REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1945 (CTA CASE No. 8764)
	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY,
-versus-	FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
PHILMAY PROPERTY, INC., *Respondent.*	Promulgated: FEB 05 2020

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on April 11, 2019 before this Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended,* seeking the reversal of the Decision, dated 23 May 2018[2] and the Resolution dated 07 September 2018[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

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[1]RULE 8, Sec 3. *Who may appeal; period to file petition.- x x x*

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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[2]Penned by Associate Justice Justice Catherine T. Manahan, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova, En Banc Docket, pp.27-71.
[3] *Id.*, pp.72-76.

Decision dated May 23, 2018:

"**WHEREFORE,** the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent (now petitioner) against petitioner for FY ending June 30, 2009 covering deficiency income tax in the amount of Php37,808,329.60, deficiency VAT in the amount of Php73,126,969.85 and deficiency EWT in the amount of Php43,315,685.33 are **CANCELLED AND WITHDRAWN** while the deficiency DST is **PARTIALLY UPHELD**.

Accordingly, petitioner (now respondent) is **ORDERED TO PAY** respondent the amount of **TWO HUNDRED SEVENTY SIX THOUSAND THREE HUNDRED EIGHTY-ONE PESOS AND TWENTY FOUR CENTAVOS (Php276,381.24)** representing deficiency DST for the FY ending June 30, 2009, inclusive of the 25% surcharge 20% deficiency interest and 20% delinquency interest imposed under Sections 248 (A)(3) and 249(B)(C) of the NIRC, computed as follows:

Basic Deficiency DST	Php	52,353.99
25% Surcharge		13,088.50
20% Deficiency Interest (07/05/09 to 12/31/17)		
(P52,353.99 x 20% x 8.4904110 years)		88,901.38
Subtotal	Php	154,343.87
20% Delinquency Interest (1/17/14 to 12/31/17)		
(P154,343.87 x 20% x 3.9534247)		122,037.37
Total	**Php**	**276,381.24**

In addition, petitioner (now respondent) is hereby **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the amount of Php154,343.87 (basic tax plus 25% surcharge plus 20% deficiency interest) computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED."

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Resolution dated September 7, 2018:

"**WHEREFORE**, the Commissioner of Internal Revenue's Motion for Reconsideration filed on June 7, 2018 is **DENIED** for lack of merit.

Petitioner's Manifestation filed on July 13, 2018 regarding its payment of Php285,109.06 is **NOTED** without further action."

SO ORDERED."

The facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

"Petitioner Philmay Property, Incorporated [Philmay] is a corporation duly organized and existing under the laws of the Philippines, and is a registered taxpayer with Tax Identification Number 005-060-231-000. It is organized "to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures.

Respondent Commissioner of Internal Revenue (CIR) is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the Government agency responsible for the assessment and collection of all national and internal revenue taxes.

For fiscal year 2009, petitioner filed its Annual Income Tax Returns (BIR Form No. 1702) through EFPS on October 21, 2009. Petitioner filed its Amended Return on the same date.

On November 25, 2009, Letter of Authority (LOA) No. 000463 was issued authorizing the examination of petitioner's books of accounts and other accounting records for the period July 1, 2008 to June 30, 2009.

[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues, (JFSI), Division Docket, Vol. VI, pp.2637-2639.

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On November 23, 2011, LOA SN:eLA201100010424 was issued covering the same period of July 1, 2008 to June 30, 2009 pursuant to the BIR's Run-After-Tax-Evaders (RATE) program.

Petitioner received a Notice of Informal Conference dated November 22, 2012 on November 23, 2012. On December 11, 2012, petitioner received the Preliminary Assessment Notice (PAN).

On April 23, 2013, petitioner received the Formal Assessment Notices (FAN) and Formal Letter of Demand (FLD) assessing petitioner for alleged deficiency taxes, interest, and penalties for fiscal year ending June 30, 2009 for: (a) deficiency income tax of Php37,808,329.60; (b) deficiency Value-Added Tax (VAT) of Php73,126,969.85; (c) deficiency Expanded Withholding Tax (EWT) of Php43,315,685.33; and (d) deficiency Documentary Stamp Tax (DST) of Php15,574,466.26; or in the total amount of Php169,825,451.04.18 The FLD laid out the assessments, as follows:

Deficiency Income Tax
(pursuant to Sec 6(B) & 34, NIRC)

Taxable Income per Return		P -
Add: Adjustments- Disallowance of Costs and Expenses		
Unsupported Cost of Service-Salaries and Wages	P 3,214,721.00	
Unsupported Operating Expenses	P 50,211,647.00	P 53,426,368.00
Total		P 53,426,368.00
Income Tax Due		P 17,363,569.60
Less: tax paid		239,806.97
Deficiency Income Tax		P 17,123,762.63
Add: Surcharge (Sec 248)		8,561,881.32
Interest p.a. from____to 4/30/2013		12,122,685.65
(Sec. 249) Compromise Penalty (Sec 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 37,808,329.60**

Deficiency Value Added Tax
(pursuant to Sec 106/ 108 & 110/113, NIRC)

Rental from Lease Properties per FS		P 11,147,732.00
Consummated Sales on Real Property		95,071,168.00
Re-acquired Properties by Maybank Phils, Inc.		228,824,817.00
Total Vatable Sales per audit		P 330,043,717.00
Output Tax Thereon		P 39,605,246.04
Less: creditable input tax per return		398,480.58
VAT payable		39,206,765.46
Less: VAT payments		
Payment per returns	P 6,694,110.54	
Payment per original investigation	53,280.00	P 6,747,390.54
Deficiency Value Added Tax		P 32,459,374.92
Add: Surcharge (Sec.248)		16,229,687.46
Interest p.a. from____to 4/30/2013		24,437,907.47
(Sec. 249) Compromise Penalty (Sec 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 73,126,969.85**

Deficiency Expanded Withholding Tax
(pursuant to Sec. 57(B), NIRC/RR 2-98)

Consummated Sales on Real Property	P 95,071,168.00
Re-acquired Properties by Maybank Phils, Inc.	223,824,817.00
Total	P 318,895,985.00
EWT Rate	6%
Deficiency Expanded Withholding Tax	P 19,133,759.10
Add: Surcharge (Sec.248)	9,566,879.55
Interest p.a. from____to 4/30/2013	14,615,046.698
(Sec. 249) Compromise Penalty (Sec 254 in relation to RMO 19-2007)	-
TOTAL AMOUNT DUE AND COLLECTIBLE	**P 43,315,685.33**

Deficiency Documentary Stamp Tax
(pursuant to Sec. 179/196, NIRC)

Current Loan Payable	
Maturity-June 30, 2010	P 21,282,524.00
Maturity-June 30, 2010	47,141,428.00
Total	P 68,423,952.00
Non-Current Loan Payable	
Maturity-December 31,2055	350,824,238.00
Total Loan Payable subject to DST per FS	419,248,190.00
DST Rate (Sec.196)	P 1/200
DST Due on Loans Payable	
Consummated Sales on Real Property	P 95,071,168.00
Re-acquired Properties by Maybank Phils, Inc.	223,824,817.00
Total	P 318,895,985.00
DST Rate (Sec.196)	P15/1000

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DST Due on Deed of Sale/ Conveyance of Properties	P 4,783,439.78	
Deficiency Documentary Stamp Tax	P 6,879,680.73	
Add: Surcharge (Sec. 248)	3,439,840.36	
Interest p.a. from____to 4/30/2013	5,254,945.17	
(Sec. 249) Compromise Penalty (Sec 254 in relation to RMO 19-2007)	-	
TOTAL AMOUNT DUE AND COLLECTIBLE	**P15,574,466.26**	

Petitioner filed its protest to the FLD/ FAN on May 23, 2013. Petitioner also made its submission of supporting documents on July 18, 2013.

On August 15, 2013, respondent issued a Preliminary Collection Letter (PCL). On September 12, 2013, respondent issued a Final Notice Before Seizure.

Petitioner received the PCL via facsimile on September 25, 2013 and through registered mail on October 17, 2013. Petitioner replied to the PCL through letters dated October 7 and 11, 2013 arguing that the PCL was erroneously issued on the ground that it has a pending protest and that PCLs are issued only in cases of undisputed assessments.

On January 17, 2014, petitioner received a letter dated December 19, 2013, where respondent stated that it will proceed with the collection and enforcement procedures on the ground that the assessments have become final and executory.

On January 21, 2014, respondent issued a Warrant of Distraint and Levy.

Counting thirty (30) days from receipt of the December 19, 2013 letter on January 17, 2014, petitioner filed the instant Petition for Review on February 13, 2014.

After an extension was granted, respondent filed his Answer on March 28, 2014. On April 25, 2014, the Court received petitioner's Reply (to the

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Answer dated March 27, 2014) filed through registered mail on April 16, 2014.

On April 25, 2014, petitioner also filed its Motion for Commissioning of Independent Certified Public Accountant (ICPA), praying for the commissioning of Mr. Edwin F. Ramos as ICPA, which motion was granted during the hearing on May 8, 2014.

On May 5, 2014, petitioner and respondent filed their respective Pre-trial Briefs. The parties filed their Joint Stipulation of Facts and Issues (JSFI) on June 20, 2014, which was approved and adopted in the Pre-Trial Order dated July 18, 2014.

The case proceeded to trial. Petitioner presented its witnesses: (1) Mr. Edwin F. Ramos; (2) Mr. Jonathan P. Ong; (3) Mr. Armando C. Lavandelo; (4) Ms. Jocelyn DG. Villaseñor; and (5) Ms. Shulammite P. Miranda.

On June 15, 2015, petitioner filed its Formal Offer of Evidence (FOE) which was resolved in the Court's Resolution dated August 4, 2015.

Respondent presented his witnesses, as follows: (1) Angeles Mores; (2) Maricol Domingo; and (3) Ruth G. Legaspi-Tandoy. On May 16, 2016, respondent filed his FOE which was resolved in the Court's Resolution dated July 21, 2016. Upon motion for reconsideration filed by respondent, the case was reset for commissioner's hearing and the subsequent filing of respondent's supplemental FOE.

On March 31, 2017, the Court resolved respondent's supplemental FOE and ordered the parties to file their respective memoranda. Within the extended period granted, petitioner filed its Memorandum on May 18, 2017 and respondent filed his Memorandum on May 23, 2017.

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Considering the foregoing, the case was submitted for decision on May 26, 2017.

On June 28, 2017, petitioner filed its Motion for Leave to File and to Admit Attached Reply Memorandum, which the Court granted in the Resolution dated July 5, 2017."

On May 23, 2018, the Court in Division rendered a Decision which partially granted Philmay's petition and cancelled and set aside the deficiency Income Tax (IT), deficiency Value-Added Tax (VAT) and deficiency EWT assessments made by the CIR, but upheld the deficiency DST assessment.

Aggrieved, the CIR filed his Motion for Reconsideration, which was denied in a Resolution dated September 7, 2018. Hence, this Petition for Review was filed.

The Petition for Review must fail. After a careful review of the assailed Decision and Resolution as well as the records of this case, the Court En Banc finds that the issues and arguments raised by petitioner have already been judiciously discussed and considered by the Court in Division. Be that as it may, pertinent issues need to be emphasized.

In the instant Petition, of critical concern for review and determination of the Court En Banc first is the prescriptive period within which to assess respondent's IT, VAT, EWT and DST deficiencies given the obtaining circumstances of the present case.

At the outset, records show that Philmay failed to present into evidence its quarterly VAT return for the 4th quarter, EWT returns, and DST returns. Therefore, the Court shall not dwell on whether the CIR's right to assess said taxes have already prescribed.

In the instant petition, petitioner CIR argues that the right to assess Philmay was yet to prescribe when the PAN, FLD/FAN, and PCL were issued on the ground that under Section 222(a) of the NIRC of 1997, as amended, the period to assess, in a case where a false or fraudulent return with intent to evade tax is filed, as obtaining in the present case,

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is at any time within ten (10) years after the discovery of falsity, fraud or omission.

Section 203 of the NIRC of 1997, as amended, provides the general rule on the prescriptive period on the right of petitioner to assess tax. To wit:

> "**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." (Emphasis supplied)

In sum, the three-year period within which an assessment may be made shall be reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. The government is mandated to assess deficiency 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.[6]

Relative thereto, Section 74[7] of the NIRC of 1997, as amended, which provides that individuals subject to income tax (IT) shall make and file a declaration of their estimated income for the current taxable year on or before April 15 of

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[6] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.
[7] Sec. 74. Declaration of Income Tax for Individuals--

> (A)In General. Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination "with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. xxx

> (B) Return and Payment of Estimated Income Tax by Individuals. - xxx The fourth instalment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed.

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the same taxable year. The amount of estimated income shall be paid in four (4) installments. The first installment shall be paid at the time of the declaration and the second and third shall be paid on August 15 and November 15 of the current year, respectively. The fourth installment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed.

Anent the period within which to file VAT returns, Section 114(A) of the NIRC of 1997, as amended, provides that every person liable to pay VAT 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 VAT on a monthly basis. A taxpayer must file the VAT return within twenty-five (25) days following the close of each taxable quarter.

Under the premises, the reckoning dates and due dates for filing of respondent's IT, and VAT Returns are as follows:

Income Tax

Period Covered	Last Day to File a Return	Actual Date of Filing
FY 2008-2009	October 15, 2009	October 21, 2009

Value- Added Tax

Period Covered	Last Day to File a Return	Actual Date of Filing
1st Qtr	October 25, 2008	October 24, 2008
2nd Qtr	January 25, 2009	January 10, 2009
3rd Qtr	April 25, 2009	April 2, 2009

Thus, in view of the foregoing, and applying Section 203 of the NIRC of 1997, as amended, and absent any waiver of the statute of limitations executed by respondent, the BIR had the following dates within which to issue the FAN/FLD for purposes of assessing respondent for deficiency IT and VAT for FY ending June 30, 2009:

Income Tax

Period Covered	Last Day to File a	Actual Date of	Last Day of 3 year	Date of Issuance of	Date of Receipt of

	Return	Filing	period to assess	FAN/FLD	FAN/FLD
FY 2008-2009	October 15, 2009	October 21, 2009	October 22, 2012	April 19, 2013	April 23, 2013

Value - Added Tax

Period Covered	Last Day to File a Return	Actual Date of Filing	Last Day of 3 year period to assess	Date of Issuance of FAN/FLD	Date of Receipt of FAN/FLD
1st Qtr	October 25, 2008	October 24, 2008	October 25, 2011	April 19, 2013	April 23, 2013
2nd Qtr	January 25, 2009	January 10, 2009	January 25, 2012		
3rd Qtr	April 25, 2009	April 9, 2009	April 25, 2012		

Based on the foregoing illustration, the three-year prescriptive period to assess petitioner for deficiency IT and VAT for the FY 2008-2009 under Section 203 of the NIRC of 1997, as amended, had already prescribed when the FAN/FLD was issued. Having thus prescribed, petitioner had no more authority to assess Philmay for deficiency IT and VAT for the 1st to 3rd quarters of FY 2008-2009.

Consequently, the FAN dated April 19, 2013, with attached Assessment Notices and Details of Discrepancy is void for having been issued beyond the three (3)-year prescriptive period provided by law.

Given the circumstances, this Court cannot subscribe to the CIR's argument that the ten (10)-year prescriptive period should apply. It is reiterated that nowhere in the notices was it indicated that the ten (10)-year period shall apply. The CIR failed to present any evidence, documentary or testimonial, with respect to any alleged finding of fraud which would justify the application of the ten (10)-year period.

No attending circumstances were cited by the CIR that would prevent him from issuing an assessment within the period prescribed by law. Further, the CIR failed to show in the PAN, FAN/FLD, and PCL that the alleged deficiencies found after investigation amounted to a substantial under-declaration of taxable sales, receipts or income, or a

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substantial overstatement of deductions which would constitute *prima facie* evidence of a false or fraudulent return.

Likewise, the Court cannot ignore the fact that Philmay did not execute a waiver authorizing the extension of the three (3)-year period for petitioner to issue an assessment. Consequently, the invocation of falsity or fraud in the IT, VAT, EWT and DST returns filed by respondent is merely an afterthought to justify the belated issuance of the impugned assessment and the application of the ten (10)-year prescriptive period to assess.

In this regard, We reiterate the ruling of the Court in Division, to wit:

> "Therefore, the Court finds that respondent failed to substantiate and justify the application of the ten (10)-year extraordinary prescriptive period under Section 222(a).
>
> The alleged findings of deficiency tax also does not constitute falsity which would give rise to the extraordinary ten (10)-year period. In *Commissioner of Internal Revenue v. Philippine Daily Inquirer*, the Supreme Court stated:
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> > 'In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. <u>The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion</u>.
> >
> > xxx
> >
> > Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. *In CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that <u>the entry</u>

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> of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.' (Citations omitted, underscoring supplied)
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> xxx xxx xxx"

Since petitioner failed to demonstrate clearly that Philmay filed a false return to warrant the application of the ten (10)-year prescriptive period, the regular period of three (3) years to assess, which already prescribed, must apply. The inadvertence or oversight, if not negligence on the part of taxing authority cannot prejudice the taxpayers, considering that the prescriptive period is precisely intended to free them from any harassment and ultimately give them peace of mind.

We now proceed in determining the alleged tax liabilities of Philmay for the unprescribed assessments, particularly for deficiency VAT for the 4th quarter of FY 2008-2009, deficiency EWT and deficiency DST.

While the Court in Division cancelled the 4th quarter VAT deficiency assessment and the EWT assessment based on the merits of the case, this Court finds that both assessments, including the deficiency DST assessment should be cancelled on the ground that the FLD/FAN dated April 19, 2013, are void for their failure to demand payment of the tax due within a specific period.

The relevant provision is Paragraph 2 of Section 228 of the 1997 NIRC, as amended, which states that **"taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."** This was implemented by Section 3.1.4 of Revenue Regulations No. 12-99, which provides as follows:

> "3.1.4 Formal Letter of Demand and Assessment Notice. The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes

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shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. xxx"

An assessment, as contemplated in the NIRC of 1997, as amended, is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[8] Therefore, a valid assessment contains not only a computation of tax liabilities but also a demand for payment within a prescribed period.[9] The ultimate purpose thereof is to ascertain the amount that the taxpayer has to pay.[10] It signals the time when penalties and interests begin to accrue against the taxpayer, and enables the taxpayer to determine his remedies thereon.

In sum, the elements of a valid assessment are:

1) Computation of tax liabilities;

2) Demand for payment within the prescribed period; and

3) Statement of the legal and factual basis/bases used.

In the case at bar, while the subject FLD/FAN dated April 19, 2013 provides for the computation of Philmay's purported tax liabilities, the amount remains undetermined as the tax due and interest thereon are still subject to adjustment depending on actual date of payment, for reference:

"NOTE: Interest and total amount due shall be adjusted up to the actual date of payment.[11]"

Further, the subject FAN/FLD did not make a clear and categorical demand for payment of the alleged tax liabilities for it contains merely a request for payment. The date "May 30, 2013" cannot be considered as a deadline for payment of the alleged tax liabilities as the FLD itself refers to the enclosed assessment notice for the due date. It merely states that the amount of interest indicated therein runs only

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[8] Adamson vs. Court of Appeals, G.R. No. 120935, May 21, 2009.
[9] Commissioner of Internal Revenue vs. Menguito, G.R. No. 167560, September 17, 2008.
[10] Tupaz v. Ulep, G.R. No. 127777, October 1, 1999.
[11] Annex A, Division Docket, Vol. I, p.41.

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up to May 30, 2013 and payment beyond the said date will require an adjustment of the interest and, consequently, the total amount due.

Based on the records, this Court finds that there is no valid assessment considering that the CIR failed to comply with Paragraph 2 of Section 228 of the 1997 NIRC, as implemented by Section 3.1.4 of Revenue Regulations No. 12-99, which underscores a mandatory, imperative and compulsory character; it is a word of command. Consequently, absent a valid demand, as in this case, makes the assessment void, the FAN/FLD bears no fruit and must be slain at sight.

Time and again, it has been ruled that the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious.[12] 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.

All told, this Court holds that the assessment should be declared null and void in its entirety.

WHEREFORE, premises considered, the Petition for Review filed by the CIR is hereby **DENIED**. The Decision dated 23 May 2018 and the Resolution dated 07 September 2018 are hereby **AFFIRMED with MODIFICATION** and shall read as follows:

> "**WHEREFORE,** the Petition for Review is **GRANTED**. The assessments issued by respondent against petitioner for FY ending June 30, 2009 covering deficiency income tax in the amount of Php37,808,329.60, deficiency VAT in the amount of Php73,126,969.85, deficiency EWT in the amount of Php43,315,685.33, and deficiency DST in the amount of P15,574,466.26 are **CANCELLED AND WITHDRAWN**.

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[12] Commissioner of Internal Revenue v. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.

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SO ORDERED."

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

(See Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1945** (CTA Case No. 8764)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.*****, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
PHILMAY PROPERTY INC., Respondent.	**Promulgated:**
	FEB 05 2020 1:11 p.m.

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SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

Foremost, I express my concurrence to the conclusion reached – the cancellation and withdrawal of the assessment for documentary stamp tax (**DST**). It is, however, for a different rationale.

In the *ponencia* of our distinguished colleague, it was stated that the subject FAN/FLD did not make a clear and categorical demand for payment of the alleged tax liabilities, thus failing to comply with paragraph 2 of Section 228 of the NIRC, as implemented by Section 3.1.4 of Revenue Regulations (**RR**) No. 12-99[1]. Further, that the date "May 30, 2013" cannot be considered a deadline for payment as the FLD itself to the enclosed assessment notice for the due date. It merely states that the amount of interest indicated therein runs only up to May 30, 2013 and payment beyond the said date will require an adjustment of the interest, and consequently, the total amount due.

From the above disquisition, I, respectfully, take exception.

Upon careful perusal of the subject FLD and the Assessment Notices appended to it, the same contained a categorical demand for payment on or before 30 May 2013, and is in fact compliant and in congruence with the pro-forma Formal Letter of Demand in Annex B of RR 12-99. Both the FLD and Assessment Notices contained the date "May 30, 2013" as the deadline for payment. In my view, the adjustment on interest for payments made *beyond* the deadline will not affect the definitiveness of the demand for payment, as petitioner Bureau of Internal Revenue (**BIR/petitioner**) is not exactly in a position to foresee the actual date of payment of the taxpayer. What is crucial is, the FLD contains a demand for payment of a certain sum of money within the period specified therein.

While I believe that there was a categorical demand for payment, BIR was nevertheless amiss in providing for the certainty of the sum he was collecting from respondent Philmay Property, Inc. (**PPI/respondent**).

It can be gleaned from the body of the FLD that the interest was computed up to 30 April 2013 only, while respondent was given until 30 May 2013 within which to pay the deficiency taxes due. Such gap of thirty (30) days will result in an absurd situation wherein the taxpayer who wishes to pay within the prescribed period still needs to have the total amount due adjusted, lest the payment of the amount reflected on the FLD will result in deficiency. It is rather illogical for petitioner to set a deadline within which to settle the deficiency taxes due but the amount remained variable. At the very least, petitioner should have

[1] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

computed the interest up to the deadline for payment, with caveat for adjustment of interest if paid beyond the deadline.

Hence, it is my opinion that respondent failed to provide for a definite amount in the FLD, and it is on this score that I find the FLD issued void thus, warranting the cancellation of the assessment for deficiency DST.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice