REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CENTRAL AZUCARERA DON PEDRO, INC., *Petitioner,*	**CTA CASE NO. 8459**
-versus-	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 02 2016 1:37 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's "Motion for Reconsideration (Re: Decision Promulgated 23 November 2015)" filed by registered mail on December 14, 2015; with petitioner's "Comment/Opposition [To Respondent's Motion for Reconsideration (Re: Decision Promulgated 23 November 2015) dated 11 December 2015]" filed on January 18, 2016.

On November 23, 2015, the Court promulgated a Decision, disposing of the case as follows:

> **WHEREFORE,** in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED.** Petitioner is hereby **ORDERED TO PAY** the deficiency DST assessment in the reduced amount of Php281,250.00, inclusive of the twenty five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC, as amended,* computed as follows:

Indemnity and Guarantee Agreements	P	3,000,000.00

Basic Deficiency DST (₱3,000,000.00 ÷ ₱4.00 x ₱.30)	P	225,000.00
Add: 25% Surcharge		56,250.00
Total Amount Due	**P**	**281,250.00**

In addition, petitioner is also **ORDERED TO PAY**:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency DST of Php225,000.00 computed from July 5, 2007 until full payment thereof, pursuant to *Section 249(B) of the 1997 NIRC*; and

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the amount of Php281,250.00, representing the basic deficiency DST of Php225,000.00; the twenty five percent (25%) surcharge of Php56,250.00; and on the twenty percent (20%) deficiency interest which have accrued as aforestated in Item (1), computed from March 13, 2012 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC, as amended.*

SO ORDERED.

On one hand, respondent avers that petitioner cannot impugn the validity of the waiver which it validly executed; that Revenue Memorandum Order ("RMO") No. 20-90 is an internal memorandum of the Bureau of Internal Revenue ("BIR") and not a source of right of a taxpayer; that a board resolution is not required when the waiver was signed by any of the corporation's responsible officials; that a withholding tax assessment is not a tax and cannot be covered by the prescriptive period to assess taxes; that respondent should not be made to suffer the consequences of the negligence of the Notary Public; and that petitioner is liable to pay for deficiency Documentary Stamp Tax ("DST").

Petitioner, on the other hand, alleges that the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes; that RMO No. 20-90 is mandatory in nature and must be strictly complied with; that the statute of limitations applies to withholding taxes; and that it is not liable to pay for deficiency DST.

The Court finds that the issues raised by respondent regarding the waivers, in relation to estoppel and RMO No. 20-90, were already discussed in the assailed Decision, for reference:

As discussed, however, the prescriptive period to assess may be suspended by entering into a valid Waiver of the Statute of Limitations. Hence, there is a need to determine whether the waivers executed by the parties are valid in order to effect the suspension of the prescriptive period.

The Supreme Court had the occasion to clarify *Section 222(b) of the 1997 NIRC* and *RMO No. 20-90* in the recent case of *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated, G.R. No. 187589, December 3, 2014,* in the following manner:

> The statute of limitations on the right to assess and collect a tax means that once the period established by law for the assessment and collection of taxes has lapsed, the government's corresponding right to enforce that action is barred by provision of law.
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> The period to assess and collect deficiency taxes may be extended only upon a written agreement between the CIR and the taxpayer prior to the expiration of the three-year prescribed period in accordance with Section 222 (b) of the NIRC. In relation to the implementation of this provision, the CIR issued Revenue Memorandum Order (RMO) No. 20-9010 on 4 April 1990 to provide guidelines on the proper execution of the Waiver of the Statute of Limitations. In the execution of this waiver, the following procedures should be followed: xxx
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> xxx xxx xxx
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> Furthermore, jurisprudence is replete with requisites of a valid waiver:
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> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
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> 2. The waiver must be signed by the taxpayer [himself/herself] or [his/her] duly authorized representative. In the case of a

> corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> 4. The CIR or the revenue official authorized by [him/her] must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by [him/her] must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or [his/her] duly authorized representative.
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> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
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> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

In Philippine Journalist, Inc. v. Commissioner of Internal Revenue, the Court categorically stated that a Waiver must strictly conform to RMO No. 20-90. The mandatory nature of the requirements set forth in RMO No. 20-90, as ruled upon by this Court, was recognized by the BIR itself in the latter's subsequent issuances, namely, Revenue Memorandum Circular (RMC) Nos. 6-2005 and 29-2012. Thus, the BIR cannot claim the benefits of extending the period to collect the deficiency tax as a consequence of the Waiver when, in truth it was the BIR's inaction which is the proximate cause of the defects of the Waiver. The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. This right would prescribe absent any showing of a valid extension of the period set by the law.

To emphasize, the Waiver was not a unilateral act of the taxpayer; hence, the BIR must act on it, either by conforming to or by disagreeing with the extension. A waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally.

Based on the three (3) waivers on file, the Court has the following findings:

	1ST WAIVER	2ND WAIVER	3RD WAIVER
Signatures			
Taxpayer	April 26, 2010	October 18, 2010	January 12, 2011
	Signed by Darlene A. Binay Dept. Head Acctg. Authorized Signatory	Signed by Darlene A. Binay Department Head Accounting	Signed by Darlene A. Binay Department Head Accounting
BIR	June 21, 2010	October 28, 2010	February 9, 2011
	Signed by Zenaida G. Garcia Assistant Commissioner LTS (Excise and LTDOs) CIR Joel Tan-Torres's name was indicated but there was no signature	Signed by Zenaida G. Garcia Assistant Commissioner LTS (Excise and LTDOs) CIR Kim S. Jacinto-Henares' name was indicated but there was no signature	Signed by Zenaida G. Garcia Assistant Commissioner Large Taxpayers Service CIR Kim S. Jacinto-Henares' name was indicated but there was no signature
Extension until	December 31, 2010	June 30, 2011	December 31, 2011
Notarized	June 15, 2010	October 19, 2010	February 4, 2011
	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010	Atty. Aurora V. Flor Notary Public authorized until December 31, 2010

Anent the First Waiver, the Court found that at the time the same was signed by the CIR representative on June 21, 2010, all the assessed taxes have prescribed, save for Income Tax, 4th Quarter VAT, and June CWT. Moreover, it did not include the

> duly notarized and written authority of Ms. Darlene A. Binay to sign the same on behalf of petitioner, same goes for the 2 other waivers. As to The Third Waiver which aims to further extend the prescriptive period from October 28, 2010 until February 19, 2011, the notary public is clearly unauthorized to notarize the same. It was notarized on February 31, 2011 but the notary public's authorization is only until December 31, 2010. It is the BIR's obligation to ensure proper notarization of the waiver, which it failed to do.
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> Moreover, as provided in the case of *Dela Rama v. Papa,* improperly notarized documents do not enjoy the presumption of due execution and authenticity, presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. Therefore, the fact that a deed is notarized is not a guarantee of the validity of its contents and the presumption of regularity may be rebutted by clear and convincing evidence to the contrary.
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> Considering that all the waivers are invalid, they will not effectively extend the period to assess, and respondent's right to assess all the foregoing taxes has already prescribed.

It must be emphasized that a waiver of the statute of limitations is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations, hence, must be carefully and strictly construed; it is not meant for the taxpayer to relinquish the right to invoke prescription unequivocally.[1] Due to this, the statute of limitations in the collection of taxes should be liberally construed, with the exceptions thereto strictly construed.[2] One such exception is the doctrine of estoppel, which is predicated on and has its origin in equity, and must be sparingly applied.[3] There is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.[4]

The Supreme Court has consistently held that the provisions of RMO No. 20-90 and Revenue Delegation Authority Order ("RDAO") No. 05-01 explicitly show their mandatory nature, requiring strict

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[1] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[2] *Id.*
[3] *Commissioner of Internal Revenue v. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[4] *Id.*

compliance and failure to comply with any of the requisites renders a waiver defective and ineffectual.[5]

Consequently, the Court finds no reason to overturn its findings as regards the invalidity of the waivers.

As to respondent's assertion that withholding tax assessments are not covered by the prescriptive period, the Court disagrees.

The assailed Decision, likewise, threshed out this matter in the following manner:

> *Section 203 of the 1997 NIRC*, as amended, mandates that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid, to wit:
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> > SECTION 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return</u>, 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.
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> Since the instant case involves deficiency Income Tax, VAT, WTC, and EWT, the prescribed due dates for filing of the returns, to be used as bases for the three (3)-year prescriptive period, varies accordingly.
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> xxx xxx xxx
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> **Creditable and Expanded Withholding Taxes**

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[5] *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015; *Philippine Journalists, Inc. v. CIR*, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) must be filed within ten (10) days after the end of each month. However, for the month of December, it shall be filed on or before January 15 of the following year. *Section 58 of the 1997 NIRC*, as amended, provides that:

> SECTION 58. *Returns and Payment of Taxes Withheld at Source.* -
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> (A) *Quarterly Returns and Payments of Taxes Withheld.* - xxx
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> xxx xxx xxx
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> The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

However, the above provision was amended by *Section 2.58(A)(2) of RR No. 2-98*, as amended by *RR No. 17-03, viz.*: xxx

It is evident from *Section 203 of the 1997 NIRC* that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return. But what taxes are considered as "internal revenue taxes?" A careful reading of *Section 21 of the 1997 NIRC*, in relation to *Section 58 of the same Code*, will shed light on this subject.

> SECTION 21. *Sources of Revenue.* — The following taxes, fees and charges are deemed to be national internal revenue taxes:
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> (a) Income tax;
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> (b) Estate and donor's taxes;
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> (c) Value-added tax;

(d) Other percentage taxes;
(e) Excise taxes;
(f) Documentary stamp taxes; and
(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

xxx xxx xxx

TITLE II
Tax on Income

xxx xxx xxx

CHAPTER IX
Returns and Payment of Tax

xxx xxx xxx

SECTION 57. *Withholding of Tax at Source.* –

xxx xxx xxx

(B) *Withholding of Creditable Tax at Source.* – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

From the foregoing, it is apparent that creditable (expanded) withholding taxes are considered as taxes on income, being imposed under *Title II of the 1997 NIRC*. Hence, they are internal revenue taxes to which the prescriptive period of three (3) years apply.

As to respondent's assertion that petitioner is liable for DST on lease and other hiring agreements, and promissory notes and other debt instruments under the presumption that assessments are correct and made in good faith, the Court has extensively discussed this issue in its assailed Decision and do not see any reason to reverse its findings, to wit:

The basic deficiency DST assessment of Php2,241,955.21 arose from petitioner's transactions relating to the following:

1. Lease and other hiring agreements in the amount of Php45,866,540.00;

2. xxx; and

3. Promissory notes and other debt instruments in the amount of Php409,888,954.00.

Considering that the determination of whether there was omission or failure to file DST return on the part of petitioner is intertwined with the correctness of the deficiency DST assessment on the aforementioned transactions, the Court shall likewise proceed to determine the correctness thereof.

Lease and Other Hiring Agreements - Php45,866,540.00

Invoking *Section 194 of the 1997 NIRC, as amended,* respondent imposed deficiency DST on the rental expenses reflected in petitioner's Audited Financial Statements ("AFS") for the FY 2007, particularly, under "Cost of sales" in the amount of Php38,646,664.00 and "General and administrative expenses" in the amount of Php7,219,876.00, totaling Php45,866,540.00.

Petitioner, on the other hand, argues that it paid all DST due on its lease and other hiring agreements.

The Court finds the assessment improper.

Section *173 of the 1997 NIRC, as amended,* provides that:

> SEC. 173. *Stamp taxes upon documents, instruments, loan agreements, and papers.* — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, <u>there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred</u> when the obligation or right arises from Philippine

> sources or the property is situated in the Philippines, and at the same time such act is done or transaction had; *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. [Emphasis ours]

Relative thereto, *Section 194 of the 1997 NIRC,* states as follows:

> SEC. 194. *Stamp Tax on Leases and Other Hiring Agreements.* — On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax of Three pesos (P3.00) for the first Two thousand pesos (P2,000), or fractional part thereof, and an additional One peso (P1.00) for every One thousand pesos (P1,000) or fractional part thereof, in excess of the first Two thousand pesos (P2,000) <u>for each year of the term of said contract or agreement.</u> [Emphasis ours]

Therefore, DST accrues upon the execution of the contract or document. In *Philippine Home Assurance Corporation v. Court of Appeals,* the Supreme Court held that:

> In general, <u>[DST] are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.</u> Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges and trusts, and conveyances of real property. [Emphasis supplied]

Examination of petitioner's 2007 AFS shows that it incurred rental expenses of Php45,866,540.00 in relation to the following lease contracts with its intermediate parent, Roxas Holdings, Inc. ("RHI"), and CADPI Retirement Fund, Inc.:

> b) Contract of lease with RHI for the rental of a parcel of land located in Barrio Lumbangan, Nasugbu, Batangas where the sugar manufacturing plant and residential staff

houses of [petitioner] are located. The term of the lease is for ten crop years commencing on December 1, 2002 and will expire in November 2012.

c) Contract of lease with CADPI Retirement Fund, Inc. for the rental of office premises located at 6th floor, Cacho Gonzales Building, Aguirre St., Makati City starting December 16, 2005. The lease is renewable annually. Monthly rental payments amount to ₱117,049.00. [Emphases ours]

Since petitioner's contracts of lease with RHI and CADPI Retirement Fund, Inc. were executed prior to FY 2007, it was erroneous on the part of respondent to assess petitioner deficiency DST thereon for such is beyond the scope of the present assessment. Thus, respondent's deficiency DST assessment on the rental expenses of Php45,866,540.00 is hereby cancelled.

xxx xxx xxx

Promissory notes and other debt instruments - Php409,888,954.00

Pursuant to *Section 179 of the 1997 NIRC, as amended by RA No. 9243 and RR No. 13-04*, respondent assessed petitioner deficiency DST on the following transactions totaling Php409,888,954.00, broken down as follows:

Short-Term Borrowings	P 155,000,000.00
Current Portion of Long-Term Borrowings	81,839,081.00
Advances to Related Parties	78,230,749.00
Advances to Planters	53,333,776.00
Advances for Raw Sugar Purchases	34,989,422.00
Advances from Related Parties	6,495,926.00
Total	**P 409,888,954.00**

With regard to Short-Term Borrowings in the amount of Php155,000,000.00 and Current Portion of Long-Term Borrowings in the amount of Php81,839,081.00, petitioner avers that the DST due thereon were already deducted from the loan proceeds and were remitted by the lender-banks to the BIR.

The Court finds for petitioner.

Section 179 of the 1997 NIRC, as amended by RA No. 9243, provides as follows:

SEC. 179. *Stamp Tax on All Debt Instruments.* On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only on documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to xxx promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. [Emphases ours]

In relation thereto, *Sections 2 and 3 of RR No. 09-00* state that:

SECTION 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax.-* (a) *In General.-* The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against '*the person making, signing, issuing, accepting, or transferring*' the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. Any of the parties thereto shall be liable for the full amount of the tax due: *Provided, however,* that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) *Exception.-* Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.

> SECTION 3. *Mode of Payment and Remittance of the Tax.* - (a) *In General.*- Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.
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> xxx xxx xxx
>
> (4) When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code: Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding.
>
> (a) A bank, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company; xxx [Emphases ours]

Based on the foregoing provisions, as a rule, any of the parties to the transaction subject to DST shall pay and remit the full amount of DST. However, if one of the parties to the said transaction is a bank, *inter alia*, the remittance of the DST shall be the responsibility of such bank.

As disclosed in Notes 10 and 13 of petitioner's 2007 AFS, petitioner obtained its short-term and long-term borrowings from various local banks. Such being the case, petitioner's lender-banks are the ones responsible for the remittance of the DST relative to the said borrowings. Hence, petitioner should not be assessed deficiency DST thereon.

Moreover, the deficiency DST assessment on the following should likewise be cancelled for being erroneous and having no factual basis:

1. Advances to Related Parties in the amount of Php78,230,749.00;

2. Advances to Planters in the amount of Php53,333,776.00;

3. Advances for Raw Sugar Purchases in the amount of Php34,989,422.00; and

4. Advances from Related Parties in the amount of Php6,495,926.00.

A perusal of petitioner's 2007 AFS shows that the aforesaid amounts refer to year-end balances and do not actually represent new transactions entered into by petitioner during the FY 2007. Evidently, the deficiency DST assessment was a mere result of respondent's arbitrary computation.

While axiomatic is the fact that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on mere presumptions, no matter how logical the said presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

WHEREFORE, considering the arguments and counter-arguments raised by respondent and petitioner, respectively, respondent's "Motion for Reconsideration (Re: Decision Promulgated 23 November 2015)" is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Took No Part)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice