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THIRD DIVISION

[G.R. No. 232663; May 3, 2021]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v*. **SPOUSES REMIGIO P. MAGAAN AND LETICIA L. MAGAAN,** *Respondents*.

D E C I S I O N

LEONEN, *J.*:

Due process requires that taxpayers be sufficiently informed of the factual basis for the allegation of fraud in the filing of their tax returns. Assessments must be based on facts and not mere presumptions. A taxable partnership has a separate juridical personality from its partners and is liable for income taxation. Without clear and convincing proof that the taxpayers received taxable income personally, or through the partnership, no intention to evade payment of taxes may be inferred.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc*, which reversed the Decision[4] and Resolution[5] of the Court

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[1] *Rollo*, pp. 63-111. Filed under Rule 45 of the Rules of Court.

[2] Id. at 112-144. The January 11, 2017 Decision in CTA EB No. 1338 was penned by Associate Justice Lovell R. Bautista, and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Presiding Justice Roman G. del Rosario filed a dissenting opinion, which was joined by Associate Justices Juanito C. Castañeda and Cielito N. Mindaro-Grulla.

[3] Id. at 145-158. The June 28, 2017 Resolution in CTA EB No. 1338 was penned by Associate Justice Lovell R. Bautista, and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Presiding Justice Roman G. Del Rosario filed a dissenting opinion, which was joined by Associate Justices Juanito C. Castañeda and Cielito N. Mindaro-Grulla.

[4] Id. at 199-237. The March 9, 2015 Decision in CTA Case. No. 7866 was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

[5] Id. at 238-248. The June 30, 2015 Resolution in CTA Case No. 7866 was

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of Tax Appeals Second Division. In so ruling, it cancelled the deficiency assessments for income and percentage taxes against Remigio and Leticia Magaan (the Magaan Spouses) for 1998, 1999, and 2000.

On November 9, 2005, a confidential informant filed a Complaint-Affidavit before the Bureau of Internal Revenue. They alleged that since 1998, the Magaan Spouses had been operating two financial companies, Imilec Tradehaus and Services Company (Imilec Tradehaus) and L4R Realty and Development Corporation (L4R Realty).The confidential informant reported that the spouses allegedly earned ₱35,498,477.62 from April 1998 to January 2002, but this income was not declared in their income tax returns.[6]

On February 9, 2006, the Bureau of Internal Revenue issued a Letter of Authority for the examination and audit of the Magaan Spouses'/Imilec Tradehaus's books of accounts and other accounting records for internal revenue taxes covering taxable years 1998 to 2001.[7]

On February 28, 2006, the Magaan Spouses were given a Final Notice to present their books of accounts and other accounting records to the investigating team not later than 10 working days from receiving the notice.[8] Thereafter, a Notice for an Informal Conference was issued.[9] The Magaan Spouses also received a Subpoena *Duces Tecum* instructing them to appear before the Chief of the Prosecution Division on July 4, 2006, and to bring books of accounts, tax returns and payments, and other records for taxable years 1998 to 2001.[10]

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penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

[6] Id. at 16.

[7] Id. at 278-279.

[8] Id. at 280.

[9] Id. at 281.

[10] Id. at 282-283.

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Remigio later sent a compliance letter dated July 3, 2006, claiming that they were not involved with Imilec Tradehaus or in any of its business transactions. He attached its Articles of Partnership to prove that they were not partners of Imilec Tradehaus.[11]

In its September 25, 2006 letter, the Bureau of Internal Revenue refused to give due course to the Magaan Spouses' compliance letter for being belatedly filed. It also denied their allegation that they were not connected with Imilec Tradehaus, noting that the spouses continued the partnership's lending operations after its legal existence had been terminated on February 16, 1999. It gave the spouses another five days to comply with the Subpoena.[12]

On June 20, 2007, the Bureau of Internal Revenue issued a Preliminary Assessment Notice assessing deficiency income and percentage taxes from 1998 to 2000, respectively amounting to ₱20,773,278.63 and ₱1,981,362.40. Allegedly, the undeclared income was based on the checks issued to the Magaan Spouses, which were undeclared for that period.[13]

For their failure to comply with the Subpoena, the Bureau of Internal Revenue filed two Complaints against the Magaan Spouses for violation of Section 266, in relation to Section 5 of the National Internal Revenue Code.[14] Upon the Office of the Prosecutor's finding of probable cause,[15] an Information was filed before the Metropolitan Trial Court.[16]

On October 16, 2007, the Magaan Spouses sent a letter questioning the basis of the Preliminary Assessment Notice. They requested copies of the checks and the documents linking them to Imilec Tradehaus.[17]

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[11] Id. at 284-287.

[12] Id. at 295.

[13] Id. at 296-297.

[14] The complaints were docketed as I.S. Nos. 07-2551 and 07-2552.

[15] *Rollo*, pp. 288-290.

[16] Id. at 291. The information was docketed as Criminal Case No. 140067.

[17] Id. at 298.

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Instead of the requested documents, the Magaan Spouses received a tabular summary of check payments with the payee, the amounts, and the banks where the checks were deposited.[18] It included a detailed computation of their income and percentage tax liabilities based on the check payments.[19]

On November 13, 2007, the Magaan Spouses reiterated their request for copies of the actual documents because the summaries furnished to them were "inadequate and confusing."[20] Allegedly, the computations stated in these documents resulted in greater tax liabilities than those stated in the Preliminary Assessment Notice.[21]

The Bureau of Internal Revenue denied their request for copies of the checks because the identity of the informer would be revealed.[22] The Magaan Spouses asked for reconsideration, arguing that the identity of the informant had already been disclosed in the joint resolution in the criminal case filed against them.[23]

On July 28, 2008, the Bureau of Internal Revenue issued the Formal Letter of Demand with Audit Result/Assessment Notices.[24] The deficiency income taxes, surcharges, and interests were as follows:

Year	Basic	Surcharge	Interest	Total
1998[25]	1,541,319.00	770,659.50	2,851,440.15	5,163,418.65
1999[26]	4,850,045.13	2,425,022.57	8,042,991.51	15,318,059.21
2000[27]	585,632.96	292,816.48	854,048.06	1,732,497.51

[18] Id. at 69 and 300-301.

[19] Id. at 302-307.

[20] Id. at 308.

[21] Id.

[22] Id. at 309.

[23] Id. at 310.

[24] Id. at 311-313. The Formal Letter of Demand was issued by Deputy Commissioner Gregorio C. Cabantac.

[25] Id. at 311. Assessment No. ES-IT-1998-0699.

[26] Id. at 312. Assessment No. ES-IT-1999-0701.

[27] Id.

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Meanwhile, the deficiency percentage taxes, surcharges, and interests were as follows:

Year	Basic	Surcharge	Interest	Total
1998[28]	145,860.00	72,930.00	274,703.00	493,493.00
1999[29]	450,105.92	225,052.96	757,678.30	1,432,837.18
2000[30]	63,385.50	31,692.80	94,021.83	189,100.13

On August 26, 2008, the Magaan Spouses filed a letter protesting the Formal Letter of Demand.[31]

On January 5, 2009,[32] the Magaan Spouses received the Final Decision on Disputed Assessment, where the Bureau of Internal Revenue denied their protest for lack of factual and legal bases. The spouses were assessed a total of ₱24,329,405.68 worth of deficiency taxes inclusive of surcharge and interests.[33]

On February 3, 2009, the Magaan Spouses filed a Petition for Review[34] before the Court of Tax Appeals. In turn, the Commissioner of Internal Revenue filed an Answer. After pre-trial, trial ensued.[35]

On November 17, 2009, the Magaan Spouses presented their evidence and filed their formal offer. The Court of Tax Appeals Second Division admitted their exhibits except for the original documents they failed to present.[36]

Meanwhile, the Commissioner of Internal Revenue submitted the affidavit of Yolanda G. Maniwang (Maniwang). The spouses opposed

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[28] Id. at 311. Assessment No. ES-IT-1998-0700.

[29] Id. at 312. Assessment No. ES-IT-1999-0702.

[30] Id.

[31] Id. at 322-323.

[32] Id. at 19.

[33] Id. at 276-277.

[34] Id. at 159-198. Docketed as CTA Case No. 7866.

[35] Id. at 119.

[36] Id.

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her presentation as a witness because she was the confidential informant whose participation in the proceedings should have ended upon the submission of the investigation report. Maniwang's testimony was, however, eventually allowed to be presented.[37]

The Commissioner of Internal Revenue later submitted its Formal Offer of Documentary Evidence. All but the photocopied exhibits of the check payments were admitted.[38] The Commissioner moved to set a hearing to mark the originals and to file a supplemental formal offer of evidence. This was granted and the exhibits were marked as faithful copies of the original. However, the Commissioner failed to file a supplemental formal offer, and was deemed to have waived the right to do so.[39]

The parties were directed to file their memoranda, but only the Magaan Spouses filed their Memorandum.[40]

In the March 9, 2015 Decision,[41] the Court of Tax Appeals Second Division denied the Magaan Spouses' Petition for Review. The dispositive portion reads:

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. Accordingly, petitioner spouses are liable for deficiency income tax and percentage tax for the years 1998, 1999 and 2000 in the aggregate amounts of ₱9,900,203.90 and ₱1,560,465.22, respectively, inclusive of the 50% surcharge imposed under Section 248(B) of the NIRC of 1997, summarized as follows:

DEFICIENCY INCOME TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	₱1,171,570.00	₱585,785.00	₱1,757,355.00
1999	5,282,006.54	2,641,003.26	7,923,009.80
2000	146,559.40	73,279.70	219,839.10
Total	**₱6,600,135.94**	**₱3,300,067.96**	**₱9,900,203.90**

[37] Id. at 120.

[38] Id. at 120-121.

[39] Id. at 212.

[40] Id. at 121-122.

[41] Id. at 199-237.

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DEFICIENCY PERCENTAGE TAX			
Taxable Year	**Basic Tax**	**Surcharge**	**Total**
1998	₱188,725.00	₱94,362.50	₱283,087.50
1999	815,625.24	407,812.62	1,223,437.86
2000	35,959.90	17,979.96	53,939.86
Total	**₱1,040,310.14**	**₱520,155.08**	**₱1,560,465.22**

In addition, petitioner spouses are liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC of 1997, as amended, on the:

1. basic deficiency income taxes of ₱1,171,570.00, ₱5,282,006.54 and ₱146,559.40 for the years 1998, 1999 and 2000, respectively, computed from April 15, 1999, 2000 and 2001 until full payment thereof; and

2. basic deficiency percentage taxes of ₱188,725.00, ₱815,625.24 and ₱35,959.90 for the years 1998, 1999 and 2000, respectively, computed from January 25, 1999, 2000 and 2001 until full payment thereof; and

(b) Delinquency interest at the rate of 20% per annum on the total amounts due of ₱9,900,203.90 and ₱1,560,465.22 representing deficiency income tax and percentage tax, respectively and on the deficiency interest which have accrued as aforestated in (a) computed from January 5, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[42] (Emphasis in the original, citation omitted)

The Court of Tax Appeals Second Division held that the Magaan Spouses may be held liable based on Maniwang's confidential information.[43] It found that the spouses received income from the checks issued by Maniwang, but these were not declared in their tax returns from 1998 to 2000.[44] Even if

[42] Id. at 236-237.

[43] Id. at 215.

[44] Id. at 219.

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the checks were not formally offered in evidence, these were deemed to have been duly identified by Maniwang, originally marked, and incorporated in the case records.[45]

The Second Division also observed that the check payments corresponded to the restructured loan stated in the Real Estate Mortgage that Remigio Magaan, Rubilina M. Simbulan, and Roselita M. Joanino executed with Maniwang and her husband.[46] Since there was a restructured loan, the Second Division concluded that a loan must have existed before the Real Estate Mortgage was executed on October 6, 1999.[47] Considering the Magaan Spouses' failure to refute the evidence against them, it held them liable for deficiency income and percentage assessments, surcharge, and interests based on the total amount of the checks.[48]

In its June 30, 2015 Resolution,[49] the Court of Tax Appeals Second Division denied the Magaan Spouses' Motion for Reconsideration.

On August 11, 2015, the Magaan Spouses filed a Petition for Review before the Court of Tax Appeals *En Banc*.[50]

In a January 11, 2017 Decision,[51] the Court of Tax Appeals *En Banc* reversed the Second Division's rulings. The dispositive portion reads:

> **WHEREFORE**, premises considered, the Petition for Review filed by Spouses Remigio P. Magaan and Leticia L. Magaan is hereby GRANTED. The Decision dated March 9, 2015 and the Resolution dated June 30, 2015 are **REVERSED** and **SET ASIDE**. Consequently, Assessment Nos. ES-IT-1998-0699, ES-PT-1998-0700, ES-IT-1999-0701, ES-PT-1999-0702, ES-IT-2000-0703 and ES-PT-2000-0704 are **CANCELLED**.
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> **SO ORDERED.**[52] (Emphasis in the original)

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[45] Id. at 219-221.

[46] Id. at 228-230.

[47] Id. at 230.

[48] Id. at 230-231.

[49] Id. at 238-248.

[50] Id. at 113. Docketed as CTA EB No. 1338.

[51] Id. at 113-141.

[52] Id. at 140.

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The Court of Tax Appeals *En Banc* held that since fraud was not proven, the Second Division erroneously applied the 10-year prescription period.[53] It held that the spouses were assessed as if they filed no return, when in fact, as found by the Second Division, the Bureau of Internal Revenue had issued a certification that they did so.[54]

The *En Banc* also ruled that the Commissioner of Internal Revenue failed to prove that the Magaan Spouses intentionally evaded payment of correct taxes.[55] The Commissioner was not able to present adequate proof that they owned and operated Imilec Tradehaus, or that its registered partners were the spouses' dummies.[56] It also failed to prove that the bank accounts in which the checks were deposited belonged to the spouses. The *En Banc* noted that Maniwang had admitted having no proof that the account numbers actually belonged to the spouses.[57]

The *En Banc* then declared the assessments void for lacking factual and legal bases.[58] It observed that there were no details in the Formal Letter of Demand elaborating how the assessed amount was computed.[59]

Finally, the *En Banc* did not apply the disputable presumption that assessments are correct, noting that the assessment of deficiency income and percentage taxes are unfounded.[60]

Presiding Justice Roman G. Del Rosario (Justice Del Rosario) dissented from the *En Banc*'s ruling, and he was joined by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla. According to him, the Commissioner of Internal Revenue sufficiently

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[53] Id. at 125.

[54] Id. at 128.

[55] Id. at 130.

[56] Id. at 138-140.

[57] Id. at 131.

[58] Id.

[59] Id. at 132.

[60] Id. at 138-139.

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proved that the Magaan Spouses committed fraud in not declaring the interest income from the loan secured by the Real Estate Mortgage, which had a stipulated interest of 5% per month. He said that the Real Estate Mortgage, as a notarized document, is entitled to full faith and credit on its face and without need of further proof of authenticity.[61]

Justice Del Rosario added that Maniwang's testimony that she paid the loan was unrebutted. She testified that upon the spouses' instruction, she issued the checks to Imilec Tradehaus. The Magaan Spouses never denied that the loan existed, or that they had been paid by Maniwang, and nor did they question the authenticity of the Real Estate Mortgage. Fraud having been proven, he said that the 10-year prescriptive period applied, and the assessments had not prescribed.[62]

In its June 28, 2017 Resolution,[63] the Court of Tax Appeals *En Banc* denied the Commissioner of Internal Revenue's Motion for Reconsideration. Justice Del Rosario reiterated his dissent, joined by the same justices.

On August 29, 2017, after having moved for extension,[64] the Commissioner of Internal Revenue filed this Petition.[65] Respondent Magaan Spouses filed their Comment[66] on January 3, 2018, and in turn, petitioner filed a Reply[67] on February 22, 2019.

Petitioner first insists that while they filed a Rule 45 petition, this case falls under the exception that such petitions may only raise questions of law. Petitioner claims that the Court of Tax Appeals *En Banc*'s factual findings were totally devoid of support or were glaringly erroneous, constituting grave abuse of discretion.[68]

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[61] Id. at 143.

[62] Id. at 143-144.

[63] Id. at 146-152.

[64] Id. at 3-11.

[65] Id. at 63-103.

[66] Id. at 536-542.

[67] Id. at 555-562.

[68] Id. at 79.

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Petitioner then argues that the tax assessments against respondents had factual and legal bases. Allegedly, through Maniwang's confidential information, petitioner discovered respondents' underdeclared income from their operation of Imilec Tradehaus and L4R Realty.[69] After receiving the confidential information, petitioner sent the required notices to respondents to present their tax returns, books of accounts, and other records. They point out that despite receiving these notices, including a Subpoena, respondents only submitted the Articles of Partnership of Imilec Tradehaus on July 3, 2006 to prove that they were not its partners.[70]

For respondents' failure to submit the required documents, petitioner invokes the best evidence obtainable under Section 6(B) of the National Internal Revenue Code. This evidence is the information provided by Maniwang as a person who personally transacted with respondents,[71] having issued them several checks. Petitioner adds that the loans' existence was also confirmed by the notarized Real Estate Mortgage that Maniwang had executed in favor of respondent Remigio Magaan and others as collateral for their loan obligations.[72]

The existence of the checks was also allegedly established upon the submission of the originally marked exhibits.[73] Citing *Laborte v. Pagsanjan Tourism Consumers' Cooperative*,[74] petitioner argues that, notwithstanding their failure to file a supplementary formal offer, the original checks should be considered since these have been duly identified by Maniwang and incorporated in the case records.[75]

Petitioner relies on the amounts stated in the checks as basis for the deficiency assessments against respondents. Petitioner notes that respondents were well informed of the factual and legal bases of the

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[69] Id. at 81.

[70] Id. at 82.

[71] Id. at 82-83.

[72] Id.

[73] Id. at 85.

[74] 724 Phil. 434 (2014) [Per J. Reyes, First Division].

[75] *Rollo*, pp. 84-87.

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assessments through notices and letters, and had the opportunity to contest these, but simply ignored them.[76]

Finally, petitioner insists having proved respondents' intent to evade paying correct taxes with clear and convincing evidence, heavily relying on Justice Del Rosario's dissent.[77] As this constitutes fraud, petitioner maintains that the 10-year prescriptive period applies, and the deficiency income and percentage tax assessments were seasonably issued.[78]

On the other hand, respondents argue that fraud has not been proven.[79] They point out that there is no proof that the checks were deposited in their bank accounts, and deny having received any income from the checks. They note that petitioner made no attempt to subpoena the banks where the checks were deposited to show respondents' alleged ownership of the accounts.[80]

Invoking the best evidence rule, respondents claim that the checks' existence cannot be proven by Maniwang's oral recollection, given that the original copies had been available to petitioner who only refused to submit them. Respondents add that Maniwang's affidavit was not corroborated by a disinterested person.[81] Since the original checks were not formally offered, respondents say these cannot be considered evidence under Rule 132, Section 34 of the Rules of Court.[82]

Respondents assert that the assessments are void for having no legal and factual bases. They contend that petitioner failed to prove fraud with competent and convincing evidence. The assessments made were allegedly only "guesstimated" by deducting the alleged

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[76] Id. at 93-95.

[77] Id. at 99.

[78] Id. at 96-99.

[79] Id. at 536.

[80] Id. at 536-537.

[81] Id. at 538.

[82] Id. at 537. The Comment made a typographical error to only read "Rule 32" instead of 132.

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principal amount from the total amount of checks issued. Respondents say that such computation is "illogical, wrong, and a result of shallow investigative work."[83] They add that Maniwang also failed to explain how much from her check payments corresponds to the principal and interest.[84]

Respondents add that when a certification had been issued proving that they indeed filed tax returns, petitioner changed tactic to now say that they filed fraudulent returns by not including the interest income.[85]

Finally, respondents say they cannot be faulted for not presenting their tax returns from 1998 to 2001, since the Bureau of Internal Revenue only issued the Letter of Authority in 2006. Since more than three years went by after the taxable years in question, they say they cannot be expected to have kept their tax returns, books of accounts, and other accounting records.[86]

The central issue for this Court's resolution is whether or not the deficiency assessments against respondent Spouses Remigio and Leticia Magaan have prescribed. The following sub-issues are relevant:

First, whether or not the case is an exception to the rule that a Rule 45 petition may not raise questions of fact;

Second, whether or not petitioner Commissioner of Internal Revenue has sufficiently informed respondent Spouses Remigio and Leticia Magaan of the factual bases of the deficiency income and percentage tax assessments; and

Finally, whether or not petitioner Commissioner of Internal Revenue has established fraud with clear and convincing evidence.

We deny the Petition.

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[83] Id. at 540-541.

[84] Id. at 540.

[85] Id.

[86] Id.

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I

This Court is not a trier of facts.[87] In a petition for review on certiorari, only questions of law may be raised.[88] The findings of fact of the Court of Tax Appeals, which has the expertise on matters of taxation, are "regarded as final, binding, and conclusive upon this Court."[89] Its findings are given great respect and set aside only in exceptional instances.[90] Unless there is a showing that its findings were not supported by substantial evidence or that it abused its authority, this Court will not lightly set aside the Court of Tax Appeals' conclusions.[91]

In this case, petitioner raises questions of fact in arguing that the deficiency income and percentage tax assessments were validly issued against respondents. It invokes the alleged grave abuse of discretion of the Court of Tax Appeals *En Banc* in reversing respondents' deficiency tax liabilities.[92]

We rule that the Court of Tax Appeals *En Banc* did not commit grave abuse of discretion. As will be discussed, the deficiency income and percentage tax assessments are void because respondents have not been sufficiently informed of their factual basis. Moreover, petitioner failed to prove that respondents received any taxable income from the informant. No intent to evade payment of taxes can be inferred here. Since fraud has not been proven, the deficiency income and percentage tax assessments have already prescribed. The Court of Tax Appeals *En Banc*'s findings must be upheld.

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[87] *Commissioner of Internal Revenue v. GJM Manufacturing, Inc.,* 781 Phil. 816 (2016) [Per J. Peralta, Third Division].

[88] RULES OF COURT, Rule 45, sec. 1.

[89] *Commissioner of Internal Revenue v. Julieta Ariete*, 624 Phil. 458, 469 (2010) [Per J. Carpio, Second Division].

[90] *Commissioner of Internal Revenue vs. Asalus Corporation*, 806 Phil. 397 (2017) [Per J. Mendoza, Second Division].

[91] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912 (2017) [Per J. Carpio, Second Division] citing *Commissioner of Internal Revenue v. Team Sual Corporation*, 739 Phil. 215 (2014) [Per J. Carpio, Second Division].

[92] *Rollo*, p. 78.

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II

Section 203 of the National Internal Revenue Code provides the period of limitation for assessing and collecting taxes.[93] The Bureau of Internal Revenue has three years counted from the last day of the filing of return to assess deficiency taxes, or from the actual filing of the return, whichever comes later.[94] This period extends up to 10 years after the discovery of falsity, fraud, or omission in the filing of a taxpayer's return:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*.— (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[95]

The assessment referred in these provisions refer to the final assessment notice,[96] a "letter of demand calling for payment of the taxpayer's deficiency tax or taxes[.]"[97] It "shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment

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[93] Republic Act No. 8424 (1997), sec. 203 provides:
SECTION 203. *Period of Limitation upon Assessment and Collection*.— Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[94] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, 510 Phil. 1 (2005) [Per J. Chico-Nazario, Second Division].

[95] Republic Act No. 8424 (1997), sec. 222.

[96] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, 821 Phil. 664 (2017) [Per J. Leonen, Third Division].

[97] Revenue Regulations No. 12-99, sec. 3.1.4.

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is based[,]"[98] as well as a definite and actual demand to pay that includes the amount of tax liability and the due date.[99]

Section 228 of the National Internal Revenue Code requires that the taxpayer be informed in writing of the factual and legal bases of the assessment; otherwise, it is void.[100] For assessments issued beyond the three-year period, where fraud is being invoked, the factual basis must also be stated and communicated to the taxpayer:

> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."
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> Respondent filed its income tax return in 1995. Almost eight (8) years passed before the disputed final assessment notice was issued. Respondent pleaded prescription as its defense when it filed a protest to the Final Assessment Notice. Petitioner claimed fraud assessment to justify the belated assessment made on respondent. If fraud was indeed present, the period of assessment should be within 10 years. It is incumbent upon petitioner to clearly state the allegations of fraud committed by respondent to serve the purpose of an assessment notice to aid respondent in filing an effective protest.
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> . . . .
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> Fraud is a question of fact that should be alleged and duly proven. "The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed." Fraud entails corresponding sanctions under the tax law. Therefore, *it is indispensable for the Commissioner of Internal Revenue to include the*

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[98] Revenue Regulations No. 12-99, sec. 3.1.4.

[99] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391 (2016) [Per J. Leonen, Second Division].

[100] Republic Act No. 8424 (1997), sec. 228.

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basis for its allegations of fraud in the assessment notice.[101] (Emphasis supplied, citations omitted)

The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory.[102] It cannot be presumed.[103] As a requirement of due process, this rule allows the taxpayer to make an effective protest:

> The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.
>
> Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for—not to mention the insufficiency of—the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[104] (Citations omitted)

This Court has invalidated tax assessments whose factual and legal bases were not stated in them, in violation of Section 228:

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[101] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 412-415 (2016) [Per J. Leonen, Second Division].

[102] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].

[103] *Commissioner of Internal Revenue v. Enron*, 596 Phil. 229 (2009) [Per J. Corona, Third Division].

[104] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 190 (2006) [Per J. Panganiban, First Division].

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Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., held that a final assessment notice that only contained a table of taxes with no other details was insufficient:

> In the present case, a mere perusal of the [Final Assessment Notice] for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at.

Any deficiency to the mandated content of the assessment or its process will not be tolerated. In *Commissioner of Internal Revenue v. Enron*, an advice of tax deficiency from the Commissioner of Internal Revenue to an employee of Enron, including the preliminary five (5)-day letter, were not considered valid substitutes for the mandatory written notice of the legal and factual basis of the assessment. The required issuance of deficiency tax assessment notice to the taxpayer is different from the required contents of the notice. Thus:

> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the [National Internal Revenue Code] and [Revenue Regulations] No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice[.]

However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied. To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest.

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, substantial compliance with Section 228 of the National Internal Revenue Code is allowed, provided that the taxpayer would be later apprised in writing of the factual and legal bases of the assessment to enable him or her to prepare for an effective protest. Thus:

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> Although the [Final Assessment Notice] and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated.[105] (Citations omitted)

Here, petitioner contends that the deficiency income and percentage tax assessments were supported by factual and legal bases. Petitioner explains that these were computed using the alleged ₱5,000,000.00 loan and the total amount of checks issued by Maniwang.[106] Respondents were also sufficiently informed of the bases during the investigation and assessment proceedings,[107] as provided in the letter correspondences, the summary of check payments, and a detailed computation of their deficiency tax liabilities from 1998 to 2002.[108] The criminal case that petitioner filed also allegedly showed that respondents were aware of the circumstances of the assessments. All these supposedly show that respondent spouses were given all the opportunity to dispute the assessments, but they ignored it.[109]

We are not persuaded.

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[105] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 410-412 (2016) [Per J. Leonen, Second Division].

[106] *Rollo*, p. 91.

[107] Id.

[108] Id. at 93-94.

[109] Id. at 94.

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The Formal Letter of Demand with Audit Result/Assessment Notices states that the complete details of the deficiency assessments can be found in Schedules 1 and 2 of the letter.[110] However, an examination of the records reveals that these schedules do not show the factual basis of the assessments. These schedules merely contain tabular summaries of the allegedly undeclared taxable income and deficiency taxation of respondents. They only mentioned payments received per information"[111] but have no other details stating the information received, or any other explanation that would enable the taxpayer to make an effective protest.

Indeed, records show that petitioner attached details of the deficiency assessments and computations of the deficiency tax liabilities from 1998 to 2002.[112] Yet, the amounts of undeclared income stated in the Preliminary Assessment Notice do not correspond to the details of the deficiency assessments.[113] Moreover, L4R Realty was also stated in the detailed computation of deficiency tax liabilities for 2001 and 2002,[114] but it was not included in the notices sent to respondents. There were also no assessments issued for those taxable years. As to the detailed computation, it is not clear how petitioner arrived at ₱15,985,879.50 as the estimate of interest payments allegedly received by respondents.[115]

More important, the Formal Letter of Demand with Audit Result/Assessment Notices for 1998 to 2000 was only issued on July 28, 2008. The assessments include check payments given to Imilec Tradehaus, a registered partnership. However, its income is being attributed to respondents. In several notices and correspondences, petitioner considered Imilec Tradehaus to be the same entity as respondents.[116] Allegedly, they continued the lending activities of Imilec Tradehaus after its legal existence expired in 1999:

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[110] Id. at 312.

[111] Id. at 320-321.

[112] Id. at 93-94.

[113] Id. at 302-303. *See also*, *rollo*, p. 296, Preliminary Assessment Notice.

[114] Id. at 303-304.

[115] Id. at 305-306.

[116] Id. at 278-282, Letter of Authority, Notice for an Informal Conference, and Subpoena *Duces Tecum*.

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In reply, please be informed that after careful study and evaluation of your letter-compliance including the records, we are constrained not to give due course thereto, the same having been filed out of time. It may be recalled that you were mandated to appear and submit your books of accounts and other accounting records on July 04, 2006 but your response was filed only on July 21, 2006 or seventeen (17) days late. Nonetheless, we find your contention untenable. Records show that despite the expiration of the partnership's legal existence on February 16, 1999, which was apparently not extended, the partnership's lending operations were continued by certain Sps. Remigio P. Magaan and Leticia L. Magaan. Granting for the sake of argument that you were not partners of IMILEC, which is belied by your continued business activities, this has no bearing in the on-going investigation because the Letter of Authority No. 00025876 dated July 3, 2006 was issued not against IMILEC but against you in your personal capacities as individual taxpayers.[117]

Petitioner ignores that Imilec Tradehaus is a partnership, with separate legal existence from its partners.[118] To pierce its personality, the facts justifying the application of this doctrine must be pleaded and proved.[119] There must be "clear and convincing proof that the separate and distinct personality of the corporation was purposely employed" to commit fraud.[120] Taxable partnerships are treated as corporations subject to a few variances.[121] There being no showing that Imilec Tradehaus is a general professional partnership, it is

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[117] Id. at 295.

[118] CIVIL CODE, art. 1768 provides:
ARTICLE 1768. The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of article 1772, first paragraph.

[119] *Kukan International Corporation v. Reyes*, 646 Phil. 210 (2010) [Per J. Velasco, First Division] citing *Pantranco Employees Association v. National Labor Relations Commission*, 600 Phil. 645 (2009) [Per J. Nachura, Third Division].

[120] *Bureau of Customs v. Devanadera*, 769 Phil. 231, 274 (2015) [Per J. Peralta, En Banc] citing *Kukan International Corporation v. Reyes*, 646 Phil. 210 (2010) [Per J. Velasco, First Division].

[121] *Tan v. Del Rosario*, G.R. No. 109289, October 3, 1994 [Per J. Vitug, *En Banc*].

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similar to a corporation in that it is liable for income taxation, and not its partners.[122]

Without substantiating its allegations of fraud, petitioner assumes that Imilec Tradehaus is respondents' alter ego. However, it did not present evidence to prove its claim. Respondents have consistently asked petitioner to show them the basis of their alleged involvement with Imilec Tradehaus,[123] but petitioner refused to give them the actual checks and other documents showing their alleged relationship.[124] What respondents got were schedules containing the list of deposits to banks, payees, and a detailed computation of their tax liabilities.[125] None of these schedules show their relationship with Imilec Tradehaus.

Thus, respondents were not properly informed of the factual basis of fraud to justify the belatedly issued deficiency assessments. The basis of their connection with Imilec Tradehaus is material in showing that they used it to evade the correct payment of taxes. Assessments must be based on facts and not mere presumptions.[126]

In failing to provide respondents with material information, petitioner denied them the opportunity to effectively protest. This renders the assessments void, for which respondents cannot be held liable.

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[122] TAX CODE, sec. 26 provides:

SECTION 26. *Tax Liability of Members of General Professional Partnerships*.— General professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

For purposes or computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership."

[123] *Rollo*, pp. 298, 308, and 310.

[124] Id. at 70.

[125] Id. at 475-479.

[126] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306 (2005) [Per J. Callejo, Second Division] citing *Collector of Internal Revenue v. Benipayo*, 114 Phil. 135 (1962) [Per J. Dizon, En Banc].

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III

Petitioner has the burden of proving that a return was filed with intent to evade payment of correct taxes.[127] It must be proven with "clear and convincing evidence amounting to more than mere preponderance, and cannot be justified by a mere speculation."[128] Petitioner must establish the existence of actual and intentional fraud:

> In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. The Court explained:
>
> > x x x. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. x x x.[129]

Generally, fraud is "anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."[130]

In the context of Section 222 (A), there is fraud in the filing of a false and deceitful entry with intent to evade the taxes due.[131] The

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[127] *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, 363 Phil. 169 (1999) [Per J. Panganiban, Third Division].

[128] *Yutivo Sons Hardware Company v. Court of Tax Appeals*, 110 Phil. 751, 758 (1961) [Per J. Gutierrez David, En Banc].

[129] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912, 935-936 (2017) [Per J. Carpio, Second Division] citing *Commissioner of Internal Revenue v. Javier*, 276 Phil. 914 (1991) [Per J. Sarmiento, Second Division].

[130] *Commissioner of Internal Revenue v. Estate of Toda*, 481 Phil. 626, 640 (2004) [Per J. Davide, First Division] citing *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1, 33 (1996) [Per J. Kapunan, First Division].

[131] *Aznar v. Court of Tax Appeals*, 157 Phil. 510 (1974) [Per J. Esguerra, First Division].

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act of filing a fraudulent return must be intentional and not attributable to "mistake, carelessness, or ignorance."[132] Thus, for petitioner to invoke the 10-year prescriptive period, it must prove the following with clear and convincing evidence: (1) respondents received taxable income; (2) they underdeclared or did not declare the taxable income in their tax returns; and (3) they intended to evade payment of correct taxes due.

Petitioner insists that it was able to establish fraud since respondents received taxable income but failed to duly report them in their tax returns from 1998 to 2001.[133] It quotes Justice Del Rosario's dissenting opinion, which reads in part:

> A careful review of the records, however, shows that there is sufficient evidence, both testimonial and documentary, to prove that petitioners committed fraud by not declaring in their ITRs the interest income they earned from the interest-bearing loan which petitioner Remigio P. Magaan extended to Spouses Reynaldo and Yolanda Maniwang.
>
> The existence of the aforementioned loan is evident from the notarized Real Estate Mortgage ("REM") which petitioner Remigio P. Magaan executed with Spouses Maniwang as collateral for the loan. The REM clearly confirms that Mr. Remigio P. Magaan, together with Rubilina M. Simbulan and Rosalita M. Joanino, extended a loan in the amount of Five Million Pesos (₱5,000,000.00) to Spouses Maniwang with stipulated interest of 5% per month. To be sure, the REM, which is a notarized document, is entitled to full faith and credit upon its face without further proof of its authenticity. . . .
>
> . . . .
>
> Furthermore, the unrebutted testimony of Ms. Maniwang established that she loaned money from petitioners and subsequently paid them by issuing a series of checks to Imilec Trade Hauz, Inc. ("Imilec"), as per instruction of petitioners themselves who claimed to be the owners thereof. The issued checks, which were validated by the banks to have been deposited in the account of the payee, were offered and admitted into evidence.

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[132] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*, 807 Phil. 912, 937 (2017) [Per J. Carpio, Second Division].

[133] *Rollo*, p, 97.

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Interestingly, petitioners never denied the existence of the said loan or the fact that they were subsequently paid by Ms. Maniwang through checks issued to Imilec. Petitioners also never questioned the authenticity of the REM. During his cross-examination, Mr. Magaan even admitted that he had in fact loaned money to Ms. Maniwang in 1999.

In the absence of evidence refuting the version narrated by Ms. Maniwang, I submit that the Court in Division correctly gave weight and credit to respondent's testimonial and documentary evidence. The totality of the evidence shows that there is in fact undeclared interest income on the part of petitioners which makes the ITRs they filed with the BIR fraudulent. Needless to say, the ten (10)-year prescriptive period under Section 222 of the NIRC, as amended, is necessarily applicable in this case.[134]

We are not convinced.

First, petitioner failed to establish that respondents received income from Maniwang's check payments. Most of the checks were issued to Imilec Tradehaus, and respondent Remigio Magaan's name appeared as co-payee starting November 1999:

[T]he checks that were submitted before the Court show that from April 28, 1998 to October 26, 1999, the· payee was Imilec Tradehaus. Remigio P. Magaan's name started to appear on the checks only on November 2, 1999 until April 18, 2000. Even then it was not issued in his name alone, but as a co-payee. Evident on the face of the checks that it was "pay to the order of Rubilina M. Simbulan and/or Remigio Magaan." The checks that were allegedly given by Ms. Maniwang to petitioners are summed up as follows:

YEAR	PAYEE	TOTAL
1998	Imilec TradeHaus/ Imilec Trade Hauz, Inc.	Php8,774,500.00
Jan. 1 to Oct. 26, 1999	Imilec TradeHaus	15,692,124.15
Nov. 2 to Dec. 1999	Rubilina Simbulan and/or Remigio Magaan	1,863,015.00
Jan. to April 2000	Rubilina Simbulan and/or Remigio Magaan	4,945,799.00

[134] Id. at 97-98.

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Evidence on record also reveal that the checks that were received by Remigio Magaan only amounted to Php6,808,814.00; that the said checks were issued pursuant to the Real Estate Mortgage that was executed among Ms. Maniwang and Reynaldo V. Maniwang, as borrowers; Rubilina M. Simbulan, Roselita M. Joanino and Remigio Magaan, as lenders.[135] (Citations omitted)

Being a check co-payee does not automatically establish the fact of income. Even if respondent Remigio admitted having extended a loan to Maniwang,[136] this act is not subject to taxation. In *Bureau of Internal Revenue v. Court of Appeals*:[137]

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.[138] (Citations omitted)

Petitioner failed to prove that respondents received taxable income from the check payments. Indeed, Maniwang's testimony did not establish that the checks were deposited in their bank accounts:

[D]uring the cross examination of Ms. Maniwang, she admitted that she has no proof that the account numbers, where the checks were allegedly deposited, belong to petitioners, viz.:

November 14, 2012

xxx xxx xxx

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[135] *Rollo*, p. 32.

[136] Id. at 98.

[137] 747 Phil. 772 (2014) [Per J. Del Castillo, Second Division].

[138] Id. at 786-787.

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ATTY. SANTIANO

Q: I see. There are three (3) account[] number[s] appearing [on] the back [of] the various checks, do you have any direct proof to show that Planters Development Bank [A]ccount No. 01-40-01394-3 ... (interrupted by the Witness)

MRS. MANIWANG
A: May I see, sir, what exhibit?

ATTY. SANTIANO
Q: That is Exhibits ["]39["] and ["]50.["] Do you have any direct proof to show that the number belong[s] to the petitioner, and not to somebody else?

xxx xxx xxx

JUSTICE MANALASTAS
Do you have proof that this [A]ccount No. 01-40-01394-3 is the account of whom?

ATTY. SANTIANO
Remigio Magaan, your honors.

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
What is your proof?

MRS. MANIWANG
A: I have here the original checks validated by the bank.

JUSTICE MANALASTAS
Please show the account, does it show[] that this is the account of Mr. Magaan?

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
May I see them?
(at this juncture[,] the checks were hand[ed] to the Court) Not only the account number, it should state[] there that it is the account of Mr. Magaan.

MRS. MANIWANG
A: Yes, your Honors.

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JUSTICE MANALASTAS
Witness presenting... can I see[?]
Witnessing presenting [C]heck No. 000034227, there's nothing here that [] shows that it is the account of Mr. Magaan.

ATTY. SANTIANO
Q: Let me also ask you the same question, this time pertaining to another bank account, Metrobank Account No. ...[]

MRS. MANIWANG
A: There is [an] account number, your Honors.

JUSTICE MANALASTAS
How did you know, can I see?
(at this juncture the witness handed the check to the Clerk of Court to be given to the Court)
May I see [t]his [A]ccount [N]o. 01394-3?

MRS. MANIWANG
A: Yes, your Honors.

JUSTICE MANALASTAS
Yes, this is just a number. How do you know that this is the account number of Mr. Magaan?

MRS. MANIWANG
A: It is validated by the bank, your Honors.

JUSTICE MANALASTAS
I know, I know. But how do you know that this is the account of Mr. Magaan[?] [T]here is no name here. Do you have any proof that this is the account of Mr. Magaan? The check is payable to Imilec Tradehaus. The check was deposited to [Account No.] 00001394-3, the account number written here at the back of the checks, this is only the account number, how do you know that this is the account of Mr. Magaan?

MRS. MANIWANG
A: I asked somebody from the bank [this] reliable info [but] they cannot give the certification.

JUSTICE MANALASTAS
They cannot give you a certification?

MRS. MANIWANG
A: They cannot give the certification.

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JUSTICE MANALASTAS
You just get the information from somebody in the bank?

MRS. MANIWANG
A: Yes, your Honors.

xxx xxx xxx

November 26, 2012

xxx xxx xxx

ATTY. SANTIANO
Q: Now, I ask you [], Madam Witness, can you please present the said check again?

M[R]S. MANIWANG
A: Yes, I have [it] here.

JUSTICE BAUTISTA
Can I also have a look [at] the check, Atty. Dan, after petitioner's counsel?

ATTY. SANTIANO
Q: Now, Madam Witness, is this the same Exhibit "133" of the respodent?

JUSTICE BAUTISTA
So, that's [a] different account number you mentioned earlier? It's [a] different account number? You deposited in Account No. 3-108035913, Miss, are you Ms. Maniwang? The face of the check has no mark from the bank. At the back, there is an indorsement that the check was deposited to Account No. 3-108035913?

M[R]S. MANIWANG
A: Yes, your Honors.

JUSTICE BAUTISTA
Account of whom?

M[R]S. MANIWANG
A: Im[i]lec and Remigio Magaan.

JUSTICE BAUTISTA
Account of the corporation, not Magaan?

M[R]S. MANIWANG
A: That's the same, your Honors.

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JUSTICE BAUTISTA
The same? How do you know that it's the same? Are you from the bank?

M[R]S. MANIWANG
A: No.

xxx xxx xxx

ATTY. SANTIANO
Q: Did you go to the bank to verify if indeed Planters Development Bank Account No. 01-40-013-94-3 belong[s] to the petitioner?

M[R]S. MANIWANG
A: Hindi po ako nagpunta, sir, sa ... (Interrupted)

ATTY. SANTIANO
Q: How about Metrobank Account No. 3-10803591-3? Did you go to the bank to verify the ownership of this account?

M[R]S. MANIWANG
A: Meron po akong reliable info in the bank but they will not give me a certification because that's a secre[t].

ATTY. SANTIANO
Q: Madam Witness, my question is, did you go to the bank?

M[R]S. MANIWANG
A: Yes.

ATTY. SANTIANO
Q: What is your proof that you [went] to the bank?

M[R]S. MANIWANG
A: I have no proof, your Honors.

ATTY. SANTIANO
Q: All right. How about Metrobank Account No. 3-19801347-2? Did you...go to the bank to verify the ownership of this bank account number?

M[R]S. MANIWANG
A: I have reliable info in the bank...(Interrupted)

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ATTY. SANTIANO
Q: Same answer as before?

M[R]S. MANIWANG
A: Yes.

xxx xxx xxx

ATTY. SANTIANO
You were asked by this representation, Madam Witness, if there are supporting company documents[,] particularly vouchers[,] that would support the checks that were issued to Im[i]lec, R[u]bilina Simbulan and/or Magaan, Simbulan alone and Magaan.

Q: May I have your answer again, Madam Witness?

M[R]S. MANIWANG
A: No voucher, sir.[139] (Citation omitted)

Second, petitioner did not even submit respondents' tax returns to prove that their income from the alleged loan payments were not declared. Notably, petitioner had initially assessed respondents as if no return had been filed.[140] After the Court of Tax Appeals had found that respondents have duly filed tax returns,[141] petitioner changed tune to claim that respondents filed fraudulent returns.[142] Even then, petitioner failed to prove the basis of the deficiency assessments. It offered nothing but the check payments to claim that respondents filed fraudulent tax returns. Without proving receipt of taxable income, the obligation to pay taxes does not arise. Petitioner cannot impute intent to evade payment of correct taxes.

Finally, the checks were not formally offered in evidence. Petitioner insists that they had been, invoking *Laborte v. Pagsanjan Tourism Consumers' Cooperative*,[143] which relaxed the application of Rule 132, Section 34 of the Rules of Court and considered evidence not formally offered. Notwithstanding *Laborte*, the settled

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[139] *Rollo*, pp. 33-37.

[140] Id. at 205.

[141] Id. at 218.

[142] Id. at 97.

[143] Id. at 85-90 citing 724 Phil. 434 (2014) [Per J. Reyes, First Division].

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rule stands that every case must be prosecuted in accordance with the Rules of Court:

> Indeed, procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Unless substantial justice dictates that procedural rules be relaxed to arrive at a just disposition of a case, there shall be no liberality in the interpretation and application of the rules.
>
> Here, not only did petitioners fail to formally offer the subject documents in evidence during the trial on the merits, they also failed to provide any explanation as to the reason behind such failure. While rules of procedure may be relaxed in the interest of justice and fair play, this Court shall refrain from doing so if there is not even the slightest effort to provide the courts with a reason to justify the non-observance of the same.[144] (Citation omitted)

In *Laborte*, this Court cited following requisites to relax the application of the rule on formal offer of evidence: (1) the pieces of evidence must have been incorporated in the records of the case; and (2) they must have been duly identified by testimony on record. It is also significant that the respondent failed to object to the evidence on record.

Here, however, the checks have not been incorporated in the records. Photocopies of the checks were only introduced in the Court of Tax Appeals during petitioner's presentation of Maniwang's affidavit on August 22, 2011.[145] Respondents had been requesting copies of the actual checks during the assessment proceedings, to no avail. They also objected to the introduction of the checks because they were not pre-marked during the pre-trial.

During trial, the Court of Tax Appeals did not admit the checks in evidence because they were mere photocopies. While petitioner

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[144] *Heirs of Mabborang v. Mabborang,* 759 Phil. 82, 96-97 (2015) [Per J. Peralta, Third Division].

[145] *Rollo*, p. 72.

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was subsequently allowed to file a supplemental formal offer for their originally marked exhibits, petitioner was deemed to have waived their right to do so.[146]

The rules may only be relaxed "in the furtherance of justice and to benefit the deserving."[147] Petitioner has not even explained the failure to file a supplemental offer, and has not provided a reason to relax the procedural rules. Clearly, it is not deserving of this Court's leniency.

While we agree that respondents did not present evidence disputing the existence of the loan and check payments, they have no prima facie liability for the deficiency assessments. The presumption of the correctness of the assessment does not apply when it is arbitrarily issued, without foundation and rational basis:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a

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[146] Id. at 74.

[147] *Magsino v. De Ocampo*, 741 Phil. 394, 410 (2014) [Per J. Bersamin, First Division].

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deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[148] (Citations omitted)

Not only did petitioner fail to state the factual basis of the alleged fraud in the assessments, but they also failed to establish that respondents filed fraudulent returns with intent to evade payment of correct taxes. Without fraud, the period for issuing assessments have prescribed. Ultimately, then, petitioner belatedly issued the deficiency income and percentage tax assessments to respondents.

WHEREFORE, the Petition is **DENIED**. The January 11, 2017 Decision and June 28, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1338, which reversed the deficiency income, percentage liability, delinquency interests and surcharge of respondent Spouses Remigio P. Magaan and Leticia L. Magaan, are **AFFIRMED**.

SO ORDERED.

Hernando, Inting, Delos Santos, and *J. Lopez, JJ.*, concur.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gil Valera for respondents.

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[148] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306, 335-336 (2005) [Per J. Callejo, Second Division].