REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

QUEZON CITY

SECOND DIVISION

FIRST SUMIDEN REALTY, INC., Petitioner,	**CTA CASE NO. 8151**
	Members:
- versus -	**CASTAÑEDA, JR., CASANOVA, MINDARO-GRULLA, *JJ.***
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	SEP 27 2012 10:25 a.m.

X- X

DECISION

CASANOVA, *J.*:

This is a Petition for Review filed by First Sumiden Realty, Inc. ("FSRI") on August 20, 2010 pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act 9282, due to the inaction of the respondent on its letter of protest[1] filed on January 22, 2010 against the Formal Letter of Demand[2] and Audit Results/Assessment Notice dated December 28, 2009. The Formal Letter of Demand, which was received by petitioner on January 15, 2010, represents petitioner's alleged deficiency value-added tax (VAT) and final withholding tax

[1] Exhibit "D", with Exhibit "J" as Supplemental Protest Letter dated August 9, 2010.
[2] Exhibit "C".

(FWT), inclusive of interest and compromise penalties, in the aggregate amount of ₱7,869,009.76, covering taxable year 2006.

The facts of the case, based from the parties' pleadings and joint stipulation of facts and issues, are as follows:

Petitioner FSRI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal business address at Ampere St. corner Main Avenue, LISPP, Bo. Diezmo, Cabuyao, Laguna.[3]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed official vested with the authority to carry out the functions, duties and responsibilities of said office including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner is a PEZA-registered Ecozone Facilities Enterprise located at the Light Industry and Science Park of the Philippine Special Economic Zone, primarily engaged in the business of the construction of factory buildings for lease or for sale specifically to registered ecozone enterprises.[4]

On February 10, 2006, petitioner filed with the Bureau of Internal Revenue (BIR) its Monthly Remittance Return of Final Income Taxes Withheld covering the period January 2006.[5]

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[3] Par. 1, Stipulated Facts, Joint Stipulations of Facts and Issues (JSFI), Docket, p. 149.
[4] Par. 3 & 4, Ibid, Docket, p. 150.
[5] Par. 14, Id, docket, p. 151; Exhibit "L" for the petitioner and Exhibit "20" for the respondent.

On April 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period January to March 2006.[6]

On July 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period April to June 2006.[7]

On October 25, 2006, petitioner filed with the BIR its Quarterly VAT Return covering the period July to September 2006.[8]

On January 24, 2007, petitioner filed with the BIR its Quarterly VAT Return covering the period October to December 2006.[9]

On March 24, 2009,[10] petitioner received respondent's Preliminary Assessment Notice with the attached Details of Discrepancies,[11] assessing petitioner for alleged deficiency value-added tax and final withholding tax for 2006.

On April 13, 2009, petitioner filed its reply addressed to Jaime Santiago, Regional Director of BIR Revenue Region No. 9, Assessment Division, San Pablo City.[12]

On January 15, 2010,[13] petitioner received respondent's Formal Letter of Demand, with attached Details of Discrepancy and Audit Results/Assessment Notice dated December 28, 2009, assessing petitioner for alleged deficiency VAT and FWT inclusive of interest and compromise penalties for taxable year 2006, in the aggregate amount of ₱7,869,009.76, broken down as follows:[14]

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[6] Exhibit "K".
[7] Par. 12, Id., Docket, p. 151; and Exhibit "K-1".
[8] Par. 13, Id., Docket, p. 151; and Exhibit "K-2".
[9] Date filed was based on the date indicated in petitioner's Formal Offer of Evidence, specifically under the purpose for which "Exhibit K-3" was formally offered (see Docket, p. 279). Date of filing is not legible per Exhibit "K-3" and BIR Records, page 104.
[10] Exhibit "42", Judicial Affidavit of Maria Rona J. Uychutin; and Exhibit "30".
[11] Exhibit "29".
[12] Exhibit "30"; Exhibit "42", Judicial Affidavit of Maria Rona J. Uychutin.
[13] Exhibit "Q", Judicial Affidavit of Liz M. Fernandez.
[14] Exhibit "C" for the petitioner; and Exhibits "31" and "32" for the respondent.

Particulars	Basic Tax	Interest	Compromise Penalty	Total
VAT	3,129,052.20	1,853,094.24	25,000.00	5,007,146.44
FWT	1,778,597.69	1,058,265.63	25,000.00	2,861,863.32
Totals	**P 4,907,649.89**	**P 2,911,359.87**	**P 50,000.00**	**P 7,869,009.76**

On January 22, 2010, petitioner protested the foregoing assessment by filing a letter-protest dated January 21, 2010 addressed to Mr. Nestor S. Valeroso, Regional Director of BIR Revenue Region No. 9, San Pablo City.[15]

In the letter dated March 3, 2010,[16] respondent, through Rodita Galanto, Regional Director of BIR Revenue Region No. 9, San Pablo City informed the petitioner that its letter request together with the whole docket of the case, will be forwarded on even date to Revenue District Office No. 57, Binan, Laguna, for further evaluation.

On April 20, 2010, respondent through Revenue District Officer Julio G. Alcasabas of Revenue Region No. 9, Revenue District No. 57 of Biñan, Laguna, wrote to petitioner a letter requesting it to execute a "Waiver of Prescription under the Statute of Limitations", with the attached form of "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code".[17]

In its letter-reply dated May 25, 2010, petitioner essentially reiterated its protest to the assessment.[18]

[15] Exhibit "D" for the petitioner; Exhibit "33" for the respondent; Par. 6, JSFI, Docket, p. 150.
[16] Exhibit "E" for the petitioner; and Exhibit 34 for the respondent.
[17] Exhibit "F".
[18] Exhibit "G".

Subsequently, on June 18, 2010, respondent through Revenue District Officer Julio G. Alcasabas wrote again to petitioner with the annexed "revised proposed tax assessments"[19].

The Computation of Deficiency dated April 12, 2010 or the revised proposed tax assessments attached as Annex A to the letter dated June 18, 2010, shows the following details:

Particulars	Basic Tax	Interest	Compromise Penalty	Total
VAT	3,129,052.20	2,153,473.73	25,000.00	5,307,525.93
FWT	1,778,597.69	1,228,937.91	25,000.00	3,032,535.60
Totals	**P 4,907,649.89**	**P 3,382,411.64**	**P 50,000.00**	**P 8,340,061.52**

In its letter dated July 16, 2010, petitioner reiterated to BIR-RDO 57 its position that it has no pending tax liabilities for 2006.[20]

On August 9, 2010, petitioner filed a letter addressed to Revenue District Officer Julio G. Alcasabas and Regional Director Nestor S. Valeroso, to supplement its letter-protest dated January 21, 2010 and the letter dated July 16, 2010, pointing out that it did not execute a waiver[21] and that any assessment for deficiency VAT and FWT for the taxable year 2006 is subject to the three-year prescriptive period for the assessment of internal revenue taxes.[22]

Respondent, not taking any final action on its protest[23], petitioner, thus, filed the instant Petition for Review on August 20, 2010, praying that the assessment of its deficiency VAT and FWT in the aggregate amount of ₱7,869,009.76 covering taxable year 2006, be cancelled and withdrawn.

[19] Exhibit "H".
[20] Exhibit "I"; Par. 15, JSFI, Docket, p. 151.
[21] Exhibit "J".
[22] Exhibit "J"; Par. 16, JSFI, Docket, p. 151.
[23] Par. 17, Ibid, Docket, p. 151.

On November 8, 2010, respondent CIR filed her Answer[24] interposing the following Special and Affirmative Defenses:

> "5. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.
>
> 6. The assessments for 2006 deficiency Value-Added Tax (VAT) and Final Withholding Tax (FWT) were issued within the periods prescribed by law.
>
> 7. Respondent reiterates her assessment against petitioner in the total amount of Php7,869,009.66, which consisted of deficiency VAT and FWT, shown below as follows:

VAT	Php 5,007,146.44
FWT	2,861,863.32
Total	**Php 7,869,009.66**

> 8. As explained by respondent in the attached details of discrepancies, petitioner was assessed deficiency VAT because it issued official receipts (OR) for taxable year 2006 without imprinting thereon the words "VAT ZERO-RATED", which is in violation to Section 4.113-4 of Revenue Regulations (RR) No. 16-2005, as amended.
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> 9. Petitioner's Certificate of Registration with the Bureau of Internal Revenue (BIR) shows that it is registered as a VAT taxpayer. Under Section 113(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, a VAT-registered person is mandated to issue a VAT invoice or official receipt (OR) for every sale, barter, exchange of goods, properties or services.
>
> 10. The invoice or official receipt should also contain the details enumerated under Section 113(B) of the NIRC of 1997, as amended, including the imprinting of the term "ZERO-RATED SALE" or "VAT-EXEMPT SALE", whenever is applicable.
>
> 11. The mandatory requirement of imprinting the words "VAT ZERO-RATED SALE" in the corresponding OR was discussed by the Honorable Court of Tax Appeals in the case of *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, thus:
>
> > 'The imprinting of the words 'zero-rated' on sales invoices or official receipts cannot be said as having no valid basis or legislative root.

[24] Docket, pp. 115-122.

> On the contrary, it is both reasonable and necessary for the effective implementation of the provisions of the NIRC concerning zero-rated sales. Hence, the requirement that sales invoices shall be imprinted with the word 'zero-rated' cannot be taken as an enlargement or expansion of the law for the reason that it merely implements the provisions of the 1997 NIRC on sales that are subject to 10% VAT, zero-rated sales (0% VAT) and exempt sales. The imprinting of 'zero-rated' is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT'. (Underscoring supplied)

12. Accordingly, petitioner's failure to comply with the aforementioned provisions validates its assessment for deficiency VAT, mentioned in paragraph 6 of this Answer.

13. As aptly held, when the law is clear, no interpretation is needed. It may be said that the law may be harsh or unfair but that is the law and it must be followed. The duty of courts is to apply the law. Dura lex, sed lex.

14. Further, petitioner was assessed deficiency FWT because it directly applied the 10% rate provided under the RP-Japan Treaty without prior filing of an application for tax treaty relief with the BIR, which is in violation of Revenue Memorandum Order (RMO) No. 1-2000.

15. Contrary to petitioner's allegations, the issue on whether an application for treaty relief is required prior to the application for treaty relief with the BIR's International Tax Affairs Division (ITAD) has already been settled in the case of *Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia-Pacific Operations [Phils.], Inc.) v. Commissioner of Internal Revenue.*

16. In the said case, the Honorable Court of Tax Appeals en banc ruled that:

> 'However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that

> indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.
>
> Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.' (Underscoring ours)

17. As consistently held by the Honorable Court of Tax Appeals and pursuant to the above-mentioned case, **a ruling from the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty**.

18. Since the transaction involved is the remittance of the dividend which was subject to the 35% final withholding tax, petitioner was assessed the deficiency final withholding tax on the differential rates.

19. Moreover, the Supreme Court in the case of *Commissioner Internal Revenue vs. Bank of the Philippine Islands* states that:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers

> will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'"

During trial, petitioner presented as witnesses Liz M. Fernandez,[25] petitioner's General Accountant and Ana Liza B. Arciaga,[26] petitioner's Accounting Manager. Thereafter, on May 13, 2011, petitioner filed its Formal Offer of Exhibits,[27] submitting Exhibits "A" to "M", and "O" to "U", inclusive of sub-markings, which were admitted in the Resolution[28] dated June 28, 2011.

On the other hand, respondent presented her witnesses Maria Rona J. Uychutin,[29] and Atty. Charadine S. Bandon.[30] Thereafter, on March 8, 2012, respondent filed her Formal Offer of Documentary Evidence[31], submitting Exhibits "1", "2", "4" to "8", "10" to "20", "22" to "34", and "42" to "47", inclusive of sub-markings, which this Court admitted in the Resolution[32] dated April 13, 2012.

On July 5, 2012, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on June 18, 2012 and respondent's Memorandum, filed through registered mail on June 20, 2012, and received by this Court on July 2, 2012.[33]

The following are the parties' jointly stipulated issues[34] submitted for this Court's resolution:

> "I. Whether or not respondent's right to assess FSRI deficiency FWT and VAT for the year 2006 has already prescribed.

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[25] Minutes, Docket, pp. 238 and 241.
[26] Ibid, Docket, p. 274.
[27] Docket, pp. 275-284.
[28] Docket, pp. 366-367.
[29] Minutes, Docket, pp. 408 and 410.
[30] Ibid, pp. 419 and 452.
[31] Docket, pp. 453-468.
[32] Docket, pp. 537-538.
[33] Resolution dated July 5, 2012, Docket, p. 614.
[34] Stipulated Issues for Resolution, JSFI, docket, p. 152.

II. Whether or not FSRI is liable for deficiency VAT and FWT for the taxable year 2006.

III. Whether or not the sale of services by FSRI to FSCI is *per se* VAT exempt.

IV. Whether or not FSRI is required to comply with RMO No. 1-2000 before it can avail of the benefits provided under the RP-Japan Tax Treaty."

The foregoing issues boil down to one major issue, *viz*, "Whether or not petitioner is liable to pay the aggregate amount of P7,869,009.76 inclusive of interest and compromise penalties, representing deficiency VAT and FWT for the taxable year 2006".

Petitioner maintains that respondent's right to assess petitioner for deficiency VAT for the first to third quarters of 2006 and FWT for taxable year 2006 has alrady prescribed considering that it received respondent's Formal Letter of Demand ("FLD") and Assessment Notices ("Ans") dated December 28, 2009 only on January 15, 2010.

The petition is partly meritorious.

Section 203 of the NIRC of 1997, quoted hereunder provides as follows:

> SEC. 203. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, **That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed**. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Pursuant to the afore-cited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. An exception to the three-year prescriptive period on the assessment of taxes is found in Section 222 (b) of the NIRC, which authorizes the extension of the original three-year period by the execution of the taxpayer of a valid waiver.

In this case, it is undisputed that herein petitioner did not execute a waiver authorizing the extension of the three-year period for respondent to issue an assessment and collect the taxes due from petitioner. Hence, the three-year prescriptive period under Section 203 of the NIRC of 1997 applies.

In *Commissioner of Internal Revenue vs. FMF Development Corporation*[35], the Supreme Court held that:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. **Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time**.
>
> An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx

[35] G.R. No. 167765, June 30, 2008 [556 SCRA 698].

> The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date." (*Emphasis supplied*)

Moreover, in *Republic of the Philippines vs. Ablaza*[36], the Supreme Court explained that the statute of limitations of actions for the collection of taxes is justified by the need to protect law-abiding citizens from possible harassment:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law."

The subject assessments in this case pertain to: (a) deficiency VAT for the four quarters of 2006; and (b) FWT for the month of January 2006. The reckoning of the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended, must be read in conjunction with Section 114(A) of the NIRC of 1997, as amended and Section 58(A) of the NIRC of 1997, as amended in relation to Section 2.58(A)(2)(a) of Revenue Regulations ("RR") No. 02-98, as amended by RR No. 17-03, which prescribe the time of filing of return and remittance of VAT and FWT, as quoted below:

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[36] *G.R. No. L-14519, July 26, 1960 [108 Phil 1105, 1108 (1960)],*

Section 114(A) of the NIRC:

"SEC. 114. ***Return and Payment of Value-added Tax.*** —

A) *In General.* — **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer:** *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided*, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches." (Emphasis supplied)

Section 58(A) of the NIRC of 1997, as amended:

"SEC. 58. Returns and Payment of Taxes Withheld at Source *.* –

(A) *Quarterly Returns and Payments of Taxes Withheld.* – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, **That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or**

withheld at more frequent intervals when necessary to protect the interest of the government." (*Emphasis supplied*)

xxx xxx xxx

Section 2.58 of Revenue Regulations No. 2-98, as amended:

"**SEC. 5. Returns and Payment of Taxes Withheld at Source**.-
Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

SEC. 2.58. Returns and Payments of Taxes Withheld at Source.-

(A) ***Monthly return and payment of taxes withheld at source***. -

(1) xxx

(2) When to file –

(a) For both large and non-large taxpayers, **the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month**, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, xxx" (Emphasis supplied)

Based on the aforequoted provision of Section 114 of the NIRC of 1997, as amended in relation to Section 203 thereof, the three-year period to assess **VAT** commences to run: (a) on the last day prescribed by law for the filing of the return, which is on the 25th day following the close of each taxable quarter prescribed for each taxpayer; or (b) in a case where a return is filed beyond the period prescribed by law, on the day the return was filed.

In the case of **FWT**, the three-year period to assess the same commences to run: (a) on the last day prescribed by law for the filing of the return, which is on the 10th day after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year, although for taxpayers under the EFPS, the period shall be 5 days later than the deadlines set above. If the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return; (b) or in a case where a return is filed beyond the period prescribed by law, on the day the return was filed.

Applying Section 203 of the NIRC of 1997 in relation to Section 114(A) of the NIRC of 1997, as amended, and Section 2.58(A)(2)(a) of RR No. 02-98, as amended by RR No. 17-03, respondent had until the following dates within which to assess petitioner of deficiency VAT and FWT for taxable year 2006, to wit:

Exhibit	Docket	Year 2006 Period Covered	Return Filed On	Last Day to File Return	Last Day to Assess
VALUE-ADDED TAX					
K	311	1st quarter	04/25/06	04/25/06	04/27/09*
K-1	313	2nd quarter	07/25/06	07/25/06	07/27/09*
K-2	315	3rd quarter	10/25/06	10/25/06	10/26/09*
K-3	317	4th quarter	01/24/07[37]	01/25/07	01/25/10
FINAL WITHHOLDING TAX					
L	319	January	02/10/06	02/10/06	02/10/09

*the 25th day of the month fell either on a Saturday or Sunday

In the instant case, petitioner sufficiently established that it actually filed its Monthly Remittance Return of Final Income Taxes Withheld covering the period

[37] Date filed was based on the date indicated in petitioner's Formal Offer of Evidence, specifically under the purpose for which "Exhibit K-3" was formally offered (see Docket, p. 279). Date of filing is not legible per Exhibit "K-3" and BIR Records, page 104.

January 2006 on February 10, 2006.[38] Counting from February 10, 2006, respondent had until February 10, 2009, as shown on the table above, within which to assess petitioner of the subject deficiency FWT for calendar year 2006. However, respondent's FLD and Assessment Notice dated December 28, 2009 received by petitioner on January 15, 2010 for FWT were mailed only on January 12, 2010[39], or beyond the three-year prescriptive period.

As to VAT, petitioner has sufficiently proven that it actually filed its quarterly VAT returns for the first to fourth quarters of 2006 on April 25, 2006, July 25, 2006, October 25, 2006 and January 24, 2007, respectively. Counting from said dates, respondent had until April 27, 2009, July 27, 2009, October 26, 2009 and January 25, 2010 to issue VAT assessment covering the first, second, third and fourth quarters of 2006, respectively. However, respondent's FLD and Assessment Notice dated December 28, 2009 for VAT assessment of 2006 were mailed only on January 12, 2010[40]. The assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer.[41] Hence, the assessments covering the first to third quarters of 2006 sent to the taxpayer on January 12, 2010 were issued beyond the three-year prescriptive period, while the assessment for petitioner's deficiency VAT for the fourth quarter of 2006 has not yet prescribed considering that the Assessment Notice and Formal Letter of Demand dated December 28, 2009, received by petitioner on January 15, 2010, was made before the three-year period expired on January 25, 2010.

[38] Par. 14, JSFI, Docket, p. 151; Exhibit "L" for the petitioner and Exhibit "20" for the respondent.
[39] Exhibit "32-A", Docket, p. 514.
[40] Exhibit "32-A", Docket, p. 514.
[41] Republic of the Philippines vs. Limaco & De Guzman Commercial Co., Inc. *et al.*, G.R. No. L-13081, August 31, 1962; Nava vs. Commissioner of Internal Revenue, G.R. No. L-19470, January 30, 1965; Basilan Estates, Inc. vs. Commissioner of Internal Revenue, *et al.* G.R. No. L-22492, September 5, 1967.

Considering the above findings, this Court's evaluation will now go to the remaining issue pertaining to the merits of deficiency VAT assessment for the fourth quarter of taxable year 2006.

Petitioner is a PEZA-registered Ecozone Facilities Enterprise located at the Light Industry and Science Park of the Philippine Special Economic Zone. It is primarily engaged in the business of construction of factory buildings for lease or for sale specifically to registered ecozone enterprises.[42]

Petitioner's 2006 revenues consisted solely of collections and rentals from the lease of a factory building to First Sumiden Circuits, Inc. ("FSCI"), also a PEZA-registered ecozone enterprise.[43]

Respondent assessed petitioner of deficiency VAT for the same year in the amount of ₱5,007,146.44, inclusive of interest and compromise penalty based on the finding that petitioner issued official receipts (ORs) to FSCI with an aggregate amount of ₱26,075,434.97 for the entire taxable year 2006 without imprinting thereon the words "VAT ZERO-RATED".

Petitioner countered that since it availed of the 5% preferential tax rate pursuant to Republic Act No. (RA) 7916 and its Implementing Rules and Regulations, it is exempt from national and local taxes including VAT. Petitioner further alleged that under Section 5(4a) of Revenue Memorandum Circular (RMC) No. 74-99, its sales of services, in particular, the lease of a factory building to FSCI, which is also a PEZA-registered enterprise, is considered an "Intra Ecozone Enterprise Sale of Service" (Intra Ecozone Transaction) which is exempt from VAT.

[42] Paragraphs 3 & 4, Stipulated Facts, JSFI, Docket, p. 150.
[43] Answer to Question No. 12, Exhibit "Q", Judicial Affidavit of Ms. Liz M. Fernandez, Docket, p. 166.

On this point, this Court finds petitioner liable for deficiency VAT which has not prescribed.

Since petitioner has been granted 5% gross income tax (GIT) incentive by the PEZA[44], it is entitled to exemption from national and local taxes including VAT pursuant to Section 24 of RA No. 7916, otherwise known as "The Special Economic Zone Act of 1995", as amended by RA No. 8748, which states:

> "SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> a. Three percent (3%) to the National Government;
>
> b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprises is located."

Section 109(K) of the NIRC of 1997, as amended, provides as well that transactions which are exempt under special laws, like RA No. 7916, are also exempt from VAT, thus:

> "SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529."

Clearly, from the foregoing, petitioner, being exempt from VAT, may not register as VAT taxpayer. However, petitioner opted to be registered as VAT

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[44] Exhibits "M" and "S", Docket, pp. 322 and 355.

taxpayer[45]. Section 113(D)(2) of the NIRC of 1997, as amended, in relation to Section 113(B)(2)(b) of the same Code, explicitly provides that if a VAT registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable, to wit :

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> "(B) Information contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> "(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> xxx xxx xxx
>
> "(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (D) *Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.* –
>
> xxx xxx xxx
>
> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term **'VAT-exempt sale'**, the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply."

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[45] BIR Records, p. 27.

Upon scrutiny of the official receipts issued by petitioner to FSCI for the fourth quarter of 2006, as contained in petitioner's "Analysis Schedule of Official Receipts issued"[46], this Court found that the words "VAT-exempt sale" were not written or printed on the said official receipts in violation of Section 113(B)(2)(b) of the NIRC of 1997, as aforequoted. Consequently, pursuant to Section 113(D)(2) of the NIRC of 1997, as amended, petitioner is liable to pay basic deficiency VAT for the fourth quarter of taxable year 2006 in the aggregate amount of ₱796,620.65, computed as follows:

Docket Page	Exhibit	Date issued	OR No.	Amount in USD	Forex Conv.	Amount in Phil. Pesos	VAT Due
484	16	10/25/06	227	35,600.00	50.079	1,782,812.40	₱ 213,937.49
484	16	10/04/06	228			311,187.49	37,342.50
485	17	11/08/06	229			316,751.62	38,010.19
485	17	11/28/06	230			367,554.48	44,106.54
485	17	11/29/06	231	35,600.00	49.705	1,769,498.00	212,339.76
486	18	12/27/06	232	35,600.00	49.570	1,764,692.00	211,763.04
486	18	12/14/06	233			326,009.44	39,121.13
		Total for the fourth quarter of 2006				**6,638,505.43**	**₱ 796,620.65**

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. **Accordingly**, the assessment for deficiency final withholding tax for taxable year 2006 in the amount of ₱2,861,863.32 is hereby **CANCELLED** and **WITHDRAWN** due to prescription.

However, the assessment for deficiency VAT issued by respondent against petitioner for taxable year 2006 is hereby **AFFIRMED** with some modifications. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱995,775.81, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

[46] Exhibit "19", Docket, p. 487.

Basic Deficiency VAT	₱796,620.65
25% Surcharge	199,155.16
Total	**₱ 995,775.81**

In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT in the amount of ₱796,620.65 computed from January 25, 2007, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱995,775.81 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from January 28, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

The compromise penalty of P25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

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

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice