Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PANGASINAN III ELECTRIC COOPERATIVE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8915
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

MAR 19 2018 ; 10:15 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Pangasinan III Electric Cooperative, Inc. against the Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a) (1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

[1] 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 Code or other laws administered by the Bureau of Internal Revenue; xxx.

[2] Act Creating the Court of Tax Appeals.

[3] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over 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.

[4] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the

Petitioner seeks to annul, reverse and set aside the (a) Final Assessment Notices/Formal Letter of Demand (FAN/FLD) dated December 12, 2013 issued by respondent Commissioner of Internal Revenue (CIR), demanding from petitioner Pangasinan III Electric Cooperative, Inc. the payment of ₱153,623,068.02 representing alleged deficiency value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT) on fringe benefits, and documentary stamp tax (DST), and compromise penalty for taxable year 2009; and (b) FAN/FLD dated February 19, 2014 issued by respondent, demanding from petitioner the payment of ₱245,682,949.94 representing alleged deficiency VAT, EWT, FWT on fringe benefits, and compromise penalty for taxable year 2010.

Petitioner Pangasinan III Electric Cooperative, Inc. is an electric cooperative registered with the Cooperative Development Authority, with address at Nancayasan, Urdaneta City, Pangasinan.[5]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) of 1997, as amended, and collecting all internal revenue taxes. Respondent holds office at the BIR National Office Bldg., BIR Road, Diliman, Quezon City.

On July 8, 2011, petitioner received from the BIR Revenue Region No. 1-Calasiao, Pangasinan, Letter of Authority No. SN: eLA201000070127/LOA-006-2011-00000219[6] dated July 7, 2011 and signed by Regional Director Arnel Guballa, assigning Revenue Officer (RO) Eric Cristobal and Group Supervisor (GS) Jose Labonete to examine its books of accounts and other accounting records for all internal revenue taxes for taxable year 2009.[7]

A Preliminary Assessment Notice[8] dated July 16, 2013 was issued by respondent against petitioner for taxable year 2009.

Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[5] Exhibit "P-106".

[6] Exhibit "R-1", BIR Records, Folder 1, p. 1.

[7] Par. 1.2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 445.

[8] Exhibit "R-11", BIR Records, Folder 2, p. 368.

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Assessment Notices[9] dated December 12, 2013 were issued by respondent and received by petitioner on the same date.[10] In the FLD[11], petitioner was assessed the following deficiency taxes:[12]

2009 DEFICIENCY TAXES	
Tax Type	**Amount**
Value-Added Tax	₱ 136,008,716.99
Expanded Withholding Tax	76,598.92
Final Withholding Tax	17,141,352.55
Documentary Stamp Tax	325,899.56
Compromise Penalty Payable	70,500.00
Total	**₱ 153,623,068.02**

However, the amounts indicated in the Assessment Notices[13] and Computation Sheet of Deficiency Taxes[14] are as follows:

2009 DEFICIENCY TAXES	
Tax Type	**Amount**
Value Added Tax	₱ 137,913,156.43
Expanded Withholding Tax	77,668.02
Final Withholding Tax	17,350,937.75
Documentary Stamp Tax	329,873.50
Compromise Penalty Payable	70,500.00
Total	**₱ 155,742,135.70**

On May 12, 2011, petitioner received Letter of Authority No. SN: eLA201000070041/LOA-006-2011-00000160[15] dated May 10, 2011 from Revenue Region No. 001-Calasiao, Pangasinan, authorizing RO Rodelio Dacanay/GS Jose Labonete of Revenue District No. 006 – Urdaneta, East Pangasinan to examine its books of accounts and other accounting records for taxable year 2010.[16]

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[9] Exhibits "P-4" to "P-8" and "R-14", BIR Records, Folder 2, pp. 375-379.
[10] Par. 1.3, Admitted Facts, JSFI, Docket, vol. I, p. 445.
[11] Exhibits "P-9" to "P-10" and "R-13", BIR Records, Folder 2, pp. 372-374.
[12] Par. 1.3, Admitted Facts, JSFI, Docket, vol. I, p. 445.
[13] Exhibits "P-4" to "P-8" and "R-14", BIR Records, Folder 2, pp. 375-379.
[14] Exhibits "P-10" and "R-13", BIR Records, Folder 2, pp. 372-373.
[15] Exhibit "R-18", BIR Records, Folder 4, p. 69.
[16] Par. 1.4, Admitted Facts, JSFI, Docket, vol. I, p. 445.

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A Preliminary Assessment Notice[17] dated January 10, 2014 was issued by respondent against petitioner for taxable year 2010.

On February 19, 2014, petitioner received the FLD[18] and Assessment Notices[19] dated February 19, 2014, requiring it to pay the following deficiency taxes:[20]

2010 DEFICIENCY TAXES	
Tax Type	**Amount**
Value-Added Tax	₱ 226,523,901.59
Expanded Withholding Tax	1,994,348.84
Final Withholding Tax	17,113,699.52[21]
Compromise Penalty Payable	51,000.00
Total	**₱ 245,682,949.95**[22]

On various dates, Warrants of Garnishment, Distraint and Levy were implemented by respondent.[23] The parties stipulated on the existence of the Warrant of Garnishment issued against petitioner's Land Bank of the Philippines accounts for the collection of deficiency taxes for taxable year 2009[24] and Notices of Lien/Levy issued to enforce the collection of deficiency taxes.[25]

On September 3, 2014, petitioner filed a Motion for Reinvestigation[26] (for taxable years 2009 and 2010) with respondent CIR and coursed through the Regional Director of Revenue Region No. 1.[27]

The said motion was denied on October 1, 2014.[28]

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17 Exhibit "P-105" (although formally offered as "Preliminary Assessment Notice for 2009 Tax Assessment", the pre-marked exhibit shows that it pertains to taxable year 2010); Exhibit "R-32", BIR Records, Folder 7, pp. 518-520.
18 Exhibits "P-15" and "R-33", BIR Records, Folder 7, pp. 534-535.
19 Exhibits "P-11" to "P-14" and "R-34", BIR Records, Folder 7, pp. 529-533.
20 Par. 1.5, Admitted Facts, JSFI, Docket, vol. I, pp. 445-446.
21 Amount per Assessment Notice but amount per FLD is ₱17,113,699.51.
22 Total per FLD is ₱ 245,682,949.94.
23 Par. 1.6, Admitted Facts, JSFI, Docket, vol. I, p. 446.
24 Par. 2.1.1, Stipulated Facts, JSFI, Docket, vol. I, p. 446.
25 Par. 2.1.2, Stipulated Facts, JSFI, Docket, vol. I, p. 446.
26 Exhibit "P-17", BIR Records, Folder 3, pp. 550-551.
27 Par. 1.7, Admitted Facts, JSFI, Docket, vol. I, p. 446.
28 Par. 1.8, Admitted Facts, JSFI, Docket, vol. I, p. 446; Exhibit "P-19", Docket, vol. I, p. 61; Exhibit "R-35", BIR Records, Folder 8, p. 615.

On October 28, 2014, petitioner filed its Petition for Review before the Court of Tax Appeals.[29]

On December 4, 2014, petitioner filed an Urgent Motion for Suspension of Collection of Tax Liability with Application for Reduction of Bond[30]. In compliance with the Resolution[31] dated December 9, 2014, respondent filed his Comment/Opposition (Re: Petitioner's Urgent Motion for Suspension of Collection of Tax Liability with Application for Reduction of Bond)[32] on December 11, 2014.

Petitioner's urgent motion was heard on December 15, 2014.[33] Thereafter, petitioner filed its Formal Offer of Evidence[34] on December 17, 2014. In the Resolution[35] dated December 18, 2014, the Court admitted all of petitioner's exhibits.

The Court partially granted petitioner's Urgent Motion for Suspension of Collection of Tax Liability with Application for Reduction of Bond.[36] In the Resolution[37] dated February 11, 2015, the Court deemed petitioner to have complied with the condition for suspension of the subject tax collection in view of the posting of the surety bond.

In his Answer[38] filed on January 21, 2015, respondent interposed the following Special and Affirmative Defenses: (a) the Court has no jurisdiction over the instant petition; the assessment had already become final, executory and demandable; (b) respondent's right to assess for the two taxable years did not prescribe; and (c) the Letter of Authority, Notice of Informal Conference, Preliminary Assessment Notice, Formal Letter of Demand, and Final Assessment Notice were issued in accordance with law, rules and jurisprudence.

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[29] Docket, vol. I, pp. 6-52. However, the parties stipulated that the date of filing is October 27, 2014, par. 1.9, Admitted Facts, JSFI, Docket, vol. I, p. 446.
[30] Docket, vol. I, pp. 162-168.
[31] Docket, vol. I, p. 225.
[32] Docket, vol. I, pp. 226-230.
[33] Minutes of the Hearing dated December 15, 2014, Docket, vol. I, pp. 232-234.
[34] Docket, vol. I, pp. 253-262.
[35] Docket, vol. I, pp. 278-279.
[36] Resolution dated December 19, 2014, Docket, vol. I, pp. 282-289.
[37] Docket, vol. I, pp. 353-354.
[38] Docket, vol. I, pp. 304-327.

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A Notice of Pre-Trial Conference[39] was issued by the Court on January 28, 2015, setting the case for pre-trial conference on April 16, 2015. Accordingly, respondent's Pre-Trial Brief[40] was filed on April 8, 2015; while petitioner's Pre-Trial Brief[41] was filed on April 13, 2015.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[42] on May 4, 2015 and Supplemental Joint Stipulation of Facts and Issues[43] on June 1, 2015. Thereafter, on June 22, 2015, the Court issued a Pre-Trial Order[44].

Meanwhile, upon petitioner's motion[45], this Court commissioned Mr. Eufracio C. Rocamora, as Independent Certified Public Accountant (ICPA) for the case.[46]

During trial, petitioner presented (1) Engr. Allan Casem[47], petitioner's general manager; (2) Atty. Julius Peralta[48], petitioner's chairman of the Board of Directors; and (3) Mr. Eufracio C. Rocamora[49], the ICPA, as its witnesses.

Petitioner filed its Formal Offer of Evidence[50] on October 9, 2015. In the Resolution dated April 8, 2016[51], the Court admitted all of petitioner's evidence except for Exhibits "P-57", "P-60", "P-91", "P-26", "P-27", "P-29", "P-30", "P-32", "P-33", "P-35", "P-36", "P-49", "P-50", "P-51", "P-53", "P-54", "P-55", and "P-56".

Petitioner's admitted documentary evidence are as follows:

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[39] Docket, vol. I, p. 330.
[40] Docket, vol. I, pp. 392-403.
[41] Docket, vol. I, pp. 406-413.
[42] Docket, vol. I, pp. 444-449.
[43] Docket, vol. II, pp. 524-541.
[44] Docket, vol. II, pp. 562-586.
[45] Motion for the Appointment of an Independent Certified Public Accountant, filed on May 14, 2015, Docket, vol. I, pp. 496-500.
[46] Minutes of the Hearing dated May 21, 2015, Docket, vol. II, p. 514-516.
[47] Minutes of the Hearing dated June 23, 2015, Docket, vol. II, pp. 588-589; Exhibit "P-20", Docket, vol. I, pp. 420-433 (Addendum, Docket, vol. II, pp. 593-602).
[48] Minutes of the Hearing dated August 25, 2015, Docket, vol. II, pp. 779-782; Exhibit "P-21", Docket, vol. II, pp. 707-714.
[49] Minutes of the Hearing dated September 24, 2015, Docket, vol. II, pp. 813-816; Exhibit "P-99", Docket, vol. II, pp. 790-806.
[50] Docket, vol. II, pp. 842-861.
[51] Docket, vol. III, pp. 1527-1529.

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Exhibits:	Description:
P-1	Petition for Review filed by Pangasinan III Electric Cooperative, Inc. in this case
P-2	Secretary's Certificate dated 26 October 2014
P-3	Board Resolution No. 117-s-08-2014 dated 12 August 2014
P-4	Audit Results/Assessment Notice for Deficiency Value Added Tax with total amount of P137,913,156.43 issued on 12 December 2013
P-5	Audit Results/Assessment Notice for Deficiency Expanded Withholding Tax with total amount of P77,668.02 issued on 12 December 2013
P-6	Audit Results/Assessment Notice for Deficiency Final Withholding Tax with total amount of P17,350,937.75 issued on 12 December 2013
P-7	Audit Results/Assessment Notice for Deficiency Documentary Stamp with total amount of P329,873.50 issued on 12 December 2013
P-8	Audit Results/Assessment Notice for Suggested Compromise Penalty in lieu of criminal prosecution with a total amount of P70,500 issued on 12 December 2013
P-9	Formal Letter of Demand for Deficiency Internal Revenue Tax Liabilities for taxable year 2009 amounting to P153,623,068.02 dated 12 December 2013
P-10	Formal Letter of Demand – Schedule of Deficiency Taxes Computations for Taxable Year 2009 with a total amount of P155,742,135.70
P-11	Audit Results/Assessment Notice for Deficiency Value Added Tax with total amount of P226,523,901.59 issued on 19 February 2014
P-12	Audit Results/Assessment Notice for Deficiency Expanded Withholding Tax with total amount of P1,994,348.84 issued on 19 February 2014
P-13	Audit Results/Assessment Notice for Final (Fringe Benefits Tax) with total amount of P17,113,699.52 issued on 19 February 2014
P-14	Audit Results/Assessment Notice for Compromise Penalties with total amount of P51,000.00 issued on 19 February 2014
P-15	Formal Letter of Demand for Deficiency Internal Revenue Tax Liabilities for taxable year 2010 amounting to P245,682,949.94 issued on 19 February 2014
P-16	Formal Letter of Demand-Schedule of Deficiency Taxes Computation for taxable year 2010 with total amount of P245,682,949.94
P-17	Motion for Reinvestigation for Taxable Years 2009 and 2010 dated 03 September 2014
P-18	Judicial Affidavit of Mr. Eufracio C. Rocamora filed on 14 May 2015
P-18-b	Resume of Mr. Eufracio C. Rocamora filed on 14 May 2015

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P-19	BIR reply to the Motion for Reinvestigation for the taxable years 2009 and 2010, received by Petitioner on 01 October 2014
P-20	Judicial Affidavit of Engr. Allan G. Casem and its Addendum
P-21	Amended Judicial Affidavit of Atty. Julius Cesar G. Peralta
P-28	BIR Form 2550Q-Quarterly Value Added Tax Return for the 1st Quarter 2009, with total amount of P1,171,407.77 and filed on 24 April 2009
P-31	BIR Form 2550-M Monthly Value Added Tax Return for 2nd Quarter 2009 with total amount of P2,637,112.38
P-34	BIR Form 2550Q-Quarterly Value Added Tax Return for 3rd Quarter 2009 with total amount of P2,077,063.91 and filed on 26 October 2009
P-37	BIR Form 2550Q-Quarterly Value Added Tax Return for the 4th Quarter 2009, with total amount of P2,475,768.19 and filed on 25 January 2010
P-38	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of January 2009 with total amount of P426,489.05 and filed on 10 February 2009
P-39	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of February 2009 with total amount of (P178,219.44) and filed on 10 March 2009
P-40	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of April 2009 with the total amount of P109,215.94 and filed on 12 May 2009
P-41	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of May 2009 with total amount of P158,605.82 and filed on 09 June 2009
P-42	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of June 2009 with total amount of P169,191.73 and filed on 10 July 2009
P-43	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of July 2009 with total amount of P147,702.11 and filed on 10 August 2009
P-44	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of August 2009 with total amount of P140,503.34 and filed on 10 September 2009
P-45	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of September 2009 with total amount of P174,726.30
P-46	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of

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	October 2009 with total amount of P145,441.56 and filed on 10 November 2009
P-47	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of November 2009 with total amount of P130,194.19 filed on 10 December 2009
P-48	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of December 2009, with total amount of P157,649.88 and filed on 15 January 2010
P-52	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of April 2009, with total amount of P526,005.14 and filed on 12 May 2009
P-58	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of October, 2009 with total amount of P576,560.08 and filed on 10 November 2009
P-59	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of November, 2009 with total amount of P632,942.85 and filed on 10 December 2009
P-61	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of January 2010, with total amount of P2,761,157.66 and filed on 19 February 2010
P-62	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of February 2010, with total amount of P2,685,324.18 and filed on 22 March 2010
P-63	BIR Form 2550Q-Quarterly Value Added Tax Return for 1st Quarter 2010, with total amount of P2,474,220.10 and filed on 26 April 2010
P-64	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of April 2010, with total amount of P3,245,363.32 and filed on 20 May 2010
P-65	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of May 2010, with total amount of P3,359,737.61 and filed on 21 June 2010
P-67	BIR Form 2550Q-Quarterly Value Added Tax Return for 2nd Quarter 2010, with total amount of (P7,589,216.05) and filed on 20 August 2010
P-68	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of August 2010, with total amount of (P4,040.315.77) and filed on 20 September 2010
P-69	BIR Form 2550Q-Quarterly Value Added Tax Return for 3rd Quarter 2010, with total amount of (P5,983,112.00) and filed on 26 October 2010
P-70	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of October 2010, with total amount of (P6,044,087.23) and filed on 22 November 2010

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P-71	BIR Form 2550M-Monthly Value Added Tax Declaration for the month of November 2010, with total amount of P163,544.45 and filed on 29 December 2010
P-72	BIR Form 2550Q-Quarterly Value Added Tax Return for 4th Quarter 2010, with total amount of P387,691.62 and filed on 25 January 2011
P-73	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of January 2010, with total amount of P153,777.98 and filed on 10 February 2010
P-74	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of February 2010, with total amount of P77,091.58 and filed on 10 March 2010
P-75	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of March 2010, with total amount of P192,010.25 and filed on 12 April 2010
P-76	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of April 2010, with total of P161,080.68 and filed on 12 May 2010
P-77	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of May 2010, and filed on 10 June 2010
P-78	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of July 2010, with total amount of P197,138.78 and filed on 9 July 2010
P-79	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of June 2010, with total amount of P176,400.10 and filed on 10 August 2010
P-80	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of August 2010, with total amount of P252,252.34 and filed on 13 September 2010
P-81	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of September 2010, with total amount of P176,056.48
P-82	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of October 2010, with total amount of P146,752.92 and filed on 10 November 2010
P-83	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of November 2010, with total amount of P223,205.10 and filed on 10 December 2010
P-84	BIR Form 1601-E Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of

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	December 2010, with total amount of P243,521.51 and filed on 10 January 2011
P-85	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month January 2010, with total amount of P525,351.20 and filed on 11 February 2010
P-86	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month February 2010, with total amount of P643,136.95 and filed on 10 March 2010
P-87	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month March, 2010, with total amount of P545,650.26 and filed on 12 April 2010
P-88	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month April 2010, with total amount of P545,259.89 and filed on 11 May 2010
P-89	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month May 2010, with total amount of P1,015,478.43 and filed on 10 June 2010
P-90	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month June 2010, with total amount of P983,560.82 and filed on 9 July 2010
P-92	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month August 2010, with total amount of P1,170,869.78 and filed on 13 September 2010
P-93	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month September 2010, with total amount of P966,890.96 filed on 11 October 2010
P-94	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month October 2010, with total amount of P1,479,107.26 and filed on 10 November 2010
P-95	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month November 2010, with total amount of P1,579,897.32 and filed on 10 December 2010
P-96	BIR Form 1601-C Monthly Remittance Return of Income Taxes Withheld on Compensation for the month December 2010, with total amount of P690,714.85 and filed on 10 January 2011
P-97	Partial Report dated 30 June 2015 submitted to the Honorable Court by the independent certified public accountant, Mr. Eufracio C. Rocamora
P-98	Final Report dated 16 July 2015 submitted to the Honorable Court by the independent certified public accountant, Mr. Eufracio C. Rocamora

P-99	Judicial Affidavit of Mr. Eufracio C. Rocamora as ICPA
P-100	2nd and Final Notice Before Seizure for 2009 Tax Assessment
P-101	Cooperative's Protest Letter
P-102	Notice of Informal Conference for 2009 Tax Assessment
P-103	2nd Collection Letter for 2010 Tax Assessment
P-104	Cooperative's Protest Letter
P-105	Preliminary Assessment Notice for 2009 Tax Assessment
P-106	CDA Certificate of Registration
P-107	Articles of Incorporation
P-108	Audited Financial Statements-2009
P-109	Audited Financial Statements-2010
P-110	Transmittal to the BIR dated January 13, 2014
P-111	Transmittal to the BIR dated Jun 13, 2012
P-112	Subpoena Duces Tecum No. RR1-3-2010
P-113	Collective Bargaining Agreement Between PANELCO III and PEA III
P-114	2009 Honorarium and Allowances Paid to Board of Directors
P-115	2010 Honorarium and Allowances Paid to Board of Directors
P-116	1601-E Monthly Remittance of Expanded Withholding Tax for 2009
P-117	1601-E Monthly Remittance of Expanded Withholding Tax for 2010
P-118	List of Basic Salaries of Managers and Supervisors Extracted from Alpha List
P-119	2010 Alpha List submitted to the BIR
P-120	Summary List of 13th Month Pay for Jan to June give to Managers and Supervisors-Taxable Year 2010
P-121	Summary List of 13th Month Pay for July to Dec given to Managers and Supervisors-Taxable Year 2010
P-122	Summary List of Year-End Christmas Incentive given to Managers and Supervisors for Jan to June-Taxable Year 2010
P-123	Summary List of Year-End Christmas Incentive given to Managers and Supervisors for July to Dec-Taxable Year 2010
P-124	Summary List of Optical Allowance given to Managers and Supervisors Taxable Year 2010
P-125	Summary List of Dental Allowance given to Managers and Supervisors Taxable Year 2010
P-126	Summary List of Medical Allowance given to Managers and Supervisors Taxable Year 2010
P-127	Summary List of Rice Allowance given to Managers and Supervisors Taxable Year 2010
P-128	Summary List of Year-Rainwear Allowance given to Managers and Supervisors Taxable Year 2010
P-129	Summary List of Phone Card Allowance given to Managers and Supervisors Taxable Year 2010
P-130	Summary List of Representation Allowance given to Managers and Supervisors Taxable Year 2010

P-131	Catalog Payment of 2010 13th Month Pay to Employee for January to June
P-132	Catalog Payment of 2010 13th Month Pay to Employee for July to December
P-133	Catalog of Partial Payment of 2010 Christmas Incentives to Employees for January to June
P-134	Catalog of Full Payment of 2010 Optical Allowance to Employees
P-135	Catalog of Payment of 2010 Optical Allowance to Employees
P-136	Catalog of Payment of 2010 Dental Allowance to Employees
P-137	Catalog of Payment of 2010 Medical Allowance to Employees
P-138	Catalog of Payment of 2010 Monthly Rice Allowance to Employees
P-139	Catalog of Payment of 2010 Rainwear Allowance to Employees
P-140	Catalog of Payment of 2010 Phone Card Allowance to Employees
P-141	Catalog of Payment of 2010 Representation Allowance to Employees
P-142	2009 Summary of Value Added Tax per Cash Receipts Register
P-143	2009 Cash Receipts Register (CRR)-Central Area Office (CAO) January to December
P-144	2009 Cash Receipts Register (CRR)-Central Area Office (SAO) January to December
P-145	2009 Cash Receipts Register (CRR)-Central Area Office (NAO) January to December
P-146	2010 Summary of Value Added Tax per Cash Receipts Register
P-147	2010 Cash Receipts Register (CRR)-Central Area Office (CAO) January to December
P-148	2010 Cash Receipts Register (CRR)- Northern Area Office (NAO) January to December
P-149	2009 Schedule of Payment of Generation Charges and Generation VAT
P-150	2009 NPC/PSALM Invoices/Billings with Check Vouchers
P-151	2009 Schedule of Payment of Transmission Charges and Transmission VAT
P-152	2009 NGCP Invoices/Billings with Check Vouchers
P-153	2010 NGCP Invoices/Billings with Check Vouchers
P-154	2010 Schedule of Payment of Generation Charges and Generation VAT
P-155	2010 SMEC Invoices/Billings with Check Vouchers
P-156	2009 Check Register (CR) January to December
P-157	2010 Check Register (CR) January to December
P-158	2009 Journal Voucher Register (JVR) January to December
P-159	2010 Journal Voucher Register (JVR) January to December
P-160	2009 Cashier's Daily Cash Receipts (CDCR)-Rosales Office-January to December

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P-161	2009 Cashier's Daily Cash Receipts (CDCR)-Tayug Office-January to December
P-162	2009 Cashier's Daily Cash Receipts (CDCR)-Sto. Tomas Office-January to December
P-163	2009 Cashier's Daily Cash Receipts (CDCR)-San Manuel Office-January to December
P-164	2009 Cashier's Daily Cash Receipts (CDCR)-Umingan Office-January to December
P-165	2009 Cashier's Daily Cash Receipts (CDCR)-Binalonan Office-January to December
P-166	2009 Cashier's Daily Cash Receipts (CDCR)-San Quintin Office-January to December
P-167	2009 Cashier's Daily Cash Receipts (CDCR)-Natividad Office-January to December
P-168	2009 Cashier's Daily Cash Receipts (CDCR)-Balungao Office-January, May to October and December
P-169	2009 Cashier's Daily Cash Receipts (CDCR)-Laoac Office-March to December
P-170	2009 Cashier's Daily Cash Receipts (CDCR)-Mapandan Office-April to December
P-171	2009 Cashier's Daily Cash Receipts (CDCR)-Sta. Maria Office-March to December
P-172	2009 Cashier's Daily Cash Receipts (CDCR)-Asingan Office – December
P-173	2010 Cashier's Daily Cash Receipts (CDCR)-Pozorrubio Office-January to December
P-174	2010 Cashier's Daily Cash Receipts (CDCR)-Urdaneta (Main) Office-January to June
P-175	2010 Cashier's Daily Cash Receipts (CDCR)-Rosales Office-January
P-176	2009 Daily Collection Report (DCR) July 1-31, 2009 – Computer Generated
P-177	2009 Daily Collection Report (DCR) August 1-31, 2009 – Computer Generated
P-178	2010 Daily Collection Report (DCR) June 1-30, 2010 – Computer Generated

On the other hand, respondent presented RO Eric E. Cristobal[52] and RO Catherine C. Mangampat[53], as his witnesses.

Respondent filed his Formal Offer of Evidence[54] on July 29, 2016. In the Resolution dated November 16, 2016[55], the Court admitted all

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[52] Minutes of the Hearing dated May 31, 2016, Docket, vol. III, pp. 1530-1533; Exhibit "R-37", Docket, vol. I, pp. 374-391.

[53] Minutes of the Hearing dated July 14, 2016, Docket, vol. III, pp. 1537-1540; Exhibit "R-38", Docket, vol. I, pp. 363-373.

[54] Docket, vol. III, pp. 1544-1559.

[55] Docket, vol. III, pp. 1574-1575.

of respondent's evidence. Respondent filed a Manifestation[56] on November 23, 2016 stating that the Memorandum dated February 20, 2014 was inadvertently offered as Exhibit "R-15" and prays that it be admitted as Exhibit "R-16". In the Resolution[57] dated January 4, 2017, the Court noted petitioner's Manifestation and admitted the said Memorandum as Exhibit "R-16".

The documentary evidence for the respondent are as follows:

Exhibits:	Description:
R-1	Letter of Authority No. LOA-006-2011-00000219/ eLA201000070127 dated 07 July 2011
R-2	Checklist of Requirements dated 08 July 2011
R-3	First Notice dated 28 July 2011
R-4	Second and Final Notice Before Issuance of Subpoena Duces Tecum dated 31 August 2011
R-5	Memorandum recommending issuance of Subpoena Duces Tecum dated 03 October 2011
R-6	Subpoena Duces Tecum dated 17 October 2011
R-7	Affidavit of Service of Subpoena Duces Tecum dated 24 October 2011
R-8	Waiver of the Defense of Prescription under the Statute of Limitations of National Internal Revenue Code dated 08 November 2011 extending the period to assess until 31 December 2013
R-9	Notice of Informal Coference (NIC) dated 16 April 2012 with attached Details of Discrepancy, composed of four (4) pages
R-10	Indorsement recommending the issuance of Preliminary Assessment Notice (PAN) dated 26 June 2013
R-11	Preliminary Assessment Notice (PAN) with attached Details of Discrepancy dated 16 July 2013 composed of three (3) pages
R-12	Registry Return Receipt dated 25 October 2013
R-13	Formal Letter of Demand (FLD) with attached Summary of Deficiency Taxes as Annex A dated 12 December 2013 composed of three (3) pages
R-14	Final Assessment Notice (BIR Form No. 0401) dated 12 December 2013 composed of five (5) pages
R-15	Registry Return Receipt
R-16	Memorandum dated 20 February 2014 recommending that the assessment be considered as an Accounts Receivable
R-17	Memorandum of Assignment dated 24 November 2011
R-18	Letter of Authority No. LOA-006-2011-00000160/ eLA201000070041 dated 10 May 2011

[56] Docket, vol. III, pp. 1581-1583.
[57] Docket, vol. III, pp. 1602-1603.

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R-19	Checklist of Requirements dated 11 May 2011
R-20	First Notice dated 25 May 2011
R-21	Second and Final Notice Before Issuance of Subpoena Duces Tecum dated 15 June 2011
R-22	Letter dated 28 July 2011
R-23	Memorandum dated 01 September 2011 recommending the issuance of Subpoena Duces Tecum composed of two (2) pages
R-24	Subpoena Duces Tecum dated 13 September 2011
R-25	Affidavit of Service of Subpoena Duces Tecum dated 16 September 2011
R-26	Notice of Informal Conference (NIC) with attached Details of Discrepancy dated 17 April 2012, composed of five (5) pages
R-27	Memorandum dated 20 February 2013 recommending the issuance of Preliminary Assessment Notice (PAN) composed of three (3) pages
R-28	Memorandum from the Regional Office dated 23 May 2013 recommending reconciliation of discrepancies and deficiencies
R-29	Amended Notice of Informal Conference dated 16 July 2013
R-30	Memorandum dated 10 October 2013 recommending the issuance of Preliminary Assessment Notice (PAN) composed of two (2) pages
R-31	Waiver of the Defense of Prescription under the Statute of Limitations of National Internal Revenue Code dated 05 December 2013 extending the period to assess until 31 December 2014
R-32	Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated 10 January 2014, composed of three (3) pages
R-33	Formal Letter of Demand (FLC) with attached Details of Discrepancies dated 19 February 2014 composed of two (2) pages
R-34	Final Assessment Notice (BIR Form No. 0401) with attached Schedule of Deficiency Taxes dated 19 February 2014 composed of five (5) pages
R-35	Decision dated 25 September 2014 denying petitioner's Motion for Reconsideration interposing that the assessments for both taxable years 2009 and 2010 have already become final and demandable
R-36	BIR Records composed of Eight (8) Folders
R-37	Judicial Affidavit of Revenue Officer Eric E.Cristobal
R-37-1	Name and signature of Revenue Officer Eric E. Cristobal
R-38	Judicial Affidavit of Revenue Officer Catherine C. Mangampat
R-38-1	Name and signature of Revenue Officer Catherine C. Mangampat

The case was submitted for decision on March 20, 2017[58], considering respondent's Memorandum[59] filed on February 6, 2017 and the Memorandum for the Petitioner[60] filed on March 2, 2017.

The parties submitted the following issues[61] for this Court's resolution:

1. Whether the Court has jurisdiction over the instant petition;

2. Whether petitioner is liable to pay the total amount of ₱153,623,068.02 for deficiency VAT, EWT, FWT, DST and Compromise Penalty for taxable year 2009; and

3. Whether petitioner is liable to pay the total amount of ₱245,682,949.95 for deficiency VAT, EWT, FWT and Compromise Penalty for taxable year 2010.

The Court shall first address the issue on jurisdiction over the instant petition in relation to respondent's allegation that petitioner failed to file its protest to the Final Assessment Notice (FAN) and FLD within the period provided by law; hence, the assessments for both taxable years have become final, executory and demandable.

Respondent contends that the FAN and FLD for taxable year 2009 and 2010 were received by petitioner on January 10, 2014 and February 19, 2014, respectively, hence, petitioner had until February 9, 2014 and March 21, 2014, respectively, within which to file a valid protest on the assessment. However, respondent points out that no protest was filed by petitioner. Hence, respondent concludes that the assessments for both taxable years, which were not disputed within the period provided by law, became final, executory and demandable.

Respondent stresses that petitioner's contention that it only filed a Motion for Reconsideration on September 3, 2014 after receiving a copy of the Warrant of Garnishment is a clear indication that petitioner

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58 Resolution dated March 20, 2017, Docket, vol. III, p. 1693.
59 Docket, vol. III, pp. 1612-1638.
60 Docket, vol. III, pp. 1642-1691.
61 Issues to be Resolved, JSFI, Docket, vol. I, p.448.

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only contested the assessment for both taxable years several months after its receipt of the FAN and FLD.

Moreover, respondent argues that the allegations in the instant petition show that petitioner is questioning the merits of the assessments, which is a cause of action patently based on Section 228 of the NIRC of 1997, as amended. Respondent points out that a reading of the reliefs sought by petitioner reveals that petitioner's main action is to nullify the FAN and FLD. Hence, respondent claims that the Court cannot exercise jurisdiction over the instant case considering that the assessment was undisputed within the period allowed by law. Respondent submits that the principle laid down in the *Philippine Journalist* case does not grant a carte blanche authority to the taxpayer to disregard or render without force and effect the other provisions of the NIRC of 1997, as amended, particularly Section 228.

On the other hand, petitioner stresses that a void assessment bears no fruit. Petitioner cites the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[62], where the taxpayer did not seasonably file its protest but the Supreme Court still ruled that the courts can take jurisdiction and highlighted the importance of observing due process. Moreover, petitioner contends that once it received the letter from respondent on October 1, 2014 denying its motion for reconsideration, petitioner immediately elevated the matter to this Court, hence, the petition was timely filed, considering that the instant petition was filed within thirty (30) days from a warrant of distraint and garnishment against petitioner.

Based on petitioner's Motion for Reinvestigation[63] (for taxable years 2009 and 2010), the same was filed on September 3, 2014 after learning that respondent already garnished several of its bank accounts. In reply to said motion, respondent issued a letter denying petitioner's motion and was received by petitioner on October 1, 2014. Hence, petitioner filed the instant petition on October 28, 2014 to appeal said denial. A reading of the instant Petition for Review[64] shows that the petition was filed on the strength of Section 7 of Republic Act (RA) No. 1125[65], as amended by RA No. 9282 and RA No. 9530 as well as the prevailing doctrines laid down in settled Supreme Court cases

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[62] G.R. No. 185371, December 8, 2010.
[63] Exhibit "P-17", BIR Records, Folder 3, pp. 550-551.
[64] Par. V, Petition for Review, Docket, vol. I, pp. 14-15.
[65] An Act Creating the Court of Tax Appeals.

such as *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[66], *Commissioner of Internal Revenue vs. Menguito*[67], and *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[68].

Moreover, in the instant petition, petitioner is assailing the validity of the assessments on the ground that these assessments were allegedly issued beyond the three-year prescriptive period; that the subject waivers of statute of limitations allegedly issued by petitioner are all invalid; and that the assessment for 2009 was issued in violation of its due process rights.

Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, provides:

> 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 Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

In *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[69], the Supreme Court held that the CTA is authorized to review, on appeal, "other matters" as provided in Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, which include the determination of whether the warrant of distraint and levy issued by the BIR is valid and whether the waiver of statute of limitations was validly effected, to wit:

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[66] G.R. No. 185371, December 8, 2010.
[67] G.R. No. 167560, September 17, 2008.
[68] G.R. No. 162852, December 16, 2004.
[69] G.R. No. 162852, December 16, 2004.

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> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.** (*Emphasis Supplied*)

Moreover, in *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[70], even though the taxpayer therein received the FLD dated April 3, 2002 on April 11, 2002, it did not file a protest, although it filed a Motion for Reconsideration with the CIR on July 30, 2004. However, the Supreme Court still exercised jurisdiction over that case and ruled that for failure of the CIR to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of RA No. 8424, the assessment made by the CIR is void. As to the issue of whether the assessment has become final and executory and demandable for failure of petitioner to protest the same within 30 days from its receipt thereof on April 11, 2002, pursuant to Section 228 of the NIRC of 1997, as amended, the Supreme Court simply held that:

> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.

Also, the issuance of a valid formal assessment is a substantive prerequisite to tax collection.[71]

In *Lanao del Norte Electric Cooperative [Laneco] vs. Bureau of Internal Revenue represented by Commissioner Kim S. Jacinto-Henares*[72], the Court of Tax Appeals *En Banc* held that the BIR's right to collect upon an assessment may be reviewed by the Court. In determining the BIR's right to collect, the validity or invalidity of an

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[70] G.R. No. 185371, December 8, 2010.
[71] *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.
[72] CTA EB No. 1452, April 5, 2017.

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assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "[a] void assessment bears no fruit." Moreover, the CTA *En Banc* held therein that it can be concluded that once there is a finding of a void assessment, the absence or presence of a protest ceases to be relevant.

Therefore, the Court has jurisdiction over the instant case as the same falls under "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue".

The Court will now proceed to determine if the assessments issued against petitioner are void in relation to allegations of due process requirements violation and prescription.

Taxable Year 2009

Petitioner avers that the 2009 FLD was not received by petitioner. Petitioner insists that no FLD accompanied the 2009 Assessment Notices that it received. Petitioner argues that failure to send the FLD is fatal to the validity of respondent's deficiency assessments.

For his part, respondent argues that the issuance of the FAN is always accompanied by the FLD. According to respondent, these two were issued and served to the taxpayer together. Therefore, respondent concludes that it is a fallacy to insist that petitioner received only a copy of the FAN and not the FLD.

Section 228 of the NIRC of 1997, as amended, in part, states:

> SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a

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> preassessment notice shall not be required in the following cases:
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> 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.** (*Emphasis supplied*)

In relation thereto, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, provides:

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof).

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[73], the Supreme Court extensively discussed what should be contained in an assessment, to wit:

> **The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void.** xxx

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[73] G.R. No. 215957, November 9, 2016.

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> The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. **The law requires that the bases be reflected in the formal letter of demand and assessment notice.** This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.
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> xxx xxx xxx
>
> 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." (*Emphasis supplied*)

Based on the foregoing, a formal letter of demand and an assessment notice, stating the facts, jurisprudence, and law on which the assessment was based, shall be issued by the CIR or his duly authorized representative. The use of the word "shall" indicates the mandatory nature of the said requirement.

In this case, petitioner insists that it did not receive the FLD, only the Assessment Notice for taxable year 2009.

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In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[74], the Supreme Court held that while a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

To contradict petitioner's denial, respondent presented the FLD[75] and Assessment Notices[76] dated December 12, 2013 and the Registry Return Receipt[77]. Respondent also presented RO Eric E. Cristobal, who testified, by way of Judicial Affidavit[78], that the FLD and FAN were served to petitioner.

However, the Court finds that the above pieces of evidence failed to satisfactorily prove that the FLD was indeed received by petitioner.

A perusal of the Registry Return Receipt allegedly proving that the FLD and FAN was served to petitioner shows a signature of a person who purportedly received the same but it was not established whose signature appears thereon. Moreover, the transmittal letter of Mr. Mario R. Fabricante, Chief, Administrative and HRM Division, Revenue Region No. 1, dated November 5, 2014[79] addressed to Ms. Lourdes P. Anteneo, OIC, Asst. Chief, Collection Division, where the subject Registry Return Receipt was attached, states that "forwarded herewith are the Registry Return Receipts dated October 25, 2013 and January 3, 2014, applicable to the Preliminary and Final Assessment Notices, respectively, issued to Pangasinan III Electric Cooperative (PANELCO III), of Nancayasan, Urdaneta City, Pangasinan for taxable year 2009." Also, the Registry Return Receipt only bears a handwritten word "FAN" which may mean that only the FAN was mailed.

Moreover, on cross examination, respondent's witness admitted that he has no proof that the FLD was received by petitioner, to wit:

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[74] G.R. No. 157064, August 7, 2006.
[75] Exhibit "R-13", BIR Records, Folder 2, pp. 372-374.
[76] Exhibit "R-14", BIR Records, Folder 2, pp. 375-379.
[77] Exhibit "R-15", BIR Records, Folder 3, p. 585.
[78] Exhibit "R-37", Docket, vol. I, pp. 374-391.
[79] BIR Records, Folder 3, p. 586.

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Q. Can you point in that document any physical proof that would show that the Formal Letter of Demand was received by the representative of petitioner?

MR. CRISTOBAL:

A. No, you Honors.[80]

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.[81] Since it was not proven that petitioner received the FLD, then, it was not informed of the legal and factual bases of the assessment.

Hence, the assessment notices issued by respondent to petitioner for deficiency VAT, EWT, FWT and DST for taxable year 2009 never became final and demandable.

A determination that there was a violation of due process because no FLD was sent renders the assessment void; and a void assessment bears no valid fruit.[82]

In light of the foregoing, the Court deems it unnecessary to discuss the issue of prescription raised by petitioner for taxable year 2009.

<u>Taxable Year 2010</u>

Petitioner argues that respondent's right to assess taxes for taxable year 2010 has prescribed.

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[80] TSN, May 31, 2016, p. 25.
[81] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[82] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

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Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, thus:

> SEC. 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.

In relation thereto, Section 114(A)[83] of the NIRC of 1997, as amended, and Section 4.114-1(A) of Revenue Regulations (RR) No. 16-2005 provide that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

On the other hand, Section 2.58(A)(2)(a)[84] of RR No. 2-98, as amended, requires the filing of the EWT returns within ten (10) days after the end of each month for the months of January to November, while the EWT return for the month of December shall be filed on or before January 15 of the following year.

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[83] SEC. 114. *Return and Payment of Value-added Tax.* –
(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.
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[84] SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* —
(A) Monthly return and payment of taxes withheld at source. —
xxx
(2) WHEN TO FILE —
(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; . . .

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Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT and EWT for taxable year 2010:

VAT Returns			
Quarter	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
1st Quarter of 2010	April 26, 2010[85]	April 26, 2010[86]	April 26, 2013
2nd Quarter of 2010	July 26, 2010[87]	July 26, 2010[88]	July 26, 2013
3rd Quarter of 2010	October 26, 2010[89]	October 25, 2010	October 26, 2013
4th Quarter of 2010	January 25, 2011[90]	January 25, 2011	January 25, 2014

EWT Returns			
Period	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
January 2010	February 11, 2010[91]	February 10, 2010	February 11, 2013
February 2010	March 10, 2010[92]	March 10, 2010	March 10, 2013
March 2010	April 12, 2010[93]	April 12, 2010[94]	April 12, 2013
April 2010	May 11, 2010[95]	May 10, 2010	May 11, 2013
May 2010	June 10, 2010[96]	June 10, 2010	June 10, 2013
June 2010	July 9, 2010[97]	July 12, 2010[98]	July 12, 2013
July 2010	August 10, 2010[99]	August 10, 2010	August 10, 2013
August 2010	September 13, 2010[100]	September 10, 2010	September 13, 2013
September 2010	October 11, 2010[101]	October 11, 2010[102]	October 11, 2013
October 2010	November 10, 2010[103]	November 10, 2010	November 10, 2013
November 2010	December 10, 2010[104]	December 10, 2010	December 10, 2013
December 2010	January 10, 2011[105]	January 17, 2011[106]	January 17, 2014

[85] Exhibit "P-63", Docket, vol. I, p. 87.
[86] April 25, 2010 fell on a Sunday.
[87] Exhibit "P-66", Docket, vol. I, p. 90.
[88] July 25, 2010 fell on a Sunday.
[89] Exhibit "P-69", Docket, vol. I, p. 93.
[90] Exhibit "P-72", Docket, vol. I, p. 96.
[91] Exhibit "P-73", Docket, vol. I, p. 108.
[92] Exhibit "P-74", Docket, vol. III, p. 1309.
[93] Exhibit "P-75", Docket, vol. III, p. 1314.
[94] April 10, 2010 fell on a Saturday.
[95] Exhibit "P-76", Docket, vol. III, p. 1319.
[96] Exhibit "P-77", Docket, vol. III, p. 1328.
[97] Exhibit "P-78", Docket, vol. III, p. 1339.
[98] July 10, 2010 fell on a Saturday.
[99] Exhibit "P-79", Docket, vol. III, p. 1347.
[100] Exhibit "P-80", Docket, vol. III, p. 1355.
[101] Exhibit "P-81", Docket, vol. III, p. 1369.
[102] October 10, 2010 fell on a Sunday.
[103] Exhibit "P-82", Docket, vol. I, p. 117.
[104] Exhibit "P-83", Docket, vol. I, p. 118.
[105] Exhibit "P-84", Docket, vol. I, p. 119.
[106] January 15, 2011 fell on a Saturday.

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In this case, the FLD and Assessment Notices were dated February 19, 2014 and received by petitioner on the same day. Based on the above table, the FLD and Assessment Notices were issued beyond the three-year prescriptive period to assess.

However, respondent contends that although Section 203 of the NIRC of 1997, as amended, provides a three-year limitation period for his right to assess petitioner's taxes, petitioner failed to consider that said provision is not without exception. Respondent stresses that petitioner executed a Waiver of the Defense of Prescription under Statute of Limitations of the National Internal Revenue Code for taxable year 2010 which is valid for a period not later than December 31, 2014.

For its part, petitioner claims that there was no valid waiver.

Section 222(b) of the NIRC of 1997, as amended, provides for an exception to the three-year prescriptive period to assess, to wit:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the CIR may stipulate to extend the period of assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon.[107]

Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ______ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. **In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized**.
>
> 3. **The waiver should be duly notarized.**
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, **duly notarized**, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

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[107] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.

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> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[108] *(Emphases supplied)*

It should be noted that petitioner executed a Waiver of the Defense of Prescription under Statute of Limitations of National Internal Revenue Code[109] on December 5, 2013 for taxable year 2010 extending respondent's right to assess petitioner "not later than December 31, 2014". It was executed by petitioner's OIC/General Manager, Engr. Celso C. Sansano, and accepted by Revenue District Officer Atty. Nasrollah B. Conding on December 5, 2013 and a copy of which was received by petitioner on December 9, 2013.

After a careful scrutiny of the subject waiver, the Court finds the same to be defective and did not validly extend the original three-year prescriptive period.

As pointed out by petitioner, the waiver was executed without the requisite notarized written authority of the signatory, in violation of the above revenue issuances.

On cross examination, respondent's witness, RO Catherine C. Mangampat, admitted that the waiver executed for taxable year 2010 was not accompanied by a Special Power of Attorney, to wit:

> Q. Was the Waiver mentioned earlier accompanied by a Special Power of Attorney or was it accompanied by a notarized written authority in favor of the representative of the petitioner?

[108] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.
[109] Exhibit "R-31", BIR Records, Folder 7, p. 513.

MS. MANGAMPAT:

A. No, Attorney.[110]

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[111], the Supreme Court invalidated the waivers which were executed without a notarized written authority on behalf of the taxpayer, as follows:

> A perusal of the waivers executed by respondent's accountant reveals the following infirmities:
>
> 1. **The waivers were executed without the notarized written authority of Pasco to sign the waiver on behalf of respondent.**
>
> 2. The waivers failed to indicate the date of acceptance.
>
> 3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.
>
> Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void. (*Emphasis supplied*)

Moreover, the Court also noted that the waiver was not duly notarized. Before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is duly notarized. Although a signature appears on the Notary Public portion of the subject waiver, the required contents of the concluding part of the notarial certificate were not indicated, like the name of the notary public, serial number of the commission of the notary public, the city where the notary public is commissioned, the expiration date of the

[110] TSN, July 14, 2016, p. 13.
[111] G.R. No. 178087, May 5, 2010.

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commission, the office address of the notary public, the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.[112]

RMO No. 20-90 must be strictly followed. A waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[113]

Since the subject waiver is defective and invalid, the prescriptive period to assess deficiency VAT and EWT for taxable year 2010 was never suspended or tolled. Consequently, the FLD and the Assessment Notices dated February 19, 2014 as to deficiency VAT and EWT are void.

However, the Court finds that the deficiency Fringe Benefits Tax (FBT) assessment for taxable year 2010 was issued within the prescribed period to assess; hence, the FLD and Assessment Notices on the deficiency FBT assessment is valid.

In this case, there is no proof that petitioner filed the FBT returns for taxable year 2010.

Section 222(a) of the NIRC of 1997, as amended, provides for one of the exceptions to the three-year prescriptive period to assess, to wit:

> SEC. 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

[112] Section 2, Rule VIII, A.M. No. 02-8-13-SC or the 2004 Rules on Notarial Practice.
[113] *Commissioner of Internal Revenue vs. FMF Development Corporation,* G.R. No. 167765, June 30, 2008.

> 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. (*Emphasis supplied*)

Based on the above provision, in case of failure to file a return, the applicable prescriptive period is ten years from discovery of the omission.

In the Details of Discrepancy attached to the Notice of Informal Conference[114] dated April 17, 2012 for taxable year 2010, there was a finding of failure to file FBT returns, hence, the imposition of compromise penalty. Such being the case, the date of the issuance of the Notice of Informal Conference shall be considered as the date of discovery of the omission.

Counting from April 17, 2012, respondent has until April 17, 2022 to issue the deficiency FBT assessment. Considering that the FLD and Assessment Notices assessing petitioner for deficiency FBT, among others, for taxable year 2010 were issued on February 19, 2014, then the deficiency FBT assessment was issued within the ten-year period to assess. Hence, the deficiency FBT assessment was validly issued. However, petitioner failed to timely protest the same, thus, the deficiency FBT assessment is already final, executory and demandable. Consequently, petitioner can no longer contest the correctness of the deficiency FBT assessment.

As to respondent's imposition of compromise penalties in the amounts of ₱70,500.00 and ₱51,000.00 for taxable years 2009 and 2010, respectively, the same cannot be sustained.

Under RMO No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Absent a showing that herein petitioner consented to the compromise penalty, its

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[114] Exhibit "R-26", BIR Records, Folder 6, pp. 335-337.

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imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[115]

In view of the effectivity of Republic Act (R.A.) No. 10963 or otherwise known as the "*Tax Reform for Acceleration and Inclusion*" (TRAIN) on January 1, 2018, the Court shall apply the pertinent provisions thereof on the imposition of deficiency and delinquency interests in determining the amount to be paid by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices dated December 12, 2013 issued by respondent against petitioner for deficiency VAT, EWT, FBT, and DST and compromise penalty for taxable year 2009 are **CANCELLED** while the Formal Letter of Demand and Assessment Notices dated February 19, 2014 issued by respondent against petitioner for deficiency VAT and EWT, and compromise penalty for taxable year 2010 are likewise **CANCELLED**. Accordingly, the corresponding Warrants of Garnishment, Distraint and Levy issued to enforce the same are likewise **CANCELLED**.

However, the deficiency fringe benefit tax assessment for taxable year 2010 is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** ₱11,415,897.99, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Fringe Benefit Tax	₱ 9,132,718.39	₱ 2,283,179.60	₱ 11,415,897.99

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twelve percent (12%) per annum on the basic deficiency fringe benefit tax, computed from January 25, 2011 until February 19, 2014, pursuant to Section 249(B) of the NIRC of 1997, as amended by R.A. No. 10963; and

[115] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

(b) Delinquency interest at the rate of 12% per annum on the total amount of ₱9,132,718.39, and on the 12% deficiency interest which have accrued as afore-stated in (a) above, computed from October 1, 2014 until the amount is fully paid, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PANGASINAN III ELECTRIC COOPERATIVE, INC., Petitioner,	**CTA CASE NO. 8915**
	Members:
- versus -	**Del Rosario**, *P.J., Chairperson* **Uy**, and **Mindaro-Grulla**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 1 9 2018 ; 10:15 a.m.

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

In view of petitioner's failure to file its Petition for Review within thirty (30) days from its receipt of the Warrants of Garnishment, Distraint and Levy for the years 2009 and 2010, I submit that the Court can no longer take cognizance of the Petition for Review.

As alleged in its Petition for Review, "on *various dates* including August 13, August 14, August 15, August 18, August 27, September 30, October 8 and October 17 of 2014, petitioner received copies of the Warrants of Garnishment, Distraint and Levy being implemented by respondent."[1] In petitioner's Memorandum, however, it is disclosed that petitioner received the Warrant of Distraint/Levy (2009) on **September 22, 2014** and the Warrant of Distraint/Levy (2010) on **August 15, 2014**.[2]

Interestingly, records disclosed that on **September 3, 2014**, petitioner filed a **Motion for Reinvestigation (Taxable Years 2009 and 2010)**, addressed to the Commissioner of Internal Revenue, thru

[1] Paragraph 4.7, Petition for Review, Docket, Vol. I, p. 14.
[2] Paragraph 5.9, Memorandum for the Petitioner, Docket, Vol. III, p. 13.

Atty. Arnel Guballa, Regional Director, Revenue Region No. 1.[3] **This simply confirms that petitioner had already received the Warrants of Garnishment, Distraint and Levy even prior to September 3, 2014**. On October 1, 2014, petitioner received a letter signed by Atty. Arnel Guballa, Regional Director, stating that the 2009 and 2010 assessments issued against it have become final, executory and demandable, and that they have become part of the delinquent accounts which are due for collection. The letter further states that in view of the finality of the assessments, petitioner's request for reinvestigation was denied.

The period within which to assail before the Court the Warrants of Garnishment, Distraint and Levy issued by respondent is thirty (30) days from receipt thereof pursuant to Section 11, in relation to Section 7(a)(1), of Republic Act (RA) No. 1125, as amended.

As aforestated, petitioner alleged in its Petition for Review that it received the Warrants of Garnishment, Distraint and Levy on various dates, with **August 13, 2014** as the **earliest date of receipt**. In its Memorandum, petitioner was more specific in stating the relevant dates when the said Warrants of Distraint and Levy were received, that is, **September 22, 2014** for the 2009 deficiency tax assessments and **August 15, 2014** for the 2010 deficiency tax assessments.

Counting thirty (30) days from September 22, 2014, petitioner had until **October 22, 2014** within which to appeal the Warrant of Distraint and Levy issued against it for the collection of the 2009 deficiency tax assessments. With regard to the 2010 deficiency tax assessments, petitioner had thirty (30) days from August 15, 2014 or until **September 14, 2014** within which to file its appeal. Yet, the Petition for Review was filed only on **October 28, 2014**, which undeniably is beyond the reglementary period to do so.

The letter of Atty. Arnel Guballa, Regional Director, received by petitioner on October 1, 2014, which denied petitioner's Motion for Reinvestigation cannot reasonably be considered as the decision appealable to the CTA for the purpose of counting the reglementary period of appeal. **To do so would create havoc on the reglementary period of appeal as a taxpayer could simply file a frivolous motion for reconsideration or reinvestigation at its pleasure long after receiving the Warrant of Garnishment, Distraint and Levy and eventually compute the period of appeal from the date it receives**

[3] Exhibit "P-17", BIR Records, Folder No. 7, p. 551.

the CIR's denial of the motion. Moreover, a motion for reconsideration or reinvestigation after receipt of a Warrant of Garnishment, Distraint and Levy is not a remedy sanctioned under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended.

In fine, for want of jurisdiction, the Court is precluded from conducting a review or making any pronouncement on the merits of the case.

All told, I **VOTE** to **DISMISS** the Petition for Review for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

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In fine, for want of jurisdiction, the Court is precluded from conducting a review or making any pronouncement on the merits of the case.

All told, I **VOTE** to **DISMISS** the Petition for Review for lack of jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice