REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ARMADILLO HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8323

Members:

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

Promulgated:

OCT 09 2014 ; 1:55 p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

This resolves respondent's "*Motion for Reconsideration (of the Decision dated 11 June 2014)*" filed through registered mail on July 2, 2014 and received by this Court on July 8, 2014, with petitioner's "*Comment/Opposition (to the Motion for Reconsideration dated July 2, 2014)*" filed on August 8, 2014.

In the said motion, respondent seeks reconsideration of the Decision dated June 11, 2014, partially granting the Petition for Review filed on August 22, 2011. Respondent argues that petitioner failed to file a valid protest which renders the assessment final, executory and demandable because the subject protest failed to state the facts and the applicable laws, rules and regulations, or jurisprudence on which it was based.[1] Moreover, respondent asserts that petitioner failed to submit relevant documents in support thereof which, again, renders the assessment final and executory.[2] Lastly, respondent posits that petitioner's administrative protest was filed

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[1] Docket, pp. 633-635.
[2] Docket, pp. 635-638.

out of time because petitioner received a copy of the Final Assessment Notice on January 14, 2011, while it filed its protest only on February 13, 2011 or five (5) days beyond the thirty (30) day reglementary period for filing protest.

In its Comment/Opposition, petitioner raises that respondent did not present any proof that its administrative protest to the Formal Assessment Notice was filed out of time. Moreover, petitioner maintains that the issue as to the timeliness of filing of administrative protest was raised only for the first time in the instant Motion. Corollary thereto, petitioner claims that the fact of receipt of the aforesaid administrative protest was not testified to, identified by and duly established by respondent in the course of the proceeding. Consequently, petitioner also had no opportunity to reply or present evidence to respondent's Preliminary Assessment Notice. Finally, petitioner contends that the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer and not by the Bureau of Internal Revenue (**BIR**).

Thus, the issue to be resolved by this Court is whether or not petitioner filed a valid administrative protest. If the answer is in the negative, this Court will resolve the ancillary issue of whether or not respondent is *estopped* from questioning the validity of the protest. On the other hand, if respondent is *estopped* from questioning its validity, this Court will resolve whether or not petitioner timely filed its administrative protest with relevant supporting documents.

The subject administrative protest of petitioner reads:

"February 18, 2010

Mr. Jaime B. Santiago
Regional Director
Revenue Region No. 8
Makati City

Dear Sir:

Glory to GOD!

This is in reference to your Formal Assessment Notice for LOA # 00001046 dated January 14, 2011 which we received on January 20, 2011 covering 2007 deficiency tax, we would like to submit the following reconciliations for your copy and review:

1. Reconciliation of Deficiency Tax.
2. Analysis on Withholding Tax – Compensation (Sched 1)
3. Reconciliation of unaccounted Income Payments (Sched 2)
4. Reconciliation of undeclared Revenue (Sched 3).

We are available at your most convenient time and place to explain the above analysis and reconciliations. Please call us at our cell nos. 0917-890-7796 for Len Grande and 0917-8913663 for Mhina Simafranca.

Thank you and God Bless you.

(signed)
Eleanor B. Grande
Group Accounting Manager"

In regard thereto, respondent anchors her argument that petitioner failed to file a valid protest based on Section 228 of the National Internal Revenue Code (**NIRC**), in relation to Section 3.1.5 of Revenue Regulations No. 12-99 (**RR 12-99**) which respectively provide:

"*Section 228.* ***Protesting of Assessment***. –

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment **<u>in such form and manner as may be prescribed by implementing rules and regulations</u>**. xxx"[3]

"*3.1.5 Disputed Assessment.* –

xxx xxx xxx

[3] Emphasis and underscoring supplied.

> **<u>The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based</u>**, otherwise, his protest shall be considered *void and without force and effect.* xxx
>
> xxx xxx xxx
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."[4]

Under Section 228 of the NIRC, the request for reconsideration or reinvestigation shall be in such form and manner as may be prescribed by implementing rules and regulations. Meanwhile RR 12-99 is the Revenue Regulation laying down the procedure covering administrative protest which prescribes that the request for reconsideration or reinvestigation shall state the facts, the applicable law, rules and regulations, or jurisprudence on which the taxpayer's protest is based.

A perusal of the February 18, 2011 letter shows that it does not protest the subject assessment as it did not state any question of fact or of law to point any erroneous or illegal assessment made by respondent.

In the case of *Tongonan Holdings and Development Corporation vs. Atty. Francisco Escaño, Jr.*, the Supreme Court distinguished or defined a question of law as against a question of fact. Thus:

> "A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a

[4] Emphasis and underscoring supplied.

review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact."[5]

In relation to the pronouncement of the Supreme Court in the above-cited case, the letter dated February 18, 2010 failed to state what doubt or issue is to be resolved by respondent or what particular matter it disputes, *i.e.*, the truth or falsity of the alleged facts or, in this case, the correctness or illegality of the assessment based on documents submitted by petitioner; or the inapplicability of any law, rule or regulation applied by respondent in making the assessment.

Corollary thereto, the tenor of said letter instantly reveals that petitioner merely used it as an avenue to facilitate a meeting with Mr. Jaime B. Santiago, Revenue Regional Director of Region No. 8, where it can explain the analysis and reconciliation schedules enumerated therein. Clearly and applying the provisions of RR 12-99 respecting the form of a valid protest, this is not the protest envisioned by the NIRC as part of the procedure in disputing assessments.

Considering the foregoing, this Court rules that there is no valid protest filed by petitioner.

There being no valid protest, the ancillary but equally important issue to be resolved is whether or not respondent is *estopped* from questioning the validity of the protest. In this regard, petitioner argues that:

"xxx Further, contrary to the claim of respondent, petitioner duly and properly filed a valid administrative protest. It cannot be denied that no less than the Bureau of Internal Revenue accepted, admitted and recognized the subject protest as evidenced and gleaned in the issuance of the Final Decision Disputed Assessment dated July 18, 2011. If it would have an invalid protest, the Bureau of Internal Revenue could have just easily issued

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[5] G.R. No. 190994, September 7, 2011.

a preliminary collection letter or a notice of levy before seizure but such was not the case. All lead to the recognition of a valid administrative protest. Simply stated, the BIR is now *estopped*. xxx"

In the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, the Supreme Court held that:

"Under Article 1431 of the Civil Code, the doctrine of *estoppel* is anchored on the rule that 'an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood."[6]

In several cases decided by the Supreme Court, it is generally held that *estoppel* may not lie against respondent as it involves the exercise of an inherent power by the government to collect taxes.

In the *consolidated cases of Philippine National Oil Company vs. Court of Tax Appeals and Philippine National Bank vs. Court of Tax Appeals*,[7] petitioners therein entered into a compromise agreement with then BIR Commissioner of Internal Revenue, Bienvenido A. Tan. When the newly appointed Commissioner, Joes U. Ong, took over from his predecessor, he discovered that the compromise agreements entered into by petitioners, respectively, failed to comply with E.O. No. 44 and its implementing Rules and Regulations. Thus, then Commissioner Ong invalidated said compromise agreements. Subsequently, petitioners therein questioned the validity of the Commissioner's act of unilaterally annulling tax compromises entered into by his predecessor.

In upholding the act of then BIR Commissioner Ong, the Supreme Court held:

"It had been declared by this Court in *Hilado v. Collector of Internal Revenue, et al.*, that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous

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[6] G.R. No. 170257, September 7, 2011.
[7] G.R. Nos. 109976 & 112800, April 26, 2005.

rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given.

It is evident in this case that the new BIR Commissioner, Commissioner Ong, construed E.O. No. 44 and its implementing rules and regulations differently from that of his predecessor, former Commissioner Tan, which led to Commissioner Ong's revocation of the BIR approval of the compromise agreement, dated 22 June 1987. Such a revocation was only proper considering that the former BIR Commissioner's decision to approve the said compromise agreement was based on the erroneous construction of the law (*i.e.*, E.O. No. 44 and its implementing rules and regulations) and should not give rise to any vested right on PNOC.

Furthermore, approval of the compromise agreement and acceptance of the compromise payment by his predecessor cannot estop BIR Commissioner Ong from setting aside the compromise agreement, dated 22 June 1987, for lack of legal basis; and from demanding payment of the deficiency withholding tax from PNB. As a general rule, the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents because:

> . . . Upon taxation depends the Government ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel. xxx"

In the case of *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez and L.M. Camus Engineering Corporation,*[8] L.M Camus Engineering Corporation (**LMCEC**) was charged for violation of Section 266 of the NIRC. In the meantime, LMCEC availed respondent's Tax Amnesty Programs, *i.e.,* Economic Recovery Assistance Program (**ERAP**) and Voluntary Assessment Program (**VAP**). Thus, LMCEC posits that the BIR is *estopped* from further taking any action against it and its corporate officers because the grant of immunity from audit due to its availment of ERAP and VAP with features of a tax amnesty, the element of fraud is negated the moment the BIR accepted the offer of compromise or payment of taxes by the taxpayer.

In ruling in favor of the BIR, the Supreme Court held:

> "Given the explicit conditions for the grant of immunity from audit under RR No. 2-99, RR No. 8-2001 and RR No. 10-2001, we hold that respondent Secretary gravely erred in declaring that petitioner is now estopped from assessing any tax deficiency against LMCEC after issuance of the aforementioned documents of immunity from audit/investigation and settlement of tax liabilities. It is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position."

Thus, it is generally held that *estoppel* may not lie against the government for collection of taxes. However, this rule admits of exceptions in cases where it will result to injustice to taxpayers.

In the case of *Commissioner of Internal Revenue vs. Petron Corporation,*[9] Petron Corporation (**Petron**) was an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered enterprises which petitioner utilized to pay its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (**Center**).

[8] G.R. No. 177279, October 13, 2010.
[9] G.R. No. 185568, March 21, 2012.

In a post-audit conducted by the Center, it was found that the TCCs issued to several enterprises-assignors of TCCs to Petron were fraudulently obtained and were fraudulently transferred to the latter. Thus, the TCCs and the Tax Debit Memos (**TDM**) issued by the Center to Petron against said TCCs were cancelled by the Department of Finance (**DOF**). Prior to the cancellation of the aforesaid TCCs and TDMs, Petron had utilized the same in the payment of its excise tax liabilities. With such cancellation, the TCCs and TDMs lost its value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid.

Considering the foregoing, Petron contended that the Center continually approved the TCCs which were subsequently declared void, as payment for its excise tax liabilities. On the other hand, then Commissioner of Internal Revenue (**CIR**) insisted that the government is not *estopped* from collecting from Petron the excise tax liabilities that had accrued to the latter as a result of the voidance of these TCCs.

In ruling in favor of Petron and applying the principle of *estoppel* against the BIR, the Supreme Court held that:

> "We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party.
>
> Petron, in this case, was not proven to have had any participation in or knowledge of the CIR's allegation of the fraudulent transfer and utilization of the subject TCCs. Respondent's status as a transferee in good faith and for value of these TCCs has been established and even stipulated upon by petitioner. Respondent was thereby provided ample protection from the adverse findings subsequently made by the Center. Given the circumstances, the CIR's invocation of the non-applicability of estoppel in this case is misplaced."

In the above-cited cases applying the doctrine of *estoppel* in taxation, the general rule that *estoppel* may not lie against the government applies where there is fraud or illegality *vis-a-vis* the acts of a taxpayer. On the other hand, the *Petron case* instructs that where there is no fraud or illegality with respect to the taxpayer's acts and to apply the general rule would work injustice against an innocent party, the doctrine of *estoppel* may lie against the government.

In the instant case, there is no evidence presented by respondent to prove that petitioner was engaged in fraudulent or illegal transactions which gave rise to petitioner's deficiency assessment. To recall, respondent merely raised the validity of petitioner's protest as to its form. However, during the proceedings, respondent failed to establish the fact of any fraud or illegality leading to the deficiency assessment. Hence, applying the foregoing rulings, respondent is *estopped* from questioning the validity of the administrative protest filed by petitioner.

More so, the Final Decision on Disputed Assessment dated July 18, 2011[10] is clear and unequivocal in its language where it treated the letter dated February 18, 2011 of petitioner as a protest or as a request for reinvestigation against respondent's Formal Assessment Notice dated January 14, 2011. In fact, said Final Decision on Disputed Assessment dated July 18, 2011 informed petitioner that its deficiency assessment is respondent's final decision. It partially states:

> "In view thereof, you are requested to pay the aforesaid deficiency tax liabilities through the duly authorized agent bank in which you enrolled using the BIR Payment Form (BIR Form 0605) attached herewith. Afterwards, submit copy thereof to the Assessment Division, this Region, located at 3rd Floor, BIR Bldg., 313 Sen. Gil Puyat Avenue, Makati City for updating of your records and cancellation of herein FDDA, if warranted.
>
> This is our final decision. If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue (CIR) or with the Court of Tax Appeals (CTA) within thirty (30) days from

[10] Exhibit "A" of petitioner, Exhibit "12" of respondent.

the date of receipt hereof; otherwise, this decision shall become final, executory and demandable."

Notwithstanding the invalidity of the letter dated February 18, 2011 to be treated as an administrative protest due to its failure to state the facts, law, rules and regulations, or jurisprudence as basis for disputing the assessment, as previously discussed, respondent led petitioner to believe that the aforesaid letter is a valid protest. In fact, on the basis of the said letter, respondent made its final decision, which final decision is appealable to the CIR or to the CTA within thirty (30) days from receipt thereof.

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*,[11] the Supreme Court said:

"xxx

In this case, records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision.

Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word 'appeal' instead of 'protest', 'reinvestigation', or 'reconsideration'. Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word 'appeal' under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms 'protest', 'reinvestigation' and 'reconsideration' refer to

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[11] G.R. No. 175097, February 5, 2010.

> the administrative remedies a taxpayer may take before the CIR, while the term 'appeal' refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term 'appeal' when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, any doubt in the interpretation or use of the word 'appeal' in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion."

In the *Allied Banking Corporation* (**Allied**) *case*, Allied disputed the Preliminary Assessment Notice instead of the Final Assessment Notice. Thereafter, the CIR issued a Formal Letter of Demand with Assessment Notices to Allied where it used the word "appeal" instead of "protest", "reinvestigation", or "reconsideration." As such, Allied was led to believe by the CIR that the denial of its protest of PAN is the final decision appealable before the Court.

In the same vein, respondent in this case took cognizance of and explicitly recognized that the February 18, 2011 letter is a request for reinvestigation. Proceeding therefrom, respondent clearly and unequivocally stated that it is their final decision. Hence, after expressly considering the February 18, 2011 letter, from which the Final Decision on Disputed Assessment dated July 18, 2011 was based, as a request for reinvestigation, respondent is now *estopped* from questioning the validity of the protest at this time.

Considering that respondent is *estopped* from questioning the validity of the administrative protest, this Court shall finally determine whether the February 18, 2011, treated by respondent as a request for reinvestigation, was timely filed with relevant supporting documents.

Respondent asserts that petitioner received a copy of the Final Assessment Notice dated January 14, 2011 on the same date as evidenced by the BIR Records. Counting thirty (30) days from receipt of the FAN, petitioner had only until February 13, 2011 within which to file its protest. However, records will show that petitioner filed its protest only on February 18, 2011, which is five (5) days beyond the

30-day reglementary period within which to file a valid and timely protest.

On the contrary, petitioner asserts that no evidence was presented by respondent to prove that its administrative protest was filed out of time. Further, said issue is raised for the first time in the subject Motion and the BIR records referred to was not identified or testified to during trial. Hence, it lacks the proper authentication to be considered as evidence in Court.

In other words, respondent asserts that contrary to petitioner's allegation in its Petition and based from BIR records, petitioner received the FAN on January 14, 2011 and not on January 20, 2011. Considering that the period to file administrative protest already lapsed, the FAN became final, executory and demandable.

Respondent's assertion is misplaced.

The case of *Rafael Arsenio S. Dizon vs. Court of Tax Appeals*[12] finds its relevance, *viz*:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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>> **SEC. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
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> The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases

[12] G.R. No. 140944, April 30, 2008.

many of which were decided after Vda. de Oñate, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

> From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the**

> **same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.**

From the foregoing declaration, however, it is clear that Vda. de Oñate is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

In this case, we find that these requirements have not been satisfied. The assailed pieces of evidence were presented and marked during the trial particularly when Alberto took the witness stand. Alberto identified these pieces of evidence in his direct testimony. He was also subjected to cross-examination and re-cross examination by petitioner. But Alberto's account and the exchanges between Alberto and petitioner did not sufficiently describe the contents of the said pieces of evidence presented by the BIR. In fact, petitioner sought that the lead examiner, one Ma. Anabella A. Abuloc, be summoned to testify, inasmuch as Alberto was incompetent to answer questions relative to the working papers. The lead examiner never testified. Moreover, while Alberto's testimony identifying the BIR's evidence was duly recorded, the BIR documents themselves were not incorporated in the records of the case.

A common fact threads through *Vda. de Oñate* and *Ramos* that does not exist at all in the instant case. In the aforementioned cases, the exhibits were marked at the pre-trial proceedings to warrant the pronouncement that the same were duly incorporated in the records of the case. Thus, we held in *Ramos*:

> In this case, we find and so rule that these requirements have been satisfied. **The exhibits in question were presented and marked during the pre-trial of the case thus, they have been incorporated into the records.** Further, Elpidio himself explained the contents of these exhibits when

> he was interrogated by respondents' counsel...
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> x x x x
>
> But what further defeats petitioner's cause on this issue is that respondents' exhibits were marked and admitted during the pre-trial stage as shown by the Pre-Trial Order quoted earlier.

> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR."

The above-quoted jurisprudence lays down the general rule under Section 34, Rule 132 of the Rules of Court which provides that the court shall consider no evidence which has not been formally offered. As exception, the court may consider evidence not formally offered provided the following requisites are present: (1) The same must have been duly identified by testimony duly recorded; and (2) The same must have been incorporated in the records of the case.

In the instant case, respondent obviously failed to formally offer as evidence the receiving copy of its FAN which forms part of the BIR records. Thus, for this Court to consider the BIR records not formally offered in court, respondent has the burden to prove that these documents were duly identified by testimony duly recorded and that the same should have been incorporated in the records. Unfortunately, a perusal of the records show that said BIR records were not even identified during trial. Hence, it cannot be considered as evidence by this Court.

Lastly, respondent's contention that petitioner did not submit relevant supporting documents as provided for under Section 228 of the NIRC is untenable. As correctly argued by petitioner, the term "relevant supporting documents" has already been defined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[13] to wit:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Here, while petitioner merely submitted reconciliation schedules attached to its February 18, 2011 letter, still, the same constitutes relevant supporting documents as determined by petitioner. Thus, it cannot be gainsaid that petitioner failed to comply with the requirement of Section 228 of the NIRC in relation to the submission of relevant supporting documents.

To end, it has been established that the letter dated February 18, 2011 does not constitute the administrative protest as provided for under Section 228 of the NIRC in relation to RR 12-99, for failure to state the facts and pertinent laws, rules, regulations or jurisprudence in support thereof. However, the invalidity of the protest as to its form does not militate against petitioner considering that respondent is *estopped* from raising said issue for failure to establish fraud or illegality with regard to the surrounding circumstances of petitioner's deficiency assessment. Further, respondent led petitioner to believe that she considered the letter dated February 18, 2011 as a request for reinvestigation from which the Final Decision on Disputed Assessment dated July 18, 2011 emanated from. Hence, notwithstanding the invalidity of the protest, injustice would result to petitioner by reason of respondent's representations. This Court also cannot consider the receiving copy of the FAN which forms part of the BIR records, as basis for ruling that petitioner's filing of administrative protest had already expired because the same has not been identified during trial. Lastly, it has

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[13] G.R. Nos. 172045-46, June 16, 2009.

been established that petitioner submitted relevant supporting documents pursuant to Section 228 of the NIRC.

All told, this Court is not inclined to depart from its Decision dated June 11, 2014.

WHEREFORE, in view thereof, the "*Motion for Reconsideration (of the Decision dated 11 June 2014)*" is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

I maintain my dissent.
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice