CTA Form No. 8

19-000220-0042

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10083

BANGKO SENTRAL NG PILIPINAS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF AMENDED DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

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ATTY. AYESHA HANIA B. GUILING-MATANOG
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Bureau of Internal Revenue
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THE OFFICE OF THE GENERAL COUNSEL AND LEGAL SERVICES
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Corner A. Mabini and P. Ocampo, Sr. Streets
Malate, Manila

GREETINGS:

You are hereby notified by these presents that on **February 19, 2025,** an Amended Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 20, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10083

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 19 2025 2:40PM

x- x

AMENDED DECISION

MANAHAN, *J.*:

This case was remanded by the Court of Tax Appeals (CTA) *En Banc* to resolve petitioner's claim for refund on the merits, pursuant to the *En Banc*'s Decision dated February 21, 2024 in CTA EB No. 2687,[1] and Entry of Judgment dated March 22, 2024.[2]

FACTS

It may be recalled that on May 22, 2019, petitioner filed its Petition for Review,[3] praying for the Court to render judgment ordering respondent to refund to petitioner the total amount of ₱3,118,106.10, representing its overpayment of capital gains tax (CGT), surcharge, and interest.

On February 11, 2022, the Court in Division promulgated its Decision,[4] dismissing petitioner's Petition for Review, the dispositive portion of which reads:

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[1] Docket, pp. 538 to 552.
[2] Docket, p. 563.
[3] Docket, pp. 10 to 28.
[4] Docket, pp. 317 to 328.

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

Petitioner then filed its Motion for Reconsideration (Decision dated 11 February 2022) on March 10, 2022,[5] *sans* respondent's comment.[6] In the Resolution dated August 18, 2022,[7] this Court in Division denied petitioner's Motion for Reconsideration (Decision dated 11 February 2022).

Consequently, petitioner filed with the Court *En Banc* its Petition for Review on September 16, 2022,[8] without respondent's comment.[9]

On February 21, 2024, the Court *En Banc* rendered its Decision,[10] the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. This case is **REMANDED** to the Court in Division to resolve petitioner's claim for refund on the merits with due and deliberate dispatch.
>
> **SO ORDERED**."

The Court *En Banc* then issued the Entry of Judgment dated March 22, 2024,[11] which states that the Decision rendered on February 21, 2024 has become final and executory, without any appeal being taken thereon, and is recorded in the Book of Entries of Judgments on March 22, 2024.

Pursuant to the *En Banc* Decision dated February 21, 2024, this case was remanded to the Court in Division for the resolution of the claim for refund on the merits. Let it be noted

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[5] Docket, pp. 339 to 355.
[6] Records Verification dated April 26, 2022 issued by this Court's Judicial Records Division, Docket, p. 363.
[7] Docket, pp. 368 to 373.
[8] Docket, pp. 376 to 407.
[9] Resolution dated February 15, 2023, Docket, pp. 535 to 536.
[10] Docket, pp. 538 to 552.
[11] Docket, p. 563.

that the Decision of the Court in Division[12] dismissed the case on the ground that the Court of Tax Appeals (CTA) has no jurisdiction to take cognizance of a dispute between the Bureau of Internal Revenue (BIR) and the *Bangko Sentral ng Pilipinas* (BSP) applying the ruling of the Supreme Court in the case of *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*[13] (*PSALM* case). We quote relevant portions of the *PSALM* case for clarity, to wit:

> "This case involves a dispute between PSALM and NPC [National Power Corporation], **which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants.** There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.** As regards cases involving only questions of law, it is the Secretary of Justice who has jurisdiction. xxx xxx xxx
>
> xxx xxx xxx
>
> The law is clear and covers ***"all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law." *(Emphases supplied)*

Notwithstanding the above disquisitions, this Court, in compliance with the *En Banc* Decision reversing the Court in Division's Decision, shall then proceed with the resolution of the issue raised by the parties on the merits, to wit:

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[12] Promulgated on February 11, 2022.
[13] G.R. No. 198146 dated August 8, 2017.

> "...Whether the BSP is entitled to a refund of the alleged erroneously paid CGT, surcharge, and interest in the amount of Three Million One Hundred Eighteen Thousand One Hundred Six and Ten Centavos (Php3,118,106.10)."[14]

Petitioner's arguments:

To recall, the argument of petitioner centers on its allegation that the BIR used the wrong fair market value (FMV) which resulted in the wrong computation of CGT and that the BIR likewise made a wrong computation of surcharge and interest due. Petitioner further alleges that it exhausted the administrative remedies before elevating the case to this Court.

Respondent's counter-arguments:

Respondent contends that petitioner miserably failed to exhaust administrative remedies before elevating the case to this Court; that respondent's assessment of deficiency CGT is correct; and that the lot plan prepared by Cuervo Appraisers, Inc. is self-serving.

RULING OF THE COURT

The governing provisions for the present claim for refund are Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC), as amended which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

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[14] Par. 2.1, Stipulation of Issues, *Joint Stipulation of Facts and Issues*, Docket, p. 215.

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases supplied)*

The afore-quoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "*regardless of any supervening cause that may arise after payment.*"[15]

Furthermore, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar aspect is illegal.[16] Moreover, the above-quoted Section 229 also allows the recovery of any sum alleged to have been excessively or in any manner wrongfully collected.

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[15] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 180740 and 180910, November 11, 2019.

[16] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject CGT paid is an "erroneous or illegal tax", and the other sums collected by the BIR have been excessively or in any manner wrongfully collected.

Petitioner timely filed both its administrative and judicial claims.

In this case, petitioner paid the amount of ₱6,886,006.10 to the BIR on May 23, 2017, representing the CGT, surcharge, interest, and compromise penalty.[17] Thus, counting two (2) years from the said date, petitioner had until May 23, 2019 to file its administrative and judicial claims for refund. Consequently, petitioner's administrative claim for refund filed before respondent on May 21, 2019,[18] and the judicial claim for refund filed before this Court on May 22, 2019,[19] both fell within the two (2)-year prescriptive period, pursuant to the afore-quoted Sections 204(C) and 229 of the 1997 NIRC, as amended. Correspondingly, petitioner timely filed its administrative and judicial claims for refund.

Respondent's contention that petitioner should have elevated its refund claim to the Technical Committee on Real Property Valuation as per Revenue Memorandum Circular No. 27-2010[20] deserves scant consideration. This is simply because the said Committee has no power to decide refund claims of internal revenue taxes, in general, and CGT, in particular, even when the bone of petitioner's contention relates to the valuation of the real property involved. To be sure, the power to refund taxes erroneously or illegally received or imposed rests on respondent, pursuant to the clear wordings of Section 204(C) of the 1997 NIRC, as amended.

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[17] Exhibits "P-5", "P-6" and "P-7", Docket, pp. 160 to 162.
[18] Exhibit "P-10", Docket, pp. 167 to 169.
[19] Docket, pp. 10 to 28.
[20] SUBJECT: Circularizing the full text of Department Order No. 6-2010 entitled "AMENDING FURTHER MINISTRY ORDER NOS. 20-86 AND 21-86, AS AMENDED BY DEPARTMENT ORDER NOS. 12-89, 13-89, 10-92, 21-99 AND 35-04 CREATING THE COMMITTEES ON REAL PROPERTY VALUATION TO DETERMINE THE ZONAL VALUES OF REAL PROPERTIES FOR PURPOSES OF COMPUTING ANY INTERNAL REVENUE TAX".

Part of the paid CGT is erroneous or illegal; the surcharge should not have been imposed; and the interest collected is excessive.

The imposition of CGT from the sale, exchange or disposition of lands and/or building by a domestic corporation, including government-owned or controlled corporations, agencies, and instrumentalities,[21] is governed by Section 27(D)(5) of the 1997 NIRC, as amended, to wit:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (D) *Rates of Tax on Certain Passive Incomes.* –
>
> xxx xxx xxx
>
> (5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* – A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the **gross selling price** or **fair market value** as determined in accordance with Section 6(E) of this Code, **whichever is higher**, of such lands and/or buildings." *(Emphasis supplied)*

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[21] Section 27(C) of the NIRC of 1997, as amended by Republic Act No. 10026, reads:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx
>
> (C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* – **The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government**, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWD) and the Philippine Charity Sweepstakes Office (PCSO), **shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity**." *(Emphases added)*

Relative to the determination of the FMV in the imposition of CGT, the said Section 6(E) of the 1997 NIRC, as amended, reads as follows, *viz.*:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> xxx xxx xxx
>
> (E) *Authority of the Commissioner to Prescribe Real Property Values.* – The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon mandatory consultation with competent appraisers both from the private and public sectors, and with prior notice to affected taxpayers, **determine the fair market value of real properties located in each zone or area** xxx. For purposes of computing any internal revenue tax, the value of the property shall be, **whichever is the higher of**:
>
> (1) **the fair market value as determined by the Commissioner**; or
>
> (2) **the fair market value as shown in the schedule of values of the Provincial and City Assessors**." *(Emphases supplied)*

Thus, the FMV of a real property, for purposes of computing any internal revenue tax, such as the CGT, would either be the FMV as determined by respondent (also known as zonal value), or the FMV as shown in the schedule of values of the Provincial and City Assessors, whichever is higher. Correspondingly, in the imposition of CGT under Section 27(D)(5) of the 1997 NIRC, as amended, once the higher of the said FMVs is determined, the same would still be compared to the gross selling price, and the higher between the determined FMV and the latter would be the tax base, to which the 6% is applied.

Moreover, it is a settled rule that only respondent has the power to determine the zonal value of properties.[22] *Apropos*, zonal valuation was established with the objective of having an efficient tax administration by minimizing the use of discretion in the determination of the tax base on the part of the administrator on one hand and the taxpayer on the other hand. Zonal value is determined for the purpose of establishing a more realistic basis for real property valuation. Since internal revenue

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[22] *Republic of the Philippines vs. Heirs of Gabriel Q. Fernandez*, G.R. No. 175493, March 25, 2015.

taxes, such as CGT and documentary stamp tax, are assessed on the basis of valuation, the zonal valuation existing at the time of the sale should be taken into account.[23]

In this case, petitioner and RD Realty Development Corporation executed the undated Deed of Absolute Sale, which was notarized on February 3, 2016,[24] involving the sale of a parcel of land in Barangay Calumpang, General Santos City, with an area of 9,000 square meters (sqms.), more or less, and covered by Transfer Certificate of Title No. T-98639 issued by the Registry of Deeds for General Santos City, in the amount of ₱4,500,000.00.

Petitioner filed the corresponding CGT Return and paid the CGT amounting to ₱1,620,000.00.[25] It is noted that in arriving at the said amount of CGT, the tax base used is the FMV totalling ₱27,000,000.00 (the lot area of 9,000 sqms. multiplied by ₱3,000.00) to which the 6% CGT rate was applied.[26]

However, upon determination by the BIR, the latter found that the CGT due for the transaction is ₱5,751,000.00.[27] Such being the case, petitioner was still made to pay the amount of ₱6,886,006.10 on May 23, 2017,[28] which amount is computed as follows:

Computation of CGT still due		**Amount (Per Audit)**
Tax Base (₱95,850,000.00 x 6%)		₱5,751,000.00
Less: Tax Paid Per Return		1,620,000.00
TAX STILL DUE (OVERPAYMENT)		₱4,131,000.00
Add: 25% Surcharge	₱1,437,750.00	
Interest	1,267,256.10	
Compromise penalty	50,000.00	2,755,006.10
TOTAL AMOUNT STILL DUE ON CGT		**₱6,886,006.10**

Based on the BIR's computation sheet,[29] the said amount of ₱95,850,000.00 is arrived at by multiplying the zonal value of ₱10,650.00 to the lot area of 9,000 sqms. Parenthetically, the BIR did not use the supposed FMV for the said lot per the Tax

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[23] *Commissioner of Internal Revenue vs. Aquafresh Seafoods, Inc.*, G.R. No. 170389, October 20, 2010.
[24] Exhibit "P-12", Docket, pp. 178 to 181.
[25] Exhibit "P-13", Docket, p. 182; and Exhibit "P-16", Docket, p. 131.
[26] Exhibit "P-13", *supra*.
[27] Exhibit "P-1", Docket, p. 268.
[28] Exhibits "P-5", "P-6" and "P-7", Docket, pp. 160 to 162.
[29] Exhibit "P-1", *supra*.

Declaration (or the "TD"), *i.e.*, ₱2,520,000.00,[30] since it is apparently lower than the said zonal value.

However, petitioner asserts that the BIR committed an error when it used the amount of ₱95,850,000.00 as tax base. Specifically, petitioner argues as follows:

> "24. The highest of the three values is the 'FMV as determined by the CIR.' Nonetheless, the BIR committed an error when it used the amount of Php95,850,000.00 as tax base because the rate of Php10,650.00 per square meter only applies if the subject property is classified as 'Industrial – **Along the Road**'.
>
> 25. BSP respectfully submits that the proper tax base is Php67,500,000.00 based on the rate of Php7,500.00 per square meter since the subject property falls under the classification 'Industrial – **Interior Lot**'.
>
> 26. The Lot Plan prepared by Cuervo Appraisers, Inc., shows that the subject property is not located along the National Highway and that no part of it is adjacent to the main road. Clearly, the subject property falls under the classification 'Industrial – **Interior Lot**'."[31]

Thus, petitioner claims that it is entitled to a refund of ₱3,118,106.10,[32] representing overpayment resulting from the BIR's erroneous calculations, detailed as follows:

	Amount	**Alleged Overpayment**
a. CGT		
Correct amount of CGT due from petitioner	₱4,050,000.00[33]	
Less: Initial payment of petitioner	(1,620,000.00)[34]	
Less: Additional Payment of petitioner under Protest	(4,131,000.00)[35]	₱1,701,000.00
b. Surcharge		
Correct amount of Surcharge due from petitioner	₱607,500.00[36]	
Less: Payment by petitioner under Protest	1,437,750.00[37]	₱830,250.00
c. Interest		

[30] *Id.*
[31] Petitioner's *Memorandum*, Docket, p. 298. Refer also to pars. 25 to 27, *Petition for Review*, Docket, p. 20.
[32] Par. 20, *Petition for Review*, Docket, p. 18.
[33] Lot area of 9,000 sqms. multiplied by ₱7,500.00 per square meter, then multiplied by the CGT rate of 6%.
[34] Exhibit "P-16", Docket, p. 131.
[35] Assessed CGT amounting to ₱5,751,00.00 less initial payment of CGT of ₱1,620,000.00.
[36] CGT due as computed by petitioner of ₱4,050,000.00 less initial payment of CGT of ₱1,620,000.00 multiplied by surcharge rate of 25%.
[37] Assessed CGT amounting to ₱5,751,00.00 multiplied by surcharge rate of 25%.

Correct amount of interest per petitioner's computation	₱680,400.00	
Less: Interest assessed by the BIR	1,267,256.10	₱586,856.10
Total Claim for Refund		**₱3,118,106.10**

This Court, however, finds that petitioner failed to substantiate its arguments anent the use of the amount of ₱95,850,000.00 as tax base.

While petitioner presented and offered the document, which was marked as Exhibit "P-2",[38] containing the supposed zonal valuations for Barangay Calumpang, General Santos City, South Cotabato, the same is merely certified as a photocopy by a certain "WALTER S. GARCIA", without any indication as to what specific official capacity the latter is certifying, considering that the said document purportedly is a public document, and thus, to the mind of the Court, the same document is not credible to contain the facts therein stated. And even granting that this Court may rely on the said document, petitioner has not established that the subject lot fell under the category of "Industrial – **Interior Lot**", instead of "Industrial – **Along the road**". The alleged Lot Plan prepared by Cuervo Appraisers, Inc. was never presented in evidence during the trial of this case, and thus, cannot constitute as a matter of fact. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[39]

In any event, petitioner was able to prove the zonal values for the lots in Barangay Calumpang for the period September 29, 1998 to March 29, 2019,[40] through the document marked as Exhibit "P-4",[41] the contents of which are as follows:

RDO NO. 110 GEN. SANTOS CITY
CITY OF GEN. SANTOS PAGE 11
BARANGAY: LABANGAL & **CALUMPANG**

STREET/ SUBDIVISION	VICINITY	CLASSI-FICATION	2ND REV. ZV. SQ.M.	1ST REV ZV. SQ.M.
ROAD TO CALUMPANG AND KIAMBA	ALL LOTS AT TS-11 000007-D	RR	1,070.00	610.00
	ALL LOTS AT TS-50	RR	750.00	430.00
FERNANDEZ SUBD	INTERIOR LOTS	RR	810.00	460.00
AIRPORT ROADS		CR	1,140.00	

[38] Refer to Exhibit "P-2", Docket, p. 269.
[39] *Castillo vs. Republic of the Philippines, et al.*, G.R. No. 214064, February 6, 2017.
[40] Exhibit "P-4-1", Docket, p. 158.
[41] Docket, p. 158.

BAYANIHAN LUMBER, TESORO, PNB, CAHILSOT AND BLISS	INTERIOR LOTS	RR	510.00	290.00
ESPINA SUBD, CATAPANG, LANOY, AMADEO, FERRER, MARPELIA, RIVAS, OBASA, ALCONES & CRISOSTOMO, ESPINA, BUREL, ABDULZARAK SUBD.	ALONG NATIONAL ROAD	RR	810.00	460.00
DONA SOLEDAD	INTERIOR LOTS	RR	470.00	270.00
ACHARON, PIANG SUBD., SAWAY AND MALOK	INTERIOR LOTS	RR	300.00	170.00
ALL COMMERCIAL AND INDUSTRIAL LOTS	FROM MAKAR WHARF TO THE INTERSECTION W/ ROAD TO KBA, **CALUMPANG**, AS WELL AS FROM KBA GOING N INCLUDING SERANILLA PRO	CR	4,725.00	2,700.00
		I	**4,725.00**	2,700.00
	INTERIOR LOTS OCCUPIED BY SOPROCOR, FORTUNE	CR	3,200.00	1,830.00
		I	3,200.00	1,830.00
	FROM GENERAL MILLING, DOLE, RFM UP TO MAKAR RIVER, CAROJA, ESPINA & LEYVA PROPERTY	CR	2,940.00	1,680.00
		I	2,940.00	1,680.00
	FROM PC CHECK POINT GOING S TO SARANILLO PROPERTY & GOING E TO SILWAY RIVER	CR	2,485.00	1,420.00
		I	2,485.00	1,420.00

Unlike Exhibit "P-2", Exhibit "P-4" was certified by Ms. Gina O. Villasoto, who is purportedly the Assistant Chief of the BIR's Assessment Performance Monitoring Division. It is noteworthy that respondent did not object to, or dispute, the said BIR employee's official capacity to certify the said Exhibit "P-4" as a "CERTIFIED XEROX COPY"; neither did respondent present or offer evidence to the contrary. Thus, this Court may conclude that Ms. Villasoto had, in fact, the authority to certify the zonal valuations and other information stated in the same Exhibit "P-4" and may rely thereon for the Court's conclusion.

Considering that Exhibit "P-4" states that the zonal value for the industrial lots in Calumpang is ₱4,725.00 per square meter (sqm.) at the time when the subject sale by petitioner to RD Realty Development Corporation was made, such zonal value should have been used in the imposition of the present CGT, instead of the zonal value of ₱10,650.00 per sqm., as reflected in the BIR's computation sheet.

Using the applicable zonal value of ₱4,725.00 per sqm. to the subject property with a lot area of 9,000 sqms., the CGT liability of petitioner should be ₱2,551,500.00 which is 6% of ₱42,525,000.00.[42] Parenthetically, this latter amount is higher than the selling price of ₱4,500,000.00.

Taking into consideration the initial payment of ₱1,620,000.00 and payment made under protest of ₱4,131,000.00[43], petitioner made an excess payment of CGT in the total amount of **₱3,199,500.00**, as computed below:

FMV based on the zonal value of ₱4,725.00 per sqm. (9,000 sqms. x ₱4,725.00)	₱ 42,525,000.00
CGT Rate	6%
CGT Due	**₱ 2,551,500.00**
Less: Initial payment made on January 14, 2016[44]	1,620,000.00
Payment made under protest on May 23, 2017[45]	4,131,000.00
Total CGT Overpayment	**₱ 3,199,500.00**

Anent the surcharge, petitioner argues that respondent not only computed the surcharge on the basis of the wrong CGT due amounting to ₱5,751,000.00,[46] but also computed the surcharge based on the total CGT rather than on the total unpaid balance of CGT,[47] or after taking into consideration its initial CGT payment amounting to ₱1,620,000.00. To recall, petitioner paid the amount of ₱1,437,750.00 as surcharge for the CGT payable amounting to ₱4,131,000.00.[48]

Relative thereto, Section 248 of the 1997 NIRC, as amended, provides as follows:

> "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
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue

[42] Lot area of 9,000 sqms. multiplied by ₱4,725.00 per sqm.
[43] Assessed CGT amounting to ₱5,751,000.00 less initial payment of CGT of ₱1,620,000.00.
[44] Exhibits "P-16" and "P-13", Docket, pp. 131 and 182.
[45] Exhibits "P-5", "P-6", "P-7", Docket, pp. 160 to 162.
[46] FMV of ₱98,850,000.00 (based on ₱10,650.00 zonal value per sqm.) multiplied by CGT Rate of 6%.
[47] *Petition for Review*, Docket, pp. 21 to 22.
[48] Refer to Exhibit "P-5" (Line 35A), Docket, p. 160.

officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(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 the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: xxx."

Based on the foregoing provision, there are only specific instances where the 25% or 50% surcharge is imposed. Upon review of the facts in this case *vis-à-vis* the said specific instances, this Court finds that no surcharge should have been imposed on the balance of the subject CGT. Thus, the amount of ₱1,437,750.00 should *not* have been paid by petitioner.

With regard to the imposition of interest, petitioner points out that it paid under protest an interest amounting to ₱1,267,256.10.[49] Petitioner further claims that the correct interest should be ₱680,400.00, thus, it overpaid the amount of ₱586,856.10[50] (₱1,267,256.10 less ₱680,400.00). It came up with the computation of ₱680,400.00 deficiency interest by multiplying the CGT still due of ₱2,430,000.00 with 20% interest rate at 1.4 years which is computed from the date of execution of the Deed of Sale on February 3, 2016[51] until the date of CGT Return on June 28, 2017[52], as shown below:

FMV based on <u>₱7,500.00 ZV per sq.m.</u> *(9,000 sq.m. x ₱7,500.00 ZV per sq.m.)*		₱ 67,500,000.00
CGT Rate		6%
CGT Due		**₱ 4,050,000.00**
Less: Initial payment made on January 14, 2016[53]		1,620,000.00
CGT Still Due		**₱ 2,430,000.00**
Multiplied by Interest Rate		20%

[49] Refer to Exhibit "P-5" (Line 35B), Docket, p. 160.
[50] Par. 38, *Petition for Review*, Docket, p. 22.
[51] Exhibit "P-12", Docket, pp. 178 to 181.
[52] Exhibit "P-5", Docket, p. 160.
[53] Exhibits "P-16" and "P-13", Docket, pp. 131 and 182.

Multiplied by Time		
Number of days counted from February 3, 2016 until June 28, 2017	511 days	1.4 years
Divided by the total number of days in a year	365 days	
Alleged Correct Interest as claimed by petitioner		**₱ 680,400.00**

However, petitioner incorrectly calculated its deficiency interest for CGT using the zonal value of ₱7,500.00 per sqm. which, as already intimated, is not the applicable zonal value for the subject lot.

The imposition of interest is governed by Section 249(A) and (B) of the 1997 NIRC, as amended, which provides as follows:

> "SEC. 249. *Interest.* -
>
> (A) *In General.* - **There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum**, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid**.
>
> (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.**" *(Emphases supplied)*

Relative thereto, Section 3 of Revenue Regulations (RR) No. 08-98[54] reads as follows:

> "SECTION 3. *Time and Place of Payment of Capital Gains Tax.* – Within thirty (30) days following each sale or disposition, the Capital Gains Tax Return shall be filed by the seller and payment made to an Authorized Agent Bank (AAB) located within the Revenue District Office (RDO) having jurisdiction over the place *where the property being transferred is located.*"

Hence, petitioner is liable to a 20% deficiency interest, but only in the amount of ₱227,132.88 computed based on CGT Still

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[54] SUBJECT: Revenue Regulations Amending Pertinent Portions of Revenue Regulations Nos. 11-96 and 2-98 Relative to the Tax Treatment on the Sale, Transfer or Exchange of Real Property and for this Purpose Revising the Time and Place of Payment of the Capital Gains Tax Due Thereon.

Due amounting to ₱931,500.00, counted from the time the CGT is prescribed for payment on March 4, 2016, which is thirty (30) days from the date of execution of the *Deed of Sale* on February 3, 2016, until May 23, 2017, the date of full payment thereof, as follows:

FMV based on ₱4,725.00 ZV per sqm. *(9,000 sq.m. x ₱4,725.00 ZV per sqm.)*		₱ 42,525,000.00
CGT Rate		6%
CGT Due		**₱ 2,551,500.00**
Less: Initial payment made on January 14, 2016[55]		1,620,000.00
CGT Still Due		**₱931,500.00**
Multiplied by Interest Rate		20%
Multiplied by Time		
Number of days counted from March 4, 2016 until May 23, 2017	445 days	1.219178082 years
Divided by the total number of days in a year	365 days	
Should be Interest		**₱ 227,132.88**

Thus, petitioner made an excess payment of interest amounting to **₱1,040,123.22**[56] after considering its interest payment made under protest of ₱1,267,256.10[57].

With respect to the compromise penalty amounting to ₱50,000.00,[58] petitioner did not dispute the same, and actually, the same is not part of the present claim.

Based on the foregoing disquisitions, petitioner is liable only to a total amount of ₱1,441,507.88 representing deficiency CGT inclusive of interest and compromise penalty, as computed below:

FMV based on ₱4,725.00 ZV per sq.m. *(9,000 sq.m. x ₱4,725.00 ZV per sq.m.)*	₱42,525,000.00
CGT Rate	6%
CGT Due	**₱2,551,500.00**
Less: Initial payment made on January 14, 2016[59]	1,620,000.00
CGT Still Due	**₱931,500.00**
Add: Penalties	
Surcharge	-

[55] Exhibits "P-16" and "P-13", Docket, pp. 131 and 182.
[56] Deficiency Interest payment under protest of ₱1,267,256.10 minus the deficiency interest of ₱227,132.88.
[57] Refer to Exhibit "P-5" (Line 35B), Docket, p. 160.
[58] Refer to Exhibit "P-5" (Line 35C), Docket, p. 160.
[59] Exhibits "P-16" and "P-13", Docket, pp. 131 and 182.

Interest from March 4, 2016 to May 23, 2017	227,132.88
Compromise	50,000.00
Total CGT Still Due, inclusive of penalties	**₱1,208,632.88**

Consequently, petitioner made a total excess payment of ₱5,677,373.22[60], detailed as follows:

		Excess Payment as determined by the Court
a. CGT		
CGT due (6% of ₱42,525,000.00)[61]	₱ 2,551,500.00	
Less: Initial payment made by petitioner	1,620,000.00[62]	
Less: Additional Payment made under Protest	4,131,000.00[63]	₱ 3,199,500.00
b. Surcharge		
Surcharge due	₱ -	
Less: Payment made under Protest	1,437,750.00[64]	₱ 1,437,750.00
c. Interest		
Deficiency interest due (as computed above)	₱ 227,132.88	
Less: Interest assessed by the BIR	1,267,256.10	₱ 1,040,123.22
Total Excess Payment		**₱ 5,677,373.22**

It is to be noted that in the present Petition for Review, petitioner prayed only for the refund of the amount of ₱3,118,106.10.[65] However, this Court is not prevented to grant the said Total Excess Payment of ₱5,677,373.22. This must be so because petitioner further prayed, in the same Petition, *"for such other relief that may be just and equitable under the circumstances."*[66]

Furthermore, under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, this Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. To be sure, the proper amount to be refunded to petitioner, if any, is one such related issue.

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60 Total CGT inclusive of surcharge, interest and compromise penalties as determined by the Court amounting to ₱1,441,507.88 less Payment made under Protest amounting to ₱6,886,006.10.

61 Lot area of 9,000 sq.m multiplied by ₱4,725.00 ZV/sq.m.

62 Exhibit "P-16", Docket, p. 131.

63 Assessed CGT amounting to ₱5,751,00.00 less initial payment of CGT of ₱1,620,000.00.

64 Assessed CGT amounting to ₱5,751,00.00 multiplied by surcharge rate of 25%.

65 Prayer, *Petition for Review*, Docket, p. 24.

66 *Id.*

Relatedly, Section 2, Rule 141 of the Rules of Court provides as follows:

> "Section 2. *Fees in lien.* – Where the court in its final judgment awards a claim not alleged, or a relief different from, **or more than that claimed in the pleading**, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees." *(Emphasis supplied)*

This Court sees no justifiable reason not to grant the amount of ₱5,677,373.22, as herein determined by this Court, based on the evidence on record subject to the payment of additional filing fees.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review is **GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱5,677,373.22**, representing petitioner's erroneously or illegally paid CGT, surcharge, and interest, paid for the sale of its parcel of land to RD Realty Development Corporation located in Barangay Calumpang, General Santos City.

Petitioner is **DIRECTED** to pay the additional filing fee of **₱18,092.13** pursuant to the afore-quoted Section 2, Rule 141 of the Rules of Court.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(I reiterate my position in the original Decision dated February 11, 2022)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice