REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SPOUSES REMIGIO P. MAGAAN AND LETICIA L. MAGAAN, Petitioners,	**CTA CASE NO. 7866**
	Members:
- versus -	**CASTAÑEDA, JR.** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 30 2015 9:30 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is petitioners' **Motion for Reconsideration**, filed on April 6, 2015, without respondent's comment thereto despite notice as per Records Verification dated May 5, 2015.

Petitioners assail the Decision dated March 9, 2015 denying their Petition for Review for lack of merit. The dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. Accordingly, petitioner spouses are liable for deficiency income tax and percentage tax for the years 1998, 1999 and 2000 in the aggregate amounts of ₱9,900,203.90 and ₱1,560,465.22, respectively, inclusive of the 50% surcharge imposed

under Section 248(B) of the NIRC of 1997, summarized as follows:

DEFICIENCY INCOME TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	₱1,171,570.00	₱ 585,785.00	₱1,757,355.00
1999	5,282,006.54	2,641,003.26	7,923,009.80
2000	146,559.40	73,279.70	219,839.10
Total	**₱6,600,135.94**	**₱3,300,067.96**	**₱9,900,203.90**

DEFICIENCY PERCENTAGE TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	₱ 188,725.00	₱ 94,362.50	₱ 283,087.50
1999	815,625.24	407,812.62	1,223,437.86
2000	35,959.90	17,979.96	53,939.86
Total	**₱1,040,310.14**	**₱520,155.08**	**₱1,560,465.22**

In addition, petitioner spouses are liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC of 1997, as amended, on the:

1. basic deficiency income taxes of ₱1,171,570.00, ₱5,282,006.54 and ₱146,559.40 for the years 1998, 1999 and 2000, respectively, computed from April 15, 1999, 2000 and 2001 until full payment thereof; and

2. basic deficiency percentage taxes of ₱188,725.00, ₱815,625.24 and ₱35,959.90 for the years 1998, 1999 and 2000, respectively, computed from January 25, 1999, 2000 and 2001 until full payment thereof; and

(b) Delinquency interest at the rate of 20% per annum on the total amounts due of ₱9,900,203.90 and ₱1,560,465.22 representing deficiency income tax and percentage tax, respectively and on the deficiency interest which have accrued as aforestated in (a) computed from January 5, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

In the assailed Decision, the Court denied petitioners' appeal on the cancellation and nullification of the Final Decision on Disputed Assessment (FDDA) dated October 7, 2008, issued by the respondent for deficiency income and percentage taxes for taxable years 1998, 1999 and 2000. The Court also found that respondent's right to assess and/or collect from petitioners has not yet lapsed, thus, applying the ten (10)-year prescriptive period under Section 222[1] of the National Internal Revenue Code (NIRC) of 1997, as amended.

In assailing the Court's Decision, petitioner spouses raised the following arguments:

1. Prescription has already set in to bar the deficiency tax assessments against the petitioners;

2. There is no competent proof showing that the petitioners had underdeclared their incomes;

3. The rulings of the Honorable Supreme Court in the *Laborte* case and the cases cited therein are not squarely applicable in the present case;

4. The submission of the petitioners that they were deprived of their right to due process of law was not considered and passed upon in the Decision of this Honorable Court;

5. The allegations of Ms. Yolanda Maniwang in her Judicial Affidavit are not worthy of full faith and credit; and

6. The *prima facie* presumptions of correctness of assessment and regularity in the performance of duties cannot apply in this case.

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[1] **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -***

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

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There being no comment on the Motion for Reconsideration, We shall now resolve the same.

Respondent's right to assess petitioner spouses has not yet prescribed.

Competent proof supports petitioners' underdeclaration of income.

The rulings of the Supreme Court in the *Laborte* case and the cases cited therein are applicable to the present case.

Respondent was able to establish, through competent evidence, that petitioners underdeclared their income. The checks, although initially denied admission by this Court, were eventually considered as competent evidence applying the *Laborte* case. The said checks were found to be (1) positively identified by testimony duly recorded; and (2) duly incorporated in the records of the case.

We reiterate our ruling in the assailed Decision citing the case of *Rodolfo Laborte, et al. vs. Pagsanjan Tourism Consumers' Cooperative et al.*[2] (*Laborte* case), to wit:

> Section 34, Rule 132 of the Revised Rules on Evidence provides the general rule, to wit:
>
> > Sec. 34. *Offer of Evidence.* – The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
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> From the above provision, **it is clear that the court considers the evidence only when it is formally offered. The**

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[2] G.R. No. 183860, January 15, 2014, 713 SCRA 536.

> **offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties**. xxx
>
> However, **there are instances when the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted**. Citing *People v. Napat-a* and *People. v. Mate*, the Court in *Heirs of Romana Saves, et al., v. Heirs of Escolastico Saves, et al.*, enumerated the requirements for the evidence to be considered despite failure to formally offer it, **namely: '*first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.**' xxx" (*Emphasis supplied*)

The general rule is that the court only considers evidence that are formally offered to and admitted by the Court. However, as stated in the above case, any evidence not formally offered may still be admitted if, *first*, the same was duly identified by testimony duly recorded; and, *second*, it was duly incorporated in the records of the case.

In the instant case, respondent satisfied the first requirement since her confidential informant and witness, Ms. Yolanda G. Maniwang, was able to duly identify in her Judicial Affidavit the assailed checks she issued to Imilec Trade Haus, L4R Realty Development Corporation, and a certain Rubelina Sibulan. Respondent's witness, Ms. Maniwang, also explained the contents of said checks and that they were duly signed by her and their Vice-President for Administrative/Finance, a certain Mr. Nelson C. Dela Torre. Ms. Maniwang further clarified that even though the checks were issued to different payees, they were all owned and managed by petitioner spouses, and in fact, the checks were deposited to their accounts.

Moreover, even though the checks were initially denied admission by this Court for being mere photocopies, they were eventually marked as originals during the Commissioner's hearing on November 25, 2013, thereby satisfying the second requirement.

Hence, respondent's tax assessments have not yet prescribed.

As mentioned in the assailed Decision, the checks were duly identified in *Sinumpaang Salaysay ni Yolanda G. Maniwang*[3] and were marked as originals during the Commissioner's hearing on November 25, 2013[4]. Further, the said checks were presented before the Court during the hearing dated March 28, 2012[5]. In the same hearing, the witness, Ms. Yolanda Maniwang had indeed positively identified the checks and the documents mentioned in her *Sinumpaang Salaysay*.

The requisites mentioned in the case of *Laborte* are attendant to warrant the relaxation of the rules and to consider the evidence submitted by the respondent. Respondent was able to present pieces of evidence that have been duly identified by testimony duly recorded. "Identification means proof of identity; the proving that a person, subject or article before the court is the very same that he or it is alleged, charged or reputed to be xxx".[6]

In addition, respondent presented the Real Estate Mortgage (REM)[7] signed and executed by and between petitioner Remigio Magaan (as one of the lenders), and spouses Maniwang. Notably, on page 2 of Annex B of the REM, there is an instruction that states:

"- PDC's PAYABLE TO:

RUBILINA M. SIMBULAN AND/OR
REMIGIO P. MAGAAN"

These factual findings were never repudiated by petitioner spouses. Judicious review of the records reveals that petitioner spouses failed to explain or rebut their participation in the REM. They failed to convince the Court that they did not receive any income

[3] Exhibit "153", docket, pp. 817-855.
[4] Docket, pp. 1445-1452.
[5] Transcript of Stenographic Notes taken during the hearing on March 28, 2012, p. 31.
[6] *People of the Philippines vs. Maximo Ramos y San Diego alias "IMO"*, G.R. Nos. 135068-72, September 20, 2001, 365 SCRA 477.
[7] Exhibit "36", docket, pp. 1133-1138.

from the said transactions. Therefore, the information provided by Ms. Maniwang in her *Sinumpaang Salaysay* and her testimony in court remained uncontroverted.

Since the respondent was able to establish a case against the petitioner spouses based on the checks, contracts and other pieces of evidence, the burden of proof shifted to the petitioner spouses to prove that they are not liable to pay the deficiency income and percentage taxes. Unfortunately, they failed to do so, hence, this Court ruled in favor of the respondent.

In sum, the totality of respondent's evidence, documentary and testimonial, were given probative value since there were no other proof to disprove the truthfulness of the said pieces of evidence. It was held that "their probative weight must be evaluated not in isolation but in conjunction with the other evidence adduced xxx"[8].

Therefore, the respondent has 10 years after the discovery of falsity or fraud within which to assess petitioner spouses. Patently, this case falls within the ambit of Section 222(a) of the NIRC of 1997, as amended, which provides:

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

As aptly ruled in the assailed Decision, respondent's right to assess has not yet prescribed.

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[8] *Donato C. Cruz Trading Corporation vs. Court of Appeals, et al.*, G.R. No. 129189, December 5, 2000, 347 SCRA 13.

Petitioners were not deprived of their right to due process of law.

"It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process."[9]

Due process was evidently complied with when petitioners received and did not deny the receipt of the required notices, to wit:

a. Letter of Authority;[10]
b. Notice of Informal Conference;[11]
c. Preliminary Assessment Notice (PAN)[12] with Details of Discrepancies;[13] and
d. Formal Letter of Demand together with the Audit Result/Assessment Notices (FAN).[14]

Consequently, petitioner spouses were able to file their reply to both the PAN[15] and FAN[16]. Also, they were informed of their deficiency income tax liability when respondent sent the details of discrepancies[17] explaining the basis of assessment.

As regards the questioned checks, petitioners were given sufficient opportunity to examine the checks and raise their objections. Clearly, they were not deprived of due process. "So long as the party is given the opportunity to explain his side, the requirements of due process are satisfactorily complied with."[18]

The allegations of Ms. Yolanda Maniwang in her Sinumpaang

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[9] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, 491 SCRA 213.
[10] Exhibit "1" for the respondent, BIR Records, p. 277.
[11] Exhibit "16" for the respondent, BIR Records, p. 285.
[12] Exhibit "17" for the respondent, BIR Records, p. 409.
[13] Exhibit "18" for the respondent, BIR Records, pp. 407-408.
[14] Exhibits "Q", "Q-1" to "Q-8" for the petitioner, BIR Records, pp. 553-557; pp. 547-552.
[15] Exhibit "K" for the petitioner, BIR Records, p. 385.
[16] Exhibits "R' and "R-1" for the petitioner, BIR Records, pp. 558-559.
[17] Exhibit "K-2" for the petitioner, BIR Records, p. 384.
[18] *Hon Waldo Q. Flores, et al. vs. Atty. Antonio F. Montemayor*, G.R. No. 170146, August 25, 2010, 629 SCRA 178, 195.

Salaysay remained uncontroverted.

Petitioners state that in denying their petition, the Court relied heavily on the allegations in the Judicial Affidavit of respondent's informant and witness, Ms. Yolanda Maniwang.

The Court finds the testimony of Ms. Yolanda Maniwang worthy of credit. We reiterate that Section 282 (A) of the NIRC of 1997,[19] as amended, does not provide any limitation as to who may give information for frauds of internal revenue laws or violations of any provisions thereof. The only limitation mentioned in said provision which actually pertains only to an informer's reward is that the informant must not be a public official or employee, or a relative within the sixth degree of consanguinity of said public official or employee. Hence, any person qualified under the rules to be a witness may freely testify.

Meanwhile, petitioners assert that Imilec Tradehaus is actually Imilec Tradehaus and Services Company, a partnership registered with the Securities and Exchange Commission, whose partners are Rubilina M. Simbulan and Rosalina M. Joanino and not herein petitioner spouses. Even assuming Imilec Tradehaus and Imilec Tradehaus and Services Co. are one and the same, a perusal of the Articles of Partnership[20] of Imilec Tradehaus and Services Co. reveals that "the term for which the partnership is to exist is ten (10) years" from and after the execution of the said agreement. The agreement was executed on January 2, 1989, hence, it is only good up to January 2, 1999. This would not support petitioners' allegations but, instead, bolsters respondent's position considering the taxable years being assessed cover 1998 to 2000. Again, taking into consideration the totality of the evidence presented, petitioners failed to convince the Court that the assessments were erroneous.

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[19] SEC. 282. *Informer's Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and in the Discovery and Seizure of Smuggled Goods.* -

> (A) *For Violations of the National Internal Revenue Code.* - Any person, except an internal revenue official or employee, or other public official or employee, or his relative within the sixth degree of consanguinity, **who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty**, shall be rewarded in a sum equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One million pesos (P1,000,000) per case, whichever is lower. xxx

[20] Exhibit "F-1" for the petitioner, docket, pp. 251-253.

The other alleged contradictions on the testimony of Ms. Maniwang are insignificant, and will not result to the impairment of her credibility. "It has been held, inconsistencies and discrepancies on minor details of the testimony of a witness serve to strengthen the credibility of the witness."[21]

The *prima facie* presumptions of correctness of assessment and regularity in the performance of duties apply in this case.

As discussed above, the Court considered the evidence of both parties, however, petitioners' pieces of evidence were not sufficient to tilt the scale to their side.

The Court emphasizes that "upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made"[22]. Further, respondent's assessments enjoy the presumption of correctness, hence, "mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against the presumption xxx".[23]

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[24], the Supreme Court held 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.[25]

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[21] *People of the Philippines vs. Roel Ponayo y Villanueva,* G.R. No. 111523, August 10, 1994, 235 SCRA 226.
[22] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301.
[23] *Hon Waldo Q. Flores, et al. vs. Atty. Antonio F. Montemayor*, G.R. No. 170146, August 25, 2010, 629 SCRA 178, 195.
[24] G.R. No. 134062, April 17, 2007, 521 SCRA 373 citing *Sy Po v. Court of Appeals*, G.R. No. L-81446, 18 August 1988, 164 SCRA 524, 530.
[25] *Ibid.*

Thus, the Court finds no cogent reason to reverse, modify or amend the assailed Decision.

WHEREFORE, in view of the foregoing, petitioners' Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice