REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

MANUEL MARANON, JR., *Petitioner,*	**C.T.A. CASE NO. 6711**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	DEC 04 2007 3:15 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

May petitioner Manuel Maranon, Jr. be held liable for deficiency capital gains tax in the amount of P17,086,689.25 and deficiency documentary stamp tax in the amount of P18,207.38 for the taxable period 1999?

THE CASE

This is the issue raised in this Petition For Review filed by Manuel Maranon, Jr. (hereafter "petitioner") praying for the cancellation of the assessments issued by the Commissioner of Internal Revenue (hereafter "respondent") against petitioner involving deficiency capital gains tax in the amount of P17,086.689.25 and deficiency documentary stamp tax in the amount of P18,207.38 covering the taxable period 1999.

THE FACTS

In their Joint Stipulation of Facts and Issues, the parties stipulated as follows:

> "1. The Petitioner is of legal age, married, Filipino citizen and a resident of No. 12-A, Andaya St., BF Homes, Paranaque City.
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> 2. The Respondent is the duly appointed Commissioner of Internal Revenue with office address at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.
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> 3. On November 29, 2002, the Petitioner received from the Respondent a Formal Letter of Demand dated July 20, 2001, assessing the Petitioner for alleged deficiency capital gains tax and its increments and deficiency documentary tax and its increments for the year 1999, on the alleged 'Over-The-Counter' sales transactions of BW shares in the amounts of P17,086,689.25 and P18,207.38, respectively.

4. In a letter to the Commissioner of Internal Revenue dated November 30, 2002, the Petitioner protested the above mentioned assessments.

5. On January 24, 2003, the Petitioner's lawyer sent his first follow-up of his request for reconsideration and reinvestigation.

6. The Letter of Authority dated 23, 2000, was issued by the Respondent only to the Wise Securities Phils., Inc., WSPI for short, and served upon the latter on June 28, 2000.

7. The Petitioner did not receive any notice or Letter of Authority from the Respondent with respect to the examination of his books of accounts or accounting records for 1999.

8. The Petitioner filed a civil case for damages against Ramon Mapa and the Commissioner of Internal Revenue."

In his Answer, respondent alleged by way of special and affirmative defenses the following:

"4. Petitioner seeks to set aside thru the instant Petition for Review the deficiency capital gains tax and documentary stamp tax assessments issued against him for the taxable year 1999 relative to the sale or transfer of BW shares owned by him on the following grounds to wit: (1) that the Letter of Authority was issued to investigate the tax liability of Wise Security, Philippines Inc., with address at 3/F Dharmala Center, 132 Amorsolo Street, Legazpi Village, Makati City and not petitioner; (2) that he did not authorize Wise Securities Philippines, Inc., and/or Ramon Mapa to buy and sell the subject BW shares; (3) that petitioner did not

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receive any payment for the sale of the said shares; (4) that he not received a copy of Notices prior to the Formal Assessment Notice (FAN);

5. On the first issue, it should be noted that the investigation is an off-shoot of the alleged stock manipulation and insider trading scandal perpetrated by Mr. Dante Tan and his associates involving BW Resources that hit the Philippine Stock in the year, 1999. Admittedly, the Letter of Authority dated 23 June 2000 was issued to Wise Securities Philippines, Inc., covering the BW Tax Inquiry and Investigation of all internal revenue taxes of such entity. During the investigation, the working group headed by Mr. Leopoldo Gomez, was able to secure duly certified true copies of both Out and In receipts of the contra-broker, as well as the Ledger or Statement of Account evidencing transfer transactions made. It was only during the collation of these documents that the Revenue Officers discovered the transfer/over-the counter transactions of 1,300,000 BW shares owned by Mr. Manuel Maranon, the petitioner in this case;

6. On to the second and third issues, petitioner claims that he did not authorize Wise Securities Phils., Inc., and/or Ramon Mapa to buy shares for *Php6,175,000.00* and to sell the same for *Php98,000,000.00* and that he did not receive payment for the said sale or transfer. *We disagree.* The records, particularly, the Ledger of Statement of Account (Security Movement Report) of petitioner, Stock Debit Memos of Wise Securities, the form used by the broker to debit (deduct) shares of stock transferred and Stock In Receipts of IGC Securities, Inc., show that the shares transferred were received and credited to the account of Mr. Ramon Mapa to the extent of 1,300,000 BW shares. Authenticated copies of the aforesaid documents were secured from the brokers, and were ascertained that the transfer transactions of petitioner and Mr. Mapa were

consummated. In addition, worth emphasizing is the fact that petitioner filed a civil case for damages against said broker and Mr. Mapa last 01 July 2002 after the assessments in this case has been made;

7. On the last issue, petitioner claims that he did not receive notices prior to the FAN, hence, a violation of his right to due process. Again, this position is without merit. The Notice to Taxpayer, Preliminary Assessment Notice and Amended Preliminary Notice were actually served to the residential house of petitioner at #12-A Andaya Street, BF Homes, Paranaque City and received by one *Leneth B. Palomares* on 02 December 2000; 27 February 2001 and 17 April 2001, respectively. The Assessment notice with attached Formal Letter of Demand were also served to the same residential address indicated in the previous notices and were received by one *Girly Canetan*, on 08 August 2001.

8. The requisite under Section 228 of the Tax Code, as implemented by Revenue Regulations 12-99, that assessment shall state the factual and legal bases, were fully complied with. The factual and legal bases were all explained and contained in the supporting documents attached to the assessment, such as, the Details of Discrepancies which contain the cited legal bases or applicable provisions of the Tax Code, particularly Section (c) which imposes capital gains tax on gains from the sale of shares of stock not traded in the stock exchange, Section 176 which imposes documentary stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of due bills, certificates of obligation, or shares of certificate of stock; Section 248 (B) which imposes surcharge and Section 249 (B) which imposes deficiency interest, and the Computation of Deficiency Capital Gains and Documentary Stamp Taxes, which were all received by petitioner, thereby

> furnishing him the necessary information in compliance with the law;
>
> 9. Finally, it is well settled rule in taxation that assessments are ***prima facie*** presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

Petitioner presented Manuel Maranon, Jr. and Amercia G. Ami, as witnesses, and documentary exhibits marked as *Exhibits "A" to "L-2"*, which were all admitted by the Court.

On the other hand, respondent presented Amercia G. Ami, as witness, and submitted his Formal Offer of Evidence which were all admitted by the Court, upon respondent's "Motion For Reconsideration", except for *Exhibit "20"*, which was denied admission for failure of respondent to compare the photocopy with the original.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Petitioner having filed its "Memorandum" on June 23, 2005, and respondent having filed his memorandum on October 6, 2006, the case was deemed submitted for decision.

ISSUES

Stipulated Issues

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY CAPITAL GAINS TAX IN THE AMOUNT OF ₱17,086,689.25 AND DEFICIENCY STAMP TAX IN THE AMOUNT OF ₱18,207.38 FOR THE YEAR 1999.

II

WHETHER OR NOT RESPONDENT ARBITRARILY AND UNLAWFULLY ISSUED THE ASSESSMENTS FOR ₱17,086,689.25 FOR CAPITAL GAINS TAX AND ₱18,207.38 FOR DOCUMENTARY STAMP TAX AGAINST PETITIONER BASED ON THE CERTIFIED TRUE COPIES OF THE BUSINESS TRANSACTION RECORDS SHOWN IN EXHIBITS "A" TO "M" OF PETITIONER.

III

WHETHER OR NOT PETITIONER AUTHORIZED THE WSPI AND/OR RAMON MAPA TO BUY FOR HIM 1,300,000 BW SHARES FOR ₱6,175,000.00 AND TO SELL THE SAME FOR ₱98,000,000.00.

IV

WHETHER OR NOT PETITIONER GAVE TO THE WSPI AND/OR RAMON MAPA ₱6,175,000.00 TO BUY FOR HIM 1,300,000 BW SHARES.

V

WHETHER OR NOT PETITIONER RECEIVED FROM THE WSPI AND/OR RAMON MAPA THE AMOUNT OF ₱98,000,000.00 AS PAYMENT TO HIM FROM THE SALE OF THE 1,300,000 BW SHARES.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is liable to pay the deficiency capital gains tax in the amount of P17,086,689.25 and deficiency documentary stamp tax in the amount of P18,207.38 covering the taxable period 1999.

THE COURT'S RULING

The Petition has no merit.

Records show that on June 23, 2000, then Commissioner Dakila B. Fonacier of the Bureau of Internal Revenue (BIR) issued Letter of Authority 1999 00061669 authorizing the Ad Hoc Committee for the Best World Resources Tax Inquiry, composed of Leopoldo M. Gomez, as

Group Head, and Revenue Officers Amercia G. Ami, Emelito L. Dizon, Yolanda V. Luna, Linda R. Macaspac, Josephine D. Madera, Nilda T. Se, Ma. Carmen V. Sy and Angelito G. Ursabia to examine the books of accounts and other accounting records of Wise Securities Phils., Inc. for any deficiency internal revenue taxes for the taxable year 1999.

Consequently, on September 9, 2000, the Ad Hoc Committee submitted its Memorandum addressed to the Commissioner of Internal Revenue explaining the circumstances that prompted the inquiry, particularly on petitioner's books of accounts and the incidents that followed (*Exhibit "2"*), to wit:

> "This has reference to the inquiry into the tax compliance of persons who may have sold or derived income from or facilitated the sale/exchange of shares of stock of *Best World Resources Corporation, Inc.* (BWRCI, formerly Great Asia Development Resources Corp.) for the year, 1999, pursuant to Revenue Special Order No. 306-2000, dated June 09, 2000, reconstituting Revenue Special Order No. 122-2000, issued on Feb. 22, 2000.
>
> The investigation/inquiry is an off-shoot of the alleged stock manipulation and insider trading scandal orchestrated by Mr. Dante T. Tan and his associates involving BW Resources that hit the Philippine Stock Exchange for the year 1999, for which Letter of Authority No. 00061669 dated June 23, 2000 was issued to Wise Securities Phils., Inc. covering BW Tax Inquiry and investigation of all internal revenue taxes.
>
> The working group started with the analysis of the composition of the *Non-Exchange Trades* per Philippine Central Depository Inc. (PCD) report on each of the brokers. *Non-Exchange Trade* refers to the sale, transfer or other disposition of shares of stock listed in the PSE but no effect on the trading floor or the transfer of shares from one broker to another via the equity trading facility (EQT) of the PCD. It is sometimes referred to as the 'Over the Counter

(OTC) transaction/transfer. This is done by analyzing and accounting all entries made or coursed thru the PCD and classifying them accordingly as transfers with change in beneficial ownership, transfers without change in beneficial ownership, and done thru transactions.

Over the counter transactions, as explained earlier are transfers of stocks that do not pass through the PSE and are settled directly between two counter-parties. As such, these are not taxed with ½ of 1% stock transaction tax under Section 127, thus, is taxable at 5% AND 10% final capital gains tax for individuals, prescribed under Section 24(C) of the National Internal Revenue Code on the net capital gains realized from such sale, transfer or other disposition and P1.20 documentary stamps tax on each P200.00 fractional part of the par value of shares as set forth in Section 176.

Proper documentation was done for OTC's by securing duly certified true copies of both Out Receipts attached with Letter of Instruction and In Receipts of the contra-broker, as well as the Ledger or Statement of Account evidencing transfer transaction made.

It was noted from the records of Wise Securities Phils., Inc. that on various dates, Manuel Maranon, Jr. instructed the said broker to transfer 1,300,000 BW shares to the account of Ramon Mapa with IGC Securities, Inc. These transfers were duly supported by the Clients Request Form, OUT & IN Receipts of the broker. Since there was a change in beneficial ownership and was not done thru the board, the corresponding capital gains and documentary stamp tax were assessed broken down as follows:

A. Deficiency Capital Gains Tax

	Broker	Out Receipt	Volume	Price	Amount
SALES	Wise Sec.	2898	500,000	32.00	16,000,000.00
		2934	500,000	107.00	53,500,000.00
		2941	300,000	95.00	28,500,000.00
			1,300,000		98,000,000.00
LESS: COST					6,175,000.00
NET TAXABLE GAINS					91,825,000.00

CAPITAL GAINS TAX DUE:	
First P100,000.00 @ 5%	5,000.00
In excess of P100,000.00 @ 10%	9,172,500.00
Total *[Sec. 27 (D)(2)]*	9,177,500.00
Less: Capital Gains Tax Paid	
Basic Deficiency Capital Gains Tax Due	9,177,500.00
Penalties:	

50% Surcharge (Non filing/Non payment) *[Sec. 248 (B)]*	4,588,750.00
20% Interest on various transactions up to 8-15-00 *[Sec. 249]*	1,399,997.00
Total Deficiency Capital Gains Tax Due	**15,166,247.00**

B. Documentary Stamp Tax

TOTAL VOLUME OF BW SHARES TRANSFERRED VIA EQ TRADE OF PCDI WITH CHANGE IN BENEFICIAL OWNERSHIP	1,300,000
PAR VALUE *[Sec. 176]*	1.00
TAXABLE BASE	1,300,000.00
DST RATE APPLICABLE	P1.50/P 200.00
DST DUE	9,750.00
DST PAID	-
BASIC DEF. DOCUMENTARY STAMP TAX	9,750.00
PENALTIES	
50% Surcharge (Non filing/Non payment) *[Sec. 248 (b)]*	4,875.00
20% Interest computed on various transactions up to 8-15-00 *[Sec. 249]*	1,540.72
Total Deficiency Documentary Stamp Tax Due	16,165.72

"In determining the tax base, Sec.(6)(a) of Revenue Regulations 2-82, dated March 29, 1982 was used, which provides-

> 'In the case of shares not traded through the stock exchange, but listed in one or more stock exchanges, the highest closing price on the day when the shares are sold, transferred or exchanged, shall be "fair market value". When no sale is made in any stock exchange, the highest closing price on the day of sale, transfer or exchange of the shares shall be the fair market value.'

In Sec.(b)(1) of the same Revenue Regulations, the first-in, first-out (FIFO) method was used in computing the cost of the shares, since proper identification can not be applied.

The surcharge of fifty percent (50%) has been imposed pursuant to the provisions of Section 248(B) of the NIRC, as amended by R.A. No. 8424, which took effect on January 1, 1998, for failure to file the capital gains and documentary stamp tax returns and pay the corresponding taxes due thereon.

Twenty percent (20%) interest per annum has been imposed pursuant to the provisions of Section 249(B) of the Same Code.

In view of the foregoing facts and findings, it is respectfully recommended that a Notice to Taxpayer containing the computations of the

> deficiency capital gains and documentary stamp taxes, as well as the details of the discrepancies (factual and legal bases), be sent to subject seller of BW shares immediately."

On October 9, 2000, a "Notice to Taxpayer" was then issued to petitioner informing him of his deficiency tax liabilities incurred from his Over-The-Counter sales transactions of BW shares and requested petitioner to appear for an informal conference to be held on December 15, 2000 (*Exhibit "10"*).

On February 9, 2001, then Commissioner Rene G. Bañez issued a Preliminary Assessment Notice (*Exhibit "13"*) against the petitioner advising the latter that he had incurred deficiency Capital Gains and Documentary Stamp Taxes for his "Over-The-Counter" sales transactions of BW shares in the year 1999, in the amounts of P16,005,988.25 and P17,057.85, respectively.

For failure of petitioner to appear during the informal conference, and upon request of the ad hoc committee, on March 14, 2001 then Commissioner Rene G. Bañez issued an Amended Preliminary Assessment Notice against petitioner for deficiency Capital Gains and Documentary Stamp Taxes for his "Over-The-Counter" sales transactions of BW shares in the year 1999, in the modified amounts of

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P16,237,261.25 and P17,303.55, respectively. The Amended Preliminary Assessment Notice was received by a certain Leveth B. Palomares on April 17, 2001 (*Exhibit "12-A"*).

Having received no response from petitioner, the Commissioner issued the Formal Letter of Demand and Assessment Notice Nos. BW-99-CGT-0030-01 and BW-99-DST-0031-01, all dated July 20, 2001, against petitioner, for deficiency Capital Gains and Documentary Stamp Taxes for his "Over-The-Counter" sales transactions of BW shares in the year 1999, in the amounts of P17,086,689.25 and P18,207.38, respectively, inclusive of surcharges and interests, computed as follows:

I. Deficiency Capital Gains Tax Due

Sales	P98,000,000.00
Less: Cost	6,175,000.00
Net Taxable Gains	91,825,000.00
Capital Gains Tax Due (Sec. 24C)	9,177,500.00
Less: Capital Gains Tax Paid	0.00
Basic Deficiency Capital Gains Tax Due (Sec. 24C)	9,177,500.00
Add: 50% surcharge (non-filing/non-payment) (Sec. 248B)	4,588,750.00
20% interest on various transaction up to 8-15-00 (Sec. 249)	1,408,766.00
20% interest from 8-16-00 to 8-31-01 (Sec. 249)	1,911,673.25
Total Deficiency Capital Gains Tax Due	**P17,086,689.25**

II. Deficiency Documentary Stamp Tax Due

Total Volume of BW Shares Transferred Via EQ Trade of	
PCDI with Change in Beneficial Ownership	P1,300,000.00
Par Value	1.00
Taxable Base	1,300,000.00
DST Rate Applicable (Sec. 176)	1.50/200.00

DST Due	9,750.00
DST Paid	0.00
Basic Deficiency Documentary Stamp Tax	9,750.00
Add: 50% surcharge (non-filing/non-payment) (Sec. 248B)	4,875.00
20% interest on various transaction up to 8-15-00 (Sec. 249)	1,551.45
20% interest from 8-16-00 to 8-31-01 (Sec. 249)	2,030.93
Total Deficiency Documentary Stamp Tax Due	**P18,207.38**

On October 25, 2001, a "Final Notice Before Seizure" was issued against petitioner giving him a period of ten (10) days from receipt thereof within which to settle his deficiency tax liabilities; otherwise, collection shall be pursued through summary administrative remedies. Said notice was constructively served on November 26, 2001 and witnessed by Pacita M. Equilos and Augusto Barreto (*BIR Records, p. 91*).

On January 7, 2002, respondent issued a "Warrant of Distraint and/or Levy" against petitioner for the amount of P17,104,896.63 for petitioner's failure to settle his deficiency tax liabilities. The same was served by Revenue Officer Jesusa R. Miñano and received by a certain Mycel Avanzado (*Exhibit "17"*).

Accordingly, on May 28, 2002, petitioner filed his "Requests for (1) Reinvestigation of Ass./Demand No. BW-CGT-0030-01 and (2) Cancellation of Warrant of Distraint and/or Levy for P17,104,896.63 Against TIN 145-467-807 Manuel D. Maranon, Jr." (*Exhibit "C"*).

Petitioner requested for a reinvestigation of the case to determine the tax, civil, and criminal consequences of the person or persons involved in the transactions, and the cancellation and revocation of the subject warrant.

On June 28, 2002, petitioner, through counsel, filed his "1. Follow-up for Action of Requests for Reinvestigation of Ass./Demand No. BW-CGT-000-01 and Lifting of Warrant of Distraint and Levy for P17,104,896.63 Against TIN 145-467-807 Manuel D. Maranon, Jr.[;] 2. Prevention to Enforce Recovery of Capital Gains Tax Erroneously or Illegally Assessed," reiterating his stand on his non-involvement in the investigated transactions.

Subsequently, on September 25, 2002, petitioner filed his "Second Follow-Up for Action of Requests for Reinvestigation of Ass./Demand No. BW-CGT-003-01 of Warrant of Distraint and Levy for P17,104,896.63 Against TIN 145-467-807 Manuel D. Marañon, Jr.".

In reply to petitioner's motions, the BIR Chief of Appellate Division Rodulfo L. Salazar issued his 2nd Indorsement dated November 6, 2002 returning the entire docket bearing the protested case of petitioner with the suggestion that "a copy of the Formal Letter of Demand and Final Assessment Notice be sent to the taxpayer by registered mail with return card to his place of residence, as reflected in the last Income Tax Return filed by him".

On November 30, 2002, petitioner filed an unsigned but verified "Request for Reconsideration and Reinvestigation of the Formal Letter of Demand and Assessment Notices dated July 20, 2001, and Received November 29, 2002, Against TIN 145-467-807 Manuel D. Marañon, Jr.," raising the same arguments and defenses, as stated in his original Request for Reinvestigation of May 28, 2002.

On January 24, 2003, the BIR received an unsigned letter from petitioner's counsel as a follow-up on petitioner's request for reconsideration and reinvestigation.

There being no response received from respondent as regards his request for reconsideration and reinvestigation, on June 27, 2003 petitioner filed the instant Petition for Review before this Court on June 27, 2003.

On July 15, 2003, the Ad Hoc Committee headed by Mr. Leopoldo M. Gomez, submitted its Memorandum addressed to respondent recommending the denial of petitioner's request for reinvestigation; effectively reiterating petitioner's deficiency tax assessments as "no additional evidence/document was presented by said broker, Wise Securities, Phils. Inc. and/or Mr. Ramon Mapa to warrant the revision or cancellation of the assessments involved" (*Exhibit "18"*).

It bears stressing that during the investigation, the working group headed by Leopoldo Gomez was able to secure duly certified true copies of both Out and In Receipts of the contra-broker (*Exhibits "3-8"*) as well as the Ledger or Statement of Account evidencing transactions made. It was during the investigation and examination of these documents that the Revenue officers discovered the over-the-counter transfer transactions of 1,300,000 BW shares owned by the petitioner.

"Over-the-Counter" (OTC) transactions refer to sale, transfer or other disposition of shares of stock listed with the Philippine Stock Exchange that are not effected on the trading floor, but only through the equity trading facility of the Philippine Central Depository, Inc. (PCDI).

Furthermore, a Notice to Taxpayer was issued by respondent to inform petitioner of his deficiency tax liabilities. Said notice also requested petitioner to appear for an informal conference. For petitioner's failure to appear during the scheduled date of conference, a Preliminary Assessment Notice (PAN) and an Amended PAN were

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separately issued and personally delivered to the residential address of petitioner. As no protest was filed nor any payment made, a Formal Letter of Demand and Assessment Notices were again issued and personally delivered to the same residential address of petitioner.

Petitioner's contention that he did not receive any of the notices issued by respondent against him for deficiency tax liabilities cannot be sustained. Records show that the Notice to Taxpayer, Preliminary Assessment Notice, and Amended Preliminary Assessment Notice, were all served to the residential address of petitioner at #12-A Andaya St., BF Homes Parañaque City on different dates and were all received by one Leneth B. Palomares on December 2, 2000, February 27, 2001 and April 17, 2001, respectively. Likewise, the Assessment Notice with attached Formal Letter of Demand was delivered and served to the same residential address indicated in the previous notices and was received by Girly Gaerlan on August 8, 2001, as shown in petitioner's accomplished Customer Account Form (*Exhibit "19"*) and in the complaint for Damages filed on July 4, 2002 by petitioner in Civil Case No. 02-0287, entitled "*Manuel and Cecilia Maranon v. Ramon and Aurora Mapa, Wise Securities Phils., Inc. & Commissioner of Internal Revenue,*" against

Ramon and Aurora Mapa and the Commissioner of Internal Revenue with the Regional Trial Court of Parañaque City (*BIR records, pp. 120-124*). Furthermore, petitioner admitted having received the Warrant of Distraint and/or Levy. The Court therefore finds no reason why he failed to receive the Notice to Taxpayer, Preliminary Assessment Notice, Amended Preliminary Assessment Notice, and Formal Letter of Demand and Assessment Notice, Final Notice Before Seizure, which were all delivered to the same residential address of petitioner. It must be stressed that the presumption of regularity in the performance of official duty applies in favor of the BIR officers or employees who delivered the Notice to Taxpayer, Preliminary Assessment Notice, Formal Letter of Demand and Assessment Notice, and Final Notice Before Seizure and Warrant of Distraint and/or Levy to petitioner's residential address, unless otherwise controverted by evidence.

On the same vein, there is likewise no denial of due process, contrary to petitioner's assertion. Procedural due process pertains to "that sufficient opportunity to be heard." Its very essence is to allow all parties the opportunity to present evidence. In administrative cases, the requirement of due process is the right to a hearing, including the right of the party interested or affected to present his own case and submit evidence to support his allegation (*Robusta Agro Marine Products, Inc. and Mario Santos, Jr. vs. Baltazar Gorombalem, et al., 175 SCRA 93, citing El Banco Español-Filipino vs. Palanca [37 Phil. 921] and Ang Tibay vs. The Court of Industrial Relations, [69 Phil. 635]*). Petitioner was given several opportunities to be heard; to present his case before an informal conference/hearing set for the purpose; and to file a protest to the Preliminary Assessment Notice, Amended Preliminary Assessment Notice, and Final Assessment Notice. Despite several opportunities given him to appear and file a protest, petitioner repeatedly ignored said notices.

The prescribed requisites under *Section 228 of the NIRC of 1997, as amended,* and as implemented by *Revenue Regulations 12-99* were fully complied with. The factual and legal bases were all explained and contained in the supporting documents attached to the assessment, such as the Details of Discrepancies which contain the cited applicable provisions of the *NIRC of 1997, as amended,* particularly *Section 24 (C)*, which imposes capital gains tax or gains from the sale of shares of stock not traded in the stock exchange, *Section 176* which imposes documentary stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of due bills, certificates of obligation, or shares of certificate of stock, *Section 248 (B)* which imposes surcharge and *Section 249 (B)* which imposes deficiency interest, and the computation of deficiency capital gains tax and documentary stamp taxes, which were all received by petitioner, thereby furnishing him the required information in accordance with the law.

Petitioner's contention that he did not authorize Wise Securities Phils., Inc. and/or Ramon Mapa to buy shares for P6,175,000.00 and to sell the same for P98,000,000.00 and that he did not receive payment for the said sale or transfer is likewise devoid of merit. Records, particularly, the Ledger of Statement of Account, Security Movement Report of petitioner (*Exhibit "9"*), Stock Debit Memo of Wise Securities (*Exhibits "3", "5", and "9"*), the form used by the broker to debit shares of stock transferred and Stock In Receipts of ICC Securities, Inc. (*Exhibits "4", "6", and "8"*) show that the shares transferred were received and credited to the account of Ramon Mapa to the extent of 1,300,000 BW shares. Authenticated copies of said documents were secured from the brokers and it was ascertained that the transfer transactions of petitioner and

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Ramon Mapa had been consummated. Records further show that on July 4, 2002 after the assessment in this case was issued, petitioner filed a complaint for damages against the broker and Ramon Mapa in Civil Case No. 02-0287 entitled *"Manuel and Cecilia Maranon v. Ramon and Aurora Mapa, Wise Securities Phils. Inc. vs. Commissioner of Internal Revenue"*, with the Regional Trial Court of Parañaque.

We now proceed to the issue of whether or not petitioner is liable for any deficiency capital gains tax and deficiency documentary stamp for the taxable year 1999.

Pursuant to the *NIRC of 1997, as amended,* "over-the-counter" transactions are subject to the following taxes:

1. **Capital Gains Tax**

Final capital gains tax of 5% to 10% was assessed on the net capital gains realized on sale/transfer of shares of stock listed but not traded in the stock exchange (Over-the-Counter Transactions), prescribed under *Section 24 (C) of the 1997 Tax Code,* to wit:

> "**SEC. 24. Income Tax Rates. –**
>
> xxx xxx
>
> **(c) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.** – The provisions of Section

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> 39(B) notwithstanding, a final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.
>
> Not over P100,000 .... 5%
> On any amount in excess of P100,000 ....10%".
>
> xxx xxx."

The highest closing price on the day when the shares are sold or transferred shall be used in determining the gross selling price, and the first-in, first-out (FIFO) method shall be used in computing the cost of shares since they cannot be properly identified, pursuant to *Revenue Regulations 2-82* dated March 29, 1982, to wit:

> "**SEC. 6(a) Determination of selling price –** The selling price of the shares of stock shall be the fair market value of the shares of stock transferred or exchanged and not the fair market value of the property received in exchange.
>
> xxx xxx
>
> **(b) (2) Determination of cost –** If the stock cannot be properly identified, then the cost to be assigned shall be computed on the basis of the first-in, first-out (FIFO) method."

2. **Documentary Stamp Tax**

As to the documentary stamp tax on sale, transfer of shares or certificates of stock, the amount of P1.50 on each Two Hundred pesos (P200.00) of the par value of shares or certificate of stock shall be

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collected, as provided under *Section 176 of the NIRC of 1997, as amended*, to wit:

> "**SEC. 176. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares of Certificates of Stock.** – On all sales, or agreements to sell, or memoranda of sale, or deliveries, or transfer of due-bills, certificates of obligation, or shares of certificates of stock in any association, company, or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200) or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock; Provided, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, That in the case of stock without par value the amount of documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock."

The 50% surcharge was imposed for petitioner's willful neglect to file capital gains tax and documentary stamp tax returns and pay the corresponding taxes thereon, pursuant to *Section 248 (B) of the NIRC of 1997, as amended,* to wit:

> "**SEC. 248. Civil Penalties. -**
>
> **xxx xxx**

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> **(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 of 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 (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."

The 20% interest per annum was imposed, pursuant to *Section 249 (B) of the NIRC of 1997, as amended,* to wit:

> "**SEC. 249. Interest. -**
>
> **(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.
>
> xxx xxx."

Therefore, for petitioner's failure to refute the respondent's findings, petitioner is liable to pay deficiency capital gains tax and deficiency documentary stamp tax in the amounts of P17,086,689.25 and P18,207.38, computed as follows:

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I. Deficiency Capital Gains Tax Due

Sales	P98,000,000.00
Less: Cost	6,175,000.00
Net Taxable Gains	91,825,000.00
Capital Gains Tax Due (Sec. 24C)	9,177,500.00
Less: Capital Gains Tax Paid	0.00
Basic Deficiency Capital Gains Tax Due (Sec. 24C)	9,177,500.00
Add: 50% surcharge (non-filing/non-payment) (Sec. 248B)	4,588,750.00
20% interest on various transaction up to 8-15-00 (Sec. 249)	1,408,766.00
20% interest from 8-16-00 to 8-31-01 (Sec. 249)	1,911,673.25
Total Deficiency Capital Gains Tax Due	**P17,086,689.25**

II. Deficiency Documentary Stamp Tax Due

Total Volume of BW Shares Transferred Via EQ Trade of	
PCDI with Change in Beneficial Ownership	P1,300,000.00
Par Value	1.00
Taxable Base	1,300,000.00
DST Rate Applicable (Sec. 176)	1.50/200.00
DST Due	9,750.00
DST Paid	0.00
Basic Deficiency Documentary Stamp Tax	9,750.00
Add: 50% surcharge (non-filing/non-payment) (Sec. 248B)	4,875.00
20% interest on various transaction up to 8-15-00 (Sec. 249)	1,551.45
20% interest from 8-16-00 to 8-31-01 (Sec. 249)	2,030.93
Total Deficiency Documentary Stamp Tax Due	**P18,207.38**

It is 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

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regularly performed their duties (*Commissioner of Internal Revenue vs. Hantex Trading Co., Inc. 454 SCRA 329*).

Tax assessments are presumed to be correct and the burden of proving otherwise rests upon the taxpayer, that is, petitioner. Petitioner must present proofs showing irregularities in the assessment or in the performance by tax authorities of their official duties. Failure to do so would result in the judicial approval of the assessment. The Court finds that petitioner failed to build a strong case that will warrant the setting aside of the assessment issued against him. His evidence primarily consists of testimonies replete with denials. Even his pleadings failed to raise strong arguments against the assessment. Thus, the Court has no other course but to deny this instant Petition For Review.

WHEREFORE, premises considered, the instant Petition For Review is hereby **DISMISSED**. Accordingly, petitioner is **ORDERED TO PAY** to respondent the amounts of **SEVENTEEN MILLION EIGHTY SIX THOUSAND SIX HUNDRED EIGHTY NINE AND 25/100 PESOS (P17,086,689.25)**, representing deficiency capital gains tax; and **EIGHTEEN THOUSAND TWO HUNDRED SEVEN AND**

38/100 PESOS (P18,207.38), representing deficiency documentary stamp tax, for the taxable year 1999.

In addition, petitioner is **ORDERED TO PAY** to respondent 20% delinquency interest per annum computed from August 31, 2001 until full payment, pursuant to *Section 249 (C)(3) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
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.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice