REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN PAOLO DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8521

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
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RESOLUTION

CASANOVA, *J*.:

For this Court's resolution is petitioner's **Motion for Reconsideration** filed on July 20, 2015, with respondent's **Comment/Opposition on Petitioner's Motion for Reconsideration of the Decision dated June 30, 2015** filed on August 14, 2015. The dispositive portion of the assailed Decision promulgated on June 30, 2015 reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The compromise penalty assessed by respondent against petitioner in the amount of ₱2,000.00 is hereby **CANCELLED**. On the other hand, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency income tax, value-added tax, and expanded withholding tax are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO**

PAY respondent the amount of **FIVE MILLION ONE HUNDRED FORTY TWO THOUSAND TWO HUNDRED FOUR PESOS AND TWENTY THREE CENTAVOS (₱5,142,204.23)** for the taxable year 2008, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱ 6,541.34	₱ 1,635.34	₱ 8,176.68
Value-Added Tax	4,107,173.04	1,026,793.26	5,133,966.30
Expanded Withholding Tax	49.00	12.25	61.25
Total	**₱ 4,113,763.38**	**₱ 1,028,440.85**	**₱ 5,142,204.23**

In addition, petitioner is **ORDERED TO PAY** respondent:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, and expanded withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 6,541.34	April 15, 2009
Value-Added Tax	4,107,173.04	January 25, 2009
Expanded Withholding Tax	49.00	January 15, 2009

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱5,142,204.23 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from December 21, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[1]

[1]Decision, Docket, (Vol. II), pp. 885-886.

Petitioner moves for reconsideration of the assailed Decision on the ground that the Final Letter of Demand issued by respondent is void for failure to inform petitioner of the specific facts, law, rules and regulations, or jurisprudence on which the assessment is based. It also contends that the revenue of ₱299,309.29 from lease rentals should not be subject to VAT. Likewise, petitioner avers that its sale of land amounting to ₱33,975,000.00 is not subject to VAT because the land in question should be considered as a capital asset. Lastly, petitioner contends that respondent's right to assess has already prescribed.

In her Comment/Opposition, respondent states that petitioner's revenues from lease and sale of parcels of land are subject to VAT. She contends that petitioner is engaged in real estate business and the property sold is an ordinary asset, as it is held for sale or lease in the regular course of petitioner's trade or business. Thus, the sale of the property in question is subject to VAT.

We DENY petitioner's Motion for Reconsideration for lack of merit.

Petitioner's arguments are mere rehash of the arguments raised in its Memorandum[2] which were already considered and thoroughly threshed out by the Court in the assailed Decision.

First, respondent was able to comply with the due process requirement that legal and factual bases of the assessment must be stated in the Formal Letter of Demand and Assessment Notice. As previously found by the Court, the Formal Letter of Demand and Final Assessment Notices dated November 21, 2011 include Details of Discrepancies showing the complete factual and legal bases of the assessments against petitioner.

Moreover, in the case of *Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle - Health Sciences Institute), Inc., herein represented by Br. Augustine Boquer, FSC and Dr. Alvin Crudovs. Commissioner of Internal Revenue*[3], the Court *En Banc* ruled that the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a

[2] Docket, (Vol. II), pp. 829-849.
[3] CTA EB Case No. 908 (CTA Case No. 8194), September 12, 2013.

full narration of the facts and laws on which the assessment is based, to wit:

> "The Court agrees with respondent that the 'Details of Discrepancies' attached to the FAN sufficiently complied with Section 228 of the NIRC. xxx
>
> xxx xxx xxx
>
> Based on the afore-quoted 'Details of Discrepancies,' the details contained therein showed that the factual basis for assessing petitioner for deficiency VAT was the discrepancy from RELIEF and Third-Party Matching. While the legal basis for assessing the taxpayer were Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 32-2007.
>
> In a long line of cases, the Supreme Court has ruled that **the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based. The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with**."*(Emphasis ours)*

Second, petitioner's lease rentals as well as its sale of land amounting to ₱33,975,000.00 are subject to VAT since petitioner is engaged in real estate business and the property sold is an ordinary asset. This was thoroughly discussed by the Court in the assailed Decision, to wit:

"A. Revenue Not Subjected to VAT - ₱299,309.29

Respondent maintains that petitioner, being engaged in the leasing business, is subject to VAT based on gross receipts. Invoking Section 108 of the NIRC of 1997, as amended, respondent imposed 12% VAT on the amount of ₱299,309.29, representing the discrepancy between petitioner's revenues per FS and per VAT returns, as shown below:

Revenue per FS	₱ 1,480,416.00
Revenue per VAT returns	1,181,106.71
Discrepancy	**₱ 299,309.29**

Petitioner disagrees with this assessment, holding that the respondent's findings have no legal and factual bases.

The Court finds respondent's assessment proper.

In relation to Section 108 of the NIRC of 1997, as amended, relevant portions of RR No. 16-05 read as follows:

> SEC. 4.108-1. *VAT on the Sale of Services and Use or Lease of Properties*. – Sale or exchange of services, as well as **the use or lease of properties**, as defined in Sec. 108 (A) of the Tax Code shall be **subject to VAT, equivalent to 10% of the gross receipts (excluding VAT)**.
>
> SEC. 4.108-2. *Meaning of 'Sale or Exchange of Services'*. – The term '*sale or exchange of services*' means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> x x x
>
> (3) **lessors of property**, whether personal or **real**; *(Emphasis supplied)*

Petitioner is engaged primarily in the business of acquiring by purchase, lease, donation or otherwise, and owning, using, improving, developing, subdividing, selling, mortgaging, exchanging, **leasing**, developing and holding for investment or otherwise, **real estate of all kinds**. Clearly, petitioner falls within the ambit of the foregoing provisions and is subject to 12% VAT based on gross receipts, defined in the same regulations, as follows:

> SEC. 4.108-4. *Definition of Gross Receipts*. – '***Gross receipts***' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, **rental** or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments **actually or constructively received** during the taxable period for the services performed or to be performed for another person, excluding VAT. *(Emphasis supplied)*

A review of the petitioner's financial statements reveals that the subject revenue, as disclosed in Note 14, consists of rental income of ₱1,460,073.00. The same amount is reflected in the amended Annual Income Tax Return. The respondent, as noted by the ICPA, derived the revenue amount of ₱1,480,416.00 from the tentative Annual Income Tax Return. Thus, the assessed amount is reduced to ₱278,966.29, that is, ₱1,460,073.00 less ₱1,181,106.71.

As disclosed also in its Notes to Financial Statements, petitioner recognizes revenue when it is earned, and not necessarily, when the money is actually or constructively received, to wit:

xxx xxx xxx

Accordingly, the revenue per FS may not coincide with that of VAT returns. Petitioner's adoption of the accrual method of accounting (i.e., the income is reported in the period it is earned regardless of whether it has been received or not) for income tax purposes and the cash method of accounting (i.e., the income is reported based on gross receipts/collection) for VAT purposes, may result to a timing difference in the recognition of its income. However, petitioner failed to establish that the ₱278,966.29 discrepancy in its reported income was brought about by such timing difference.

In the case of *Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp.,* income was defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. **Unless otherwise specified, it means cash or its equivalent**. In the present case, petitioner's financial statements show that it had no Trade Receivables as of December 31, 2008. It may then be safely concluded that all of its rental income for the year 2008 in the amount of ₱1,460,073.00 had already been collected and should have been subjected to VAT as of December 31, 2008. Thus, respondent's deficiency VAT assessment on the ₱278,966.29 discrepancy in petitioner's income shall be sustained.

B. Proceeds from Sale of Land - ₱33,975,000.00

Citing Sections 106 and 108 of the NIRC of 1997, as amended, in relation to RR No. 16-05, as amended, respondent imposed 12% VAT on the proceeds from petitioner's sale of land in the amount of ₱33,975,000.00, computed as follows:

Cost of land sold	₱ 33,236,604.00
Add:Cash from disposal	738,396.00
Proceeds from sale of land	**₱33,975,000.00**

Petitioner, on the other hand, admitted that it is engaged in the real estate business but argued that the nature of its business does not *pro tanto* make any transfer of its assets subject to VAT. The parcels of land sold are allegedly capital assets considering that at the time of their acquisition, the said properties were never held for sale or lease nor used by petitioner in its business, and remained idle up to the time of such sale. Hence, the transfer should not be subject to VAT.

Petitioner submitted the Schedule of Rental Income to prove that the lands sold were bought for investment purposes and they were not rented out and remained idle up to the time of sale.

The Court finds the assessment in order.

Per its Amended Articles of Incorporation, petitioner's primary purpose is not only to acquire by purchase and lease real properties but also to hold for investment and sell real properties, to wit: '***to acquire by purchase****, lease, donation or otherwise,* ***and to own****, use, improve, develop, subdivide,* ***sell****, mortgage, exchange, lease, develop and* ***hold for investment*** *or otherwise,* ***real estate of all kinds****, whether improve manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances'.* As such, petitioner is considered as a 'taxpayer engaged in the real estate business' defined in Section 2(g) of RR No. 07-03 as follows:

> g. **Taxpayers engaged in the real estate business** shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term **"taxpayers not engaged in the real estate business"** shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations.

The parcels of land sold by petitioner, subject of the assessment, are ordinary assets contrary to petitioner's claim, as set forth under Section 3 of RR No. 07-03, to wit:

xxx xxx xxx

> Moreover, the fact that the subject properties from the time of their acquisition were never held for sale or lease nor used by petitioner in its business and remained idle up to the time of such sale does not convert them into capital assets since the taxpayer is engaged in real estate business.
>
> Furthermore, petitioner, in its Annual Income Tax Return for taxable year 2008, treated the gain on the sale of the subject lands as ordinary gain. If petitioner truly believed that the said lands are capital assets then it should have reported the capital gains thereon and paid the corresponding capital gains tax instead of ordinary income tax.
>
> Considering that petitioner's sale of the subject lands was made in the ordinary course of its real estate business, the proceeds therefrom in the amount of ₱33,975,000.00 is subject to 12% VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended, xxx"[4]

Lastly, in the case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[5], the Supreme Court citing the case of *Aznar vs. Court of Tax Appeals, et al.*[6], discussed what acts or omissions may constitute falsity under Section 222 of the NIRC of 1997, as amended, that would give respondent the benefit of the period to assess the correct amount of tax at any time within ten (10) years after the discovery of the falsity, fraud or omission, to wit:

> "The case of *Aznar v. Court of Tax Appeals* discusses what acts or omissions may constitute falsity, *viz.*:
>
> > Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists

[4] Decision, Docket, (Vol. II), pp. 873-878.
[5] G.R. No. 193100, December 10, 2014.
[6] G.R. No. L-20569, August 23, 1974.

contrariwise, with respondent Court of Tax Appeals concluding that the very 'substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax.'

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity,' 'fraud' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but

> whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made."

In the assailed Decision the pertinent parts of which are quoted hereunder, the Court found that petitioner committed falsity in its 2008 Quarterly VAT Returns as it did not declare substantial sales/receipts from its rental and sale of real properties for the said year, *viz*:

> "Following the doctrine in the **Aznar** case, it is evident that herein petitioner committed falsity in its 2008 Quarterly VAT Returns as it did not declare substantial sales/receipts from its rental and sale of real properties for the said year. There is a deviation from the truth and it follows that the applicable prescriptive period would be ten years from the discovery of falsity, which should be reckoned from the issuance of the Preliminary Assessment Notice (PAN) on October 27, 2011. Since the FLD and FAN were issued on December 21, 2011, it follows that the deficiency VAT assessment had not yet prescribed."[7]

Thus, respondent's right to assess petitioner has not yet prescribed.

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[7] Decision, Docket, (Vol. II), pp. 880-881.

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.	(On Leave)
JUANITO C. CASTAÑEDA, JR.	**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice	Associate Justice