REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

HOLCIM PHILIPPINES MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10414

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

2:25 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on December 3, 2020, prays for the cancellation of the assessments issued by respondent against petitioner for its alleged deficiency capital gains tax ("CGT") in the aggregate amount of Php355,479,878.19, inclusive of surcharges, interest and compromise penalty.[1]

The Facts

Petitioner Holcim Philippines Manufacturing Corporation is a domestic corporation duly registered and existing under the laws of the Philippines,[2] with principal office at Lugait Plant, Lugait, Misamis Oriental. It is registered with the

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1 Docket, Pre-Trial Order dated May 31, 2022, Summary of the Case, p. 900.
2 *Id.,* Exhibit "P-1", pp. 1005-1019.

Bureau of Internal Revenue ("BIR") under Taxpayer Identification No. 000-293-083.[3]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his Office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code ("NIRC"), as amended, and other tax laws, rules and regulations.[4]

On April 2, 2001, Republic Cement Corporation ("RCC") filed the letter dated March 16, 2001 with the BIR - Revenue District No. 048,[5] applying for a Certificate Authorizing Registration ("CAR") for the transfer of the shares of stocks of Iligan Cement Corp. ("ICC"). The shares were to be transferred from Alsons Cement Corp. ("ACC") (now petitioner Holcim Philippines Manufacturing Corporation) to RCC.

Thereafter, the BIR Large Taxpayers Service ("LTS") issued to ACC (petitioner herein) the letter dated July 5, 2001 signed by Revenue Officer ("RO") Walter A. Batoon,[6] requesting for a photocopy of the Sale and Purchase Agreement with Blue Circle Philippines, Inc. and supplemental agreements made effective as of July 20, 2000 and October 20, 2000. In compliance thereto, ACC (petitioner herein) submitted the Sale Purchase Agreement dated July 20, 1999 and Agreement dated July 20, 2000, which were received by RO Batoon on July 18, 2001.[7]

The BIR-LTS then issued the letter dated April 12, 2002,[8] inviting the President of ACC (petitioner herein) or its duly authorized representative for an informal conference to discuss the details of its findings anent the imposition of CGT, *inter alia*, summarized as follows:

SUMMARY OF DEFICIENCY TAXES

Tax Type	Basic CGT Still Due	Surcharge (25% on wrong venue)	Interest up to April 30, 2002	Compromise Penalty	Total

[3] *Id., Joint Stipulation of Facts and Issues* (JSFI), Summary of Admitted/Stipulated Facts, Par. 1, p. 885.

[4] *Id.,* JSFI, Summary of Admitted/Stipulated Facts, Par. 2, pp. 885-886.

[5] *Id.,* Exhibit "P-9", p. 1058.

[6] *Id.,* Exhibit "P-18", p. 1158.

[7] *Id.,* Exhibit "P-19", p. 1159.

[8] *Id.,* Exhibits "P-12", "P-12-a" and "P-12-b", pp. 1098-1100.

CGT – December 8, 2000	Php1,511,530.63	Php1,114,290.32	Php420,205.52	Php25,000.00	Php3,071,026.47
CGT – January 20, 2001	48,449,432.54	35,389,158.08	11,530,964.94	25,000.00	95,394,555.56
Total	**Php49,960,963.17**	**Php36,503,448.40**	**Php11,951,170.46**	**Php50,000.00**	**Php98,465,582.03**

On April 28, 2015, petitioner filed the letter dated April 24, 2015 addressed to the Chief, Excise Large Taxpayers Audit Division I ("ELTAD I"),[9] requesting for a status report on the issuance of the CAR or Tax Clearance pertaining to the transaction involving a sale of shares covered by a Deed of Absolute Sale of Shares dated January 30, 2001.

In reply, the BIR-LTS ELTAD I issued the letter dated May 13, 2015 signed by Mr. Nestor S. Valeroso, OIC-Assistant Commissioner,[10] stating that the docket was forwarded from the Large Taxpayers Audit Division II ("LTAD II") to LTS for indorsement to the Office of the Deputy Commissioner, Legal and Inspection Group, for resolution of the issues raised by the RO; that upon follow-up, it was informed that the Logbook maintained by the Office of the Deputy Commissioner – Legal and Inspection Group starts with year 2012 only, and the currently available Logbook in the Office of the Deputy Commissioner – Operations starts with the year 2009 only; and that it is advised that a reconstruction of the documents/docket be made and a re-application for issuance of CAR be filed with the ELTAD II (RDO 124), where petitioner is currently registered.

Petitioner filed the letter dated January 9, 2016 with the BIR ELTAD I on January 19, 2016,[11] submitting documents for the December 8, 2000 and January 20, 2001 transactions.

On July 19, 2016, the BIR ELTAD II issued the letter to petitioner requesting for additional documents for the processing of the CAR.[12]

Thereafter, the *Notice of Informal Conference* ("NIC") dated March 19, 2018 was received by petitioner on even date, with findings of deficiency CGT.[13]

On July 26, 2018, petitioner received the *Preliminary Assessment Notice* ("PAN") with attached *Details of Discrepancies* dated July 16, 2018.[14] The PAN

9 *Id.,* Exhibit "P-20", pp. 1160-1161.
10 *Id.,* Exhibit "P-13", pp. 1101.
11 Docket, Exhibit "P-21", pp. 1162-1164; Exhibit "R-1", BIR Records (Exhibit "R-12"), pp. 74-76.
12 Docket, Exhibit "R-4", BIR Records (Exhibit "R-12"), p. 282.
13 Docket, Exhibit "R-5", BIR Records (Exhibit "R-12"), pp. 653-654.
14 Docket, Exhibits "P-4", "P-4-1" (offered as Exhibit "P-4-a") and "R-7", BIR Records (Exhibit "R-12"), pp. 680-684.

alleged that petitioner incurred deficiency CGT in the total amount of Php345,598,067.41, inclusive of interest, surcharge and compromise penalty, covering the two (2) Deeds of Absolute Sale of Shares of Stock[15] dated December 8, 2000 and January 20, 2001, broken down as follows:

SUMMARY OF DEFICIENCY TAXES

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
CGT – December 8, 2000	Php 1,511,530.58	Php 755,765.29	Php 5,261,782.90	Php50,000.00	Php 7,579,078.77
CGT – January 20, 2001	68,172,799.59	34,086,399.79	235,709,789.26	50,000.00	338,018,988.64
Totals	**Php69,684,330.17**	**Php34,842,165.08**	**Php240,971,572.16**	**Php100,000.00**	**Php345,598,067.41**

Petitioner filed its Reply Letter to the PAN on September 3, 2018.[16]

On July 1, 2019, petitioner received the *Formal Letter of Demand* ("FLD"), with attached *Details of Discrepancies* dated July 1, 2019,[17] and *Audit Result/Assessment Notice* ("FAN").[18] The FAN and FLD reiterated that petitioner incurred the same amount of alleged basic deficiency taxes stated in the PAN,[19] to wit:

SUMMARY OF DEFICIENCY TAXES

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
CGT – December 8, 2000	Php 1,511,530.58	Php 755,765.29	Php 5,377,239.00	Php 50,000.00	Php 7,694,534.87
CGT - January 20, 2001	68,172,799.59	34,086,399.79	240,917,070.50	50,000.00	343,226,269.88
Totals	**Php69,684,330.17**	**Php34,842,165.08**	**Php246,294,309.50**	**Php100,000.00**	**Php350,920,804.75**

Petitioner then filed its Protest ("Request for Reconsideration") to the FAN and FLD on July 30, 2019.[20]

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15 Docket, JSFI, Summary of Admitted/Stipulated Facts, Par. 3, p. 886.

16 *Id.*; Exhibit "P-5", pp. 1030-1037.

17 Docket, Exhibits "P-6" and "P-6-a", pp. 1038-1042; Exhibit "R-8", BIR Records (Exhibit "R-12"), pp. 922-926.

18 Docket, Exhibit "P-6-b", pp. 1043-1044; Exhibits "R-8-A" and "R-8-B" (offered as Exhibits "R-8-1" and "R-8-2"), BIR Records (Exhibit "R-12"), pp. 920-921.

19 Docket, JSFI, Summary of Admitted/Stipulated Facts, Par. 4, p. 886.

20 *Id.,* Pars. 3 and 25, *Petition for Review* (pp. 7 and 11, respectively), vis-à-vis par 1, *Answer* (p. 449); JSFI, Summary of Admitted/Stipulated Facts, Par. 4, p. 886; and Exhibit "P-7", pp. 1045-1056.

Subsequently, respondent issued the letter dated January 12, 2017,[21] and the undated *Final Decision on Disputed Assessment* ("FDDA"),[22] denying petitioner's request for reconsideration. Petitioner received the FDDA on November 10, 2020.[23] The assailed FDDA provides for the following CGT computations, to wit:[24]

<u>DEFICIENCY TAXES - INTEREST ADJUSTED</u>

CAPITAL GAINS TAX
Date of Sale: December 8, 2000

Selling price in US Dollar					1,259,294.00
Multiplied by: Exchange rate on December 8, 2000					50.273
Selling price in Philippine Peso					63,308,487.26
Less: Cost					3,571,568.52
Gain on Sale of Shares of Stocks					59,736,918.74
Computation of Capital Gains Tax:					
Not Over	100,000 x 5%				5,000.00
Over	100,000 x 10%				5,963,691.87
Capital Gains Tax					5,968,691.87
Less: CGT Payment on January 8, 2001					4,457,161.29
Tax Due					1,511,530.58
Add: Increments					
Surcharge					755,765.29
20% Interest	January 7, 2001	December 31, 2017	6202	3.3984	5,136,719.28
12% Interest	January 1, 2018	November 15, 2019	683	0.2245	339,411.09
Compromise Penalty					50,000.00
Total Amount Due					7,793,426.24

CAPITAL GAINS TAX
Date of Sale: January 20, 2001

Selling price in US Dollar	40,717,195.00
Multiplied by: Exchange rate on January 19, 2001	55.013
Selling price in Philippine Peso	2,239,975,048.54

[21] *Id.,* Exhibit "P-2", p. 1020.
[22] Docket, Exhibit "P-3", pp. 1021-1024; Exhibit "R-11", BIR Records (Exhibit "R-12"), pp. 1392-1395.
[23] Docket, Exhibit "P-22" (Q&A No. 42) Docket – Vol. I, p. 179; *Memorandum* dated December 4, 2020, BIR Records (Exhibit "R-12"), pp. 11-12 and 14.
[24] Docket, JSFI, Summary of Admitted/Stipulated Facts, Par. 5, pp. 886-887.

Less: Cost					142,630,729.35
Gain on Sale of Shares of Stocks					2,097,344,319.19
Computation of Capital Gains Tax:					
Not Over	100,000 x 5%				5,000.00
Over	100,000 x 10%				209,724,431.92
Capital Gains Tax					209,729,431.92
Less: CGT Payment on 1/8/2001					141,556,632.33
Tax Due					68,172,799.59
Add: Increments					
Surcharge					34,086,399.79
20% Interest	January 7, 2001	December 31, 2017	6159	3.3748	230,069,190.50
12% Interest	January 1, 2018	November 15, 2019	484	0.2245	15,308,062.07
Compromise Penalty					50,000.00
Total Amount Due					347,686,451.95

SUMMARY OF DEFICIENCY TAXES

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
CGT – December 8, 2000	1,511,530.58	755,765.29	5,476,130.37	50,000.00	7,793,426.24
CGT – January 20, 2001	68,172,799.59	34,086,399.79	245,377,252.57	50,000.00	347,686,451.95
Total	**Php69,684,330.17**	**Php34,842,165.08**	**Php250,853,382.94**	**Php100,000.00**	**Php355,479,878.19**

As earlier mentioned, the present *Petition for Review* was filed on December 3, 2020.[25] This case was initially raffled to the Second Division of this Court.

On February 26, 2021, respondent filed his *Answer*,[26] interposing the following special and affirmative defenses, to wit: (1) respondent has the right to assess petitioner for deficiency taxes within the period prescribed by law; (2) the wordings of the FLD indicate that there is a demand for payment and a definite amount of tax liability; (3) assuming *arguendo* that respondent failed to indicate the definite total amount of deficiency tax, the assessment must not be nullified in its entirety; and (4) the assessment were made in accordance with prevailing laws and rules.

25 *Id.*, pp. 6-28.
26 *Id.*, pp. 449-461.

The Pre-Trial Conference was initially set on April 26, 2021,[27] but was later reset to, and held on, June 14, 2021.[28] Prior thereto, petitioner's *Pre-Trial Brief* was posted on April 23, 2021.[29] Subsequently, petitioner submitted the *Motion to Admit Amended Pre-Trial Brief* on June 11, 2021,[30] attaching therewith the said *Amended Pre-Trial Brief.*[31] Respondent's *Compliance*,[32] with attached *Respondent's Pre-Trial Brief*,[33] was submitted on June 11, 2021. During the said Conference,[34] the parties agreed to have the case referred to mediation, and the Court granted petitioner's *Motion to Admit Amended Pre-Trial Brief.*

In the meantime, on June 2, 2021, respondent transmitted to the Court the *BIR Records* of this case, consisting of two (2) folders, consecutively numbered as pages 1 to 1398.[35]

On June 11, 2021, petitioner filed a *Motion to Allow Petitioner to Request for Admission (With Request for Admission addressed to Respondent)*,[36] requesting that it be allowed to serve respondent the request for admission of the existence and genuineness of the documents enumerated therein, and the truth of the material facts discussed therein, as well as that the respondent's receipt of the *Motion* be considered as his receipt of petitioner's written request for admission. Respondent submitted his *Comment/Opposition (Motion to Allow Petitioner to Request for Admission)* on June 29, 2021.[37] Petitioner then filed the *Motion to Admit Reply*,[38] attaching therewith *Reply (Re: Respondent's Comment/Opposition dated June 29, 2021)*,[39] on July 16, 2021.

In the Resolution dated June 17, 2021,[40] the case was referred to mediation, and the parties were ordered to proceed and appear at the Philippine Mediation Center ("PMC") – Court of Tax Appeals ("CTA"). However, during mediation, the parties decided not to have their case mediated by the PMC-

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27 *Id.,* Notice of Pre-Trial Conference dated March 2, 2021, pp. 463-464.
28 *Id.,* Notice of Resetting dated June 1, 2021, p. 697; Minutes of the hearing held on, and Order dated, June 14, 2021, pp. 730-731.
29 *Id.,* pp. 478-490.
30 *Id.,* pp. 698-701.
31 *Id.,* pp. 702-713.
32 *Id.,* pp. 721-722.
33 *Id.,* pp. 723-727.
34 *Id.,* Minutes of the hearing held on, and Order dated, June 14, 2021, pp. 730-731.
35 *Id., Compliance* dated May 31, 2021, pp. 692-694.
36 *Id.,* pp. 714-720.
37 *Id.,* pp. 739-743.
38 *Id.,* pp. 748-750.
39 *Id.,* pp. 745-747.
40 *Id.,* p. 734.

CTA,[41] which was noted by the Court in the Resolution dated June 30, 2021.[42] Thus, the case was set anew for Pre-Trial on August 16, 2021.[43]

In the Resolution dated September 30, 2021,[44] the Court granted petitioner's *Motion to Admit Reply* and admitted the *Reply*; denied petitioner's *Motion to Allow Petitioner to Request for Admission* for lack of merit; and reset the schedule of the Pre-Trial on October 25, 2021, thereby cancelling the setting thereof on August 16, 2021.

On October 22, 2021, petitioner posted its *Motion for Reconsideration (Re: Resolution dated September 30, 2021)*,[45] and *Motion to Admit Amended Pre-Trial Brief*.[46] Respondent posted his *Comment/Opposition (On Petitioner's Motion for Reconsideration)* on November 8, 2021.[47] In the Resolution dated February 8, 2022,[48] the Court denied both petitioner's *Motions* for lack of merit, and further reset the Pre-Trial Conference to February 28, 2022. However, the Pre-Trial Conference was eventually again reset to, and held on, April 28, 2022.[49]

On May 17, 2022, the parties submitted their *Joint Motion to Admit*,[50] with attached *Joint Stipulation of Facts and Issues*.[51] In the Pre-Trial Order dated May 31, 2022,[52] the *Joint Motion* was granted, and the *Joint Stipulation of Facts and Issues* was admitted, approved and adopted by the Court, thereby deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Deeryn C. Ultra,[53] its Tax Manager; (2) Ms. Victoria Tomelden,[54] its Chief

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41 *Id., No Agreement to Mediate* dated June 28, 2021, p. 736.
42 *Id.*, p. 738.
43 *Id.*
44 *Id.*, pp. 752-758.
45 *Id.*, pp. 808-815.
46 *Id.*, pp. 819-836.
47 *Id.*, pp. 843-847.
48 *Id.*, pp. 851-864.
49 *Id.*, Minutes of the hearing held on, and Order dated, February 28, 2022, pp. 865-866; Minutes of the hearing held on, and Order dated, April 25, 2022, pp. 873-874.
50 *Id.*, pp. 882-884.
51 *Id.*, pp. 885-93.
52 *Id.*, pp. 900-905.
53 *Id.*, Exhibit "P-22", pp. 168-182; Minutes of the hearing held on, and Order dated, June 8, 2022, p. 911, and p. 912, respectively.
54 *Id.*, Exhibit "P-23", pp. 273-294; Minutes of the hearing held on, and Order dated, June 8, 2022, p. 911 and p. 912, respectively.

Audit Executive; (3) Ms. Euney Marie J. Mata-Perez,[55] Managing Partner of Mata-Perez, Tamayo and Francisco Attorneys-At-Law; and (4) Ms. Maria Teresita Z. Dimaculangan,[56] Managing Partner of Dimaculangan, Dimaculangan & Company, and board member of the Board of Accountancy.

In the Order dated June 29, 2022,[57] the present case was transferred to the Third Division of this Court.

On February 10, 2023, petitioner filed its *Formal Offer of Documentary Exhibits*,[58] to which respondent submitted his *Comment [Re: Petitioner's Formal Offer of Evidence]* on February 27, 2023.[59] Petitioner then filed the *Reply (Re: Respondent's Comment dated March 7, 2023)* on March 22, 2023.[60] On April 19, 2023, respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence – Additional Marked Exhibits)*.[61] In the Resolution dated June 23, 2023,[62] the Court admitted petitioner's offered exhibits.

The present case was transferred back to the Second Division of this Court pursuant to the Notice of Resolution dated June 14, 2023.

For his part, respondent offered the testimony of RO Francis F. Nabua.[63]

On December 4, 2023, *Respondent's Formal Offer of Evidence* was filed,[64] to which petitioner posted its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated December 1, 2023)* on December 11, 2023.[65] In the Resolution dated January 24, 2024,[66] the Court admitted all of respondent's offered exhibits.

Petitioner's *Memorandum* was filed on March 4, 2024.[67] On even date, respondent filed a *Manifestation*,[68] stating that he is adopting the arguments he raised in his *Answer* as his *Memorandum*.

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[55] *Id.*, Exhibit "P-24", pp. 415-422; Minutes of the hearing held on, and Order dated, October 5, 2022, pp. 925-926.
[56] *Id.*, Exhibit "P-26", pp. 946-963; Minutes of the hearing held on, and Order dated, January 26, 2023, pp. 984, and 986-987, respectively.
[57] *Id.*, p. 913.
[58] *Id.*, pp. 994-1004.
[59] *Id.*, pp. 1249-1252.
[60] *Id.*, pp. 1260-1263.
[61] *Id.*, pp. 1267-1269.
[62] *Id.*, pp. 1272-1273.
[63] *Id.*, Exhibit "R-13", pp. 765-774; Minutes of hearing held on, and Order dated, September 28, 2023, pp. 1274-1275.
[64] *Id.*, pp. 1287-1293.
[65] *Id.*, pp. 1306-1310.
[66] *Id.*, pp. 1315-1316.
[67] *Id.*, pp. 1318-1357.
[68] *Id.*, pp. 1358-1360.

The present case was considered submitted for decision on March 7, 2024.[69]

<u>The Issue</u>

As stipulated by the parties, the issues for this Court's resolution are as follows, *viz.*:

> "*ISSUES FOR PETITIONER:*
>
> A.
> WHETHER OR NOT THE ASSESSMENT IS VALID.
>
> i.
> WHETHER OR NOT THE PERIOD FOR THE RESPONDENT TO ASSESS THE PETITIONER FOR DEFICIENCY TAXES HAS ALREADY PRESCRIBED.
>
> ii.
> WHETHER OR NOT THE ASSESSMENT IS INVALID FOR HAVING VIOLATED THE PETITIONER'S RIGHT TO DUE PROCESS.
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> B.
> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY CGT.
>
> C.
> WHETHER OR NOT THE IMPOSITION OF COMPROMISE PENALTY IS LEGAL AND AUTHORIZED.
>
> *ISSUE FOR RESPONDENT:*
>
> D.
> WHETHER OR NOT PETITIONER IS LIABLE FOR THE PAYMENT OF ASSESSED DEFICIENCY CAPITAL GAINS TAX PLUS PENALTIES, INTEREST AND SURCHARGES, IN THE AGGREGATE AMOUNT OF PHP355,479,878.19."[70]

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[69] *Id.,* Minute Resolution dated March 7, 2024, p. 1362.

[70] Docket, Pre-Trial Order dated May 31, 2022, p. 900 adopting the issues in the JSFI, Issues to be Tried or Resolved, pp. 887-888.

Petitioner's arguments:

Petitioner argues that the period for respondent to assess petitioner had already prescribed; that the assessment is void for violating petitioner's right to due process; that the FLD and FDDA are void for having been issued without specifying a clear and definite amount of liability and categorically demand to pay; that it is not liable for deficiency CGT; that no U.S. Dollars were paid on the completion of the sale of the ICC shares in 2001; that no taxable foreign exchange gain was realized by ACC (petitioner herein) in 2001; and that the imposition of a compromise penalty without conformity of a taxpayer is illegal and unauthorized.

Respondent's counter-arguments:

In his *Answer*, respondent contends that he has the right to assess petitioner for deficiency taxes within the period prescribed by law; that the wordings of the FLD indicate that there is a demand for payment and a definite amount of tax liability; that assuming *arguendo* that respondent failed to indicate the definite total amount of deficiency tax, the assessment must not be nullified in its entirety; and that the assessment were made in accordance with prevailing laws and rules.

Discussion/Ruling

The present *Petition for Review* is meritorious.

The Court has jurisdiction over the present case.

Sections 7(a)(1) and (2), and 11 of Republic Act ("RA") No. 1125,[71] as amended by RA No. 9282,[72] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same, respectively, to wit:

"SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:

71 An Act Creating The Court Of Tax Appeals, June 16, 1954.

72 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, March 30 2004.

(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;

(2) Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;"[73]

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA **within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[74]

In this case, petitioner received the FDDA on November 10, 2020.[75] Hence, it had until December 10, 2020 within which to file its *Petition for Review.*

Correspondingly, the *Petition for Review* filed on December 3, 2020[76] was within the reglementary period, and this Court has jurisdiction to entertain the present case.

Respondent's right to assess has prescribed.

Petitioner asserts that respondent was granted under the law a three (3)-year period window from the dates of payment of CGT on the transfer of shares,

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[73] *Emphasis supplied.*
[74] *Emphasis supplied.*
[75] Docket, Exhibit "P-22" (Q&A No. 42) p. 179; *Memorandum* dated December 4, 2020, BIR Records (Exhibit "R-12"), pp. 11-12 and 14.
[76] *Id.*, pp. 6-28.

January 8, 2001 and February 19, 2001, to assess petitioner. This allowed respondent until January 8, 2004 and February 19, 2004, respectively, within which to assess petitioner. Thus, according to petitioner, respondent's period to assess petitioner for the transfer of shares has prescribed.

Petitioner further argues that even if the extended ten (10) year period is considered, the conclusion remains the same – the right of respondent to make a deficiency assessment has prescribed. Respondent had until January 8, 2011 and February 19, 2011 to assess petitioner for any deficiency tax arising from the transaction. Moreover, according to petitioner, if the period to assess is counted from the date of the filing of the CAR application, *i.e.*, April 2, 2001, an examination of the timeframes outlined in Sections 203 and 222 of the NIRC, as amended, easily reveals that the assessment had already become time-barred. Petitioner points out that respondent learned of the sale transaction as early as 2001, when petitioner made its initial CAR application on April 2, 2001, not when petitioner refiled its CAR application in 2016, as shown by the written communications between petitioner and respondent dating back to the application of the initial CAR.

We find petitioner's argument meritorious.

Section 203 of the NIRC of 1997, as amended, reads as follows:

> "SEC. 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-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.**"[77]

Based on the foregoing provision, except as provided in Section 222 of the NIRC of 1997, internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[78] As a corollary, an

[77] *Emphasis supplied.*

[78] Refer to *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[79]

To determine the reckoning period for Section 203 of the NIRC of 1997 to apply in the present case, Sections 52(D) and 56(A)(3) of the NIRC of 1997, provide:

> "SEC. 52. *Corporation Returns.* —
>
> xxx xxx xxx
>
> (D) *Return on Capital Gains Realized from Sale of Shares of Stock not Traded in the Local Stock Exchange.* — Every corporation deriving capital gains from the sale or exchange of shares of stock not traded thru a local stock exchange as prescribed under Sections 24(C), 25(A)(3), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall **file a return within thirty (30) days after each transaction** and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year."[80]
>
> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.* –
>
> (A) *Payment of Tax.* —
>
> xxx xxx xxx
>
> (3) *Payment of Capital Gains Tax.* — The total amount of tax imposed and prescribed under Sections 24(C), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: xxx."

Thus, for CGT on the sale of shares of stocks not traded in the local stock exchange, the taxpayer has thirty (30) days within which to file a return after each transaction. The payment of the CGT shall also be done upon filing of the return.

The two (2) *Deeds of Absolute Sale of Shares of Stock* subject of the assessment were executed between petitioner (as ACC) and RCC: (1) dated December 8,

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79 *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils, Inc.)*, G.R. No. 212825, December 7, 2015.

80 *Emphasis supplied.*

2000, where RCC purchased 1,973,242 Class A common shares of ICC at the purchase price of US$1,259,294.00; and (2) dated January 20, 2001, where RCC purchased 63,801,497 Class A common shares and 15,000,000 Class B common shares of ICC at the purchase price of US$40,717,195.00.[81] The CGT was collected by the BIR on January 8, 2001 and February 19, 2001 in the amounts of Php4,457,161.29 and Php141,556,632.33, respectively.[82] Subsequently, petitioner filed the letter dated March 16, 2001,[83] applying for a CAR for the transfer of the shares of stocks, on April 2, 2001.

Counting thirty (30) days from December 8, 2000 and January 20, 2001, when the *Deeds of Absolute Sale of Shares of Stock* were executed, the corresponding CGT Returns should have been filed on January 8, 2001[84] and February 19, 2001, respectively.

However, for purposes of the subject tax assessment of deficiency CGT against petitioner, the end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997 is respectively determined as follows:

Date of Transaction	**Actual date of filing of the CGT Return**	**Reckoning date of the three (3)-year prescriptive period[85]**	**End of the three-year prescriptive period**
December 8, 2000	March 14, 2001[86]	March 14, 2001	March 14, 2004
January 20, 2001	March 14, 2001[87]	March 14, 2001	March 14, 2004

Notably, the FLD, with attached *Details of Discrepancies*,[88] were only issued on July 1, 2019 and received by petitioner on even date. Consequently, as the FLD was issued after the three (3) year prescriptive period, the said assessment is void.

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81 Docket, Exhibits "P-16" and "P-17", pp. 1150-1157.
82 Docket, Exhibit "P-8", p. 1057; BIR Records (Exhibit "R-12"), pp. 116-181.
83 Docket, Exhibit "P-9", p. 1058.
84 The 30th day from date of transaction is actually January 7, 2001, but the same fell on a Sunday.
85 The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
86 Amended *Capital Gains Tax Return* (BIR Form No. 1707), BIR Records (Exhibit "R-12"), p. 181.
87 Amended *Capital Gains Tax Return* (BIR Form No. 1707), BIR Records (Exhibit "R-12"), p. 116.
88 Docket, Exhibits "P-6" and "P-6-a", pp. 1038-1042; Exhibit "R-8", BIR Records (Exhibit "R-12"), pp. 922-926.

Respondent contends that it found that petitioner incorrectly used a foreign exchange rate, which was below the exchange rate of the Philippine Dealing System near the time of sale. The findings and discovery of the use of an incorrect foreign exchange rate at the time of sale clearly falls under false or fraudulent return. Therefore, respondent asserts that he may assess petitioner within ten (10) years from discovery of false and fraudulent return or from March 19, 2018, the time the NIC was issued.

We find respondent's argument bereft of merit.

Again, the general rule is that internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later, pursuant to the aforequoted Section 203 of the NIRC of 1997, as amended. By way of an exception, under Section 222 of the NIRC of 1997, as amended, there are instances when the government may assess pertinent taxes against taxpayers even beyond the said three (3)-year prescriptive period. Said provision reads as follows:

> "SEC. 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.
>
> xxx xxx xxx."[89]

In *McDonald's Philippines Realty Corporation vs. Commissioner of Internal Revenue* (the *McDonald's case*)[90] , the Supreme Court held that the extension of the assessment period to ten (10) years is **conditioned** upon concurrence of the requisites under Section 222 (a) of the NIRC of 1997 and compliance with due process requirements, *viz.*:

[89] *Emphasis supplied.*
[90] G.R. No. 247737, August 8, 2023.

"F. *Summary: **<u>Conditions</u>** for a Valid Extension of Assessment Period in Case of a False Return*

*i. **<u>Requisites</u>** under Section 222 (a) of the 1997 Tax Code*

- *General Rule — Proof of False or Fraudulent Return*

Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.

A fraudulent return 'implies intentional or deceitful entry with intent to evade the taxes due,' while a false return simply 'implies deviation from the truth, whether intentional or not.'

It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return when:*

(1) the return contains an error or misstatement, and
(2) **such error or misstatement was *deliberate or willful.***

Consequently, **the Court's ruling in *Aznar*** which applied the extraordinary 10-year assessment period under Section 222 (a) to false returns in general, *i.e.*, regardless of whether the deviation is intentional or not, **is *abandoned*.**

It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with ***<u>clear and convincing evidence</u>***.

- *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*

The **CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of falsity or fraud*,** as defined under Section 248 (B) of the 1997 Tax Code.

(1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,

(a) an *understatement/underdeclaration* of sales, receipts, or income or
(b) an *overstatement/overdeclaration* of expenses or other deductions, and

(2) the misstatement is *substantial*, such that exceeds the corresponding amount declared in the return by 30%.

30% threshold satisfied. There is *prima facie* evidence of falsity or fraud and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.

Taxpayer refutes presumption. If the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's *intent to evade.*

ii. ***Due Process Requirements***

(1) **First Due Process Requirement**. The *assessment notice* issued to the taxpayer must clearly state the following:

(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

(2) **Second Due Process Requirement**. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have

> otherwise misled the taxpayer that the basic period will be applied."[91]

Applying the foregoing conditions, which outline the *requisites* under Section 222 (a) of the NIRC of 1997, as amended, and the *due process requirements* relative thereto, the Court finds that the extraordinary ten (10)-year period to assess does not apply in this case.

To reiterate, as ruled in the *McDonald's case*, the extraordinary (10)-year assessment period applies to a *false return when:*

(1) the return contains an error or misstatement, and
(2) **such error or misstatement was *deliberate or willful.***

To prove that the error or misstatement was deliberate or willful, *clear and convincing* evidence must be presented for the ten (10)-year prescriptive period to be invoked.

In this case, respondent imposed a fifty percent (50%) surcharge on the deficiency CGT "in view of the difference in foreign exchange valuation thereby not reflective of the true and accurate tax due as against your filed tax returns rendering the filed tax returns a false return." Respondent alleged that the "[t]axes were paid using the forex rate of $1 to Php38.27 which was below the exchange rate of the Philippine Dealing System (PDS) nearest the time of sale." Hence, considering that the discrepancy in taxes paid were supposedly substantial, respondent found petitioner's "**returns filed were false**", which is a ground for assessment as provided for under Section 222 of the NIRC of 1997.[92]

Respondent however failed to present *clear and convincing* evidence proving that petitioner **deliberately or willfully** filed false returns. Respondent merely stated that based on the FDDA, taxes were paid using the forex rate of $1 to Php38.27 which was below the exchange rate of the PDS nearest the time of sale and using the Peso Conversion Rate provided under the *Bangko Sentral ng Pilipinas* website. He then found that petitioner is still liable for deficiency CGT for the subject sale transactions,[93] without presenting evidence establishing that the misstatement was deliberate or willful.

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91 *Emphasis and underscoring supplied.*
92 Docket, Exhibits "P-6" and "P-6-a", pp. 1038-1042; Exhibit "R-8", BIR Records (Exhibit "R-12"), pp. 922-926.
93 *Id.,* Par. 38, *Answer*, p. 456.

Moreover, the use of the foregin exchange rate of $1=Php38.27 for the transaction was fully explained by Petitioner. Petitioner loaned[94] an amount from Blue Circle Philippines, Inc. ("BCPI") in the peso equivalent of Php1,606,440,232 as recorded in the former's books of account for the year ending December 31, 1999. Petitioner repaid the loan by exchanging or transferring the ICC shares to ACC (the designated entity of BCPI). The loan or exchangeable note was carried at its peso equivalent amount at the exchange rate of $1=Php38.27 then prevailing as of the transaction date.

As such, petitioner does not appear to have deliberately or willfully filed false returns. Thus, the extraordinary ten (10)-year assessment period does not apply herein as respondent failed to prove that there was intentional or deliberate falsity which renders the return false for purposes of invoking the extraordinary period under Section 222(a) of the NIRC of 1997.

But even granting that petitioner filed a false or fraudulent return, the ten (10) year prescriptive period to assess has nonetheless prescribed.

As provided under Section 222(a) of the NIRC of 1997, the ten (10) year prescriptive period shall be reckoned from the time of the discovery of falsity, fraud or omission in the return. Contrary to the contention of the respondent that the ten (10)-year prescriptive period should be reckoned from March 19, 2018, the extraordinary prescriptive period should be reckoned from the issuance of the letter dated April 12, 2002[95] wherein petitioner was invited for an informal conference.

To recall, an examination of the records would reveal that after RCC, the buyer of the subject shares, filed its CAR Application on April 2, 2001,[96] respondent issued a letter dated April 12, 2002[97] requesting petitioner for an informal conference to discuss his findings. Accordingly, it cannot be denied that respondent became aware of the subject transactions and the alleged tax deficiencies of petitioner at that time. Counting ten (10) years from the issuance of the said BIR letter, respondent had until April 12, 2012 to assess petitioner. However, it was only on July 1, 2019 that the FLD[98] was issued – more than seven (7) years have passed from the last day of the prescriptive period. Hence, the ten (10) year period to assess has also prescribed.

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94 *Id.,* Exhibit "P-15", pp. 1134-1145.
95 *Id.,* Exhibit "P-12" to "P-12-b", pp. 1098-1100.
96 *Id.,* Exhibit "P-9", p. 1058.
97 *Id.,* Exhibit "P-12" to "P-12-b", pp. 1098-1100.
98 Docket, Exhibits "P-6" and "P-6-a", pp. 1038-1042; Exhibit "R-8", BIR Records (Exhibit "R-12"), pp. 922-926.

To emphasize, the Supreme Court, in *Republic of the Philippines vs. Luis G. Ablaza*,[99] explained the purpose behind this statute of limitation as follows:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense[,] taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law."

Considering that in this case, the periods to assess, whether the three (3) year period and ten (10) year period, have already prescribed, the FLD dated July 1, 2019[100] and undated FDDA[101] issued against petitioner for deficiency CGT on the subject sales of shares of stocks are unenforceable being issued beyond the prescriptive period.

As respondent's right to assess petitioner has already prescribed, the Court need not address the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the PAN dated July 16, 2018, FLD dated July 1, 2019 and undated FDDA issued against petitioner for deficiency CGT assessment in the aggregate amount of Php355,479,878.19, inclusive of surcharges, interests and compromise penalty, are **CANCELLED** and **SET ASIDE**.

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99 G.R. No. L-14519, July 26, 1960.

100 Docket, Exhibits "P-6" and "P-6-a", pp. 1038-1042; Exhibit "R-8", BIR Records (Exhibit "R-12"), pp. 922-926.

101 Docket, Exhibit "P-3", pp. 1021-1024; Exhibit "R-11", BIR Records (Exhibit "R-12"), pp. 1392-1395.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice