



Republic of the Philippines
Supreme Court
 Manila
FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
 Petitioner, **G.R. No. 227121**
 Present:

- versus -

PERALTA, C.J., Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, JJ.

THE HONGKONG SHANGHAI BANKING CORPORATION LIMITED – PHILIPPINE BRANCH,
 Respondent.

Promulgated:

DEC 09 2020

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision² dated May 17, 2016 and Resolution³ dated September 9, 2016 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB Case No. 1257, which affirmed the CTA Third Division's (CTA Division) Decision⁴ dated October 13, 2014 and Resolution⁵ dated December 10, 2014 in CTA Case No. 8428. The CTA Division granted respondent Hongkong Shanghai Banking Corporation Limited-Philippine Branch's (respondent) petition for review and cancelled the Final Decision on Disputed Assessment (FDDA) dated January 18, 2012 and Final Assessment Notice (FAN) dated June 28, 2011.⁶

¹ *Rollo*, pp. 10-47

² Id. at 53-71. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen Ringpis-Liban, concurring.

³ Id. at 73-78. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis Liban, concurring while Associate Justice Esperanza R. Fabon-Victorino, on official business.

⁴ Id. at 80-97. Penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

⁵ Id. at 108-110.

⁶ Id. at 96.

Facts

The facts as summarized by the CTA Division are as follows:

[Respondent], The Hongkong and Shanghai Banking Corporation Limited – Philippine Branch, is a duly licensed branch of The Hongkong and Shanghai Banking Corporation Limited [(HSBC)] x x x.

x x x x

Prior to July 2008, HSBC carried on in the Asia Pacific Region, including the Philippines, among other businesses, a Merchant Acquiring Business [(MAB)], whereby it entered into Merchant Agreements with accredited merchants to honor credit cards it issued under various card associations for which it is a member.

HSBC, through [respondent], then created Global Payments Asia Pacific-Phils., Inc. [GPAP-Phils. Inc.] to transfer its [MAB] in the Philippines.

On July 22, 2008, GPAP-Phils[.] was incorporated, wherein shares of stocks were issued to [respondent] in exchange for the fair-market value of the Point-of-Sale (“POS”) Terminals, Merchant Agreements, and transfer of the [MAB] of HSBC.

On July 24, 2008, a Share Sale and Purchase Agreement was executed between HSBC and Global Payment Asia Pacific (Singapore Holdings) Private Limited [(GPAP-Singapore)] for the transfer of said shares.

On September 3, 2008, a Deed of Assignment between [HSBC] and GPAP-Singapore was executed, wherein the former assigned its GPAP-Phils[.] shares to the latter.

On September 5, 2008, the Documentary Stamp Tax in the amount of ₱52,365.75, based on the par value of the shares, was paid.

On September 22, 2008, [respondent] filed an Application and Joint Certification with [petitioner] to secure a ruling on the tax-free exchange under Section 40(C)(2) of the 1997 National Internal Revenue Code [(NIRC)], as amended, regarding the transfer of the POS Terminals and [MAB].

On September 28, 2008, the Capital Gains Tax [(CGT)] in the amount of ₱89,929,292.10 was paid, in relation to the above said Deed of Assignment dated September 3, 2008.

On January 23, 2009, a Certification/Ruling No. SN:018-2009 was issued by Assistant Commissioner of Legal Service, certifying that the transfer of POS Terminals and [MAB] with Substituted Basis, in exchange for the GPAP-Phils[.] shares are not subject to tax pursuant to Section 40(C)(2) of the 1997 NIRC, as amended.



On September 8, 2010, however, [petitioner] issued a Notice of Informal Conference addressed to [respondent], the same was received by the latter on September 17, 2010.

On January 7, 2011, [petitioner] issued a Preliminary Assessment Notice (“PAN”) against [respondent] for deficiency Income Tax in the amount of ₱296,936, 948.59, inclusive of interest, from its gain on the sale of the [MAB]; the same was received on January 18, 2011.

On February 2, 2011, [respondent] filed its Protest of even date to the said PAN. [It also filed a Supplemental Position Paper on March 10, 2011.]

On March 14, 2011, [petitioner] issued a Letter, granting [respondent’s] request to refer the matter to the Legal and Inspection Group for resolution; the same was received on March 30, 2011.

On March 15, 2011, [respondent] then executed and duly filed a Waiver of the Statute of Limitations; the same was duly received and acknowledged by [petitioner].

On June 28, 2011, [petitioner], thus, issued a [FAN] against [respondent] for deficiency Income Tax in the amount of ₱318,781,625.17, inclusive of interest, on the sale of “Goodwill,” pursuant to Section 27(A) of the 1997 NIRC, as amended; the same was received by [respondent] on July 11, 2011. x x x

x x x x

On July 26, 2011, [respondent] filed its Administrative Protest, which was received by [petitioner] on even date.

On January 18, 2012, [petitioner] issued a Final Decision on Disputed Assessment, which was received by [respondent] on January 24, 2012.

On February 16, 2012, [respondent], thus, filed the present Petition for Review [with the CTA Division].

[In its Answer, the CIR claimed that the Deed of Assignment did not pertain to a sale of shares but to a sale or transfer of business or “Goodwill,” which is subject to ordinary income tax and not CGT].⁷

CTA Division Ruling

In its Decision dated October 13, 2014, the CTA Division granted respondent’s petition and cancelled the FDDA and FAN.

⁷ Id. at 81-90.



The CTA Division found that, contrary to the CIR's assertion, the evidence bears that the transaction in question is a sale or transfer of capital asset, and not a sale of an ordinary asset, to wit:

x x x based on the records of the case – the creation of GPAP-Phils[.] to transfer the Merchant Acquiring Business of HSBC by way of additional paid-in capital; the subscription of 139,640 shares of stocks of GPAP-Phils in exchange for HSBC's POS terminals; the subscription of 1 common share of GPAP-Phils[.] in exchange for HSBC's Merchant Agreements; and the subsequent assignment of the total number of shares of 139,641, subscribed by HSBC to GPAP-Singapore, clearly shows that it is a sale of capital asset, as earlier quoted under Section 39(A)(1) of the 1997 NIRC, as amended, to which [respondent] paid the total amount of ₱89,929,292.10.⁸

The CTA Division further ruled that "Goodwill" is connected to the business itself and cannot be allocated without regard to the business. Thus, the CIR cannot treat separately the alleged sale of "Goodwill" from the transfer of HSBC's MAB to GPAP Phils. and conveniently allocate and reclassify the same as a sale of ordinary asset subject to income tax.⁹

In its Resolution dated December 10, 2014, the CTA Division denied CIR's motion for reconsideration.

CTA EB Ruling

In the assailed Decision, the CTA EB affirmed the findings of the CTA Division.

The CTA EB reiterated that "Goodwill" is an intangible asset, cannot exist independently of the business, nor can it be sold, purchased or transferred separately without carrying out the same transactions for the business as a whole. Thus, while HSBC and GPAP-Singapore agreed to recognize and value the goodwill of the MAB in the Share Sale and Purchase Agreement, the same cannot be sold or purchased independently of the MAB.¹⁰

Further, the CTA EB agreed with the CTA Division that the sale of HSBC's GPAP-Phils. Inc. shares to GPAP-Singapore at a premium, whereby the goodwill of the MAB was recognized and valued, involves a sale of capital asset subject to CGT and not Income Tax.¹¹

The CIR sought reconsideration but the same was denied in a Resolution dated September 9, 2016.

⁸ Id. at 95.

⁹ Id. at 96.

¹⁰ Id. at 65-66.

¹¹ Id. at 67-70.

Hence, this petition.

Issue

Whether the CTA EB erred in cancelling the deficiency income tax assessment against respondent on the alleged sale of “Goodwill” of its MAB for taxable year 2008.

The Court’s Ruling

The Petition lacks merit.

In its intention to restructure its MAB in the Asia-Pacific Region in order to achieve efficiency, HSBC, through respondent, entered into two transactions: (1) the transfer of its Point of Sales Terminals, other information technology assets and Merchant Agreements of its MAB in the Philippines, in exchange for GPAP-Phils. Inc. shares and (2) the subsequent sale or assignment of its GPAP-Phils. Inc. shares to GPAP-Singapore.

It is beyond dispute that the first transaction qualifies as a tax-free exchange under Section 40, paragraphs (C)(2)¹² and (6)(c)¹³ of the 1997 NIRC, as amended. Pursuant to this provision, no gain or loss shall be recognized both to the transferor and transferee corporation on the transfer or exchange of property provided the following requirements are present: (1) the transferee is a corporation; (2) the transferee exchanges its shares of stock for property/ies of the transferor; (3) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (4) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.¹⁴

All the foregoing requirements are present in this case.

HSBC, through respondent, transferred the assets of its MAB in the Philippines to GPAP-Phils. Inc. as payment for the subscription of the 139,641 common shares of GPAP-Phils. Inc. As a result of such transfer, HSBC became the majority stockholder of GPAP-Phils. Inc. and gained 99.99% control of the transferee corporation. Thus, both HSBC and GPAP-Phils. Inc. shall not recognize any gain or loss on the transfer of the MAB in

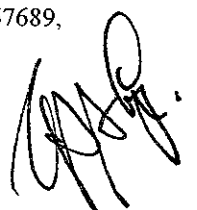
¹² (C) *Exchange of Property.* –

x x x x

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.

¹³ (c) The term “*control*”, when used in this Section, shall mean ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.

¹⁴ *Commissioner of Internal Revenue v. Filinvest Development Corporation*, G.R. No. 163653 & 167689, July 19, 2011, 654 SCRA 56, 76.



exchange for shares. Consequently, respondent will not be liable for capital gains tax, income tax or creditable withholding tax arising from such exchange of properties. Notably, in its Certification¹⁵ dated January 23, 2008, the CIR recognized that the first transaction between HSBC and GPAP-Phils. Inc. is not subject to income tax, capital gains tax, expanded withholding tax and gross receipts tax.¹⁶

It should be emphasized, however, that when the property or shares of stock acquired through a tax-free exchange is subsequently sold, the said subsequent sale shall now be subject to income tax.¹⁷ This is because, in a tax-free exchange, the recognition of gain or loss arising from the exchange is merely deferred.¹⁸ Thus, the second transaction, wherein HSBC subsequently assigned its GPAP Phils. Inc. shares to GPAP Singapore, is now subject to capital gains tax,¹⁹ to which respondent paid the total amount of ₱89,929,292.10.²⁰

The CIR, however, insists the second transaction involves an alleged sale of the “goodwill” of the MAB, which makes HSBC liable for deficiency income taxes.²¹ The CIR anchors its finding on the value of the “goodwill” indicated in the Share Sale and Purchase Agreement in the amount of ₱885,378,821.00.²² Thus, in the FAN dated June 28, 2011, the CIR subjected to the regular corporate income tax of 35% as provided under Section 27(A) of the 1997 NIRC, as amended, the gain derived by HSBC on the sale of its GPAP-Phils. Inc. shares, viz.:

INCOME TAX

Actual Selling Price	899,342,921.00
Less GPAPPI Shares of Stocks	<u>13,964,100.00</u>
Gross Amount	P 885,378,821.00
Income Tax Rate	<u>35%</u>
Income Tax Due	309,882,587.35
Advance Payment 9-29-08	<u>89,929,292.10</u>
Basic Income Tax Deficiency	219,953,295.25
Interest (April 16, 2009 to July 15, 2011)	98,828,329.92
Income Tax Payable	P <u>318,781,625.17</u> ²³

¹⁵ *Rollo*, pp. 437-439.

¹⁶ *Id.* at 437.

¹⁷ Hector S. De Leon and Hector M. De Leon, Jr., *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED*, 11th ed. Vol. I (2015), p. 542.

¹⁸ Eufrocina M. Sacdalan-Casasola, *NATIONAL INTERNAL REVENUE CODE ANNOTATED*, Vol. 2 (2013), p. 454.

¹⁹ See Revenue Regulations No. 6-2008, April 22, 2008, Sec. 7.

²⁰ *Rollo*, p. 95 and pp. 443-444.

²¹ *Id.* at 40.

²² *Id.* at 27, 440.

²³ *Id.* at 362.

This is error. The Court agrees with the findings of the CTA that the assessment has no legal and factual bases because the subject transaction is covered by capital gains tax and not regular corporate income tax.

The records clearly show that the object of the transaction between HSBC and GPAP-Singapore is the 139,641 GPAP-Phils shares. The Share Sale and Purchase Agreement between HSBC and GPAP-Singapore states that:

- (E) The Seller has agreed to sell the Philippine Subsidiary Shares to the Purchaser, and the Purchaser has agreed to purchase the Philippine Subsidiary Shares in reliance (inter alia) upon the Seller's representations, warranties, indemnities, covenants and undertakings in this Agreement, for the Consideration and otherwise upon and subject to the terms and conditions of this Agreement.

x x x x

ARTICLE 2

SALE AND PURCHASE

2.1 Sale and Purchase.

On the terms and subject to the conditions set forth in this Agreement, at Completion the Seller shall sell, and the Purchaser shall purchase, all outstanding shares of the Philippine Subsidiary free of all Encumbrances and together with all the rights now attaching thereto.²⁴

Further, the Deed of Assignment provides:

“3.1. Consideration

In consideration for the sale of the Philippine Subsidiary Shares, the consummation of the Restructuring as provided in Schedule 3.1(a) and the entering into by the Bank of the Operative Documents to which the Bank is or will be a party, and upon and subject to the terms and conditions set forth in this Agreement and in reliance on the representations, warranties, indemnities, covenants and agreements of the Seller contained herein and therein, at and subject to Completion, the purchaser shall pay the Seller in the aggregate the sum of the U.S. Dollar equivalent of EIGHT HUNDRED NINETY NINE MILLION THREE HUNDRED FORTY TWO THOUSAND NINE HUNDRED TWENTY ONE PHILIPPINE PESOS (Php899,342,921.00) at the most recent prevailing exchange rate at completion. The exchange rate shall be the AM WT AVE found in Reuters page PDSPESO.²⁵

Section 27(A) of the NIRC of 1997, as amended, provides that *except as otherwise provided in this Code*, an income tax shall be imposed on the taxable income derived by domestic corporations. Relevantly, paragraph

²⁴ Id. at 440-442.

²⁵ Id. at 381.

(D)(2) thereof states that a *final tax* at the rates of 5% or 10% shall be imposed on the net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange. Revenue Regulation 6-2008,²⁶ which implements the aforesaid provision, echoes Section 27(D)(2) and provides for rules on the determination of gain or loss for the purpose of the imposition of CGT. In other words, the amount of the gain realized from the sale of shares of stock not traded through the local stock exchange, is in lieu of the regular corporate income tax. Moreover, in *Commissioner of Internal Revenue v. Ocier*,²⁷ this Court clarified that the CGT for the sale of shares of stocks not listed in the stock exchange refers to the final tax based on the net capital gains realized during the taxable year. Hence, a taxpayer is liable to pay CGT for the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except if the sale or disposition is through the stock exchange.

Notably, in several rulings issued by the Bureau of Internal Revenue, it was recognized that the gain realized from the sale of shares acquired through a tax-free exchange transaction is subject to CGT.²⁸ Therefore, the subsequent disposition of HSBC's GPAP-Phils. Inc. shares in favor of GPAP-Singapore is subject to CGT and not to regular corporate income tax under Section 27(A), upon which the CIR's assessment is based.

Further, the Share Sale and Purchase Agreement is explicit that the goodwill of the MAB was transferred by way of additional paid-in capital to GPAP-Phils. Inc.²⁹ Clearly, as the CTA Division aptly ruled, nothing in the Share Sale and Purchase Agreement supports the CIR's position that goodwill of the MAB was sold to GPAP-Singapore.³⁰

Black's Law Dictionary defines goodwill as business' reputation, patronage and other intangible asset considered in appraising a business, especially for purchase.³¹ It is the ability of the business to generate income in excess of a normal rate on assets due to superior managerial skills, market position, new product technology, etc. In the purchase of business, goodwill represents the difference between the purchase price and the value of assets.³²

Goodwill has also been referred to as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation

²⁶ CONSOLIDATED REGULATIONS PRESCRIBING THE RULES ON THE TAXATION OF SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF SHARES OF STOCK HELD AS CAPITAL ASSETS, April 22, 2008.

²⁷ G.R. No. 192023, November 21, 2018, 886 SCRA 235.

²⁸ See *rollo*, pp. 408-426.

²⁹ *Id.* at 440

³⁰ *Id.* at 96.

³¹ BLACK'S LAW DICTIONARY (9TH ed.), p. 763.

³² Randall B. Wilhite, The Effect of Goodwill in Determining the Value of a Business in a Divorce, *Family Law Quarterly*, Volume 35, No. 2, p. 353 (2001), accessed at <<http://www.jstor.org/stable/25740341>>.

for skill, or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.”³³ It is derived from the assets associated with the business,³⁴ inseparable from the business to which it adds value, and exists where the business is carried on.³⁵ It has also been said that goodwill “has no meaning except in connection with some trade, business or calling;”³⁶ hence, “cannot exist or be transferred apart from the business to which it is attached.”³⁷

In accounting, goodwill is described as the “future economic benefits arising from assets that are not capable of being individually identified and separately recognised.”³⁸ It “arises as a result of property specific name and reputation, customer patronage, location, products, and similar factors, which generate economic benefits. It is inherent to the trade related property, and will transfer to a new owner on sale.”³⁹

Parsed from the foregoing, goodwill is essentially characterized as an intangible asset derived from the conduct of business, and cannot therefore be allocated and transferred separately and independently from the business as a whole. Thus, when HSBC transferred its MAB in the Philippines, inclusive of the Point of Sales terminals, other information technology assets and merchant agreements, to GPAP-Phils. Inc. in exchange for shares, the goodwill of the business was also transferred to GPAP-Phils. Inc., being the new owner of the MAB and its assets. When HSBC subsequently assigned its GPAP-Phils. Inc. shares to GPAP-Singapore, the goodwill of the MAB remains with GPAP-Phils. Inc. GPAP-Singapore merely steps into the shoes of HSBC as the majority stockholder of GPAP-Phils. Inc. Indeed, fundamental is the rule in corporation law that a corporation is clothed with a personality separate and distinct from its stockholders; and the “[m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.”⁴⁰

The CIR however finds the methodology employed by respondent as a form of a tax evasion scheme to escape income tax liability. According to the CIR, the formation of GPAP-Phils. Inc. was to circumvent the law by

³³ *Bachrach Motor Co. v. Esteva*, G.R. No. 44510, December 24, 1938, 67 Phil. 16, 29.

³⁴ See Mona Shin, Lightened Taxpayer Burdens in the Sale of Personal Goodwill After H&M, Inc. v. Commissioner, *The Tax Lawyer*, Volume 67, No. 2 (2014), accessed at <<http://www.jstor.org/stable/24247753>>.

³⁵ Richard N. Owens, Goodwill in the Accounts. *The University Journal of Business*, Volume 1, No. 3, p. 284 (1923), accessed at <<http://www.jstor.org/stable/2354868>>.

³⁶ Walter J. Derenberg, Territorial Scope and Situs of Trademarks and Good Will, *Virginia Law Review*, Volume 47, No. 5, p. 736 (1961), accessed at <<https://www.jstor.org/stable/1071060>>.

³⁷ An Inquiry into the Nature of Goodwill, *Columbia Law Review*, Volume 53, No. 5, p. 673 (1953), accessed at <<https://www.jstor.org/stable/1118896>>.

³⁸ PRESCRIBING THE PHILIPPINE VALUATION STANDARDS (1ST EDITION) - ADOPTION OF THE IVSC VALUATION STANDARDS UNDER PHILIPPINE SETTING. Department of Finance, Department Order No. 037-09, October 19, 2009.

³⁹ Id.

⁴⁰ *Construction & Development Corporation of the Philippines v. Cuenca*, G.R. No. 163981, August 12, 2005, 466 SCRA 714, 727.

classifying the subject transaction as a sale of shares of stock instead of a sale of asset and goodwill, which is subject to regular corporate income tax.

The Court is not persuaded.

A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits.⁴¹ This is called tax avoidance. It is the use of legal means to reduce tax liability. However, this method should be used by the taxpayer in good faith and at arms-length.⁴²

In this case, when HSBC transferred the assets of its MAB in the Philippines to GPAP-Phils. Inc. in exchange for shares, pursuant to the tax-free exchange provision under Section 40(C)(2) of the 1997 NIRC, as amended, and subsequently sold such shares to GPAP-Singapore and paid the corresponding CGT in accordance with Section 27(D)(2) of the same Code, it simply availed of tax saving devices within the means sanctioned by law. Further, this methodology was adopted by HSBC not merely to reduce taxes but also for a legitimate business purpose – *i.e.* the restructuring of the MAB to achieve more efficiency and economies of scale.⁴³ Consequently, what was employed to minimize taxes was a tax avoidance scheme.

Contrariwise, tax evasion is “a scheme used outside of those lawful means.”⁴⁴ It “connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes.”⁴⁵ To constitute tax evasion, the following factors must be proven: “(1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being “evil,” in “bad faith,” “willful,” or “deliberate and not accidental”; and (3) a course of action or failure of action which is unlawful.”⁴⁶ In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer’s resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation.⁴⁷ Here, the CIR failed to proffer any clear and convincing proof of fraud on the part of respondent.

Accordingly, the Court finds no reason to reverse the findings of the CTA EB and uphold the validity of the CIR’s assessment against respondent.

⁴¹ *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, G.R. No. L-13203, January 28, 1961, 1 SCRA 160, 168.

⁴² *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, September 14, 2004, 438 SCRA 290, 298.

⁴³ See *rollo*, p. 431.

⁴⁴ *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, *supra* note 42.

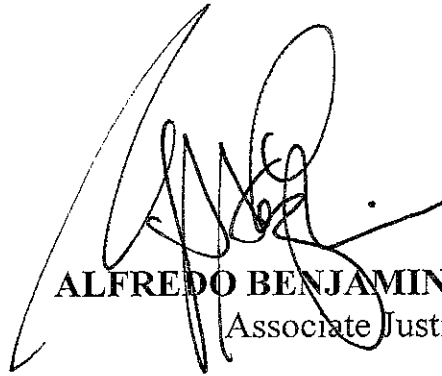
⁴⁵ *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, *supra* note 41, at 167.

⁴⁶ *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, *supra* note 42, at 299.

⁴⁷ *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, *supra* note 41, at 167.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Decision dated May 17, 2016 and Resolution dated September 9, 2016 of the Court of Tax Appeals *en banc* in CTA EB Case No. 1257 are hereby **AFFIRMED**.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

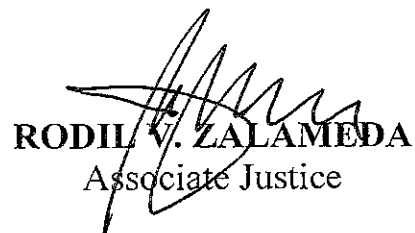
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



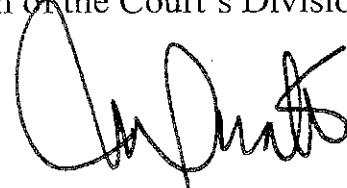
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice