REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

BELLE CORPORATION,
Respondent.

CTA EB No. 147
(CTA Case No. 6156)

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BELLE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 155
(CTA Case No. 6156)

Members:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ*:

Promulgated:

OCT 13 2006 [signature]

x - x

DECISION

CASANOVA, J:

This is a case where both parties filed their respective Petitions for Review.

Commissioner of Internal Revenue (CIR) filed a Petition for Review of the Decision (*assailed Decision*) dated June 17, 2005 of the Court of Tax Appeals' Original Division in CTA Case No. 6156, entitled "Belle Corporation vs.

Commissioner of Internal Revenue," canceling the assessment issued to Belle Corporation (BELLE) for DST for the taxable year 1997; and of the Resolution (*assailed Resolution*) dated December 2, 2005 denying CIR's Motion for Partial Reconsideration of the said decision. The said petition is docketed as *En Banc* Case No. 147, entitled "Commissioner of Internal Revenue vs. Belle Corporation."

On the other hand, BELLE filed a Petition for Review of the assailed Resolution in accordance with Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The said petition is docketed as *En Banc* Case No. 155, entitled "Belle Corporation vs. Commissioner of Internal Revenue."

The facts of the case, as culled from the records, are as follows:

"Petitioner BELLE CORPORATION is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It may be served with summons and other court processes through the undersigned counsel.

Respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code of 1997 to examine any taxpayer and to assess the correct amount of internal revenue tax. He may be served with summons and other court processes at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

On 28 July 1998, Respondent served Letter of Authority No. 165641 on Petitioner authorizing the examination of its books of accounts and other accounting records for "all internal revenue taxes" for "1997 & unverified prior years."

In the course of the examination, documents requested by Respondent were submitted by Petitioner and formed part of BIR records.

On 22 November 1999, Respondent issued two (2) assessment notices with an accompanying demand letter and an explanation of the deficiency tax assessments which Petitioner received on 24 December 1999. The assessment notices indicate a deficiency in income and documentary stamp taxes in the aggregate amount of P170,265,449.61, inclusive of increments, as follows:

Particulars	Basic Tax	Surcharges	Interest	Total
Deficiency income tax	95,760,227.27		30,638,900.00	126,399,127.27
Deficiency documentary tax	35,093,057.87	8,773,264.47		43,866,322.34
Total	130,853,285.14	8,773,264.47	30,638,900.00	170,265,449.61

In a letter dated 24 January 2000, which was received by the Respondent on even date, Petitioner, through counsel protested the Assessment by requesting for reconsideration thereof.

In a letter dated 24 March 2000, which was received by Respondent on even date, Petitioner manifested that its protest dated 24 January 2000 and those documents submitted to the BIR examiners which formed part of the BIR records constituted all relevant documents of the Protest in compliance with Section 228 of the Tax Code.

To date, no decision has been made by Respondent on the Protest, notwithstanding one hundred eighty (180) days has passed since the filing of the Protest on 24 January 2000.

To be well within the 30-day period from the earlier 180-day period given to Respondent to decide the Protest, the Petition for Review was filed for the purpose of having the Assessment cancelled and/or withdrawn.

The assessment by the BIR for deficiency income tax was made on the basis of Section 43 (now Section 50) of the Tax Code, as amended."

(*Joint Stipulation of Facts*)

After trial on the merits, the Second Division promulgated the assailed Decision, the dispositive portion of which is hereunder quoted, to wit:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby partially **GRANTED**. Accordingly, petitioner is

> **ORDERED** to PAY the respondent Commissioner of Internal Revenue the amount of **P2,534,100.56** representing petitioner's deficiency income tax for the taxable year 1997, plus 20% delinquency interest from January 23, 2000 until the amount is fully paid pursuant to *Section 249 (c) (3) of the 1994 Tax Code*.
>
> As regards the documentary stamp tax assessment of P 43,866,322.34 issued by respondent against the petitioner, the same is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

On July 8, 2005, CIR filed his Motion for Partial Reconsideration. BELLE, on the other hand, filed its Motion for Reconsideration on July 13, 2005. The Second Division, in a Resolution dated December 2, 2005, denied both motions. The dispositive portion of the assailed Resolution is hereby quoted, to wit:

> "**WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration" and petitioner Belle Corporation's "Motion for Reconsideration" are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In EB Case No. 147, petitioner-CIR raised the sole issue of:

> WHETHER OR NOT RESPONDENT'S GRANTING OF ADVANCES TO ITS AFFILIATES IS TANTAMOUNT TO GRANTING LOAN OR CREDIT WHICH IS SUBJECT TO DOCUMENTARY STAMP TAX (DST) UNDER SECTION 180 OF THE TAX CODE.

On the other hand, BELLE raised the following assignment of errors in support of it Petition for Review in EB Case No. 155, to wit:

> A. THE HONORABLE SECOND DIVISION OF THE CTA ERRED IN APPLYING SECTION 43 OF THE NATIONAL INTERNAL REVENUE CODE OF 1977 ("SECTION 43 OF 1977 TAX CODE") AND CONCOMITTANTLY, REVENUE MEMORANDUM ORDER 63-99 ("RMO 63-99") TO INTERCOMPANY ADVANCES ("ADVANCES") MADE BY PETITIONER TO ITS SUBSIDIARIES AND AFFILIATES IN 1997.
>
> B. WHILE THE HONORABLE SECOND DIVISION WAS CORRECT IN FINDING THAT RMO 63-99 DOES NOT APPLY TO

> ADVANCES MADE AS CAPITAL CONTRIBUTIONS, IT ERRED IN FINDING THE TOTAL AMOUNT OF P1,663,002,793.32, FROM WHICH THE AMOUNT OF P106,321,219.19 WAS TAKEN AND WAS ASSESSED IMPUTED INTEREST INCOME, AS NOT ACTUALLY SUBSTANTIATED BY THE RECORDS OF THE PETITIONER TO BE CLASSIFIED AS CAPITAL CONTRIBUTIONS.

On March 20, 2006, the Court En Banc issued a Resolution giving due course to the Petition for Review filed by BELLE in EB Case No. 155. Accordingly, both parties were required to submit their respective Memoranda within a non-extendible period of thirty (30) days from receipt of the said Resolution. In compliance with the En Banc directive, BELLE filed its Memorandum on April 18, 2006. On the other hand, CIR filed his Memorandum on April 25, 2006. However, CIR inadvertently indicated in his Memorandum "CTA EB No. 147" instead of "CTA EB No. 155." Thus, on May 2, 2006, CIR filed a Manifestation with the Court En Banc praying that he be allowed to amend his Memorandum filed on April 25, 2006 under CTA EB No. 147 only insofar as changing the CTA En Banc No. from 147 to 155.

The Court *En Banc*, in a Resolution promulgated on May 29, 2006, noted the said Manifestation. The Memorandum filed by the CIR under CTA EB No. 147 was expunged from the records of this case and the Court ordered the CIR to submit his Amended Memorandum in CTA EB No. 155. In compliance with the said Resolution, the CIR filed his Amended Memorandum on June 7, 2006.

In the same Resolution, the Court *En Banc* consolidated EB No. 155 with EB No. 147, the case bearing the lower docket number, considering that both cases emanated from the same Decision promulgated by the CTA Second Division on June 17, 2005 in CTA Case No. 6156 entitled, "Belle Corporation vs. Commissioner of Internal Revenue."

After a careful and thorough perusal, evaluation and study of the instant Petitions for Review, the Court *En Banc* finds no cogent reason to disturb the

Decision of the CTA Second Division promulgated on June 17, 2005, and the Resolution dated December 2, 2005. What the instant Petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had been resolved and extensively discussed in the assailed Decision and Resolution.

In EB Case No. 147, Petitioner-CIR alleges that BELLE's granting of advances to its affiliates is tantamount to granting loan or credit which is subject to DST under Section 180 of the Tax Code. Furthermore, the CIR argues that the letters of instruction and cash vouchers, which are written documents to advance money from one company to another, are loan transactions by their very nature even though they do not strictly conform to the supposed documentation of a loan. The advances covered by inter-office memo made by BELLE to its affiliates should be treated as loans extended to the latter, and the inter-office memo is in the nature of a promissory note within the purview of Section 180 of the Tax Code. In support of these allegations, the CIR invoked BIR Ruling No. 108-99, which is quoted hereunder for easy reference, as follows:

> "After a careful restudy of the aforementioned ruling, this Office is of opinion as it hereby holds that inter-office memo covering the advances granted by a corporation affiliate company, i.e. or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to the documentary stamp tax imposed under Section 180 of the Tax Code of 1997."

We are not persuaded.

Pertinent to the resolution of this case is Section 180 of the 1997 Tax Code, as amended, which is hereunder quoted as follows:

> "Sec. 180. **Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute, Debt Instruments, Certificates of Deposit Bearing Interest and Others Not payable on Sight or Demand**. – On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or

> used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instrument certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of thirty centavos (P.30) on each two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note. xxx" (*Underlining supplied*)

Basically, the issue involved in this case is the proper interpretation of Section 180 of the 1997 Tax Code as to what documents vis-à-vis transactions are covered therein. Corollary thereto, Petitioner-CIR issued the above-quoted BIR Ruling No. 108-99 on July 15, 1999, which in effect, superseded BIR Ruling No. 116-98 earlier issued in 1998. Pertinent portion of the earlier BIR Ruling states:

> "On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings/borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are more or less categorized as 'securities', is not subject to documentary stamp tax imposed under Sections 180, 174, and 176 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates."

As correctly found out by the Court's Second Division, a careful examination of both BIR rulings would show that BIR Ruling 116-98 is more in accordance with the provision of the 1997 Tax Code.

It is well-settled in our jurisprudence that rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not judicially binding if found to be erroneous. In the case of *Misamis*

Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary, 238 SCRA 63, the Supreme Court held that "As a matter of power of a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some immediate degree of authoritative weight to the interpretative rule."

In the instant case, BIR Ruling 108-99 clearly went beyond the terms of the law it seeks to interpret. Thus, We are constrained to override the said ruling and exempt board resolutions and cash vouchers issued by BELLE from documentary stamp tax consistent with Section 180 of the 1997 Tax Code and with the well-settled rule that, in cases of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. (*Lincoln Philippine Life Insurance Company, Inc. vs. Court of Appeals, 293 SCRA 92*)

Documentary stamp tax is an excise tax upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto. As held by the Supreme Court in the case of Philippine Home Assurance Corporation, et. Al. vs. Court of Appeals, 301 SCRA 447, "documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationship through the execution of specific instruments." Since board resolutions and cash vouchers do not partake the nature, the elements and the form of any of the specific instruments mentioned in the law, they are not therefore subject to DST.

As defined, a promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or a fixed or determinable future time, a sum certain in money to such other person or to bearer, free from restrictions as to registration or transfer, and usually without coupons. It also refers to an instrument, whether negotiable or non-negotiable, whereby the maker agrees to pay a sum certain in money or its equivalent at a definite time.

From the foregoing, it is evident that the inter-company advances evidenced by inter-office memorandum, vouchers, or board resolutions are not in the nature of a promissory note. The definition is clear, and when the law speaks in clear and categorical language, there is no room for interpretation but only application. There is nothing in Section 180 that clearly and expressly declares inter-office memorandum covering inter-company advances made by BELLE to its affiliates making it subject to DST.

Under the above-quoted Section 180, the law seeks to impose DST on loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities or certificates of deposits drawing interest and others not payable on sight or demand. Inter-office memoranda, board resolutions and cash vouchers were not included in the list thus, they are not liable to DST.

In EB Case No. 155, BELLE contends that the Second Division of the CTA erred in applying Section 43 of the 1977 Tax Code and its implementing regulation, RMO 63-99, to the advances made to its affiliates. In addition, assuming that the aforesaid implementing regulation can be made to apply to the subject Advances, the Advances, in the amount of P1,663,002,793.32, from which the amount of P106,321,219.19 was taken and was assessed imputed interest income, was adequately substantiated as capital contributions and thus, should not be subject to tax.

We find BELLE's arguments not meritorious.

The assessment made by the CIR for deficiency income tax was made on the basis of Section 43 (now Section 50) of the NIRC, as amended, which reads as follows:

> "Sec. 43. Allocation of income and deductions. – In any case of two or more organizations, trades or businesses (whether or not

> incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among such organizations, trades or businesses if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trades or businesses."

In the instant case, the subject transaction from which deficiency income tax was assessed involves cash advances made by BELLE to its affiliates/subsidiaries. Examination of the records would show that BELLE, using its own credit line, borrows money from banks, and subsequently advances the same to its affiliates/subsidiaries without charging any interest. For the foregoing "dubious" transaction, CIR imputed BELLE an "imaginary" interest income for the advances extended by the latter to its subsidiaries. As a result thereof, BELLE was assessed deficiency income tax for the undeclared "imaginary" interest income, which the CIR previously imputed.

Section 43 empowers the CIR to rectify abnormalities and distortions in income brought about by common control through the adoption of standards considered fair, reasonable or at arm's length. Admittedly the purpose of the law is to place a controlled taxpayer on tax parity with an uncontrolled taxpayer by determining, according to the standard of an uncontrolled taxpayer, the true net income from the property and business of a controlled taxpayer. If this has not been done then the taxable net income are hereby understated, the statute grants the CIR authority to intervene by making distributions, apportionments or allocations of gross income among the controlled taxpayers to determine the true net income of each controlled taxpayer (*Section 179[b], Revenue Regulations No. 2*).

To implement the authority given to the Commissioner under Section 43 of the 1977 Tax Code, then Commissioner Beethoven L. Rualo issued *Revenue*

Memorandum Order No. 63-99 on July 19, 1999. The subject of said memorandum reads as follows:

> "Determination of Taxable Income on Inter-Company Loans or Advances applying *Section 50 [then Section 43] of the NIRC*, as amended"

and the objectives thereof are as follows:

> "1.1. To adopt the arm's length bargaining standard as the ultimate test for determining the correct gross income and deductions between two or more enterprises under common control
>
> 1.2. To provide means of redistributing or reapportioning income and expenses of taxpayers under common control after applying *Section 50 [then Section 43] of the NIRC*, as amended."

BELLE argues that RMO 63-99, which was issued on July 19, 1999, or after the subject advances were made, thus, said regulation cannot be applied retroactively. To reiterate, the right of the CIR to assess BELLE was made, pursuant to Section 50 of the National Internal Revenue Code (NIRC), which already existed even before the transaction took place. Revenue Memorandum Order 63-99 was not issued to create a new right nor take away rights that are already vested. An administrative ruling which is interpretative of a pre-existing statute and not declarative of certain rights with obligation thereunder should be given retroactive effect as of the date of the effectivity of the statute. (*Statutory Construction by Ruben E Agpalo, Fifth Edition 2003, citing Adamsom Ozanon Educational Institution, Inc. vs. Adamson University Faculty, 179 SCRA 285*)

As correctly found out by the Second Division, at first glance, it would seem that the inter-company advances of BELLE to its affiliates fall within the ambit of the foregoing order, which further reads as follows:

> "2. Coverage - This paper applies to all forms of bona fide indebtedness and includes:
>
> 2.1 Loans or advances of money or other consideration (whether or not evidenced by a written instrument);

xxx xxx xxx."

However, a careful perusal of said memorandum reveals certain exceptions to its coverage, to wit:

"xxx xxx xxx.

2.3 But does not apply to alleged indebtedness which was in fact a *contribution of capital* or a distribution by a corporation with respect to its shares." (Emphasis supplied)

We are not convinced that the manner of imposing "imaginary" income against petitioner is *completely* justifiable under the present situation. In the course of the trial, BELLE was able to prove, in part, by testimonial and documentary evidence that such advances were extended to its affiliates/subsidiaries to give the latter financial assistance for operational and capital expenditures. More telling and, in this case, decisive is the independent audit conducted by Constantino Guadalquiver Mendoza & Co. (hereafter "CGM & Co."), Certified Public Accountants, pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, confirming in part petitioner's allegation that the inter-company advances were indeed utilized for capital contribution.

CGM & Co. was engaged by this Court to verify and issue a report on: (a) the amount of the Company's advances to its Subsidiaries and Affiliates for the taxable year 1997; and (b) the completeness of supporting the actual disbursements of said advances and the subsequent receipt by the respective Subsidiaries and Affiliates or their third-party Suppliers/Service Providers. The findings (*Exhibit "PPP"; "QQQ-1 to 5"; "QQQ-2-1 to 11"; "QQQ-3-1 to 10"; "QQQ-4-1 to 10" and "QQQ-5-1 to 8."*) are summarized as follows:

"Used for acquisition of furniture, fixture and equipment	P	38,208,499.98
Used for project development costs		6,395,854,553.81
Used for working capital of Operating Subsidiaries		182,749,082.40
Used for pre-operating expenses of Subsidiaries		
Affiliates not yet in operations as of 12/31/97		188,606,332.32

Used for acquisition of shares of stocks	1,745,308,929.84
Adjustments	13,182,714,819.49
Others	1,661,929,875.05
	P 23,395,372,092.89"

On direct examination of the commissioned independent CPA, represented by Ms. Liani Marcia B. Constantino, she collaborated the purpose of said advances, to wit:

> "Atty. Maraon:
> Q: Based on your examination and analysis of the petitioner's documents relating to the advances which you have just described, where you able to ascertain the nature and the purpose of the advances?
>
> Ms. Constantino:
> A: Yes, we have ascertain the nature and the purpose of these advances by examining the supporting documents, we have note that these advances were used by the subsidiaries and affiliates for acquisition of furniture, fixtures, and equipment, used for project development cost of certain subsidiaries, used for working capital of subsidiaries and affiliates in operations and used for pre-operating expenses of subsidiaries and affiliates not yet in operation as of December 31, 1997, and also used for acquisition of shares of stocks." (*TSN, April 30, 2003, pages 21-22*)

We are convinced of the fact that *RMO 63-99*, pursuant to *Section 43 of the NIRC*, finds no application to advances, which are in fact contribution of capital. However, it is still incumbent upon BELLE to adduce evidence to prove the same. It is with this regard that CIR may take solace in the fact that BELLE failed to substantiate its entire claim for the exception.

In the same testimony of the commissioned independent CPA, it was further revealed that there were advances, which were not adequately disclosed as to its purpose or were not supported by documents, thus:

> "Atty. Maraon:
> Q: Were there any substantiation as to the nature or purpose of these advances, which you have just described to us?
>
> Ms. Constantino:

A: Yes. Based on the examination that we have performed on the supporting vouchers, disbursement vouchers and journal vouchers, as well as the supporting third party document, the amount that we have ascertained to be properly substantiated or wherein the nature and the purpose which are adequately disclosed in supporting vouchers and journal vouchers, the amount is only P 1,663,002,793.32.

Atty. Maraon:
Q: What do you mean, Ms. Witness, when you say that there are no details on nature and purpose?

Ms. Constantino:
A: It only means that the nature and purpose of these advances were not adequately disclosed in the supporting disbursement vouchers and journal vouchers, and there is no supporting third party document to document such nature and purpose." (*TSN, April 30, 2003, pages 25-27*)

The details (*Exhibit "NNN-5")* of the above unsubstantiated amount is broken down as follows:

DESCRIPTION	AMOUNT
APC Group	1,551,360,155.97
Capital Partners	82,261,726.98
Metro Manila Turf Club	11,123,884.44
Parallax Resources, Inc	5,649,625.00
Ruby Stone	3,295,510.22
Silver Chain	3,295,510.22
Belle Makati Property	3,279,553.87
Tagaytay Highlands Int'l Golf Club	1,832,524.20
Rancho Montana	750,000.00
THCAI-VILLAS	206,669.32
THCAI-Pinecrest	61,762.10
Belle Bay City	45,020.91
White Rock	23,117.90
Maginet Corp	13,384.82
Sinophil Corp	8,754.60
Tagaytay Midlands Golf Club, Inc.	1,266.00
Pacific Online Systems Corp	1,133.95
Palo Bandera Resorts	394.75
Manila Bay Park	131.85
Belle Bay Plaza Corp	(207,333.78)
	1,663,002,793.32

After considering the evidence, testimonial as well as documentary, the Court *En Banc* cannot allow BELLE to claim the entire advances as exempt from the coverage of RMO 63-99. Instead, We rule to reduce the same, by the aggregate amount of P **106,321,219.19**. This amount represents the unsubstantiated portion, which the CIR could validly impute interest income in applying *RMO 63-99*. Although the total unsubstantiated advances was P 1,663,002,793.32, We cannot declare the whole amount as being covered under RMO 63-99 since not all of the unsubstantiated advances were subjects of the assessment notice (*Exhibits "TTT" to "TTT-c" vis-a-vis BIR Records No. 1009 to 1016*), to wit:

SINOPHIL	8,754.60	BELLE MAKATI	3,279,505.87
MMTC	11,123,884.44	THCCAI VILLAS	206,669.32
PALO BANDERA	394.75	THCCAI PINECREST	98,840.10
CAPITAL PARTNERS	82,261,726.98	PARALLOX	6,706,000.00
MANILA BAY PARK	131.85	BELLE BAY PLAZA	66,632.22
THIGCI	1,772,524.20	RANCHO	750,000.00
PACIFIC ONLINE	1,133.95	BELLE BAY CITY	45,020.91
			106,321,219.19

The foregoing advances are subject to a 16.2% interest, which is the prevailing rate per annum in 1997 using 365 days as time basis. Thus, the aggregate "undeclared" interest income of BELLE for the aforesaid unsubstantiated advances amounts to **P 5,485,066.44**.

SINOPHIL	4.00	BELLE MAKATI	133,911.65
MMTC	683,605.00	THCCAI VILLAS	24,033.17
PALO BANDERA	14.00	THCCAI PINECREST	9,266.56
CAPITALPARTNERS	4,308,260.00	PARALLOX	142,865.00
MANILA BAY PARK	4.00	BELLE BAY PLAZA	3,164.00
THIGCI	107,182.76	RANCHO	65,577.00
PACIFIC ONLINE	162.00	BELLE BAY CITY	7,017.00
			5,485,066.14

Therefore, CIR's assessment for deficiency income tax is upheld in the reduced amount of P2,534,100.56, computed as follows:

Imputed Interest Income On Advances to Subsidiaries	P 5,485,066.14
Income tax due thereon @ 35%	1,919,773.15
Add: 20% interest from 4/16/98 to 11/22/99	614,327.41
Total	P 2,534,100.56

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed June 17, 2005 Decision and December 2, 2005 Resolution of the Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the assailed Decision and Resolution of the Second Division are hereby **AFFIRMED *in toto,*** and the instant Petitions for Review are hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice