REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SPC REALTY CORPORATION,
Petitioner,

-versus-

MUNICIPAL TREASURER OF CAINTA,
Respondent.

CTA EB No. 985
(CTA AC No. 77)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:
SEP 29 2014 3:20pm

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D E C I S I O N

***CASTAÑEDA, JR., J.*:**

Assailed before Us are a) the Decision dated November 15, 2012 dismissing the petition for review on the basis that the assessment of business taxes for years 1999 until 2005 had become final and executory, and b) the Resolution dated January 31, 2013 denying SPC Realty Corporation's motion for reconsideration for lack of merit both issued by the Court of Tax Appeals' ("CTA") Third Division in the case entitled "SPC Realty Corporation vs. Municipal Treasurer of Cainta", docketed as CTA AC No. 77.

THE FACTS

SPC Realty Corporation ("petitioner") is a corporation duly organized and existing under the laws of the Republic of the Philippines.[1]

Municipal Treasurer of Cainta ("respondent") on the other hand, is sanctioned by law to assess and collect local taxes, charges and fees under Republic Act ("R.A.") No. 7160.[2]

Since the time of its incorporation in 1999, petitioner owns a parcel of land in Cainta, Rizal leased to Alcan Packaging Starpack Corporation.[3]

In the Letter of Authority ("LOA") No. 0468 dated September 12, 2005, respondent through Mr. Edgar T. Villanueva authorized Mr. Bernardo M. Bautista and Ms. Aileen C. Austria to examine petitioner's books of account and other pertinent records, to verify, assess and collect the correct amount of taxes, fees and charges due for the unexamined previous years of 1999 to December 31, 2004.[4] On the same day, respondent issued an assessment of business taxes due of P1,945,202.97 for years 1999 to 2005.[5]

On December 29, 2005, petitioner questioned respondent's assessment of business taxes for the covered period. It pointed that prior to year 2005, the principal office was at Manila. Thus, the sale or transaction should be recorded in the principal office in Sta. Ana Manila, not in Cainta, the place where the real property is leased not as a branch, factory, warehouse or sales outlet.[6]

On July 4, 2006, respondent denied the protest and demanded payment of the business taxes due.[7]

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[1] Docket, CTA AC Case No. 77, p. 68.
[2] 1991 Local Government Code. See Docket, CTA AC Case No. 77, p.69.
[3] Docket, CTA AC Case No. 77, p. 6 and Records, pp. 70 & 316.
[4] Records, CTA AC Case No. 77, pp.14 &70.
[5] Exhibit "AA".
[6] Exhibit "BB".
[7] Exhibit "EE".

On July 7, 2006, petitioner received another computation from the respondent increasing the amount of taxes, interests and surcharges due to P2,346,781.32.[8]

On July 11, 2006, petitioner denied the liability claimed by respondent.[9]

Dissatisfied, petitioner filed a petition for review docketed as Civil Case No. 06-7957 before the Regional Trial Court ("RTC") of Antipolo, Rizal, Branch 73 on August 2, 2006.[10]

In ruling for respondent, the trial court issued a Decision dated March 11, 2010 dismissing the petition for review for lack of jurisdiction. The trial court reasoned that petitioner did not avail of the proper administrative remedies in protesting the assessment.[11]

Petitioner moved for the reconsideration of the RTC's decision dated March 11, 2010; however, in the Order dated February 25, 2011, the RTC denied the same for lack of merit.[12]

Unfazed, petitioner appealed the case docketed as CTA AC Case No. 77 with the Court of Tax Appeals ("CTA") Third Division on May 12, 2011; while respondent filed his Comment on October 13, 2011.[13]

On November 15, 2012, the CTA Third Division dismissed the petition for review due to petitioner's failure to observe the sixty (60) day period within which to file a protest on the assessment.[14]

In the Resolution dated January 31, 2013, the Court in Division denied petitioner's motion for reconsideration for lack of merit.[15]

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[8] Exhibit "CC" and Docket, CTA AC No. 77, p.7.
[9] Exhibit "DD".
[10] See Records of Civil Case No. 06-7957.
[11] Docket, CTA AC No. 77, pp. 23-24.
[12] Docket, CTA AC No. 77, p. 25.
[13] Docket, CTA AC No. 77, p. 83.
[14] Docket, CTA AC No. 77, pp. 126-139. Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Olga Palanca-Enriquez (retired) and Associate Justice Amelia R. Cotangco-Manalastas.
[15] Docket, CTA AC No. pp. 158-159.

THE ISSUES

Petitioner elevated the case by way of a Petition for Review before the Court *en banc* raising the following issues:

I. THE 3RD DIVISION ERRED IN DENYING THE PETITION AND IN NOT CANCELLING THE SAME ASSESSMENT GIVEN THAT THE SAME IS NULL AND VOID.

II. THE 3RD DIVISION ERRED IN NOT FINDING THAT PETITIONER IS NOT SUBJECT TO PAYMENT OF LOCAL BUSINESS TAXES IN THE MUNICIPALITY OF CAINTA FOR THE YEARS 1999-2005.

III. THE ASSESSMENT ISSUED BY RESPONDENT IS CONTRARY TO THE LOCAL GOVERNMENT CODE.

IV. THE ASSESSMENT ISSUED BY RESPONDENT IS NULL AND VOID AS IT WAS ISSUED BEYOND ITS TAXING AUTHORITY.

V. ASSESSMENT FOR THE YEARS 1999 AND 2000 IS ALREADY BARRED BY PRESCRIPTION.

VI. PETITIONER ALREADY PAID THE FULL AMOUNT OF TAXES DUE ON ITS BUSINESS TO THE CITY OF MANILA.[16]

THE COURT'S RULING

PETITIONER HAS FAILED TO FILE A TIMELY PROTEST.

[16] Rollo, pp. 11, 14,15 & 19.

THE ASSESSMENT FOR BUSINESS TAXES COVERING YEARS 1999 & 2000 HAS PRESCRIBED.

According to petitioner, during the period of years 1999 to 2005, it did not operate or maintain a branch, factory, warehouse or sales outlet in Cainta leased to another. Prior to year 2005, petitioner held its principal office in Sta. Ana, Manila, where all of its transactions are recorded and entered. Under Section 150, petitioner is liable to pay business taxes to the City of Manila.

It is baseless for respondent to assess petitioner for business taxes for years 1999 until 2005 because during this period, it did not carry a business, and all of the income derived from the lease were all recorded in its principal place of business in Sta. Ana, Manila.

Petitioner alleges that the act in belatedly submitting its protest to respondent did not cure the invalidity of the assessment. A void assessment bears no fruit.

Finally, petitioner already paid the full amount of local business taxes due to the City of Manila, which payment was made pursuant to Section 150 of R.A. No. 7160.

Respondent on the other hand, asserts that he duly assessed deficiency business taxes against petitioner over its realty business considering that the lease transaction took place in Cainta, and the property subject of lease is likewise located in Cainta. It follows that the situs of taxation is in Cainta.

Respondent further argues that petitioner availed of the wrong mode of appeal to the RTC, thus the assessment has become final and executory.

Assuming that the RTC has jurisdiction over the instant case, this case should be remanded to it for further proceedings for the determination and appreciation of its merits.

Petitioner's assertions are partly meritorious.

In disputing assessment of local tax issued by the local treasurer, the taxpayer should comply with the procedure stated in Section 195 of R.A. 7160 as follows:

> SEC. 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interest and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

The law provides that the local treasurer shall issue a notice of assessment on unpaid or deficiency local taxes, fees or charges due. The taxpayer is given a period of sixty (60) days from receipt of the assessment notice to protest in writing. The local treasurer shall decide on the protest within sixty (60) days from the time of its filing. If the local treasurer upholds the assessment or in the event of inaction, the taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty day period within which to appeal to the regular courts.

As to the timeliness of the filing of petitioner's written protest on deficiency local taxes such as business taxes, the Court in Division correctly observed the following: *Jc*

> Based on the records of the case, an assessment was issued by respondent against petitioner for deficiency taxes, including interests and surcharges for the period covering years 1999 to 2005, in the aggregate amount of P1,945,202.97, on September 12, 2005, counting sixty (60) days from said date, petitioner had until November 11, 2005, within which to file its protest on the subject assessment.
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> However, petitioner failed to file any protest, and it was only on December 29, 2005, that Finance and Accounting Manager, Emiliano L. Gutierrez, Jr., of Alcan Packaging Starpack Corporation, the lessee of the subject property of petitioner, who filed a letter addressed to respondent, in response to the assessment.
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> xxx xxx xxx as a result therefore, for failure of petitioner to timely contest the assessment, the same has become final and executory.[17]

Thus, the assessment has become final and executory due to petitioner's failure to seasonably file a protest against the assessment on business taxes due.

However, it is imperative for this Court to ascertain if the assessment of the deficiency business taxes for years 1999 to 2005 was within the prescriptive period.

Prescription as a ground to dismiss a claim must be invoked at the earliest stage in the answer or motion to dismiss; otherwise, it is waivable. Prescription is not a waivable defense or objection if shown on the pleadings or the evidence on record in accordance with Section 1, Rule 9 of the Revised Rules of Civil Procedure, reading:

> Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or

[17] Docket, CTA Case AC No. 77, p. 137.

> that the action is barred by a prior judgment or by **statute of limitations**, the court shall dismiss the claim. (Emphasis supplied.)

Under the rule, the defenses of lack of jurisdiction over the subject matter, *litis pendentia, res judicata*, and prescription of action may be raised at any stage of the proceedings, even for the first time on appeal, except that the objection to the lack of jurisdiction over the subject matter may be barred by laches.[18]

The ground of prescription was raised by both parties in the petition for review and answer filed in the trial court.

Petitioner further argues that respondent issued the assessment on September 12, 2005, which date is obviously beyond the five-year assessment period of local taxes for the years 1999 and 2000. Thus, the assessed taxes for years 1999 to 2000 should be cancelled on the ground of prescription.

Respondent counters that the assessment of business taxes for years 1999 and 2000 has not prescribed. While the right to collect taxes terminates after five years from the date they become due; however, the law further provides that in case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of fraud or intent to evade payment.

We disagree with respondent's stance.

Contrary to respondent's posture in the answer, the 1999 and 2000 assessment of business taxes has prescribed corroborated by assessment summary of business taxes, surcharges and interests for the covered period proffered by petitioner and admitted by the trial court.[19]

The assessment and collection periods of local taxes are governed by Section 194 (a) of R.A. 7160, stating:

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[18] *Spouses Celso Dico, Sr. And Angeles Dico v. Vizcaya Management Corporation*, G.R. No. 161211, July 17, 2013. See also *Commissioner of Internal Revenue v. First Sumiden Realty*, Inc., C.T.A. EB Case No. 975, January 7, 2014 affirming *First Sumiden Realty, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8151, September 27, 2012.

[19] Exhibit "AA". See Records, Civil Case No.06- 7957, pp. 191 & 233.

> SEC. 194. Periods of Assessment and Collection. – (a) local taxes, fees, or charges shall **be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period.**
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> xxx xxx xxx
>
> (b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.
>
> (c) Local taxes, fees, or charges may be **collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period**. xxx xxx xxx
>
> (d) The running of the period of prescription provided in the preceding paragraphs shall be suspended for the time during which:
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> (1) The Treasurer is legally prevented from making the assessment of collection;
>
> (2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
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> (3) The taxpayer is out of the country or otherwise cannot be located. (Emphasis supplied.)

Thus, the period of assessment of local tax is five (5) years from the due date unless there be fraud or intent to evade the payment of taxes in which case the assessment is ten (10) years from discovery thereof; while the period of collection is within five (5) years from the date of assessment.

Business taxes are payable within the first twenty (20) days of January or of each subsequent quarter under Article 255 of Administrative Order No. 270.[20]

Fraud is the deliberate or intentional evasion of the normal fulfilment of an obligation. Fraud is never presumed. It must be alleged and proven and established by clear and convincing evidence.[21] *Fraus est odiosa et non praesumenda.*[22]

In the case at bar, respondent has failed to show by clear and convincing evidence the existence of fraud or intention to evade payment against petitioner justifying the application of the ten-year period of assessment.[23] Both parties acknowledge that during the years 1999 until 2005, Cainta property owned by petitioner was leased to another entity, Alcan Packaging Starpack Corporation. Petitioner believed that the situs of sales allocation mentioned in Section 150 of R.A. 7160, is inapplicable because it had no branch, factory, warehouse or sales outlet operating within the Cainta property during the covered period. Thus, petitioner cannot be faulted when it paid business taxes due to the City of Manila where the principal office is situated during the covered period as shown in proofs of business tax payments duly admitted by the trial court.[24]

There being no fraud or intention to evade payment, and considering that the assessment of business taxes issued on September 12, 2005 was disputed on December 29, 2005, only the assessment for years 1999 and 2000 has prescribed as shown below: Jc

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[20] Implementing Rules and Regulations of the 1991 Local Government Code.
[21] *Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue*, G.R. No. L-13203, January 28, 1961, 1 SCRA 160.
[22] *Carmela Cuizon Y Montalban v. Court of Appeals and Spouses Gerardo and Maria Paray*, G.R. No. 102096, August 22, 1996, 260 SCRA 645.
[23] Docket, CTA AC Case No. 77, pp. 78 & 117.
[24] Records, CTA AC Case No. 77. See Exhibits "A", "B", "J", "K", "L", "M", "N", "O","P", "Q", "'R", "S", "T", "U", "V", "W", "X", & "Y".

Period Covered	Business Tax Due Date	Last Day to Assess
1999	January 20, 1999	Jan 20, 2004
2000	January 20, 2000	Jan. 20, 2005
2001	January 20, 2001	Jan. 20, 2006
2002	January 20, 2002	Jan. 20, 2007
2003	January 20, 2003	Jan. 20, 2008
2004	January 20, 2004	Jan. 20, 2009
2005	January 20, 2005	Jan. 20, 2010

THE SUPREME COURT CASE OF *PHILIPPINE JOURNALISTS V. COMMISSIONER OF INTERNAL REVENUE*[25] EMPHASIZES THAT AN ASSESSMENT IS VOID IF IT IS TIME-BARRED DESPITE FAILURE OF THE TAXPAYER TO PROTEST WITHIN THE MANDATED PERIOD.

THE *PHILIPPINE JOURNALISTS* CASE IS BINDING AND MUST BE DULY OBSERVED.

In the case of *Philippine Journalists v. Commissioner of Internal Revenue*[26], notwithstanding taxpayer's failure to timely file a protest on the assessment, the Supreme Court declared the 1994 final assessment notice as invalid on the basis of prescription. The Highest Tribunal explained that:

> On October 5, 1998, the Assessment Division of the BIR issued Pre-Assessment Notices which informed petitioner of the results of the investigation. Thus, BIR Revenue Region No. 6, Assessment Division/Billing Section, issued Assessment/Demand No. 33-1-000757-94 on December 9, 1998 stating the following deficiency taxes, inclusive of interest and compromise penalty:
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> xxx xxx xxx
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> On March 16, 1999, a preliminary collection letter was sent by Deputy Commissioner Romeo S. Panganiban

[25] G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[26] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue, Supra.*

to the petitioner to pay the assessment within ten (10) days from receipt of the letter.

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The first assigned error relates to the jurisdiction of the CTA over the issues in this case. The Court of Appeals ruled that only decisions of the BIR denying a request for reconsideration or reinvestigation may be appealed to the CTA. **Since the petitioner did not file a request for reinvestigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable.** The petitioner now argue that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of statute of limitations.

We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:

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The waiver document is incomplete and defective and thus the three-year prescriptive period was not tolled or extended and continued to run until April 17, 1998. Consequently, **the Assessment/Demand No. 33-1-000757-94 issued on December 9, 1998 was invalid because it was issued beyond the three (3) year period**. In the same manner, Warrant of Distraint and/or Levy No. 33-06-046 which petitioner received on March 28, 2000 is also null and void for having been issued pursuant to an invalid assessment.[27] (Emphasis supplied.)

Although the *Philippine Journalists* case involves internal revenue tax, and is premised on prescription as a ground to invalidate assessment, the same case can be applied by analogy to the instant case.

[27] cited in *Commissioner of Internal Revenue v. Headstrong Philippines*, Inc., CTA EB Case No. 489, August 26, 2010.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[28] Thus, the *Philippine Journalists* case is binding and must be duly observed.

In deference to the *Philippine Journalists* case, the Court of Appeals held in the case of *Takasago Import-Export Corporation v. Commissioner of Internal Revenue and the BIR Acting Regional Director, Revenue Region No. 07, Quezon City* as follows:

> The CTA ruled that since Takasago did not file a request for re-investigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable, that Takasago's right to protest was waived by its failure to contest assessment within thirty days from receipt thereof. Takasago on the other hand now argues that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was filed beyond the prescriptive period.
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> We disagree with the aforementioned findings of the CTA. A case with similar factual backdrop, **the Supreme Court declared null and void a BIR assessment issued beyond the prescriptive period, notwithstanding the taxpayer's failure in said case to file a protest within the aforementioned thirty-day period.**[29] (Emphasis supplied.)

In another Court of Appeals case of *FMF Development Corporation v. Commissioner of Internal Revenue*[30], the effects of a void assessment resulting from prescription was ruled in this manner:

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[28] *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. No. 114924-27, March 18, 1997, 270 SCRA 9.
[29] CA-G.R. SP No. 78777, January 31,2007. See also *FMF Development Corporation v. Commissioner of Internal Revenue*, CA-G.R. SP No. 73973,February 23, 2004.
[30] CA-G.R. SP No. 73973, February 23, 2004.

On June 20, 2002, the Court of Tax Appeals issued the assailed Resolution dated June 20, 2002 dismissing the Petition for Review for lack of jurisdiction. **According to the Tax Court, petitioner could no longer contest the assessment beyond the 30-day prescriptive period because the same already became final and executory**.

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A void assessment cannot give rise to an obligation to pay deficiency taxes. It likewise divests the taxing authority of the right to collect them. Indeed, under Article 1106 of the Civil Code, "by prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. In the same way, rights and actions are lost by prescription.

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in *Republic vs. Ablaza*[31]

xxx xxx xxx in fairness to the taxpayer, the Government should be estopped from collecting the tax where it failed to make the necessary investigation and assessment within 5 years after the filing of the return and where it failed to collect the tax within 5 years from the date of assessment thereof. **Just as the government is interested in the stability of its collections, so also are the taxpayers entitled to an assurance that they will not be subjected to further investigation for tax purposes after the expiration of a reasonable period of time.**'(Vol. II, Report of the Tax Commission of the Philippines, pp. 321-322).

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WHEREFORE, the petition is hereby GRANTED. The assailed Resolutions of the Court of Tax Appeals dated June 20, 2002 and October 24, 2002 are hereby REVERSED AND SET ASIDE. **Respondent's**

[31] G.R. No. L-14519, 108 Philippine Reports 1105, July 26, 1960.

> **assessment is hereby declared void for having prescribed** and for failure to state the facts and law upon which it was based.[32] (Emphasis supplied.)

Clearly, the assessment of business taxes for years 1999 and 2000 has prescribed; and the assessment for business taxes due for years 2001, 2002, 2003, 2004 & 2005, is final and collectible.

Moreover, petitioner is also liable to pay surcharge and interest pursuant to Section 168 of the 1991 of R.A. 7160, reading:

> SEC. 168. Surcharges and Penalties on Unpaid Taxes, Fees, or Charges. – The sanggunian may impose a surcharge not exceeding twenty-five percent (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

The Court sees no cogent reason to resolve the other grounds for being moot.

WHEREFORE, premises considered, the assailed Decision dated November 15, 2012 and Resolution dated January 31, 2013 are **AFFIRMED with modifications** as follows:

a) The assessment of business taxes for years 1999 and 2000 has prescribed; and

b) The assessment of basic business taxes including surcharge and interest for years 2001, 2002, 2003, 2004 and 2005 has become final and collectible.

SO ORDERED. ja

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[32] *FMF Development Corporation v. Commissioner of Internal Revenue, supra.*

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

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

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court *en banc* before the case was assigned to the writer for the opinion of the Court *en banc*.

ROMAN G. DEL ROSARIO
Presiding Justice