REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE PROFESSIONAL SERVICES, INC., *Petitioner,*	**CTA CASE No. 9502** For: Assessment
-versus-	Members: CASTAÑEDA, JR., *Chairperson* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 1 3 2019

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1:15 p.m.

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 4, 2018 is a Petition for Review[1], filed by The Professional Services, Inc., through registered mail, on November 23, 2014 and received by this Court on December 2, 2016, praying that the instant Petition be granted and that a judgment be rendered declaring null and void the Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN") dated March 17, 2016, assessing petitioner of deficiency income tax ("IT") and value-added tax ("VAT") in the aggregate amount of ₱1,472,331,240.45, inclusive of surcharges and interests, for taxable year 2007 (collectively, the "Disputed Assessment")[2].

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at Don Eugenio Lopez, Sr. Medical Complex, Ortigas Avenue, Pasig City. It may be served with pleadings, notices and other legal processes through Divina Law, with office address at 8th Floor, Pacific Star

[1] Docket (Vol. I), pp. 10-44.
[2] Par. 4, Nature of the Petition, Petition for Review, Docket (Vol. I), pp. 11-12; I, Summary of the Case, Pre-Trial Order, Docket (Vol. II), p. 456.

Building, Sen. Gil Puyat Avenue corner Makati Avenue, Makati City.[3] It is duly registered with the Bureau of Internal Revenue ("BIR") with Tax Identification No. 000-061-237-000.[4]

On the other hand, respondent is the Chief of the BIR, the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the 1997 National Internal Revenue Code ("1997 NIRC"), as amended.[5]

On May 25, 2007, petitioner sold to Robinsons Land Corporation a parcel of land located in San Miguel Avenue corner Lourdes Street, Ortigas Center, Mandaluyong City ("the subject property"), in the amount of P1,000,000,000.00.[6] Petitioner paid the corresponding Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) on the said transaction.[7]

Prior to such sale, petitioner leased the subject property for two (2) years to A.C Comsti Builders, a parking operator. The said transaction was disclosed in petitioner's financial statements and was classified therein as an "Investment Property".[8]

Subsequently, petitioner received a Letter of Authority No. 2007 00038029[9] dated August 8, 2008 (first LOA), authorizing Revenue Officers A. Molinos/M. Girang to examine petitioner's "books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2007 to December 31, 2007". The investigation conducted therein led to the issuance of a report[10] dated July 1, 2009, approved by OIC-Assistant Commissioner Ms. Zenaida G. Garcia, finding petitioner liable for deficiency income tax, withholding tax on compensation, final withholding tax and VAT for taxable year 2007, to wit:

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[3] Par. 1, The Parties, Petition for Review, Docket (Vol. I), p. 11; I, Summary of the Case, Pre-Trial Order, Docket (Vol. II), p. 456.
[4] As per Formal Letter of Demand, Exhibit "P-5", Docket (Vol. I), p. 314.
[5] Admitted Facts, Joint Stipulation of Facts and Issues (With List of the Parties' Documentary Evidence and Witnesses), Docket (Vol. II), p. 446.
[6] Pars. 16 and 21, Statements of Facts and Case, Petition for Review, Docket (Vol. I), pp. 14-15.
[7] Facts of the Case stated in Exhibit "R-6", BIR Records, p. 242.
[8] Par. 128, petitioner's Memorandum, Docket (Vol. III), p. 921; Facts of the Case, Exhibit "R-6", BIR Records, p. 242; Exhibit "R-2", BIR Records, p. 142.
[9] BIR Records, p. 45A.
[10] BIR Records, p. 57

"Please be informed that the report of investigation pursuant to **Letter of Authority No. 00038029 dated August 8, 2008** on your All Internal Revenue Taxes for the year ended December 31, 2007 was discussed with the undersigned regarding the recommendation of Revenue Officers **A. Molinos, M. Girang, and P. Sta. Maria** under Group Supervisor **Roberto P. Castro** with the proposed assessment as summarized in Annex A.

If you are not agreeable to the attached discrepancies, you or your authorized representative may arrange for an informal conference with the Revenue Officers and Group Supervisor within fifteen (15) days from receipt hereof.

You may submit at said conference documentary evidence to support any objections you may find against the proposed assessment. If you are sending your representatives, please authorize him/her in writing to act in your behalf.

Should you fail to respond within said period, this case docket will be forwarded to the Chief, LT Audit and Investigation Division I for issuance of Preliminary Assessment Notice (PAN)/Final Assessment Notice (FAN) pursuant to Section 228 of the Tax Code as implemented by RR 12-99, calling for payment of your deficiency taxes and the corresponding interest and penalties. If however, you have already paid the amount due before the receipt of this notice, kindly submit proof of payment to this Office at the soonest time possible.

We trust this matter will merit your preferential attention."

"**Computation of Deficiency Taxes**
Taxable Year 2007

	Basic	**Surcharge**	**Interest**	**Compromise**	**Total**
Income Tax Deficiency	567,510.51		141,748.09	20,000.00	729,258.60
Withholding Tax-Compensation	50,553.74		15,276.96	12,000.00	77,830.70
Withholding Tax-Final	321,608.73		129,348.42	18,000.00	468,957.15
Withholding Tax-Expanded	239,246.29		72,298.31	16,000.00	327,544.60
Value-Added Tax	265,472.12		78,126.38	66,000.00	409,598.50
Total					**2,013,189.55**"[11]

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[11] Docket (Vol. II), p. 792.

But then, an anonymous memorandum[12] dated June 22, 2012 was allegedly received by the BIR, which spurred the issuance of LOA No. 126-2012-00000031[13] dated July 13, 2012 ("second LOA"), authorizing the examination of petitioner's accounting records for **Income Tax and VAT for the same taxable period**[14], *viz:*

> "The bearer(s) hereof, **RO-CONSTANTE JR REINANTE, ALFRED MANODON, RYAN LOON/GS-HERMINIA CERCADO of LT REGULAR AUDIT DIVISION 3** is/are authorized to examine your books of accounts and other accounting records for **IT, VT** for the period from **January 1, 2007 to December 31, 2007 pursuant to AUDIT CRITERIA FOR TAXABLE YEARS 2009 & 2010**. x x x"

In justifying the issuance of the second LOA, the BIR claims that the "first LOA did not cover the Income Tax and VAT issues on the sale of the property subject of the present case".[15]

Thereafter, OIC-Assistant Commissioner Misajon issued a Preliminary Assessment Notice[16] ("PAN") dated May 7, 2014. A Reply/Protest[17] dated May 23, 2014 was filed by petitioner contesting the said assessment.

On March 28, 2016, petitioner received the Formal Letter of Demand (FLD) with Details of Discrepancies[18] dated March 17, 2016, finding petitioner liable again for deficiency IT and VAT.[19] The Details of Discrepancies are hereunder quoted for ready reference:

"DETAILS OF DISCREPANCIES

I. INCOME TAX

- **Deliberate misdeclaration of sales (₱999,574,486.00)-** Verification revealed a deliberate misclassification of sales pertaining to a sale of land classified as a capital asset which should have been classified as an ordinary asset pursuant to Section 39 of the National Internal Revenue Code (NIRC) of

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[12] As per Exhibit "R-6", BIR Records, p. 241.
[13] BIR Records, p. 1.
[14] Transcript of the Stenographic Notes Taken During the Hearing Held on June 6, 2018, p. 13.
[15] Par. 10, Answer with Motion to Dismiss, Docket (Vol. I), p. 203.
[16] Exhibit "R-5", BIR Records, pp. 198-201.
[17] BIR Records, pp. 219-231.
[18] Exhibit "R-7", BIR Records, pp. 274-278.
[19] Par. 29, Statements of Facts and Case, Petition for Review, Docket (Vol. I), pp. 16-17.

1997, as regulated by Revenue Regulations No. 7-2003, hence, assessed pursuant to Section 32 of the NIRC.

Schedule 1

Selling price of Real Property Sold	₱1,000,000,000.00
Cost of Real Property Sold	425,514.00
Gain on Sale of Real Property Sold	**₱999,574,486.00**

II. VALUE-ADDED TAX

- **Deliberate misdeclaration of sales (₱1,000,000,000.00)-** Verification disclosed that the aforementioned amount of misclassification of sales as discussed on above, is considered as sales subject to 12% VAT, hence, assessed pursuant to Sections 106 and 108 of the NIRC, as implemented by RR No. 16-2005.

III. CIVIL PENALTIES

- The 50% surcharge and 20% interest was assessed pursuant to Sec. 248 (B) and Sec. 249 (B) of the National Internal Revenue Code of 1997, as implemented by Revenue Regulations No. 12-99 as amended.

PERIOD OF PRESCRIPTION

The running of the three-year statute of limitation as provided under Section 203 of the 1997 National Internal Revenue Code (NIRC) is not applicable with respect to your income tax, value-added tax and expanded withholding tax liabilities but rather to the ten (10) year prescriptive period pursuant to Section 222(A) of the tax code which states that '**In case of a false or fraudulent return with the intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax maybe filed without assessment, at anytime within ten (10) years after the discovery of the falsity, fraud or omission.**"

Petitioner protested the said FLD in a Letter[20] dated April 27, 2016.

In view of respondent's inaction on its protest[21], petitioner filed through registered mail the instant Petition for Review on November 23, 2016.

[20] BIR Records, pp. 279-294.

[21] Par. 31, Statements of Facts and Case, Petition for Review, Docket (Vol. I), p. 18.

Within the extension of time granted by the Court, respondent filed his Answer with Motion to Dismiss[22] on January 27, 2017, interposing the following special and affirmative defenses, to wit:

"4. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.

5. The deficiency Income Tax (IT) assessment in the amount of ₱1,081,854,528.12 and deficiency Value-Added Tax (VAT) in the amount of ₱390,476,712.33 were issued in accordance with law and suffers no infirmity.

6. Verification disclosed a deliberate misclassification of sales pertaining to a sale of land classified as a capital asset which should have been classified as an ordinary asset pursuant to Section 39 of the National Internal Revenue Code of 1997 (NIRC of 1997), as regulated by Revenue Regulations No. 7-2003, hence, assessed pursuant to Section 32 of the NIRC of 1997.

Section 2 (e) of RR 7-2003 provides:

> 'Provided however, that properties classified as ordinary assets for being used in business by a taxpayer engaged in business other than real estate business as defined in Section 2(g) hereof are automatically converted into capital asset upon showing of proof that the same have not been used in the business for more than two (2) years prior to the consummation of the taxable transactions involving said properties.

Contrary to petitioner's assertion, the subject property did not remain idle and undeveloped. The same was used in trade or business within 2 years prior to its sale being leased and rented out as parking lot. No matter how minimal the income earned in the lease of the property, the same was still used for business. The act of leasing the property is within the definition of 'used in trade or business'.

7. The aforementioned amount of misclassification of sales is considered as sales subject to Value-Added Tax (VAT) at 12%, hence, assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as implemented by Revenue Regulations No. 16-2005. Since there was a deliberate misclassification of asset resulting to a misdeclaration of sales, the subject sale should be subjected to Income Tax and VAT. Hence, there was neither a timely nor proper settlement of tax liabilities nor payment of taxes due in full.

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[22] Docket (Vol. I), pp. 200-210.

8. Petitioner's contention that a deliberate misclassification resulting to a deliberate misclassification of sales is a fraudulent act which must not be presumed but must be duly proven by respondent is likewise untenable. Revenue Memorandum Order No. 15-95 or the General Policies in the Investigation of Tax Fraud Cases provides in part:

> 'The Direct Approach Method or by Direct Evidence, also called Specific Item Cases— Proof of fraudulent acts are adduced by specific items of fraudulent transactions. It is that one, if the allegations are believed, the existence of the principal or ultimate fact is proven without any inference or presumption.
>
> Specific Item Cases determined by the Direct Approach Method-
>
> 1.1 Income Tax
> 1.2 Omission or understatement of taxable income
> 1.3 Failure to file income tax return
> 1.4 Items of income and expenses, or assets or liabilities have been omitted, or falsely claimed in the accounting records or return in order to minimize or reduce taxes
> 1.5 Misclassification of Accounts — Income taken upon and classified as liabilities; erroneous classification of income from taxable to exempt; **ordinary gains classified as capital gains**; non-deductible expenses disguised as deductible items; and capital expenditures classified as deductible items.

9. Moreover, the sale of the subject property could never have resulted to a loss. Instead, a realized gain on the sale. The subject property had an acquisition cost of ₱425,514.00, while the selling price amounted to ₱1,000,000,000.00. The difference of ₱999,574,486.00 should have been realized as gain subject to income and VAT. Thus, petitioner filed a false and fraudulent return and deliberately misclassified the income in order to evade the payment of income tax and VAT.

10. Contrary to petitioner's assertion, Letter of Authority No. 126-2012-00000031 dated 13 July 2012 was validly issued. On 8 August 008, a Letter of Authority was issued to petitioner for All Internal Revenue Taxes for the year 2007. However, this LOA did not cover the Income Tax and VAT issues on the sale of property subject of the present case.

11. The running of the 3-year prescriptive period to assess as provided under Section 203 of the NIRC of 1997 finds no application

in the instant case. Rather, Section 222(A) should apply which states that in case of false or fraudulent return with the intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax maybe filed without assessment, at anytime within ten (10) years after the discovery of the falsity, fraud or omission.

12. As earlier pointed out, the subject property is an ordinary asset. Its misclassification into a capital asset is an act that constitutes fraud with intent to evade payment of tax. Such act resulted to an underdeclaration of sales for income and VAT as shown below:

Undeclared Income on Sale of Property	1,000,000,000.00
Divided by: Reported Income per Returns	2,538,580,813.00
Percentage of Underdeclaration	**39.39%**

Based on the foregoing, the deliberate misclassification of income constitutes a *prima facie* evidence of fraud.

The Honorable Supreme Court in the case of *Aznar vs. CTA*, had the occasion to define fake or fraudulent return in this wise:

> That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due. (Emphasis ours)

Since the correct sales of petitioner did not appear in its VAT returns, there can only be one inevitable conclusion – that there was a **substantial under-declaration** of sales in its VAT returns.

To reiterate, a false return implies **deviation from the truth, whether intentional or not**. Although the Aznar case distinguishes what constitute 'false returns' referring to mistake, carelessness or ignorance, from that of 'fraudulent returns' referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of Aznar, the Supreme Court ruled in favor of the CIR for an extension of 10 years to assess the taxpayer, thus:

> The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue Code should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade**

> **payment of tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent CTA that Section 332 (a) (now Sec. 222) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made. (Emphases ours)

It is, therefore clear from the statutory provision in Section 222 of the NIRC of 1997 in the three different case of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time within 10 years after the discovery of the (1) falsity, (2) fraud, (3) omission. The discrepancy of 39.39% in petitioner's return manifests an evident substantial under declaration which eloquently demonstrate the falsity or fraudulence of the VAT returns with an intent to evade the payment of tax. Respondent, could therefore, rightfully invoke Section 222 because her right to assess has not yet prescribed.

All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671).* It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.

Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995).*

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On February 15, 2017, petitioner filed its Opposition (To Respondent's Motion to Dismiss)[23].

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[23] Docket (Vol. I), pp. 213-222.

On March 2, 2017, respondent filed a Motion to Defer Transmittal of BIR Records[24] on the ground that the said records will be used in the preparation of the judicial affidavits of his witnesses.

In the Resolution[25] promulgated on September 5, 2017, the Court denied respondent's Motion to Dismiss and partially granted respondent's Motion to Defer Transmittal of BIR Records.

On September 6, 2017, the Court issued a Notice of Pre-Trial Conference[26] setting the case for pre-trial conference on September 28, 2017.

Thereafter, the Respondent's Pre-Trial Brief[27] and the petitioner's Pre-Trial Brief[28] were filed on September 19, 2017 and September 25, 2017, respectively.

The Pre-Trial Conference ensued. Both parties submitted their Joint Stipulation of Facts and Issues (with List of the Parties' Documentary Evidence and Witnesses)[29] on October 13, 2017, which was approved and adopted in the Pre-Trial Order[30] dated October 26, 2017.

During trial, petitioner presented (1) Atty. Virgilio Martin P. Samson[31], petitioner's Vice President for Legal Services; and (2) Atty. Manolito S. Soller[32], petitioner's External Counsel, as its witnesses.

Meanwhile, on January 12, 2018, petitioner filed a Request for Admission[33], requesting the BIR to admit or deny the due execution, genuineness and authenticity of the following documents:

"Exhibit	*Documents*
P-11	Certificate Authorizing Registration dated 01 June 2007
P-12	Capital Gains Tax Return (BIR Form 1706) dated 31 May 2007
P-13	Payment Slip for the Capital Gains Tax

[24] Docket (Vol. I), pp. 223-227.
[25] Docket (Vol. I), pp. 229-236.
[26] Docket (Vol. I), pp. 237-238.
[27] Docket (Vol. I), pp. 243-247.
[28] Docket (Vol. I), pp. 434-442.
[29] Docket (Vol. II), pp. 446-451.
[30] Docket (Vol. II), pp. 456-460.
[31] Minutes of the Hearing dated November 22, 2017, Docket (Vol. II), p. 461.
[32] Minutes of the Hearing dated January 17, 2018, Docket (Vol. II), p. 560.
[33] Docket, (Vol. II) pp. 466-470.

P-14	Documentary Stamp Tax Declaration/Return (BIR Form 2000-OT) dated 31 May 2007
P-15	Payment Slip for Documentary Stamp Tax
P-16	Tax Clearance Certificate dated 01 June 2007
P-17	BIR letter dated 01 July 2009
P-21	Payment Form [BIR Form 0605 dated 31 December 2007, Reference No. 290900003066199, for the amount of Php729,258.60]
P-21-A	eFPS Payment Details for Exh. P-21
P-22	Payment Form [BIR Form 0605 dated 07 July 2009, Reference No. 290900003066523, for the amount of Php409,598.50
P-22-A	eFPS Payment Details for Exh. P-22
P-23	Payment Form [BIR Form 0605 dated 07 July 2009, Reference No. 290900003006391, for the amount of Php327,544.59
P-23-A	eFPS Payment Details for Exh. P-23
P-24	Payment Form [BIR Form 0605 dated 07 July 2009, Reference No. 290900003066280, for the amount of Php468,957.16]
P-24-A	eFPS Payment Details for Exh. P-24
P-25	Payment Form [BIR Form 0605 dated 07 July 2009, Reference No. 290900003006126, for the amount of Php77,830.70]
P-25-A	eFPS Payment Details for Exh. P-25"

On January 31, 2018, respondent filed his Opposition (Re: Petitioner's Request for Admission dated 8 January 2018)[34].

On February 19, 2018, petitioner filed an Urgent Motion for Additional Time[35] to file its Formal Offer of Evidence stating that the blanket denial made by respondent was unexpected considering that the subject documents have been issued or filed with the BIR. Nonetheless, petitioner alleges that it already requested the BIR to issue the certified true copies of the said documents and that it will not cease in locating the original/duplicate originals of the said documents. A Reply (To: Respondent's Opposition Dated 29 January 2018)[36] was filed by petitioner on February 21, 2018.

In the Resolution[37] dated February 23, 2018, the Court partially granted petitioner's Request for Admission; noted respondent's admission of Exhibit "P-17"; allowed petitioner's request for admission of Exhibits "P-21" to "P-25-A"; disallowed the request for admission of

[34] Docket (Vol. II), pp. 565-570.
[35] Docket (Vol. II), pp. 579-584.
[36] Docket (Vol. II), pp. 585-590.
[37] Docket (Vol. II), pp. 592-596.

Exhibits "P-11" to "P-16"; and, ordered respondent to file a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny Exhibits "P-21" to "P-25-A".

On February 28, 2018, petitioner filed, by registered mail, its Formal Offer of Evidence *Ad Cautelam* with Omnibus Motion[38], which was received by the Court on March 9, 2018, offering Exhibits "P-1" to "P-25-A", inclusive of sub-markings. Respondent, on the other hand, filed his Comment (Re: Petitioner's Formal Offer of Evidence)[39] on March 6, 2018.

In the Resolution[40] promulgated on March 2, 2018, the Court noted petitioner's Reply (To Respondent's Opposition dated 29 January 2018) and granted petitioner's Urgent Motion for Additional Time.

On March 8, 2018, petitioner filed a Motion for Partial Reconsideration (To: Resolution Dated 23 February 2018)[41], while respondent filed his Opposition (Re: Motion for Partial Reconsideration of the Resolution dated 23 February 2018)[42] on April 3, 2018.

By way of Compliance[43] to the Resolution dated February 23, 2018, respondent submitted the required Sworn Statement on March 14, 2018. A Comment (To: Compliance with Sworn Statement dated 9 March 2018)[44] was filed by petitioner on April 4, 2018.

In the Resolution[45] dated April 27, 2018, the Court admitted as part of petitioner's evidence the following exhibits:

Exhibit	Description
P-1	Secretary's Certificate of petitioner dated 22 November 2016
P-2	Petitioner's Special Power of Attorney dated 22 November 2016
P-5	Formal Letter of Demand and Final Assessment Notice dated 17 March 2016
P-6	Tax Protest dated 27 April 2016

[38] Docket (Vol. II), pp. 712-727.
[39] Docket (Vol. II), pp. 702-705.
[40] Docket (Vol. II), p. 700.
[41] Docket (Vol. II), pp. 706-711.
[42] Docket (Vol. III), pp. 822-827.
[43] Docket (Vol. II), pp. 811-815.
[44] Docket (Vol. III), pp. 828-833.
[45] Docket (Vol. III), pp. 836-841.

P-7	Supplemental Tax Protest dated 24 June 2016
P-10	Deed of Absolute Sale dated 25 May 2007
P-17	BIR letter dated 01 July 2009
P-18	Letter of Authority dated 13 July 2012
P-19	Preliminary Assessment Notice issued against petitioner
P-20	Letter-reply to the PAN dated 23 May 2014
P-25-A	eFPS Payment Details for Exh. P-25

On the other hand, in the hearing[46] held on June 6, 2018, respondent presented his lone witness, Revenue Officer Ryan Loon.

Subsequently, respondent filed his Formal Offer of Evidence[47] on June 22, 2018, with petitioner's Comments/ Objections to Formal Offer of Evidence[48] filed on July 4, 2018.

In the Resolution[49] promulgated on July 20, 2018, the Court admitted the following exhibits presented by respondent:

Exhibit	Description
R-1	Letter of Authority No. LOA-126-2012-00000031 (SN: eLA201100003794) dated 13 July 2012
R-2	Memorandum dated 22 November 2012 recommending the issuance of a Notice of Informal Conference
R-3	Notice of Informal Conference dated 3 December 2012
R-4	Memorandum dated 5 March 2014 recommending for the issuance of a Preliminary Assessment Notice
R-5	Preliminary Assessment Notice
R-6	Memorandum dated 11 March 2016 recommending for the issuance of a Formal Letter of Demand
R-7	Formal Letter of Demand with attached Details of Discrepancies
R-8	Entire BIR Records of CTA Case No. 9502

On September 17, 2018, the instant case was submitted[50] for decision, taking into consideration the respondent's Memorandum[51]

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[46] Minutes of the Hearing dated June 6, 2018, Docket (Vol. III), p. 858.
[47] Docket (Vol. III), pp. 863-868.
[48] Docket (Vol. III), pp. 869-874.
[49] Docket (Vol. III), pp. 876-877.
[50] Docket (Vol. III), p. 968.
[51] Docket (Vol. III), pp. 878-886.

filed on August 16, 2018 and petitioner's Memorandum[52] filed *via* registered mail on August 31, 2018 and received by the Court on September 7, 2018.

However, in view of the reorganization of the three (3) Divisions of the Court effective September 18, 2018, the foregoing Resolution of the Court submitting the instant case for decision was recalled and set aside; and, the case was submitted anew for decision on October 4, 2018.[53]

The parties submitted the following issues[54] for the resolution of this Court:

1. Whether the Formal Letter of Demand and Final Assessment Notice dated 17 March 2016 is already barred by prescription pursuant to Section 203 of the Tax Code.

2. Whether actual or constructive fraud cannot be imputed against petitioner, as would warrant the application of the 10-year prescriptive period and the penalty of 50% surcharge.

3. Whether the Letter of Authority, upon which the Disputed Assessment was premised, is invalid pursuant to Section 235 of the Tax Code.

4. Whether the Subject Property is a Capital Asset, the sale of which is subject to Capital Gains Tax (CGT), and not Value-Added Tax (VAT) nor regular income tax on net gain.

5. Whether or not petitioner has legal and factual basis to refute the deficiency Income Tax in the amount of ₱1,081,854,528.12 and deficiency VAT in the amount of ₱390,476,712.33 for taxable year 2007.

Petitioner claims that the Disputed Assessment was issued or served upon it beyond the three-year period provided under Section 203 of the 1997 NIRC, as amended. Accordingly, when the Disputed Assessment was served on March 28, 2016, "59 months (or nearly five years) have already lapsed beyond the three-year prescriptive period

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[52] Docket (Vol. III), pp. 928-965.
[53] As per Resolution dated October 4, 2018.
[54] II. Statement of Issues, Joint Stipulation of Facts and Issues (with List of the Parties' Documentary Evidence and Witnesses), Docket (Vol. II), p. 447.

for income tax and 62 months (or more than five years) beyond the prescriptive period for VAT."[55] As such, petitioner is of the considered view that it is entitled to the cancellation of the Disputed Assessment, following the ruling in *Commissioner of Internal Revenue vs. FMF Development Corp.*[56] and *Commissioner of Internal Revenue vs. BF Goodrich Phils.*[57]

Petitioner also claims that respondent gravely erred in issuing and affirming the Disputed Assessment under the theory that there is fraud, whether actual or constructive, or that there is a prima facie presumption of fraud considering that the entire receipt or gross income on the sale of the subject property was declared by petitioner in its Capital Gains Tax Return; and paid the corresponding tax due thereon in the amount of Sixty Million Pesos (P60,000,000.00).[58] Thus, for petitioner contends that the purchase price thereon need be declared in BIR Form No. 1702 ("Income Tax Return") as it was already declared in BIR Form No. 1706 ("CGT Return").

Petitioner also claims that its 2007 Audited Financial Statements for the year ended December 31, 2007 clearly and openly disclosed the sale of the subject property and its effect on the other accounts of petitioner.

Moreover, petitioner claims that the difference in opinion between petitioner and respondent on the matter of classifying the subject property and the taxes applicable to the sale thereof should not result in an automatic finding of fault, let alone an imputation of fraud as against the taxpayer who relied in good faith on sound legal principles and even official acts of respondent, such as the issuance of CAR and Tax Clearance Certificate in petitioner's favor.

Furthermore, petitioner insists that, in view of the absence of fraud, it is not liable to pay the surcharge penalty.

Petitioner also claims that the second LOA, as well as the resulting Disputed Assessment, must be struck down and declared as void for the following reasons: (i) the issuance of the second LOA is prohibited under the rule on one tax audit for every taxable year; (ii) that no preliminary investigation was conducted by the BIR prior to the

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[55] Par. 48, Arguments and Discussion, Memorandum, Docket (Vol. III), p. 901.
[56] G.R. No. 167765, June 30, 2008.
[57] 363 Phil. 169 (1999).
[58] Six (6) percent of the entire selling price of ₱1,000,000,000.00.

issuance of the second LOA; and, (iii) that nothing was done by respondent to verify the accuracy and truthfulness of the contents of the anonymous memorandum which led to the issuance of the second LOA.

Lastly, petitioner admits that it leased the subject property for two (2) years to a parking operator. However, the lease thereof was not, accordingly, part of its "hospital business". Thus, the subject property cannot be considered as part of its ordinary asset.

Respondent claims that there was a deliberate misclassification of sales pertaining to a sale of land classified as a capital asset since the same was being leased and rented out as parking lot within two (2) years, prior to its sale. Thus, no matter how minimal the income earned in the lease of the subject property, the same was still being used for trade or business. As such, it should be considered as ordinary asset and the consequent sale of the subject property should be subjected to Income Tax and VAT, pursuant to Sections 106 and 108 of the 1997 NIRC, as amended, and as implemented by Revenue Regulations No. 16-2005.

Thus, it is respondent's position that the running of the 3-year prescriptive period to assess under Section 203 finds no application in the instant case.

Lastly, respondent avers that all presumptions are in favor of the correctness of tax assessment. Thus, it is incumbent upon the taxpayer to prove the contrary. Failure to do so, shall vest legality in respondent's actions and assessments.

The Court finds the instant Petition meritorious.

The power of the Commissioner of Internal Revenue to assess and collect taxes can be found under Section 2 of the 1997 NIRC, as amended, to wit:

> "SEC. 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all

> forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."

However, such power is limited by the general rule provided under Section 203 of the 1997 National Internal Revenue Code which provides:

> "SEC. 203. Period of Limitation Upon Assessment and Collection. — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.
>
> For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

In this case, the deficiency taxes involved pertain to income tax and value-added tax. The pertinent laws relative to the assessment of said deficiency taxes are as follows:

> In the case of income tax, petitioner is required to file its return and the payment is to be made, on or before the fifteenth (15th) day of April following the close of the taxable year pursuant to Section 77 (B) and (C) of the 1997 NIRC, as amended, to wit:
>
> ***"SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** —
>
> xxx xxx xxx

***(B) Time of Filing of Income Tax Return.* —** The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

***(C) Time of Payment of the Income Tax.* —** The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner."

Thus, counting from April 15, 2008, the last day for the filing of petitioner's Income Tax Return for taxable year 2007, respondent had until April 15, 2011 within which to assess petitioner for deficiency income tax, if any, for taxable year 2007, as shown below:

<u>Income Tax</u>

Taxable Year	Due Date of Filing of Income Tax Return with BIR	Date of Filing of Petitioner's Income Tax Return	Last Day of Issuance of BIR's Deficiency Income Tax Assessment	Date of Issuance of FAN	Date of Petitioner's Receipt of of the FAN
2007	April 15, 2008	April 11, 2008[59]	April 15, 2011	March 17, 2016[60]	March 28, 2016[61]

As regards value-added tax, the law requires that the VAT Return must be filed quarterly within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer pursuant to Section 114 of the 1997 NIRC, as amended, which reads as follows:

"Sec. 114. Return and Payment of Value-Added Tax. —

[59] Answer to Question No. 90, Judicial Affidavit of Atty. Virgilio P. Samson, Docket (vol. I), p. 267.
[60] See Footnote No. 18.
[61] See Footnote No. 18.

(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."

Here, the dates to file Quarterly VAT Returns for the four quarters of 2007 were on April 25, 2007, July 25, 2007, October 25, 2007, and January 25, 2008. Hence, respondent had until April 25, 2010, July 25, 2010, October 25, 2010, and January 25, 2011 within which to assess petitioner for deficiency VAT for the first, second, third and fourth quarters of taxable year 2007, respectively, to wit:

Value-Added Tax

Taxable Quarter	Due Date for Filing of Quarterly VAT Return with BIR	Date of Filing of Petitioner's Quarterly VAT Return	Last Day for Issuance of BIR's Deficiency VAT Assessment	Date of Issuance of FAN	Date of Petitioner's Receipt of the FAN
1st Quarter of 2007	April 25, 2007	April 23, 2007[62]	April 25, 2010	March 17, 2016[63]	March 28, 2016[64]
2nd Quarter of 2007	July 25, 2007	July 20, 2007[65]	July 25, 2010		
3rd quarter of 2007	October 25, 2007	October 22, 2007[66]	October 25, 2010		
4th quarter of 2007	January 25, 2008	January 21, 2008[67]	January 25, 2011		

Based therefrom, the 3-year prescriptive period to assess petitioner for deficiency IT and VAT for the year 2007 under Section 203 of the 1997 NIRC, as amended, had already prescribed.

However, respondent claims that the ten (10) year prescriptive period under Section 222(a) of the 1997 NIRC, as amended, should be applied on the ground that there was a deliberate misdeclaration of sales of the subject property.

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[62] Answer to Question No. 89, Judicial Affidavit of Atty. Virgilio P. Samson, Docket (vol. I), p. 267.
[63] See Footnote No. 18.
[64] See Footnote No. 18.
[65] Answer to Question No. 89, Judicial Affidavit of Atty. Virgilio P. Samson, Docket (vol. I), p. 267.
[66] Answer to Question No. 89, Judicial Affidavit of Atty. Virgilio P. Samson, Docket (vol. I), p. 267.
[67] Answer to Question No. 89, Judicial Affidavit of Atty. Virgilio P. Samson, Docket (vol. I), p. 267.

The Court does not agree.

In the recent case of *Philippine International Air Terminals, Co., Inc. vs. Commissioner of Internal Revenue*[68], the CTA Third Division, citing the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.*,[69] ruled that where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency tax assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year.

To recall, the first LOA specifically mentioned that the scope of the examination of petitioner's books of accounts and other accounting records was for **"all internal revenue taxes for period from January 1, 2007 to December 31, 2007."** This led to the issuance of a report assessing petitioner of deficiency **income tax**, withholding tax on compensation, final withholding tax and **VAT for taxable year 2007**, which have been settled and paid by petitioner.[70] Even respondent's witness, Revenue Officer Ryan Loon, confirmed[71] such fact during his cross-examination.

Guided by the foregoing, petitioner should not have been assessed again for taxable year 2007.

Further, upon scrutiny of the records, the Court finds no sufficient evidence to prove fraud or intentional falsity on the part of petitioner to merit the application of the 10-year prescriptive period under Section 222 (a).

In this case, petitioner literally laid its cards on the table for respondent to examine its documents, pursuant to the first LOA. In fact, it did not conceal the sale of subject real property as well as the leasing of the same, prior to such sale. To set things in their proper perspective, the facts stated in respondent's Memorandum[72] dated March 5, 2014 (marked as Exhibit "R-4") are hereunder quoted for ready reference:

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[68] CTA Case No. 9123, May 7, 2018.
[69] G.R. No. 104171, February 24, 1999.
[70] See Footnote No. 7.
[71] Transcript of the Stenographic Notes Taken During the Hearing Held on June 6, 2018, p. 10.
[72] BIR Records, pp. 173-174.

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"• A sale of real property occurred and was executed on May 25, 2007 for One Billion Pesos (Php1,000,000,000.00) between Professional Services, Inc. as seller and Robinsons Land Corporation as buyer. The subject real property sold is a lot located in San Miguel Avenue corner Lourdes Street, Mandaluyong City, with an area of Ten Thousand Five Hundred Nine (10,509) square meters covered by Transfer Certificate of Title (TCT) No. (127556) 7717 of the Registry of Deeds for the Province of Rizal. **Capital Gains Tax and Documentary Stamps Tax were paid.**

- Before the above stated sale, the said property was leased to A.C. Comsti Builders. This lease was executed on December 7, 2005 with a term of two (2) years. **A disclosure was also made on this lease on the company's financial statements.**

- **The said property was classified as part of the "Investment Property" per financial statements.**

- On August 8, 2008 a Letter of Authority was issued on All Internal Revenue Taxes covering the taxable year 2007. **The same was approved and deficiency taxes were collected.** However, it does not cover the Income Tax and VAT issues on the sale of the investment property.

- An anonymous memorandum dated June 22, 2012 involving the said property arises, thus further investigation is needed. Letter of Authority No. 126-2012-00000031 was issued for this matter." (Emphases supplied)

Thus, if there was really intent to evade the payment of tax, petitioner would not have reported the foregoing lease and sale of the subject property in its records forwarded with the BIR.

Further, the records are bereft of any showing that the revenue officers authorized in the first letter of authority have neglected to perform their duties as mandated by law, or they were prevented from ascertaining the correct tax liabilities of petitioner at the very first instance that petitioner's books of accounts and other accounting records for taxable year 2007 were examined. Thus, the Court cannot comprehend why the alleged misclassification committed by petitioner

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was not discovered by the revenue officers authorized under the first LOA.

Furthermore, even assuming that there was negligence or oversight on the part of the revenue officers authorized under the first LOA, the same cannot prejudice petitioner since the prescriptive period is precisely intended to give the taxpayers peace of mind and free from any harassment.

This Court cannot turn blind on the importance of the statute of limitations upon the assessment and collection of internal revenue taxes provided for under the 1997 NIRC. The rationale behind the said Statute of Limitation is adequately explained by the Supreme Court in the case of *Republic vs. Ablaza*[73] in this wise:

> "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 a 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 recommend the approval of the law."

Considering that respondent failed to demonstrate clearly that petitioner had filed a false or fraudulent return to warrant the application of the 10-year prescriptive period, the applicable regular period of 3 years for assessment had, therefore, already prescribed as discussed above.

[73] 108 Phil. 1105 (1960).

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In view of the prescription of the government's claim, the Court no longer deems it necessary to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice dated March 17, 2016 assessing and demanding from petitioner the payment of deficiency income tax and VAT in the total amount of P1,472,331,240.45 for the taxable year 2007 are hereby **CANCELLED** and **WITHDRAWN**, on ground of prescription.

SO ORDERED.

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

I CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice