 of the Tax Code, the ten (10) year period under Sec. 223 (a) of the same Code (now Sec. 222 (a) of the Tax Code of 1997) shall be applied.

Assuming that there is no fraud, Benedicto's share in the deposits can be considered as income only in 1990 on the theory that in 1986 the rightful ownership of the deposits was disputed, and it was only at the time of the execution of the compromise agreement on July 16, 1990 when Benedicto's undisputed ownership of his share in the deposits was established.

11. Section 4 of Revenue Regulations No. 12-85, which implements Section 229 of the Tax Code (now Section 228 of the 1997 Tax Code) provides:

xxx xxx

While the taxpayer is allowed to examine the documents or records pursuant to section 4 of the Revenue Regulations No. 12-85, however, *it is not a requirement under the said implementing regulations that the taxpayer or any of his authorized representative shall be furnished with copies of the said documents*. BIR records clearly disclose that ever since the inception of the investigation, petitioner's representatives were given free access and reasonable opportunity to examine the BIR records.

12. Petitioner's claim that the BIR has been selective and has not followed the principle of equality and uniformity in taxation because the PCGG has entered into several compromise agreements where assets worth millions were adjudicated to the alleged cronies of the late President Marcos and that, presumably, no assessments have as yet been issued for those released assets, is purely speculative and baseless.

Respondent is not in a position to issue deficiency tax assessments to those concerned in the absence of documents that may support the issuance of the same. Since an assessment creates an obligation on the part of the taxpayer to pay the amounts assessed and demanded, it is only just that it should not be issued an assessment without the proper evidence or documentation.

13. The authority granted to the Presidential Commission on Good Governance (PCGG) to enter into a compromise settlement on the claims of the Republic of the

Philippines against the spouses Roberto S. Benedicto and Julita C. Benedicto regarding their share in the deposit/s subject of the compromise agreement, does not include the authority to compromise and abate tax liabilities of the Benedicto spouses, as the same is vested exclusively with the Commissioner of Internal Revenue pursuant to Section 204 of the Tax Code.

14. The grant by the PCGG of immunity from taxation to Mr. Roberto S. Benedicto over his 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.

The issue has been settled by the Supreme Court in the case of 'Francisco I. Chavez vs. Presidential Commission on Good Government (PCGG) and Magtanggol Gunigundo (in his capacity as Chairman of the PCGG), et al.,' G.R. No. 130716, December 9, 1998, where the Court declared that:

> 'The grant by the PCGG of exemption from tax liabilities to the properties to be retained by the Marcos heirs and cronies by reason of the Compromise Agreement is a clear violation of the Constitution. The power to tax and to grant tax exemptions is vested in Congress and, to a certain extent, in the local legislative bodies. Section 28 (4), Article VI of the Constitution, especially provides. 'No law granting any tax exemption shall be passed without the concurrence of a majority of all the members 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'** *(Underscoring supplied).*

15. The availment of various Tax Amnesty Programs covering untaxed income prior to 1972 up to 1980 does not relieve herein taxpayer from the questioned 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.

16. The assessment issued against petitioner for deficiency income tax for the year 1990 was made in accordance with law and regulations.

17. All presumptions are in favor of the correctness of tax assessments."

Petitioner presented Atty. Diosdado B. Jimenez, former counsel of Roberto Benedicto, as witness, and documentary evidence, marked as *Exhibits "A"* to *"Z"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated May 24, 2005, after petitioner filed a Motion for Partial Reconsideration.

On the other hand, respondent presented Atty. Arnel A. Bernardo, Attorney V, Inspection Service of the BIR, as witness, and documentary evidence, marked as *Exhibits "2"* to *"8"* and *"11"*, which the Court denied except for *Exhibit "4"*, in a Resolution dated February 4, 2008.

On October 2, 2007, respondent filed a *Request for Admission*, requesting petitioner to admit that the following documents are faithful reproductions of the original copies:

1. Compromise Agreement between the Republic of the Philippines through the PCGG and Mr. Roberto S. Benedicto executed in Berne, Switzerland on July 16, 1990; and

2. Compromise Agreement entered into by the Republic of the Philippines, represented by the PCGG and Mr. Roberto S. Benedicto, executed in Singapore on November 3, 1990.

On October 9, 2007, petitioner admitted that the foregoing documents are faithful reproductions of the certified true copies of the said documents.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having filed their respective memorandum, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

FACTUAL ISSUES

I

WHAT IS THE BASIS OF THE RESPONDENT'S CONTENTION THAT THE PETITIONER 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?

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.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not Mr. Benedicto is liable for deficiency income tax for taxable year 1990, in the amount of P183,334,238.92, inclusive of surcharge, interest and compromise penalty.

THE COURT'S RULING

The petition is impressed with merit.

A perusal of the Assessment Notice FAC-1-90-92-003066 *(BIR Records, pp. 206-207, and Exhibits "D" and "D-1")* and Notice to Taxpayer, dated June 17, 1992 *(BIR Records, p. 195)* shows that the total deficiency income tax assessment of P183,334,238.95, consists of the following:

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

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Compromise	25,000.00
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

(BIR Records, p. 204).

From the foregoing, it appears that Mr. Benedicto was assessed of deficiency income tax for his alleged undeclared income of $15,633,324.24 (equivalent to P370,040,784.76 in Philippine Peso), allegedly pertaining to his share in the Swiss deposit accounts by reason of the Compromise Agreement dated July 16, 1990.

We find respondent's assessment erroneous.

In 1986, immediately after the Marcos regime, President Corazon Aquino issued Executive Orders Nos. 1, 2, 14 and 14-A, which aimed for the recovery of ill-gotten wealth accumulated by former President Ferdinand Marcos, members of his immediate family, close relatives, subordinates, business associates, dummies, agents, or nominees. Mr. Benedicto, being identified as one of the business associates/cronies of former President Marcos, the PCGG run after his identified assets and

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properties, among which are the Swiss deposits in Swiss Credit Bank Account No. 402 109-52, and Swiss Bank Corporation, CO-055.289.0. Said Swiss deposit accounts had become 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 Swiss Compromise Agreement was executed between PCGG Chairman, Mateo Caparas, and Roberto S. Benedicto, which reads 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.
>
> The Parties mentioned heretofore have agreed as follows:
>
> 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 co-operation 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. 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 *(Exhibit "4", emphasis supplied).*

The existence of said Compromise Agreement dated July 16, 1990 was confirmed by the PCGG Executive Director, Tereso L. Javier *(Exhibit "I").*

Thereafter, on November 3, 1990, a Singapore Compromise Agreement was executed between the PCGG, represented by its Chairman, David Castro, and Roberto S. Benedicto, making reference to the Swiss Agreement made and entered in Berne, Switzerland, which reads:

> "This Agreement is made and executed this ___ of November 1990, by and between:
>
>> The Republic of the Philippines, represented by the Presidential Commission on Good Government, a government agency created under Executive Order No. 1 with offices at Philcomcen Bldg., Ortigas Avenue, Pasig, Metro Manila and represented in this act by its Chairman David M. Castro.
>
> - and -

Mr. Roberto S. Benedicto, a private individual acting on his behalf, of legal age, and residing at Caracas, Valenzuela.

WITNESSETH THAT:

WHEREAS, this Compromise Agreement covers the remaining claims and cases of the Philippine Government against Roberto S. Benedicto, including his associates and nominees, namely: Julita C. Benedicto, Hector T. Rivera, Lourdes V. Rivera, Miguel V. Gonzales, Pag-Asa San Agustin (Deceased), Rocio B. Torres, Marciano Benedicto (Deceased), Romulo Benedicto, Francisca C. Benedicto, Richard de Leon, Jose Montalvo, Jesus Martinez, Nestor Mata, Alberto Velez, Zafiro Tanpinco, Dominador Pangilinan (Deceased), Mariano del Mundo and Zacarias Amante;

WHEREAS, specifically, these claims are the subject matter of the following cases:

1. Sandiganbayan Civil Case No. 9
2. Sandiganbayan Civil Case No. 24
3. Sandiganbayan Civil Case No. 34
4. Tanodbayan (Phil-Asia)
5. PCGG I.S. No. 1

WHEREAS, sometime in December, 1986, the parties herein entered into temporary arrangement pendente lite, covering the management and operations of Mr. Benedicto's media business, to wit: BBC/Channel 2, IBC/Channel 13, Sining Makulay (CATV) and Daily Express/Express Commercial Printers Corporation, for the proprietary interest during the dependency of the sequestration proceedings;

WHEREAS, in March 1990 the cases of Mr. Benedicto in the United States were settled thru a plea bargaining agreement approved by the New York Court, and a "Settlement and Partial Release of Claims" approved by the Los Angeles Court, California, U.S.A.;

WHEREAS, on July 20, and 23, 1990 the Swiss cases involving Benedicto's bank deposits were terminated with the withdrawal by 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 assets (deposits) with the Swiss Federal and Cantonal authorities in order to comply with the Agreement;

WHEREAS, following the termination of the United States and Swiss cases, and also without admitting the merits of their respective claims and counterclaims presently involved in uncertain, protracted, and expensive litigation, the Republic of the Philippines, solely motivated by the desire for immediate accomplishment of its recovery mission and Mr. Benedicto, being interested to lead a peaceful and normal pursuit of his endeavors, the parties have decided to withdraw and/or dismiss their mutual claims and counterclaims under the cases pending in the Philippines, earlier referred to;

NOW, THEREFORE, for and in consideration of the foregoing premises, parties hereunto agree as they hereby agree to execute the following reciprocal cessions and concessions:

I. Property Cessions by BENEDICTO To The Government:

a) Cession to the Government by BENEDICTO and/or his group-controlled corporations/businesses of their shareholdings/dividends/deposits indicated in Annex "A" hereof.

b) Assignment and transfer of whatever rights and/or interests, if he has any, in favor of the

Government, over all corporate assets in Annex "B" hereof.

II. Lifting of Sequestrations; Extension of Absolute Immunity and Recognition of the Freedom to Travel:

a) The Government hereby lift the sequestrations over the assets listed in Annex "C" hereof, the same being within the capacity of Mr. Benedicto to acquire from the exercise of his profession and conduct of business, as well as all the haciendas listed in his home in Negros Occidental, all of which were inherited by him or acquired with income from his inheritance to wit: Hda. Prudencia/Hortencia, Hda. Sevillana, Hda. Banaba-Natividad, Hda. San Jose (Harab), Hda. Prudencia-Camansi, and Hda. Nalup-an, and all the other sequestered assets that belong to Benedicto and/or his corporation/nominees which are not listed in Annex "A" as ceded or to be ceded to the Government.

Provided, however, any asset (s), not otherwise settled or covered by this Compromise Agreement, hereinafter found and clearly established with finality by proper competent court as being held by Mr. Benedicto in trust for the family of the late President Ferdinand E. Marcos, shall be turned over or surrendered to the Government for appropriate custody and disposition.

b) The Government hereby extends absolute immunity, as authorized under the pertinent provisions of Executive Orders Nos. 1, 2, 14

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and 14-A, to Benedicto, the members of his family, officers and employees of his corporations above mentioned, who are included in past, present and future cases and investigations of the Philippine Government, such that there shall be no criminal investigation or prosecution against said persons for acts omissions committed prior to February 25, 1986 that may be alleged to have violated any penal laws, including but not limited to Republic Act No. 3019, in relation to the acquisition of any asset treated, mentioned or included in this Agreement.

c) The Government hereby recognizes the citizen's constitutional freedom to travel of Mr. Roberto S. Benedicto and his wife, Mrs. Julita C. Benedicto, and therefore interposes no objection to the issuance and/or restoration of the passports of Mr. Roberto S. Benedicto and Mrs. Julita C. Benedicto by the Government Office concerned.

III. Mechanics for the Implementation of the Settlement:

a) Parties herein shall file Joint Motion to Drop Mr. Roberto S. Benedicto and/or the nominees mentioned above based on cessions of sequestered properties in the following cases:

a. Civil Case No. 34
(Benedicto assets/group of companies)

b. Civil Case No. 9
(Telecommunications companies)

c. Civil Case No. 24
(Phil-Asia and PIMECO)

b) Government's Manifestation in other cases or any investigation involving claims related to Benedicto;

c) Nothing said herein shall preclude any private person from initiating or prosecuting any case to enforce any claimed right in his/her favor against Benedicto and/or his associates and nominees herein mentioned for any cause whatsoever.

IV. Cooperation in Preservation/Recovery Efforts

The parties herein hereby undertake to cooperate with each other in the preservation or recovery of sequestered properties and businesses, including joint action or defense in the enforcement or resistance as the case may be, of claims affecting the sequestered properties and businesses involved in this Agreement.

V. Warranty of Authority.

Each party whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed.

VI. Further Acts/Documents.

Each party to this Agreement agrees to perform such other and further acts and authorizations, including the execution and delivery of such other and further documents as may be

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reasonably necessary to carry out the provision of this Agreement.

VII. Binding on Successors.

All provisions of this Agreement shall extend and be binding on each party and each of their officers, employees, directors, agents, heirs, executors, administrators, legal successors and assign.

IN WITNESS HEREOF, parties hereby sign this Compromise Agreement this 3rd day of November, 1990 at Singapore *(Exhibit "5", and Replies to Request for Admission dated June 6, 2006 and October 9, 2007. emphasis supplied).*

An integral part of the Compromise Agreement dated November 3, 1990 is Annex "A", which reads, as follows:

"II. FOREIGN ASSETS (ceded)

1. 100% of his share in
California Overseas Bank
($18 M capital account) . . . . . . P406 million

**2. Deposits in Swiss Banks
($16.271 M at P23.72/$1.00) . . <u>P386 million</u>**

TOTAL . . . . <u>P792 million</u>"

The validity of the Compromise Agreement dated November 3, 1990 was upheld by the Supreme Court in the case of *Republic vs. Sandiganbayan, 226 SCRA 314.*

From the terms and conditions of the Compromise Agreement dated July 16, 1990, it is clear that:

a) It was Mr. Benedicto who entered into Compromise Agreement with the Republic of the Philippines regarding his assets in Switzerland in the form of deposit accounts. It does not mention that former President Marcos is the owner of the deposit accounts and that Mr. Benedicto is only acting as a dummy. Instead, Mr. Benedicto is taking the position that he acquired legally all funds that are covered by the agreement *(par. 4, Compromise Agreement dated July 16, 1990)*;

b) The Compromise Agreement does not state that the Swiss Credit Bank Account No. 402-109-52 and Swiss Bank Corporation CO-055.289-0 are ill-gotten wealth. Instead, in paragraph 4 of the July 16, 1990 Compromise Agreement, the parties expressly admitted that the 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, and the agreement is no determination of any illegality of the funds that are covered by the agreement; and

c) The Compromise Agreement does not state whether the Swiss deposit accounts are income or capital of Mr. Benedicto.

After a careful perusal of the foregoing Compromise Agreements and the evidence on record, the Court finds that the Swiss deposit accounts are capital of Mr. Benedicto for the following reasons:

First, the Compromise Agreement dated July 16, 1990 is clear that Mr. Benedicto, and not the Marcoses, owns the Swiss deposit accounts and said deposit accounts are referred to as assets of Mr. Benedicto;

Second, respondent himself found that the Swiss deposit accounts were in the name of Roberto S. Benedicto and were existing as of March 1986. In the original Memorandum of the STAT dated January 4, 1991, respondent found that the frozen deposits of Mr. Benedicto at the Swiss Banking Corporation in the amount of US$9,635,000 and at the Swiss Credit Bank in the amount of US$22,269,722.53, or an aggregate amount of US$31,904,722.53, were existing as of March 1986 *(Exhibit "8")*. This initial finding of respondent, although subsequently amended by a Memorandum dated December 5, 1991, adopting another basis for the assessment, cannot be ignored as to the findings of fact. The STAT was being constituted basically to investigate possible income tax liabilities of the former President Marcos and/or his family and a number of identified associates or cronies *(Exhibits "6" and "7", and TSN dated July 3, 2006, pp. 11-12)*; hence, there is presumption that the STAT performed its duties in the regular course of business, which includes examination, verification and evaluation of pertinent documents. Thus, when the STAT found that the frozen deposits at the Swiss Banking Corporation and Swiss Credit Bank were existing as of March 1986 and in the deposit account of Mr. Benedicto, said findings was arrived at after respondent had thoroughly examined, verified and evaluated pertinent documents;

Third, said initial findings of the STAT was subsequently confirmed by respondent's Chief of the Appellate Division, Rodulfo Salazar, when he issued a Memorandum for Deputy Commissioner dated March 26, 2003 *(Exhibits "Y" to "Y-6")*, and Deputy Commissioner, Legal and Inspection Group, Jose Mario Buñag, when he issued an undated Memorandum for the Commissioner *(Exhibits "Z" to "Z-2"),* wherein, both found that Mr. Benedicto had been in possession of the Swiss deposit accounts as early as 1986;

Fourth, the finding of respondent that Mr. Benedicto had been in possession of the Swiss deposit accounts as early as 1986 was confirmed by both Commissioners Parlade and Defensor, as admitted by respondent himself *(Exhibits "8", "Y" to "Y-6", and "Z" to "Z-2").* Well settled is the rule that an admission is rendered conclusive upon the person making it and cannot be denied as against the person relying on it *(Potenciano vs.*

Reynoso, 401 SCRA 408). This finding of fact was bolstered when Executive Director Tereso Javier of the PCGG confirmed that the Swiss Credit Bank with Account No. 402 109-52 and Swiss Bank Corporation with Account No. CO-055.289.0 were in the deposit accounts of Mr. Benedicto *(Exhibit "I").* The deposit accounts are all in the name of Mr. Benedicto, and as such, are presumed to have been legitimately acquired by him;

Fifth, Mr. Benedicto himself admitted in the Compromise Agreement dated July 16, 1990, of which he was a signatory, and which was the basis of respondent's assessment, that the "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" *(par. 4, Exhibit "4").* To acquire in law of contracts and of descents is to become owner of property; to make property one's own. To gain ownership of *(Black Law Dictionary, 6th ed., p. 24).* Thus, when Mr. Benedicto admitted that he acquired lawfully the Swiss deposit accounts, he in effect admitted ownership of said funds. Settled is the rule that admission made in an agreement is binding on the admitter;

Finally, Mr. Benedicto's act in entering into a compromise agreement with the Republic 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 *(Republic vs. Sandiganbayan, 406 SCRA 259)*. While it may be argued that an agent can enter into a compromise agreement in behalf of its principal, an agent however needs a special power of attorney to compromise *(Article 1878, New Civil Code of the Philippines)*. In the present case, there is no evidence on record which shows that Mr. Benedicto is merely acting on a representative capacity when he entered into the Compromise Agreements with respect to the subject Swiss deposit accounts. Nor is there any evidence on record to show that a Special Power of Attorney to compromise was granted to Mr. Benedicto. These findings clearly show that Mr. Benedicto is the owner of the Swiss deposit accounts, subject of the July 16, 1990 Compromise Agreement.

Considering that the Swiss deposit accounts are in the name of Mr. Benedicto, the portion of the Swiss deposit accounts that the Republic of the Philippines had specifically agreed to be withdrawn by Mr. Benedicto, as his share in the Compromise Agreement dated July 16, 1990, cannot be considered as income of Mr. Benedicto, as respondent has the burden to prove that the deposit accounts are income of Mr. Benedicto. Respondent, however, failed to discharge this burden. Respondent failed to prove what year the alleged income was earned by Mr. Benedicto and whether said alleged income was declared in Mr. Benedicto's Income Tax Return at the time it was allegedly earned. In fact, record shows that respondent himself is not even certain whether the portion of Mr. Benedicto's share in the Compromise Agreement is taxable or not. The BIR has a divided stand as to the tax treatment of the alleged share of Mr. Benedicto in the Compromise Agreement, as shown by the diverse findings in the Decision dated December 8, 1999 of CIR Beethoven Rualo *(Exhibit "G")*, Memorandum for Deputy Commissioner dated March 26, 2003 of the Chief of the Appellate Division, Rodulfo Salazar *(Exhibits "Y" to "Y-6")*, Memorandum for the Commissioner of Deputy Commissioner, Legal and Inspection Group, Jose Mario Buñag *(Exhibits "Z" to "Z-2")*, and Decision dated December 22, 2003 of then Commissioner Guillermo Parayno *(Exhibit "A")*.

It cannot be argued by respondent that it was only in 1990, at the time of the execution of the Compromise Agreement, that the Swiss deposit accounts were earned as income of Mr. Benedicto, because record shows that in 1986, Swiss Credit Bank with Account No. 402 109-52 and

Swiss Bank Corporation with Account No. CO-055.289.0 were already in the name of Mr. Benedicto and were already frozen.

In the case of *Jison vs. Court of Appeals, 286 SCRA 532*, the Supreme Court ruled, as follows:

> "The foregoing discussion, however, must be situated within the general rules on evidence, in light of the burden of proof in civil cases, *i.e.*, preponderance of evidence, and the shifting of the burden of evidence in such cases. Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of 'preponderance of evidence' refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth."

In the instant case, petitioner made out a *prima facie* case that the portion of Mr. Benedicto's share in the Compromise Agreement is not an income of Mr. Benedicto, the burden of evidence, therefore, shifts to respondent to controvert petitioner's *prima facie* case. But, as discussed above, respondent failed to discharge this burden.

Neither can respondent argue that it is taxing the portion of Mr. Benedicto's share in the Compromise Agreement dated July 16, 1990 as an ill-gotten wealth because the Compromise Agreement does not state that the Swiss deposit accounts are ill-gotten wealth. On the other hand, the said Compromise Agreement clearly states that the funds covered by the agreement were lawfully acquired by Mr. Benedicto and the parties entered into the agreements solely to end litigation. In fact, with the execution of the Compromise Agreements dated July 16, 1990, and November 3, 1990, the Republic of the Philippines and Mr. Benedicto, put an end to the litigation involving the Swiss cases, as a compromise agreement is a contract, whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced *(Article 2028, New Civil Code of the Philippines)*.

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)*.

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)*.

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.

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: xxx (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.

Having determined that petitioner is not liable for deficiency income tax, the Court deems it unnecessary to discuss the other issues raised by the parties.

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**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division

	Name of Supplier	Exhibits		Input VAT
	December			
	RA-JR Enterprises	PP-4-L299-B		10.91
	Subtotal		P	**4,147.98**
m.	**Certain information indicated in the suppliers' VAT invoices and/or official receipts were altered *(Exhibit PP-21)***			
	August			
	RD-reimb(Paraiso sa Barrio)	PP-4-H196	P	175.70
	September			
	EN reimb(Ford Makati)	PP-4-I147, PP-4-I146		136.36
	October			
	Trends & Technologies, Inc.	PP-4-J289, PP-4-J288		1,242.00
	Subtotal		P	**1,554.06**
n.	**BIR permit numbers of suppliers' VAT invoices and/or official receipts are not within the range of BIR permit period *(Exhibit PP-22)***			
	July			
	RF Trading & Distrib Corp	PP-4-G357, PP-4-G358	P	45.45
	September			
	RF Trading & Distrib Corp	PP-4-I298, PP-4-I297		45.45
	RF Trading & Distrib Corp	PP-4-I299, PP-4-I297		45.45
	RF Trading & Distrib Corp	PP-4-I300, PP-4-I297		22.73
	RF Trading & Distrib Corp	PP-4-I301, PP-4-I297		22.73
	Subtotal		P	**181.81**
o.	**Reconciliation of input VAT per return and input VAT per general ledger *(Exhibit PP-23)***			
	August		P	0.01
	September			0.07
	October			0.41
	November			1,847.35
	Subtotal		P	**1,847.84**
p.	**Input VAT on purchase of automobiles *(Exhibit PP-26)***			
	May			
	Ford Edsa, Inc.	PP-4-E127, PP-4-E121	P	130,363.64
	August			
	Ford Makati	PP-4-H101, PP-4-H100		195,879.55
	Subtotal		P	**326,243.19**
TOTAL DISALLOWED INPUT VAT			P	4,235,868.33

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