REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ALTUS ANGELES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9164

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 08 2019
11:30 a.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This Petition for Review[1] filed by petitioner Altus Angeles, Inc. against respondent Commissioner of Internal Revenue (CIR) on October 2, 2015, prays for the cancellation of the alleged deficiency 2009 income tax, value-added tax (VAT), expanded withholding tax (EWT), increments for late remittance of WE, compensation withholding tax (WTC), and documentary stamp tax (DST) in the total amount of P5,352,161.05.

FACTS

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at Mezzanine Floor, Galleria Condominium Corp. Center, Edsa corner Ortigas Ave., Quezon City.[2]

Petitioner was incorporated on October 30, 2002 to establish, manage and maintain a commercial complex, offer such services and merchandise to the public in connection with the operation of a commercial complex and to

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[1] Docket, Vol. I, pp. 12-34
[2] Par. 1, II. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, Vol. I, p. 233

make and enter into all kinds of contracts, agreements and obligations with any person, partnership, corporation or association for the leasing of commercial space or the disposition, sale, acquisition of goods, wares and merchandise of all kinds, among other things.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where he may be served with summons and other legal processes.[4]

On May 14, 2010, respondent issued Letter of Authority No. LOA-127-2010-0000006[5] authorizing the examination of the books of accounts of Petitioner for the taxable year 2009.[6]

Petitioner alleges that it executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code[7] (Waivers) extending the period to assess until June 30, 2014.[8]

On December 6, 2012, petitioner received a copy of the Notice of Informal Conference[9] (NIC) which proposed to assess petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WC), documentary stamp tax (DST), increments for late remittance of WE and penalty for non-submission of schedule of taxes and licenses, in the aggregate amount of P7,445,494.05 for the fiscal year ending September 30, 2009.[10]

On May 26, 2010[11], petitioner received the Preliminary Assessment Notice[12] (PAN) finding petitioner liable for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P4,761,596.05 for the fiscal year ending September 30, 2009.[13]

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[3] Par. 2, II. Stipulation of Facts, JSFI, docket, Vol. I, p. 233
[4] Par. 1, I. Summary of Admitted Facts, JSFI, docket, Vol. I, p. 232
[5] Exhibit "P-3", docket, Vol. II, pp. 1075; Exhibit "P-189", Q/A No. 11, Judicial Affidavit (JA) of Ms. Anne Mae E. Mangaser, docket, Vol. I, pp. 251-252
[6] Par. 2, I. Summary of Admitted Facts, JSFI, docket, Vol. I, p. 232
[7] Exhibits "P-11", "P-12" and "P-13", docket. Vol. II, pp. 1277, 1278, 1279
[8] Par. 5, II. Statement of Facts and Jurisdictional Allegations, Petition for Review, docket, Vol. I, p. 13
[9] Exhibit "P-4", docket, Vol. II, pp. 1076-1081; Exhibit "P-189", Q/A Nos. 14 and 15, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, p. 252
[10] Par. 3, I. Summary of Admitted Facts, JSFI, docket, Vol. I, p. 232
[11] PAN was received on May 26, 2014
[12] Exhibit "P-5", docket, Vol. II, pp. 1082-1090; Exhibit "P-189", Q/A Nos. 16 and 17, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, pp. 252-253
[13] Par. 4, I. Summary of Admitted Facts, JSFI, docket, Vol. I, pp. 232-233

Petitioner claims that on June 10, 2014, it filed its protest letter against the findings of respondent as stated in the PAN.[14]

On June 30, 2014, petitioner received the Formal Letter of Demand[15] (FLD) reiterating the findings and deficiency tax assessments in the PAN and assessing petitioner for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P4,830,555.56 for the fiscal year ending September 30, 2009.[16]

According to petitioner, it filed its protest letter against the FLD on July 30, 2015, with request for reinvestigation, and submitted supporting documents.[17] Subsequently, petitioner submitted additional supporting documents on September 26, 2014.[18]

On September 3, 2015, petitioner received the Final Decision on Disputed Assessment[19] (FDDA), which substantially reiterated the assessment in the FLD for deficiency income tax, VAT, EWT, WC, DST and increments for late remittance of WE, in the aggregate amount of P5,352,161.05, broken down as follows:

Type of Tax	Basic	Interest	Compromise Penalty	TOTAL
Income Tax	P 1,117,641.73	P 1,238,285.00	P 25,000.00	P 2,380,926.73
Value-Added Tax	334,678.70	385,843.00	16,000.00	736,521.70
Withholding Tax on Compensation	166,780.24	193,648.00	16,000.00	376,428.24
Expanded Withholding Tax	39,941.39	46,376.00	8,500.00	94,817.39
Increment for Late Remittance of WE	-	678.46	8,500.00	9,178.46
Documentary Stamp Tax	799,177.53	930,111.00	25,000.00	1,754,288.53
TOTAL	**P 2,458,219.59**	**P 2,794,941.46**	**P 99,000.00**	**P 5,352,161.05**

[14] Par. 8, II. Statement of Facts and Jurisdictional Allegations, Petition for Review, docket, Vol. I, p. 13; Exhibit "P-6", docket, Vol. II, pp. 1091-1095; Exhibit "P-189", Q/A Nos. 18 and 19, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, p. 253

[15] Exhibit "P-7", docket, Vol. II, pp. 1139-1147; Exhibit "P-189", Q/A Nos. 20 and 21, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, p. 253

[16] Par. 5, I. Summary of Admitted Facts, JSFI, docket, Vol. I, p. 233

[17] Par. 8, II. Statement of Facts and Jurisdictional Allegations, Petition for Review, docket, Vol. I, p. 13; Exhibit "P-8", docket, Vol. II, pp. 1148-1154; Exhibit "P-189", Q/A Nos. 23 and 24, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, pp. 253-254

[18] Exhibit "P-9", docket, Vol. II, pp. 1211-1212; Exhibit "P-189", Q/A Nos. 25 and 26, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, p. 254

[19] Exhibit "P-10", docket, Vol. II, pp. 1259-1276; Exhibit "P-189", Q/A Nos. 27 and 28, JA of Ms. Anne Mae E. Mangaser, docket, Vol. I, p. 254

On February 1, 2016, respondent filed his Answer.[20]

A Notice of Pre-Trial Conference[21] was issued by the Court, setting the case for pre-trial conference on April 28, 2016, which was cancelled and reset to September 27, 2016[22]. Accordingly, respondent's Pre-Trial Brief[23] was filed on April 22, 2016 while petitioner's Pre-Trial Brief[24] was filed on April 25, 2016.

The Pre-trial conference ensued.[25] Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[26] (JSFI) on October 17, 2016. Consequently, the Court issued a Pre-Trial Order[27] on November 16, 2016 and the pre-trial was deemed terminated.

During the trial, petitioner presented the testimony of its witness, Ms. Anne Mae E. Mangaser by way of Judicial Affidavits in lieu of direct examination.[28]

The Formal Offer of Evidence[29] for the petitioner was filed on July 3, 2017. On August 23, 2017, the FOE was resolved[30] by the Court admitting Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-14-1", "P-14-2", "P-14-3", "P-14-4", "P-14-5", "P-15", "P-15-1", "P-16", "P-16-1", "P-17", "P-17-1", "P-21", "P-22", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96", "P-97", "P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P-106", "P-107", "P-108", "P-109", "P-110", "P-111", "P-112", "P-113", "P-114", "P-115", "P-116", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", "P-144", "P-145", "P-147", "P-148", "P-149", "P-150", "P-

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[20] Docket, Vol. I, pp. 106-128
[21] Docket, Vol. I, pp. 130-131
[22] Order dated July 4, 2016, docket, Vol. I, p. 211
[23] Docket, Vol. I, pp. 147-151
[24] Docket, Vol. I, pp. 178-183
[25] Minutes of the Hearing, September 27, 2016, docket, Vol. I, pp. 213-215
[26] Docket, Vol. I, pp. 232-237
[27] Exhibit "189", Judicial Affidavit of Ms. Anne Mae E. Mangaser dated October 27, 2016, docket, Vol. I, pp. 249-291; Exhibit "P-190", Supplemental Judicial Affidavit of Ms. Mangaser dated February 16, 2017, docket, Vol. II, pp. 941-952
[28] Exhibit "P-79", docket, Vol. I, pp. 419-427
[29] Docket, Vol. II, pp. 1012-1039
[30] Resolution dated August 23, 2017, docket, Vol. III, pp. 1652-1654

151", "P-152", "P-153", "P-154", "P-155", "P-156", "P-157", "P-158", "P-159", "P-160", "P-161", "P-162", "P-163", "P-164", "P-165", "P-166", "P-167", "P-168", "P-169", "P-170", "P-171", "P-172", "P-173", "P-174", "P-175", "P-176", "P-188", "P-189", "P-189-1", "P-190"and "P-190-1".

On the other hand, the Court denied the admission of: 1) Exhibits "P-23", "P-23-1", "P-24", "P-24-1","P-36" and "P-37", for failure to provide satisfactory evidence for the introduction of secondary evidence; 2) Exhibit "P-146", for failure of the exhibit formally offered to correspond with the document identified; and 3) Exhibits "P-177", "P-178", "P-179", "P-180", "P-181", "P-182", "P-183", "P-184", "P-185", "P-186" and "P-187", for failure to identify these exhibits.

Petitioner filed a motion for reconsideration[31] on September 11, 2017, of the Court's Resolution dated August 23, 2017, on the denied exhibits. In the Resolution[32] dated January 8, 2018, the Court partially granted petitioner's motion, admitting Exhibits "P-177", "P-178", "P-179", "P-180", "P-181", "P-182", "P-183", "P-184", "P-185", "P-186" and "P-187" while still denying Exhibits "P-23", "P-23-1", "P-24", "P-24-1","P-36", "P-37" and "P-146".

Respondent presented his witnesses, Revenue Officers Joel M. Aguila[33], who testified by way of Judicial Affidavit in lieu of direct examination.

Respondent filed its FOE[34] on June 1, 2018. In Resolution[35] dated July 30, 2018, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", and "R-9".

This case was deemed submitted for decision on October 16, 2018[36], considering the Memorandum[37] for petitioner was filed on September 3, 2018, while respondent filed his Memorandum[38] on October 4, 2018.

ISSUE

The parties agreed that the sole issue[39] for the Court's determination is:

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[31] Docket, Vol. III, pp. 1655-1661
[32] Docket , Vol. III, pp. 1675-1682
[33] Exhibit "R-10", Judicial Affidavit of Revenue Officer Joel M. Aguila, docket, Vol. II, pp. 979-989; Minutes of the Hearing, May 15, 2018, docket, Vol. III, pp. 1689-1690
[34] Docket, Vol. III, pp. 1694-1700
[35] Docket, Vol. III, pp. 1712-1713
[36] Resolution dated October 16, 2018, docket, Vol. III, p. 1779
[37] Docket, Vol. III, pp. 1714-1745
[38] Docket, Vol. III, pp. 1755-1776
[39] III. Stipulation of Issues, JSFI, docket, Vol. I, p. 234

Whether petitioner is liable to pay deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Documentary Stamp Tax, and increments for late remittance of WE, for fiscal year ending September 30, 2009, plus 25% Surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997.

ARGUMENTS OF THE PETITIONER[40]

Petitioner argues that the PAN, FLD and FDDA have been issued without valid authority and are not supported by any factual and legal basis.

Petitioner claims that the FDDA, PAN and FLD are void due to the absence of an electronic Letter of Authority (eLA) to support the audit investigation, as required under Revenue Memorandum Order (RMO) No. 69-10[41] and RMO No. 62-10[42]. It contends that the manually-prepared Letter of Authority (LOA) that covered the 2009 tax returns should have been replaced by an eLA. Since the manually-prepared LOA was never retrieved and replaced with an eLA as required under RMO Nos. 62-2010 and 69-2010, petitioner asserts that assessments issued by the respondent are void.

On the assessments, petitioner avers that the alleged deficiency income tax, VAT, WTC, EWT, increments for late remittance of WE and DST for the taxable year 2009 should be cancelled for lack of factual and legal basis.

ARGUMENTS OF THE RESPONDENT[43]

On the other hand, respondent submits that, contrary to the allegation of petitioner that the assessment is void due to the absence of an eLA, there was compliance with the requirement of LOA under the law.

Respondent argues that 1) upon the issuance and due receipt of the LOA, the revenue officers tasked to perform audit and investigation has the clear authority and duty to do the audit investigation in accordance with Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended; 2) RMO No. 62-2010 and 69-2010 are merely internal issuances intended to regulate internal functions and processes of officers and employees of the BIR and does not affect the validity of the already issued LOA; 3) there is nothing in the said issuances that invalidates the assessment in case of failure to retrieve

[40] Docket, Vol. III, pp. 1714-1745

[41] "*Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment*", August 11, 2010

[42] "*Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures*", July 1, 2010

[43] Docket, Vol. III, pp. 1755-1776

and replace the manually issued LOA; 4) the acts of petitioner constitute as admission of the validity of the assessments when it failed to assert its right not to entertain the revenue officers, and it even keenly participated in the audit and investigation.

Further, respondent counters that the assessment issued against the petitioner has bases in facts and law.

RULING OF THE COURT

Jurisdiction over the Petition for Review

The Court shall first determine whether it has jurisdiction over the Petition for Review in relation to the assessment issued by the respondent against the petitioner.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, 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 pre-assessment 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.
>
> 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 <u>within one hundred eighty (180) days from submission of documents</u>, 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. (*Emphasis and underscoring supplied*)

In relation thereto, Section 11 of Republic Act (RA) No. 1125, as amended by Section 9 of RA No. 9282, states:

> **Section 9.** Section 11 of the same Act is hereby amended to read as follows:
>
> > "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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **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.**
> >
> > **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc."
> >
> > xxx xxx xxx
> >
> > (*Emphasis supplied.*)

Based on the foregoing provisions, to dispute the assessment, taxpayer may file an administrative protest within thirty (30) days from the receipt of the assessment and submit the relevant supporting documents within sixty (60) days from the filing of such protest. Otherwise, the assessment will become final.

In the instant case, petitioner received the FLD on June 27, 2014 and filed its protest with a request for reinvestigation and submission of supporting documents on July 30, 2014. Subsequently, within the sixty (60) day period from the filing of said protest, petitioner submitted additional supporting documents on September 26, 2014. In reply to the protest, respondent issued the FDDA, which was received by the petitioner on September 3, 2015, substantially reiterating the assessment in the FLD.

Counting thirty (30) days from the receipt of the FDDA, the petition should be filed on or before October 3, 2015. Considering the instant petition was filed on October 2, 2015, the petition was timely filed. Therefore, this Court has jurisdiction to take cognizance of the case.

Authority of the Revenue Officers to conduct an audit investigation in the absence of an electronic LOA

Petitioner posits that the assessment is void for failure of the revenue officers who conducted the audit investigation to replace the manually-prepared LOA with an eLA as required under RMO Nos. 62-2010 and 69-2010.

The Court finds petitioner's arguments without merit.

Pursuant to Section 6(A) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue (CIR) is vested with the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

> "SEC. 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 duly authorized representative may authorize the examination of any taxpayer and the**

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> **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." (*Emphasis supplied*)

As provided by the above provision, a valid grant of authority from the CIR or his duly authorized representative is required before a revenue officer conducts an examination or issue an assessment.

Such grant of authority is in the form of a Letter of Authority (LOA), pursuant to Section 13 of the NIRC of 1997, as amended, which states:

> "SEC. 13. ***Authority of a Revenue Officer***. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

The Supreme Court discussed the importance of the issuance of an LOA in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* (the *Sony case*).[44] The Supreme Court held:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of**

[44] G.R. No. 178697, November 17, 2010.

> **such an authority, the assessment or examination is a nullity.**" (*Emphasis supplied*)

In view of the above *Sony case*, it can be considered that the LOA is a crucial document to revenue officers as this grants them the authority to conduct examination or assess the taxpayer. Absence of the LOA would result to the nullity of the examination or assessment.

In relation thereto, RMO Nos. 62-2010 and 69-2010 provides for the guidelines on the electronic issuance of Letters of Authority (eLA). Sections 5 and 6, II. Policies and Procedures, of the RMO No. 62-2010 states that manually prepared LOAs covering tax returns for 2009 should be converted or replaced by eLAs, to wit:

"II. *Policies and Procedures*

xxx xxx xxx

5. <u>**For manually prepared LAs covering 2009 tax returns, the concerned officials shall be given ten (10) working days from the effectivity of this Order to convert the same to eLAs using the LAMS**</u>. Likewise, all TVNs issued under the 2010 Audit Program for RDOs shall also be converted to eLA within the same period.

   Further, for other offices under the LTS, ES and for Task Forces and Special Teams, the concerned officials are also given the same time frame to enter the data of their manually issued LAs and TVNs into the LAMS.

6. <u>**All manually prepared LAs covering 2009 tax returns and TVNs issued shall be retrieved and replaced with eLAs. Thus, taxpayers who are in possession of manually prepared LAs/TVNs shall not entertain any Revenue Officer (RO) relative to the audit of his internal revenue tax liabilities for taxable year 2009 unless the same is replaced with eLA**</u>. Accordingly, the Bureau of Internal Revenue shall require the surrender of the manual LA/TVN and service of the replacement eLA even if the taxpayer has already paid his/its deficiency tax liabilities for 2009."

While RMO No. 69-2010, Sections 6 and 7, III. Policies and Guidelines, provides that revenue officers are to continue the conduct of the audit/investigation under the manually issued LOAs, *viz*:

"III. Policies and Guidelines

xxx xxx xxx

6. All LAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new *e*LA form (BIR Form No. 1966).

7. **All revenue officers ordered to conduct investigation/audit through manually issued LAs prior to July 1, 2010 should continue the conduct of audit/investigation**, subject to the retrieval and replacement of LAs as mandated under Item No. III 6 of this Order.

Based on the afore-quoted RMOs, manual LOAs are to be retrieved and replaced with the new eLAs. However, nowhere in the said RMOs invalidates the manually-prepared LOAs when said LOAs are not retrieved and replaced with eLAs.

Moreover, in case the manually prepared LOA is not replaced with a new eLA, the remedy of the taxpayer is to invoke Section 6 of RMO No. 62-2010 which allow taxpayers with the right not to entertain any revenue officer, unless a new eLA has been issued. Such right, however, may be waived when the taxpayer continues to allow the audit/investigation without protest.

In *Commissioner of Internal Revenue vs. Next Mobile, Inc. (Next Mobile case)*[45], the Supreme Court held that while the application of estoppel should be applied sparingly, the doctrine will be applied should the Court finds that it would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage, particularly on highly suspicious situations where both parties are at fault:

> "*Third,* respondent is estopped from questioning the validity of its Waivers. **While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to**

[45] G.R. No. 212825, December 7, 2015.

petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities." (*Emphasis supplied.*)

In the instant case, petitioner was given several opportunities to raise the validity of the manual LOA during the NIC or in its protests to the PAN and FLD, which petitioner failed to do so. Petitioner even executed several waivers extending the period to assess until June 30, 2014. Thus, petitioner cannot raise for the first time in its petition the invalidity of the LOA for non-compliance of RMO Nos. 62-2010 and 69-2010 as it actively participated in the audit/investigation conducted by the revenue officers authorized under the manually prepared LOA.

Considering the foregoing, the assessment remains valid under the manually prepared LOA.

The Court shall now determine whether the petitioner is liable of the alleged deficient income tax, VAT, EWT, increments for late remittance of EWT, WTC and DST for the fiscal year ending September 30, 2009. Below are the findings of the Court:

I. DEFICIENCY INCOME TAX

Respondent assessed petitioner of deficiency income tax for FY 2009 ending September 30, 2009 amounting to ₱2,355,926.73, inclusive of increments, computed as follows:[46]

Assessment No. IT-116-LOA-0000006-09-14-984		
Taxable Income per return		₱ 4,794,365.00
Add: Adjustments		
Additional Taxable Sales	₱ 116,163.80	
Undeclared Revenue (FS vs. ITR)	11,122.00	
Undeclared Revenue (SLS vs. SAWT)	2,507,849.19	
Undeclared Revenue from RLC (CAATS)	153,854.16	
Unsubstantiated and Not Subjected to Withholding Tax		
Professional Fee/Consultancy	266,275.92	
Compensation	521,188.26	3,576,453.33
Adjusted Taxable Income		8,370,818.33
Tax Due		2,615,880.73

[46] Exhibits "P-10", Docket, p. 1259;"R-9", BIR Records, p. 803

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Less: Payments/Tax Credits		
Prior Year Excess Credits		
Creditable Tax Withheld for the First Three Quarters	1,633,955.00	
Creditable Tax Withheld for the Fourth Quarter	507,239.00	
Total Creditable Tax per Return	2,141,194.00	
Less: Tax Credit forwarded to succeeding period	642,955.00	1,498,239.00
Deficiency Income Tax		1,117,641.73
Add: 20% Interest p.a. (01.16.10 to 07.31.15)		1,238,285.00
TOTAL AMOUNT DUE		**₱2,355,926.73**

The Court shall determine the validity of the assessment by looking into the following items of adjustments imputed and disallowed by respondent:

a. Additional Taxable Sales	₱ 116,163.80
b. Undeclared Revenue (FS vs. ITR)	11,122.00
c. Undeclared Revenue (SLS vs. SAWT)	2,507,849.19
d. Undeclared Revenue from RLC (CAATS)	153,854.16
e. Unsubstantiated and Not Subjected to Withholding Tax	
Professional/Consultancy Fees	266,275.92
Compensation	521,188.26
f. Tax Credit forwarded to succeeding period	642,955.00

a. Additional Taxable Sales - ₱116,163.80

In the Details of Discrepancies, respondent explained the basis of the assessment as follows:

> "Line-by-line analysis of your purchases per your SLP as compared with RELIEF/SLS data of your supplier disclosed that there were reported sales to you by your suppliers that were not included in your SLP. You were given enough time to reconcile the discrepancy but you failed to substantiate it as of this date. The additional taxable sales that resulted from the undeclared purchases were added back to your taxable income pursuant to Section 32 of the NIRC, as amended.

Under-declaration of Purchases thru line-by-line analysis (SLP vs TPI)	₱ 275,497.52
Add: Under-declared purchases (Input tax per FS vs. Creditable Input Tax per 4th Quarter of 2550Q)	460,879.62
Total Under-declared Purchases	736,377.14
Divide by Cost Ratio	86.37%
Additional Sales based on Discrepancy	852,584.39
Multiply by Gross Profit Rate	13.63%
Additional Taxable Sales	**₱116,169.72**

Computation of discrepancy/GPR/CR

a. Gross Profit Rate = $\dfrac{\text{GP per AFS (p.49)}}{\text{Net Sales per AFS}} = \dfrac{4{,}805{,}487.00}{35{,}268{,}083.00}$ = **13.63%**

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b. Cost Ratio = 100% - Gross Profit Ratio = 100% - 13.63% = **86.37%**

The alleged items composing the under-declared purchases thru line-by-line analysis in the amount of ₱275,497.52 pertains to the following:[47]

Name	Per SLP	Per AITEID	Under-declared Purchases
Electrical and Equipment	₱ 2,591.17	₱ 7,948.21	₱ 5,357.04
Gendiesel Philippines, Inc.	99,336.83	138,079.09	38,742.26
Ketchikan Enterprises, Inc.	-	21,576.78	21,576.78
New Covenant Marketing Corp.	-	4,464.29	4,464.29
Vivendi Water Systems (Phils.), Inc.	-	205,357.15	205,357.15
Total	**₱101,928.00**	**₱ 377,425.52**	**₱ 275,497.52**

Petitioner contends that respondent's assessment is void for being based merely on unfounded presumption instead of hard facts. Citing the case of *La Verdead, Inc. v. Collector of Internal Revenue*[48], it submits that the resort to the gross profit method based on the best evidence available is clearly unwarranted. Respondent's agents conducted a full-blown audit of petitioner's books of accounts and accounting records and were freely given access to petitioner's records.[49]

Further, petitioner contests the examiner's source documents as valid basis for this assessment, relying on this Court's ruling in the case of *Fax Parcel, Inc. vs. Commissioner of Internal Revenue*[50] where it held that assessments based on the BIR's computer generated third party information which was not verified with externally source data is not valid as it is merely based on presumptions.[51]

The Court finds petitioner's arguments meritorious.

Basic is the rule that 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. However, in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[52] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[53]

[47] BIR Records, pp. 230-231
[48] CTA Case No. 257, April 15, 1958
[49] Pars. 24 to 25, Petition for Review, Docket, pp. 18-19
[50] CTA Case No. 7415, November 22, 2011
[51] Exhibit "P-8", Docket, pp. 1148-1149
[52] *Collector of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182, 185.
[53] *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987, 153 SCRA 665, 677.

In this present scenario, it is clear that respondent failed to prove the presumption in his favor given that the assessment was based merely on an unverified RELIEF/SLS data of the alleged suppliers of petitioner. Nowhere in the records of the case can it be found that respondent verified or confirmed the amounts from the purported third party sources. Without such confirmation or any other satisfactory supporting documents, the subject RELIEF/SLS data is doubtful, inconclusive and unreliable.

It is worth stating that under RMO No. 04-03 issued by the BIR, it recognizes the need to verify the information with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted thus:

> 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 taxpayer's Summary List 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)*

Likewise, this Court, in the case of *G & W Architects, Engineers and Project Consultants Co. vs. CIR*[54], held that while there is no showing from the guidelines provided under Revenue Memorandum Order Nos. 32-07 and 46-04 that the sworn statements from the third-party information sources are indispensable and mandatory, the fact remains that the amounts of undeclared purchases found by respondent were unverified. Thus, the same casts doubts as to the

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[54] CTA Case No. 8604, August 16, 2016

reliability and correctness of the findings of deficiency taxes assessed by respondent.

Nevertheless, in its attempt to reconcile the findings of respondent, petitioner provided the following explanations, through Ms. Anne Mae E. Mangaser, Business Unit Controller of Robinsons Land Corporation, of which petitioner is a subsidiary:[55]

1. Vivendi Water Systems (Phils.), Inc. and Ketchikan Enterprises, Inc. are not suppliers of the Company. They are not included in the Company's vendor database.

2. The difference in the Company's purchases from Gendiesel Philippines, Inc. corresponds to the purchased services for the installation of general set and fan screw, which was invoiced by the supplier on 25 July 2009, reported in Altus' December 2009 SLP, and processed for payment in December 2009.

3. The difference in the Company's purchases from Electrical and Equipment Sales Co., Inc. corresponds to the purchased bulbs and lighting, which was invoiced by the supplier on 1 October 2009, reported in Altus' November 2009 SLP, and processed for payment in November 2009.

4. The difference in the Company's purchases from New Covenant Marketing Corp. corresponds to the purchased battery for the alarms system, which was invoiced by the supplier on 21 December 2009, reported in Altus' January 2010 SLP, and processed for payment in January 2010.[56]

Anent the difference in petitioner's purchases from Electrical and Equipment Sales Co. ("EESO"), Gendiesel Philippines, Inc. ("Gendiesel") and New Covenant Marketing Corp. ("New Covenant") in the respective amounts of ₱5,357.04, ₱38,742.26 and ₱4,464.29, petitioner has proven its claim as the discrepancy can be traced to the Summary List of Purchases (SLP) for the months of November 2009,[57] December 2009[58] and January 2010[59], respectively, as the payments were only made on the said months.[60] Clearly, the aforesaid discrepancies of ₱5,357.04, ₱38,742.26 and ₱4,464.29 are attributable only to timing difference on reporting the same. Thus, the assessment thereon should be cancelled.

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[55] Exhibit "P-189", docket, Vol. I, pp. 249-290
[56] *Supra,* Answer to Q38
[57] Exhibit "P-27", docket, Vol. II, p. 1399
[58] Exhibit "P-25", docket, Vol. II, p. 1397
[59] Exhibit "P-29", docket, Vol. II, p. 1401
[60] Exhibits "P-26" and "P-28", docket, Vol. II, pp. 1398, 1400

With regard to petitioner's contention that Vivendi Water Systems (Phils.), Inc. ("Vivendi") and Ketchikan Enterprises, Inc. ("Ketchikan") were not its suppliers, it submitted a Vendor List[61] generated from the SAP records to prove that these companies were not in the database from the period October 1, 2004 to December 31, 2009. As testified by Ms. Mangaser, the system will not process the transaction until the vendor's details are encoded into the vendor database and included in the vendor list.[62]

However, the Court finds non-inclusion of the said suppliers in petitioner's Vendor List from the period October 1, 2004 to December 31, 2009 to be self-serving, thus, cannot be given much weight.

Be that as it may, as shown in the above assessment, the basis for the income tax assessment on this alleged additional taxable sales issued by respondent is the finding that there was under-declaration of purchases in the total amount of ₱736,377.14. Simply put, respondent's theory is that since there was an under-declaration of purchases, the same should translate to taxable income subject to income tax.

The Court disagrees with the respondent.

It is worth to emphasize that the three elements in the imposition of income tax are:

1) there must be gain or profit;

2) that the gain or profit is realized or received, actually or constructively; and

3) it is not exempted by law or treaty from income tax.[63]

Income tax is assessed on income received from any property, activity or service.[64] Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an under-declaration of purchases.[65]

In the instant case, said elements on the imposition of income tax are not present. Respondent merely presumed that the alleged discrepancy/under-

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[61] Exhibit "P-22", docket, Vol. II, pp. 1362-1394
[62] Exhibit "P-189", Answer to Q39
[63] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[64] *Ibid.*
[65] *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*, G.R. 213943, March 22, 2017, adopting the decision of the CTA in *Philippine Daily Inquirer, Inc. vs. CIR*, CTA Case No. 7853, February 16, 2012

declared purchases constitute undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

Moreover, it is important to note that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[66]

Thus, even when there is under-declaration of purchases, the same is not prohibited by law. Accordingly, mere reliance on the fact that there were under-declared purchases is not enough basis for the Court to uphold respondent's assessment of the subject deficiency income tax. As a result, respondent's deficiency income tax on the alleged additional taxable sales of ₱116,169.72 is cancelled.

b. Undeclared Revenue - ₱11,122.00

In the Details of Discrepancies, respondent explained the basis of the assessment as follows:

> "Verification disclosed that the total Revenue per GL of ₱39,741,855.00 is higher by ₱11,122.00 as compared with total revenue per annual ITR. The said discrepancy was considered as undeclared revenue and was assessed pursuant to Section 32 of the 1997 NIRC which states "... Gross income means all income derived from whatever source..."

Revenue per GL	₱ 39,741,855.00
Revenue per ITR	39,730,733.00
Undeclared Revenue	**₱ 11,122.00**

Petitioner contends that the assessment is void for failure to comply with the requirements of Section 228 of the NIRC of 1997. Respondent only made a mere comparison between the figures in the GL and the ITR without explanation as to why the same was treated as undeclared revenues. Respondent's finding is based merely on presumption and is not based on facts.[67]

The Court cannot sustain petitioner's claim.

Evidently, the purported undeclared revenue was derived by respondent through comparison of the revenues declared per GL/AFS as against per ITR,

[66] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., G.R. No. L-19727, May 20, 1965, 14 SCRA 52.*
[67] Par. 30, Petition for Review, docket, Vol. I, p. 21

both of which are information reflected in the documents supplied by petitioner. Simply put, petitioner had specific knowledge on the amounts being compared.

Nevertheless, petitioner submits that in any case, the difference between the total revenue per GL and the revenue per ITR pertains to the net effect of non-taxable income and non-deductible expense, as presented in the "Reconciliation of Net Income per Books against Taxable Income" attached in its annual ITR for taxable year 2009.[68]

Based on the "Reconciliation of Net Income per Books against Taxable Income"[69], attached to petitioner's annual ITR for taxable year 2009[70], the following amounts are shown:

Non-deductible Expenses/Other Taxable Income	
Interest Expense from PAS 39	(₱ 1,240,856.00)
Non-taxable Income and Income Subjected to Final Tax	
Interest Income subjected to Final Tax	3,232,916.00
Accrued Rental Income from PAS 17	(4,784,404.00)
Accrued Rental Income from PAS 39	321,754.00
Net Effect	**(₱2,470,590.00)**

As can be gleaned above, it is clear that the net effect of non-taxable income and non-deductible expense does not correspond to the assessed undeclared revenue of ₱11,122.00. Considering that petitioner failed to reconcile and provide any other supporting documents to support its claim, mere allegations will never suffice to overthrow the presumption in favor of taxation; only evidence presented to substantiate errors in assessment will be given merit. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[71]

Thus, respondent's findings that petitioner had undeclared revenue of ₱11,122.00 is sustained.

c. Undeclared Revenue (SLS vs SAWT) - ₱2,507,849.19

In the Details of Discrepancies, respondent explained the basis of the assessment as follows:

[68] Q/A No. 95 of Exhibit "P-189", docket, Vol. I, p. 24
[69] Exhibit "P-14-1" to "P-14-4", docket, Vol. II, p. 1282
[70] Exhibit "P-14", docket, Vol. II, pp. 1280-1281
[71] *Real vs. Belo*, G.R. No. 146224, January 26, 2007

"Comparative line-by-line analysis of your revenue per Summary List of Sales as compared with income/revenue you declared in your Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) disclosed that there revenues from your various clients that were not subjected to VAT pursuant to Section 108 of 1997 NIRC of the Philippines.

Tenant	SAWT	Per SLS	Undeclared Revenue
Argentree	180,000.00	144,028.33	35,971.67
BENCH	857,355.20	709,738.57	147,616.63
Business Laboratories, Inc.	267,490.00	162,000.00	105,490.00
CharinaAgasArtezuela	14,524.20	4,785.92	9,738.28
Creative Trend, Inc.	102,000.00	(6,580.67)	108,580.67
DAVID S SALON	207,278.40	200,803.41	6,474.99
DIGITEL MOBILE PHILS. INC.	1,056,931.20	603,479.16	453,452.04
EXQUISITE BOUTIQUE	32,826.20	14,364.26	18,461.94
Fukuda Sisig Diner	73,228.20	21,692.59	51,535.61
GC MASANGKAY CELLUER	65,435.00	32,640.00	32,795.00
Giant Pictures, Inc.	3,735.80	-	3,735.80
GREENWICH	352,291.20	351,273.01	1,018.19
GUESS	154,548.80	119,365.00	35,183.80
Handyman's - Pylon	1,223.00	-	1,223.00
Handyman's Do it Best	2,190,604.60	1,684,305.59	506,299.01
Hazel A. Quicho	21,900.00	1,318.92	20,581.08
HBC Home of Beauty Exclusive	461,570.80	402,989.59	58,581.21
IDD Celfone Station	48,000.00	29,580.50	18,419.50
Jiggy's Shawarma	70,000.00	30,000.00	40,000.00
KODAK	133,713.80	-	133,713.80
Lots' A Pizza	249,575.20	198,160.09	51,415.11
Mega Frost	96,000.00	86,578.34	9,421.66
Mercury Drug	957,070.40	741,443.00	215,627.40
Penshoppe	61,249.20	-	61,249.20
Pita Stop Shawarma	-	(9,545.25)	9,545.25
Rusty Lopez	383,631.20	383,631.00	0.20
SABELLA	31,719.80	14,336.92	17,382.88
SKIN PERFECT	278,280.00	222,624.00	55,656.00
STAR REPUBLIC CORP.	195,000.00	150,573.75	44,426.25
Sterling Cinema Management	1,305,089.20	1,125,000.00	180,089.20
Tom & Joy, Incorporated	628,406.40	592,406.11	36,000.29
TOM S WORLD	737,611.20	735,277.64	2,333.56
Tristan's Playhouses	96,000.00	84,363.42	11,636.58
Universal Storefront Service	88,043.40	67,700.00	20,343.40
Vendo Corporation	-	(748.42)	748.42
VIBES INC.	190,748.40	187,646.83	3,101.57
	11,593,080.80	**9,085,231.61**	**2,507,849.19**

Citing the case of *Commissioner of Internal Revenue vs. Headstrong Philippines, Inc.*[72], petitioner argues that the assessment is void on the basis that the resulting discrepancy between the sales per withholding tax returns when

[72] CTA EB Case No. 489, February 7, 2011

compared to sales per VAT returns cannot be considered undeclared income due to the timing difference in the method of accounting for withholding tax on the one hand and VAT on the other.

Further, petitioner contends that it has no undeclared revenue even when the SLS is compared with the SAWT. Petitioner's SAWT includes taxes withheld by tenants for rental and other charges such as reimbursements for consumed utilities and common area charges. For income tax purposes, these charges to tenants effectively reduced the expenses claimed by petitioner as allowable deductions in the ITR.

Upon examination of the records of the case, other than the petitioner's Summary List of Sales[73] and Reconciliations with supporting BIR Form 2307 attached to its Supplemental Protest Letter[74], no other document was presented to infer whether the discrepancy could, indeed, be attributed to reimbursements for consumed utilities and common area charges, or due to timing difference, as petitioner claims. The Court finds the testimonial and documentary evidence presented by petitioner insufficient to establish and trace the said discrepancies.

Thus, respondent's findings that petitioner had undeclared revenue of ₱2,507,849.19 is sustained.

d. Undeclared Revenue from Robinsons Land Corp. (CAATS) - ₱153,854.16

In the Details of Discrepancies, respondent explained the basis of the assessment as follows:

> "Extraction of data per Conglomerate Masterfile Database disclosed that Robinsons Land Corp. reported income payment to Altus Angeles, Inc. amounting to ₱153,854.16 which was not reflected in your SLS. Said amounts was construed as undeclared revenue and should form part of your gross income pursuant to Sec. 32 of the 1997 NIRC which states that "Gross income means all income derived from whatever source…"

Petitioner argues that the undeclared revenue from Robinsons Land Corporation (RLC) has no factual basis since it was reported by petitioner under the name Robinsons Homes, Inc. (RHI), a company which was merged with RLC in March 2009 where the latter was the surviving entity. Further, petitioner contends that the alleged income payment of ₱153,854.16 was actually received by petitioner from RHI as shown in the official receipts issued by the former.

[73] Exhibit "P-21", docket, Vol. II, pp. 1324-1347
[74] Exhibit "P-9", docket, Vol. II, pp. 1211-1258

The Court finds for the petitioner.

As indicated in the Certificate of Filing of the Articles and Plan of Merger with the Securities and Exchange Commission[75], RLC as the surviving corporation, shall absorb the entire assets and liabilities of the absorbed corporations, which includes RHI. In other words, by virtue of the merger, RHI shall cease to exist as a corporate entity and the entire assets and liabilities appurtenant thereto will be transferred to RLC. Accordingly, the receivables of petitioner from the absorbed corporation, RHI, now become due from RLC. Necessarily, upon its payment, RLC shall report the income payments, which is deemed payment in behalf of RHI. Needless to say, the amount of ₱153,854.16 actually pertains to one and the same income payments due from RHI but paid by RLC.

Thus, respondent's finding that petitioner had undeclared revenue from Robinsons Land Corporation of ₱153,854.16 is without basis.

e. Unsubstantiated and Disallowed Expenses for Non-Withholding of Tax – Professional Fee (₱266,275.92) and Compensation/Salaries (₱521,188.26).

In the Details of Discrepancies, respondent explained the basis of the assessment as follows:

> "Audit of expanded withholding tax liability includes analysis of your income payments per FS/GL accounts and classified according to nature of transaction so as to impose the corresponding EWT rate. The total EWT due per ATC codes were then compared with alphalist of annual information return of creditable income taxes withheld.
>
> Based on the above-cited procedure it was found that professional fee of ₱266,275.92 and compensation of ₱521,[188.26] were not properly supported and not subjected to expanded withholding tax in violation of Revenue Regulations No. 2-98, as amended.
>
> You were given enough time to reconcile and substantiate with documentary evidences the discrepancies noted above but there has been no positive action on your part as of this date. Hence, said income payments were disallowed for failure to comply with substantiation requirement of Section 34(A)(1)(b) of the 1997 NIRC of the Philippines. In case you were able to support the above-mentioned income payments with valid documents, the same are likewise disallowed for failure to withhold and remit the corresponding withholding tax on the above mentioned income payments pursuant to Section 34(K) of the same Code.

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[75] Exhibit "P-35", docket, Vol. II, p. 1432

Shown below is computation of Deficiency Expanded and Compensation Withholding Tax for your reference:

a. Income payment not subjected to WE	
Professional Fee/Consultancy	
Per FS	₱ 1,106,117.72
Per Alphalist	839,841.80
Not subjected to WE	**₱ 266,275.92**
b. Salaries, Wages and Benefits not subjected to Withholding Tax	
Salaries and Wages per FS	₱ 1,926,944.00
Total amount of Compensation per 1601C	1,405,755.74
Diff	**₱ 521,188.26**

Anent the income payment not subjected to withholding tax, petitioner argues that the assessment is void since the FDDA did not provide any verifiable details as to how the alleged ₱1,106,117.72 professional/consultancy fees per FS was determined. The professional fees reported in its 2009 audited financial statements and claimed as deduction in its 2009 annual ITR amounted only to ₱181,737.00.

As for the disallowance of compensation/salaries amounting to ₱521,275.92 derived by respondent, petitioner contends that the same are without legal and factual bases as it had remitted the withholding tax on compensation income on all taxable compensation/salaries paid out in 2009. The respondent simply compared the amount of salaries and wages reported in the 2009 AFS, which is based on a fiscal year against the amount reported in the BIR Returns No. 1601C, which is based on the calendar year.

Based on the Judicial Affidavit of Ms. Mangaser, she stated that it is likely that the difference noted by the BIR pertains to nontaxable compensation income such as exemptions, SSS, PHIC and Pag-ibig contributions (both employee and employer share), allowances of extras/seasonals, employee training and seminar fees, and retirement benefits. Since the BIR derived the FY 2009 taxable compensation income by adding monthly 1601C from October 2008 to September 2009 and compared it to FY 2009 AFS, she explained that it is difficult to arrive at the monetary equivalent of the nontaxable compensation income for FY 2009 as the alphalist containing this is calendar year.[76]

The Court finds petitioner's arguments partly meritorious.

On the income payment allegedly not subjected to withholding tax, an examination of petitioner's Monthly Remittance Return of Creditable Income

[76] Exhibit "P-189", Q/A No. 117, docket, Vol. I, pp. 277-278

Taxes Withheld (Expanded) [BIR Form 1601-E], together with the Alphalist[77] shows that the professional fees subjected to withholding tax amounted to ₱839,841.80.

On the other hand, petitioner's AFS[78] and ITR[79] for the FY 2009 show that it reported Professional Fees of ₱181,737.00 and Management and Consultancy Fees of ₱480,549.00, or in the total amount of ₱662,286.00, contrary to the findings of respondent which amounts to ₱1,106,117.72, the said amount of which cannot be ascertained in the records even in the working papers used by the respondent's examiner in conducting the audit.

In as much as petitioner was able to subject the amount of ₱839,841.80 to withholding tax but claimed as deductible expense only the lesser amount of ₱662,286.00, respondent's assessment thereon is unwarranted, thus, should be cancelled.

Anent the Salaries, Wages and Benefits not subjected to withholding tax, an examination of petitioner's AFS[80] and ITR[81] for the fiscal year ending September 30, 2009 shows that petitioner declared Salaries, Wages and Benefits in the total amount of ₱1,926,944.00.[82]

On the other hand, respondent's basis on the total amount of compensation per BIR Form 1601-C of ₱1,405,755.74 was actually the Monthly Remittance Return of Income Taxes Withheld on Compensation for the FY 2009 covering the period from October 2008 to September 2009[83], detailed as follows:

Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601C			
For the Month of	**Amount of Compensation**	**Tax Withheld**	**Reference**
October 2008	₱ 128,674.57	₱ 16,549.57	BIR Records, p. 147-1
November 2008	115,838.82	8,810.46	BIR Records, p. 147-2
December 2008	126,340.25	13,444.91	BIR Records, p. 147-3
January 2009	110,090.89	9,084.55	BIR Records, p. 149
February 2009	118,869.30	10,143.50	BIR Records, p. 152
March 2009	132,408.80	11,893.99	BIR Records, p. 153
April 2009	123,279.48	10,305.20	BIR Records, p. 155
May 2009	113,915.66	9,851.54	BIR Records, p. 157
June 2009	88,403.17	7,527.24	BIR Records, p. 159

[77] BIR Records, pp. 65-1 to 125
[78] Exhibit "P-15", docket, Vol. II, p. 1314
[79] Exhibit "P-14", docket, Vol. II, p. 1283
[80] Exhibit "P-15", docket, Vol. II, p. 1291
[81] Exhibit "P-14", docket, Vol. II, p. 1283
[82] ₱1,645,372.00 + ₱281,572.00= ₱1,926,944.00
[83] BIR Records, pp. 147-1 to 165

July 2009	117,264.94	9,918.83	BIR Records, p. 163
August 2009	126,041.79	12,134.39	BIR Records, p. 161
September 2009	104,628.07	9,491.96	BIR Records, p. 165
Total	**₱1,405,755.74**	**₱ 129,156.14**	

Clearly, the amounts of salaries, wages and benefits reported in the 2009 AFS vis-a-vis reported in the BIR Returns 1601-C used by respondent in its comparison cover the same taxable period, *i.e.,* from October 2008 to September 2009.

Petitioner's allegation that the difference was likely pertains to nontaxable compensation income such as exemptions, SSS, PHIC and Pag-ibig contributions allowances, employee training and seminar fees deserves scant consideration, as it failed to substantiate the same with supporting documents. Conversely, without providing the necessary documents to support its claim, the Court cannot ascertain whether the said amount of ₱521,188.26 is indeed not subject to withholding tax on compensation.

It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments. In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[84]

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[85] In the absence of proof, the Court is constrained to uphold the assessment of respondent against petitioner. Accordingly, the amount of ₱521,188.26 shall be disallowed as deductible expense from petitioner's gross income.

f. Tax Credit forwarded to succeeding period - ₱642,955.00

In computing the deficiency income tax due, respondent deducted the amount of ₱642,955.00 pertaining to tax credit forwarded to succeeding period from the available tax credits of petitioner which effectively disallows the same. However, respondent failed to provide legal and factual bases in disallowing the same in the FLD or FDDA. This renders the disallowance null and void for not being compliant with Section 228 of the NIRC of 1997, as amended.

[84] *Sy Po v. Honorable Court of Tax Appeals, et al.,* G.R. No. 81446, August 18, 1988
[85] *Martin v. Hon. Court of Appeals and Manila Electric Company,* G.R. No. 82248, January 30, 1992

In view of the foregoing, petitioner should be held liable to pay basic deficiency income tax due in the adjusted amount of ₱307,094.89, computed as follows:

Taxable Income per return		₱ 4,794,365.00
Add: Adjustments		
Undeclared Revenue (FS vs. ITR)	₱ 11,122.00	
Undeclared Revenue (SLS vs. SAWT)	2,507,849.19	
Unsubstantiated and Not Subjected to Withholding Tax - Compensation	521,188.26	3,040,159.45
Adjusted Taxable Income		₱ 7,834,524.45
Tax Due (@ 31.25%)		₱ 2,448,288.89
Less: Payments/Tax Credits		
Creditable Tax Withheld for the First Three Quarters	₱ 1,633,955.00	
Creditable Tax Withheld for the Fourth Quarter	507,239.00	2,141,194.00
Total Basic Deficiency Income Tax Due		**₱ 307,094.89**

II. DEFICIENCY VALUE-ADDED TAX

Respondent assessed petitioner of alleged deficiency VAT for FY 2009 ending September 30, 2009 amounting to ₱720,521.70, inclusive of increments, computed as follows:

Assessment No. VT-116-LOA-0000006-09-14-985		
Taxable Sales per VAT returns		₱ 37,928,141.79
Add: Adjustments		
Additional Taxable Sales	₱ 116,163.80	
Undeclared Revenue (FS vs. ITR)	11,122.00	
Undeclared Revenue (SLS vs. SAWT)	2,507,849.19	
Undeclared Revenue from RLC (CAATS)	153,854.16	2,788,989.15
Adjusted Taxable Income		40,717,130.94
Output Tax		4,886,055.71
Less: Allowable Tax Credits		
IT Carried over from Previous Quarter	34,402,677.34	
Input Tax from current purchases	4,725,588.12	
Total	39,128,265.46	
Less: Tax Credit forwarded to succeeding period	34,576,888.45	4,551,377.01
Deficiency VAT		334,678.70
Add: 20% Interest p.a. (10.26.09 to 07.31.15)		385,843.00
TOTAL AMOUNT DUE		**₱ 720,521.70**

As can be gleaned above, the alleged deficiency VAT assessment is basically anchored on the following items:

A. Additional Taxable Sales	₱ 116,163.80
B. Undeclared Revenue (FS vs. ITR)	11,122.00
C. Undeclared Revenue (SLS vs. SAWT)	2,507,849.19
D. Undeclared Revenue from RLC (CAATS)	153,854.16
E. Tax Credit forwarded to succeeding period	34,576,888.45

The above-listed items of assessments *(items A to D)* mainly arose from the same adjustments found in the assessment of petitioner's deficiency income tax.

As earlier discussed, petitioner had no additional taxable sales *(item A)* and undeclared revenue from RLC *(item D)* in the respective amounts of ₱116,163.80 and ₱153,854.16. Consequently, the imposition of VAT thereon is improper.

On the other hand, as previously established, petitioner had undeclared revenue in the total amount of ₱2,518,971.19, determined as follows:

Undeclared Revenue (FS vs. ITR)	₱ 11,122.00
Undeclared Revenue (SLS vs. SAWT)	2,507,849.19
Total	**₱ 2,518,971.19**

Consequently, the same is subject to VAT.

In computing the deficiency VAT due, respondent deducted the amount of ₱34,576,888.45 pertaining to tax credit forwarded to succeeding period from the allowable tax credits of petitioner which effectively disallows the same. However, respondent failed to provide legal and factual bases in disallowing the same in the FLD or FDDA. This renders the disallowance null and void for not being compliant with Section 228 of the NIRC of 1997, as amended.

In view of the foregoing, since it has sufficient tax credits to cover its output VAT liability for the FY 2009, the Court finds that petitioner has no deficiency VAT liability, computed as follows:

Taxable Sales per VAT returns		₱ 37,928,141.79
Add: Adjustments		
Undeclared Revenue (FS vs. ITR)	₱ 11,122.00	
Undeclared Revenue (SLS vs. SAWT)	2,507,849.19	2,518,971.19
Adjusted Taxable Income		₱ 40,447,112.98
Output Tax		₱ 4,853,653.56
Less: Allowable Tax Credits		
Input tax carried over from Previous Quarter	₱ 34,402,677.34	

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Input tax from current purchases	4,725,588.12	39,128,265.46
Total Basic Deficiency VAT		**₱ (34,274,611.90)**

III. DEFICIENCY EXPANDED WITHHOLDING TAX

Respondent assessed petitioner of alleged deficiency EWT for FY 2009 ending September 30, 2009 amounting to ₱86,317.39, inclusive of increments, computed as follows:

Assessment No. WE-116-LOA-0000006-09-14-986	
Professional Fee/Consultancy	
Per FS	₱ 1,106,117.72
Per Alphalist	839,841.80
Not subjected to WE	266,275.92
WE Rate	0.15
Deficiency WE	39,941.39
Add: 20% interest p.a. (10.11.09 to 07.31.15)	46,376.00
TOTAL AMOUNT DUE	**₱ 86,317.39**

The basic deficiency EWT relates to the disallowed income payments in the amount of ₱266,275.92 due to non-withholding of EWT. As discussed, in as much as petitioner was able to subject the amount of ₱839,841.80 to withholding tax but claimed as deductible expense only the lesser amount of ₱662,286.00, respondent's assessment thereon is unwarranted, thus, the imposition of withholding tax thereon should also be cancelled.

IV. INCREMENT FOR LATE REMITTANCE OF WE

In the FDDA, respondent imposed an increment for late remittance of withholding tax, computed as follows:

Assessment No. WE-116-LOA-0000006-09-14-987	
Basic	102,406.31
20% interest p.a.	678.46
TOTAL AMOUNT DUE	**678.46**

In the Details of Discrepancies, respondent explained this imposition of increment as follows:

> "Line-by-line analysis of SLP versus income payments per 1604E Alphalist that the expanded withholding tax remitted on various income payments were higher than what should have been. Based from your explanation these discrepancies were due to timing differences. Hence, the discrepancies noted were treated as WE that should have been remitted from

previous period and was assessed of one (1) month interest and corresponding compromise penalty for late remittance pursuant to Revenue Regulation No. 2-98 and RMO No. 1-99, both as amended.

	Per 1601/SAWT	Per FS	Difference	WE Rate	WE Due
Income Payments subjected to 2% WE	15,207,175.29	10,270,007.28	4,937,168.01	2%	98,743.36
Income Payments subjected to 5% WE	73,258.96	-	73,258.96	5%	3,662.95
	15,280,434.25	10,270,007.28	5,010,426.97		102,406.31

Based on the respondent explanation, the discrepancy in the total amount of ₱102,406.31 was simply treated as withholding taxes that should have been remitted from previous period. Presumed to be belatedly paid, respondent imputed the alleged discrepancy with interest in the amount of ₱678.46.

The Court finds that these purported remittances pertaining to prior year's withholding taxes are not within the scope indicated in the Letter of Authority issued which actually covers the taxable period of petitioner from October 01, 2008 to September 30, 2009.

Clearly, respondent's assessment pertaining to the increment for late remittance of withholding tax has no basis, therefore, should be cancelled.

V. DEFICIENCY WITHHOLDING TAX ON COMPENSATION

Respondent assessed petitioner for deficiency WTC for FY 2009 ending September 30, 2009 amounting to ₱360,428.24, inclusive of increments, computed as follows:

Assessment No. WC-116-LOA-0000006-09-14-988	
Salaries, Wages & Benefits not subjected to WC	521,188.26
Withholding Tax Rate	0.32
Basic Deficiency WC	166,780.24
Add: 20% interest p.a. (10.11.09 to 07.31.15)	193,648.00
TOTAL AMOUNT DUE	**360,428.24**

In the Details of Discrepancies, respondent explained this deficiency WTC, as follows:

> "Reconciliation of Salaries, Wages and Employees Benefits accounts per General Ledger/FS accounts as compared to taxable compensation per 1601C resulted to a discrepancy of ₱521,188.26 which was not subjected to withholding tax on compensation. The said difference was assessed of

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deficiency compensation withholding tax pursuant to RR No. 2-98, as amended."

As discussed, in as much as petitioner failed to prove that the amount of ₱521,275.92 pertains to non-taxable compensation income, respondent's assessment thereon shall be sustained. Accordingly, petitioner is liable to pay the basic deficiency withholding tax on compensation in the amount of ₱166,780.24, as computed below:

Salaries, Wages & Benefits not subjected to WC	₱ 521,188.26
Withholding Tax Rate	0.32
Basic Deficiency WTC	**₱ 166,780.24**

VI. DEFICIENCY DOCUMENTARY STAMP TAX

Respondent assessed petitioner of deficiency DST for FY 2009 ending September 30, 2009 amounting to ₱1,729,288.53, inclusive of increments, computed as follows:

Assessment No. DS-116-LOA-0000006-09-14-989	
Due from Affiliates (Total amount debited)	₱ 2,633,366.00
Due to Affiliates (Total amount credited)	4,179,153.00
Advances from Stockholders	153,022,986.00
Total Loan	159,835,505.00
DST Rate	0.01
Deficiency DST	799,177.53
Add: 20% interest p.a. (10.06.09 to 07.31.15)	930,111.00
TOTAL AMOUNT DUE	**₱ 1,729,288.53**

In the Details of Discrepancies, respondent explained the basis of the deficiency DST assessment, as follows:

> "Verification disclosed that you failed to file and pay the corresponding documentary stamp tax due on your advances from stockholders and due from related parties in violation of Section 179 of the National Internal Revenue Code of 1997, as amended by RA 9243 and implemented by RR No. 13-04 and in relation to RMC No. 48-2011."

Petitioner argues that respondent failed to consider that "Due from Affiliates" and "Due to Affiliates" pertain mainly to rental and other charges by/to petitioner to/by its affiliates which are trade transactions not within the coverage of Section 179 of the NIRC.

As for the advances from stockholders, petitioner contends that respondent himself, as well as the Court of Appeals and the Honorable Court of Tax Appeals have previously ruled that these advances were not subject to DST under Section 179 of the NIRC when not evidenced by loan agreements or promissory notes.

Petitioner further argues that the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[86] cannot be used as basis for assessing deficiency DST on intercompany advances for the FY 2009 since the ruling in *Filinvest* case was anchored on the provisions found in the last paragraph of Section 6 of RR 09-94, which no longer appears in RR No. 13-04 which actually implements the DST on debt instruments imposed under Section 179 of the 1997 Tax Code. Hence, the *Filinvest* ruling does not apply to petitioner's intercompany advances made in 2009 when RR No. 13-04 and not RR No. 09-94 was in effect.

In the case cited by petitioner *(Filinvest case)*, the Supreme Court ruled that Section 180 of the NIRC *(now Section 179 of the NIRC of 1997, as amended)* in relation to Section 173 of the 1993 NIRC applies to all loan agreements, and that instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements upon which documentary stamp taxes may be imposed, to wit:

> "On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
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> > Sec. *180.* ***Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.*** – *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof,*

[86] G.R. Nos. 163653 and 167689, July 19, 2011

> *of the face value of any such agreen1ent, bill of exchange, draft, certificate of deposit or note:* ***Provided,*** *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* ***Provided however,*** *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or used in the Philippines.' Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. *Definition of Terms.* – For purposes of these Regulations, the following term shall mean:
>
> (b) 'Loan agreement' - refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.
>
> 'Section 6. *Stamp on all Loan Agreements.* All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any

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such agreements, pursuant to Section180 in relation to Section 173 of the Tax Code.

In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180of the Tax Code.

Applying the aforesaid provisions to the case at bench, **we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed**. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. xxx" (*Emphasis and underscoring supplied*)

As ruled in the foregoing case, instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements, upon which DST maybe imposed. Applying the same to the case at hand, the Court finds that DST should be imposed on the subject Advances from Stockholders and Due to Affiliates–RLC.

Petitioner's ratiocination that the *Filinvest* case cannot be used as respondent's basis for assessing it as the same can apply only prospectively to transactions after its ruling on July 19, 2011 is untenable. Contrary thereto, the ruling of the Supreme Court in the *Filinvest case* necessarily retroacts to the date the NIRC took effect and therefore applicable to the present case.

As held in a long line of cases, the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[87] As aptly held by the Supreme Court in the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[88] to wit:

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[87] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, November 21, 2017; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, 676 SCRA 325; *Eagle Realty Corporation v. Republic*, G.R. No. 151424, July 31, 2009, 594 SCRA 555; *Castro v. Deloria*, G.R. No. 163586, January 27, 2009, 577 SCRA 20; *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, G.R. No. 172409, February 4, 2008, 543 SCRA 666; *Pesca v. Pesca*, G.R. No. 136921, April 17, 2001, 356 SCRA 588: Re: Resolution Granting Automatic Permanent

"Petitioner VGPC also argues that Aichi should be applied prospectively and, therefore, should not be applied to the present case. This position cannot be given consideration.

Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. **The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith."** *(Emphasis supplied)*

The retroactive application of jurisprudence was also treated in *Accenture, Inc. v. Commissioner of Internal Revenue*[89] where the Supreme Court upheld this Court's application of the pronouncements in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (2007)[90] as basis in ruling that Accenture's services would qualify for zero-rating under Section 108 (b) of the 1997 NIRC [formerly Section 102 (b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. It was held that:

"Moreover, **even though Accenture's Petition was filed before Burmeister was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application.** When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in Burmeister, this interpretation became part of the law from the moment it became effective. **It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."** *(Emphasis supplied)*

Total Disability Benefits to Heirs of Justices and Judges Who Die in Actual Service, A.M. No. 02-12-01-SC, November 24, 2004, 443 SCRA 549; *Columbia Pictures, Inc. v. Court of Appeals*, G.R. No. 110318, August 28, 1996, 261 SCRA 144; *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506; *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956, 100 Phil. 501, as cited in the case of *E.E. Black Ltd.-Philippine Branch vs. Commissioner Internal Revenue*, CTA En Banc Case No. 1611 (CTA Case No. 8719), January 22, 2019

[88] G.R. No. 197525, June 4, 2014, 725 SCRA 130, 147

[89] G.R. No. 190102, July 11, 2012, 676 SCRA 325, 339

[90] G.R. No. 153205, January 22, 2007, 512 SCRA 124

While it is true that when a prior ruling of the Supreme Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith,[91] such principle will not apply to this case, as there had been no doctrine previously established by the Supreme Court that was overturned by *Filinvest*.

Significantly, the rulings allegedly prevailing at the time of the alleged transaction and relied upon by petitioner to justify its position were of the Court of Appeals (CA),[92] or of this Court.[93] In one case, the Supreme Court clarified that *"CTA decisions do not constitute precedent and do not bind this Court or the public. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[94] That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system."*[95]

Upon examination of the records of the case, the alleged total loan of ₱159,835,5050.00 subjected by respondent to deficiency DST can be traced from petitioner's 2009 AFS, and is composed of five (5) line items, to wit:

Note 17. Related Party Transactions	
	2009
Due from Affiliates:	
Robinsons Supermarket Corporation	₱ 2,291,520.00
Sterling Cinema	341,846.00
Total	**₱ 2,291,520.00**
Due to Affiliates:	
RLC	₱ 2,341,913.00
Robinsons Department Store	1,837,240.00
Total	**₱ 4,179,153.00**
Advances from Stockholders	**₱ 153,022,986.00**
TOTAL	**₱ 159,835,505.00**

[91] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014
[92] *Commissioner of Internal Revenue vs. APC Group, Inc.*, CA-G.R. No. 69869, November 29, 2002; *Commissioner of Internal Revenue vs. APC Group*, G.R. SP No. 69869, November 29, 2002
[93] *APC Group, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6155, March 11, 2002.
[94] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014
[95] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013

Anent the Due to/from Affiliates transactions between petitioner and Robinsons Supermarket Corporation (₱2,291,520.00), Sterling Cinema (₱341,846.00), and Robinsons Department Store (₱1,837,240.00), records prove that these transactions do not pertain to any lending or borrowing transaction. In fact, the summary lists[96] presented in evidence show the nature of the transactions, such as space rentals, waters and power rate charges and adjustments, and charges on common usage service area, which are duly supported by official receipts[97] and billing statements[98]. Thus, the same should not be subjected to deficiency DST.

With regard to the Due to Affiliates-RLC, there is no documentary evidence provided by petitioner that would warrant cancellation of the present assessment. For petitioner's failure to submit necessary documents to corroborate and strengthen its position as discussed in its protest, respondent's assessment shall be afforded the presumption of regularity. Nonetheless, considering that the amount of ₱2,341,913.00 being assessed with deficiency DST includes those from prior years amounting to ₱1,449,191.00[99], the assessment of deficiency DST made in years prior to FY 2009 is void for being outside the scope of the present year of assessment. Accordingly, only the amount of ₱892,722.00[100] is subject to deficiency DST.

Lastly, the imputation of DST in the amount of ₱153,022,986.00 pertaining to Advances from Stockholders is erroneous. Petitioner's Statement of Financial Position[101] discloses that the Advances from Stockholders account significantly decreased by ₱59,977,014.00[102] during the FY ending September 30, 2009. This is corroborated by the fact that the Statement of Cash Flows shows that petitioner actually paid a portion of its Advances from Stockholders[103] amounting to the same ₱59,977,014.00. As there was no clear and convincing proof that petitioner had advances to shareholders during the FY ending September 30, 2009, the DST imposition on such item has no basis.

In fine, petitioner is liable to pay basic deficiency DST in the amount of ₱4,463.61, computed as follows:

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96 Exhibits "P-38" (*Sterling Cinema*, Docket, pp. 1483-1486), "P-77" (*Robinsons Department Store*, Docket, pp. 1523-1526), and "P-125" (*Robinsons Supermarket*, Docket, pp. 1573-1576).

97 Exhibits "P-39" to "P-64" (*Sterling Cinema*, Docket, pp. 1487-1510), "P-78" to "P-111" (*Robinsons Department Store*, Docket, pp. 1527-1560), and "P-126" to "P-151"), except "P-146" (*Robinsons Supermarket*, Docket, pp. 1577-1602).

98 Exhibits "P-65" to "P-76" (*Sterling Cinema*, Docket, pp. 1511-1522), "P-112" to "P-121", "P-152" to "P-163" (*Robinsons Department Store*, Docket, pp. 1561-1570), and "P-164" to "P-175" (*Robinsons Supermarket*, Docket, pp. 1615-1626).

99 Ending balance as of September 30, 2008.

100 ₱2,341,913.00 ending balance as of September 30, 2009 - ₱1,449,191.00.

101 Exhibit "P-15", Docket, p. 1289.

102 ₱214,542,636.00 ending balance as of September 30, 2008 - P153,599,084.00 ending balance as of September 30, 2009.

103 Exhibit "P-15", Docket, p. 1293.

Due to Affiliates-RLC	₱ 892,722.00
DST rate	1/200
Basic Deficiency DST	**₱ 4,463.61**

VII. COMPROMISE PENALTY

Respondent imposed compromise penalties on the foregoing deficiency taxes in the total amount of ₱99,000.00, to wit:

Imposed on:	Compromise Penalty
I. Deficiency IT	₱ 25,000.00
II. Deficiency VAT	16,000.00
III. Deficiency EWT	8,500.00
IV. Deficiency MC (EWT)	8,500.00
V. Deficiency WTC	16,000.00
VI. Deficiency DST	25,000.00
Total	**₱ 99,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[104] Under Revenue Memorandum Order No. 01-90, 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 a 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 in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[105] Absent showing taxpayer's consent, the compromise penalty should be removed. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[106]

In the present case, there is nothing in the records which would show that petitioner consented to the compromise penalty. Thus, the imposition of which in the deficiency IT, VAT, EWT, Increment for late remittance of EWT, WTC and DST in the total amount of ₱99,000.00 cannot be sustained.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for the fiscal year ending September 30, 2009

[104]The Philippine International Fair, Inc. vs. The Collector of Internal Revenue, et. al. G.R. Nos. L-12928 and L-12932, March 31, 1962
[105]*Phil. International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781
[106]*Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1999, 193 SCRA 92-93

covering deficiency VAT, EWT, increments for late remittance of WE and compromise penalties are **CANCELLED** and **SET ASIDE**.

On the other hand, the deficiency income tax, WTC and DST assessments are **AFFIRMED but with MODIFICATION**. Accordingly, petitioner is ordered to pay respondent the amount of ₱1,213,034.03, ₱671,378.26 and ₱17,997.05, representing basic deficiency IT, EWT and DST, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as determined below:

	IT	WTC	DST	TOTAL
Basic	₱ 307,094.89	₱ 166,780.24	₱ 4,463.61	₱ 478,338.74
Surcharge (25%)	76,773.72	41,695.06	1,115.90	119,584.68
Deficiency Interest (20%) until September 3, 2015				
IT - 1/16/10 to 09/03/15 (₱307,094.89 x 20% x 2,057 days/365 days)	346,133.80			346,133.80
WTC - 10/14/09 to 09/03/15 (₱166,780.24 x 20% x 2,151 days/365 days)		196,572.22		196,572.22
DST - 10/06/09 to 09/03/15 (₱4,463.61 x 20% x 2,159 days/365 days)			5,280.51	5,280.51
Total Amount Due - September 3, 2015	**₱ 730,002.41**	**₱ 405,047.52**	**₱ 10,860.02**	**₱ 1,145,909.95**
Deficiency Interest (20%) from September 4, 2015 to December 31, 2017				
IT - 09/04/15 to 12/31/17 (₱307,094.89 x 20% x 850 days/365 days)	143,030.50			143,030.50
WTC - 09/04/15 to 12/31/17 (₱166,780.24 x 20% x 850 days/365 days)		77,678.47		77,678.47
DST - 09/04/15 to 12/31/17 (₱4,463.61 x 20% x 850 days/365 days)			2,078.94	2,078.94
Delinquency Interest (20%) from September 4, 2015 to December 31, 2017				
IT - 09/04/15 to 12/31/17 (₱730,002.41 x 20% x 850 days/365 days)	340,001.12			340,001.12
WTC - 09/04/15 to 12/31/17 (₱405,047.52 x 20% x 850 days/365 days)		188,652.27		188,652.27
DST - 09/04/15 to 12/31/17 (₱10,860.02 x 20% x 850 days/365 days)			5,058.09	5,058.09
Total Amount Due as of December 31, 2017	**₱ 1,213,034.03**	**₱ 671,378.26**	**₱ 17,997.05**	**₱ 1,902,409.34**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

IT	₱ 730,002.41
WTC	405,047.52
DST	10,860.02

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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