REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILMAY PROPERTY, INCORPORATED, Petitioner,	**CTA Case No. 8764**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 23 2018 8:10 a.m.

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D E C I S I O N

MANAHAN, *J.:*

This case involves a Petition for Review[1] seeking the cancellation of the assessments for alleged deficiency taxes, interest, and penalties against Philmay Property, Incorporated for fiscal year (FY) ending June 30, 2009 amounting to Php169,825,451.04.

FACTS

Petitioner Philmay Property, Incorporated is a corporation duly organized and existing under the laws of the Philippines, and is a registered taxpayer with Tax Identification Number 005-060-231-000.[2] It is organized "to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures."[3]

Respondent Commissioner of Internal Revenue (CIR) is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the

[1] Docket, CTA Case No. 8764, Vol. 1, pp. 6-31.
[2] Docket, Vol. 6, Joint Stipulation of Facts and Issues (JSFI), p. 2637.
[3] *Id.*

Government agency responsible for the assessment and collection of all national and internal revenue taxes.[4]

For fiscal year 2009, petitioner filed its Annual Income Tax Return[5] (BIR Form No. 1702) through EFPS on October 21, 2009. Petitioner filed its Amended Return[6] on the same date.[7]

On November 25, 2009, Letter of Authority (LOA) No. 000463[8] was issued authorizing the examination of petitioner's books of accounts and other accounting records for the period July 1, 2008 to June 30, 2009.[9]

On November 23, 2011, LOA SN:eLA201100010424[10] was issued covering the same period of July 1, 2008 to June 30, 2009 pursuant to the BIR's Run-After-Tax-Evaders (RATE) program.[11]

Petitioner received a Notice of Informal Conference[12] dated November 22, 2012 on November 23, 2012.[13] On December 11, 2012, petitioner received the Preliminary Assessment Notice (PAN)[14].[15]

On April 23, 2013, petitioner received the Formal Assessment Notices (FAN)[16] and Formal Letter of Demand (FLD)[17] assessing petitioner for alleged deficiency taxes, interest, and penalties for fiscal year ending June 30, 2009 for: (a) deficiency income tax of Php37,808,329.60; (b) deficiency Value-Added Tax (VAT) of Php73,126,969.85; (c) deficiency Expanded Withholding Tax (EWT) of Php43,315,685.33; and (d) deficiency Documentary Stamp Tax (DST) of Php15,574,466.26;

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[4] Docket, Vol. 6, JSFI, p. 2637.
[5] Petitioner's Formal Offer of Evidence (FOE), Folder 9, Exhibit "P-57".
[6] Petitioner's FOE, Folder 9, Exhibit "P-58".
[7] Docket, Vol. 6, JSFI, p. 2638.
[8] Petitioner's FOE, Folder 9, Exhibit "P-46".
[9] Docket, Vol. 6, JSFI, p. 2638.
[10] Petitioner's FOE, Folder 9, Exhibit "P-48"; docket, Vol. 10, Exhibit "R-13", p. 4001.
[11] Docket, Vol. 6, JSFI, p. 2638.
[12] Petitioner's FOE, Folder 9, Exhibit "P-50"; docket, Vol. 10, Exhibit "R-20", p. 4031.
[13] Docket, Vol. 6, JSFI, p. 2638.
[14] Petitioner's FOE, Folder 9, Exhibit "P-51"; BIR Records, Exhibit "R-25", pp. 211-209.
[15] Docket, Vol. 6, JSFI, p. 2638.
[16] Petitioner's FOE, Folder 9, Exhibits "P-34", "P-35", "P-36", and "P-37"; BIR Records, Exhibits "R-26", "R-26-a", "R-26-b", and "R-26-c", pp. 281-278.
[17] Petitioner's FOE, Folder 9, Exhibit "P-33"; BIR Records, Exhibit "R-26-d", pp. 277-275.

or in the total amount of Php169,825,451.04.[18] The FLD laid out the assessments, as follows:

Deficiency Income Tax
(pursuant to Sec. 6(B) & 34, NIRC)

Taxable Income per Return			P	-
Add: Adjustments – Disallowance of Cost and Expenses				
Unsupported Cost of Service – Salaries and Wages	P	3,214,721.00		
Unsupported Operating Expenses		50,211,647.00		53,426,368.00
Total			P	53,246,368.00
Income Tax Due			P	17,363,569.60
Less: tax paid				239,806.97
Deficiency Income Tax			P	17,123,762.63
Add: Surcharge (Sec. 248)				8,561,881.32
Interest p.a. from ____ to 4/30/2013 (Sec. 249)				12,122,685.65
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				-
TOTAL AMOUNT DUE AND COLLECTIBLE			**P**	**37,808,329.60**

Deficiency Value Added Tax
(pursuant to Sec. 106/108 & 110/113, NIRC)

Rental from Lease Properties per FS			P	11,147,732.00
Consummated Sales on Real Property				95,071,168.00
Re-acquired Properties by Maybank Phils., Inc.				223,824,817.00
Total Vatable Sales per audit			P	330,043,717.00
Output Tax Thereon			P	39,605,246.04
Less: creditable input tax per return				398,480.58
VAT payable				39,206,765.46
Less: VAT payments				
Payment per returns	P	6,694,110.54		
Payment per original investigation		53,280.00		6,747,390.54
Deficiency Value Added Tax			P	32,459,374.92
Add: Surcharge (Sec. 248)				16,229,687.46
Interest p.a. from ____ to 4/30/2013 (Sec. 249)				24,437,907.47
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				-
TOTAL AMOUNT DUE AND COLLECTIBLE			**P**	**73,126,969.85**

Deficiency Expanded Withholding Tax
(pursuant to Sec. 57(B), NIRC/RR 2-98)

Consummated Sales on Real Property	P	95,071,168.00
Re-acquired Properties by Maybank Phils., Inc.		223,824,817.00
Total	P	318,895,985.00
EWT Rate		6%
Deficiency Expanded Withholding Tax	P	19,133,759.10
Add: Surcharge (Sec. 248)		9,566,879.55
Interest p.a. from ____ to 4/30/2013 (Sec. 249)		14,615,046.68
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE AND COLLECTIBLE	**P**	**43,315,685.33**

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[18] Docket, Vol. 6, JSFI, pp. 2638-2639.

Deficiency Documentary Stamp Tax (pursuant to Sec. 179/196, NIRC)				
Current Loan Payable				
Maturity-June 30, 2010	P	21,282,524.00		
Maturity-June 30, 2010		47,141,428.00		
Total	P	68,423,952.00		
Non-Current Loan Payable				
Maturity-December 31, 2055		350,824,238.00		
Total Loan Payable subject to DST per FS	P	419,248,190.00		
DST Rate (Sec. 196)		P1/200	P	2,096,240.95
DST due on Loans Payable				
Consummated Sales on Real Property	P	95,071,168.00		
Re-acquired properties by Maybank Phils, Inc.		223,824,817.00		
Total	P	318,895,985.00		
DST Rate (Sec. 196)		P15/1000		
DST due on Deed of Sale/Conveyance of Properties				4,783,439.78
Deficiency Documentary Stamp Tax			P	6,879,680.73
Add: Surcharge (Sec. 248)				3,439,840.36
Interest p.a. from ____ to 4/30/2013 (Sec. 249)				5,254,945.17
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				-
TOTAL AMOUNT DUE AND COLLECTIBLE			**P**	**15,574,466.26**

Petitioner filed its protest[19] to the FLD/FAN on May 23, 2013.[20] Petitioner also made its submission of supporting documents[21] on July 18, 2013.[22]

On August 15, 2013, respondent issued a Preliminary Collection Letter (PCL)[23]. On September 12, 2013, respondent issued a Final Notice Before Seizure.[24]

Petitioner received the PCL via facsimile on September 25, 2013 and through registered mail on October 17, 2013.[25] Petitioner replied to the PCL through letters dated October 7[26] and 11,[27] 2013 arguing that the PCL was erroneously issued on the ground that it has a pending protest and that PCLs are issued only in cases of undisputed assessments.[28]

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[19] Petitioner's FOE, Folder 9, Exhibit "P-38"; BIR Records, Exhibit "R-29", pp. 347-323.
[20] Docket, Vol. 6, JSFI, p. 2639.
[21] Petitioner's FOE, Folder 9, Exhibit "P-39".
[22] Docket, Vol. 1, Petition for Review (PFR), p. 12.
[23] Petitioner's FOE, Folder 9, Exhibit "P-40"; BIR Records, Exhibit "R-2", p. 290.
[24] BIR Records, Exhibit "R-3", p. 291.
[25] Docket, Vol. 1, PFR, p. 8; Vol. 8, Exhibit "P-71" Supplement to the Judicial Affidavit of Armando C. Lavandelo, p.3081.
[26] Petitioner's FOE, Folder 9, Exhibit "P-41".
[27] Petitioner's FOE, Folder 9, Exhibit "P-42"; BIR Records, Exhibit "R-4", pp. 406-405.
[28] Docket, Vol. 1, PFR, p. 8.

On January 17, 2014, petitioner received a letter dated December 19, 2013[29], where respondent stated that it will proceed with the collection and enforcement procedures on the ground that the assessments have become final and executory.[30]

On January 21, 2014, respondent issued a Warrant of Distraint and Levy.[31]

Counting thirty (30) days from receipt of the December 19, 2013 letter on January 17, 2014, petitioner filed the instant Petition for Review[32] on February 13, 2014.

After an extension was granted,[33] respondent filed his Answer[34] on March 28, 2014. On April 25, 2014, the Court received petitioner's Reply (to the Answer dated March 27, 2014)[35] filed through registered mail on April 16, 2014.

On April 25, 2014, petitioner also filed its Motion for Commissioning of Independent Certified Public Accountant (ICPA), praying for the commissioning of Mr. Edwin F. Ramos as ICPA,[36] which motion was granted during the hearing on May 8, 2014[37].

On May 5, 2014, petitioner and respondent filed their respective Pre-trial Briefs.[38] The parties filed their Joint Stipulation of Facts and Issues (JSFI)[39] on June 20, 2014, which was approved and adopted in the Pre-Trial Order[40] dated July 18, 2014.

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[29] Petitioner's FOE, Folder 9, Exhibit "P-43"; BIR Records, Exhibit "R-6", p. 415.
[30] Docket, Vol. 1, PFR, p. 9.
[31] BIR Records, Exhibit "R-8", p. 422.
[32] Docket, Vol. 1, pp. 6-34.
[33] Docket, Vol. 2, Order dated March 14, 2014, p. 792.
[34] Docket, Vol. 2, pp. 793-799.
[35] Docket, Vol. 2, pp. 821-832.
[36] Docket, Vol. 2, pp. 806-810.
[37] Docket, Vol. 6, p. 2629; Transcript of Stenographic Notes (TSN), Hearing on May 8, 2014, p. 6-8.
[38] Docket, Vol. 2, Petitioner's Pre-Trial Brief Ad Cautelam, pp. 1076-1090; Respondent's Pre-Trial Brief, pp. 1091-1095.
[39] Docket, Vol. 6, pp. 2637-2642.
[40] Docket, Vol. 6, pp. 2648-2655.

The case proceeded to trial. Petitioner presented its witnesses: (1) Mr. Edwin F. Ramos;[41] (2) Mr. Jonathan P. Ong;[42] (3) Mr. Armando C. Lavandelo;[43] (4) Ms. Jocelyn DG. Villaseñor;[44] and (5) Ms. Shulammite P. Miranda.[45]

On June 15, 2015, petitioner filed its Formal Offer of Evidence (FOE)[46] which was resolved in the Court's Resolution[47] dated August 4, 2015.

Respondent presented his witnesses, as follows: (1) Angeles Mores;[48] (2) Maricol Domingo;[49] and (3) Ruth G. Legaspi-Tandoy.[50] On May 16, 2016, respondent filed his FOE[51] which was resolved in the Court's Resolution[52] dated July 21, 2016. Upon motion for reconsideration[53] filed by respondent, the case was reset for commissioner's hearing[54] and the subsequent filing of respondent's supplemental FOE.[55]

On March 31, 2017, the Court resolved respondent's supplemental FOE and ordered the parties to file their respective memoranda.[56] Within the extended period granted,[57] petitioner filed its Memorandum[58] on May 18, 2017 and respondent filed his Memorandum[59] on May 23, 2017.

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[41] Docket, Vol. 6, Exhibit "P-65" Judicial Affidavit of Mr. Edwin F. Ramos, pp. 2674-2691; Vol. 9, Exhibit "P-74" Supplement to the Judicial Affidavit of Mr. Edwin F. Ramos, pp. 3597-3617.
[42] Docket, Vol. 2, Exhibit "P-66" Judicial Affidavit of Jonathan P. Ong, pp. 858-870; Vol. 7, Exhibit "P-67" Supplement to the Judicial Affidavit of Mr. Jonathan P. Ong, pp. 2702-2711; Vol. 9, Exhibit "P-73" Second Supplement to the Judicial Affidavit of Mr. Jonathan P. Ong, pp. 3426-3434.
[43] Docket, Vol. 3, Exhibit "P-70" Judicial Affidavit of Armando C. Lavandelo, pp. 1100-1107; Vol. 8, Exhibit "P-71" Supplement to the Judicial Affidavit of Armando C. Lavandelo, pp. 3080-3089.
[44] Docket, Vol. 6, Exhibit "P-68" Judicial Affidavit of Jocelyn DG. Villaseñor, pp. 2621-2625; Vol. 8, Exhibit "P-69" Supplement to the Judicial Affidavit of Jocelyn DG. Villaseñor, pp. 3075-3079.
[45] Docket, Vol. 8, Exhibit "P-72" Judicial Affidavit of Ms. Shulammite P. Miranda, pp. 3398-3406.
[46] Docket, Vol. 9, pp. 3626-3646.
[47] Docket, Vol. 9, pp. 3820-3822.
[48] Docket, Vol. 9, Exhibit "R-11" Judicial Affidavit of Angeles Mores, pp. 3828-3831.
[49] Docket, Vol. 9, Exhibit "R-12" Judicial Affidavit of Maricol Domingo, pp. 3839-3842.
[50] Docket, Vol. 10, Exhibit "R-31" Judicial Affidavit of Ruth G. Legaspi-Tandoy, pp. 3927-3930.
[51] Docket, Vol. 10, Respondent's Formal Offer of Documentary Evidence, pp. 3989-4000.
[52] Docket, Vol. 10, pp. 4079-4080.
[53] Docket, Vol. 10, Omnibus Motion, pp. 4081-4084.
[54] Docket, Vol. 10, pp. 4100-4101.
[55] Docket, Vol. 10, pp. 4103-4105.
[56] Docket, Vol. 10, pp. 4117-4118.
[57] Docket, Vol. 10, p. 4126.
[58] Docket, Vol. 10, pp. 4127-4213.
[59] Docket, Vol. 10, pp. 4214-4224.

Considering the foregoing, the case was submitted for decision on May 26, 2017.[60]

On June 28, 2017, petitioner filed its Motion for Leave to File and to Admit Attached Reply Memorandum, which the Court granted in the Resolution dated July 5, 2017.

ISSUES[61]

The parties submit the following issues for resolution:

1. Whether this Court has jurisdiction to entertain the Petition for Review.

2. Whether the assessments have become final and demandable.

3. Whether respondent's right to assess petitioner has prescribed, the assessment having been issued beyond the three (3)-year prescriptive period.

4. Assuming respondent's period to assess has not prescribed, whether the assessments are null and void because they do not comply with the requirements of Section 228 of the 1997 National Internal Revenue Code, as amended (NIRC), and Revenue Regulations No. (RR) 12-99, as amended.

5. Assuming respondent's period to assess has not prescribed and the assessments are valid, whether respondent's findings in said assessments are correct:

    5.1. Whether the deductions claimed by petitioner on account of salaries, wages, allowances and fringe benefits of employees seconded to it, amounting to Php5,826,141.00, were properly disallowed.
    5.2. Whether the deduction claimed by petitioner on account of its interest expense amounting to Php47,600,227.00, was properly disallowed.
    5.3. Whether petitioner was properly assessed deficiency VAT due on rental from leased properties. *cem*

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[60] Docket, Vol. 10, p. 4225.
[61] Docket, Vol. 6, JSFI, pp. 2639-2640.

5.4. Whether petitioner was properly assessed deficiency VAT, deficiency EWT, deficiency DST due on sales of real property.
5.5. Whether reacquisition of real property, as a consequence of the rescission of its sale, is a transaction deemed sale subject to VAT, EWT, and DST.
5.6. Whether the "loans payable" reported in petitioner's 2009 Audited Financial Statements are subject to DST.

6. Whether or not petitioner is liable for the assessments for fiscal year ending June 30, 2009.

Petitioner's Arguments[62]

Petitioner argues that its appeal is timely filed and that the assessments have not become final and executory; that respondent's right to assess has prescribed having been done beyond the three (3)-year prescriptive period; that respondent's alleged finding of fraud in order to justify the application of the ten (10)-year exceptional prescriptive period has no basis; and, that the assessments are void for failing to comply with the requirements of Section 228 of the NIRC and Revenue Regulations No. (RR) 12-99.

Petitioner further argues that the BIR adopted means of determining its tax liability which are haphazard, illegal, and invalid.

With respect to the items of assessment for deficiency income tax, petitioner argues that the BIR has no basis due to the following reasons: (1) the deductions claimed by petitioner for salaries, wages, allowances, and fringe benefits of the seconded employees were proper and substantiated by contracts, vouchers, receipts, and other supporting documents; (2) the deduction claimed for interest expense paid to Maybank Philippines, Inc. (MPI) is proper, as petitioner and MPI are not related parties disqualified from claiming said deduction; and, that petitioner would still have no taxable income even if the deductions claimed for salaries, wages, allowances, and fringe benefits, and interest expense were disallowed.

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[62] Docket, Vol. 1, PFR, pp. 13-30; Vol. 10, Petitioner's Memorandum, pp. 4143-4210.

As to the other items of assessment, petitioner states that the VAT due on rental from leased properties were properly reported and paid to the BIR; the VAT, EWT, and DST due on sales of real property were properly reported and paid to the BIR; the partial rescission of the 1997 sale and return of certain properties by petitioner to MPI are not transactions deemed sale and are not subject to VAT, EWT, or DST; and, that the loans payable account reported in petitioner's audited financial statements for fiscal year 2009 is not subject to DST.

Respondent's Counter-Arguments[63]

Respondent argues that the assessment has become final, executory and demandable due to petitioner's failure to appeal to the CTA within thirty (30) days from receipt of the PCL. Respondent states that the PCL is an outright denial of the protest filed by petitioner.

As to prescription, respondent asserts that the assessment was issued within ten (10) years from discovery of falsity or fraud under Section 222(A) of the NIRC; that the result of the re-investigation of petitioner revealed substantial under-declaration of taxable income, over-declaration of expenses, and non-declaration of taxable transactions; and that the above findings are considered *prima facie* evidence of a false or fraudulent return pursuant to Section 248(B) of the NIRC.

Respondent further argues that the FAN was with complete details, such as the computation, schedules and applicable laws, which are the factual and legal bases of the assessments; that the subject assessments are valid and correct; that tax assessments made by examiners are presumed correct and made in good faith and the taxpayer must prove the contrary.

RULING OF THE COURT

The petition has merit.

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[63] Docket, Vol. 2, Answer, pp. 795-798; Vol. 10, Respondent's Memorandum, pp. 4216-4223.

The Court has jurisdiction over the petition for review.

Under the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the CIR in cases involving disputed assessments.[64] Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the CIR to act on the disputed assessments.[65]

Petitioner argues that PCLs are issued only in cases of undisputed assessments, thus, the PCL was erroneously issued since petitioner has a pending protest. Instead, petitioner argues that the denial from which it appeals is the December 19, 2013 Letter, which it received on January 17, 2014. Or, in the alternative, petitioner argues that it filed its appeal within thirty (30) days from the lapse of the 180-day period from the submission of the supporting documents to its protest.

On the other hand, respondent argues that the assessment has become final, executory, and demandable for petitioner's failure to appeal the PCL to the CTA within thirty (30) days from receipt thereof.

In a case, this Court has ruled that a PCL is a final decision and therefore appealable to the CTA after finding that the PCL reiterated the taxpayer's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges.[66] The PCL also indicated that upon failure to pay the same, respondent would be constrained to serve and

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[64] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. –
The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, xxx.

[65] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx

[66] Organization Change Consultants International Center for Learning, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8625, February 10, 2017.

execute administrative summary remedies to enforce collection.[67]

However, this Court has also allowed the reckoning of the 30-day period to appeal to the CTA from the taxpayer's receipt of a letter reiterating the collection, to wit:

> On the issue of jurisdiction, the WDL [Warrant of Distraint and Levy], which was served upon SEGI on June 22, 2010, was not the last response received by SEGI from the CIR. After SEGI requested a withdrawal and cancellation of WDL in a letter dated September 24, 2010, SEGI received a letter on March 25, 2011 from OIC-RDO Amador P. Ducut reiterating the collection.
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> xxx
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> In light of the foregoing events obtaining after the issuance of the WDL, it is clear that in the instant case, the WDL cannot be considered the final act of the CIR, from which the counting of the statutory period to appeal to this Court must be reckoned.[68]

In the instant case, after petitioner requested the revocation[69] of the PCL, petitioner received a letter from respondent on January 17, 2014 reiterating the enforcement of collection thru summary remedies considering that the assessment has become final, executory and demandable. Thus, petitioner properly reckoned the 30-day period to appeal from receipt of said letter.

Considering that the December 19, 2013 Letter reiterating collection was received by petitioner on January 17, 2014, petitioner had until February 16, 2014 to file its appeal. Thus, the instant petition for review was timely filed on February 13, 2014 and the Court has jurisdiction.

The assessments on income tax and VAT for

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[67] Organization Change Consultants International Center for Learning, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8625, February 10, 2017.
[68] Commissioner of Internal Revenue v. South Entertainment Gallery, Inc., CTA EB Case No. 1246, January 4, 2016.
[69] Petitioner's FOE, Folder 9, Exhibit "P-41".

the 1st to 3rd quarters have prescribed.

It is undisputed that when the assessments were received by petitioner on April 23, 2013, the same were already beyond the regular three (3)-year prescriptive period under Section 203 of the NIRC. However, respondent argues that the assessments were issued within the ten (10)-year prescriptive period in cases of false or fraudulent return with intent to evade tax as provided under Section 222(a) of the NIRC. On the other hand, petitioner argues that respondent did not justify the application of the exceptional ten (10)-year prescriptive period since there is no evidence to prove falsity or fraud.

Sections 203 and 222(a) of the NIRC provide:

> Sec. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
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> *** *** ***
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> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.—*
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> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission; Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

The Court agrees with petitioner that the assessments have prescribed.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.,*[70] the Supreme Court held that "[t]o avail of the extraordinary period of assessment in Section 222(a) of the [NIRC], the [CIR] should show that the facts upon which the fraud is based in communicated to the taxpayer."

Examination of the PAN, FLD/FAN, and PCL reveals that respondent never indicated therein that the ten (10)-year prescriptive period shall apply, or that the three (3)-year prescriptive period shall not apply. Nowhere in said PAN and FLD/FAN did respondent allege any circumstance revealed by the investigation which warranted the application of said ten (10)-year period. Furthermore, respondent failed to show in the PAN, FLD/FAN, and PCL that the alleged deficiencies found after investigation amounted to a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions which would constitute *prima facie* evidence of a false or fraudulent return.

As can be seen from respondent's evidence, the purpose of the reinvestigation of petitioner was to ascertain its correct tax liabilities and to determine whether tax fraud was committed.[71] This was echoed in respondent's letter to petitioner, which merely stated that the "case falls in the exception of Section 203 of [the] NIRC due to the presence of fraud as earlier stated in the letter of CIR Henares dated June 26, 2012."[72] However, said June 26, 2012 letter cannot be found in the parties' evidence. Thus, from the correspondence, respondent was still to determine if there was fraud or not.

It is also noteworthy that respondent's witnesses did not testify as to any finding of fraud or that they found any evidence of fraud which would justify the application of the ten (10)-year extraordinary period.

Respondent's witness Antonino T. Longjas merely testified:

[70] G.R. No. 215957, November 9, 2016.
[71] Docket, Vol. 10, Exhibit "R-15" Memorandum dated July 20, 2011, p. 4007.
[72] Petitioner's FOE, Folder 9, Exhibit "P-53"; docket, Vol. 10, Exhibit "R-24", pp. 4050-4052.

17. What did you do next, if there's any?

A. I, together with Revenue Officer Carlito Coronel and Group Supervisor Neil Cordero, conducted an examination of the available accounting records of the petitioner. As a result, we found out that Petitioner is still liable to pay deficiency taxes; accordingly, a Notice of Informal Conference with the Details of Computation of the tax deficiencies was issued to enable the petitioner to go over the findings and present objection thereto, if any, as well as to submit whatever evidence it may have in its favor. Another Notice of Informal Conference was subsequently issued with Revised Details of Computation.[73]

Another witness testified:

8. What did you do next after the tax case has been assigned to you?

A. I conducted my review of the report of investigation submitted by Revenue Officers Antonino Longjas and Carlito Coronel and Group Supervisor Neil Cordero, as well as the entire tax records of the petitioner for the fiscal year ending 30 June 2009. As [a] result, I found out that petitioner is liable for the amounts of Php36,532,257.42 as deficiency income tax, Php70,708,079.45 as deficiency VAT, Php41,889,827.11 as deficiency expanded withholding tax, and Php15,061,788.68 as deficiency DST, as contained in the Revenue Officer's Audit Reports that I prepared.[74]

Therefore, the Court finds that respondent failed to substantiate and justify the application of the ten (10)-year extraordinary prescriptive period under Section 222(a).

The alleged findings of deficiency tax also does not constitute falsity which would give rise to the extraordinary ten (10)-year period. In *Commissioner of Internal Revenue v. Philippine Daily Inquirer*,[75] the Supreme Court stated:

In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon

[73] Docket, Vol. 9, Exhibit "R-30" Judicial Affidavit of Antonino T. Longjas, p. 3856.
[74] Docket, Vol. 10, Exhibit "R-31", Judicial Affidavit of Ruth G. Legaspi-Tandoy, p. 3928.
[75] G.R. No. 213943, March 22, 2017.

> circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.
>
> xxx
>
> Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return. (*Citations omitted, underscoring supplied*)

This is especially important considering that taxes are self-assessed, which system was described by the Supreme Court as:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes.[76]

Upon the finding that a tax has been erroneously paid, the taxpayer is allowed to file a claim for refund. On the reverse, should the taxpayer find that there is an error in its return, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment may be issued.

The very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error does not result to a false return and should not result to the operation of the ten (10)-year prescriptive period.

In the instant case, respondent failed to make any allegation nor present any evidence that the returns filed by petitioner were false or fraudulent. Respondent also failed to

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[76] SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.

justify the application of the ten (10)-year prescriptive period, thus, only the ordinary three (3)-year prescriptive period shall apply.

Considering the foregoing, the Court finds that the following assessments have prescribed: (1) deficiency income tax for fiscal year June 30, 2009; and (2) deficiency VAT for the first to third quarters of fiscal year June 30, 2009, as follows:

Tax Type	Period Covered	Last day to File Return	Actual Date of Filing	Last Day to Assess
Income Tax	FY 2008-2009	October 15, 2009	October 21, 2009[77]	October 22, 2012
VAT	1st Qtr	October 25, 2008	October 24, 2008[78]	October 25, 2011
	2nd Qtr	January 25, 2009	January 10, 2009[79]	January 25, 2012
	3rd Qtr	April 25, 2009	April 9, 2009[80]	April 25, 2012

However, petitioner failed to present into evidence its quarterly VAT return for the 4th quarter, EWT returns, and DST returns, for this Court to determine whether said respondent's right to assess said taxes have prescribed.

The Court will now examine the merits of the unprescribed assessments.

I. DEFICIENCY VAT – Php73,126,969.85

Respondent assessed petitioner for deficiency VAT in the amount of Php73,126,969.85, computed as follows[81]:

Rental from Lease Properties per FS		Php 11,147,732.00
Consummated Sales on Real Property		95,071,168.00
Re-acquired Properties by Maybank Phils., Inc.		223,824,817.00
Total Vatable Sales per audit		Php 330,043,717.00
Output Tax thereon		Php 39,605,246.04
Less: Creditable Input Tax per return		398,480.58
VAT Payable		Php 39,206,765.46
Less: VAT Payments		
Payments per Returns	Php 6,694,110.54	

[77] Petitioner's FOE, Folder 9, Exhibit "P-57".
[78] Docket, Vol. 9, Exhibit "P-5.3", pp. 3720-3723.
[79] Docket, Vol. 9, Exhibit "P-5.6", pp. 3732-3735.
[80] Docket, Vol. 9, Exhibit "P-5.9", pp. 3744-3747.
[81] BIR Records, Exhibit R-26-d, p. 277.

Payments per Original Investigation	53,280.00	6,747,390.54
Deficiency Value-Added Tax		Php 32,459,374.92
Add: Surcharge (Sec.248)		16,229,687.46
Interest p.a. from ___ to 04/30/2013 (Sec. 249)		24,437,907.47
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE & COLLECTIBLE		**Php 73,126,969.85**

Pursuant to Section 106 of the NIRC, respondent assessed petitioner of the following transactions:

A. Rental of Real Properties - Php11,147,732.00

Based on the VAT Returns for FY 2009, petitioner declared the receipts on lease of real property in the amount of Php11,467,491.86, and paid the corresponding output VAT of Php1,376,099.02, broken down as follows:

Exhibit[82]	Taxable Period	Amount of Rental	Output VAT
P-5.15	1st Quarter	Php 7,017,153.20	Php 842,058.38
P-5.18	2nd Quarter	385,393.59	46,247.23
P-5.21	3rd Quarter	2,072,091.67	248,651.00
P-5.22	April 2009	359,396.33	43,127.56
P-5.23	May 2009	386,182.08	46,341.85
P-5.24	June 2009	1,247,274.99	149,673.00
	Total	**Php 11,467,491.86**	**Php 1,376,099.02**

Since the Php11,467,491.86 reported amount of rental receipts for FY 2009 is higher than the assessed amount of Php 11,147,732.00, petitioner is not liable for any deficiency VAT thereon. Thus, the assessment on this item should be cancelled.

B. Consummated Sales of Real Property - Php95,071,168.00

In the course of the respondent's investigation, petitioner furnished its schedule[83] of consummated sales of real properties for FY 2009 with selling prices totalling Php95,071,168.00 upon which respondent imposed 12% VAT.

82 Docket, Vol. 9, pp. 3768-3770, 3780-3782, 3793-3795, and 3797-3807.
83 BIR Records, pp. 95-97.

Petitioner argues that the sales are either: (a) exempt from VAT under Section 109(1)(P) of the NIRC, or (b) taxable based on the payments received, in case of installment sales.

Section 109(1)(P) of the NIRC provides:

> SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
>
> x x x x x x x x x
>
> (P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business or real property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, **residential lot valued at One million pesos (P1,500,000) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (P2,500,000) and below**: *Provided,* That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to their present values using the Consumer Price Index, as published by the National Statistics Office (NSO); *(Emphasis supplied)*

From the foregoing, the sale of residential lot valued at Php1,500,000.00 and below and sale of house and lot and other residential dwellings valued at Php2,500,000.00 and below are exempt from VAT.

Based on the prescribed thresholds and examination of petitioner's supporting documents, the Court-commissioned Independent Certified Public Accountant (ICPA) classified petitioner's sales of real properties into VAT taxable or exempt. However, out of the Php95,071,168.00 assessed total sales for FY 2009, the ICPA was able to account only the amount of Php93,814,167.00, detailed as follows:[84]

[84] Petitioner's FOE, Exhibit P-1.2, pp 3-4.

Findings	Annex Reference to Exh. P-1.2	Selling Price
1. Sale of residential properties with selling price less than Php 1,500,000, exempt from VAT supported by original deed of promise to sell and deed of absolute sale, but supported by VAT OR	Annex B-1	Php 7,546,100.00
2. Sale of residential properties with selling price less than Php 1,500,000, exempt from VAT supported by original deed of promise to sell, but supported by VAT OR	Annex B-2	994,001.00
3. Sale of residential properties with selling price less than Php 1,500,000, exempt from VAT supported by photocopy of deed of promise to sell and deed of redemption, but supported by original VAT OR	Annex B-3	988,000.00
4. Sale of residential properties with selling price more than Php 1,500,000, subject to VAT under installment payment method supported by original deed of promise to sell and VAT OR	Annex B-4	6,455,001.00
5. Sale of residential properties with selling price more than Php 1,500,000, subject to VAT under installment payment method supported by photocopy of deed of promise to sell and original VAT OR	Annex B-5	5,780,000.00
6. Sale of residential properties with selling price more than Php 1,500,000, subject to VAT under cash payment method supported by original deed of promise to sell and VAT OR	Annex B-6	4,200,000.00
7. Sale of residential properties with selling price more than Php 1,500,000, subject to VAT under cash payment method supported by photocopy of deed of promise to sell, deed of absolute sale and original VAT OR	Annex B-7	3,700,000.00
8. Sale of commercial properties subject to VAT under installment payment method supported by original deed of promise to sell,	Annex B-8	11,850,000.00

deed of conventional redemption and VAT OR		
9. Sale of commercial properties subject to VAT supported by original VAT OR	Annex B-11	1,190,265.00
10. Sale of residential properties with price more than Php 1,500,000, subject to VAT under installment payment method supported by certified true copy of deed of promise to sell and original VAT OR	Annex B-13	2,000,000.00
11. Sale of residential properties with selling price more than Php 1,500,000, subject to VAT under cash payment method supported by certified true copy of deed of absolute sale and original VAT OR	Annex B-14	1,600,000.00
12. Sale of residential properties subject to VAT under installment payment method supported by certified true copy of deed of promise to sell	Annex B-15	150,000.00
13. Sale of residential properties with selling price less than Php 1,500,000, exempt from VAT supported by certified true copy of deed of promise to sell but supported by original VAT OR	Annex B-16	2,020,000.00
17. Sale of commercial properties subject to VAT under cash payment method supported by certified true copy of deed of promise to sell, and photocopy of deed of sale and original VAT OR	Annex B-17	45,340,800.00
Total		**Php 93,814,167.00**
Per BIR Assessment (***Exhibit P-2***)		**95,071,168.00**
Difference		**(Php 1,257,001.00)**

For being unsupported, the discrepancy of Php1,257,001.00 shall be considered as petitioner's sales/receipts for the unprescribed fourth quarter of FY 2009.

While there were sales transactions that fall within the Php 1,500,000.00 threshold based on the above ICPA findings, the same shall be subject to VAT for petitioner's failure to indicate the term "VAT-exempt sale" in the official receipts it issued for the said transactions. This is in accordance with Section 113 of the NIRC, which requires a VAT-registered person to prominently write or print the term "VAT-exempt sale" on the VAT official receipt or invoice as failure to do so shall make it liable to account for the VAT as if the sale is not VAT-exempt, to wit:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> xxx xxx xxx
>
> (B) *Information contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> xxx xxx xxx
>
> (b) If the sale is exempt from value-added tax, the term '**VAT-exempt sale**' shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (D) *Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt.* —
>
> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

Petitioner further asserts that it should not have been assessed based on the selling price of the installment transactions, but on the taxable receipts or installment payments.

Sections 4.106-3 and 4.106-4 of RR No. 16-05,[85] as amended by RR No. 04-07,[86] prescribe the taxable base and time of payment of the 12% VAT on sales of real properties as follows:

> **SEC. 4.106-3. *Sale of Real Properties.*** – Sale of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business of the seller shall be subject to VAT.
>
> xxx xxx xxx
>
> ***Sale of real property on installment plan*** means sale of real property by a real estate dealer, the initial payments of which in the year of sale do not exceed twenty-five (25%) of the gross selling price.
>
> In case of installment sale, the seller shall be subject to output VAT on the installment payments received, including the interests and penalties for late payment, actually and/or constructively received, subject to the provisions of Sec.4.106-4 hereof. Correspondingly, the buyer of the property can claim the input tax in the same period as the seller recognized the output tax.
>
> Installment payments, including interests and penalties, actually and/or constructively received starting February 1, 2006 shall be subject to twelve percent (12%) output VAT.
>
> ***Sale of real property by a real estate dealer on a deferred payment basis not on the installment plan*** means sale of real property, the initial payments of which in the year of sale exceed twenty-five percent (25%) of the gross selling price.
>
> ***'Initial payments'*** means payment or payments which the seller receives before or upon execution of the instrument of sale and payments which he expects or is scheduled to receive in cash or property (other than evidence of indebtedness of the purchaser) during the taxable year when the sale or disposition of the real property was made. It covers any down payment made and includes all payments actually or constructively

[85] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.
[86] Amending Certain Provisions of Revenue Regulations No. 16-20015, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, February 7, 2007.

received during the year of sale, the aggregate of which determines the limit set by law.

xxx xxx xxx

In the case of sale of real properties on a deferred-payment basis not on the installment plan, the transaction shall be treated as cash sale which makes the entire selling price taxable in the month of sale. Output tax shall be recognized by the seller and input tax shall accrue to the buyer at the time of the execution of the instrument of sale.

Payments subsequent to "initial payments" shall no longer be subject to output VAT, in the case of sale on a deferred payment basis."

"SEC. 4.106-4. *Meaning of the Term 'Gross Selling Price'*. — The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. *If the VAT is not billed separately in the document of sale, the selling price or the consideration stated therein shall be deemed to be inclusive of VAT.* The term "fair market value" shall mean whichever is higher of: 1) the fair market value as determined by the Commissioner/zonal value, or 2) the fair market value as shown in schedule of values of the Provincial and City Assessors (real property tax declaration). However, in the absence of zonal value/fair market value as determined by the Commissioner, gross selling price refers to the market value shown in the latest real property tax declaration or the consideration, whichever is higher. If the gross selling price is based on the zonal value or market value of the property, the zonal or market value shall be deemed exclusive of VAT. *Thus, the zonal value/market value, net of the output VAT, should still be higher than the consideration in the document of sale, exclusive of the VAT.*

If the sale of real property is on installment plan where the zonal value/fair market value is higher than the consideration/selling price, exclusive of the VAT, the VAT *shall be based on the ratio of actual collection of the consideration, exclusive of the VAT, against the agreed consideration, exclusive of the VAT, appearing in the Contract to Sell/Contract of Sale applied to the zonal value/fair market value of the property at the time of the execution of the Contract to Sell/Contract of Sale at the inception of the contract. Thus, since the output VAT is based on the market value of the property which is higher than the consideration/selling price in the sales document, exclusive of the VAT, the input VAT that can be claimed by the buyer shall be the separately-billed output VAT in the sales document issued by the seller. Therefore, the output VAT which is based on the market value must be billed separately by the seller in the sales document with specific mention that the VAT billed separately is based on the market value of the property.*

Illustration:

ABC Corporation sold a parcel of land to XYZ Company on July 2, 2006 for P1,000,000.00, plus the output VAT, with a monthly installment payment of P10,000.00, plus the output VAT. The zonal value of the subject property at the time of sale amounted to P1,500,000.00. Compute for the output tax due on the installment payment.

Formula:

$$\frac{\text{Actual collection (exclusive of the VAT) x Zonal value x 12\%}}{\text{Agreed consideration (exclusive of the VAT)}}$$

$$\frac{\text{P10,000.00}}{\text{P1,000,000.00}} \text{ x P1,500,000.00 = P15,000.00}$$

P15,000.00 x 12% = P1,800.00
==========

Selling price is the amount of consideration in a contract of sale between the buyer and seller or the total price of the sale which may include cash or property and evidence of indebtedness issued by the buyer, excluding the VAT.

From the foregoing provisions, the time of payment of the VAT shall depend on whether the sale is a cash sale, an installment sale, or a deferred-payment sale. For cash sales, *i.e.*, the consideration is paid in full by the buyer at the time of sale, the VAT on the entire consideration accrues at the time of sale. For installment sales, *i.e.*, the initial payments of which do not exceed 25% of gross selling price, the VAT accrues on the installment payments, inclusive of interest and penalties, and is due at the time of receipt thereof. For deferred payment sales, *i.e.*, the initial payments of which exceed 25% of gross selling price, the entire selling price is subject to VAT in the month of sale.

Applying the rules provided under Sections 4.106-3 and 4.106-4 of RR No. 16-05, as amended by RR No. 04-07 and following the earlier resolution on the prescription of the assessment for the first to third quarters of FY 2009, only the sales/receipts totaling Php14,403,008.36 (the sum of Php2,905,741.36 and Php11,497,267.00), as computed below, covering the fourth quarter of FY 2009 may be subject of the assessment.

				OFFICIAL RECEIPT (OR)			**TOTAL SALES/RECEIPTS**	
BUYER	**CON-TRACT DATE**	**SELLING PRICE**	**DOWN-PAYMENT**	**Exh.**	**DATE**	**AMOUNT (In PHP)**	**INSTALL-MENT SALE (In PHP)**	**CASH/ DEFERRED PAYMENT SALE (In PHP)**
CONSUMMATED SALES IN 2009								
Annex B-1 of Exh. P-1.2								
Cherry Lim	12/12/08	1,260,000.00	252,000.00	P-9.677	4/23/09	14,461.87	14,461.87	
				P-9.734	5/25/09	14,461.87	14,461.87	
				P-9.771	6/26/09	14,461.87	14,461.87	
Sally Monterola	11/24/08	1,100,000.00	110,000.00	P-9.667	4/23/09	111,500.00	111,500.00	
				P-9.726	5/25/09	22,300.00	22,300.00	
Jessa Boron	6/30/09	430,000.00	43,000.00	P-9.829	6/30/09	7,100.00	50,100.00*	
Subtotal						**184,285.61**	**227,285.61**	
Annex B-2 of Exh. P-1.2								
Francisco Zoleta	6/30/09	264,000.00	26,400.00	P-9.696	4/30/09	5,147.00	5,147.00	
				P-9.753	5/29/09	5,147.00	5,147.00	
				P-9.826	6/30/09	5,147.00	31,547.00*	
Eena Monique Dira	4/17/09	470,001.00	94,000.00	P-9.152	4/17/09	47,000.00	47,000.00	
				P-9.153	4/17/09	47,000.00	47,000.00	
				P-9.709	5/6/09	8,000.00	8,000.00	
				P-9.729	5/25/09	8,000.00	8,000.00	
Subtotal						**125,441.00**	**151,841.00**	
Annex B-3 of Exh. P-1.2								

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Janice Cosadio	1/9/09	288,000.00	28,800.00	P-9.668	4/23/09	9,360.00	9,360.00	
				P-9.728	5/25/09	9,360.00	9,360.00	
				P-9.804	6/26/09	9,360.00	9,360.00	
Subtotal						**28,080.00**	**28,080.00**	
Annex B-4 of Exh. P-1.2								
Kirth Pagkan-lungan	5/29/09	2,105,001.00	210,501.00	P-9.151	5/29/09	210,501.00	210,501.00	
				P-9.759	5/29/09	27,400.00	27,400.00	
				P-9.792	6/22/09	27,400.00	27,400.00	
Ranier Galang	5/29/09	1,850,000.00	200,000.00	P-9.148	5/29/09	200,000.00	200,000.00	
				P-9.769	5/29/09	27,000.00	27,000.00	
				P-9.770	5/29/09	27,000.00	27,000.00	
Filsat Corporation	6/15/09	2,500,000.00	500,000.00	P-9.141	6/15/09	250,000.00	250,000.00	
				P-9.142	6/15/09	225,000.00	225,000.00	
				P-9.143	6/15/09	25,000.00	25,000.00	
Subtotal						**1,019,301.00**	**1,019,301.00**	
Annex B-5 of Exh. P-1.2								
Merlyn Pomperada	11/27/08	1,680,000.00	336,000.00	P-9.704	4/30/09	39,800.00	39,800.00	
				P-9.723	5/25/09	19,900.00	19,900.00	
				P-9.822	6/29/09	19,900.00	19,900.00	
				P-9.806	6/26/09	19,900.00	19,900.00	
Subtotal						**99,500.00**	**99,500.00**	
Annex B-6 of Exh. P-1.2								
Jose Cordero Jr	5/29/09	4,200,000.00	1,200,000.00	P-9.145	5/29/09	600,000.00		4,200,000.00
				P-9.146	5/29/09	600,000.00		
Subtotal						**1,200,000.00**		**4,200,000.00**
Annex B-7 of Exh. P-1.2								
Doris Pascual	6/02/09	3,700,000.00	1,200,000.00	P-9.149	5/29/09	200,000.00		3,700,000.00
				P-9.150	5/29/09	1,000,000.00		
				P-9.801	6/26/09	37,697.23		
Subtotal						**1,237,697.23**		**3,700,000.00**
Annex B-8 of Exh. P-1.2								
Teresita Regullano	1/27/09	1,400,000.00	280,000.00	P-9.619	4/23/09	25,500.00	25,500.00	
				P-9.662	4/23/09	25,500.00	25,500.00	
				P-9.725	5/25/09	25,500.00	25,500.00	
				P-9.768	6/26/09	25,500.00	25,500.00	

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Macario & Lolita Perez	2/3/09	1,900,000.00	380,000.00	P-9.648	4/2/09	29,100.00	29,100.00	
				P-9.676	4/23/09	29,100.00	29,100.00	
				P-9.760	5/29/09	29,100.00	29,100.00	
				P-9.823	6/30/09	29,100.00	29,100.00	
Reynaldo Eusebio	2/2/09	7,000,000.00	1,400,000.00	P-9.656	4/20/09	127,000.00	127,000.00	
Jose Marie & Yolanda Guanzon	5/29/09	1,000,000.00	200,000.00	P-9.147	5/29/09	200,000.00	200,000.00	
				P-9.739	5/28/09	18,200.00	18,200.00	
				P-9.903	5/29/09	18,200.00	18,200.00	
Subtotal						**581,800.00**	**581,800.00**	
Annex B-11 of Exh. P-1.2								
Rocel Columna		320,265.00		P-9.831	4/16/09	320,265.00		320,265.00
Ma. Teresa Ursabia		420,000.00		P-9.832	6/18/09	420,000.00		420,000.00
Subtotal						**740,265.00**		**740,265.00**
Annex B-13 of Exh. P-1.2								
Geraldine Javier	5/29/09	2,000,000.00	200,000.00	P-9.144	5/29/09	200,000.00	200,000.00	
				P-9.772	5/29/09	27,142.00	27,142.00	
Subtotal						**227,142.00**	**227,142.00**	
Annex B-14 of Exh. P-1.2								
Don Rafael Marasigan	4/13/09	1,600,001.00		P-9.154	4/13/09	1,600,001.00		1,600,001.00
Subtotal						**1,600,001.00**		**1,600,001.00**
Annex B-16 of Exh. P-1.2								
Dominador Furigay	12/15/08	900,000.00	180,000.00	P-9.737	5/28/09	10,856.80	10,856.80	
				P-9.795	6/25/09	10,856.80	10,856.80	
Emelie Estacio	6/9/09	110,000.00	11,000.00	P-9.140	6/9/09	11,000.00	11,000.00	
Subtotal						**32,713.60**	**32,713.60**	
PRIOR YEAR'S SALES								
Annex C-1 of Exh. P-1.2								
Cynthia Dela Cruz		1,000,000.00		P-9.761	05/29/09	29,500.00	29,500.00	
				P-9.800	06/26/09	29,500.00	29,500.00	
Arnulfo Lapag		1,120,001.00		P-9.679	04/23/09	13,500.00	13,500.00	
				P-9.730	05/25/09	13,500.00	13,500.00	
				P-9.807	06/26/09	13,500.00	13,500.00	
Elnora Decano		350,000.00		P-9.634	04/01/09	6,300.00	6,300.00	
				P-9.708	05/06/09	6,300.00	6,300.00	
Hazel Marmolejo		500,001.00		P-9.685	04/29/09	6,050.00	6,050.00	

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				P-9.687	04/29/09	6,050.00	6,050.00	
				P-9.688	04/29/09	6,050.00	6,050.00	
				P-9.689	04/29/09	6,050.00	6,050.00	
				P-9.690	04/29/09	6,050.00	6,050.00	
				P-9.765	05/29/09	6,050.00	6,050.00	
Faustino Ignacio		9,300,000.00		P-9.747	05/25/09	202,000.00	202,000.00	
Penny Roxas		180,000.00		P-9.673	04/23/09	6,900.00	6,900.00	
				P-9.736	05/25/09	6,900.00	6,900.00	
				P-9.784	06/26/09	6,900.00	6,900.00	
Charmaine Jurilla		922,000.00		P-9.655	04/20/09	11,700.00	11,700.00	
				P-9.719	05/20/09	11,700.00	11,700.00	
Zircon Housing		800,000.00		P-9.635	04/07/09	12,500.00	12,500.00	
				P-9.680	04/27/09	12,500.00	12,500.00	
				P-9.712	05/19/09	12,500.00	12,500.00	
				P-9.815	06/26/09	12,500.00	12,500.00	
				P-9.814	06/26/09	12,500.00	12,500.00	
Jonathan Austria		200,000.00		P-9.678	04/23/09	2,513.96	2,513.96	
				P-9.724	05/25/09	2,513.96	2,513.96	
				P-9.785	06/26/09	2,513.96	2,513.96	
				P-9.763	05/29/09	6,931.59	6,931.59	
				P-9.773	05/29/09	6,931.59	6,931.59	
				P-9.774	05/29/09	6,931.59	6,931.59	
				P-9.775	05/29/09	6,931.59	6,931.59	
Anita Potot		800,000.00		P-9.828	06/30/09	6,931.59	6,931.59	
Subtotal						**499,199. 83**	**499,199. 83**	
Annex C-3 of Exh. P-1.2								
Arlyn Taningco		750,000.00		P-9.779	06/11/09	13,500.00	13,500.00	
				P-9.780	06/11/09	13,500.00	13,500.00	
				P-9.781	06/09/09	13,500.00	13,500.00	
Subtotal						**40,500.00**	**40,500.00**	
Annex C-5 of Exh. P-1.2								
Manuel & Linda Yu		2,700,000.00		P-9.670	04/23/09	32,700.00	32,700.00	
				P-9.738	05/25/09	32,700.00	32,700.00	
				P-9.280	06/26/09	32,700.00	32,700.00	
Elizar Alcantara - Filsat		2,500,000.00		P-9.283	06/26/09	29,100.00	29,100.00	
Rainier Galang		1,850,000.00		P-9.803	06/26/09	27,000.00	27,000.00	

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Subtotal						**154,200.00**	**154,200.00**	
Annex C-9 of Exh. P-1.2								
Adam Birao		279,360.00		P-9.899	04/20/09	5,400.00	5,400.00	
				P-9.720	05/21/09	5,400.00	5,400.00	
				P-9.812	06/26/09	5,400.00	5,400.00	
Edwin Mabitazanan-Salonga		150,000.00		P-9.665	04/23/09	2,599.35	2,599.35	
				P-9.731	05/25/09	2,599.35	2,599.35	
				P-9.732	05/25/09	5,656.41	5,656.41	
				P-9.798	06/26/09	2,599.35	2,599.35	
Miguel Torres		4,100,000.00		P-9.684	04/29/09	36,000.00	36,000.00	
Subtotal						**65,654.46**	**65,654.46**	
Annex C-10 of Exh. P-1.2								
Danilo Posadas		4,488,001.00		P-9.699	04/30/09	5,200.00	5,200.00	
Subtotal						**5,200.00**	**5,200.00**	
Annex C-12 of Exh. P-1.2								
Gregorio Abu		2,298,600.00		P-9.653	04/20/09	7,400.00	7,400.00	
				P-9.722	05/21/09	7,400.00	7,400.00	
				P-9.788	06/19/09	7,400.00	7,400.00	
Edwin Mabitazan-Roman		450,000.00		P-9.666	04/23/09	5,656.41	5,656.41	
				P-9.797	06/26/09	5,656.41	5,656.41	
Subtotal						**33,512.82**	**33,512.82**	
Annex C-14 of Exh. P-1.2								
Ramonito Geonzon		1,000,000.00		P-9.660	04/21/09	29,500.00	29,500.00	
				P-9.811	06/26/09	29,500.00	29,500.00	
Romanito Geonzon		1,000,000.00		P-9.766	05/29/09	29,500.00	29,500.00	
Subtotal						**88,500.00**	**88,500.00**	
Total							**3,254,430.32**	**10,240,266.00**
Add: Unaccounted discrepancy in sales/receipts per assessment and per ICPA findings								1,257,001.00
Total, as adjusted							3,254,430.32	11,497,267.00
Less: VAT included in sales/receipts on installment plan (₱3,254,430.32 ÷ 112% x 12%)							348,688.96	
VATABLE SALES/RECEIPTS FOR THE FOURTH QUARTER OF FY 2009							**2,905,741.36**	**11,497,267.00**

**Includes downpayment*

C. Re-acquired Properties by MPI – Php223,824,817.00

Respondent assessed petitioner of deficiency VAT for the reconveyance to MPI of its several assets previously purchased from the latter amounting to Php223,824,817.00, arguing that the same constitutes a transaction deemed sale under Section 106(B) of the NIRC.

Petitioner submits that the reacquisition by MPI of the properties pursuant to the Deed of Partial Rescission of the 1997 Sale is not a transaction deemed sale subject to VAT.

A perusal of the Deed of Partial Rescission[87], which was executed by and between MPI (*then* PNB Republic Bank) and petitioner on September 2008, discloses that the transfer of properties from the petitioner to MPI was the result of the partial rescission of the Deed of Absolute Sale[88], which was executed by and between the same parties on November 12, 1997.

The Deed of Absolute Sale was executed in favor of petitioner over a certain inventory of assets and real properties owned and acquired by MPI in the course of its banking business for the consideration of Php890,000,000.00. Under the terms of the aforesaid Deed of Sale, petitioner was obligated to pay MPI the total consideration in the following manner: *(i)* a downpayment equivalent to ten percent (10%) thereof; and *(ii)* the balance payable in five (5) equal annual amortizations. In a Supplement to the Deed of Absolute Sale[89] entered into on March 22, 2007, the five (5)-year repayment period was extended for another five (5) years.

Due to the continuing breach of the terms on the account of non-payment of the stipulated consideration for the sale, despite the extension, the parties agreed to enforce an equitable restitution and reconveyance of the properties and assets subject of the Deed of Sale.

Pursuant to the terms of the Deed of Partial Rescission, petitioner reconveyed to MPI several properties. Petitioner further agreed that all payments under the Deed of Sale shall

[87] Petitioner's FOE, Exhibit P-19.
[88] Petitioner's FOE, Exhibit P-20.
[89] Petitioner's FOE, Exhibit P-27.

not be returned, but shall be applied by MPI to its outstanding receivables from petitioner.

Based on the foregoing facts, the reacquisition of the properties as a result of the Deed of Partial Rescission does not fall under any of the following transactions deemed sale enumerated in Section 106(B) of the NIRC, which reads as follows:

> Sec. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> xxx xxx xxx
>
> (B) Transactions Deemed Sale. – The following transactions shall be deemed sale:
>
> (1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;
>
> (2) Distribution or transfer to:
>
> (a) Shareholders or investors as share in the profits of the VAT-registered persons; or
>
> (b) Creditors in payment of debt;
>
> (3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and
>
> (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

Essentially, rescission creates the obligation to return the things which were the object of the contract.[90] To rescind is to declare a contract void at its inception and to put an end to it **as though it never was**. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but **abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made.**[91]

Furthermore, the Court notes that the BIR through James H. Roldan, Assistant Commissioner, Legal Service, issued to

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[90] Article 1385 of the Civil Code.

[91] *Armand O. Raquel-Santos and Annalissa Mallari vs. Court of Appeals and Finvest Securities Co., Inc.*, G.R. No. 174986, July 7, 2009.

MPI on August 29, 2008 BIR Ruling No. DA-(C-052) 182-08[92] confirming that the effect of rescission of the subject Deed of Absolute Sale is, as if no sale, transfer or exchange ever took place between the petitioner and MPI.

Thus, the Court finds that this item of assessment should be cancelled.

In summary, petitioner is not liable for any deficiency VAT for the 4th quarter of FY 2009, computed below:

Lease of Real Property		
April 2009 *(Exh. P-5.22)*	Php 359,396.33	
May 2009 *(Exh. P-5.23)*	386,182.08	
June 2009 *(Exh. P-5.24)*	1,247,274.99	Php 1,992,853.40
Sale of Real Property		
Installment Sales	Php 2,905,741.36	
Cash/Deferred Payment Sales	11,497,267.00	14,403,008.36
Total Vatable Sales/Receipts for the 4th Quarter of FY 2009		**Php16,395,861.76**
Output Tax Due thereon		Php1,967,503.41
Less:		
April 2009 *(Exh. P-5.22)*	Php 641,978.69	
May 2009 *(Exh. P-5.23)*	1,110,396.17	
June 2009 *(Exh. P-5.24)*	712,398.56	2,353,810. 85
VAT Overpayment for the 4th Quarter of FY 2009		**Php (386,307.44)**

II. DEFICIENCY EWT – Php43,315,685.33

Pursuant to Section 57(B) of the NIRC of 1997, as amended, and RR No. 02-98,[93] as amended by RR No. 06-01,[94] respondent assessed petitioner for deficiency 6% EWT on consummated sales on real property in the amount of Php95,071,168.00 and re-acquired properties by MPI in the amount of Php223,824,817.00. Below is the computation of the Php43,315,685.33 deficiency EWT assessment, inclusive of surcharge and interest:

Consummated Sales of Real Property	Php 95,071,168.00
Re-acquired Properties by Maybank Phils., Inc.	223,824,817.00
Total	Php 318,895,985.00
EWT Rate	6%

[92] Petitioner's FOE, Exhibit P-29.
[93] April 17, 1998.
[94] July 31, 2001.

Deficiency Expanded Withholding Tax	Php 19,133,759.10
Add: Surcharge (Sec. 248)	9,566,879.55
Interest p.a. from ___ to 04/30/2013 (Sec. 249)	14,615,046.68
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)	-
TOTAL AMOUNT DUE & COLLECTIBLE	**Php 43,315,685.33**

A. Consummated Sales of Real Property – Php95,071,168.00

With regard to the Php95,071,168.00 consummated sales on real property, petitioner argues that the deficiency EWT assessment is erroneous since petitioner as the seller of real property is the taxpayer, while its buyers are the withholding agents. The obligation to withhold income tax allegedly rests on the buyers-withholding agents, not upon the petitioner.

The Court agrees with petitioner.

Pursuant to the following provisions of Sections 57(B) and 58(A) of the NIRC, the withholding of the creditable income taxes and the remittance thereof to the BIR is the responsibility of the payor-corporation/person (withholding agent) and not the payee (income recipient):

> SEC. 57. Withholding of Tax at Source. —
>
> xxx xxx xxx
>
> (B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, **by payor-corporation/persons** as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year. (*Emphasis supplied*)
>
> SEC. 58. *Returns and Payment of Taxes Withheld at Source.* —
>
> (A) Quarterly Returns and Payments of Taxes Withheld. — Taxes deducted and withheld under Section 57 **by withholding agents** shall be covered by a return and paid to, except in cases where the Commissioner

> otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers. (*Emphasis supplied*)

Further, Section Sec. 2.57.3(B) in relation to Section 2.57.2(J) of RR No. 02-98, as amended by RR Nos. 06-01 and 17-03,[95] enumerates the persons who are required to deduct and withhold the creditable income taxes due on real property sales transactions as follows:

> Sec. 2.57.2. *Income payments subject to creditable withholding tax rates prescribed thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> x x x x x x x x x
>
> (J) Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange, or transfer of real property classified as ordinary asset. – A creditable withholding tax based on the gross selling/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, shall be **imposed upon the withholding agent/buyer** x x x.
>
> Sec. 2.57.3. *Persons required to deduct and withhold.* — The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:
>
> (A) x x x x x x x x x
>
> (B) An individual, with respect to payments made in connection with his trade or business. ym

[95] March 31, 2003.

> However, **insofar as taxable sales, exchanges or transfers of real property are concerned, the buyers, whether or not engaged in trade or business, are constituted as withholding agents.** In any case, no Certificate Authorizing Registration (CAR) /Tax Clearance Certificate (TCL) shall be issued to the buyer unless the withholding tax due on the sale, transfer or exchange of real property has been duly paid.
>
> Since the tax herein involved and being withheld is income tax, the **burden of the tax is really upon the seller although the mode of payment of the tax is through withholding by the buyer.** As such, the tax withheld is considered a part of the consideration agreed upon between the seller and buyer resulting, therefore, to a net take to the seller of only the difference between the agreed consideration/selling price and the tax withheld. *(Emphasis supplied)*

Clearly, the payment to the BIR of the creditable withholding taxes is the duty of the payor/withholding agent such that the failure to withhold and remit payment of amounts withheld will make the payor/withholding agent liable and not the payee/income recipient. In the case at bar, the buyers of the real properties sold by petitioner, being the payors, are the duly constituted withholding agents and are to be held liable, and not the petitioner, which is the income recipient, for failure to withhold the correct tax on their income payments to the latter.

Thus, the assessment on this item should be cancelled.

B. Re-acquired Properties by MPI – Php223,824,817.00

As discussed earlier, this represents rescission of the Deed of Sale between petitioner and MPI, hence, cannot be subjected to EWT. Thus, the assessment on this item should also be cancelled.

III. DEFICIENCY DST – Php15,574,466.26

Respondent's assessment for deficiency DST in the amount of Php15,574,466.266 is shown below:

Current Loan Payable		
Maturity – June 30, 2010	Php 21,282,524.00	
Maturity – June 30, 2010	47,141,428.00	
Total	Php 68,423,952.00	

Non-Current Loan Payable		
Maturity – December 31, 2055	350,824,238.00	
Total Loan Payable subject to DST per FS	Php 419,248,190.00	
DST Rate (Sec. 179)	1/200	Php 2,096,240.95
DST due on Loans Payable		
Consummated Sales of Real Property	Php 95,071,168.00	
Re-acquired Properties by Maybank Phils., Inc.	223,824,817.00	
Total Loan Payable subject to DST per FS	Php 318,895,985.00	
DST Rate (Sec. 196)	15/1,000	
DST due on Deed of Sale/Conveyance of Properties		4,783,439.78
Deficiency Documentary Stamp Tax		Php 6,879,680.73
Add: Surcharge (Sec. 248)		3,439,840.36
Interest p.a. from ___ to 04/30/2013 (Sec. 249)		5,254,945.17
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE & COLLECTIBLE		**Php 15,574,466.26**

A. Current and Non-Current Portion of Loan Payable – Php419,248,190.00

Citing Section 179 of the NIRC, respondent imposed DST on the Php419,248,190.00 current and non-current portion of petitioner's "Loan Payable" account as appearing in its Audited Financial Statements (AFS) for FY 2009.

Petitioner argues that except for the Php47.1 Million loan from MPI through a revolving credit line (RCL), the "Loan Payable" reported in its FY 2009 AFS represents the unpaid purchase price of the properties it purchased from MPI under the 1997 sale. Thus, petitioner maintains that said "Loan Payable" is not a debt instrument within the meaning of Section 179 as the same does not represent borrowing and lending transaction.

As to the Php47.1 Million loan from MPI, petitioner asserts that it could not be assessed for deficiency DST because the statutory taxpayer of such is MPI.

Section 179 of the NIRC of 1997, as amended by Republic Act (RA) No. 9243, provides as follows:

> SEC. 179. *Stamp Tax on All Debt Instruments.* **On every original issue of debt instruments, there shall**

> **be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument:** *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only on documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> **For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to** xxx **promissory notes, whether negotiable or non-negotiable,** except bank notes issued for circulation." *(Emphasis supplied)*

In relation thereto, Sections 2 and 3 of RR No. 09-00[96] state that:

> SECTION 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax.-* (a) *In General.-* The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against *'the person making, signing, issuing, accepting, or transferring'* the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due:** *Provided, however,* that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.
>
> (b) *Exception.-* Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.
>
> SECTION 3. *Mode of Payment and Remittance of the Tax.* - (a) *In General.-* **Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.**

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[96] Mode of Payment and/or Remittance of the Documentary Stamp Tax Under Certain Condtions, April 31, 2000.

xxx xxx xxx

> (4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code:** Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding.
>
> (a) **A bank,** a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, as a rule, any of the parties to the transaction subject to DST shall pay and remit the full amount of DST. However, if one of the parties to the said transaction is a bank, it shall be responsible for the payment and remittance of the DST prescribed under Title VII of the NIRC; and unless it is exempt from said tax, then it shall remit the same only as a collecting agent of the CIR.

As disclosed in Note 16 of petitioner's AFS[97] for FY 2009, the "Loan Payable" account consisted of a 5% interest-bearing loan payable to MPI amounting to Php372.1 Million (the sum of the Php21,282,524.00 current portion and Php350,824,238.00 non-current portion) arising from the acquisition of land, buildings and other properties and a Php47.1 Million loan availed through the RCL with MPI subject to periodic pricing. Being the lender-bank, MPI is the one responsible for the remittance of the DST relative to the said loans. Hence, petitioner should not be assessed for any deficiency DST thereon.

B. Consummated Sales of Real Property – Php95,071,168.00

Invoking Section 196 of the NIRC, respondent imposed DST on petitioner's consummated sales of real property of Php95,071,168.00.

[97] Petitioner's FOE, Exhibit P-59.

Petitioner counter argues that the parties to a transaction subject to DST may agree on who will be liable for the tax due, and that its buyers agreed to shoulder the DST.

Section 196 of the NIRC, mandates the imposition of DST on all conveyances, deeds, instruments, or writings whereby realty sold shall be conveyed to the purchaser/s, to wit:

> SEC. 196. *Stamp tax on Deeds of Sale and Conveyances of Real Property.* – On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: *Provided,* That when one of the contracting parties is the Government the tax herein imposed shall be based on the actual consideration.
>
> (a) When the consideration, or value received or contracted to be paid for such realty after making proper allowance of any encumbrance, does not exceed One thousand pesos (P1,000) fifteen pesos (P15.00).
>
> (b) For each additional One thousand Pesos (P1,000), or fractional part thereof in excess of One thousand pesos (P1,000) of such consideration or value, Fifteen pesos (P15.00).

Relative thereto, Section 163 of Regulations No. 26,[98] or Revised Documentary Stamp Tax Regulations provides that:

> SECTION 163. *Contract for sale of land.* — If contract for the sale of land vests title on the land and improvements thereon, it would be subject to taxation as a conveyance. If it does not vest title but contains only certain provisions for the giving of a deed in the future upon compliance with conditions precedent, it is not subject to tax.

[98] March 26, 1924.

Moreover, Section 2.57.2(J) of RR No. 02-98 states that:

xxx xxx xxx

For sale of property on installment basis or deferred payment basis where the Contract to Sell is always executed before the execution of the Deed of Sale, the said Contract to Sell must be attached to the Deed of Absolute Sale executed upon completion of the payments and the duly notarized original duplicate copy of both documents must be presented to the RDO having jurisdiction of the place where the property is located for validation of the correctness of payment of all applicable taxes before the issuance of CAR/TCL.

It is to be noted, however, that in case of sale of real property paid under installment payment or deferred payment basis, the payment of the documentary stamp tax (DST) shall accrue upon the execution of the Deed of Absolute Sale but the basis for the imposition thereof shall be the gross selling price or fair market value of the property, whichever is higher, as of the time of the execution of the Contract to Sell.

From the foregoing, the DST on the sale and conveyance of real property as prescribed in Section 196 of the NIRC, accrues upon transfer of the ownership of the property sold through the execution of the Contract of Sale or Deed of Absolute Sale.

However, in the case of sale of real property paid under installment or deferred payment basis, the DST shall be computed based on the highest value among the (1) selling price indicated in the Contract to Sell, (2) fair market value/zonal value as determined by the Bureau of Internal Revenue (BIR), and (3) fair market value as shown in the schedule of values of the Provincial and City Assessors (real property tax declaration) as of the time of the execution of the Contract to Sell.

The DST is not yet payable upon the execution of the Contracts to Sell or in the instant case, the Deeds of Promise to Sell.[99] Contracts to sell are mere agreements between the seller and the buyer to sell a property pending the happening of a condition, which is the full payment of the purchase price. Unlike a contract of sale where the title to the property bought

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[99] Petitioner's FOE, Exhibits P-13.1 to P-13.82.

passes to the vendee upon the delivery of the thing sold, in contract to sell, ownership is, by agreement, reserved in the seller and is not to pass to the buyer until full payment of the purchase price.[100]

Thus, out of the assessed sales of Php95,071,168.00, only the amount of Php4,416,666.00 which had been paid in full in FY 2009 is subject to DST for the said period, detailed as follows:

ICPA Report (Exh. P-1.2) Annex Ref.	**Contract**				
	Exhibit	**Title of Contract**	**Seller Per Contract**	**Buyer**	**Selling Price**
B-1	P-12.4	Deed of Absolute Sale	Philmay Property, Inc.	Leonel Dominic S. Edulan and Shiela May M. Lim	Php 300,000.00
B-1	P-13.5	Deed of Promise to Sell	Maybank Philippines, Inc.	Spouses Roberto E. Jumawan and Estrella P. Jumawan	96,000.00
B-3	P-15	Deed of Redemption	Philmay Property, Inc.	Kim Simon C. Sioson	700,000.00
B-11				Ernesto Balolong, Jr.	450,000.00
B-11				Rocel Columna	320,265.00
B-11				Ma. Teresa Ursabia	420,000.00
B-14	P-12.5	Deed of Absolute Sale	Maybank Philippines, Inc.	Don Raphael P. Marasigan	1,600,001.00
				Total	**Php 3,886,266.00**

While MPI and not petitioner is the seller indicated in the Deed of Promise to Sell and Deed of Absolute Sale supporting the sales to Spouses Roberto E. Jumawan and Estrella P. Jumawan in the amount of Php96,000.00 and Don Raphael P. Marasigan in the amount of Php1,600,001.00, the same shall be considered as petitioner's own sales transactions since petitioner duly received payments therefor and issued the corresponding VAT official receipts.

Further, although no Deeds of Absolute Sale were presented for the sales to Spouses Roberto E. Jumawan and Estrella P. Jumawan, Ernesto Balolong, Jr., Rocel Columna and

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[100] *Sps. Torrecampo vs. Dennis Alindogan and Heide Alindogan*, GR No. 156405, February 28, 2007

Ma. Teresa Ursabia, the same shall be considered as sales of real property subject to DST since petitioner had already received full payment therefor.

As stated earlier, DST could be contractual which means that the parties may agree who will shoulder the DST. In the instant case, the buyers agreed to shoulder the payment of DST.

Be that as it may, petitioner must present proof of the DST payment. As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made.[101]

Petitioner was able to present proof of DST payment only on the following sales:

ICPA Report (Exh. P-1.2) Annex Ref.	Contract Exh. Ref.	Buyer	Selling Price	DST Paid	
				Amount	Exh. Ref.
B-1	P-12.4	Leonel Dominic S. Edulan and Shiela May M. Lim	Php 300,000.00	Php 7,140.00	P-12.4, p. 7
B-1	P-13.5	Sps. Roberto E. Jumawan and Estrella P. Jumawan	96,000.00	4,445.00	P-13.5, p. 9
			Php 396,000.00		

Thus, petitioner is liable for basic deficiency DST in the amount of Php52,353.99 on the remaining sales of Php3,490,266.00, computed as follows:

Sales of Real Property, the consideration of which had been paid in full in FY 2009	Php 3,886,266.00
Less: Sales for which DST had already been paid	396,000.00
Sales of Real Property Still Subject to DST	Php 3,490,266.00
Tax Rate	15/1,000.00
Basic Deficiency DST	**Php 52,353.99**

[101] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

C. Re-acquired Properties by MPI – Php223,824,817.00

Petitioner asserts that the reacquisition of properties does not amount to a transaction deemed sale. Hence, the assessment for deficiency DST is erroneous.

Section 196 of the NIRC, provides that the DST is imposed on all conveyances, deeds, instruments or writings whereby realty sold shall be conveyed to the purchaser/s.

In the case of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*[102], the Supreme Court ruled that Section 196 of the NIRC, refers to a transfer of realty by virtue of sale, to wit:

> As can be gleaned from the aforequoted provision, documentary stamp tax is imposed on all conveyances, deeds, instruments or writings whereby land or realty sold shall be conveyed to the purchaser or purchasers.
>
> It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.
>
> Here, we do not find merit in petitioner's contention that Section 196 covers all transfers and conveyances of real property for a valuable consideration. A perusal of the subject provision would clearly show it pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The phrase 'granted, assigned, transferred or otherwise conveyed' is qualified by the word 'sold' which means that documentary stamp tax under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. Indeed, as correctly noted by the respondent, the fact that Section 196 refers to words 'sold', 'purchaser' and 'consideration' undoubtedly leads

[102] G.R. No. 192398, September 29, 2014.

to the conclusion that only sales of real property are contemplated therein.

Thus, petitioner obviously erred when it relied on the phrase 'granted, assigned, transferred or otherwise conveyed' in claiming that all conveyances of real property regardless of the manner of transfer are subject to documentary stamp tax under Section 196. It is not proper to construe the meaning of a statute on the basis of one part. As we have previously explained,

> A statute is passed as a whole and not in parts or sections, and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. It is not proper to confine its intention to the one section construed. *It is always an unsafe way of construing a statute or contract to divide it by a process of etymological dissection, into separate words, and then apply to each, thus separated from the context, some particular meaning to be attached to any word or phrase usually to be ascertained from the context.*

We quote with approval the following statements of the appellate court in the assailed decision,

> Section 196 should be read as a whole and not phrase by phrase. The phrase *granted, assigned, transferred or otherwise conveyed* clearly refers to the phrase whereby any land, tenement or other realty is sold. This clearly shows that the legislature intended Section 196 to refer to a transfer of realty by virtue of sale. This is further bolstered by the fact that the property is *granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers*. In addition, the basis of the stamp tax is the consideration agreed upon by the parties or the property's fair market value. Taking all of these into consideration, it is beyond doubt that ... Section196 pertains to a transfer of realty by way of sale." (*Italics and underlining in the original; citations omitted*)

It should be emphasized that the transfer of petitioner's real properties to MPI was the consequence of the partial rescission of the Deed of Absolute Sale earlier executed by and between petitioner and MPI. Hence, Section 196 of the NIRC of 1997, as amended, is inapplicable, and petitioner is not liable for DST.

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for the FY ending June 30, 2009 covering deficiency income tax in the amount of Php37,808,329.60, deficiency VAT in the amount of Php73,126,969.85 and deficiency EWT in the amount of Php43,315,685.33 are **CANCELLED AND WITHDRAWN** while the deficiency DST is **PARTIALLY UPHELD**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED EIGHTY-ONE PESOS AND TWENTY FOUR CENTAVOS (Php276,381.24)** representing deficiency DST for the FY ending June 30, 2009, inclusive of the 25% surcharge 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3) and 249(B)(C) of the NIRC, computed as follows:

Basic Deficiency DST	Php 52,353.99
25% Surcharge	13,088.50
20% Deficiency Interest (07/05/09 to 12/31/17)	
(P52,353.99 x 20% x 8.4904110 years)	88,901.38
Subtotal	Php 154,343.87
20% Delinquency Interest (1/17/14 to 12/31/17)	
(P154,343.87 x 20% x 3.9534247 years)	122,037.37
Total	Php **276,381.24**

In addition, petitioner is hereby **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the amount of Php154,343.87 (basic tax plus 25% surcharge plus 20% deficiency interest) computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice