REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

THOMAS C. ONGTENCO,
Respondent.

CTA EB No. 995
(CTA Case No. 8190)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

JUN 30 2014

x - x

DECISION

UY, J.:

This Petition for Review[1] filed on April 8, 2013 seeks the reversal and setting aside of the Decision dated December 12, 2012,[2] and the Resolution dated March 5, 2013,[3] both promulgated by the Second Division of this Court (or Court in Division) in CTA Case No. 8190, entitled *"Thomas C. Ongtenco, petitioner, v. Commissioner of Internal Revenue, respondent"*, the dispositive portions of which respectively read:

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[1] Docket, pp. 11 to 26.
[2] Docket, pp. 28 to 50; Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[3] Docket, pp. 51 to 53; *supra*.

<u>Decision dated December 12, 2012</u>:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby GRANTED. Accordingly, respondent's deficiency VAT assessment against petitioner in the amount of ₱ 1,998,745.34 is hereby CANCELLED and SET ASIDE.
>
> **SO ORDERED**".

<u>Resolution dated March 5, 2013</u>:

> "**WHEREFORE**, in view of the foregoing, respondent's **'MOTION FOR RECONSIDERATION'** filed on December 26, 2012 is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue, who is duly appointed and empowered to perform the duties of her office, including, among others, the power to decide, cancel, and abate tax liabilities. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Thomas C. Ongtenco is a Filipino, of legal age and with registered address at Motortrade, Vinzons Avenue, Daet, Camarines Norte. He is also registered with the BIR Revenue District Office (RDO) No. 64-Daet, Camarines Norte, as an income tax and non-VAT taxpayer as evidenced by his Certificate of Registration No. OCN2006-064-000913, bearing Tax Identification No. (TIN) 114-097-367-000-N-VAT.

On November 14, 2008, Letter of Authority No. 00014179 was issued to investigate all internal revenue tax liabilities of respondent for calendar year (CY) 2006.

As a result of the investigation, petitioner found respondent liable for income tax and value-added tax (VAT) deficiencies. Thus, on August 19, 2009, petitioner issued a Preliminary Assessment Notice (PAN) against respondent, which the latter received on August 24, 2009.

Respondent filed a protest letter dated September 5, 2009 as a reply to the PAN, which was received by petitioner on September 8, 2009.

Respondent subsequently received from petitioner a Formal Letter of Demand and Assessment Notice No. 064-06-114-097-367 dated March 16, 2010, covering calendar year 2006, assessing respondent for alleged deficiency income tax amounting to ₱ 34,618.78 and deficiency VAT amounting to ₱ 2,109,268.71, inclusive of twenty-five percent (25%) surcharge and interest, as well as compromise penalty on VAT amounting to ₱ 50,000.00.

On April 16, 2010, respondent filed a protest letter dated April 16, 2010, through registered mail, contesting the assessment and requesting its withdrawal and cancellation for lack of legal and factual bases.

On October 22, 2010, respondent received from petitioner a letter/decision dated August 27, 2010, cancelling the deficiency income tax assessment of ₱ 34,618.78 and reducing the deficiency VAT assessment from ₱ 2,109,268.71 to ₱ 1,998,745.34.

Considering petitioner's decision as a denial, respondent filed with the Court in Division a Petition for Review on November 18, 2010 entitled *"Thomas C. Ongtenco, petitioner, v. Commissioner of Internal Revenue, respondent"* and docketed as CTA Case No. 8190.

On January 7, 2011, petitioner filed a "Motion to Admit Attached Answer", which was approved by the Court in Division in the Resolution dated January 13, 2011. In the said Answer, petitioner interposed certain Special and Affirmative Defenses.

Thereafter, the case was set for pre-trial conference on March 17, 2011. Subsequently on March 30, 2011, the parties filed their Joint Stipulation of Facts and Issues (JSFI). In the Resolution dated April 1, 2011, the Court in Division approved the parties' JSFI and deemed pre-trial as terminated.

During trial, respondent as the petitioner in CTA Case No. 8190 presented two (2) witnesses, namely: Thelma M. Idaba., and petitioner himself, Thomas C. Ongtenco to prove his claims.

On the other hand, petitioner as the respondent in CTA Case No. 8190, likewise presented two (2) witnesses, namely: Manolito B.

Gagalac and Lani M. Borja.

On February 23, 2012, CTA Case No. 8190 was submitted for decision after submission of petitioner's Memorandum on February 17, 2012 and respondent's Memorandum on February 20, 2012.

Finding merit in respondent's Petition for Review, the Court in Division rendered the assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent's deficiency VAT assessment against petitioner in the amount of ₱ 1,998,745.34 is hereby **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**".

Subsequently, petitioner filed her "Motion For Reconsideration" on December 26, 2012,[4] to which respondent filed his Comment/Opposition on January 16, 2013[5] pursuant to the Court in Division's Resolution dated January 2, 2013.[6]

The said motion was denied by the Court in Division in the assailed Resolution dated March 5, 2013,[7] the dispositive portion of which reads:

> "**WHEREFORE,** in view of the foregoing, respondent's **'MOTION FOR RECONSIDERATION'** filed on December 26, 2012 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On March 25, 2013, petitioner filed, before the Court *En Banc,* a Motion for Extension of Time To File Petition for Review,[8] praying for an additional period of fifteen (15) days from March 23, 2013, or until April 7, 2013, within which to file her Petition for Review. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from March 23, 2013, or until April 7, 2013, within

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[4] Division Docket (CTA Case No. 8190), pp. 482 to 494.
[5] Division Docket (CTA Case No. 8190), pp. 497 to 501.
[6] Division Docket (CTA Case No. 8190), p. 496.
[7] Docket, pp. 51 to 53; Division Docket (CTA Case No. 8190), pp. 503 to 505.
[8] Docket, pp. 1 to 4.

which to file the said Petition for Review.[9]

Petitioner filed the instant "Petition for Review"[10] before the Court *En Banc* on April 8, 2013 (considering that April 7, 2013 fell on a Sunday), praying for the reversal and setting aside of the Decision dated December 12, 2012 and Resolution dated March 5, 2013; and that a new one be rendered, ordering respondent to pay the amount of ₱ 1,998,745.34 as deficiency VAT for taxable year 2006, plus 25% surcharge and 20% deficiency and delinquency interest for late payment from August 27, 2010 until fully paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997.

Without awaiting for the resolution from the Court requiring the filing of a Comment, respondent filed his "Answer"[11] to the subject Petition for Review on April 29, 2013. Considering the issues raised in the subject Petition for Review, the Court *En Banc* resolved to give due course thereto and to require the parties to submit their respective memorandum.[12]

Respondent filed her Memorandum on July 26, 2013.[13] For her part, petitioner manifested that she is adopting the arguments raised in the instant Petition for Review as her Memorandum.[14] Correspondingly, the case was submitted for decision on September 25, 2013.[15]

Hence, this Decision.

THE ISSUE

Petitioner submits the following assignment of error In the instant Petition for Review, to wit:

> "THE HONORABLE SECOND DIVISION ERRED IN CANCELLING THE PETITIONER'S DEFICIENCY VALUE-ADDED TAX ASSESSMENT AGAINST

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[9] Resolution dated March 26, 2013, Docket, pp. 9 to 10.
[10] Docket, pp. 11 to 26.
[11] Docket, pp. 57 to 68.
[12] Resolution dated June 20, 2013, Docket, pp. 70 to 71.
[13] Docket, pp. 72 to 86.
[14] Docket, pp. 89 to 91.
[15] Resolution dated September 25, 2013, Docket, pp. 98 to 99.

RESPONDENT IN THE AMOUNT OF P1,998,745.34 FOR THE TAXABLE YEAR 2006."[16]

Based on the foregoing, the issue boils down to whether or not petitioner is liable for deficiency value-added tax in the amount of P1,998,745.34, inclusive of interest and penalty for the taxable year 2006.

Petitioner's Arguments

Petitioner contends that respondent is liable for the deficiency VAT assessment for calendar year 2006 because the loan extended to Intertrade Credit Corporation (ICC) is incidental to respondent's trade or business.

Moreover, petitioner argues that the applicability of Revenue Regulations No. 16-2005 was not fully appreciated by the Court in Division in resolving the case, because it should have considered that respondent's gross receipts exceeded the VAT threshold as indicated in Section 109 (v) of the National Internal Revenue Code (NIRC).

Finally, petitioner asserts that the assessment has become final and executory for failure of respondent to submit relevant documents within sixty days from the filing of the administrative protest.

Respondent's counter-arguments

Respondent, for his part, maintains that the loan assistance was not incidental to his motorcycle business. He stated that he only commenced his motorcycle business on November 2006 and registered with the BIR on December 19, 2006. Thus, the said business was not yet in existence when the loan was extended to ICC, although the payment of the interest to respondent was made in 2006.

Moreover, respondent's involvement in the affairs of ICC was borne out of the fact that he is a director of the said company and has a duty towards ICC as an elected director. Likewise, the cases cited by the petitioner refer to a company/corporation engaged in the business of managing its affiliates.

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[16] Docket, p. 15.

Finally, respondent contends that no additional documents were submitted because the necessary documents were already submitted during the filing of the protest letter to the Pre-Assessment Notice, and already formed part of the records of the case.

THE COURT EN BANC'S RULING

We deny the instant Petition for Review.

There is no showing that the act of respondent in extending a loan to ICC is an incidental transaction of respondent.

Section 105 of the NIRC of 1997 provides as follows:

> "SEC. 105. *Persons Liable.* — Any person who, **in the course of trade or business**, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase **'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, <u>including transactions incidental thereto</u>, by any person** regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by non-resident foreign persons shall be considered as being rendered in the course of trade or business." *(Emphases and underscoring supplied)*

Based on the above-quoted Section 105, to be subject to the VAT, the act of selling, bartering, exchanging, leasing goods or properties, and the rendering of service, must be made *"in the course of trade or business"*, which means *"the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person"*. In other words, the act of selling, etc. or rendering of service is not by itself constitutive of a "vatable" transaction; but it must be coupled with the fact that it is done *"in the course of trade or business"*, as understood in the law. Nevertheless, said phrase, in turn, is not limited to *"the regular conduct or pursuit of a commercial or an economic activity"*, but also includes *"transactions incidental thereto"*.

The word *"incidental"* is defined as follows:

> "Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose."[17]

Based on the foregoing definitions, for a transaction to be considered as *"incidental"* in the context of the said Section 105, it must be dependent upon or appertaining to a primary transaction or activity.

Thus, in this case, to be considered as an incidental transaction, the act of extending a loan to ICC by respondent must be dependent upon or appertaining to respondent's primary business transactions or activities.

Petitioner argues as follows:

> "Respondent is in the business of motorcycle sales. His business model is that of a sole proprietorship. There is no separation between his current properties and those which are currently invested in the 'business'. That said, whatever amount he extended necessarily comes from his trade. The cash available at the time respondent extended the loan could have been accumulated income from the business. Moreover, it could very well have been cash available for operations, for contingencies, as well as for expansion and further capitalization.
>
> Thus, the funds utilized to extend the loan to ICC

[17] Black's Law Dictionary, Sixth Edition, © 1990, p. 762.

> are necessarily connected to the respondent's actual trade or business. The interest revenue which inevitably accrued upon the loan, and which certainly increased the value of respondent's cash, benefited respondent's trade and respondent himself, the two being interchangeable and considered as one and the same as far as the law is concerned."[18]

Simply put, based on the foregoing disquisitions, petitioner is of the view that the principal business of respondent is the selling of motorcycles, and the act of extending a loan is the transaction incidental to said business.

We do not agree.

As a general rule in construing a tax provision, We should be guided by the principle that tax statutes are strictly construed against the tax authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[19] In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.[20]

Notably, respondent's business of selling motorcycles was registered with the Department of Trade & Industry and BIR **only on November 7, 2006 and December 19, 2006**, respectively.[21] Furthermore, there is no indication that said business of selling motorcycles was in existence prior to such dates of registration. In this connection, it must be stressed that the respondent extended the loan to ICC **in 2004**.[22] Thus, it is absurd to conclude that such act of extending the said loan is incidental to the business of selling

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[18] Docket, p. 17.
[19] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.
[20] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.
[21] Exhibits "P" and "D", Docket (CTA Case No. 8190), pp. 302 and 217.
[22] Exhibits "N" and "O", Docket (CTA Case No. 8190), pp. 284 to 290 (at p. 288), and pp. 291 to 301 (at p. 299), respectively.

motorcycles.

And, granting for the sake of argument, that We are to assume that the payment of the said loan plus interest in 2006[23] is a transaction by itself, it cannot still be considered as incidental to the business of selling motorcycles, simply because said payment of the loan is not *"dependent upon or appertaining to"* the said business.

In this regard, petitioner specifically argues as follows:

> "Additionally, respondent owns fifteen percent (15%) of ICC's outstanding capital stock. Again, admittedly, a shareholding in a company, even if substantial, does not automatically render the shareholder as being involved in the trade or business of the company, the shares of which he owns. Had respondent merely held his 15% equity in ICC as a silent shareholder, then he should not be considered as being involved in ICC's trade or business.
>
> However, this is not the case here. At the time of the extension of the loan, respondent was a director and a substantial stockholder. Undisputedly, he was actively involved in the management of ICC.
>
> Moreover, the act of respondent in extending financial assistance to ICC, which is engaged in microfinancing and lending activities, also necessarily involved him in ICC affairs. Thus, respondent could be considered as engaging in two trades. Whether respondent has realized profit or not is insignificant, as long as the respondent has provided financial assistance or services for a fee, remuneration or consideration, such service rendered is subject to VAT."

As can be gathered from the foregoing discussions, petitioner stresses that the active involvement of respondent in the management of ICC is one of respondent's principal business, and again, the act of extending a loan is an incidental transaction thereto.

We disagree.

Revenue Memorandum Circular No. 77-2008[24] reads as

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[23] Exhibits "B", "N", and "O", Docket (CTA Case No. 8190), p. 215, pp. 284 to 290 (at p. 288), and pp. 291 to 301 (at p. 299), respectively.

[24] SUBJECT: TAXABILITY OF DIRECTOR'S FEES RECEIVED BY DIRECTORS

follows:

> "**As can be gleaned from the abovementioned provision,[25] it is clear that the applicability of the VAT provisions <u>generally pertain to those persons whose undertakings are intended to be pursued on a going-concern basis where the end view is to realize unrestricted amounts of pecuniary gains/profits from those who may avail of the goods they sell or the services they render</u>.**
>
> **A member of the board of directors therefore who is not an employee of the corporation does not fall under the foregoing category.**
>
> For one, such individual does not freely offer his services as director disparately to just any corporation. In order to be elected as a director of a corporation, Section 23 of the Corporation Code requires such individual to at least own one (1) share of the capital stock of said corporation.
>
> Secondly, said section of the Corporation Code limits the term of the elected director for only one (1) year until his successor is elected. This means that his functions as a director of the company can only be exercised within this limited term period. Being so, such limited services can not be considered as one of those undertaken on a going-concern basis as would normally be expected from those who are in the regular conduct of selling goods and/or services upon whom the VAT is consequently imposed pursuant to Sec. 105 of the Code.
>
> Moreover, the remuneration that a director may get from the corporation is fixed and subject to the ceiling prescribed by the Corporation Code, whereas the remunerations/gains or profits that a seller of goods/services may realize from his commercial transaction vary. As provided in Section 30 of the same Corporation Code, *"in the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems: Provided, however, That any such*

WHO ARE NOT EMPLOYEES OF THE CORPORATION FOR VAT OR PERCENTAGE TAX PURPOSES AS ESPOUSED UNDER REVENUE MEMORANDUM CIRCULAR NO. 34-2008.

[25] That is, Section 105 of the NIRC of 1997.

> *compensation other than per diems may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income of the corporation during the preceding year."*
>
> Furthermore, as a director of a corporation, an individual is generally precluded from entering into a contract with the corporation of which he is a director subject to the conditions provided for under Section 32 of the Corporation Code. By this, such director is generally restricted from having business dealings directly with the corporation of which he is a director.
>
> **Based on the foregoing, it is therefore apparent that the fees, per diems, honoraria or allowances being given to a director of a corporation as such cannot be considered <u>as derived from an economic or commercial activity that have been pursued *"in the course of trade or business"*</u>. Rather, said director's fees are remunerations paid in the exercise of a right of an owner in the management of a corporation. Thus, not *"in the course of trade or business"* as contemplated under Section 105 of the Code.** Such fees, per diems, allowances and other income received by the director as such, are therefore, exempt from the imposition of the 12% VAT or 3% percentage tax, notwithstanding that the said payments are not among those enumerated under Section 109 of the said Code." *(Emphases and underscoring supplied)*

Clearly from the foregoing ruling, the performance of the functions of a director of a corporation is not considered as being done *"in the course of trade or business"* as understood in the aforequoted Section 105. Such being the case, respondent's active involvement in the management of ICC, as a member of the Board of Directors thereof, cannot be treated as the principal business of respondent for the purpose of the said provision. Therefore, there exists no principal business to which the act of extending a loan to ICC by respondent can be made to depend upon or appertain to.

Accordingly, the interest income from the said loan paid by ICC to respondent is not subject to VAT, simply because the act of extending a loan of respondent cannot be considered as an *"incidental"* transaction in the context of Section 105 of the NIRC of

1997.

Respondent's gross receipts did not exceed the VAT threshold as indicated in Section 109 (v) of the NIRC of 1997, as amended.

Petitioner maintains that the interest income of respondent from ICC amounting to ₱ 8,610,000.00 is subject to VAT, pursuant to Section 4.109-1(B)(v) of Revenue Regulations No. (RR) 16-2005, which states:

> "SEC. 4.109-1. <u>*VAT-Exempt Transactions.*</u> –
>
> (A) xxx
>
> (B) Exempt transactions. –
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:
>
> xxx xxx xxx
>
> (v) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, **the gross annual sales and/or receipts do not exceed the amount of One Million Five Hundred Thousand Pesos (₱ 1,500,000.00)**; *Provided,* That not later January 31, 2009 and every three (3) years thereafter, the amount of ₱ 1,500,000.00 shall be adjusted to its present value using the Consumer Price Index, as published by the NSO.
>
> For purposes of the threshold of P1,500,000.00, the husband and the wife shall be considered separate taxpayers. However, the aggregation rule for each taxpayer shall apply. For instance, if a professional, aside from the practice of his profession, also derives revenue from other lines of business which are otherwise subject to VAT, the same shall be combined for purposes of determining whether the threshold has been exceeded. Thus, the VAT-exempt sales shall not be included in determining the threshold." *(Emphasis supplied by petitioner)*

According to petitioner, the clear tenor of the foregoing provision connotes that in computing the VAT threshold, the gross annual sales and receipts are both considered. Furthermore, petitioner contends that pursuant to Section 108(A) of the NIRC of 1997, the VAT on sale of services is imposed on gross receipts, which is defined as follows:

> *"...**the total amount** of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.**" (Emphasis supplied by petitioner)*

Petitioner then concludes as follows:

> "In the case at bar, the respondent posits that in determining the VAT threshold, the gross sales of One Million Three Hundred Ninety Thousand Seven Hundred Seventy Pesos (P1,390,770.00) should be the only criterion. However, that argument has no leg to stand on based on the foregoing discussion.
>
> The interest income of respondent from Intertrade Credit Corporation amounting to P8,610,000 is subject to VAT. Although the respondent is registered as a non-VAT taxpayer, however its total gross receipts from the ICC and from the receipts not subject to expanded withholding tax exceeded the threshold of P1,500,000.00 pursuant to Section 4.109-1(B) (v) and Section 9.236-1 of Revenue Regulation No. 16-2005. Consequently, the total receipts of respondent is subject to VAT."

Petitioner's argument, however, is clearly misplaced.

The significance of Section 4.109-1(B)(v) of RR 16-2005 in relation to Section 108(A) of the NIRC of 1997 is that the *"gross annual sales and/or receipts"*, which exceed the threshold of ₱ 1,500,000.00 and are therefore subject to VAT, are those which fall under the purview of the focal taxing provision of the VAT law, *i.e.*, Section 105 of the NIRC of 1997, which is reiterated as follows, for easy reference, to wit:

> "SEC. 105.*Persons Liable.* — Any person who, in

> the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods **shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code**." *(Emphasis supplied)*

This is so because no person or property is subject to taxation unless they fall within the terms or plain import of a taxing statute.[26]

As We have already ruled, the act of extending a loan of respondent cannot be considered as an *"incidental"* transaction in the context of Section 105 of the NIRC of 1997. Thus, the interest income from the said loan paid by ICC to respondent is not subject to VAT.

Furthermore, to hold that Section 108(A) of the NIRC of 1997 can be the sole basis for the imposition of the VAT on the said interest income would be to render nugatory the above-quoted provision of Section 105. Needless to state, in construing the law aforesaid, care should be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole. For taken in solitude, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when a word or phrase is considered with those with which it is associated.[27]

Thus, considering that the interest income from the said loan paid by ICC to respondent is not subject to VAT, the same should not be included in determining the threshold amount of ₱ 1,500,000.00 in the imposition of the VAT.

The subject assessment has <u>not</u> become final and executory.

Petitioner likewise argues that the assessment has become final and executory for failure of the respondent to submit relevant documents within sixty days from the filing of the administrative protest.

[26] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 86785, November 21, 1991.
[27] Refer to *Torbela, et al. vs. Spouses Rosario, et al., etseq.*, G.R. Nos. 140528 and 140553, December 7, 2011.

We are not convinced.

As succinctly stated by the Supreme Court in the case of *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue,*[28] such an argument cannot prosper when petitioner CIR fails to identify what the said documents are, to wit:

> "The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, **when the CIR does not even identify what these documents are**. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. **In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former**."

In this case, petitioner merely makes a broad and vague allegation that respondent failed to submit the relevant supporting documents within sixty (60) days of filing its protest, but does not identify what these documents are. Clearly, it would be inequitable to charge respondent with failing to submit documents in support of his protest, when petitioner has not specified what these documents are.

Moreover, it appears that the documents submitted by respondent are considered sufficient,[29] considering that petitioner was able to render a Decision[30] on respondent's protest, whereby the earlier tax assessment was reduced.

After all, the term "relevant supporting documents" under Section 228[31] of the NIRC of 1997 should be understood as those

[28] G.R. No. 178797, August 4, 2009.
[29] Exhibits "F" and "G," Division Docket (CTA Case No. 8190), pp. 218 to 245, and 246 to 264, respectively.
[30] Exhibit "H," Division Docket (CTA Case No. 8190), pp. 265 to 267.
[31] "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 : xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer**. **The BIR can only inform the taxpayer to submit additional documents.** The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[32]

Such being the case, it could not be successfully argued that the assessment against respondent has become final and executory by virtue of its alleged failure to submit relevant documents in support of its protest.

WHEREFORE, all the foregoing considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated December 12, 2012 and Resolution dated March 5, 2013 of the Court in Division in CTA Case No. 8190, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Official Business)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Official Business)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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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.

xxx xxx xxx." *(Emphasis supplied)*

[32] *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.

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

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc*.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice