Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CASTALLOY TECHNOLOGY CORP., ALLIED INDUSTRIAL CORP. AND ALINSU STEEL FOUNDRY CORP.,
Petitioners,

-versus-

ATTY. JOSE N. TAN, CESO V., as REGIONAL DIRECTOR, BIR Region No. 13, Cebu City, acting for and in behalf of the Commissioner of Internal Revenue,
Respondent.

CTA CASE No. 8244

Present:

Castañeda, Jr., *Chairperson,*
Casanova, and
Cotangco-Manalastas, JJ.

Promulgated:

JAN 3 0 2014
4:n p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

This is a Petition for Review filed by Castalloy Technology Corporation, Allied Industrial Corporation and Alinsu Steel Foundry Corporation to seek the reversal and setting aside of the letter dated February 10, 2011 and the Formal Letter of Demand dated February 16, 2011 issued by Bureau of Internal Revenue (BIR) Regional Director Jose N. Tan; the declaration of the Assessment Notice dated February 16, 2011 as null and void; and the declaration of the *dacion en pago* executed by Alinsu Steel Foundry Corporation and Allied Industrial Corporation in favor of Opal Portfolio Investments, Inc. as tax-exempt.

THE FACTS

Petitioners Castalloy Technology Corporation, Allied Industrial Corporation, and Alinsu Steel Foundry Corporation are corporations duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Pagsabungan, Mandaue City.[1]

[1] Par. 1, Petition for Review, docket, p. 1.

On the other hand, respondent Atty. Jose N. Tan, acting for and in behalf of the Commissioner Internal Revenue, is impleaded in his official capacity as Regional Director of the BIR Revenue Region No. 13-Cebu City.

On December 14, 2010, respondent Tan issued a Preliminary Assessment Notice (PAN)[2] with the attached Details of Discrepancies, assessing petitioners Allied Industrial Corporation and Alinsu Steel Foundry Corporation for alleged deficiency donor's tax in the aggregate amount of ₱13,972,608.26 for taxable period January 21, 2009.

The contents of the PAN read as follows:

"PRELIMINARY ASSESSMENT NOTICE

ALLIED INDUSTRIAL CORP. & ALINSU STEEL FOUNDRY CORP.
Attention: Mrs. Gloria C. Ngo, President
c/o Castalloy Compound, Pagsabungan,
Mandaue City

SUBJECT: Tax Verification Notice Nos. 00112774, 00112775 & 00112776
Dated May 11, 2010
For the Taxable Period January 21, 2009

Madam:

Please be informed that after a thorough investigation and review, there has been found due deficiency taxes in the total amount of **Thirteen Million Nine Hundred Seventy Two Thousand Six Hundred Eight and 26/100 (P13,972,608.26)** inclusive of statutory increments computed as follows:

Donor's Tax

1.) Alinsu Steel Foundry Corp. - Total Value of Properties Donated			P37,367,130.00
2.) Allied Industrial Corp. - Total Value of Properties Donated			P27,789,940.00
Total Value of Properties Donated (ANNEX A1)			P65,157,070.00
Less: Dacion Price			35,545,000.00
Net Value of Property subject to Donation			P29,612,070.00
Donor's Tax Due thereon computed as follows:			
1.) Alinsu Steel Foundry Corp. (37,367,130.00/65,157,070.00) x 29,612,070.00	P16,982,317.79		
2.) Allied Industrial Corp. (27,789,940.00/65,157,070.00) x 29,612,070.00		P12,629,752.21	
Multiply by Donor's Tax Rate	30%	30%	
Basic Deficiency Donor's Tax	P 5,094,695.34	P 3,788,925.66	P 8,883,621.00
Add: 25% Surcharge	1,273,673.84	947,231.42	2,220,905.26
20% Interest from 05.29.09-12.30.10	1,616,150.58	1,201,931.42	2,818,082.00
Compromise penalty	25,000.00	25,000.00	50,000.00
Total Deficiency Donor's Tax Due	**P8,009,519.76**	**P5,963,088.50**	**P13,972,608.26**
TOTAL AMOUNT STILL DUE AND COLLECTIBLE			**P13,972,608.26**

Please note that the interest and the total amount collectible will have to be adjusted if paid beyond December 30, 2010. *Jc*

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[2] Exhibits "G", "G-1", "23", and "24", docket, pp. 50 and 51.

> The complete details covering the aforementioned discrepancies established during the investigation of this case is shown in the accompanying **'Annex A'** of this preliminary assessment notice.
>
> The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the National Internal Revenue Code.
>
> Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing your side of the case within 15 days from receipt hereof. If we fail to hear from you within the said period, you shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid tax deficiency inclusive of the corresponding increments.
>
> Please give this matter your preferential attention.
>
> Very truly yours,
>
> **JOSE N. TAN, CESO V**
> Regional Director"

On January 18, 2011, petitioners Allied Industrial Corporation and Alinsu Steel Foundry Corporation filed their protest letter dated January 17, 2011 addressed to respondent BIR Regional Director Jose N. Tan.[3]

On March 9, 2011, petitioners received a letter dated February 10, 2011[4] issued by respondent Jose N. Tan, addressed to petitioners Allied Industrial Corporation and Alinsu Steel Foundry Corporation, denying their protest letter dated January 17, 2011. Attached to the said letter are the Formal Letter of Demand and the Assessment Notice both dated February 16, 2011, assessing petitioners Allied Industrial Corporation and Alinsu Steel Foundry Corporation for alleged deficiency donor's tax inclusive of surcharge, interest, and compromise penalty for taxable period January 21, 2009, in the aggregate amount of ₱14,323,423.40.[5]

In the February 10, 2011 letter, respondent Jose N. Tan, having denied the protest letter of Allied Industrial Corporation and Alinsu Steel Foundry Corporation, advised the latter that the BIR office "is left with no alternative but to issue Final Assessment Notice", to wit:

> "This has reference to your protest letter dated January 17, 2011 to the Preliminary Assessment Notice issued on December 14, 2010, the total amount of which is ₱13,972,608.26 representing deficiency Donor's Tax as a result

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[3] Exhibit "H-1", docket, pp. 57 to 63.
[4] Exhibit "I", docket, pp. 69 to 70; Exhibit "T", docket, pp. 199 to 208.
[5] Exhibits "J" and "K", docket, pp. 72 and 73; Exhibit "26", docket, p. 73.

of investigation on the executed Compromise Agreement dated January 21, 2009 pursuant to Tax Verification Notice Nos. 00112774-00112776.

xxx xxx xxx

We hope the foregoing clarification meet its purpose. We also regret to inform you that the documents attached to your letter of protest were not sufficient to reverse the issues or to overthrow the validity of the assessment. Consequently therefore, this office is left with no alternative but to issue Final Assessment Notice (FAN) reiterating the demand for the payment of the deficiency donor's tax shown therein to protect the interest of the government."

The contents of the Formal Letter of Demand for Assessment No. 80-dn-13-2009-2011-02-049 are quoted below:

"FORMAL LETTER OF DEMAND

16 February 2011

ALLIED INDUSTRIAL CORP. & ALINSU STEEL FOUNDRY CORP.
Attention: Mrs. Gloria C. Ngo, President
c/o Castalloy Compound, Pagsabungan,
Mandaue City

SUBJECT: Tax Verification Notice Nos. 00112774, 00112775 & 00112776
For the Taxable Period January 21, 2009

Madam:

Please be informed that after a thorough investigation and review, there has been found due deficiency taxes in the total amount of **FOURTEEN MILLION THREE HUNDRED TWENTY THREE THOUSAND FOUR HUNDRED TWENTY THREE PESOS AND 40/100 (P14,323,423.40)** inclusive of statutory increments computed as follows:

Assessment No. 80-dn-13-2009-2011-02-049

Donor's Tax

1.) Alinsu Steel Foundry Corp. - Total Value of Properties Donated	P37,367,130.00
2.) Allied Industrial Corp. - Total Value of Properties Donated	P27,789,940.00
Total Value of Properties Donated (ANNEX A1)	P65,157,070.00
Less: Dacion Price	35,545,000.00
Net Value of Property subject to Donation	P29,612,070.00

Donor's Tax Due thereon computed as follows:

1.) Alinsu Steel Foundry Corp.
(37,367,130.00/65,157,070.00) x 29,612,070.00 P16,982,317.79

2.) Allied Industrial Corp.

jc

(27,789,940.00/65,157,070.00) x 29,612,070.00		P12,629,752.21	
Multiply by Donor's Tax Rate	30%	30%	
Basic Deficiency Donor's Tax	P 5,094,695.34	P 3,788,925.66	P 8,883,621.00
Add: 25% Surcharge	1,273,673.84	947,231.42	2,220,905.26
20% Interest from 05.29.09-03.15.11	1,817,340.64	1,351,556.50	3,168,897.14
Compromise penalty	25,000.00	25,000.00	50,000.00
Total Deficiency Donor's Tax Due	**P8,210,709.82**	**P6,112,713.58**	**P14,323,423.40**
TOTAL AMOUNT STILL DUE AND COLLECTIBLE			**P14,323,423.40**

Please note that the interest and the total amount due will have to be adjusted if paid beyond March 15, 2011.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying **'Schedule 1'** of this letter of demand.

The 25% surcharge and the 20% interest per annum have been imposed pursuant to Sections 248(A) and 249(B) of the National Internal Revenue Code, respectively.

Compromise penalty has been imposed pursuant to RMO 19-2007.

In view thereof, you are requested to pay the aforesaid tax liabilities through the agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

Very truly yours,

JOSE N. TAN, CEO V
Regional Director"

Without filing any formal protest letter against the foregoing final assessment, petitioners filed the instant Petition for Review on March 28, 2011, praying for the reversal and setting aside of the letter dated February 10, 2011 and the Formal Letter of Demand dated February 16, 2011; the declaration of the Assessment Notice dated February 16, 2011 as null and void; and, the declaration of the *dacion en pago* executed by Alinsu Steel Foundry Corporation and Allied Industrial Corporation in favor of Opal Portfolio Investments, Inc. as tax-exempt.

On May 31, 2011, respondent filed her Answer,[6] interposing the following Special and Affirmative Defenses:

"***The Honorable Court is bereft of jurisdiction to try the instant case on account of the prematurely filing of the***

[6] Docket, pp. 92 to 117.

Petition for Review before the Honorable Court

With all due respect, respondent respectfully manifests that this Honorable Court is bereft of jurisdiction to hear and decide for failure on the part of petitioner to exhaust all administrative remedies available before elevating the instant case before the Honorable Court. Thus, rendering the assessment notice issued against petitioner to be final, executory and demandable.

Section 228 of the National Internal Revenue Code of 1997, as amended, explicitly provides:

> '**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:
>
> xxx xxx xxx
>
> 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.' (Emphasis and underscoring supplied)

Corollary thereto, R.A. 9282 promulgated on March 30, 2004 otherwise known as the Revised Rules of Court of Tax Appeals avers:

'Section 7. Jurisdiction.

The Court of Tax Appeals shall exercise:

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2. **Inaction by the Commissioner of Internal Revenue** in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, whether the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial.' (Emphasis and underscoring supplied)

Respondent humbly manifests that the Petition for Review should be dismissed in view of petitioner's utter failure and disregard to comply with the aforesaid provision of law.

It must be stressed that prior to elevating the case before the Honorable Court via a Petition for Review, petitioner, upon receipt of the Formal Letter of Demand and Final Assessment Notice, should have protested the same administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof. In support of the administrative protest, it is likewise required to submit all relevant documents within sixty (60) days from the filing of the administrative, otherwise, the assessment shall be considered final and executory. Ergo, it is only upon the denial of the protest or upon inaction of respondent within 180 days from submission of documents may petitioner elevate the case before the Honorable Court.

In the instant case, petitioner, in its Petition for Review, manifested that it received the Formal Letter of Demand and the Final Notice of Assessment on March 9, 2011, together with the February 10, 2011 letter denying the protest on the Preliminary Assessment Notice. However, instead of filing an administrative protest to the Final Assessment Notice within thirty (30) days from March 9, 2011 or until April 8, 2011, it automatically filed a Petition for Review before the Honorable Court on March 28, 2011. Suffice it to say that respondent was not given ample opportunity to act on any administrative protest as there is none to speak of and no submission of supporting documents to review on. Hence, for prematurely filing the instant case before the Honorable Court, the Petition for Review should be *denied outright*.

It cannot be denied though that petitioner protested the Preliminary Assessment Notice without however, presenting any evidence to support its allegations. However, petitioner cannot be considered to have complied with the provision of Section 228 on account of the fact that the Preliminary Assessment Notice cannot be considered the Final Decision given by respondent as the PAN contained the following:

> 'Pursuant to the provision of Section 228 of the NIRC of 1997 and its implementing Revenue Regulations, **you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof**. If we fail to hear from you within the said period, you shall be considered in default, in which case, a Formal Letter of Demand, and assessment notice shall be issued by this Office calling for payment of your aforesaid tax deficiency inclusive of the corresponding increments.' (Emphasis and underscoring supplied)

In addition, it must be stressed that the Honorable Court's jurisdiction to hear and decide cases is limited to, among others, the *inaction by the Commissioner of Internal Revenue* in cases involving *disputed assessments*. Suffice it to say that it is not the Final Assessment Notice per se, which is the subject of the judicial review of the Honorable Court but whether or not aforesaid assessment notice were disputed by petitioner. Clearly, petitioner allowed the thirty (30) day period provided by law to lapse without disputing the assessment via a request for reinvestigation or request for consideration. In view of petitioner's omission, the Final Assessment Notice therefore, becomes final and executory.

In the case entitled *'Allied Banking Corporation v. Commissioner of Internal Revenue'*, no less than the Supreme Court held:

Proceedings before the CTA First Division

On September 29, 2004, petitioner filed a Petition for Review with the CTA which was raffled to its First Division and docketed as CTA Case No. 7062.

On October 12, 2005, the First Division of the CTA rendered a Resolution granting respondent's Motion to Dismiss. It ruled:

Clearly, it is neither the assessment nor the formal demand letter itself that is appealable to this Court. It is the decision of the Commissioner of Internal Revenue on the disputed assessment that can be appealed to this Court (*Commissioner of Internal Revenue v. Villa*, 22 SCRA 3). As correctly pointed out by respondent, a **<u>disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the formal letter of demand and assessment notice within thirty (30) days from date [of] receipt thereof</u>**. In this case, petitioner failed to file an administrative protest on the formal letter of demand with the corresponding assessment notices. Hence, **<u>the assessments did not become disputed assessments as subject to the Court's review under Republic Act No. 9282</u>**. (See also *Republic v. Liam Tian Teng Sons & Co., Inc.*, 16 SCRA 584.)' (Emphasis and underscoring supplied)

In the case entitled *'Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue',* the Supreme Court had the occasion to say:

'Petitioner protested the assessments pursuant to Section 228 of the NIRC, which provides:

SEC. 228. *Protesting of Assessment*. –

xxx xxx xxx

> 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 (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**.

The CTA Second Division held:

> Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. **Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period**.
>
> **As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment**.

> In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that **while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional**. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, **the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment'**.

In the case entitled *'Protector's Services, Inc., v. Court of Appeals and Commissioner of Internal Revenue'*, the Supreme Court specifically averred:

> 'The pertinent provision of the National Internal Revenue Code of 1977 (NIRC 1977), concerning the period within which to file a protest before the CIR, reads:
>
> > Section 270. *Protesting of assessment*. - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
> >
> > Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by the implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final, and unappealable.
> >
> > If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the

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

We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a reinvestigation. **<u>From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessments. Hence, in our view, the CTA correctly dismissed the appeal for lack of jurisdiction</u>**.

The Supreme Court in the case *Barangay Dasmarinas v. Creative Play Corner School et al.*, held:

'**<u>Utter disregard of [the rules of procedure] cannot justly be rationalized by harking on the policy of liberal construction</u>**.'

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As to petitioner's invocation of liberal application of the rules, we cannot heed the same. 'It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, **<u>it does not mean that the Rules of Court may be ignored at will</u>**. It bears emphasizing that **<u>procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons</u>**.'

While petitioner cites several jurisprudence wherein this Court set aside procedural rules, an imperative existed in those cases that warranted a liberal application of the rules. We have examined the records of this case, however, and we are convinced that the present case is not attended by such an imperative that justifies relaxation of the rules. Moreover, as pointed out by respondents, petitioner had not only once transgressed procedural rules. This Court has previously held that '[t]echnical rules may be relaxed only for the furtherance of justice and to benefit the deserving.' **<u>Petitioner's low regard of procedural rules only shows that it is undeserving of their relaxation. x x x</u>**' (Emphasis and underscoring supplied)

Rules of Procedure are required to be followed, except only when for the most persuasive of reasons, they must be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. (*Limpot v. Court of Tax Appeals*, 170 SCRA 367). While the rigid application of the rules of procedure has, in the past, been relaxed so that the ends of justice may be better served, such liberality may not be invoked if it would result to wanton disregard of the rules and cause needless delay. Save for the most persuasive reasons, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.

Petitioner is liable to pay Donor's tax on donation pursuant to the* Dacion en Pago *entered into by the parties with Opal Portfolio Investment

Petitioner, in its Petition for Review, alleged that respondent erred in holding petitioners liable to pay Donor's Tax in the absence of a Deed of Donation executed by Allied Industrial Corporation and Alinsu Steel foundry Corporation in favor of Castalloy Technology Corporation. It went further by stating that a Donation of Real Property to be considered valid must comply with the strict formalities provided under Article 749 of the Civil Code of the Philippines. The law, in effect, states that the immovable property must be contained in a public document and the acceptance of the donation must be made in the same deed of donation or in a separate instrument.

While respondent humbly agrees with the existence of the aforesaid provision of law, she, however, would like to manifest that the same does not always holds true for purposes of computing internal revenue taxes because the NIRC of 1997, as amended, explicitly provides for the determination of what transactions are considered as deemed donation.

For purposes of computing internal revenue taxes, the NIRC of 1997, as amended and as implemented by revenue regulations, has laid down the guidelines, procedures and manner on how transactions made by taxpayers may be subject to internal revenue taxes.

In the case at hand, the NIRC of 1997 and implementing rules and regulations clearly defines what comprise transactions that are 'deemed' considered Donations subject of Donor's Tax. This kind of Donation is recognized as such even without complying with the strict formalities required under the Civil Code of the Philippines. Section 100 of the NIRC of 1997, as amended, states:

'CHAPTER II-DONOR'S TAX

xxx xxx xxx

Section 100 Transfer for Less Than Adequate of Full Consideration. –

Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate or full consideration in money or money's worth, then **the amount by which the fair market value of the property exceeded the value of the consideration** shall, for purposes of the tax imposed by this Chapter, be **deemed a gift**, and shall be included in computing the amount of gifts made during the calendar year.

In relation, Section 24 (D) of the NIRC of 1997, as amended, provides:

D) **Capital Gains from Sale of Real Property**. –

(1) In General. - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24 (A) or under this Subsection, at the option of the taxpayer. x x x

SEC. 39. Capital Gains and Losses. –

(A) Definitions. - As used in this Title –

(1) Capital Assets. – The term 'capital assets' means property held by the taxpayer (whether or not connected

> with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

It bears stressing that petitioner Castalloy Technology Corporation (Castalloy) obtained in the year 1996 various loans from Philippine National Bank (PNB). The loans acquired from the bank were secured allegedly by Real Estate Mortgage, using as collaterals certain real properties, considered as ordinary assets, which are absolutely owned by petitioners Allied Industrial Corporation (AIC) and Alinsu Steel Foundry Corporation (ASFC), as evidenced by the Transfer of Certificate of Titles issued in its favor. They allegedly act as accommodation mortgagors of petitioner Castalloy relative to the Real Estate Mortgage executed. Incidentally, those assets should be considered ordinary assets because they are used in the ordinary course of trade and business of petitioners AIC and ASFC.

For failure of petitioner Castalloy to pay the existing loans together with interests and penalties in the aggregate amount of ₱226,431,862.30 [(a) principal: ₱57,630,403.80; (b) interest: ₱97,096,645.15; and (c) penalties: ₱71,704,813.35], PNB applied for the extrajudicial foreclosure of the above properties. A Petition for the Extra-Judicial Foreclosure Proceedings under Act No. 3135 was filed before the Regional Trial Court of Mandaue City on January 25, 2005. At this juncture, it is noteworthy of emphasis that the Petition filed states that petitioners for the instant case binds themselves solidarily to pay the unpaid obligation. An excerpt of the petition clearly avers:

> '4. As Annex 'D', a copy of <u>**The Joint and Solidary Agreement**</u> dated and notarized on October 15, 1996 executed by GLORIA C. NGO and THOMAS C. NGO, JR., <u>**binding themselves solidarily**</u> with Castalloy Technology Corporation for the payment of the loans incurred from the Philippine National Bank.' (Emphasis and underscoring supplied)

Subsequent thereto, petitioners Castalloy, AIC, ASFC filed a case for the determination of correct obligation of petitioner Castalloy with an application for the issuance of a writ of preliminary injunction gc before the Branch 56-Regional Trial Court, Mandaue City docketed as Civil Case No. MAN-5081 to hold in abeyance the foreclosure of petitioners' properties until the correct amount of the outstanding obligation of petitioner Castalloy shall have been determined.

Pending resolution of the aforesaid civil case, PNB assigned all its rights and obligations to Opal Portfolio Investments Inc. (SPV-AMC) Inc. (herein referred to as 'Opal'), registered on February 16, 2004 with the Securities and Exchange Commission in accordance with Republic Act No. 9182 (Special Purpose Vehicle Act of 2002) and thereby acquired from PNB the loan account of Castalloy and became the defendant by substitution in the aforesaid civil case.

An Asset Sale and Purchase Agreement was executed on December 19, 2006 by and between PNB as seller and Golden Dragon Star Equities as buyer, which assigned all its rights and obligations to Opal by virtue of an Association Agreement dated December 29, 2006.

The Bangko Sentral ng Pilipinas issued on April 25, 2007 a Certificate of Eligibility (Of Non-Performing Assets) approving the sale of said assets to Opal.

A Compromise Agreement was entered into by and between petitioners and Opal on January 21, 2009, which was granted by the RTC Branch 56-Mandaue City in an Order dated April 27, 2009. In said compromise agreement, petitioners AIC and ASFC, referred to as solidary obligors, offered to sell, transfer and convey in favor of Opal their respective rights, title and interests over four (4) parcel of land, including all buildings and improvements existing thereon, by way of a *Dacion en Pago* agreement for and in consideration of a dacion price of Thirty Five Million Five Hundred Forty Five Thousand Pesos (₱35,545,000.00) to fully settle and liquidate the loan.

All the parties voluntarily consented to the *Dacion en Pago* agreement as evidenced by the signatures appearing in the Compromise Agreement. As agreed upon by the parties, the Compromise Agreement took effect upon the approval of the Court on April 27, 2009.

On October 6, 2009, these properties were sold by Opal to Red Bark Treasury Development Corporation for ₱33,000,000.00.

Respondent humbly manifests that the aforesaid the transfer of the real properties from petitioners AIC and ASFC to PNB, as represented by the assignee, Opal, are considered donation subject to the imposition of Donor's Tax.

Revenue Regulations No. 6-2004 dated March 31, 2004 implemented Republic Act No. 9182 otherwise known as 'The Special Purpose Vehicle Act of 2002' which specifically laid down the tax exemptions and privileges granted under said Act. It explicitly provides:

> 'CHAPTER III
>
> TAX EXEMPTIONS and PRIVILEGES
>
> Section 7. Tax Exempt Transactions. –
>
> (a) Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (d) hereof
>
> xxx xxx xxx
>
> (4) Dation in Payment (*dacion en pago*) of an NPL by a third party, on behalf of a borrower, to an FI.
>
> (c) The tax exemptions as provided in paragraph (d) hereof shall apply to the transactions listed in paragraph (a) above only if the following particular requirements, where applicable, are complied with:
>
> (7) In the case of transactions **<u>(a)(3), (a)(4), (a)(9), and (a)(10)</u>** above, the tax exemptions provided in paragraph (d) hereof shall **<u>apply only to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL being paid, inclusive of interests and penalties, if any</u>**: Provided, That the dation in payment must not be intended to circumvent the intention of the Act which is to benefit solely the borrower and the FI.
>
> The **<u>value of the property</u>** being transferred as payment is its fair market value as determined in accordance with Section 6(E) of the NIRC of 1997, whereas the **<u>consideration for such transfer</u>** shall be the **<u>value of the NPL</u>** including interests and other charges, if any, **<u>as stated</u>**

ge

<u>in the Deed of Dacion</u>. xxx' (Emphasis and underscoring supplied)

In relation thereto, Section 3 of the aforesaid RR No. 6-2004 likewise states:

'SEC 3. Definitions. For purposes of these Regulations, the term:

xxx xxx xxx

(d) **<u>Dacion in payment (*dacion en pago*)</u>** refers to a **<u>payment</u>** whereby property, whether real or personal, tangible or intangible, **<u>is alienated in favor of the creditor, which could either be an FI or SPV, in satisfaction of a non-performing loans</u>**: Provided, That the term does not include other forms of transfer such as judicial or extrajudicial foreclosure of execution of judgment.

xxx xxx xxx

(g) '**<u>Non-Performing Loan or NPL</u>**' refers to loans and receivables, such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including, but not limited to, real estate mortgages, chattel mortgages, pledges and antichresis whose principal and/or interest has remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred, as of June 30, 2002, as certified by the Appropriate Regulatory Authority.

(h) '**<u>ROPOA</u>**' refers to real and other properties owned or acquired by an FI in settlement of its loans and receivables, including, but not limited to real properties, shares of stock, and chattel formerly constituting collateral for secured loans, by way of dation in payment (*dacion en pago*), judicial or extrajudicial foreclosure, or execution of judgment xxx Provided, That, only for the purpose of this definition, a property is deemed acquired on:

(A) The date of notarization of the 'Deed of Dacion' in case of dation in payment (*dacion en pago*);

(B) The date of the entry of judgment in case of judicial foreclosure; or
(C) The date of notarization of the 'Sheriff's Certificate' in case of extra-judicial foreclosure;

Applying the aforementioned provisions of law and taking into consideration the transactions that occurred, it is safe to assume that, in the case at hand, petitioner Castalloy represents the 'Borrower', petitioners AIC and ASFC as 'third parties', the Philippine National Bank as the 'Financial Institution (FI)', Opal is deemed as 'Special Purpose Vehicle (SPV)', the real properties involved as 'Real and Other Properties Owned and Acquired (ROPOA)' by an FI as settlement for the Non-Performing Loans (NPL).

Under Section 7 (a) (4) of the aforesaid RR, it states that one of the tax exempt transactions are those pertaining to a Dacion in payment (*dacion en pago*) of an NPL by a third party, on behalf of a borrower, to a Financial Institution. However, be that as it may, Section 7 (d) of the same Revenue Regulation which incorporates what these taxes exemptions are, was amended by Section 2 of Republic Act No. 9343 which was promulgated on July 25, 2005 and circularized under Revenue Memorandum Circular No. 44-2006 dated July 14, 2006. It now reads in part:

> SECTION 2. Section 15 of the same Act is hereby amended to read as follows:
>
> SEC. 15. ***Tax Exemptions and Fee Privileges***. – Any existing law to the contrary notwithstanding the transfer of NPAs from the FI to an SPV, and from an SPV to a third party or dation in payment (*dacion en pago*) by the borrower or **by a third party in favor of an FI or in favor of an SPV** shall be **exempt** from the following taxes:
>
> a. **Documentary stamp tax** on the abovementioned transfer of NPAs and dation in payment (*dacion en pago*) as may be imposed under Title VII of the National Internal Revenue Code of 1997;
>
> b. **Capital gains tax** imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39(A)(1) of the National Internal Revenue Code of 1997;

> c. **<u>Creditable withholding income taxes</u>** imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulation No. 2-98, as amended;
>
> d. **<u>Valued-added tax</u>** on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997 or gross receipts tax under Title V of the same Code, whichever is applicable. x x x '

As can be gleaned, the only kind of taxes granted to tax-exempt transactions pertains only to the foregoing enumerations of internal revenue taxes. Hence, transactions covered by the Special Purpose Vehicle Act of 2002 may not be exempt from the payment of taxes outside the enumerations granted. In view thereof, since Donor's Tax is not within the coverage, transactions falling under said Act may therefore be subject to the payment of Donor's Tax.

In the case entitled, '*National Power Corporation v. City of Cabanatuan*,' the Supreme Court held:

> 'It is a basic precept of statutory construction that the **<u>express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*</u>**. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes.' (Emphasis and underscoring supplied)

One of the illustrations provided under RR No. 6-2004 shows:

> *Example 5: Dation in payment by third-party*
>
> If a third-party, in behalf of the borrower, transfers its land (classified as capital asset with a FMV of ₱100,000.00) to an FI in settlement of an NPL of ₱70,000.00, without any intention of claiming reimbursement from the said borrower, then:

1. the transfer is exempt from CGT and DST, but only to the extent of ₱70,000.00;
2. the transfer is subject to CGT and DST on the difference of ₱30,000.00; and
3. the third-party is liable for donor's tax by paying the borrower's NPL of ₱70,000.00.

On the other hand, if a third-party, in behalf of the borrower transfers its vatable land (with a book value of ₱70,000.00 and a FMV of ₱120,000.00) to an FI in settlement of an NPL of ₱100,000.00 because the said borrower gave ₱80,000.00 to the said third-party, then:

12. the transfer is exempt from VAT subject to the provisions of Sec. 110 (A)(3) of the NIRC of 1997;
13. the transfer is exempt from creditable withholding income tax and DST;
14. the third-party is liable for income tax on its gain of ₱10,000.00; and
15. the third-party is **liable for donor's tax on the transfer for insufficient consideration** where the insufficiency in the consideration amounts to ₱40,000.00 (₱120,000.00-₱80,000.00).

In the instant case, guided by the foregoing provision of law and illustration, the real properties of petitioners AIC and ASFC were used to pay for the unpaid obligation of petitioner Castalloy to a Financial institution, which assigned the aforesaid properties to Opal via a *Dacion en Pago* Agreement for and in consideration of a *dacion* price amounting to ₱35,545,000.00. The Zonal Value of the properties at the time of the execution of the agreement amounted to ₱65,157,070.00. Hence, the difference between the zonal value and the *dacion* price which would result to ₱29,612,070.00 shall be deemed Donation for purposes of computing internal revenue taxes, hence, said transaction shall be liable for the payment of Donor's Tax. Suffice it to say that this is deemed a Donation despite the fact that it does not contain the strict formalities and/or requisites necessary to consider it as a Donation.

In addition, it is very clear in Section 7 (c) (7) of RR 6-2004 that tax exemptions for transaction falling under (a) (4) shall apply only to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL being paid, inclusive of interest and penalties, if any. It likewise stated that in computing for the value of the property being transferred as payment, its FMV shall be determined in accordance with Section 6 (E) of the NIRC of 1997, as amended, whereas the consideration for such transfer shall be the value of the NPL including interests and other charges, if any, as stated in the Deed of Dacion. Ergo, the difference in the amount shall be subject to Donor's Tax. The detailed computation of the Donor's Tax was incorporated in the Formal Letter of Demand dated February 16, 2011 together with the Details of Discrepancies, which was served to petitioner by registered mail. In addition, upon verification of the documents, it was disclosed that the assignment of real properties to Special Purpose Vehicle was no longer exempted from the payment of taxes considering that the assignment of these properties to an SPV was made beyond the two-year period limitation provided under Republic Act No. 9343.

Section 2 of Republic Act No. 9343 clearly provides:

> 'SECTION 2. Section 15 of the same Act is hereby amended to read as follows:
>
> SEC. 15. ***Tax Exemptions and Fee Privileges***. – Any existing law to the contrary notwithstanding the transfer of NPAs from the FI to an SPV, and from an SPV to a third party or dation in payment (*dacion en pago*) by the borrower or **by a third party in favor of an FI or in favor of an SPV** shall be **exempt** from the following taxes:
>
> xxx xxx xxx
>
> All sales or transfers of NPAs from the FIs to an SPV or transfers by way of dation in payment (*dacion en pago*) by the borrower or by a third party to the FI shall be entitled to the privileges enumerated herein for a period of not more than two (2) years from the date of effectivity of this amendatory act. x x x'
>
> SEC. 5. Effectivity – This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette or in at least two newspapers of general publication.

The aforecited law was published on April 29, 2006 in a newspaper of general circulation and therefore shall have taken effect on May 14, 2006 which is 15 days following the date of publication as provided by law. Ergo, the Amendatory Act shall be effective two years reckoned from May 14, 2006 or until May 14, 2008. The Accession Agreement was executed between Opal as Assignee, Golden Dragon Star Equities Inc as the purchaser and PNB on December 29, 2006 where the purchaser assigns all its rights and obligations to the assignee. The Compromise Agreement which gave rise to the *Dacion en Pago* agreement was executed on January 21, 2009. Therefore, the transaction is no longer exempt from the payment of tax as provided under the SPV Act of 2002, as amended and with all the more reason that petitioners is liable to pay the Donor's Tax.

Petitioners AIC and ASFC should be held liable for the payment of Donor's Tax on account of the gift deemed received by petitioner Castalloy

Respondent's deficiency Donor's Tax assessment against petitioner should be sustained on account of the gift deemed received by petitioner Castalloy from petitioners AIC and ASFC via the Compromise Agreement the parties executed with Opal.

Contrary to the allegations of petitioners AIS and ASFC that they merely acted as accommodation mortgagors for the loan account of petitioner Castalloy and that the latter Castalloy would eventually reimburse them, the documents submitted for evaluation speak otherwise.

Upon careful scrutiny of the Compromise Agreement executed, it would reveal that there is no particular provision stating that a reimbursement would be made by petitioner Castalloy relative to the loan account to be fully settled, liquidated and paid by the transfer of real properties absolutely owned by petitioners AIS and ASFC. In the same vein, petitioner Castalloy never expressly stated that it acknowledges that it has reimbursement to be made in favor of petitioners AIS and ASFC for the liabilities it incurred. In fact, the Compromise Agreement collectively refers the parties as SOLIDARY OBLIGORS.

Paragraph 2(a) of the Compromise Agreement clearly states:

2. AIC and ASFC represent and warrant that:

xxx xxx xxx

9. In the event that titles to properties cannot be transferred in the name of OPAL, free from all liens and

> encumbrances, the Loan Account shall become demandable and payable. Consequently, **Castalloy and the solidary obligors shall immediately pay**, without need of demand, the loan account. **Failure of Castalloy and the solidary obligors** shall entitle Opal to avail of all the applicable remedies under the law, including the foreclosure of the mortgaged properties which secure the Loan Account. xxx' (Emphasis and underscoring supplied)

In addition, it bears stressing that the Petition for the determination of the correct liability of petitioner Castalloy which was filed before Branch 56 of RTC – Mandaue City states that petitioners binds themselves solidarily to pay the unpaid obligation. An excerpt of the petition clearly avers:

> '4. As Annex 'D', a copy of **The Joint and Solidary Agreement** dated and notarized on October 15, 1996 executed by GLORIA C. NGO and THOMAS C. NGO, JR., **binding themselves solidarily** with Castalloy Technology Corporation for the payment of the loans incurred from the Philippine National Bank.' (Emphasis and underscoring supplied)

Petitioners AIC and ASFC actively participated in all the agreements entered and executed by petitioner Castalloy. Petitioners always stood as one of the parties from the time of the execution of Real Estate Mortgage to the filing of Petition before the Regional Trial Court and the Compromise Agreement down to the submission of protest before the Bureau of Internal Revenue. In fact, the Petition for Review before the Court of Tax Appeals was filed not solely by Castalloy but also by the others petitioners AIS and ASFC. These only proves that petitioners AIC and ASFC are solidary obligors which are held liable equally with petitioner Castalloy.

Revenue officers are afforded the presumption of regularity in the performance of their official functions, since they have the distinct opportunity, aside from competence, to peruse records of the assessments. By reason of their expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact are generally accorded great respect, if not finality, by the Courts.

In the case entitled '*Commissioner of Internal v. Hon. Raul M. Gonzales et al.*,' the Supreme Court held: gr

> Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. We have held that a taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes." *(Citations omitted)*

During trial, petitioners presented their lone witness Thomas C. Ngo, Executive Vice-President of petitioner Castalloy Technology Corporation.[7] Thereafter, petitioners filed their Formal Offer of Exhibits[8] on May 21, 2012, submitting Exhibits "A" to "Q", "S" and "T", inclusive of sub-markings; which were admitted in the Resolutions dated July 12, 2012[9] and November 7, 2012[10].

On the other hand, respondent presented Lourdes B. Estrañero as her lone witness.[11] Thereafter, respondent filed her Formal Offer of Documentary Evidence[12] on March 6, 2013, submitting Exhibits "3", "9" to "16", "19", "22" to "26" and "30", inclusive of sub-markings; which this Court admitted in the Resolutions dated May 17, 2013[13] and June 19, 2013[14], except Exhibits "9", "15", and "16".

The case was submitted for decision on August 15, 2013, taking into consideration the Memorandum for the Petitioner filed through registered mail on July 15, 2013 and received by this Court on July 23, 2013 and respondent's Manifestation filed on August 8, 2013 stating that she is adopting the arguments raised in her Answer filed on May 31, 2011 as her Memorandum.[15]

THE ISSUES

The issues[16] for this Court's resolution are as follows: *gc*

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[7] Minutes, docket, p. 241.
[8] Docket, pp. 248 to 256.
[9] Docket, pp. 340 to 341.
[10] Docket, pp. 388 to 389.
[11] Minutes, docket, pp. 369 and 386.
[12] Docket, pp. 427 to 434.
[13] Docket, pp. 442 to 443.
[14] Docket, p. 454.
[15] Resolution dated August 15, 2013, docket, p. 489.
[16] Pre-Trial Order dated May 30, 2012, docket, pp. 234 to 238.

1. Whether or not the Court of Tax Appeals has jurisdiction to try and hear the case;

2. Whether or not there was premature filing of the Petition for Review before the Court of Tax Appeals;

3. Whether or not petitioners are liable to pay donor's tax in the amount of ₱14,323,423.40, inclusive of increments; and

4. Whether or not the *dacion en pago* executed by petitioners Alinsu Steel Foundry Corporation and Allied Industrial Corporation in favor of Opal Portfolio Investments, Inc., is exempt from tax.

<u>THE COURT'S RULING</u>

We dismiss the petition.

Section 228 of the NIRC of 1997, as amended, provides that:

"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 pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

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.** ge

> **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**." *(Emphasis supplied)*

To implement the above-mentioned provision, Revenue Regulations (RR) No. 12-99 was issued, the pertinent portions of which are quoted hereunder:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -
>
> xxx xxx xxx
>
> '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 the payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void.* xxx The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x

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**. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

xxx xxx xxx

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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.

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." *(Emphasis supplied)*

Based on Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99, it is clear that when the Commissioner or his duly authorized representative finds that there is sufficient basis to assess the taxpayer for any deficiency tax or taxes, the Commissioner or his duly authorized representative shall then issue a Preliminary Assessment Notice (PAN) against the taxpayer for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence. The taxpayer is then given fifteen (15) days from receipt of the PAN to make a reply to present his arguments in writing.

However, if the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN or if the Commissioner or his duly authorized representative finds that the former's response is without merit, the formal letter of demand and assessment notice shall then be issued, calling for the payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

The said formal letter of demand and assessment notice may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment. Within sixty (60) days from the filing of the protest, all relevant supporting documents must be submitted; otherwise, the assessment shall become final, executory and demandable.

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 may appeal to this Court within 30 days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the assessment shall become final, executory and demandable.

On the other hand, the jurisdiction of this Court is defined under Republic Act No. 1125, as amended. Section 7(a)(1) and (2) thereof states:

> "Sec. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other

matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

Corollary thereto, Section 3 of Rule 4 and Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals state:

"RULE 4
Jurisdiction of the Court

xxx xxx xxx

SECTION 3. *Cases within the jurisdiction of the Court in Division*. - The Court in Division shall exercise:

(a) **Exclusive original or appellate jurisdiction to review by appeal** the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner

of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

xxx xxx xxx

RULE 8
Procedure in Civil Cases

xxx xxx xxx

SECTION 3. *Who May Appeal; Period to File Petition*. - (a) **A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." *(Emphasis supplied)*

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[17] the Supreme Court ruled that decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments, to wit:

"From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue.

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[17] G.R. No. 168498, April 24, 2007.

> **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments**. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same." *(Emphasis supplied)*

In the instant case, petitioner filed a protest against the PAN after receiving it, as issued by BIR Regional Director Jose Tan. In response, the BIR issued a letter dated February 10, 2011[18] together with the Formal Letter of Demand and Assessment Notice dated February 16, 2011, which petitioners received on March 9, 2011. The February 10, 2011 letter of the Regional Director clearly indicated that his "office is left with no alternative but to issue Final Assessment Notice (FAN) reiterating the demand for the payment of the deficiency donor's tax shown therein to protect the interest of the government."

Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 require that petitioners should file an administrative protest against the said FAN of the Regional Director. This is done by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Within 60 days from the filing of the protest, all relevant supporting documents must be submitted; otherwise, the assessment shall become final, executory and demandable.

Petitioners, however, did not protest the final assessment notice before the Commissioner of Internal Revenue. Instead, on March 28, 2011, petitioners immediately filed the instant Petition for Review with this Court without filing a protest against respondent's final assessment.

It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[19]

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[18] Exhibit "I", docket, pp. 69 to 70; Exhibit "T", docket, pp. 199 to 208.
[19] *Asia International Auctioneers, Inc. and Subic Bay Motors Corporation v. Hon. Guillermo L. Parayno, Jr., et al.*, G.R. No. 163445, December 18, 2007.

Given that petitioners did not file a protest against the final assessment before the BIR Commissioner, there is no inaction or decision of the BIR Commissioner appealable before this Court. Clearly, this Court has not acquired jurisdiction over the subject matter of this case.

It must be emphasized that this Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[20]

Based on the foregoing, this Court deems it no longer necessary to resolve the other stipulated issues.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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[20] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice