REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SPOUSES JOSEPH EJERCITO ESTRADA AND LUISA P. EJERCITO,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE AND LILIAN HEFTI, IN HER CAPACITY AS THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 7847

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 2 3 2015
9 3:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

STATEMENT OF THE CASE

This is a Petition filed by Spouses Joseph Ejercito Estrada and Luisa P. Ejercito seeking (1) to reverse and set aside the Deficiency Income Tax Assessment Notice ES-IT-1999-0680 and the Formal Letter of Demand, both dated June 19, 2008, and the Decision of Lilian Hefti dated September 26, 2008, the then Commissioner of Internal Revenue, requiring them to pay ₱2,905,048,539.58 representing the alleged deficiency income taxes for taxable year 1999, and (2) to hold respondents liable for costs of suit.

THE FACTS

Petitioner Joseph Ejercito Estrada (JEE) is a resident of No. 1 Polk St., North Greenhills, San Juan City. Petitioner Luisa P. Ejercito (LPE) is the spouse of petitioner JEE.[1]

Respondent Commissioner of Internal Revenue (CIR) is an authorized official under Section 4 of the National Internal Revenue Code (NIRC) of 1997, who issued Decision No. PO5-08 on September 26, 2008.[2]

The Bureau of Internal Revenue (BIR) sent to petitioners a Notice to Taxpayer dated November 27, 2001 at No. 1 Polk St., North Greenhills, San Juan City.[3] The Notice to Taxpayer was issued pursuant to a Letter of Authority with No. 000029150 dated January 22, 2001.[4]

The above-mentioned notice to taxpayer directed petitioner JEE to "appear for an informal conference at Room 211 of the BIR National Office Building Diliman Quezon City within 15 days upon receipt of this notice xxx" and warned him that "your failure to appear on the schedule date xxx shall be presumed that you have waived your right to a preliminary conference xxx".[5]

At that time, it was public knowledge that petitioner JEE was detained or confined at the Veterans Memorial Hospital and, therefore, incapable of attending any such conference.[6]

The above notwithstanding, on November 23, 2002[7], respondent BIR issued two (2) Preliminary Assessment Notices (PAN).[8]

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[1] Petition for Review, docket, p. 5.
[2] Par. 1a, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 189.
[3] Par. 1c, Admitted Facts, JSFI, docket, p. 190.
[4] Par. 1d, Admitted Facts, JSFI, docket, p. 190.
[5] Par. 1e, Admitted Facts, JSFI, docket, p. 190.
[6] Par. 1f, Admitted Facts, JSFI, docket, p. 190.
[7] This is September 23, 2002 in the Petition for Review, docket, p. 7.
[8] Par. 1g, Admitted Facts, JSFI, docket, p. 190.

The first (1st) PAN refers to the alleged deficiency income taxes of petitioners for taxable year 1999 in the amount of One Billion Eight Hundred Twenty-Five Million Five Hundred Sixty-One Thousand Three Hundred Fifty-Six Pesos and Twenty-Five Centavos (₱1,825,561,356.25).[9]

The second (2nd) PAN covers the purported deficiency value-added tax (VAT) of petitioner LPE for taxable year 1999 in the amount of Four Hundred Ninety Thousand Eight Hundred Seventy-Six Pesos and Seventeen Centavos (₱490,876.17).[10]

The foregoing notices were again sent to petitioners at their above-mentioned residence.[11] At that time, petitioner JEE was still under detention.[12]

Based on the fact that the plunder case against petitioner JEE was being heard before the Sandiganbayan, then BIR Deputy Commissioner for Legal and Inspection Group, Atty. Edmundo P. Guevarra, instructed the assigned Revenue Officers not to make or issue a formal assessment against petitioner JEE.[13]

Thereafter, respondent Hefti (then CIR) sent to petitioners a Notice to Taxpayer dated June 12, 2008, which states that:

> "This refers to the Preliminary Assessment Notice (PAN) dated September 23, 2003[14] under Letter of Authority No. 0029150 issued against Joseph Ejercito Estrada & Hon. Luisa P. Ejercito as well as the protest letter dated November 15, 2002 sent in response to the PAN.
>
> In the said letter it was emphasized that unless and until a court of competent jurisdiction issues a final declaration or judgment with regard to the ownership of the bank accounts in question, the said PAN should be DISREGARDED, NULLIFIED, and SET ASIDE.

[9] Par. g.1, Admitted Facts, JSFI, docket, pp. 190-191.
[10] Par. g.2, Admitted Facts, JSFI, docket, p. 191.
[11] Par. g.3, Admitted Facts, JSFI, docket, p. 191.
[12] Par. g.4, Admitted Facts, JSFI, docket, p. 191.
[13] Par. h, Admitted Facts, JSFI, docket, p. 191.
[14] This is September 23, 2002 in the Petition for Review, docket, p. 7.

Please be informed that your request is hereby DENIED. The Special Division of the Sandiganbaya(n), in Criminal Case No. 26558 rendered a judgment finding the accused FPres. Joseph Ejercito Estrada, guilty beyond reasonable doubt of the crime of Plunder as defined in and penalized by Republic Act No. 7080 as amended.

In the aforesaid case, the Court categorically declared that FPres. Estrada is the real and beneficial owner of EPCIB Combo account CA No. 0110-25495 and SA No. 0610-62501-5 in the name of Jose Velarde, among several issues and finding of fact.

In view thereof, and as a matter of course, a final assessment notice and a letter of demand will be sent for the collection of the deficiency taxes."[15]

Subsequently, respondent Hefti issued Assessment Notice No. ES-IT-1999-0680[16] and a Formal Letter of Demand[17] both dated June 19, 2008, addressed to petitioners requiring them to pay the amount of Two Billion Nine Hundred Five Million Forty-Eight Thousand Five Hundred Thirty-Nine Pesos and Fifty-Eight Centavos (₱2,905,048,539.58) as deficiency income taxes for taxable year 1999.

On July 18, 2008, petitioners filed a Formal Protest[18] dated July 17, 2008 and submitted on September 16, 2008[19] the documents in support of the protest.

On September 26, 2008, respondent issued Decision No. PO5-08[20] entitled "In the Matter of the Protest of Former President Joseph Ejercito Estrada and Spouse Luisa P. Ejercito Against the Assessment for Deficiency Income Tax in the Amount of ₱2,905,048,539.58 for Taxable Year 1999", which denied the protest of petitioners and ordered them to pay immediately the amount of Two Billion Nine Hundred Five Million Forty-Eight Thousand Five Hundred Thirty-Nine

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[15] Par. i, Admitted Facts, JSFI, docket, pp. 191-192.
[16] Exhibit "11-c", BIR Records, p. 42.
[17] Exhibits "11", "11-a", and "11-b", BIR Records, pp. 43-45.
[18] Exhibit "12", BIR Records, pp. 46-57.
[19] Petition for Review, docket, pp. 9-10.
[20] Exhibit "16", BIR Records, pp. 109-116.

Pesos and Fifty-Eight Centavos (₱2,905,048,539.58), representing the alleged income tax deficiency for taxable year 1999.[21]

On October 27, 2008 petitioners filed the instant Petition[22] before the Court of Tax Appeals (CTA).

Respondent CIR filed her Answer[23] on November 28, 2008 and interposed the following Special and Affirmative Defenses:

> "Respondents replead and further states:
>
> 3. The assessment on deficiency income tax, plus increments in the total amount of Php2,905,048,539.58 for taxable year 1999 was issued in accordance with law and regulations.
>
> **Respondents did not rely on the decision of the Sandiganbayan. The decision is a mere contingency that paved the way for the Final Assessment Notice (FAN).**
>
> 4. This petition pertains to the pronouncement of the Honorable Sandiganbayan made on September 12, 2007 that petitioner JOSEPH EJERCITO ESTRADA (JEE for brevity) is guilty of plunder and finding that the names JOSEPH EJERCITO ESTRADA and JOSE VELARDE in the subject bank account in Equitable-PCI Bank (now Banco De Oro Unibank, Inc. pertain to one and the same person.
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> 5. Respondents, with all due respect, would like to elucidate on what transpired leading to the instant petition. A case for plunder against petitioner JEE commenced with the filing of information on April 4, 2001 accusing him to have unlawfully and criminally amassed, accumulated and acquired ill-gotten wealth in the amount of P4,097,804,173.17 more or less. Jr

[21] Par. 1b, Admitted Facts, JSFI, docket, p. 190.
[22] Docket, pp. 4-20.
[23] Docket, pp. 67-81.

6. **Prior to the commencement of the plunder case**, a Writ of Constructive Distraint was issued by the Bureau of Internal Revenue (BIR) on January 2001 over the Velarde account. The BIR then initiated an investigation per Letter of Authority No. 00029150, there having been found due from petitioners the amount of Php1,825,561,356.25 as deficiency income taxes for the taxable year 1999. A Preliminary Assessment Notice (PAN) dated September 23, 2002 was subsequently issued to this effect. Under the PAN, it was mentioned that there were undeclared income sourced from several bank deposits or accounts owned by the spouses, particularly bank deposits in BDO under the name of JOSE VELARDE in the total amount of Php2,221,622,054.94.

7. In a letter dated October 17, 2002, Mr. Julius M.G. Topacio, the duly authorized representative of petitioners by virtue of a Special Power of Attorney executed in his favor, acknowledged receipt of the PAN covering the investigation for deficiency income taxes. Mr. Topacio requested for an extension in filing an answer or comment or until November 16, 2002. On November 15, 2002, Mr. Topacio filed a protest on the PAN reasoning, among other things, that no court has made a definitive judgment that petitioners are the true and beneficial owner of the undeclared income. He further alleged that ownership over the Velarde account is *sub-judice*, since at that time the plunder case against petitioner JEE was still pending. (A copy of the said letter is hereto attached as **Annex '1'** and is hereby made an integral part hereof.)

8. Based on the fact that the plunder case was ongoing, then BIR Deputy Commissioner for Legal and Inspection Group Edmundo P. Guevara instructed the assigned revenue officers not to make and issue a formal assessment against petitioner JEE. Prior to September 12, 2007, the BIR is still conducting an independent investigation on the Velarde account through its National Investigation Division.

9. **On September 12, 2007, the Honorable Sandiganbayan resolved the plunder case against**

petitioner JEE finding him to be the real and beneficial owner of the amount of Php189,700,000.00 deposited in BDO under the account name 'Jose Velarde.' As a result, the Sandiganbayan declared the forfeiture in favor of the government of the following:

> (1) The total amount of Php545,291,000.00, with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (P200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation;
> (2) The amount of Php189,000,000.00, inclusive of interests and income earned, deposited in the Jose Velarde account; and
> (3) The 'Boracay Mansion' located at #100 11th Street, New Manila, Quezon City.

All income that flows into the citizen's pockets is subject to income tax, regardless of its source.

10. Respondents respectfully invite the attention of the Honorable Court to the truism of this contention, citation and discourse of the following provisions of law are in order. Section 32(A) of the National Internal Revenue Code of 1997 (NIRC of 1997) defines gross income as all income derived from whatever source:

> **SEC. 32.** ***Gross Income.*** –
>
> **(A)** ***General Definition.*** – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession; *gr*

(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional.

11. Taxable income, on the other hand, pertains to the items of gross income. Section 31 of the NIRC of 1997 defines 'taxable income' as follows:

> 'The term "taxable income" means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.'

12. This includes bribes, kickbacks and other similar payments in accordance with Section 34(A)(1)(c) of the NIRC of 1997 which reads:

> 'Bribes, Kickbacks and Other Similar Payments. - No deduction from gross income shall be allowed under Subsection (A) hereof for any payment made, directly or indirectly, to an official or employee of the national government, or to an official or employee of any local government unit, or to an official or employee of a government-owned or controlled corporation, or to an official or employee or representative of a foreign government, to a private corporation, general professional partnership, or a similar entity, if the payment constitutes a bribe or kickback.'

13. Thus, whether income was obtained from legal or illegal means, transactions or endeavors, it will, *gc*

nonetheless, still be subject to income taxes. From the foregoing, this conclusion may be inferred: Income from the controversial Velarde account forms part of the gross income of petitioners and as such, is subject to income tax and can never be deducted for any reason.

The power of taxation precedes forfeiture.

14. Respondents are of the opinion that taxation precedes forfeiture, based on the following grounds:

> a. Penalty and taxation are distinct concepts that can exist independent of each other. The order of forfeiture stems from the application of Section 2 of Republic Act No. 7080, An Act Penalizing the Crime of Plunder, which reads in part:
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> 'x x x The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment therefore forfeited in favor of the State.'

15. A 'forfeiture' is a penalty by which one loses his rights and interests in his property, 'forfeit' being defined as to lose, or lose the right to, by some error, fault, offense, or crime, or to subject, as property, to forfeiture or confiscation (State v. Cowen, 3 N. W. 2d, 176 Iowa 1117, cited in Words and Phrases, Volume 17, Permanent Ed., 1958, p. 457). The forfeiture contemplated herein is one that is from the commission of an offense, for which the accused was found guilty. Penalty, therefore, is ancillary in the matter, something that cannot exist without the corresponding judgment of guilt. Tax, however, is not a penalty (Welch vs. Henry, Wis., 59 s.c.t. 121, 305 U.S.).

16. The respondents' cause, on the other hand, stems from a tax assessment which is civil in nature. By virtue of Revenue Special Order No. 70-01, a team called

Task Force on petitioner JEE., et al. was created to investigate all internal tax liabilities of petitioners. On September 26, 2008, a decision was promulgated by respondent Commissioner of Internal Revenue (CIR), holding that petitioners are liable for the amount of Php2,905,048,539.58 representing deficiency income tax for taxable year 1999, plus increments that have accrued until actual date of payment based on his ownership of the Jose Velarde account. Petitioners are therefore liable for deficiency income tax under Section 34(A)(1)(c) of the NIRC of 1997, Bribes, Kickbacks and Other Similar Payments.

17. Since both concepts are independent of each other, it stands to reason that the only question is a matter of preference. Respondents are of the view that although forfeiture and taxation can coexist, the latter takes precedence over the former. The power of taxation is plenary or absolute in its application. It is a power that has existed since the creation of the State. Recognizing the importance of this inherent power of the State, legislature deemed it wise to subject to tax even income originating from a distasteful source. From the point of view of collection, taxation is amoral. Income from kickbacks and similar payments is treated as though it were ordinary income tax once its existence is brought to light. Thus, we have that unusual provision of the NIRC of 1997 ominously titled as 'Bribes, Kickbacks and Other Similar Payments.' Such being the case, it is only natural that income generated from the Jose Velarde Account should first be subjected to taxation before forfeiture can take place.

18. Respondents maintain that the lien of the BIR over the account takes precedence over forfeiture. For the sake of argument, even if forfeiture takes precedence over the BIR's lien or is at most on equal footing, the income taxes assessed were already intended for appropriation. Forfeiture proceedings, over and above the enforcement of the lien of the BIR, would be circuitous process – a redundancy. The resulting redundant proceedings is a deviation from the course provided by the NIRC of 1997, i.e., immediate collection of taxes after assessment thereof. The government can dispense with

the unnecessary burden of allocating funds collected through forfeiture. The essence of the function of the BIR is 'to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Due process of law under the Constitution does not require judicial proceedings in tax case. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.' (Philippine Bank of Communications vs. CIR, 302 SCRA 250.)

Respondents did not err in considering the entire amount deposited in Jose Velarde Account as taxable income.

19. Petitioners exploited the case of CIR vs. Tours Specialist, Inc. (183 SCRA 402) to their advantage. Bluntly, the case is not applicable. To reiterate the words of the Court in the said case:

> 'As demonstrated in the above-mentioned case, *gross receipts* subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit; and it is not necessary that there must be law or regulation which would exempt such monies or receipts within the meaning of gross receipts under the Tax Code. Parenthetically, *the room charges entrusted by the foreign travel agencies to the private respondent do not form part of its gross receipts within the definition of the Tax Code. The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels.* x x x' (Italics ours)

20. The analogy, if present, is ambiguous. Petitioners omitted, whether wittingly or not, the indispensable requirement in order for the doctrine under

this case to be applicable – the money entrusted to petitioner JEE must have been **earmarked or identified for a specific purpose**, i.e., the money is held in trust in favor of Jaime Dichaves. The admission of Jaime Dichaves is but a lame attempt to ward off the impending conviction of petitioner JEE.

21. This is not the case here. There was a commingling of funds under the Jose Velarde account. This gave rise to a presumption in accordance with law, that all the money deposited to the Jose Velarde account added to the petitioner JEE's net worth or redounded to his benefit – nothing more, nothing less.

Respondents assessed the correct parties.

22. Petitioners' contention that respondents assessed the wrong parties has been rendered moot, with the September 12, 2007 decision of the Sandiganbayan that the names JOSEPH EJERCITO ESTRADA and JOSE VELARDE pertain to one and the same person who is petitioner JEE.

Respondents did not commit reversible error and grave abuse of discretion amounting to lack or excess of jurisdiction when it imposed deficiency income tax.

23. Respondents reconciled their findings and information through standard audit procedures that indeed petitioners have willfully and intentionally failed to report taxable receipts and acquisition of assets in violation of the NIRC of 1997.

24. Ignorantia legis non excusat, this principle applies to all kinds of domestic laws, whether civil or penal, and whether substantive or remedial on grounds of expediency, policy and necessity. Petitioners claimed that they were divested of their right to due process, it goes to show that petitioners are divesting themselves of the responsibility and adverse actions that arose form the anomalous transfers of properties. This is not a valid

excuse from the assessment of deficiency income tax against petitioners. If this is viable and acceptable, violations of the NIRC of 1997 will increase and ignorance thereof will be lauded. There is no excuse from complying with the law, i.e., the NIRC of 1997 in this case.

25. Well-established is the rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

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

This case was set for pre-trial conference on January 15, 2009.[24] After filing their respective Pre-Trial Briefs,[25] both parties entered into a Joint Stipulation of Facts and Issues[26] (JSFI), which the Court approved in a Resolution[27] dated June 4, 2009. In the same Resolution, the pre-trial was deemed terminated and the parties were ordered to proceed with the trial.

Among the admitted documents in the Joint Stipulation of Facts and Issues are as follows:

"2.1 As to existence, genuineness and due execution -

a. BIR Revenue Regulations No. 12-99
b. Commissioner of Internal Revenue vs. Reyes, 480 SCRA 382 (2006)
c. Commissioner of Internal Revenue vs. Antonio Santos, CA-GR SP No. 48441, May 7, 2001

2.2 As to existence and genuineness -

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[24] Notice of Pre-Trial Conference issued on December 3, 2008, docket, pp. 89-90.
[25] Respondents' Pre-Trial Brief filed on January 9, 2009 and petitioners' Pre-Trial Brief filed on January 13, 2009, docket, pp. 91-96 and 98-108.
[26] Docket, pp. 189-194.
[27] Docket, p. 195.

a. Assessment Notice and Letter of Demand dated June 19, 2008, ES-IT-1999-0680, in the amount of 2,905,048,539.58 for the taxable year 1999, with attachments and proof of constructive service;
b. Photocopy of the Formal Protest dated July 17, 2008, duly stamped as 'Received' on July 18, 2008;
c. BIR Letter dated June 12, 2008;
d. Decision PO5-08 promulgated in 26 September 2008.

2.3 As to existence -

a. Letter of Authority No. 00029150 that authorized revenue examiners to conduct an investigation on the Jose Velarde Account.
b. Warrant of Garnishment dated 29 September 2008 to the petitioners' residence at Polk St., North Greenhills, San Juan City, admitted as to the existence thereof."

Meanwhile, pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2010 entitled "Implementing the Fully Expanded Membership in the Court of Tax Appeals", this case was transferred to the CTA "Third Division" as per Order[28] dated January 11, 2010.

Thereafter, the trial continued. Subsequent to the presentation of witnesses, petitioners filed on February 3, 2012 their Formal Offer of Evidence[29] with Exhibits "A" to "E-6", inclusive of markings. The Court issued a Resolution[30] on April 20, 2012, admitting Exhibits "B" to "E-6; while Exhibits "A", "A-1", and "A-2" were denied.

On April 27, 2012, petitioners filed a Motion for Reconsideration[31] praying for the admission of Exhibits "A", "A-1", and "A-2". The said motion was granted in a Resolution[32] dated June 7, 2012, and Exhibits "A", "A-1", and "A-2" were then admitted.

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[28] Docket, p. 292.
[29] Docket, pp. 440-464.
[30] Docket, pp. 506-508.
[31] Docket, pp. 510-515.
[32] Docket, pp. 525-526.

Incidentally, following the Order[33] dated April 5, 2013 by the Chairperson of the CTA Third Division, Associate Justice Lovell R. Bautista, vis-à-vis CTA Administrative Circular No. 01-2013 dated March 26, 2013 entitled "Reorganization of the Three (3) Divisions of the Court of Tax Appeals", this case reverted to the CTA Second Division.

Respondent CIR filed her Formal Offer of Evidence[34] on December 17, 2013, offering Exhibits "1" to "24-a", inclusive of submarkings. In a Resolution[35] dated February 28, 2014, the Court admitted Exhibits "1", "3", "4", "6", "8" to "12", "16", "18" to "19-a", "22", "24", and "24-a"; while Exhibits "2", "5", "7", "13", "14", "15", "17", "20", "20-a", "21", "21-a", "23", and "23-a" were denied.

On March 20, 2014, respondent CIR filed a Motion for Reconsideration[36] seeking the admission of the denied evidence, with petitioners' Comment/Opposition (To The Motion for Reconsideration dated 19 March 2014)[37] filed on April 22, 2014. In a Resolution[38] dated September 30, 2014, the Court admitted Exhibits "7", "13", "14", and "15"; while Exhibits "2", "5", and "17" were still denied. In the same Resolution, the Court admitted the Compliant Replacement Affidavits of respondents' witnesses, Atty. Teodoro G. Galicia, Revenue Officer Cynthia M. Catolico, and Revenue Officer Alfredo A. Mananghaya, corresponding to Exhibits "20", "20-a", "21", "21-a", "23" and "23-a".

Respondent CIR, in her Offer of Proof[39], prayed that Exhibits "2", "5", and "17" be put and made part of the records of the case. She offered as proof the excluded evidence, and submitted that the excluded evidence would prove the following:

> "**Exhibit 2**, *Letter of Authority No. 00029150 dated 23 January 2001*, it proves and shows the authority of Atty. CherryFlor dela Cruz, Atty. Jose Edimar P. Jaen, and Atty. Theodoro Galicia to conduct an investigation/examination for all internal revenue tax liabilities of petitioners from 01 January 1999 to 31 December 1999;

[33] Docket, p. 576.
[34] Docket, pp. 676-690.
[35] Docket, pp. 729-730.
[36] Docket, pp. 796-802.
[37] Docket, pp. 811-817.
[38] Docket, pp. 861-869.
[39] Docket, pp. 872-874.

> **Exhibit 5**, *Preliminary Assessment Notice dated 23 September 2002 with attached Details of Discrepancies duly received by Carmen Oliveros on 02 October 2002*, it proves, that: (1) petitioners were notified of their deficiency income taxes in the amount of ₱1,825,561,356.25 for the taxable year 1999; (2) after investigation respondent assessed petitioners deficiency Income Taxes for the taxable year 1999; and (3) the factual and legal bases of the assessment issued against petitioners;
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> **Exhibit 17**, *Memorandum for the Chief, Collection Enforcement Division dated 02 October 2008*, it proves that the collection team served copies of the Warrant of Garnishment, addressed to Citibank and Equitable PCIBank (now BDO), to former President Estrada at his residence at #1 Polk Street Greenhills, San Juan City."

The Court noted respondent CIR's Offer of Proof in a Resolution[40] dated October 31, 2014.

This case was then submitted for decision on January 7, 2015,[41] after the filing of the Memorandum for the Petitioners[42] on December 9, 2014 and respondent CIR's Manifestation[43] that she is adopting the arguments raised in the Answer as her Memorandum.

THE ISSUES

The parties jointly stipulated the following issues[44] for this Court's resolution:

> "a. Whether respondents observed procedural due process in issuing the assessments.

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[40] Docket, pp. 879-880.
[41] Docket, p. 895.
[42] Docket, pp. 897-939.
[43] Docket, p. 941.
[44] JSFI, docket, p. 193.

b. Whether respondents failed to observe the standard audit and accounting procedures for determining the taxability of the *'Jose Velarde'* Account.

c. Whether respondents committed grave abuse of discretion when they adopted *in toto* the Decision of the Sandiganbayan, sitting as a criminal court, and applied it to resolve a tax law issue.

d. Whether the *'Jose Velarde'* Account belongs to Jaime Dichavez.

e. Whether the questioned tax assessments issued by respondents have now become moot considering that the Sandiganbayan had already issued a WRIT OF EXECUTION forfeiting the *'Jose Velarde'* Account.

f. Whether or not petitioners are liable for the amount of ₱2,905,048,539.58 representing deficiency income taxes for taxable year 1999."

DISCUSSION/RULING

RESPONDENTS OBSERVED DUE PROCESS IN ISSUING THE ASSESSMENT NOTICES

A. Existence of LOA No. 00029150 was judicially admitted in the JSFI and in the Special Power of Attorney executed by petitioners.

Petitioners contend that respondents failed to prove the Letter of Authority (LOA) upon which the assessments were based. Petitioners anchor this assertion on the fact that this Court denied the admission of LOA No. 00029150 for failure to submit the original for comparison. This argument is belied by the parties' "Admitted Facts" in their JSFI, the pertinent portion of which states: *ge*

> "d. The Notice to Taxpayer was issued pursuant to a Letter of Authority with No. 000029150 dated 22 January 2001."[45]

In the same JSFI, the parties admitted the existence of LOA No. 000029150 which authorized revenue examiners to conduct investigation on the Jose Velarde account. The parties' stipulation of facts amounts to an admission, thus, treated as a judicial admission. "Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted."[46] In other words, even if the LOA was denied admission by the Court, its existence need not be proved as it was already admitted by the parties.

This judicial admission binds petitioners and can no longer be controverted by mere allegation that respondents failed to attach any LOA in the Notice to Taxpayer. The Supreme Court, in the case of *Oscar Constantino, Maxima Constantino and Casimira Maturingan vs. Heirs of Pedro Constantino, Jr., represented by Asuncion Laquindanum*[47], ruled that:

> "Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas, et. al. v. Sandiganbayan, et al.*, this Court emphasized that:
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> > **Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated**. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must

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[45] Par. 1d, Admitted Facts, JSFI, docket, p. 190.

[46] *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012, 668 SCRA 735.

[47] G.R. No. 181508, October 2, 2013, 706 SCRA 580.

> assume the consequences of the disadvantage.

Moreover, in *Alfelor v. Halasan*, this Court declared that:

> A party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. **Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party**, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. **A party cannot subsequently take a position contrary of or inconsistent with what was pleaded**. (Citations omitted)"[48] *(Emphasis supplied)*

The exceptions provided under Section 4 of Rule 129 of the Revised Rules on Evidence, that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made, do not exist in this case. There is no showing that the admission was mistakenly made or that no admission was ever made.

During cross-examination, respondents' witness Revenue Officer CherryFlor dela Cruz (RO dela Cruz) testified that the said LOA was received by petitioner JEE's Personal Secretary[49] on January 25, 2001.[50] The testimony of RO dela Cruz was corroborated by petitioners' subsequent execution of a Special Power of Attorney[51] *ge*

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[48] *Ibid.*
[49] Transcript of Stenographic Notes (TSN), January 23, 2013, p. 13.
[50] TSN, January 23, 2013, p. 37.
[51] Exhibit "6", BIR Records, pp. 21-22.

(SPA) dated October 17, 2002 wherein petitioners recognized LOA No. 00029150, to wit:[52]

> **"SPECIAL POWER OF ATTORNEY**
>
> **KNOW ALL MEN BY THESE PRESENTS:**
>
> **WE, Spouses JOSEPH and Sen. LUISA EJERCITO ESTRADA**, Filipino with residence at No. 1 Polk Street, North Greenhills, San Juan, Metro Manila, do hereby name, appoint, and constitute **JULIUS G. TOPACIO**, Filipino, of legal age, with postal address at 409 Shaw Boulevard, Mandaluyong City, to be my lawful attorney-in-fact, and in my name, place and stead, do and perform any of the following:
>
> 1. To represent us in the investigation being conducted by the Bureau of Internal Revenue on the income tax return filed for the taxable year 1999, **subject of Letter of Authority No. 00029150**;" *(Emphasis supplied)*

Undoubtedly, the said LOA reached petitioners. Respondents successfully refuted petitioners' allegation of failure to receive the LOA when the former presented the SPA. Thus, petitioners are estopped from denying receipt of LOA considering that "a party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood".[53]

B. The required notices were served upon petitioners.

In the Notice to Taxpayer[54] dated November 27, 2001, petitioners were apprised of an informal conference and were notified that if they cannot come personally, they may be represented or assisted by their duly authorized representative/counsel. Given the

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[52] *Ibid.*
[53] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011, 657 SCRA 70 citing Tolentino, Arturo M. *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 4, p. 660.
[54] Exhibit "4", BIR Records, p. 18.

option to appoint their duly authorized representative, petitioners cannot hide behind the excuse that petitioner JEE was in detention. In fact, as mentioned above and borne by the records, petitioners appointed Julius G. Topacio as their Attorney-in-fact via the SPA[55] dated October 17, 2002.

The PANs, the (Final) Assessment Notice (FAN), the Formal Letter of Demand (FLD), the Final Decision, and the other required notices were served upon petitioners. They were given sufficient opportunity to be heard, since they were able to effectively protest the PAN and the FAN.

On November 15, 2002, petitioners, through their Attorney-in-fact, Julius G. Topacio, submitted to respondents a Letter-Protest[56] concerning the PANs. This Letter-Protest was denied by respondent Hefti (then CIR) in a Notice to Taxpayer[57] dated June 12, 2008. The said Notice to Taxpayer was made an integral part of the Petition for Review.

Petitioners also admitted that on July 18, 2008, they filed a Formal Protest of the Assessment Notice No. ES-IT-1999-0680 and FLD, both dated June 19, 2008.[58] In their Formal Protest[59] dated July 17, 2008, they acknowledged receipt of the FAN and the FLD. They even submitted supporting documents on September 16, 2008.[60] Both parties stipulated the existence and genuineness of Assessment Notice No. ES-IT-1999-0680 and FLD for taxable year 1999, with attachments and proof of constructive service.[61]

Records show that petitioners were afforded due process. They were able to submit protest letters against the PAN and the FAN. They even submitted supporting documents on September 16, 2008.[62] Thus, it is too late in a day for petitioners to deny the receipt of the required notices since the "denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard"[63].

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[55] Exhibit "6", BIR Records, pp. 21-22.
[56] Exhibit "7", BIR Records, pp. 25-30.
[57] Exhibit "8", BIR Records, p. 32.
[58] Par. 5.2, Petition for Review, docket, p. 9.
[59] Exhibit "12", BIR Records, pp. 47-57.
[60] Par. 5.2, Petition for Review, docket, pp. 9-10.
[61] Admitted Documents, JSFI, docket, p. 192.
[62] Par. 5.2, Petition for Review, docket, pp. 9-10.
[63] *Gonzales vs. Civil Service Commission, et al.,* G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.

The Court will now determine whether the assessment contains legal and factual bases.

TAX ASSESSMENT BASED SOLELY ON THE SANDIGANBAYAN DECISION CANNOT BE SUSTAINED

The law requires that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. The relevant provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997 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:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

> 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 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.

Relative thereto is Revenue Regulations (RR) No. 12-99, Section 3.1.4 of which reads:

> 3.1.4. *Formal Letter of Demand and Assessment Notice*. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*. xxx The same shall be sent to the

taxpayer only by registered mail or by personal delivery xxx

The FAN and the FLD dated June 19, 2008 contain the computation of petitioners' assessed tax deficiencies as well as the source of the alleged undeclared taxable income. The FLD[64] in part states:

	Joseph E. Estrada	**Luisa P. Ejercito**	**Total**
Total Income Per Return (In Phil Pesos)	678,520.30	1,875,996.20	2,554,516.50
Add: Undeclared Taxable Income			
(See Attached Annex "A-1")	2,221,622,054.94	0.00	2,221,622,054.94
Net Taxable Income Per Investigation	2,222,300,575.24	1,875,996.20	2,222,300,575.24
Income Tax Due Thereon	733,319,189.83	579,078.92	733,898,268.75
Less: Income Tax Paid Per Return	183,911.70	579,078.92	762,990.62
Income Tax Still Due	733,135,278.13	0.00	733,135,278.13
Add: Penalties:			
50% Surcharge	366,567,639.07	0.00	366,567,639.07
20% Interest p.a.			
(4/16/00 to 6/30/08)	1,805,345,622.38	0.00	1,805,345,622.38
TOTAL AMOUNT DUE	2,905,048,539.58	0.00	2,905,048,539.58

Attached to the FLD is Schedule "1" with Details of Discrepancy/Assessment[65], explaining the legal and factual bases of the assessment, to wit:

I. DEFICIENCY INCOME TAX

Verification disclosed that you failed to report or disclose your income contained in the Jose Velarde Account for the year ending December 31, 1999 amounting to Two Billion Two Hundred Twenty One Million Six Hundred Twenty Two Thousand Fifty Four Pesos & Ninety Four Centavos (P2,221,622,054.94), in violation of Section 32(A) in relation to Section 254 of the National Internal Revenue Code, as amended.

[64] Exhibit "11", BIR Records, p. 45.
[65] Exhibit "11-b", BIR Records, p. 43.

The alleged deficiency income tax arose from Jose Velarde accounts, specifically Account No. 0160-62501-5 and Account No. 0110-25495-4.[66] Respondents enumerated the debits and credits of the said accounts for the year ended December 31, 1999 as follows:

Annex "A-1"

Schedule of Jose Velarde Accounts
For the Year Ended December 31, 1999

I. Account no. 0160-62501-5

Statement Period	Debit	Credit	Remarks
Aug 1-31	₱ 80,005,031.75	₱ 81,000,001.00	Exh D19-a
Sept 1-30	90,001,859.60	118,311,110.04	Exh D19-1-a
Oct 1-29	642,000,219.69	969,097,916.66	Exh D19-2-a
Nov 1-29	689,000,000.00	512,453,859.84	Exh D19-3-a
Dec 1-29	148,351,170.23	540,759,167.40	Exh D19-4-a
Total	**₱1,649,358,281.27**	**₱2,221,622,054.94**	

I. Account no. 0110-25495-4

Aug 1-31	345.00	5,296.00	Exh E19-a
Sept 1-30	50.00	-	Exh E19-1-a
Oct 1-31	142,000,050.00	142,000,219.69	Exh E19-2-a
Nov 1-29	-	-	
Dec 1-29	-	-	
Total	**₱142,000,445.00**	**₱142,005,515.69**	

According to respondents, there was violation of Section 32(A) in relation to Section 254 of the NIRC of 1997 when petitioners failed to declare the alleged taxable income computed using the total credits of Jose Velarde Account No. 0160-62501-5 amounting to ₱2,221,622,054.94.

While it appears that the assessment contains factual and legal bases, the Court is not precluded from evaluating the propriety of the facts and the law upon which the assessment is based. *je*

[66] Exhibit "11-a", BIR Records, p. 44.

A. *Res judicata* is not present in this case.

As can be gathered above, the tax assessment arose from the Jose Velarde account alleged to have been owned by petitioner JEE. To support the said allegation, respondents offered mainly the following:

1. Memorandum[67] dated September 23, 2002 prepared by the BIR Audit Team and approved by former CIR Guillermo L. Parayno, Jr.;

2. Memorandum[68] dated June 17, 2008 addressed to then CIR Lilia B. Hefti;

3. Amended Writ of Execution[69] issued by the Special Division of Sandiganbayan in the case of *People of the Philippines vs. Joseph Ejercito Estrada, et al.*, Crim. Case No. 26558, February 19, 2008;

4. Judicial Affidavit[70] of RO dela Cruz, who testified that she was part of the investigating team formed pursuant to Letter of Authority No. 00029150 and that they served letters of access to several government offices in relation to petitioner's tax investigation;

5. Judicial Affidavit[71] of OIC-Assistant Revenue District Officer Jose Edimar P. Jaen, stating that he was part of the investigating team formed pursuant to Letter of Authority No. 00029150; and

6. Compliant Replacement Affidavit[72] of Atty. Teodoro G. Galicia, Revenue District Officer, stating that he was the Group Supervisor of the investigating team formed pursuant to Letter of Authority No. 00029150.

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[67] Exhibit "3", BIR Records, pp. 12-17.
[68] Exhibit "9", BIR Records, pp. 33-37.
[69] Exhibit "13", BIR Records, pp. 88-90.
[70] Exhibit "18", docket, pp. 531-536.
[71] Exhibit "19", docket, pp. 553-558.
[72] Docket, pp. 841-847.

Meanwhile, in opposition, petitioners questioned the factual basis of assessment and denied the ownership of Jose Velarde account. They offered and presented the following:

1. Sinumpaang Salaysay[73] of Lucina "Baby" Ortaliza, who represented herself as the part-time Secretary of Mr. Jaime Dichaves, who allegedly owned the Jose Velarde account;

2. Sworn Statement in Question and Answer Form of Beatriz L. Bagsit[74], who testified that she previously worked as the Branch Manager of the Pacific Star Branch of Equitable PCI Bank and eventually became 1st Vice President and Division Head, Makati Area. She testified that she was introduced to Mr. Jaime Dichaves by Mr. Romuald Dy Tang, EVP-Treasurer, Equitable PCI Bank, and was informed that Mr. Dichaves maintains a special account in Binondo Branch under the name of Jose Velarde, which was later transferred to the Pacific Star Branch of Equitable PCI Bank for her close personal attention;

3. Affidavit[75] of Mr. Romuald Dy Tang, who testified that he was then the Executive Vice-President of Equitable PCI Bank; that he was a Senior Vice-President of the bank from June 1, 1995 to September 30, 1999. He also testified that he received a letter from Mr. Jaime Dichaves sometime in the last week of August 1999, requesting that savings and current accounts be opened in the Juan Luna Binondo branch for Jose Velarde care of Jaime Dichaves; that Mr. Dichaves also revealed that all banking transactions of Jose Velarde be coursed through him;[76]

4. Testimony of Atty. Kenneth S. Tampal, who represented himself as Director V of the Office of the Senate Legal Counsel. He testified that they are the custodian of all records of the impeachment court; that he is in possession of the second envelope containing a letter of Jaime Dichaves addressed to Mr. Romuald Dy Tang;[77]

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[73] Exhibit "A", docket, pp. 201-202.
[74] Exhibit "B", docket, pp. 302-307.
[75] Exhibit "C", docket, pp. 314.
[76] TSN, October 18, 2010, p. 13
[77] TSN, May 30, 2011, pp. 6-40.

5. Letter of Mr. Jaime Dichaves to Mr. Romuald Dy Tang dated August 25, 1999;[78]

6. Equitable Bank Statements in the name of Jose Velarde with Account No. 0110-25495-4;[79]

7. Equitable Bank Statements in the name of Jose Velarde with Account No. 001-110-000-00000160625015;[80]

8. Debit Advice to Jose Velarde with Account No. 0110-25495-4;[81]

9. Credit Advice to Jose Velarde with Account No. 0110-25495-4;[82] and

10. Savings/Time Statement Inquiry for Account No. 001-110-000-00000160625015.[83]

Respondents assert the application of conclusiveness of judgment on the issue of ownership of the Jose Velarde account. Petitioners counter that conclusiveness of judgment applies only to parties and persons privy with them in the previous litigation.

Thus, this Court will revisit the principle of *res judicata*.

"The doctrine of *res judicata* is a fundamental principle of law which precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment."[84] In the case of *Pryce Corporation vs. China Banking Corporation*[85], the following elements were enumerated in order for *res judicata* to apply:

(a) the former judgment was final; ge

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[78] Exhibit D-2", docket, p. 336.
[79] Exhibit "D-4", docket, p. 337; Exhibit "D-5", docket, p. 338; Exhibit "D-6", docket, p. 339.
[80] Exhibits "D-11" to "D-23", pp. 344-356.
[81] Exhibits "D-7" and "D-8", docket, pp. 340-341.
[82] Exhibit "D-9", docket, p. 342.
[83] Exhibit "D-10", p. 343.
[84] *Spouses Suntay vs. Keyser Mercantile, Inc.*, G.R. No. 208462, December 10, 2014.
[85] G.R. No. 172302, February 18, 2014, 716 SCRA 207.

(b) the court that rendered it had jurisdiction over the subject matter and the parties;

(c) the judgment was based on the merits; and

(d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action.

The two concepts of *res judicata* are (1) bar by prior judgment and (2) conclusiveness of judgment.

"Bar by prior judgment exists 'when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action.' On the other hand, the concept of conclusiveness of judgment finds application 'when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction.' This principle only needs identity of parties and issues to apply."[86]

In both instances, the "identity of parties and issues" are required. In this case, the elements of "identity of parties" and "causes of action" are wanting. In Criminal Case No. 26558, tried before the Special Division of Sandiganbayan, the parties were the "People of the Philippines" and "Joseph Ejercito Estrada, *et al.*" Here, the ones who initiated the petition are "Spouses Joseph Ejercito Estrada and Luisa P. Ejercito" against the "Bureau of Internal Revenue and Lilia Hefti, in her capacity as the Commissioner of Internal Revenue", as respondents.

In the case of *Republic of the Philippines vs. Tuvera, et al.*[87], the Supreme Court reversed the ruling of Sandiganbayan and held that there is no conclusiveness of judgement on the issue of Timber License Agreement (TLA) when there is no identity of parties and no identity of causes of action between the first case (recovery of ill-gotten wealth involving TLA No. 356) and the second case (revocation of TLA No. 356). Although the comparison of "identity of parties" was made between the Republic of the Philippines and Felipe Ysmael, Jr. Co., Inc., it is observed that the Supreme Court did not consider the **Republic of the Philippines**, as privy to the first case gu

[86] *Ibid.*
[87] G.R. No. 148246, February 16, 2007, 516 SCRA 113.

which involved the **Deputy Executive Secretary, the Secretary of Environment and Natural Resources, and the Director of the Bureau of Forest Development**. The Court held:

> "For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. When there is only identity of issues with no identity of causes of action, there exists *res judicata* in the concept of conclusiveness of judgment.
>
> In *Ysmael*, the case was between Felipe Ysmael Jr. & Co., Inc. and the Deputy Executive Secretary, the Secretary of Environment and Natural Resources, the Director of the Bureau of Forest Development and Twin Peaks Development and Realty Corporation. The present case, on the other hand, was initiated by the Republic of the Philippines represented by the Office of the Solicitor General. No amount of imagination could let us believe that there was an identity of parties between this case and the one formerly filed by Felipe Ysmael Jr. & Co., Inc.
>
> The Sandiganbayan held that despite the difference of parties, *res judicata* nevertheless applies on the basis of the supposed sufficiency of the 'substantial identity' between the Republic of the Philippines and Felipe Ysmael, Jr. Co., Inc. We disagree. The Court in a number of cases considered the substantial identity of parties in the application of *res judicata* in instances where there is privity between the two parties, as between their successors in interest by title or where an additional party was simply included in the subsequent case or where one of the parties to a previous case was not impleaded in the succeeding case.
>
> The Court finds no basis to declare the Republic as having substantial interest as that of Felipe Ysmael, Jr. & Co., Inc. In the first place, the Republic's cause of action

lies in the alleged abuse of power on respondents' part in violation of R.A. No. 3019 and breach of public trust, which in turn warrants its claim for restitution and damages. *Ysmael*, on the other hand, sought the revocation of TLA No. 356 and the reinstatement of its own timber license agreement. Indeed, there is no identity of parties and no identity of causes of action between the two cases."[88]

Likewise, in the case of *Digital Telecommunications Philippines, Inc. vs. Cantos*[89], even if respondents in both cases similarly sought to enforce the tax obligations of petitioner therein, (first case involves the Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas; while the second case involves the Provincial Treasurer of the Province of Batangas) they were sued under different capacities, thus, the Supreme Court affirmed the ruling of the Regional Trial Court (RTC) and the Court of Appeals (CA), holding that:

"Here, there is no identity of parties between Civil Case No. 3514 and the instant case. '**Identity of parties exists "where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity**."' In Civil Case No. 3514, the action was directed against Benjamin E. Martinez, Jr. and Francisco P. Martinez in their capacities as Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas, respectively. On the other hand, respondent, in the instant case, is being sued in his capacity as Provincial Treasurer of the Province of Batangas. **While the defendants in both cases similarly sought to enforce the tax obligation of petitioner, they were sued under different capacities**. Moreover, there is no identity in the causes of action between the two cases. In Civil Case No. 3514, the propriety of the municipal officials' closure/stoppage of petitioner's business operation in Balayan, Batangas was the one in question while what is involved in this case is respondent's act of issuing Warrants of Levy and proceeding with the auction

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[88] *Ibid.*
[89] G.R. No. 180200, November 25, 2013, 710 SCRA 514.

> sale of the real properties of petitioner. Clearly, the principle of res judicata does not apply. The RTC and the CA are therefore correct in ruling that respondent, not being a party thereto, is not bound by the Decision rendered in Civil Case No. 3514." *(Emphasis supplied)*

As earlier stated, there is no identity of parties in Criminal Case No. 26658 and the present case. There is no privity, or even community of interest, between the "People of the Philippines", the plaintiff in Criminal Case No. 26658, and the "Bureau of Internal Revenue and Lilia Hefti, in her capacity as the Commissioner of Internal Revenue", the respondents in the present case. Aside from the fact that the foregoing parties sued and are now being sued under different capacities, they also represent different interests. In Criminal Case No. 26658, the interest of the plaintiff is to establish the culpability of the accused therein for the crime of plunder while in the present case, the respondents' interest is to enforce the alleged tax obligations of the petitioners.

Hence, the principle of *res judicata* will not apply here.

B. Cases filed before the CTA
are litigated *de novo.*

The general rule is 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. It is to be presumed, however, that such assessment was based on sufficient evidence."[90]

It is further noted that "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 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."[91]

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[90] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[91] *Ibid.*

Upon thorough evaluation of the pieces of evidence on record, this Court finds that these are insufficient to support the basis of assessment on the alleged undeclared income arising from the Jose Velarde account.

In the instant case, the assessment notices reveal that the basis of petitioners' alleged deficiency tax arose from the investigation and findings of another tribunal. In the Memorandum[92] dated June 17, 2008 of the Task Force on Joseph Ejercito Estrada, *et. al.* of the BIR's Legal and Enforcement Group, they admittedly based their recommendation therein on the Sandiganbayan Plunder Case Decision, where they concluded that *it is finally established that subject taxpayers have willfully and intentionally failed to report taxable receipts and acquisition of assets in palpable and blatant violation of National Internal Revenue Code of 1997, as amended.*[93]

It is noteworthy to mention that it is not the Department of Justice or the Office of the Ombudsman, or worse a private law firm, who is burdened with the task of determining the amount of deficiency taxes due a taxpayer. Such mandate is vested upon the BIR, being the primary agency tasked to assess and collect of "all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith."[94] In this case, BIR should have conducted an independent investigation of its own in the determination of the amount of deficiency taxes due the taxpayers and not merely rely on the findings of another agency or tribunal.

In relation to this, Section 6 (B) of the NIRC of 1997, as amended, provides that the CIR shall assess the proper tax due based on the best evidence obtainable, *viz*:

> "**SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> *x x x*
>
> (B) Failure to Submit Required Returns, Statements, Reports and other Documents - When a report required

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[92] Exhibit "9", BIR Records, pp. 33-37
[93] *Ibid, p. 34.*
[94] Section 2 of the National Internal Revenue Code (NIRC) of 1997, as amended.

> by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, **the Commissioner shall assess the proper tax on the best evidence obtainable**.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes." *(Emphasis Ours)*

It is a basic rule of evidence that each party must prove his affirmative allegation.[95] As the old maxim goes, *ei incumbit probatio qui dicit, non qui negat.*[96] Hence, mere reliance on the Sandiganbayan's Decision and adopting it as basis for their deficiency tax assessment, may not be considered as the best evidence obtainable.

Anent the decision of the Sandiganbayan in *People of the Philippines vs. Joseph Ejercito Estrada, et al.*, Crim. Case No. 26558 , it was not presented as evidence. In fact, it was only a copy of the Amended Writ of Execution[97] dated February 19, 2008 of the said criminal case that was submitted before the Court. No other evidence was presented to sway this Court that respondents indeed complied with their given mandate. More importantly, reliance on the Sandiganbayan decision was vehemently objected to by the petitioners. Considering thereto, this Court cannot take judicial notice of the ruling on the said case.

Due process demands that petitioners are afforded ample opportunity to be heard before any judgment may be rendered against them. Part of this due process requirement is the reasonable opportunity to confront or rebut any evidence that may be presented

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[95] *Lolita Lopez vs. Bodega City (Video-Disco Kitchen of the Philippines), et al.,* G.R. No. 155731, September 3, 2007, 532 SCRA 56.
[96] "He who asserts, not he who denies, must prove."
[97] Exhibit "13", BIR Records, pp. 88-90

against them. Thus, this Court cannot sustain the tax assessment against petitioners solely based on the Sandiganbayan decision.

While respondents' witnesses testified that they sent Letters of Access to Records to various government offices, the documents alleged to have been obtained and used in assessment were never presented before this Court. "Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value."[98]

Moreover, the earlier statement of RO dela Cruz during cross-examination that the documents supposedly used in the investigation of the Jose Velarde accounts consisted of the Income Tax Returns (ITRs) furnished by the BIR[99] contradicted her later testimony that they did not obtain the ITRs of petitioner JEE because he is a non-filer.[100] The inconsistencies in the statements of the witness cast doubts on respondents' findings of undeclared income when even petitioners' Annual ITRs or Certificate of Compensation Payment/Tax Withheld were neither seen during investigation nor presented before the Court

Similarly, during cross-examination of Atty. Jaen, he confirmed that they solely relied on the Amended Writ of Execution when they issued the FAN and did not perform any accounting work or digging of records.[101] He testified as follows:

> "ATTY. OCAMPO
> Q You said that after you received a copy of the protest from the petitioner, you held in abeyance the investigation?
>
> ATTY. JAEN
> A Yes, your Honors.
>
> ATTY. OCAMPO
> Q So, in other words, you did not, from that time ...Interrupted

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[98] *LNS International Manpower Services vs. Armando C. Padua, Jr.,* G.R. No. 179792, March 5, 2010, 614 SCRA 322.
[99] TSN, July 23, 2012, pp. 19-20.
[100] TSN, January 23, 2013, p. 20.
[101] TSN, October 10, 2012, pp. 44-45.

ATTY. JAEN
A Not the investigation, your Honors, the assessment. I stand corrected. On the assessment.

JUSTICE BAUTISTA
Mr. Jaen, your assessment was based on the Writ of Execution issued by the Sandiganbayan?

ATTY. JAEN
A Yes, your Honors.

JUSTICE BAUTISTA
So, you did not do any accounting work or digging of records? There was none?

ATTY. JAEN
None anymore, your Honors, because one of the...Interrupted

JUSTICE BAUTISTA
You only based on the Writ of Execution?

ATTY. JAEN
Yes, your Honors, because one of the issue raised in the protest, the petitioner raised the issued on the ownership of the Jose Velarde account which was then pending under criminal case in the Sandiganbayan. So, for reason of sub judice, so we inhibited ourselves.

JUSTICE BAUTISTA
So, because of that Writ of Execution issued by the Sandiganbayan, it was decided by the BIR that there was undeclared income because of the Velarde account?

ATTY. JAEN
Yes, your Honors, that's correct.

ATTY. OCAMPO
Q So, in other words, Mr. Witness, you did not conduct your own personal investigation because you already...Interrupted

JUSTICE BAUTISTA
He mentioned that a while ago, he did not.

ATTY. JAEN
A We take judicial notice in the decision of the Sandiganbayan.

JUSTICE BAUTISTA
The assessment was based on the Writ of Execution issued by the Sandiganbayan. Okay?

ATTY. OCAMPO
Q On this note, Mr. Witness, did you, as part of the investigating team ever obtain a court order against the bank for you to open first the Jose Velarde account?

ATTY. JAEN
A No, your Honors, we just depended on the decision of the Sandiganbayan. [102]

xxx xxx xxx

JUSTICE BAUTISTA
Let him explain.

ATTY. JAEN
First, we conducted, we gathered the documents from the Senate regarding the impeachment and then those documents from the Ombudsman. There was an issue on the ownership of Jose Velarde account.

JUSTICE BAUTISTA
But there was no mention of that in the affidavit. What was mentioned here in the affidavit is the Writ of Execution, amended decision. *[initials]*

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[102] TSN, October 10, 2012, pp. 44-47.

ATTY. JAEN
Yes, your Honors. That was for the FAN, your Honors, when the Sandiganbayan has declared Joseph Ejercito Estrada as the real and beneficial owner of the Jose Velarde account.

JUSTICE BAUTISTA
That was for the FAN?

ATTY. JAEN
Yes, FAN, final assessment.

JUSTICE BAUTISTA
Final assessment.
How about the PAN?

ATTY. JAEN
The PAN was based on the documents we gathered from the Senate and from the documents...Interrupted.

JUSTICE BAUTISTA
But there was no mention of that in the affidavit.[103]

Also, the Memorandum[104] dated September 23, 2002, prepared by the BIR Audit Team and approved by then CIR Guillermo L. Parayno, Jr., cannot be given much weight for lack of documents to substantiate its contents. If at all, the said Memorandum established only the fact of sending the Letters of Access to Records to various agencies, but the documents allegedly obtained from these agencies were never presented. As the Supreme Court held in "*Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption."[105]

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[103] TSN, October 10, 2012, pp. 113-115.
[104] Exhibit "3", BIR Records, pp. 12-17.
[105] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.

In numerous rulings of the Supreme Court, it has been settled that "under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases."[106]

Due to the absence of vital documents from which the Court can verify the correctness of assessment, the subject deficiency income tax assessment should be cancelled.

Consequently, the Court will no longer belabor on the remaining issues inasmuch as the assessment cannot be sustained.

RESPONDENTS ARE NOT LIABLE FOR COST OF SUIT.

Being the agency primarily mandated to perform tax assessment and collection of all national internal revenue taxes, the BIR or the respondent cannot be held liable for costs of suit. The pertinent provision of the Rules of Court reads:

> Rule 142
> Costs
>
> SECTION 1. *Costs ordinarily follow results of suit.* - Unless otherwise provided in these Rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. **No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.** *(Emphasis supplied)* Jc

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[106] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 609; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008, 553 SCRA 111.

WHEREFORE, premises considered, the instant Petition is hereby **PARTIALLY GRANTED**. Accordingly, the Deficiency Income Tax Assessment Notice No. ES-IT-1999-0680 and the Formal Letter of Demand dated June 19, 2008, and the decision dated September 26, 2008, are **REVERSED** and **SET ASIDE**. However, petitioners' prayer for costs of suit is **DENIED**.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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