REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEA TOLLWAY CORPORATION, Petitioner,	CTA Case No. 8364
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 13 2015

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DECISION

Fabon-Victorino, J.:

Through the instant Petition for Review[1], petitioner PEA Tollway Corporation (PEATC) is asking the Court to cancel and withdraw the assessment issued against it by respondent Commissioner of Internal Revenue (CIR) for deficiency income tax of ₱380,179,711.64, inclusive of surcharge, interest and compromise penalties for the taxable year 2007.

Petitioner is a domestic corporation borne out of a Joint Venture Agreement (JVA)[2] for the construction and development of the Manila-Cavite Toll Expressway (MCTE) Project, and was formed pursuant to a Toll Operation Agreement[3] between and among the Republic of the Philippines, acting through the Toll Regulatory Board (TRB), the Public Estates Authority (PEA) [now the Philippine Reclamation Authority (PRA)], and the UEM-MARA Philippines Corporation (UMPC) [now Cavitex Infrastructure Corporation (CIC)].

[1] Docket, pp. 6-22.
[2]Exhibit "D", docket, pp. 1378-1411.
[3] Exhibit "E", docket, pp. 1412-1483.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On May 31, 1990, the PEA was granted by the Philippine Government, through the TRB, a Toll Operation Certificate (TOC) authorizing it to operate the MCTE, which consisted of the R1 Expressway, the C-5 Link Expressway and the R-1 Expressway Extension Project (collectively called as the "MCTE Project").

On December 27, 1994, PEA entered into a JVA[4] with two (2) Malaysian entities, Majlis Amanah Rakyat (MARA) and Renong Berhad (Renong), for the development of the MCTE Project. Under the JVA, the parties agreed, among others, to carry out the design and construction works, the performance of the operation and maintenance services and the provision of ancillary facilities of the MCTE Project.

Additionally, PEA and MARA agreed that Renong may assign its rights and transfer its liabilities and obligations under the JVA to the United Engineers Malaysia (UEM) Berhad, a public company incorporated in Malaysia and a member of the Renong Berhad Group of Companies. Pursuant thereto, the interested parties executed a novation agreement on August 17, 1995[5], confirming the assignment and transfer to UEM of Renong's rights, liabilities and obligations under the JVA.

To expand the scope of, and adjust the toll collection period under the TOC and to include terms and conditions which are necessary to ensure the financial viability of the Project, a Toll Operation Agreement (TOA)[6] was executed on July 26, 1996 between and among TRB, PEA and its Malaysian partner (UEM and MARA) through UMPC. UEM and MARA incorporated UMPC to represent them under the

[4]Exhibit "D", docket, pp. 1378-1411.
[5]Exhibit "D", Appendix 6, docket, pp. 1410-1411.
[6]Exhibit "E", docket, pp. 1412-1483.

TOA[7], but they continue to be liable jointly and severally under the agreement.

Under the TOA, UMPC has the primary and exclusive privilege, responsibility and obligation to design, construct and finance the MCTE Project, while PEA, referred to as the Grantee in the JVA, has the primary and exclusive privilege, responsibility and obligation to operate and maintain the MCTE Project, including the collection of toll fees.[8]

The TOA also obligated PEA to incorporate a wholly-owned subsidiary company, the powers and functions of which shall only be to undertake and perform PEA's obligations under the JVA and the TOA. Further, under the TOA, PEA cannot collect toll fees until such time that a subsidiary is incorporated for this purpose.[9] Thus, petitioner was incorporated on October 7, 1997, whose primary purpose is to manage, operate, monitor, maintain, construct and repair the MCTE project including the construction of the feeder roads, interchanges and other facilities at any point of the MCTE Toll Roads and to collect fees therefrom.

Toll collections from the MCTE Project are undertaken by petitioner and directly deposited to a bank account held for the benefit of the project joint venture partners, PEA and UMPC. While the expenses needed for the operation and maintenance of the project shall be based on the Operation and Maintenance Manual and Procedures agreed upon by the Grantee and the Grantor.[10]

On November 14, 2006, UMPC, PEA and TRB executed an Operations and Maintenance Agreement (OMA)[11] where it was agreed that UMPC shall take charge of the operation and maintenance (O & M) functions of the MCTE Project. Under the OMA, UMPC shall shoulder all the O&M costs and expenses from its share of the toll collections based on gross toll collections. From November 2006-2009, the shares of PEA and UMPC at the ratio of 8.5% and 91.5% (now 9% and 91% effective 2009) of the gross toll collections,

[7]Exhibit "E", Recitals, letter J, docket, p. 1423.
[8]Exhibit "E", Section 2.02(1), docket, p. 1432.
[9]Exhibit "E", Sections 15.03(1) and (2), docket, pp. 1478-1479.
[10]Exhibit "E", Section 7.02, docket, p. 1449.
[11]Exhibit "F", docket, pp. 1484-1492.

respectively, are immediately transferred to the individual bank accounts of both companies. Thereafter, all the O&M costs and expenses are deducted solely from UMPC's share.[12]

On December 17, 2009, respondent issued Letter of Authority (LOA) No. 2009 00007402 for the examination of petitioner's books of accounts and accounting records for all internal revenue taxes for the period covering January 1, 2007 to December 31, 2007.[13]

On September 2, 2010, petitioner received a Preliminary Assessment Notice (PAN)[14] from respondent, for deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), and withholding tax on VAT (WTV), for 2007, including surcharges, interest and penalties.[15]

On September 15, 2010, petitioner filed a letter-reply[16] requesting for the cancellation and withdrawal of the assessments for deficiency IT and VAT, for lack of legal and/or factual bases. On the other hand, it settled the deficiency WTC, EWT and WTV.

On October 14, 2010, petitioner received a Formal Letter of Demand (FLD)[17]and Assessment Notice from respondent, reiterating the assessment for deficiency IT for 2007.[18] Respondent insists that petitioner, despite being incorporated for the primary purpose of undertaking and performing PEA's obligations under the JVA and the TOA, is not just a collecting agent of the joint venture partners but a corporation subject to income tax as contemplated in Section 22(B) of the NIRC of 1997.

[12]Exhibit "F", Section 5, docket, p. 1488.
[13]Exhibit "G", docket, p. 1494.
[14]Exhibit "H", docket, pp. 1498-1504.
[15] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 338-339.
[16]Exhibit "I", docket, pp. 1505-1509.
[17]Exhibit "B", docket, pp. 1362-1366.
[18]Par. 3, Stipulation of Facts, JSFI, docket, p. 339.

Petitioner protested the FLD/FAN in a letter[19] dated October 20, 2010 requesting that the assessment be cancelled and withdrawn.

On October 4, 2011, petitioner received the Final Decision on Disputed Assessment (FDDA)[20] denying with finality its protest and request for the cancellation and withdrawal of the assessment for deficiency IT for 2007, in the total amount of ₱380,179,711.64, inclusive of surcharge, compromise penalty and interest computed up to October 31, 2011[21]. The amount of ₱380,179,711.64 is broken down as follows:

Taxable Income per Return	-
Add: Adjustments	
Net Taxable Income as computed	₱ 491,654,452.43
Adjusted taxable income	491,654,452.43
Tax Rate	35%
Income Tax Due Thereon	172,079,058.35
Less: Tax Payments/Credits	-
Deficiency Income Tax	172,079,058.35
Add: Increments	
50% Surcharge	86,039,529.18
Interest (4/15/08 to 10/31/11)	122,011,124.11
Compromise penalty	50,000.00
Total	208,100,653.29
TOTAL DEFICIENCY INCOME TAX	**₱380,179,711.64**

Hence, this *Petition for Review* filed on November 2, 2011.

In her belatedly filed *Answer*[22], respondent counters that petitioner is liable to pay deficiency IT as it is not just a collecting agent but a corporation subject to IT under Section 22(B) of the NIRC of 1997, as amended. Any agreement or arrangement entered into by the stockholders or the owner of the corporation or the management, in this case PEA or the grantee of the TOA, would not alter or change the character/nature of the corporation. Being a corporation organized and existing under Philippine laws, petitioner is subject to IT as provided under Section 27 of

[19]Exhibit "J", docket, pp. 1512-1517.
[20]Exhibit "A", docket, pp. 1359-1361.
[21]Par. 4, Stipulation of Facts, JSFI, docket, p. 339.
[22] Docket, pp. 240-254.

the NIRC of 1997, as amended, as it is not one of the exempt corporations enumerated in Section 30 of the Tax Code, and its income earned from toll operations is not one of the exclusions from gross income as provided in Section 32(B) of the same Code. Respondent invokes the principle that tax assessments are entitled to the presumption of correctness and made in good faith and that taxpayer has the duty to prove otherwise.

After the *Pre-trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[23] on the basis of which a *Pre-Trial Order*[24] was issued on July 9, 2012.

On January 11, 2013, petitioner filed an *Omnibus Motion to Include Additional Issues in the Pre-Trial Order*[25] which the Court partially granted per Resolution[26] dated March 26, 2013.

To substantiate its contentions, petitioner presented its Finance/Admin-Purchasing Manager Jolan V. Wedingco; the Comptroller of UMPC now CIC Andrew E. Dimaano; and the Manager of the General Accounting Division and Officer-in-Charge of the Accounting Services Department of PEA now PRA Delfin C. Torrecampo Jr.

By way of a Judicial Affidavit[27], **Jolan V. Wedingco** testified that the assessment for deficiency IT for taxable year 2007 has no basis since under the JVA and the OMA, petitioner only acts as a toll collector of the JVA partners and the daily toll fees collected by it are deposited to individual bank accounts of PEA and UMPC the following day at the ratio of 8.5% and 91.5% (now 9% for PEA and 91% for UMPC effective 2009) of the gross toll collections. He further testified that the toll revenues are owned by the JVA partners and petitioner has no share in it. In 2007, petitioner derived an income of ₱203,476.44, representing interest income from the capitalization of petitioner invested in five (5)-year Retail Treasury Bonds of the government.

[23] Docket, pp. 338-343.
[24] Docket, pp. 352-359.
[25] Docket, pp. 451-455.
[26] Docket, pp. 572-575.
[27] Exhibit5 "S[15]", Judicial Affidavit of Jolan V. Wedingco, docket, pp. 578-585.

Witness **Andrew E. Dimaano** corroborated the foregoing testimony in his Judicial Affidavit[28] and clarified that petitioner's obligation to collect for the Joint Venture partners PEA and UMPC and to deposit the collections on a daily basis to the respective bank accounts are pursuant to Section 7.01 of the TOA and Section 6 of the OMA. Further, respondent has no basis to assess petitioner of deficiency IT since UMPC already recognized the Toll Collection Revenue in its 2007 Audited Financial Statements and Income Tax Return. If petitioner is made to pay the deficiency IT for the year 2007 it would be paying IT for revenues it did not receive and not belonging to it.

Witness **Delfin C. Torrecampo Jr.,** also executed a Judicial Affidavit[29] in which he emphasized that petitioner is a government-owned and-controlled corporation born out of a JVA for the construction of the MCTE Project and was formed pursuant to a TOA between and among the Republic of the Philippines, acting through the TRB, the PEA and the UMPC. He reiterated that the toll collections from the MCTE Project is undertaken by petitioner and directly deposited to a bank account held for the benefit of the joint venture partners, PEA and UMPC pursuant to Section 7.01 of the TOA and Section 6(a) of the OMA. Hence, petitioner does not earn income from its toll revenue collections as all collections are remitted to PEA and UMPC. In the year 2007, petitioner remitted its toll revenue collections to PEA, which treated the same as other business income and paid the corresponding income tax to the BIR. Thus, double taxation will occur if petitioner is made to pay IT for the year 2007, since PEA already paid IT on the toll revenues collected by petitioner.

After petitioner rested its case, respondent presented her lone witness Revenue Officer **Samuel C. Reyes**.

By way of a Judicial Affidavit,[30] Samuel C. Reyes testified that by virtue of LOA No.200900007402 dated December 17, 2009, he and other members of the team audited petitioner based on the documents it provided. Per

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[28]Exhibit "T15", Judicial Affidavit of Andrew E. Dimaano, docket, pp. 1104-1114.
[29]Exhibit "U15", Judicial Affidavit of Delfin C. Torrecampo Jr, docket, pp. 1039-1052.
[30]Exhibit "16", Judicial Affidavit of Samuel C. Reyes, docket, pp. 2407-2413.

their audit/investigation of its internal revenue taxes for taxable year 2007, petitioner has deficiency taxes. Thus a Letter of Informal Conference was issued requesting petitioner to present during the meeting its defense on their findings. Thereafter, a PAN was issued. Petitioner paid the WTC, EWT and WTV but protested the assessment on IT and VAT for which reason they recommended the issuance of FLD/FAN through a Memorandum dated September 28, 2010. On October 14, 2010, petitioner received the FLD to which it protested resulting in the issuance of a FDDA finding it liable for deficiency IT for taxable year 2007. Petitioner received the FDDA on October 4, 2011.

Respondent rested[31] and the case was submitted for decision on July 15, 2014.

THE ISSUES

The parties presented the following issues[32] for the determination of the Court, to wit:

> "(1) Whether or not PEATC is liable for deficiency income tax for taxable year 2007 in the aggregate amount of ₱380,179,711.64, including interest and penalty since:
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> a. By express provision of law, income derived by a JVA from construction projects pursuant to a JVA under a service contract with the Philippine Government is exempt from payment of Income Tax.
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> b. PEATC is but a mere conduit vehicle on the collection and eventual receipt of Toll Revenues by the JVA Partners."

Per Resolution[33] dated March 26, 2013, the following issues were added, thus:

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[31] Docket, pp. 2425-2426.
[32] Issues, JSFI, docket, p. 342.
[33] Docket, pp. 572-575.

> "a. Whether or not PEATC, which is a mere conduit vehicle on the collection and eventual receipt of Toll Revenues by the JVA Partners, is subject to tax or liable for deficiency income tax for 2007 in the aggregate of PhP380,179,711.64, including interest and penalty;
>
> b. Whether or not the entire amount PEATC collected in behalf of UEM-MARA Philippines Corporation (UMPC) and Philippine Reclamation Authority (PRA) and deposited to their respective bank accounts on a daily basis for the years covered by the O&M Agreement, specifically for 2006, could be treated as taxable income on PEATC's part?
>
> c. Whether or not PEATC earned any income pursuant to the Operations and Maintenance (O&M) Agreement. xxxIf so, how much income did PEATC derive in 2007?xxx"

THE COURT'S RULING

The issues raised by the parties may be narrowed down to whether or not petitioner is liable for deficiency income tax for taxable year 2007 in the aggregate amount of ₱380,179,711.64, inclusive of interest and penalties.

Petitioner's Argument:

Petitioner contends that the deficiency income tax assessment issued against it for taxable year 2007 has no factual and legal bases and must accordingly be cancelled and withdrawn. Having been created by virtue of a JVA, it takes the personality of a joint venture or consortium formed for the purpose of undertaking construction projects pursuant to an operating or consortium agreement which is not subject to the regular corporate income tax.

Furthermore, it is not subject to income tax based on toll collections because it does not receive the money for its own account, but merely holds the toll revenues in trust for PEA and UMPC. It has no tax personality separate and distinct from the joint venture partners composing it.

Respondent's Argument:

Respondent, on the other hand, maintains that petitioner is liable to pay deficiency IT in the amount of ₱380,179,711.64. She claims that under Section 22(B), in relation to Section 27 of the NIRC of 1997, as amended, only the joint venture or consortium formed for the purpose of undertaking construction projects pursuant to an operating or consortium agreement under a service contract with the government is not subject to corporate income tax. If one of the co-venturers incorporates a subsidiary corporation pursuant to the joint venture agreement, the said corporation shall be liable for payment of IT pursuant to Section 27 of the NIRC of 1997, as amended. According to respondent, petitioner is misguided in extending unto itself the non-inclusion provision in Section 27 of a joint venture or consortium.

Further, petitioner is not one of the exceptions provided under Section 30 of the NIRC of 1997, as amended, and the income earned from toll operations is also not one of the exclusions from gross income as provided in Section 32(B) of the NIRC of 1997, as amended.

Finally, the allegation of petitioner that it is only a mere conduit for the collection and receipt of toll revenues by the JVA partners is not supported by the primary purpose for which petitioner was incorporated.

The petition has merit.

Indeed, petitioner is not a joint venture or consortium formed for the purpose of undertaking construction projects pursuant to an operating or consortium agreement under a service contract with the government that is not subject to corporate income tax. However, the assessment for deficiency IT issued against petitioner should be cancelled and withdrawn as petitioner had no income tax due tax for taxable year 2007. We explain:

Petitioner is not a joint venture or consortium formed for the purpose of undertaking construction projects.

Petitioner is a subsidiary company of the PEA/PRA, incorporated pursuant to Section 15.03(1) and (2) of the TOA[34], which is hereby quoted for easy reference:

> "**SECTION 15. MISCELLANEOUS PROVISIONS**
>
> xxx xxx xxx
>
> 15.03 Grantee's Subsidiary Company.
>
> (1) **The Grantee shall, subject to all relevant existing laws, rules and regulations, incorporate a subsidiary company, of which the Grantee shall be the sole stockholder and the powers and functions of which shall only be to undertake and perform the obligations of the Grantee under this Agreement,** at least sixty (60) days before the first Operation Date. The Grantor and UEM-MARA hereby agree that the Grantee may assign its rights, and transfer its liabilities and obligations under this Agreement to the Grantee's subsidiary company provided that the Grantee shall continue to be liable to the Grantor and UEM-MARA for the due performance by the Grantee's subsidiary company of such obligations as aforesaid and the Parties hereto shall enter into such agreement in such form as may be

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[34] Exhibit "E", docket, pp. 1478-1479.

> mutually agreed to effect the provisions of this Section.
>
> (2) **In the event the Grantee fails to incorporate a subsidiary company pursuant to Section 15.03(1) due to reasons attributable to the Grantee's willful default or negligence, the Grantee shall not be entitled to collect Toll until such subsidiary company is incorporated and the provisions of Section 15.03(1) have been fulfilled.**"*(Emphasis supplied)*

Based on the foregoing, the PEA/PRA, as co-venturer in the JVA[35] responsible for the operations and management of the MCTE Project, is obligated to incorporate petitioner for the purpose of collecting toll fees from the said project.

However, this does not make petitioner a joint venture nor does it give it the personality of a joint venture or consortium formed for the purpose of undertaking construction projects pursuant to an operating or consortium agreement that is not subject to the regular corporate income tax.

In the case of *JG Summit Holdings, Inc. vs. Court of Appeals, et al.,*[36] the Supreme Court defined a joint venture as "an association of persons or companies jointly undertaking some commercial enterprise with all of them generally contributing assets and sharing risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement to share both in profit and losses."

In the case of *Philex Mining Corporation vs. Commissioner of Internal Revenue*[37], the Supreme Court explained the concept of joint ventures in the following fashion:

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[35] Exhibit "D", docket, pp. 1378-1411.
[36] G.R. No. 124293, November 20, 2000.
[37] G.R. No. 148187, April 16, 2008.

> "The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. ... It is in fact hardly distinguishable from the partnership, since their elements are similar- community of interest in the business, sharing of profits and losses, and a mutual right of control. ... The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. ... This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. ... It would seem therefore that under Philippine law, a joint venture is a form of partnership and should be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others."

Clearly, while petitioner was created pursuant to the JVA, it is not a joint venture but a corporation with a distinct and separate personality from PEA/PRA, its parent corporation. Thus, it is subject to corporate income tax under Section 27 of the NIRC of 1997, as amended, to wit:

> "SEC. 27.*Rates of Income tax on Domestic Corporations.-*
>
> (A) *In General.* - Except as otherwise provided in this Code, **an income tax** of thirty-five percent (35%) **is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the**

> **Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines**: *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)." *(Emphasis supplied)*

Petitioner has no income tax due for taxable year 2007.

While petitioner undertakes the toll collection from the MCTE Project, it could not consider these toll collections as its revenue. Petitioner merely collects the toll revenues belonging to the PEA/PRA and UMPC/CIC.

Section 7.01 of the TOA[38] explicitly provides that these toll collections are property of both the PEA/PRA and UMPC/CIC, to wit:

> "SECTION 7. COLLECTION OF TOLL
>
> 7.01 Toll Road Revenue. The Grantor (the Philippine Government through the TRB) recognizes Toll Road Revenue is the property of both the Grantee (PRA) and UEM-MARA (UMPC), and shall be owned by and be shared between them in accordance with the revenue sharing arrangement set forth in Clause 3.2 of the Joint Venture Agreement."

Thus, in collecting the toll revenues, petitioner merely holds the collected revenues in trust for PEA/PRA and UMPC/CIC. It remits the same to the joint venture parties pursuant to Section 7.02 of the TOA,[39] which provides that these toll collections by petitioner shall be deposited directly to a bank account held for the benefit of the project joint

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[38] Exhibit "E", docket, p. 1449.
[39] Exhibit "E", docket, p. 1449.

venture partners based on their sharing agreement under Clause 3.2 of the JVA.

On the other hand, the expenses incurred for the operation and maintenance of the project shall be deducted from the share of UMPC/CIC in the toll collections, as per OMA[40] executed by the JV partners on November 14, 2006.

In unison, petitioner's Finance/Admin-Purchasing Manager Jolan Wedingco[41], the Controller of UMPC/CIC Andrew Dimaano[42] and the Officer-in-Charge of the Accounting Services Department of PEA/PRA DelfinTorrecampo, Jr.[43] declared that the daily toll fees collected by petitioner were deposited to the individual bank accounts of the JVA Partners - PEA/PRA and UMPC/CIC - the following day in the ratio of 8.5% and 91.5% per the OMA. They concluded that the income derived or earned by the JVA partners from the daily toll collections for taxable year 2007 cannot be considered as taxable income of petitioner.

Witnesses Dimaano and Torrecampo added that the toll collection remittances made by petitioner to PEA/PRA and UMPC/CIC were recorded as revenues by the joint venture partners in their respective books and were declared as income in their respective ITRs, to wit:

> "**Mr. Dimaano's Judicial Affidavit:**
>
> 14. Q: You said that PEATC remits its toll revenue collections to PRA and CIC. How does CIC treat the said toll revenue remittances of PEATC, if you know?
>
>   A: CIC treats it as income from toll revenue collections by PEATC.
>
> xxx xxx xxx
>
> 25. Q: Can you please point out where in UMPC's Income Tax Return it is

[40]Exhibit "F", docket, pp. 1484-1492.
[41]Exhibit "S[15]", docket, pp. 581-582.
[42]Exhibit "T[15]", docket, pp. pp. 1106-1107.
[43]Exhibit "U[15]", docket, pp. 1044-1045.

provided that it recorded PEATC's toll revenue collections for the year 2007 as income?

A: Under Part II, No. 15 of ITR (Sales Revenues/Receipt)."[44]

"**Mr. Torrecampo's Judicial Affidavit:**

22. Q: I noticed that you recorded PEATC's remittances for year 2007 as PRA's "Other business income", what does this mean, if you know?

A: It was classified under Other Business Income in the Chart of Accounts of PRA. PRA treated this as income and has paid the necessary income tax to BIR.

xxx xxx xxx

27. Q: Can you please point out where in PRA's Corporate Income Tax Return it is provided that PRA recorded PEATC's toll revenue collections for the year 2007 as its income?

A: Part II, item 15 of PRA's Income Tax Return for CY 2007."[45]

Significantly, the Audited Financial Statement (AFS) of petitioner for the year 2007 confirms that it did not recognize any income arising from toll collections.

The AFS of UMPC for the year 2007[46], on the other hand, shows that it earned revenues amounting to ₱538,531,414.00, which comprised of the toll fees collected and remitted to it by petitioner. The same amount was declared as Sales/Revenues/Receipts/Fees in UMPC's Annual Income Tax Return (ITR) for the year 2007.[47]

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[44]Exhibit "T^{15}", docket, pp. 1109 and 1111.
[45]Exhibit "U^{15}", docket, pp. 1048.
[46]Exhibit "O^{15}-2", docket, p. 2276.
[47]Exhibit "N^{15}", line 15A, docket, p. 2268.

In the same light, witness Torrecampo stated that the remittances of toll fees by petitioner to PEA/PRA were recorded in its books as part of its Other Business Income amounting to ₱44,666,424.00, specifically classified as Income from Joint Venture, which accordingly formed part of the ₱1,441,959,994.00 Operating Income reflected in its AFS for the year 2007[48]. The same amount of ₱1,441,959,994.00 was traced to the Sales/Revenues/Receipts/Fees in its Annual ITR for the year 2007.[49]

The foregoing indicates that the total toll collections received by UMPC/CIC and PEA/PRA from petitioner amounted to ₱583,197,838.00[50](net of VAT), which is greater than the amount of ₱525,483,484.82 taxable receipts (net of VAT) assessed by respondent. Evidently, the toll collections do not belong to petitioner, neither did it redound to its benefit as a taxpayer.

As correctly cited by petitioner, in the case of *Commissioner of Internal Revenue vs. Tours Specialists, Inc. and the Court of Tax Appeals*[51], the Supreme Court ruled that "gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit; and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code".

The primary purpose for which petitioner was created cannot prevail over the nature of the transactions undertaken by petitioner *viz-a-viz* the collection of toll fees.

Evidence likewise shows that the toll fee collections were remitted by petitioner to the JVA partners, which declared them as revenues in their respective Annual ITRs for the year 2007, hence, were already subjected to income tax pursuant to their respective tax regimes. To allow

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[48]Exhibit "Q[15]-1" under Other business income, docket, pp. 2321 and 2324.
[49]Exhibit "P[15]", line 15C, docket, p. 2315.
[50]The sum of ₱538,531,414.00 and ₱44,666,424.00.
[51]G.R. No. L-66416, March 21, 1990.

respondent to collect IT from the same toll fees from petitioner would result in direct double taxation which is prohibited in this jurisdiction.

Since the assessment has no more revenue to consider, respondent's computation of the alleged deficiency income tax would already sum up to a net loss amounting to ₱33,829,032.39, as computed below:

Gross Revenue		₱ -
Less: Output tax component		-
Gross Receipts - net of VAT		₱-
Less: Costs & Expenses		
Salaries and Wages	Alphalist	28,826,818.39
Depreciation	FS	4,881,954.00
Repairs and Maintenance	FS	830,974.00
Financial Expenses	FS	144,657.00
Taxes, Insurance Premiums & Other Fees	FS	109,705.00
Other Maintenance and Operating Expenses	FS	88,240.00
Supplies and Materials	FS	36,523.00
Communication	FS	3,085.00
Total		₱ 34,921,956.39
Add: Prior Year's Adjustment	Note 14	1,092,924.00
Net Loss		**₱33,829,032.39**

Without any income which could possibly be subject to minimum corporate income tax, petitioner has no IT due for taxable year 2007.

WHEREFORE, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency income tax assessment issued by respondent Commissioner of Internal Revenue against petitioner PEA Tollway Corporation for taxable year 2007 is hereby **CANCELLED** and **WITHDRAWN,** for lack of legal and factual bases.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice