



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated **March 15, 2023**, which reads as follows:*

**“G.R. No. 200395 (City of Makati v. Commissioner of Internal Revenue).** – The Court resolves to:

- (1) **GRANT** the Office of the Solicitor General’s (OSG) (first to third) motions for extension of time within which to comply with the Resolution dated September 16, 2020 by furnishing the Court with the compromise document allegedly approved by the Bureau of Internal Revenue, totaling ninety (90) days from December 26, 2020;
- (2) **NOTE** and **GRANT** the OSG’s Manifestation and Motion dated March 25, 2021, stating that on March 19, 2021, it wrote a letter to the Legal Department of the Commissioner of Internal Revenue and the City of Makati Legal Office requesting a copy of the compromise agreement, however, it has yet to receive a reply, with prayer for extension of thirty (30) days from March 26, 2021 within which to comply with the Resolution dated September 16, 2020; and
- (3) **NOTE:**
  - (a) the OSG’s Manifestation dated May 7, 2021, submitting the thereto attached copy of the letter addressed to the City of Makati Legal Office requesting a copy of the compromise agreement, to show its substantial compliance with the Court’s Resolution dated September 16, 2020; and
  - (b) the copy of the Resolution dated September 16, 2020 which, among others, required petitioner and respondent to furnish the Court with the compromise document allegedly approved by the BIR, addressed and sent to Atty. Pio

Kenneth I. Dasal, counsel for petitioner, at Law Department, Office of the City Attorney, 18/F, Makati City Hall, 1200 Makati City, was returned to this Court on February 16, 2021 unserved with postal notation “RTS no longer connected in LDO City Attorney, Makati City,” and **DEEM** said Resolution as **SERVED** upon Atty. Dasal.

It appearing that the handling lawyer of the Law Department, Office of the City Attorney, counsel for petitioner, failed to (1) submit a verified declaration of the motion to dismiss with prejudice as required in the Resolution dated June 19, 2019 within the period fixed therein which expired on October 12, 2019; and (2) comply with the Resolution dated September 11, 2019 which reiterated the Move in the Premises Resolution dated August 9, 2017 within the period fixed therein which expired on December 29, 2019, the Court further resolves to **DISPENSE** with petitioner’s compliance with the Resolutions dated June 19, 2019 and September 11, 2019.

The Court likewise **DISPENSES** with the parties’ compliance with the Resolution dated September 16, 2020, which required them to furnish the Court with the compromise document allegedly approved by the Bureau of Internal Revenue.

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated September 16, 2011 and Resolution<sup>3</sup> dated January 19, 2012 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 641. The CTA *En Banc* affirmed the Decision<sup>4</sup> dated December 16, 2009 of the CTA Second Division and Resolution dated May 25, 2010 in CTA Case No. 7809.

In its Decision<sup>5</sup> dated December 16, 2009, the CTA Second Division ruled in favor of the Bureau of Internal Revenue (BIR) and the Commissioner of Internal Revenue (CIR). The CTA Second Division dismissed the petition for review filed by the City of Makati seeking the nullification of the Final Decision on Disputed Assessment (FDDA) dated October 16, 2003 which the BIR issued for alleged deficiency taxes for taxable years 1999 to 2001. The CTA Second Division ruled that the City of Makati failed to file its petition on time.

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<sup>1</sup> Rollo, pp. 3-39.

<sup>2</sup> Id. at 42-69; penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring.

<sup>3</sup> Id. at 71-75.

<sup>4</sup> Id. at 244-282; penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

<sup>5</sup> Id.

### The Facts

Based on the stipulation made by the parties, the facts are as follows:

On September 20, 2002, Regional Director Antonio I. Ortega (Regional Director Ortega) of Revenue Region No. 8 of Makati City issued a Preliminary Assessment Notice (PAN) finding the City of Makati liable for the total amount of ₱1,320,980,395.63, representing its deficiency income tax, value-added tax (VAT), and withholding compensation taxes for the years 1999–2002. Through a letter dated October 4, 2002, the City of Makati pointed out the inaccuracies in the PAN. Thereafter, on October 15, 2002, it received assessment notices. This time, the deficiency taxes for the years 1999–2002 amounted to ₱1,331,615,125.30.<sup>6</sup>

On October 29, 2002, the City of Makati requested for a reinvestigation of the assessments. It also asked for more time to reconcile the records with those of the BIR. Later, in a protest letter dated December 26, 2002, the City of Makati enumerated the discrepancies it found. Regional Director Anselmo G. Adriano (Regional Director Adriano) of Revenue Region No. 8, Makati City denied the protest and maintained the tax assessment of ₱1,316,424,402.15. The City of Makati received the said denial of protest on June 5, 2003. Reiterating its protest, the City of Makati sent BIR a letter dated June 27, 2003. On September 3, 2003, the City of Makati requested for an extension of 60 days within which to submit additional documentary requirements.<sup>7</sup>

An FDDA with Amended Assessment Notices were issued by Regional Director Adriano on October 16, 2003, stating that the total amount of ₱1,146,883,843.08 is due from the City of Makati for its deficiency taxes for 1999–2001. Again, on October 24, 2003, the City of Makati requested for a recomputation. Supporting documentary evidence was also submitted to support its claim. On November 19, 2003, the City of Makati requested for a 30-day extension to submit additional documentary requirements.<sup>8</sup>

On August 18, 2004, Regional Director Adriano informed the City of Makati that the subject assessments had become final and executory. On August 27, 2004, the City of Makati, in another protest letter, argued against the assessments on the ground that they are baseless and arbitrary, therefore, void and had no effect.<sup>9</sup>

Later, on March 11, 2005, the City of Makati requested the re-opening and reinvestigation of its tax case. The Vice Mayor, acting on behalf of the City of Makati, stated in his letter request that Revenue Officer Martinez agreed to re-examine the financial records of the City of Makati. A Tax Verification

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<sup>6</sup> Id. at 248.

<sup>7</sup> Id. at 248.

<sup>8</sup> Id. at 249.

<sup>9</sup> Id.

Notice was issued on April 26, 2005.<sup>10</sup> On April 29, 2005, Regional Director Adriano informed the City of Makati that its request for re-opening of its 1999–2001 internal revenue tax case was approved by the CIR, as signed by the then-Deputy CIR Jose Mario C. Buñag (Deputy CIR Buñag).<sup>11</sup>

In the course of the re-opening and reinvestigation, Regional Director Adriano requested the City of Makati to submit specific documents. The request was made on May 3, 2005. Meanwhile, on July 1, 2005, the Revenue District Officer of Revenue District Office (RDO) No. 49 requested for another set of records. Thereafter, Regional Director Adriano sent a letter dated August 4, 2005 to the City of Makati wherein he informed the latter of the revised assessment of ₱520,829,896.92 for 1999–2001. The letter likewise stated that payment of the revised assessment shall be made on or before August 31, 2005.<sup>12</sup>

On September 1, 2005, Secretary of Finance Margarito Teves (SOF Teves) presided a meeting between the City of Makati and the BIR for the purpose of reconciling the records and the positions of both parties. The City of Makati was represented by its Mayor and its Vice Mayor Ernesto S. Mercado, while Assistant Regional Director Nelson M. Aspe (Regional Director Aspe) attended for the BIR. In the said meeting, SOF Teves directed the parties to settle the case fairly and reasonably.<sup>13</sup>

Consequently, on September 2, 2005, the City of Makati offered to pay ₱100 million for the full settlement of the deficiency taxes for 1999–2001. On September 5, 2005, the City of Makati tendered the initial payment of ₱20 million to the BIR. This initial payment was accepted by Regional Director Adriano, who also reminded the City of Makati that the balance of ₱80 million must be paid by the end of the year.<sup>14</sup>

The City of Makati made another offer of compromise on October 21, 2005. This time, the offer of compromise in the amount of ₱100 million was for the settlement of the deficiency taxes for 2002–2004.<sup>15</sup> On the same date, Regional Director Adriano accepted the offer of compromise on the condition that 30% of the settlement amount shall be paid on or before October 31, 2005. The City of Makati, on October 28, 2005, paid ₱30 million to the BIR.<sup>16</sup>

Then, the following payments were made by the City of Makati on February 22, 2006: (a) ₱80 million for the balance in the compromise of the deficiencies for 1999–2001; and (b) ₱70 million for the balance in the compromise of the deficiencies for 2002–2004.<sup>17</sup>

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<sup>10</sup> Id.

<sup>11</sup> Id. at 249-250.

<sup>12</sup> Id. at 250.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 251.

<sup>17</sup> Id.

On November 22, 2006, the newly appointed Regional Director Aspe informed the City of Makati that the offer of compromise settlement was not accepted. Thus, he demanded payment of the balance of ₱581,468,164.58 for the deficiency taxes in 1999–2001. Likewise, Regional Director Aspe proposed the assessment in the amount of ₱322,952,109.25 for taxable years 2002–2004.<sup>18</sup>

On December 28, 2006, a meeting was held between the parties and in the presence of SOF Teves. They all agreed to set another meeting to finalize and conclude the ongoing reconciliation of records.<sup>19</sup>

Subsequently, Regional Director Aspe issued on April 11, 2007 a series of Assessment Notices:<sup>20</sup>

Assessment Notice No.	Purpose	Amount
WC-14523-02-07-0129	Withholding tax on compensation for taxable year 2002	₱20,889,059.62
MC-14523/17740/17741-02/03/04-07-0129	Compromise/penalties for the years 2002–2004	₱206,000.00
WE-14523-02-07-0129	Expanded withholding tax (EWT) for the year 2002	₱12,804,005.13 and ₱3,896,183.13
WG-14523-02-07-0129	Deficiency withholding tax for the year 2002	₱7,064,759.99
VT-14523-02-07-0129	VAT for the year 2002	₱4,234,621.24
WE-17740-03-07-0129	Deficiency EWT for the year 2003	₱28,939,658.45
WC-17740-03-07-0129	Deficiency withholding tax on compensation for the year 2003	₱33,232,829.50
WG-17740-03-07-0129	Deficiency withholding tax for the year 2003	₱103,134,743.24
VT-17740-03-07-0129	Deficiency VAT for the year 2003	₱6,439,821.47
WE-17741-04-07-0129	Deficiency EWT for the year 2004	₱3,809,901.55
WC-17741-04-07-0129	Deficiency withholding tax on compensation for the year 2004	₱26,869,006.09
WG-17741-04-07-0129	Deficiency withholding tax for the year 2004	₱62,340,387.12

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 251-252.

VAT-17741-04-07-0129	Deficiency VAT for the year 2004	₱3,946,363.13 <sup>21</sup>
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Pursuant to the above notices, Warrant of Garnishment No. RD49-WG-05-02-07 # 0050 (Warrant of Garnishment) dated May 2, 2007 was issued by Revenue District Officer Roberto A. Baquirin (Revenue District Officer Baquirin) of RDO No. 49 of the BIR. The Warrant of Garnishment called for the payment of ₱1,150,331,321.81 due from the City of Makati.<sup>22</sup>

Immediately, on May 4, 2007, the City of Makati filed a Protest Letter disputing the validity of the Warrant of Garnishment, as well as the above-enumerated assessment notices.<sup>23</sup> Revenue District Officer Baquirin granted the protest.

In a Letter<sup>24</sup> dated May 4, 2007 and received by the City of Makati on May 7, 2007, Revenue District Officer Baquirin lifted the Warrant of Garnishment. Later, the City of Makati was informed by Regional Director Aspe that its Protest Letter dated May 4, 2007 will be forwarded to the Revenue District Officer, RDO No. 49, North Makati, for further verification, evaluation, and necessary action.<sup>25</sup>

On November 5, 2007, the City of Makati received a letter dated October 9, 2007 from Regional Director Ma. Nieva A. Guerrero (Regional Director Guerrero) of Revenue Region No. 8, Makati City. In the said letter, Regional Director Guerrero ruled that the City of Makati is liable to pay the BIR the following:<sup>26</sup>

Assessment	Purpose	Amount
Deficiency Assessment dated October 16, 2003	Deficiency withholding taxes/VAT/compromise penalties for taxable years 1999–2001	₱1,146,883,846.08
Deficiency Assessment dated April 11, 2007	Deficiency withholding taxes/VAT/compromise penalties for taxable years 2002–2004	₱317,087,339.66 <sup>27</sup>

Further, Regional Director Guerrero asserted that both deficiency assessments dated October 16, 2003 and April 11, 2007 have become final and executory.<sup>28</sup>

The City of Makati filed its Protest Letter dated November 16, 2007

<sup>21</sup> Id.  
<sup>22</sup> Id. at 246.  
<sup>23</sup> Id.  
<sup>24</sup> Id. at 109.  
<sup>25</sup> Id. at 246.  
<sup>26</sup> Id. at 247.  
<sup>27</sup> Id.  
<sup>28</sup> Id.

before the CIR to dispute Regional Director Guerrero's ruling. The Protest Letter was filed pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (R.A.) No. 8424,<sup>29</sup> and as implemented by Section 3.1.5 of Revenue Regulations (R.R.) No. 12-99.<sup>30</sup>

### **Ruling of the CIR**

On June 20, 2008, the CIR dismissed the appeal filed by the City of Makati. The CIR affirmed Regional Director Guerrero's finding that the FDDA and Amended Assessment Notice dated October 16, 2003 have become final and executory for failure of the City of Makati to elevate its protest to the CTA or to the CIR within 30 days from receipt thereof.<sup>31</sup> The CIR found that the appeal filed by the City of Makati on May 7, 2007 was made beyond the reglementary period. Thus, there is no reason to review the merits of the case "because the case is already a collection case."<sup>32</sup> Consequently, the CIR ordered the City of Makati to pay ₱1,146,883,846.08 (less the amount of ₱100 million already paid) representing various deficiency tax assessments for taxable years 1999–2001.<sup>33</sup>

### **Ruling of the CTA Second Division**

Aggrieved, the City of Makati filed a Petition for Review before the CTA insisting that the FDDA dated October 16, 2003 is null and void for failure to state the facts and the law on which the deficiency assessments are based. Further, the City of Makati averred that the Amended Assessment Notice of October 16, 2003 has been cancelled and superseded by the Revised Assessment dated August 4, 2005.<sup>34</sup>

For its Answer, the CIR mainly argued that the subject assessments have become final, executory, and demandable. The FDDA was received by the City of Makati on October 20, 2003, giving the latter until November 19, 2003 to file an appeal. However, no appeal was filed before the CIR. Instead, the City of Makati filed another protest letter dated October 24, 2003 with Regional Director Adriano. According to the CIR, when the City of Makati opted to file a protest letter or a letter of reconsideration with the office of the Regional Director, its right to appeal the FDDA to the CTA or to seek a reconsideration of the same with the CIR, was already barred.<sup>35</sup>

In its Decision<sup>36</sup> dated December 16, 2009, the CTA Second Division

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<sup>29</sup> AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES; approved on December 11, 1997.

<sup>30</sup> *Rollo*, p. 247.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 247-248.

<sup>34</sup> *Id.* at 256.

<sup>35</sup> *Id.* at 253.

<sup>36</sup> *Id.* at 244-282.

dismissed the petition for lack of merit.

*First*, the CTA Second Division upheld the validity of the FDDA dated October 16, 2003. Pursuant to Section 3.1.6 of R .R. No. 12-99, implementing Section 228 of the NIRC of 1997, the FDDA informed the City of Makati of the facts, applicable law, rules and regulations on which the assessment was based.<sup>37</sup> According to the CTA Second Division, the City of Makati could not have intelligently protested the FDDA had it not been aware of the factual and legal bases thereof. In fact, the City of Makati was able to cite in its protest letter certain discrepancies in the withholding tax on compensation, EWT, VAT withholding tax, and VAT.<sup>38</sup>

*Second*, the CTA Second Division found that the FDDA clearly indicated that the assessment contained therein is the final Decision of the CIR on the matter. Thus, it constitutes the Decision that is appealable for review before the CTA.<sup>39</sup> Following Section 228 of the NIRC of 1997, the City of Makati may file an appeal to the CTA, or it may elevate the protest to the CIR.<sup>40</sup> However, none of these remedies were availed of. Consequently, the assessments for taxable years 1999–2001 have become final, executory, and demandable. As such, they can no longer be re-opened.<sup>41</sup>

*Third*, the CTA Second Division explained that the re-opening of the case, which resulted to a reduction of tax liabilities for 1999–2001, did not revoke or modify the FDDA, which had already become final and executory.<sup>42</sup> The NIRC of 1997 is clear that the power of the CIR to reverse, revoke, or modify any existing ruling of the BIR cannot be delegated. In violation of this provision, the ruling dated August 4, 2005 revoking/modifying the FDDA was rendered by a Regional Director, hence, null and void.<sup>43</sup>

*Fourth*, there was no formal compromise agreement executed by the City of Makati and the CIR. Section 204 of the NIRC of 1997 requires the approval of the National Evaluation Board in cases of settlement where the basic tax involved exceeds ₱1 million, such as in the case of the City of Makati.<sup>44</sup> Here, the approval of the National Evaluation Board is wanting. The CTA Second Division noted that since the City of Makati already paid ₱100 million by way of the alleged compromise agreement, the same should be deducted from its tax liabilities.<sup>45</sup>

As regards the deficiency tax assessments for 2002–2004, the CTA Second Division found that the City of Makati did not contest the deficiency

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<sup>37</sup> Id. at 257-258.

<sup>38</sup> Id. at 264.

<sup>39</sup> Id. at 266.

<sup>40</sup> Id. at 267-268.

<sup>41</sup> Id. at 270-271.

<sup>42</sup> Id. at 271.

<sup>43</sup> Id. at 272-273.

<sup>44</sup> Id. at 274-275.

<sup>45</sup> Id. at 275.



assessments for EWT, VAT, and withholding VAT. For failure to contest the said deficiency assessments, the City of Makati in effect admitted their correctness.<sup>46</sup> Furthermore, while the protest letter dated May 3, 2007 partakes of the nature of a request for reinvestigation, the City of Makati failed to submit the relevant documents. Following Section 3.1.5 of R.R. No. 12-99 and Section 228 of the NIRC of 1997, the assessments for 2002–2004 had also become final, executory, and demandable.<sup>47</sup> Lastly, the City of Makati cannot successfully argue that its tax liabilities for 2002–2004 had been settled through compromise agreement. As previously discussed, in the absence of the approval of the National Evaluation Board, the compromise agreement where the basic tax involved exceeds ₱1 million, is invalid, therefore, null and void.<sup>48</sup>

The dispositive portion of the Decision dated December 16, 2009 rendered by the CTA Second Division reads:

**WHEREFORE**, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner City of Makati is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the following:

1) the amount of **ONE BILLION FORTY SIX MILION EIGHT HUNDRED EIGHTY THREE THOUSAND EIGHT HUNDRED FORTY SIX and 08/100 PESOS (₱1,046,883,846.08)**, representing its deficiency taxes for taxable years 1999 to 2001; and

2) the amount of **TWO HUNDRED SEVENTEEN MILLION EIGHT HUNDRED SEVEN THOUSAND THREE HUNDRED THIRTY NINE and 66/100 PESOS (₱217,807,339.66)**, representing deficiency taxes for taxable years 2002 to 2004.

In addition, petitioner is hereby **ORDERED TO PAY** a delinquency interest equivalent to twenty percent (20%) per annum on the amount of [₱]1,046,883,846.08 from November 19, 2003, until fully paid, and on the amount of [₱]217,807,339.66 from November 20, 2007 until fully paid, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended*.

**SO ORDERED.**<sup>49</sup> (Emphases and italics in the original)

The City of Makati moved for reconsideration and filed a Second Urgent Motion for Extension of Time to Post Surety Bond. The latter was granted in a Resolution dated April 20, 2010.<sup>50</sup> Later on, a Compliance/Manifestation (with Motion to Admit Surety Bond) was filed by the City of Makati. After a perusal of the surety bond, the same was disapproved. Resolving these matters, the CTA Second Division issued an Omnibus Resolution<sup>51</sup> dated May 25, 2010, the dispositive portion of which reads:

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<sup>46</sup> Id. at 278.

<sup>47</sup> Id. at 279.

<sup>48</sup> Id. at 280-281.

<sup>49</sup> Id. at 281-282.

<sup>50</sup> Id. at 298.

<sup>51</sup> Id. at 284-299.

**WHEREFORE**, premises considered:

- 1) petitioner City of Makati's "Motion for Reconsideration" of the Decision is hereby **DENIED** for lack of merit; and
- 2) the Resolution dated April 20, 2010 granting petitioner City of Makati's "Motion for Suspension of the Collection of Tax" is hereby **RECALLED AND SET ASIDE**.

**SO ORDERED**.<sup>52</sup> (Emphases in the original)

The City of Makati elevated the case to the CTA *En Banc*.

### **Ruling of the CTA *En Banc***

In its Decision<sup>53</sup> dated September 16, 2011, the CTA *En Banc* affirmed the CTA Second Division:

**WHEREFORE**, premises considered, the Assailed Decision dated December 16, 2009 and the Assailed Resolution dated May 25, 2010, promulgated both by the CTA Former Second Division are hereby **AFFIRMED *in toto*** and the instant Petition for Review is hereby **DISMISSED** for lack of merit.

**SO ORDERED**.<sup>54</sup> (Emphases and italics in the original)

The CTA *En Banc* did not find any reason to deviate from the findings of the CTA Second Division as the latter correctly ruled that the FDDA has factual and legal bases, therefore, valid.<sup>55</sup> With its validity upheld, the FDDA is the Decision appealable to the CTA. In the said FDDA, the BIR, through Regional Director Adriano, ordered the City of Makati to pay the stated deficiency taxes within 30 days from receipt of the letter. Also, the City of Makati was warned that failure to settle its obligation will give the BIR the right to collect by means of summary remedies provided by law. The CTA *En Banc* emphasized that Regional Director Adriano reiterated the finality of such Decision in his letter dated August 18, 2004.<sup>56</sup>

In addition, the CTA *En Banc* held that the disapproval of the Compromise Agreement did not give rise to an obligation on the part of the BIR to return the ₱200 million paid by the City of Makati, pursuant to the principle of *solutio indebiti* under the Civil Code.<sup>57</sup> The CTA *En Banc* explained that the payment of ₱200 million did not amount to any unjust enrichment on the part of the BIR. Hence, it is only proper that the amount be considered as partial payment of the tax obligation and shall be duly deducted from the deficiency

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<sup>52</sup> Id. at 299.

<sup>53</sup> Id. at 42-69.

<sup>54</sup> Id. at 68.

<sup>55</sup> Id. at 56.

<sup>56</sup> Id. at 61.

<sup>57</sup> Id. at 62.

taxes that the City of Makati has to settle with the BIR.<sup>58</sup> Given that the City of Makati failed to settle its obligation within the prescribed period, the BIR reasonably resorted to the summary remedies of attachment, levy, or garnishment.<sup>59</sup>

Lastly, the CTA *En Banc* ruled that there is no basis for the suspension of the collection of taxes during the pendency of the Petition for Review. “The rules are clear, collection of tax will not be suspended except for meritorious cases where collection of taxpayer’s liability may jeopardize the interest of the Government or taxpayer.”<sup>60</sup> Initially, the CTA Second Division granted the motion filed by the City of Makati for the suspension of collection of tax but subject to certain conditions, particularly the filing of a surety bond. As the City of Makati failed to comply with the said condition, the CTA *En Banc* is constrained to recall and set aside the order suspending collection of taxes.<sup>61</sup>

The City of Makati filed a Motion for Reconsideration, which was likewise denied by the CTA *En Banc* in its Resolution dated January 19, 2012, to wit:

**WHEREFORE**, there having no new matters or issues advanced by petitioner in its Motion which may compel this Court to reverse, modify or amend the Assailed Decision of the CTA *En Banc*, the instant **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Our Decision dated September 16, 2011 denying present Petition for Review for lack of merit stands. Accordingly, petitioner is hereby ordered to pay to respondent deficiency taxes for the taxable years 1999 to 2001 and 2002 to 2004 in the amounts of One Billion Forty Six Million Eight Hundred Eighty Three Thousand Eight Hundred Forty Six and 08/100 Pesos ([P]1,046,883,846.08) and Two Hundred Seventeen Million Eight Hundred Seven Thousand Three Hundred Thirty Nine and 66/100 Pesos ([P]217,807,339.66), respectively.

**SO ORDERED.**<sup>62</sup> (Emphases and italics in the original)

### **Petition for Review on *Certiorari***

Undaunted, the City of Makati filed before the Court a petition for review on *certiorari* and raised the following arguments: (1) that the assessment letter dated October 16, 2003 for taxable years 1999–2001 and for 2002–2004 are not valid;<sup>63</sup> (2) the FDDA dated October 16, 2003 cannot be considered final assessments subject of a petition for review before the CTA because of the subsequent actions of the BIR, as well as that of the Honorable SOF;<sup>64</sup> (3) the ₱200 million paid by the City of Makati shall be returned by the BIR since the

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<sup>58</sup> Id. at 63.

<sup>59</sup> Id. at 64-65.

<sup>60</sup> Id. at 67.

<sup>61</sup> Id.

<sup>62</sup> Id. at 74.

<sup>63</sup> Id. at 11.

<sup>64</sup> Id. at 20.

compromise agreement was subsequently disapproved;<sup>65</sup> (4) the properties of the City of Makati are public properties that cannot be subjected to attachment, levy, or garnishment;<sup>66</sup> and (5) the collection of taxes during the pendency of the case will cause disservice to the constituents of the City of Makati as they will ultimately be deprived of their right to avail basic services from the said local government unit.<sup>67</sup>

The CIR, through the Office of the Solicitor General (OSG), filed its Comment<sup>68</sup> dated October 5, 2012, while the City of Makati filed a Reply<sup>69</sup> dated January 4, 2013. In a Resolution<sup>70</sup> dated June 5, 2013, the Court noted the letter dated March 14, 2013 of CAP General Insurance Corporation. In the same Resolution, the said letter was referred to the Chief Judicial Records Office for appropriate action of the request for documents for the purpose of the renewal of the bond in this case.<sup>71</sup>

### **Manifestation of Payment**

On July 3, 2013, the City of Makati filed a Manifestation/Motion<sup>72</sup> stating that it paid the amount of ₱400 million, evidenced by BIR Tax Payment Deposit Slip and BIR Payment Form No. 0605, for the settlement of the case at bar. The City of Makati further stated that this payment of ₱400 million is in addition to the ₱200 million payment made in 2005–2006. Thus, the City of Makati prayed that the resolution of the case at bar be held in abeyance to give chance to its extra-judicial settlement.<sup>73</sup>

On September 2, 2013, the Court issued a Resolution<sup>74</sup> wherein the above Manifestation/Motion filed by the City of Makati was noted.

On June 17, 2015, the parties were required to move in the premises by informing the Court of any supervening events or subsequent developments pertinent to the case which may be of help for its immediate disposition or may have rendered the case moot and academic.<sup>75</sup>

### **Motion to Dismiss with Prejudice**

On May 8, 2018, the Court received a Motion to Dismiss with Prejudice<sup>76</sup> filed by the City of Makati, stating that it has already paid an additional amount of ₱301,979,220.58 on April 25, 2017 to the BIR, for the

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<sup>65</sup> Id. at 30.

<sup>66</sup> Id. at 31-33.

<sup>67</sup> Id. at 34.

<sup>68</sup> Id. at 322-339.

<sup>69</sup> Id. at 346-361.

<sup>70</sup> Id. at 368.

<sup>71</sup> Id.

<sup>72</sup> Id. at 370-372.

<sup>73</sup> Id. at 370.

<sup>74</sup> Id. at 375-B.

<sup>75</sup> Id. at 383.

<sup>76</sup> Id. at 384-385.

final resolution of the case. In consideration of the payments made, the parties agreed to release each other from any and all liabilities, claims, and demands related to the present case. Ultimately, the City of Makati prayed that the case be dismissed with prejudice.<sup>77</sup>

The Court, on August 9, 2017<sup>78</sup> and September 11, 2019,<sup>79</sup> again required the parties to move in the premises.

Initially, the CIR, through the OSG, filed a Manifestation<sup>80</sup> dated October 1, 2019. The Manifestation was received by the Court on even date. The CIR pointed out that the Motion to Dismiss with Prejudice filed by the City of Makati failed to establish that the BIR payment slip amount to ₱301,979,220.58 is the full payment of the obligation of the City of Makati for the final settlement of the present case.<sup>81</sup>

Another Comment/Manifestation,<sup>82</sup> similarly dated October 1, 2019, was filed by the CIR through the OSG. This Comment/Manifestation was received by the Court on October 21, 2019.<sup>83</sup> This time, the CIR states that “he interposes no objection to the petitioner’s motion to dismiss considering that the deficiency taxes subject of the present case had already been settled by petitioner through compromise settlement duly approved by Commissioner Caesar R. Dulay.”<sup>84</sup>

### Compliance

In response to the directive of the Court on September 11, 2019, the CIR filed a Manifestation (Compliance)<sup>85</sup> dated December 23, 2019. The CIR, through the OSG, informed the Court that the application of the City of Makati for the compromise amount of ₱901,979,220.58 for its deficiency taxes had been approved by Commissioner Caesar R. Dulay. However, the OSG begs the indulgence of the Court since a copy of the approved compromise document could not be attached. The OSG averred that it has no copy of the said document. The OSG further explained that “[n]either the Revenue District Office (RDO) No. 49, North Makati (RDO 49) where the petitioner is registered has copy of the approved compromise. RDO 49 only provided the undersigned proof of several installment payments of the total amount of [₱]901,979,220.58 which are attached hereto for ready reference.”<sup>86</sup>

On September 16, 2020, the Court resolved as follows:

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<sup>77</sup> Id.  
<sup>78</sup> Id. at 392-A.  
<sup>79</sup> Id. at 392-B.  
<sup>80</sup> Id. at 394-396.  
<sup>81</sup> Id. at 394.  
<sup>82</sup> Id. at 399-400.  
<sup>83</sup> Id. at 399.  
<sup>84</sup> Id.  
<sup>85</sup> Id. at 403-404.  
<sup>86</sup> Id. at 403.

- (2) **REQUIRE** petitioner and respondent to **FURNISH** the Court with the compromise document allegedly approved by the BIR within ten (10) days from notice.<sup>87</sup> (Emphasis in the original)

The OSG repeatedly asked the Court for extension of time to comply with the Resolution dated September 16, 2020. In its Manifestation and Motion<sup>88</sup> dated March 25, 2021, the OSG explained that it wrote a letter dated March 19, 2021 to the legal department of the CIR and the City of Makati Legal Office requesting a copy of the compromise agreement, to no avail.<sup>89</sup>

Thereafter, no subsequent filings were made.

### **Ruling of the Court**

#### **I. On the Motion to Dismiss with Prejudice**

The Court must deny the Motion to Dismiss with Prejudice filed by the City of Makati.

In *Gaisano v. Akol*,<sup>90</sup> the Court defined a compromise agreement as a contract whereby the parties make reciprocal concessions, avoid litigation, or put an end to one already commenced. The validity of the compromise agreement depends on its fulfillment of the requisites and principles of contracts dictated by law; its terms and conditions being not contrary to law, morals, good customs, public policy and public order.

Compromise may be the favored method to settle disputes, but when it involves taxes, it may be subject to closer scrutiny by the courts. A compromise agreement involving taxes would affect not just the taxpayer and the BIR, but also the whole nation, the ultimate beneficiary of the tax revenues collected.<sup>91</sup>

Here, there is no compromise agreement to be scrutinized.

Before the Court can sanction a compromise agreement as valid and consequently dismiss a pending case by its virtue, the existence of such compromise agreement must first be established. In its Motion to Dismiss with Prejudice, the City of Makati generally averred the existence of a compromise agreement as follows:

1. After an exhaustive discussion of the facts and circumstances of the case, the Parties have come to an agreement for the amicable resolution of the instant Petition, without admission of any liability on the part of the parties sued, or of the lack of merit of any claims, demand or cause of action on the part of the party or parties asserting the suit.

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<sup>87</sup> Id. at 407.

<sup>88</sup> Id. at 441-442.

<sup>89</sup> Id. at 441.

<sup>90</sup> *Gaisano v. Akol*, 667 Phil. 512, 514 (2011).

<sup>91</sup> *Philippine National Oil Company v. Court of Appeals*, 496 Phil. 506, 576 (2005).

2. Pursuant to the agreement, Petitioner paid the amount of THREE HUNDRED ONE MILLION NINE HUNDRED SEVENTY NINE THOUSAND TWO HUNDRED TWENTY PESOS AND FIFTY EIGHT CENTAVOS (Php 301,979,220.58) on April 25, 2017 to the BIR in addition to the previous payments already made, for the final resolution of this case. Attached, marked and made an integral part of this Motion as *Annex "A"*<sup>92</sup> is a copy of the BIR Payment Slip as proof of payment.
3. Further, as a consequence, the Parties have RELEASED, REMISED, and DISCHARGED one another and/or their representatives, and successors from any and all liabilities, claims, demands, and causes of action, raised or could have been raised in connection with, arising from, or relating to, the instant case including, as well as from any and all forms of action whatsoever, past, present, or future, which the parties had or may now hereafter have by reason of any matter connected with or related to their previous transactions with one another.
4. For the foregoing reasons, the [City of Makati] hereby moves for the dismissal, with prejudice, of the instant case.<sup>93</sup> (Emphasis in the original)

No copy of the alleged compromise agreement was attached; neither did the parties furnish the Court with a copy despite several notices.

The BIR Payment Slip<sup>94</sup> attached with the Motion to Dismiss with Prejudice cannot suffice. It does not prove the existence of a compromise agreement between the City of Makati and the BIR. *First*, nowhere was it shown in the BIR Payment Slip that the amount of ₱301,979,220.58 represents the full and final settlement of the present case. *Second*, the BIR Payment Slip shows that the payment was made for BIR Form No. 0605, accomplished and used by taxpayers for various reasons. According to the guidelines and instructions found at the back of any BIR Form No. 0605,<sup>95</sup> the said form is for taxes and fees which do not require the use of a tax return such as second installment payment for income tax, deficiency tax, delinquency tax, registration fees, penalties, advance payments, deposits, installment payments, etc. In the absence of a copy of the alleged compromise agreement, the Court has no basis to conclude that the BIR Payment Slip was made pursuant to the compromise agreement alleged by the City of Makati, and not for any other reason.

## II. Applicable laws

For proper context, the following are the laws applicable for the resolution of the Petition for Review on *Certiorari*:

1. R.A. No. 8424, otherwise known as "The Tax Reform Act of

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<sup>92</sup> *Rollo*, p. 388.

<sup>93</sup> *Id.* at 384-385.

<sup>94</sup> *Id.* at 388.

<sup>95</sup> Bureau of Internal Revenue, Files, BUREAU OF INTERNAL REVENUE WEBSITE, available at <[https://www.bir.gov.ph/images/bir\\_files/old\\_files/pdf/1210605.pdf](https://www.bir.gov.ph/images/bir_files/old_files/pdf/1210605.pdf)> (Last accessed on February 15, 2023).

1997,” but more commonly referred to as “NIRC of 1997,” specifically, Section 228 thereof which reads:

SEC. 228. *Protesting of Assessment.*— When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

- (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
- (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
- (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
- (d) When the excise tax due on excisable articles has not been paid; or
- (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day



period; otherwise, the decision shall become final, executory and demandable.

2. Section 205 of the NIRC of 1997, to wit:

SEC. 205. *Remedies for the Collection of Delinquent Taxes.*— The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, that the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.

3. Section 218, NIRC of 1997:

SEC. 218. *Injunction not Available to Restrain Collection of Tax.*— No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.

4. R.R. No. 12-99,<sup>96</sup> prior to its amendment by R.R. No. 18-2013 - Implementing the Provisions of the NIRC of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

**III. Assessment for taxable years 1999–2001**

Taxes are the lifeblood of the government, for without taxes, the

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<sup>96</sup> Dated September 6, 1999.

government can neither exist nor endure.<sup>97</sup> Thus, the government is given a number of remedies that can be used to ensure the prompt and certain availability of taxes. Among the remedies available to the government is the power to issue deficiency tax assessments upon discovery of the BIR that the assessment made by the taxpayer is deficient, or when no return was made.<sup>98</sup>

### **A. Preliminary Assessment Notice (PAN)**

As part of the due process requirement in the issuance of a deficiency tax assessment, a PAN must first be sent to the taxpayer to inform him of the proposed assessment, together with facts, laws, rules, regulations, and jurisprudence on which it is based. The absence of a PAN renders nugatory any assessment made by the tax authorities.<sup>99</sup>

In order to comply with the due process requirement in the issuance of a PAN and its protest, R.R. No. 12-99<sup>100</sup> requires as follows:

3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

On September 20, 2002, Regional Director Ortega issued a PAN finding the City of Makati liable for deficiency taxes in the total amount of ₱1,320,980,395.63 for taxable years 1999–2002.<sup>101</sup> On October 4, 2002, within the 15-day period quoted above, the City of Makati responded through a letter pointing out the inaccuracies in the PAN.

### **B. Formal Letter of Demand and Final Assessment Notice (FLD/FAN)**

The BIR then issued a Final Assessment Notice (FAN), received by the

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<sup>97</sup> *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 549 Phil. 886, 903 (2007), citing *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 247-248 (2003).

<sup>98</sup> NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, Section 56(B).

<sup>99</sup> *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186 (2010)

<sup>100</sup> IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY, REVENUE REGULATIONS NO. 12-99; dated September 6, 1999.

<sup>101</sup> *Rollo*, p. 248.

City of Makati on October 15, 2002.<sup>102</sup>

The NIRC of 1997 allows the taxpayer to file a letter of protest within 30 days from receipt of the FLD/FAN. This protest in the administrative level may come in the form of a written request for reconsideration or for reinvestigation. In case of the latter, the taxpayer shall submit all relevant supporting documents 60 days from the date of the filing of the letter of protest. If the taxpayer fails to file an administrative protest, then the assessment becomes final, executory, and demandable.<sup>103</sup> Otherwise, the assessment becomes a disputed assessment.

In this case, the assessment is disputed.

Well within the 30-day period from its receipt of the FAN, the City of Makati filed on October 29, 2002 a request for reinvestigation. Another protest letter dated December 26, 2002 followed.

At this point when an administrative protest is filed, the CIR or its duly authorized representative either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied.<sup>104</sup>

### **C. Final Decision on a Disputed Assessment (FDDA)**

The FDDA is the decision rendered by the CIR or its duly authorized representative in cases of disputed assessments. However, not all “decisions” rendered in cases of administrative protests may be considered FDDA.

The FDDA shall state the facts and law on which it is based to provide the taxpayer the opportunity to file an intelligent appeal before the CIR.<sup>105</sup> Merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient and violates the constitutional guarantee that no person shall be deprived of his or her property without due process of law.<sup>106</sup> Thus, R.R. No. 12-99 reads:

*3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.*

On June 5, 2003, Regional Director Adriano *partly denied* the protest letter dated December 26, 2002, ordering the City of Makati to pay its VAT and income tax deficiencies for the taxable years 1999-2001, within 10 days.

<sup>102</sup> Id. at 6-7.

<sup>103</sup> NIRC OF 1997, Section 228.

<sup>104</sup> *Commissioner of Internal Revenue v. Liguigaz Philippines Corp.*, 784 Phil. 874, 890 (2016).

<sup>105</sup> Id. at 891.

<sup>106</sup> *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, supra note 97, at 899.

However, with respect to the protest on the withholding tax on compensation and EWT deficiencies, Regional Director Adriano provided the City of Makati another ten (10) days to submit the required documents, to wit:

In this regard, except for Items A [Underwithholding – WTC]<sup>107</sup> and D [EWT (Underwithholding)],<sup>108</sup> wherein **you are given another ten (10) days to submit the required documents**, it is requested that the aforementioned deficiency internal revenue taxes be paid within ten (10) days from date of receipt hereof, inclusive of the delinquency penalties incident to late payment. Otherwise, this Office shall be constrained to collect the same by means of summary remedies provided by law, in which case, the corresponding warrant of distraint and levy shall be issued by this Office for the collection of your above mentioned delinquent internal tax liabilities.

The above assessments may be settled under the Voluntary Assessment and Abatement Program of the Government, pursuant to the provisions of RR 12-2002 as amended by RR Nos. 17-2002, 18-2002, 23-2002 and 28-2002, the deadline which was extended up to October 31, 2003.<sup>109</sup> (Emphasis supplied)

In response, the City of Makati submitted the following:

- (1) June 20, 2003 – request for extension of another 30 days to support its protest against the assessment. The request also contains the position of the City of Makati on late remittance of taxes withheld on compensation and expanded withholding on certain months;<sup>110</sup>
- (2) June 27 and 30, 2003 – submission of annual information return of income taxes withheld on compensation/alphabetical list of employees and annual information return of creditable income taxes withheld EWT/alphabetical list of income payments for taxable years 1999–2002;<sup>111</sup> and
- (3) July 8, 2003 – explanation on the variances on total compensation per Alpha List of employees against the total personal services.<sup>112</sup>

Acting on these submissions, Regional Director Adriano issued the FDDA dated October 16, 2003:

After considering all the documents and explanation submitted by you as well as the evidence (sic) on record, **this Office hereby resolved the following:**

1. We grant your request for reconsideration on the deficiency income taxes arising from proprietary activities for taxable years 1999, 2000 and 2001 x x x. Hence, the same is hereby cancelled for lack of factual and legal basis.

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<sup>107</sup> *Rollo*, p. 178.

<sup>108</sup> *Id.* at 179.

<sup>109</sup> *Id.* at 180.

<sup>110</sup> *Id.* at 259.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

2. On the issue involving penalties for late remittance of withholding tax on compensation, expanded withholding tax, and withholding of value added tax for taxable years 1999, 2000 and 2001 x x x, the subject matter of your VAAP availment, the same will be forwarded for further review and evaluation by Head, TWG-IVD, Office of the DCIR-Operations Group which has exclusive jurisdiction of VAAP cases pursuant to RSO 604-2002 dated August 26, 2002 and RMO 32-2002 dated November 22, 2002 x x x.
3. **We deny your request for reconsideration on the following:**
  - a. Withholding tax on compensation/wages x x x — For your failure to withhold and remit the correct taxes due in violation of Section 78 of the Tax Code, as implemented by Section 2.78 of Revenue Regulation 2-98 and your failure to submit the Alpha List in prescribed form in accordance with Section 2.83.2 of Revenue Regulations No. 2-98 also x x x;
  - b. Deficiency Tax Assessment on Value-added tax x x x – For your failure to pay the VAT in violation of Section 105 of the Tax Code. Moreover, your failure to register as VAT-registered entity prohibits you from claiming input taxes x x x;
  - c. Deficiency Tax Assessment on Expanded Withholding taxes x x x – For your failure to withhold and remit the correct taxes on income payments in violation of 2.57.2 of Revenue Regulations No. 2-98 x x x;
  - d. Deficiency Tax Assessment on Withholding Value Added x x x Tax on Government Money Payments – For your failure to withhold and remit the correct taxes on purchases, services, and payments to public works contractors prescribed under Section 114 of the Tax Code of 1997, as implemented by Section 4.114 of Revenue Regulations No. 2-98 x x x.

Based on the foregoing, we recomputed **the taxes due from you in the amount of P1,146,883,846.08**, inclusive of interest computed from due date of the tax up to November 25, 2003, summarized as follows:

x x x x

Grand Total:  
P1,146,883,846.08

In this connection, it is requested that the aforesaid deficiency internal revenue taxes **be paid within thirty days from receipt of this letter**. Otherwise, this Office shall be constrained to collect the same by means of summary remedies provided by law, in which case, the corresponding

warrant of distraint and levy/garnishment of your bank accounts shall be issued by this Office for the collection of the same.

**This is our final decision on the matter.**<sup>113</sup>  
(Emphases supplied)

A perusal of the said FDDA reveals substantial compliance with the due process requirement embodied in R.R. No. 12-99.

Be that as it may, the City of Makati tries to convince the Court that the FDDA dated October 16, 2003 is void and produces no legal effect, citing the case of *Commissioner of Internal Revenue v. Reyes*.<sup>114</sup> (*CIR v. Reyes*)

The Court is not convinced.

There is a glaring difference between the FDDA in *CIR v. Reyes* and the FDDA issued in the present case.

In *CIR v. Reyes*, the taxpayer was initially informed of the ongoing investigation for tax assessment purposes. After such notification, the taxpayer received the following: (1) Return Verification Order; (2) Letter of Authority; and (3) PAN for the amount of ₱14,580,618.67. Thereafter, the taxpayer received a FAN and a demand letter for the amount of ₱14,912,205.47, inclusive of surcharge and interest. The Court declared the FAN void since it merely notified the taxpayer of the findings of the CIR, assuming that the taxpayer already knew the law and the facts on which the assessment was based.<sup>115</sup>

In contrast, the FDDA dated October 16, 2003, as quoted above, clearly contains the facts, applicable law, rules and regulation on which the tax deficiency imposed upon the City of Makati were based. It cannot be said that the City of Makati was merely *notified* of the assessment as what happened in *CIR v. Reyes*. Upholding the validity of the FDDA, the CTA *En Banc* aptly pointed out:

The Final Decision on Disputed Assessment and the Amended Assessment Notice, both dated October 16, 2003 likewise show that the subject assessment is the result of the reinvestigation of the Formal Assessment Notice issued on October 14, 2002, taking into account the explanation and the documents in support thereof submitted by [the City of Makati] as well as the evidence on record. The considerable changes resulting from the reinvestigation proves that the subject assessment has factual and legal bases, and therefore complies with the mandatory requirements under the law.

Also, [as emphasized by the Decision and Resolution of the CTA

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<sup>113</sup> Id. at 58-59.

<sup>114</sup> 516 Phil. 176 (2006).

<sup>115</sup> *Commissioner of Internal Revenue v. Reyes*, supra note 114.

Second Division], the fact that [the City of Makati] was able to intelligently protest the subject assessment, as shown in the numerous correspondences between [the City of Makati] and [CIR] belies the allegation that the said assessment lacks basis. [The City of Makati] could not have submitted its explanation and could not have protested on the imposition of tax deficiencies had it not been aware of the basis of the subject assessment.<sup>116</sup>

Verily, the FDDA dated October 16, 2003 was valid as it was issued in accordance with the requirements laid out in Section 228 of the NIRC and 3.1.6 of R.R. No. 12-99. It disposed the administrative protest in full, stating therein the facts and the law on which it was based and that the Decision is final.

#### **D. Appeal to the CTA or CIR**

Section 228 of the NIRC provides that a taxpayer may file an administrative protest against an assessment of the BIR. Thereafter, if the protest was denied in whole or in part, or not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal the same to the CTA. The relevant portions of Section 228 of the NIRC states:

*Sec. 228. Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

x x x x

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

**If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)**

In relation to the foregoing, Section 3.1.5 of R. R. No. 12-99,<sup>117</sup> implementing Section 228 of the NIRC, further provides for the remedies

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<sup>116</sup> *Rollo*, pp. 59-60.

<sup>117</sup> *Supra* note 100.

available to a taxpayer to challenge and question an assessment and subsequently the Decision on the protest of said assessment:

3.1.5. *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x

x x x x

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

**If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.**

**In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Emphases and underscoring supplied)

In *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*,<sup>118</sup> the Court summarized the remedies available to a taxpayer to dispute an assessment:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;
2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest;

<sup>118</sup> G.R. No. 221780, March 25, 2019, citing *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*, 779 Phil. 547 (2016).



3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.<sup>119</sup>

In the present case, the FDDA appealable to the CIR or the CTA is the FDDA dated October 16, 2003. This was received by the City of Makati on October 20, 2003. Consequently, the appeal to the CIR or to the CTA may be filed until November 19, 2003.

However, instead of filing a request for reconsideration before the CIR or an appeal before the CTA, on October 24, 2003, the City of Makati instead filed with **Regional Director Adriano** a request for re-computation and submitted supporting documents. Until after November 19, 2003, no appeal was filed before the CTA; neither was there any request for reconsideration before the CIR. Thus, the CIR correctly found:

The remedy of seeking reconsideration of an FDDA in the Office of the Regional Director is simply not a remedy allowed by law. Thus, when the City [of Makati] chose to file a letter of reconsideration with the Office of the Regional Director, its right to appeal the FDDA before the CTA or to seek a reconsideration of the same before the [CIR] was already barred. Consequently, the assessments issued on October 16, 2003 have become final, executory, demandable and unappealable.<sup>120</sup>

Affirming the CIR, the CTA Second Division fittingly added that “a request for reconsideration directed to a person who is not authorized by law to review decisions of the CIR did not suspend the running of the reglementary period within which to appeal.”<sup>121</sup>

Therefore, Regional Director Adriano acted within the bounds of the law when he informed the City of Makati on August 18, 2004 that its tax deficiency assessments for taxable years 1999–2001 had become final and executory.

### **E. Finality of the FDDA**

Notwithstanding the finality of the FDDA, the City of Makati resorted to a litany of protests including requests for reconsideration and petition for the re-opening of the case.

On April 29, 2005, Regional Director Adriano issued a letter informing the City of Makati that its request for re-opening the 1999–2001 internal revenue tax case was favorably considered. The approval was signed not by the CIR but by the then-Deputy CIR Jose Mario C. Buñag.<sup>122</sup> As a result of the re-opening of the case, the assessment against City of Makati for its deficiency

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<sup>119</sup> Id.

<sup>120</sup> *Rollo*, p. 146.

<sup>121</sup> Id. at 268-269.

<sup>122</sup> Id. at 141.

taxes for 1999–2001 was reduced from ₱1,146,883,846.08 to ₱520,829,896.92.<sup>123</sup> By virtue of these circumstances, the City of Makati insists that the FDDA has not attained finality. This argument, however, has no legal basis.

The CIR is given the exclusive power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the BIR.<sup>124</sup> This power cannot be delegated.<sup>125</sup>

The re-opening of the case for the deficiency taxes of the City of Makati for 1999–2001 was approved by a Deputy CIR, and not by the CIR itself. In fact, the parties stipulated as follows:

3.27. That on 29 April 2005, Regional Director Adriano in a letter informed the [City of Makati] that its request for re-opening the 1999–2001 internal revenue tax case was approved by the Commissioner. The approval was signed for the Commissioner (Guillermo Parayno) by then Deputy Commissioner Jose Mario C. Buñag. x x x<sup>126</sup>

Obviously, the re-opening of case was done without the necessary authority. As a matter of fact, the CIR itself denied the re-opening of the case in its Decision dated June 20, 2009.<sup>127</sup>

The re-opening of the case, simply, has no basis in law. Therefore, it cannot be used as a ground to nullify the finality of FDDA and assessments dated October 16, 2003.<sup>128</sup>

#### **IV. Assessment for taxable years 2002–2004**

A deficiency assessment for taxable years 2002–2004 was issued against the City of Makati on April 11, 2007. Similar to the assessments for taxable years 1999–2001, the Court has no reason to deviate from the findings of the CIR and the CTA that the assessments dated April 11, 2007 complied with the strict requirements of the NIRC of 1997, as well as the relevant provisions of R.R. No. 12-99.

It is important to note that the assessments dated April 11, 2007 covered the 2002–2004 deficiency taxes for the following: (1) withholding tax on compensation; (2) EWT; (3) increments on EWT; (4) VAT; and withholding of VAT.<sup>129</sup> In its protest letter dated May 3, 2007, however, the City of Makati merely requested for the reinvestigation of the assessment for deficiency on withholding taxes on compensation:

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<sup>123</sup> Id. at 207.

<sup>124</sup> NIRC OF 1997, Section 5.

<sup>125</sup> NIRC OF 1997, Section 7.

<sup>126</sup> *Rollo*, p. 8.

<sup>127</sup> Id. at 273.

<sup>128</sup> Id. at 274.

<sup>129</sup> Id. at 76-77.

A close scrutiny of the records of this case disclosed that the main bulk of the subject assessment purportedly represented deficiency withholding taxes on salaries and wages paid by the Makati City Government to its employees for the years from 1999 to 2004. The details of this assessment are shown in the aforesaid letter of demand and assessment notices issued by Regional Director Aspe x x x. However, a cursory examination thereof shows that the amounts shown in ANNEXES “A” and “B” are markedly different from each other and are wantonly irreconcilable. Our records also disclosed that the purported deficiency withholding taxes were determined by your tax auditors based on the lump sum amount of compensation paid to employees, as shown in the COA Report versus the Alpha List by this City Government.<sup>130</sup>

Failing to contest all other assessments, the City of Makati effectively admitted them, thus, liable for their payment.<sup>131</sup> On top of that, the City of Makati did not submit any relevant documents to support its protest. Pursuant to Section 228 of the NIRC of 1997, failure to do so renders the assessment final.<sup>132</sup>

The assessments for taxable years 2002–2004 had the same fate as those made for taxable years 1999–2001. They all became final, demandable, and executory following the failure of the City of Makati to file a timely protest and a proper appeal, as the case may be.

#### V. Compromise payments

The CIR disapproved the compromise offer of the City of Makati. Prior to such disapproval, a total amount of ₱200 million had already been paid to the BIR by the City of Makati. Now it is argued that pursuant to the principle of *solutio indebiti* and as a necessary consequence of the disapproval of the compromise offer, the BIR must return to the City of Makati the ₱200 million.

In this regard, the Court fully agrees with the CTA *En Banc* that *solutio indebiti* is not applicable between BIR and the City of Makati.

There is *solutio indebiti* when: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake and not through liberality or some other cause.<sup>133</sup> Neither of these elements is present here. *First*, the City of Makati, as a payor, has a binding relation with the BIR as the taxing authority in this jurisdiction. *Second*, the finality of the FDDA dated October 16, 2003 rendered the assessments for 1999–2001 demandable, enforceable, and collectible.<sup>134</sup>

The payment of ₱200 million was not made through mistake; it is rightly

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<sup>130</sup> Id. at 94.

<sup>131</sup> Id. at 278.

<sup>132</sup> Id. at 280.

<sup>133</sup> *Commissioner of Internal Revenue v. Manila Electric Co.*, 735 Phil. 547, 559 (2014).

<sup>134</sup> *Rollo*, p. 63.

considered as partial settlement of the tax obligation of the City of Makati.<sup>135</sup> The same must be said about the subsequent ₱301,979,220.58 paid by the City of Makati, allegedly made for the full and final settlement of the present case. Failure to prove the existence of a compromise agreement does not *ipso facto* translate the latter payment to one made through mistake. The fact remains that the City of Makati has a duty to pay the BIR.

## VI. Collection of Taxes

The government is given two ways to collect assessments that have become final and unappealable: (1) summary or administrative remedies; and (2) judicial remedies, whether civil or criminal.<sup>136</sup> Collection by distraint and levy, among others, are known as the summary, extra-judicial or administrative enforcement remedies.<sup>137</sup>

The BIR subjected the properties of the City of Makati to attachment, levy, or garnishment. The latter opposed on the ground that the actions resorted to by the BIR would cause disservice to the constituents of the City of Makati; likewise, it claimed that the properties are owned by the public.

Generally, no court can issue an injunction to restrain collection of internal revenue taxes, fees, or charges imposed by the NIRC of 1997.<sup>138</sup> In exceptional cases, however, the CTA can issue injunctive writs to restrain the collection of taxes and to dispense with the deposit of the amount claimed or the bond, whenever the method employed by the CIR in the collection of the tax jeopardizes the interests of the taxpayer for being patently in violation of the law.<sup>139</sup>

Understanding the predicament of the City of Makati, the CTA Second Division initially granted its prayer and allowed for the posting of surety bond subject to the submission of some documents. The City of Makati failed to comply, forcing the CTA Second Division to recall its initial Order for the suspension of the tax collection.<sup>140</sup> The City of Makati was given an exceptional opportunity but wasted it. The required documents for the posting of the surety bond were not unreasonable and may easily be complied with.

If truth be told, too much leeway had already been extended to the City of Makati. Numerous opportunities had been given. Continuing with this leniency will cause *injustice* not only to the constituents of the City of Makati, but also to the whole Republic of the Philippines.<sup>141</sup>

Plainly, the Court cannot find *any* reason to grant the prayer of the City

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<sup>135</sup> Id. at 63.

<sup>136</sup> NIRC OF 1997, Section 205.

<sup>137</sup> NIRC OF 1997, Section 206–212.

<sup>138</sup> NIRC OF 1997, Section 218.

<sup>139</sup> *Spouses Emmanuel and Jinkee Pacquiao v. Court of Tax Appeals*, 784 Phil. 220 (2016).

<sup>140</sup> *Rollo*, p. 67.

<sup>141</sup> Id. at 65.

of Makati to suspend the collection of its deficiency taxes for 1999–2001 and 2002–2004.

Finally, deficiency interest shall be imposed on the tax liabilities of the City of Makati pursuant to Section 249<sup>142</sup> of the NIRC of 1997. However, in light of the amendments introduced by R.A. No. 10963,<sup>143</sup> there is a need for the Court to modify the ruling of the CTA:

Section 249 now reads:

“Sec. 249. *Interest* –

(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

(B) *Deficiency Interest* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.”

Accordingly, since the rate of interest under Bangko Sentral ng Pilipinas Memorandum No. 799 series of 2013 for loans or forbearance of money in the absence of express stipulation is 6%, the rate of legal interest imposable under the above section shall be twelve percent (12%).<sup>144</sup> However, considering that the tax liabilities herein became due before the effectivity of R.A. No. 10963, the applicable deficiency interest shall be computed at twenty percent (20%) for the period up to December 31, 2017 and thereafter at twelve percent (12%) for the period January 1, 2018 until full payment of the tax liability.<sup>145</sup>

The Transitory Provision of BIR Revenue Regulation No. 21-2018,

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<sup>142</sup> SEC. 249. *Interest.* —

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

(B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

<sup>143</sup> OTHERWISE KNOWN AS THE “TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN)” LAW.

<sup>144</sup> REVENUE REGULATION NO. 21-2018, Section 2.

<sup>145</sup> REVENUE REGULATION NO. 21-2018, Section 6.

summarized the applicable interest rates vis-à-vis the period when the tax liabilities became due as follows:

Period	Applicable Interest Type and Rate
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

Anent the simultaneous imposition of deficiency interest and delinquency interest, the Court sitting *En Banc* clarified its application given the amendments introduced by R.A. No. 10963 in the case of *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*.<sup>146</sup>

Prior to its amendment Section 249 of the NIRC of 1997 allowed for the simultaneous imposition of deficiency interest and delinquency interest.<sup>147</sup> However, given the amendments introduced by R.A. No. 10963, deficiency and delinquency interest can no longer be imposed simultaneously.<sup>148</sup> Thus, deficiency and delinquency interests under the NIRC of 1997 shall be imposed simultaneously but only until December 31, 2017. Beginning January 1, 2018 or upon the effectivity of R.A. No. 10963, only deficiency or delinquency interest at the prevailing legal rate of 12% shall accrue on the unpaid amount of tax until fully paid.<sup>149</sup>

**WHEREFORE**, the Motion to Dismiss with Prejudice and the Petition for Review on *Certiorari*, both filed by the petitioner City of Makati, are **DENIED**. The Decision dated September 16, 2011 and Resolution dated January 19, 2012 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 641 (CTA Case No. 7809) are **AFFIRMED with MODIFICATION**.

The City of Makati is hereby **ORDERED TO PAY** the Bureau of Internal Revenue deficiency taxes for taxable years 1999–2001 and 2002–2004 in the amounts of ₱1,046,883,846.08 and ₱217,807,339.66, respectively. In addition, the City of Makati is likewise **ORDERED TO PAY** deficiency interest and delinquency interest computed by the Bureau of Internal Revenue, as guided below.

The Bureau of Internal Revenue is **DIRECTED** as follows:

- (1) Deduct from the foregoing the following payments already made by the City of Makati: (a) ₱400,000,000.00; and (b) ₱301,979,220.58;

<sup>146</sup> G.R. No. 226680, August 30, 2022.

<sup>147</sup> *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*, supra, citing *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 211589, March 12, 2018.

<sup>148</sup> Section 75 of REPUBLIC ACT NO. 10963, amending in particular Section 249(A) of the NIRC of 1997.

<sup>149</sup> *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*, supra note 147, citing *E.E. Black Ltd.-Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 221655, January 20, 2021.

- (2) Impose a deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency taxes of the City of Makati for taxable years 1999–2001 and 2002–2004, computed from the respective date prescribed for their payments until December 31, 2017;
- (3) Impose a delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of deficiency taxes of the City of Makati for taxable years 1999–2001, and on the 20% deficiency interest which have accrued as stated in paragraph (2), computed from November 19, 2003 until December 31, 2017 pursuant to Section 249(C) of the National Internal Revenue Code of 1997;
- (4) Impose a delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount of deficiency taxes of the City of Makati for taxable years 2002–2004, and on the 20% deficiency interest which have accrued as stated in paragraph (2), computed from November 20, 2007 until December 31, 2017 pursuant to Section 249(C) of the National Internal Revenue Code of 1997; and
- (5) Impose a delinquency interest at the rate of twelve percent (12%) *per annum* on the unpaid amount for taxable years 1999–2001 and 2002–2004 (*i.e.*, basic tax plus surcharge and interests computed in the foregoing paragraphs) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C)(3) of the 1997 Tax Code, as amended by Republic Act No. 10963.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
*(209)*

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