REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1527** (CTA Case No. 8722)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
LEO MARIO CELDRAN, Respondent.	Promulgated: MAR 14 2017 2:10 pm

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner Commissioner of Internal Revenue, seeks to reconsider and set aside the Decision[1] dated July 21, 2016 and the Resolution[2] dated September 20, 2016 of the Court in Division, respectively.

The dispositive portion of the assailed Decision states:

> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is

[1] Court in Division Docket, pp. 427-455.
[2] Court in Division Docket, pp. 480-483.

hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **SEVENTY THOUSAND FOUR HUNDRED FIVE AND 76/100 PESOS (PHP70,405.76)**, representing erroneously paid Expanded Withholding Tax.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution states:

"**WHEREFORE,** respondent's Motion for Reconsideration (Re: Decision Promulgated on 21 July 2016) is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

THE FACTS

The following are the antecedent facts as found by the Court in Division:

"On March 12, 2008, the Housing and Land Use Regulatory Board ('HLURB') issued a letter to Atty. Suzette L. Legislador-Lopez in relation to her letter dated January 15, 2008, requesting for confirmation that Star Group of Companies, which includes Star Asset Management Ropoas, Inc. ('SAMRI'), is habitually engaged in the business of real estate. It is represented that SAMRI was duly organized and existing under and by virtue of the laws of the Philippines, and its purpose, among others and as indicated in its Articles of Incorporation, is to transfer and sell such real properties acquired from financial institutions; that its principal business is asset management, mainly acquiring portfolios of non-performing assets such as foreclosed real properties owned or acquired ('ROPOAs') from financial institutions; that SAMRI acquired ROPOAs all over the country, with the intention of selling them to third parties at competitive prices; and that, on average, each member of the Star Group Companies has sold more than six (6) properties during the past year of operations. Based on these submissions, the HLURB Director of the Legal Services Group, confirmed that SAMRI is habitually engaged in the business of selling real estate.

[3] See Note 1, p. 454.
[4] See Note 2, p. 483.

On January 11, 2010, petitioner [now respondent] filed its Withholding Tax Remittance Return or BIR Form No. 1606 for a transaction dated July 6, 2010 using a tax base of Php206,001.00 and the rate of one point five percent (1.5%) as CGT, with SAMRI paying Php3,090.02.

On February 11, 2010, SAMRI entered into a Contract to Sell with petitioner wherein the former contracted to sell to the latter four (4) parcels of land (the 'Property') located in Cecilia Homes, Brgy. Basak, Lapu-lapu City containing a total area of Three Hundred Sixty-Six (366) square meters and covered by four (4) Transfer Certificates of Title ('TCT') registered under the name of Unimark Investment (SPV-AMC) Corporation ('Unimark') but already purchased by SAMRI. The sale of the property shall be in consideration of Two Hundred Six Thousand One Pesos (Php206,001.00) inclusive of Value-Added Tax ('VAT'); with Php20,600.10 as down payment already paid on November 5, 2009, Php144,200.90 as additional downpayment paid on December 1, 2009, and the balance of Php41,200.00 to be paid upon the presentation of titles in SAMRI's name. Titles to the property shall remain in the name of SAMRI until full payment. With regard to taxes, the parties agreed that petitioner shall be liable for Creditable Withholding Tax ('CWT') in excess of the selling price, Documentary Stamp Tax ('DST'), and local transfer tax. The Contract was duly notarized on February 2, 2010 in Cebu City, and on February 11, 2010 in Makati City.

Therafter, petitioner went to BIR Mandaue Cebu RDO to have the Capital Gains Tax ('CGT') and DST computed. Prepared for him was a One-Time Transactions ('ONETT') Computation Sheet for Expanded Withholding Tax ('EWT'/CWT) and DST on the sale of real property classified as ordinary asset, computed by an ONETT Officer and approved by BIR Mandaue Cebu RDO, Evangeline S. Abanilla ('RDO Abanilla') and with payment later verified by an ONETT Member, provided therein is a computation of the taxes on account of the transaction dated February 11, 2010 in the following manner:

xxx xxx xxx

On November 25, 2010, TCT Nos. 110-2011000214, 110-2011000215, 110-2011000216 and 110-2011000217 were issued with SAMRI as the new registered owner and cancelling the TCTs under the name of Unimark. ge

On February 17, 2011, petitioner paid SAMRI the balance of Php41,200.00, hence, the Property was fully paid.

Having complied with the conditions of the sale, SAMRI and petitioner entered into an undated Deed of Absolute Sale duly notarized on March 2, 2011 in Cebu City, and on March 16, 2011 in Makati City.

Based on the ONETT Computation and on March 4, 2010, petitioner filed its Withholding Tax Remittance Return or BIR Form No. 1606 for the above-stated transaction declaring the Property's Fair Market Value ('FMV') *per* latest tax declaration at Php32,940.00, FMV as determined by the BIR Commissioner at Php1,775,100.00, and gross selling price at Php206,001.00; and remitting a total amount of Php53,253.00 based on Php1,775,100.00 and the tax rate of three percent (3%) as EWT. Further, on March 10, 2010, petitioner filed its Documentary Stamp Tax Declaration/Return (One-Time Transactions) or BIR Form No. 2000-OT also for the said transaction, paying the amount of Php26,640.00 based on Php1,775,100.00 and the effective tax rate of one point five percent (1.5%). These payments were not refunded by SAMRI *per* stipulation in the Contract to Sell that petitioner will shoulder CWT and DST.

On March 21, 2011, RDO Abanilla issued a Memorandum of Assignment No. ONETT080-03-2011-01761 to Revenue Officer Misael M. Cadavero ('RO Cadavero') for the audit/verification of the CGT of SAMRI for the February 11, 2010 transaction.

Around the same time, petitioner went to RDO Abanilla to file the necessary documents for the processing of the Certificate Authorizing Registration ('CAR'). Upon follow up, RDO Abanilla refused to issue the CAR due to an alleged deficiency in the computation of the CGT, using the rate of 6% instead of the 3% paid by petitioner. RDO Abanilla then informed him that she is elevating the issue to the BIR Cebu Regional Office Legal Division for a ruling therein on the correct rate; and that petitioner can pay the deficiency under protest for the issuance of the CAR.

Based on the recommendation of RDO Abanilla, on October 21, 2011, petitioner filed its Payment Form or BIR Form No. 0605 for 'Withholding Tax – Others (One-time transaction not subject to capital gains tax) [Sale/transfer or exchange of real properties other than capital assests]; and paid under protest the basic CWT of Php53,253.00 representing the alleged deficiency of 3% (6% due, less 3% already paid) and interest of Php17,152.76 or a total amount of

Php70,405.76. *Per* agreement, this additional sum was likewise not refunded by SAMRI.

On October 27, 2011, CAR 201100048722 was issued certifying that transfer of Property from SAMRI to petitioner are subject to CWT at 3% and DST, and the following were paid in this regard:

xxx xxx xxx

On the same date, a Tax Clearance Certificate ('TCC') with OCN 2TA0000396069 was issued by RDO Abanilla certifying that following were paid in connection with the transfer of Property from SAMRI to petitioner:

xxx xxx xxx

Thereafter, the titles over the Property were transferred to petitioner.

On August 2, 2012, petitioner filed with RDO Abanilla, a follow up letter on the ruling of the CIR regarding its query on the correct rate.

On October 29, 2012, RDO Abanilla wrote a letter to the Chief of the Legal Division of RR No. 13, Cebu City, stating that SAMRI is akin to a bank or financial institution paying percentage tax on gross income, with the applicable rate of 6% for CWT; and that if the legal opinion is for applying the graduated rate of 1.5%, 3% & 5%, petitioner will request for a refund, if it is applying the 6% rate, the issue will be put to rest.

On October 30, 2012, petitioner's request, for issuance of a ruling or legal opinion on the CGT (should be EWT) paid on the transaction, was forwarded to the Legal Division of RR No. 13.

On December 26, 2012, the resolution on the issue regarding the rate to be used was forwarded to the CIR.

On September 6, 2013, petitioner filed with RDO Abanilla, his request for refund of erroneously or wrongfully assessed deficiency CGT (should be EWT) in the amount of Php70,405.76 paid under protest plus interest, claiming that the related transaction is subject only to the graduated rate of 3% since SAMRI is an entity habitually engaged in real estate business and/or has more than six (6) real estate transactions *per* year; and that the transaction was, instead, wrongfully subjected to a rate of 6%.

On September 26, 2013, OIC-RD Hermeno A. Palamine ('OIC-RD Palamine') wrote a letter to petitioner stating that his request for refund cannot be processed by OIC-RD Palamine's office and was forwarded to the Legal Service of the BIR National Office. On even date, he forwarded to the CIR the letter of petitioner, for consolidation with the previous indorsement dated December 26, 2012.

On October 8, 2013 and by registered mail, petitioner filed his request for refund with the CIR of the assessed EWT/CWT paid under protest.

On October 17, 2013, petitioner filed by registered mail with the Honorable Court the present Petition for Review, claiming a tax refund for his payment for deficiency EWT/CWT erroneously or excessively assessed.

On November 26, 2013, OIC-RDO Rhodora V. Lagnada forwarded to the RD the letter of GS Cadavero to Assistant RD Manuel V. Mapoy. The said letter states that GS Cadavero cannot act on the request pending the issuance of a resolution from the ACIR, Legal Office of the National Office on the correct tax rate applicable.

On February 25, 2014, respondent filed her Answer, interposing the following Special and Affirmative Defenses:

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On September 29, 2014, the parties filed their Joint Stipulation of Fact and Issue ('JSFI'), which was approved by the Court on October 16, 2014 when it promulgated a Pre-Trial Order to this effect.

Trial ensued, then, on November 4, 2014, Petititoner's Formal Offer of Exhibits ('FOE') was filed by registered mail. xxx

On September 28, 2015, in open court, counsel for respondent manifested that no report of investigation was submitted to her by the BIR examiners, hence, she will no longer present any evidence. Thus, Jr the parties were given a period of thirty (30) days to file their respective memoranda.

On October 23, 2015, petitioner filed his Memorandum for Petitioner by registered mail, while respondent filed her Memorandum on November 23, 2015. Thus, on November 27, 2015, the Court promulgated a Resolution submitting the case for decision, xxx."

On July 21, 2016, the Court in Division promulgated the assailed Decision. On August 10, 2016, petitioner filed his Motion for Reconsideration (Re: Decision Promulgated on 21 July 2016), which was denied by the Court in Division in the assailed Resolution promulgated on September 20, 2016.

On October 24, 2016, petitioner filed the instant Petition for Review.[5] On December 12, 2016, respondent filed through registered mail his Comment (to Petitioner's Petition for Review).[6] Then, On January 19, 2017, the instant case was submitted for decision. Hence, this Decision.

THE ISSUES

Petitioner raised the following assigned errors[7] in his Petition for Review:

> "The Honorable CTA Third Division erred in ruling that respondent is entitled to refund or tax credit certificate in the amount of Seventy Thousand Four Hundred Five and 76/100 pesos (Php70,405.76) representing allegedly erroneous payment of Expanded Withholding Tax.
>
> The Honorable CTA Third Division erred in ruling that seller-SAMRI is not a bank and habitually engaged in the real estate business.
>
> The Honorable Third Division erred in ruling that there was erroneous payment of the EWT/CWT of 6% instead of the 3% rate."

The core issue raised by petitioner is whether SAMRI, being a Special Purpose Vehicle (SPV), is considered as a bank or financial institution

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[5] Court *En Banc* Docket, pp. 7-25.
[6] Court *En Banc* Docket, pp. 67-73.
[7] See Note 5, Assigned Errors, p. 12.

engaged in financial intermediation, such that respondent's transaction with SAMRI should be subject to 6% EWT or CWT.

THE RULING

The Court *En Banc* denies the instant Petition.

SAMRI is not a bank and therefore, the sale of real properties owned or acquired by it is not subject to 6% CWT

Petitioner argues that:

> "In light of the above discussion, the seller – SAMRI from whom respondent bought the 4 parcels of land is not habitually engaged in the real estate business. It is not a real estate dealer, not a real estate developer, nor a real estate lessor as defined by the law. Based on the purposes specified in the SPV law, SAMRI is akin to a bank or a financial institution with the aim to help the banking system rid itself of bad or non-performing loans (NPLs) and non-performing assets (NPAs). Since SAMRI's business operations are akin to banking and financial institutions, its operations are limited to the acquisition and financing of specific assets. Thus, the sale of real properties – owned or acquired, being an ordinary asset is subject to 6% creditable withholding tax as provided by the rules and the law."[8]

The Court *En Banc* disagrees with petitioner.

Revenue Regulation (RR) No. 2-98. Section 2.57.2(J) pertinently provides:

> "SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

[8] Discussion, Petition for Review, Court *En Banc* Docket, p. 18.

(J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.* – A creditable withholding tax based on gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital assets, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:

xxx xxx xxx

B. xxx xxx xxx With a selling price of more than Five Hundred Thousand Pesos (P500,000.00) but not more than Two Million Pesos (P2,000,000.00)	3%
xxx xxx xxx C. Where the seller/transferor is not habitually engaged in the real estate business	6%

Registration with the HLURB or HUDCC shall be sufficient for a seller/transferor to be considered as habitually engaged in the real estate business. If the seller/transferor is not registered with HLURB or HUDCC, he/it may prove that he/it is engaged in the real estate business by offering other satisfactory evidence (for example, he/it consummated during the preceding year at least six taxable real estate transactions, regardless of amount). Notwithstanding the foregoing, for purposes of these Regulations, banks shall not be considered as habitually engaged in the real estate business."

As succinctly held by the Court in Division, SAMRI is not a bank. Likewise, SAMRI is habitually engaged in the real estate business. Thus:

"Therefore, in order for the rate of 6% EWT/CWT to be imposed on the sale of ordinary assets under Section 2.57.2 (J) of RR No. 2-98, the taxpayer should either be:

1. A bank, in which case, it is considered as not habitually engaged in the real estate business; or

2. An entity not engaged in the real estate business.

xxx xxx xxx

RR No. 2-98 is silent as to the definition of 'banks'. However, Section 22 of the 1997 NIRC refers to Section 2 of Republic Act No. 337, which has been amended by RA No. 8791, defining the same, for reference:

xxx xxx xxx

'3.1. 'Banks' shall refer to entities engaged in the lending of funds obtained in the form of deposits.'

xxx xxx xxx

The conclusion that SAMRI is a bank is based merely on the fact that SAMRI is an SPV. However, not all SPVs are banks within the definition set by law. Moreover, SAMRI's primary purpose provided in the said Memorandum (to invest in, or acquire Non-performing Assets of financial institutions, provided that it shall [not] engage in the business of being a broker/dealer in securities, government securities eligible dealer, investment adviser of an investment company and investment house of an SPV) does not translate to 'an entity engaged in the lending of funds obtained in the form of deposits', as defined in R.A. No. 8791. Hence, the BIR merely presumed that an SPV is a bank.

xxx xxx xxx

Section 2.57.2 (J) of *Revenue Regulations No. 2-98* expressly provides that registration with the HLURB or HUDCC shall be sufficient for a seller/transferor to be considered as habitually engaged in the real estate business.

Records show that petitioner presented a confirmation from the HLURB that SAMRI is habitually engaged in the business of selling real estate."

Based on the foregoing, it was sufficiently proved during the proceedings below that SAMRI is habitually engaged in real estate business as evidence by the confirmation issued by the HLURB. Further, the Court *En Banc* observes that petitioner attempts to broaden the scope of RR No. 2-98 to entities "akin to a bank or a financial institution", where the subject provision is limited only to "banks" defined under the law as "entities engaged in the lending of funds obtained in the form of deposits". SAMRI is not engaged in the lending of funds obtained in the form of deposits.

Considering the foregoing, the Court *En Banc* finds petitioner's arguments untenable.

Incidentally, the Court *En Banc* finds it relevant to discuss Section 15 of Republic Act No. 9182, otherwise known as The Special Purpose Vehicle (SPV) Act of 2002. Thus:

> "**Section 15.** *Tax Exemptions and Fee Privileges.* – Any existing law to the contrary notwithstanding the transfer of NPAs from the FI to an SPV, and **from an SPV to a third party** or dation in payment *(dacion en pago)* by the borrower or by a third party in favor of an FI or in favor of an SPV shall be exempt from the following taxes:
>
> (a) **Documentary stamp tax on the above mentioned transfer of NPAs and dation in payment *(dacion en pago)* as may be imposed under Title VII of the National Revenue Code of 1997**;
>
> (b) Capital gains tax imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39 (A)(1) of the National Revenue Code of 1997;
>
> (c) **Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulation No. 2-98, as amended**;
>
> (d) **Value-added tax on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997 or gross receipts tax under Title V of the same Code, whichever is applicable**.
>
> The abovementioned transfers shall also be subject to the following in lieu of the applicable fees:
>
> (a) Fifty percent (50%) of the applicable mortgage registration and transfer fees on the transfer of real estate mortgage and chattel mortgage registrations to and from the SPV, as imposed in accordance with the existing circulars of the Land Registration Authority (LRA);
>
> (b) Fifty percent (50%) of the filing fees for any foreclosure initiated by the SPV in relation to any NPA acquired from an FI, as prescribed by the Rules of Court; and

(c) Fifty percent (50%) of the land registration fees prescribed under the existing circulars of the LRA.

All sales or transfers of NPAs from the FIs to an SPV or transfers by way of dation in payment *(dacion en pago)* by the borrower or by a third party to the FI shall be entitled to the privileges enumerated herein for a period of not more than two (2) years from the date of effectivity of the IRR: *Provided,* That transfers from an SPV to a third party of NPAs acquired by the SPV within such two-year period or transfers by way of dation in payment *(dacion en pago)* by a borrower to the SPV shall enjoy the privileges enumerated herein for a period of not more than five (5) years from the date of acquisition by the SPV: *Provided, further,* That properties acquired by an SPV from GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses.

The abovementioned tax exemptions, incentives, and fee privileges given to FIs and SPV at the various stages of the transactions under this section shall likewise be extended to any individual in accordance with the IRR: *Provided,* That:

(i) The transaction is limited to a single family residential unit ROPOA or NPL secured by real estate mortgage on a residential unit;

(ii) There shall only be one transaction consisting of one residential unit per individual; and

(iii) The two-year transfer and the five-year entitlement period granted to NPA shall also apply to said single family residential unit."*(Emphasis supplied)*

Section 15 of the SPV Act of 2002 pertinently provides that the sale of NPAs from an SPV to a third party shall be exempt from documentary stamp tax (DST) on the transfer of such NPAs, CWT imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to RR No. 2-98, as amended, and Value-Added Tax (VAT) on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997 or gross receipts tax under Title V of the same Code, whichever is applicable. These incentives and privileges are subject to the conditions set forth under the SPV Act of 2002.

In the instant case, it appears that respondent paid the corresponding DST and VAT. Furthermore, petitioner agreed to pay the 3% CWT under Section 2.57.2 (J) of RR No. 2-98. Considering that no issue was raised as to respondent's liability to pay DST and VAT, the Court *En Banc* need not discuss the same. On the other hand, the Court *En Banc* notes that respondent would have been altogether exempt from payment of CWT under Section 15 of the SPV Act of 2002, provided that he can prove that he is entitled thereto under the conditions set forth by law. In other words, he would have been entitled to a refund of the entire 6% CWT paid, and not merely to the 3% rate as prayed for in his Petition before the Court in Division.

However, the fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint; other reliefs prayed for may be granted only when related to the specific prayer(s) in the pleadings and supported by the evidence on record. Necessarily, any such relief may be granted only where a cause of action therefor exists, based on the complaint, the pleadings, and the evidence on record.[9]

Here, while respondent's 3% CWT already paid to the BIR is related to his relief prayed for in his Petition before the Court in Division, *i.e.*, refund of the additional 3% CWT, the Court *En Banc* is constrained to limit the Decision to the issues raised by the parties, considering that the evidence on record failed to meet or to prove the requirements under the SPV Act of 2002.

WHEREFORE, in view thereof, the instant Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated July 21, 2016 and the Resolution dated September 20, 2016 of the Court in Division, respectively, are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[9] *Philippine Charter Insurance Corporation v. Philippine Construction Corporation*, G.R. No. 185066, October 2, 2009.

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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