

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

EDUARDO LIM, JR.,

Petitioner,

C.T.A. EB No. 455

(C.T.A. CASE No. 6943)

Present:

-versus-

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

**THE COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

FEB 02 2010 *Ernesto D. Acosta*
1:55 P.M.

X-----X

D E C I S I O N

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *en banc* assailing the Decision¹ dated October 15, 2008 and the Resolution dated *Ja*

¹ *Rollo*, pp. 33-55. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

January 9, 2009 issued by the First Division of this Court in the case entitled, "*Eduardo Lim, Jr. vs. Commissioner of Internal Revenue*", docketed as CTA Case No. 6943.

THE FACTS

The facts of the case as found by the Court in First Division are as follows:

Petitioner is Mr. Eduardo Lim, Jr., single, a resident of 176 Swallow Drive, Green Meadows Subdivision, Quezon City.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the 4th floor, BIR Building, Agham Road, Diliman, Quezon City.

On June 28, 2001, petitioner received a copy of the Formal Letter of Demand and Assessment Notice from the Bureau of Internal Revenue (BIR) advising him to pay deficiency assessment relative to his alleged "Over-the-Counter" sales/transaction of his Best World Resources shares of stocks (BW shares) with the following details:

Assessment No. BW-99-CGT-0022-01	
A. DEFICIENCY CAPITAL GAINS TAX	
Sales	P 745,495,000.00
Less: Cost	<u>61,895,527.26</u>
Net Taxable Gains	P 683,599,472.74
Capital Gains Tax Due (Sec. 24C)	P 68,354,947.27
Less: Capital Gains Tax Paid	<u>0.00</u>
Basic Deficiency Capital Gains Tax Due (Sec. 24C)	P 68,354,947.27
Add: 50% surcharge (non-filing/non-payment) (Sec 248B)	34,177,473.64
20% interest in various transactions up to 4-15-00 (Sec. 249)	8,146,961.25
20% interest from 4-16-00 to 5-15-01 (21.67%)	<u>14,812,517.07</u>
Total Deficiency Capital Gains Tax Due	<u>P 125,491,899.23</u>

Assessment No. BW-99-DST-0023-01	
B. DEFICIENCY DOCUMENTARY STAMP TAX	
Total Volume of BW shares Transferred Via EQ Trade of PCDI with Change in Beneficial Ownership	26,305,000.00
Par value	<u>1.00</u>
Taxable Base	P 26,305,000.00
DST Rate Applicable (Sec. 176)	<u>P 1.50/P200.00</u>
DST Due	P 197,287.50
DST Paid	<u>0.00</u>
Basic Deficiency Documentary Stamp Tax	P 197,287.50
Add: 50% surcharge (non-filing/non-payment) (Sec 248B)	98,643.75
20% interest n various transactions up to 3-15-01 (Sec. 249)	<u>59,942.69</u>

20% interest from 3-16-01 to 5-15-01 (3.33%) (Sec. 249)
Total Deficiency Capital Gains Tax Due

6,569.67
P 362,443.61

The Formal Letter of Demand contained annexes which show that petitioner's brokers, Asiasec Equities, Inc., Belson Securities, Inc. and Mark Securities Corporation, sold 325,000, 980,000, and 25,000,000 shares, respectively, allegedly on petitioner's instructions. These transactions were used as basis in computing for the assessed deficiency Capital Gains Tax (CGT) and Documentary Stamp Tax (DST), shown in the following computations:

Date	Broker	Sales OR#	Vol.	CGT Due	CGT Paid	Basic CGT	50% Surch.	Interest	Total Pen.	Total Def. CGT
09-28-99	Asiasec Eq	10712	325,000	1,468,875.00		1,468,875.00	734,437.50	136,278.96	870,716.46	2,339,591.46
08-11-99	Belson		25,000,000	65,217,132.27			32,608,566.14	7,752,997.95	40,361,564.09	105,578,696.36
		1240				65,217,132.27				
06/07/99	Mark Sec. Corp.	1905	980,000	1,668,940.00		1,668,940.00	834,470.00	257,684.34	1,092,154.34	2,761,094.34
				68,354,947.27			34,177,473.64	8,146,961.25	42,324,434.89	
						68,354,947.27				

Summary of Taxable Gross Gain & corresponding Def. CGT

TOTAL DEF. CGT

P 110,679,382.16

Add: Interest (4/16/2000- 5/15/2001) (21.67%)

14,812,517.07

TOTAL DEF. CGT DUE

P 125,491,899.23

Date	Broker	Out Receipts	Vol./ Basis	Par Val	Basis	DST Rate	DST Due	50% Surch.	Interest	Total Amount Due
09-28-99	Asiasec Eq.	10712	325,000	1.00	325,000.00	0.0075	2,437.50	1,218.75	697.36	4,353.61
08-11-99	Belson	1240	25,000,000	1.00	25,000,000.00	0.0075	7,350.00	3,675.00	2,470.33	13,495.33
06/07/99	Mark Sec Corp.	1905	980,000	1.00	980,000.00	0.0075	187,500.00	93,750.00	56,775.00	338,025.00
					26,305,000.00		197,287.50	98,643.75	59,942.69	355,873.94

TOTAL DEF. DST

P 355,873.94

Add: Interest (3/16/2000- 5/15/2001) (3.33%)

6,569.67

TOTAL DEF. DST DUE

P 362,443.61

Petitioner, in a letter to the Commissioner of Internal Revenue dated July 30, 2001, protested the above mentioned assessments on the ground that he never sold his BW shares of stocks. Specifically on the 25M BW shares, petitioner alleged that these were pledged to Mr. Dante Tan. Petitioner attached the following documentary evidence to his letter as proof: (a) pledge agreement; (b) promissory note; and (c) authority to transfer.

Petitioner's documents allegedly show that on August 10, 1999, petitioner executed a promissory note in favor of Mr. Dante Tan to secure a personal loan in the amount of P81,660,914.20. On the same day, as added security, petitioner executed a pledge agreement in favor of Mr. Dante Tan over his 25,000,000 (25M) BW shares.

Pursuant to the pledge agreement, petitioner supposedly instructed his broker, Belson Securities, Inc. to transfer its 25M BW shares to Quality Services, Inc., for the account of Mr. Dante Tan. However, upon petitioner's receipt of respondent's Formal Letter of Demand, it came to his attention that there was a transfer of his share to a certain Mr. Lucio Co. Hence, on August 17, 2001, petitioner filed a Complaint with the Regional Trial Court, National Capital Region, Quezon City, against Dante Tan, Quality Investments & 

Securities Corporation and Lucio Co for the annulment of sale on the 25M BW shares of stocks. In said complaint, petitioner stated that as far as he was concerned, he transferred his shares only to Mr. Dante Tan and that he did not authorize its transfer to any other party.

On March 15, 2004, petitioner received a copy of the decision of herein respondent, denying his administrative protest, on the ground that there was a transfer of shares pursuant to Section 24 (C) of the 1997 National Internal Revenue Code (NIRC), as amended. Respondent in arriving at such conclusion relied on the following documents:

- a. Out Receipt No. 1240 indicating the transfer of the BW shares from the Belson Securities account of petitioner to Quality Investment and Security Corporation (QIS) account to Lucio Co;
- b. In Receipt No. 46834 indicating the transfer of the BW shares to the account of Lucio Co; and
- c. The Customer Ledgers or Statement of Accounts of petitioner and Lucio Co.

In view of the denial of his administrative protest, petitioner filed the Petition for Review before Us on April 14, 2004.

Shortly thereafter, to further establish his right over the 25M BW shares, petitioner filed a Complaint-Affidavit on May 6, 2004 before the Department of Justice for Estafa against Dante Tan, Benjamin Y. Cu, Teresita P. Cu, Rosa Y. Cu and Lucio Co.

On June 1, 2004, respondent in his Answer interposed the following Special and Affirmative Defenses, to wit:

"5. Petitioner seeks to set aside thru this instant [p]etition the deficiency capital gains tax and documentary stamp tax assessments issued against him for the taxable year 1999 relative to the sale or transfer of his BW shares on the following grounds to wit: (1) that the decision (denying petitioner's written protest) is bereft of factual basis as petitioner never authorized the transfer of his BW shares to Mr. Lucio Co; (2) the Commissioner violated petitioner's right to due process; (3) petitioner can not be held liable for documentary stamp taxes as no document of sale was executed by him; (4) petitioner failed to present clear and convincing proof of fraud as required by the Tax Code; and (5) the written protest was timely filed;

6. On the first issue, it is beyond dispute that the BW shares subject of controversy were actually transferred. Proper documentation was done to establish this fact using pertinent documents, such as, Out Receipts with attached Letter of Instruction executed by petitioner as well as the In Receipts of the contra broker and the Ledger or Statement of Account. The Out Receipt with the corresponding number 1240 was used to transfer the 25,000,000 BW shares from Belson Securities Inc., in the account of petitioner, Eduardo Lim, 

Jr[sic], to Quality Investment Securities for the account of Mr. Lucio Co with the corresponding In Receipt number 46834. This transfer was further verified through the Customer Ledger or Statement of Accounts of petitioner. Per records, petitioner authorized Belson Securities Inc., to transfer his 25,000,000 BW shares to Quality Securities for the account of Dante Tan. However, upon verification from the receiving broker, it was disclosed that the shares were not transferred or credited to the account of Mr. Dante Tan but rather to the account of Mr. Lucio Co. There being change of beneficial ownership as a result of the transfer, the resultant tax consequence is expressly provided under Section 24 (4) of the Tax Code;

7. On the second issue, petitioner was fully apprised of the law and facts upon which the questioned assessments were based contrary to his allegations in the [p]etition. He was informed of the facts and the law as evidenced by the annexes which were attached to the Assessment Notice. This includes the Computation of the Deficiency Capital Gains and Documentary Stamp Tax covering his Over the Counter Transaction as well as the Details of Discrepancies of the assessments. To our mind, the above-mentioned documents or attachments completely informed petitioner of the factual and legal bases of the assessment;

8. On the third issue, petitioner posited the view that he can not be held liable for the Documentary Stamp Tax as no document of sale was ever executed. [We disagree]. As mentioned in the memorandum which was prepared by the task force that conducted the investigation, the trading is not done in the trading floor but directly settled between two counter-parties. The Philippine Central Depository, aside from being a depository, is a place where settlement of securities takes place. It utilizes [scripless] trading. In the [scripless] trading, settlement is carried out via [Book Entry System or BES]. BES is a system used to record the ownership of shares. When a trade is done at the Philippine Stock Exchange, securities are moved via electronic debit and credit of participant's securities account to effect settlement. There is no need for physical movement of stock certificate (scrip) between buyer or seller. Well settled is the rule that a documentary stamp tax is an excise tax, the purpose of which is to raise revenue. In *Philippine Home Assurance Corporation et al. vs. Court of Appeals*, G.R. No. 119446, 21 January 1999, the Honorable Supreme Court explicitly ruled that *'while it is true that a documentary stamp tax is levied on the document and not on the property involved, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, which in this case, is at the time of the issuance of the document.'*

9. Petitioner also questioned the propriety of the imposition of the 50% surcharge as fraud penalty on the ground that the Commissioner failed to present clear and convincing proof of fraud. The circumstances attendant to this case indicate that petitioner's willful neglect to file the corresponding returns within the time prescribed by law was due to fraud with intent to evade the payment of the corresponding tax due. Petitioner's failure to report his substantial gain derived from the transfer of shares is a palpable attempt to

evade his tax liabilities. His failure to file returns can not be imputed as an honest mistake. Accordingly, the imposition of 50% surcharge as fraud penalty is consistent with the provision of the law and therefore justified;

10. Lastly, petitioner argued that his written protest dated July 30, 2001 was timely filed. To evidence his allegation, petitioner in the instant [petition] attached a copy of his written protest alleged to have been sent to the BIR thru registered mail on the same date appearing in the letter. Despite this allegation, herein respondent Commissioner is not convinced that petitioner filed his written protest within the period required under the law. Petitioner received the Assessment Notices on 28 June 2001. Petitioner has thirty days from 28 June 2001, or until 28 July 2001, within which to dispute the assessment. However, July 28, 2001 being a Saturday (legal holiday), the written protest may be filed on the next business or working day, which [sic] 30 July 2001. However, the BIR records reveal that the written protest filed by petitioner was received by the Commissioner only on 08 August 2001, or nine (9) days after the lapse of the period within which to protest or dispute the assessments under the law. Obviously, the subject assessments had become final, executory and demandable as a result of petitioner's failure to submit the written protest within the period required by law;

11. Finally, it is a well settled rule in taxation that assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

To support his claim, petitioner presented testimonies of witnesses and documentary exhibits to prove his arguments of non-sale transfers.

For his part, respondent presented her lone witness, Ms. Josephine Madera, whose testimony was stricken out of records, *via* a Resolution² dated December 18, 2007, for witness' continued failure to be present for cross-examination. In the same resolution, respondent was likewise deemed to have terminated her presentation of evidence without having to formally offer any documentary exhibit. On January 7, 2008, petitioner filed its Memorandum, while respondent did not file any. On March 6, 2008, the instant case was submitted for decision.

XXX

XXX

XXX

Acting on the Petition, the First Division of this Court issued a Decision on October 15, 2008 which is now the subject of appeal. The said Decision partially granted the petition modifying the Decision of the Commissioner of *je*

² *Rollo*, p. 301.

Internal Revenue dated March 10, 2004. The dispositive portion of the said Decision reads, as follows:

"WHEREFORE, with the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated March 10, 2004 of the Commissioner of Internal Revenue is hereby **MODIFIED**. Petitioner is **ORDERED TO PAY** Capital Gains Tax in the amount of P 4,988,863.06 and Documentary Stamp Tax in the amount of P 15,727.99 on the disposition of his 980,000 and 325,000 shares, computed as follows:

DEFICIENCY CAPITAL GAINS TAX

Sales	P 32,995,000.00
Less: Cost	<u>1,566,860.00</u>
Net Taxable Gains	P 31,428,150.00
Capital Gains Tax Due (Sec.24C)	P 3,132,815.00
Less: Capital Gains Tax Paid	<u>0.00</u>
Basic Deficiency Capital Gains Tax Due (Sec.24C)	P 3,132,815.00
Add: 25% surcharge (non-filing/non-payment) (Sec. 248A)	783,203.75
20% interest in various transactions up to 4-15-00 (Sec. 249)	393,963.30
20% interest from 4-16-00 to 5-15-01 (21.67%)	<u>678,881.01</u>
Total Deficiency Capital Gains Tax Due	<u><u>P 4,988,863.06</u></u>

DEFICIENCY DOCUMENTARY STAMP TAX

Total Volume of BW shares Transferred Via EQ Trade of PCDI with	
Change in Beneficial Ownership	1,305,000
Par value	1.00
Taxable Base	<u>P 1,305,000.00</u>
DST Rate Applicable (Sec. 176)	P 1.50/P200.00
DST Due	P 9,787.50
DST Paid	<u>0.00</u>
Basic Deficiency Documentary Stamp Tax (24C)	P 9,787.50
Add: 25% surcharge (non-filing/non-payment) (Sec. 248A)	2,446.88
20% interest in various transactions up to 4-15-00 (Sec. 249)	3,167.69
20% interest from 4-16-00 to 5-15-01 (21.67%)	<u>325.92</u>
Total Deficiency Capital Gains Tax Due	<u><u>P 15,727.99</u></u>

In addition, petitioner is likewise **ORDERED TO PAY** delinquency interest of twenty percent (20%) per annum on the total amount of P5,004,591.05 from April 14, 2004 until fully paid, pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

SO ORDERED. *je*

On November 7, 2008, petitioner filed a Partial Motion for Reconsideration of the Decision dated October 15, 2008. In a Resolution dated January 9, 2009, the First Division denied the Motion for lack of merit.

Hence, this Petition for Review *en banc*.

In a Resolution dated March 3, 2009, the Court *en banc* ordered the respondent to file its comment to the petition to which the latter complied on March 16, 2009. Thereafter, both parties submitted their respective Memoranda and the instant case was submitted for decision.

THE ISSUES

The issues in this case are whether or not:

1. The First Division of this Honorable Court gravely erred in ruling that the transfer of Petitioner's 980,000 and 325,000 BW shares falls under the phrase "Disposition of Shares" under Section 24(C) of the National Internal Revenue Code (NIRC) of 1997 subject to capital gains and documentary stamp taxes, including interests.
2. The First Division of this Honorable Court seriously erred when it ruled that petitioner was not denied due process.

THIS COURT'S RULING

The petition is without merit.

The transfer of petitioner's 980,000 and 325,000 BW shares is subject to capital gains tax and documentary stamp tax.

Capital Gains Tax (CGT)

Petitioner contended that the transfer of shares from petitioner's broker to another broker is not the "disposition" contemplated under Section 24(C) of *Je*

the NIRC of 1997 as no net realizable gain or loss may and/or will be realized on such a transaction. He further asserted that he never authorized any sale or transfer of ownership concerning his BW shares. He simply instructed his broker to transfer electronically his BW shares to his other broker. Also, petitioner argued that no adequate proof had been proffered to establish, much more prove, that a consummated taxable transaction occurred which would justify the assessment against him.

On the other hand, respondent maintained its position that the transfer of petitioner's BW shares was a taxable transaction covered by Section 24 (C) of the NIRC of 1997 which imposes CGT on every "sale, barter, exchange or other disposition of shares of stock" not traded in the stock exchange.

We rule for the respondent.

It should be noted that the transactions being assessed for deficiency CGT were petitioner's "over-the-counter transactions" involving the transfer of his 980,000 and 325,000 BW shares and not just the mere transfer of shares from broker to broker. The transfer of 980,000 BW shares was made by Mark

Securities Corp. to AP De Castro Securities while the transfer of 325,000 BW shares was made by Asiasec Equities, Inc. to PCCI Securities through electronic recording in the Philippine Central Depository (PCD) upon petitioner's instruction. *gr*

After a review of the records of this case, We quote with approval the ruling of the First Division:

Section 24 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, states that:

"Sec. 24. Income Tax Rates. –

xxx

xxx

xxx

(C) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange – The provisions of Section 39 (B) notwithstanding, a final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the **sale, barter, exchange or other disposition of shares of stock** in a domestic corporation, except shares sold, or disposed of through the stock exchange. (Emphasis supplied)

xxx

xxx

xxx

It is clear from the foregoing that what is being subject to capital gains tax is not just the sale of shares of stocks but any barter, exchange or disposition of shares. Based from the testimonies of petitioner's witnesses there were transfers made based on petitioner's instructions. Although these witnesses likewise testified that the transfers were not sale, they failed to explain the underlying circumstances surrounding the transfers and at the same time controvert that there were other disposition of shares.

For failure of petitioner to satisfactorily refute the findings of the revenue examiners, the presumption of correctness of the assessments subsists. Tax assessments by tax examiners are presumed correct and made in good faith. xxx

It is well settled that assessments are entitled to the presumption of correctness and validity; and should, therefore be considered conclusive in the *Je*

absence of fraud or illegality or a showing that the determination of the same is not correct or does not proceed from a wrong principle of law.³ It is, therefore, the duty of the petitioner to prove that the assessment is not correct and was not made in good faith.⁴ Failure on the part of the petitioner to satisfactorily overcome the presumption of regularity and correctness cannot overturn the findings of the respondent.

The burden of the taxpayer contesting the validity or correctness of an assessment is to prove not only that the Commissioner of Internal Revenue is wrong, but that the taxpayer is right.⁵ Unfortunately, the pieces of evidence submitted by petitioner were not sufficient to satisfactorily overcome the presumption of correctness of assessment. Petitioner failed to convince the Court that there were no "over-the-counter" transactions and that transfer of shares did not fall under Section 24 (C) of the NIRC of 1997 which covers **sale, barter, exchange or other disposition of shares of stock** not traded in the stock exchange.

As regards petitioner's transfer of 980,000 BW shares, We cannot give much credence to the Certification⁶ issued by Mr. Mark S. Dayrit, Chairman of Mark Securities Corp. For one, the Certification merely denied that there was a sale transaction effected through their office involving 980,000 BW shares in 

³ *Commissioner of Internal Revenue vs. Court of Tax Appeals*, G.R. No. 48027, March 11, 1991, 195 SCRA 12 citing the case of *Coca-Cola Corp. vs. The Commissioner of Internal Revenue*, G.R. No. L-23604, March 15, 1974, 56 SCRA 5.

⁴ *Sy Po vs. Court of Tax Appeals*, No. L-81446, August 18, 1988, 164 SCRA 524.

⁵ *Tan Guan v. Court of Tax Appeals*, No. L-23676, April 27, 1967, 19 SCRA 903.

⁶ Exhibit "E", Division Docket, p. 30.

the name of petitioner but never denied the existence of SDM Receipt No. 1905 or that no other dispositions of shares were made.

Standing alone, the above mentioned Certification and the testimony of Ms. Analiza Hernandez, Accountant of Mark Securities Corp, are self serving and unverifiable considering that documentary and testimonial evidence were made by the officer and employee of Mark Securities Corp. which happens to be the broker/agent of the petitioner. Nonetheless, if We are to consider these evidence, still, it can only prove the transactions affecting petitioner and Mark Securities Corp. but not the transactions between AP De Castro Securities and petitioner.

The same is true with respect to the 325,000 BW shares. The evidence was insufficient to convince this Court to rule otherwise. Petitioner offered the testimony of Ms. Aurora Sto. Domingo, Marketing Assistant of Asiasec Equities, Inc. who attested that no sale transaction took effect but neither denied the transfer nor the other disposition of shares. Also, petitioner presented a *letter*⁷ by the Compliance Officer of Asiasec Equities, Inc. which only proved the fact that a copy of petitioner's instruction to transfer was enclosed into the said letter. Nothing was offered to corroborate and verify petitioner's allegation that no change in the beneficial ownership occurred after the transfer of 325,000 BW shares was made from Asiasec Equities, Inc. to PCCI Securities. *gc*

⁷ Exhibit "G", Division Docket, p. 128.

Thus, we accord greater weight to the findings espoused by the respondent. Absent a showing of any irregularity or arbitrariness, the findings of fact of administrative bodies are entitled to great weight and are conclusive and binding on this Court.⁸

Documentary Stamp Tax (DST)

DST is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.⁹ In the instant case, what is being taxed is petitioner's exercise of privilege to enter into transaction, that is, the "over-the-counter" transfer of shares which was done via electronic recording in Philippine Central Depository.

Petitioner was not denied due process.

Petitioner claimed that he was not fully informed of the factual and legal bases of the assessment, hence, was denied due process. He argued that he was never furnished copies of the receipt and statements that were used by the BIR in assessing him of the deficiency capital gains and documentary stamp taxes. According to petitioner, mere citations of Out Receipt numbers are insufficient to properly apprise him of the facts upon which the tax assessed against him were made. *Je*

⁸ *Feeder International Line, Pte., Ltd. v. Court of Appeals*, G.R. No. 94262, May 31, 1991, 197 SCRA 842.

⁹ *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008, 566 SCRA 57.

We are not convinced.

Section 228 of the NIRC of 1997 provides that "the taxpayers shall be informed in writing of the law and the fact on which the assessment is made; otherwise, the assessment shall be void." In relation to this, Revenue Regulation (RR) No. 12-99 discusses that one of the requisites for validity of letter of demand and assessment notice is to state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based.

The purpose of this requirement is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s).¹⁰ This is consistent with the essence of due process which is the reasonable opportunity to defend one's interests in due course such that there would be no reason to complain.¹¹ If there is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of¹² before judgment is rendered, then the demands of due process are sufficiently met.

Here, petitioner was given sufficient opportunity to explain his side and adduce his evidence. In his Petition for Review,¹³ he admitted receiving a Formal Letter of Demand and Assessment Notice from the BIR. As aptly *je*

¹⁰ *Bank of America N.A. Manila Branch vs. Commissioner of Internal Revenue*, CTA Case No. 6144, March 14, 2005 citing *Belle Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5930, April 4, 2002.

¹¹ *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006, 491 SCRA 213.

¹² *El Greco Ship Manning and Management Corp. vs. Commissioner of Customs*, G.R. No. 177188, December 4, 2008, citing *Danan vs. CA*, GR. No. 132759, October 25, 2005, 474 SCRA 113,125.

¹³ *Statement of Facts and Antecedent Proceedings*, Rollo, page 9.

observed by the First Division, petitioner disputed the assessment in his protest *Letter*¹⁴ dated July 30, 2001. In fact, petitioner was able to intelligently express his arguments and expound the issues raised in the assessment. He even presented evidence such as Certifications¹⁵ from his brokers that significantly mentioned the documents upon which the assessment was based, i.e. SDM Receipt No. 1905 and Out Receipt No. 01240.

Therefore, We are convinced that petitioner was fully apprised of the law and the facts upon which the assessment was based when the very evidence submitted by him proved his awareness of the nature and factual bases of the assessment. We reiterate our previous ruling in several *cases*¹⁶ that a taxpayer's actual knowledge of the bases of the assessments, such that it or he was able to intelligently protest the same, is sufficient compliance with the requirement of Section 228 of the NIRC of 1997. In addition, there is nothing in the provision of the law or in its implementing rule requiring the respondent to furnish taxpayers of the documents upon which the assessment was based. It is sufficient that the law and the facts are stated in the assessment notice.

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision 

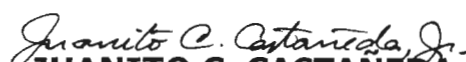
¹⁴ Exhibit "D", Division Docket, pp. 21-29.

¹⁵ Exhibits "E" and "F", Division Docket, pp. 30-31.

¹⁶ *Taian (Subic) Electric, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6314, March 17, 2006, *Camara Steel Industries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5960, February 19, 2004 and *Belle Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5930, April 4, 2002.

dated October 15, 2008 and the Resolution dated January 9, 2009 issued by the First Division are **AFFIRMED**.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

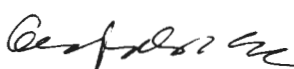
WE CONCUR:

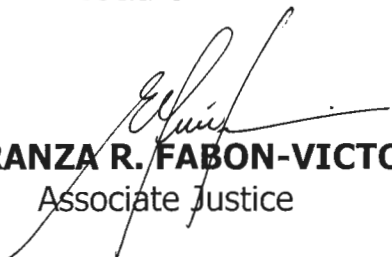

ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

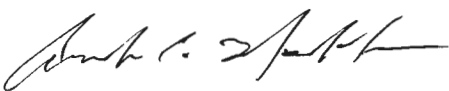

ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

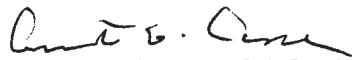

ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice