REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

OPULENT LANDOWNERS, INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 8956

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

FEB 14 2018 9:03 Am

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RESOLUTION

CASTAÑEDA, JR., ***J.***:

For resolution of the Court are the following:

1. Petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on September 19, 2017)**, filed on October 5, 2017, with respondent's **Opposition (re: Petitioner's Motion for Partial Reconsideration)**, filed on November 3, 2017; and

2. Respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 19 September 2017)**, filed on October 5, 2017, with petitioner's **Comment (To the Respondent's Motion for Partial Reconsideration)**, filed on October 27, 2017. *gc*

For easy reference, the dispositive portion of the assailed Decision[1] reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly the Compromise Penalty imposed upon petitioner is **CANCELLED**. On the other hand, the assessments issued by respondent against petitioner for deficiency Income Tax, deficiency Value Added Tax, deficiency Documentary Stamp Tax, and deficiency Improperly Accumulated Earnings Tax are **UPHELD**, but in the reduced amount of ₱15,372,714.26 inclusive of 25% surcharge, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱263,060.57	₱65,765.14	₱328,825.71
Value Added Tax	543,484.02	135,871.01	679,355.03
Documentary Stamp Tax	630,506.99	157,626.75	788,133.74
Improperly Accumulated Earnings Tax	10,861,119.82	2,715,279.96	13,576,399.78
Total	**₱12,298,171.40**	**₱3,074,542.86**	**₱15,372,714.26**

In addition, petitioner is liable to pay:

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

Deficiency Tax	Basic Tax	20% Deficiency Interest computed from
Income Tax	₱263,060.57	April 15, 2010
Value Added Tax	543,484.02	January 25, 2010
Documentary Stamp Tax	630,506.99	January 5, 2010
Improperly Accumulated Earnings Tax	10,861,119.82	January 15, 2011

(b) Delinquency interest at the rate of 20% per annum in the total amount due of ₱15,372,714.26 representing basic deficiency income tax, deficiency value added tax, deficiency documentary stamp tax, Improperly Accumulated Earnings Tax, and on the deficiency interest

[1] Docket, Vol. II, pp. 690-736.

which has accrued as stated above in (a) computed from November 19, 2014 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."[2]

Petitioner raised the following issues in its motion:

"I. Whether petitioner is liable for the total deficiency Income Tax of ₱263,060.57, exclusive of interests and surcharge.

II. Whether petitioner is liable for the total deficiency VAT of ₱543,484.02, exclusive of interests and surcharge.

III. Whether petitioner is liable for the total deficiency DST of ₱630,506.99, exclusive of interests and surcharge.

IV. Whether petitioner is liable for the total deficiency Improperly Accumulated Earnings Tax of ₱10,861,119.82, exclusive of interests and surcharge.

V. Whether petitioner may be held liable for interests and surcharge."[3]

On the other hand, respondent raised the following issues in his motion:

I. "The Honorable Court erred in ruling that petitioner is not liable for deficiency Income Tax for taxable year 2009 due to:

a. Undeclared Income from discrepancy in the sales to Garcia, Rodrigo in the amount of ₱108,000.00;

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[2] Docket, Vol. II, pp. 734-735.
[3] Docket, Vol. II, p. 759.

b. Undeclared Income [from] discrepancy in the sales to Rivera, Roy in the amount of ₱82,210.00; and

c. Undeclared Income [from] discrepancy in the sales to Uy, Mady in the amount of ₱293,375.00.

II. The Honorable Court erred in ruling that petitioner is not liable for deficiency Income Tax for taxable year 2009 due from Collection of Other Receivables – Tenants in the entire amount of ₱7,164,425.73.

III. The Honorable Court erred in ruling that petitioner is not liable for deficiency Income Tax for taxable year 2009 due from Unaccounted Disbursements (SAWT of Meralco) in the amount of ₱4,587,870.68.

IV. The Honorable Court erred in ruling that petitioner is not liable for deficiency Value-Added Tax [from] taxable year 2009 due from Collection of Other Receivable[s]-Tenants in the amount of ₱7,164,425.73.

V. The Honorable Court erred in ruling that petitioner is liable for deficiency Value-Added Tax for the taxable year 2009 due from undeclared income but only in the reduced amount of ₱778,061.49 instead of ₱1,181,646.49.

VI. The Honorable Court erred in ruling that petitioner is not liable for deficiency Value-Added Tax for the taxable year 2009 due from Undeclared Income from Meralco in the amount of ₱4,587,870.68.

VII. The Honorable Court erred in ruling that petitioner is not liable [for] Compromise Penalty in the amount of ₱50,000.00."[4]

After careful evaluation of the issues raised by the parties, the Court finds both motions unmeritorious.

[4] Docket, Vol. II, pp. 740-741.

I. Income Tax

In the assailed decision, the liability for deficiency income tax is revised in the amount of ₱263,060.57 computed as follows:

Taxable Income per return		₱ 24,379,143.14
Add: Discrepancies per investigation		
Undeclared Income	₱778,061.49	
Collection of Other Receivables – Tenants	14,400.20	792,461.69
Taxable Income		₱25,171,604.83
Tax Rate		30%
Income Tax Due		₱7,551,481.45
Less: Tax Credits/Payment per return		
Tax Credit per return	₱1,646,161.01	
Less: Unsupported CWT	25,322.66	
Allowed Creditable Withholding Tax	₱ 1,620,838.35	
Add: Payment	5,667,582.53	7,288,420.88
Deficiency Income tax		**₱263,060.57**

The reduction in the assessed amount of deficiency income tax was due to the cancellation and/or reduction of the following:

a.	Undeclared Income from discrepancy in the sales to Garcia, Rodrigo	₱108,000.00
b.	Undeclared Income from discrepancy in the sales to Rivera, Roy	82,210.00
c.	Undeclared Income from discrepancy in the sales to Uy, Mady	213,375.00
d.	Income from Collection of Other Receivables-Tenants	7,150,025.53
e.	Unaccounted Disbursement (SAWT of Meralco)	4,587,870.68

a. Undeclared Income from discrepancy in the sales to Garcia, Rodrigo

As discussed in the assailed decision, the reporting of creditable withholding taxes claimed by petitioner as reflected in the SAWT were declared under the name of "Garcia, Rodrigo H.", while the sales reported in its SLS were declared under the trade name "Homebankers Realty". ℊℯ

Petitioner sufficiently proved that the income declared under the name of "Garcia, Rodrigo H." and the income declared under the trade name, "Homebankers Realty", is one and the same. The billing statements[5] bear the company name Homebankers Realty under the name Garcia, Rodrigo H. as the owner, while the official receipts[6] were issued to Garcia, Rodrigo H. under the business style/name of Homebankers Realty.

Thus, the Court aptly ruled that petitioner has no undeclared sales in the amount of ₱108,000.00.

b. Undeclared Income from discrepancy in the sales to Rivera, Roy

As discussed in the assailed decision, the reporting of creditable withholding taxes claimed by petitioner reflected in the SAWT were declared under the name of "Rivera, Roy C.", while the sales reported in its SLS were declared under the trade name "RDEX Food Intl. Phil., Inc."

To corroborate its assertion, petitioner presented the Certificate of Registration[7] with the BIR of RDEX Food Intl. Phil., Inc. The TIN No. 005-979-710-11 appearing therein is the TIN No. used in the official receipts and billing statements under the name of Mr. Rivera, Roy C.

Thus, records clearly show that RDEX Food Intl. Phil., Inc. is the tradename registered under the name of Rivera, Roy C.

In fine, the Court aptly ruled that petitioner has no undeclared sales in the amount of ₱82,210.

c. Undeclared Income from discrepancy in the sales to Uy, Mady

Upon verification of SAWT[8] and SLS, the Court found that the total sales of petitioner to Ms. Uy, Mady T. is only ₱80,000.00 and not ₱293,375.00[9] as claimed by the BIR.

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[5] Exhibit P-29-4, pp. 415-426.
[6] Exhibit P-29-5, pp. 443-454.
[7] Exhibit P-29-3, IC-27 (I.a), p.177.
[8] Exhibit P-12, Docket, Vol. II, pp. 515-538; Exhibit P-29-3, pp. 163-175.

Hence, the Court aptly ruled that the assessment is void for being capricious and arbitrary.

d. Income from Collection of Other Receivables-Tenants in the amount of ₱7,164,425.73

In his report,[10] the ICPA disclosed that electricity and water bills charged to tenants were not included in the claimed expenses of the petitioner, computed as follows[11]:

Month	Total Water Bills	Water Bills Charged To Tenants[12]	OPEX	Total Electricity Bill	Electricity Bills Charged to Tenants[13]	OPEX
January	₱47,687.05	₱29,028.09	₱18,658.96	₱456,460.82	₱492,488.78	₱(36,027.96)
February	49,801.52	20,285.76	29,515.76	605,080.59	382,552.74	222,527.85
March	51,908.08	25,359.24	26,548.84	603,981.30	525,044.75	78,936.55
April	56,859.07	20,372.10	36,486.97	643,482.81	533,531.62	109,951.19
May	52,903.22	28,748.03	24,155.19	608,401.95	567,218.52	41,183.43
June	46,123.62	23,874.08	22,249.54	568,399.34	552,298.50	34,100.84
July	49,237.87	19,596.75	29,641.12	590,283.37	492,752.52	97,530.85
August	53,678.45	29,980.57	23,697.88	532,714.42	514,638.71	18,075.71
September	49,016.09	27,803.90	21,212.19	506,693.17	470,090.13	36,603.04
October	38,399.96	25,190.78	13,209.18	465,296.59	446,848.83	18,447.76
November	42,908.31	28,184.37	14,723.94	486,210.59	415,399.10	70,811.49
December	48,945.16	19,328.54	29,616.62	491,952.38	391,648.67	100,303.71
Total	**₱587,468.40**	**₱297,752.21**	**₱289,716.19**	**₱6,576,957.33**	**₱5,784,512.87**	**₱792,444.46**

In support thereof, petitioner presented pieces of evidence such as Billing Statements to tenants,[14] Meralco Statement of Accounts[15] and Manila Water Statement of Accounts.[16]

However, the ICPA's examination revealed that petitioner over-claimed its Operating Expenses by ₱14,400.20, computed as follows:

Month	Total Bill (Water & Electricity)	Charged to Tenants	Claimed Operating Expense (Light, Water & Power)
January	₱504,147.87	₱521,516.87	₱(17,369.00)

[9] Exhibit P-29-3, pp. 138-162.
[10] Exhibit P-29, pp. 12-13.
[11] Exhibit P-29, p. 13.
[12] Please See Annex A.
[13] Please See Annex A.
[14] Exhibit P-29-4.
[15] Exhibit P-29-3, pp. 214-320.
[16] Exhibit P-29-3, pp. 178-213.

February	654,882.11	402,838.50	252,043.61
March	655,889.38	550,403.99	105,485.39
April	700,341.88	553,903.72	146,438.16
May	661,305.17	595,966.55	65,338.62
June	632,522.96	576,172.58	56,350.38
July	639,521.24	512,349.27	127,171.97
August	586,392.87	544,619.28	41,773.59
September	555,709.26	497,894.03	57,815.23
October	503,696.55	472,039.61	31,656.94
November	529,118.90	443,583.47	85,535.43
December	540,897.54	410,977.21	129,920.33
Total Light, Water,& Power of OPI	₱7,164,425.73	₱6,082,265.08	₱1,082,160.65
Less: Light, Water & Power per AFS			₱1,095,560.85
Difference			**₱(14,400.20)**

Due to the insufficiency of the reconciliation[17] to account for the difference of ₱14,400.20, the Court was convinced that of ₱1,095,560.85 Light, Water and Power per AFS, only ₱1,082,160.65 were mere reimbursements of electricity and water consumptions.

Citing *Greenhills Properties, Inc. vs. Commissioner of Internal Revenue*[18], the Court held that collections which are merely held in trust and from which the corporation could not realize any gain or profit as a result of receipt thereof, must not be included in the corporation's gross income.

Thus, it is proper to uphold the assessment on Collection of Other Receivables – Tenants in the amount of ₱14,400.20.

e. Unaccounted Disbursements (SAWT of Meralco) in the amount of ₱4,587,870.68

CIR assessed petitioner of unaccounted disbursement amounting to ₱4,587,870.68 based on the data extracted from the Conglomerate Masterfile through the use of Computerized Accounting Audit Tools and Technique System (CAATTS). This amount was reported by Meralco on its SAWT. However, this was not reported/accounted for by petitioner both in its Income Tax Return and Financial Statements.[19]

[17] Exhibit P-29, pp. 13-14.
[18] CTA Case No. 8295, May 15, 2015.
[19] Schedule 1, Details of Discrepancy, Formal Letter of Demand, Exhibit P-29-3, p. 31.

As discussed in the assailed Decision, there are three (3) elements for the imposition of income tax, *to wit:*

1. there must be gain or profit;
2. that the gain or profit is realized or received, actually or constructively; and
3. it is not exempted by law or treaty from income tax.

The Court held that income tax is assessed on income received from property, activity or service.[20] Therefore, the imposition or assessment of income tax should not be based on an undeclared disbursement, but only when there was income, and such income was received or realized by the taxpayer.[21]

Further, the assailed Decision explained that petitioner is free to claim or not the deductions from gross income. What is prohibited by law is to claim a deduction beyond the authorized amount.

Thus, the Court aptly ruled that the undeclared disbursement should not be treated as undeclared income for being presumptive in nature.

II. Deficiency Value Added Tax (VAT)

With respect to deficiency VAT, petitioner moves to reconsider the following:

a. Undeclared Receipts	₱3,750,965.45
b. Undeclared Income (RLF/TRS/SAWT vs. SLS)	778,061.49

a. Undeclared receipts in the amount of ₱3,750,965.45

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[20] *Commissioner of Internal Revenue v. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp.*, G.R. No. 108576, January 20, 1999.

[21] *Viricson Corporation v. Commissioner of Internal Revenue, et. al.*, CTA Case No. 8709, January 24, 2017.

Petitioner avers that the analysis of the ICPA showed that the collections it made were for utilities paid in advance, but subject to reimbursement by its tenants. While they may have been lodged as credit in the Accounts Receivable – Trade account, the fact is that that they are indeed reimbursements received from tenants for utilities.[22]

Respondent, on the other hand, asserts that there is a separate account for Other Receivables-Tenants which lodged the receivables from tenants representing reimbursements from utility expenses.

On this score, the Court observes that petitioner merely rehashed its arguments.

In the assailed Decision, the Court ruled that the income of petitioner is subject to 12% VAT based on gross receipts. Thus, a comparison between Sales reported on VAT returns *vis-à-vis* the computed Sales on accrual basis, to arrive at the over reported sales, is incorrect.

Moreover, the Court is convinced that there is a separate account for Other Receivables-Tenants which lodge the receivables from tenants representing reimbursements from utility expenses. Thus, the deduction of the reimbursement of utility expenses in the ICPA reconciliation of the Accounts Receivable Trade is incorrect.

Thus, the Court finds no cogent reason to disturb its findings.

b. Undeclared Income (RLF/TRS/SAWT vs. SLS) in the amount of ₱1,181,646.49

Again, the Court observes that petitioner merely rehashed its arguments raised in its Petition for Review. Moreover, petitioner failed to present any evidence to support its argument.

Thus, the Court aptly ruled that the undeclared income in the amount of ₱778,061.49 should be subjected to VAT due to petitioner's failure to substantiate its claim.

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[22] Motion for Partial Reconsideration for the Petitioner, Docket, Vol. II, pp. 763-764.

III. Documentary Stamp Tax (DST)

In the assailed Decision, petitioner admits its DST liability in the total amount of ₱630,506.99, as follows:

Particulars	DST Due
Lease Contract	₱8,006.99
Loans Receivable	122,500.00
Advances from Stockholders	500,000.00
Deficiency DST	**₱630,506.99**

At any rate, petitioner moves to reconsider the cancellation of a portion of the DST on Lease Contract in the total amount of ₱24,907.01, considering that upon verification of the ICPA, only the amount of ₱8,006.99 was left not subjected to DST.[23]

The ICPA presented a summary of documentary stamp tax paid for 2009. Based on his report, the DST in the amount of ₱24,907.01 was already paid. He further asserts that the difference of ₱8,006.99 between the computed DST payments and the alleged deficiency DST represents the DST due from non-renewing tenants,[24] *to wit:*

Amount of DST that should be paid	₱32,914.00
Less: DST Payments	24,907.01
DST Due from non-renewing tenants	**₱8,006.99**

However, upon Court's verification, out of the DST payments of ₱24,907.01 per ICPA report, only the amount of ₱15,988.70 was supported by Documentary Stamp Tax Return (BIR Form No. 2000) and corresponding bank validation slips, as follows:

Date of Payment	DST Due	Reference	Exhibit No. /Page
February 5, 2009	₱3,126.38	IC-91 (I.c)	P-29-3, p. 424
July 3, 2009	7,698.28	IC-85 (I.c)	P-29-3, p. 366
August 4, 2009	2,677.82	IC-90 (I.c)	P-29-3, p. 415
November 5, 2009	2,486.22	IC-81 (I.c)	P-29-3, p. 354
Total	**₱15,988.70**		

Sec. 194 of the NIRC, as amended, provides: *ge*

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[23] Motion for Partial Reconsideration for the Petitioner, Docket, Vol. II, p. 764.
[24] Exhibit P-29, pp. 26-27.

"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 (P2,000.00), or fractional part thereof, and an additional One peso (P1.00) for every One thousand pesos (P1,000.00) or fractional part thereof, in excess of the first Two thousand pesos (P2,000.00) for each year of the term of said contract or agreement.**" *(Emphasis Supplied.)*

In light of the foregoing, petitioner's deficiency DST on lease contracts amounts to ₱16,923.17, computed pursuant to Sec. 194 of the NIRC, as amended, *to wit:*

Lease Contract - ₱32,910,871.00			**DST Due**
First ₱2,000.00, tax is		₱3.00	
Add:			
In excess of first ₱2,000.00 (₱32,910,871.00 less ₱2,000.00)	32,908,871.00		
Multiplied by	1/1,000	32,908,87	₱32,911.87
Less: Payments with supporting documents			15,988.70
Deficiency DST Due			**₱16,923.17**

In effect, petitioner should have been liable to pay the basic deficiency DST in the increased amount of ₱639,423.17, computed as follows:

Particulars	**DST Due**
Lease Contract	₱16,923.17
Loans Receivable	122,500.00
Advances from Stockholders	500,000.00
Deficiency DST	**₱639,423.17**

However, a perusal of respondent's motion shows that he failed to contest or raise any issue as to petitioner's deficiency DST. Thus, the Court shall uphold its previous ruling in the assailed Decision.

IV. Improperly Accumulated Earnings Tax (IAET)

The Court shall now determine whether there is basis to reconsider the assailed Decision with respect to petitioner's deficiency IAET.

The Court still finds that petitioner failed to satisfy the immediacy test

In finding that petitioner failed to satisfy the immediacy test, the Court stated in the assailed Decision that:

"A perusal of the audited financial statements of the petitioner shows that the following account comprises its Non-Current Assets, to wit:

	2009	**2008**	**Increase (Decrease)**
Investment Properties	₱142,763,945.00	₱146,457,806.00	(3,693,861.00)
Available-for-sale financial assets	99,553,840.00	57,474,382.00	42,079,458.00
Loans Receivable	28,000,000.00	28,000,000.00	0.00
Other non-current assets	1,481,158.00	1,481,158.00	0.00
Total Non-Current Assets	**₱271,798,943.00**	**₱233,413,346.00**	**₱38,385,597.00**

As per evaluation of the Court, the net decrease in Investment Properties account of (₱3,693,861.00) pertains to additions in building improvements amounting to ₱669,643.00 and to additions in Office Equipment & Furniture amounting to ₱118,692.00, with an aggregate amount of ₱788,335.00 less accumulated depreciation of investment properties in the total amount of ₱4,482,196.00.

On the other hand, the net increase in Available-for-sale financial assets in the amount of ₱42,079,458.00 pertains to the unrealized gain from changes in fair value of the available-for-sale financial assets.

As such, while the investment in properties account shows additions in building improvements and office equipment & furniture, there are no additions in the building account of petitioner. Clearly, there is no indication that the management has undertaken any action to prove that the contemplated project, *i.e.*, the construction of building, has taken place.

Furthermore, petitioner presented various Secretary's Certificate to support its contention that the Board of Directors approved the appropriation of its retained earnings 'to proceed with the implementation of its contemplated projects.' However, said Secretary's Certificate reveals no clear information regarding the alleged plan for a specific project.

Likewise, petitioner presented the following: (1) budgetary cost estimate dated April 19, 2006 and (2) perspective and floor plans prepared by Architect Ruben Co for the construction of the proposed 15 storey commercial building in the estimated total construction cost of ₱573,687,670.00.

In regard thereto, the Court finds that petitioner had a contemplated expansion project as early as 2006. However, from 2006 to 2009, such expansion project was merely speculative or indefinite because, as testified to by petitioner's rebuttal witness, the expansion projects will be pursued as soon as petitioner's finances permit.

Also, the ICPA reported that 'there was an existing development plan to rehabilitate petitioner's building and upgrade its facilities to conform with the Building Code of the Philippines with the total estimated cost of ₱573,687,670.00. However, **the plan is yet to commence.**' Clearly, these findings lead to the conclusion that the alleged expansion project is speculative or indefinite.

Moreover, petitioner failed to disclose in its Notes to the Financial Statements the appropriations made, which are significant transactions and/or information of which the stockholders, government and the public should be apprised about. On this score, the CTA Second Division had the occasion to rule in this wise:

> 'Further, for the years 2007, 2008 and 2009, petitioner failed to disclose in the Notes to the

> Financial Statements the appropriations made, which are significant transactions and/or information of which the stockholders, government and the public should be apprised about. This is in violation to Philippine Accounting Standards (PAS) 1: *Presentation of Financial Statements*, paragraph 103, stating that the notes shall:
>
> (a) present information about the basis of preparation of the financial statements and the specific accounting policies used in accordance with paragraphs 108-115;
>
> (b) Disclose any information required by IFRS that is not presented on the face of the balance sheet, income statement, statement of changes in equity, or cash flow statement; and
>
> (c) **Provide additional information that is not presented on the face of the balance sheet, income statement, statement of changes in equity, or cash flow statement that is deemed relevant to an understanding of any of them.'**

As such, the Court finds that petitioner failed to pass the 'Immediacy Test'. Hence, petitioner is liable to pay the deficiency Improperly Accumulated Earnings Tax."[25]

Petitioner asserts in its motion that: (1) the budgetary cost estimate as testified to by witness Gary Tan Jao; (2) the deposits for future subscriptions in the amount of ₱177,036,144.00; and (2) photographs of the existing state of its building, proves the reasonable needs of petitioner's business, *i.e.*, expansion project.

However, as discussed in the assailed Decision, from 2006 to 2009, such expansion project was merely speculative or indefinite because, as testified to by petitioner's rebuttal witness, the expansion projects will be pursued as soon as petitioner's finances permit. In

[25] See Note 1, pp. 731-734.

other words, the expansion project remained to be speculative or indefinite, *i.e.*, it will be pursued as soon as petitioner's finances permit and the plan is yet to commence as found by the ICPA.

In relation thereto, while there exists deposits for future subscriptions, these amounts of money are merely received by petitioner with a view of applying the same as payment for additional issuance of shares for the alleged expansion project, which may or may not happen as discussed above.

Thus, petitioner still failed to show that it satisfied the immediacy test in relation to IAET. Considering that petitioner failed to satisfy the same, there is no need for this Court to discuss the other relative arguments of petitioner.

Petitioner's IAET is a proper subject of the assessment

Petitioner contends that since the Letter of Authority (LOA) pertains only to the period from January 1, 2009 to December 31, 2009, it cannot be assessed for deficiency IAET for CY 2009.

However, the Court finds petitioner's contention untenable.

While it is true that the LOA covers only the period from January 1, 2009 to December 31, 2009, said LOA merely grants respondent the authority to examine the financial books and records of petitioner within the given period. It does not, however, decrease the power of respondent to make a deficiency IAET assessment later when it finds that based on the taxpayer's records, a deficiency IAET assessment is in order.

Here, respondent found that petitioner had accumulated earnings in 2009 based on its financial books and records. Later in 2014, respondent found that such earnings were improperly accumulated. In fact, petitioner continued to accumulate earnings despite the fact that no part of its alleged plan has even commenced.

Considering the foregoing, the Court finds petitioner's contention unmeritorious.

It is necessary to take into account petitioner's prior accumulations to determine whether it is liable for deficiency IAET

In this regard, petitioner questions respondent's computation of its deficiency IAET because respondent included its "Retained Earnings from Prior Years".

However, upon careful evaluation of petitioner's argument, the Court finds that respondent committed no error when it included the "Retained Earnings from Prior Years" in the computation of petitioner's deficiency IAET. In the case of *Basilan Estates, Inc. v. The Commissioner of Internal Revenue, et al.,*[26] the Supreme Court explained that:

> Petitioner questions why the examiner covered the period from 1948-1953 when the taxable year on review was 1953. The surplus of P347,507.01 was taken by the examiner from the balance sheet of petitioner for 1953. To check the figure arrived at, the examiner traced the accumulation process from 1947 until 1953, and petitioner's figure stood out to be correct. There was no error in the process applied, for previous accumulations should be considered in determining unreasonable accumulations for the year concerned. **'In determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not reasonably be necessary.**'" *(Emphasis supplied)*

Following the ruling of the Supreme Court in *Basilan*, it is necessary to take into account the prior accumulations of petitioner to determine the reasonable needs of the business in relation to the immediacy test. Thus, there is no need to disturb the previous findings of this Court. ʃr

[26] G.R. No. L-22492, September 5, 1967.

Compromise penalty applies only in the settlement of criminal liability

Respondent insists that petitioner is liable for compromise penalty pursuant to Revenue Memorandum Order No. 19-2007.

However, it bears stressing that in tax cases, compromise penalty is applicable only in the settlement of criminal liability. Considering that this case is merely civil in nature, no compromise penalty may be imposed against petitioner. As such, the Court is correct when it held that:

> "With respect to the compromise penalty in the amount of ₱50,000.00, the same should be cancelled. Under Revenue Memorandum Order No. 1-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalties. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Without showing that petitioner consented to the compromise penalty, its imposition should be deleted."[27]

The Court correctly imposed interest and surcharge on deficiency Documentary Stamp Tax (DST)

Finally, petitioner moves for this Court to cancel the imposition of surcharge and interest on its deficiency DST. It argues, among others, that it merely relied in good faith on several BIR Rulings where no DST was imposed on inter-corporate advances.

Petitioner's argument is untenable.

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[27] See Note 1, p. 734.

In *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) v. Commissioner of Internal Revenue*,[28] the Supreme Court differentiated between a general interpretative rule applicable to all taxpayers as against a specific ruling applicable only to a particular taxpayer. Thus:

> "Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.
>
> BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was, in fact, asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period."

A perusal of the several BIR Rulings relied upon by petitioner reveals that these are mere specific rulings applicable to a particular taxpayer. In fact, said BIR Rulings were responses to the corresponding queries of the respective taxpayers and not by a government agency. Hence, applying the ruling in *Team Energy* case, petitioner could not have relied in good faith on specific rulings tailored for a particular taxpayer.

Finally, the Court is correct in the imposition of surcharge and interest on petitioner's deficiency DST based on the ruling of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue v. Filinvest Development Corporation*.[29] In the said consolidated cases, the Supreme Court declared as valid the 𝓅

[28] G.R. No. 197760, January 13, 2014.
[29] G.R. Nos. 163653 & 167689, July 19, 2011.

deficiency DST assessments on the advances respondent extended to its affiliates in **1996** and **1997**. Thus:

> "Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997. In Assessment Notice No. SP-DST-96-00020-2000, the CIR correctly assessed the sum of ₱6,400,693.62 for documentary stamp tax, ₱3,999,793.44 in interests and ₱25,000.00 as compromise penalty, for a total of ₱10,425,487.06. Alongside the sum of ₱4,050,599.62 for documentary stamp tax, the CIR similarly assessed ₱1,721,099.78 in interests and ₱25,000.00 as compromise penalty in Assessment Notice No. SP-DST-97-00021-2000 or a total of ₱5,796,699.40. The imposition of deficiency interest is justified under Sec. 249 (a) and (b) of the NIRC which authorizes the assessment of the same 'at the rate of twenty percent (20%), or such higher rate as may be prescribed by regulations', from the date prescribed for the payment of the unpaid amount of tax until full payment. The imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof 'in case of each failure to file an information or return, statement or list, or keep any record or supply any information required' on the date prescribed therefor."

Based on the foregoing, the Supreme Court applied the imposition of penalties on deficiency DST for transactions that transpired as early as 1996 and 1997. Considering the foregoing, the Court rules that the *Filinvest* ruling is likewise applicable in this case.

To conclude, the parties failed to raise meritorious arguments which warrant the reversal of the assailed Decision. Hence, the denial of both motions is in order.

WHEREFORE, petitioner's **Motion for Partial Reconsideration (of the Decision Promulgated on September 19, 2017)** and respondent's **Motion for Partial Reconsideration** ge

(Re: Decision promulgated on 19 September 2017) are **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice