REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SPOUSES REMIGIO P. MAGAAN AND LETICIA L. MAGAAN,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7866

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated: MAR 09 2015 4:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF THE CASE

This is a petition for the nullification of the Final Decision on Disputed Assessment (FDDA) dated October 7, 2008 demanding payment in the total amount of Twenty-Four Million Three Hundred Twenty-Nine Thousand Four Hundred Five and 68/100 Pesos (₱24,329,405.68), inclusive of interest, allegedly representing spouses Remigio P. Magaan and Leticia L. Magaan's deficiency income and percentage taxes for taxable years 1998, 1999 and 2000.

STATEMENT OF FACTS

Petitioners are spouses Remigio P. Magaan and Leticia L. Magaan ("petitioner spouses") with residence at Lot 22, Block 13, Muralla Street, New Intramuros Village, Diliman, Quezon City.[1]

[1] Par. 3, Petition for Review, docket, p. 2.

Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 9, 2005, a complaint-affidavit was filed with the Law Division of the BIR by a confidential informant, which was docketed as Confidential Information No. 641-2005, alleging information that petitioner spouses have operated financial companies known as IMILEC TRADEHAUS and L4R REALTY AND DEVELOPMENT CORPORATION since the year 1998; and that petitioner spouses earned from the informant alone more than ₱35,498,477.62 from April 1998 to January 2002, which were not duly covered in their income tax returns (ITRs).[2]

As a result, then BIR Commissioner Jose Mario Buñag issued Letter of Authority (LOA) No. 2001 00025876[3] on February 9, 2006 to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN (IMILEC TRADEHAUS)" authorizing his Revenue Officers (ROs) to examine/audit the addressees' books of accounts and other accounting records for internal revenue taxes covering taxable years 1998 to 2001. The LOA, together with an attached document listing the Tax Return Payments, Books of Accounts and Other Documents, Schedules to be Prepared and Worksheet to be Accomplished, was received by petitioner Remigio Magaan.[4]

Petitioner Remigio P. Magaan received a Final Notice[5] dated February 28, 2006, again addressed to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN (IMILEC TRADEHAUS)" issued by Atty. Arnel Guballa, Chief of the BIR National Investigation Division, giving them the last opportunity to present the desired records to the investigating team not later than ten (10) working days from receipt thereof.

On March 6, 2006, a Notice for an Informal Conference[6] was issued against petitioner spouses.

Thereafter, petitioner spouses received a *Subpoena Duces Tecum* dated June 20, 2006, with the attached list of the desired documents to be presented[7], addressed to "SPS. REMIGIO P. MAGAAN & LETICIA L. MAGAAN

[2] Answer, docket, p. 86; Petitioner's Memorandum, docket, pp. 1476-1477.
[3] Exhibits "B", "B-2", and "B-3".
[4] Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 141-142.
[5] Exhibits "C" and "C-1".
[6] Exhibits "D" to "D-1".
[7] Exhibits "E" and "E-1".

(IMILEC TRADEHAUS)" issued by Atty. James Roldan, in his capacity as Assistant Commissioner, BIR Legal Service, commanding them to appear before the Chief of the Prosecution Division at his office located at Room 704, 7th floor of the BIR National Office Building, Diliman, Quezon City on July 4, 2006 and to bring with them books of accounts and other accounting records for taxable years 1998, 1999, 2000 and 2001 as contained in the list of requirements attached thereto.

In response, petitioner Remigio Magaan sent a compliance letter[8] dated July 3, 2006, claiming that they are not involved with IMILEC TRADEHAUS AND SERVICES CO., or in any of their business transactions.

On June 20, 2007, respondent issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies[9] assessing petitioner spouses of deficiency income and percentage taxes for the years 1998, 1999 and 2000 in the amounts of ₱20,773,278.63 and ₱1,981,362.40, inclusive of surcharges and interest.

In protest, petitioner spouses sent a letter[10] dated October 16, 2007 assailing the PAN and also requesting copies of the checks covering the amounts allegedly received by them that were used as basis for the PAN.

On January 24, 2008, petitioner spouses received a letter[11] dated January 7, 2008 from Atty. Celia C. King, Assistant Commissioner, BIR Enforcement Services, denying petitioner spouses' request that they be provided copies of the checks allegedly deposited in their bank accounts which were made the basis of the issuance of the PAN. In the said letter, Assistant Commissioner King, citing Section 270 of the National Internal Revenue Code (NIRC) of 1997, as amended, informed petitioner spouses that the requested documents, if furnished would divulge the identity of the informer and this would allegedly violate the said provision of the Tax Code.

On February 5, 2008, petitioners filed a letter[12] with the office of the BIR Enforcement Service, requesting reconsideration of Atty. Celia C. King's decision arguing, among others, that the informer has long been known and identified in the Joint Resolution dated August 7, 2007 of the City Prosecutor's Office in I.S. Nos. 07-2551 and 07-2552. Thus, the confidentiality of the informer may no longer be invoked.

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[8] Exhibits "F" to "F-4".
[9] Exhibits "J" to "J-3".
[10] Exhibits "K" to "K-2".
[11] Exhibits "O" to "O-2".
[12] Exhibits "P" and "P-1".

Thereafter, respondent, through BIR Deputy Commissioner Gregorio C. Cabantac, issued a Formal Letter of Demand with Audit Result/Assessment Notices[13] (FLD-AN) all dated July 28, 2008. The breakdown of the alleged deficiency taxes are as follows:

Assessment No. ES-IT-1998-0699

Deficiency Income Tax 1998	
Basic Deficiency Income Tax	1,541,319.00
Increments	
Surcharge 50%	770,659.50
Interest 20% 4-15-99 to 7-31 (111.5mos/12mos)	2,851,440.15
TOTAL DEFICIENCY INCOME TAX	**5,163,418.65**

Assessment No. ES-PT-1998-0700

Deficiency Percentage Tax 1998	
Basic Deficiency Percentage Tax	145,860.00
Add: Increments	
Surcharge 50%	72,930.00
Interest 20% 2-20-99 to 7-31-08 (113mos/12mos)	274,703.00
TOTAL DEFICIENCY PERCENTAGE TAX	**493,493.00**

Assessment No. ES-IT-1999-0701

Deficiency Income Tax 1999	
Basic Deficiency Income Tax	4,850,045.13
Increments	
Surcharge 50%	2,425,022.57
Interest 20% 4-15-00 to 7-31-08 (99.5mos/12mos)	8,042,991.51
TOTAL DEFICIENCY INCOME TAX	**15,318,059.21**

Assessment No. ES-PT-1999-0702

Deficiency Percentage Tax 1999	
Basic Deficiency Percentage Tax	450,105.92
Add: Increments	
Surcharge 50%	225,052.96
Interest 20% 2-20-00 to 7-31-08 (101mos/12mos)	757,678.30
TOTAL DEFICIENCY PERCENTAGE TAX	**1,432,837.18**

Assessment No. ES-IT-2000-0703

Deficiency Income Tax 2000	
Basic Deficiency Income Tax	585,632.96
Increments	
Surcharge 50%	292,816.48

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[13] Exhibits "Q" to "Q-9".

Interest 20% 4-15-01 to 7-31-08 (87.5mos/12mos)	854,048.06
TOTAL DEFICIENCY INCOME TAX	**1,732,497.51**

Assessment No. ES-PT-2000-0704

Deficiency Percentage Tax 2000	
Basic Deficiency Percentage Tax	63,385.50
Add: Increments	
Surcharge 50%	31,692.80
Interest 20% 2-20-01 to 7-31-08 (89mos/12mos)	94,021.83
TOTAL DEFICIENCY PERCENTAGE TAX	**189,100.13**

On August 26, 2008, petitioner spouses then filed their letter-protest[14] dated August 21, 2008, questioning the FLD-AN and requesting reconsideration thereof.

On January 5, 2009, petitioner spouses received a Final Decision on Disputed Assessment[15] dated October 7, 2008, denying their request for lack of factual and legal bases and demanding payment of their alleged deficiency taxes in the total amount of ₱24,329,405.68.

Aggrieved, petitioner spouses filed the instant Petition for Review[16] on February 3, 2009.

Respondent filed her Answer[17] on March 16, 2009, interposing the following special and affirmative defenses:

"xxx xxx xxx

1. The assessments for taxable years 1998, 1999 and 2000 for deficiency income taxes and percentage taxes against spouses Remigio P. Magaan and Leticia L. Magaan were issued in accordance with law and regulations.

2. Petitioner Spouses Remigio P. Magaan and Leticia L. Magaan are liable to pay the aggregate amount of Twenty Four Million Three Hundred Twenty Nine Thousand Four Hundred Five Pesos and 68/100 (₱24,329,405.68) representing deficiency income taxes and percentage taxes for the taxable years 1998,

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[14] Exhibits "R" to "R-2".
[15] Exhibits "A" and "A-1".
[16] Docket, pp. 1-27.
[17] Docket, pp. 84-95.

1999 and 2000 in violation of Section 31, 32 and 122 of the National Internal Revenue Code of 1997.

On the basis of the complaint-affidavit filed by the confidential informant on November 9, 2005 docketed as Confidential Information No. 641-2005 subscribed and sworn to before Hermeno A. Palamine, Chief, Law Division of the Bureau of Internal Revenue, Diliman, Quezon City, a Letter of Authority No. 2001-00025878 dated February 9, 2006 was issued for the purpose of examining the books of accounts and accounting records of Remigio P. Magaan and spouse Leticia L. Magaan, operator of IMILEC TRADEHAUS AND SERVICE COMPANY with principal business address located at 2239 Kusang Loob Street, Sta. Cruz, Manila and L4R Realty and Development Corporation with business address at Suite 402-B Webject Bldg., 64 Quezon Avenue, Quezon City on account of the non-declaration of income by aforesaid individuals for taxable years 1998, 1999, 2000 and 2001. A copy of said Letter of Authority is hereto attached as Exhibit '1' and made an integral part hereof.

On the basis of the investigation/examination conducted by respondent through the Letter of Authority, a Preliminary Assessment Notice (PAN) dated June 20, 2007 and Formal Letter of Demand (FLD) was issued to petitioner together with the Final Assessment Notice dated July 28, 2008 were likewise issued. Subsequently, a Final Decision on Disputed Assessment (FDDA) dated October 7, 2008 for deficiency tax assessments for taxable years 1998, 1999 and 2000 was issued to petitioners for their non-declaration of receipts/income for said years.

Relative thereto, Section 203 of the National Internal Revenue Code (NIRC) explicitly provides:

> '**Section 203. Period of Limitation Upon Assessment and Collection of Taxes.**
>
> > **Except as provided in Section 222**, internal revenue taxes shall be assessed **within three (3) years after the last day prescribed by law for filing of the return**, and no proceeding in court without assessment, for the collection of such taxes shall be begun after the expiration of such

> period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered filed on such day.'

However, Section 222 of the NIRC provides the exceptions to the rules laid down under Section 203. In particular, as shown under Section (a) thereof, the three (3) years period of limitation in making an assessment shall **not** apply in cases where it involves **false or fraudulent returns** or in cases where there is failure to file a return on the person obliged to file such return. Section 222(a) of the National Internal Revenue Code provides:

> **'Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.**
>
> (a) In the case of **false or fraudulent return** with intent to evade tax or **failure to file 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 and criminal action for the collection thereof.' (Emphasis and underscoring supplied)

Such being the case, the three (3) period of limitation for the assessment of internal revenue tax liabilities reckoned from the last day prescribed by law for the filing of the return shall not apply in the case at hand for the simple reason that petitioner ***willfully failed to file the required returns*** for taxable year 1998, 1999 and 2000. Therefore, the applicable provision shall be Section 222 (a) where the period of limitation provides that the assessment may be made within ten (10) years after the discovery of falsity, fraud or omission. In the case at hand, the reckoning period was from the time during which the Formal Letter of

Demand was issued to petitioner. Indubitably, the Formal Letter of Demand pertaining to taxable year 1998, 1999 and 2000 issued and received by petitioner was issued within the prescriptive period provided by law. Such being the case, the FLD is considered valid and has the force and effect of law.

2. The tax liabilities of petitioners arose on account of the confidential information provided on November 9, 2005 docketed as Confidential Information No. 641-2005.

In relation thereto, Revenue Memorandum Order No. 12-93 dated February 1, 1993 provides:

> 'II. Filing of Information.
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> Pursuant to Section 5 of Finance Regulations No. 1, in relation to Section 281 (now 282) of the NIRC, duly sworn confidential information on frauds upon or violations of any of the provisions of the NIRC, shall be filed with the Legislative, Ruling and Research Division (LRRD) for scrutiny and verification to determine if the information given is in accordance with the Regulations. The information must be accompanied with a Sworn Statement and the informer shall appear in person and execute under oath the statement, specifying the particular violation by the denounced person and the kind of tax or taxes allegedly not paid.'
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> Section 5 of Finance Regulations No. 1 states:
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> 'Section 5. To Whom Information shall be given.
>
> On frauds, upon or violations of any of the provisions of the Internal Revenue Laws, the information may be given either to the Secretary of Finance, or the Commissioner of Internal Revenue, or to the Regional Director, or to the provincial or city revenue officer or to their assistants in case of their absence or incapacity. fr

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Section 8. Frauds upon and/or violation of the Internal Revenue Laws. – The following are some of the frauds and/or violation commonly committed against the internal revenue laws.

1. Underdeclaration of Sales
2. Underdeclaration of Income
3. False entries in the books of accounts

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16. All kinds of misrepresentation to evade tax.'

Corollary thereto, Section 281 (now 282) of the NIRC explicitly states:

'Section 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 fine or penalty shall be rewarded in a sum equivalent to ten (10%) percent of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (₱1,000,000) xxx *Provided further,* That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners or the Secretary of Finance or any of his deputies or agents. xxx' (Emphasis or underscoring supplied)

On the basis of the information given, respondent conducted his investigation of petitioner. The investigation established the following:

Taxable Year 1998

1. Income Tax – Receipts in the amount of ₱4,862,000 from checks issued to Spouses Remigio and Leticia Magaan (IMILEC) were not declared for income tax purposes in violation of Sections 31 and 32 of the NIRC of 1997, as amended.
2. Percentage Taxes – Receipts in the amount of ₱4,862,000 from checks issued to Spouses Remigio and Leticia L. Magaan were not declared for Percentage Tax purposes in violation of Section 122 of the NIRC of 1997, as amended.

Taxable Year 1999

1. Income Tax – Receipt in the amount of ₱15,003,530.70 from checks issued to Spouses Remigio and Leticia Magaan (IMILEC) were not declared for income tax purposes in violation of Sections 31 and 32 of the NIRC of 1997, as amended.
2. Percentage Taxes – Receipts in the amount of ₱15,003,530.70 from checks issued to Spouses Remigio and Leticia L. Magaan were not declared for Percentage Tax purposes in violation of Section 122 of the NIRC of 1997, as amended.

Taxable Year 2000

1. Income Tax – Receipt in the amount of ₱2,112,853.02 from checks issued to Spouses Remigio and Leticia Magaan (IMILEC) were not declared for income tax purposes in violation of Sections 31 and 32 of the NIRC of 1997, as amended.
2. Percentage Taxes – Receipts in the amount of ₱2,112,853.02 from checks issued to Spouses Remigio and Leticia L.

> Magaan were not declared for Percentage Tax purposes in violation of Section 122 of the NIRC of 1997, as amended.
>
> Penalties pertaining to fifty (50%) percent surcharge was imposed pursuant to Section 248(B) of the NIRC of 1997 and Interest at the rate of twenty (20%) per annum up to July 31, 2008 pursuant to Section 249 (A) of the NIRC of 1997, as amended."

On April 20, 2009, both petitioner spouses and respondent filed their respective Pre-Trial Briefs.[18] Thereafter, both parties submitted their Joint Stipulation of Facts and Issues[19] on May 21, 2009. In the Resolution[20] dated May 25, 2009, the Court approved the Joint Stipulation of Facts and Issues, deemed the pre-trial terminated, and ordered the parties to proceed with trial and the initial presentation of petitioners' evidence. Thereafter, trial proceeded.

On November 17, 2009, petitioner spouses filed their Formal Offer of Documentary Evidence[21], offering Exhibits "A" to "V", inclusive of sub-markings. Having no comment/objection from respondent, this Court in the January 20, 2010 Resolution[22], admitted petitioner spouses' exhibits except for Exhibits "F-5" to "H", for petitioner spouses' failure to present the original documents for comparison. In the same Resolution, the initial presentation of evidence for respondent was likewise set on February 8, 2010.

Meanwhile, pursuant to CTA Administrative Circular No. 01-2010,[23] the case was transferred to the Third Division on January 12, 2010.

During respondent's presentation of evidence, she filed a Submission of Affidavit of Witness Yolanda G. Maniwang[24] on August 22, 2011, intending to present the latter as her witness and praying that Ms. Yolanda G. Maniwang's judicial affidavit be admitted. However, petitioner spouses filed their Comment/Opposition to the Offer of Testimony of Yolanda G. Maniwang[25] on September 26, 2011, asserting the non-inclusion of Ms. Yolanda G. Maniwang in the list of witnesses in respondent's Pre-Trial Brief and the non-inclusion of documents/records sought to be identified by the intended witness for pre-marking before identification. 9r

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[18] Petitioner's Pre-Trial Brief, docket, pp. 99-122; Respondent's Pre-Trial Brief, docket, pp. 123-136.
[19] Docket, pp. 141-149.
[20] Docket, p. 164.
[21] Docket, pp. 225-241.
[22] Docket, pp. 308-309.
[23] Implementing the Fully Expanded Membership in the Court of Tax Appeals, January 5, 2010.
[24] Docket, pp. 660-701.
[25] Docket, pp. 705-716.

Thereafter, respondent filed her Reply (Re: Comment/Opposition to the Offer Testimony of Yolanda G. Maniwang)[26] arguing that she has the right to choose the evidence she intends to present, that she also made a reservation in her Pre-Trial Brief, and that her intended witness has personal knowledge of the documents identified in her judicial affidavit. In response, petitioner spouses filed their Rejoinder (To Respondent's Reply on the Comment/Opposition to the Offer of Testimony of Yolanda G. Maniwang)[27] on October 21, 2011, reiterating their position that Ms. Yolanda G. Maniwang is the confidential informant whose role ended when the BIR examiners submitted their Investigation Report, thereby, disqualifying her to testify during trial.

In the November 9, 2011 Resolution[28], this Court allowed the presentation of Ms. Yolanda G. Maniwang's testimony reasoning that petitioner spouses prematurely raised the issue of competency since it is only after the witness is presented that the Court can judicially determine the issue of competency.

Petitioner spouses filed a Motion for Reconsideration[29] on November 24, 2011, reiterating that divulging the informant's confidentiality will violate the principle of estoppel. Subsequently, respondent filed her Comment (Re: Motion for Reconsideration)[30] on December 13, 2011, which petitioner spouses answered in their Reply (To Comment dated December 13, 2011) filed on December 29, 2011.

In the Resolution[31] dated February 6, 2012, this Court denied petitioner spouses' motion, stating that once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable. Thus, respondent presented Ms. Yolanda G. Maniwang as witness and offered her testimony as evidence.

After completing the presentation of her evidence, respondent filed her Formal Offer of Documentary Evidence[32] on January 10, 2013, offering Exhibits "1" to "153", inclusive of sub-markings. In response thereto, petitioner spouses filed their Comment/Objection (To Respondent's Formal Offer of Documentary Evidence)[33] on February 1, 2013. Subsequently, in the

[26] Docket, pp. 727-746
[27] Docket, pp. 748-756.
[28] Docket, pp. 759-761.
[29] Docket, pp. 762-769.
[30] Docket, pp. 773-778.
[31] Docket, pp. 801-812.
[32] Docket, pp. 1070-1127.
[33] Docket, pp. 1228-1235.

February 21, 2013 Resolution[34], this Court admitted respondent's exhibits save for the following:

> 1. Exhibits "38", "39", "47", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "72", "73", "74", "75", "76", "77", "78", "79", "80", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95", "96", "97", "99", "100", "101", "102", "103", "104", "105", "106", "107", "110", "111", "113", "114", "115", "116", "117", "118", "119", "120", "121", "122", "123", "124", "125", "126", "127', "128", "129", "130", "131", "133", "134", "135", "136", "137", and "138" for being photocopies;
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> 2. Exhibits "138-A" and "138-B" for being photocopies and for not being found in the records;
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> 3. Exhibits "40", "41", "42", "43", "44", "45", "46", "48", "71", "98", "109", and "112" for being photocopies and for failure to correspond to the exhibits identified and submitted in Court;
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> 4. Exhibit "108" for being a mere photocopy and for failure to correspond to the exhibit actually submitted in Court;
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> 5. Exhibits "139" and "140" for not being identified during trial and for not being found in the records of this case;
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> 6. Exhibits "144", "145", "145-A", and "146" for not being identified during trial and for failure to submit the originals for comparison; and
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> 7. Exhibits "147", "148", "149", and "150" for failure to submit the originals for comparison."

Thereafter, respondent filed a Motion for Partial Reconsideration (Re: Resolution promulgated on February 21, 2013)[35] on March 13, 2013, praying that the Resolution be reconsidered and the denied exhibits be admitted.

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[34] Docket, pp. 1269-1283.
[35] Docket, pp. 1242-1256.

Meanwhile, on March 19, 2013, petitioner spouses filed a Motion[36] asking this Court for leave to file a Formal Offer of Rebuttal Evidence and to admit the attached Formal Offer of Rebuttal Evidence, offering Exhibits "W", "W-1", and "W-2" as their additional evidence. In turn, respondent interposed no objection to petitioner spouses' motion in her Comment (Re: Petitioner's Formal Offer of Rebuttal Evidence dated 16 March 2013) filed on May 7, 2013.

On April 10, 2013, pursuant to CTA Administrative Circular No. 01-2013, reorganizing the three (3) divisions of the CTA, this case was transferred to the Second Division.

This Court, in the Resolution[37] dated April 18, 2013, denied respondent's Motion for Partial Reconsideration, while granted petitioner spouses' Motion.

On May 7, 2013, respondent filed an Omnibus Motion[38] for the reconsideration of the Court's resolution, for the setting of a Commissioner's hearing to mark the originals of the denied exhibits, and to allow respondent to file a Supplemental Formal Offer of Evidence. In the Resolution[39] dated July 3, 2013, the Court admitted petitioner spouses' rebuttal evidence and granted respondent's omnibus motion; thus, scheduling a Commissioner's hearing solely for the purpose of marking the originals of respondent's denied exhibits.

After several requests for resetting, respondent finally presented Exhibits "38" to "59", "61" to "114", and "129", which were marked as original checks as per Commissioner's Report[40] dated November 25, 2013.

However, in the Resolution[41] dated December 18, 2013, this Court noted respondent's failure to timely file her supplemental formal offer of evidence thereby considering her to have waived her right to formally offer her exhibits. This Court further ordered both parties to submit their respective memorandum within thirty (30) days from notice.

On February 24, 2014, petitioner spouses filed a Motion (to admit Memorandum)[42] with their attached Memorandum, which the Court admitted ga

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[36] Docket, pp. 1293-1298.
[37] Docket, pp. 1305-1309.
[38] Docket, pp. 1310-1316.
[39] Docket, pp. 1415-1417.
[40] Docket, p. 1445.
[41] Docket, p. 1455.
[42] Docket, pp. 1472-1524.

in its February 27, 2014 Resolution[43]. On the other hand, respondent failed to file her memorandum as per Records Verification[44] dated March 25, 2014. Thus, in the April 8, 2014 Resolution[45], this Court deemed the case submitted for decision.

STATEMENT OF ISSUES

The issues[46] submitted by the parties for this Court's resolution are as follows:

1. Whether or not the subject deficiency income tax and deficiency percentage tax assessments are valid and legal;

2. Whether or not petitioners are liable to pay the aggregate amount of Twenty Four Million Three Hundred Twenty Nine Thousand Four Hundred Five Pesos and 68/100 (₱24,329,405.68) representing deficiency income taxes and percentage taxes for the taxable years 1998, 1999, and 2000 in violation of Sections 31, 32, and 122 of the NIRC of 1997;

3. Whether or not petitioners are liable to pay twenty five percent (25%) surcharge and twenty percent (20%) annual interest for late payment from July 31, 2008 until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997;

4. Whether or not petitioners were accorded due process in the issuance of the deficiency income tax and deficiency percentage tax assessments;

5. Whether or not the subject deficiency income tax and deficiency percentage tax assessments had already prescribed;

6. Whether or not the Formal Letter of Demand and Assessment Notice issued on July 28, 2008 were issued within the prescriptive period provided by law;

7. Whether or not the subject deficiency income tax and deficiency percentage tax assessments have factual and legal bases;

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[43] Docket, p. 1526.
[44] Docket, p. 1532.
[45] Docket, p. 1533.
[46] Docket, pp. 147-148.

8. Whether or not petitioners may be held liable on the basis of the confidential information which was filed, duly subscribed and sworn to by an informer on his own volition before this Court as provided for under Section 282 of the NIRC of 1997; and

9. Whether or not Section 222 of the NIRC of 1997 is applicable in the case at hand.

DISCUSSION/RULING

The above-enumerated issues can be summarized into the following main issues:

1. Whether or not petitioners may be held liable for deficiency income tax and deficiency percentage tax on the basis of a confidential information as provided for under Section 282 of the NIRC of 1997, as amended;

2. Whether or not the subject deficiency income tax and deficiency percentage tax assessments had already prescribed; and

3. Whether or not petitioners are liable to pay the aggregate amount of ₱24,329,405.68 representing deficiency income taxes and percentage taxes for taxable years 1998, 1999, and 2000, including 25% surcharge and 20% annual interest for late payment pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

Whether or not petitioners may be held liable for deficiency income tax and deficiency percentage tax on the basis of a confidential information as provided for under Section 282 of the NIRC of 1997, as amended

Section 282(A) of the NIRC of 1997, as amended, provides that any person may give any information to the BIR for alleged acts of fraud of internal revenue laws or violations of any provisions thereof, provided the information given are voluntary, definite and sworn to, and not yet in the possession of the BIR. Section 282(A) of the NIRC of 1997 is quoted hereunder for ready reference:

> "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" *(Emphasis supplied)*

In the instant case, petitioner spouses assail the information given by the confidential informant, Ms. Yolanda G. Maniwang, to the BIR. They claim it was made in retaliation for their filing of a criminal case against Ms. Maniwang for violation of Batas Pambansa Blg. 22.

We are not persuaded.

Section 282(A) of the NIRC of 1997, 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, *viz.*, that the informant must not be a public official or employee, or a relative within sixth degree of consanguinity of said public official or employee, pertains only to an informer's reward. In fact, the law merely provides that all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Conviction of a crime, much less having a pending criminal case, unless otherwise provided by law, shall not be a ground for disqualification.[47]

Accordingly, petitioner spouses may be held liable based on the confidential information executed by Ms. Yolanda G. Maniwang.

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[47] Section 20, Rule 130, Rules of Court.

Whether or not the subject deficiency income tax and percentage tax assessments had already prescribed

Petitioner spouses assail the assessments issued against them by respondent for having been issued out of time and not in conformity with procedures laid down by law, thereby, violating their right to due process. Petitioner spouses assert that respondent only issued the FLD-AN for their alleged deficiency income and percentage taxes for taxable years 1998, 1999, and 2000 on July 28, 2008, which is more than the three-year prescriptive period provided for under Section 203 of the NIRC of 1997, as amended.

On the other hand, respondent claims that her assessments will not fall under the said three-year period but rather within the exceptions enumerated under Section 222 of the same Tax Code. She insists that since petitioner spouses willfully failed to file the required returns for taxable years 1998, 1999 and 2000, the ten-year prescriptive period from the discovery of falsity, fraud or omission shall govern, which period is reckoned from the time the FLD-AN was issued. She further argues that in her PAN with Details of Discrepancies[48], as well as in her FLD-AN[49] with Schedules 1 and 2[50], petitioner spouses filed false or fraudulent return during the said taxable years by not declaring certain sales/receipts in their returns.

We find merit in respondent's assertion.

Section 203 of the NIRC of 1997, as amended, mandates that respondent should make 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-year prescriptive period shall not be valid save in certain cases enumerated under Section 222(a) of the same Code, to wit:

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

[48] Exhibits "J" to "J-3.

[49] As attached to the Formal Letter of Demand, Exhibits "Q-3" to "Q-8".

[50] As attached to the Formal Letter of Demand, Exhibit "Q-9".

filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

"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." *(Emphasis supplied)*

In relation thereto, Section 51(C)(1) of the NIRC of 1997, as amended, specifies that the three (3)-year period within which to assess an individual's deficiency income tax shall commence from the fifteenth (15^{th}) day of April of each year covering income for the preceding taxable year, to wit:

"SEC. 51. *Individual Return. –*

xxx xxx xxx

(C) *When to File. –*

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year."

Moreover, Section 128(A)(1) of the NIRC of 1997, as amended, provides that payment of percentage taxes must be made within twenty-five (25) days after the close of each taxable quarter, thus:

"SEC. 128. *Returns and Payment of Percentage Taxes. –*

(A) *Returns of Gross Sales, Receipts or Earnings and Payment of Tax. –* ℊ

(1) *Persons Liable to Pay Percentage Taxes.* – Every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-five (25) days after the end of each taxable quarter: *Provided,* That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section 116 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section."

If the return was filed earlier than the last day allowed by law within which to file a return, the period to assess shall still be counted from the last day prescribed by law for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was actually filed.

In the instant case, since the involved taxable years are 1998, 1999 and 2000, any deficiency income tax should be assessed not later than April 15, 2002, April 15, 2003 and April 15, 2004. As for deficiency percentage tax, assessment should be made not later than April 25, 2001, July 25, 2001, October 25, 2001 and January 25, 2002 for taxable year 1998; April 25, 2002, July 25, 2002, October 25, 2002 and January 25, 2003 for taxable year 1999; and April 25, 2003, July 25, 2003, October 25, 2003 and January 25, 2004 for taxable year 2000.

Since respondent only issued the FLD-AN on July 28, 2008,[51] it is clear that it was filed beyond the three-year prescriptive period. Now, the question is whether petitioner spouses filed a false or fraudulent return with intent to evade tax, or failed to file a return, so as to excuse the said FLD-AN from the three-year prescriptive period.

Anent respondent's assertion that petitioner spouses willfully failed to file their income tax and quarterly percentage tax returns,[52] this Court believes otherwise. Even though the best evidence to dispute said assertion is the production and presentation of petitioner spouses' tax returns, the Certification[53] dated November 30, 2005 issued by the BIR's database, nonetheless, shows that petitioner spouses indeed filed income tax returns, value-added tax (VAT) returns, and withholding tax returns during taxable years 1998 to 2001 thereby negating respondent's assertion. Therefore, petitioner spouses did not fail to file their tax returns. gr

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[51] Exhibits "Q" to "Q-9-b".

[52] Par. 2, Special and Affirmative Defenses, Respondent's Answer, docket, pp. 85-89; Admitted by respondent's witness, Revenue Officer Joaquin Tinio, during his cross-examination in the April 14, 2010 hearing, Transfer of Stenographic Notes (TSN), pp. 34-35; Exhibit "35".

[53] Exhibit "11"; Exhibits "W" to "W-2".

The only remaining ground for it to fall within the ambit of Section 222(a) of the NIRC of 1997, as amended, is whether petitioner spouses filed a false or fraudulent return with intent to evade tax. It must be stressed that respondent has been asserting since the onset that, based on a confidential information[54], petitioner spouses had received income from numerous checks issued to them by Ms. Yolanda G. Maniwang[55] which were undeclared in their tax returns for taxable years 1998, 1999 and 2000. Thus, such underdeclaration of income/sales are considered fraud under Section 8 of Finance Regulations No. 1, to wit:

> "Section 8. Frauds upon and/or violation of the Internal Revenue Laws. – The following are some of the frauds and/or violation commonly committed against the internal revenue laws.
>
> 1. Underdeclaration of Sales
> 2. Underdeclaration of Income
> 3. False entries in the books of accounts
>
> xxx xxx xxx"

Conversely, petitioner spouses argue that respondent's conclusion is merely presumptuous, speculative and imaginary. As a matter of fact, the photocopies of the supposed checks offered to prove the alleged undeclared sales/receipts or income received by petitioner spouses were denied admission in evidence by this Court for their failure to present the original copies. Consequently, there is no proof on record to substantiate the alleged undeclared income to warrant the accusation of filing a false or fraudulent return.

We are not convinced.

In the case of *Rodolfo Laborte, et al. vs. Pagsanjan Tourism Consumers' Cooperative, et al.*[56], the Supreme Court discussed the importance of formally offering evidence. However, the same is subject to certain exceptions. Thus:

> "Anent the procedural issue raised, both the trial court and the CA faulted the petitioners for their failure to formally offer their evidence inspite of the ample opportunity granted to do

[54] Confidential Information No. 641-2005 dated November 9, 2005.
[55] Q37 to Q40 of Sinumpaang Salaysay ni Yolanda G. Maniwang, Exhibit "153".
[56] G.R. No. 183860, January 15, 2014.

so. Thus, such lapse allegedly militated against the petitioners whose assertions were otherwise supported by sufficient evidence on record.

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.

From the above provision, **it is clear that the court considers the evidence only when it is formally offered. The 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.** A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered. The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered.

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[57] 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,[58] they were eventually marked as originals during the Commissioner's hearing[59] on November 25, 2013, thereby satisfying the second requirement.

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

Whether or not petitioners are liable to pay the aggregate amount of ₱24,329,405.68 representing deficiency income taxes and percentage taxes for taxable years 1998, 1999, and 2000, including 25% surcharge and 20% annual interest for late payment pursuant to Sections 248 and 249 of the NIRC of 1997, as amended

Respondent's deficiency income tax and percentage tax assessments are computed as follows:[60]

Deficiency Income Tax	**Basic**	**Surcharge**	**Interest**	**Total**
1998	₱1,541,319.00	₱ 770,659.50	₱ 2,851,440.15	₱ 5,163,418.65
1999	4,850,045.13	2,425,022.57	8,042,991.51	15,318,059.21
2000	585,632.96	292,816.48	854,048.06	1,732,497.50
Total Deficiency Income Tax	**₱6,976,997.09**	**₱3,488,498.54**	**₱11,748,479.72**	**₱ 22,213,975.35**

Deficiency Percentage Tax				
1998	₱ 145,860.00	₱ 72,930.00	₱ 274,703.00	₱ 493,493.00
1999	450,105.92	225,052.96	757,678.30	1,432,837.18

[57] Exhibit "153".
[58] Resolution dated February 21, 2013, docket, pp. 1237-1238; Resolution dated April 18, 2013, docket, pp.1305-1309.
[59] Docket, p. 1445.
[60] Exhibit "Q-9".

2000	63,385.50	31,692.80	94,021.83	189,100.13
Total Deficiency Percentage Tax	**₱ 659,351.42**	**₱ 329,675.76**	**₱ 1,126,403.13**	**₱ 2,115,430.31**

Surcharge of 50% was imposed pursuant to Section 248(B) of the NIRC.
Interest of 20% per annum was computed up to July 31, 2008.

In her Judicial Affidavit, Ms. Maniwang stated that when St. Anthony Security and Protective Agency, Inc., the company owned by her husband and herself,[61] was in financial need, she loaned money from and made payments thereon to petitioner spouses in the years 1998, 1999 and 2000, to wit:[62]

> 6. Q: Ano ang basehan po ninyo sa pagsasabing ang kumpanya ninyo ay nakahiram ng pera sa mag-asawang Remigio at Leticia Magaan?
>
> *What is your basis for telling that spouses Magaan loaned you money?*
>
> A: Una pong pagpapahiram ng pera sa amin ng mag-asawang Magaan ay wala po kaming kasulatang nilagdaan. Siguro tiwala lang po sa isa't isa ang naging basehan. Pero nung mga bandang 1999 at 2001 ay nagsabi na si Mr. Magaan na mag-execute na kami ng Real Estate Mortgages (REM) na kung saan ang aking tatlong (3) lupa ay nakasanla sa kanila kapalit ng perang kanilang ipapahiram sa aming kumpanya, St. Anthony Security and Protective Agency, Inc. ("St. Anthony", sa maikling tawag), sa pamamagitan naming mag-asawa.
>
> xxx xxx xxx
>
> 12. Q: Sa pagkakatanda mo, magkanu *[sic]* ang kabuuang pera na pinahiram ng mag-asawang Magaan na walang pinirmahang dokumento o iyong pera bukod pa sa REM na inyong pinirmahan noong taong 1999 at 2001?
>
> *Based on your recollection, how much is the total amount loaned to you by Spouses Magaan without any documents executed or that amount of money loaned aside from the REM executed in 1999 and 2001?*

[61] Exhibits "147" to "150".
[62] Exhibit "153".

A: Kung susumahin po ang kabuuang perang kanilang pinahiram sa kumpanya ay umabot po ng Limang Milyong Piso (P5,000,000.00) ang kabuuang pera na napahiram sa amin ng mag-asawang Remigio Magaan.

xxx xxx xxx

15. Q: Maliban sa iyong salita, anu *[sic]* ang patunay mo na ikaw ay pinahiram ng ganung *[sic]* kalaking halaga ng wala man lamang dokumentong pinapirmahan?

Aside from your assertions, what is your basis for telling that Spouses Magaan loaned you the aforesaid amount when you claim that there was no existing documents evidencing the same?

A: Katulad po ng aking nabanggit, ang mga tseke po na aming in-issue sa mag-asawang Magaan ang magpapatunay na kami po ay pinahiram ng mag-asawang Emy Magaan. Ang mga tseke po ay dinedeposit nila sa account nila at bumabalik na pong validated ang mga tseke sa amin.

16. Q: Paano mo nasabing ang mga tseke na iyong binabayad ay dinedeposito nila?

How did you know that the checks you issued were deposited in the bank?

A: Katulad ng aking tinuran, ang mga tseke po na aming in-issue ay bumabalik sa amin na validated na. Sa likod po ng tseke ay malinaw na makikita na idene-deposit po ito sa account ng tumanggap.

However, when respondent submitted the subject checks as evidence, the same were not admitted for failure of respondent to present the originals thereof. Nevertheless, as earlier discussed, the following checks may still be considered as evidence in determining the merits of the instant case, as long as the same have been duly identified by testimony duly recorded or the same have been incorporated in the records of the case or were repeatedly referred to in the course of the trial.[63] Thus:

[63] *Laborte, et al. vs. Pagsanjan Tourism Consumers Cooperative, et al., supra.*

SUMMARY OF CHECKS ISSUED BY INFORMANT[64]					
Exh.	**Date**	**Bank**	**Check No.**	**Payee**	**Amount**
38	4/3/1998	FEBTC	26A094325C	Imilec Trade Haus	₱ 302,000.00
39	7/1/1998	FEBTC	26A0000342267	Imilec Trade Haus	512,500.00
40	8/14/1998	FEBTC	26A0000332322	Imelec Trade Haus	550,000.00
41	8/28/1998	FEBTC	26A0000332326	Imelec Trade Haus	512,500.00
42	9/2/1998	FEBTC	26A0000342594	Imelec Trade Hauz Inc.	332,500.00
43	9/17/1998	FEBTC	26A0000342595	Imelec Trade Hauz Inc.	525,000.00
44	9/17/1998	FEBTC	26A0000342736	Imelec Trade Hauz Inc.	322,500.00
45	10/2/1998	FEBTC	26A0000342596	Imelec Trade Hauz Inc.	512,500.00
46	10/2/1998	FEBTC	26a0000342734	Imelec Trade Hauz Inc.	315,000.00
47	10/6/1998	FEBTC	26a0000341901	Imilec Tradehaus	332,500.00
48	10/17/1998	FEBTC	26A0000342735	Imelec Trade Hauz Inc.	307,500.00
49	10/20/1998	FEBTC	26A0000342029	Imilec Tradehaus	332,500.00
50	10/22/1998	FEBTC	26A0000341903	Imilec Tradehaus	525,000.00
51	11/4/1998	FEBTC	26A0000342030	Imilec Tradehaus	525,000.00
52	11/6/1998	FEBTC	26A0000341910	Imilec Tradehaus	512,500.00
53	11/19/1998	FEBTC	26A0000342031	Imilec Tradehaus	512,500.00
54	11/27/1998	FEBTC	26A0000341941	Imilec Tradehaus	345,000.00
55	12/10/1998	PCIB	224416	Imilec Tradehaus	525,000.00
56	12/12/1998	FEBTC	26A0000341933	Imilec Tradehaus	537,500.00
57	12/16/1998	FEBTC	26A0000378546	Imilec Tradehaus	435,000.00
	Subtotal				*₱ 8,774,500.00*
58	1/1/1999	FEBTC	26A0000378660	Imilec Tradehaus	₱ 293,750.00
59	1/9/1999	FEBTC	26A0000378702	Imilec Tradehaus	525,312.50
61	1/11/1999	FEBTC	26A0000378703	Imilec Tradehaus	538,125.00
62	1/11/1999	FEBTC	26A0000341932	Imilec Tradehaus	512,500.00
63	1/15/1999	FEBTC	26A0000378548	Imilec Tradehaus	512,500.00
64	1/15/1999	FEBTC	26A0000378704	Imilec Tradehaus	538,125.00
65	1/16/1999	FEBTC	26A0000378659	Imilec Tradehaus	537,500.00
66	1/28/1999	FEBTC	26A0000378755	Imilec Tradehaus	537,500.00
67	1/31/1999	FEBTC	26A0000378658	Imilec Tradehaus	525,000.00
68	2/3/1999	FEBTC	26A0000378301	Imilec Tradehaus	540,000.00
69	2/4/1999	FEBTC	26A0000378728	Imilec Tradehaus	525,000.00
70	2/12/1999	FEBTC	26A0000378756	Imilec Tradehaus	525,000.00
71	2/18/1999	FEBTC	26A0000378302	Imilec Tradehaus	527,500.00
72	3/8/1999	FEBTC	26A0000378174	Imilec Tradehaus	142,578.00
73	3/15/1999	FEBTC	26A0000378175	Imilec Tradehaus	169,193.00
74	3/22/1999	FEBTC	26A0000378176	Imilec Tradehaus	167,529.00
75	3/26/1999	FEBTC	26A0000378421	Imilec Tradehaus	760,000.00
76	3/29/1999	FEBTC	26A0000378177	Imilec Tradehaus	165,866.00
77	4/5/1999	FEBTC	26A0000378178	Imilec Tradehaus	346,181.00
78	4/12/1999	FEBTC	26A0000378179	Imilec Tradehaus	369,995.00
79	4/13/1999	FEBTC	26A0000378265	Imilec Tradehaus	404,000.00
80	4/19/1999	FEBTC	26A0000378181	Imilec Tradehaus	366,208.00
81	4/26/1999	FEBTC	26A0000378182	Imilec Tradehaus	362,422.00

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[64] Docket, pp. 1139-1205.

82	5/3/1999	FEBTC	26A0000378183	Imilec Tradehaus	358,636.00
83	5/10/1999	FEBTC	26A0000378184	Imilec Tradehaus	354,849.00
84	5/17/1999	FEBTC	26A0000378185	Imilec Tradehaus	351,063.00
85	5/24/1999	FEBTC	26A0000378186	Imilec Tradehaus	347,276.00
86	5/31/1999	FEBTC	26A0000378187	Imilec Tradehaus	343,490.00
87	6/7/1999	FEBTC	26A0000378188	Imilec Tradehaus	339,703.00
88	6/14/1999	FEBTC	26A0000378190	Imilec Tradehaus	335,916.00
89	6/21/1999	FEBTC	26A0000378180	Imilec Tradehaus	332,130.00
90	6/28/1999	FEBTC	26A0000378189	Imilec Tradehaus	328,343.00
91	7/20/1999	FEBTC	26A0000410385	Imilec Tradehaus	7,228.00
92	7/21/1999	FEBTC	26A0000410321	Imilec Tradehaus	307,500.00
93	8/3/1999	FEBTC	26A0000410388	Imilec Tradehaus	234,446.00
94	8/10/1999	FEBTC	26A0000410375	Imilec Tradehaus	232,022.00
95	8/17/1999	FEBTC	26A0000410376	Imilec Tradehaus	229,598.00
96	8/24/1999	FEBTC	26A0000410377	Imilec Tradehaus	227,174.00
97	8/31/1999	FEBTC	26A0000410378	Imilec Tradehaus	224,750.00
98	9/7/1999	FEBTC	26A0000410379	Imilec Tradehaus	222,326.00
99	9/14/1999	FEBTC	26A0000410380	Imilec Tradehaus	219,902.00
100	9/21/1999	FEBTC	26A0000410381	Imilec Tradehaus	217,477.00
101	9/24/1999	FEBTC	26A0000378715	Imilec Tradehaus	3,431.00
102	9/28/1999	FEBTC	26A0000410382	Imilec Tradehaus	215,053.00
103	10/5/1999	FEBTC	26A0000410383	Imilec Tradehaus	212,629.00
104	10/12/1999	FEBTC	26A0000410384	Imilec Tradehaus	210,205.00
105	10/26/1999	FEBTC	26A0000410389	Imilec Tradehaus	238,948.15
106	11/2/1999	FEBTC	26A0000434310	Rubilina M. Simbulan and/or Remigio P. Magaan	170,710.00
107	11/7/1999	FEBTC	26A0000434306	Rubilina M. Simbulan and/or Remigio P. Magaan	210,542.00
108	11/9/1999	FEBTC	26A0000434303	Rubilina M. Simbulan and/or Remigio P. Magaan	218,509.00
109	11/16/1999	FEBTC	26A0000434304	Rubilina M. Simbulan and/or Remigio P. Magaan	216,517.00
110	11/23/1999	FEBTC	26A0000434311	Rubilina M. Simbulan and/or Remigio P. Magaan	214,526.00
111	11/30/1999	FEBTC	26A0000434305	Rubilina M. Simbulan and/or Remigio P. Magaan	212,534.00
112	12/14/1999	FEBTC	26A0000434307	Rubilina M. Simbulan and/or Remigio P. Magaan	208,551.00
113	12/21/1999	FEBTC	26A0000434308	Rubilina M. Simbulan and/or Remigio P. Magaan	206,559.00
114	12/28/1999	FEBTC	26A0000434309	Rubilina M. Simbulan and/or Remigio P. Magaan	204,567.00
	Subtotal				*₱17,848,894.65*
129	3/27/2000	EPCIB	279303	Rubilina M. Simbulan and/or Remigio P. Magaan	₱ 719,198.00
	Subtotal				*₱ 719,198.00*
	TOTAL				**₱27,342,592.65**

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It must be pointed out that most of the checks were issued to Imilec Tradehaus, Imelec Trade Haus or Imelec Trade Hauz Inc. ("Imilec" for brevity). Ms. Maniwang explained:[65]

42. Q: Paano mo ulit nasisiguro na natatanggap nga ni Remigio Magaan ang perang inyong binabayad?

How sure are you that the amount you paid were received by Remigio Magaan?

A: Unang-una katulad po ng aking nabanggit kanina, humihingi po agad sa akin ng post-dated checks si Emy. Siya po ang nagsabi na dun ko ipangalan ang tseke sa Imilec Tradehaus dahil nga sa kanila daw po iyon. Pangalawa, bumabalik po ang mga tseke sa kumpanya, iyon po ang mga tsekeng na na-issue ko kay Emy. Makikita po sa tseke na-validated iyon at nadeposito sa account sa MetroBank at Planters Dev't. Bank.

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48. Q: Anu ang sumunod na nangyari?

What happened next?

A: Nung sumunod po naming pagkikita noong mga bandang October ng taong 1999 ay may dala-dala na si Emy na REM na kanyang pinapirma sa aming mag-asawa. Inilagay niya po doon na sa halagang P5,000,000 na aming pagkakautang sa kanya ay ico-collateral naming *[sic]* ang aming tatlong ari-arian na nauna nang naisanla sa PNB. Ito po iyong Real Estate Mortgage na nabanggit ko kanina na minarkahan bilang Exhibit "36". Sabi niya pirmahan ko daw po iyong dokumento. Bago ko ito pinirmahan napansin ko ang pangalan nina Rubilina Simbulan at Roselita M. Juanino na nakasulat bilang kapwa-lender ni Emy. Nung ito po ay tinanung ko sa kanya kung sino sila ang tugon niya po ay: "Grupo ko yan". Nakaattach *[sic]* na din po sa REM ang schedule ng payments na aming gagawin. Katulad po ng dati ang instruction po niya sa akin ay mag issue ako ng post dated

[65] Exhibit "153".

checks at ito uli ay ipangalan naming either sa kanya o kay Rubilina M. Simbulan o sa Imilec Tradehaus. Pagkatapos po noon ay pinirmahan na po naming mag-asawa iyong dokumento.

49. Q: Anu *[sic]* mga sumunod na pangyayari?

What happened next?

A: Bumalik po ulit sa akin ang tatlong (3) validated na tsekeng *[sic]* na aking nauna ng in-issue kay Emy. Ang mga tseke pong ito ay ang mga sumusunod:

Check No.	Date	Amount Paid
1. 410383	Oct. 5, 1999	₱212,629.00
2. 410384	Oct. 12, 1999	210,205.00
3. 410389	Oct. 26, 1999	238,948.15

On the other hand, in his Judicial Affidavit, petitioner Remigio P. Magaan stated:[66]

Q: What, if any, do you know about IMILEC TRADEHAUS?

A: The only IMILEC TRADEHAUS that I know is a partnership registered in the Securities and Exchange Commission and its complete name is IMILEC TRADEHAUS AND SERVICES CO., sir.

Q: Are you and/or your wife a partner in Imilec Tradehaus and Services Co.?

A: No, sir. Neither of us is a partner in the said partnership.

Q: Please tell this Honorable Court, who the partners are in Imilec Tradehaus and Services Co.?

A: My sister, Rubilina M. Simbulan and her partner, Rosalina M. Juanino, sir.

---

[66] Exhibit "S".

Q: Have you and/or your wife been involved in the *[sic]* any of the business transactions or affairs of Imilec Tradehaus and Services Co.?

A: No, sir. Except that for awhile *[sic]*, it also held office in the same office building where I hold office.

Notably, petitioner spouses did not deny the existence of the alleged loans, nor did they refute the allegation by the informant that the checks issued to Imilec were deposited to their bank account in MetroBank and Planters Development Bank. Petitioner spouses likewise failed to submit any certification of whether or not they hold an account with the said banks during the years 1998 to 2000.

Perusal of the records reveals that Appendix "B" Schedule of Payments of the Real Estate Mortgage (REM) signed by informant Yolanda G. Maniwang, Reynaldo V. Maniwang, Rubilina M. Simbulan, Roselita M. Joanino and petitioner Remigio P. Magaan dated October 6, 1999 includes *Item A. Existing loan payments* and *Item B. Re-structured loan payments*, thus:[67]

A. Existing loan payments

Due Date		Amount
Oct. 5, 1999		₱ 212,629
Oct. 12, 1999		₱ 210,205
Oct. 26, 1999		₱238,948.15
PDC's issued	Total	₱661,782.15

B. Re-structured loan payments

Amount	From	To		Re-structured Amount
₱1,349,291	23 Sept 99	02 Nov 99		₱1,439,244
₱2,100,000	05 Oct 99	02 Nov 99		₱2,201,500
₱ 600,000	07 Oct 99	02 Nov 99		₱ 627,000
			Total	₱4,267,744

Examination of the checks submitted shows that Ms. Maniwang did in fact issue checks corresponding to the afore-stated existing and re-structured loan payments, to wit:

[67] Exhibit "36".

Exh.	Date	Bank	Check No.	Payee	Amount
103	10/5/1999	FEBTC	26A0000410383	Imilec Tradehaus	₱ 212,629.00
104	10/12/1999	FEBTC	26A0000410384	Imilec Tradehaus	210,205.00
105	10/26/1999	FEBTC	26A0000410389	Imilec Tradehaus	238,948.15
106	11/2/1999	FEBTC	26A0000434310	Rubilina M. Simbulan and/or Remigio P. Magaan	170,710.00
107	11/7/1999	FEBTC	26A0000434306	Rubilina M. Simbulan and/or Remigio P. Magaan	210,542.00
108	11/9/1999	FEBTC	26A0000434303	Rubilina M. Simbulan and/or Remigio P. Magaan	218,509.00
109	11/16/1999	FEBTC	26A0000434304	Rubilina M. Simbulan and/or Remigio P. Magaan	216,517.00
110	11/23/1999	FEBTC	26A0000434311	Rubilina M. Simbulan and/or Remigio P. Magaan	214,526.00
111	11/30/1999	FEBTC	26A0000434305	Rubilina M. Simbulan and/or Remigio P. Magaan	212,534.00
112	12/14/1999	FEBTC	26A0000434307	Rubilina M. Simbulan and/or Remigio P. Magaan	208,551.00
113	12/21/1999	FEBTC	26A0000434308	Rubilina M. Simbulan and/or Remigio P. Magaan	206,559.00
114	12/28/1999	FEBTC	26A0000434309	Rubilina M. Simbulan and/or Remigio P. Magaan	204,567.00

This Court finds that the REM dated October 6, 1999[68] actually corresponds to the previous unpaid loans between spouses Maniwang and petitioner Remigio Magaan (and company): (a) the existing loan, and (b) the re-structured loan. Section 3 of Bangko Sentral ng Pilipinas (BSP) Circular No. 409 provides:

> "Section 3. Restructured loans; Refinanced loans; Restructured loans are loans that have been **renegotiated or modified to either lengthen or postpone the original scheduled installment payments or substantially alter the original terms of the loans**. Any increase in the face amount of the debt resulting from accrued interest and accumulated charges which have been capitalized or made part of the principal of restructured loans shall be recorded in the unearned income/deferred credit account 'Capitalized Interest and Other Charges - Restructured Loans'. Upon receipt of payment, the realized portion shall be amortized/credited to income.
>
> Refinanced loans are loans that have been disbursed to enable repayment of prior loans that would not have been paid in accordance with the original installment schedule. Loans granted within a week or less from the date an original loan with more than 30% of the original principal still outstanding had been paid in advance shall be considered as refinanced loans. Refinanced

[68] Exhibit "36".

loans shall be classified and reported as restructured loans." *(Emphasis supplied)*

Based thereon, to be able to re-structure or re-schedule a loan, there needs to be an existing loan.

It is likewise noted that the schedule of payments are computed based on the re-structured loan amount of ₱4,267,744.00, although the REM states that "the BORROWERS have borrowed from the LENDERS the principal sum of FIVE MILLION PESOS (P5,000,000.00) Philippine Currency, with an interest thereon of five percent (5%) a month reckoned from Oct. 05, 1999 until fully paid."[69]

Clearly, the foregoing confirms the informant's allegation that she and her husband loaned money from petitioner Remigio P. Magaan, among others, before the REM was made and signed on October 6, 1999.

Accordingly, for failure to explain and disprove the findings of respondent's examiners, petitioner spouses should be made liable to pay deficiency income tax on the aggregate interest income, pursuant to Sections 31 and 32 of the NIRC of 1997, as amended, computed as follows:

1998	
Total payments per checks issued	₱ 8,774,500.00
Less: Principal amount per Exhibit "153"	5,000,000.00
Interest income	**₱ 3,774,500.00**

1999		
Total payments per checks issued		₱17,848,894.65
Less: Principal		
Jan. - Oct. (cannot be determined)	₱ -	
Nov. - Dec. (per REM dated Oct. 6, 1999)	1,536,390.00	1,536,390.00
Interest income		**₱16,312,504.65**

2000	
Total payments per checks issued	₱ 719,198.00
Less: Principal (cannot be determined, not in REM dated Oct. 6, 1999)	-
Interest income	**₱ 719,198.00**

[69] Exhibit "36".

Corollary thereto, Section 121 of the NIRC of 1997 provides:

> SEC. 121. *Tax on Banks and Non-bank Financial Intermediaries.* – **There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:**
>
> (a) **On interest**, commissions and discounts **from lending activities** as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Short-term maturity (not in excess of two (2) years)	**5%**
Medium-term maturity (over two (2) years but not exceeding four (4) years	3%
Long-term maturity –	
(1) Over four (4) years but not exceeding seven (7) years	1%
(2) Over seven (7) years	0%

> xxx xxx xxx
>
> **Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.**" *(Emphasis supplied)*

Further, for performing financing activities and deriving income therefrom, petitioners should likewise be made liable to deficiency percentage tax on their aggregate gross receipts pursuant to the foregoing provision of law.

With regard to whether petitioner spouses are liable to pay 25% surcharge and 20% annual interest for late payment of deficiency tax, this Court finds the same to be in accordance with Sections 248 and 249 of the NIRC of 1997, as amended, *albeit* the surcharge shall be at 50%, which provide:

"SEC. 248. *Civil Penalties.* –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) In case of **willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or the deficiency tax**, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein. *(Emphasis supplied)*

SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx"

The 50% surcharge imposed by respondent in the Formal Letter of Demand[70] may be sustained considering that there is a willful neglect on the part of petitioner spouses in not including the subject income in their returns. Thus, the imposition of 50% surcharge is legal and proper.

All told, petitioner spouses' total deficiency income tax liabilities inclusive of 50% surcharge for the years 1998, 1999 and 2000 amount to ₱1,757,355.00, ₱7,923,009.80, and ₱219,839.10, respectively, computed as follows: *ge*

[70] Exhibit "Q".

On the other hand, petitioner spouses' deficiency percentage tax liabilities inclusive of 50% surcharge for the years 1998, 1999 and 2000 amount to ₱283,087.50, ₱1,223,437.86 and ₱53,939.86, respectively, computed as follows:

1998			
Gross receipts/Interest income	₱1,887,250.00	₱1,887,250.00	₱ 3,774,500.00
Tax rate	5%	5%	5%
Deficiency percentage tax	94,362.50	94,362.50	188,725.00
Surcharge (50%)	47,181.25	47,181.25	94,362.50
Total amount due	**141,543.75**	**141,543.75**	**283,087.50**

1999			
Gross receipts/Interest income	₱8,156,252.33	₱8,156,252.33	₱16,312,504.66
Tax rate	5%	5%	5%
Deficiency percentage tax	407,812.62	407,812.62	815,625.24
Surcharge (50%)	203,906.31	203,906.31	407,812.62
Total amount due	**611,718.93**	**611,718.93**	**1,223,437.86**

2000			
Gross receipts/Interest income	₱ 359,599.00	₱ 359,599.00	₱ 719,198.00
Tax rate	5%	5%	5%
Deficiency percentage tax	17,979.95	17,979.95	35,959.90
Surcharge (50%)	8,989.98	8,989.98	17,979.96
Total amount due	**26,969.93**	**26,969.93**	**53,939.86**

As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC. Stated differently, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[71]

[71] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

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[72] until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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

[72] Exhibit "A-1".