REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AYALA PROPERTY MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9298

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:
JAN 2 1 2019
3:10 p.m.

x- x

DECISION

CASTAÑEDA, JR., ***J.*:**

THE CASE

This resolves the Petition for Review[1] filed on March 18, 2016 by Ayala Property Management Corporation to seek the nullification of the Final Decision on Disputed Assessment (FDDA)[2] that found it liable for deficiency income tax and value-added tax (VAT) plus interest, in the aggregate amount of ₱7,700,009.70 for taxable year 2009.

[1] Docket, vol. I, pp. 12-23.
[2] Exhibit "P-4", docket, vol. I, pp. 437-439; Exhibit "R-15", BIR Records, pp. 582-584.

THE FACTS

Petitioner Ayala Property Management Corporation is a corporation duly organized and existing under Philippine laws, with principal office address at the 5th Floor, Glorietta IV, Ayala Center, Ayala Avenue, Makati City.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On May 26, 2010, petitioner received Letter of Authority (LOA) No. 126-2010-00000017[4] dated May 14, 2010, authorizing the concerned revenue officers to examine petitioner's books of accounts and other accounting records for income tax for the period from January 1, 2009 to December 31, 2009.

On July 8, 2014, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancies[5] dated April 21, 2014.

On October 10, 2014, petitioner received the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (FLD/FAN)[6] dated September 25, 2014, assessing it for alleged deficiency income tax and VAT, inclusive of interests, for taxable year 2009.[7]

On November 10, 2014, petitioner sent its Protest Letter[8] dated November 7, 2014, assailing the tax assessments in the FLD/FAN, together with the documents in support of the same.[9] On January 7, 2015, petitioner sent a Letter[10] dated January 6, 2015 to the BIR to

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[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 328.
[4] Exhibit "R-1", BIR Records, p. 5.
[5] Exhibits "R-11", BIR Records, pp. 445-451.
[6] Exhibit "P-1", docket, vol. I, pp. 401-407; Exhibit "R-14", BIR Records, pp. 511-517.
[7] Par. 3, JSFI, docket, vol. I, p. 328.
[8] Exhibit "P-2", docket, vol. I, pp. 423-431.
[9] Par. 4, JSFI, docket, vol. I, p. 329.
[10] Exhibit "P-3", docket, vol. I, pp. 432-436.

supplement its Protest Letter and submitted documents in support thereof.[11]

On February 17, 2016, petitioner received the FDDA with Details of Discrepancies, finding it liable for deficiency income tax and VAT, inclusive of interests, in the aggregate amount of ₱7,700,009.70 for taxable year 2009.[12]

Petitioner then filed the present Petition for Review before this Court on March 18, 2016.

Respondent filed his Answer[13], through registered mail on June 27, 2016 and received by the Court on July 7, 2016, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

Assessment are in accordance with law

4. Petitioner hinged its contention on the fact that respondent's assessment was based on the comparison of its Summary List of Sales to the Summary List of Purchases of its customers and on data coming from Third Party Information.

5. Section 5 of the Tax Code empowers the Commissioner of Internal Revenue to obtain from any person, other than the person subject to audit or investigation, any information to determine the liability of a taxpayer for any internal revenue tax quoted herewith, to wit:

> SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons. - In ascertaining the correctness of any return, or in making a return when none has been made, or in

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[11] Par. 5, JSFI, docket, vol. I, p. 329.
[12] Par. 6, JSFI, docket, vol. I, p. 329.
[13] Docket, vol. I, pp. 108-115.

> determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> -xxx-
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government- owned or –controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

6. Pursuant to Section 5 of the Tax Code, as amended, the RELIEF (Reconciliation of Listing for Enforcement) system was created to support the third party information program of the Bureau of Internal Revenue through cross-referencing of third party information from Summary List of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations No. 7-1995, as amended by Revenue Regulations 13-1997, Revenue Regulations No. 7-1999 and Revenue Regulations No. 8-2002.

7. Accordingly, respondent, in comparing petitioner's SLP vs. MAP (Monthly Alphalist of Payees) vs. RELIEF, she did not rely on mere estimates or presumptions as petitioner contended. *Je*

8. To emphasize, respondent based its assessment for undeclared purchases on actual reported sales and purchases of taxpayers pursuant to the clear mandate of the Tax Code, as amended.

9. During audit of petitioner's tax liability, the revenue officers found that the petitioner uses computerized Accounting system with permit No. LTS-1-ca-0702-00071 issued on July 25, 2002 by the large TaxPayers service.

10. The preliminary Assessment Notice (PAN) covering the hereunder stated deficiency tax assessment was duly served to petitioner on July 08, 2014

Tax type	Basic	Interest	Compromise	Total
IT	126,097,525.29	104,125,463,34	50,000.00	230,272,988.63
VT	25,836,439.69	22,467,084,82	50,000.00	48.353,524.51
WC	484,533.29	423,999,82	16,000.00	924,533.11
WE	6,756,490,26	5,912,391,75	50,000.00	12,718,882.01
TOTAL	159,174,988,53	132,928,939,73	166,000.00	292,269,928.26

Note that the interest was computed until May 31, 2014

11. On July 23, 2014 and on September 01, 2014, the petitioner filed its protest and supplemental protest, respectively and submitted additional documents/ records in support of its rebuttal of the issues contained therein.

12. On September 09, 2014, the petitioner paid deficiency taxes amounting to P5,109,125.76 broken down as follows:

Tax type	Basic	Interest	Compromise	**Total**
IT	73,440.00	29,376.00	50,000.00	**152,816.00**
VT	452,056.56	406,175.05	50,000.00	**908,231.61**
WE	1,388,167.31	1,254,554.72	16,000.00	**2,658,722.03**
WC	10,949.03	10,235.09	3,000.00	**24,184.12**
WC	681,484.64	633,687.36	50,000.00	**1,365,172.00**
Total	**2,606,097.54**	**2,33,028.22**	**169,000.00**	**5,109,125.76**

13. Reinvestigation of the additional documents submitted by the petitioner in support of its rebuttal of the issues contained in the subject PAN resulted to the foregoing audit findings, the covering Formal Letter of Demand was served on October 10, 2014.

Tax type	Basic	Interest	**Total**
IT	19,581,751.80	17,811,346.84	**37,393,098.64**
VT	7,833,821.15	7,468,985.25	**15,302,779.40**
Total	**27,415,572.95**	**25,280,305.09**	**52,695,878.04**

14. On November 07, 2014 and January 06, 2015, the Company filed its protest and supplemental protest, respectively and submitted additional documents/records in support of its rebuttal of the issues contained in the said Formal Letter of Demand.

15. Evaluation of all the documents submitted by the Company such as Statement of Accounts, Official Receipts and Forms 2307 in support of their rebuttal of the issues resulted to the following audit findings.

INCOME TAX

16. Unaccounted income resulting from matching of Summary List of Purchases (SLP) of Third Parties versus Summary List of Sales (SLS) P3,202,895.04. This assessment was reiterated for failure of the Company to present documents/records that will warrant reversal thereof.

17. A complete list of the details covering petitioner's tax liability can be found in Annex A of the Formal Demand on Disputed Assessment.

VALUE ADDED TAX

18. Unaccounted income resulting from matching of Summary List of Purchases (SLP) of Third Parties versus Summary List of Sales (SLS) P3,202,895.04. The unaccounted income resulting from matching of the Masterfile extract for Summary List of Purchases (SLP) versus Summary List of Sales (SLS) submitted by the Company as discussed under Income Tax is subject to VAT pursuant to Section 106 and 108 of the NIRC, as amended.

19. A complete list of the details covering petitioner's tax liability can be found in Annex A of the Formal Demand on Disputed Assessment.

Final discussions

20. 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 irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

21. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

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

The pre-trial conference[14] was scheduled on September 15, 2016. Petitioner's Pre-Trial Brief[15] was filed on August 1, 2016; while Respondent's Pre-Trial Brief[16] was filed on August 2, 2016.

The parties filed their Joint Stipulation of Facts and Issues[17] on September 30, 2016, which was approved by the Court in its Pre-Trial Order[18] dated November 7, 2016.

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[14] Notice of Resetting dated August 2, 2016, docket, vol. I, p. 313.
[15] Docket, vol. I, pp. 119-125.
[16] Docket, vol. I, pp. 307-311.
[17] Docket, vol. I, pp. 328-330.
[18] Docket, vol. I, pp. 347-350.

Petitioner presented its witnesses, Ms. Guillerma I. Ramos[19] and Independent Certified Public Accountant (ICPA) Atty. Adan T. Delamide.[20]

On February 6, 2017, petitioner filed its Formal Offer of Evidence with Manifestation[21], offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-6", "P-6-A", "P-7" to "P-8", "P-19" to "P-52", "P-9" to "P-11", "P-12" to "P-13", "P-14" to "P-18", "P-53" to "P-69", "P-70" to "P-73", "P-74" to "P-81", "P-82", "P-83" and "P-84", as its documentary evidence. Respondent failed to file his comment thereto.[22]

In the Resolution[23] dated March 24, 2017, the Court admitted all of the formally offered exhibits of petitioner, except for Exhibits "P-29", "P-34" to "P-37", "P-39" to "P-46", and P-53" to "P-69".

On the other hand, respondent presented Revenue Officer (RO) Roberto Castro as his witness.[24]

On June 27, 2017, respondent's Formal Offer of Evidence[25] was filed, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "P-17", and "P-17-a", as his documentary evidence. Petitioner filed its Comment (Petitioner's Comment to Respondent's Formal Offer of Evidence)[26] on July 6, 2017. The Court admitted all the exhibits formally offered by respondent via Resolution[27] dated November 17, 2017.

The Court declared the case submitted for decision on February 12, 2018,[28] after petitioner filed its Memorandum[29] on December 27, 2017 and respondent filed his Memorandum[30] on February 6, 2018.

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[19] Minutes of the hearing on November 28, 2016, docket, vol. I, p. 351.
[20] Minutes of the hearing on January 23, 2017, docket, vol. I, p. 376.
[21] Docket, vol. I, pp. 387-392.
[22] Records Verification dated February 21, 2017, docket, vol. II, p. 445.
[23] Docket, vol. II, pp. 448-449.
[24] Minutes of the hearing on June 14, 2017, docket, vol. II, p. 474.
[25] Docket, vol. II, pp. 479-484.
[26] Docket, vol. II, pp. 485-487.
[27] Docket, vol. II, pp. 489-490.
[28] Resolution dated February 12, 2018, docket, vol. II, p. 519.
[29] Docket, vol. II, pp. 491-499.
[30] Docket, vol. II, pp. 511-518.

THE ISSUES

The parties submitted the following issues for this Court's resolution:[31]

> "1. Whether or not the deficiency tax assessments in the Final Decision on Disputed Assessment have factual and legal basis?
>
> 2. Whether or not the deficiency tax assessments are valid?"

THE COURT'S RULING

The Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. *ge*

[31] Docket, vol. I, p. 329.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Petitioner received the FLD/FAN, with attached Details of Discrepancies, dated September 25, 2014 from respondent assessing it for alleged deficiency income tax and VAT, inclusive of interests, for taxable year 2009 on October 10, 2014. Within thirty (30) days from receipt of the FLD/FAN on October 10, 2014, petitioner filed its administrative protest on November 10, 2014.[32]

On February 17, 2016, petitioner received the FDDA with Details of Discrepancies, finding it liable for deficiency income tax and VAT, inclusive of interests, in the aggregate amount of ₱7,700,009.70 for taxable year 2009. Counting 30 days from February 17, 2016, petitioner had until March 18, 2016 within which to file its Petition for Review.

Records confirm that the instant Petition for Review was filed on March 18, 2016. Clearly, the Court has acquired jurisdiction over the instant case.

The Court shall now address the merits of the case. ge

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[32] November 9, 2014 fell on a Sunday.

I. DEFICIENCY INCOME TAX

The alleged income tax deficiency amounting to ₱6,929,516.89 resulted from (a) unaccounted income of ₱3,202,895.04; (b) disallowed out of period creditable tax withheld of ₱2,574,599.19; and (c) disallowed excess tax credits carried over to succeeding year in the amount of ₱68,437,216.00.

Below is respondent's detailed computation of the alleged deficiency income tax:[33]

I. INCOME TAX			
Taxable Income/(Net Loss) per Return			₱29,425,307.00
Add: Unaccounted Income - Recon of Masterfile Extract for SLP vs. SLS of APMC (Schedule 1)			3,202,895.04
Total Taxable Income per Audit			₱32,628,202.04
Tax Rate			0.30
Tax Due per Audit			₱ 9,788,460.61
Less: Paid per Return			
Tax Payments		-	
Prior Year's Excess Credits		₱53,735,027.00	
Creditable Tax Withheld	₱23,529,781.00		
Less: Out of Period Creditable Tax Withheld (Schedule 2)	2,574,599.19	20,955,181.81	
Total Tax Credits		₱74,690,208.81	
Less Carried Over to Succeeding Year		68,437,216.00	6,252,992.81
Still Due			₱ 3,535,467.80
Add: Interest from 04-16-10 to 1-31-16			3,394,049.09
Still Due as of 1-31-16			**₱6,929,516.89**

Unaccounted Income resulting from matching of SLP of Third Parties vs. SLS of Petitioner – ₱3,202,895.04

Respondent's matching of the Summary List of Purchases (SLP) of Third Parties and petitioner's Summary List of Sales (SLS) disclosed that petitioner had unaccounted income in the amount of ₱3,202,895.04, hence, petitioner was assessed of deficiency income tax pursuant to Section 27 in relation to Section 32 of the NIRC of 1997, as amended.[34]

[33] Exhibit "P-4", docket, vol. I, p. 437.
[34] Exhibit "P-4", Annex A, docket, vol. I, p. 439.

Petitioner submits that the data from SLP of Third Parties consists of electronically-generated or computer-generated third-party information allegedly from the tax returns and reports filed by third parties. Petitioner avers that during the cross-examination of respondent's witness, Revenue Officer Roberto Castro, it was established that the electronically-generated or computer-generated third-party information came from a different division of the BIR; and that the team who conducted the audit and made the assessment did not conduct any verification, validation, or confirmation of the third-party information.

Petitioner maintains that since the third-party information was not verified or validated for accuracy, it is evident that respondent merely presumed the discrepancy as unaccounted income giving rise to alleged taxable income subject to income tax and VAT.

The Court cancels the assessment.

As testified by Revenue Officer Roberto Castro, the third-party information was not verified with externally sourced data to check its correctness, to wit:[35]

"ATTY. SISON

Mr. Witness, in your Affidavit, you mentioned of a master file extract for the summary list purchases of third parties using the CAATs. This master file that is referred to in the assessment, is this from actual verification from each of the third party or from a computer file?

WITNESS:

From a computer file only, sir.

ATTY. SISON:

As part of the audit team, what is the participation of the examiner in preparing the computer file?

WITNESS:

None, sir. We just request the same from another division." *Jz*

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[35] TSN dated June 14, 2017, pp. 5-6.

Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged unaccounted income.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[36] This principle was thoroughly discussed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[37], the pertinent portions of which are quoted hereunder:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the

[36] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated,* CTA EB No. 883, February 14, 2013.
[37] G.R. No. 136975, March 31, 2005.

> determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence." (Citations omitted)*

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database.

Note that Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's underdeclaration of revenues or overstatement of costs and expenses, if any. The significant parts of RMO No. 04-03 are quoted as follows:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information **with other externally sourced data** will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential." *(Emphasis supplied)*

Instead of exerting his best effort in gathering information from other sources to verify the alleged unaccounted income, respondent chose to resort to presumptions and heavily relied on the results of the unverified third-party information in determining petitioner's deficiency tax liability. Thus, respondent's assessment on the alleged unaccounted income of ₱3,202,895.04 should be cancelled for lack of factual and legal bases.

Disallowed Creditable Income Tax Withheld – ₱2,574,599.19

Respondent's verification disclosed that the amount of ₱2,574,599.19 represents creditable income tax withheld on income recognized in the year 2008, but was only claimed as tax credit in the year 2009, hence, disallowed in accordance with the provisions of Section 2.58.3(a) of Revenue Regulations (RR) No. 02-98; which provides that the amount of creditable tax withheld shall be allowed as tax credit against the income tax liability of the payee in the quarter of the taxable year in which the income was earned.[38]

Details of the ₱2,574,599.19 disallowance are as follows:[39]

Schedule 2							
Name of the Company	Per FLD			Adjustment		Per FDDA	
	Amount	Tax Rate	Tax Withheld	Revenue	Tax Withheld	Revenue	Tax Withheld
Dusit Thani Manila	₱2,318,047.62	2%	₱ 46,360.95	₱2,318,047.62	-	-	₱ 46,360.95
Remarks: Revenue billed and recognized in 2008. Creditable tax withheld thereon was claimed only in 2009 upon receipt of the 2307, hence, CWT was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
International School Manila, Inc.	831,922.10	2%	16,638.44	831,922.10	-	-	16,638.44
Remarks: Same as above							
One Legazpi Park Residential Condo	5,806,909.15	2%	123,946.03	5,806,909.15	-	-	123,946.03
Remarks: Same as above							
Serendra Condominium Corp	9,593,285.65	2%	191,865.71	9,593,285.65	-	-	191,865.71
Remarks: We find merit in the position of the taxpayer that the discrepancy pertains to revenue in prior years, the creditable withholding thereon was only claimed in 2009 for the reason that based on the contract of APMC and Serendra, the monthly management fee is as follow: Serendra One P586,678.46 and Serendra Two P536,784.49 or a monthly of 1,123,463.35 or a yearly of 13,481,560.20. The creditable withholding, however, was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
Universal Re Condominium Corp	1,591,815.13	2%	33,085.06	1,591,815.13	33,085.06	-	-

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[38] Exhibit "P-4", Annex A, docket, vol. I, p. 439.

[39] Exhibit "P-4", docket, vol. I, pp. 440-442.

Remarks: We find merit on the position of APMC that the discrepancy was due to the 15% rate used by the withholding agent in its payment for Jan and Feb accounts instead of 2% resulting to a higher tax withheld. However, upon issuance of the 2307 which was the basis for the SAWT, the entire creditable tax withheld was subjected to 2% tax rate resulting to a higher taxable base which was used as the basis of the matching of SAWT versus the reported income per PAN and FLD. Henceforth, this assessment is reversed.							
Verdana Homes Homeowners Association	2,200,990.32	2%	49,464.81	2,200,990.32	-	-	49,464.81
Remarks: We find merit in the position of the taxpayer that the discrepancy pertains to revenue in prior years, the creditable withholding thereon was only claimed in 2009 for the reason that based on the documents submitted by APMC, the total revenue from Jan to Dec 2009 was only 1,711,666.68, hence, it is logical to infer that the difference pertains to revenue from prior years, CWT thereon was only claimed in 2009 upon receipt of the 2307. The creditable withholding however was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
Maybank Bonifacio Development Corp	81,095.50	2%	1,621.91	48,657.20	1,621.91	-	-
Remarks: The adjustment is due to difference in rate. Maybank used 2% instead of 5%.							
Fort Bonifacio Development Corp	560,504.60	15%	84,075.70	560,504.60	-	-	84,075.70
Remarks: Revenue billed and recognized in 2008. Creditable tax withheld thereon was claimed only in 2009 upon receipt of the 2307, hence, CWT was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
Bonifacio Estate Service Corp	612,500.00	2%	12,250.00	612,500.00	-	-	12,250.00
Remarks: Double issuance of 2307 by the withholding agent.							
Ceci Realty, Inc.	882,898.63	2%	36,846.80	882,898.63	-	-	36,846.80
Remarks: Revenue billed and recognized in 2008. Creditable tax withheld thereon was claimed only in 2009 upon receipt of the 2307, hence, CWT was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
Others	5,404,641.65	2%	108,092.83	5,404,641.65	-	-	108,092.83
Remarks: Revenue billed and recognized in 2008. Creditable tax withheld thereon was claimed only in 2009 upon receipt of the 2307, hence, CWT was disallowed in accordance with Section 2.58.3(a) of RR 2-98.							
TOTAL	₱29,884,610.35		₱ 704,248.25	₱29,852,172.05	₱ 34,706.97	**-**	**₱669,541.27**

Schedule 2A

Name of the Company	Per FLD: Recognized Revenue in 2008, Collected only in 2009	Per FLD: Tax Withheld	Per SOA and OR Submitted: Sales	Per SOA and OR Submitted: Tax Withheld	Unaccounted Income	Adjustment on EWT	EWT for Disallowance
Glensworth Development, Inc.	₱ 38,760.26	₱ 5,814.04	₱ 38,760.26	₱ 5,814.04	-	-	₱ 5,814.04
The Residences At Greenbelt Condominium	903,168.00	135,475.20	903,168.00	135,475.20	-	-	135,475.20
Ceci Realty, Inc.	143,009.14	14,300.91	143,009.14	14,300.91	-	-	14,300.91
Ceci Realty, Inc.	249,181.55	24,918.16	249,181.55	24,918.16	-	-	24,918.16
Subtotal	*1,334,118.95*	*180,508.31*	*1,334,118.95*	*180,508.31*	-	-	*180,508.31*
Avida Residences	190,848.00	28,627.20	190,848.00	28,627.20	-	-	28,627.20
Avignon Tower Condominium Corp	985,644.00	147,846.60	985,644.00	147,846.60	-	-	147,846.60
Ayala Life FGU Center Condominium Corp	345,923.35	6,918.47	345,923.35	6,918.47	-	-	6,918.47
Ayala Westgrove Heights Homeowners	698,996.07	104,849.41	698,996.07	104,849.41	-	-	104,849.41
Citibank N.A.	11,370,176.00	227,403.52	11,370,176.00	227,403.52	-	-	227,403.52
Citibank Square Condominium Corp	2,579,507.44	51,590.15	2,579,507.44	66,137.29	-	₱ 14,547.14	66,137.29
Citigroup Business Process Solutions	1,781,093.50	35,621.87	1,781,093.50	35,621.87	-	-	35,621.87

Glensworth Development, inc.	461,869.27	69,280.39	461,869.27	69,280.39	-	-	69,280.39
One Dela Rosa Property Development	2,866,312.00	57,326.24	2,866,312.00	141,051.64	-	83,725.40	141,051.64
One Legaspi Park Residential Condo Corp	375,927.33	7,518.55	375,927.33	43,678.55	-	36,160.00	43,678.55
Roxas Triangle Towers Condominium Corp	16,374.64	327.49	16,374.64	327.49	-	-	327.49
Roxas Triangle Towers Condominium Corp	130,814.88	19,622.23	130,814.88	19,622.23	-	-	19,622.23
Roxas Triangle Towers Condominium Corp	266,215.47	5,324.31	266,215.47	5,324.31	-	-	5,324.31
Roxas Triangle Towers Condominium Corp	196,222.32	3,924.45	196,222.32	3,924.45	-	-	3,924.45
Roxas Triangle Towers Condominium Corp	200,253.57	4,005.07	200,253.57	4,005.07	-	-	4,005.07
The Asia Tower Condominium Corp	275,869.91	5,517.40	275,869.91	41,555.49	-	36,038.09	41,555.49
The Residences At Greenbelt Condominium	451,584.00	9,031.68	451,584.00	9,031.68	-	-	9,031.68
Verdana Homes Homeowners Association	27,250.00	5,445.00	27,250.00	30,492.00	-	25,047.00	30,492.00
The Columns Ayala Avenue Condominium	340,000.00	6,800.00	340,000.00	57,120.00	-	50,320.00	57,120.00
Woodside Homes Condominium Corp	156,034.93	23,405.24	156,034.93	23,405.24	-	-	23,405.24
Ayala Land, Inc.	6,478,371.79	647,837.18	6,478,371.79	647,837.18	-	-	647,837.18
Universal Re Condominium Corp	62,437.66	1,248.75	62,437.66	10,489.53	-	9,240.78	10,489.53
Subtotal	*30,257,726.14*	*1,469,471.20*	*30,257,726.14*	*1,724,549.62*	-	*255,078.42*	*1,724,549.61*
TOTAL	31,591,845.09	1,649,979.51	31,591,845.09	1,905,057.93	-	255,078.42	**₱1,905,057.92**
GRAND TOTAL							**₱2,574,599.19**

Petitioner argues that respondent acknowledged in the FDDA that the amount of ₱2,574,599.19 was being claimed only in 2009 even if it represented creditable income tax withheld on income recognized in 2008. In other words, respondent was able to verify: (a) income recognition in 2008; and (b) use of the certificate of creditable taxes withheld only in 2009.

Petitioner likewise submits that respondent disregarded the fact that the withholding agent is his agent and since the former only issued the certificate of creditable withholding tax in 2009, petitioner had no opportunity to use it earlier and it was only in 2009 that petitioner was able to use it.

Further, petitioner asserts that the disallowance of the use of the certificate of creditable withholding tax would constitute double taxation, *i.e.,* income tax was imposed the first time when the withholding agent withheld the creditable income taxes from petitioner and income taxes will be imposed a second time when respondent seeks to disallow the use of the certificate of creditable withholding tax, notwithstanding the full knowledge that the same certificate represents income tax already collected in advance from petitioner.

The Court finds for the petitioner.

Section 2.58.3(B) of RR No. 02-98 provides that claims for tax credit or refund of any creditable income tax, which was deducted and withheld on income payments, shall be given due course only when it is shown that (1) the income payment has been declared as part of the gross income, and (2) the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor/withholding agent to the payee/recipient, known as the Certificate of Creditable Tax Withheld at Source or BIR Form No. 2307, showing the amount paid and the amount of tax withheld therefrom.

Respondent admits that the income payments related to the creditable withholding taxes of ₱2,574,599.19 were already declared by petitioner in its income tax return for the year 2008. Likewise, the amount of ₱2,574,599.19 is duly supported by BIR Forms No. 2307 issued in the year 2009. Thus, pursuant to Section 2.58.3(B) of RR No. 02-98, petitioner may validly claim the amount of ₱2,574,599.19 as tax credits for the year 2009.

Disallowed Excess Tax Credits – ₱68,437,216.00

Following the computation per FDDA, respondent disallowed the excess tax credits carried over to the succeeding year in the amount of ₱68,437,216.00, without indicating therein the basis for the disallowance in the Details of Discrepancies.

Despite petitioner's failure to refute the same, the Court finds it improper to uphold an assessment which is already void on its face. Section 228 of the NIRC of 1997, as amended, provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In sum, petitioner is not liable for any deficiency income tax for taxable year 2009.

II. DEFICIENCY VALUE-ADDED TAX

Based on the same finding under the deficiency income tax assessment that petitioner had an alleged unaccounted income in the amount of ₱3,202,895.04 resulting from the comparison of the SLP of third parties vis-à-vis the SLS of petitioner, respondent assessed petitioner of corresponding deficiency VAT for taxable year 2009 in the amount of ₱770,492.81, inclusive of interest, computed as follows:[40]

Gross Vatable Sales per VAT Returns		₱1,017,651,819.35
Add: Unaccounted Income (Schedule 1)		3,202,895.04
Total Vatable Sales per Audit after Protest		1,020,854,714.39
x VAT rate		0.12
Output Tax Due		122,502,565.73
Less: Creditable Input Tax per Return		67,612,829.12
VAT Payable per Audit		₱ 54,889,736.61
Less: Paid per Return/Tax Credits		
Tax Payments	₱ 54,467,369.90	
Add: Creditable Tax Withheld	37,857.72	54,505,227.62
Still Due		384,508.99
Add: Interest from 1-26-10 to 01-31-16		385,983.82
Still Due as of 1-31-16		**₱ 770,492.81**

As discussed earlier, respondent failed to verify the amounts extracted from respondent's own database; thus, the deficiency VAT assessment of ₱770,492.81 should be cancelled and withdrawn.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner for alleged deficiency income tax in the amount of **₱6,929,516.89** and deficiency value-added tax in the amount of **₱770,492.81** or in the aggregate amount of **₱7,700,009.70** for taxable year 2009 is **CANCELLED** and **SET ASIDE**. *gr*

[40] Exhibit "P-4", docket, vol. I, p. 437.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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