REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1372** (CTA Case No. 8364)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
PEA TOLLWAY CORPORATION, Respondent .	***Promulgated:*** MAR 2 3 2017 2:55 p.m.

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DECISION

UY, *J*.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) on November 13, 2015 against PEA Tollway Corporation (PEATC), praying for the reversal and setting aside of the Decision dated July 13, 2015[2] and the Resolution dated October 12, 2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8364, entitled *"PEA Tollway Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 12 to 26.
[2] EB Docket, pp. 29 to 47; Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban.
[3] EB Docket, pp. 48 to 50; *Supra.*

<u>Decision dated July 13, 2015</u>:

> "**WHEREFORE,** the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency income tax assessment issued by respondent Commissioner of Internal Revenue against petitioner PEA Tollway Corporation for taxable year 2007 is hereby **CANCELLED** and **WITHDRAWN**, for lack of legal and factual bases.
>
> **SO ORDERED.**"

<u>Resolution dated October 12, 2015</u>:

> "**WHEREFORE,** there being no compelling legal argument raised by respondent that will merit reconsideration, let alone modification of the assailed Decision of July 13, 2015, respondent's *Motion for Reconsideration* dated July 29, 2015, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) of 1997, as amended, and collecting all internal taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent PEATC is a domestic corporation borne out of a Joint Venture Agreement (JVA) for the construction and development of the Manila-Cavite Toll Expressway (MCTE) Project, and was formed pursuant to a Toll Operation Agreement (TOA) between and among the Republic of the Philippines, acting through the Toll Regulatory Board (TRB), the Public Estates Authority (PEA) [now the Philippine Reclamation Authority (PRA)], and the UEM-MARA Philippines Corporation (UMPC) [now Cavitex Infrastructure Corporation (CIC)].

On May 31, 1990, the PEA/PRA was granted by the Philippine Government, through the TRB, a Toll Operation Certificate (TOC) authorizing it to operate the MCTE, which consisted of the R-1

Expressway, the C-5 Link Expressway and the R-1 Expressway Extension Project (collectively called as the "MCTE Project").

On December 27, 1994, PEA entered into a JVA with two (2) Malaysian entities, Majlis Amanah Rakyat (MARA) and Renong Berhad (Renong), for the development of the MCTE Project. Under the JVA, the parties agreed, among others, to carry out the design and construction works, the performance of the operation and maintenance services and the provision of ancillary facilities of the MCTE Project.

Additionally, respondent PEATC and MARA agreed that Renong may assign its rights and transfer its liabilities and obligations under the JVA to the United Engineers Malaysia (UEM) Berhad, a public company incorporated in Malaysia and a member of the Renong Berhad Group of Companies. Pursuant thereto, the interested parties executed a novation agreement on August 17, 1995, confirming the assignment and transfer to the UEM of Renong's rights, liabilities and obligations under the JVA.

To expand the scope of, and adjust the toll collection period under the TOC and to include terms and conditions which are necessary to ensure the financial viability of the Project, a TOA was executed on July 26, 1996 between and among TRB, PEA/PRA and its Malaysian partner (UEM and MARA) through UMPC/CIC. UEM and MARA incorporated UMPC to represent them under the TOA, but they continue to be liable jointly and severally under the agreement.

Under the TOA, UMPC/CIC has the primary and exclusive privilege, responsibility and obligation to design, construct and finance the MCTE Project, while PEA/PRA, referred to as the Grantee in the JVA, has the primary and exclusive privilege, responsibility and obligation to operate and maintain the MCTE Project, including the collection of toll fees.

The TOA also obligated PEA/PRA to incorporate a wholly-owned subsidiary company, the powers and functions of which shall only be to undertake and perform PEA/PRA's obligations under the JVA and the TOA. Further, under the TOA, PEA/PRA cannot collect toll fees until such time that a subsidiary is incorporated for this purpose. Thus, respondent PEATC was incorporated on October 7, 1997, whose primary purpose is to manage, operate, monitor, maintain, construct and repair the MCTE Project including the construction of the feeder roads, interchanges and other facilities at any point of the MCTE Toll Roads and to collect fees therefrom.

Toll collections from the MCTE Project are undertaken by respondent PEATC and directly deposited to a bank account held for the benefit of the joint venture partners, PEA/PRA and UMPC/CIC. The expenses needed for the operation and maintenance of the project shall be based on the Operation and Maintenance Manual and Procedures agreed upon by the Grantee and the Grantor.

On November 14, 2006, UMPC/CIC, PEA/PRA and TRB executed an Operations and Maintenance Agreement (OMA) where it was agreed that UMPC/CIC shall take charge of the operation and maintenance (O&M) functions of the MCTE Project. Under the OMA, UMPC/CIC shall shoulder all the O&M costs and toll collections. From November 2006-2009, the shares of PEA/PRA and UMPC/CIC at the ratio of 8.5% and 91.5% (now 9% and 91% effective 2009) of the gross toll collections, respectively, were immediately transferred to the individual bank accounts of both companies. Thereafter, all the O&M costs and expenses were deducted solely from UMPC/CIC's share.

On December 17, 2009, petitioner issued Letter of Authority (LOA) No. 2009 00007402 for the examination of respondent PEATC's books of account and accounting records for all internal revenue taxes for the period covering January 1, 2007 to December 31, 2007.

On September 2, 2010, respondent PEATC received a Preliminary Assessment Notice (PAN) from petitioner for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and withholding tax on VAT (WTV) for 2007, including surcharges, interest and penalties.

On September 15, 2010, respondent PEATC filed a letter-reply requesting for the cancellation and withdrawal of the assessments for deficiency income tax and VAT, for lack of legal and/or factual bases. On the other hand, it settled the deficiency WTC, EWT and WTV.

On October 14, 2010, respondent PEATC received a Formal Letter of Demand and Assessment Notice (FLD/FAN) from petitioner, reiterating the assessment for deficiency income tax for 2007.

Petitioner insists that respondent PEATC, despite being incorporated for the primary purpose of undertaking and performing PEA/PRA's obligations under the JVA and the TOA, is not just a collecting agent of the joint venture partners but a corporation subject to income tax as contemplated in Section 22(B) of the NIRC of 1997.

Respondent PEATC protested the FLD/FAN in its letter dated October 20, 2010 requesting that the assessment be cancelled and withdrawn.

On October 4, 2011, respondent PEATC received the Final Decision on Disputed Assessment (FDDA) denying with finality its protest and request for the cancellation and withdrawal of the assessment for deficiency income tax for 2007, in the total amount of ₱380,179,711.64, inclusive of surcharge, compromise penalty and interest computed up to October 31, 2011. The amount of ₱380,179,711.64 is broken down as follows:

Taxable Income per Return	-
Add: Adjustments	
Net Taxable Income as computed	₱ 491,654,452.43
Adjusted taxable income	491,654,452.43
Tax rate	35%
Income Tax Due thereon	172,079,058.35
Less: Tax payments / credits	-
Deficiency Income Tax	172,079,058.35
Add: Increments	
50% Surcharge	86,039,529.18
Interest (4/15/08 to 10/31/11)	122,011,124.11
Compromise penalty	50,000.00
Total	208,100,653.29
TOTAL DEFICIENCY INCOME TAX	**₱380,179,711.64**

On November 2, 2011, respondent PEATC filed its Petition for Review with the Court in Division entitled "***PEA Tollway Corporation, petitioner, v. Commissioner of Internal Revenue, respondent***". The case was docketed as CTA Case No. 8364.

In his belatedly filed ***Answer*** in said case, petitioner counters that respondent PEATC is liable to pay deficiency income tax as it is not just a collecting agent but a corporation subject to income tax under Section 22(B) of the NIRC of 1997, as amended; that any agreement or arrangement entered into by the stockholders or the owner of the corporation or the management, in this case respondent PEATC or the grantee of the TOA, would not alter or change the character/nature of the corporation; that being a corporation organized and existing under Philippine laws, respondent PEATC is subject to income tax as provided under Section 27 of the NIRC of 1997, as amended, as it is not one of the exempt corporations enumerated in Section 30 of the Tax Code, and its income earned from toll operations is not one of the exclusions from gross income as provided in Section 32(B) of the same Code; and that tax assessments are entitled to the presumption of correctness and made in good faith and that taxpayer has the duty to prove otherwise.

After the *Pre-trial Conference* held on May 31, 2012[4], the parties filed their "*Joint Stipulation of Facts and Issues*"[5] on the basis of which, a *Pre-Trial Order* was issued on July 9, 2012[6]. On January 11, 2013, respondent PEATC filed an "*Omnibus Motion to Include Additional Issues in the Pre-Trial Order*"[7] which the Court in Division partially granted in its Resolution dated March 26, 2013[8].

In support of its Petition for Review in CTA Case No. 8364, respondent PEATC presented its Finance/Admin-Purchasing Manager, Jolan V. Wedingco; the Comptroller of UMPC/CIC, Andrew E. Dimaano; and the Manager of the General Accounting Division and Officer-in-Charge of the Accounting Services Department of respondent PEATC, Delfin C. Torrecampo, Jr.

By way of Judicial Affidavit, Jolan V. Wedingco testified that the assessment for deficiency income tax for taxable year 2007 has no basis since under the JVA and the OMA, respondent PEATC only acts as a toll collector of the JVA partners and the daily toll fees collected by it are deposited to individual bank accounts of PEA/PRA and UMPC/CIC the following day at the ratio of 8.5% and 91.5% (now 9% for PEA/PRA and 91% for UMPC/CIC effective 2009) of the gross toll collections. He further testified that the toll revenues are owned by the JVA partners and respondent PEATC has no share in it. In 2007, respondent PEATC derived an income of ₱203,476.44, representing interest income from the capitalization of respondent PEATC invested in five (5)-year Retail treasury Bonds of the

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[4] Division Docket, CTA Case No. 8364, Vol. I, p. 318
[5] Division Docket, CTA Case No. 8364, Vol. I, pp. 338-343
[6] Division Docket, CTA Case No. 8364, Vol. I, pp. 352-359
[7] Division Docket, CTA Case No. 8364, Vol. I, pp. 451-455
[8] Division Docket, CTA Case No. 8364, Vol. II, pp. 572-575

government.

Witness Andrew E. Dimaano corroborated the foregoing testimony in his Judicial Affidavit and clarified that respondent PEATC's obligation to collect for the JVA partners, PEA/PRA and UMPC/CIC, and to deposit the collections on a daily basis to the respective bank accounts are pursuant to Section 7.01 of the TOA and Section 6 of the OMA. Further, Dimaano said that petitioner has no basis to assess respondent PEATC of deficiency income tax since UMPC/CIC already recognized the Toll Collection Revenue in its 2007 Audited Financial Statements and Income Tax Return. If respondent PEATC is made to pay the deficiency income tax for the year 2007 it would allegedly be paying income tax for revenues it did not receive and not belonging to it.

Witness Delfin C. Torrecampo Jr., also executed a Judicial Affidavit in which he emphasized that respondent PEATC is a government-owned and controlled corporation born out of a JVA for the construction of the MCTE Project and was formed pursuant to a TOA between and among the Republic of the Philippines, acting through the TRB, PEA/PRA and UMPC/CIC. He reiterated that the toll collections from the MCTE Project is undertaken by respondent PEATC and directly deposited to a bank account held for the benefit of the joint venture partners, PEA/PRA and UMPC/CIC, pursuant to Section 7.01 of the TOA and Section 6(a) of the OMA; that respondent PEATC does not earn income from its toll revenue collections as all collections are remitted to PEA/PRA and UMPC/CIC; that in the year 2007, respondent PEATC remitted its toll revenue collections to PEA/PRA, which treated the same as other business income and paid the corresponding tax to the BIR; and that double taxation will occur if respondent PEATC is made to pay income tax for the year 2007, since PEA/PRA already paid income tax on the toll revenues collected by respondent PEATC.

After respondent PEATC rested its case in CTA Case No. 8364, petitioner presented his lone witness Revenue Officer Samuel C. Reyes. By way of Judicial Affidavit, Samuel C. Reyes testified that by virtue of LOA No. 200900007402 dated December 17, 2009, he and other members of the team audited respondent PEATC based on the documents it provided; that per their audit/investigation of its internal revenue taxes for taxable year 2007, respondent PEATC has deficiency taxes; that a Letter of Informal Conferences was issued requesting respondent PEATC to present during the meeting its defense on their findings; that thereafter, a PAN was issued; that respondent PEATC paid the WTC, EWT and WTV but protested the assessment on income tax and VAT for which reason they recommended the issuance of FLD/FAN through a Memorandum September 28, 2010; that on October 14, 2010, respondent PEATC received the FLD to which it protested relating to the issuance of a FDDA finding respondent PEATC liable for deficiency income tax for taxable year 2007; and that respondent PEATC received the FDDA on October 4, 2011.

Thereafter, petitioner rested his case and CTA Case No. 8364 was submitted for Decision by the Court in Division on July 15, 2014.

In the assailed Decision,[9] the Court in Division granted respondent PEATC's *Petition for Review*, thus cancelling and withdrawing the deficiency income tax assessment issued by petitioner against respondent PEATC for taxable year 2007, for lack of legal and factual bases.

Petitioner then filed his *Motion for Reconsideration (Re: Decision Promulgated 13 July 2015)* on July 31, 2015.[10] In the assailed Resolution,[11] the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.

On October 28, 2015, petitioner filed before the Court *En Banc* its *Motion For Extension of Time To File Petition for Review*,[12] praying for an extension of fifteen (15) days from October 31, 2015[13] or until November 15, 2015 within which to file a Petition for Review. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from October 31, 2015 or until November 15, 2015, within which to file the said Petition for Review.[14]

Petitioner filed the instant *Petition for Review* before the Court *En Banc* on November 13, 2015.[15]

In the Resolution dated December 18, 2015,[16] the Court *En*

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[9] EB Docket, pp. 29 to 47; Division Docket, CTA Case No. 8364,Vol. 5, pp. 2513 to 2531.
[10] Division Docket, CTA Case No. 8364, Vol. 5, pp. 2532 to 2543.
[11] EB Docket, pp. 48 to 50; Division Docket (CTA Case No. 8364) – Vol. 5, pp. 2553 to 2555.
[12] EB Docket, pp. 1 to 3.
[13] Erroneously stated as "October 15, 2015" in the Motion.
[14] Minute Resolution dated October 30, 2015, EB Docket, p. 5.
[15] EB Docket, pp. 12 to 26.
[16] EB Docket, pp. 55 to 56.

Banc ordered respondent PEATC to file its comment to the instant *Petition for Review*. However, on January 22, 2016, respondent PEATC filed a *Motion For Extension of Time To File Comment*,[17] praying that it be granted an additional 15-day period reckoned from January 22, 2016, or until February 6, 2016, within which to file its *Comment*. The Court *En Banc* granted respondent PEATC a final and non-extendible period of fifteen (15) days from January 22, 2016 or until February 6, 2016, within which to file the said *Comment*.[18]

On February 5, 2016 respondent PEATC filed a *Second Motion for Additional Time To File Comment*,[19] praying for an additional five-day period or until February 11, 2016 within which to file its *Comment*.

Without awaiting for the resolution of its *Second Motion for Additional Time To File Comment*, respondent PEATC filed its *Comment* on February 11, 2016.[20] Nevertheless, in the Resolution dated February 24, 2016,[21] the said *Second Motion for Additional Time To File Comment* was granted by the Court *En Banc* and respondent PEATC's *Comment* was admitted. In the same Resolution, petitioner's *Petition for Review* was given due course, and the parties were required to submit their respective memoranda.

Petitioner filed his *Manifestation* on March 22, 2016,[22] stating that in lieu of filing a Memorandum, he is adopting his Petition for Review dated November 11, 2015; while respondent PEATC filed its *Memorandum* on April 12, 2016.[23] Thus, the instant case was submitted for decision in the Resolution dated May 12, 2016.[24]

Hence, this Decision.

THE ISSUE

Petitioner raises a sole issue for resolution, *to wit*:

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[17] EB Docket, pp. 57 to 59.
[18] Minute Resolution dated January 26, 2016, EB Docket, p. 60.
[19] EB Docket, pp. 61 to 63.
[20] EB Docket, pp. 65 to 73.
[21] EB Docket, pp. 75 to 77.
[22] EB Docket, pp. 78 to 80.
[23] EB Docket, pp. 83 to 93.
[24] EB Docket, pp. 96 to 97.

> "WHETHER RESPONDENT IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX IN THE AGGREGATE AMOUNT OF P380,179,711.642, INCLUDING INTEREST AND PENALTIES FOR TAXABLE YEAR 2007."[25]

Petitioner's arguments:

Petitioner argues that respondent PEATC conducted business operations for the purpose of generating profits pursuant to its Primary Purpose as stated in its Articles of Incorporation. He contends that respondent PEATC received revenue from motorists in the form of toll fees arising from rendering services to its customers specifically in managing, operating, maintaining, constructing and repairing the MCTE Project.

Moreover, petitioner claims that there was a flow of income to respondent PEATC and expenses were incurred from its operations. Allegedly, PEATC never acted as a mere conduit or trustee for the collection of toll fees; and that PEATC did not amend any provision in its Article of Incorporation that it will merely act as a mere conduit or trustee for the collection of toll fees for its purpose.

According to petitioner, since there was a flow of income and that PEATC is a subsidiary corporation, the toll fees it collected and earned is subject to income tax as provided in Section 27 of the NIRC of 1997, as amended. Allegedly, toll fees are not one of those exclusions from gross income or revenue under Section 32(B) of the NIRC of 1997.

Furthermore, petitioner contends that cost and expenses were recognized as incurred, but the income arising from toll fees were not recorded as revenue, when in fact these expenses are directly related to the generation of the income arising from the collection of toll fees. Petitioner also claims that even the Commission on Audit (COA) issued an adverse opinion on the financial statements of respondent PEATCs as a whole. In the said opinion, COA stated that respondent PEATC's financial position, results of operation and cash flows for the year under the audit is not in conformity with the generally accepted accounting principles in the Philippines.

Petitioner likewise contends that the OMA entered into by

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[25] EB Docket, p. 15.

PEA/PRA and UMPC/CIC is clearly contrary to law, and the same cannot prevail over Section 27(A) and Section 32(A) and (B) of the NIRC of 1997, as amended.

Finally, petitioner claims that there is no double taxation in this case because respondent PEATC, as a subsidiary corporation, has a separate and distinct legal personality from PEA/PRA and UMPC. Thus, petitioner did not tax the same corporation twice.

Respondent PEATC's counter-arguments:

Respondent PEATC counter-argues that the deficiency income tax assessment for 2007 has no factual and legal bases and must be cancelled and withdrawn. It maintains that while it is a subsidiary corporation subject to corporate income tax under Section 27 of the NIRC of 1997 as amended, it has no income tax due for 2007. While it is responsible for the toll collection from the MTCE Project, the amount does not belong to it but to PEA/PRA and UMPC/CIC.

According to respondent PEATC, it has no share in the collections as it only acts as a toll collector of the JVA partners and the daily toll fees collected by it are deposited to individual accounts of PEA/PRA and UMPC/CIC at the ratio of 8.5% and 91.5% (now 9% for PEA/PRA and 91% for UMPC/CIC effective 2009) of the gross toll collections. Respondent PEATC maintains that in 2007, it remitted its toll revenue collections to PEA/PRA which treated the same as other business income amounting to ₱44,666,424.00 particularly classified as Income from Joint Venture in which the corresponding income tax was paid to the BIR.

Respondent PEATC points out that its Audited Financial Statement for 2007 also indicates that there was no income realized from toll collections. Hence, it would allegedly be contrary to law and public policy to make it liable for deficiency income tax pertaining to revenues which does not belong to it.

Furthermore, respondent PEATC contends that it is a doctrinal rule that "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 a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code." Consequently, respondent PEATC submits that there being no revenue to consider, it has no income tax due for taxable year 2007.

Finally, respondent PEATC maintains that to collect deficiency income tax would constitute double taxation.

THE COURT *EN BANC*'S RULING

We deny the instant Petition for Review.

Respondent PEATC is a mere collecting agent of PEA/PRA and UMPC/CIC.

As the Court *En Banc* sees it, the crux of the controversy is the determination of whether or not the toll collections pertain to respondent PEATC as its revenues. In the assailed Decision, the Court in Division found that it is not so, and declared as follows:

> "While [respondent PEATC] undertakes the toll collection from the MCTE Project, it could not consider these toll collections as its revenue. [Respondent PEATC] merely collects the toll revenues belonging to the PEA/PRA and UMPC/CIC.
>
> Section 7.01 of the TOA explicitly provides that these toll collections are property of both the PEA/PRA and UMPC/CIC, to wit:
>
> > 'SECTION 7. COLLECTION OF TOLL
> >
> > 7.01 <u>Toll Road Revenue</u>. The Grantor (the Philippine Government through the TRB) recognizes Toll Road Revenue is the property of both the Grantee (PRA) and UEM-MARA (UMPC), and shall be owned by and be shared between them in accordance with the revenue sharing arrangement set forth in Clause 3.2 of the Joint Venture Agreement.'
>
> Thus, in collecting the toll revenues, [respondent PEATC] merely holds the collected revenues in trust for PEA/PRA and UMPC/CIC. It remits the same to the joint

venture parties pursuant to Section 7.02 of the TOA, which provides that these toll collections by [respondent PEATC] shall be deposited directly to a bank account held for the benefit of the project joint venture partners based on their sharing agreement under Clause 3.2 of the JVA.

On the other hand, the expenses incurred for the operation and maintenance of the project shall be deducted from the share of UMPC/CIC in the toll collections, as per OMA executed by the JV partners on November 14, 2006.

xxx xxx xxx."

We see no reversible error in the foregoing findings of the Court in Division.

Income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income.[26] Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is gain derived and severed from capital, from labor or from both combined.[27] As used in our income tax law, "income" refers to the flow of wealth.[28] In *Fisher vs. Trinidad*,[29] the Supreme Court gives Us, *inter alia*, this definition, *viz*:

"xxx Mr. Black in his law dictionary, says: **'An income is the return in money from one's business, labor, or capital invested; gains, profit, or private revenue.'**" *(Emphasis supplied)*

Based on the foregoing definitions, it becomes apparent that the statement of respondent PEATC's Primary Purpose in its Articles of Incorporation is insignificant. This must be so because with or without the said Primary Purpose, the ultimate issue to be addressed is whether or not there was a flow of wealth, or that respondent PEATC earned the subject income.

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[26] *Republic of the Philippines vs. Manila Electric Company*, G.R. Nos. 141314 and 141369, November 15, 2002.
[27] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[28] *Alexander Howden & Co., Ltd., et al. vs. The Collector (Now Commissioner) of Internal Revenue*, G.R. No. L-19392, April 14, 1965.
[29] G.R. No. 17518, October 30, 1922.

Parenthetically, it must be emphasized that respondent PEATC can have a taxable income even when the activity which produces the said income is not stated in its Primary Purpose, or Secondary Purpose for that matter. We thus agree with the Court in Division that the said Primary Purpose cannot prevail over the nature of the transactions undertaken by respondent PEATC.

Simply put, for income tax to be imposed, what must be established is that there was a flow of wealth on the part of respondent PEATC, or a return in money from respondent PEATC's business, labor, or capital invested. In the case before the Court in Division, petitioner failed to show that the toll fees collected, to which the subject deficiency income tax was imposed, pertains to respondent PEATC.

The above-quoted Section 7.01 of TOA[30] in the assailed Decision clearly states that the Toll Road Revenue, which is defined therein as the *"Toll collected by the Grantee from the Toll Roads"*,[31] is the property of PEA/PRA and UMPC/CIC. Thus, the said Revenue does not belong to respondent PEATC. And as corollary thereto, pertinent provisions of the OMA[32] establish respondent PEATC's role in the collection and remittance of the said Toll Road Revenue, to wit:

> "WHEREAS, pursuant to the TOA, PRA established a wholly-owned subsidiary, PEA Tollway Corporation (PEATC) to undertake the operations and maintenance (O&M) obligations of PRA under the TOA;
>
> xxx xxx xxx
>
> **During the term of this Agreement, the operations of the PEATC shall be conducted as follows**:
>
> a. **All gross toll revenue collections shall be directly deposited on a daily basis to the respective bank accounts of PRA and UMPC with 8.5% of gross toll revenue collections deposited to PRA and 91.5% of gross toll revenue collections deposited to UMPC, subject to increase in revenue share of PRA** as mentioned in paragraph No. 5 hereof;

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[30] Exhibit "E", Division Docket (CTA Case No. 8364) – Vol. 3, pp. 1412 to 1483.
[31] Exhibit "E", Division Docket (CTA Case No. 8364) – Vol. 3, p. 1429.
[32] Exhibit "F", Division Docket (CTA Case No. 8364) – Vol. 3, pp. 1484 to 1493.

b. The 91.5% UMPC share in gross toll revenue collections as mentioned in paragraph 5 hereof, shall absorb all O&M costs and expenses;

UMPC shall continue to set aside sinking fund in accordance with the TOA Schedule of Maintenance Per Segment. The sinking fund interest income shall remain intact and shall not be subject to revenue sharing of the JVA partners. **The sinking fund, which shall remain with PEATC and maintained adequately at all times, shall be solely used for major road repair and re-pavement and for extraordinary costs and expenses needed by the operation but not provided in the annual budget.** Any shortage in the sinking fund shall be the sole responsibility of UMPC.

xxx xxx xxx

e. All disbursements for O&M shall be authorized solely by UMPC. In effect, there shall be no PEATC/PRA Board approval for any O&M disbursement.

xxx xxx xxx." *(Emphases supplied)*

The said evidence are corroborated by the testimonies of respondent PEATC's witnesses.[33]

Considering that petitioner failed to refute respondent PEATC's evidence, the Court in Division did not err in finding that respondent PEATC is a mere collecting agent of PEA/PRA and UMPC/CIC.

Petitioner's other contentions premised on the notion that respondent PEATC is not a collecting agent are without merit.

We further do not agree with petitioner's contention to the effect

[33] Exhibits "S[15]", "T[15]", and "U[15]", Division Docket (CTA Case No. 8364) -Vol. 5, pp. 2326 to 2333, 2335 to 2345, and 2346 to 2359, respectively.

that since the toll fees are not one of those exclusion from gross income or revenue under Section 32(B)[34] of the NIRC of 1997, it is subject to income tax as provided in Section 27[35] of the same Code, as amended. This reasoning is specious.

Clearly, Section 27(A) of the NIRC of 1997 is the legal basis used by petitioner in the deficiency income tax assessment[36] against respondent. To the mind of this Court however, said section imposing income tax *"upon the taxable income derived...by every corporation"*, cannot be applied to respondent PEATC, simply because as already pointed out, it did not derive or earn the subject toll fees, as it merely acted as a collecting agent of PEA/PRA and UMPC/CIC.

In the same vein, this Court disagrees with petitioner's contentions that the provisions of the OMA entered into by PEA/PRA and UMPC/CIC, to the effect that the gross toll revenue shall be directly deposited on a daily basis to the respective bank account of the said parties, and the Operation and Maintenance Costs and Expenses shall be absorbed by UMPC/CIC, are in contravention with the generally accepted accounting principles in the Philippines and is contrary to law, and the same cannot prevail over Section 27(A) and Section 32 (A) and (B) of the NIRC of 1997, as amended.

Generally accepted accounting principles refer to accounting concepts, measurement techniques, and standards of presentation in a company's financial statements, and are not rooted in laws of nature, as are the laws of physical science, for these are merely developed and continually modified by local and international regulatory accounting bodies.[37] As such, the specific accounting principles, concepts, measurement techniques, and standards of presentation in a company's financial statements that were violated by respondent should have been proven as a matter of fact. Having failed to do so, the Court *En Banc* finds no basis to rule whether or not the OMA is indeed in contravention with the same.

Nevertheless, even granting that the said principles were duly proven, the same will still have no effect on the subject OMA,

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[34] See *infra*.
[35] *Id.*
[36] Exhibit "B",BIR Records, pp. 402 to 406; Exhibits "9" and "10", BIR Records, pp. 397 to 401.
[37] *ABAKADA Guro Party List Officer Samson S. Alcantara, et al. vs. Hon. Executive Secretary Eduardo R. Ermita, etseq.*, G.R. Nos. 168056, 168207, 168461, 168463, and 168730, October 18, 2005.

because the same principles will not alter the established fact that respondent PEATC is still a collecting agent of PEA/PRA and UMPC/CIC, and thus, cannot be held liable for the assessed deficiency income tax in this case.

In the same line of reasoning, even when the COA declared that the financial statements of respondent PEATC *"do not present fairly, in all material respects, the financial position of PEA Tollway Corporation as of December 31, 2007 and 2008 or the results of its operations and its cash flows for the years then ended in conformity with generally accepted state accounting principles in the Philippines"*,[38] the same is of no moment. Like the generally accepted accounting principles referred to earlier, the generally accepted **state** accounting principles were not proved; nor were they shown to refute the finding that respondent PEATC is a mere collecting agent.

Moreover, We do not agree with petitioner in imputing error on the part of the Court in Division in recognizing only the cost and expenses while the gross revenue were left blank; and in arguing that *in fact*, these expenses are directly related to the generation of the income arising from the collection of toll fees. This contention of petitioner is likewise unfounded.

It must be emphasized that petitioner was not able to establish that the said expenses are indeed directly related to the income arising from the collection of the said fees. Mere allegation and speculation is not evidence, and is not equivalent to proof.[39]

There is no conflict between the OMA provision and Sections 27(A), 32(A) and (B) of the NIRC of 1997, as amended.

We see no conflict between the said provision of the OMA and Section 27(A) and Section 32(A) and (B) of the NIRC of 1997, as amended, so as to have the effect of determining whether the latter would prevail over the former.

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[38] BIR Records, p. 48.

[39] *Miro vs. Mendoza Vda. De Erederos, et al.*, G.R. No. 172532 and 172544-45, November 20, 2013.

For easy reference, Sections 27(A), 32(A) and (B) of the NIRC of 1997, as amended, provide as follows:

"SEC. 27. *Rates of Income Tax on Domestic Corporations.—*

(A) *In General.* — **Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed <u>upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation</u>, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines**: *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

xxx xxx xxx." *(Emphasis and underscoring supplied)*

"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;

(3) Gains derived from dealings in property;

(4) Interests;

(5) Rents;

6) Royalties;

(7) Dividends;

(8) Annuities;

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(9) Prizes and winnings;

(10) Pensions; and

(11) Partner's distributive share from the net income of the general professional partnership.

(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

(1) *Life Insurance.* — The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(2) *Amount Received by Insured as Return of Premium.* — The amount received by the insured, as a return of premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(3) *Gift, Bequests, and Devises.* — The value of property acquired by gift, bequest, devise, or descent: *Provided, however,* That income from such property, as well as gift, bequest, devise, or descent of income from any property, in cases of transfers of divided interest, shall be included in gross income.

(4) *Compensation for Injuries or Sickness.* — Amounts received, through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amounts of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(5) *Income Exempt under Treaty.* — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

(6) *Retirement Benefits, Pensions, Gratuities, etc.*—

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided, further,* That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee.

(c) The provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by resident or nonresident citizens of the Philippines from foreign governments agencies and other institutions, private or public.

(d) Payments of benefits due or to become due to any person residing in the Philippines under the laws of the United states administered by the United States Veterans Administration.

(e) Benefits received from or enjoyed under the Social Security System in accordance with the provisions of Republic Act No. 8282.

(f) Benefits received from the GSIS under Republic Act No. 8291, including retirement gratuity received by government officials and employees.

(7) *Miscellaneous Items.* —

(a) *Income Derived by Foreign Government.* — Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.

(b) *Income Derived by the Government or its Political Subdivisions.*— Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.

(c) *Prizes and Awards.* — Prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement but only if:

(i) The recipient was selected without any action on his part to enter the contest or proceeding; and

(ii) The recipient is not required to render substantial future services as a condition to receiving the prize or award.

(d) *Prizes and Awards in Sports Competition.* — All prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their national sports associations.

(e) *13th Month Pay and Other Benefits.* — Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (₱30,000) which shall cover:

(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;

(ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

(iii) Benefits received by officials and employees not covered Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

(iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (₱30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

(f) *GSIS, SSS, Medicare and Other Contributions.* — GSIS, SSS, Medicare and Pag-IBIG contributions, and union dues of individuals.

(g) *Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness.* — Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

(h) *Gains from Redemption of Shares in Mutual Fund.* — Gains realized by the investor upon redemption of shares of stock in a mutual fund company as defined in Section 22(BB) of this Code."

A careful reading of the foregoing provisions vis-à-vis the aforequoted OMA provision would show that the former is **not contrary** to the latter, or vice versa.

First, the above-quoted Section 27(A) imposes tax on the income derived by a domestic corporation. The OMA provision in question, upon the other hand, does not, in any way, say that the parties to the OMA should not be taxed on the income they derived.

Second, Section 32(A) merely defines gross income and enumerates the items included therein; while the same OMA provision does not, in any case, say that the gross toll revenues are not included or should not be included in the term "gross income".

And *lastly*, Section 32(B) is an enumeration of what are excluded in gross income. The said OMA provision, however, does not state that the gross toll revenue are included in the exclusions under Section 32(B).

There is double taxation in the imposition of deficiency income taxes on the gross toll revenues upon respondent PEATC.

Petitioner insists that there is no double taxation in imposing the assailed assessment. According to him, respondent PEATC is a subsidiary corporation which has separate and distinct legal personality from PEA/PRA and UMPC/CIC, and thus, petitioner did not tax the same corporation.

The reasoning is obviously erroneous.

Double taxation means taxing the same property twice when it should be taxed only once; that is, taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as direct duplicate taxation, the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.[40]

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[40] *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*, G.R. No. 181277, July 3, 2013, citing *The City of Manila vs. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 181845, August 4, 2009.

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As already established, respondent PEATC was a collecting agent of PEA/PRA and UMPC/CIC. As such, the gross toll revenues collected by respondent PEATC is not its own revenues, but of the latter corporations. Furthermore, it is shown that PEA/PRA and UMPC/CIC reported the said revenues in their Annual Income Tax Returns for 2007,[41] respectively. Based on these Returns, PEA/PRA had an income tax due of ₱28,846,943.11, while there is none for UMPC/CIC.

Correspondingly, if the deficiency income tax assessment will be sustained, there will be double taxation insofar as PEA/PRA is concerned. There is double taxation because the tax is imposed on the same subject matter (gross toll revenues), the same purpose (the privilege of earning income), the same taxing authority (Philippine government), within the same jurisdiction (Philippines), during the same taxing period (year 2007), and the taxes are of the same kind and character (income taxes).

The same, however, may not be said in the case of UMPC/CIC since it has not paid any income tax for the year 2007. Nevertheless, even when there is no showing that there is double taxation insofar as UMPC/CIC's portion of the gross toll revenues are concerned, the corresponding part of the assessed deficiency income tax imposed thereon cannot still be sustained. This is so because respondent PEATC was not assessed of the said deficiency income tax as UMPC/CIC's representative, but as a separate entity. As a corollary, to sustain the said part of the assessed deficiency income tax would be violative of UMPC/CIC's right to due process.

WHEREFORE, in light of all the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated July 13, 2015 and Resolution dated October 12, 2015 of the Court in Division in CTA Case No. 8364, are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[41] Exhibits "P[15]" and "N[15]", Division Docket (CTA Case No. 8364) – Vol. 5, pp. 2315 to 2317, and 2268 to 2270.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice