REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MERIDIEN EAST REALTY & DEVELOPMENT CORPORATION, *Petitioner,*	**CTA Case No. 9130**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **MINDARO-GRULLA,** and **BACORRO-VILLENA,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 07 2020 1:20 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This *Petition for Review* filed on August 27, 2015 involves Meridien East Realty & Development Corporation's judicial protest against the Commissioner of Internal Revenue's assessment for alleged deficiency income tax, value added tax (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST) for taxable year (TY) 2010, in the total amount of ₱35,666,837.02, inclusive of interest, penalty and surcharge.[1] It prays for the cancellation and withdrawal of respondent's *Final Decision on Disputed Assessment*

[1] Statement of the Case, Pre-Trial Order dated November 14, 2016, Docket, p. 433.

(FDDA) dated July 27, 2015, assessing petitioner for the said alleged deficiency taxes.

THE FACTS

Petitioner Meridien East Realty & Development Corporation is a corporation duly organized and existing under Philippine laws. Its primary purpose is to acquire by purchase, lease, donation otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improve, manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances.[2]

Respondent is the Commissioner of Internal Revenue vested under appropriate laws with authority to carry out the functions, duties, and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) and other laws, rules, and regulations.[3]

On June 7, 2005, the Bureau of Internal Revenue (BIR) issued BIR Ruling No. DA-245-05, wherein the BIR confirmed, in favor of petitioner, the opinion that *"the conveyance of the land and common areas of the Project in favor of the condominium corporation being without monetary consideration and is not in connection with a sale made to the condominium corporation, no income was generated and a* fortiori, *no income and/or creditable withholding tax is payable and collectible. Since the said conveyance is not a sale, it is likewise not subject to the ten percent (10%) VAT imposed under Section 106 of the Tax Code of 1997, neither will it be subject to the documentary stamp tax on sale or conveyance of real property imposed under Section 196 of the same Code. xxx."*

However, respondent later issued Revenue Memorandum Circular (RMC) No. 20-2010, which, in effect, nullified and revoked BIR Ruling No. DA-245-2005.

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[2] Exhibit "P-16", Docket, at p. 574.
[3] Paragraph (Par.) 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 414.

On August 16, 2013, the Bureau of Internal Revenue (BIR) sent the *Letter of Authority* No. 044-2013-00000156 dated August 15, 2013,[4] for the examination of petitioner's books of accounts and other accounting records of all internal revenue taxes for TY 2010.[5]

Subsequently, on December 9, 2013, petitioner received respondent's *Preliminary Assessment Notice*, assessing petitioner for alleged deficiency income tax, VAT, EWT, and DST, for TY 2010, in the total amount of ₱425,806,483.14, inclusive of penalties and surcharge.[6]

On January 3, 2014, petitioner received a copy of respondent's *Formal Assessment Notices* (FAN), assessing petitioner for alleged deficiency income tax, VAT, EWT and DST, for TY 2010 in the total amount of ₱429,482,031.85, inclusive of penalties and surcharge.[7] Petitioner filed its Protest[8] to the FAN with a request for reinvestigation on January 9, 2014.[9] On March 10, 2014, petitioner submitted additional documents/evidence to support the Protest.[10]

Thereafter, on July 28, 2015, petitioner received respondent's FDDA dated July 27, 2015,[11] assessing petitioner for deficiency income tax, VAT, EWT and DST, for TY 2010 in the total amount of ₱35,666,837.02, inclusive of interest, penalty and surcharge,[12] broken down as follows:

Tax Type	**Basic**	**Surcharge**	**Interest**	**Compromise**	**Total**
Income tax	₱9,198,579.53	₱4,599,289.77	₱8,044,346.81		₱21,842,216.11
VAT	4,473,506.22	2,286,753.11	4,200,107.63		11,060,366.96
EWT	996,047.05	196,667.34	920,183.74	₱50,000.00	2,162,898.13
DST	252,995.00	63,248.75	235,112.07	50,000.00	601,355.82
Total	**₱15,021,127.80**	**₱7,145,958.97**	**₱13,399,750.25**	**₱100,000.00**	**₱35,666,837.02**

[4] Exhibits "P-1" and "R-1", BIR Records, p. 2.
[5] Par. 2, Admitted Facts, JSFI, Docket, p. 414.
[6] Par. 3, Admitted Facts, JSFI, Docket, pp. 414 to 415.
[7] Par. 4, Admitted Facts, JSFI, Docket, p. 415.
[8] Exhibit "P-4", BIR Records, pp. 123 to 129.
[9] Par. 4, Admitted Facts, JSFI, Docket, p. 415.
[10] Exhibit "P-5", BIR Records, pp. 138 to 141.
[11] Exhibits "P-6", BIR Records, pp. 205 to 210.
[12] Par. 5, JSFI, Docket, p. 415.

Petitioner filed the present *Petition for Review* on August 27, 2015.[13] The present case was initially raffled to this Court's First Division.

Respondent filed his *Answer* on November 9, 2015,[14] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

> Respondent reproduces and repleads all the foregoing allegations as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 8. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta, Tax Law and Jurisprudence, 3rd Edition, p. 55*);
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> 9. Assessment[s] are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);
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> 10. At the outset, the Final Decision on Disputed Assessment (FDDA) and its corresponding Details of Discrepancies dated September 29, 2015, reflect the all internal revenue tax liabilities of the petitioner for the taxable year 2010 and the factual and legal bases of the assessment made against the petitioner, as a result of its failure to pay Income tax in the amount of P21,842,216.11, VAT in the amount of P11,060,366.96, Expanded Withholding Tax, in the amount of P2,112,898.13, Documentary Stamp Tax in the amount of P551,355.82, the resulting compromise penalty thereon in the amount of P100,000. *gr*

[13] Docket, pp. 10 to 31.
[14] Docket, pp. 74 to 78.

> 11. The HLURB, the government agency tasked with the implementation of Presidential Decree No. 957 or the Condominium Buyer's Protective Decree, has already resolved that the [the] scheme of build-to-own, build-your-own, and similar concepts, which mainly consist of the developer making it appear that it merely manages the construction of the condominium project and that the funds as contributed by the individual investors/co-developers are pooled in a common fund or bank with the developer, as project manager, receiving a project management fee, is in fact pre-selling/selling activities.
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> 12. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another.- **Non videtur quisquam id capere quod ei necesse est alii restitutere**."

The Pre-Trial Conference was initially set on February 25, 2016.[15] However, by virtue of Presidential Proclamation No. 1071 dated July 8, 2015, declaring February 25, 2016, as a special (non-working) holiday throughout the country, in celebration of the 30th Anniversary of the EDSA People Power Revolution, the said Pre-Trial Conference was reset to April 28, 2016.[16] However, the Pre-Trial Conference was further reset to, and was held on, July 28, 2016.[17] The *Pre-Trial Brief (for the Respondent)* was filed on April 21, 2016;[18] while petitioner's *Pre-Trial Brief* was filed on July 25, 2016.[19]

The *BIR Records* for the present case was transmitted to this Court on June 7, 2016.[20]

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[15] Notice of Pre-Trial Conference dated December 4, 2015, Docket, pp. 80 to 81.
[16] Order dated February 18, 2016, Docket, p. 83.
[17] Order dated April 27, 2016, Docket, p. 97; Minutes of the hearing held on, and Order dated, July 28, 2016, Docket, pp. 275 to 279, and 281 to 283, respectively.
[18] Docket, pp. 101 to 104.
[19] Docket, pp. 139 to 149.
[20] Docket, p. 136.

On October 14, 2016, the parties filed their *Joint Stipulation of Facts and Issues*,[21] which was approved by the Court in its Resolution dated November 8, 2016,[22] thereby terminating the Pre-Trial. Subsequently, the Court issued its Pre-Trial Order dated November 14, 2016.[23]

The trial of the case then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner's witnesses are: (1) Mr. Rafael G. Yaptinchay,[24] President of petitioner and the Treasurer of Century Properties Group, Inc., and (2) Mr. Benito A. Obra, Jr., petitioner's Vice President – Finance/Administration.[25]

Petitioner filed its *Formal Offer of Evidence* on November 18, 2017,[26] offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-9", "P-10," "P-11", "P-13", "P-14", "P-16", "P-17", "P-17-a", "P-18", "P-19" and "P-19-a", as its documentary evidence. Respondent failed to file his comment thereto.[27]

The Court admitted all the said exhibits formally offered by petitioner in the Resolution dated January 26, 2018.[28]

For his part, respondent likewise presented his documentary and testimonial evidence. His sole witness is Revenue Officer Rommel Proceso B. Datoc.[29]

Respondent filed his *Formal Offer of Evidence* on March 27, 2018,[30] offering Exhibits "R-1", "R-1-a", "R-1-b", "R-2", "R-2-a", "R-3", "R-3-a", "R-4", "R-4-a", "R-5", "R-5-a", "R-6", "R-7" and "R-8", as his

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[21] Docket, pp. 414 to 423.
[22] Docket, p. 431.
[23] Docket, pp. 433 to 443.
[24] Exhibit "P-17", Docket, pp. 389 to 412; Minutes of the hearing held on, and Order dated, March 30, 2017, Docket, pp. 454 to 458.
[25] *Judicial Affidavit*, Docket, pp. 471 to 480; Minutes of the hearing held on, and Order dated, August 3, 2017, Docket, pp. 483 to 487.
[26] Docket, pp. 532 to 542.
[27] Records Verification dated December 27, 2017 issued by the Judicial Records Division of this Court, Docket, p. 590.
[28] Docket, pp. 596 to 598.
[29] Exhibit "R-2", Docket, pp. 106 to 113; Minutes of the hearing held on, and Order dated, March 6, 2018, Docket, pp. 599 to 603.
[30] Docket, pp. 606 to 609.

IV. WHETHER OR NOT PETITIONER LIABLE FOR INTEREST, SURCHARGE, AND COMPROMISE PENALTY."[37]

Petitioner's arguments:

Petitioner argues that the revocation of BIR Ruling No. DA-245-05 is not valid; that the revocation of BIR Ruling No. DA-245-05 may not be given retroactive effect; that the alleged deficiency taxes are without legal and factual bases; and that this Court *En Banc* already upheld that the Build-To-Own concept similar to that applied by petitioner from which respondent's assessment arose is not considered a sale.

Respondent's counter-arguments:

In his *Answer*, respondent contends that assessments are *prima facie* presumed correct and made in good faith; that taxpayer has the duty of proving otherwise; and that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

According to respondent, the House and Land Use Regulatory Board (HLURB) has already resolved that the scheme of build-to-own, build-your-own, and similar concepts –which mainly consist of the developer making it appear that it merely manages the construction of the condominium project and that the funds as contributed by the individual investors/co-developers are pooled in a common fund or bank with the developer, as project manager, receiving a project management fee – is in fact pre-selling/selling activities.

Lastly, respondent avers that petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance. *jr*

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[37] Issue, JSFI, Docket, at p. 327.

documentary evidence. Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on September 21, 2018.[31]

The Court admitted all the exhibits formally offered by respondent in its Resolution dated November 16, 2018.[32]

In the meantime, the Court transferred the present case to its Second Division.[33]

Petitioner filed its *Memorandum* on January 3, 2019.[34] Respondent failed to file his memorandum.[35]

The present case was considered submitted for decision on January 21, 2019.[36]

THE ISSUES

The parties stipulated the following issues to be resolved by the Court, to wit:

"I. WHETHER OR NOT THE REVOCATION OF BIR RULING NO. DA-245-05 IS VALID.

II. WHETHER OR NOT THE REVOCATION OF BIR RULING NO. DA-245-05 MAY BE GIVEN RETROACTIVE EFFECT.

III. WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, AND DOCUMENTARY STAMP TAX.

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[31] Docket, pp. 633 to 635.
[32] Docket, pp. 638 to 639.
[33] Order dated September 26, 2018, Docket, p. 632.
[34] Docket, pp. 645 to 681.
[35] Records Verification dated January 11, 2019 issued by the Judicial Records Division of this Court, Docket, p. 684.
[36] Resolution dated January 21, 2019, Docket, p. 685.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The crux of the controversy rests on the revocation of BIR Ruling No. DA-245-05 dated June 7, 2005, with the issuance of RMC No. 20-2010[38].

Section 246 of the NIRC of 1997 states when the revocation, modification or reversal of rulings or circulars issued by the BIR should be given a retroactive application. It reads:

> "SEC. 246. *Non-Retroactivity of Rulings.* – **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, ***except in the following cases:***
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> **(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required him by the Bureau of Internal Revenue;**
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> **(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or**
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> **(c) Where the taxpayer acted in bad faith.**" *(Emphases and italics ours)*

On the basis of the foregoing provision, in a long line of cases,[39] the Supreme Court has affirmed that the rulings, circular, rules and

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[38] SUBJECT: Circularizing Revocation of **BIR Ruling No. DA-245-2005**.

[39] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117982, 06 February 1997, 267 SCRA 557, 564, citing *Commissioner of Internal Revenue vs. Telefunken Semiconductor Philippines, Inc.*, G.R. No. 103915, 23 October 1995, 249 SCRA 401; *Bank of America vs. Court of Appeals*, G.R. No. 103092, 21 July 1994, 234 SCRA 302; *Commissioner of Internal Revenue vs. CTA*, G.R. No. L-44007, 20 March 1991, 195 SCRA 444; *Commissioner of Internal Revenue vs. Mega General Merchandising Corp.*, G.R. No. 69136,

regulations promulgated by respondent would have no retroactive application if to so apply them would be prejudicial to the taxpayers.[40] In other words, under the aforequoted Section 246, taxpayers may rely upon a rule or ruling issued by respondent from the time the rule or ruling is issued up to its reversal by respondent or by the Supreme Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact.[41] The *exceptions* to this rule are: (1) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the BIR; (2) where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (3) where the taxpayer acted in bad faith.[42]

In *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,[43] the Supreme Court said:

> "In *ABS-CBN Broadcasting Corp. v. Court of Appeals*,[44] this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer.** Hence, <u>where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play</u>.
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> xxx. <u>The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case</u>."

30 September 1988, 166 SCRA 166; *Commissioner of Internal Revenue vs. Burroughs*, G.R. No. 66653, 19 June 1986, 142 SCRA 324; *ABS-CBN vs. CTA*, G.R. No. 52306, 12 October 1981, 108 SCRA 142.

[40] *Commissioner of Internal Revenue vs. Benguet Corporation*, G.R. Nos. 134587 & 134588, July 8, 2005.

[41] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 196113, and 197156, October 8, 2013.

[42] *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*, G.R. No. 168129, April 24, 2007.

[43] G.R. No. 168129, April 24, 2007.

[44] G.R. No. 52306, October 12, 1981.

pre-selling and that there is a need to re-examine the ruling exempting it from taxes.

In the said memorandum, it was alleged that, upon investigation of RDO No. 44, the facts are not represented by the subject taxpayer in their request for ruling. Hence, the transactions should be treated as pre-selling and therefore subject to EWT and DST.

It must be noted that the ruling was issued with a very specific collatilla, to wit:

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

Finding merit in the arguments of our revenue officers and considering the blatant misrepresentation by Meridien and CPI, it is hereby declared that the ruling is null and void.

Furthermore, the revenue district offices under your region are ordered to:

a. Conduct a full blown audit and investigation in order to ascertain the amount of taxes owed by the said taxpayers; and
b. Determine whether other taxpayers granted similar rulings ought to be investigated as well.

xxx xxx xxx

The nullification of DA-245-2005, *supra*, is anchored on the findings that the scheme of *build-to-own, build-your-own, and similar concepts* mainly consist of the developer making it appear that it merely manages the construction of the condominium project, and that the funds as contributed by the individual investors/co-developers are pooled in a bank with the developer, as project manager, receiving a project management fee only. Moreover, in the above scheme, the assignment and delivery of the developed units to join owner (individual investors/co-developers), as stipulated in the Agreement, is claimed not be a taxable event being merely a transaction to effect the return of their respective capital

It is here not disputed that RMC No. 20-2010 has declared the revocation of BIR Ruling No. DA-245-05 dated June 7, 2005. In the said BIR Ruling, the following statements, *inter alia*, were made, *viz*:

> "This refers to your letter dated June 1, 2005 requesting on behalf of MERIDIEN EAST REALTY AND DEVELOPMENT CORPORATION (MERIDIEN for brevity), an opinion on the proposed construction of a condominium project under a build-to-won concept pursuant to a Co-Development and Construction Management Agreement.
>
> xxx xxx xxx
>
> xxx this Office confirms your opinion that **the conveyance of the land and common areas of the Project in favor of the condominium corporation being without monetary consideration and is <u>not in connection with a sale</u> to the condominium corporation**, no income was generated and a *fortiori*, no income and/or creditable withholding tax is payable and collectible. **Since the said conveyance is <u>not a sale</u>**, it is likewise not subject to the ten percent (10%) VAT imposed under Section 106 of the Tax Code of 1997, neither will it be subject to the documentary stamp tax on sale or conveyance of real property imposed under Section 196 of the same Code. However, the notarial acknowledgment to the said deed of conveyance is subject to the documentary stamp tax of fifteen pesos (P15.00) pursuant to Section 188 of the Tax Code of 1997." *(Emphases and underscoring ours)*

RMC No. 20-2010, in turn, made the following pronouncements, to wit:

> "For the information and guidance of all internal revenue officials, employees and other concerned, quoted hereunder is the full text of the memorandum letter to the Regional Director of Revenue Region No. 8, Makati, declaring **BIR Ruling DA-245-2005** dated June 7, 2005, null and void, as follows:
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> xxx xxx xxx
>
> > This refers to the memorandum of RDO Gerry O. Dumayas and ARDO Christina Barroga dated March 26, 2009, seeking confirmation that the co-development concept employed by Meridien and CPI is considered as

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contribution to the joint venture. The foregoing effectively resulted in the non-payment of income taxes and value-added tax by the developer on the gross project amount.

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

<u>The revocation of BIR Ruling No. DA-245-2005</u> dated June 7, 2005 is hereby circularized for the guidance and information of all revenue district offices. All concerned are hereby enjoined to report similar schemes for appropriate investigation, and to give this circular as wide a dissemination as possible." *(Emphasis and underscoring ours)*

Thus, there can be no doubt that BIR Ruling No. DA-245-05 dated June 7, 2005 was revoked by virtue of RMC No. 20-2010. Basically, the former is to the effect that there is no sale transaction in the subject scheme; while the latter rules that there is selling or pre-selling under the same scheme.

Relative thereto, it is likewise here *not* doubted that the subject tax assessments were made pursuant to RMC No. 20-2010. In the *Details of Discrepancies* attached to the FDDA dated July 27, 2015,[45] respondent declares as follows:

"<u>DETAILS OF DISCREPANCIES</u>

<u>REVOCATION OF BIR RULING NO. DA-245-2005</u>

<u>The hereunder deficiency taxes were assessed pursuant to the issuance of **Revenue Memorandum Circular (RMC) No. 20-2010**</u> providing for the publication of [the] Memorandum dated April 28, 2009 declaring the **nullity of BIR Ruling No. DA-245-2005 dated June 07, 2005**, and for the **conduct of a full blown audit and investigation in order to ascertain the amount of taxes owed relative to the blatant misrepresentation made in obtaining the ruling for exemption of taxes.**" *(Underscoring ours)* ℛ

[45] Exhibit "P-6", BIR Records, at p. 208; Exhibit "R-13", BIR Records, at p. 197.

In other words, with the revocation of BIR Ruling DA-245-2005, respondent assessed petitioner for the subject income tax, VAT, EWT and DST for TY 2010, pursuant to RMC No. 20-2010.

Clearly, undue prejudice will be caused to petitioner if the revocation of BIR Ruling No. DA-245-05 dated June 7, 2005 will be retroactively applied to its case.

More importantly, none of the exceptions stated under Section 246 of the NIRC of 1997 that would prevent the application of the non-retroactivity rule was shown to exist. Respondent's assertion that petitioner committed misrepresentation of facts when it sought respondent's ruling leading to the issuance of BIR Ruling No. DA-245-2005, is not supported by evidence.

Basic is the rule in evidence that the burden of proof lies upon him who asserts it, not upon him who denies, since, by the nature of things, he who denies a fact cannot produce any proof of it.[46] Mere allegation is not evidence, and the person who alleges has the burden of proving his or her allegation with the requisite quantum of evidence.[47]

Hence, without any sufficient evidence showing the existence of any of the exceptions enumerated in Section 246 of the NIRC of 1997 against petitioner, RMC No. 20-2010 cannot be given a retroactive application.

With the finding of the non-retroactivity of RMC No. 20-2010, it becomes unnecessary to address the other issues or arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, respondent's FDDA dated July 27, 2015, assessing petitioner for deficiency income tax, VAT, EWT, and DST, in the total amount of ₱35,666,837.02, inclusive of interest, penalty and surcharge, for TY 2010, is **WITHDRAWN** and **SET ASIDE**.

[46] *MOF Company, Inc. vs. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009.
[47] *Tan, Jr. vs. Hosana*, G.R. No. 190846, February 3, 2016.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice