REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 491** (CTA Case No. 6831)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ*.
JERRY OCIER, *Respondent*.	Promulgated: MAR 3 1 2025 4:25 p.m.

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AMENDED DECISION

***CUI-DAVID, J.*:**

This Amended Decision is issued pursuant to the Supreme Court's Decision in *Commissioner of Internal Revenue v. Jerry Ocier* (*Ocier*),[1] which upheld and affirmed the capital gains tax (CGT) and documentary stamp tax (DST) assessments issued by petitioner Commissioner of Internal Revenue (CIR) against respondent Jerry Ocier. The Supreme Court remanded the case to this Court to determine the amount of respondent's CGT liability. The dispositive portion of the Decision states as follows:

> **WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on February 2, 2010 and the resolution promulgated on April 20, 2010 in C.T.A. E.B. No. 491; **UPHOLDS** and **AFFIRMS** Assessment Notice No. BW-99-CGT-

[1] G.R. No. 192023, November 21, 2018 [Per J. Bersamin, First Division].

0040-01 dated September 10, 2001, subject to the proper determination of the amount of respondent's deficiency Capital Gains Tax by the Court of Tax Appeals as hereby directed; **REMANDS** to the Court of Tax Appeals the issue of the respondent's deficiency Capital Gains Tax for the proper determination of the amount of liability; **UPHOLDS** and **AFFIRMS** Assessment Notice No. BW-99-DST-0041-01 dated September 10, 2001 for deficiency Documentary Stamp Taxes amounting to ₱71,703.76; and **DIRECTS** the respondent to pay the costs of suit.

SO ORDERED.

THE PARTIES[2]

Petitioner is the duly-appointed officer of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, cancel, and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.

Respondent is of legal age, Filipino, with address at No. 6 Wilson Street, Greenhills, San Juan, Metro Manila, where he may be served summons and other court processes.

THE FACTS

The uncontroverted facts, as found by the Supreme Court in *Ocier*, are as follows:

The Case

Before the Court is the appeal by the Commissioner of Internal Revenue from the February 2, 2010 decision promulgated in C.T.A. E.B. No. 491, whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) unanimously affirmed the cancellation of the final assessment notices for the deficiency capital gains taxes (CGT) and documentary stamp taxes (DST) amounting to P17,862,848.21 and P71,703.76, respectively, issued by the Bureau of Internal Revenue (BIR) against the respondent.

Antecedents

On January 31, 2001, the respondent received an assessment notice from the BIR to the effect that he had incurred deficiencies in the CGT and DST for the year 1999.

[2] *Commissioner of Internal Revenue v. Jerry Ocier*, CTA EB Case No. 491, February 2, 2010.

The deficiency assessments arose from the gains that he had realized from the sale of shares of stock of Best World Resources Corporation (BW Resources) through over-the-counter transactions. It appears that based on the BIR's investigation the sale/exchange of shares was related to the stock manipulation and insider trading scandal orchestrated by Dante Tan and his associates involving BW Resources shares that affected the Philippine Stock Exchange in 1999.

On April 19, 2001, the respondent sent his letter-reply to the BIR alleging that the BIR had erroneously considered as a sale the transfer of a total of 4.9 million BW Resources shares from his account to Tan when it was actually a loan.

On September 26, 2001, the respondent received from the BIR Assessment Notice No. BW-99-DST-0041-01 and Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001 assessing him the deficiency DST and CGT, inclusive of increments, in the respective amounts of P71,703.76 and P17,862,848.21. He protested the assessments on October 12, 2001, but the BIR denied his protest on March 10, 2003.
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On June 16, 2003, the respondent received the notice of preliminary collection of the deficiency assessments, and filed his reply on July 30, 2003.

On December 5, 2003, the respondent filed a petition for review in the CTA to seek the cancellation of the deficiency assessments. The case, docketed as C.T.A. Case No. 6831, was assigned to and heard by the Second Division of the CTA (CTA in Division).

On February 2, 2009, after trial, the CTA in Division rendered its decision, disposing thusly:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated March 10, 2003, is **REVERSED AND SET ASIDE**. The Final Assessment Notice Nos. BW-99-CGT-0040-01 and BW-99-DST-0041-01, both dated September 10, 2001, assessing petitioner for deficiency CGT and DST in the amounts of P17,862,848.21 and P71,703.76, respectively, inclusive of interest, surcharge and compromise penalty for taxable year 1999 is hereby ordered **CANCELLED**.
>
> **SO ORDERED.**

The petitioner moved for reconsideration of the decision, but the CTA in Division denied the motion for reconsideration on April 21, 2009.

The petitioner elevated the adverse decision to the CTA *En Banc* by petition for review (CTA EB No. 491).

On February 2, 2010, the CTA *En Banc* rendered the assailed decision in CTA EB No. 491, disposing:

> **WHEREFORE**, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the February 2, 2009 Decision and April 21, 2009 Resolution of the *CTA Second Division* in CTA Case No. 6831 entitled, *"Jerry Ocier vs. Commissioner of Internal Revenue"* are hereby **AFFIRMED *in toto*.**
>
> **SO ORDERED.**

The CTA *En Banc* denied the petitioner's motion for reconsideration on April 20, 2010. (*Emphasis supplied; citations omitted*)

The main issue raised by petitioner before the Supreme Court was whether the cancellation of Assessment Notice No. BW-99-CGT-0040-01 and Assessment Notice No. BW-99-DST-0041-01 for failure on the part of petitioner to prove respondent's liability for the CGT and DST arising from the gains he had allegedly realized from the sale of Best World Resources Corporation, Inc. (BW Resources) shares was proper.

On November 21, 2018, the Supreme Court granted petitioner's appeal, setting aside the February 2, 2010 Decision and April 20, 2010 Resolution in CTA EB No. 491. It upheld the CGT and DST assessments and remanded the case to this Court to determine respondent's CGT liability.

The upheld Assessment Notice No. BW-99-CGT-0040-01, dated September 10, 2001, shows the following details of respondent's CGT liability:

Tax Due	₱9,324,432.00
Add: Surcharge	4,662,216.00
Interest	3,876,200.21
TOTAL AMOUNT PAYABLE	**₱17,862,848.21**

On March 10, 2022, this Court received the Supreme Court's Entry of Judgment,[3] stating that the November 21, 2018 Decision had become final and executory, and was

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[3] *En Banc* (*EB*) Docket – Vol. 1, pp. 566–567.

recorded in the Book of Entries of Judgment on October 14, 2020.

In compliance with the Supreme Court's order, the Court *En Banc* issued a Resolution dated June 23, 2022,[4] directing both parties to file a written manifestation regarding any supervening events that may have transpired in this case that the Court may consider in determining respondent's final CGT liability.

On July 26, 2022, the Court received respondent's *Manifestation,*[5] filed by registered mail on July 20, 2022, declaring that no supervening event had transpired since the Supreme Court's November 21, 2018 Decision. The case was subsequently submitted for decision on December 15, 2022,[6] without petitioner's manifestation.[7]

On February 2, 2023, and February 16, 2023, respondent filed a *Motion to Defer Proceedings*[8] and a *Motion to Set the Case for Clarificatory Hearing and/or Oral Argument,*[9] respectively.

In compliance with the Court *En Banc*'s order,[10] petitioner filed a *Comment/Opposition (Re: Respondent's Motion to Set the Case for Clarificatory Hearing and/or Oral Argument)*[11] on March 31, 2023.

On June 22, 2023, the Court *En Banc* issued a Resolution[12] setting the case for clarificatory hearing and/or oral argument on July 10, 2023, while recalling its previous Resolution dated December 15, 2022, which had submitted the case for decision. In addition, the Court *En Banc* issued an Advisory[13] directing both parties to limit their discussion to the specific issues listed therein and also required the filing of a manifestation detailing the names of the presenting lawyers, the specific issues to be discussed, and the time allotted per issue, which should not exceed thirty (30) minutes for each party.

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4 *Id.* at 570–572.
5 *Id.* at 574–575.
6 *Id.* at 582–584, Resolution.
7 *Id.* at 580, Records Verification dated August 8, 2022.
8 *Id.* at 587–590.
9 *Id.* at 591-594.
10 *Id.* at 596–597, Resolution dated March 9, 2023.
11 *Id.* at 605–609.
12 *Id.* at 609–610.
13 *Id.* at 611–613.

On July 5, 2023, respondent filed a *Manifestation,*[14] followed by petitioner's *Manifestation*[15] on July 6, 2023.

On July 10, 2023, the clarificatory hearing was conducted. Both parties' counsels were directed to submit their respective memoranda within a non-extendible period of thirty (30) days. The case was also referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation on July 25, 2023.[16]

On August 8, 2023, respondent submitted a *Memorandum,*[17] while petitioner filed his *Memorandum*[18] on September 8, 2023.

On October 11, 2023, the PMC-CTA filed a Request for Extension,[19] asking for a final extension of 30 days from October 13, 2023, or until November 12, 2023, to allow additional time for an amicable settlement.

On November 29, 2023, the parties filed a Joint Manifestation with Motion to Defer Resolution,[20] which the Court *En Banc* granted on January 8, 2024, giving the parties sixty (60) days from notice to pursue the amicable settlement.[21]

On April 29, 2024, the Court received the Mediator's Report[22] stating that the mediation was unsuccessful.

On May 22, 2024, the case was submitted for decision.[23]

THE ISSUE

The issue before this Court, as directed by the Supreme Court, is to determine the deficiency CGT liability of respondent.

In remanding the case, the Supreme Court emphasized that the CIR assessed respondent's CGT liability by determining the net capital gains from the transaction following the guidelines set forth in Revenue Regulations (RR) No. 2-82, dated

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14 *EB* Docket – Vol. 2, pp. 614–616.
15 *Id.* at 617–620.
16 *Id.* at 623–625 and 622, Order and Minutes of the Hearing, respectively.
17 *Id.* at 629–651.
18 *Id.* at 659–683.
19 *Id.* at 684.
20 *Id.* at 685–704.
21 *Id.* at 705, Minute Resolution.
22 *Id.* at 706.
23 *Id.* at 712.

March 29, 1982. Further, any challenges in computing the net capital gains upon which respondent's CGT liability was based, do not provide sufficient grounds to exempt him from his tax liability.

The Supreme Court's relevant ruling in *Ocier* is as follows:

> We must note, however, that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982. Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000, which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc's* conclusion that the transfer of the shares remained uncontroverted. **Any difficulty in the computation of the net capital gains upon which the respondent's CGT liability was imposed did not**, therefore, **constitute sufficient basis to exempt him from his tax liability.** Accordingly, **we need to remand the case to the CTA for the proper determination of the amount of net capital gains and his corresponding CGT liability.** (*Emphasis supplied*)

Petitioner's arguments:

Petitioner argues that, in determining respondent's CGT liability, the Court may refer to the BIR Records, which are part of the case records. Petitioner contends that, since the CGT computation under RR No. 2-82[24] remains undisputed by respondent, the Court can rely on the information in the BIR Records. Petitioner asserts that respondent is estopped from raising a new computation for the deficiency CGT, as defenses and objections not pleaded are, under remedial law, deemed waived.

Petitioner further argues that assessments are presumed correct and that the burden of proof is on the taxpayer to challenge the validity or correctness of an assessment. Petitioner points out that, throughout both administrative and judicial proceedings, respondent's only defense has been that the transfer of the shares was a loan, without contesting the correctness of the assessment's computation; thus, the computation should be considered accurate. Finally, petitioner claims that the imposition of the 50% surcharge is proper, as it

[24] Taxation of Sales of Shares of Stock Classified as Capital Assets, March 29, 1982.

is based on Section 248 (B) of the Tax Code due to respondent's failure to report his income from the transfer of shares.

Respondent's arguments:

Respondent counters that the Court cannot use the BIR Records in determining his CGT liability, as they were not formally offered as evidence. Even if these records were considered, the tax base for respondent's CGT liability cannot be established under RR No. 02-82, as it lacks factual basis and is only based on assumption. Respondent claims that petitioner failed to discharge the burden of proof to substantiate his claim. Respondent opposes the imposition of the 50% surcharge since willful neglect to file the tax return is not presumed. Respondent concludes that there is no factual or legal basis for the Court to determine the correct amount of deficiency CGT.

THE COURT *EN BANC'S* RULING

The Court is precluded from considering the BIR Records in determining respondent's CGT liability.

Respondent claims that the BIR Records should not be considered by this Court in determining his CGT liability, contending, among other reasons, that the CIR's failure to formally offer these records as evidence renders them inadmissible under the Rules of Court.

In *Ocier,* the Supreme Court held that a claimant's failure to formally offer evidence renders his evidence incompetent for the trial court's consideration. It rejected petitioner's contention that the failure to formally offer BIR's evidence was not fatal considering that respondent's CGT and DST liabilities for the transfer of the BW Resources shares had still been established by the evidence on record. The Supreme Court opined that:

> The petitioner does not deny the failure to formally offer BIR's evidence against the respondent, but insists that such failure was not fatal considering that the respondent's liability for the CGT and DST for the transfer of the BW Resources shares had still been established by the evidence on record. Even so, the petitioner contends that the CTA *En Banc* should still have relied also on BIR's pieces of evidence, even if not formally offered, because said pieces of evidence had been duly

identified by Josephine D. Madera, Revenue Officer of the National Investigation Division of the BIR, and incorporated in the records of the case.

The petitioner's contention cannot be sustained.

The CTA *En Banc* ruled on the matter as follows: ...

In our view, **the CTA *En Banc* thereby correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence.** Such offer of evidence was indispensable to the consideration of the evidence by the trial court. The necessity of the formal offer of evidence has been suitably stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* thusly: ... (*Emphasis supplied*)

However, the Supreme Court emphasized in *Ocier* that "the claimant's cause is not necessarily lost if other evidence on record as well as the adverse party's own admissions can support the former's claim. Every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication."

The Supreme Court also stressed that there was enough proof in the records on which to base a ruling against respondent. Even if the CTA *En Banc* could not consider evidence that petitioner had not formally offered, it could not disregard the record which showed the transfer of shares that established respondent's tax liability, including the evidence formally submitted by respondent and his own admissions, *viz.*:

... **There was enough proof extant in the records on which to base a ruling *against* the respondent**. The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to *everything* on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication. Even if **the CTA *En Banc*** could not validly consider and appreciate any matter that had not been formally offered by the petitioner, it **could not turn a blind eye as to disregard the record that showed the transfer of shares that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission**.

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The respondent's insistence that he was not liable for the CGT and DST because he had only loaned his shares to

> Tan without any consideration therefrom, being unsubstantiated, must fail.
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> The respondent's admission of transferring the 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment of the CGT. **It is worthy to underscore that the respondent never claimed exemption from the CGT. His denial of liability solely rested on the fact that the transfer of his shares had been a stock loan, not a sale.** Still, the transfer even in that manner came within the concept and context of a disposition sufficient for the CGT liability to attach pursuant to Section 24 (C) of the National Internal Revenue Code (NIRC), which provides: ...
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> As the provision textually indicates, the CGT is imposed on 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. The term *disposition*, being neither defined nor qualified in Section 24(C), is accorded its ordinary meaning, *that is*, any act of disposing, transferring to the care or possession of another, or the parting with, alienation of, or giving up of property. **With the respondent himself not disputing (but actually admitting) the transfer of the 4.9 million shares of BW Resources to Tan, such manner of disposition of the shares was definitely within the contemplation of Section 24 (C) of the NIRC.** (*Emphasis supplied*)

Indeed, the Supreme Court found that respondent's admission of transferring BW Resources shares to Dante Tan (Mr. Tan), along with his admission of the circumstances of the transfer, clearly established the transaction as one subject to CGT. Notably, respondent did not claim exemption from CGT; rather, he denied liability on the ground that the transfer was a stock loan rather than a sale. However, even as a stock loan, the transaction still constituted a "disposition" under Section 24(C) of the NIRC of 1997, as amended, and was therefore subject to CGT.

As a result, the Supreme Court also held respondent liable to pay the deficiency DST assessment in the amount of ₱71,703.76, which is based on the transfer of five million shares of BW Resources even though the Formal Letter of Demand (FLD) with enclosed Assessment Notice No. BW-99-DST-0041-01 dated September 10, 2001 for the deficiency DST was not

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offered by respondent as evidence [25] on the ground of respondent's admission that he transferred the shares. The Supreme Court in *Ocier* ratiocinated in this wise:

> Anent the assessment for the deficiency DST, the respondent was similarly liable. The DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto, but, for clarity, we have to point out that the subject of the DST is not limited to the document embodying the enumerated transactions. The DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. The transfer of the shares of stocks is an exercise of the privilege to transfer a right and properties incident thereto that is embodied in the stock loan agreement/trust declaration. Accordingly, the transaction between the respondent and [sic] was properly subjected to the DST.

Having settled that respondent is liable for the payment of CGT and DST as ruled by the Supreme Court and disregarding the BIR records or other evidence presented by petitioner due to their lack of formal offer, the Court *En Banc* now proceeds to determine the amount of respondent's CGT liability, based on his *submissions* and *admissions.*

Based on the assessment notice received by respondent, he is liable for a basic CGT deficiency in the amount of ₱9,324,432.00.

Petitioner alleged that respondent transferred five million shares of BW Resources stock in 1999 to various individuals through the Equity (EQ) Trade Facility of the Philippine Central Depository Inc. (PCD). [26] Consequently, petitioner assessed respondent for a basic deficiency CGT for taxable year 1999 arising from the gains realized from the sale of BW Resources shares through over-the-counter transactions. The total assessment, including a **50% surcharge** and **20% interest** for respondent's failure to file the CGT return and pay the corresponding taxes, amounted to ₱17,862,848.21, as follows:[27]

[25] Division Docket, pp. 141–147, *Formal Offer of Evidence*.
[26] Now known as the Philippine Depository & Trust Corp. (PDTC); Division Docket, p. 159, Exhibit "E", par. 4.
[27] Division Docket, pp. 148–155, Exhibit "A".

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Basic CGT	₱9,324,432.00
50% Surcharge	4,662,216.00
20% Interest up to 10-31-2001	3,876,200.21
TOTAL CGT DUE	**₱17,862,848.21**

It is settled that BW Resources was listed on the Philippine Stock Exchange (PSE) and that respondent's transfer of BW Resources shares to Mr. Tan on September 3, 1999 was not conducted on the PSE trading floor, but through the EQ Trade Facility of the PCD.[28] This type of stock disposition is subject to CGT under Section 24 (C) of the NIRC of 1997, as amended,[29] *viz.*:

SEC. 24. *Income Tax Rates.*

. . . .

(C) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* - The provisions of Section 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 ₱100,000	5%
On any amount in excess of ₱100,000	10%

Corollary thereto, Section 39 (A)(2)[30] of the NIRC of 1997, as amended, defines "net capital gains" as the excess of gains from the sale or exchange of capital assets over losses from such sales or exchanges.

On the other hand, Section 40 (A)[31] of the NIRC of 1997, as amended, provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized.

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[28] *Id.*

[29] *Supra* note 1.

[30] SEC. 39. *Capital Gains and Losses.* -
(A) *Definitions.* - As used in this Title –
....
(2) *Net Capital Gain.* - The term 'net capital gain' means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

[31] SEC. 40. *Determination of Amount and Recognition of Gain or Loss.* -
(A) *Computation of Gain or Loss.* - The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis or adjusted basis for determining gain, and the loss shall be the excess of the basis or adjusted basis for determining loss over the amount realized. The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received.

The amount realized from the sale or other disposition of property shall be the sum of money received plus the fair market value of the property (other than money) received.

The Supreme Court has noted that petitioner calculated the selling price and cost of BW Resources shares in accordance with RR No. 02-82,[32] which defines the manner of taxation of shares of stock classified as capital assets. Particularly, Section 6 of RR No. 02-82 outlines the determination of the tax base (selling price and cost) for computing CGT as follows:

> SEC. 6. *Determination of Tax Base.* — In determining the tax base, the following rules shall apply:
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> (a) *Determination of selling price.* — The selling price of the shares of stocks shall be the fair market value of the shares of stocks transferred or exchanged and not the fair market value of the property received in exchange. If the total consideration of the sale or disposition consists partly in cash or money and partly in kind, the selling price shall be the fair market value of the shares disposed.
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> (1) In the case of shares traded through the stock exchange, "fair market value" shall consist of the actual selling price as shown in the sales confirmation issued by the member of the stock exchange through whom the sale was effected.
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> (2) 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 the "fair market value." When no sale is made in any stock exchange, the highest closing price on the day nearest to the day of sale, transfer or exchange of the shares shall be the fair market value.
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> (3) In the case of sale, transfer or exchange of shares not listed in the stock exchange, the following rules shall be observed:
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> (i) In general, the unlisted shares shall be valued at their book value nearest the valuation date. The book value of these unlisted shares of

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[32] In *Commissioner of Internal Revenue v. Ocier*, G.R. No. 192023, November 21, 2018, the Supreme Court noted petitioner's basis of the computation of the net capital gains, *viz.*, "We must note, however, that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982."

stock shall be *prima facie* considered as their fair market value.

(ii) In case the shares are valued on a basis lower than their book values, a justification for the deviation from the book value, together with the evidences in support thereof, should be submitted. The following factors are considered relevant in the valuation of shares of stock of closed corporations.

. . . .

If such lower fair market valuation is not clearly established and documented, the book value of the unlisted shares of stock shall be adopted. If there have been previous sales/exchanges of the unlisted shares of stock, the price at which these shares exchanged hands should be taken/considered as its fair market value/s.

(b) *Determination of cost.* — The cost basis for determining the capital gains or losses shall be the basis as determined in accordance with the provisions of Section 35 of the National Internal Revenue Code, as amended, and its implementing regulations applied in the following manner:

(1) If the stocks can be identified, then the cost shall be the actual purchase price plus all costs of acquisition such as commission, documentary tax, transfer fees, etc.

(2) If the stocks cannot be properly identified, then the cost to be assigned shall be computed on the basis of the first-in, first-out (FIFO) method. However –

(3) If books of accounts are maintained by the seller where every transaction of a particular stocks are recorded, then the moving average method shall be applied rather than the first-in, first-out, (FIFO) method.

(4) In all cases, stock dividend received must be assigned a corresponding cost by allocating the original cost of acquisition to the total number of shares composed of the original shareholdings plus the number of shares of stocks received as stock dividend.

Section 6 (a)(2) of RR No. 02-82 states that the selling price of shares listed but not traded on the stock exchange is the highest closing price on the day the shares are sold, transferred, or exchanged. When no sale is made in any stock exchange, the highest closing price on the day nearest to the day of sale, transfer or exchange of the shares is used as the fair market value.

On the other hand, Section 6 (b)(2) of RR No. 02-82 provides that the cost basis for determining capital gains or losses is established in accordance with Section 35 (now Section 40) of the NIRC of 1997, as amended, and its implementing regulations by using the first-in, first-out (FIFO) method, if the stocks disposed of cannot be properly identified.

Respondent did not refute the factual and legal bases of the CGT assessment; thus, respondent's liability shall be based on the basic deficiency CGT of ₱9,324,432.00.

Applying Section 6 (a)(2) and (b)(2) of RR No. 02-82, respondent's transfer of BW Resources shares yielded a basic deficiency CGT of ₱9,324,432.00, as reflected in Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001, which he received on September 26, 2001.[33] While respondent admitted to transferring 4.9 million shares, he did not challenge the assessed amount nor the cost and selling price of the shares as detailed in the assessment notices for both the CGT and DST.[34]

These figures also served as the basis for the Supreme Court's ruling *upholding* and *affirming* petitioner's assessments for CGT and DST against respondent. While holding respondent liable for both CGT and DST, the Supreme Court remanded the case to this Court with a directive to determine the correct amount of CGT liability.

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[33] Petition for Review, par. 3.8 *vis-à-vis* Amended Pre-Trial Brief, par. 5, Joint Stipulation, par. 4, and Memorandum, par. 4, Division Docket, pp. 5, 77, 101 and 265, respectively.

[34] Division Docket, pp. 8–12, Petition for Review; Division Docket, pp. 125–126, Sworn Statement; Division Docket, pp. 472–482, Memorandum.

It is a well-established principle that tax assessments are *prima facie* correct,[35] and the burden of proving otherwise lies with the taxpayer. It is incumbent upon the taxpayers to clearly show that the assessment was erroneous in order to relieve themselves from it.[36] As the Supreme Court held in *Po v. Court of Tax Appeals* (*Po*):[37]

> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. **All presumptions are in favor of the correctness of tax assessments**. (*Emphasis supplied*)

Thus, if taxpayers deny their tax liabilities, it is incumbent upon them to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same,[38] as highlighted in the case of *Po* citing *Collector of Internal Revenue v. Reyes*:[39]

> **Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a <u>full and fair disclosure of all pertinent data in his possession</u>.** Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession. (*Emphasis supplied*)

Respondent miserably failed to meet the burden of proving that the assessment was erroneous throughout the administrative and judicial proceedings. He presented no evidence to refute petitioner's computations, which were based on the selling price and cost of the transferred shares as prescribed by RR No. 02-82. Despite being confronted with the

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35 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division]; *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007 [Per J. Corona, First Division].

36 *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 & L-13462, April 29, 1960, [Per J. Bautista Angelo, *En Banc*] cited in *Commissioner of Internal Revenue v. Secretary of Justice, et al.*, G.R. No. 177387, November 9, 2016 [Per J. Bersamin, First Division].

37 G.R. No. 81446, August 18, 1988 [Per J. Sarmiento, Second Division], cited in *Commissioner of Internal Revenue v. Traders Royal Bank*, G.R. No. 167134, March 18, 2015 [Per J. Leonardo-De Castro, First Division].

38 *AFP General Insurance Corp. v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division], citing *Commissioner of Internal Revenue v. Hon. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010 [Per J. Villarama, Jr., Third Division], citing further *Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997 [Per J. Torres, Jr., Second Division], and *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 & L-13462, April 29, 1960 [Per J. Bautista Angelo, *En Banc*].

39 G.R. Nos. L-11534 and L-11558, November 25, 1958 [Per J. Capistrano, *En Banc*].

figures used in calculating his CGT and DST liabilities when he received the assessment notices, he did not identify specific errors in the computation, nor did he provide evidence to substantiate his claims of incorrect tax liabilities throughout the proceedings.

Instead, respondent merely countered that the transfer was not a sale but a **stock loan**; that RR No. 02-82 applies only to actual sales; and that, assuming *arguendo* the transfer was taxable, the liability should fall on the **withholding agent,** not himself. These arguments were unsupported by evidence and had already been dismissed by the Supreme Court.

During the clarificatory hearing, respondent's counsel, Atty. Allene M. Anigan (Atty. Anigan) acknowledged that the Supreme Court had already ruled on respondent's liability for CGT, leaving only the computation of the correct amount for determination. He reiterated the stock loan argument but admitted his lack of familiarity with the administrative aspect of the case. When questioned, he confirmed that a protest had been filed against the Preliminary Assessment Notice (PAN) but was unable to specify whether the computation of CGT was explicitly challenged at that stage:[40]

> **Justice David:** Did you read, of course, I presume that you have read the Decision of the Supreme Court several times.
>
> **Atty. Anigan:** Yes, Your Honor.
>
> **Justice David:** And if I may call your attention to the dispositive portion, **the Supreme Court upheld and affirmed the assessment notice.**
>
> **Atty. Anigan:** That's correct.
>
> **Justice David:** And the only thing that was remanded to us was the computation or the determination of the amount of CGT liability of Mr. Ocier?
>
> **Atty. Anigan:** Yes Your Honor.
>
> **Justice David:** So, this tell [sic] that your client Mr. Ocier is liable for CGT. It is just that we have to determine if the amount reflected or the amount that appear [sic] in the assessment notice is correct?

[40] TSN, Atty. Allene M. Anigan, July 10, 2023, pp. 14–48.

Atty. Anigan: Yes Your Honor but again

Justice David: Atty. Anigan, of course, before coming to this Court you also read the records of this case?

Atty. Anigan: Yes Your Honor.

Justice David: Do you know that in the Petition for Review, do you know that the records of the Court in Division disclosed that the Petition for Review filed by Mr. Ocier on December 5, 2003, as well as, the Joint Stipulation of Facts filed on July 22, 2004 and also the Memorandum of Mr. Ocier filed on June 6, 2007, Mr. Ocier did not raise as an issue the CIR's use of the highest grossing price and FIFO method in determining the tax base pursuant to R.R. 2-82?

Atty. Anigan: I still have to recall the records of that Your Honor but **the position of the respondent at that time is that the transfer was merely on loan there was no actual disposition per se.**

Justice David: Actually, **the issue raised by Mr. Ocier before Court in Division was whether or not the transfer is subject to CGT since it was accordingly, according to Mr. Ocier it was a loan transaction.**

Atty. Anigan: That's correct Your Honor.

Justice David: So it should not be subjected to capital gains stock.

Atty. Anigan: Yes Your Honor.

Justice David: But that issue has already been settled by the Supreme Court. And the Supreme Court said that the transfer is subject to capital gains [tax].

Atty. Anigan: Yes Your Honor.

Justice David: Do you know Atty. Anigan that your client Mr. Ocier never disputed the CIR's computation of the capital gains [tax].

Atty. Anigan: We have no actually [sic] **opportunity to challenge that because it was not presented Your Honor.**

Justice David: That was not presented but [sic] your client

Atty. Anigan: The computation, the annexes supposedly attached to the memorandum of the commissioner.

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Justice David: But **do you know that Mr. Ocier filed a protest to the PAN, Preliminary Assessment Notice?**

Atty. Anigan: Yes Your Honor.

Justice David: And in the protest to the Preliminary Assessment Notice, your client mentioned about this assessment, about the computation of the assessment but it did not dispute it.

Atty. Anigan: I am not familiar to the case on the administrative level Your Honor. (*Emphasis supplied*)

The Court posed questions to Atty. Anigan to clarify how respondent's CGT liability should be computed. These exchanges underscored the gaps in the evidence presented by respondent and emphasized the Court's authority under Section 6, Rule 135 of the Rules of Court to exercise its jurisdiction effectively:[41]

Justice Villena: Just a follow up, of course **the Supreme Court has already settled and determined the rights of the parties?**

Atty. Anigan: Yes, Your Honor.

Justice Villena: And **this court is tasked to make a determination of the liability of your client?**

Atty. Anigan: Yes, Your Honor.

Justice Villena: But you insist that there is no liability but of course that's already not an issue because **the Supreme Court has spoken and that there is already an entry of judgment.**

Atty. Anigan: That's correct Your Honor.

Justice Villena: But apparently the pieces of evidence shown to us by the representatives of the CIR and by your admission, these exhibits have not been identified by the witness for us to apply and consider evidence in the records even if not offered but also as pointed out by the Supreme Court, correct Atty. Gonzales?

Atty. Gonzales: Yes, Your Honor

Justice Villena: Since **we are mandated to still make a determination and [of] course the Rules of Court provide also an authority on the part of the Court** under Rule 135,

[41] *Id.* at 53–56.

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Section 5 [g] that **the Court can resort to processes to make** an effective, [sic] the authority that has been vested in and make **the judgment effective.**

So may I just ask attorney for Mr. Ocier, as a concession because the liability is already there, only that we can't make a determination because of the supposed absence of a competent evidence from the CIR, but **you cannot go away with the liability because the Supreme Court has spoken.**

Atty. Anigan: I still have to discuss that with my client Your Honors, with all due respect.

Justice Ferrer: That is also my point if **the directive is for this Court, the Court of Tax Appeals on the issue of respondent's deficiency capital gains tax for the proper determination of the amount of liability. Attorney, what is your proposal as to how to determine this liability because this is the directive.**

Atty. Anigan: As of now Your Honor, to be honest **I have no proposal yet but since the decision of the Supreme Court was already final in so far as the CGT tax is concerned, I think that will be our client's responsibility.**

Justice Ferrer: The directive is very clear, the directive is for us to determine the liability. I'm asking you how do you propose, or at least what is what you have in mind. How do we go about determining this? I'm just asking.

Atty. Anigan: May I refer to attorney De Guzman.

Atty. De Guzman: Good afternoon Your Honors, I'm Atty. Jason De Guzman. Your Honors we don't have, in so far, we don't have an authority to have a quick figure settlement. But if you will ask us of what we have in mind, maybe just a possibility that the respondent would apply the compromise settlement under the Tax Code which is 10% based on financial capacity provided he has the qualifications for such application. In so far Your Honor, that would be what we can say.

Justice Villena: Of course, actually **we are referring to Section 6 of Rule 135 that** is apparently **points out to the authority of any court** to, if I may read for the record.

Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these

> rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules. (*Emphasis supplied*)

Further, the Supreme Court emphasized that respondent never claimed exemption from the CGT. His denial of liability was anchored *solely* on the assertion that the transfer of his shares was a stock loan, not a sale:

> The **respondent's insistence that he was not liable for the CGT and DST because he had only loaned his shares to Tan** without any consideration therefrom, being unsubstantiated, **must fail.**
>
> The respondent's admission of transferring the 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment of the CGT. It is worthy to underscore that the **respondent never claimed exemption from the CGT. His denial of liability *solely* rested on the fact that the transfer of his shares had been a stock loan, not a sale.**[42] (*Emphasis supplied*)

Respondent's failure to refute the CGT assessment or challenge the computation of his liability constrains the Court to adhere to the legal principle that "all presumptions are in favor of the correctness of tax assessments."[43] His silence regarding the cost and selling price of the transferred shares further supports the presumption of the correctness of the assessment. Section 33, Rule 130[44] of the Revised Rules on Evidence states:

> SEC. 33. *Admission by silence.* - An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her.

Respondent had numerous opportunities to challenge the BIR's findings but instead relied on an unsubstantiated claim that the transfer was a mere stock loan. His failure to provide

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[42] *Supra* note 1.

[43] *Po v. Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988 [Per J. Sarmiento, Second Division] citing *Collector of Internal Revenue v. Bohol Land Transportation Co.*, G.R. Nos. L-13099 & L-13462, April 29, 1960, [Per J. Bautista Angelo, *En Banc*].

[44] See *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division], where the Supreme Court "recognized the application of the rule 'to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant.'"

evidence to substantiate his assertions rendered the CGT and DST assessments conclusive.

Pursuant to the Supreme Court's directive, this Court conducted a thorough examination of the records, focusing on the *admissions* and *submissions* of respondent, to determine the correct amount of his CGT liability. The records reveal that, despite multiple opportunities to contest the assessments, respondent failed to challenge the assessed amount or the figures used in calculating the deficiency CGT, including the cost and selling price of the transferred shares. Instead, respondent relied on an unsubstantiated claim that the transfer was a mere stock loan.

Respondent's silence and failure to dispute the assessments rendered the CGT and DST computations conclusive. Accordingly, respondent's CGT liability is determined based on the undisputed basic deficiency CGT of ₱9,324,432.00, as indicated in Assessment Notice No. BW-99-CGT-0040-01 dated September 10, 2001, which was upheld and affirmed by the Supreme Court in *Ocier*.

The imposition of the 50% surcharge under Section 248 (B) of the NIRC of 1997, as amended, is unwarranted in this case.

While petitioner imposed a 50% surcharge on the CGT and DST deficiency assessments pursuant to Section 248 (B) of the NIRC of 1997, as amended, this Court finds that the imposition lacks sufficient legal justification. Although respondent did not contest the imposition of the 50% surcharge in the assessment notices during the administrative[45] and judicial proceedings,[46] the Court finds it necessary to reduce the surcharge in accordance with applicable laws and jurisprudence.

For the imposition of a civil penalty, Section 248 (B) of the NIRC of 1997, as amended, provides a 50% surcharge in the following instances: *first*, in case of willful neglect to file the return within the prescribed period, and *second*, in case a false or fraudulent return is willfully made. Section 248 (B) provides:

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[45] Division Docket, pp. 159–160, Exhibit "E"; Division Docket, pp. 162–164, Exhibit "6"; Division Docket, p. 170; Exhibit "I"; Division Docket, p. 171, Exhibit "J".

[46] Division Docket, pp. 1–13, *Petition for Review*; Division Docket, pp. 100–104, *Joint Stipulation*; Division Docket, pp. 271–275, *Memorandum*.

> SEC. 248. *Civil Penalties.* —
>
> ....
>
> (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. (*Emphasis supplied*)

The willful neglect to file the required tax return, considering that the same is accompanied by legal consequences, cannot be presumed.[47] It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.[48] Thus, it is indispensable for petitioner to include in the assessment notice the basis for its allegations of fraud.[49]

In *Commissioner of Internal Revenue v. Japan Air Lines, Inc.*,[50] the Supreme Court explained that petitioner cannot loosely impose a 50% surcharge for mere failure to file a return, thus:

> **Nowhere in the records of the case can be found that JAL deliberately failed to file its income tax returns for the years covered by the assessment**. There was not even an attempt by petitioner to prove the same or justify the imposition of the 50% surcharge. **All that petitioner did was to cite the provision of law upon which the surcharge was based without explaining why it was applicable to respondent's case. Such cannot be countenanced for mere allegations are definitely not acceptable.** The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed (*CIR vs. Air India, supra*). **The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. **It must amount to intentional wrongdoing with the sole object of evading the tax** (*Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974,

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47 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division], citing *Commissioner of Internal Revenue v. Air India*, G.R. No. 72443, January 29, 1988 [Per J. Gancayco, First Division].

48 *People of the Philippines v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023 [Per J. M. Lopez, *En Banc*].

49 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

50 G.R. No. 60714, October 4, 1991 [Per J. Paras, *En Banc*]; See also *Aznar v. Court of Tax Appeals, et al.*, G.R. No. L-20569, August 23, 1974 [Per J. Esguerra, First Division].

> 58 SCRA 519). This was not proven to be so in the case of JAL as it believed in good faith that it need not file the tax return for it had no taxable income then. The element of fraud is lacking. **At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law**. (*Emphasis supplied*)

The foregoing circumstances are also present in this case. Petitioner merely cited the legal provision of the law upon which the 50% surcharge was based without presenting proof or justification for its application to respondent's case. Consequently, the imposition of the 50% surcharge is improper. Instead, the basic deficiency CGT in the amount of ₱9,324,432.00 should be subject to a 25% surcharge under Section 248 (A)(1)[51] of the NIRC of 1997, as amended.

Accordingly, respondent is **ORDERED TO PAY** the total amount of **One Hundred Million Four Hundred Sixty-Four Thousand Nine Hundred Nineteen Pesos and Thirty-Seven Centavos (₱100,464,919.37)**, representing the deficiency Capital Gains Tax for taxable year 1999, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248 (A),[52] 249 (B)[53] and (C) [54] of the NIRC of 1997, respectively, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), computed until December 31, 2017, as follows:

Basic deficiency CGT	₱9,324,432.00[55]
Surcharge (25%)	2,331,108.00
Deficiency interest (Oct. 3, 1999 to Dec. 6, 2003)	
[₱9,324,432.00 x 20% x 1,525/365 days]	7,791,648.66

[51] SEC. 248. *Civil Penalties.*
(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or ...

[52] *Id.*

[53] 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, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.

[54] SEC. 249. *Interest.* –
. . . .
(C) *Delinquency Interest.* - In case of failure to pay:
(1) The amount of the tax due on any return to be filed, or
(2) The amount of the tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

[55] Exhibit "F", Division Docket, p. 161.

Total amount due as of December 6, 2003	**₱19,447,188.66**
Deficiency interest (Dec. 7, 2003 to Dec. 31, 2017)	
[₱9,324,432.00 x 20% x 5,139/365 days]	26,256,578.66
Delinquency interest (Dec. 7, 2003 to Dec. 31, 2017)	
[₱19,447,188.66 x 20% x 5,139/365 days]	54,761,152.06
Total amount due as of December 31, 2017	**₱100,464,919.38**

In addition, respondent is **ORDERED TO PAY** petitioner delinquency interest at the rate of twelve percent (12%) per annum on the ₱19,447,188.66 total amount due as of December 6, 2003, as determined above, or an amount of **₱6,393.60** per day, [56] from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, as implemented by RR No. 21-2018.[57]

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[56] ₱19,447,188.66 x 12%/365 days.

[57] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)," September 14, 2018.

x--x

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, with Dissenting and Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion in the above Amended Decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 491 (CTA CASE NO. 6831)**
- versus -	Members: **DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN** **MANAHAN** **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and **ANGELES**, *JJ.*
JERRY OCIER, Respondent.	Promulgated: MAR 3 1 2025 4:25 p.m.

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I am constrained to withhold my assent on the *ponencia*.

Records reveal that respondent Jerry Ocier transferred 4.9 million BW Resources Corporation (BW) shares to a certain Dante Tan. Asserting that this transaction constituted a taxable disposition of property, petitioner Commissioner of Internal Revenue (CIR) assessed respondent's deficiency Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) in the amounts of ₱17,862,848.21 and ₱71,703.76, respectively. Respondent protested this assessment, arguing that the transaction constituted a loan, and not a sale or transfer of property. Both the Court of Tax Appeals (CTA) in Division and *En Banc* ruled to nullify the assessment on the ground that there is no evidence to support the computation of the deficiency taxes. The CTA cancelled the assessment as the amount of respondent's liability could not be determined based on the admitted evidence and the available records. Undeterred, petitioner appealed to the Supreme Court.

In *Commissioner of Internal Revenue vs. Jerry Ocier*,[1] the Supreme Court ruled in favor of petitioner and reversed the CTA Decision and Resolution. The Supreme Court declared the subject transaction as a taxable transfer and that respondent is liable for the payment of CGT and DST thereon but remanded the case to the CTA for the proper determination of the amount of respondent's CGT liability. The Supreme Court made the following pronouncements:

> "**The claimant's failure to formally offer his evidence renders his evidence incompetent for consideration by the trial court**. But the claimant's cause is not necessarily lost if other evidence on record as well as the adverse party's own admissions can support the former's claim. Every court has the positive duty to **consider and give due regard to everything on record that is relevant and competent** to its resolution of the ultimate issue presented for its adjudication.
>
> x x x
>
> The petitioner does **not deny the failure to formally offer BIR's evidence against the respondent**, but insists that such failure was not fatal considering that the respondent's liability for the CGT and DST for the transfer of the BW Resources shares had still been established by the evidence on record. Even so, the petitioner contends that the **CTA *En Banc* should still have relied also on BIR's pieces of evidence, even if not formally offered**, because said pieces of evidence had been duly identified by Josephine D. Madera, Revenue Officer of the National Investigation Division of the BIR, and incorporated in the records of the case.
>
> The petitioner's contention **cannot be sustained**.
>
> x x x
>
> In our view, the CTA *En Banc* thereby **correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence**. Such offer of evidence was indispensable to the consideration of the evidence by the trial court. The necessity of the formal offer of evidence has been suitably stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, thusly:

[1] G.R. No. 192023, November 21, 2018.

x x x

Nonetheless, the petitioner's failure to **establish the nature of the transaction as a sale** between the respondent and Tan due to the non-offer of the evidence did not prevent the CTA *En Banc* from resolving the issue *in favor* of the petitioner. There was enough proof extant in the records on which to base a ruling *against* the respondent. **The CTA *En Banc* had the positive duty as a court of law to consider and give due regard to *everything* on record *relevant* and *competent* to its resolution of the ultimate issue presented for its adjudication.** Even if **the CTA *En Banc* could not validly consider and appreciate any matter that had not been formally offered by the petitioner**, it could not turn a blind eye as to disregard the **record that showed the transfer of shares** that gave rise to the tax liability on the part of the respondent, including the evidence formally offered by the respondent himself as well as his admission. The CTA *En Banc* was all too aware of the presence of such proof in the records because it precisely declared that '**the Court need no longer look into whether or not the subject BW shares were actually transferred, as this was clearly not controverted.**' Thus, the CTA *En Banc* gravely erred in upholding the ruling of the CTA in Division.

The respondent's insistence that he was not liable for the CGT and DST because he had only loaned his shares to Tan without any consideration therefrom, being unsubstantiated, must fail.

The respondent's admission of transferring the 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment of the CGT. It is worthy to underscore that the respondent never claimed exemption from the CGT. His denial of liability solely rested on the fact that **the transfer of his shares had been a stock loan, not a sale. Still, the transfer even in that manner came within the concept and context of a *disposition*** sufficient for the CGT liability to attach pursuant to Section 24(C) of the *National Internal Revenue Code* (NIRC), which provides:

x x x

As the provision textually indicates, the CGT is imposed on 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. The term *disposition*, being neither defined nor qualified in Section 24(C), is accorded its ordinary meaning, *that is*, any act of disposing, transferring to the care or possession of another, or the parting with, alienation of, or giving up of property. **With the respondent himself not disputing (but actually admitting) the**

transfer of the 4.9 million shares of BW Resources to Tan, such manner of disposition of the shares was definitely within the contemplation of Section 24(C) of the NIRC.

x x x

We must note, however, that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982. **Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000, which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc*'s conclusion that the transfer of the shares remained uncontroverted**. Any difficulty in the computation of the net capital gains upon which the respondent's CGT liability was imposed did not, therefore, constitute sufficient basis to exempt him from his tax liability. Accordingly, **we need to remand the case to the CTA for the proper determination of the amount of net capital gains and his corresponding CGT liability**." *(Boldfacing and underscoring supplied)*

The Supreme Court has settled the issue on the nature of the transaction – there was an actual **transfer of the 4.9 million BW shares to Dante Tan which makes respondent liable for the payment of the CGT** within the contemplation of Section 24(C) of the National Internal Revenue Code (NIRC). The Supreme Court based this finding on respondent's own admission. Indeed, in respondent's Letters to petitioner[2] dated April 19, 2001 and October 12, 2001, respondent admitted the fact of transfer of the 4.9 million BW shares to a certain Dante Tan, insisting that the transfer was without any consideration as it was a mere loan of said shares to Dante Tan and not an actual share thereof.

As the admission of respondent, which became the basis of the Supreme Court's finding, was limited only to the fact of transfer of the 4.9 million BW shares, the Supreme Court mandated the CTA *En Banc* to conduct a proper determination of the amount of net capital gains arising from the subject transaction and the corresponding CGT liability thereon. **Had there been an admission on the part of respondent anent the correctness of the amount of deficiency CGT, the Supreme Court could have easily taken that admission into account in its ruling and ordered respondent to pay the deficiency CGT as indicated in the Assessment Notice dated September 10, 2001, instead of remanding the case to the CTA for the**

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[2] Exhibits "E", CTA Division Docket, p. 159-160; Exhibit "F", CTA Division Docket, pp. 162 to 164.

determination of the amount of net capital gains and the corresponding CGT liability of respondent.

The *ponencia* is of the position that respondent, in admitting the transfer of the 4.9 million BW shares, *"did not challenge the assessed amount nor the cost and selling price of the shares as detailed in the assessment notices for both the CGT and DST."* **On this point, I respectfully disagree.**

A perusal of respondent's Letters to petitioner[3] dated April 19, 2001 and October 12, 2001 reveals that while respondent admitted the fact of transfer of the 4.9 million BW shares to Dante Tan, **respondent was firm in contesting the assessments for CGT and DST arguing that the assessment was erroneous and arrived at arbitrarily or capriciously**; and that the assessment was not based on actual facts but based on mere conjectures or presumptions that there had been a consideration or payment received on the transaction. It cannot, therefore, be said that respondent did not challenge the assessed amount nor the cost and selling price of the shares as detailed in the assessment notices for both the CGT and DST.

What is glaring is that there is actually **nothing on record which shows that respondent admitted the correctness of the computation of the net capital gains and the resulting amount of deficiency CGT. It is for this reason that the Supreme Court remanded the case to the CTA for the proper determination of the amount of the net capital gains and respondent's corresponding CGT liability. The CTA is called upon to determine, based on <u>relevant</u> and <u>competent evidence</u> on record, the amount of net capital gains due on the transaction and the corresponding CGT liability of respondent.**

After meticulously evaluating the records, I find that there is no relevant and competent evidence that the Court may consider in determining the amount of net capital gains due on the transaction and the corresponding CGT liability of respondent.

Petitioner failed to offer any of its evidence thus rendering the same incompetent for consideration by the Court. This means that the Court cannot give probative value to the documents emanating from petitioner, including those contained in the BIR Records, as said

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[3] *Id.*

documents were **not formally offered by petitioner and were not admitted in evidence by the Court**. The declaration in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*,[4] is edifying, *viz.*:

> "Time and again, this Court has consistently declared that cases filed before the CTA are litigated ***de novo*****, party-litigants must prove every *minute aspect* of their cases**. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, **no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents <u>must be formally</u> offered before the CTA**. Xxx
>
> x x x
>
> As a matter of fact, **even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the <u>Rules prohibit it</u>**. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.
>
> x x x
>
> Clearly therefore, **evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal**. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected." *(Boldfacing and underscoring supplied)*

True, in *Vda. De Oñate vs. Court of Appeals*,[5] the Supreme Court laid down the exception to the rule that only formally offered and admitted evidence may be considered by the court. But there are requirements which must be complied with before the court can consider such evidence. Said the Supreme Court:

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[4] G.R. No. 195876, December 5, 2016.
[5] G.R. No. 116149, November 23, 1995.

> "[W]e relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.*: first, **the same must have been duly identified by testimony duly recorded** and, second, **the same must have been incorporated in the records of the case**." *(Boldfacing supplied)*

Interestingly, petitioner failed to meet the requirements in order for the above-mentioned exception to apply. As admitted by petitioner's counsel, Atty. Lara Nicole Gonzales, **none of the documents included in the BIR Records were identified by petitioner's witness**, *viz.*:

Justice San Pedro:	I was centering on the evidence, the documents, you presented several pages from the BIR records, correct?
Atty. Gonzales:	Yes Your Honor.
Justice San Pedro:	You know that your witness Madera?
Atty. Gonzales:	Yes Your Honor.
Justice San Pedro:	She testified on May 24, October 9, November 22, 2006 and January 24, 2006, right?
Atty. Gonzales:	I'm not particular on the dates Your Honor.
Justice San Pedro:	**Which of the documents you presented were identified by Madera?** Because I know per my review of the record, that she identified 14 pieces of evidence or documentary evidence.
Atty. Gonzales:	Let me check my records Your Honor.
Justice San Pedro:	Okay let[s] start with your Stock Exchange document that was not included among the 14. My next question if you look at it, were any of those documents you presented attached to the documents identified by Madera? For instance, she identifies as Exhibit "1" and "2" the Memorandum to the Commissioner

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	and to the Deputy Commissioner. **It could be, that some of the documents you presented were attached but not identified because she only identified 14 pieces of documents and I'm curious if any of those you presented were identified or included among these 14?**
Atty. Gonzales:	Let me check Your Honors my documents.
Justice San Pedro:	Because of time, maybe I can lead you through the 14 pieces of documents.
Atty. Gonzales:	Thank you, Your Honor.
Justice San Pedro:	**The Exhibit "1" and "2" were the Memorandum for the Comm[i]ssioner dated 21 November and the Memorandum for the Deputy Commissioner dated November 15**. The other exhibits were the in receipts, several in receipts and the others were out receipts aside from that it was the Letter of Instruction to SEC as Exhibit "8" and that was it. **Two memoranda for the commissioner and the deputy commissioner, several in receipts, a number of out receipts, a Letter of Instruction and of course the two JA, her JA and her supplemental JA. So, none of these appear to have identified by the witness?**
Atty. Gonzales:	Your Honors I believe that the Letter of Instructions were referred to the sales pointing out to how the sales were made to Jerry Ocier. However, **the documents that I have shown in the screen are part of the BIR Records**.
Justice San Pedro:	**But part of the BIR Records not all of them which have been identified by the witness?**
Atty. Gonzales:	**Yes Your Honors.**

Justice San Pedro:	**So that's my question again which of these documents appeared on the BIR Records were identified by Madera?**
Atty. Gonzales:	**<u>None Your Honors</u>.**
Justice San Pedro:	None identified perse but could it be that they form part for example of the memorandum or the letter of instruction?
Atty. Gonzales:	Yes Your Honor maybe it is included as attachments.
Justice San Pedro:	In particular I would like to ask you mentioned the FLD which you said the computation there attached could be used as the basis for the computation.
Atty. Gonzales:	Yes Your Honor.
Justice San Pedro:	That FLD was also not identified by the witness but my question is was that FLD attached to the Memorandum either to the Commissioner or the Deputy Commissioner? If you cannot anwer, that is okay. We will refer to the record, I just wanted if you could admit them.
Atty. Gonzales:	At this point Your Honors, I cannot answer.[6] *(Boldfacing and underscoring supplied)*

In the aforequoted Transcript of Stenographic Notes (TSN), Memorandum for the Commissioner dated November 21, 2000[7] and Memorandum for the Deputy Commissioner dated November 15, 2001[8] were the subject of clarificatory questions by Associate Justice Maria Rowena Modesto-San Pedro, specifically to establish whether the same could be used as basis in determining the amount of net capital gains due on the transaction and the corresponding CGT liability of respondent.

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[6] Transcript of Stenographic Notes (TSN) taken on July 10, 2023, pp.
[7] Marked as Exhibit "1" but not formally offered in evidence; Division Docket, pp. 215-216.
[8] Marked as Exhibit "2" but not formally offered in evidence; Division Docket, pp. 217-220.

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To my mind, both memoranda are devoid of probative value as elucidated hereunder.

The Supreme Court noted that the basis of the computation of the net capital gains was laid down in the **Memorandum for the Commissioner dated November 21, 2000**,[9] which, as also noted by the Supreme Court, was **not formally offered in evidence**. Hence, while the Supreme Court ruled that the fact of transfer of the 4.9 million BW shares was uncontroverted, there is difficulty in the computation of the net capital gains, causing it to remand the case to the CTA for the proper determination of the amount of net capital gains and the corresponding CGT liability of respondent.

In complying with the Supreme Court's directive, this Court cannot, however, disregard the rules laid down by the Supreme Court itself anent which evidence or records may be considered by the Court.

As the November 21, 2000 Memorandum has no evidentiary value for petitioner's failure to formally offer the same, this Court must carefully examine the records to verify if there are other relevant and competent evidence which would establish the selling price and the cost of the 4.9 million BW shares.

The **Memorandum for the Deputy Commissioner dated November 15, 2001**[10] stated the following annexes and their purposes:

1. **Annex A-1 to 2 or Computation of Deficiency Capital Gains Tax** – showed the selling price, cost of shares sold and the realized gain per transaction taxable at five and ten percent capital gains tax.
2. **Annex A-3 to 4 or Schedule of Over-the-Counter transactions** – presented the transfers made by Jimmy Juan to Dante Tan constituting transfers with change in beneficial ownership or sale transaction reflecting the following data.
   a) Date of over-the-counter transaction.
   b) Out and In Receipt numbers accomplished by the transferring and receiving brokers.
   c) Name of the corresponding buyer.
   d) Volume of BW shares transferred out by the seller (debited to his account) and confirmed by the receipt of the buyer (credited to his account).
   e) Selling price, cost of shares sold and taxable gain derived from the transactions.

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[9] Marked as Exhibit "1" but not formally offered in evidence; Division Docket, pp. 215-216.
[10] Marked as Exhibit "2" but not formally offered in evidence; Division Docket, pp. 217-220.

3. **Annex B or Computation of Deficiency Documentary Stamp Tax** – Showed the taxable transaction containing the same facts enumerated above, except for the buyer, selling price and cost. These are vouched from the certified-true copies of documents submitted by the brokers including the Letter of Instruction of Jerry Ocier as well as entries reflected in the Statement of Account or Client's Ledger.
4. **Annex C or Details of Discrepancies cited the legal bases or applicable provisions of the Tax Code**, to wit:
   a) Section 24(C) which imposes capital gains tax from sale of shares of stock not traded in the stock exchange. –
   "The provisions of Section 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%

   b) 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 certificates of stock. –
   "On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or 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 part value of such due-bill, certificate of obligation or stock x x x."
   c) Section 248(B) which imposes surcharge –
   "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 x x x."
   d) Section 249(B) which imposes 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."
   e) Under Revenue Regulations 2-82 determination of tax base and cost shall be—

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> 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. x x x."
> Sec. 6(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."

The November 15, 2001 Memorandum made reference to certain annexes that purportedly present the selling price and the cost of the transferred shares. Sorely, **the November 15, 2001 Memorandum and its Annexes were not offered and admitted in evidence. Hence, the Court cannot give probative value to the same for being incompetent evidence.** Moreover, said November 15, 2001 Memorandum and Annexes were not identified by petitioner's witness. Thus, even the exception laid down in *Oñate, supra* would not apply.

It bears pointing out that the November 15, 2001 Memorandum is an **internal document** of the Bureau of Internal Revenue (BIR). In the ordinary course of events, respondent cannot reasonably be expected to be furnished with a copy of such internal document. Truth to tell, there is nothing on record which shows that respondent received a copy of it. **Absent evidence showing that respondent received the Memorandum and its Annexes (that supposedly contain information on the selling price and the cost of the transferred shares), respondent cannot be considered to have *admitted* the selling price and cost** which were allegedly the basis of Assessment Notice dated September 10, 2001. Put differently, respondent cannot be said to have admitted the selling price and cost as these details had not come within his knowledge. Incidentally, even Assessment Notice dated September 10, 2011 (assessing respondent for deficiency CGT) which was offered by respondent as Exhibit "F" was **denied admission** by the CTA in Division for respondent's failure to properly identify the same during trial.[11]

Respondent's admission of the occurrence of the transfer of the 4.9 million BW shares, coupled with the subsequent declaration by the Supreme Court of its taxability, does not, in itself, constitute an assessment as contemplated by law. **This is merely a confirmation of the substantive taxability of the transaction. The determination of the taxability of an event is nothing more than a preliminary step preceding the formal conduct of an assessment.** A transaction or event may be declared taxable but without an assessment – or the

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[11] CTA Division Docket, pp. 187-188.

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determination of amounts due from a person obligated to make payments[12] – the amount of liability due and demandable from the taxpayer cannot be fixed.

Better put, taxes accrue upon the occurrence of taxable events; however, such accrual merely establishes the existence of a tax liability as what the Supreme Court confirmed in G.R. No. 192023. Assessment, on the other hand, is the process of determining the actual amount of that liability.

In this case, with respect to procedural due process, the only issue is whether the selling price and the cost can be determined from the admitted evidence and available records. Again, this determination is part of respondent's right to procedural due process. Without such determination, there is no assessment to speak of. Consequently, without an assessment, a deficiency tax liability cannot be demanded or collected from respondent.

An exhaustive examination of the records of this case reveals that there is no relevant and competent evidence that may be considered in determining the selling price and the cost of the transferred shares. Even if the Court considers Assessment Notice dated September 10, 2001[13] (which as aforestated was not also admitted in evidence), there is no indication therein anent the basis of the amounts indicated therein.

The formula for the net capital gains and the corresponding CGT liability is as follows:

Amount Realized (Selling Price)	XX
Less: Basis or Adjusted Basis (Cost of shares)	XX
Net Capital Gains	**XX**
X CGT rates	
5% on any amount not over P100,000	XX
Add: 10% on any amount in excess of P100,000	XX
Capital Gains Tax	**XX**

[12] *SMI-Ed Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[13] CTA Division, Docket, p. 161

As shown above, to determine the net capital gains, it is indispensable to establish both the selling price (or the amount realized) and the cost (or the basis or adjusted basis). Without such information, the net capital gains cannot be computed. Consequently, without the computed net capital gains, the amount of capital gains tax liability cannot be fixed.

I cannot over emphasize the importance of determining both the selling price and the cost. Unlike the CGT imposed on the sale of real properties classified as capital assets – where the tax base is the presumed gain, hence the CGT is based on selling price or fair market value, whichever is higher, without considering the cost of the asset – the tax base for CGT on the sale of shares not traded in the stock exchange is the actual gain. It is worth emphasizing that the selling price and the cost may be of the same amount, resulting in no gain, and consequently, no CGT liability. This explains why respondent was unwavering on the importance of the fact that he did not receive any consideration for the transfer of the 4.9 million BW shares as the same would be the basis upon which the cost of the shares would be deducted for purposes of determining the net capital gain on which the 5%/10% tax rate would be imposed.

One final note. While the Supreme Court upheld the amount indicated in the Assessment Notice for the deficiency DST, it did not uphold the amount indicated in the Assessment Notice for the deficiency CGT. At first glance, this may seem inconsistent – finding no deficiency CGT despite the Supreme Court's declaration that the same transaction is subject to deficiency DST and its ruling to uphold the DST liability indicated in the Assessment Notice.

I submit, however, that respondent may be assessed a certain amount of deficiency DST without being assessed for any deficiency CGT.

A review of the formulas for calculating deficiency CGT and deficiency DST reveals a key difference in their respective tax bases. The deficiency DST is computed based on the total par value of the shares transferred, whereas the deficiency CGT is calculated on the net capital gains, which represent the difference between the selling price and the cost. While the Court may work backward to determine the total par value of the shares transferred using the amount of deficiency DST upheld by the Supreme Court, such par value is irrelevant to the computation of net capital gains. Thus, it does not factor into the assessment of a deficiency CGT.

The Supreme Court mandated this Court to determine the proper amount of respondent's net capital gains and CGT liability. I have carefully perused and examined the entire records of this case, and **there is only one conclusion – respondent's CGT liability could not be determined based on respondent's admission or on relevant and competent evidence on record.**

ALL TOLD, I ***VOTE*** to declare that the capital gains tax due on respondent Jerry Ocier's transfer of 4.9 million BW Resources Corporation to Dante Tan is not determinable on the basis of the records of the case.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

JERRY OCIER,
Respondent.

CTA EB No. 491
(CTA Case No. 6831)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 31 2025 4:25 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect to my esteemed colleague, Associate Justice Lanee S. Cui-David, I am constrained to dissent from the *ponencia* insofar as it merely affirms the capital gains tax (**CGT**) computation of petitioner Commissioner of Internal Revenue (**petitioner/CIR**) without validating the accuracy of the tax base (*i.e.*, the net capital gains or the difference between the selling price and the cost of the transferred shares).

The *ponencia* relies on the presumption of correctness of tax assessments, reasoning that respondent Jerry Ocier (**respondent/Ocier**) did not contest the factual and legal basis of the assessment. Specifically, respondent admitted to transferring the 4.9 million *publicly listed* shares of Best World Resources Corporation (**BW Resources**) to a certain Dante Tan (**Tan**) through over-the-counter transactions; did not dispute the basic deficiency CGT of **₱9,324,432.00**, as indicated in Assessment Notice (**AN**) No. BW-99-CGT-0040-01 dated 10 September 2001; and remained silent regarding the cost and selling price of the transferred shares (understandably so, as his sole contention was that the transfer was not a sale but merely a loan of shares to Tan, and therefore, involved no consideration).

However, I concur with Presiding Justice Roman G. Del Rosario's observation that respondent's admission is limited to the fact of transferring 4.9 million shares of BW Resources. This admission—along with respondent's silence on the cost and selling price of the transferred shares, which is logically expected given his claim that the transfer was not made for consideration—cannot be interpreted as an acknowledgment of the accuracy of petitioner's net capital gains computation and the resulting CGT liability.

I wish to emphasize that in *Commissioner of Internal Revenue v. Jerry Ocier*[1] (**Ocier**), the Supreme Court remanded the case to the Court of Tax Appeals (**CTA**) for the *sole purpose* of determining the amount of respondent's **net capital gains** and his corresponding **CGT liability**. It is no longer in dispute that respondent transferred 4.9 million shares of BW Resources to Tan, a transaction that triggered CGT liability under Section 24(C)[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. This clearly meant that the Supreme Court found respondent liable for CGT arising from the said share transfer. What is left for the CTA to do is to compute the exact amount of CGT for which respondent is liable.

Since the Supreme Court expressly directed the CTA to conduct a proper determination of the "net capital gains" arising from the subject transaction and the corresponding CGT liability, I am likewise of the view that respondent could not have admitted to the correctness of the assessed deficiency CGT. Had such an admission existed, the Supreme Court would have accounted for it in its ruling and simply ordered respondent to pay the deficiency CGT, as stated in AN No. BW-99-CGT-0040-01 dated 10 September 2001, rather than remanding the case to the CTA.

As can be inferred from the ruling in *Ocier*, the Supreme Court remanded the case to the CTA, recognizing its expertise in tax matters and the apparent reasonableness of petitioner's basis and/or method for

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[1] G.R. No. 192023, 21 November 2018.

[2] SEC. 24. *Income Tax Rates.* —

...

(C) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* — The provisions of Section 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 ₱100,000	5%
On any amount in excess of ₱100,000	10%

computing respondent's CGT liability. Specifically, petitioner computed the "net capital gains" from the subject transaction in accordance with the guidelines set in Revenue Regulations (**RR**) No. 02-82[3] dated 29 March 1982, as outlined in the Memorandum for the Commissioner dated 21 November 2000[4] and the Memorandum for the Deputy Commissioner dated 15 November 2001.[5] Notably, neither memorandum was formally offered in evidence, as respondent failed to do so despite multiple opportunities granted by the Court.

Nonetheless, while the Supreme Court acknowledged that the aforementioned memoranda were not formally submitted as evidence, it emphasized that any 'difficulty' in computing net capital gains—which serves as the basis for respondent's CGT liability—does not, in itself, constitute sufficient grounds to exempt respondent from this tax obligation, *viz*:

> ...
>
> We must note, however, that the CIR determined the respondent's CGT liability by computing the net capital gains on the transaction in accordance with the guidelines set in Revenue Regulations No. 2-82 dated March 29, 1982. Although the basis of the computation of the net capital gains was explained in the Memorandum of the CIR dated November 21, 2000, which the CIR failed to formally offer as evidence, such fact should not disturb the CTA *En Banc*'s conclusion that the transfer of the shares remained uncontroverted. **<u>Any difficulty in the computation of the net capital gains upon which the respondent's CGT liability was imposed did not, therefore, constitute sufficient basis to exempt him from his tax liability.</u> Accordingly, we need to remand the case to the CTA for the proper determination of the amount of net capital gains and his corresponding CGT liability.**[6]
>
> ...

The Supreme Court's final declaration that respondent is not exempt from, and should be held liable for, CGT serves as the CTA's cue to employ an alternative, reasonable method to determine respondent's CGT liability in this case, despite respondent's failure to formally offer evidence. The perceived difficulty in arriving at a reasonable estimate of this tax liability cannot be used as a basis to declare respondent exempt or to conclude that no such liability exists. The CTA thus bears the challenging task of determining respondent's CGT liability based on relevant and competent evidence on record, as well as other appropriate references for estimating the "net capital gains" from the subject transaction.

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3 Taxation of Sales of Shares of Stock Classified as Capital Assets.
4 Marked as Exhibit "1", Division Docket, pp. 215-216.
5 Marked as Exhibit "2", id., pp. 217-220.
6 Supra at note 1; Citations omitted, emphasis and underscoring supplied.

It is therefore unreasonable for this Court, sitting *En Banc*, to sidestep the necessity of first establishing the proper amount of net capital gains—determined by deducting the cost from the selling price—and instead summarily declare the basic deficiency CGT reflected in AN No. BW-99-CGT-0040-01 dated 10 September 2001 as "the correct amount of basic deficiency CGT" based solely on respondent's supposed admission and the presumption of correctness of the tax assessment. Doing so would disregard the Supreme Court's unequivocal directive in *Ocier*.

Contrary to the *ponencia*, I submit that this Court is not precluded from considering the BIR Records in determining respondent's CGT liability, even if petitioner did not formally offer them as evidence, since these documents constitute public records. Given the Supreme Court's final and executory ruling that the transfer of shares in question is subject to CGT, the only remaining task for the CTA is to compute the "net capital gains" and the corresponding CGT liability. In making this determination, the CTA inherently possesses the authority to examine and refer to publicly available information—such as those found in the BIR Records—to assess and validate the CIR's computation of respondent's CGT liability.

Pertinently, Sections 5(g) and 6, Rule 135 of the Rules of Court (**ROC**), as amended, provide that the Court has a wide latitude in employing means to carry its jurisdiction into effect, to wit:

> ...
> Sec. 5. *Inherent power of courts.* — Every court shall have the power:
> ...
>
> (g) **To amend and control its process and orders so as to make them conformable to law and justice**;
>
> ...
>
> Sec. 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, **all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court** or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, **<u>any suitable process or mode of proceeding</u> may be adopted which appears conformable to the spirit of said law or rules**.[7]
>
> ...

In fact, pursuant to the aforesaid inherent power, the Court *En Banc* deferred proceedings in this case to give respondent an opportunity to

[7] Italics in the original text, emphasis and underscoring supplied.

participate in the determination of the tax liability based on the authenticity and accuracy of the documents on record. The Court *En Banc* even allowed the conduct of a clarificatory hearing and/or oral argument to assess whether the deficiency CGT could be properly determined based on the best available evidence. It likewise directed the parties to submit their respective memoranda before the case would be deemed submitted for decision. This exercise of discretion finds support in the Court's recognized authority to adopt procedures that promote a full and fair adjudication of issues, especially when due process rights are at stake.

Bearing in mind the Court's inherent power to suspend its own rules in the pursuit of the ends of justice[8], the lack of formal offer should not preclude this Court from considering the BIR Records in determining respondent's CGT liability. Aside from Associate Justice Maria Rowena Modesto-San Pedro's observation that the requisites for admitting evidence not formally offered have been satisfied, it must be stressed that proceedings before the CTA are not strictly governed by the technical rules of evidence.[9] The paramount consideration remains the ascertainment of the truth, as held in *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*[10], *viz*:

> ...
>
> True, strict procedural rules generally frown upon the submission of the Return after the trial. **The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence."** <u>**The paramount consideration remains the ascertainment of truth.**</u> Verily, the quest for orderly presentation of issues is not absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
>
> ...
>
> **It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court.** To repeat, the undisputed facts is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax

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[8] See *Republic of the Philippines v. The Honorable Aniano A. Desierto as Ombudsman, et al.*, G.R. No. 136506, 16 January 2023, citing *Arnold Ginete, et al. v. Hon. Court of Appeals, et al.*, G.R. No. 127596, 24 September 1998.

[9] See Section 8, Republic Act (**RA**) No. 1125 or An Act Creating the Court of Tax Appeals (**CTA**), as amended by RA 9282:

> SEC. 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. **It shall have the power to promulgate rules and regulations** for the conduct of the business of the Court, and as may be needful **for the uniformity of decisions within its jurisdiction as conferred by law, but <u>such proceedings shall not be governed strictly by technical rules of evidence</u>**. (Emphasis and underscoring supplied)

[10] G.R. No. 122480, 12 April 2000; Citations omitted, emphasis and underscoring supplied.

> credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner.
>
> ...

Clearly, liberal application of technical rules of evidence is generally allowed in proceedings before the CTA. As such, there is ample basis for this Court to examine and refer to documents contained in the BIR Records of this case to arrive at the proper tax base for respondent's CGT liability.

Even without delving into the BIR Records, it is worth noting that in petitioner's Memorandum dated 04 September 2023[11], the total selling price for the transfer of 4.9 million shares of BW Resources to Tan was computed at **₱115,150,000.00**, as follows:

Date	Details	No. of Shares	Selling Price (₱)	Total
03 September 1999	Out # 60154	1,000,000	23.50	₱91,650,000.00
03 September 1999	Out # 60155	3,900,000	23.50	23,500,000.00
Total		**4,900,000**		**₱115,150,000.00**

The selling price *per* share of ₱23.50 represents the highest market price of a BW Resources share on 03 September 1999—the date of the share transfer—at the Philippine Stock Exchange (**PSE**). This is publicly available information that can be verified through the PSE's Daily Quotation Report for that trading day.[12]

Pursuant to Section 6(a)(2) of RR No. 02-82[13], in the case of shares not traded through the stock exchange, but listed in one or more stock exchange, the highest closing price on the day when the shares are sold, transferred or exchanged, shall be the "fair market value" (**FMV**). When no sale is made in any stock exchange, the highest closing price on the day nearest to the day of sale, transfer or exchange of the shares shall be the FMV.

Considering that the BW Resources shares are listed in the PSE, the FMV of the BW Resources shares, for purposes of determining the selling or transfer price of BW Resources shares, shall be the highest closing price of the BW Resources shares in the stock exchange on the day of the share transfer or on 03 September 1999. There being no precise definition of the term "highest closing price" in RR No. 02-82, it may be construed as the highest

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[11] *Rollo*, Volume II, pp. 659-683, with annexes.
[12] See Annex "**A**".
[13] Supra at note 3.

price recorded on the date of sale or transfer determined upon the close of the trading day.

Accordingly, the "high" stock price of ₱23.50 (compared to the "close" stock price of ₱23.00) reflected in the PSE's Daily Quotation Report represents the peak intraday value that buyers were willing to pay for BW Resources shares during the trading session on 03 September 1999. The selling price *per* share of ₱23.50 may therefore be reasonably used as the basis for estimating the FMV of the subject BW Resources shares transferred by respondent to Tan.

On the other hand, petitioner's Memorandum dated 04 September 2023[14] likewise shows that the total cost of the 4.9 million BW Resources shares transferred to Tan was computed at **₱23,892,880.00**, using the first-in first-out (**FIFO**) method, as follows:

Date	No. of Shares	Selling Price (₱)	Total
10 August 1998	80,000	0.80	₱64,000.00
11 August 1998	10,000	0.77	7,700.00
12 August 1998	50,000	0.77	38,500.00
07 September 1998	100,000	0.79	79,000.00
05 November 1998	60,000	1.62	97,200.00
30 March 1999	550,000	2.75	1,512,500.00
19 April 1999	200,000	2.85	570,000.00
27 February 1999	400,000	3.10	1,240,000.00
28 April 1999	100,000	3.10	310,000.00
04 May 1999	500,000	4.45	2,225,000.00
06 May 1999	300,000	4.25	1,275,000.00
10 May 1999	200,000	4.28	856,000.00
11 May 1999	59,000	4.35	256,650.00
13 May 1999	91,000	4.63	421,330.00
14 May 1999	200,000	4.70	940,000.00
14 May 1999	100,000	4.75	475,000.00
20 May 1999	200,000	6.10	1,220,000.00
21 May 1999	200,000	6.50	1,300,000.00
03 June 1999	200,000	14.13	2,826,000.00
13 August 1999	100,000	28.00	2,800,000.00
03 June 1999	200,000	14.25	2,850,000.00
18 December 1999	100,000	2.60	260,000.00
21 December 1999	100,000	2.49	249,000.00
22 December 1999	100,000	2.54	254,000.00
23 December 1999	200,000	2.48	496,000.00

14 Supra at note 11.

Date	No. of Shares	Selling Price (₱)	Total
21 January 1999	100,000	2.20	220,000.00
15 March 1999	200,000	2.60	520,000.00
16 March 1999	200,000	2.65	530,000.00
Total	**4,900,000**		**₱23,892,880.00**

Petitioner also stated that the cost of shares, as determined using the FIFO method, can be traced through the certified true copies of the broker's ledger[15] contained in the BIR Records. The sequence of historical transactions related to respondent's acquisition of BW Resources shares subsequently transferred to Tan can likewise be verified from the computation sheets[16] found in the BIR Records.

Accordingly, the "net capital gains" arising from the subject transaction, along with the corresponding basic deficiency CGT, are computed as follows:

Estimated Selling Price (FMV) of the Transferred Shares	₱115,150,000.00
Less: Cost of Shares	23,892,880.00
Net Capital Gains	**₱91,257,120.00**
CGT Rates:	
5% on any amount not over ₱100,000.00	₱5,000.00
Add: 10% on any amount in excess of ₱100,000.00	9,115,712.00
Basic Deficiency CGT	**₱9,120,712.00**

Evidently, the basic deficiency CGT computed above—**₱9,120,712.00**— is lower by ₱203,720.00 compared to the amount stated in AN No. BW-99-CGT-0040-01 dated 10 September 2001, which is ₱9,324,432.00. This discrepancy belies the *ponencia*, which merely affirmed petitioner's computation of the basic deficiency CGT—an amount apparently derived from a different and higher tax base.

Using the recomputed basic deficiency CGT, respondent should instead be ordered to pay the amount of **₱98,269,963.87**, representing the deficiency CGT for the taxable year (**TY**) 1999, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)[17], 249(B) and (C)[18] of the NIRC of 1997, respectively, as

[15] BIR Records, pp. 9-10a, 15-17, 32-33, and 49-50 (lifted from petitioner's Memorandum dated 04 September 2023, supra at note 11, p. 674).

[16] Id., pp. 23-27 (lifted from petitioner's Memorandum dated 04 September 2023, supra at note 11, p. 674).

[17] **SEC. 248**. *Civil Penalties*.

[18] **SEC. 249**. *Interest*.

...

(B) *Deficiency Interest*. ...

(C) *Delinquency Interest*. ...

amended by Republic Act (**RA**) No. 10963, also known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**), computed until 31 December 2017, as follows:

Basic Deficiency CGT	₱9,120,712.00
Surcharge (25%)	2,280,178.00
Deficiency Interest (03 October 1999 to 06 December 2003)	
[₱9,120,712.00 x 20% x 1,525/365 days]	7,621,416.88
Total Amount Due as of 06 December 2003	**₱19,022,306.88**
Deficiency Interest (07 December 2003 to 31 December 2017)	
[₱9,120,712.00 x 20% x 5,139/365 days]	25,682,925.46
Delinquency Interest (07 December 2003 to 31 December 2017)	
[₱9,120,712.00 x 20% x 5,139/365 days]	53,564,731.53
Total Amount Due as of 31 December 2017	**₱98,269,963.87**

In addition, respondent should instead be ordered to pay petitioner delinquency interest at the rate of twelve percent (12%) *per* annum on the ₱19,022,306.88 total amount due as of 06 December 2003, as determined above, or an amount of **₱6,253.91** *per* day, from 01 January 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law, as implemented by RR No. 21-2018.[19]

All told, I vote to order respondent to pay the deficiency CGT, inclusive of surcharge and interest, based on the recomputed tax base or net capital gains as determined from the data gathered from the BIR Records.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

19 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as Amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)."

Annex "A"

PHILIPPINE STOCK EXCHANGE, INC

Daily Quotations Report

Friday, September 3, 1999

NAME	SYMBOL	BID	ASK	OPEN	HIGH	LOW	CLOSE	VOLUME	VALUE	NET FOREIGN TRADE (Peso) BUYING (SELLING)
F&J PRINCE HLDGS. "B"	FJPB	1.54	-	-	-	-	-	-	-	-
1ST PHIL HOLDINGS CORP A	FPH	38.50	39.00	37.00	38.5	37	38.5	35,800	1,368,800	-
1ST PHIL HOLDINGS CORP B	FPHB	38.50	39.00	37.00	39	37	39	87,600	3,379,550	(1,251,350)
GLOBAL EQUITIES, INC.	GEI	.3900	.4500	.4500	.45	.45	.45	20,000	9,000	-
GUOCO HOLDINGS (PHILS.)	GUO	.8100	.8200	.8100	.81	.81	.81	30,000	24,300	-
HOUSE OF INVESTMENTS INC.	HI	1.20	1.48	1.06	1.06	1.06	1.06	30,000	31,800	-
J.G. SUMMIT HOLDINGS, INC	JGS	3.45	3.50	3.40	3.45	3.4	3.45	203,000	698,150	660,450
KEPPEL PHIL. HOLDINGS	KPH	.7100	.8100	-	-	-	-	-	-	-
KEPPEL PHIL. HOLDINGS "B"	KPHB	.7200	.7900	-	-	-	-	-	-	-
MACROASIA CORPORATION	MAC	6.10	6.20	6.40	6.4	6.2	6.2	882,000	5,541,400	310,000
MARSTEEL CONS. INC. "A"	MC	.0260	.0300	-	-	-	-	-	-	-
MARSTEEL CONS., INC. "B"	MCB	.0260	.0300	-	-	-	-	-	-	-
MEDCO HOLDINGS	MED	.6000	.7500	.6200	.62	.6	.6	1,220,000	732,400	600,000
MEGAWORLD CORPORATION	MEG	1.34	1.36	1.36	1.38	1.32	1.34	31,815,000	42,769,060	(1,157,320)
MABUHAY HOLDINGS CORP.	MHC	.4000	.5500	-	-	-	-	-	-	-
MAGNUM HOLDINGS, INC	MHI	-	4.00	-	-	-	-	-	-	-
METRO PACIFIC CORP.	MPC	1.46	1.48	1.50	1.5	1.46	1.46	10,530,000	15,549,440	(10,363,720)
PETROFIELDS CORP.	PET	1.46	1.50	1.48	1.48	1.46	1.48	160,000	236,680	-
PETROFIELDS CORP. "B"	PETB	1.50	1.52	1.50	1.54	1.5	1.5	32,000	48,040	-
PHILCOMSAT HOLDINGS CORP.	PHC	2.00	2.50	-	-	-	-	-	-	-
EAST ASIA POWER RES. CORP	PWR	.7500	-	-	-	-	-	-	-	-
SOLID GROUP, INC.	SGI	1.02	1.06	1.04	1.06	1.02	1.04	1,600,000	1,658,000	212,000
SEAFRONT RESOURCES CORP.	SPM	1.06	1.16	1.06	1.06	1.06	1.06	17,000	18,020	-
UNIOIL RES. & HOLDINGS CO	UNI	.5800	.6000	.5800	.58	.58	.58	20,000	11,600	-
UNIWIDE HOLDINGS, INC.	UW	.4100	.4200	.4200	.42	.41	.41	5,590,000	2,314,500	-
WATERFRONT PHILS., INC.	WPI	2.06	2.10	2.16	2.18	2.02	2.1	42,685,000	90,195,720	-
ZEUS HOLDINGS, INC.	ZHI	.4200	.7400	-	-	-	-	-	-	-
**** MANUFACTURING, DISTRIBUTION & TRADING ****										
ALLIANCE GLOBAL, INC.	AGI	1.98	2.00	1.50	1.5	1.5	1.5	35,000	52,500	-
A BROWN COMPANY, INC.	BRN	.4000	.4500	-	-	-	-	-	-	-
EURO-MED LAB. PHIL., INC.	EURO	5.60	6.00	-	-	-	-	-	-	-
ATLAS FERTILIZER CORP "A"	FER	.6200	.8000	-	-	-	-	-	-	-
ATLAS FERTILIZER CORP "B"	FERB	.6200	.8000	-	-	-	-	-	-	-
INTERPHIL LABS INC. "A"	ILI	-	1.00	-	-	-	-	-	-	-
INTERPHIL LABS INC. "B"	ILIB	1.00	1.68	-	-	-	-	-	-	-
IONICS CIRCUITS, INC.	ION	14.25	14.50	14.00	14.25	14	14.25	113,500	1,606,250	(252,000)
JARDINE DAVIES, INC.	JDI	22.00	-	-	-	-	-	-	-	-
MARSMAN & CO., INC. "A"	MAR	.3800	.5000	.3800	.38	.38	.38	30,000	11,400	-
MARSMAN & CO., INC. "B"	MARB	.3800	.5700	-	-	-	-	-	-	-
MATSUSHITA ELEC PHIL CORP	MEP	4.30	5.50	-	-	-	-	-	-	-
MUSIC CORPORATION	MUSX	6.30	6.40	6.00	6.4	6	6.3	6,204,000	38,975,300	45,200
MABUHAY VINYL CORP.	MVC	.3900	.4800	.4000	.4	.4	.4	140,000	56,000	-
PICOP RESOURCES, INC.	PCP	.3300	.3400	.3400	.34	.34	.34	1,650,000	561,000	(459,000)
PRYCE CORPORATION	PPC	1.52	1.66	1.60	1.6	1.6	1.6	40,000	64,000	-
PHILTREAD TIRE & RUBBER A	PTR	2.40	5.30	-	-	-	-	-	-	-
PHILTREAD TIRE & RUBBER B	PTRB	5.60	12.50	-	-	-	-	-	-	-
REYNOLDS PHILIPPINE CORP.	RPC	1.02	1.04	1.02	1.04	1	1.04	14,404,000	14,691,120	-
PHILIPPINE SEVEN CORP.	SEVN	1.80	-	-	-	-	-	-	-	-
CENTRAL AZUCAR DON PEDRO	SGR	1.22	-	1.26	1.26	1.26	1.26	50,000	63,000	-
SPI TECHNOLOGIES, INC.	SPI	10.75	11.00	10.75	11	10.75	11	150,500	1,646,125	(340,125)
STENIEL MANUFACTURING	STN	.7000	.9000	-	-	-	-	-	-	-
**** HOTEL, RECREATION & OTHER SERVICE ****										
BELLE CORPORATION	BEL	3.45	3.50	3.60	3.65	3.45	3.45	69,805,000	244,158,400	(21,581,850)
BW RESOURCE CORPORATION	BW	22.75	23.00	22.50	23.5	22	23	43,341,900	992,808,425	32,925,000
MANILA JOCKEY CLUB	MJC	10.00	15.75	-	-	-	-	-	-	-
MONDRAGON INTL PHILS, INC	MON	.8100	.8200	.9000	1.02	.76	.81	49,952,000	44,665,340	(1,584,670)
PREMIERE ENT. PROD., INC.	PEP	.8400	.8500	.8500	.85	.83	.84	1,520,000	1,279,100	-
PHILIPPINE RACING CLUB	PRC	4.20	4.40	4.40	4.4	4.4	4.4	13,000	57,200	-

Mary 9/3

Of Cy 9-03-99

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

JERRY OCIER,
Respondent.

CTA EB NO. 491
(CTA Case No. 6831)

Present:
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 3 1 2025 4:25 p.m.

x -- x

DISSENTING AND CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

While I concur with the dispositive portion of the Decision penned by Justice David, I respectfully dissent from the portion finding that "[t]he Court is precluded from considering the BIR Records in determining respondent's CGT liability".

In so ruling, the Decision cited *Commissioner of Internal Revenue v. Jerry Ocier*,[1] which rejected petitioner's contention that its evidence could still be considered even if not formally offered as evidence.

In the 2023 case of *Zamora v. Magsalay-Zamora*,[2] however, and indeed, in a plethora of cases before this, the Supreme Court laid down the basis for allowing the admission of evidence not formally offered, to wit:

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1 G.R. No. 192023, November 21, 2018.
2 G.R. No. 253993, October 23, 2023.

> The general rule under Rule 132, Section 34 of the Rules of Court is that a court can only consider evidence that had been formally offered. But this Court has previously "relaxed the application of [that provision] by allowing the admission of evidence not formally offered." Two requirements, however, must be met for the exception to apply: (1) the evidence "must have been duly identified by testimony duly recorded"; and (2) it "must have been incorporated in the records of the case."
> (Citations omitted)

Here, these two requirements appear to have been met.

First, respondent's witness, Josephine Madera, testified on May 24, 2006, October 9, 2006, November 22, 2006 and January 24, 2007. During her testimony on those dates, she identified 14 pieces of documentary evidence which were in the BIR records. These documents are as follows:

(1) Exhibit 9 — Judicial Affidavit, dated October 5, 2006;
(2) Exhibit 1 — Memorandum for the Commissioner, dated November 21, 2000;
(3) Exhibit 2 — Memorandum for the Deputy Commissioner, dated November 15, 2000;
(4) Exhibit 3 — In Receipt No. 0081489;
(5) Exhibit 4 — IR No. 0080994;
(6) Exhibit 5 — Security Movement Report;
(7) Exhibit 6 — IR No. 04317;
(8) Exhibit 7 — Out Receipt No. 4149;
(9) Exhibit 8 — Letter of Instruction to Citisecurities;
(10) Exhibit 10 — Judicial Affidavit, dated October 25, 2006 and Supplemental Judicial Affidavit;
(11) Exhibit 11 — Out Receipt No. 60154 (Annex A);
(12) Exhibit 12 — OR No. 60155 (Annex B);
(13) Exhibit 13 — OR No. 60156 (Annex C); and
(14) Exhibit 14 — IR No. 19471 (Annex D).

Her testimony and her identification of these pieces of documentary evidence are duly recorded and can be gleaned from the corresponding transcript of stenographic notes.

Second, these pieces of documentary evidence are incorporated in the records of the case by virtue of the mandatory transmittal to the Court, and are found, as indicated above.

With the clear demonstration that the two requirements for allowing the admission of evidence not formally offered have been met, the Court could very well proceed to consider such pieces of documentary evidence appearing in the BIR records to determine respondent's CGT liability.

From the transcript of stenographic notes of the hearing before the Court En Banc, petitioner's counsel ably presented how the BIR records can assist in the computation of respondent's CGT liability, as follows:

Atty. Gonzales: . . . .

> If I may refer you on Page 6 of the BIR records, the basis for the selling price per share of stock is as certified by the Philippine Stock Exchange. This is a copy of Page 6 of the BIR records, highlighted in September 3, 1999 is the selling price used which is 23.5 this is for the sale of the 4.9Million shares of stocks. Also found on Pages 10, 16, 17, 29 and 30 of the BIR records are the basis for the cost of shares using FIFO method as certified from the ledger of Jerry Ocier's broker. Also shown on the screen are the said pages from the BIR Records.
>
> As can be seen in the first picture, from the buying of the Jerry Ocier in August 1998 and thru the buying of other shares of stocks in 1999 this can be shown also in the computation sheet made by the BIR attached to the FLD. So, Your Honors, it can be clearly seen in the BIR Records that there is enough basis for the computation of the capital gains tax the selling price and also the cost used for the computation is also clearly seen therein.[3]

In the Dissenting Opinion of PJ Del Rosario, quoting portions of the undersigned's questioning of petitioner's counsel, it is emphasized that apparently none of the documents appearing on the BIR records were identified by Madera. But the same line of questioning did point out that these could be part of the documents identified by said witness, as attachments. As extant from the TSN quoted, the Court can refer to the records absent the admission from the counsel in said score. While PJ Del Rosario considered such documents as being incompetent evidence for not being offered, the discussion, above, reflects my dissent on this score.

Premises considered, I concur with the Decision insofar as it orders respondent to pay deficiency CGT inclusive of surcharges and interest.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[3] Transcript of Stenographic Notes, July 10, 2023, p. 13.