REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CENTRAL AZUCARERA DON PEDRO, INC., *Petitioner,*	**CTA CASE NO. 8459**
-versus-	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 23 2015 2:10 p.m.

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DECISION

BAUTISTA, J:

The Case[1]

This is a Petition for Review filed on April 11, 2012, pursuant to *Section 7(a)(1)*[2] of *Republic Act ("RA") No. 1125*[3], *as amended by RA No. 9282*[4] and *RA No. 9503*[5], seeks for the Court to render a judgment:[6]

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[1] *Records, CTA Case No. 8459,* p. 44.
[2] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals 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 Code or other laws administered by the Bureau of Internal Revenue.
[3] *"An Act Creating the Court of Tax Appeals, as amended."*
[4] *"An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."*
[5] *"An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes."*
[6] *Records,* p. 4.

1. Declaring that petitioner is not liable for alleged deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), Withholding Tax on Compensation ("WTC"), Expanded Withholding Tax ("EWT") and Documentary Stamp Tax ("DST") for fiscal year ending June 30, 2007 in the aggregate amount of Php345,249,425.93, inclusive of interest and penalties; and

2. Ordering that the above-mentioned deficiency assessments be withdrawn and cancelled.

The Parties[7]

Petitioner is a corporation organized and existing under the laws of the Philippines, holding office at 6th Floor, Cacho-Gonzales Building, 101 Aguirre Street, Legaspi Village, Makati City. It is principally engaged in the business of manufacturing, refining and trading sugar and molasses.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), holding office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On January 15, 2007, petitioner received a Notice from respondent that it is a Large Taxpayer, pursuant to *Revenue Regulations ("RR") No. 1-98.*[8]

Petitioner received Letter of Authority No. 00011820 ("LOA") dated October 10, 2007 from the BIR, authorizing the examination of its books of account and other financial records for all internal revenue taxes for the fiscal year ending June 30, 2007.[9]

A Notice of Informal Conference ("NIC") dated August 18, 2010 was received by petitioner on even date from the Large Taxpayers Excise Audit Division I ("LTEAD") of the Large Taxpayers Service ("LTS") of the BIR. The NIC, pursuant to the LOA, informed the

[7] *Records, Joint Stipulation of Facts and Issues ("JSFI")*, p. 296.
[8] *Id., JSFI*, p. 297.
[9] *Id.*

petitioner of the proposed deficiency IT, VAT, WTC, EWT and DST assessments for fiscal year ending June 30, 2007.[10]

Petitioner received a Preliminary Assessment Notice ("PAN") from Assistant Commissioner Zenaida G. Garcia of the LTS (Excise and Large Taxpayers District Office), informing petitioner of the proposed deficiency IT, VAT, WTC, EWT and DST assessments amounting to Php1,084,740,400.25, inclusive of interest and compromise penalty.[11]

Subsequently, petitioner was made to execute its First Waiver of Statute of Limitations Under the National Internal Revenue Code ("NIRC") signed by petitioner and the Assistant CIR on April 26, 2010 and June 21, 2010, respectively.[12]

Thereafter, petitioner and respondent executed a Second Waiver signed by petitioner and the Assistant CIR on October 18, 2010 and October 28, 2010, respectively.[13] Lastly, a Third Waiver was signed by petitioner and the Assistant CIR on January 12, 2011 and February 9, 2011, respectively.[14]

On May 6, 2011, petitioner received a Formal Letter of Demand ("FLD") with attached Final Assessment Notice ("FAN") and Details of Discrepancy, reiterating and increasing the alleged deficiency IT, VAT, WTC, EWT and DST assessments of petitioner to the aggregate amount of Php1,429,024,808.10, inclusive of interest and compromise penalty.[15]

A Final Decision on Disputed Assessment ("FDDA") dated March 13, 2012 was received by petitioner on even date and was issued by Officer in Charge - Assistant Commissioner Alfred S. Misajon of LTS.[16] The FDDA states that after evaluation of the documents and records submitted, the office found deficiency IT, VAT, WTC, EWT and DST for fiscal year ending June 30, 2007 in the aggregate amount

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[10] *Id.*
[11] *Id.*
[12] *Id.*, p. 1188.
[13] *Id.*, p. 1189.
[14] *Id.*, p. 1190.
[15] *Id.*
[16] *Id.*, p. 297.

of Php345,249,425.93, inclusive of interest and compromise penalty, broken down as follows:[17]

Income Tax		
Basic	P	130,397,574.26
Interest		113,952,991.29
Compromise Penalty		50,000.00
Subtotal	P	244,400,565.55
Value-Added Tax		
Basic	P	33,040,344.96
Interest		30,342,050.12
Compromise Penalty		50,000.00
Subtotal	P	63,432,395.08
Withholding Tax on Compensation		
Basic	P	860,898.05
Interest		797,765.53
Compromise Penalty		20,000.00
Subtotal	P	1,678,663.58
Withholding Tax - Expanded		
Basic	P	16,281,125.27
Interest		15,087,176.08
Compromise Penalty		25,000.00
Subtotal	P	31,393,301.35
Documentary Stamp Tax		
Basic	P	2,241,955.21
Interest		2,077,545.16
Compromise Penalty		25,000.00
Subtotal	P	4,344,500.37
TOTAL	**P**	**345,249,425.93**

Respondent assessed petitioner deficiency taxes for fiscal year ending June 30, 2007, as follows:[18]

Income Tax

Taxable Net Income *per* Return		P 539,122,253.00
Add: Adjustments *per* Audit		
A. Undeclared Sales		
FS/ITR vs. VAT Returns	P 14,257,454.32	
CWT vs. Sales	8,038,959.48	

[17] *Id.*, pp. 297-298.
[18] *Id.*, pp. 298-300.

2006 Deferred Sales not take up in FS/ITR	4,660,714.28	
B. Over claimed Purchases		
Discrepancy *per* VAT Returns vs. SLP	2,742,368.35	
Over claimed Imported Purchases	180,778.29	
Purchases of Raw Sugar	329,455,922.69	P 359,336,197.41
Taxable Net Income		P 898,458,450.41
Tax Due		P 314,460,457.64
Less: Adjustments		
Tax due *per* ITR	P 188,692,789.00	
Less: Disallowed CWT	4,629,905.62	P 184,062,883.38
Deficiency Tax		P 130,397,574.26
Add: Penalties		
Interest - 10/16/07 to 2/29/12 (87.39%)	P 113,952,991.29	
Compromise	50,000.00	P 114,002,991.29
Total Amount Payable		P 244,400,565.55

Value-added Tax

Taxable Sales/Receipts per Return		P3,635,531,821.35
Add: Adjustments *per* Audit		
FS/ITR vs. VAT Returns	P 20,817,655.60	
Sales (FS) vs. SLS	12,031.58	
Sale of PPE/Proceeds Net of Gain	465,514.04	P 21,295,201.22
Taxable Sales/Receipts *per* Audit		P3,656,827,022.57
Output Tax Due		P 438,819,242.71
Less: Creditable Input Tax		
Input tax credits claimed *per* return	P207,200,500.24	
Less:		
Disallowed Input Tax from overstated purchases	(313,282.83)	
Disallowed Input Tax on Current Importation of Capital Assets	(789,693.64)	
Input Tax *per* SLP directly identifiable to exempt transaction	(5,610,810.37)	
Input Tax *per* SLP allocable to exempt transaction	(11,932,679.63)	
Disallowed presumptive input tax	(13,178,236.91)	P 175,375,796.86
VAT payable		P 263,443,445.85
Less: Tax credits/payments		
Advance payments	P103,441,316.95	
Monthly payments	126,961,783.94	P 230,403,100.89
Deficiency Tax		P 33,040,344.96
Add: Penalties		
Interest - 7/26/07 to 2/29/12 (91.83%)	P 30,342,050.12	
Compromise	50,000.00	P 30,392,050.12
Total Amount Payable		P 63,432,395.08

Withholding Tax on Compensation

Taxable Basis *per* FS	P 294,322,953.00

Less: Non-Taxable Benefits/Salaries				
Retirement Benefits	P	37,642,932.00		
Premium Contributions		10,905,016.20		
Miscellaneous		2,975,410.29		
Bonuses/13th Month		13,684,368.78	P	65,207,727.27
Salaries subject to withholding tax			P	229,115,225.73
Per 1601C			P	226,424,919.32
Still subject to Withholding Tax			P	2,690,306.41
Withholding tax payable *per* audit			P	34,438,643.28
Less: Tax Credit/Payment				33,577,745.23
Deficiency Tax			P	860,898.05
Add: Penalties				
Interest	P	797,765.53		
Compromise		20,000.00	P	817,765.53
Total Amount Payable			P	1,678,663.58

Expanded Withholding Tax

Taxable Basis *per* Return			P1,848,180,511.96
Add (Less:) Adjustments			
Income payments not subjected to withholding tax			648,594,162.81
Taxable Basis *per* Audit			P2,496,774,674.77
Tax Due		P	53,638,252.51
Add: Unremitted EWT			60,468.35
Total Tax Due		P	53,698,720.86
Less: Tax Paid - net			37,417,595.59
Deficiency Tax		P	16,281,125.27
Add: Penalties			
Interest	P15,087,176.08		
Compromise	25,000.00	P	15,112,176.08
Total Amount Payable		P	31,393,301.35

Documentary Stamp Tax[19]

	TAX BASE	DST
Warehouse Receipts (Quedans Issued-87,980 Pcs.)		
Tax:	87,980.00	
P15.00 On Each Warehouse Receipt		P 1,319,700.00
Lease And Other Hiring Agreements		
Rent Expense *Per* FS	P 45,866,540.00	
Tax: On	2,000.00	3.00
Excess (P1.00 Per P1,000.00)	45,864,540.00	45,864.54
Total		45,867.54
Indemnity Bonds		
Indemnity and Guarantee Agreements	P 3,000,000.00	225,000.00
Promissory Notes/Debt Instruments (Annex A-2, Sched. L)*	P 409,888,954.00	
Tax:		
Section 179 - P1.00 On Each P200.00		2,049,444.77
Total Tax Due		P 3,640,012.31
Less: Payments (Annex A-2, Schedl. L)		1,398,057.10
Deficiency Tax		P 2,241,955.21
Add: Penalties		
Interest - 7/11/07 to 2/29/12 (92.67%)	P 2,077,545.16	
Compromise	25,000.00	2,102,545.16

[19] *Id.*, p. 1154; as provided in the FDDA, but was erroneously excluded in the JSFI.

Total Amount Payable		P 4,344,500.37
*20 Short Term Borrowing	P 155,000,000.00	
Current Portion of Long Term Borrowings		
Advances to Related Parties	81,839,081.00	
Advances to Planters	78,230,749.00	
Advances to Raw Sugar Purchases	53,333,776.00	
Advances to Related Parties	34,989,422.00	
Total	6,495,926.00	
TAX:	P 409,888,954.00	

The FDDA further provides that the same serves as the final decision of respondent on the matter, which is appealable to the Court of the Tax Appeals ("CTA") within thirty (30) days from receipt.[21]

Hence, petitioner was left with no recourse but to seek redress from the Court on April 11, 2012 through the present Petition for Review.[22]

On July 2, 2012, respondent filed her Motion to Admit Attached Answer[23]; which the Court, in a Resolution[24] dated August 6, 2012, granted, and accordingly the attached Answer[25] was admitted.

Respondent interposed the following Special and Affirmative Defenses in her Answer:[26]

> 11. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
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> 12. Petitioner Central Azucarera Don Pedro, Inc., is liable to pay its deficiency [IT], [VAT], [WTC], [EWT], and [DST] in the aggregate amount of Three Hundred Forty Five Million Two Hundred Forty Nine Thousand Four Hundred Twenty Five Pesos and 93/100 ([Php]345,249,425.93) for the fiscal year ending June 30, 2007 for the following reasons:
>
> > 12.1 Petitioner is liable for income tax in the total amount of [Php]130,397,574.26 for the fiscal year ending June 30, 2007. After verification and evaluation of the

[20] *Id.*, p. 1163.
[21] *Id.*, *JSFI*, p. 298.
[22] *Id.*, pp. 7-45, with Annexes.
[23] *Id.*, pp. 158-164.
[24] *Id.*, pp. 239-244.
[25] *Id.*, pp. 166-188.
[26] *Id.*, pp. 168-186.

documents submitted by petitioner in protest to the [FAN], the documents failed to refute and cancel the assessments. The finding of revenue officers who conducted the comparison and analysis of the additional documents presented by petitioner reveals that petitioner is liable for deficiency income tax as explained below:

12.1.1. Undeclared Sales - Analysis of additional documents submitted and comparison thereof with the Financial Statements/Income Tax Return/VAT Return revealed that sales aggregating [Php]14,257,454.32, from Tolling Fees ([Php]3,366,544.90), Premium Grade ([Php]3,173,079.42), and Molasses ([Php]7,717,830.00) were[] not declared for income tax purposes, hence assessed pursuant to Sections 31, 32 in relation to Section 27 of the [1997 NIRC], as amended.

12.1.2. Undeclared Sales to Edward Keller, Globe Commodities, Mic Mac and Roxas Holdings - After considering the additional documents submitted and comparing such with the gross purchases reported by the herein mentioned customers in the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to you, it was revealed that sales to such customers amounting to [Php]8,038,959.48 were not declared for income tax purposes, hence assessed pursuant to Sections 31, 32 in relation to Section 27 of the [1997 NIRC], as amended.

12.1.3. Undeclared Sales from 2006 deferred sales - Analysis of additional documents submitted showed that deferred sales of refined sugar invoiced in 2006 but delivered in 2007 were not declared for income tax purposes for the fiscal year ending June 30, 2007, hence assessed pursuant to Sections 31, 32 in relation to Section 27 of the [1997 NIRC], as amended.

12.1.4. Over claimed Purchases from comparison between Summary List of Purchases [("SLP")], VAT Returns & Protest Documents submitted - After evaluation of documents submitted, it was revealed that purchases amounting to [Php]2,742,368.35 were over claimed, hence disallowed and assessed pursuant to Section 34 of the [1997 NIRC], as amended.

12.1.5. Over claimed Purchases from Importation ([Php]180,778.29) - After verification of the documents submitted, it was disclosed that there are importations *per* VAT Return that were not included *per* SLP, hence disallowed and assessed pursuant to Section 34 of the [1997 NIRC], as amended.

12.1.6. Over claimed Purchases of Raw Sugar - Evaluation of the documents submitted disclosed that purchases of raw sugar amounting to [Php]329,445,922.69 which includes intercompany purchases were over claimed, hence disallowed and assessed pursuant to Section 34 of the [1997 NIRC], as amended.

12.1.7. Disallowed Creditable Withholding Tax - Validation of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) submitted disclosed that the amount of [Php]4,629,905.62 is unsupported, hence disallowed pursuant to Section 58 of the [1997 NIRC], as implemented by Section 2.58.5 (B) of [RR] No. 2-98, as amended.

For your reference[, Sections] 27, 31, 32 and 34 all of the [1997 NIRC], as amended is hereunder quoted:

"**Section 27**. *Rates of Income Tax on Domestic Corporations.* -

(A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

Section 31. *Taxable Income Defined.* - The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized

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for such types of income by this Code or other special laws.

Section 32. *Gross Income.* -

(A) *General Definition.* - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

Section 34. *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

(A) *Expenses.* -

(1) Ordinary and Necessary Trade, Business or Professional Expenses.-

(a) In General. - There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

(i) A reasonable allowance for salaries, wages, and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of fringe benefit furnished or granted by the employer to the employee: Provided, That the final tax imposed under Section 33 hereof has been paid;

(ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession;

(iii) A reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user or possessor;

(iv) A reasonable allowance for entertainment, amusement and recreation expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or profession of the taxpayer, or that are directly related to or in furtherance of the conduct of [his/her] or its trade, business or exercise of a profession not to exceed such ceilings as the Secretary of Finance may, by rules and regulations prescribe, upon recommendation of the Commissioner, taking into account the needs as well as the special circumstances, nature and character of the industry, trade, business, or profession of the taxpayer: Provided, That any expense incurred for entertainment, amusement or recreation that is contrary to law, morals public policy or public order shall in no case be allowed as a deduction.

(b) Substantiation Requirements. - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

12.2 Petitioner is liable for [VAT] in the total amount of [Php]33,040,344.96 for the fiscal year ending June 30, 2007. After verification and evaluation of the documents submitted by petitioner in protest to the FAN, the documents failed to refute and cancel the assessments for deficiency [VAT]. The findings of revenue officers who conducted the comparison and analysis of the additional documents presented by petitioner reveals that it is liable for deficiency [VAT], as provided below:

12.2.1. Undeclared Sales from Tolling Fees ([Php]3,500,228.36), Premium Grade ([Php]9,847,838.57), Others ([Php]7,469,588.67) - Analysis of additional documents submitted and comparison thereof with the VAT returns revealed that sales aggregating [Php]20,817,655.60 from Tolling Fees ([Php]3,500,228.36), were not declared for VAT purposes, hence assessed pursuant to Section 106 of the [1997 NIRC], as amended.

12.2.2. Undeclared Sales from various customers - Analysis of documents submitted revealed that [sales] to various customers amounting to [Php]12,031.58 were not subjected to VAT, in the amount of [Php]465,514.04, hence assessed pursuant to Section 106 of the [1997 NIRC], as amended.

12.1.3. Undeclared Sales from Proceeds on Sale of Equipment - Analysis of documents submitted revealed that there was a sale of equipment which was not subjected to VAT, in the amount of [Php]465,514.04, hence assessed pursuant to Section 106 of the [1997 NIRC], as amended.

12.2.4. Disallowed input tax from overstated purchases ([Php]313,282.83) - After considering the documents submitted, the overstatement of input tax in the recorded importations and local purchases which were previously disallowed pursuant to Section 110 of the [1997 NIRC], as amended, was reduced to [Php]313,282.83.

12.2.5. Deferred input tax on purchase of capital goods exceeding [Php]1Million - Verification made on the documents submitted failed to prove that the input tax on the purchase of capital goods in the amount of [Php]789,693.64 was properly deferred in

> the VAT return hence, the disallowance was sustained pursuant to Section 110A(2)(b) of the [1997 NIRC], as amended.
>
> 12.2.6. Input tax *per* SLP directly identifiable to exempt transactions - Verification made on the [SLP] submitted revealed input taxes amounting to [Php]5,610,810.37 which were directly identifiable to your exempt transactions; hence the same were not allowed to be creditable against output tax pursuant to Section 110(A) of the [1997 NIRC], as amended.
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> 12.2.7. Input tax *per* SLP allocable to exempt transactions - Verification made on the [SLP] submitted revealed input taxes amounting to [Php]11,932,679.63 which were allocated to your exempt transactions; hence the same were not allowed to be creditable against output tax pursuant to Section 110(A) of the [1997 NIRC], as amended.
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> 12.2.8. Disallowed presumptive input tax ([Php]13,178,236.91) - Verification made on the documents submitted failed to prove that you are entitled to said presumption input tax, hence the disallowance pursuant to Section 111(B) of the [1997 NIRC], as amended, was sustained.

For your reference Sections 106, 110 and 111 all of the [1997 NIRC], as amended[, are] hereunder quoted:

> **Section 106.** *Value-Added Tax on Sale of Goods or Properties.* - (A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> (1) The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
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> (a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;
> (b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or

process, goodwill, trademark, trade brand or other like property or right;
(c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment;
(d) The right or the privilege to use motion picture films, tapes and discs; and
(e) Radio, television, satellite transmission and cable television time.

The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

Section 110. *Tax Credits.* -

(A) *Creditable Input Tax.* -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of [his/her] trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

(B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at [his/her] option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

(C) *Determination of Creditable Input Tax.* - The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments the Bureau of Customs.

Section 111. *Transitional/Presumptive Input Tax Credits.* -

(A) *Transitional Input Tax Credits.* - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner, be allowed input tax on [his/her] beginning inventory of goods, materials and supplies equivalent for eight percent (8%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

(B) *Presumptive Input Tax Credits.* -

(1) Persons or firms engaged in the processing of sardines, mackerel and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1 1/2%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

As used in this Subsection, the term 'processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1 1/2%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom.

12.3 Petitioner is liable for [WTC] and [EWT] in the amounts of [Php]860,898.05 and [Php]16,281,125.27, respectively for the fiscal year ending June 30, 2007. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the [FAN] were not sufficient to cancel the assessments. Therefore, petitioner is found liable for deficiency [WTC] and [EWT] as explained below:

[WTC]

12.3.1. Compensation not subjected to [WTC] - After considering all the documents submitted, reconciliation and analysis of the compensation subject to withholding tax, it was determined that there remains compensation in the amount of [Php]2,690,306.41 that should be subjected to withholding tax, hence the assessment pursuant to Section 78-83 of the [1997 NIRC], as amended and [RR] No. 2-98.

[EWT]

12.3.2. Compensation not subjected to [EWT] - After considering all the documents submitted, reconciliation and analysis of the income payments subject to withholding tax, it was determined that withholding tax in the amount of [Php]648,594,162.81 is still due, hence the assessment pursuant to [Sections] 57(B) and 58 of the [1997 NIRC], as amended.

12.4 Petitioner is liable for [DST] for the fiscal year ending June 30, 2007 amounting to [Php]2,241,955.21. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the FAN were not sufficient to cancel the assessments. Therefore, petitioner is found liable for deficiency [DST] as explained below:

12.4.1. Warehouse receipts not subjected to [DST] - After considering the documents submitted, you failed to prove that the [DST] in the amount of [Php]1,319,700.00 on the 87,980 pieces of quedans issued were paid, hence the assessment was sustained pursuant to Section 189 of the [1997 NIRC], as amended.

12.4.2. Lease and other hiring agreements not subjected to DST - After considering the documents submitted you failed to prove that the DST on the lease and other hiring agreements aggregating to [Php]45,866,540.00 were paid, hence the assessment was sustained pursuant to Section 194 of the [1997 NIRC], as amended.

12.4.3. Indemnity and Guarantee Agreements not subjected to DST - After considering the documents submitted, you failed to prove that the [DST] on the indemnity and guarantee agreements aggregating [Php]3,000,000.00, were paid, hence the assessment was sustained pursuant to Section 187 of the [1997 NIRC], as amended.

12.4.4. Promissory notes and other debt instruments - After considering the documents submitted, you failed to prove that the DST in the amount of [Php]409,888,954.00 on the promissory notes and other debt instruments were paid, hence the assessment was sustained pursuant to Section 179 of the [1997 NIRC], as amended by RA No. 9243 and RR No. 13-04.

13. Clearly, the deficiency assessments issued against petitioner have factual and legal bases.

14. The [PAN], [FLD], [FAN] and [FDDA] were issued in accordance with law, rules and jurisprudence.

14.1 On October 10, 2007, [] LOA 2007 00011820 was issued, authorizing the revenue examiners named therein to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period of July 1, 2006 to June 30, 2007. The LOA 2007 00011820 was received by petitioner on October 26, 2007.

14.2 A [NIC] was received by petitioner on August 18, 2010 informing petitioner of its findings and giving the latter the opportunity to offer explanation[s], present objections and submit documentary evidence/s to refute the said findings.

14.3 The finding of deficiency tax assessments are supported by factual and legal bases.

14.4 Under [RR] No. 12-99, a valid assessment is accomplished following the stages of [NIC], PAN and FAN. The procedure prescribed under RR No. 12-99 have been complied with by respondent as can be deduced from the following narration of facts.

14.5 On August 18, 2010, petitioner received a [NIC] informing it in this wise:

> "In connection with the examination of all internal revenue taxes for fiscal year ending June 30, 2007 conducted pursuant to [LOA] No. 00011820 dated October 10, 2007, please be informed that there have been found deficiency taxes due from you which are now submitted to this Office for final evaluation.
>
> In accordance with the policy of this Office to give taxpayers opportunity to present their side of the case, you or your duly authorized representative is requested to appear for an informal conference on the matter xxx xxx."

14.6 On September 8, 2010, respondent issued to petitioner the PAN with attached Details of Discrepancies informing it of the following deficiency tax liabilities for fiscal year ending June 30, 2007:

Deficiency Income Tax

Net Income *per* ITR			P 539,122,253.00
Add:	Findings Disallowances		
	Undeclared Sales	P 585,749,307.67	
	GP on imputed sale from undeclared Purchases	138,700,072.75	
	Disallowed Purchases	41,396,802.89	
	Unsupported Purchases	449,565,548.07	1,215,411,731.38
Net Taxable Income *per* Investigation			1,754,533,984.38

Multiplied by tax rate	35%
Tax Due thereon	614,086,894.53
Less: Tax Paid *per* Return	188,692,789.00
Tax Still Due	425,394,105.53
Add: 20% Interest (10/16/07 to 10/15/10)	254,999,944.20
Compromise	50,000.00
DEFICIENCY INCOME TAX	**P 680,444,049.73**

Deficiency Withholding Taxes (Compensation)

Compensation *per* FS	P 294,322,953.00
Less: Retirement Benefits	37,642,932.00
Compensation Subject to Withholding Tax	256,680,021.00
Per 1601C	226,434,919.32
Still Subject to Withholding Tax	30,245,101.68
Multiplied by Tax Rate	32%
Deficiency Tax	9,678,432.54
Add: 20% Interest (07/11/07 to 10/15/10)	6,312,486.63
Compromise	25,000.00
DEFICIENCY WITHHOLDING TAX ON COMPENSATION	**P 16,015,919.17**

Withholding Tax - Expanded	**TAX RATE**	***PER* AUDIT**	***PER* RETURN**	**DIFFERENCE**
INCOME PAYMENTS				
Regular Supplier of Goods	1%	P 2,775,519,206.24	P 1,323,489,173.63	P 1,452,030,032.61
Contractor/Supplier of Services	2%	711,770,109.56	385,709,286.26	326,060,823.30
Rent	5%	103,627,674.24	42,678,707.57	60,948,966.67
Brokers/Prof. Services, Etc. Below P720,000	10%	29,832,086.75	1,960,377.50	27,871,709.25
Brokers/Prof. Services, Etc. Above P720,000	15%	105,162,927.79	94,243,966.60	10,918,961.19
TOTAL		P 3,725,912,004.58	P 1,848,081,511.56	P 1,877,830,493.02
WITHHOLDING TAX DUE				
Regular Supplier of Goods	1%	P 27,755,192.06	P 13,234,891.74	P 14,520,300.33
Contractor/Supplier of Services	2%	14,235,402.19	7,714,185.73	6,521,216.47
Rent	5%	5,181,383.71	2,133,935.38	3,047,448.33
Brokers/Prof. Services, Etc. Below PhP720,000	10%	2,983,208.68	196,037.75	2,787,170.93
Brokers/Prof. Services, Etc. Above PhP720,000	15%	15,774,439.17	14,136,594.99	1,637,844.18
TOTAL		P 65,929,625.81	P 37,415,645.58	P 28,513,980.23
Add: Unremitted EWT				62,418.35
Deficiency Tax				28,576,398.58
Add: 20% Interest (07/11/07 to 10/15/10)				18,638,155.83
Compromise				25,000.00
DEFICIENCY EXPANDED WITHHOLDING TAX				P 47,239,554.41

Value-added Tax

Sales *per* VAT Return			P 3,635,531,821.35
Add: Findings Disallowances			
Undeclared Sales		P 618,223,849.67	
Imputed Sale on Undeclared Purchases		194,136,671.71	812,360,521.38
Sales *per* Investigation Subject to VAT			4,447,892,342.73
Multiplied by Tax Rate			12%
Value Due Thereon			533,747,081.13
Less: Input Tax *Per* Return		207,200,500.24	
Less: Disallowed Input from Overstated Purchases	P 4,967,624.28		
Input Tax *per* SLP Directly Identifiable to Exempt Transactions	789,633.64		
Input Tax *per* SLP Allocable to Exempt Transactions	5,610,810.37		
Unaccounted Presumptive Input Tax	11,932,679.63		
VAT PAYABLE *PER* INVESTIGATION	84,202,078.84	107,502,886.76	99,697,613.48
Less: VAT paid *per* Return			434,049,467.65
Advance Payments		103,441,316.95	
Monthly Payment		126,961,783.92	230,403,100.87
VAT Still Due			203,646,366.78
Add: 20% Interest (07/26/07 to 10/15/10)			131,125,655.46
Compromise			50,000.00
DEFICIENCY VAT			P 334,822,022.24

		TAX BASE	DST
Documentary Stamp Tax			
WAREHOUSE RECEIPTS (QUEDANS ISSUED-87,980 PCS)			
TAX:		87,980.00	
PhP15.00 ON EACH WAREHOUSE RECEIPT			P 1,319,700.00
Lease and Other Hiring Agreements			
Rent Expense *per* FS	P 45,866,540.00		
Consultancy Agreement	94,925,214.00		
Indemnity and Guarantee Agreement	3,000,000.00		
Hauling Expense	235,866,024.00		
Total	379,657,778.00		
TAX:	2,000.00		3.00
ON Excess (P1.00 *per* 111,000.00)	P 379,655,778.00		379,655.78
Promissory Notes/Debt Instruments	155,000,000.00		
Short Term Borrowing	81,839,081.00		
Current Portion of Long Term Borrowings	78,230,749.00		
Advances to Related Parties	53,333,776.00		
Advances to Planters	34,989,422.00		
Advances to raw sugar purchases	6,495,926.00		
Advances from related parties	P 409,888,954.00		
Total			
TAX: P1.00 ON EACH P200.00			P 2,049,444.77
Total DST Due			3,748,803.55
Add: 20% Interest (07/11/07 to 10/15/10)			2,445,052.15
Compromise			25,000.00
DEFICIENCY DOCUMENTARY STAMP TAX			P 6,218,855.70

14.7 On May 6, 2011, respondent issued a FLD with attached Details of Discrepancies and Assessment Notices for fiscal year ending June 30, 2007:

Income Tax		
Net Income *per* ITR		P 539,122,253.00
Add: Findings Disallowances		
Undeclared Sales	P 912,328,538.58	
GP on imputed sale from undeclared Purchases	138,700,072.75	
Disallowed Purchases	41,396,802.89	
Unsupported Purchases	449,565,548.07	1,541,990,962.29
Net Taxable Income *per* Investigation		2,081,113,215.29
Multiplied by tax rate		35%
Tax Due thereon		728,389,625.35
Less: Tax Paid *per* Return	P 188,692,789.00	
Less: Disallowed CWT	4,629,905.62	184,062,883.38
Tax Still Due		P 544,326,741.97
Add: 20% Interest (10/16/07 to 4/30/11)		385,262,492.78
Compromise		50,000.00
DEFICIENCY INCOME TAX		**P 929,639,234.75**

VALUE-ADDED TAX			
Sales *per* VAT Return			P 3,635,531,821.35
Add: Findings Disallowances			
Undeclared Sales		P944,803,050.66	
Imputed Sale on Undeclared Purchases		194,136,671.71	1,138,939,722.37
Sales *per* Investigation Subject to VAT			P 4,774,471,543.72
Multiplied by Tax Rate			12%
Value Due Thereon			P 572,936,585.25
Less: Input Tax *Per* Return		P207,200,500.24	
Disallowed Input from Overstated			
Less: Purchases	P 4,967,624.28		
Input Tax *per* SLP Directly Identifiable to Exempt Transactions	789,633.64		
Input Tax *per* SLP Allocable to Exempt Transactions	5,610,810.37		
Unaccounted Presumptive Input Tax	11,932,679.63		

VAT PAYABLE *PER* INVESTIGATION	84,202,078.84	107,502,886.76	99,697,613.48
Less: VAT paid *per* Return			P 473,238,971.77
Advance Payments		P103,441,316.95	
Monthly Payment		126,961,783.92	230,403,100.87
VAT Still Due			242,835,870.90
Add: 20% Interest (07/26/07 to 4/30/11)			182,666,484.48
Compromise			50,000.00
DEFICIENCY VAT			**P 425,552,355.38**

Withholding Taxes – Compensation (WC)	
Compensation *per* FS	P 294,322,953.00
Less: Retirement Benefits	37,642,932.00
Compensation Subject to Withholding Tax	256,680,021.00
Per 1601C	226,434,919.32
Still Subject to Withholding Tax	30,245,101.68
Multiplied by Tax Rate	32%
Deficiency Tax	9,678,432.54
Add: 20% Interest (07/11/07 to 04/30/11)	7,360,989.94
Compromise	25,000.00
DEFICIENCY WITHHOLDING TAX ON COMPENSATION	**P 17,064,422.48**

Withholding Tax - Expanded (WE)	
Taxable Basis *per* Alphalist	P 1,848,081,511.56
Add: Income Payments not subjected to WE	1,877,830,493.02
Taxable Basis *per* Audit	P 3,725,912,004.58
Tax Due	65,929,625.81
Add: Unremitted Tax	62,418.35
Total Tax Due	P 65,990,044.16
Less: Tax already paid	37,415,645.58
Deficiency Tax	P 28,574,398.58
Add: 20% Interest (07/11/07 to 04/30/11)	21,733,951.40
Compromise	25,000.00
DEFICIENCY EXPANDED WITHHOLDING TAX	**P 50,333,349.98**

DOCUMENTARY STAMP TAX		
WAREHOUSE RECEIPTS (QUEDANS ISSUED-87,980 PCS)	TAX BASE	DST
TAX:	87,980.00	
P15.00 ON EACH WAREHOUSE RECEIPT		P 1,319,700.00
Lease and Other Hiring Agreements		
Rent Expense *per* FS	P45,866,540.00	
TAX: On Excess (P1.00 *per* P1,000.00)	2,000.00	3.00
	45,864,540.00	45,864.54
		45,867.54
Indemnity Bonds		
Indemnity and Guarantee Agreements	3,000,000.00	
TAX:		
P0.30 on each P4.00		225,000.00
Promissory Notes/Debt Instruments	P155,000,000.00	
Short Term Borrowing	81,839,081.00	
Advances to Related Parties	78,230,749.00	
Advances to Planters	53,333,776.00	
Advances to raw sugar purchases	34,989,422.00	
Advances to related parties	6,495,926.00	
Total	P409,888,954.00	
TAX: P1.00 ON EACH P200.00		P 2,049,444.77
Total DST Due		3,640,012.31
Add: 20% Interest (07/11/07 to 4/30/11)		2,768,433.20
Compromise		25,000.00
DEFICIENCY DOCUMENTARY STAMP TAX		**P 6,433,445.51**

GRAND TOTAL	**P1,429,024,808.10**

15. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue [v.] Bank of the Philippines Islands*:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by [his/her] superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

16. Anent the allegation of petitioner that the [FAN] issued on May 6, 2011 is barred by prescription, when respondent has no longer the power to make said assessment because her authority to do so had already prescribed is totally misleading.

16.1 The provisions of Section 222 of the [1997 NIRC] as amended is instructive on this matter, which provides:

> "**Section 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the**

expiration of the period previously agreed upon." [Emphasis supplied]

Evidently, the right of respondent to assess petitioner for its deficiency taxes for fiscal year ending June 30, 2007 did not prescribe in view of petitioners execution of Waiver of the Statute of Limitations under the [1997 NIRC], as amended, ("Waiver," for brevity), which extended the period of assessment. Petitioner executed the first waiver on [April 26, 2010] extending the period within which to assess petitioner or until December 31, 2010. The waiver was signed by Ms. Darlene A. Binay, Department Head-Accounting, duly authorized representative of petitioner. A second waiver was executed on [October 18, 2010], extending the period within which to assess petitioner or until June 30, 2011. The third waiver was again executed on [January 12, 2011] extending the period to assess petitioner on or until December 31, 2011. Petitioner cannot impugn the validity of the waivers executed because the same are valid and in accordance with laws rules and regulations.

Respondent humbly manifests that [the] three (3) waivers were executed by and between the Commissioner and petitioner, through the person of Ms. Darlene A. Binay-Department Head-Accounting with the intention of extending the period of assessment until December 31, 2011.

The execution of the waiver[s] by both parties proved to be beneficial to petitioner considering that aforesaid waiver[s] constitute as tools for petitioner by providing it enough time to gather its voluminous documents/records for the conduct of audit by respondent. The waiver[s] eventually led to the issuance of the [PAN], [FLD] and [FAN]. Petitioner failed to provide complete supporting documents to refute the findings despite ample time was given by respondent, thus, assessment for deficiency taxes still resulted after evaluation and consideration of the documents and explanation submitted by petitioner.

It is quite absurd and unfair that when the PAN, [FLD], FAN and FDDA proved to be adverse to petitioner, the very same waiver[s] utilized by petitioner for its own advantage will now be used by the very same petitioner to defeat the validity of the waiver[s] it voluntarily executed. Ergo, petitioners deafening silence and failure to challenge the legality of the waivers within the administrative level operates as an estoppel on its part to question the same before the Honorable Court.

Throughout the whole thing, petitioner was compliant with how the situation stands and when it realized that a deficiency tax assessment looms over its head, only then did it voice out an objection to the execution of another waiver. This is truly a case of estoppel.

Article 1431 of the New Civil Code is quite instructive in providing that an admission or representation is rendered conclusive upon the person making it and cannot be denied against the person relying upon it. A party, having performed affirmative acts upon which another person based [his/her] subsequent action, cannot thereafter refute [his/her] acts or renege on the effects of the same, to the prejudice of the latter.

In the case of *Philippine Journalists, Inc. [v.] Commissioner of Internal Revenue* the Supreme Court held:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes."

The very soul of the doctrine enunciated in the PJI case is that the waiver of the Statute of Limitations can never be used as an instrument of malice. However, respondent would like to point out that this doctrine was never meant to favor one party over another where both were at fault.

Therefore, the waivers executed by petitioner are valid, thus extending respondent's period to assess petitioner until December 31, 2011.

In view thereof, the [FLD] and [FAN] received by petitioner on May 6, 2011 was issued well within the prescriptive period.

17. It is a well- settled rule in taxation that the burden of proof is on the taxpayer to present evidence to show the incorrectness of the assessment.

18. The assessment in the amount of [Php]345,249,425.93 was issued in accordance with law and regulations.

19. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularit[y] in the performance of duties, an assessment duly made by a [BIR] examiner, and approved by [his/her] superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (*Sy Po [v.] Court of Tax Appeals, 164 SCRA 524*). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

Petitioner and respondent filed their respective Pre-trial Briefs on October 1, 2012[27] and September 18, 2012[28].

On November 14, 2012, the parties filed their Joint Stipulation of Facts ("JSFI")[29], thus, a Pre-Trial Order[30] was issued on December 12, 2012.

On March 21, 2014, petitioner filed its Formal Offer of Evidence With Motion for Permanent Marking[31], which was resolved by the Court in its Resolution[32] dated June 17, 2014.

[27] *Id.*, pp. 267-292.
[28] *Id.*, pp. 252-264.
[29] *Id.*, pp. 296-318.
[30] *Id.*, pp. 491-502.
[31] *Id.*, pp. 1029-1103, with Annexes.
[32] *Id.*, pp. 1564-1565.

On August 8, 2014, respondent filed her Formal Offer of Documentary Evidence[33], which was resolved by the Court in its September 16, 2014 Resolution[34].

In compliance to the July 24, 2014 Minute Resolution of the Court granting the parties a period of thirty (30) days from receipt of the Court's Resolution on respondent's Formal Offer of Evidence to file their respective memoranda, petitioner and respondent then filed their Memoranda on October 22, 2014[35], and November 24, 2014[36], respectively.

On December 1, 2014, the Court promulgated a Resolution[37] submitting the case for Decision, hence, this Decision.

The Issues[38]

The issues for consideration of the Court are as follows:

1. WHETHER OR NOT THE RIGHT OF THE GOVERNMENT TO ASSESS PETITIONER FOR DEFICIENCY INCOME TAX, VAT, WTC, EWT AND DST FOR FISCAL YEAR ENDING JUNE 30, 2007 HAS PRESCRIBED;

2. ASSUMING *ARGUENDO* THAT THE RIGHT OF THE GOVERNMENT TO ASSESS DEFICIENCY TAXES FOR THE FISCAL YEAR ENDING JUNE 30, 2007 HAS NOT YET PRESCRIBED, WHETHER OR NOT THE RIGHT OF PETITIONER TO DUE PROCESS WAS VIOLATED, RENDERING THE FAN AND THE FDDA VOID;

3. ASSUMING, FOR THE SAKE OF ARGUMENT, THAT THE RIGHT OF THE GOVERNMENT TO ASSESS DEFICIENCY TAXES HAS NOT YET PRESCRIBED, WHETHER OR NOT THE ASSESSMENT FOR ALLEGED DEFICIENCY IT, VAT, WTC, EWT AND DST FOR FISCAL YEAR ENDING JUNE 30, 2007 HAS FACTUAL AND LEGAL BASES;

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[33] *Id.*, pp. 1596-1605.
[34] *Id.*, pp. 1622-1623.
[35] *Id.*, pp. 1624-1683.
[36] *Id.*, pp. 1689-1713.
[37] *Id.*, p. 1716.
[38] *Id.*, p. 495.

4. WHETHER OR NOT PETITIONER IS LIABLE TO PAY COMPROMISE PENALTY ON THE ALLEGED DEFICIENCY IT, VAT, WTC, EWT AND DST; AND

5. WHETHER OR NOT PETITIONER IS LIABLE FOR THE DEFICIENCY IT, VAT, WTC, EWT AND DST ASSESSMENTS FOR FISCAL YEAR ENDING JUNE 30, 2007 IN THE AGGREGATE AMOUNT OF PHP345,249,425.93.

Petitioner's Arguments

Petitioner avers that in accordance with *Section 203 of the 1997 NIRC* providing a period of three (3) days from the filing of a return for the government to assess the related tax, and considering that it received the FAN only on May 6, 2011, the assessment is barred by prescription; that the waivers it executed are invalid and should not have the effect of extending the prescriptive period; and that it is not liable to pay compromise penalty.

It further argues that assuming prescription has not yet set in, petitioner's right to due process was violated since the FDDA raised new deficiency tax assessments outside the scope of the FAN, rendering the FAN and the FDDA void; and that the FAN and the FDDA failed to indicate factual and legal bases.

Respondent's Counter-Arguments

Respondent counters that its right to assess the aforestated taxes has not yet prescribed; that the waivers are valid and effectively extended the three (3)-year period to assess; that it observed procedural and substantial due process in issuing both FAN and FDDA; and that the assessment has factual and legal bases.

The Ruling of the Court

The assessments relating to IT, VAT, WTC, and EWT already prescribed.

Section 203 of the 1997 NIRC, as amended, mandates that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid, to wit:

> SECTION 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [Emphases ours]

Since the instant case involves deficiency Income Tax, VAT, WTC, and EWT, the prescribed due dates for filing of the returns, to be used as bases for the three (3)-year prescriptive period, varies accordingly.[39]

Income Tax

Section 77(B) of the 1997 NIRC, as amended, provides that the filing of the Annual Income Tax Return shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be, to wit:

> SECTION 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* -
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or

[39] DST to be discussed separately.

before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. [Emphasis ours]

Value-added Tax

The filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter. *Section 114(A) of the 1997 NIRC* provides, as follows:

SECTION 114. *Return and Payment of Value-added Tax.-*

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

Creditable and Expanded Withholding Taxes

Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) must be filed within ten (10) days after the end of each month. However, for the month of December, it shall be filed on or before January 15 of the following year. *Section 58 of the 1997 NIRC*, as amended, provides that:

SECTION 58. *Returns and Payment of Taxes Withheld at Source. -*

(A) *Quarterly Returns and Payments of Taxes Withheld.* - xxx

xxx xxx xxx

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government. [Emphasis ours]

However, the above provision was amended by *Section 2.58(A)(2) of RR No. 2-98*[40], as amended by *RR No. 17-03*[41], *viz.*:

SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.*

(A) *Monthly return and payment of taxes withheld at source* –

xxx xxx xxx

(2) *WHEN TO FILE* –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located. xxx [Emphases ours]

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[40] *Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended, "Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Tax,"* April 17, 1998.

[41] *"Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes,"* March 31, 2003.

Amendment of Tax Returns

Should the taxpayer opt to amend the returns already filed, *Section 6(A) of the 1997 NIRC*, grants it/him/her three (3) years from the date of filing of the original tax return to make the necessary amendment as long as the BIR has not yet issued a notice of investigation or audit relative to the tax return filed, *viz.*:

> SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or [his/her] duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from [his/her] duly authorized representative.
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer. [Emphasis ours]

As to the running of the three (3)-year period to assess relative to amended returns, the Supreme Court *En Banc* has settled this issue as early as 1965 in the case of *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd., G.R. No. L-19727 & L-19903, May 20, 1965, 14 SCRA 52*, to wit:

> Accordingly, he [(Commissioner)] would wish to press for the counting of the prescriptive period from the filing of the amended return.

> To our mind, the Commissioner's view should be sustained. The changes and alterations embodied in the amended income tax return consisted of the exclusion of reinsurance premiums received from domestic insurance companies by Phoenix Assurance Co., Ltd.'s London head office, reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines and various items of deduction attributable to such excluded reinsurance premiums thereby substantially modifying the original return. Furthermore, although the deduction for head office expenses allocable to Philippine business, whose disallowance gave rise to the deficiency tax, was claimed also in the original return, the Commissioner could not have possibly determined a deficiency tax thereunder because Phoenix Assurance Co., Ltd. declared a loss of [Php]199,583.93 therein which would have more than offset such disallowance of [Php]15,826.35. <u>Considering that the deficiency assessment was based on the amended return which, as aforestated, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income tax return.</u> From August 30, 1955, when the amended return was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.
>
> To strengthen our opinion, we believe that to hold otherwise, we would be paving the way for taxpayers to evade the payment of taxes by simply reporting in their original return heavy losses and amending the same more than five years later when the Commissioner of Internal Revenue has lost [his/her] authority to assess the proper tax thereunder. The object of the Tax Code is to impose taxes for the needs of the Government, not to enhance tax avoidance to its prejudice. [Emphasis ours]

Therefore, should the changes in the amended return be substantial, the counting of the prescriptive period should start from the date the same was filed. Otherwise, the period should commence from the filing date the original return.

Extension of Period to Assess

Section 222(b) of the 1997 NIRC provides that the prescription period in *Section 203 of the 1997 NIRC* may be extended by way of a written agreement between the taxpayer and the CIR, entered into before the lapse of the said period, *viz.*:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. [Emphases ours]

Section 222(b) above was later implemented by the BIR through *Revenue Memorandum Order ("RMO") No. 20-90, April 4, 1990,* as amended, to wit:

> Pursuant to Section 223 of the [1997 NIRC], internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after ______ 19 ___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer [himself/herself] or [his/her] duly authorized representative.

In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the [CIR] or the revenue official authorized by [him/her], as hereinafter provided, shall sign the waiver indicating that the [BIR] has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

1. ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than [Php]500,000.00
2. Deputy Commissioner	For tax cases involving more than [Php]500,000.00 but not more than [Php]1M
3. Commissioner	For tax cases involving more than [Php]1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the

Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. <u>The foregoing procedures shall be strictly followed.</u> Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. [Emphases ours]

The above *RMO No. 20-90* was later modified by *Revenue Delegation Authority Order ("RDAO") No. 05-01, August 2, 2001, viz.:*

REVENUE DELEGATION AUTHORITY ORDER NO. 05-01

SUBJECT : *Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations*

TO : *All Internal Revenue Officers and Employees and Others Concerned*

a. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

i. *For National Office cases*

Designated Revenue Official

1. Assistant Commissioner (ACIR), — For tax fraud and policy Enforcement Service cases

2. ACIR, Large Taxpayers Service — For large taxpayers cases other than those cases falling under Subsection B hereof

3. ACIR, Legal Service — For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena Duces Tecum

4. ACIR, Assessment Service (AS) — For cases which are pending in or subject to review or approval by the ACIR, AS

5. A CIR, Collection Service For cases pending action in the Collection Service

B. For cases in the Large Taxpayers District Office (LTDO)

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in [his/her] possession.

C. For Regional cases

Designated Revenue Official

1. Revenue District Officer Cases pending investigation/ verification/ reinvestigation in the Revenue District Offices

2. Regional Director Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or [its/his/her] authorized representative before affixing [his/her] signature to signify acceptance of the same. <u>In case</u>

N

the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.

b. *Repealing Clause*

All other issuances and/or portions thereof inconsistent herewith are hereby repealed and amended accordingly.

c. *Effectivity*

This revenue delegation authority order shall take effect immediately upon approval.

ATTACHMENT

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE

I, _____________ of _____________________________ request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its ________________________ tax liabilities for the year ________. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than __________.

The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a

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credit or refund of such tax that may have been paid for the same year pursuant to the provisions of Section 204 and 229 of the National Internal Revenue Code.

The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.

Executed this __________ day of ___________ in _______________ Philippines.

____
TAXPAYER OR DULY AUTHORIZED SIGNATORY

____
POSITION

____
WITNESS

ACCEPTED BY:

Commissioner of Internal Revenue
By:

____
REVENUE OFFICIAL/POSITION

________________________ __________
OFFICE DATE

ACKNOWLEDGMENT

Republic of the Philippines) S.S.
__________________)

In the City of _________________, on this _______ day of _______________, personally appeared before me _______________, with Community Tax Certificate No. ____________ issued at ____________ on __________, in his/her capacity as ______________ of _____________, known to me and to me known to be the same person who executed the foregoing waiver for and in behalf of the said taxpayer, and he/she acknowledged to me that the same is the voluntary act and deed of _____________________________, and that he/she is duly authorized to sign the same.

WITNESS MY HAND AND SEAL at the place and on the date first above written.

Notary Public

N

Until ________
PTR No.______
Issued at _____
On __________

Doc. No.______
Page No.______
Book No.______
Series No.______ [Emphases ours]

Based on the BIR records, petitioner's tax returns, other than DST, for taxable year ended June 30, 2007 were filed on the dates provided below:[42]

TAX RETURNS	EXHIBIT	DATE OF FILING
Income Tax – Annual filing		
Annual Income Tax Return	"N"	October 10, 2007[43]
Amended Annual Income Tax Return	**"N-1"**	**October 15, 2007[44]**
VAT – Quarterly filing		
1st Quarter VAT Return	"O"	October 23, 2006[45]
Amended 1st Quarter VAT Return	**"O-1"**	**October 30, 2006[46]**
Amended 1st Quarter VAT Return	**"O-2"**	**December 4, 2006[47]**
2nd Quarter VAT Return	"P"	January 23, 2007[48]
3rd Quarter VAT Return	"Q"	April 24, 2007[49]
Amended 3rd Quarter VAT Return	**"Q-1"**	**April 30, 2007[50]**
4th Quarter VAT Return	"R"	July 24, 2007[51]
Amended 4th Quarter VAT Return	**"R-1"**	**July 30, 2007[52]**
Amended 4th Quarter VAT Return	**"R-2"**	**August 2, 2007[53]**
EWT – Monthly filing		
July 2006 CWT Remittance Return	"T"	August 11, 2006[54]
August 2006 CWT Remittance Return	"T-1"	September 14, 2006[55]
September 2006 CWT Remittance Return	"T-2"	October 11, 2006[56]
October 2006 CWT Remittance Return	"T-3"	November 14, 2006[57]
November 2006 CWT Remittance Return	"T-4"	December 13, 2006[58]
December 2006 CWT Remittance Return	"T-5"	January 15, 2007[59]

[42] The amended returns were highlighted, for easy reference.
[43] *BIR Records*, pp. 1191-1193.
[44] *Id.*, pp. 1194-1196.
[45] *Id.*, pp. 1198-1199.
[46] *Id.*, pp. 1200-1201.
[47] *Id.*, pp. 1202-1203.
[48] *Id.*, pp. 1204-1205.
[49] *Id.*, pp. 1206-1207.
[50] *Id.*, pp. 1208-1209.
[51] *Id.*, pp. 1210-1211.
[52] *Id.*, pp. 1212-1213.
[53] *Id.*, pp. 1214-1215.
[54] *Id.*, pp. 1216-1217.
[55] *Id.*, pp. 1218-1219.
[56] *Id.*, pp. 1220-1221.
[57] *Id.*, pp. 1222-1223.
[58] *Id.*, pp. 1224-1225.
[59] *Id.*, pp. 1226-1227.

Amended December 2006 CWT Remittance Return	**"T-6"**	**January 17, 2007[60]**
January 2007 CWT Remittance Return	"T-7"	February 14, 2007[61]
February 2007 CWT Remittance Return	"T-8"	March 10, 2007[62]
March 2007 CWT Remittance Return	"T-9"	April 13, 2007[63]
April 2007 CWT Remittance Return	"T-10"	May 9, 2007[64]
Amended April 2007 CWT Remittance Return	**"T-11"**	**May 1, 2007[65]**
May 2007 CWT Remittance Return	"T-12"	June 8, 2007[66]
June 2007 CWT Remittance Return	"T-13"	July 11, 2007[67]
Amended June 2007 CWT Remittance Return	**"T-14"**	**July 16, 2007[68]**

After careful scrutiny of the original and amended returns presented and taking into account that the notice of investigation (through the LOA) was issued on October 10, 2007, the Court finds that the prescriptive period shall be based on the following dates:

TAX RETURNS	EXHIBIT	DATE OF FILING
Income Tax – Annual filing		
Annual Income Tax Return	"N"	October 10, 2007[69]
VAT – Quarterly filing		
1st Quarter VAT Return	"O"	October 23, 2006[70]
2nd Quarter VAT Return	"P"	January 23, 2007
3rd Quarter VAT Return	"Q"	April 24, 2007[71]
4th Quarter VAT Return	"R"	July 24, 2007[72]
EWT – Monthly filing		
July 2006 CWT Remittance Return	"T"	August 11, 2006
August 2006 CWT Remittance Return	"T-1"	September 14, 2006
September 2006 CWT Remittance Return	"T-2"	October 11, 2006
October 2006 CWT Remittance Return	"T-3"	November 14, 2006
November 2006 CWT Remittance Return	"T-4"	December 13, 2006
December 2006 CWT Remittance Return	"T-5"	January 15, 2007[73]
January 2007 CWT Remittance Return	"T-7"	February 14, 2007

[60] *Id.*, pp. 1228-1229.
[61] *Id.*, pp. 1230-1231.
[62] *Id.*, pp. 1232-1233.
[63] *Id.*, pp. 1234-1235.
[64] *Id.*, pp. 1236-1237.
[65] *Id.*, pp. 1238-1239.
[66] *Id.*, pp. 1240-1241.
[67] *Id.*, pp. 1242-1243.
[68] *Id.*, pp. 1244-1245.
[69] The Amended Return only changed the amount of Minimum Corporate Income Tax. Since the Regular Corporate Income Tax is higher, the latter was used in the computation of tax payable. Hence, the amendment is not substantial.
[70] The first Amended Return only revised the number of attached pages; the second amended return was identical to the former. Hence, the amendment is not substantial.
[71] The Amended Return only revised the number of attached pages. Hence, the amendment is not substantial.
[72] The first and second Amended Return only revised the number of attached pages and the change in amount to be paid was based merely on the reflection of the payment accompanied by the filing of the Original Return. Hence, the amendments are not substantial.
[73] The Amended Return only revised the number of attached pages. Hence, the amendment is not substantial.

February 2007 CWT Remittance Return	"T-8"	March 10, 2007
March 2007 CWT Remittance Return	"T-9"	April 13, 2007
April 2007 CWT Remittance Return	"T-10"	May 9, 2007[74]
May 2007 CWT Remittance Return	"T-12"	June 8, 2007
Amended June 2007 CWT Remittance Return	"T-14"	July 16, 2007[75]

The table below will help shed light into the reckoning dates of the three (3)-year period to assess:

TAX RETURNS	ACTUAL DATE OF FILING	LAST DATE TO FILE RETURN	LAST DAY TO ASSESS
Income Tax – Annual filing			
Annual Income Tax Return	October 10, 2007	**October 15, 2007**	October 15, 2010
VAT – Quarterly filing			
1st Quarter VAT Return *(7/01/2006 to 9/30/2006)*	October 23, 2006	**October 25, 2006**	October 25, 2009
2nd Quarter VAT Return *(10/01/2006 to 12/31/2006)*	January 23, 2007	**January 25, 2007**	January 25, 2010
3rd Quarter VAT Return *(01/01/2007 to 03/31/2007)*	April 24, 2007	**April 25, 2007**	April 25, 2010
4th Quarter VAT Return *(04/01/2007 to 06/30/2007)*	July 24, 2007	**July 25, 2007**	July 25, 2010
EWT – Monthly filing			
July 2006 CWT Remittance Return	**August 11, 2006**	August 10, 2006	August 11, 2009
August 2006 CWT Remittance Return	**September 14, 2006**	September 10, 2006	September 14, 2009
September 2006 CWT Remittance Return	**October 11, 2006**	October 10, 2006	October 11, 2009
October 2006 CWT Remittance Return	**November 14, 2006**	November 10, 2006	November 14, 2009
November 2006 CWT Remittance Return	**December 13, 2006**	December 10, 2006	December 13, 2009
December 2006 CWT Remittance Return	**January 15, 2007**	**January 15, 2007**	January 15, 2010
January 2007 CWT Remittance Return	**February 14, 2007**	February 10, 2007	February 14, 2010
February 2007 CWT Remittance Return	**March 10, 2007**	**March 10, 2007**	March 10, 2010
March 2007 CWT Remittance Return	**April 13, 2007**	April 10, 2007	April 13, 2010
April 2007 CWT Remittance Return	May 9, 2007	**May 10, 2007**	May 10, 2010
May 2007 CWT Remittance Return	June 8, 2007	**June 10, 2007**	June 10, 2010
Amended June 2007 CWT Remittance Return	**July 16, 2007**	July 10, 2007	July 16, 2010

Based on the records, the FANs[76] and the FLD[77] issued by respondent on May 6, 2011, were received by petitioner on even date or on **May 6, 2011**[78]. Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer,[79] the three (3)-year period within which to assess petitioner shall be based on **May 6, 2011**. Looking into the last dates to assess on the table above, and considering only *Section 203 of the 1997 NIRC,* it appears that respondent's right to assess all the foregoing taxes have already prescribed.

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[74] The Amended Return only revised the number of attached pages. Hence, the amendment is not substantial.

[75] The Amended Return reflected an increase in payment of rental and contractor's income, resulting to an increase in the total amount of tax due from Php3,784,151.86 to Php3,889,733.24, or a difference in the amount of Php105,581.38; it likewise revised the number of attached pages. Hence, the amendment is substantial.

[76] *Records,* pp. 1135-1139.

[77] *Id.,* pp. 1131-1134.

[78] *Id., JSFI,* p. 297.

[79] *Basilan Estates, Inc. v. Commissioner of Internal Revenue, et. al.,* G.R. No. L-22492, September 5, 1967, 21 SCRA 17.

As discussed, however, the prescriptive period to assess may be suspended by entering into a valid Waiver of the Statute of Limitations. Hence, there is a need to determine whether the waivers executed by the parties are valid in order to effect the suspension of the prescriptive period.

The Supreme Court had the occasion to clarify *Section 222(b) of the 1997 NIRC* and *RMO No. 20-90* in the recent case of *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014,* in the following manner:

> The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law.
>
> The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-9010 on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. In the execution of this waiver, the following procedures should be followed: xxx
>
> xxx xxx xxx
>
> Furthermore, jurisprudence is replete with requisites of a valid waiver:
>
>> 6. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>>
>> 7. The waiver must be signed by the taxpayer [himself/herself] or [his/her] duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. <u>In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.</u>

8. The waiver should be duly notarized.

9. The CIR or the revenue official authorized by [him/her] must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by [him/her] must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or [his/her] duly authorized representative.

10. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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

In Philippine Journalist, Inc. v. Commissioner of Internal Revenue, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of

> limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally. [Emphases ours]

Based on the three (3) waivers on file, the Court has the following findings:

	1ST WAIVER[80]	2ND WAIVER[81]	3RD WAIVER[82]
Signatures			
Taxpayer	April 26, 2010	October 18, 2010	January 12, 2011
	Signed by Darlene A. Binay Dept. Head Acctg. Authorized Signatory	Signed by Darlene A. Binay Department Head Accounting	Signed by Darlene A. Binay Department Head Accounting
BIR	June 21, 2010	October 28, 2010	February 9, 2011
	Signed by Zenaida G. Garcia Assistant Commissioner LTS (Excise and LTDOs) CIR Joel Tan-Torres's name was indicated but there was no signature	Signed by Zenaida G. Garcia Assistant Commissioner LTS (Excise and LTDOs) CIR Kim S. Jacinto-Henares' name was indicated but there was no signature	Signed by Zenaida G. Garcia Assistant Commissioner Large Taxpayers Service CIR Kim S. Jacinto-Henares' name was indicated but there was no signature
Extension until	December 31, 2010	June 30, 2011	December 31, 2011
Notarized	June 15, 2010	October 19, 2010	February 4, 2011
	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010

Anent the First Waiver, the Court found that at the time the same was signed by the CIR representative on June 21, 2010, all the assessed taxes have prescribed, save for Income Tax, 4th Quarter VAT, and June CWT. Moreover, it did not include the duly notarized and written authority of Ms. Darlene A. Binay to sign the same on behalf of petitioner, same goes for the 2 other waivers. As to The Third Waiver which aims to further extend the prescriptive period from October 28, 2010 until February 19, 2011, the notary public is clearly unauthorized

[80] *Records, Exhibit* "K," p. 1188; *Exhibit* "R-2," *BIR Records*, p. 126.
[81] *Id., Exhibit* "L," p. 1189; *BIR Records, Exhibit* "R-7," p. 129.
[82] *Id., Exhibit* "M," p. 1190; *BIR Records, Exhibit* "R-8," p. 133.

to notarize the same. It was notarized on February 31, 2011 but the notary public's authorization is only until December 31, 2010. It is the BIR's obligation to ensure proper notarization of the waiver, which it failed to do.

Moreover, as provided in the case of *Dela Rama v. Papa*[83], improperly notarized documents do not enjoy the presumption of due execution and authenticity, presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.[84] Therefore, the fact that a deed is notarized is not a guarantee of the validity of its contents and the presumption of regularity may be rebutted by clear and convincing evidence to the contrary.[85]

Considering that all the waivers are invalid, they will not effectively extend the period to assess, and respondent's right to assess all the foregoing taxes has already prescribed.

Petitioner is liable to pay deficiency DST.

The filing of the DST Returns must be made within ten (10) days after the close of the month when the subject document was made, signed, issued, accepted, or transferred. *Section 200(B) of the 1997 NIRC* provides, as follows:

> SECTION 200. *Payment of Documentary Stamp Tax.* –
>
> xxx xxx xxx
>
> (B) *Time for Filing and Payment of the Tax.* — Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

[83] G.R. No. 142309, January 30, 2009, 577 SCRA 233.
[84] *Id.*
[85] *San Juan v. Offril*, G.R. No. 154609, April 24, 2009, 586 SCRA 439.

Corollary thereto, *Section 5 of RR No. 06-01* mandates the filing of DST returns and payment of the DST due thereon within five (5) days after the close of the month when the subject document was made, signed, issued, accepted, or transferred, to wit:

> **SECTION 5. Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon.** — The time for filing of the documentary stamp tax returns and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to existing regulations, as presented below.
>
> (1) Paragraph 19 of Revenue Memorandum Circular No. 1-98 is hereby amended to read as follows:
>
> "(19) <u>The documentary stamp tax return shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.</u>"
>
> (2) For large taxpayers, Section 4(3.6) of Revenue Regulations No. 1-98 is hereby amended to read as follows:
>
> "**Section 4.** <u>*Filing of Returns and Payment of Taxes*</u>. —
>
> xxx xxx xxx
>
> 3. ***When to File and Pay***
>
> *3.6 Documentary Stamp Taxes*
>
> <u>Large taxpayers shall pay their documentary stamp taxes within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred by the filing of the documentary stamp tax returns, through purchase or actual affixture or by imprinting the documentary stamps through a documentary stamp tax metering machine.</u>" [Emphases ours]

DST is paid on a *per* transaction basis. Hence, it is important to look into whether petitioner filed the required returns relative to the transactions assessed. If yes, the three (3)-year period of prescription shall apply. Otherwise, the ten (10) year period is applicable in accordance with *Section 222(a) of the 1997 NIRC*, to wit:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. [Emphases ours]

For transactions subject to DST but not included in the returns filed, the same have not yet prescribed. Petitioner's taxable year starts on July 1, 2006, hence, it could file a DST return as early as the said date.[86] Even if the Court works under the assumption that respondent discovered the non-filing of DST returns as early as July 1, 2006, the ten (10)-year period to assess will end on July 1, 2016. Having issued the FAN early enough to reach petitioner on May 6, 2011, the line item assessments related to those transactions not declared in the returns have not yet prescribed.[87]

Scrutiny of the records shows that the DST returns filed by petitioner for FY 2007 pertain only to its warehouse receipts[88] transactions for which it paid DST amounting to Php1,780,375.00, detailed as follows:

TAX RETURNS	EXHIBIT	DATE OF FILING	TRANSACTION DATE	DST PAYMENT
DST – Monthly filing				
DST Declaration/Return	"Z"	November 28, 2006[89]	November 21, 2006	P 180,375.00
DST Declaration/Return	"Z-1"	November 28, 2006[90]	Nov 27, 2006	200,000.00
DST Declaration/Return	"Z-2"	January 4, 2007[91]	January 3, 2007	200,000.00

[86] Should it enter into a transaction subject to DST and file the return on the said date.
[87] The period between July 1, 2006 (earliest date to discover non-filing) and May 6, 2011 (date of assessment) is roughly 4 years and 10 months only.
[88] Based on the Alphanumeric Tax Code ("ATC") DS115 and Php15.00 DST rate indicated on the returns.
[89] *Records*, pp. 1332-1333.
[90] *Id.*, pp. 1334-1335.
[91] *Id.*, pp. 1336-1337; date of filing is unclear but considering that payment was made on January 4, 2007 (a day after transaction date), the same was also deemed by the Court as the date of filing.

DST Declaration/Return	"Z-3"	January 4, 2007[92]	January 3, 2007	200,000.00
DST Declaration/Return	"Z-4"	January 30, 2007[93]	January 29, 2007	200,000.00
DST Declaration/Return	"Z-5"	January 30, 2007[94]	January 29, 2007	200,000.00
DST Declaration/Return	"Z-6"	March 6, 2007[95]	February 28, 2007	200,000.00
DST Declaration/Return	"Z-7"	March 6, 2007[96]	February 28, 2007	200,000.00
DST Declaration/Return	"Z-8"	April 25, 2007[97]	April 23, 2007	200,000.00
TOTAL PAYMENTS				P 1,780,375.00

While respondent imposed DST in the amount of Php1,319,700.00 on petitioner's warehouse receipts transactions for the year 2007, such amount was also deducted by respondent in arriving at the basic deficiency DST due in the amount of Php2,241,955.21. Hence, the amounts assessed relate to transactions which were not included in the DST Returns, to which the ten (10)-year prescriptive period applies and were validly assessed.

The basic deficiency DST assessment of Php2,241,955.21 arose from petitioner's transactions relating to the following:

1. Lease and other hiring agreements in the amount of Php45,866,540.00;

2. Indemnity and guarantee agreements in the amount of Php3,000,000.00; and

3. Promissory notes and other debt instruments in the amount of Php409,888,954.00.

Considering that the determination of whether there was omission or failure to file DST return on the part of petitioner is intertwined with the correctness of the deficiency DST assessment on the aforementioned transactions, the Court shall likewise proceed to determine the correctness thereof.

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[92] *Id.*, pp. 1338; also, refer to previous unnumbered page for the return; date of filing is unclear but considering that payment was made on January 4, 2007 (a day after transaction date), the same was also deemed by the Court as the date of filing.
[93] *Id.*, pp. 1339-1340; date of filing is unclear but payment was made on January 31, 2015. Considering that *Exhibit* "Z-5" was filed on January 30, 2015, and that both *Exhibits* "Z-4" and "Z-5" were paid on the same date and bear the same stamps and signatures, the Court assumed that *Exhibit* "Z-4" was filed on the same date as *Exhibit* "Z-5," as part of the same batch.
[94] *Id.*, pp. 1341-1342.
[95] *Id.*, pp. 1343-1344.
[96] *Id.*, pp. 1345-1346.
[97] *Id.*, pp. 1347-1348.

Lease and Other Hiring Agreements - Php45,866,540.00

Invoking *Section 194 of the 1997 NIRC, as amended,* respondent imposed deficiency DST on the rental expenses reflected in petitioner's Audited Financial Statements ("AFS") for the FY 2007, particularly, under "Cost of sales" in the amount of Php38,646,664.00[98] and "General and administrative expenses" in the amount of Php7,219,876.00,[99] totaling Php45,866,540.00.

Petitioner, on the other hand, argues that it paid all DST due on its lease and other hiring agreements.

The Court finds the assessment improper.

Section *173 of the 1997 NIRC, as amended,* provides that:

> SEC. 173. *Stamp taxes upon documents, instruments, loan agreements, and papers.* — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had; *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. [Emphasis ours]

Relative thereto, *Section 194 of the 1997 NIRC,* states as follows:

> SEC. 194. *Stamp Tax on Leases and Other Hiring Agreements.* — On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax of Three pesos (P3.00) for the first Two thousand pesos (P2,000), or fractional

[98] *Exhibit* "BBBB-36," Note 20.
[99] *Exhibit* "BBBB-37," Note 22.

> part thereof, and an additional One peso (P1.00) for every One thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) for each year of the term of said contract or agreement. [Emphasis ours]

Therefore, DST accrues upon the execution of the contract or document. In *Philippine Home Assurance Corporation v. Court of Appeals*[100], the Supreme Court held that:

> In general, [DST] are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property. [Emphasis supplied]

Examination of petitioner's 2007 AFS shows that it incurred rental expenses of Php45,866,540.00 in relation to the following lease contracts with its intermediate parent, Roxas Holdings, Inc. ("RHI"), and CADPI Retirement Fund, Inc.:[101]

> b) Contract of lease with RHI for the rental of a parcel of land located in Barrio Lumbangan, Nasugbu, Batangas where the sugar manufacturing plant and residential staff houses of [petitioner] are located. The term of the lease is for ten crop years commencing on December 1, 2002 and will expire in November 2012.
>
> c) Contract of lease with CADPI Retirement Fund, Inc. for the rental of office premises located at 6th floor, Cacho Gonzales Building, Aguirre St., Makati City starting December 16, 2005. The lease is renewable annually. Monthly rental payments amount to ₱117,049.00. [Emphases ours]

Since petitioner's contracts of lease with RHI and CADPI Retirement Fund, Inc. were executed prior to FY 2007, it was erroneous on the part of respondent to assess petitioner deficiency DST thereon for such is beyond the scope of the present assessment. Thus,

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[100] G.R. No. 119446, January 21, 1999, 301 SCRA 443.
[101] *Exhibit* "BBBB-29," Note 15(b) and (c).

respondent's deficiency DST assessment on the rental expenses of Php45,866,540.00 is hereby cancelled.

Indemnity and Guarantee Agreements - Php3,000,000.00

Citing *Section 187 of the 1997 NIRC, as amended,* respondent assessed petitioner deficiency DST in the amount of Php225,000.00 on the Php3,000,000.00 guarantee fees reflected under Note 22 - General and administrative expenses[102] in petitioner's 2007 AFS.

As stated in Note 15(d)[103] of the 2007 AFS, the guarantee fees of Php3,000,000.00 were paid by petitioner in relation to the following:

> (d) Indemnity and guarantee agreement whereby RHI will continue to be a mortgagor under the mortgage trust indenture (MIT) between and among [petitioner], RHI and Bank of the Philippine Islands (BPI). RHI conveyed unto BPI as mortgage trustee its land located in Nasugbu, Batangas (mortgaged property). RHI agreed to continue to subject the mortgaged property to the MTI on the following conditions:
>
> - [Petitioner] shall protect and reimburse RHI with all expenses in case the mortgaged property is attached to satisfy the obligations of petitioner secured by the MTI; and
>
> - A guarantee fee/mortgaged fee shall be paid by [petitioner] to compensate RHI for the continuance of the mortgage.

Considering that respondent's assessment has factual basis, and tax assessments are presumed correct and made in good faith,[104] respondent's deficiency DST assessment in the amount of Php225,000.00 is hereby upheld.

Promissory notes and other debt instruments - Php409,888,954.00

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[102] *Exhibit* "BBBB-37."
[103] *Exhibit* "BBBB-29."
[104] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005, 454 SCRA 301.

Pursuant to *Section 179 of the 1997 NIRC, as amended by RA No. 9243 and RR No. 13-04,* respondent assessed petitioner deficiency DST on the following transactions totaling Php409,888,954.00, broken down as follows[105]:

Short-Term Borrowings	P 155,000,000.00
Current Portion of Long-Term Borrowings	81,839,081.00
Advances to Related Parties	78,230,749.00
Advances to Planters	53,333,776.00
Advances for Raw Sugar Purchases	34,989,422.00
Advances from Related Parties	6,495,926.00
Total	**P 409,888,954.00**

With regard to Short-Term Borrowings in the amount of Php155,000,000.00 and Current Portion of Long-Term Borrowings in the amount of Php81,839,081.00, petitioner avers that the DST due thereon were already deducted from the loan proceeds and were remitted by the lender-banks to the BIR.

The Court finds for petitioner.

Section 179 of the 1997 NIRC, as amended by RA No. 9243, provides as follows:

> SEC. 179. *Stamp Tax on All Debt Instruments.* On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only on documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to xxx promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. [Emphases ours]

[105] *Exhibit* "I," Annex A-2, Schedule L.

In relation thereto, *Sections 2 and 3 of RR No. 09-00* state that:

> SECTION 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax.*- (a) *In General.*- The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against '*the person making, signing, issuing, accepting, or transferring*' the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. <u>Any of the parties thereto shall be liable for the full amount of the tax due:</u> *Provided, however,* that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.
>
> (b) *Exception.*- Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.
>
> SECTION 3. *Mode of Payment and Remittance of the Tax.* - (a) *In General.*- <u>Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.</u>
>
> xxx xxx xxx
>
> (4) <u>When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code:</u> Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding.
>
> (a) <u>A bank</u>, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company; xxx [Emphases ours]

Based on the foregoing provisions, as a rule, any of the parties to the transaction subject to DST shall pay and remit the full amount of DST. However, if one of the parties to the said transaction is a bank, *inter alia*, the remittance of the DST shall be the responsibility of such bank.

As disclosed in Notes 10[106] and 13[107] of petitioner's 2007 AFS, petitioner obtained its short-term and long-term borrowings from various local banks. Such being the case, petitioner's lender-banks are the ones responsible for the remittance of the DST relative to the said borrowings. Hence, petitioner should not be assessed deficiency DST thereon.

Moreover, the deficiency DST assessment on the following should likewise be cancelled for being erroneous and having no factual basis:

1. Advances to Related Parties in the amount of Php78,230,749.00;

2. Advances to Planters in the amount of Php53,333,776.00;

3. Advances for Raw Sugar Purchases in the amount of Php34,989,422.00; and

4. Advances from Related Parties in the amount of Php6,495,926.00.

A perusal of petitioner's 2007 AFS[108] shows that the aforesaid amounts refer to year-end balances and do not actually represent new transactions entered into by petitioner during the FY 2007. Evidently, the deficiency DST assessment was a mere result of respondent's arbitrary computation.

While axiomatic is the fact that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on mere presumptions, no matter how logical the said presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[109]

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[106] *Exhibit* "BBBB-25."
[107] *Exhibit* "BBBB-26."
[108] *Exhibit* "BBBB-22," Note 6; *Exhibit* "BBBB-31," Note 15; *Exhibit* "BBBB-26," Note 12.
[109] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, 31 January 1962, 4 SCRA 182.

Compromise Penalty - Php25,000.00

Respondent's imposition of compromise penalty amounting to Php25,000.00 cannot be sustained. *Under RMO No. 01-90, as amended by RMO No. 19-07,* compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that the taxpayer refuses to pay the same.

It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because, by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying the penalty distinctly belongs to the taxpayer.[110] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[111]

Absent any clear showing that petitioner consented to the compromise penalty, its imposition should be deleted.

Based from the foregoing, petitioner's failure to file the required return and pay the DST relative to its Indemnity and Guarantee Agreement with RHI for the FY 2007 justifies the application of the ten (10)-year prescriptive period to assess under *Section 222(a) of the 1997 NIRC, as amended.*

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is hereby **ORDERED TO PAY** the deficiency DST assessment in the reduced amount of Php281,250.00, inclusive of the twenty five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC, as amended,* computed as follows:

Indemnity and Guarantee Agreements	P	3,000,000.00
Basic Deficiency DST (₱3,000,000.00 ÷ ₱4.00 x ₱.30)	P	225,000.00
Add: 25% Surcharge		56,250.00
Total Amount Due	**P**	**281,250.00**

110 *The Philippines International Fair, Inc. v. Collector of Internal Revenue, et. al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 774.
111 *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et. al.,* G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency DST of Php225,000.00 computed from July 5, 2007 until full payment thereof, pursuant to *Section 249(B) of the 1997 NIRC*; and

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php281,250.00, representing the basic deficiency DST of Php225,000.00; the twenty five percent (25%) surcharge of Php56,250.00; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from March 13, 2012 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC, as amended.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Took No Part)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice