REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION, Petitioner,	**CTA CASE NO. 9219**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 11 2019 9:00 a.m.

x---x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Before this Court is a Petition for Review[1] filed by Philippine Communications Satellite Corporation praying that judgment be rendered cancelling the deficiency value-added tax (VAT) assessment issued by the Commissioner of Internal Revenue in the amount of ₱7,336,587.85, inclusive of surcharge and interest, for calendar year 2007.

[1] Docket (vol. I), pp. 12-37.

STATEMENT OF FACTS

Petitioner Philippine Communications Satellite Corporation is a wholly-owned subsidiary of Philippine Overseas Telecommunications Corporation (POTC) and is an enfranchised and licensed Philippine Public Telecommunications Entity (PTE).[2] It holds office at the 12th Floor, Telecoms Plaza Building, 316 Sen. Gil Puyat Avenue, Makati City.[3]

Petitioner is also a VAT-registered taxpayer of the Bureau of Internal Revenue (BIR) with Certificate of Registration No. 9RC0000439597 dated January 19, 1996 with Tax Identification No. 000-165-660.[4]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is vested by law with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For years, petitioner used to maintain a Transport Maintenance Center (hereinafter "TMC property") located at Mariveles Street, Mandaluyong City which served as a garage and repair shop for petitioner's company vehicles.

On June 29, 2007, petitioner sold the TMC property to Fortune Enrichment Resources Holdings and Development Corporation.[5]

On July 2, 2007, the One-Time Tax (ONETT) Team of BIR Revenue Region No. 7, Revenue District Office (RDO) No. 41 – Mandaluyong City issued an ONNET Computation Sheet[6] for sale of real property considered as ordinary asset, stating the amounts of taxes due on the sale of the TMC property, *viz.*:

i. Expanded Withholding Tax (EWT) – ₱1,556,180.00; and,
ii. Documentary Stamp Tax (DST) – ₱391,545.00. *gc*

---

[2] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 642; Exhibit "P-1".
[3] Par. 3, JSFI, Docket (Vol. II), p.643.
[4] Par. 4, *id.*; Exhibit "P-2".
[5] Exhibit "P-3".
[6] Exhibit "P-4".

Later that day, petitioner paid the above EWT in the amount of ₱1,556,180.00[7] and DST in the amount of ₱391,545.00[8]. Thus, a Certificate Authorizing Registration[9] of even date was issued by BIR RDO No. 41 – Mandaluyong City authorizing the registration of the transfer of the TMC property.

Subsequently, a Tax Clearance Certificate[10] dated July 3, 2007, was issued by BIR RDO No. 41 – Mandaluyong City, confirming that all internal revenue taxes due for the purpose of transferring the registration of the TMC property have already been settled.

On August 8, 2008, a Letter of Authority (LOA) No. 0028530[11] was issued to petitioner by OIC-Regional Director Ma. Nieva A. Guerrero of RDO No. 49 – Makati City, authorizing Revenue Officers (RO) Alyasah Andig and Maglangit Decampong to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for calendar year 2007.[12]

On December 28, 2010, petitioner received a Preliminary Assessment Notice [13] (PAN) dated December 21, 2010 from respondent, informing petitioner of deficiency VAT assessment for calendar year 2007 in the amount of ₱6,552,210.57 arising from the following:

i. Imposition of VAT on petitioner's sale of the TMC property on June 29, 2007, which the BIR treated as a sale of an ordinary asset subject to VAT under Section 106 of the National Internal Revenue Code of 1997, as amended, and as implemented by Sec. 4.109-1(B)(1)(p) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007; and,

ii. Disallowance of excess input tax in the amount of ₱4,266,784.69 that was carried over to the succeeding taxable periods.[14] gr

---

[7] Exhibit "P-5".
[8] Exhibit "P-6".
[9] Exhibit "P-7-2".
[10] Exhibit "P-7-1".
[11] Exhibits "R-1" and "R-1-a".
[12] Par. 6, JSFI, docket (vol. II), p. 643.
[13] Exhibit "P-8"; Exhibit "R-3".
[14] Par. 7, JSFI, docket (vol. II), p. 643.

Then, on January 10, 2011, petitioner signed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code[15] in favor of respondent with respect to their investigation of petitioner's deficiency VAT liability until and not later than June 30, 2011.[16]

On January 12, 2011, petitioner filed its letter-reply[17] to the PAN, wherein it prayed for the cancellation of the proposed deficiency VAT assessment for calendar year 2007.[18]

Thereafter, on July 1, 2011, petitioner received a Formal Assessment Notice (FAN) with Assessment Notice No. VT-LA28530-07-11-0594[19] dated June 29, 2011, demanding payment of deficiency VAT in the amount of ₱6,907,497.44.[20]

On July 29, 2011, petitioner filed its letter protest[21] against the FAN, wherein it prayed for the cancellation of the proposed deficiency VAT assessment.[22]

Thus, on March 2, 2012, petitioner received respondent's Final Decision on Disputed Assessment[23] (FDDA) dated March 1, 2012, denying the letter protest dated July 29, 2011 and ordering petitioner to pay the deficiency VAT assessment in the total amount of ₱7,336,587.85, computed as follows:

VALUE-ADDED TAX		
Gross sales/receipts per VAT returns		₱5,753,830.24
Add: Adjustments		
Sale of ordinary asset not subjected to VAT		26,103,000.00
Gross sales/receipts subject to VAT		₱31,856,830.24
Output Tax Due		₱3,822,819.63
Less Input Tax Credits		
Input Tax carried over from	₱3,346,359.02	

Jr

15 Exhibit "P-9"; Exhibit "R-4".
16 Par. 8, JSFI, docket (vol. II), p. 644.
17 Exhibit "P-10"
18 Par. 9, JSFI, docket (vol. II), p. 644.
19 Exhibit "P-11"; Exhibit "R-7".
20 Par. 10, JSFI, docket (vol. II), p. 644.
21 Exhibit "P-12".
22 Par. 11, JSFI, docket (vol. II), p. 644.
23 Exhibit "P-13"; Exhibit "

previous period		
Current input tax	1,403,747.41	
Total	4,750,106.43	
Less: Input tax carried over to the succeeding period	(4,266,784.69)	483,321.74
VAT Due		₱3,339,497.89
Less VAT payments		(207,137.89)
Deficiency VAT		₱3,132,360.00
Add: Surcharge (50%)	₱1,586,180.00	
Interest (1/26/08 to 4/11/12)	2,638,047.85	4,204,227.85
TOTAL AMOUNT STILL DUE		**₱7,336,587.85**[24]

In the FDDA dated March 1, 2012, respondent alleged that petitioner sold the TMC property as an ordinary asset without subjecting the same to VAT.[25]

As such, on March 30 2012, petitioner filed letter re: Administrative Appeal/Motion for Reconsideration of the FDDA[26] dated March 27, 2012, in accordance with Section 3.1.5 of RR No. 12-99, wherein it prayed for the reversal of the FDDA and cancellation of the deficiency VAT assessment for calendar year 2007.[27]

On November 11, 2015, petitioner received respondent's Decision[28] dated October 15, 2015 denying petitioner's administrative appeal and ordering the latter to pay its deficiency VAT assessment.[29]

Undaunted, petitioner elevated the matter to this Court via the filing of a Petition for Review on December 11, 2015 praying for the cancellation of respondent's deficiency VAT assessment for calendar year 2017 in the total amount of ₱7,336,587.85.

Meanwhile, on January 28, 2016, petitioner filed an Urgent Motion for Suspension of Collection of Taxes[30] primarily praying that the collection of the alleged deficiency taxes be suspended until the court's final resolution of the present controversy. *Je*

---

[24] Par. 12, JSFI, docket (vol. II), p. 644.
[25] Par. 13, *id.*, p. 645.
[26] Exhibit "P-14".
[27] Par. 14, JSFI, docket (vol. II), p. 645.
[28] Exhibit "P-15".
[29] Par. 15, JSFI, docket (vol. II), p. 645.
[30] Docket (vol. I), pp. 127-133.

On March 2, 2015, respondent filed his Answer[31] interposing the following special and affirmative defenses:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
>
> 2. The waiver dated January 10, 2011 is valid.
>
> 3. Assuming without admitting that the waiver is not valid, the ten (10) year prescriptive period will apply to the Value-Added Tax assessment pursuant to Section 222(A) of the Tax Code, which states that 'In case of false or fraudulent return with the intent to evade tax or of **<u>failure to file a return</u>**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or **<u>omission</u>**.'
>
> 4. Assessment*[s]* are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed;
>
> 5. Finally, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance. Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another – *Non videtur quisquam id capere quod ei necesse est alii restitutere.*" *(Citations omitted)*

On March 7, 2016, a Notice of Pre-Trial Conference[32] was issued by this Court setting the case for pre-trial conference on April 14, 2016 and, further, ordering the parties to file their respective pre-trial briefs at least three (3) days before the said date.

As such, on April 5, 2016, Respondent's Pre-Trial Brief[33] was filed, while, on the other hand, Petitioner's Pre-Trial Brief[34] was filed on May 6, 2016. *gc*

---

[31] *Id.*, pp. 164-166.
[32] *Id.*, pp. 289-290.
[33] *Id.*, pp. 299-302.
[34] *Id.*, pp. 325-345.

Meanwhile, in the Resolution[35] dated April 13, 2016, this Court granted petitioner's Urgent Motion for Suspension of Collection of Taxes, subject to the posting of a bond equivalent to not more than double the amount being collected or ₱6,264,720.00.

In compliance with the above order, petitioner filed a Submission[36] on April 25, 2016, attaching therewith a surety bond from Prudential Guarantee and Assurance, Inc. with PGA Bond No. BD-G16-HOM-0074221 dated April 21, 2016. Accordingly, the same was noted and granted by this Court in the Resolution[37] dated July 26, 2016.

Then, on May 27, 2016, the parties filed their Joint Stipulation of Facts and Issues[38] (JSFI). Consequently, on June 22, 2016, a Pre-Trial Order[39] was issued by this Court, adopting the parties' JSFI and also deeming the pre-trial conference terminated.

On June 16, 2016, petitioner filed a Motion to Commission Independent Certified Public Accountant[40], praying that Atty. Arminda Acyatan-Guerrero of Acyatan & Co. be commissioned as the Independent Certified Public Accountant (ICPA) for the present case. Finding everything in order, this Court granted petitioner's Motion during the June 27, 2016 hearing thereby commissioning Atty. Acyatan-Guerrero as the ICPA for the present case and also ordering her to submit her ICPA report within thirty (30) days.

During trial, petitioner offered as witnesses its Chief Accountant, Ms. Zenaida A. Alcantara,[41] and the court-commissioned ICPA, Atty. Arminda Acyatan-Guerrero,[42] who both testified by way of judicial affidavit.

Thereafter, petitioner filed its Formal Offer of Evidence[43] on February 13, 2017, and a Supplemental Formal Offer of Evidence[44]

---

[35] *Id.*, pp. 304-310.
[36] *Id.*, pp. 311-314.
[37] Docket (vol. II), pp. 690-691.
[38] *Id.*, pp. 642-651.
[39] *Id.*, pp. 679-685.
[40] *Id.*, pp. 665-668.
[41] Exhibits "P-22" and "P-22-a"; Sworn Statement of Ms. Zenaida A. Alcantara dated May 5, 2016, docket (vol. I), pp. 540-565.
[42] Exhibits "P-50" and "P-50-a"; Sworn Statement of Ms. Arminda Acyatan-Guerrero dated November 2016, docket (vol. II), pp. 839-852.
[43] Docket (vol. II), pp. 866-890.
[44] Docket (vol. III), pp. 1168-1179.

on October 30, 2017. In the Resolution[45] dated December 12, 2017, this Court initially denied some of petitioner's exhibits due to either its failure to submit the original copies for comparison or for not being found in the records of the case. Nonetheless, after filing a Motion for Partial Reconsideration (Re: Resolution dated December 12, 2017)[46] on January 18, 2018, explaining that the photocopied exhibits are being offered as secondary evidence and that the missing exhibits were mere inadvertence on the part of the ICPA, this Court in the Resolution[47] dated March 1, 2018, eventually granted and admitted all of the previously denied exhibits.

After which, petitioner was deemed to have rested its case.

When called to present his evidence, respondent offered as witnesses Revenue Officers Atty. Alyasah M. Andig[48] of RDO No. 50 – South Makati City and Mr. Robertson T. Gazzingan[49] of RDO No. 48 – West Makati City, who also both testified by way of judicial affidavit.

On March 19, 2018, respondent filed his Formal Offer of Evidence[50]. Thus, in the Resolution[51] dated June 11, 2018, this Court admitted respondent's exhibits except for Exhibit "R-6" for being a mere photocopy. Thereafter, respondent was deemed to have rested his case and the parties were given a period of thirty (30) days within which to submit their respective memoranda.

On September 3, 2018, petitioner filed its Memorandum[52] while respondent failed to file his, as per Records Verification[53] report dated September 25, 2018. Accordingly, in the Resolution[54] dated October 5, 2018, the present case was deemed submitted for decision.

---

[45] *Id.*, pp. 1203-1209.
[46] *Id.*, pp. 1210-1218.
[47] *Id.*, pp. 1274-1276.
[48] Exhibits "R-10" and "R-10-a"; Judicial Affidavit of Atty. Alyasah M. Andig dated February 1, 2018, docket (vol. III), pp. 1240-1246.
[49] Exhibits "R-11" and "R-11-a"; Judicial Affidavit of Robertson T. Gazzingan dated February 1, 2018, docket (vol. III), pp. 1266-1269.
[50] Docket (vol. III), pp. 1286-1292.
[51] *Id.*, pp. 1340-1341.
[52] *Id.*, pp. 1347-1380.
[53] *Id.*, p. 1381.
[54] *Id.*, p. 1382.

STATEMENT OF ISSUES

The following issues[55] were stipulated by the parties for this Court's resolution, *to wit*:

> Whether or not respondent's deficiency VAT assessment against petitioner for CY 2007 in the total amount of ₱7,336,587.85 is valid.
>
> Whether or not respondent's right to assess deficiency Vat on the sale of TMC property has already prescribed.
>
> Whether or not the subject sale of the TMC property is subject to VAT under Section 106, Tax Code, as implemented by Sec. 4.109-1(B)(1)(P) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-*[2007]*.
>
> Whether or not petitioner is liable for deficiency VAT assessment for CY 2007 in the amount of ₱7,336,587.85.

PETITIONER'S ARGUMENTS

Petitioner primarily claims that respondent's deficiency VAT assessment is void for having been issued beyond the three-year prescriptive period as mandated under Section 203 of the NIRC of 1997, as amended. Nonetheless, even assuming for the sake of argument that the subject assessment is not barred by prescription, petitioner insists that the sale of the TMC property should not be subjected to VAT since it was no longer an ordinary asset at the time of its sale on June 29, 2007. Considering that the TMC property has not been used for more than two (2) years prior to the consummation of the sale, the said property has been converted to a capital asset.

---

[55] Issues, JSFI, docket (vol. II), p. 645.

RESPONDENT'S ARGUMENTS

On the other hand, respondent asserts that by executing a waiver, the period within which to conduct the subject assessment was validly extended in accordance with Section 222 of the NIRC of 1997, as amended, which provides for the exceptions regarding to the three-year prescriptive period. Nevertheless, since petitioner failed to file a return, the prescriptive period of ten (10) years after the discovery of the said omission shall be observed instead of the usual three (3) years.

THE COURT'S RULING

After due consideration of the arguments and evidence presented by the parties, this Court finds merit in the instant Petition.

Verily, one of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[56] Included in this due process, is a set of procedure laid down by law to be properly observed for an effective delivery of justice, including the manner and period within which to properly conduct an assessment, which is not only mandatory but also jurisdictional.

Perforce, Section 203 of the NIRC of 1997, as amended, provides:

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

---

[56] Section 1, Article III of the 1987 Philippine Constitution.

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation*,[57] the Supreme Court held that the government must assess internal revenue taxes within the prescribed period of time so as not to deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of the said period, to wit:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

Clearly, save for certain exceptions, the BIR only has three (3) years, counted from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.

Under Sec 114(A)[58] of the NIRC of 1997, as amended, a VAT return shall be filed within twenty-five (25) days following the close of each taxable quarter prescribed or the date of actual filing in case it was beyond the twenty-five (25) days. In the present case, petitioner filed his quarterly VAT returns on April 25, 2007, July 24, 2007, October 30, 2007, and January 28, 2008. Counting three (3) years from the said dates, respondent has, at the latest, until January 28, 2011 within which to assess petitioner. A table is hereafter provided for ease of reference, to wit: *gc*

---

[57] G.R. No. 167765, June 30, 2008.

[58] "**SEC. 114.** *Return and Payment of Value-Added Tax.* –

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

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches."

Taxable quarter for 2007	Actual date of filing	Close of taxable quarter	Last day to Assess
1st quarter *Exhibit "P-16"*	April 25, 2007	April 25, 2007	April 25, 2010
2nd quarter *Exhibit "P-17"*	July 24, 2007	July 25, 2007	July 25, 2010
3rd qtr. (amended) *Exhibit "P-18-1"*	October 30, 2007	October 25, 2007	October 30, 2010
4th qtr. (amended) *Exhibit "P-19-1"*	January 28, 2008	January 25, 2008	January 28, 2011

However, it was only on July 1, 2011, when petitioner received respondent's FAN with Assessment Notice No. VT-LA28530-07-11-0594[59] dated June 29, 2011. Evidently, the VAT assessment was made beyond the three-year period mandated by law.

Nonetheless, respondent points out that the first line of Section 203 of the NIRC of 1997, as amended, provides for certain exceptions within which the three-year period to assess internal revenue taxes may be extended. Section 222 of the same tax code enumerates as follows:

> "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax. Jr

---

[59] Exhibit "P-11"; Exhibit "R-7".

> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) - year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."

Respondent asserts that paragraph (b) of the immediately quoted provision states that the three-year period may be extended if both the CIR and the taxpayer have agreed in writing to extend the period within which the assessment may be conducted. Thus, by signing a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code[60] on January 10, 2011, petitioner and respondent have validly agreed in writing that the assessment for petitioner's deficiency VAT liability shall be extended until and not later than June 30, 2011 thereby making the subject assessment an exception to the three-year period.

Unfortunately, this Court does not agree.

Further reading of Section 222(b) explicitly states that while the three-year period to assess internal revenue tax may be extended by agreement between the CIR and the taxpayer, such is only true if the said agreement was made before the expiration of the time prescribed in Section 203 for the assessment of the tax.

In the present case, petitioner executed a Deed of Absolute Sale[61] of the TMC property in favor of Fortune Enrichment Resources Holdings and Development Corporation on June 29, 2007. Then, after paying the EWT in the amount of ₱1,556,180.00[62] and DST in the amount of ₱391,545.00 as calculated in the ONNET Computation Sheet[63] issued by BIR RDO No. 41 – Mandaluyong City, a Certificate Authorizing Registration[64] was issued on July 2, 2007 authorizing the registration of the transfer of the TMC property. ge

---

60 Exhibit "P-9"; Exhibit "R-4".
61 Exhibit "P-3".
62 Exhibit "P-5".
63 Exhibit "P-4".
64 Exhibit "P-7-2".

Subsequently, a Tax Clearance Certificate[65] dated July 3, 2007, was issued by BIR RDO No. 41 – Mandaluyong City, confirming that all internal revenue taxes due for the purpose of transferring the registration of the TMC property have already been settled.

Notably, all the transactions occurred within the second quarter of taxable year 2007. Under the implementing rules and regulations of VAT, particularly, Section 4.114-1 of RR No. 16-2005[66], as amended, the same should be included and reported in the VAT return for the second quarter (April 1 to June 30, 2007), to wit:

> "**SEC. 4.114-1. *Filing of Return and Payment of VAT.* –**
>
> *(A) Filing of Return.* – Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. The term *'taxable quarter'* shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e. the calendar quarter or fiscal quarter).
>
> Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter."

Again, petitioner's VAT return for the second quarter was filed on July 24, 2007. Respondent therefore has until July 25, 2010, three (3) years from the close of taxable quarter, within which to assess petitioner for any deficiency internal revenue taxes. By executing the waiver on January 10, 2011, only the assessment for the fourth quarter of taxable year 2007 is considered extended since it was filed on January 28, 2008. Stated simply, respondent's assessment with regard to the TMC property has already prescribed.

More so, respondent asserts that, notwithstanding the validity of the waiver, his right to assess petitioner is ten (10) years from discovery of petitioner's omission of filing a return as provided for under paragraph (a) of Section 222 of the NIRC of 1997, as amended. *Je*

---

[65] Exhibit "P-7-1".

[66] Consolidated Value-Added Tax Regulations of 2005, dated September 1, 2005.

Respondent's assertion is untenable.

A simple peruse of the records would easily reveal that this is not a case of failure to file a return. In fact, petitioner filed the following returns/BIR forms in connection with the sale and transfer of the TMC property, *viz.*:

Tax Return/BIR Forms	**Dated filed**	**Exhibit No.**
Withholding Tax Remittance Return (BIR Form No. 1606)	July 2, 2007	"P-5"
DST Declaration/Return (BIR Form No. 2000-OT)	July 2, 2007	"P-6"
Quarterly VAT Return (BIR Form 2550Q) for 2nd quarter of 2007	July 24, 2007	"P-17"
Monthly/Quarterly VAT Returns for 2004 to 2007	Various dates	"P31-0001 to P31-0048"
Annual ITR for calendar year 2007	April 14, 2008	"P-26"

Obviously, the foregoing exhibits are *prima facie* evidence that establishes a positive act that petitioner indeed filed its tax returns. 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. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[67]

Accordingly, in view of the finding that respondent's VAT deficiency assessment has already prescribed, this Court need not anymore belabor on the substantive validity of the subject assessment.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Consequently, respondent's deficiency value-added tax (VAT) assessment in the amount of ₱7,336,587.85, inclusive of surcharge and interest, for calendar year 2007 is **CANCELLED** and **SET ASIDE**.

---

[67] *Commissioner of Internal Revenue vs. Robert Christopher M. Carmona, doing business under the name Saga Casting And Productions*, CTA EB No. 1324 (CTA Case No. 8484), December 20, 2017.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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 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