Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8358, 8426 and 8489
For: Assessment

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

NOV 03 2015 ; 4:00p.m

x- -x

DECISION

MINDARO-GRULLA, J.:

The instant case is a consolidation of three (3) Petitions for Review filed by G & W Architects, Engineers and Project Consultants Co. as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner prays for the cancellation of the deficiency tax assessment issued against it for deficiency expanded withholding tax (EWT) and documentary stamp tax (DST), broken down as follows:

CTA Case No.	Period Covered	Deficiency EWT	Deficiency DST	Amount
8358	2004	₱213,376,605.65	₱64,081,511.54	₱ 277,458,117.19[3]
8426	July 10, 2004	102,091,930.43	30,760,748.62	132,852,679.05[4]
8489	June 2004	114,909,209.18	34,505,019.48	149,414,228.66[5]
TOTAL				**P559,725,024.90**

Petitioner G & W Architects, Engineers and Project Consultants Co. is duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office No. 30 of Revenue Region No. 6-Manila.[6]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue, who is vested with

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Petition for Review, CTA Case No. 8358, Docket, Vol. I, p. 31.
[4] Petition for Review, CTA Case No. 8426, Docket, Vol. I, p. 30.
[5] Petition for Review, CTA Case No. 8489, Docket, Vol. I, p. 30.
[6] Par. 1, Admitted Facts, Pre-Trial Order, CTA Case No. 8489, Docket, Vol. I, p. 609.

authority to administer and enforce National Internal Revenue Laws.[7]

On different dates, petitioner obtained several confirmatory BIR Rulings for the following projects:

BIR Ruling	Condominium Project
DA-338-2007[8]	Grand Hamptons Tower I
DA-337-2007[9]	Grand Hamptons Tower II
DA-056-2003	Penhurst Parkplace
DA-455-2007	Kensington Condominium Project

According to said BIR Rulings, petitioner's Build-To-Own concept of pooling of unit owners' funds to be used for the construction of condominium units on behalf of the fund owners is tax-exempt because it does not constitute a taxable sale, exchange, or disposition of real property by petitioner, hence, not subject to creditable withholding tax (CWT) or capital gains tax (CGT), value-added tax (VAT) and DST, except the ₱15.00 DST on the contractual agreement.

Thereafter, petitioner proceeded with the implementation of the projects.

The parcels of land upon which the projects were built were originally owned by Fort Bonifacio Development Corporation (FBDC) and these were subsequently sold to the projects' respective condominium corporations via Deed of Absolute Sale, summarized as follows:

Date of Execution of Deed of Absolute Sale	Cancelled TCTs in the name of FBDC (seller)	TCTs issued in the names of the Condominium Corporations (Buyer)
September 11, 2007[10]	No. 31276[11]	No. 2270-P[12] in the name of Grand Hamptons Tower I

[7] Par. 2, Admitted Facts, Pre-Trial Order, CTA Case No. 8489, Docket, Vol. I, p. 609.
[8] Exhibit "J" in CTA Case No. 8489, Docket, Vol. II, pp. 720-723.
[9] Exhibit "J" in CTA Case No. 8426, Docket, Vol. I, pp. 618-621.

		Condominium Corporation
June 16, 2008[13]	No. 31275[14]	No. 2434-P[15] in the name of Grand Hamptons Tower II Condominium Corporation
December 17, 2003[16]	No. 35847[17]	No. 30-P[18] in the name of Penhurst Parkplace Condominium Corporation
July 21, 2006[19]	No. 35849[20]	No. 1402-P[21] in the name of Kensington Parkplace Condominium Corporation

Respondent's representatives issued Letter of Authority Nos. 00027636[22], 00027639[23], and 00027637[24], all on September 29, 2009, to examine petitioner's books of accounts for Transfer Taxes (EWT and DST) involving Penhurst Parkplace and Kensington Place, Grand Hamptons Tower I, and The Grand Hamptons.

Thereafter, a letter[25] was sent by BIR Revenue District Officer (RDO) Gerry O. Dumayas to petitioner, requiring the submission of documents. This was followed by a Second Request for Presentation of Records[26] dated November 9, 2009.

[10] Exhibit "F", CTA Case No. 8426, Docket, Vol. I, pp. 577-589.
[11] Exhibit "G", CTA Case No. 8426, Docket, Vo. I, pp. 590-593.
[12] Exhibit "H", CTA Case No. 8426, Docket, Vol. II, p. 865.
[13] Exhibit "F", CTA Case No. 8489, Docket, Vol. II, pp. 687-701.
[14] Exhibit "G", CTA Case No. 8489, Docket, Vol. II, pp. 702-705.
[15] Exhibit "H", CTA Case No. 8489, Docket, Vol. II, pp. 706-707.
[16] Exhibit "D", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[17] Exhibit "B", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[18] Exhibit "F", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[19] Exhibit "E", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[20] Exhibit "C", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[21] Exhibit "G", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[22] Exhibit "I", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[23] Exhibit "L", in CTA Case No. 8426, Docket, Vol. I, p. 624.
[24] Exhibit "L", in CTA Case No. 8489, Docket, Vol. II, p. 726.
[25] Exhibit "2", BIR Records, p. 94.
[26] Exhibit "3", BIR Records, p. 95.

A Notice of Informal Conference dated January 20, 2010 was issued by RDO Dumayas, inviting petitioner to an informal conference regarding the results of the investigation on petitioner's EWT and DST liabilities on the transfer of units in Kensington and Penhurst Place.[27]

In a Memorandum for Commissioner of Internal Revenue Joel L. Tan-Torres dated March 28, 2010, Assistant RDO Christina C. Barroga and RDO Dumayas requested the nullification of BIR Ruling Nos. DA-056-2003, DA-624-2004, DA-455-2007, DA-338-2007, DA-410-2007, DA-409-2007, and DA-337-2007.[28]

On June 28, 2010, Revenue Memorandum Circular (RMC) No. 55-2010[29] was issued by the BIR, declaring, among others, BIR Ruling Nos. DA-337-2007, DA-056-2003, and DA-455-2007 as null and void.

As a result, respondent issued Preliminary Assessment Notices dated June 8, 2010[30] and July 1, 2010[31], finding petitioner liable to pay EWT and DST for the transfer of the 111 condominium units in Penhurst Parkplace and 229 units in Kensington Place.

Subsequently, respondent issued the assailed Formal Assessment Notices (FAN) on January 25, 2011[32], June 10, 2011[33] and July 26, 2011[34], finding petitioner liable to pay EWT and DST on the transfer of condominium units in Penhurst Parkplace, Kensington Place, Grand Hampton I, and Grand Hampton II.

[27] Exhibit "4", BIR Records, pp. 103-105.
[28] Exhibit "28", CTA Case No. 8358, Docket, Vol. II, pp. 1252-1257.
[29] Exhibit "K", CTA Case No. 8426, Docket, Vol. I, pp. 622-623.
[30] Exhibit "25", BIR Records, pp. 144-146.
[31] Exhibit "6", BIR Records, pp. 154-156.
[32] Exhibit "J", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[33] Exhibit "M", in CTA Case No. 8426, Docket, Vol. I, p. 625.
[34] Exhibit "M", in CTA Case No. 8489, Docket, Vol. II, p. 727.

Petitioner filed its protest[35] on the January 25, 2011 FAN on February 24, 2011 and submitted its supporting documents on March 30, 2011[36].

As to the FAN issued on June 10, 2011, petitioner filed its protest on July 6, 2011[37] and submitted its supporting documents on July 27, 2011[38]; while on August 25, 2011[39], petitioner protested the FAN issued on July 26, 2011 and submitted supporting documents on October 18, 2011[40].

Due to respondent's inaction on the protest, petitioner filed the instant Petitions for Review on October 21, 2011 for CTA Case No. 8358, on February 15, 2012 for CTA Case No. 8426, and on May 11, 2012 for CTA Case No. 8489.

In CTA Case No. 8358, respondent interposed the following Special and Affirmative defenses in the Answer[41] filed on December 7, 2011:

> "7. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
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> 8. **Section 228 of the 1997 Tax Code** partly reads as follows:
>
> '**SEC. 228. Protesting of Assessment** –
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such

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[35] Exhibit "O", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[36] Exhibit "P", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[37] Exhibit "N", in CTA Case No. 8426, Docket, Vol. I, pp. 630-723.
[38] Exhibit "O", in CTA Case No. 8426, Docket, Vol. I, pp. 724-756.
[39] Exhibit "N", in CTA Case No. 8489, Docket, Vol. II, pp. 737-753.
[40] Exhibit "O", in CTA Case No. 8489, Docket, Vol. II, pp. 877-904.
[41] CTA Case No. 8358, Docket, Vol. I, pp. 152-158.

> form and manner as may be prescribed by the implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 said decision, or from the lapse of the one hundred eighty (180) – day period; otherwise the decision shall become final, executory and demandable.' [Emphasis supplied]

Implementing the aforesaid provision, Section 3, 3.1.5 of the Revenue Regulations No. 12-99 dated September 6, 1999, provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory, and demandable. The phrase **'submitted the required documents'** includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.

In the instant case, pursuant to the report of re-investigation of the concerned BIR Examiner, the latter found that despite considerable length of time given to herein petitioner, it failed to submit the required documents in support of its protest against the BIR Formal Assessment Notice (FAN) dated 25 January 2011, within sixty (60) days from the alleged filing of its administrative protest on February 24, 2011. Hence, the assessed deficiency expanded withholding tax and documentary stamp tax, respectively for taxable year 2004 has already become final, executory and demandable. As such, this

Honorable Court has no jurisdiction to act on the instant petition.

9. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits ***(De Guzman, et al., vs. Escalona, et al., G.R. No. L-51773, May 16, 1980)***. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only on matters that are clearly within its jurisdiction ***(Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation, vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150)***.

10. Further, the Supreme Court in the case of **Ker & Company, Ltd., vs. CTA, et al., L-12396, January 31, 1962** and **Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30, 1962**, consistently ruled that:

> '*<u>If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.</u>*' [Emphasis supplied]

11. Moreover, in the case of ***Yao vs. Court of Appeals, et al., G.R. No. 132428, October 24, 2000***, the Supreme Court held and we quote:

> '***The right to appeal is not a constitutional, natural or inherent right.*** It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural right nor part of due process, ***<u>it may be exercised only in the manner and in</u>***

> ***accordance with the provisions of law. Corollary, its requirements must be strictly complied with.***
>
> ***That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional.*** Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.' [Emphasis supplied]

Thus, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for the court to act on a given controversy ***(Commissioner of Internal Revenue, vs. Villa, et al., G.R. No. L-23988, January 2, 1968)***, and is conferred only by law and not by the consent or waiver upon the court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties ***(Laresma vs. Abellana, G.R. No. 140973, November 11, 2004)***.

12. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, Petitioner was assessed for deficiency expanded withholding tax and documentary stamp tax, respectively for taxable year 2004, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated January 25, 2011, the Preliminary Assessment Notice (PAN) dated June 8, 2010, which are briefly discussed hereunder, viz:

xxx xxx xxx

13. Verification disclosed that the 111 condominium units of Penhurst Parkplace Condominium Corporation and the 229 condominium units of Kensington Place Condominium Corporation both located at Global City Fort Bonifacio, Taguig City have already been issued with Condominium Certificate of Title's (CCTs) in violation of last paragraph of Section 56(A) of the Tax Code, as amended which states that:

> *'NO registration of any documents transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported, and the tax therein imposed, if any has been paid.'*

14. In Memorandum dated April 28, 2009 the Commissioner of Internal Revenue has effectively nullified the BIR ruling exempting the transfer of condominium units to the unit owner under the so-called co-development/built-to-own/built-your-own and similar schemes, and directed to conduct investigation of involved taxpayers.

15. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated June 8, 2010 and Formal Assessment Notice (FAN) dated January 25, 2011 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the initial findings of the respondent involving its deficiency taxes for taxable year 2004 through the issuance of a Notice for Informal Conference and Preliminary Assessment Notice (PAN) dated June 8, 2010. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why he (respondent) arrived at such a deficiency expanded withholding tax and documentary stamp tax, respectively for taxable year 2004, through the receipt of the Details of

Discrepancies attached to the Formal Assessment Notice (FAN) dated January 25, 2011 and the Preliminary Assessment Notice (PAN) dated June 8, 2010, as well as other BIR Correspondence/Notices duly received by petitioner which are found in the BIR records of this case.

16. Petitioner was assessed by the respondent CIR for deficiency expanded withholding tax and documentary stamp tax for taxable year 2004, within the ten (10) year prescriptive period pursuant to Section 222 (a) of the 1997 Tax Code, in view of the fact that petitioner failed to file the required Withholding Tax Remittance Return (BIR Form 1606) and Documentary Stamp Tax Declaration/Return (BIR Form 2000-OT) on the transfer of the 111 condominium units of Penhurst Parkplace Condominium Corporation and 229 condominium units of Kensington Place Corporation both located at Global City Fort Bonifacio, Taguig City;

17. The assessments issued against petitioner for deficiency expanded withholding tax and documentary stamp tax for taxable year 2004 were made in accordance with law and regulations.

18. All presumptions are in favor of the correctness of tax assessments (i.e. expanded withholding tax and documentary stamp tax for taxable year 2004) issued by the respondent."

Respondent likewise filed by registered mail her Answer to the Petition for Review in CTA Case No. 8426 on May 14, 2012[42], and interposed denials to the allegations in the said petition.

Respondent filed her Answer[43] to the Petition for Review in CTA Case No. 8489 by registered mail on July 16, 2012, and raised the following Special and Affirmative Defenses: *C*

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[42] CTA Case No. 8426, Docket, Vol. I, pp. 155-160.
[43] CTA Case No. 8489, Docket, Vol. I, pp. 260-263.

"3. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;

4. The assessments in question were made and issued in accordance with law, rules and regulations;

5. The petitioner is time-barred in filing the instant petition for review filed on May 11, 2012, hence, the Honorable CTA has no jurisdiction to take cognizance of the case. Under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No 12-99, a taxpayer has thirty (30) days from receipt of an assessment to file a protest, and another sixty (60) days from such filing to submit all relevant/pertinent documents. Thereafter, the BIR has one hundred eighty (180) days within which to rule on the protest. The taxpayer has 30 days to appeal to the Court of Tax Appeals (CTA), reckoned from the receipt of decision or the lapse of the 180 day period. However, if no relevant/pertinent documents were submitted by the taxpayer within 60 days from the filing of the protest, the 180 days inaction of the BIR which is appealable to the CTA should be reckoned from the filing of the protest ***(Oceanic Wireless Network, Inc., vs. Commissioner of Internal Revenue, CTA EB No. 76, June 22, 2006; also cited in Fil-Hispano Holdings Corporation vs. Commissioner of Internal Revenue, CTA EB No. 343, June 12, 2008)***.

6. In case of transfer of real properties, the situs of taxation is where the property is located. Thus, the corresponding creditable withholding tax and documentary due on the transfer are to be paid with the Revenue District office which has jurisdiction over the location of the properties.

7. Under Section 22 (N) of the NIRC of 1997, as amended, the term '*taxpayer*' means any person subject to tax imposed by this Title. Thus, the

Revenue District Office No. 44 of the Revenue Region No. 8 has jurisdiction to assess taxpayers over the transfer taxes (i.e., creditable withholding tax and documentary stamp tax) due on the properties located within its jurisdiction.

8. The 'Build-To-Own or Build-Your-Own' concept employed by petitioner is considered pre-selling/selling that should have been subjected to expanded withholding tax (EWT) and documentary stamp tax (DST).

9. Upon examination of RDO No. 44, the facts are not as represented by the petitioner in its request for ruling. Hence, the transactions should be treated as pre-selling/selling and therefore subject to EWT and DST. The BIR Ruling DA-338-2007 dated June 20, 2007 issued to petitioner was issued with a very specific collatilla, to wit:

> 'This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

10. The nullification of the BIR Ruling DA-338-2007 dated June 20, 2007 is anchored on the findings that the *scheme of build-to-own, build-your-own, and similar concepts* mainly consist of the developer making it appear that it merely manages the construction of the condominium project, and that the funds as contributed by the individual investors are management fee only. Moreover, in the above scheme, the assignment and delivery of the developed units to joint owners (individual investors), is claimed not to be a taxable event being merely a transfer of property held in trust by the Trustee for the individual Trustors. The foregoing effectively resulted in the non-payment of income taxes and value-added tax by the developer on the gross project amount.

11. The House and Land Use Regulatory Board (HLURB) rejects the above-scheme being contrary to the policy behind Presidential Decree (P.D.) No. 957, otherwise known as 'The Subdivision and Condominium Buyer's Protective Decree' (as amended by P.D. 1216).

12. The Assistant Commissioner of the BIR Legal Service had exceeded his delegated authority to render the questioned/cancelled BIR Ruling DA-338-2007 dated June 20, 2007 which is a case of first impression which he has no authority to do under Sec. 7 (b) of the NIRC of 1997. Hence, the said BIR Ruling (DA-338-2007) is void and of no effect.

13. The deficiency assessments against petitioner arose from the transactions covered by One-Time Transactions (ONETT). Under Revenue Memorandum Order (RMO) No. 15-2003, no Letters of Authority (LA) is required before verification can be made of such returns on one-time transactions (ONETT). Thus, any defect in the issuance of the Letter of Authority No. 00027637 dated September 29, 2009 has no effect on the validity of the subject deficiency tax assessments and the issuance of the said LA would just be a surplusage because of the aforestated existing RMO 15-2003.

14. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**."

Thereafter, the three (3) cases were set for Pre-Trial Conference on January 19, 2012[44], June 22, 2012[45], and August 10, 2012[46].

Accordingly, in CTA Case No. 8358, the Pre-Trial Brief for Petitioner Ad Cautelam[47] and Respondent's Pre-Trial

[44] CTA Case No. 8358, Docket, Vol. I, p. 159.
[45] CTA Case No. 8426, Docket, Vol. I, p. 162.
[46] CTA Case No. 8489, Docket, Vol. I, p. 265.
[47] CTA Case No. 8358, Docket, Vol. I, pp. 179-212.

Brief[48] were filed on January 16, 2012 and February 14, 2012, respectively.

On the other hand, Petitioner's Pre-Trial Brief[49] and the Pre-Trial Brief (for Respondent)[50] in CTA Case No. 8426 were filed on June 15, 2012 and June 18, 2012, respectively.

Also, in CTA Case No. 8489, Petitioner's Pre-Trial Brief[51] and Respondent's Pre-Trial Brief[52] were filed on August 6, 2012 and August 23, 2012, respectively.

On March 27, 2012, petitioner filed a Manifestation stating that a Joint Stipulation will no longer be filed in CTA Case No. 8358 due to some disagreements over the draft Joint Stipulation.[53]

Meanwhile, the parties filed their Joint Stipulation of Facts and Issues in CTA Case Nos. 8426 and 8489 on July 6, 2012[54] and September 28, 2012[55], respectively.

Upon the termination of the pre-trial of the cases, trial proceeded, giving both parties the opportunity to present their respective documentary and testimonial evidence.

After the presentation, marking, identification, and formal offer of evidence, the Court admitted Exhibits "A" to "Q-1" as part of petitioner's evidence in CTA Case No. 8358[56], Exhibits "A" to "P-1" in CTA Case No. 8426[57], and Exhibits "A" to "P-1" in CTA Case No. 8489[58].

[48] CTA Case No. 8358, Docket, Vol. I, pp. 215-218.
[49] CTA Case No. 8426, Docket, Vol. I, pp. 163-174.
[50] CTA Case No. 8426, Docket, Vol. I, pp. 181-184.
[51] CTA Case No. 8489, Docket, Vol. I, pp. 266-277.
[52] CTA Case No. 8489, Docket, Vol. I, pp. 280-283.
[53] CTA Case No. 8358, Docket, Vol. I, pp. 233-235.
[54] CTA Case No. 8426, Docket, Vol. I, pp. 186-197.
[55] CTA Case No. 8489, Docket, Vol. I, pp. 297-306.
[56] CTA Case No. 8358, Docket, Vol. II, pp. 616-617.
[57] CTA Case No. 8426, Docket, Vol. II, pp. 780-781 and 891-893.
[58] CTA Case No. 8489, Docket, Vol. II, pp. 922-923.

The documentary evidence formally offered by the petitioner and admitted by the Court are as follows:

CTA Case No. 8358

Exhibit	Description
A	Certificate of Registration (BIR Form No. 2303) showing G&W's registration at Revenue Region No. 6 under Revenue District Office No. 30
B	Transfer Certificate of Title (TCT) No. 35847 registered under the name of Fort Bonifacio Development Corporation (FBDC)
C	TCT No. 35849 registered under the name of FBDC
D	Deed of Absolute Sale between FBDC and Penhurst Parkplace Condominium Corporation notarized on 17 December 2003
E	Deed of Absolute Sale between FBDC and Kensington Place Condominium Corporation notarized on 21 July 2006
F	TCT No. 30-P registered under the name of Penhurst Parkplace Condominium Corporation
G	TCT No. 1402-P registered under the name of Kensington Place Condominium Corporation
H	Condominium Certificate of Title (CCT) Nos. 231 registered under the name of Adele A. Jaucian; CCT No. 479 registered under the name of Sps. Edward K. Sy and Emily C. Sy; CCT No. 240 registered under the name of Cathy G. Kong; CCT No. 235 registed under the name of Pek Eng Lim; CCT No. 223 registered under the name of Glenda T. Endaya; CCT No. 11302 registered under the name of Alvin Clifton T. Go; CCT No. 8115 registered under the name of Angela S. Aguilar; CCT No. 12128 registered under the name of Elizabeth Q. Alvina; and CCT No. 10535 registered under the name of Gina G. Tan
I	LOA 27636 dated 29 September 2009

J	Formal Assessment Notice (FAN) dated 25 January 2011
K	Contract to Manage and Execute the Construction of Penhurst Parkplace Condominium
L	Contract to Manage and Execute the Construction of Kensington Place Condominium
M	Trust Agreement dated 03 July 2002
N	Depository and Disbursing Agreement dated 23 March 2004
O	Letter Protest dated 24 February 2011 filed with the Bureau of Internal Revenue (BIR)
P	Supporting documents submitted to the BIR and Letter dated 29 March 2011
Q	Judicial Affidavit of Arch. Gilbert C. Yu dated 13 June 2012
Q-1	Signature of Arch. Gilbert C. Yu

<u>CTA Case No. 8426</u>

Exhibit	Description
A	G&W's Articles of Partnership duly filed with the Securities and Exchange Commission
B	G&W's Amended Articles of Partnership duly filed with the Securities and Exchange Commission
C	BIR Certificate of Registration (BIR Form No. 2303), showing G&W's registration at Revenue Region No. 6 under Revenue District Office No. 30
D	Contract to Manage and Execute the Construction of Hamptons Place Condominium
D-1	Contract to Manage and Execute the Construction of Hamptons Place Condominium

D-2	Contract to Manage and Execute the Construction of Hamptons Place Condominium
D-3	Contract to Manage and Execute the Construction of Hamptons Place Condominium
E	Depository and Disbursing Agreement dated 17 June 2005
E-1	Depository and Disbursing Agreement dated 30 June 2005
E-2	Depository and Disbursing Agreement dated 19 October 2005
E-3	Depository and Disbursing Agreement dated 13 June 2007
F	Deed of Absolute Sale between Fort Bonifacio Development Corporation and The Grand Hamptons Tower 1 Condominium Corporation
G	Transfer Certificate of Title (TCT) No. 31276 under the name of Fort Bonifacio Development Corporation (FBDC)
H	TCT No. 2270-P under the name of The Grand Hamptons Tower I Condominium Corporation
I	Condominium Certificate of Title No. 30375 under the name of Nelly Uy Yu
I-1	Condominium Certificate of Title No. 29777 under the name of Michael Joseph B. Celis
I-2	Condominium Certificate of Title No. 29764 under the names of Sps. Ernesto S. Esmani and Rebecca E. Esmani
I-3	Condominium Certificate of Title No. 30371 under the name of Shirley Y. Sy
J	BIR Ruling No. DA-337-2007 dated 20 June 2007
K	Revenue Memorandum Circular No. 55-2010 dated 28 June 2010
L	Letter of Authority No. 200800027639 dated 29 September 2009 ("LOA 27639")

M (with sub-markings "M-1" to "M-4)	Formal Assessment Notice ("FAN") dated 10 June 2011
N	Letter Protest dated 06 July 2011, filed by petitioner G&W on 06 July 2011
O	Supporting Documents submitted to the BIR and Letter dated 22 July 2011, filed by petitioner G&W on 27 July 2011
P	Judicial Affidavit of Arch. Gilbert C. Yu dated 17 October 2012
with sub-marking Exhibit "P-1"	Signature of Arch. Gilbert C. Yu

CTA Case No. 8489

Exhibit	Description
A	G&W's Articles of Partnership duly filed with and certified by the Securities and Exchange Commission ("SEC") on 31 January 1978
B	G&W's Amended Articles of Partnership duly filed with and certified by the SEC on 15 January 1998
C	BIR Certificate of Registration (BIR Form No. 2303) No. 1RC0000586533 issued on 01 January 1996, showing G&W's registration at Revenue Region No. 6 under Revenue District Office No. 30
D	Contract to Manage and Execute the Construction of Hamptons Place Condominium executed by and between Jayan Russel S. Dy and Janette Sy Dy and petitioner G&W dated 23 August 2006
D-1	Contract to Manage and Execute the Construction of Hamptons Place Condominium executed by and between Enrique B. Gepilano, III and Gretelwolda C. Gepilano and petitioner G&W dated 29 June 2006
D-2	Contract to Manage and Execute the Construction of Hamptons Place Condominium executed by and between Mitchell O. Soria and

	Anna Marie P. Amoroso and petitioner G&W dated 11 May 2007
E	Depository and Disbursing Agreement dated 01 September 2006 executed by and between Jayan Russel S. Dy and Janette Sy Dy and Banco de Oro Universal Bank – Trust Banking Group
E-1	Depository and Disbursing Agreement dated 12 July 2006 executed by and between Enrique B. Gepilano, III and Gretelwolda C. Gepilano and Banco de Oro Universal Bank – Trust Banking Group
E-2	Depository and Disbursing Agreement dated 01 June 2007 executed by and between Mitchell O. Soria and Anna Marie P. Amoroso and Banco de Oro Universal Bank – Trust Banking Group
F	Deed of Absolute Sale executed between Fort Bonifacio Development Corporation and The Grand Hamptons Tower II Condominium Corporation dated 16 June 2008
G	Transfer Certificate of Title (TCT) No. 31275 under the name of Fort Bonifacio Development Corporation (FBDC)
H	TCT No. 2434-P under the name of The Grand Hamptons Tower II Condominium Corporation
I	Condominium Certificate of Title No. 36079 under the names of Jayan Russel Sy Dy and Janette Sy Dy
I-1	Condominium Certificate of Title No. 36099 under the names of Sps. Enrique B. Gepilano and Gretelwolda G. Gepilano
I-2	Condominium Certificate of Title No. 36104 under the names of Sps. Mitchell Oliva Soria and Anna Marie Amoroso Soria
J	BIR Ruling No. DA-337-2007 dated 20 June 2007
K	Revenue Memorandum Circular No. 55-2010 dated 28 June 2010

L	Letter of Authority No. 200800027637 dated 29 September 2009 ("LOA 27637")
M (with sub-markings "M-1" to "M-4)	Formal Assessment Notice ("FAN") dated 26 July 2011
N	Letter Protest dated 24 August 2011, filed by petitioner G&W on 25 August 2011
O	Supporting Documents submitted to the BIR and Letter dated 14 October 2011, filed by petitioner G&W on 18 October 2011
P	Judicial Affidavit of Arch. Gilbert C. Yu dagted 12 November 2012
with sub-marking Exhibit "P-1"	Signature of Arch. Gilbert C. Yu

During the presentation of respondent's evidence, respondent filed her Manifestation with Urgent Motion to Consolidate CTA Case Nos. 8358, 8426 and 8489 on September 12, 2013[59], which was later granted during the hearing held on September 20, 2013[60].

The Court admitted as part of respondent's evidence Exhibits "1" to "30-A", with the exception of Exhibits "17-A", "19", "19-A", "24", and "24-A" for CTA Case No. 8358; Exhibits "1" to "30-a", except Exhibits "4", "4-a", "4-b", "4-c", "8", "8-a", "8-b", "9", "9-a", "10", "13", "13-a", "13-b", and "15-a" for CTA Case No. 8426; and Exhibits "R-1" to "R-25-1" for CTA Case No. 8489.[61]

Respondent's consolidated documentary evidence are as follows:

CTA Case No. 8358

Exhibit Description

[59] CTA Case No. 8358, Docket, Vol. II, pp. 761-765; CTA Case No. 8426, Docket, Vol. II, pp. 917-921; CTA Case No. 8489, Docket, Vol. II, pp. 941-945.
[60] CTA Case No. 8358, Docket, Vol. II, pp. 767-768; CTA Case No. 8426, Docket, Vol. II, pp. 923-924; CTA Case No. 8489, Docket, Vol. II, pp. 946-947.
[61] CTA Case No. 8358, Docket, Vol. II, pp. 1395-1397 and 1443-1448.

1	BIR Records bearing the report of investigation on the deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) liabilities of petitioner for taxable year 2014.
2	BIR First Notice dated October 6, 2009 to present records addressed to petitioner.
2-A	Name and specimen signature of GERRY O. DUMAYAS, Revenue District Officer of BIR RDO 44, Taguig/Pateros.
2-B	Date of receipt of petitioner of the said BIR First Notice dated October 6, 2009.
3	BIR Second Request to Present Records dated November 9, 2009 addressed to petitioner.
3-A	Name and specimen signature of GERRY O. DUMAYAS, Revenue District Officer of BIR RDO 44, Taguig/Pateros.
3-B	Date of receipt of petitioner of the said BIR Second Request to Present Records dated November 9, 2009.
4	BIR Letter dated January 20, 2010 addressed to petitioner, inviting for an informal conference.
4-A	Name and specimen signature of GERRY O. DUMAYAS, Revenue District Officer of BIR RDO 44, Taguig/Pateros.
4-B	Summary of Computation of the Tax Liability of petitioner for taxable year 2004 which was attached to the said BIR Letter dated January 20, 2010.
4-C	Date of receipt of petitioner of the said BIR Letter dated January 20, 2010 with attached Summary of Computation of its Tax Liabilities for taxable year 2004.
5	Memorandum Report dated March 23, 2010 of Revenue Officer RHODORA S. DE VILLA.
5-A	Name and specimen signature of Revenue Officer RHODORA S. DE VILLA.

6	BIR Preliminary Assessment Notice (PAN) dated July 1, 2010, assessing petitioner a deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for taxable year 2004 <u>for its Kensington Place Condominium Project</u>, located in Taguig City, Metro Manila.
6-A	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
6-B	Details of Discrepancies attached to the said BIR Preliminary Assessment Notice (PAN) dated July 1, 2010.
6-C	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
6-D	Date of receipt of petitioner of the said BIR Preliminary Assessment Notice (PAN) dated July 1, 2010 with attached Details of Discrepancies.
7	Memorandum Report dated August 10, 2010 of Revenue Officer RHODORA S. DE VILLA.
7-A	Name and specimen signature of Revenue Officer RHODORA S. DE VILLA.
8	BIR Letter dated August 18, 2010, in reply to petitioner's protest against the BIR Preliminary Assessment Notices (PAN) dated July 1, 2010.
8-A	Name and specimen signature of GERRY O. DUMAYAS, Revenue District Officer of BIR RDO 44, Taguig/Pateros.
9	BIR Letter dated October 1, 2010, in reply to petitioner's Letter dated September 14, 2010.
9-A	Name and specimen signature of GERRY O. DUMAYAS, Revenue District Officer of BIR RDO 44, Taguig/ Pateros.
9-B	Date of receipt of petitioner of the said BIR Letter dated October 1, 2010.

10	Memorandum Report dated December 2, 2010 of Revenue Officer RHODORA S. DE VILLA.
10-A	Name and specimen signature of Revenue Officer RHODORA S. DE VILLA.
11	BIR Formal Assessment Notice (FAN) and Letter of Demand dated 25 January 2011 addressed to petitioner.
11-A	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
11-B	Details of Discrepancies attached to the said BIR Formal Assessment Notice (FAN) and Letter of Demand dated 25 January 2011.
11-C	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
11-D	Date of receipt of petitioner of the said BIR Formal Assessment Notice (FAN) and Letter of Demand dated 25 January 2011 with attached Details of Discrepancies.
12	Certified True copy of the Housing and Land Use Regulatory Board (HLURB) Decision dated 26 July 2005 in the case entitled "In the Matter of Imposition of Administrative Fine and Cease and Desist Order – G & W Architect, Engineer and Project Dev't. Consultants, Inc.", docketed HLURB Case No. REM-A-041130-0252.
12-A	Ruling/Order of the Housing and Land Use Regulatory Board (HLURB) on the appeal filed by petitioner in HLURB Case No. REM-A-041130-0252.
13	Certified True Copy of BIR Revenue Memorandum Order (RMO) No. 15-2003 dated May 8, 2003.
13-A	BIR Policies stated under sub-paragraph 11 of RMO 15-2003 on the tax examination involving the transfer of real properties covered under the ONETT system of the BIR.

14	Certified True Copy of BIR Revenue Memorandum Circular No. 55-2010 dated June 28, 2010.
14-A	Name and specimen signature of JOEL L. TAN-TORRES, then Commissioner of Internal Revenue.
15	Certified True Copy of the Original BIR Ruling No. DA-956-03 dated February 24, 2003, issued by the BIR to petitioner for its Penhurst Parkplace Condominium project.
15-A	BIR disclaimer/collatilla specified under the said BIR Ruling No. DA-056-03 dated February 24, 2003, issued by the BIR to petitioner.
15-B	Name and specimen signature of MILAGROS V. REGALADO, Asst. Commissioner, Legal Service of the BIR.
16	Certified True Copy of the Original BIR Ruling No. DA-455-2007 dated August 17, 2007 issued by the BIR to petitioner for its Kensington Place Condominium project.
16-A	BIR disclaimer/collatilla specified under the said BIR Ruling No. DA-455-2007 dated August 17, 2007, issued by the BIR to petitioner.
16-B	Name and specimen signature of JAMES H. ROLDAN, Asst. Commissioner, Legal Service of the BIR.
18	BIR Letter addressed to petitioner informing the latter about the revocation made by the CIR of BIR Ruling No. DA-455-2007 dated August 17, 2007, issued for its Kensington Place Condo. project; BIR Ruling No. DA-624-2004 dated December 10, 2004 issued for its Kensington Place Condo. Project; and BIR Ruling No. DA-056-03 dated February 24, 2003, issued fro its Penhurst Parkplace Condominium project.
18-A	Date of receipt by petitioner of the said BIR Letter/Notice of Revocation.

18-B	Name and specimen signature of JOEL L. TAN-TORRES, then Commissioner of Internal Revenue.
20	Certified True Copy of the Memorandum dated January 28, 2008 of the Chief, Legal Division, BIR RR8 Makati City.
20-A	Name and specimen signature of ALBERTO R. BOMEDIANO, JR., Chief Legal Division BIR, RR8, Makati City.
21	Letter dated 3 April 2008 of petitioner through its counsel PACIS & REYES LAW FIRM, filed with the BIR National Office-Law Div., Quezon City in protest to the internal Memorandum dated January 28, 2008 of ALBERTO R. BOMDEDIANO, JR., Chief, BIR Legal Division.
21-A	Specific statement made by petitioner under the said Letter dated 3 April 2008.
22	BIR Notice for Informal Conference dated July 22, 2008 of the Revenue District Officer, BIR RDO 44, Taguig/Pateros.
22-A	Name and specimen signature of LEIDA G. BUSCAINO, Revenue District Officer of BIR RDO 44, Taguig/Pateros.
22-B	Date of receipt of petitioner of the said BIR Notice for Informal Conference dated July 22, 2008.
23	Letter dated 20 May 2009 of the Regional Director, BIR RR8 Makati City.
23-A	Name and specimen signature of ALFREDO V. MISAJON, then Regional Director of BIR RR8 Makati City.
23-B	Date of receipt of petitioner of the said BIR Letter dated 20 May 2009.
25	BIR Preliminary Assessment Notice (PAN) dated June 8, 2010, assessing petitioner a deficiency Expanded Withholding Tax (EWT) and Documentary Stamp (DST) for taxable year 2004 for its <u>Penhurst Condominium Project</u>, located in Taguig City, Metro Manila.

25-A	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
25-B	Details of Discrepancies attached to the said BIR Preliminary Assessment Notice (PAN) dated June 8, 2010.
25-C	Name and specimen signature of JAIME B. SANTIAGO, CESO V, Regional Director, BIR Revenue Region No. 8, Makati City.
26	Letter dated November 16, 2012 of the Chief, Legal Division, RR8 Makati City, addressed to the Board of Commissioner's Housing and Land Use Regulatory Board (HLURB).
26-A	Name and specimen signature of OSCAR A. AGUILAR, Chief Legal Division of BIR, RR8, Makati City.
27	Letter dated November 16, 2012 of the Chief, Legal Division, RR8 Makati City, addressed to the Chief, Law Division, BIR National Office, Diliman, Quezon City.
27-A	Name and specimen signature of OSCAR A. AGUILAR, Chief Legal Division of BIR, RR8, Makati City.
28	Memorandum dated March 28, 2010 of respondent's witness, Atty. CHRISTINA C. BARROGA.
28-A	Name and specimen signature of Atty. CHRISTINA C. BARROGA.
29	Judicial Affidavit dated March 25, 2013 of respondent's witness, Atty. CHRISTINA C. BARROGA.
29-A	Name and specimen signature of Atty. CHRISTINA C. BARROGA.
30	Amended Judicial Affidavit dated March 22, 2013 of respondent's witness, Revenue Officer RHODORA S. DE VILLA.

30-A	Name and specimen signature of Revenue Officer RHODORA S. DE VILLA.

CTA CASE No. 8426

Exhibit	Description
1	BIR Records
2	1st Notice for Presentation of Records dated October 5, 2009
2-a	Stamped received by G & W on the 1st Notice for Presentation of Records dated October 5, 2009
2-b	Signature of Catherine F. Tabagan
3	Second Notice dated November 9, 2009
3-a	Stamped received by G & W on the Second Notice dated November 9, 2009
5	Letter dated February 1, 2010
5-a	Stamped received by G & W on the Letter dated February 1, 2010
5-b	Signature of Revenue District Officer Gerry Dumayas
6	Memorandum dated March 1, 2010
6-a	Signature of Revenue Officer Catherine F. Tabagan
6-b	Signature of Group Supervisor Frederico Q. Pilarca
6-c	Signature of Revenue District Officer Gerry Dumayas
7	Notice of Decision in HLURB Case No.
7-a	HLURB Decision/Disposition of the Case
11	Memorandum dated August 23, 2010
11-a	Signature of Revenue Officer Catherine F. Tabagan

11-b	Signature of Group Supervisor Frederico Q. Pilarca
11-c	Signature of Gerry O. Dumayas
12	Letter dated October 1, 2010
12-a	Stamped received by G &W on the Letter dated October 1, 2010
12-b	Signature of Revenue District Officer -Gerry Dumayas
14	Memorandum dated May 19, 2011
14-a	Signature of Catherine C. Fuentes
14-b	Signature of Revenue District Officer Maridur V. Rosario
15	Letter dated May 19, 2011
16	Assessment Notices dated June 10, 2011 together with the Formal Assessment Notice also dated June 10, 2011 with its corresponding Details of Discrepancies
16-a	Signature of Regional Director Jaime B. Santiago on the front page of the Assessment Notice dated June 10, 2011
17	Stamped received by Johanna Co, Accounting Staff, on the Assessment Notices dated June 10, 2011 on June 28, 2011
18	Memorandum of Assignment
19	Letter dated March 15, 2012
19-a	Stamped received by G & W on the Letter dated March 15, 2012 on March 15, 2012 with signature of Johanna Co
19-b	Handwritten proof of receipt by Atty. Caganda on behalf of G & W
19-c	Signature of Revenue District Officer Maridur V. Rosario

20	Memorandum dated January 28, 2008
20-a	Signature of Alberto R. Bomediano Jr., Chief, Legal Division
21	Letter dated May 20, 2009
21-a	Signature of Alfredo V. Misajon, Regional Director
22	Letter addressed to the President of the petitioner by Commissioner Joel L. Tan-Torres
22-a	Signature of Joel L. Tan-Torres, the Commissioner of Internal Revenue
22-b	Stamped received by petitioner's representative in the person of Liza Chan, Admin. Head, on June 29, 2010
23	Revenue Memorandum Circular No. 55-2010 dated June 28, 2010
24	Judicial Affidavit of Revenue Officer Catherine C. Fuentes
24-a	Signature of Catherine C. Fuentes
25	Complaint in Civil Case No. 71615 (consisting of 16 pages) filed by Joseph Anthony M. Alejandro against G & W Architect, Engineers Project Development Consultants Co. et. al.
26	Amended Complaint (consisting of 16 pages) in Civil Case No. 71615 filed by Joseph Anthony M. Alejandro against G & W Architect, Engineers Project Development Consultants Co. et. al.
27	Answer with Compulsory Counterclaim (consisting of 34 pages) of the counsel of G & W Architect, Engineers Project Development Consultants Co. in Civil Case No. 71615
28	Copy of the printouts gathered from the website (http://www.gw-architects.com/grandhamptons) which advertised petitioner's sale of condo. units to prospective buyers

28-a	Page two of the Copy of the printouts gathered from the website (http://www.gw-architects.com/ grandhamptons) which advertised petitioner's sale of condo. units to prospective buyers
29	Supplemental Judicial Affidavit of Catherine C. Fuentes
29-a	Signature of Catherine C. Fuentes
30	Judicial Affidavit of Rhodora S. De Villa
30-a	Signature of Rhodora S. De Villa

CTA Case No. 8489

Exhibits	Description
R-1	Revenue Memorandum Order (RMO) No. 15-2003 dated May 8, 2003
R-1-1	Sub-paragraph 11 of RMO 15-2003
R-2	First Notice dated October 12, 2009
R-2-1	Name and signature of Revenue Officer (RO) MARY ANN G. ZAMUCO
R-3	Second Notice dated November 9, 2009
R-3-1	Name and signature of Revenue District Officer (RO) GERRY O. DUMAYAS
R-4	Schedule of Computation of the corresponding deficiency taxes due from petitioner based on the List of Unit Owner (so-called "investors") submitted by petitioner
R-4-1	List of Unit Owner (so-called "investors") submitted by petitioner
R-5	Post Reporting Notice (PRN) dated April 16, 2010
R-5-1	Name and signature of RDO GERRY O. DUMAYAS
R-5-2	Date of Receipt on April 16, 2010

R-6	Memorandum Report dated May 12, 2010
R-6-1	Name and signature of RO MARY ANN G. ZAMUCO
R-7	Housing and Land Use Regulatory Board (HLURB) Decision dated July 26, 2005
R-8	Amended Complaint filed by Mr. Joseph Anthony M. Alejandro vs. G & W Architects, Engineers and Project Development Consultants, et. al., docketed as Civil Case No. 71615, RTC Br. 271, Taguig City
R-9	Answer with Compulsory Counter-Claim filed by petitioner in the case "Joseph Anthony M. Alejandro vs. G & W Architects, Engineers and Project Development Consultants, et. al., docketed as Civil Case No. 71615, RTC Br. 271, Taguig City
R-10	Computer Print-Out of petitioner's Advertisement for the Grand Hamptons Tower
R-11	BIR Letter dated November 16, 2012 signed by Atty. Oscar A. Aguilar addressed to the HLURB
R-11-1	Name and signature of Atty. OSCAR A. AGUILAR
R-12	Memorandum dated March 28, 2010
R-12-a	Name and signature of ATTY. CHRISTINA C. BARROGA
R-13	BIR letter addressed to petitioner informing the latter of the nullification of BIR Ruling No. 337-2007 dated June 20, 2007 and other BIR Rulings issued to petitioner
R-13-1	Name and signature of then Commissioner JOEL C. TAN-TORRES
R-13-2	Date of petitioner's Receipt on June 29, 2010
R-14	Formal Assessment Notice (FAN) dated July 26, 2011
R-14-1	Details of Discrepancies attached to the FAN dated July 26, 2011.

R-15	Schedule of Payments of petitioner's clients Mr. JAYAN RUSSEL and Ms. JANETTE SY DY
R-16	Schedule of Payments for petitioner's clients Sps. ENRIQUE B. GEPILLANO III and GRETELWOLDA C. GEPILLANO
R-17	Judicial Affidavit dated September 20, 2013 of ATTY. CHRISTINA C. BARROGA
R-17-a	Name and signature of ATTY. CHRISTINA C. BARROGA
R-18	Judicial Affidavit of Revenue officer MARY ANN G. ZAMUCO
R-18-1	Signature of Revenue Officer MARY ANN G. ZAMUCO
R-19	Manifestation dated September 2, 2005 filed by petitioner before the HLURB manifesting that it will no longer appeal or ask for a reconsideration of the HLURB's Decision dated July 26, 2005
R-20	Certificate of Registration No. 20133 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER I
R-20-1	License to Sell No. 21947 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER I
R-21	Certificate of Registration No. 24027 issued to petitioner as the project developer of THE GRAND HAMPTONS TOWER II
R-21-1	License to Sell No. 25720 issued to petitioner as the project developer of THE GRAND HAMPTONS TOWER II
R-22	Certificate of Registration No. 24426 issued to petitioner as the project developer of THE CRESCENT PARK RESIDENCES CONDOMINIUM
R-22-1	License to Sell No. 26181 issued to petitioner as the project developer of THE CRESCENT PARK RESIDENCES CONDOMINIUM

R-23	Certificate of Registration No. 24418 issued to petitioner as the project developer of THE BLUE SAPPHIRE RESIDENCES
R-23-1	License to Sell No. 26169 issued to petitioner as the project developer of THE BLUE SAPPHIRE RESIDENCES
R-24	Certificate of Registration No. 24028 issued to petitioner as the project developer of THE SAPPHIRE RESIDENCES
R-24-1	License to Sell No. 25271 issued to petitioner as the project developer of THE SAPPHIR RESIDENCES
R-25	Judicial Affidavit of ATTY. MARIA LUISA PANGAN
R-25-1	Name and signature of ATTY. MARIA LUISA PANGAN

The Memorandum for the Petitioner[62] was filed on October 10, 2014; while respondent's Consolidated Memorandum was filed through registered mail on November 11, 2014.[63]

In a Resolution dated November 28, 2014, the consolidated cases were submitted for decision.[64]

Based on the Pre-Trial Brief for Petitioner Ad Cautelam[65], Respondent's Pre-Trial Brief[66] in CTA Case No. 8358, and Pre-Trial Orders in CTA Case Nos. 8426[67] and 8489[68], the parties raised the following issues for this Court's resolution:

1. Whether or not there is a sale transaction from petitioner G & W to the unit owners;

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[62] CTA Case No. 8358, Docket, Vol. II, pp. 1449-1476.
[63] CTA Case No. 8358, Docket, Vol. I, pp. 179-202 and 205-206.
[64] CTA Case No. 8358, Docket, Vol. I, pp. 215-218 and 217.
[65] CTA Case No. 8358, Docket, Vol. I, pp. 179-202 and 205-206.
[66] CTA Case No. 8358, Docket, Vol. I, pp. 215-218 and 217.
[67] CTA Case No. 8426, Docket, Vol. II, pp. 772-778 and 773-774.
[68] CTA Case No. 8489, Docket, Vol. I, pp. 608-615 and 610-611.

2. Whether or not petitioner G & W is liable for withholding taxes;

3. Whether or not the tax deficiency assessment is null and void for the following reasons, among others;

    a. Whether or not the Letter of Authority covering prior years, is in violation of Revenue Memorandum Order No. 43-90;
    b. Whether or not the Letter of Authority was issued by the Revenue Region No. 8 beyond its jurisdiction, petitioner G & W being a registered taxpayer in Revenue District No. 30 of Revenue Region No. 6;
    c. Whether or not the tax deficiency assessment had already prescribed;
    d. Whether or not the tax deficiency assessment does not state the facts and law upon which it is based in violation of Section 228 of the Tax Code;
    e. Whether or not the revocation of the subject BIR Rulings has no facts and law on which said revocation is based; and
    f. Whether or not the revocation of subject BIR Rulings cannot be retroactively applied in violation of petitioner G & W's vested proprietary rights;

4. Whether or not petitioner G & W is liable to the deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) on the alleged sale by petitioner of the condominium units;

5. Whether or not there was an investigation conducted to determine the legal basis for nullifying the BIR Ruling No. DA-337-2007 dated June 20, 2007;

6. Whether or not the Assistant Commissioner of the Legal Service has the authority to issue BIR Ruling No. DA-337-2007 dated June 20, 2007; and

7. Whether or not the subject transactions are One-Time Transactions (ONETT) under Revenue Memorandum Order (RMO) No. 15-2003, where no Letter of Authority is required before verification can be made of such returns.

Additional issues raised by respondent in CTA Case No. 8358:

8. Whether or not the deficiency expanded withholding tax and documentary stamp tax assessments of petitioner for the taxable year 2004 has already become final, executory and demandable pursuant to Section 228 of the 1997 Tax Code;

9. Whether or not the Court has jurisdiction to entertain the instant case; and

10. Whether or not petitioner filed with the BIR the required Withholding Tax Remittance Return (BIR Form 1606) and Documentary Stamp Tax Declaration/Return (BIR Form 2000-OT) on the transfer of the 111 condominium units of Penhurst Parkplace Condominium Corporation and 229 condominium units of Kensington Place Corporation both located at Global City Fort Bonifacio Taguig City.

Respondent alleges that the Court has no jurisdiction over the subject matter in CTA Case Nos. 8358 and 8489 since petitioner failed to submit the required documents in support of its protest against the FAN dated January 25, 2011 and July 26, 2011, within sixty (60) days from the filing of its administrative protests on February 24, 2011 and

August 25, 2011, respectively. Hence, the deficiency EWT and DST assessment for taxable year 2004 has already become final, executory and demandable. As such, this Court has no jurisdiction to act on the instant petition.

This Court disagrees.

The Court finds instructive Section 228 of the NIRC of 1997, as amended, the pertinent portion of which reads:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Petitioner is given a period of sixty (60) days from the filing of the protest within which to submit supporting documents. While respondent alleges that petitioner failed to submit supporting documents on its protests filed on February 24, 2011 and August 25, 2011, records show that petitioner submitted supporting documents to respondent on March 30, 2011[69] for its protest filed on February 24, 2011 and on October 18, 2011[70] for its protest filed on August 25, 2011. Counting from the filing of supporting documents, respondent had 180 days, or until September 26, 2011 and April 15, 2012 within which to render her decision on the protests. Since respondent failed to act on the said protests, petitioner had 30 days from the expiration of the 180 days, or until October 26, 2011 and May 15, 2012, within which to file its appeal before this Court. Clearly, the Petitions for Review filed on October 21, 2011 and May 11, 2012 pertaining to the protests filed on February 24, 2011 (in CTA Case No. 8358) and August 25, 2011 (in CTA Case No. 8489) were within the 30-day prescriptive period within which to file an appeal before the Court.

The Court shall proceed to determine whether the deficiency tax assessment is null and void.

Petitioner alleges that the tax deficiency assessments issued by respondent are null and void since the Letter of Authority issued covers prior years in violation of Revenue Memorandum Order (RMO) No. 43-90, and that the Letter of Authority issued by Revenue Region No. 8 was beyond its jurisdiction, since it is a registered taxpayer of Revenue District Office No. 30 of Revenue Region No. 6.

On the other hand, respondent argues that the investigation on the taxability of petitioner for the alleged transfer of the subject condominium units are covered by Revenue Memorandum Circular (RMC) No. 55-2010 dated June 28, 2010, in relation to RMO No. 15-2003 dated May 8, 2003, wherein no Letter of Authority is required before verification can be made to determine if indeed petitioner is liable to pay the subject deficiency taxes.

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[69] Exhibit "P", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[70] Exhibit "O", CTA Case No. 8489, Docket, Vol. II, pp. 877-904.

The then Commissioner of Internal Revenue issued RMO No. 15-2003 dated May 8, 2003, which set the policies, guidelines and procedures in the processing and monitoring of One-Time Transactions (ONETT) and the issuance of Certificates Authorizing Registration (CARs) covering transactions subject to EWT on sale of real properties considered as ordinary assets, and other taxes including DST related to the sale/transfer of properties, among others.

The significant portion of RMO No. 15-2003 reads:

"I. OBJECTIVES:

This Order is issued to:

1. Simplify documentary requirements and procedures in the processing, verification/audit and review of tax returns on ONETT.

2. Ensure timely issuance of Certificates Authorizing Registration.

3. Ensure the imposition and collection of the correct tax(es).

4. Establish measures to monitor the processing, review and evaluation of ONETT cases.

5. Provide sanctions to be imposed for non-compliance by revenue personnel concerned.

II. POLICIES:

In order to achieve the above objectives, the following policies shall be observed:

1. **ONETT shall cover transactions subject to** Final Capital Gains Tax (FCGT) on sale of real properties considered as capital assets as well as Capital Gains

> Tax (CGT) on the Net Capital Gain on sale, transfer or assignment of stocks not traded in the Stock Exchange(s), **Expanded Withholding Tax (EWT) on sale of real properties considered as ordinary assets,** Donor's Tax (DN), Estate Tax (ES) and **other taxes related thereto including Documentary Stamp Tax (DST).**
>
> xxx xxx xxx
>
> 11. **Issuance of Tax Verification Notice or Letters of Authority (TVN/LA) for ONETT shall no longer be required** except for estate tax case with other tax liabilities of the decedent to determine the other internal revenue tax liabilities that should be paid by the estate before distribution of the properties to the heir/s." *(Emphasis supplied)*

Under the said RMO, issuance of Tax Verification Notice (TVN) or Letters of Authority (LOA) for ONETT shall no longer be required.

The deficiency EWT and DST assessed on the alleged sale of real property considered as ordinary assets in this case being covered by the ONETT, the investigation on the said tax liabilities is still valid even without the Letters of Authority issued by respondent since LOAs or TVN for the said transaction are no longer required.

Moreover, in RMC No. 55-2010[71], Commissioner Joel L. Tan-Torres found that petitioner committed misrepresentation in its request for ruling on its "Build-To-Own or Build-Your-Own" concept for which it has obtained BIR Ruling Nos. DA-056-2003 (Penhurst Parkplace Condominium), DA-624-2004 (Kensington Place Condominium), DA-455-2007 (Kensington Condominium), DA-410-2007 (Sapphire Residences), DA-409-2007 (Blue Sapphire Residences Condominium), and DA-337-2007 (Grand Hamptons Place Condominium). Thus, in the same RMC, Commissioner Tan-Torres declared the said BIR

[71] Exhibit "K", CTA Case No. 8426, Docket, Vol. I, pp. 622-623.

Rulings as null and void and ordered the conduct of a full blown audit and investigation to ascertain the amount of taxes owed by petitioner in connection with the said "Build-To-Own or Build-Your-Own" scheme.

Accordingly, the investigation on petitioner's transfer tax (EWT and DST) liabilities was clearly authorized by then BIR Commissioner Joel L. Tan-Torres.

Nevertheless, even if the Court would set aside the issue pertaining to the validity of the LOAs issued by respondent, perusal of the assessment reveals that the same has no factual basis.

In the Memorandum for Commissioner of Internal Revenue Joel L. Tan-Torres dated March 28, 2010[72], Assistant RDO Christina C. Barroga and RDO Dumayas requested the nullification of BIR Ruling Nos. DA-056-2003, DA-624-2004, DA-455-2007, DA-338-2007, DA-410-2007, DA-409-2007, and DA-337-2007, which exempted from tax the assignment and delivery of the developed units to each Joint Owner/Investor on the basis of a "Contract to Manage and Execute the Construction of Condominium" with the scheme "Build-To-Own or Build-Your-Own" in the following condominium projects all located at Bonifacio Global City:

1. Penhurst Parkplace;
2. Kensington Place;
3. Grand Hamptons Tower 1;
4. The Grand Hamptons;
5. The Sapphire Residences;
6. Blue Sapphire; and
7. Crescent Park Residences. c

[72] Exhibit "28", CTA Case No. 8358, Docket, Vol. II, pp. 1252-1257.

According to Asst. RDO Barroga and RDO Dumayas, petitioner did not pay income tax, VAT and DST on its construction of the above-enumerated condominium projects by reason of the afore-mentioned rulings issued in petitioner's favor.

The revenue officers claim that the Commissioners of the Housing and Land Use Regulatory Board (HLURB) reject the concept of "Build-Your-Own" for being contrary to the policy behind Presidential Decree (PD) No. 957 or the "Subdivision and Condominium Buyers' Protective Decree" by virtue of its resolution directing petitioner to secure Certificate of Registration and License to Sell.

They further argue that the facts upon investigation are different and therefore the said rulings, in so far as they exempt the assignment and delivery of the developed units to each Joint Owner, are null and void.

As a result, the BIR Commissioner issued RMC No. 55-2010, which granted the request of Asst. RDO Barroga and RDO Dumayas for the nullification of the afore-mentioned rulings and ordered the said revenue officers to conduct investigation to determine petitioner's tax liabilities in connection with the assignment and delivery of the condominium units involved in the said rulings.

Formal Assessment Notices were then issued on January 25, 2011[73], June 10, 2011[74] and July 26, 2011[75], finding petitioner liable to pay EWT and DST on the transfer of condominium units, detailed as follows:

CTA CASE NO.	CONDOMINIUM PROJECT	UNITS	TAXABLE PERIOD	EWT	DST	TOTAL
8358	Penhurst Parkplace	111	2004	₱ 90,744,745.00	₱27,252,000.39	₱117,996,745.39

[73] Exhibit "J", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.
[74] Exhibit "M", in CTA Case No. 8426, Docket, Vol. I, p. 625.
[75] Exhibit "M", in CTA Case No. 8489, Docket, Vol. II, p. 727.

	Kensington Place	229	2004	P122,631,860.65	P36,829,511.15	P159,461,371.80
8426	Grand Hampton I	190	July 10, 2004	P102,091,930.43	P30,760,748.62	P132,852,679.05
8489	Grand Hampton II	197	June 2004	P114,909,209.18	P34,505,019.48	P149,414,228.66

In the Details of Discrepancies of the FAN, it was mentioned that the units of the condominium projects have already been issued Condominium Certificate of Title (CCT) in violation of the last paragraph of Section 56(A) of the Tax Code, as amended, which requires the certification of the BIR Commissioner or his duly authorized representative that such transfer has been reported, and the tax therein imposed, if any, has been paid, before the registration of any document transferring real property may be effected by the Register of Deeds.

Respondent also cited the nullification of the BIR Rulings exempting the transfer of condominium units to the unit owners under the so-called co-development/build-to-own/build-your-own and similar schemes.

Considering the foregoing, respondent found that petitioner failed to file the Withholding Remittance Return and pay the corresponding basic withholding tax on the transfer of the condominium units in violation of Section 2.58 of Revenue Regulations No. 2-98, and that petitioner likewise failed to file DST Declaration Return on the transfer of the condominium units under Section 200(B) of the NIRC of 1997, as amended.

Clearly, the findings of respondent in the FAN were based on the nullification of the BIR Rulings, the HLURB Decision, and respondent's assumption that the purported transfer of condominium units to the individual unit owners was actually a sale of condominium units from petitioner to the unit owners.

A close scrutiny of the foregoing likewise shows that the basis of respondent's conclusion that there was a sale of condominium units between the unit owners and petitioner is the Contract to Manage and Execute the Construction of the afore-mentioned condominiums.[76]

Thus, the Court shall evaluate the terms and conditions embodied in the said contract to determine the actual relationship between petitioner and its clients. Article 1370 of the Civil Code provides:

> "ART. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former."

In the case of *Commissioner of Internal Revenue vs. Traders Royal Bank*[77], the Supreme Court said that in the interpretation of contracts, the ascertainment of the intention of the contracting parties is to be discharged by looking to the words they used to project that intention in their contract, all the words, not just a particular word or two, and words in context, not words standing alone.

In the same case, the Supreme Court also cited its ruling in *Bautista vs. Court of Appeals, et al.*[78], wherein it was held that:

> "The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. xxx."

[76] Exhibits "K" and "L", in CTA Case No. 8358, Petitioner's Folder of Exhibits; Exhibits "D", "D-1", "D-2", and "D-3" in CTA Case No. 8426, Docket, Vol. I, pp. 525-560; Exhibits "D", "D-1", and "D-2" in CTA Case No. 8489, Docket, Vol. II, pp. 648-674.
[77] G.R. No. 167134, March 18, 2015, citing *Limson vs. Court of Appeals, et. al.*, G.R. No. 135929, April 20, 2001.
[78] G.R. No. 123655, January 19, 2000.

Petitioner presented the following documents to prove that there is no sale of condominium units between petitioner and its clients:

CONTRACT TO MANAGE AND EXECUTE THE CONSTRUCTION OF CONDOMINIUM	**PROJECT**	**CLIENT**	**TRUST AGREEMENT/ DEPOSITORY AND DISBURSING AGREEMENT**
Exhibit "K" (CTA Case No. 8358)	Penhurst Parkplace	Pek Eng Lim	Exhibit "M" (CTA Case No. 8358)
Exhibit "L" (CTA Case No. 8358)	Kensington Place Condominium	Ellen S. Francisco	Exhibit "N" (CTA Case No. 8358)
Exhibit "D" (CTA Case No. 8426)	Hamptons Place Condominium	Nelly Uy Yu	Exhibit "E" (CTA Case No. 8426)
Exhibit "D-1" (CTA Case No. 8426)	Hamptons Place Condominium	Michael Borja Celis	Exhibit "E-1" (CTA Case No. 8426)
Exhibit "D-2" (CTA Case No. 8426)	Hamptons Place Condominium	Ernesto S. Esmani and Rebecca Esmani	Exhibit "E-2" (CTA Case No. 8426)
Exhibit "D-3" (CTA Case No. 8426)	Hamptons Place Condominium	Shirley Yap Sy	Exhibit "E-3" (CTA Case No. 8426)
Exhibit "D" (CTA Case No. 8489)	Grand Hamptons Place Condominium	Jayan Russel Dy and Janette Sy Dy	Exhibit "E" (CTA Case No. 8489)
Exhibit "D-1" (CTA Case No. 8489)	Grand Hamptons Place Condominium	Enrique G. Gepilano III and Gretelwolda C. Gepilano	Exhibit "E-1" (CTA Case No. 8489)
Exhibit "D-2" (CTA Case No. 8489)	Grand Hamptons Place Condominium	Mitchell O. Soria and Anna Marie P. Amorsolo	Exhibit "E-2" (CTA Case No. 8489)

To determine whether the intention of the parties in the above-mentioned agreements is to enter in a contract of sale of condominium units, the Court shall further be guided by Article 1458 of the Civil Code of the Philippines, which provides that in a contract of sale, one obligates himself not only to deliver a determinate thing but also to transfer ownership thereto for a consideration:

> "ART. 1458. By the contract of sale one of the contracting parties obligates himself to **transfer the ownership** of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> A contract of sale may be absolute or conditional." *(Emphasis supplied)*

In the instant case, there is nothing in the said contracts which would show that there would be a transfer of ownership of the condominium units from petitioner to its clients for the transaction to be considered as a sale of the condominium units.

The Contract to Manage and Execute the Construction of Penhurst Parkplace Condominium between petitioner and Mr. Pek Eng Lim (the client)[79] provides, among others, that:

1. The clients irrevocably names, appoints and constitutes petitioner as its true and lawful attorney-in-fact for the execution of acts properly within the knowledge and expertise of petitioner and to do, among others, the following acts in its stead:

    a. To prepare or cause the preparation of all the necessary documents for the purchase of the Subject Land and the subsequent registration thereof in the name of the Trustee (International Exchange Bank) for the benefit of the Clients;
    b. To apply for the issuance of individual Condominium Certificates of Title in the name of the Trustee (International Exchange Bank), with the proper Registry of Deeds xxx
    c. To prepare or cause the preparation of the necessary contracts for the conveyance by the Trustee (International Exchange Bank) of the Condominium Certificates of Title over the units comprising the Project to the Clients and the Condominium Certificate of Title over the Common Areas to the Condominium Corporation;
    d. To instruct the trustee (International Exchange Bank) to issue payments from the trust to third parties contracted by

[79] Exhibit "K", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.

petitioner to perform and/or complete tasks for the project.

2. Any and all necessary contracts and/or documents arising out of or as a consequence of the foregoing acts while executed by and in the name of petitioner shall be understood to be for and in behalf of the clients.

3. For and in consideration of the services to be rendered by petitioner as overall project manager, an amount equivalent to four percent (4%) of the construction funding shall be paid to petitioner as and by way of professional fee.

4. The construction funding is the amount to be paid by the client to defray the costs for the development and completion of the subject unit the client intends to own and the same shall be payable to the Trust.

5. The said Trust shall be managed by the Trustee (International Exchange Bank) for the clients benefit. The trustee shall own and hold title to the Project in trust for the clients.

In relation thereto, a Trust Agreement was executed between the trustee International Exchange Bank and the client, which provides how the trust fund shall be distributed:[80]

1. To purchase the subject land and pay the purchase price of the said land and to register the same in the name of the trustee, for and in behalf of the clients;

2. To disburse and certify as to the completion of the necessary payments for the project to the various

[80] Exhibit "M", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope.

professionals employed for the project based on the certification of petitioner.

As to the Kensington Place Condominium, Hamptons Place Condominium and Grand Hamptons Place Condominium Projects, the Contract to Manage and Execute the Construction of the said projects between petitioner and its clients[81] contains similar stipulations with that of the Contract to Manage and Execute the Construction of Penhurst Parkplace, except for the following:

1. In the construction of Kensington Place Condominium, Hamptons Place Condominium and Grand Hamptons Place Condominium, petitioner is named as the project manager and a trustee;

2. The clients irrevocably names, appoints and constitutes petitioner as its true and lawful attorney-in-fact to prepare or cause the preparation of all the necessary documents for the purchase of the Subject Land and the subsequent registration thereof in its name for the benefit of the Clients and to apply for the issuance of individual Condominium Certificates of Title in its name, with the proper Registry of Deeds xxx;

3. The construction funding shall be payable to an Account, to be delivered by the client to petitioner together with the signed copies of the Depository and Disbursing Agreement which account shall be held and managed by the Banco de Oro Universal Bank Trust Banking Group for the clients benefit.

[81] Exhibit "L", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope; Exhibits "D", "D-1", "D-2", and "D-3", CTA Case No. 8426, Docket, Vol. I, pp. 525-560; Exhibits "D", "D-1" and "D-2", CTA Case No. 8489, Docket, pp. 648-674/

In relation thereto, Depository and Disbursing Agreements[82] were executed between Banco de Oro Universal Bank Trust Banking Group and the clients, which provide how the funds in the Account shall be distributed.

The stipulations in the said agreements state that the fund in the said account shall be used for the necessary payments in connection with the construction and development of the project and the purchase of the land where the condominium building will be situated. Petitioner shall provide photocopies of source documents to the bank for each disbursement instruction. The source documents shall include but not be limited to bills, invoices, certifications of indebtedness issued by petitioner and other evidence of indebtedness in relation to services rendered or materials procured for the project.

From the foregoing, it can be gathered that all of the acts of petitioner, including the execution and preparation of all necessary contracts and/or documents arising out of or as a consequence of the construction of the project, while may be executed by and in the name of petitioner, **shall be understood to be for and on behalf of the clients**.

Thus, there can be no transfer of ownership of the condominium units between petitioner and its clients considering that petitioner merely acts for and on behalf of its clients.

At this juncture, it must be pointed out that the method of withholding tax at source is a **procedure of collecting income tax** which is sanctioned by our tax laws.[83]

Section 57(B) of the NIRC of 1997, as amended, provides:

[82] Exhibit "N", CTA Case No. 8358, Petitioner's Exhibit in expanding envelope, Exhibits "E", "E-1", "E-2" and "E-3", CTA Case No. 8426, Docket, Vol. I, pp. 561-576, Exhibits "E", "E-1" and "E-2", CTA Case No. 8489, Docket, Vol. II, pp. 675-686.
[83] *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Alberto Romulo, et. al.*, G.R. No. 160756, March 9, 2010.

> "SEC. 57. *Withholding of Tax at Source.* –
>
> xxx xxx xxx
>
> (B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

Relevantly, Section 2.57.2 of Revenue Regulations No. 2-98 covers the matters of income payments subject to creditable withholding tax, and the gross selling price or total amount of consideration paid to seller for the sale of real property other than capital assets as follows:

> "SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of.* – Real property, other than capital assets, sold by an individual, corporation, estate, trust, trust fund or pension fund and the seller/transferor is habitually engaged in the real estate business in accordance with the following schedule –
>
> xxx xxx xxx"

However, in the instant case, the fact of actual sale of condominium units from petitioner to the unit owners was not clearly established in the investigation as well as in the FAN issued by respondent against petitioner.

Notably, the construction funding which respondent considered as the clients payment for the sale of the condominium units is actually the amount held in trust by the bank pursuant to the trust agreement/depository and disbursement agreement in favor of the clients which will be exclusively used for the construction of the project and purchase of the land. In other words, petitioner appears to have no complete control over the said amount; thus, no part of the said fund can be considered as payment for the transfer of the condominium units from which the assessed creditable withholding tax can be deducted.

Also, the evidence of petitioner, such as the Transfer Certificates of Title[84] of the subject lots from which the condominium projects were built and the respective Deeds of Sale[85], show that the said lots were directly transferred from Fort Bonifacio Development Corporation to the Grand Hamptons Tower I Condominium Corporation, Grand Hamptons Tower II Condominium Corporation, Penhurst Parkplace Condominium Corporation and Kensington Parkplace Condominium Corporation. Furthermore, the Condominium Certificates of Title[86] that petitioner presented indicate that the condominium units were transferred directly from the said condominium corporations to the unit owners.

As already mentioned, the participation of petitioner in the transactions was based on the Contracts to Manage and

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[84] Exhibits "B", "C", "F" and "G", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope; Exhibit "H", CTA Case No. 8426, Docket, Vol. II, p. 865; Exhibits "G" and "H", CTA Case No. 8489, Docket, Vol. II, pp. 702-707.

[85] Exhibits "D" and "E", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope; Exhibit "F", CTA Case No. 8426, Vol. I, pp. 577-589; Exhibit "F", CTA Case No. 8489, Docket, Vol. II, pp. 687-701.

[86] Exhibit "H", CTA Case No. 8358, Petitioner's Exhibits in expanding envelope; Exhibits "I", "I-1", "I-2" and "I-3", CTA Case No. 8426, Vol. I, pp. 598-617, Exhibits "I", "I-1" and "I-2", CTA Case No. 8489, Docket, Vol. II, pp. 708-719.

Execute the Construction of the condominium projects[87], which in essence directed petitioner to prepare the documents necessary for the transfer of ownership of the subject land to the condominium corporation and the construction of the condominium units for a professional fee of four percent (4%) of the construction funding. The Court observes that nothing in the said contracts indicate that the ownership of the subject land and the condominium units will first be transferred from FBDC to petitioner **in its personal capacity** and that after the construction of the condominium units, the ownership of the subject land and condominium units will be transferred from petitioner to their clients. **Thus, the transaction between petitioner and its clients, while it may still be considered as sale, is actually a sale of petitioner's services to its clients and not a sale of real property.**

Another basis for the issuance of the FAN against petitioner is the HLURB Decision, which concerns the invitation to prospective co-owners advertised in January and March 1994 offering petitioner's professional services to those interested to build their own condominium unit at direct cost by hiring petitioner as project manager with the Kensington Place as the prospective site. In the said ruling, the HLURB said that "there is no existing co-ownership of a parcel of land as the co-ownership remains an uncertainty and may not materialize in view of a number of variables such as whether there will be enough persons interested to raise the capitalization needed to finance the acquisition of a lot and the development of a condominium project, and whether the lot intended to be purchased will still be available if and when the required funds are finally raised". Thus, the said ruling affirmed the order of the Expanded National Capital Region Field Office of the HLURB for petitioner to pay administrative fines and for it to cease and desist from further selling and/or advertising in any form until the necessary permits or license is secured from the said office.

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[87] Exhibits "K" and "L", in CTA Case No. 8358, Exhibits "D", "D-1", "D-2" and "D-3", in CTA Case No. 8426, and Exhibits "D", "D-1" and "D-2" in CTA Case No. 8489.

Notably, the regulatory power exercised by the HLURB in the above decision appears to be based on variables which, at the time of the issuance of the ruling, remains an uncertainty and may not materialize. These uncertainties were found before the alleged transfer or delivery of the condominium units to the individual unit owners. While this may be considered in the determination of the tax liability of a taxpayer, the BIR should also have determined whether these uncertainties still existed at the time of the transfer of the condominium units. The BIR should also have investigated on the true nature of the transaction between petitioner and the unit owners, whether there is a sale of condominium units between them upon the transfer of the condominium units, based on facts and not based solely on the HLURB decision.

In this regard, respondent may argue that her findings are not merely based on the HLURB ruling, but also on the following facts found upon their investigation which are allegedly different from the representation of petitioner when it was requesting for the subject BIR Rulings:

1. There are as many contracts as there are private investors/joint owners;
2. Petitioner's clients could not have grouped or organized themselves before contracting with petitioner and therefore could not have themselves undertook the construction;
3. Petitioner's act of persuading the clients to invest in the condominium project;
4. Copies of petitioner's advertisements, flyers, FAQs, investors' guide, etc.;
5. The use of the terms "Buyers", "Units available for sale", "Pricing", "Prices start at ₱___, and the provision of payment terms or scheme that is either that of deferred cash or on installment;
6. Annotations in the said ads/flyers worded as follows: "Prices and terms of payment are subject to change without prior notice"; and
7. The Contract to Manage which shows "Particular Description of Subject Unit(s) and Parking(s)" the client/joint owner intends to own.

Pursuant to the Memorandum[88] dated March 28, 2010, the foregoing facts support the conclusion that the contract is in substance a Contract to Sell and the scheme is actually a pre-selling/selling activity.

However, the alleged advertisements and the words used therein which, according to respondent, connote that the transaction is actually a sale of condominium units do not, by themselves, prove that there is actual transfer of ownership of the condominium units from petitioner to the individual unit owners. The alleged facts found upon investigation appear to be mere speculations and presumptions without any factual basis to support them.

The contract is the best evidence to prove the agreement between the parties. In order to disprove the stipulations therein, respondent should have exhausted all lawful means to determine the true nature of the transaction between petitioner and its clients.

In connection thereto, even considering that petitioner, upon respondent's request, still failed to present any document, record, or books of account for tax audit purposes, or any proof or record of any liquidation report on the funds contributed by the alleged investors/joint owners, the same is not an excuse for respondent not to exert effort in gathering these information from other sources to establish that the transaction between petitioner and the unit owners is a sale of condominium units, since respondent may avail herself of the best evidence or other information or testimony by exercising her power or authority under paragraphs (A) to (D) of Section 5 of the NIRC of 1997, as amended, to wit:

> "(A) To examine any book, paper, record or other data which may be relevant or material to such inquiry; C

[88] Exhibit "28", CTA Case No. 8358, Docket, Vol. II, pp. 1252-1257.

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; xxx

Moreover, in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[89], the Supreme Court ruled as follows:

"The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in

[89] G.R. No. 136975, March 31, 2005.

> whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*
>
> In *Campbell, Jr. v. Guetersloh*, the United States (U.S.) Court of Appeals (5th Circuit) declared that it is the duty of the Commissioner of Internal Revenue to **investigate any circumstance which led him to believe that the taxpayer had taxable income larger than reported**. Necessarily, this inquiry would have to be outside of the books because they supported the return as filed. He may take the sworn testimony of the taxpayer; **he may take the testimony of third parties; he may examine and subpoena, if necessary, traders' and brokers' accounts and books and the taxpayer's book accounts. The Commissioner is not bound to follow any set of patterns**. The existence of unreported income may be shown by any practicable proof that is available in the circumstances of the particular situation. Citing its ruling in *Kenney v. Commissioner*, the U.S. appellate court declared that where the records of the taxpayer are manifestly inaccurate and incomplete, **the Commissioner may look to other sources of information to establish income made by the taxpayer during the years in question**." *(Emphasis supplied)*

Respondent could have at least taken the testimony under oath of petitioner's clients to determine their true intention in entering into the Contract of Management and Execution of the Condominium projects or of third parties as may be relevant or material to the assessment. However, during the hearing held on October 8, 2013, respondent's witness, Ms. Catherine C. Fuentes, testified that their office has no record of the statement of the purported buyers in writing and under oath.[90] Instead, respondent chose to resort to presumptions and heavily relied on the HLURB Decision and on the nullification of the BIR Rulings, which may have supported the legal basis of the assessment, but failed to sufficiently establish its factual basis.

It is true that all presumptions are in favor of the correctness of a tax assessment. However, 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. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis.[91]

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.[92] Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[93]

Accordingly, the presumption of correctness of the assessment does not apply in the instant case considering that respondent's conclusion, that the transaction between petitioner and the unit owners is a sale or transfer of ownership from the former to the latter, is not based on actual facts and are mere presumptions.

Thus, the deficiency EWT and DST assessed for the alleged sale of real property has no factual basis and must therefore be cancelled.

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[90] Transcript of Stenographic Notes taken on October 8, 2013, pp. 33-36.
[91] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.
[92] *Commissioner of Internal Revenue vs. Alberto D. Benipayo,* G.R. No. L-13656, January 31, 1962.
[93] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals,* G.R. No. L-46644, September 11, 1987.

Consequently, the resolution of the remaining issues is already deemed moot.

WHEREFORE, the instant Petitions for Review filed on October 21, 2011, February 15, 2012 and May 11, 2012 are hereby **GRANTED**. Accordingly, the deficiency expanded withholding tax and documentary stamp tax assessed for the periods 2004, July 10, 2004, and June 2004, in the amounts of ₱277,458,117.19, ₱132,852,679.05, and ₱149,414,228.66, respectively, or in the total amount of ₱559,725,024.90, are hereby **CANCELLED**.

SO ORDERED.

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

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO., *Petitioner,*	**CTA CASE Nos. 8358, 8426 and 8489**
	Members:
-versus-	**DEL ROSARIO**, *Chairperson,* **UY**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 03 2015; 4:00 p.m.

x -- x

DISSENTING OPINION

DEL ROSARIO, PJ.:

With due respect, I dissent with the *ponencia* in granting the Petition for Review and cancelling the deficiency expanded withholding tax (EWT) and documentary stamp tax (DST) assessed for the periods June 24, 2004, July 10, 2004, and June 2004.

Petitioner's Built-to-Own or Build-Your-Own-Home concept of purportedly pooling condominium unit owners' funds to be used for the construction of the condominium units on behalf of the fund owners constitute a taxable sale, exchange or disposition of real property, hence, subject to EWT and DST.

Petitioner's aforementioned Built-to-Own or Build-Your-Own-Home activity is covered by three (3) agreements, particularly: the Contracts to Manage and Execute the Construction of the Condominium between petitioner and the condominium unit owners;[1] the Trust Agreements established by the condominium unit owners, naming a trustee to hold in trust the pooled funds of the condominium unit owners and the land where

[1] Exhibits "K", and "L" in CTA Case No. 8358, Exhibits "D", "D-1", "D-2", and "D-3" in CTA Case No. 8426, Exhibits "D" and "D-1" in CTA Case No. 8489.

the condominium project will be located;[2] and the Depository and Disbursing Agreements between Banco De Oro Universal Bank Trust Banking Group and the condominium unit owners.[3]

On its face, the Contract to Manage and Execute the Construction of the Condominium appears to be a contract for services where the unit owners pay petitioner for the construction and management of the condominium projects. The Trust Agreement, on the other hand, regulates the pooled funds of the condominium unit owners to be used for the construction of the condominium project and for the purchase of the land where the condominium project will be built. The Depository and Disbursing Agreement, on the other hand, governs the disbursement of the construction funding held in trust.

True, the best evidence of the intention of the parties to a contract is the contract itself being the formal expression of the parties' rights, duties and obligations.[4] The stipulations of the contract and not its title are controlling and such stipulations confirm the nature of the contract.[5] When the real intention of the parties to the contract is in issue, however, their subsequent or contemporaneous acts must be principally considered to reveal their true intention.[6]

Interestingly, the following provisions in the Contract to Manage and Execute the Construction of the Condominium, the Trust Agreement, and the Depository and Disbursing Agreement amplify respondent's theory that petitioner is a seller and the unit owners are the buyers thereof:

CONTRACT TO MANAGE & EXECUTE THE CONSTRUCTION OF CONDOMINIUM[7]

xxx xxx xxx

SECTION 3

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[2] Exhibit "M" in CTA Case No. 8358.

[3] Exhibit "N" in CTA Case No. 8358, Exhibits "E", "E-1", "E-2" and "E-3" in CTA Case No. 8426, Exhibits "E", "E-1", and "E-2" in CTA Case No. 8489.

[4] *Norton Resources and Development Corporation v. All Asia Bank Corporation,* G.R. No. 162523, November 25, 2009.

[5] *Peoples Industrial and Commercial Corporation, vs. Court of Appeals and Mar-Ick Investment Corporation*, G.R. No. 112733, October 24, 1997.

[6] Article 1371, Civil Code; *Anita C. Buce vs. The Honorable Court of Appeals, et al.*, G.R. No. 136913, May 12, 2000.

[7] Exhibit "K" and "L".

DEVELOPMENT AND MANAGEMENT OF THE PROJECT

3.01 Engagement of G & W

The Client hereby engages the services of G & W as project manager in relation to the Project and trustee in relation to, the Subject Land and G & W, by virtue of such engagement, shall assume the responsibilities enumerated in this Section. The Client, however, acknowledges and confirms that G & W does not assume the role of developer of the Project and hence, has not made and is not making any representation that it is, in its own capacity, selling the units comprising the Project.

3.03 G & W as Project Manager

Pursuant to the engagement of G & W as project manager, Client requires G & W to do the following acts on behalf and for the collective benefit of the Clients and in furtherance of the development of the Project:

xxx xxx xxx

The power and authority hereby granted to G & W shall terminate upon the Acceptance and Turnover of the Subject Unit(s) by the Client and the conveyance of the common areas of the Project to the Condominium Corporation as provided in Subsection 5.05. **For purposes of this Contract, Acceptance and Turnover shall mean that point in time when the Project is conclusively deemed completed through the joint certification of G & W and the Construction Manager.** The Client expressly acknowledges that the aforesaid entities possess the required technical expertise to properly ascertain that the Project is completed. Without in any manner limiting the exclusive authority of G & W and the Construction Manager to jointly certify that the Project is completed, Project completion shall consist of the following:

xxx xxx xxx

Upon Acceptance and Turnover and the Trustee's certification of full payment by the Client of all amounts provided in this Contract, the Subject Unit shall be conveyed by the Trustee to the Client and this Contract shall terminate.

xxx xxx xxx

3.07 Scope of Obligations

Any and all acts to be done and performed by G & W pursuant to its responsibilities hereunder shall be deemed to have been done and performed by it in representation and on behalf of the Clients for the effective development of the Project. In the absence of willful default or misconduct, fraud, bad faith or gross negligence or violation of any provision of this Contract on the part of G & W, the Clients shall be bound by all the obligations which G & W may have contracted within the scope of its authority. The Client agrees to hold G & W free and harmless from any and all losses, claims, damages, liabilities and expenses, or actions with respect thereto arising out or by virtue of the failure of the Client to comply with any of its undertakings, covenants or obligations herein not otherwise attributable to the fault or negligence o[f] G & W.

xxx xxx xxx

SECTION 5
CLIENT'S SHARE OF INTEREST IN THE PROJECT

5.01 Subject Unit(s)/ Parking Unit(s)

As part of his interest in the Project, the Client shall be assigned: (i) the Subject Unit(s), which is/are more particularly described in Schedule "A" hereof, and (ii) the Parking Unit(s), which is/are more particularly described also in Schedule "A" hereof, which represents a percent proportionate of the entire project which shall be indicated in the Master Deed.

xxx xxx xxx

5.04 Non-assignability of Interest

The rights and interests of the Client in the Project, the Subject Unit, the Parking Unit, and the corresponding proportionate undivided interest in the Common Areas of Project shall not be assignable, unless with the prior written approval of G & W. In the event G & W should grant such an approval, the Client shall be required to pay G & W a processing fee of Pesos: Fifteen Thousand (Php 15, 000.00).

5.05 Conveyance of Title to the Subject Unit and Common Areas

Upon completion of the Project and full payment by the Client of all amounts payable under this Contract, <u>title</u> to the Subject Unit including the Parking Unit shall be conveyed by G & W to the Client. Upon completion of the Project, title to the Common Areas shall be conveyed by G & W to the Condominium Corporation which shall be established in accordance with the provisions of the Master Deed.

xxx xxx xxx

SECTION 7
REMEDIES FOR DELAY IN PAYMENT

7.01 Payment of Penalty

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The Client hereby acknowledges that time is of the essence in this contract. Furthermore, the Client hereby agrees and acknowledges that any delay in payments to the Trustee through G & W of the Construction Funding or any delay in payments to G & W of Labor Cost Overruns or Miscellaneous Expenses in accordance with the schedule of payments provided herein will cause the delay of the completion of the whole project. **Accordingly, a penalty of one and a half percent (1.5%) a month shall be imposed for such late payments, based on the amount which should have been contributed or paid for every calendar day of delay**.

7.02 Free and Harmless Cause

The Client acknowledges that his delay in any payment to the Trustee through G & W of the Construction Funding, or his delay in any payment to G & W of the Miscellaneous Fees or Labor Cost Overruns, or his failure to comply with any of his other obligations under this Contract, may result in a default by G & W on its obligations to the other Clients under the Contracts with such other Clients. In addition to the penalty interest under Section 7.01, the Client hereby agrees to hold G & W free and harmless against any and all claims for damages which may be made or filed against G & W by the other Clients or other third parties as a result of or arising from the delay by the Client in any payment of the Construction Funding or his failure to comply with any of his other obligations under this Contract.

xxx xxx xxx

SECTION 8
TERMINATION

8.01 Violation or Default

G & W shall have the right to reseind, terminate or cancel this Contract including the trust herein created with respect to the Subject Land, without need of judicial action, in case any one of the events of default stipulated hereunder occurs, and the Client fails to remedy or cure to the satisfaction of G & W such default, within five (5) days from receipt of written notice from G & W pf the occurrence of such default:

(a) Failure to pay any of the Construction Funding payments in accordance with the schedule of payment herein provided for over 60 days;
(b) Failure to pay the Client's portion of the Cost Advances or Labor Cost Overruns if any, or any portion thereof;

Upon such termination, G & W shall have the right to acquire, or identify a substitute client to acquire all the rights and interests of the Client in the Project and to assume the corresponding remaining obligations hereunder. If at the time the violation or default occurs, Client had paid thirty five percent (35%) or less of the Construction Funding (including accrued cost Overruns and Cost Advances), any and all amounts already paid by the Client **shall automatically be forfeited by way of liquidated damages in favor of G & W**, without need of judicial intervention. If at the time the violation or default occurs, Client had paid more than thirty five percent (35%) of the Construction Funding (including accrued Cost Overruns and Cost Advances), the excess over the said percentage shall be returned to the Client after deducting all expenses and costs involved including the Bank's professional fees, attorney's fees and other acts of administration.

The remedy herein granted is without prejudice to the right of G & W to avail of the remedies to which it is entitled under Section 7 hereof.

Should G & W deem that it is not feasible to continue with the Project, it may also terminate this Contract by advance written notice to the Client of at least five working days. In such case, all Construction Funding payments which have been deposited in the Account shall be returned to the Client, together with all interests which in the meantime have accrued thereon after deducting professional fees due to the Bank under the terms of this Contract and the Depository and Disbursement Agreement. Should professional fees due to the Bank exceed interest earned from the Account, G & W undertakes to pay the aforesaid deficiency.

8.02 Effect of Termination

Unless termination was made in accordance with Section 8.01 above, **termination of this Contract shall not relieve the Client from the obligation to pay or remit any amounts payable under this Contract and accrued as of the effective date of termination.**

xxx xxx xxx

11.03 Binding Effect

This Contract shall be binding upon and shall be enforceable against the Client and G & W and their respective successors and assigns; provided, however, that **the Client shall not have the right to transfer or assign any and all of his rights or obligations herein without the prior written consent of G & W**."

cml

TRUST AGREEMENT[8]

DISTRIBUTION OF TRUST FUND

4.0 The Trustee shall distribute the Trust Fund in accordance with the following instructions of the Trustor:

xxx xxx xxx

(d) To convey the Condominium Certificate of Title over the Subject Unit(s) to and in favor of the Trustor;
(e) To convey the Condominium Certificate of Title over the Common Areas to the Condominium Corporation;
(f) **To transfer to the name of G & W or a substitute client identified by G & W the amounts in trust as liquidated damages in cases of violation or default of the Trustor of or in his obligations under the Contract which results in G & W acquiring the right, or identifying a substitute client to acquire all the rights and interests of the Trustor thereunder, including any and all contracts and agreements arising in connection therewith**;
(g) To return the Construction Funding to the Trustor together with all accrued income and interests thereon where instructed by G & W; and,
(h) To sign, execute and deliver such documents as may be necessary to carry out the foregoing instructions.

4.1 The Trust hereby created as well as this Agreement shall automatically be terminated upon: (i) **violation or default of the Trustor of or in his obligations under the Contract which results in G & W acquiring the right, or identifying a substitute client to acquire all the rights and interests of the Trustor of or in identifying a substitute client to acquire all the rights and interests of the Trustor, and to assume the corresponding obligations**; (ii) the return of the Construction Funding to the Trustor in accordance with Subsection 4.0 (g) above, or, (iii) completion of the Project and the complete delivery and transfer of title to the Subject Unit to the Trustor and the Subject Land and Common Areas to the Condominium Corporation. Any remaining balance of the Trust may also be terminated in accordance with the procedure set forth in Subsection 5.04 of the Contract.

xxx xxx xxx

DEPOSITORY AND DISBURSING AGREEMENT[9]

xxx xxx xxx

"9. TERMINATION OF THE AGREEMENT

[8] Exhibit "M" in CTA Case No. 8358.
[9] Exhibit "N", petitioner's Formal Offer of Evidence folder.

> 9.01 This Agreement shall automatically terminate upon: a) **violation or default of the PRINCIPAL of his obligation under the Contract which results in G & W acquiring the right or identifying a substitute client to acquire all the rights and interests of the PRINCIPAL and assume the corresponding obligations in the Contract**; b) the return of the Funds to the PRINCIPAL in accordance with Sec. 2.02 hereof; c) completion of the Project as certified by G & W." *(Emphases supplied)*

From the afore-quoted provisions, it is apparent that all the attributes of ownership of the condominium project are integrated into, and are being exercised by, the petitioner. The Contract to Execute and Manage the Construction of the Condominium pretentiously suggests that petitioner is simply the manager of the project, when in truth, ownership rights of petitioner's purported "clients" over the project or any of the condominium units accrue and become vested upon them only upon full payment of the said units. Note that under the said contract, petitioner has the potent authority to terminate the contract when the supposed "clients" fail to pay the amounts payable, and the power to substitute the client who violated its terms or defaulted in the payment. **The supposed "clients"' only obligation under the said contract is confined to paying a specified amount and upon full payment, the clients will acquire ownership of their respective condominium units. Such arrangement cannot be any different from a contract to sell. Upon full payment by the clients, the transaction is properly deemed a sale of condominium unit.**

Article 1458 of the Civil Code defines a contract of sale:

> "**Article 1458.** By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> A contract of sale may be absolute or conditional."

The essential elements of a contract of sale are the following: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.[10]

In the case at bar, all the essential elements of a contract of sale are present. The first element, consent to transfer ownership in exchange for the

[10] *Mila A. Reyes vs. Victoria T. Tuparan*, G.R. No. 188064, June 1, 2011.

price, is clearly stated in the Contract to Manage and Execute the Construction of the Condominium:

> 5.05 Conveyance of Title to the Subject Unit and Common Areas
>
> **Upon completion of the Project and full payment by the Client of all amounts payable under this Contract, title to the Subject Unit including the Parking Unit shall be conveyed by G & W to the Client.** Upon completion of the Project, title to the Common Areas shall be conveyed by G & W to the Condominium Corporation which shall be established in accordance with the provisions of the Master Deed. (Emphasis supplied)

The second element, determinate subject matter, is the completed condominium unit, and the third element, price certain in money, is the amount payable under the purported Contract to Manage and Execute the Construction of the Condominium which is further subject to the relevant provisions of the Trust Agreement and the Depository and Disbursement Agreement.

Under these circumstances, there is no denying that the transaction contemplated under the Contract to Manage and Execute the Construction of the Condominium is a sale of condominium units despite the contractual embellishments that attempt to conceal its true nature.

Furthermore, records disclosed petitioner's contemporaneous and subsequent acts that point to a contract of sale/contract to sell. Its own advertisement for the sale of the condominium units in its website to buyers, particularly that for Grand Hampton's Tower[11], is consistent with a seller's act as it tellingly reads:

> **"4 Easy Steps for Foreign Buyers**
>
> STEP 1
>
> Select a Desired Unit
>
> xxx xxx xxx

[11] Exhibits "28" (Copy of the printouts gathered from the website (http://www.gw-architects.com/grandhamptons) which advertised petitioner's sale of condo. Units to prospective buyers) and "28-a" (Page two of the Copy of the printouts gathered from the website (http://www.gw-architects.com/grandhamptons) which advertised petitioner's sale of condo. units to prospective buyers) in CTA Case No. 8426, and Exhibit "R-10" (Computer Print-Out of petitioner's Advertisement for the Grand Hampton's Tower) in CTA Case No. 8489.

STEP 2

Reserve Your Unit

xxx xxx xxx

Reservation Fees are as follows:
1) Penthouse [171.75 sqm (1848.70 sq. ft.)] – Php 75,000
2) 3-Bedroom [128.27 sqm (1,380.69 sq. ft.)] – Php 75,000
3) 2-Bedroom [77.91 sqm (838.62 sq. ft.)] – Php 50,000
4) 1-Bedroom [48.28 sqm (519.68 sq. ft.)] – Php 50,000
5) 1-Bedroom [46.00 sqm (495.14 sq. ft.)] – Php 50,000

xxx xxx xxx

STEP 3
Sign Contract

xxx xxx xxx

STEP 4
Directly Remit payments to Banco De Oro under your account name

xxx xxx xxx

(Emphasis supplied)

With such open invitation to the public on the mode and manner of acquiring a condominium unit, one must indeed be extremely naive to accept petitioner's claim that it is merely a "contractor" under the Contract to Manage and Execute the Construction of the Condominium.

Not only that, petitioner even applied for and was granted Licenses to Sell the condominium units by the Housing and Land Use Regulatory Board (HLURB), thereby tacitly admitting that it was engaged in the selling of condominium units. The following Licenses to Sell[12] of petitioner bolster its status as a seller of condominium units:

Exhibits	**Descriptions**
"R-20"	Certificate of registration No. 20133 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER I
"R-20-1"	License to Sell No. 21947 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER I
"R-21"	Certificate of registration No. 24027 issued to petitioner as the

[12] Exhibits "R-20", "R-20-1", "R-21", "R-21-1", "R-22", "R-22-1", "R-23", "R-23-1", "R-24", and "R-24-1" in CTA Case No. 8489.

	project owner and developer of THE GRAND HAMPTONS TOWER II
"R-21-1"	License to Sell No. 25720 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER II
"R-22"	Certificate of registration No. 24426 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-22-1"	License to Sell No. 26181 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-23"	Certificate of registration No. 24418 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-23-1"	License to Sell No. 26169 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-24"	Certificate of registration No. 24028 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-24-1"	License to Sell No. 25271 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM

Indeed, there would have been no necessity to secure the afore-listed Licenses to Sell, if petitioner were not engaged in selling condominium units, as it tenaciously claims.

Section 5 of Presidential Decree 957[13] requires a license to sell as a condition *sine qua non* first obtained before selling condominium units:

> **Section 5. *License to sell.* Such owner or dealer to whom has been issued a registration certificate shall not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.**
>
> The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent. (Emphasis supplied)

Presidential Decree No. 957 is implemented by the HLURB.[14]

[13] The Subdivision and Condominium Buyers' Protective Decree.

In HLURB Case No. REM-A-041130-0252, where petitioner appealed the order of the Expanded National Capital Region Field Office of the HLURB **imposing an administrative fine on petitioner for selling condominium units without a license to sell,** for failure to secure certificate of registration and for advertising without prior approval, **and ordering it to cease and desist from further selling and advertising until all the necessary permits or license is secured,** the HLURB denied petitioner's appeal and affirmed the order of imposition of fine, and cease and desist order.[15] Expectedly, the HLURB required petitioner to secure licenses to sell and petitioner complied with the said directive.

With regard to petitioner's claim that it was denied due process when BIR Ruling Nos. DA-056-2003, DA-624-2004, DA-455-2007, DA-338-2007, DA410-2007, DA-409-2007 and DA-337-2007 were revoked by respondent, I disagree.

The BIR Rulings were issued pursuant to Section 7 of the National Internal Revenue (NIRC) of 1997, as amended, which provides that the Commissioner of the Internal Revenue (CIR) has the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau. Generally, once a ruling has been issued, the revocation, modification or reversal of its rulings cannot be given retroactive effect pursuant to Section 246 of the NIRC of 1997, as amended. The same provision, however, provides that **"(a) where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) Where the taxpayer acted in bad faith", the Commissioner may revoke the same as an exception to Section 246 of the NIRC of 1997, as amended.**

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[14] Executive Order No. 90, December 17, 1986; Executive Order No. 648, February 7, 1981.

[15] Exhibits "12" (Certified True Copy of the Housing and Land Use Regulatory Board (HLURB) Decision dated 26 July 2005 in the case entitled "In the Matter of Imposition of Administrative Fine and Cease and Desist Order – G & W Architect, Engineer and Project Dev't. Consultants, Inc.", docketed HLURB Case No. REM-A-041130-0252) and "12-A" (Ruling/Order of the Housing and Land Use Regulatory Board (HLURB) on the appeal filed by petitioner in HLURB Case No. REM-A-041130-0252) in CTA Case No. 8358; Exhibits "7" (Notice of Decision in HLURB Case No.) and "7-a" (HLURB Decision/Disposition of the Case) in CTA Case No. 8426; Exhibit "R-7" (Housing and Land Use Regulatory Board (HLURB) Decision dated July 26, 2005) in CTA Case No. 8489.

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In the case of *Republic of the Philippines, represented by the Bureau of Food and Drugs vs. Drugmaker's Laboratories, Inc. and Terramedic, Inc.*[16], the Supreme Court tersely clarified the classifications of administrative regulations, *viz*:

> "An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. Legislative rules are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates**. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, contingent rules are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends."
>
> **In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law." (Citations omitted and emphasis supplied)

Simply stated, the requirements of prior notice, hearing and publication are necessary when the administrative ruling partakes of a legislative nature. On the other hand, interpretative rules, as those involved in the present controversy, need no prior notice, hearing and publication to be valid and binding.

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[16] G.R. No. 190837, March 5, 2014.

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Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, et al.[17] was categorical in declaring that the inquiry to be made by courts in considering interpretative rulings is not into the validity but into the correctness or propriety of the rule:

> *Second.* Petitioner complains that it was denied due process because it was not heard before the ruling was made. There is a distinction in administrative law between legislative rules and interpretative rules. [3] There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule. But it is not. It is a mere interpretative rule.
>
> xxx xxx xxx
>
> Accordingly, in considering a legislative rule a court is free to make three inquiries: (i) whether the rule is within the delegated authority of the administrative agency; (ii) whether it is reasonable; and (iii) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. **In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power, a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule.**[6] (Emphasis supplied)

An interpretive rule may be further classified as general interpretative rule or a specific interpretative rule, as differentiated in *CBK Power Company Limited vs. Commissioner of Internal Revenue*[18]:

> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer. BIR Ruling No. DA-489-03 is a **general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency** asked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay

[17] G.R. No. 108524, November 10, 1994.
[18] G.R. Nos. 198729-30, January 15, 2014.

> Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. (Emphasis supplied)

In the case at bar, the revoked BIR rulings involve petitioner's request for an administrative pronouncement on whether its Built-to-Own or Build-Your-Own-Home activity is a taxable event being purportedly a transfer of property held in trust by the Trustee for the individual Trustor. Respondent undeniably answered in the affirmative, which response or rulings constitute specific interpretative rules having been issued upon request of the petitioner.

I submit, therefore, that the validity of the revocation of the BIR rulings and the retroactive application of their revocation are warranted on the following grounds:

1. The afore-listed BIR rulings and subsequent BIR ruling revoking them are interpretative rules which do not require prior notice, hearing and publication for their validity;

2. The revocation of the said rulings is the result of the investigation conducted by the BIR which eventually arrived at the conclusion that petitioner misrepresented the facts upon which the revoked rulings were based; and

3. Respondent is not bound by the ruling of her predecessors.[19]

It has been settled in cases too numerous to cite that findings of fact of administrative agencies and quasi-judicial bodies, including those of the HLURB and the BIR, which acquired expertise because their respective jurisdictions are confined to specific matters, are generally accorded great respect.[20]

In fine, transactions crafted to appear as something they are not cannot be countenanced especially if such transactions are contrary to public policy or are used as a tool for committing tax evasion.

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[19] Section 7, NIRC of 1997, as amended; *BPI Family Bank vs. Court of Appeals, et al.*, G.R. No. 117319, July 19, 2006.

[20] *Jose Geukeko vs. Hon. Salvador Araneta, Secretary Of Agriculture and Natural Resources, etc.*, G.R. No. L-10182, December 24, 1957; *Alexander B. Gatus vs. Social Security System*, G.R. No. 174725, January 26, 2011.

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All told, I **VOTE** to **DENY** the Petition for Review filed by G & W Architects, Engineers and Project Consultants in CTA Case Nos. 8358, 8426 and 8489, and **UPHOLD** the subject assessments for deficiency EWT and DST for the periods of June 24, 2004, July 10, 2004, and June 2004, in the amounts of ₱277,458.117.19, ₱132,852,679.05, and ₱149,414,228.66, respectively, or in the total amount of ₱559,725,024.90.

ROMAN G. DEL ROSARIO
Presiding Justice