Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

COLLEGE ASSURANCE PLAN PHILS., INC., represented by its Vice-President for Accounting Services, Mr. Alfeo S. Pelayo,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7190

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

Promulgated:

AUG 16 2013
4:00 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed by petitioner-College Assurance Plan Philippines, Inc. ("CAP") on April 4, 2005 under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, seeking the reversal, cancellation and/or withdrawal of the Final Decision on Disputed Assessment (FDDA)[2] dated January 28, 2005, issued against it by respondent Commissioner of Internal Revenue for deficiency Value-Added Tax (VAT) in the amount of P501,910,583.87 for taxable year 1999, inclusive of surcharge and interest.

Petitioner COLLEGE ASSURANCE PLAN PHILIPPINES, INC. (CAP) is a domestic corporation duly created and existing under the laws of the Republic of the Philippines with principal office at CAP Building, #126 Amorsolo cor. Herrera Streets, Legaspi Village, Makati City and

[1] Docket (Vol. I), pp. 1-17
[2] Annex "B" to Petition for Review, Ibid, pp. 18-20

duly represented herein by its Vice President for Accounting Services ALFEO S. PELAYO.[3]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties and responsibilities of said office including the power to assess and collect internal revenue taxes. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 5, 2004, petitioner received copies of the Formal Letter of Demand (FLD) dated November 24, 2003 and Assessment Notice No. VT-99-000100 dated December 26, 2003 issued by respondent assessing Deficiency Value-Added Tax for taxable year 1999 in the amount of P501,910,583.87.[4]

On February 4, 2004, petitioner filed with the respondent a letter-protest dated January 27, 2004 assailing the aforementioned assessment for Deficiency Value-Added Tax pursuant to Section 228 of the Tax Code.[5]

On March 3, 2005, petitioner, through counsel, received from respondent the Final Decision on Disputed Assessment (FDDA) dated January 28, 2005 demanding the immediate payment of the amount of P557,430,866.81, inclusive of penalties computed up to March 31, 2005, as deficiency VAT for the taxable year 1999.[6]

On the basis of the FDDA, which constitutes as a denial of petitioner's protest, petitioner filed its Petition for Review before this Court on April 4, 2005, in accordance with the provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997, which provides:

> "SEC. 228. Protesting of Assessment. –
>
> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the

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[3] Par. 1, Joint Stipulation of Admitted Facts and Exhibits, Docket, p. 128
[4] Par. 4, Joint Stipulation of Admitted Facts and Exhibits, Docket, p. 129; Exhibits "C' and "D"
[5] Par. 5, Joint Stipulation of Admitted Facts and Exhibits, Docket, *Ibid.*; Exhibit "E"
[6] Par. 6, Joint Stipulation of Admitted Facts and Exhibits, Docket, *Id.*; Exhibit "B"

said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In her Answer[7] filed on June 14, 2005, respondent interposed the following Special and Affirmative Defenses

"4. The assessment has become final, executory and demandable for failure of petitioner to submit relevant supporting documents within sixty 60 days from the filing of the protest pursuant to Section 228 of the Tax Code, as implemented by Section 3.1.5 of the Revenue Regulations No. 12-99;

5. In its Petition for Review, petitioner is assailing the validity of the deficiency VAT assessment in the amount of Php:557,430,866.81 on the following grounds, to wit: (1) that said assessment has prescribed; (2) that respondent's reliance on RMC-13-96 A-10 and BIR Ruling No. 000-026 as basis for the disallowance of the **Php: 1,07,145,246.00** *(sic)* as a deduction from the gross receipts of the contribution to the trust fund is misplaced; (3) that the Deputy Commissioner is devoid of any power to issue a final decision on disputed assessment; and (4) the 50% surcharge imposed on the disputed assessment has no factual and legal bases;

6. The issues raised by petitioner in numbers 1, 2 and 4 shall be discussed jointly, the same being interrelated to each other. Petitioner asserts that the subject deficiency VAT assessment has already prescribed pursuant to Section 203 of the Tax Code. *We disagree*. Be it noted that the subject assessment imposes 50% surcharge pursuant to Section 248 of the Tax Code for failure of petitioner to report the amount of Php: 1,707,145,264.00 which represents its contribution to its trust fund as part of its gross receipts subject to VAT. Petitioner being a pre-need company, is subject to VAT on its gross income/gross receipts;

7. Per investigation, petitioner's realized income for the year 1999 is Php: 2,605,808,476.00 per its Financial Statement. The amount of Php: 1,707,145,264.00, according to petitioner forms part of its contribution to the trust fund per Financial Statement, hence, Revenue Memorandum Circular No. 13-98, and BIR Ruling No. 000-026 is applicable in this case. RMC No. 13-98 in relation to BIR Ruling No. 000-026, provides that petitioner's contributions to the trust fund are generally excluded from its gross income subject to VAT. However, there is a requirement that in order to be excluded from gross income, the said contributions must be independently

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[7] Docket, pp. 80-91

indicated in petitioner's official receipts otherwise the entire amount shall be subject to VAT. The provision of Revenue Memorandum Circular No. 13-98 *(sic)*, A-10, is stated in this wise:

> Pre need companies shall be considered as dealer in securities and shall be subject to VAT based on their gross income. Gross income shall mean actual receipts on contract price minus contribution to the trust fund to be set up independently as mandated by the Securities and Exchange Commission. ***<u>The amount of such contribution shall be indicated in the VAT official receipts, otherwise the entire amount shall be subject to VAT</u>***.
>
> xxx xxx xxx

8. Petitioner requested for a waiver of the above-mentioned requirement, but in a Ruling dated 23 September 1996, the BIR denied said request and insisted that said requirement cannot be dispensed with. Despite this ruling, petitioner intentionally failed to comply with said requirement;

9. Petitioner treated the amount of Php: 1,707,145,264.00 as allowable exclusion/deduction from its gross income subject to VAT. However, petitioner did not indicate the said amount as its contributions to its trust fund in its official receipts, a clear violation of RCMO 13-98 and BIR Ruling No. 000-026. Since said amount is more than 50% of the realized gross income per financial statement amounting to Php: 2,605,808,476.00, more than 50% of the output tax due thereon was not paid as a result thereof. Such being the case, the imposition of 50% surcharge pursuant to the provisions of Section 248(B) of the Tax Code is, therefore, correct;

10. Obviously, the act of petitioner, arising from its failure to comply with the requirement above-mentioned, despite being ordered to do so pursuant to BIR Ruling No. 000-026, is indicative of its manifest and clear intention to deliberately evade payment of the proper tax due. Such being the case, the finding of fraud, which justifies the imposition of the 50% surcharge, is in order;

11. Considering that the subject assessment is a fraud assessment, the government is allowed to issue the same within (10) years from discovery of the fraud pursuant to Section 222 (a) of the Tax Code;

12. Deputy Commissioner on Special Concerns Group, Kim S. Jacinto-Henares, issued the Final Decision on Disputed Assessment in her capacity as the Officer-In-Charge of the Large Taxpayers Service. One of the functions of the Large Taxpayers Service, particularly, the Audit Review Unit therein, is to "review and resolve all letters of protests, requests for reinvestigation and similar communications of large taxpayers" as provided in Revenue Administrative Order No. 4-2000 dated 24 August 2000. Hence, said Deputy Commissioner has the authority to issue the Final Decision on Disputed Assessment;

13. In Section 3.1.5 of Revenue Regulations No. 12-99, it is provided:

> **"In general, if the protest is denied, in whole or in part by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision xxx."**

From the foregoing, it is clear that the protest may be resolved by the duly authorized representative of the Commissioner of Internal Revenue;

14. Petitioner did not dispute the other bases of the assessment, i.e., imputed VAT in the amount of Php: 95,354,723.00, miscellaneous income in the amount of Php: 256,112,326.00 and disallowed input tax in the amount of Php: 15,288,084.30. Hence, the assessment has become final and unappealable with respect to said items;

15. Finally, it is a well-settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of providing otherwise. In the absence of proof of irregularities in the performance of official duties, an assessment will not be disturbed."

On March 15, 2006, the parties filed their Joint Stipulation of Admitted Facts and Exhibits[8], which this Court approved in a Resolution[9] dated March 27, 2006, thus, terminating the Pre-Trial.

During trial, the parties presented their evidence, both testimonial and documentary, to prove their respective case.

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[8] Docket (Vol. I), pp. 128-130
[9] Docket (Vol. II), p. 131

In a Resolution dated January 17, 2013, this Court ordered the parties to file their respective Memorandum, within thirty (30) days from receipt thereof[10].

On April 17, 2013, the case was submitted for decision[11], taking into consideration petitioner's Memorandum[12] filed through registered mail on March 22, 2013, and respondent's Memorandum (for Respondent)[13], filed through registered mail on April 1, 2013.

The issues[14] proposed by the parties, in their respective Pre-Trial Briefs are as follow:

1. WHETHER OR NOT THE ASSESSMENT FOR DEFICIENCY VALUE-ADDED TAX FOR THE TAXABLE YEAR 1999 HAS ALREADY PRESCRIBED.

2. WHETHER OR NOT RESPONDENT'S RELIANCE ON RMC-13-96 A-10 AND BIR RULING NO. 000-026 AS THE BASES FOR THE ASSESSMENT IS CORRECT.

3. WHETHER OR NOT DEPUTY COMMISSIONER ON SPECIAL CONCERNS GROUP, KIM S. JACINTO-HENARES HAS THE POWER TO ISSUE A FINAL DECISION ON DISPUTED ASSESSMENT.

4. WHETHER OR NOT THE IMPOSITION OF 50% SURCHARGE IS VALID.

In this case, petitioner contends that the assessment for deficiency VAT for taxable year 1999 has already prescribed, as provided under Sections 203 and 114(A) of the National Internal Revenue Code of 1997, as amended, 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

[10] Docket (Vol. II), p.001007-001008
[11] Resolution, Docket (Vol. II), p. 001068
[12] Docket (Vol. II), pp. 001038-001051
[13] Docket (Vol. II), pp. 001054-001066
[14] Issues to be Tried or Resolved, Pre-Trial Brief (For the Respondent), Docket (Vol. I), p. 98; Statement of the Issues, Pre-Trial Brief, Docket (Vol. I), p. 108

> 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."
>
> SEC. 114. ***Return and Payment of Value-Added Tax. -***
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches."

Based on the foregoing, petitioner contends that the Formal Letter of Demand with Assessment Notice received by the latter on January 5, 2004[15] was issued by respondent way beyond the prescriptive period provided under Section 203 of the NIRC of 1997, as amended. Thus, the assessment for deficiency VAT has already prescribed.

On the contrary, respondent argues that the subject assessment is a fraud assessment, thus, the government is allowed to issue an assessment within ten (10) years from discovery of fraud pursuant to Section 222 (a) of the NIRC of 1997, as amended, to wit:

> "SEC 222. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.***
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

[15] Exhibits "C' and "D".

As respondent pointed out, the reason for petitioner's assessment was its failure to comply with the requirement of Revenue Memorandum Circular (RMC) No. 13-96, A-10 which provides:

> "Revenue Memorandum Circular 13-96:
>
> Q-10 – What is the nature of the business and the tax liability of pre-need companies?
>
> A-10 – **Pre-need companies shall be considered as dealers in securities and shall be subject to VAT based on their gross income.**
>
> **Gross income shall mean actual receipts on contract price minus contributions to the trust fund to be set up independently as mandated by the Securities and Exchange Commission. The amount of such contribution shall be indicated in the VAT official receipt, otherwise the entire amount shall be subject to VAT**." (emphases supplied)

Based on the records, petitioner treated the contribution to its trust fund in the amount of P1,707,145,264.00 as allowable exclusion/deduction from its gross income subject to VAT. However, petitioner did not indicate in its official receipts that the said amount was a contribution to its trust fund, in violation of RMC No. 13-96.

Further, respondent denied petitioner's request for a waiver of the requirement provided under RMC No. 13-96 and issued BIR Ruling No. 026 dated September 23, 1996, pertinent portions of which are hereby quoted for ready reference:

> "It is represented that your companies, College Assurance Plans Phils., Inc. and Comprehensive Annuity Plans and Pension Corp. which are classified as pre-need companies will have great difficulty to comply to the above requirement; that cashiers located nationwide do not have the information of the trust fund contributions for each and every payment to be received from your planholders; that the amount contributed to the trust fund varies from year to year during the payment period of the plan, and that by indicating the trust fund contributions you might adversely affect your marketing efforts and unduly disclose some trade secrets.
>
> **In reply, please be informed that the VAT liability of dealers in securities prescribed by Section 102 of the Tax Code, as amended by Republic Act No. 7716, as implemented by Revenue Regulations No. 7-95, is computed on gross income. Gross income shall mean**

> **actual receipts on contract price minus contributions to the trust fund to be set up independently as mandated by the Securities & Exchange Commission. The amount of such contribution shall be indicated in the VAT official receipt, otherwise the entire amount shall be subject to VAT. Corollarily, the input tax allowable to the customer shall be based on the amount of the contract price net of the trust fund contribution. In other words, the procedure prescribed in A-10 cannot be dispensed with.**" (emphases supplied)

Respondent also argues that per investigation, petitioner committed substantial under declaration of its gross income subject to VAT as reflected in petitioner's Financial Statement for taxable year 1999. Its realized income for 1999 amounts to P2,605,808,476.00 but out of this amount, P1,707,145,264.00 was claimed by petitioner as deduction from its gross income. As a result thereof, more than fifty percent (50%) of the output tax due thereon was not paid. Hence, respondent contends that the substantial under declaration of gross income subject to VAT constitute a prima facie evidence of a fraudulent return.

In the case of *Aznar vs. Court of Tax Appeals*[16], the Supreme Court made a distinction between "false" and "fraudulent" returns as provided for by the law. To quote:

> "x x x. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) **fraudulent return with intent to evade tax**, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, **the second implies intentional or deceitful entry with intent to evade the taxes due**.
>
> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 [now Section 203]

[16] G.R. No. L-20569, August 23, 1974, 58 SCRA 519

> of the NIRC should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due** to false returns, **fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years** provided for in Sec. 332 (a) **[now Section 222a)] NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.**" (Emphasis supplied)

Also in the Aznar case, fraud in relation to the filing of income tax return, was discussed in this manner:

> ". . . **the fraud contemplated by law is actual** and not constructive. **It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. **It must amount to intentional wrong-doing with the sole object of avoiding the tax.** It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith." (Emphasis supplied)

In the case at bar, the bases for the allegation of fraud in the returns is the substantial under declaration of gross income subject to VAT. As mentioned above, a perusal of petitioner's Financial Statement for taxable year 1999 shows that its realized income for 1999 amounts to P2,605,808,476.00 but out of this amount, P1,707,145,264.00 was claimed by petitioner as deduction from its gross income. Thus, more than fifty percent (50%) of the output tax due thereon was not paid.

Clearly, this Court finds that there exists a substantial under declaration of taxable sales, receipts or income which constitutes a prima facie evidence in this case of a false and fraudulent return, thus, the applicable prescriptive period would be ten years from the discovery of fraud as provided under Section 222 of the NIRC of 1997, as amended.

In the instant case, the latest Quarterly VAT return filed was on January 25, 2000, while the FLD was received by petitioner on January 5, 2004, such period being within the ten year period it follows that the assessment had not yet prescribed.

Anent the second issue, petitioner argues that respondent's reliance on RMC-13-96 A-10 and BIR Ruling No. 000-026 as basis for the assessment is misplaced.

This Court does not agree with petitioner.

Based on the afore-quoted RMC-13-96 A-10, it is apparent that contributions to trust funds are generally excluded from gross income subject to VAT provided that said contributions be indicated in the VAT official receipts, otherwise, the entire amount shall be subject to VAT.

Records show that petitioner treated the contribution to its trust fund in the amount of P1,707,145,264.00 as allowable exclusion/deduction from its gross income subject to VAT. However, petitioner did not indicate in the official receipts it issued that the said amount was a contribution to its trust fund, which is a clear violation of RMC No. 13-96 A-10.

Moreover, when petitioner requested for a waiver of the requirement provided under RMC No. 13-96 A-10, respondent denied the same in VAT Ruling No. 026, where respondent ruled that "Gross income shall mean actual receipts on contract price minus contributions to the trust fund to be set up independently as mandated by the Securities & Exchange Commission. The amount of such contribution shall be indicated in the VAT official receipt, otherwise the entire amount shall be subject to VAT. Corollarilly, the input tax allowable to the customer shall be based on the amount of the contract price net of the trust fund contribution. In other words, the procedure prescribed in A-10 cannot be dispensed with."

Again, it is evident from the above BIR ruling that the requirement provided by RMC No. 13-96 is indispensable. Thus, respondent was correct in assessing petitioner of deficiency VAT for failure to comply with the said RMC.

Moving to the third issue, petitioner asserts that only the CIR has the sole power to decide disputed assessments by virtue of Section 4 of Republic Act (R.A.) No. 8424, to wit:

> SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Hence, petitioner contends that the FDDA issued by then Deputy Commissioner on Special Concerns Group, Kim S. Jacinto-Henares cannot be considered as the final decision which can be appealed to this Court but instead appealable to the office of the CIR.

On the other hand, respondent counter-argues that the Deputy Commissioner on Special Concerns Group, Kim S. Jacinto-Henares has the authority to issue the Final Decision on Disputed Assessment since it was issued in her capacity as the Officer-In-Charge of the Large Taxpayers Service. One of the functions of the Large Taxpayers Service, particularly, the Audit Review Unit therein, is to "review and resolve all letters of protests, requests for reinvestigation and similar communications of large taxpayers" as provided in Revenue Administrative Order No. 4-2000 dated 24 August 2000.

Further, respondent states that Section 3.1.5 of Revenue Regulations (RR) No. 12-99 provides that the protest may be resolved by the duly authorized representative of the Commissioner of Internal Revenue, to wit:

> Section 3.1.5 of RR 12-99, provides:
>
> "SEC. 3.1.5. Disputed Assessment. —
>
> xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized

> representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner.
>
> xxx xxx xxx."

This Court agrees with the petitioner.

As provided by Section 3.1.5 of RR 12-99, if the FDDA was issued by the Commissioner's duly authorized representative, a taxpayer may still elevate the protest to the CIR within thirty days (30) from the receipt thereof and the said FDDA shall not attain finality. In such a case, the protest shall be decided by the Commissioner.

Perusal of the records show that petitioner filed a protest against the FDDA to then Commissioner Parayno, Jr.[17] within the thirty-day period provided by RR 12-99, hence, the said appeal to the CIR prevented the FDDA, issued by Deputy Commissioner Henares, from attaining finality.

Finally, this Court does not agree to petitioner's argument that respondent's imposition of 50% surcharge is invalid.

Section 248 (B) of the NIRC of 19978, as amended reads, as follows:

> SEC. 248. Civil Penalties. —
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or **fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax,** in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* **That a substantial underdeclaration of taxable sales, receipts or income**, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, **shall constitute prima facie evidence of** a false **or fraudulent return**: *Provided, further,* **That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return,** and a claim of deductions in an amount exceeding (30%) of actual deductions, **shall render the taxpayer liable for substantial underdeclaration of**

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[17] Exhibit "F".

sales, receipts or income or for overstatement of deductions, as mentioned herein. (emphases supplied)

A careful reading of Section 248 (B) shows that the law is very explicit in imposing the civil penalty of 50% surcharge in case a false or fraudulent return is willfully made.

Further, the mandate of the law is clear and unequivocal, any substantial under declaration of taxable sales or receipts shall constitute prima facie evidence of the false or fraudulent return.

As mentioned earlier, respondent's investigation revealed that petitioner's realized income for 1999 amounts to P2,605,808,476.00 but out of this amount, P1,707,145,264.00 was claimed by petitioner as deduction from its gross income. As a result therefore, more than fifty percent (50%) of the output tax due thereon was not paid.

Clearly, there exists a substantial under declaration of taxable sales, receipts or income which constitutes a prima facie evidence in this case of a fraudulent return, thus, the provisions of Section 248(B) of the Tax Code, and the concommitant fifty (50%) percent penalty must be imposed.

WHEREFORE, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of P329,689,315.74 representing petitioner's deficiency Value Added Tax (VAT) for taxable year 1999, plus fifty percent (50%) surcharge, computed as follows:

Basic Tax	P219,792,877.16
50% Surcharge	109,896,438.58
TOTAL	**P329,689,315.74**

In addition, petitioner is hereby **ORDERED to PAY the** following:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Value-added Tax computed from January 25, 2000 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of 329,689,315.74 and on the 20% deficiency interest which have accrued as afore-stated in a), computed from February 4, 2004 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice