TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TMAP TAX UPDATE FOR FEBRUARY 2017
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SUPREME COURT EN BANC DECISION

Jaime N. Soriano, et al. vs. Secretary of Finance and Commissioner of Internal Revenue; Sen. Manuel A. Roxas vs. Margarito B. Teves and Lilian B. Hefti; TUCP vs. Margarito B. Teves and Lilian B. Hefti; Sen. Francis G. Escudero, Tax Management Association of the Philippines, Inc. and Ernesto G. Ebro vs. Margarito B. Teves and Sixto S. Esquivias IV *(GR No. 184450 dated January 24, 2017)*

This case involved four (4) consolidated Petitions for Certiorari, Prohibition and Mandamus (TMAP was a petitioner in one of the consolidated cases) seeking to nullify certain provisions of Revenue Regulations (RR) No. 10-2008. The RR was issued by the Bureau of Internal Revenue (BIR) on September 24, 2008 to implement the provisions of Republic Act (RA) No. 9504.

On June 17, 2008, RA No. 9504 was approved and signed into law by President Arroyo. Its salient features included the increase of the basic personal exemption to P50,000 for each individual, the increase of the additional exemption for each dependent not exceeding four to P25,000, and the grant to minimum wage earners (MWEs) exemption from payment of income tax on their minimum wage, holiday pay, overtime pay, night shift differential pay and hazard pay. RA No. 9504 took effect on July 6, 2008.

On September 24, 2008, the BIR issued RR No. 10-2008, dated July 8, 2008, implementing the provisions of RA No. 9504. Section 1 of the said RR provided in part: *"xxx Provided, further, that MWEs receiving 'other benefits' exceeding the P30,000.00 limit shall be taxable on the excess benefits, as well as on his salaries, wages and allowances, just like an employee receiving compensation income beyond the SMW (statutory minimum wage)."* Section 3 provided in part: *"xxx Provided, however, that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of P30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax, and consequently, from withholding tax."*

The issues in this case were: **(a)** whether the increased personal and additional exemptions provided by RA No. 9504 should be applied to the entire taxable year 2008 or prorated, considering that RA 9504 took effect only on July 6, 2008 (or second half of the calendar year); **(b)** whether an MWE is exempt from income tax for the entire taxable year 2008 or from July 6, 2008 only; and **(c)** whether Sections 1 and 3 of RR No. 10-2008 are consistent with the law in providing that an MWE who receives other

benefits in excess of the statutory limit of P30,000 ceases to be an MWE and is no longer entitled to the MWE exemption provided by RA No. 9504.

Ruling:

***(a) The new set of personal and additional exemptions provided by RA No. 9504 should be applied to the entire taxable year 2008*.**

Umali v. Estanislao supports the Court's stance. In *Umali*, the Supreme Court was faced with the issue of whether the increased personal and additional exemptions should be applied to compensation income earned or received during calendar year 1991, given that RA No. 7167 came into law only on January 30, 1992 when taxable year 1991 had already closed. The Court ruled in the affirmative considering, among others, that RA No. 7167 was a piece of social legislation that was in part intended to alleviate the economic plight of lower-income taxpayers.

RA No. 9504, like RA No. 7167 in *Umali*, was a piece of social legislation clearly intended to afford immediate tax relief to individual taxpayers, particularly low-income compensation earners. Indeed, if RA No. 9504 were to take effect beginning taxable year 2009 or half of the year 2008 only, then the intent of Congress to address the increase in the cost of living in 2008 would have been negated. Therefore, following *Umali*, the test was whether the new set of personal and additional exemptions was available at the time of the filing of the income tax return. Thus, while the status of the individual taxpayers is determined at the close of the taxable year, their personal and additional exemptions - and consequently the computation of their taxable income - is reckoned when the tax becomes due, and not while the income is being earned or received.

Nothing in RA No. 9504 expressly provided or even suggested a prorated application of the exemptions for taxable year 2008. On the other hand, the policy of full taxable year treatment, especially of the personal and additional exemptions, is clear under Section 35, particularly paragraph C of RA No. 8424 or the 1997 Tax Code.

(b) The MWE is exempt from income tax for the entire taxable year 2008.

RA No. 9504 is undoubtedly a piece of social legislation. The exemption of an MWE from income tax was intended to alleviate the plight of the working class, especially low income earners. The calendar year 2008 remained as one taxable year for an individual taxpayer. Therefore, RR No. 10-2008 cannot declare the income earned by a MWE from January 1, 2008 to July 5, 2008 to be taxable and those earned by him for the rest of that year to be tax-exempt. To do so would contradict the National Internal Revenue Code (NIRC) and jurisprudence, as taxable income would then cease to be determined on a yearly basis.

On the question of whether one who ceases to be an MWE may still be entitled to the new set of personal and additional exemptions, the answer must necessarily be yes. The MWE exemption is separate and distinct from the entitlement to personal and additional exemptions. One's status as an MWE does not preclude enjoyment of personal and additional exemptions.

(c) Workers who receive the statutory minimum wage as their basic pay will remain MWEs and their receipt of other income during the year does not disqualify them as MWEs. They remain MWEs entitled to exemption as such, but the taxable income they may receive in excess of the statutory minimum wage may be subject to appropriate taxes.

Sections 1 and 3 of RR No. l0-2008 added a requirement not found in the law by effectively declaring that an MWE who receives other benefits in excess of the statutory limit of P30,000 is no longer entitled to the MWE exemption provided by RA No. 9504. Said sections are therefore null and void.

The legislature granted to the lowest paid employees additional income by no longer demanding from them a contribution for the operations of government. This was the essence of RA No. 9504 as a social legislation. The government, by way of the tax exemption, sought to afford increased purchasing power to this sector of the working class. Accordingly, workers who receive the SMW as their basic pay remain MWEs and their receipt of other income during the year does not disqualify them as MWEs. They remain MWEs entitled to exemption as such, but the taxable income they may receive in excess of the statutory minimum wage may be subject to appropriate taxes.

An administrative agency may not enlarge, alter or restrict a provision of law; it cannot add to the requirements provided by law. The treatment of bonuses and other benefits that an employee receives from the employer in excess of the P30,000 is taxable. However, the treatment of this excess cannot operate to disenfranchise the MWE from enjoying the exemption explicitly granted by RA No. 9504.

COURT OF TAX APPEALS EN BANC DECISIONS

Manila Peninsula Hotel, Inc. vs. Commissioner of Internal Revenue *(CTA EB Case No. 1408 dated January 17, 2017)*

Provision of services to a foreign corporation with Philippine branch license will disqualify said services for zero-rating

Petitioner (Manila Peninsula Hotel) rendered services to Delta Air by providing room accommodation and food and beverage services to Delta Air's employees, non-crew employees, its subsidiary and affiliates, and contractors of such subsidiary or affiliates. Petitioner insisted that its services to Delta Air were subject to zero-rating because Delta Air was a juridical person engaged in international transport operations. The only issue in this case is whether petitioner's transaction with Delta Air qualified for zero-rating.

Ruling:

First, the Court noted that petitioner failed to present sufficient evidence that its services to Delta Air were essential to Delta Air's international flight operations.

Second, to be qualified for zero-rating, the indispensable requirement was that the recipient of services must be doing business outside the Philippines. It appeared that during taxable year 2010 when petitioner provided room accommodations and food and beverage services to Delta Air, Delta Air was the holder of an SEC Branch License to Transact Business in the Philippines as provider of international air transport services. The transaction of petitioner with Delta Air failed to qualify for zero-rating because Delta Air, as recipient of petitioner's services, was actually doing business in the Philippines.

Third, petitioner failed to exhaust administrative remedies. Respondent's position was based on Revenue Memorandum Circular (RMC) No. 046-08 and BIR Ruling No. 099-2011. Petitioner attacked the validity of the Circular and the Ruling without appealing to the Secretary of Finance. In *Bloomberry Resorts and Hotels, Inc. vs. BIR*, the Supreme Court reiterated that *"the CIR's power to interpret provisions of the Tax Code and other tax laws is subject to review by the Secretary of Finance; and thereafter, the latter ruling may be appealed to the CTA, having the technical knowledge over the subject controversies."* Following this ruling, the Court *En Banc* may not pass upon the validity of the subject Ruling and Circular for failure of petitioner to exhaust its administrative remedies, i.e., invoke the power of review of the Secretary of Finance. Thus, the natural consequence is that the subject Ruling and Circular remain to be and is applicable to petitioner with respect to its present cause of action.

Stateland Inc. vs. Commissioner of Internal Revenue *(CTA EB Case No. 1148 dated January 18, 2017)*

Carry-over of any amount of CWT denied for refund may not be allowed

Petitioner sought to modify the dispositive portion of the assailed Decision of the CTA in Division dated July 4, 2016 to the effect that it is entitled to carry-over the amount of CWT denied for refund.

The carry-over of the CWT was not decreed in the dispositive portion of the assailed Decision. Petitioner contended that it was able to establish, both in the administrative and judicial proceedings, that it complied with the requirements for the carry-over of CWT, namely, the fact of withholding and payment of its CWT, and that such CWT remained unutilized.

Ruling:

In the assailed Decision, the Court observed a discrepancy in the total amount of P129,928,217.22 between petitioner's income based on the certificates of tax withheld, and those declared in its Income Tax Return (ITR) for the same year. Petitioner's income in 2009 based on the certificates of tax withheld amounted to P296,344,363.22, while its income for the same year as reported in its Annual ITR was only in the amount of P166,416,146.00. This discrepancy cannot simply be ignored. Before any carry-over can be made, petitioner must present proof to reconcile this discrepancy before the proper forum but certainly not before the Court *En Banc*.

Issues and arguments not raised before the original tribunal cannot be raised for the first time on appeal. Thus, to entertain petitioner's new theory for the first time before the Court *En Banc* is unfair to the other party and is offensive to the rudimentary rules of fair play, justice and due process. The only issue stipulated upon by the parties for the consideration of the Court is "whether or not petitioner is entitled to its claim for refund of its unutilized or excess payment of CWT for the taxable year ended December 31, 2009 in the amount of P11,570,181.00." By veering away from the original position at this stage of the case, petitioner was effectively depriving respondent Commissioner of Internal Revenue (CIR) of the opportunity to present evidence to contravene this new relief.

Allegro Microsystems Philippines, Inc. vs. The Undersecretary of the Department of Finance and Chairman of the One-Stop-Shop Inter-agency Tax Credit and Duty Drawback Center, the CIR, and the Commissioner of the Bureau of Customs *(CTA EB Case No. 1327 dated January 30, 2017)*

The case of Lascona Land Co., Inc. vs. CIR (where the Supreme Court held that the taxpayer may await the final decision of the BIR on its protest and appeal the same, if unfavorable, within 30 days after receipt of the copy of the decision) applies only to a judicial appeal of a disputed assessment pursuant to Section 228 of the NIRC and not to Section 112 of the NIRC.

Petitioner Allegro Microsystems Philippines, Inc. (AMPI), a corporation duly organized under Philippine laws, filed its administrative claim for the refund or the issuance of a tax credit certificate (TCC) with the One-Stop-Shop in the aggregate amount of P129,770,030.10 representing unutilized excess input value-added tax (input VAT) arising from importation attributable to zero-rated export sales for fiscal year (FY) 2013. Petitioner alleged that its administrative claim was verbally denied on July 20, 2013 and that the reason given for the denial was the issuance of RMC No. 54-14. The Court in Division found that it had no jurisdiction to decide the case since AMPI filed its appeal beyond the 120+30-day period provided in Section 112(C) of the NIRC.

The issue is whether AMPI timely filed its judicial claim before the Court in Division.

Ruling:

AMPI's judicial claim was belatedly filed before the Court in Division. The 120+30-day period provided in Section 112(C) of the NIRC is mandatory and jurisdictional, such that failure to comply with the same deprived the CTA of jurisdiction. Here, petitioner filed its administrative claim with the One-Stop-Shop on September 26, 2013, together with its supporting documents giving respondents until January 24, 2014 within which to deny or grant the same. Upon the lapse of this period on January 24, 2014, petitioner had 30 days, or until February 24, 2014 within which to file its appeal to the CTA. Petitioner filed its appeal with the Court in Division on August 29, 2014, clearly beyond the 30-day period for filing an appeal.

Petitioner claimed that due to the alleged similarities in Section 228 and Section 112(C), the ruling in *Lascona Land Co., Inc. vs. CIR* should also apply to claims for refund under Section 112 of the NIRC. In *Lascona*, the Supreme Court, interpreting Section 228 of the NIRC, held that the taxpayer may await the final decision of the CIR on its protest and appeal the same (if unfavorable) within 30 days after receipt of the copy of the decision, despite the expiration of the 180-day period.

Petitioner's reliance on *Lascona* was misplaced. *Lascona* referred to the judicial appeal of a disputed assessment pursuant to Section 228 of the NIRC. Here, what was involved was the timeliness of the judicial appeal with respect to a claim for refund of unutilized input VAT under Section 112 of the NIRC. When respondents did not act on petitioner's claim within the 120-day period, petitioner should have filed its judicial appeal within 30 days therefrom, in accordance with the doctrines in *San Roque* and *Mindanao II Geothermal*. Unfortunately, petitioner relied instead on *Lascona* and waited for the respondents' decision which was not issued, and filed its Petition for Review only on August 29, 2014, or 186 days late. Thus, the Court in Division correctly ruled that it has no jurisdiction to entertain the appeal.

Petitioner also cannot allege that it became aware of the "deemed denial" provision only when the BIR issued RMC No. 54-14 on June 11, 2014, considering that a reading of RMC No. 54-14 showed that it is a mere application of the Supreme Court rulings in *CIR vs. San Roque Power* and *CIR vs. Mindanao II Geothermal* which were promulgated on February 12, 2013 and January 15, 2014, respectively.

Commissioner of Internal Revenue vs. ANSI Agricultural Products, Inc. *(CTA EB Case No. 1340 dated January 30, 2017)*

The offsetting by a taxpayer of its receivable account against its payable account in respect of the same debtor, as a consequence of the partial settlement of the latter's debt, does not result in any taxable income.

In 2004, respondent ANSI Agricultural Products, Inc. ("AAPI") sold animal feed ingredients to Swift Foods Inc. ("Swift") for the total purchase price of P6,768,357.50 which was recorded in AAPI's books as an increase in Accounts Receivable (due from Swift) and Sales. In early 2005, Swift made partial payment totaling P700,000. Afterwards, Swift had financial difficulties and entered into a swap agreement with AAPI whereby AAPI received old-stock dressed chickens from Swift worth P2,310,495.50. This was recorded by AAPI as an increase in Purchases and Accounts Payable (due to Swift). In 2009, offsetting was recorded in the books of AAPI wherein the amount of P2,310,495.50 was deducted from its Accounts Receivable (due from Swift) and Accounts Payable (due to Swift).

The CIR argued that the amount of P2,310,495.50 representing the amount payable to Swift that was unilaterally declared as "condoned" and offset against its receivable from said company, should have been reported as part of AAPI's taxable income.

The issue in this case was whether the offsetting of AAPI's Receivable account from Swift with its own Payable Account to the same debtor-creditor, as a consequence of the partial settlement of the latter's prior debt, resulted in any taxable income.

Ruling:

The revenue of AAPI from its sale of animal feed ingredients was already earned and realizable at the time the receivable was recognized in taxable year 2004, when income tax arising therefrom was due and presumably paid. To recognize income and to demand payment of income tax in taxable year 2009 from AAPI on the same revenue, upon offsetting, will effectively reimpose a tax which was already paid. The value of the dressed chickens was simply applied to the outstanding debt of Swift that was due to AAPI through legal compensation under Article 1278 of the Civil Code of the Philippines.

The requisites of legal compensation were present in the case at bar, to wit: (1) there were two debts, the pre-existing debt of Swift in favor of AAPI, and the debt of APPI from its purchase of dressed chickens from Swift; (2) in both debts, Swift and AAPI were principally bound to each other as debtor and/ or creditor; (3) both debts were due, liquidated and demandable; and (4) there was no retention or controversy in relation to both debts. Therefore, when AAPI accepted Swift's offer to "swap" its debts, albeit in the form of dressed chickens, AAPI merely deducted the value thereof from Swift's indebtedness to it.

Offsetting of AAPI's receivable account from Swift with its own payable account to the same debtor-creditor, as a consequence of the partial settlement of the latter's prior debt, would not produce any taxable income as there was no gain realized therefrom. With the reduction of the receivable account to the extent of the offsetted payable account, no new income was recognized as the supposed income was already previously recognized during the year the sale on credit was made, and the related tax therefrom was already paid.

Commissioner of Internal Revenue vs. Sonoma Services, Inc. *(CTA EB Case No. 1357 dated January 30, 2017)*

On April 15, 2011, Sonoma (a domestic corporation conducting general services business) filed its Annual ITR for CY 2010 indicating therein its choice for refund of excess and unutilized CWT for CY 2010. On December 6, 2011, Sonoma filed with the BIR an administrative claim for refund of such excess and unutilized CWT for CY 2010 in the amount of P3,911,850.00. Upon the alleged inaction by the CIR, Sonoma filed its Petition for Review before the Court in Division on April 12, 2013. The Court in Division granted Sonoma's petition and ordered the refund. The CIR's Motion for Reconsideration (MR) was denied for lack of merit. Hence, this appeal to the CTA *En Banc*.

The issue was whether Sonoma was able to present documents whereby the income payments relating to the claimed CWTs may be traced and confirmed as forming part of the taxable gross income reflected in the Annual ITRs.

Ruling:

The CTA *En Banc* found that respondent Sonoma complied with the requirements for claiming for refund of excess and unutilized CWT. Among the documents presented were summary of official receipts of administrative fees for CY 2010, official receipts of administrative fees for CY 2010, management services agreements and cost recovery agreements between petitioner and its clients/withholding agents for CY 2010 and general ledgers for CY 2010 for administration fees, recovery on costs, rental expense, insurance expense, supplies, advertising and promotions, representation expense, transportation, bank

charges and miscellaneous expense. In other words, petitioner submitted sufficient evidence to prove its entitlement to the relief sought.

COURT OF TAX APPEALS (IN DIVISION) DECISIONS

Arc Investors, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City *(CTA AC No. 153 dated January 16, 2017)*

Petitioner Arc Investors, Inc. (ARCI) is a domestic corporation incorporated with the primary purpose to purchase, subscribe for, or otherwise acquire and own, hold, use, sell, or otherwise dispose of real and personal property, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership and to do every act and thing covered generally by the denomination 'holding corporation', provided that it shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.

From October 2009, petitioner has been the registered owner of 105,689,360 preferred shares of stock of San Miguel Corporation (SMC). The dividends received by petitioner from the SMC preferred shares were deposited in trust accounts which earned interest from money market placements.

Respondents collected from ARCI a 0.55% local business tax for the 1st and 2nd quarters of 2011 based on the gross receipts derived by ARCI from the SMC dividends and interests for taxable year 2010 in the aggregate amount of P2,204,494.00 pursuant to Section 69(f) of Ordinance No. 0158-05, series of 2005 (the 2005 Revenue Code of Davao City), in relation to Section 5(b3) of the same Code.

Petitioner filed a written claim for refund or credit with the respondents. Due to respondent Riola's inaction, petitioner ARCI filed a Petition before the Regional Trial Court (RTC) of Davao City which denied said petition as well as the Motion for Reconsideration. Thus, petitioner filed the instant Petition for Review with the CTA.

The main issue was whether the petitioner is a non-bank financial intermediary which would make it liable for local business tax.

Ruling:

(a) Petitioner ARCI (a holding company) is <u>not</u> a non-bank financial intermediary.

Respondents may not impose business tax on dividends and interest income received by petitioner since there was no showing that petitioner is a non-bank financial intermediary. The following are the basic requirements for a person or entity to be considered a "non-bank financial intermediary", to wit: **(1)** the person or entity is "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"; **(2)** the principal functions of the said person or entity "include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of other", and **(3)** the person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit: **(3.1)** receive funds from one group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities; **(3.2)** use principally the funds received for acquiring various types of debt or equity securities; **(3.3)** borrow against, or lend on, or buy or sell debt or equity securities; **(3.4)** hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and **(3.5)** realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees,

guarantees, fees, commissions, and services fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Applying the foregoing, there was no indication that petitioner fell under these requirements. The *first* requirement had not been met as it was not proven, nor was it shown, that petitioner was authorized by the BSP to perform quasi-banking activities. For the *second* requirement, while it may be true that the functions of petitioner on the basis of its primary purpose as stated in its Amended Articles of Incorporation (AOI) may cover functions of a non-bank financial intermediary, it was not shown that said functions were *"principal"* in nature. It was never established that the enumerated functions under the *third* requirement were performed by petitioner *"on a regular and recurring, not on an isolated basis."* Neither was it shown that petitioner held itself out, nor advertised itself, as a non-banking financial intermediary.

(b) As petitioner belonged to the Coconut Industry Investment Fund (CIIF) block of SMC shares, which were declared to be owned by the Government, any tax imposed upon petitioner would in effect be a tax on the Government.

In its Decision dated January 24, 2012 and Resolution dated September 4, 2010, the Supreme Court declared that the SMC shares held by the 14 holding companies, including petitioner, are owned by the government. In light of these pronouncements, the SMC shares of stock and any income that may accrue therefrom cannot be subject to any local tax, fee or charge pursuant to Section 133(o) of RA No. 7160. Since petitioner is considered as holder/owner of Government property, any tax imposed thereon will be considered, in effect a tax on Government.

(c) Petitioner was entitled to the amount of refund being claimed. However, petitioner cannot be awarded with the legal interest it has prayed for because the taxes were not shown to have been arbitrarily collected. Interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.

Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8679 dated January 16, 2017)*

If a taxpayer was given an extension within which to submit supporting documents under Section 112 (C) of the NIRC, the 120-day period within which BIR is required to decide on the administrative claim for refund will be counted from the expiration of the extension period given.

Petitioner, through a letter addressed to the BIR, requested an extension until June 17, 2013 within which to submit supporting documents in connection with a claim for VAT refund. However, on July 29, 2013, petitioner filed its Petition for Review before the CTA. The Petition for Review was dismissed by the CTA for lack of jurisdiction on the ground that petitioner should have waited for the lapse of 120 days from June 17, 2013 before filing its Petition for Review in court. Petitioner is now seeking reconsideration of this Decision.

Petitioner contended that: *"it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period"* citing the ruling in the case of *Pilipinas Total Gas, Inc. vs. CIR*. According to petitioner, upon filing of the administrative claim with the BIR on March 1, 2013, petitioner already attached all the documents it deemed necessary to establish its claim for refund. It added that the "reservation to submit additional documents" was merely an indication of a suggestion or submission and should not be taken as absolute and conclusive. Petitioner also asserted that there was inaction on the part of the respondent because it did not decide the claim within 120 days, which was tantamount to the denial of the claim. The BIR's inaction was allegedly not negated by the

issuance of notices to submit additional documents, and that it was proper for petitioner to elevate its claim before the CTA and try the present case *de novo*.

The issue in this case is whether the Petition for Review was filed prematurely.

Ruling:

Indeed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. However, as pointed out by the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. CIR*: *"the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim,* ***unless given further extension by the CIR.*** *Then, upon filing by the taxpayer of his complete documents to support his application,* ***or expiration of the period given,*** *the CIR has 120 days within which to decide the claim for tax credit or refund.* ***Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing."***

In the instant case, petitioner did not manifest on the day of its filing of the administrative claim that it will not submit any other additional documents to complete its claim. In fact, it even made a reservation to submit additional documents. Moreover, in a letter dated May 16, 2013, it specifically requested for an extension of until June 17, 2013, within which to submit the supporting documents. Hence, petitioner cannot now claim that it submitted complete documents with the BIR as of the date of the filing of administrative claim. The Court counted the 120-day period to decide on the claim for refund from the expiration of the extension period given, which is until June 17, 2013 and concluded that the instant petition filed with the CTA on July 29, 2013 was prematurely filed.

Tesco Services, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8705 dated January 17, 2017)*

The petition for review questioning the validity of a WDL shall be filed with the CTA within 30 days from the date of receipt of the challenged WDL.

This case involved a Petition for Review filed by petitioner Tesco assailing the Warrant of Distraint and/or Levy (WDL) dated June 6, 2013 issued by respondent CIR to collect the sum of P6,377,267.77 allegedly representing deficiency Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), and Valued-Added Tax (VAT) for taxable years 1997 to 1998 on the ground of prescription.

On December 18, 1998, petitioner wrote a letter addressed to respondent to negotiate a compromise settlement of its tax liabilities in the amount of P6,377,267.77 on installment basis based on a Proposed Installment Payment Plan. The request was granted by respondent through Revenue District Office Celia C. King of RDO No. 41 – Mandaluyong City. Due to financial difficulties, petitioner failed to comply with the schedule of monthly installment plan. Respondent issued a Preliminary Collection Letter and thereafter, a Final Notice Before Seizure for the amount of P6,377,267.77. On September 29, 1999, respondent issued a WDL to petitioner which was received on October 26, 1999. Petitioner's accountant sent a letter requesting the cancellation of the Notice of Warrant of Distraint and/or Levy by offering another compromise settlement, which was denied by respondent. Respondent issued another Final Notice Before Seizure dated May 23, 2013, reiterating the demand to pay the amount of P6,377,267.77. Another WDL was issued which was received by petitioner on July 19, 2013. On August 22, 2013, petitioner filed the present Petition for Review before the CTA.

The issue was whether contesting the validity of the subject WDL falls within the jurisdiction of the CTA.

Ruling:

Section 7(a)(1) of RA No. 1125, as amended, provides that the CTA has jurisdiction with respect to *"Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or* ***other matters arising under the National Internal Revenue Code*** *or other laws administered by the Bureau of Internal Revenue."* In *Philippine Journalist, Inc. vs. CIR*, the Supreme Court ruled that the CTA has jurisdiction to resolve controversies involving the validity of the issuance of a WDL as it is among the "other matters" arising under the NIRC.

Evidently, this Court has jurisdiction to pass upon the validity of a WDL, on condition that the corresponding Petition for Review impugning such WDL be filed within the period provided under Section 11 of the RA No. 1125, as amended, which reads as follows: *"Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals* ***within thirty (30) days after the receipt of such decision or ruling*** *or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."*

The 30-day period to appeal before the CTA was reckoned from petitioner's date of receipt of the challenged WDL, i.e. on July 19, 2013. Thus, counting 30 days from July 19, 2013, petitioner had until August 19, 2013 to file the instant Petition for Review. Clearly, the Petition for Review (which was filed on August 22, 2013) was filed beyond the 30-day reglementary period thereby depriving the CTA of jurisdiction to rule on the same.

Center for Training and Development, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8742 dated January 17, 2017)*

This case arose from a resolution of respondent's Motion for Partial Reconsideration of the Decision promulgated on March 8, 2016 (assailed Decision) which cancelled and set aside the deficiency income tax assessment issued by respondent against petitioner for the taxable year 2006, and upheld in part the deficiency VAT assessment for taxable year 2006 ordering petitioner to pay P8,010.86.

The issue was whether the petitioner should be liable for deficiency income tax and deficiency VAT for taxable year 2006.

Ruling:

Petitioner was not liable for any deficiency income tax for taxable year 2006 but was liable for deficiency VAT for the 4th quarter of taxable year 2006.

(a) Petitioner has no undeclared income for the subject year. Respondent committed an accounting slide arising from an erroneous positioning of the decimal point. Respondent's assessment for deficiency income tax should be cancelled for lack of merit.

(b) Notwithstanding petitioner's unsupported expenses of P754,571.70, the income tax due thereon should be offset against petitioner's total tax credits in the amount of P1,222,670.00. Therefore, petitioner was not liable for any deficiency income tax for taxable year 2006, as in fact it had excess tax credit duly supported by Creditable Withholding Tax Certificates (BIR Form No. 2307).

(c) The Net Operating Loss Carryover (NOLCO) was beyond the scope of the present assessment as it can only be the subject of assessment in the taxable year when it was claimed as a deduction. The same

holds true for the Minimum Corporate Income Tax (MCIT), as any tax benefit derived by petitioner from the carry-over of the said amount redounded to the succeeding year. Considering that the tax benefit would only affect the succeeding year/s, then petitioner may only be assessed in the years when MCIT was applied.

(d) The Court rejected respondent's allegation that this case fell under the exception of the 3-year prescriptive period for assessment, and that the 10-year prescriptive period should apply on the ground of filing a false return. Under Section 222(a) of the NIRC, in case a taxpayer filed a false return, the CIR may assess a taxpayer for deficiency tax within 10 years after the discovery of the falsity.

A re-examination of the Preliminary Assessment Notice (PAN), Formal Assessment Notice (FAN)/ and Final Decision on Disputed Assessment (FDDA) revealed that the issue of falsity was neither mentioned during the examination of petitioner's records nor considered by respondent in his computation of civil penalties. Thus, respondent's issue of falsity was merely an afterthought in order to justify the application of the 10-year prescriptive period to assess. Moreover, respondent failed to substantiate the belated claim of falsity.

Galileo Asia, LLC – Philippine Branch vs. Commissioner of Internal Revenue *(CTA Case No. 8868 dated January 18, 2017)*

Petitioner is a branch office in the Philippines of Galileo Asia, LLC—a foreign corporation organized and existing under the laws of the State of Delaware, USA. Petitioner is established in the Philippines to provide travel reservations, products and services to travel agencies and to foreign and domestic airlines using a global computer reservation system (CRS). Petitioner and Travelport Global Distribution System B.V. (Travelport) entered into a Marketing Services Agreement on January 1, 2009.

Petitioner filed its 1st, 2nd, 3rd, and 4th Quarterly VAT Returns for taxable year 2012 on April 25, 2012, July 25, 2012, October 25, 2012, and January 25, 2013, respectively. On March 19, 2014, petitioner filed an administrative claim for refund or the issuance of a tax credit certificate (TCC) in the amount of P6,080,035.23 representing alleged excess and unutilized input VAT on domestic purchases of goods and service attributable to its zero-rated sales of services for the period covering February 1, 2012 to December 31, 2012. However, respondent failed to act on petitioner's administrative claim, prompting petitioner to file the present Petition for Review before this Court on August 14, 2014.

The issues in the case were: (a) whether petitioner’s administrative and judicial claims were filed on time; and (b) whether petitioner is entitled to a refund or issuance of TCC in the amount of P6,080,035.23, representing alleged unutilized input VAT on purchases of goods and services attributable to zero-rated sales of services for the period covering February 1, 2012 to December 31, 2012.

Ruling:

(a) Petitioner’s administrative and judicial claims were filed within the period prescribed by law.

Pursuant to Section 112(A) of the NIRC, the application for tax credit certificate or refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The present claim covers the four quarters of taxable year 2012. Counting from the close of the said taxable quarters, petitioner had until the following dates to file its administrative claim for refund or issuance of TCC of unutilized input VAT attributable to zero-rated sales: 1st quarter - March 31, 2014, 2nd quarter - June 30, 2014, 3rd quarter - September 30, 2014, 4th quarter - December 31, 2014. Clearly, petitioner's administrative claim for refund or issuance of TCC, together with the supporting documents, was seasonably filed on March 19, 2014.

Section 112(C) of the NIRC states the time requirements for filing of a judicial claim for the refund or tax credit of input VAT. It provides for two periods: the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA. Applying the foregoing to the instant case, the 120-day period provided for respondent to act on petitioner's administrative claim expired on July 17, 2014. Without petitioner receiving any decision from respondent on the said claim, petitioner had 30 days from July 17, 2014, or until August 16, 2014, to appeal such inaction by respondent before this Court. Thus, the Petition for Review filed on August 14, 2014 fell within the "120+30" day period.

(b) While petitioner incurred zero-rated sales, it is entitled to refund of only a portion of its unutilized input VAT in the amount of P344,532.18

In the case of *CIR vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, the Supreme Court held that in order for the sale of services to be VAT zero-rated under Section 108(8)(2) of the NIRC, the following requisites must be met: (1) the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods; (2) the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and (3) the recipient of such services is doing business outside the Philippines.

Pursuant to a Marketing Services Agreement dated January 1, 2009, petitioner was appointed by Travelport as distributor of Travelport Global Distribution Systems (TGDS) in the Philippines. TGDS enabled travel agencies and other organizations to make bookings with participating companies such as airlines and other providers of travel-related services. Petitioner's services clearly fall within the scope of *"serves other than processing, manufacturing or repacking of goods"* as contemplated in Section 108(8)(2) of the NIRC. Furthermore, Travelport is a corporation established in Amstelveen, Netherlands as evidenced by its Amended Articles of Association and is not registered in the Philippines as a corporation or partnership as certified by the SEC. With the foregoing, petitioner sufficiently proved that Travelport, as recipient of petitioner's services, was doing business outside the Philippines.

For the period covering February 1, 2012 to December 31, 2012, petitioner's sales of services to Travelport amounted to US$2,373,313.00 or equivalent to P100,552,650.29. This amount was duly supported by VAT zero-rated official receipts (in US dollar denomination) that were compliant with the invoicing requirements. Thus, petitioner's sales of services for the claimed period in the amount of P100,552,650.29, which was duly reported in its 2012 Quarterly VAT Returns, qualified for VAT zero-rating under Section 108(B)(2) of the NIRC.

Petitioner’s total input VAT credits for taxable year 2012, excluding January 2012, amounted to P7,12,127.22. After deducting output tax liability, the available input VAT yielded an excess input VAT of P6,713,052.06. (However, only the amount of P6,080,035.23 was being claimed for refund by petitioner).

The Court disallowed input VAT amounting to P5,026,980.82 for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC, in relation to Section 4.110-2, 4.110-3, 4.110-8, and 4.113-1 of RR No. 16-05, as amended.

As to the claimed P708,522.23 amortization of input VAT on domestic purchases of capital goods exceeding P1 million, records show that such amount was comprised of: (1) P680,772.27 arising from purchases prior to 2012 in regard to which petitioner failed to submit VAT invoices/official receipts in support of its claimed amortization of input taxes; and (2) P27,749.96 pertaining to purchases in May 2012, the supporting invoices of which were found by the Independent Certified Public Accountant (ICPA) to not reflect petitioner’s Tax Identification Number (TIN). As such, the entire claimed

P708,522.23 amortization of input VAT on domestic purchases of capital goods exceeding P1 million was disallowed.

A portion of the P756,607.34 valid input VAT was applied against petitioner's reported output VAT liability for the four taxable quarters of 2012 in the amount of P412,075.16. Hence, the only remaining input VAT attributable to petitioner's zero-rated sales for taxable year 2012 was the amount of P344,532.18, which was allowed to be refunded to the petitioner.

Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue *(CTA Case No. 8818 dated January 23, 2017)*

This is a Decision involving a Petition for Review filed by petitioner Prime Steel seeking the cancellation of alleged income and value-added tax deficiencies for taxable year 2005, as well as compromise penalties, interests and surcharges, in the aggregate amount of P37,675,379.58.

Petitioner Prime Steel Mill, Incorporated is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Petitioner received a Preliminary Assessment Notice (PAN) dated December 19, 2008 assessing it for alleged deficiency income, VAT, and EWT for taxable year 2005. On February 12, 2009, petitioner received the Formal Letter of Demand (FLD) with Details of Discrepancies and Final Assessment Notices (FAN). Consequently, petitioner sent a letter to respondent to dispute the FLD and the FAN. On April 14, 2014, petitioner received a Final Decision on Disputed Assessment (FDDA), signed by Jonas DP. Amora, Regional Director of Revenue Region No. 7, maintaining the finding against petitioner.

The issues are: (a) whether respondent's right to assess petitioner has prescribed; and (b) whether petitioner is liable to pay the alleged income and value-added tax deficiencies against petitioner for taxable year 2005, as well as other compromise penalties, interests and surcharges, aggregating P37,675,379.58.

Ruling:

(a) Respondent's right to assess petitioner deficiency income tax has not prescribed. However, the same cannot be said with respect to its right to assess deficiency VAT.

It is long established that the first three quarterly returns are mere installments of the annual tax due. These quarterly tax payments, which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. The final adjustment return is the one truly reflective of the operations of an establishment. Thus, the three-year period is reckoned from the 15th day of April or the 15th day of the 4th month following the close of the fiscal year, as the case may be; or the date of actual filing of the final adjustment return, whichever is later. In this case, petitioner filed its 2005 final adjustment return for income tax on April 12, 2006, which was later amended on June 22, 2006. Applying Sections 77(B) and 203 of the NIRC, the BIR had until June 22, 2009 within which to issue the FLD and the FAN assessing petitioner for deficiency income tax for taxable year 2005. Considering that the FLD was received by petitioner on February 12, 2009, the deficiency income tax assessment was validly issued within the three-year prescriptive period provided by law.

However, the same cannot be said as to the deficiency VAT assessment. According to Section 114(A) of the NIRC, the running of the 3-year period within which the BIR can make an assessment is reckoned from the filing of the quarterly VAT returns. Unlike in corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable

year, VAT is computed and paid on a purely quarterly basis without need for final adjustment at the end of the taxable year. Hence, each quarterly return has its own prescriptive period. In this case, since the FLD was only received by petitioner on February 12, 2009, respondent's right to assess petitioner for deficiency VAT for the 1st to 3rd quarters of taxable year 2005 had already prescribed and only the deficiency VAT assessment for the 4th quarter was valid.

(b) Petitioner is liable to pay deficiency income tax for the unaccounted source of cash amounting to only P78,119.39 (as discussed below) and the corresponding interest and surcharges therewith. However, petitioner is not liable for deficiency VAT and compromise penalties.

(1) *Unaccounted source of cash - P25,587,799.58*

(i) *Discrepancy in cash deposited to the bank - P1,528,321.31.* This was composed of Post-dated checks amounting to P1,359,058.92, and Returned checks in the amount of P169,263.00. The post-dated checks did not comprise cash deposits during the year 2005 as proven by bank deposit slips showing that the post-dated checks were actually deposited in 2006 and were accordingly traced to the respective bank statements or passbook of petitioner on the same date they were deposited. On the other hand, out of the alleged returned check of P169,263.00, only the amount of P91,143.00 was ascertained to be not included in cash deposited to the bank as the same was dishonored by petitioner's bank. In fine, only the remaining unaccounted amount of P78,119.39 shall be subject to deficiency income tax.

(ii) *Fund Transfers - P38,000,000.00 and P107,889,288.41.* Verily, all of these transactions being merely transfers of cash from petitioner's one account to another only showed that no cash inflow actually transpired. Respondent's inference that there was undeclared revenue from the foregoing account is without basis.

(iii) *Discrepancy in loan proceeds - P141,260.40.* The discrepancy of P141,260.40 represented payment of documentary stamp taxes (DST) in securing loans from Metrobank for working capital purposes which were already deducted from the loan proceeds of petitioner. Evidently, respondent failed to consider such deduction of DST. The loan proceeds were accordingly credited to petitioner's bank account as shown on its passbook. Thus, respondent's assessment with regard to this item was also erroneous.

(iv) *Interest Income - P48,684.87.* The amount of P48,684.87 represented the quarterly interest earned from petitioner's savings accounts deposits, which can be traced from its passbooks and bank statements and duly certified by the banks. The same amount was accordingly disclosed in the Audited Financial Statement of petitioner. Thus, the Court found respondent's assessment improper on this item.

(v) *Other deposits - P12,809. 79.* There was lack of factual basis regarding this matter, thus the Court found that respondent's assessment with respect to the other deposits should be cancelled.

(vi) *Reversal Entry - P36,001.71.* Based on petitioner's journal vouchers, this amount was a mere reversal of a previous debit in the Cash on Hand account. Respondent took into consideration only the initial entry in its investigation while disregarded the reversal entry. Since it was a mere reversal, there was no actual cash inflow to petitioner, hence, it cannot be imputed as undeclared revenue.

In sum, petitioner was able to satisfactorily account for the discrepancy noted by respondent, except for the amount of P78,119.39. Consequently, respondent's deficiency income tax assessment must be reduced to P25,388.81. Likewise, the unaccounted amount of P78,119.39 shall be subject to output VAT.

(2) *Disallowed Input VAT – P3,636,370.41*

Respondent's verification disclosed that the input VAT in the amount of P3,636,370.41 relating to purchases from South Lotus Business Corporation shall be disallowed as deduction from its VAT liability in violation of the invoicing requirements set forth under Section 113(A) of the NIRC, in relation to RR No. 16-2005. On the other hand, petitioner contended that the same should not be disallowed due to violation of invoicing requirements set forth under Section 113(A) of the NIRC, in relation to RR No. 16-2005 since said RR became effective only on November 1, 2005. Petitioner claimed that the invoices were issued by South Lotus Business Corporation between January to July 2005 which was prior to the issuance of said RR.

The Court found in favor of the petitioner. The determination of petitioner's compliance with the substantiation requirements should be based on the existing law and revenue regulations at the time it claimed its input VAT. The invoices were issued between January to July 2005. The prevailing law then governing the VAT system was RA No. 8424, as implemented by RR No. 7-95 (Consolidated Value-Added Tax Regulations), and not RA No. 9337, as implemented by RR No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005) which took effect only on November 1, 2005. The Court found that the subject invoices bore all necessary information as required under Sections 113(A) and 237 of RA No. 8424, and Section 4.108-1 of RR No. 7-95. Verily, the input taxes in relation thereto incurred by petitioner may be credited against its output VAT liability.

In view of the foregoing, the Court found petitioner not liable for deficiency VAT for taxable year 2005, since it had sufficient tax credits to cover its output VAT liability.

(3) *Compromise penalties – P100,000.00*

Pursuant to RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. There is nothing in the records which would show that petitioner consented to the compromise penalty. Consequently, the compromise penalty should not be imposed and must be cancelled.

Sutherland Global Services Philippines, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8558 dated January 24, 2017)*

This case involved both parties' respective Motions for Reconsideration assailing the Court's Decision promulgated on July 21, 2016 (assailed Decision) which ordered the respondent CIR to refund the amount of P11,493,196.61, but denied petitioner's claim for refund of P5,874,793.33.

The issues were: (a) whether the Court acted beyond its jurisdiction when it denied petitioner's claim for refund of P5,874,793.33; (b) whether petitioner's Export Bank facility enjoyed an Income Tax Holiday (ITH) incentive during FY 2010; (c) whether the petitioner timely filed its Petition for Review before the CTA; (d) whether the requirement of RMC No. 15-2007 that all registered enterprises entitled to ITH and/or 5% Gross Income Tax incentive should secure from PEZA on an annual basis a certification that the enterprise is a bona fide PEZA-registered enterprise entitled to such incentive should still be complied with despite the issuance of RMC No. 14-2012.

Ruling:

(a) The power to assess national internal revenue taxes lies with the BIR, and not with the Court pursuant to Section 2 of the NIRC. This Court did not assess taxes when it adjusted petitioner's entitlement to a

refund of its erroneously paid income tax. Instead, the Court merely considered the evidence presented to it to determine whether or not petitioner is indeed entitled to a refund in the amount prayed for.

(b) With regard to petitioner's claim that its Export Bank facility enjoyed an ITH incentive during FY 2010, it attached a letter from the Philippine Economic Zone Authority (PEZA), confirming that it has issued to petitioner Notice of ITH Extension Approval No. 10-015 dated February 19, 2010 and Notice of ITH Extension Approval No. 10-032 dated April 29, 2010, for entitlement of two bonus years of ITH of the project at the Export Bank Plaza Building. However, the document presented by petitioner has not been formally offered during trial nor has it been duly identified by testimony duly recorded. Hence, the Court cannot give probative value to the document attached to the motion.

(c) Respondent CIR insisted that petitioner belatedly filed its Petition for Review two days after the lapse of the two-year prescriptive period. However, the issue on prescription had already been resolved by the Court. The actual date of filing of the Annual ITR and the payment of tax was made by petitioner on October 20, 2010 and it was only this time that the amount to be refunded was ascertained. Considering so, October 20, 2010 was the reckoning date of the two-year prescriptive period prescribed in Section 229 of the NIRC. Thus, the filling of the administrative and judicial claims for refund on October 15, 2010 and October 17, 2010, respectively, were made within the two-year reglementary period.

(d) RMC No. 14- 2012 revoked RMC No. 15-2007 on April 4, 2012. Further, the Court found that petitioner had established with sufficient proof that its income for FY ended June 30, 2010 was actually derived from PEZA-registered activities.

Viricson Corporation vs. Commissioner of Internal Revenue; Office of the Regional Director, BIR, Revenue Region No. 8 – Makati City; BIR, Revenue District Office No. 52, Parañaque *(CTA Case No. 8709 dated January 24, 2017)*

This case involved a Petition for Review praying for the cancellation and nullification of the final assessment made through respondents' Formal Letter of Demand with Assessment Notices dated December 10, 2012, for allegedly being issued without factual and legal bases.

The issues were: (a) whether the CTA Division had jurisdiction over the instant case; and (b) whether petitioner was liable for deficiency income tax, VAT and EWT for taxable year 2009.

Ruling:

(a) The Court has jurisdiction over the instant case.

Based on Section 228 of the NIRC, in relation to Section 3.1.5 of RR No. 12-99, petitioner was mandated to submit the required documents in support of its protest within 60 days from date of filing of the protest letter, otherwise, the assessment shall become final. Here, since petitioner filed its Protest on January 10, 2013, it had until March 11, 2013 within which to submit the relevant supporting documents to its protest. Records showed that on March 11, 2013 petitioner sent to respondent BIR RDO No. 52 a letter together with certain documents in support of its Protest. Petitioner, therefore, was able to submit relevant supporting documents within 60 days from the filing of the said Protest.

The failure of petitioner to submit original receipts and documents in support of its protest did not render the assessments final, executory, and demandable. Records indicate that petitioner was not inclined to submit the original receipts and documents, but was willing to present them for purposes of comparison only as evidenced by its letter-reply dated July 10, 2013. Thus, the assessment against petitioner had not become final, executory, and demandable on the ground of failure to submit original documents in support of its protest within 60 days from the filing of said protest.

(b) Petitioner not liable for any deficiency income tax.

(1) *Unrecorded gain on the sale of motor vehicle – P646,148.08.* Respondents' verification disclosed that in connection with its disposal of a motor vehicle, petitioner failed to record or report the gain on sale amounting to P646,148.08 in the Audited Financial Statements (AFS) or ITR as other income. The Court found that it was error for respondents to treat the amount of P904,467.00 as *"Proceeds from sale of motor vehicle"* because the same actually represented the *"Cost" of the "Retirement/disposals" of "Motor Vehicle."* The *"Cost"* of the *"Retirement/disposals"* of *"Motor Vehicle"* cannot be equated with the *"Proceeds from sale of motor vehicle",* the latter being the amount received because of the sale. Thus, the finding of *Unrecorded Gain on Sale of Motor Vehicle* in the amount of P646,148.08 was without foundation.

(2) *Disallowed professional fee due to non-withholding of tax – P55,650.00*. Respondents' verification disclosed that petitioner failed to withhold and remit the correct withholding taxes on its income payments of professional fees in the amount of P55,650.00. However, the Court found that the professional fee was paid to a general professional partnership (GPP) which was exempted from withholding in accordance with Section 2.57.5(B)(4) of RR 2-98, as amended.

(3) *Unaccounted rent expense – P55,000.00.* Respondents' analysis of petitioner's BIR Form No. 1601-E and AFS showed unaccounted payments for rentals in the amount of P55,000.00. Respondents' assessment was based on petitioner's remittance of the amount of P2,750.00 representing 5% withholding tax on the rental payment of P55,000.00 for the month of May 2009 as indicated in petitioner's BIR Form No. 1601-E. Since the amount in petitioner's BIR Form No. 1601-E was higher than those reflected in the AFS and ITR, respondents inferred that petitioner had "undeclared income".

The 3 elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. In this case, said elements were not present. The BIR assumed that there was undeclared income based on a mere presumption that since there was an undeclared expense, there was likewise undeclared income which corresponded to it. It must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Thus, the assessment of deficiency assessment corresponding to alleged undeclared income from unaccounted rent expense should be cancelled.

(4) *Disallowed NOLCO - P148,550.00, excess MCIT carried over - P8,800.00, and amount carried over to succeeding years - P36,911.67.* The Court ruled that it was improper for respondents to disallow the said NOLCO, excess MCIT, and excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amounts redounded to ucceeding years. Since the tax benefit would be in the succeeding years, at most petitioner may only be assessed in the said succeeding years.

(c) Petitioner is liable for basic deficiency VAT in the amount of P55,131.63.

(1) *The sale of the motor vehicle in the amount of P904,467.00 is subject to VAT.* Based on the Supreme Court pronouncements in *Mindanao II Geothermal Partnership vs. CIR, et al.* and *CIR vs. Magsaysay Lines, Inc.*, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability, and that a criteria for determining whether a sale of an asset may be treated as incidental transaction is that when said asset was part of the taxpayer's Property, Plant and Equipment. In this case, since there was no showing that the said sale of motor vehicle was not an incidental transaction and that the subject motor vehicle was retained in the accounts under petitioner's "Properties

and Equipment" or was part thereof, the same sale was subject to VAT. However, in view of the fact that the selling price was only P200,000.00, the VAT should only be imposed on said amount.

(2) *Unaccounted rent expense – P55,000.00*. What was critical to be shown in the imposition or assessment of VAT in the sale and the lease of goods or properties, was that the taxpayer was paid an amount of money or its equivalent representing the contract price, compensation, service fee, rental, etc. The VAT is imposed when one leases goods or properties and is paid therefor, not when one rents out and pays for the rental. Correspondingly, VAT should not be imposed on the supposed "Unaccounted rent expense" amounting to P55,000.00.

(3) *Unsupported input tax – P31,131.63*. Petitioner did not submit the documents supporting its claimed input taxes of P31,131.63 for the Court's verification so as to ascertain whether the said supporting documents indeed complied with the invoicing requirements prescribed under Sections 113 and 237 of the NIRC. Hence, the Court cannot set aside respondents' disallowance of the unsupported input tax.

(d) Petitioner was not liable for the subject deficiency EWT assessment in the amount of P55,000.00. It was already determined that the subject income payment amounting to P55,000.00 was made to a GPP, which was exempt from income tax pursuant to Section 26 of the NIRC, and consequently to withholding tax as provided under Section 2.57.5(8)(4) of RR No. 2-98, as amended. Thus, respondents' deficiency EWT assessment on the said income payment in the aggregate amount of P9,660.23 should be cancelled.

Ritegroup Incorporated vs. Commissioner of Internal Revenue *(CTA Case No. 8651 dated January 25, 2017)*

The BIR can only inform the taxpayer to submit additional documents but it cannot demand from the taxpayer what type of supporting documents that it should submit.

Petitioner Ritegroup Incorporated is a domestic corporation engaged in the business of supplying medical and laboratory products.

On January 13, 2012, petitioner received a Formal Letter of Demand (FLD) with Detail of Discrepancies and Final Assessment Notices (FAN) assessing it for alleged deficiency taxes for taxable year 2008 in the aggregate amount of P10,941,323.58. Petitioner disputed the aforesaid FAN on January 26, 2012. On September 25, 2012, petitioner received a letter dated September 7, 2012 issued by OIC-Regional Director of Revenue Region No. 7, Quezon City, stating that the investigating officer of RDO No. 43A-Pasig City recommended the reiteration of the assessments issued against petitioner. The letter also requested the payment of petitioner's tax liabilities and indicated that its decision was a final one. On October 9, 2012, petitioner filed with the BIR a Letter of Appeal dated October 7, 2012. Due to inaction of respondent, petitioner filed the instant Petition for Review on May 7, 2013.

The issues were: (a) whether the instant Petition for Review was timely filed before the CTA; (b) whether the assessment has become final due to petitioner's failure to submit supporting documents in the reinvestigation and protest; and (c) whether petitioner was liable for the alleged deficiency income tax, VAT, EWT, FBT, and compromise penalty for taxable year 2008.

Ruling:

(a) Petitioner received on September 25, 2012 a copy of the denial of the protest to the FAN issued by OIC-Regional Director Jonas DP. Amora of Revenue Region No.7, Quezon City. Petitioner then appealed the said denial before respondent on October 9, 2012, which was within the 30-day period from receipt of such denial by the latter's duly authorized representative. Accordingly, respondent had 180 days from

October 9, 2012 or until April 7, 2013 within which to act on petitioner's protest. However, respondent failed to act on the same; thus, petitioner had 30 days from April 7, 2013 or until May 7, 2013 within which to appeal such inaction. Since petitioner filed its Petition for Review on May 7, 2013, the same was timely filed.

(b) The Court emphasized that respondent cannot demand from petitioner what type of supporting documents that it should submit. The BIR can only inform the taxpayer to submit additional documents. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit. Therefore, the FAN has not become final due to petitioner's purported failure to submit supporting documents.

(c) Deficiency Income Tax – P7,770,554.22 and Deficiency EWT – P44,763.11

(1) *Disallowed Purchases – P12,511,344.83.* Petitioner's purchases for taxable year 2008 that should be disallowed as deductions from gross income would amount only to P3,923,170.66 based on the findings of the Independent CPA and the findings of the Court.

(2) *Disallowed meetings and conferences expense - P662,134.85*. Respondent disallowed meetings and conferences expense of P662,134.85 for petitioner's failure to fully substantiate the same with necessary documentary evidence, pursuant to Section 34(A)(1)(b) of the NIRC. The substantiation requirement for deductibility of expenses requires sufficient evidence, such as official receipts or other adequate record. The supporting document submitted by petitioner was a mere schedule or summary of expenses which was self-serving. Such schedule or summary of expense was not, in itself, sufficient to prove petitioner's claimed meetings and conferences expenses, unless it was accompanied by pertinent invoices and/ or official receipts.

The Court also found no merit in petitioner's invocation of the "50% rule, in the absence of receipts to prove actual amount of expense deduction." Based on Section 2.4(c) of RMC No. 23-00, the "50% rule" was to be resorted to by respondent when no invoices or receipts were submitted by the taxpayer to prove its claimed expense deduction. Here, petitioner presented documents supporting its claimed meetings and conferences expenses up to a certain extent. And even if the Court applied the 50% rule, the amount of P682,560.15 allowed by respondent as deduction from petitioner's gross income was even greater than the amount of P672,347.50 representing 50% of the total claimed expense of P1,344,695.00.

(3) *Non-deductible representation expense - P83,151.32.* Finding that petitioner's representation expense per financial statements exceeded the statutory limit, the excess amount over the limitation was assessed by respondent as non-deductible, pursuant to RR No. 10-2002.

The Court found that the notices and communications issued by respondent to petitioner indicated that other than stating that the assessed amount of P83,151.32 was in excess of the prescribed limit, no further details have been provided. Accordingly, insofar as the non-deductible representation expense of P83,151.32 was concerned, the assessment was void for respondent's failure to inform petitioner of the specific facts on which the said assessment was based in violation of Section 228 of the NIRC and RR No. 12- 99.

The Court also found that petitioner's claimed representation expense in the amount of P127,684.00 was a valid deduction against its taxable gross income. Applying Section 2 of RR No. 10-02, petitioner being engaged in the sale of food and medical products to hospitals, its allowable representation expense should not exceed 0.50% of its net sales of P26,190,642.00. Therefore, its ceiling for representation expense amounted to P130,953.21 (P26,190,642.00 x .005). Clearly, the claimed representation expense of P127,684.00 did not exceed or even reach the ceiling of P130,953.21. Consequently, the whole amount claimed should be allowed as deduction from gross income.

(4) *Unaccounted expenses - P430,364.97*. Based on respondent's verification, the following expenses per petitioner's alphalist were not fully reported in its FS/ITR resulting in an "unaccounted source of cash" which led to the inference that part of its income had not been declared.

The Court found that the imputation of alleged undeclared income was based on a mere presumption that since there were undeclared expenses, there was corresponding undeclared income. Even if these alleged unaccounted expenses were to be treated as unaccounted sources of income, the same would be offset by recording the equivalent payments as expenses. As such, no taxable income would result from the said transactions.

(5) *Deficiency EWT – P44,763.11*. Respondent disallowed income payments in the amount of P524,031.00 for petitioner's failure to subject the same to withholding tax pursuant to RR No. 02-98; thus, petitioner was assessed for the corresponding deficiency EWT in the amount of P44,763.11,

Petitioner presented its Payment Form (BIR Form No. 0605) and the related Transaction Acknowledgement and EFPS Payment Form proving that it paid on October 9, 2012, the amount of P6,175.32 representing 2% deficiency EWT in the total amount of P308,766.00. Therefore, the deficiency income tax assessment on the disallowed expense deductions of P308,766.00 was cancelled.

On the other hand, the vouchers presented by petitioner in support of the incentives and commissions do not prove the fact of withholding for the payment of incentives and commissions. Thus, the basic deficiency 10% EWT assessment in the amount of P21,526.50 was upheld pursuant to Section 2.57.2(0) of RR No. 02-98, as amended by RR No. 17-03.

(6) *Disallowed Donation - P48,557.65 and Disallowed expenses - P27,348.00*. Respondent disallowed petitioner's donation expense in the amount of P48,557.65, being in excess of the statutory limit pursuant to Section 34(H) of the NIRC. Likewise, expenses in the amount of P27,348.00 were disallowed as deductions from gross income pursuant to Section 34 of the NIRC.

Petitioner did not controvert the findings of respondent. It maintained, however, that it already settled the related 35% income tax deficiency on the disallowed donation and disallowed expenses.

To properly account for the valid disallowance on the subject expenses and the payment made by petitioner, the assessed disallowances on donation and contributions in the amount of P48,557.65 and other expenses, namely, provision for probable losses and penalty charges, in the amount of P27,348.00 should remain, and the income tax payment thereon in the amount of P40,209.05 should be deducted to arrive at the total deficiency income tax still due from petitioner.

In sum, petitioner was declared liable to pay basic deficiency income tax in the amount of P1,626,348.56, deficiency EWT in the amount of P21,526.50, and increments amounting to P6,250.10 on the P6,175.32 deficiency EWT paid by petitioner on October 9, 2012.

(d) Deficiency VAT- P3,005,918.88

(1) *Disallowed input tax attributable to sale to government - P255,960.32*. Respondent found that the input tax credits attributable to sales to government was overstated by P255,960.32; therefore, respondent disallowed the same pursuant to RMC No. 65-05 as amended and RR No. 4-07. Petitioner agreed to the above findings of respondent as can be seen from petitioner's computation of partial settlement of deficiency VAT wherein petitioner considered the amount of P255,960.32 as deduction to tax credits. Thus, the assessment was upheld.

(2) *Proceeds from sale of asset not subjected to VAT - P449,812.00*. Petitioner averred that the actual proceeds from the sale of its company vehicle were only P100,000 and that the amount of P449,812 assessed by respondent referred to the book value of the said company vehicle. In admitting its deficiency VAT liability on the P100,000 sales proceeds of its company vehicle and the P255,960.32 disallowed input tax attributable to sales to government, petitioner paid the amount of P126,798.99 on January 12, 2012. However, said payment was lower by P141,161.13 compared with the assessed deficiency VAT in the amount of P267,960.12 which was derived from the P100,000 proceeds from petitioner's sale of company vehicle and P255,960 disallowed input tax on sales to government. Nevertheless, since the Court upheld the P267,960.12 deficiency VAT assessment, petitioner's partial payment of P126,798.99 should be deducted therefrom.

(3) *Unaccounted expenses - P430,364.97*. This assessment was based on the same finding under the deficiency income tax assessment that there were expenses per petitioner's alphalist. The assessment was devoid of merit. As discussed, even if the expenses per alphalist were to be considered as income subject to output VAT, the same should be offset by treating the equivalent payments as purchases for which input tax credits may be claimed. Hence, no VAT-able income would result from the said transactions.

(4) *Disallowed input tax - P1,501,361.38*. Input taxes in the amount of P1,501,361.38 were disallowed in connection with the assessed disallowed purchases as discussed earlier. As determined, petitioner's purchases amounting to P3,923,170.66 were found to be proper disallowances. Consequently, only the input VAT corresponding thereto in the amount of P470,780.48 (P3,923,170.66 x 12%) should be disallowed as credit against petitioner's output tax due.

In fine, petitioner was still liable for basic deficiency VAT for taxable year 2008 in the amount of P616,188.11.

(e) Deficiency FBT - P108,087.37

Petitioner claimed that the subject plane ticket was a business class ticket and for a legitimate business trip, and hence not subject to FBT. Petitioner also alleged that the car in question was being used by its sales manager as a company vehicle which has remained in the name of the company, and is limited to official sales operations that are necessary, beneficial and convenient to petitioner.

The electronic ticket and other supporting documents offered by the petitioner showed that the flights were booked for petitioner's President and CEO for "Restricted Business/Z" trips for a total cost of P169,890.00. It was also established that said foreign travel of the President and CEO was for the purpose of visiting the Medica 2008 Exhibition for the furtherance of petitioner's business of buying and selling of food and medical products. Undoubtedly, the cost of the plane ticket was not subject to FBT pursuant to Section 2.33(B)(7)(a) and (b) of RR No. 03-98 in relation to Section 33(A) of the NIRC. Nonetheless, petitioner failed to explain the discrepancy between the assessed amount of P251,850.73 and the substantiated amount of P169,890.00. In view thereof, the assessment on the difference of P81,960.73 should remain.

As to the deficiency FBT assessment on the Toyota Altis (1.8, Beige Mica) car, petitioner presented an internal memorandum signed by its President and CEO and addressed to its National Sales Manager assigning the said car to the latter for official use and hospital coverage effective July 18, 2008. The memo stated that the "car assignment is not permanent and may be assigned to another person in the future as the exigencies in operational efficiencies may require". Thus, said car should not be subject to FBT pursuant to Section 2.33 (C) of RR No. 03-98 in relation to Section 33(A) of the NIRC.

In sum, petitioner was declared liable to pay basic deficiency FBT for TY 2008 in the reduced amount of P11,570.93.

City of Manila and City Treasurer of the City of Manila vs. Rizal Commercial Banking Corporation, and Hon. Presiding Judge, Regional Trial Court, Branch 20, Manila *(CTA AC No. 148 dated January 27, 2017)*

Private respondent Rizal Commercial Banking Corporation (RCBC) is a domestic corporation engaged as a banking institution. It is subject to local business taxes as a commercial/universal bank under the Revenue Code of the City of Manila ("Revenue Code"). Section 21 of the Revenue Code of the City of Manila was amended by Ordinance No. 7988 dated February 25, 2000, which in turn was amended by Ordinance No. 8011 dated February 22, 2009. Due to its business operations within the City of Manila, RCBC, through its branches or business centers, paid its local business taxes imposed pursuant to the Revenue Code. Furthermore, under Section 21 of the Revenue Code of the City of Manila, RCBC paid additional tax in order to secure the respective Business Permits of its branches or business centers from the City of Manila which would allow them to continue their business operations within the city.

On December 19, 2008, RCBC filed with petitioner City Treasurer a consolidated administrative claim for the refund of the additional business taxe, pursuant to Section 196 of the Local Government Code (LGC) and Section 286 of Rules and Regulations Implementing the LGC. In the said administrative claim, RCBC invoked the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al.* wherein the Supreme Court held that Tax Ordinance Nos. 7988 and 8011 are null and void. Because of the inaction of the City Treasurer and because the two-year prescriptive period was about to expire, RCBC filed a Complaint before the RTC of the City of Manila praying for the refund, or alternatively for the issuance of a tax credit certificate, in the amount of P3,030,455.99, representing payment of taxes under Section 21 of the Revenue Code of the City of Manila, for the 1st to 4th quarters of 2007.

The public respondent RTC judge directed the petitioners to refund to RCBC the amount of P3,030,455.99 representing the additional local tax it paid in 2007 pursuant to Tax Ordinance Nos. 7988 and 8011 (the ordinances which were declared null and void in the *Coca-Cola* case). Petitioners City of Manila and the City Treasurer filed a Petition for Review with the CTA seeking the reversal and/or modification of the decision rendered by the RTC judge.

The issues in this case were: (a) whether the RTC judge erred in ordering the refund to RCBC; (b) whether RCBC should have appealed the denial of its protest pursuant to Section 195 of the LGC instead of claiming for refund or tax credit under Section 196 of the said Code.

Ruling:

(a) The RTC did not err in granting a tax refund, instead of a tax credit. The law is silent as to the instances when a taxpayer is entitled either to a tax refund or a tax credit. In fact, Section 196 of the LGC, the provision which governed the claiming of refund or tax credit of local taxes, did not specify when the grant of tax refund or a tax credit was warranted.

(b) RCBC was not in error in availing of Section 196 of the LGC, instead of Section 195 thereof. RCBC was free to choose which remedy to enforce. The only matter that ought to be inquired into was whether RCBC observed the procedures laid down by law for the availment of its chosen remedy. The Court found that RCBC observed the procedures laid down by Section 196 of the LGC which required the following in an action for the recovery of any local tax erroneously or illegally collected: (1) a written claim for refund must have been filed with the local treasurer, and (2) the case for the recovery of the local tax, i.e., both at the administrative and judicial levels, must have been filed within 2 years from the date of payment thereof, or from the date the taxpayer is entitled to a refund or credit. Here, it was

undisputed that RCBC filed its administrative claim for refund within the two-year period prescribed by Section 196 of the LGC.

While it may be true that the remedy under Section 195 of the LGC was available to RCBC in questioning the subject local tax assessment, the law does not prohibit RCBC to avail of the remedy provided under Section 196 of the same Code. This is especially true since the subject local tax has already been "erroneously or illegally collected" by petitioners pursuant to the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al.*

Futamura Chemical Co. Ltd. vs. Commissioner of Internal Revenue *(CTA Case No. 8906 dated January 30, 2017)*

A written claim for refund filed with the International Tax Affairs Division of the BIR shall be considered a valid administrative claim. A foreign corporation is entitled to claim for refund of erroneously or illegally collected CGT pursuant to the RP-Japan Tax Treaty.

Petitioner Futamura Chemical is a corporation duly organized and existing under the laws of Japan. It sold 535,950 of its common shares in Philippine-Japan Active Carbon Corporation (PJACC) to Kowa Company, Ltd. (Kowa). PJACC is corporation organized under the laws of the Philippines, while Kowa is a corporation organized under the laws of Japan. Consequently, petitioner filed and paid capital gains tax (CGT) on the on the sale of shares in the amount of P18,836,500.00 on October 12, 2012.

On October 31, 2013, petitioner filed an administrative claim for the refund of erroneously paid CGT on the sale of shares in view of the alleged exemption pursuant to the *Convention Between Japan and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (RP-Japan Tax Treaty). It then filed an Application for Tax Credits/Refunds (BIR Form No. 1914), and an Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C) on September 29, 2014. Thereafter, it filed a request for confirmatory ruling of the application of the RP-Japan Tax Treaty on October 8, 2014. Due to the inaction of the CIR, petitioner filed the present Petition for Review on October 10, 2014.

The issues were: (a) whether the claim for refund was timely filed; and (b) whether the CGT paid by petitioner in the amount of P18,836,500.00 should be refunded to petitioner based on an exemption from payment thereof under the RP-Japan Tax Treaty.

Ruling:

(a) The claim for refund was timely filed.

Section 204(C) in relation to Section 229 of the NIRC required the filing of an administrative claim for refund before the filing of a judicial claim, both of which claims should be filed within two years from payment of the tax. Here, petitioner paid the CGT on October 12, 2012, giving it until October 12, 2014 to file its claim for refund. The administrative claim under Sections 204(C) and 229 of the NIRC refers to any written claim for refund filed with the CIR or his duly authorized representative. The administrative claim need not be in the form of an Application for Tax Credits/Refunds (BIR Form No. 1914) or otherwise. In *CIR vs. Lawl Pte Ltd*., the Court *En Banc* ruled that a written claim for refund may be filed with the International Tax Affairs Division of the BIR, and the same shall be considered a valid administrative claim. In the present case, not only did petitioner file a written claim for refund on October 31, 2013, it likewise filed the following: the Application for Tax Credits/Refunds (BIR Form No. 1914) on September 29, 2014, an Application for Relief from Double Taxation on Capital Gains (BIR Form No. 0901-C) on September 29, 2014, and a request for confirmatory ruling of the application of the RP-Japan Tax Treaty on October 8, 2014--all of which, taken together with the filing of the judicial claim for refund

on October 10,2014, were filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC. The foregoing documents, together with the fact of payment of the CGT on October 12, 2012 as evidenced by the Capital Gains Tax Return (BIR Form No. 1707), clearly showed that petitioner's administrative and judicial claims for refund were timely made.

(b) Petitioner was entitled to its claim for refund of erroneously or illegally collected CGT pursuant to the RP-Japan Tax Treaty.

Generally, any gain realized by petitioner from the sale of shares in PJACC should be subject to CGT. However, considering that the Philippines has a tax treaty with Japan, said income from the sale of shares may be exempt from income tax if the conditions set forth under the RP-Japan Tax Treaty are met.

Applying Paragraphs (4) and (5), Article 13 of the RP-Japan Tax Treaty to the present case, the rule can be summarized as follows: (1) gains from the alienation of shares of a company, the property of which consists principally in immovable property situated in the Philippines, may be taxed in the Philippines; (2) however, if the company's property does not consist principally in immovable property situated in the Philippines, such gains shall be taxable only in Japan, the Contracting State of which the alienator (i.e., petitioner) is a resident.

Meanwhile, RR No. 04-86 was issued to provide the guidelines in determining whether under the applicable tax treaty, the assets of a corporation consists principally of real property interest. RR No. 04-86 simplifies the rule, thus: capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally in real property interest located in the Philippines. It then defines the term "real property interest" as interests on properties enumerated therein, including real properties as defined under Philippine laws; and the term "principally" to mean more than 50% of the entire assets in terms of value. Finally, RR No. 04-86 provides that the basis of determining the composition of a company's assets shall be the value of all the assets of the subject corporation, both real and personal, as appearing in its financial statement on the date of the sale of the share or interest and as verified by the BIR.

Guided by the parameters set forth in RR No. 04-86, a perusal of PJACC's 2011 Audited Financial Statements and the Certification with attached Interim Balance Sheet and Comparative Schedule of Property, Plant, and Equipment showed that PJACC's assets did not consist principally in real property interest located in the Philippines. The percentage of PJACC's real property interest as of December 31, 2011 was only 23.17% of its total assets. Accordingly, the conclusion can be made that the assets of PJACC did not consist primarily in immovable property situated in the Philippines. Consequently, pursuant to Paragraph (5) in relation to Paragraph (4), Article 13 of the RP-Japan Tax Treaty, the capital gains derived by petitioner from the sale of its shares of stock in PJACC shall be taxable only in Japan, and shall be exempt from CGT in the Philippines.

AP Holdings, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City *(CTA AC No. 156 dated January 30, 2017)*

Respondent City Treasurer assessed petitioner a 0.55% local business tax for the first and second quarters of 2011 on the dividends derived from its SMC preferred shares of stock and interests on its money market placements for 2010 in the total amount of P723,531.50. Petitioner paid the assessed amount under protest.

The issue was whether petitioner is considered a Bank and Other Financial Institution (Non-Bank Financial Intermediary) so as to be subject to the imposition and assessment of local business tax under

Section 143(f) of RA No. 7160, otherwise known as the Local Government Code of 1991 on its receipt of dividends and interest income from SMC.

Ruling:

Incidentally, Section 131(e) of RA No. 7160 (Local Government Code of 1991) and, as adopted under Section 5(b3) of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of the City of Davao", defines banks and other financial institutions as follows: *(e) 'Banks and other financial institutions'* ***include non-bank financial intermediaries,*** *lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as* ***defined under applicable laws, or rules and regulations thereunder."*** Section 131(e) defines banks and other financial institutions by giving examples of such rather than providing a concrete description of its definition. The said section further qualifies its definition by including the phrase *as defined under applicable laws, or rules and regulations thereunder.* Clearly, reference to other definitions of the same import under applicable laws, or rules and regulations may be resorted to since financial institutions include, by reference, non-bank financial intermediaries. Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions defines financial intermediaries as those whose principal functions include, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others. Thus, to determine whether petitioner's business includes the principal function of a financial intermediary, reference to petitioner's primary purpose, as indicated in its Amended Articles of lncorporation, is necessary.

The scope of petitioner's primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. Bearing in mind that the nature of petitioner's business (which consisted solely in owning a substantial number of shares of stock and equity in SMC from which it regularly received dividends in millions of pesos and thereafter reinvested in money market placements to maximize its profit), petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which is well within the purview of a financial institution. The scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to catch all the descriptive functions of a Financial Intermediary.

Phil. Gold Processing Refining Corp. vs. Commissioner of Internal Revenue *(CTA Case No. 8697 dated January 31, 2017)*

This is a Resolution on the Motion for Reconsideration filed by petitioner assailing the Court's decision denying petitioner's claim for refund or issuance of a tax credit certificate for its alleged unutilized creditable input VAT in the aggregate amount of P53,540,003.27 for the 1st and 2nd quarters of FY ended June 30, 2012 for insufficiency of evidence.

The issue in this case was whether the documentary evidence submitted by petitioner sufficiently substantiated actual shipments of goods to a foreign country in order to support its claim for refund or issuance of a tax credit certificate.

Ruling:

The sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking presented by petitioner only established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. The said pieces of evidence did not reveal the actual shipment of goods from the Philippines to a foreign country. Section

106(A)(2)(a)(1) of the NIRC mandates that the goods be physically shipped out of the Philippines to a foreign country, which can be proven through the presentation of corresponding export declarations and bills of lading or airway bills. Thus, petitioner's non-presentation of said export documents warranted the dismissal of its claim for refund or issuance of tax credit certificate.

The Schedule of Export Sales was not sufficient to prove the actual shipment of goods from the Philippines to a foreign country because it was a mere schedule and did not prove the fact of actual shipment of goods. Though the schedule contained a column described as "A WB of Buyer" and "Lading Date", petitioner should have attached the source document from which the entries were based, i.e., the airway bill itself, so that the Court can verify the accuracy of these entries.

Likewise, the Board of Investments (BOI) Certification itself was not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country, as the information contained therein originally came from petitioner through its affidavit and sales performance. Thus, it was merely self-serving and the presumption of regularity in the performance of BOI's duty in issuing the said certification cannot be applied in this case. It should be noted that the BOI Certification dated July 15, 2011 stated that "information is hereby given that the firm exported 100% of its total sales volume/value for the fiscal year covering July 01, 2010 to June 30, 2011", while the instant claim for refund referred to the period July 1, 2011 to December 31, 2011.

Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8812 dated January 31, 2017)*

This was a Resolution of the petitioner's Motion for Reconsideration of the Court's Decision promulgated on September 22, 2016 which was decided against petitioner.

Petitioner mainly asserted that the definition of "toilet waters" under RR No. 8-84 was not validly amended by BIR Ruling No. 43-2000 which was published in RMC No. 17-2002. Petitioner contended that the power of respondent to interpret the provisions of the NIRC does not include the power to supplant the definition of "toilet waters" prescribed by the Secretary of Finance pursuant to his authority under Section 244 of the NIRC. Petitioner also claimed that Section 244 of the NIRC expressly provided that in the promulgation of revenue regulations, the authority of the CIR is only recommendatory. The power to promulgate rules and regulations is only with the Secretary of Finance and not with respondent CIR.

Ruling:

The definition of "toilet waters" under RR No. 8-84 was no longer applicable in this case since the provision of law [Section 194(b) of the NIRC of 1977] which the regulation sought to implement has long been amended. In this regard, respondent issued BIR Ruling No. 43-2000 and RMC No. 17-2002 to interpret the term "toilet waters" under Section 150(b) of the NIRC of 1997 pursuant to his power to interpret the provisions of the NIRC and other tax laws under Section 4 of the NIRC.

Prior to the issuance of BIR Ruling No. 43-2000 and RMC No. 17-2002, there was no prevailing administrative interpretation of Section 150 of the NIRC. The subsequent issuance of RMC No. 17-2002, which published BIR Ruling No. 043-2000, provided a new definition of "toilet waters" as a scented alcohol-based liquid used as perfume, after-shave lotion or deodorant, and classified all other colognes as "toilet waters" subject to excise tax under Section 150(b) of the NIRC.

Petitioner further contended that the legal definition of "toilet waters" under RR No. 8-84 still applied in construing Section 150(b) of the NIRC under the principle of legislative approval of administrative interpretation by reenactment which may briefly be stated thus: "where a statute is susceptible of the

meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."

However, the Court ruled that the principle of legislative approval of administrative interpretation by reenactment was not applicable to this case. Section 194 of the NIRC of 1977, which originally imposed percentage tax on toilet water, among others, was not reenacted, but rather was amended in several instances.

Filminera Resources Corporation vs. Commissioner of Internal Revenue *(CTA Case No. 8938 dated January 31, 2017)*

Petitioner Filminera Resources Corporation (FRC), a domestic corporation, entered into an Ore Sales and Purchase Agreement whereby FRC will exclusively sell to Philippine Gold Processing and Refining Corp. (PGPRC) pre-production ore and ores mined from FRC's facilities.

PGPRC is a domestic corporation registered with the BOI on a non-pioneer status as a New Producer of Gold and Silver Doré. On August 3, 2009, Assistant Commissioner-Legal Service James H. Roldan, wrote to Sycip Gorres Velayo & Co., informing the latter that the input VAT on PGPRC's purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales were available as tax credit or refund pursuant to Section 112 of the NIRC.

For the period starting April to June 2012, petitioner issued to PGPRC VAT Zero-Rated Official Receipts (OR) for the "settlement of ore sales." On June 30, 2014, petitioner filed its Application for Tax Credits/Refunds for the period April 1, 2012 to June 30, 2012, claiming for a TCC in the amount of P76,333,107.78, representing unutilized or unapplied creditable input VAT. On November 27, 2014, petitioner filed the instant Petition for Review claiming no action from respondent.

The issues were: (a) whether CTA has jurisdiction in the instant case; and (b) whether petitioner is entitled to the refund or the issuance of a TCC representing its alleged unutilized input VAT attributable to its zero-rated sales.

Ruling:

(a) The Court has jurisdiction over the instant case.

Based on Section 112(A) of the NIRC, petitioner has 2 years from the close of the taxable quarter when the sales were made to file its administrative claim. Further, Section 112(C) of the same law, in relation to RR No. 16-2005, states that if no action was taken by the CIR after the 120 day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days therefrom.

The period involved in the case at bar was April 1, 2012 to June 30, 2012. Therefore, the administrative claim is due 2 years from June 30, 2012 or on June 30, 2014. Petitioner timely filed its Application for Tax Credits/Refunds on June 30, 2014. Thereafter, petitioner had 120 days or until October 28, 2014 to await the CIR's decision. However, the CIR did nothing after petitioner filed its administrative claim. Consequently, petitioner had 30 days from October 28, 2014 or until November 27, 2014 to file its judicial claim with the CTA. Therefore, on November 27, 2014, petitioner timely filed the instant Petition for Review.

(b) Petitioner is entitled to the issuance of a TCC, albeit at a reduced amount.

Under Section 112(A) of the NIRC, in order to be entitled to a refund/ tax credit of unutilized input VAT, the following requisites must be satisfied: (1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within 2 years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

As explained in letter (a) above, petitioner complied with the third requisite. As to the first requisite, petitioner is indeed a VAT-registered entity, as shown in its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000.75

With respect to the second requisite, based on Section 106(A) of the NIRC in relation to Section 4.106-5 of RR No. 16-2005, petitioner must comply with the following requirements in order for its sales to be considered zero-rated: (1) the taxpayer seller must be VAT-registered; (2) the buyer must be a BOI-registered manufacturer/ producer; and (3) the buyer's products must be 100% exported as shown by a certification issued by the BOI. Petitioner submitted a BOI Certification issued on July 17, 2012 which certified that PGPRC exported 100% of its total sales volume for the period July 1, 2011 to June 30, 2012, and the same has been issued pursuant to the Guidelines on the issuance of BOI Certification per RMO No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales." With the submission of the said document, the Court found petitioner's sales as zero-rated.

In its Quarterly VAT Return for the 4th Quarter of FY ending June 30, 2012, petitioner declared total zero-rated sales of P898,414.147.45. However, supporting documents showed that the total zero-rated sales was only P898,269,213.75. The difference of P144,933.70 should be denied instantly.

With respect to petitioner’s input taxes, only the amount of P67,913,375.25 represented valid input tax out of petitioner's input VAT claim for the 4th Quarter of FY 2012 in the amount of P76,333,107.78. The difference corresponded to input taxes claimed but were not properly substantiated by VAT invoices or ORs in accordance with Sections 110(A) and 113(A) and (B) of the NIRC and as implemented by RR No. 16-2005. These input taxes cannot be claimed in full since only 99.83% of the actual zero-rated sales declared per VAT Return were found to be valid. Therefore, petitioner was entitled only to the properly substantiated amount of P67,797,922.51 as claim for refund arising from its unutilized input VAT from zero-rated transactions.

First Balfour Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 9020 dated January 31, 2017)*

Where a Waiver of Statute of Limitation (to assess taxes within the 3-year period) was defective due to the fault of both the taxpayer and the BIR (in pari delicto doctrine), the BIR’s right to assess beyond the 3-year period was deemed validly extended.

This was a Resolution of respective Motions filed by the parties in response to this Court’s Resolution which partially cancelled the assessments for taxable year 2009 on the ground of prescription.

The issues were: (a) whether the parties are *in pari delicto* such that respondent’s CIR right to assess was deemed validly extended through the issuance of waivers; (b) whether petitioner’s right to speedy disposition of cases was violated when the Letter of Authority (LOA) was received on May 18, 2010 and the initial assessment was issued only on June 27, 2014.

Ruling:

(a) The factual circumstances of the *CIR vs. Next Mobile* were similar to the present case. Both parties were *in pari delicto* or 'in equal fault.' Petitioner executed the Waivers through its Treasurer/Comptroller who had no authority to sign the Waivers therefore violating RMO No. 20-90 which provided that in case of a corporate taxpayer, the waiver must be signed by its responsible officials, and Revenue Delegation Authority Order (RDAO) No. 05-01 which required the presentation of a written and notarized authority. The BIR violated its own rules and was negligent in performing its functions when the concerned authorized revenue official failed to ensure that the waiver was duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same, and failed to see to it that the delegation was in writing and duly notarized. Here, the BIR apparently failed five times to perform its duties to exact compliance with its own rules. The defects of the Waivers were obvious to both parties but they continued their dealings with each other on the strength of the five Waivers. Thus, the Court rule that respondent's right to assess was deemed validly extended through the issuance of the defective Waivers.

(b) While there was unexplained delay in the issuance of the assessment as alleged by petitioner, any negligence on the part of the BIR may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for such.

Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8612 dated February 3, 2017)*

A Waiver of the Statute of Limitations must faithfully comply with the requirements; the case of CIR vs. Next Mobile Inc. created an exception (the application of the pari delicto principle)

Petitioner is a corporation organized and existing under the laws of the Philippines engaged in the business of conducting and operating hotels, clubs, restaurants, and all other businesses appurtenant and/or related thereto. It is registered with the Poro Point Management Corporation (PPMC) as a Poro Point Special Economic and Freeport Zone (PPSEFZ) enterprise pursuant to RA No. 7227, known as the Bases Conversion and Development Act of 1992, as amended by RA No. 9400. Petitioner is duly licensed by Philippine Amusement and Gaming Corporation (PAGCOR) to operate a casino complex business within PPSEFZ pursuant to Presidential Decree (PD) No. 1869.

For the taxable year 2008, petitioner filed its Annual ITR, Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) and Monthly Remittance Returns of Final Income Taxes Withheld. On September 22, 2011, petitioner received a Notice of Informal Conference for deficiency assessment for taxable year 2008. Petitioner executed a Waiver of the Statute of Limitations dated October 10, 2011 (First Waiver) extending the period to assess deficiency taxes to a period not later than August 31, 2012.

On July 31, 2012, petitioner received the PAN dated June 21, 2012 issued by respondent, assessing it for deficiency special preferential rate tax (SPRT), franchise tax (FT), expanded withholding tax (EWT), final withholding tax (FWT) and documentary stamp tax (DST) in the aggregate amount of P131,699,553.75. On August 17, 2012, petitioner received the FAN dated August 15, 2012 issued by respondent. On August 29, 2012, petitioner received a Letter from Regional Director Arnel SD. Guballa, informing it that before its protest to the PAN and request for reconsideration can be acted upon, submission of the Waiver of Defense of the Statute of Limitations was necessary. Petitioner executed another Waiver of the Statute of Limitations dated August 30, 2012 (Second Waiver) extending the period to assess deficiency taxes to a period not later than March 31, 2013. Petitioner filed its protest to the FAN on September 14, 2012 and supplemental protest on November 13, 2012. On January 21, 2013, petitioner received a Letter issued by Regional Director Arnel SD. Guballa, informing petitioner of the denial of its protest. Thus, petitioner filed the present Petition for Review on February 19, 2013.

The issues were: (a) whether or not the period to assess petitioner for deficiency SPRT, FT, EWT, FWT and DST for taxable year 2008 had already prescribed; and (b) whether petitioner was liable to pay P131,699,553.75 as alleged deficiency Special Preferential Rate Tax, Franchise Tax, Expanded Withholding Tax, Final Withholding Tax, Documentary Stamp Tax, with interest, surcharges and penalty for the taxable year 2008.

Ruling:

(a) Section 203 of the NIRC provides that internal revenue taxes must be assessed within 3 years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. However, in case of false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within 10 years after the discovery of the falsity, fraud or omission. Section 222(b) of the NIRC provides that the period to assess and collect deficiency taxes may be extended upon a written agreement between the CIR and the taxpayer prior to the expiration of the 3-year prescriptive period.

The Supreme Court outlined the procedure for the proper execution of a waiver in the case of *CIR vs. Standard Chartered Bank,* to wit: (1) the waiver must be in the proper form prescribed by RMO No. 20-90; (2) the waiver must be signed by the taxpayer himself or his duly authorized representative; (3) the waiver should be duly notarized; (4) the CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver; (5) both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case of subsequent agreement is executed; and (6) the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The Supreme Court has consistently ruled that a Waiver of the Statute of Limitations must faithfully comply with the requirements. However, the case of *CIR vs. Next Mobile Inc.* created an exception (the application of the pari delicto principle). The Court found that the factual circumstances of the instant case were similar with that of *Next Mobile* in that in this case both parties were at fault or *in pari delicto* for being aware of the infirmities of the waivers but continued their dealings with each other on the strength of these waivers.

The act of petitioner in voluntarily executing waivers without raising any objection as to their validity, means that it is already estopped from questioning their validity after the assessment had already been issued. Thus, respondent's right to assess was validly extended from October 11, 2011 to March 31, 2013 except for deficiency EWT for the months of January to August 2008 and deficiency FWT for the months of February, April to August 2008, which had already prescribed. However, petitioner failed to specify which portion of the deficiency EWT and FWT pertained to prescribed months. Consequently, the entire deficiency tax assessments were imputed to the unprescribed portion of taxable year 2008 in consonance with the case of *Liquigaz Philippines Corporation vs. CIR*.

As regards the assessment on FT and DST, the 10-year prescriptive period for assessment applies considering petitioner's failure to file the required returns.

(b) Special Preferential Rate Tax (SPRT) - P9,015,201.18

(1) *Undeclared gross revenues - P90,755,618.00*. This assessment arose from alleged undeclared gross revenues of P90,755,618.00 arising from the difference between gross revenues declared as revenues subject to special rate in petitioner's Annual ITR for taxable year 2008 of P33,507,934.00 and gross revenues of P124,263,552.00, as computed in various Certificates of Creditable Tax Withheld at Source. The Court found no merit in petitioner’s contention that respondent did not provide any

explanation or factual basis on how the amount of P124,263,552.00 was arrived at because petitioner was able to refute respondent's finding.

Petitioner arguds that its revenues from gaming operations are not subject to SPRT of 5% since the same was already subjected to franchise tax of 5% which petitioner remitted to PAGCOR together with the license fees of 25%. The Court emphasized that upon passage of RA No. 9337, PAGCOR is no longer exempt from the corporate income tax. Thus, petitioner, as the licensee or contractee of PAGCOR, cannot rely on the exemption of PAGCOR to avoid its obligation to pay the proper income tax.

(2) *Allowed deductions under RR No. 13- 2005 - P33,465,590.30*. Section 5(a)(2)(iii) of DOF Order No. 3-08, Rules and Regulations to Implement RA No. 9400, expressly provides that specific items of costs of sales/direct costs shall be allowed as deductions for purposes of calculating the gross income earned (GIE) by Ecozone or Freeport enterprises/industries. Hence, it was necessary for petitioner to show that its supporting documents actually pertained and were traceable to those direct costs which were being disallowed by respondent under its nongaming operations. However, petitioner did not bother to lay down the accounts and the corresponding amounts which comprised the direct costs being claimed as deduction from gross income and which the documents purportedly supported.

(3) *Other income (Rental income) - P16,846,231.48*. Respondent CIR made part of the gross income subject to SPRT, the "other operating income" which pertained to the Rental Income received by petitioner during the year. Indeed, the income from petitioner's sublease contract was derived within the Freeport zone, hence shall be considered as gross income which must be subject to SPRT. However, the corresponding rent expense incurred in providing said sublease must be deducted from the rental income earned as provided in DOF Order No. 3-08.

(4) *Overpayment per BIR Form 1702 carried over to next period - P960,633.00*. Respondent disallowed petitioner's total overpayment amounting to P960,633.00 by adding the same to the latter's tax liability after the former's audit, but did not explain the reason in doing so. The Court surmised that the overpayment which was carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying-over the said amount to the succeeding year. The Court found it improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounded to the succeeding year 2009. Since the tax benefit would be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

(c) Franchise Tax - P72,616,423.07

Respondent assessed the Gaming Revenues to be subject to Franchise Tax under PD No. 1869 amounting to P72,616,423.07. The Court did not agree with the petitioner's argument that its payment of 25% included 20% license fee and 5% franchise tax. The 25% license fee/gross gaming revenue paid by petitioner was different and distinct from the franchise tax to which petitioner was being assessed. As clearly stated in its License, the 25% of the gross gaming revenue was being paid by virtue of the License to establish and operate a casino at the PPSEFZ. Nothing in the terms of the License showed that such includes a 5% franchise tax due on gaming operations.

(d) Expanded Withholding Tax (EWT) - P35,911,478.50

(1) *Expenses of P29,535,724.28 subject to 2% - P590,714.49*. Respondent assessed 2% deficiency EWT on petitioner's income payments mostly classified as outside services, advertising and marketing expenses, and service fees in the total amount of P29,535,724.28. Petitioner withheld 2% on its payments to prime contractors/sub-contractors amounting to P232,249,577.94, and duly remitted the corresponding EWT amounting to P4,644,991.56 This amount was higher than the amount being assessed. However,

petitioner did not offer its Alphalist of Payments subject to EWT for the year 2008, thus the Court cannot ascertain whether the income payments being subjected by respondent to 2% EWT were part of the income payments already subjected by petitioner to 2% EWT. Also, petitioner failed to substantiate with documentary evidence the expenses amounting to P29,535,724.28. Thus, the Court could not verify the actual nature of the said expenses. Consequently, deficiency EWT assessment pertaining thereto should be sustained.

(2) *Expenses of P45,915,923.61 subject to 5% - P2,295,796.18*. Respondent subjected rentals for deficiency EWT at 5%. Petitioner withheld 5% on its payments on rentals amounting to P25,619,016.40, and remitted the corresponding EWT amounting to P1,280,950.82. However, petitioner did not offer in evidence its Alphalist of Payments subject to EWT for 2008, thus, the Court cannot ascertain whether the income payments being subjected by respondent to 5% EWT were part of the income payments already subjected by petitioner to 5% EWT.

(3) *Expenses of P255,923.63 subject to 10% (commission) - P25,592.36*. Said assessment allegedly pertained to commission expense. However, respondent failed to sufficiently explain how the amount of P255,923.63 was arrived at. Further, the FLD did not lay down the legal basis for assessing the said amount. Accordingly, this assessment should be cancelled.

(4) *Expenses of P133,065, 176.73 subject to 15% - P19,959,776.51*. Petitioner only withheld 10% on its payments to professionals and its directors. However, petitioner did not offer its Alphalist of Payments subject to EWT for 2008. Hence, the Court cannot verify whether or not the amounts specifically assessed by respondent to 15% deficiency EWT were already included in the amounts declared in the returns which were subjected to 10% EWT.

(5) *Increments for the late filing of November Returns - P103,567.51*. Since petitioner timely filed its original November 2008 EWT return on December 10, 2008 with the corresponding payment via BTR-BIR Deposit made on the same day, the Court found it incorrect for respondent to pronounce petitioner liable for increments for the alleged late filing of its November 2008 EWT return, based on the filing of the amended return on January 21, 2009. Thus, the same should be cancelled.

(e) Final Withholding Tax (FWT) - P13,767,802.53.

This assessment pertained to management fees in the amount of P79,813,348.00 paid to South American Entertainment Corporation II Ltd. - Regional Operating Headquarters ("SAEC-ROHQ"). Under Chapter IV, Article 64 of Executive Order (EO) No. 226, as amended by RA No. 8756, ROHQs are subject to a tax rate of 10% of their taxable income as provided for under the NIRC. Likewise, Part IV, Rule XVII (E), Section 13 of the rules and regulations implementing RA No. 8756 (IRR) provides that income derived by ROHQs from performing the qualifying services shall be subject to the preferential rate of 10% on taxable income in accordance with the provisions of the NIRC. Therefore, petitioner cannot be held liable for FWT on its income payments to SAEC-ROHQ.

(f) Documentary Stamp Tax (DST) - P285,148.47

According to respondent CIR, the equity portion of Long-term Advances remains to be a legal liability of the Company at year end, thus the increase in the said amount was subjected to DST for debt instruments under Section 179 of the NIRC. The amount subjected to deficiency DST assessment was based on petitioner's Credits amounting to P28,794,150.00 in the Equity Portion of Long Term Advances account in its Historical Trial Balance Summary by Period for 2008. Such credits connote increase in said account. Petitioner was not able to explain or substantiate the total additions in the account amounting to P28,794,150.00.

(g) Compromise penalties - P119,500.00

Pursuant to RMO No. 01-90, compromise penalties were only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted.

Marionnaud Philippines, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8807 dated February 8, 2017)*

As cases filed in the CTA are litigated de novo, a petitioner should prove every minute aspect of its case by presenting, formally offering, and submitting its evidence to the court.

This is a Resolution of petitioner's Motion for Reconsideration or in the alternative, Motion for New Trial praying for the reversal of the Court's Decision denying its claim for refund or issuance of a tax credit certificate of Prior Year's Excess Credits for the CY 2011.

The issues were: (a) whether new trial should be conducted; (b) whether Section 2.58.3(C) of RR No. 2-98 should only be applied at the administrative level, not at the judicial level; and (c) whether the petitioner complied with all the requisites for it to be entitled to the refund or issuance of a tax credit certificate.

Ruling:

(a) A new trial is not proper.

Petitioner argued that mistake or excusable negligence which ordinary prudence could not have guarded against is present in the instant case. Petitioner contended that it could not have reasonably conceived that the Court would require it to prove its "Prior Year's Excess Credits" for CY 2011 in the amount of P42,631,744.00. Petitioner argued that since proving the same was not necessary, it becomes apparent that its legal position was grounded on its interpretation and evaluation that petitioner was not duty bound to prove every minute aspect of its case as jurisprudentially required. Thus, the supposed mistake committed by petitioner was one of law, not one of fact.

"Mistake" must be a mistake of fact, not of law, which relates to the case; while, negligence, to be "excusable", must be one which ordinary diligence and prudence could not have guarded against. As early as August 31, 2005, the Supreme Court has already ruled in *CIR vs. Manila Mining Corporation* that "under Section 8 of RA No. 1125, the CTA is described as a court of record". As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. In *Atlas Consolidated Mining and Development Corporation vs. CIR*, the Supreme Court ruled that "cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering, and submitting its evidence to the CTA." Subsequently, on April 30, 2008, in *Dizon vs. CTA, et al.*, the Supreme Court reiterated the exact pronouncements it made in *Manila Mining*.

Petitioner's supposed negligence was not "excusable." The *Manila Mining, Atlas, and Dizon cases* have already been promulgated years before the filing of the instant Petition for Review on April 15, 2014. There was no "unexpected or unavoidable hindrance or accident" which prevented petitioner from knowing these cases, as it is its obligation to know the same, not only because on its being a party litigant,

but also because the rulings of the Supreme Court are laws by their own right. Thus, there is no valid justification for petitioner's non-compliance with the requirement to "prove every minute aspect of its case by presenting, formally offering and submitting its evidence" to this Court.

(b) Section 2.58.3(C) of RR No. 2-98 should only be applied at the administrative level, not at the judicial level.

Petitioner invoked Section 2.58.3(C) of RR No. 2-98 which stated that "an individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate."

The above provision finds application only from the administrative stand point, i.e., only insofar as the BIR is concerned, when the taxpayer is claiming before it a tax refund or credit; and not when proving a tax refund or credit before the Court. This is especially true considering that the BIR has all the administrative machinery available to it to easily determine whether the supposed excess credits do exist. This is not so in the case of the Court wherein it has to rely only on all the evidence presented/offered by the parties and admitted by the Court, subject only to the rules of judicial admissions and judicial notice, to dispose of a refund case.

(c) Petitioner has not complied with all the requisites for it to be entitled to the refund or issuance of a tax credit certificate.

Petitioner failed to prove that the income upon which the taxes were withheld was declared as part of its gross income of the recipient. The income per CWT certificates is higher by P32,090,675.92 as compared to the income reported per return. Petitioner failed to fully account for this discrepancy. Moreover, petitioner did not present a detailed schedule of its sales/income with the corresponding creditable withholding taxes so that the Court may verify and trace whether the income payments relating to the claimed CWTs were indeed part of the income as per petitioner's ITR.

BJ Well Services Company (Philippines), Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8859 dated February 8, 2017)*

Petitioner BJ Well Services Company (Philippines), Inc. is a domestic corporation primarily engaged in rendering services and supplying equipment, chemicals, tools, products and processes to geothermal and oil exploration or drilling companies or in relation to geothermal and oil exploration or drilling projects.

On November 26, 2013, petitioner filed with the BIR RDO No. 43A an administrative claim for refund or issuance of tax credit certificate for its alleged unutilized input VAT for the period covering May 1, 2012 to December 31, 2012 in the aggregate amount of P7,332,514.81. On March 12, 2014, petitioner submitted its last supporting documents to RDO No. 43A. Due to respondent CIR's inaction, petitioner filed the instant Petition for Review on August 8, 2014.

The issues were: (a) whether petitioner has complied with the procedural requirements for the CTA Division to take cognizance of this Petition for Review; and (b) whether petitioner was entitled to claim the unutilized input VAT attributable to its zero-rated sales to Energy Development Corporation (EDC) and the Maibarara Geothermal, Inc. (Maibarara).

Ruling:

To claim refund or tax credit of unutilized input taxes based on Section 112(A) of the NIRC, the following requisites must be complied with: (1) the claimant must be a VAT-registered person; (2) there must be zero-rated or effectively zero-rated sales; (3) input taxes were incurred or paid; (4) such input taxes are attributable to zero-rated or effectively zero-rated sales; (5) said input taxes were not applied against any output VAT liability; and (6) the administrative and judicial claims for refund were seasonably filed.

(a) *First Requisite: Petitioner is a VAT- Registered Entity.* Petitioner is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the NIRC with TIN 007-203-649-000.

(b) *Second Requisite: Petitioner had zero-rated sales.* Based on Sections 106(A)(2)(c) and 108(B)(3) of the NIRC, sales of goods/properties or services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such goods/properties or services to zero percent (0%) rate. The special law applicable in petitioner's case is RA No. 9513 or the Renewable Energy Act of 2008, as implemented by Department of Energy (DOE) under Circular No. DC 2009-05-008. Among the incentives provided under the law was that all renewable energy (RE) Developers were entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities. Thus, from the foregoing, to qualify for VAT zero-rating as contemplated in RA No. 9513 and DOE Circular No. DC 2009-05-008, petitioner must prove by sufficient evidence that: (1) it is engaged in the sale of goods and services to RE Developers; and (2) the goods and services sold (a) were needed for the development, construction, and installation of the RE Developers' plant facilities or (b) pertained to the whole process of exploration and development of RE sources up to its conversion into power. But as far as the supply of locally-produced renewable energy equipment was concerned, petitioner must additionally show that it was also registered with the DOE in order to qualify the sale of said equipment to VAT zero-rating.

Among petitioner's clients during taxable year 2012 were RE Developers of geothermal energy resources, namely, EDC and Maibarara, which were registered with the DOE, and hence, were entitled to the incentives granted under RA No. 9513. As such, all their purchases of goods and services from petitioner which were needed for the development, construction, and installation of plant facilities and those pertaining to the whole process of exploration and development of RE sources up to its conversion into power were entitled to VAT zero-rating, with the exception of locally produced RE equipment purchases from the latter, if any, since petitioner failed to show that it was registered with the DOE.

However, out of the declared zero-rated sales amounting to P226,139,207.38, only the amount of P99,714,589.50 was considered valid. The difference was disallowed for failing to comply with substantiation requirements.

(c) *Third Requisite: Petitioner incurred or paid input taxes.* Out of the P11,959,466.58 total input VAT per petitioner's Schedule of Purchases, only the amount of P27 5,518.10 represented petitioner's valid input VAT. The difference was disallowed for non-compliance with substantiation requirements.

(d) *Fourth and Fifth Requisites: Petitioner had no excess input VAT which may be attributable to zero-rated sales.* Petitioner's properly substantiated input VAT of P275,518.10 was way lower when compared with petitioner's output VAT liability for the subject period of claim in the amount of P3,976,944.37. While petitioner's Quarterly VAT Return for the 2nd quarter of 2012 reflected the amount of P3,985,253.12 as "Input Tax Carried Over from Previous Period", still, petitioner failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input tax carry-over of P3,985,253.12 cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC. Considering that there was no excess input VAT which may be

the subject of a claim for refund or tax credit certificate under Section 112(A) of the NIRC, the instant claim must be denied.

(e) *Sixth Requisite: Petitioner's administrative and judicial claims were seasonably filed*. The instant claim for refund covered the 2nd to 4th taxable quarters of the year 2012, thus, the 2-year prescriptive period for filing of the corresponding administrative claim for refund pursuant to Section 112(A) of the NIRC fell on June 30, 2014 for the 2nd quarter, September 30, 2014 for the 3rd quarter, and December 31, 2014 for the fourth quarter. Hence, the administrative claim for refund, specifically covering the periods from May 1, 2012 to December 31, 2012, was seasonably filed by petitioner on November 26, 2013.

Petitioner made its last submission of supporting documents on March 12, 2014. Respondent had 120 days from March 12, 2014 to act on the administrative claim for refund or until July 10, 2014. However, respondent failed to act on petitioner's claim. Consequently, petitioner had 30 days from July 10, 2014 to appeal such inaction before the CTA Division, or until August 9, 2014. Hence, the instant petition, which was filed on August 8, 2014, was filed within the reglementary period provided by law.

Total (Philippines) Corporation vs. Commissioner of Internal Revenue *(CTA Case No. 7855 dated February 9, 2017)*

This is a Resolution of petitioner’s Motion for Reconsideration assailing the Court’s Decision which denied its claim for VAT refund.

The issues were: (a) whether the taxpayer-claimant must first prove that its input taxes exceeded its output taxes in order to be entitled to the refund of input taxes; and (b) whether the taxpayer-claimant was required to first substantiate input tax carried over from previous periods in a claim for VAT refund.

Ruling:

(a) Section 112 of the NIRC must be read in relation to the whole law, particularly to Section 110 of the same law. Under Section 110, when the input tax exceeded the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax attributable to zero-rated sales exceeded the output tax, it may be refunded or credited. Hence, for input tax attributable to zero-rated sales, it was only when input tax exceeded the output tax that a refund or credit was proper. While it may be true that a reading of Section 112(A) appears to suggest that input VAT, which is attributable to zero-rated sales and 'to the extent that such input tax has not been applied against the output tax', may be applied, without any further requirement, for the issuance of a tax credit certificate or refund, the said provision may not be read or applied in isolation with the other provisions of the VAT law.

Petitioner's properly substantiated input VAT for the 4th quarter of 2006 amounted only to P594,510,839.75, and when compared with its output VAT liability for the same period in the amount of P722,903,477.94, there remained an output VAT still due in the amount of P128,392,638.19. Clearly, petitioner's properly substantiated input VAT for the 4th quarter of 2006 was not enough to cover its output VAT for the same period.

(b) The validation of the carried over excess input VAT from the last quarter of 2006 was necessary in the determination of petitioner's entitlement to refund. This was to verify that the 2006 carried-over input VAT was sufficient to cover the 2007 output VAT so that the 2007 input VAT remained undiminished by any 2007 output VAT.

Edzen Jogie B. Garcia vs. Commissioner of Internal Revenue *(CTA Case No. 9075 dated February 9, 2017)*

A decision of the RTC is not a binding precedent; only decisions of the Supreme Court constitute binding precedents forming part of the Philippine legal system.

Under the ADB Charter, resident citizens or nationals of the Philippines who are working with ADB are taxable on their income from all sources, including those income derived from ADB.

Petitioner Edzen Jogie B. Garcia (Garcia), a resident citizen of the Philippines, was employed at Asian Development Bank (ADB) as a staff member holding the position of Senior Integrity Officer at the Office of Anti-Corruption and lntegrity.

On April 12, 2013, respondent CIR issued RMC No. 31-2013 (Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/Embassies/Diplomatic Missions and International Organizations Situated in the Philippines), which provided, among others, that officers and staff of the ADB who were ***not*** Philippine nationals shall be exempt from Philippine income tax.
On July 15, 2013, petitioner Garcia filed his Annual ITR for CY 2012 and paid the income tax due of P426,245.27.

On April 15, 2014, other Filipino employees of the ADB filed with the RTC in Mandaluyong City, docketed as Civil Case No. MC14-8775, a Petition to Nullify RMC No. 31-2013, particularly Section 2(d)(1) thereof.

On April 15, 2014, petitioner Garcia filed his ITR for CY 2013 reflecting therein an overpayment of income tax in the amount of P426,245.27. According to petitioner, the overpayment reflected in his 2013 ITR was premised on the illegality of the assessment and collection of income tax on July 15, 2013 under RMC No. 31-2013. On September 30, 2014, the RTC promulgated a decision in Civil Case No. MC14-8775 declaring Section 2(d)(1) of RMC No. 31-2013 as void for being issued without legal basis, in excess of authority and/or without due process of law due to absence of legislation and/or regulation to the contrary. The CIR's MR was also denied.

On January 14, 2015, petitioner Garcia filed his formal request for tax refund of the income tax paid on July 15, 2013 for CY 2012, in the amount of P426,245.27. Because of the CIR's inaction, petitioner filed the instant Petition for Review before the CTA.

The issues in the case were: (a) whether petitioner Garcia was entitled to a tax refund of his income tax paid on his 2012 compensation from ADB, considering that Section 2(d)(1) of RMC No. 31-2013, the basis of the BIR assessment of his income tax for 2012, was declared void by a court of general jurisdiction; and (b) whether RMC No. 31-2013 dated April 12, 2013, assuming it was valid, can be applied retroactively.

Ruling:

(a) RTC Decision in Civil Case No. MC14-8775 declaring Section 2(d)(1) of RMC No. 31-2013 as void was not a binding precedent.

The RTC Decision in Civil Case No. MC14-8775 was insignificant in the resolution of the present controversy. The Court noted that petitioner did not appear to be a party in Civil Case No. MC14-8775, on which the doctrine of *res judicata* may possibly apply. Nonetheless, the decision therein was still not a binding precedent that forms part of the Philippine legal system. Only decisions of the Supreme Court constitute binding precedents forming part of the Philippine legal system.

Additionally, the RTC Decision in Civil Case No. MC14-8775 appeared to be jurisdictionally infirm insofar as it declared that Section 2(d)(1) of RMC No. 31-2013 was a nullity. In *The Philippine American Life and Genera/Insurance Company vs. CIR*, the Supreme Court held that the CTA was vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars.

(b) Resident citizens who are officers and employees of ADB are subject to income tax on salaries and emoluments they receive from ADB.

A resident citizen is taxable on all income derived from all sources within and without the Philippines, except in a situation where the resident citizen is exempt under the provisions of a treaty which is binding upon the Philippine government. The ADB Charter provides a tax exemption provision with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a proviso wherein a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country, which declaration must be made in the instrument of ratification or acceptance. Similarly, the ADB Headquarters Agreement recognizes the tax exemption privilege of ADB officers and employees but said Agreement also declares in no uncertain terms that the same is subject to the power of the Government to tax its nationals.

Pursuant to Article 56(2) of the ADB Charter, the Philippine government made a specific declaration, when it ratified and confirmed the ADB Charter through Senate Resolution No. 6, that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals. Said declaration of the Philippine government's right to tax its citizens is categorical in the proviso "subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines."

(c) Taxation of salaries and emoluments paid by ADB to its officers and employees who are resident citizens is not anchored on the retroactive application of RMC No. 31-2013.

Resident citizens or nationals of the Philippines who are working with ADB are taxable on their income from all sources, including those income derived from ADB. The taxability of the income they received from ADB is not dependent on the validity or invalidity of RMC No. 31-2013 as the same is based on existing provisions of the NIRC in relation to the treaty and/or agreement between the Philippine government and ADB.

Petitioner cited the Letter of BIR Regional Director Antonio I. Ortega dated January 29, 2001 wherein he confirmed the opinion that officers and staff of ADB were not required to secure TIN since the salaries and emoluments of ADB's officers and staff were exempt from taxation. The Court noted that said Letter-Opinion of Regional Director Ortega was issued by said official of the BIR without any valid delegation of authority from the CIR. Notably, the CIR may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank, but he cannot delegate certain powers enumerated in Section 7 of the NIRC which included the power to issue rulings of first impression. As the subject matter of the letter involved a novel issue, the exercise of CIR's own power to issue a ruling of first impression was required.

Petitioner also claimed that since the ratification of the ADB Charter in 1966, or for almost 50 years, ADB employees have never been subjected by the BIR to income tax until the issuance of RMC No. 31-2013 on April 12, 2013. The Court held that the failure of the BIR to collect income tax from ADB employees who are resident citizens does not *per se* justify the non-implementation of existing legislations nor result in the absurd construction that pertinent tax laws are deemed repealed. While non-payment of taxes cannot be considered as custom, yet, even so Article 11 of the Civil Code provides that "[C]ustoms which are contrary to law, public order or public policy shall not be countenanced." Thus, the alleged long-standing practice of the BIR of not subjecting to income tax the salaries and emoluments

derived by resident citizens from their employment with ADB is not sufficient to exempt them from payment of said tax.

Toda Holdings, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City *(CTA AC No. 138 dated February 9, 2017)*

Petitioner Toda Holdings, Inc. is a domestic corporation with principal office in Davao City. As stated in its Amended AOI, petitioner's primary purpose includes in part—to purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, to receive, collect, and dispose of the interest, dividends and income arising from such property, to do every act and thing covered generally by the denomination 'holding corporation', provided, however, that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.

On January 20, 2014, respondents issued a Business Tax Order of Payment assessing petitioner for alleged deficiency local business tax for the 3rd and 4th quarters of taxable year 2011 in the total amount of P3,105,739.00. Petitioner sent a protest letter on March 21, 2014. Respondents informed petitioner that no protest shall be entertained unless petitioner pays first the imposed tax pursuant to Section 423 of the 2005 Revenue Code of Davao City. Due to respondents' inaction, petitioner filed a Petition for Review before the RTC of Davao City which dismissed said petition and ordered petitioner to pay the amount assessed. Petitioner's MR was likewise denied. Thus, petitioner filed the instant Petition for Review before the CTA Division.

The issues in this case were: (a) whether the CTA has jurisdiction over the case and whether the petitioner is required to first pay under protest the before its protest may validly be acted upon; (b) whether petitioner is a non-bank financial intermediary and thus liable for local business tax on the dividends and interest income it received; and (c) whether petitioner is liable for the alleged deficiency local business tax.

Ruling:

(a) Both the RTC and the CTA Division has jurisdiction over this case. Petitioner may not be required under the law to first pay deficiency local business tax before its protest may be acted upon.

Section 423 of the 2005 Revenue Code of Davao City or City Ordinance No. 158-05 provides that protests shall not be entertained unless the taxpayer first pays the tax. However, said provision is inconsistent with Section 195 of the LGC which mandates the local treasurer to decide the protest within a period of 60 days without any qualification or condition (regarding the necessity to first pay the assailed tax, fees or charges, under protest), and in case of failure to do so, the same shall be considered an inaction on the part of the local treasurer appealable to the court of competent jurisdiction. For being inconsistent with a statute, Section 423 of the 2005 Revenue Code of Davao City is invalid. Therefore, petitioner cannot be compelled to pay the assessed local business tax before filing its protest with the City of Davao.

When respondent Riola failed to act within the 60-day period, the right to appeal his action to the court of competent jurisdiction became available to petitioner within 30 days from the lapse of the said period. Considering that the appeal was filed by petitioner on June 9, 2014, or within the 30-day reglementary period to file said appeal, counted from the lapse of the 60-day period from the filing of petitioner' protest on March 21, 2014, and it appearing that the assessed amount of P3,105,739.00 was within the jurisdiction of the Regional Trial Courts as conferred by law, the RTC of Davao City validly acquired jurisdiction to entertain the said appeal.

Subsequently, any decision, order, resolution or ruling of the RTC was appealable to the CTA Division within 30 days from receipt thereof pursuant to Sections 7(a)(3) and 11 of RA No. 1125, as amended by RA No. 9282. Here, the date of receipt of the trial court's Order denying petitioner's MR was on May 8, 2015. Although the instant Petition for Review was filed only on June 8, 2015 or 31 days after the said date of receipt, nevertheless, the said Petition for Review was filed on time because the 30th day from date of receipt fell on a Sunday. Thus, the instant Petition for Review was timely filed.

(b) There was no showing that petitioner is a non-bank financial intermediary. Thus, respondents may not impose local business tax on the dividends and interest income received by petitioner.

Under Section 133(a) of the LGC, respondent City of Davao is empowered to impose income tax on banks and other financial institutions on its gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%, subject to the limitation under section (o) of the same section that, taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

The following are the basic requirements for a person or entity to be considered as a "non-bank financial intermediary", to wit: (1) The person or entity is "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"; (2) The principal functions of the said person or entity "include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others"; and (3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis.

In this case, there is no evidence showing that it was authorized by the BSP to perform quasi-banking activities". Additionally, the second requirement is not likewise met. While it may be true that the functions of petitioner on the basis of its primary purpose as stated in its Amended Articles of Incorporation may cover the functions of a non-bank financial intermediary, it was not shown that said functions are "principal" in nature, i.e., "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental". It was also not established that the enumerated functions under the third requirement were performed by petitioner "on a regular and recurring, not on an isolated, basis". In fact, it was not shown that petitioner ever performed the said functions.

(c) Petitioner belongs to the Coconut Industry Investment Fund (CIIF) block of San Miguel Corporation (SMC) shares, which were declared to be owned by the Government, thus, any tax imposed upon petitioner is, in effect, a tax on the Government.

In *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etc.*, the Supreme Court ruled that the "the CIIF Companies and the CIIF Block of SMC shares are public funds/assets." Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds, funds which have been established to be public in character, it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.

Thus, since petitioner is considered as Government property, any tax imposed upon petitioner is considered, in effect, as a tax on Government. Such being the case, the dividend income earned by petitioner may not be subjected to business tax under Section 131(e) of the LGC by respondent City of Davao, pursuant to Section 133(o) of the same law.

Te Deum Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City *(CTA AC No. 150 dated February 10, 2017)*

Petitioner Te Deum Resources, Inc. (TDRI) is a domestic corporation. Its primary purpose includes the *"purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership."* Since October 2009, petitioner has been the registered owner of 58,487,823 SMC preferred shares of stock in San Miguel Corporation (SMC). The dividends received by TDRI were deposited in a trust account which earned interest from money market placements. In 2010, petitioner obtained the amount of P443,823,123.35 from dividends on its SMC preferred shares and interests on its money market placements.

Respondents collected from petitioner 0.55% local business tax for the 1st and 2nd quarters of 2011 based on the gross receipts from dividends and interests for taxable year 2010 in the amount of P1,220,513.50. Petitioner paid the same under protest on January 18, 2011 and on April 25, 2011. On September 13, 2012, petitioner filed with respondent City Treasurer a written claim for refund or credit of the 0.55% local business tax collected in the 1st and 2nd quarters of 2011. Due to inaction of respondent City Treasurer on the administrative claim for refund, petitioner filed a petition for refund before the RTC of Davao City on January 17, 2013. However, the RTC dismissed the petition finding that TDRC is a financial intermediary whose income falls under Section 143(f) of the LGC. TDRC's MR was likewise denied. Thus, petitioner filed the instant Petition for Review on November 9, 2015.

The issues were: (a) whether the CTA Division has jurisdiction over the present petition; and (b) whether the petitioner is entitled to a refund or credit of the 0.55% local business taxes collected for the 1st and 2nd quarters of 2011 on the dividends received from its SMC preferred shares and interest on its money market placements for taxable year 2010.

Ruling:

(a) Under Section 7(a)(3) of RA No. 1125, as amended by RA No. 9282, an appeal from the resolutions or orders of the RTC in local tax cases decided or resolved by them in the exercise of their original jurisdiction may be made by filing a Petition for Review before the CTA within 30 days from receipt of a copy of the decision or ruling. Here, petitioner received the Order denying its MR on October 8, 2015, giving it 30 days therefrom or until November 8, 2015 within which to file its Petition for Review. Since November 8, 2015 fell on a Sunday, petitioner had until November 9, 2015 within which to file its Petition for Review. Petitioner timely filed the instant Petition for Review on November 9, 2015. Therefore, the Court has jurisdiction to entertain the instant petition.

Section 196 of the LGC requires the following in order to be entitled to a refund/credit of local taxes: (1) the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and (2) the case or proceeding for refund has to be filed within 2 years from the date of payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Petitioner paid the assailed local business tax under protest on January 18, 2011 and on April 25, 2011. For the payments made on January 18, 2011 and on April 25, 2011, petitioner had until January 18, 2013 and April 25, 2013 within which to file a claim for refund. Petitioner filed a written claim for refund with

the City Treasurer on September 13, 2012. Due to respondent's inaction, petitioner filed a petition before the RTC of Davao City on January 17, 2013. Thus, the claim for refund was timely filed.

(b) Petitioner is not entitled to the refund of the local business taxes collected by respondents for the 1st and 2nd quarters of 2011 arising from the imposition of local tax on the dividends received by petitioner from its SMC preferred shares and interest on its money market placements for taxable year 2010.

Section 133 (a), in relation to Section 143 (f) of the LGC, provides that the imposition of income taxes by local government units is prohibited except when levied on banks and other financial institutions.

Petitioner's Amended Articles of Incorporation shows that the scope of its primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. Moreover, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC. The Notes to Financial Statements confirmed that petitioner's main activity has been the holding of shares of stock of SMC. Based on petitioner's Statement of Cash Flows, the dividends and interest income were considered income from both operating and investing activities. The continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. Thus, petitioner is deemed engaged in the business of investing or placement of funds which is well within the definition of a financial intermediary.

The last phrase of petitioner's primary purpose that it *"shall not act as an investment company or a securities broker and/ or dealer nor exercise the functions of a trust corporation"* cannot prevail over the real nature of petitioner's business, which is mainly holding stocks and investing the interests therein in money market placements. Petitioner therefore cannot hide under the said proviso as it is clearly under the category of non-bank financial intermediary.

Note: In this issue of Tax Update, four (4) cases were decided by the CTA (in Division) dealing with the same issue whether a holding company is considered a non-bank financial intermediary for purposes of the imposition of the local business tax under the Davao City Tax Revenue Ordinance. The City Treasurer assessed local business tax on the dividends and interest income earned by the holding company. Two (2) of the cases were decided in favor of the taxpayer ("Arc Investors, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City", *CTA AC No. 153 dated January 16, 2017*, and "Toda Holdings, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City", *CTA AC No. 138 dated February 9, 2017*). In the other two cases ("Te Deum Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City", *CTA AC No. 150 dated February 10, 2017* and **"**AP Holdings, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City", *CTA AC No. 156 dated January 30, 2017*), the CTA ruled in favor of the City Treasurer.

Organization Change Consultants International Center for Learning, Inc. vs. Commissioner of Internal Revenue *(CTA Case No. 8625 dated February 10, 2017)*

A Preliminary Collection Notice may constitute a final decision where the notice reiterated the taxpayer's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges, and further stated that if taxpayer failed to pay the same, the BIR would be constrained to serve and execute the administrative summary remedies to enforce the collection of said tax liabilities.

Petitioner is a domestic corporation primarily engaged to establish and operate a center for learning which shall provide courses of study in vocational-technical curriculum and similar short-term activities such as but not limited to technical training and language skills for call center agents and the public in general.

On April 15, 2010, petitioner submitted its Annual ITR for taxable year 2009. Petitioner also filed its 1st, 2nd, 3rd, and 4th Quarterly VAT Returns for taxable year 2009 on April 24, 2009, July 24, 2009, October 23, 2009, and January 25, 2010, respectively. On July 20, 2012, petitioner received a Preliminary Assessment Notice (PAN) dated July 13, 2012, assessing it for the following deficiency income tax, VAT, EWT, DST, and compromise penalties. Respondent served a Formal Letter of Demand (FLD) together with the Assessment Notices (FAN), all dated August 21, 2012, which petitioner received on August 24, 2012. Petitioner disputed the FLD and FAN on September 17, 2012. On February 27, 2013, petitioner received a *Preliminary Collection Notice* dated February 21, 2013. Consequently, petitioner filed this Petition for Review on April 1, 2013.

The issues were: (a) whether the Preliminary Collection Notice was a final decision as contemplated in the foregoing provisions; (b) whether the FAN and FLD provide factual basis for the disallowances, rendering the preliminary collection notice void; and (c) whether respondent gravely erred in assessing petitioner for deficiency income tax, VAT, EWT, documentary stamp tax, and compromise penalties

Ruling:

(a) Based on Section 228 of the NIRC, in relation to Sections 3.1.4 and 3.1.5 of RR No. 12-99, petitioner had 30 days from receipt of respondent's final decision within which to appeal such final decision. Here, petitioner received a Preliminary Collection Notice on February 27, 2013, instead of a final decision. As such, petitioner filed this Petition for Review on April 1, 2013. The Court found that the Preliminary Collection Notice was a final decision. The notice reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. It is also indicated in the notice that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities. In *Allied Banking Corporation vs. CIR*, the Supreme Court pronounced that CIR must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment.

(b) The FAN and the FLD with Details of Discrepancies contained factual basis for petitioner's liabilities in compliance with Section 228 of the NIRC and Section 3.1.4 of RR No. 12-99. The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. The fact that petitioner was able to intelligently protest the assessment implies that it had substantial understanding of the factual and legal bases of the assessments.

(c) Deficiency Income Tax - P8,330,090.88

(1) *Disallowed Expenses - P7,503,175.00*. Respondent's verification disclosed that some of petitioner's expenses were not properly supported by valid documentary evidence, hence, disallowed as deduction from petitioner's gross income pursuant to the provision of Section 34(1)(8) of the NIRC.

The Service Agreements submitted by petitioner as supporting document did not provide sufficient evidence for the Court to ascertain whether the disallowance was valid or not. Moreover, even if the Court took into account the Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) issued by petitioner to its facilitators, the income payments reflected therein did not tally with the disallowed expenses.

Petitioner was neither able to sufficiently refute the examiner's findings nor was able to offer any documentary evidence to substantiate the disallowed bad debts and donations. Thus, the disallowances should be upheld.

(2) *Non-Deductible Representation Expenses- P407,486.86*. This disallowed item was also not contested by petitioner, thus, the same should be upheld.

(3) *Rental Expense Not Subjected to Withholding Tax - P2,345,923.00*. Respondent's verification disclosed that petitioner failed to subject portion of its rental expenses to EWT, thus the same should be disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC.

After perusal of the supporting documents, the Court found that only the purchase of chairs and tables in the amount of P P743,987.50 was not subjected to withholding tax. Thus, only this amount of the assessment should be upheld.

(4) *Salaries and Wages Not Subjected to Withholding Tax - P911,544.18*. Respondent's investigation showed that petitioner failed to subject portion of its salaries and wages to withholding tax, thus, should be disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC.

Petitioner asserted that the amount of P911,544.38 was attributable to other benefits such as meals, transportation allowance, cash incentives and others, which are in the nature of *de minimis* benefits, and these benefits are not subject to withholding tax. The Court held, however, that petitioner failed to present clear and convincing evidence to substantiate its allegations.

(5) *Undeclared Sales - P5,287,034.18*. The official receipts issued by petitioner in 2009 revealed that the transactions totaling to P1,009,239.80 pertained to stock subscriptions, liquidations of advances and reimbursements. These transactions did not constitute sales or income, thus not subject to tax. However, other receipts pertained to miscellaneous income which was subject to income tax. Thus, the amount totaling P1,313,965.97 was subject to income tax. Lastly, the receipts totaling P2,251,700.00, though pertaining to stock subscriptions, were dated not within the subject taxable period 2009; thus, the same cannot be given consideration by the Court. Therefore, petitioner had undeclared sales in the reduced amount of P4,277,794.38.

(6) *Unaccounted source of cash- P1,206,119.50*. Respondent's verification disclosed that a portion of petitioner's income payments to prime/sub-contractor was not reported in the financial statements. The discrepancy was considered as "unaccounted source of cash" which led to the inference that part of its income had not been declared. Therefore, the amount was added to petitioner's reported taxable income pursuant to Section 31 of the NIRC.

The Court emphasized that respondent's assessment was anchored on an inference that the discrepancy in income payments to prime/sub-contractor was not declared as part of income. Considering that the income payments to prime/sub-contractor per return amounting to P1,601,935.50 had, in fact, been declared in the financial statements as part of the Venue Rental Account of P3,318,923.00, respondent's assessment was without basis.

(7) *Unsupported creditable withholding tax - P300,505.00*. Respondent's verification disclosed that petitioner's claimed creditable withholding tax (CWT) was not supported by appropriate documentary evidence; hence, the same was disallowed and assessed. The Court disallowed the CWTs amounting to P237,090.67 for petitioner's failure to submit the originals for comparison. However, the remaining amount of P63,415.65 was allowed.

(8*) Disallowed Excess Tax Credits Carried Over to Succeeding Period - P232,705.00*. Respondent disallowed petitioner's excess tax credits for the taxable year 2009 amounting to P232,705.00, but gave no explanation in the FLD in doing so. The Court surmised that the tax credits carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year. However, the Court found it improper for

respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounded to the succeeding year 2010. Since the tax benefit would be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In sum, petitioner was declared liable for deficiency income tax amounting to P4,160,170.59

(d) Deficiency Value-Added Tax - P2,317,373.98

(1) *Revenue Not Subjected to VAT - P7,124,300.94*. Respondent's verification disclosed that petitioner failed to fully subject its gross receipts to VAT, hence the latter was assessed pursuant to Sections 106 and 108 of the NIRC. The Court found that out of the P31,602,225.96 purportedly supported by ORs, the receipts totaling to P1,099,239.80 pertained to stock subscriptions, liquidations of advances and reimbursements which do not constitute sales or income, thus not subject to tax. Therefore, petitioner was liable to pay VAT on the reduced revenue amount of P2,639,108.36.

(2) *Unaccounted Source of Cash - P1,206,119.50*. The unaccounted source of cash was subjected by respondent to VAT pursuant to Sections 106 and 108 of the NIRC. As earlier discussed, petitioner has no unaccounted source of cash. Thus, this assessment should be cancelled.

In fine, petitioner was declared liable to pay deficiency VAT in the total amount of P830,717.40.

(e) Deficiency Expanded Withholding Tax - P612,785.81

Respondent's verification disclosed that petitioner failed to subject portion of its income payments to EWT as required under RR No. 2-98, as amended. However, records show that only the rental of P1,723,000.00 was subjected to withholding tax of P86,150.00. Consequently, petitioner should be liable for the deficiency EWT on rentals in the amount of P37,199.38. Records also showed that payments in the amount of P870,000.00 and P128,880.00 were subject to 15% and 10% EWT respectively. However, only the EWTs of P581,762.78 and P103,539.39 were duly remitted to the BIR. Consequently, petitioner should be liable for the deficiency EWT on the same in the amounts of P288,237.22 and P25,340.61.

In sum, petitioner was declared liable to pay the basic deficiency EWT amounting to P350,777.21.

(f) Deficiency Documentary Stamp Tax – P52,788.11

Respondent's verification disclosed that petitioner failed to pay DST on petitioner's capital stock of P1,000,000 and deposits received for future subscription in the amount of P4,891,800.00; hence, the corresponding DST was assessed pursuant to Section 179 of the NIRC.

Based on Audited Financial Statements as of the end of taxable year 2008, petitioner's authorized capital stock amounted to P1,000,000, which means that the same had already been issued and paid years prior to taxable year 2009. Whether the corresponding DST had already been paid or not is of no moment since the subject period of assessment covered only taxable year 2009. Consequently, the DST assessment pertaining to the capital stock of P1,000,000 should be cancelled.

As regards the balance of P4,891,800.00 pertaining to stockholders' deposit for future stock subscription, the Court ruled that the same is not subject to DST as the increase of the capital stock of petitioner has not been approved by the SEC. In the case of *CIR vs. Arst Express Pawnshop Company, Inc.*, the Supreme Court ruled that deposits on future subscription of shares of stock are not subject to DST for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation

Therefore, petitioner is not liable for the payment of DST on its deposits for future subscription.

(g) Compromise Penalty - P6,000.00

Under RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Since there is no showing that petitioner consented to the compromise penalty, its imposition should be deleted.

Philippine Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue *(CTA Case No. 8763 dated February 15, 2017)*

A taxpayer's filing of an Application for Tax Credits/Refunds (BIR Form No. 1914) may suffice as a written request for administrative refund. In claims for VAT refund, the non-submission of complete supporting documents at the administrative level is not fatal to the taxpayer's judicial claim.

Petitioner Philippine Gold Processing & Refining Corp. (PGPRC), formerly registered as "LFT Processing Corporation," is a domestic corporation with the primary purpose of engaging in the business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof. It is a VAT-registered entity and likewise registered with the BOI on a non-pioneer status as a New Producer of Gold and Silver Doré.

On July 24, 2012, PGPRC filed its Quarterly VAT Return for the 4th Quarter of FY 2012. On February 8, 2013, PGPRC filed its Amended Quarterly VAT Return for the 3rd Quarter of FY 2012. On September 18, 2013, PGPRC filed its Application for Tax Credits/Refunds or BIR Form No. 1914 asking specifically for TCCs, covering the periods January 1, 2012 to March 31, 2012 and April 1, 2012 to June 30, 2012, in the amounts of P35,340,374.12 and P23,432,701.0019, respectively, based on Section 112 of the NIRC and Section 4.112 of RR No. 16-05. Thereafter, petitioner filed the instant Petition for Review on February 11, 2014.

Issues: (a) whether PGPRC's failure to file a written request for administrative refund is fatal to its cause; and (b) whether PGPRC is entitled to a refund and/or the issuance of a tax credit certificate in the total amount of P58,773,075.12 representing unutilized or unapplied creditable input VAT for the period January 1 to March 31, 2012 and April 1 to June 30, 2012 of FY ending June 30, 2012.

Ruling:

(a) PGPRC's failure to file a written request for administrative refund is not fatal to its cause. While petitioner filed only its Applications for Tax Credits/Refunds or BIR Form No. 1914, there is no need to submit complete documents required under RMO No. 53-98 in relation to Section 112(C) of the NIRC. In claims for VAT refund, the non-submission of complete supporting documents at the administrative level is not fatal to the taxpayer's judicial claim. The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.

(b) PGPRC is not entitled to the issuance of a TCC due to insufficiency of evidence.

Based on Section 112(A) of the NIRC, PGPRC must prove compliance with the following requisites to be entitled to its claim for refund or TCC of its unutilized input VAT: (1) there must be zero-rated or effectively zero-rated sales; (2) the input taxes were incurred or paid; (3) such input taxes are attributable to zero-rated or effectively zero-rated sales; (4) the input taxes were not applied against any output tax liability; and (5) the claim for refund was filed within the 2-year prescriptive period.

The following are required in order for the export of goods to be considered a VAT zero-rated under Section 106(A)(2)(a)(l) of the NIRC: (1) the sales invoice as proof of sale of goods; (2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) the bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. Section 113(B)(2)(c) of the NIRC, as implemented by Section 4.113-18(2)(c) of RR No. 16-05, as amended, requires that if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

For the period January to June 2012, petitioner actually shipped its processed gold and silver ore to its foreign buyers generating export sales reflected in its 3rd and 4th Quarterly VAT Returns for FY ending June 30, 2012, in its peso equivalent amounting to P5,518,931,547.76. While petitioner submitted documents such as sales invoices and certification from Hong Kong and Shanghai Banking Corporation (HSBC), the same do not fully substantiate its alleged export sales for the 3rd and 4th Quarters of FY ending June 30, 2012. The Court noted that petitioner failed to submit export documents such as export declarations and bills of lading or airway bills. It was also noted that the foreign currency remittances indicated in the HSBC Certification did not reconcile with those reflected in the invoices issued by petitioner to its clients for the 3rd and 4th quarters of FY ending June 30, 2012. Such failure was fatal for it cannot be ascertained whether such foreign currency remittances actually pertained to its export sales for the subject period of claim. In view of this, petitioner's alleged export sales for the 3rd and 4th Quarters of FY ending June 30, 2012, in the aggregate amount of P5,518,931,547.76, cannot qualify for VAT zero-rating. Consequently, the alleged input VAT incurred by petitioner for the said periods in the aggregate amount of P58,773,075.12 cannot be refunded.

BIR RULINGS

BIR Ruling No. 005-2017 *dated January 16, 2017*

This ruling confirms that the donation made by the United Nations Children's Fund (UNICEF) of a locally-purchased vehicle to the Municipal Government of Burauen, Leyte under a Deed of Donation is exempt from donor's tax. Donations made in favor of the Government and any of its agencies which are not conducted for profit, or to any of its political subdivisions, are exempt from the payment of the donor's tax pursuant to the provisions of Section 101(A)(2) and Section 101(B)(1) of the NIRC.

It was noted that the BIR has previously issued a ruling (BIR ITAD Ruling No. 061-08 dated August 28, 2008) to UNICEF granting exemption from VAT on its local purchase of the subject vehicle, for official use of UNICEF. Since the purchase by UNICEF of the vehicle was previously exempted from VAT and ad valorem tax (excise tax), the Municipal Government of Burauen, Leyte, not being exempt from the same, shall pay the VAT and the excise tax due on this transaction pursuant to Section 107(B) of the NIRC and Section 8 of RR No. 25-03, respectively.

Moreover, the Deed of Donation is subject to documentary stamp tax of P15.00 imposed under Section 188 of the same Code.

BIR Ruling No. 019-2017 *dated January 31, 2017*

Certain bank deposit accounts in the name of Nora C. Eubanas were transferred to her son Dr. Ramonito Chuanica Eubanas apparently "to reward the son's medical and other valuable services" to his mother. The assignment is evidenced by a notarized Deed of Assignment which was executed prior to the death of Nora C. Eubanas.

The BIR ruled that since the deposit accounts have been transferred and conveyed by the mother to her son, the same should be excluded from the mother's gross estate and therefore not subject to estate taxes. Nevertheless, the assignment of the deposit accounts shall be subject to donor's tax pursuant to Section 98(A) of the NIRC.

BIR Ruling No. 034-2017 *dated February 3, 2017*
BIR Ruling No. 035-2017 *dated February 3, 2017*

Certain lands owned by the National Housing Authority (NHA) have been identified and certified for development into a residential project under the Yolanda Permanent Housing Program intended for the families affected by typhoon Yolanda and qualified for housing assistance under RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992". NHA issued certifications in favor of the contractors to the effect that these lands constitute socialized housing projects under NHA's Yolanda Permanent Housing Program.

In these rulings, the BIR confirm that (1) the income directly realized by project contractors from the construction of socialized housing projects under the Yolanda Permanent Housing Program pursuant to RA No. 7279, is exempt from project-related income taxes, and that (2) the housing construction with its necessary construction components for the housing units shall be exempt from VAT.

However, the purchases of goods/articles by the project contractors shall be subject to VAT, even if said purchases are to be used for the socialized housing project. VAT is an indirect tax which can be passed on by the seller of the good/services. It shall be understood that the project contractors must issue non-VAT official receipts from these socialized housing projects.

BIR Ruling No. 042-2017 *dated February 7, 2017*

This ruling grants the request for refund of the excess DST paid in the amount of P6,785.00 on the sale of a condominium unit by Mega World Corporation to Luningning Angeles-Blum on October 2, 2015.

The Revenue District Office (RDO) No. 40 assessed and collected from Mrs. Blum DST in the amount of P63,210.00 based on the condominium's gross selling price of P4,213,017.00 inclusive of VAT, instead of the property's net selling price of P3,761,622.32.

The term "consideration contracted" or the "gross selling price" as defined in Section 106(A) of the NIRC 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 DST due on the subject document should therefore be P56,430.00, computed based on the purchase price of P3,761,622.32, net of VAT, hence, there was indeed an overpayment amounting to P6,785.00.

BIR ISSUANCES

Revenue Memorandum Circular No. 010-17 *(dated January 19, 2017)*

This Circular is being issued to clarify the bookkeeping requirements of National Government Agencies (NGAs), Government Agencies and Instrumentalities (GAIs) and Government-Owned and -Controlled Corporations (GOCCs).

NGAs, GAIs, and GOCCs fall under the term 'corporation' created by special law or charter. Thus, NGAs, GAIs, and GOCCs vested with functions relating to public needs whether governmental or proprietary in nature are required to register and keep their books of accounts.

(1) Those who are using the Commission on Audit (COA)-developed Electronic New Government Accounting System (eNGAS) are not required to apply for its Permit to Use. However, considering the requirement for payment/remittance and verification of tax liabilities, these entities shall submit the eNGAS in electronic format.

(2) Those who are using a computerized accounting system and/or components thereof other than the eNGAS are required to apply for Permit to Use and shall submit and register the same in electronic format.

The submission is to the RDO having jurisdiction over the principal place of business or to the LTAD/ELTRD/LTD-Cebu/LTD-Davao where the head office is duly registered within 30 days from the close of each taxable year or within 30 days upon the termination of its use, following the existing revenue issuances on computerized accounting system.

Revenue Memorandum Circular No. 012-17 *(dated January 24, 2017)*

In line with the forthcoming tax deadline and pursuant to the Memorandum of Agreement executed by the Authorized Agent Banks (AABs), the Bureau of Internal Revenue (BIR) and the Bureau of the Treasury (BTr), more particularly item 2.1.2 of Bank Obligations which states that: *"[t]he AAB shall xxx open bank operations two (2) Saturdays immediately prior to April 15 of every year and extend banking hours from 3:00 p.m. to 5:00 p.m. from April 1 to income tax payment deadline;"* all concerned revenue personnel are being informed and guided that all AABs are reminded to open bank operations on April 1, 2017 and April 8, 2017.

Furthermore, and considering that April 15, 2017 falls on a Black Saturday, they are also advised to extend the banking hours from 3:00 p.m. to 5:00 p.m. for the period April 1 to April 17, 2017, for purposes of accepting tax payments

Revenue Memorandum Order No. 003-17 *(dated February 1, 2017)*

All approved applications for compromise settlement and/or abatement of penalties shall be issued a Certificate of Availment (CA) following the prescribed format while denied applications shall be issued a Notice of Denial (ND) following prescribed format. Both CA and ND shall be included as accountable forms of the Bureau.

Revenue Memorandum Order No. 004-17 *(dated February 2, 2017)*

In line with the roll-out of the Electronic Tax Information System-Collection Remittance and Reconciliation (eTIS-CRR) in selected pilot sites, it has been observed that there are certain missing information in the Tax Subsidy Availment Certificates (TSACs) being issued by the processing office that are subsequently presented as a mode of payment by concerned taxpayers. These missing information are considered as one of the mandatory fields in completing the Payment Details in the eTIS-CRR. For purposes of addressing this concern pending the re-design of the existing TSAC form, all concerned TSAC-issuing offices are hereby directed to print the number and the corresponding issue date of the Special Allotment Release Order (SARO), where the TSACs being issued have been drawn, at the lower left portion on the face of each and every copy of the TSAC form, more specifically immediately below the date and place of issuance of the said TSAC.