REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**C.T.A. EB NO. 417** **(C.T.A. CASE NO. 7056)**
	Present:
-versus-	ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
WINTELECOM, INC., *Respondent.*	**Promulgated:** MAY 2 1 2009

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed on September 8, 2008 by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* which seeks to set aside the Decision dated February 20, 2008 and Resolution dated August 5, 2008 rendered by the Court in

Division in C.T.A. Case No. 7056, the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency income tax for years 2001 and 2000 are hereby **CANCELLED.** However, petitioner is hereby **ORDERED TO PAY** respondent the assessment for deficiency VAT, withholding tax on compensation, expanded withholding tax and final withholding tax on fringe benefits for the years 2001 and 2000 in the aggregate but reduced amount of **FIVE MILLION NINE HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED FORTY SIX PESOS AND EIGHTY EIGHT CENTAVOS** (P5,949,846.88) computed as follows:

	YEAR 2001	YEAR 2000	TOTAL
Deficiency VAT	P553,177.65	P2,898,767.65	P3,451,945.30
Deficiency Withholding Taxes			
Compensation	27,540.25	26,056.73	53,596.98
Expanded Withholding Tax	1,203,728.18	39,512.76	1,243,240.94
Final Withholding Tax — Fringe Benefits	P1,201,063.66	—	1,201,063.66
	P2,985,509.74	P2,964,337.14	P5,949,846.88

> In addition, petitioner is hereby **ORDERED TO PAY** an additional 20% delinquency interest on the total amount of P5,949,846.88 computed from August 23, 2004 until fully paid, pursuant to Section 249 (C) of the NIRC of 1997, as amended.
>
> **SO ORDERED**."

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> "**WHEREFORE,** respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue charged with the duty of assessing and collecting national internal revenue taxes, and holds office at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

Respondent Wintelecom, Inc. (hereafter "respondent Wintelecom"), on the other hand, is a domestic corporation duly organized and existing in accordance with the laws of the Republic of the Philippines, engaged in selling and repair of mobile phones, with office address at 2339 Leon Guinto St., Malate, Manila.

On July 10, 2003, Assistant Commissioner of the BIR Enforcement Service Percival Salazar sent respondent a letter advising it of the Report, which is the result of an investigation of its internal revenue tax liabilities for taxable years 2001 and 2000, to which respondent protested in a letter dated July 31, 2003.

On December 15, 2003, respondent received a Pre-Assessment Notice for alleged deficiency internal revenue taxes for the years 2000 and 2001 in the total amount of P523,258,495.68.

On December 19, 2003, respondent protested the Pre-Assessment Notice.

On March 10, 2004, respondent received a Final Assessment Notice for deficiency internal revenue taxes for the years 2000 and 2001, with Details of Discrepancies in the total amount of P553,344,468.98.

On April 6, 2004, respondent filed its protest to the Final Assessment.

There being no action on the part of petitioner CIR, respondent filed a Petition for Review before this Court, docketed as C.T.A. Case No. 7056.

Summons and a copy of the petition having been served, on October 14, 2004, the Commissioner of Internal Revenue filed a "Motion for Extension of Time to File Answer" praying for an extension of fifteen (15) days from October 15, 2004 or until October 30, 2004 to file Answer, which the Court in Division granted in its Order dated October 20, 2004.

On October 27, 2004, the CIR filed a second "Motion for Extension of Time to File Answer" praying for another period of fifteen (15) days from October 30, 2004 or until November 14, 2004 to file Answer, which the Court in Division granted in its Order dated November 2, 2004.

On November 16, 2004, the CIR filed a third "Motion for Final Extension of Time to File Answer" praying for another period of fifteen (15) days from November 14, 2004 or until November 29, 2004 to file Answer, which the Court in Division granted in its Order dated November 17, 2004, with warning that it is a final extension.

On November 26, 2004, the CIR filed a fourth "Motion for Extension of Time to File Answer" praying for an additional ten (10) days from November 29, 2004 or until December 9, 2004 to file Answer. The Court in Division granted the motion, but expressly and unequivocally stated in its Order dated November 30, 2004 that such extension would be the last.

On December 9, 2004, the CIR filed a fifth "Motion for Extension of Time to File Answer" praying for an extension of ten (10) days from December 9, 2004 or until December 19, 2004 to file Answer. In its Order dated December 17, 2004, the Court in Division denied petitioner

CIR's fifth motion, a copy of which was received by petitioner CIR on January 5, 2005. On December 20, 2004, petitioner CIR filed the Answer.

On January 13, 2005, petitioner CIR filed a "Motion for Reconsideration" of the Resolution dated December 17, 2004.

On March 9, 2005, respondent filed its "Opposition/Comment on Petitioner's Motion For Reconsideration".

In its Resolution dated May 20, 2005, the Court in Division denied with finality petitioner CIR's Motion For Reconsideration and set the *ex parte* presentation of evidence for respondent Wintelecom on July 5, 2005, at 9:00 a.m.

On July 4, 2005, petitioner CIR filed a "Petition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)" with the Court of Appeals seeking to enjoin this Court from implementing the Resolution dated May 20, 2005 and thereafter to set aside the Resolution dated May 20, 2005 and to order this Court to admit petitioner CIR's Answer. On July 11, 2005, the Court of Appeals dismissed said petition for lack of jurisdiction declaring that petitioner CIR availed of a wrong remedy in a wrong forum.

Discontented, on July 15, 2005, petitioner CIR appealed to the Supreme Court, but said petition was likewise denied by the Supreme Court on March 5, 2007 for failure to sufficiently show that the Court of Appeals had committed any reversible error on the questioned judgment.

After the termination of respondent Wintelecom's *ex parte* presentation of evidence, on February 20, 2008, the Court in Division rendered a Decision partly granting the petition.

On March 14, 2008, petitioner CIR filed a "Motion for Reconsideration with Motion to Admit Answer and to Set Aside All Evidence Presented", which was denied by the Court in Division in its Resolution dated August 5, 2008.

Not satisfied, petitioner CIR filed the instant Petition for Review raising the following:

ISSUES

I

THE CIR WAS DENIED DUE PROCESS WHEN THIS HONORABLE COURT IN ITS ORDER DATED MAY 20, 2005 ORDERED AND ALLOWED THE *EX PARTE* PRESENTATION OF RESPONDENT'S EVIDENCE WITHOUT AN ORDER DECLARING THE CIR IN DEFAULT.

THE CIR WAS DENIED DUE PROCESS WHEN THIS HONORABLE COURT TREATED HER TO BE IN

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DEFAULT WITHOUT THE NECESSARY MOTION AND HEARING TO DECLARE THE CIR IN DEFAULT.

THE ORDER DATED MAY 20, 2005 DID NOT COMPLY WITH THE REQUIREMENTS FOR A VALID DECLARATION OF DEFAULT.

RESPONDENT DID NOT MOVE TO DECLARE THE CIR IN DEFAULT.

NO HEARING WAS CONDUCTED TO DECLARE THE CIR IN DEFAULT.

THE CIR FILED AN ANSWER BEFORE THE CTA, FIRST DIVISION'S ORDER DATED MAY 20, 2005 WAS ISSUED.

JUDGMENTS BY DEFAULT ARE NEVER LOOKED UPON WITH FAVOR.

THERE IS NO SHOWING THAT THE MOTIONS FOR EXTENSION OF TIME TO FILE ANSWER WERE FILED TO DELAY THE PROCEEDINGS.

THE ORDER FOR *EX PARTE* PRESENTATION OF EVIDENCE IS NOT THE ORDER OF DEFAULT CONTEMPLATED BY SECTION 3, RULE 9, RULES OF COURT.

II

THE GOVERNMENT IS NOT BOUND BY THE MISTAKES OF ITS AGENTS.

III

THE CTA, FIRST DIVISION ERRED WHEN, AFTER ORDERING AN *EX PARTE* PRESENTATION OF

WINTELECOM'S EVIDENCE, IT GRANTED THE PETITION ON THE GROUND THAT THE CIR FAILED TO SUBMIT EVIDENCE TO SUBSTANTIATE ITS ASSESSMENT.

IV

THE CTA, FIRST DIVISION ERRED WHEN IT PARTIALLY GRANTED THE PETITION AND CANCELLED THE INCOME TAX ASSESSMENTS ON THE GROUND THAT THE CIR FAILED TO SUBMIT EVIDENCE TO SUBSTANTIATE ITS ASSESSMENT DESPITE RESPONDENT'S FAILURE TO PROVE THAT THE ASSESSMENTS FOR THE YEARS 2000 AND 2001 ARE ERRONEOUS.

On October 7, 2008, without necessarily giving due course to the petition, We required respondent to file its comment, not a motion to dismiss, within ten (10) days from notice.

On October 30, 2008, respondent filed its comment, after its "Motion for Extension of Time" was granted.

Upon manifestation of petitioner CIR that she is no longer filing a reply, the petition was deemed submitted for decision.

THE COURT *EN BANC'S* RULING

The petition is impressed with merit.

Principal Issue

The principal issue raised in the petition is whether the Court in Division validly allowed and ordered the *ex parte* presentation of evidence for respondent Wintelecom without a motion from Wintelecom, to declare the CIR in default, without a hearing on such motion, and without an order declaring the CIR in default and in rendering judgment thereon.

Petitioner CIR contends that she was denied due process when the Court in Division disregarded the Rules, to petitioner's prejudice, and allowed respondent to present its evidence *ex parte* without a Motion To Declare the CIR in default and without an order declaring her in default, and in rendering judgment thereon. According to petitioner, she was not given the opportunity to participate in the proceedings and present evidence.

Section 3, Rule 9 of the 1997 Rules of Civil Procedure, as amended, provides:

> "SEC. 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court."

The elements of a valid declaration of default are:

1) The Court has validly acquired jurisdiction over the person of the defending party either by service of summons or voluntary appearance *(Laus v. Court of Appeals, 219 SCRA 688);*
2) the defending party failed to file the Answer within the time allowed therefore; and
3) a motion to declare the defending party in default has been filed by the claiming party with notice to the defending party.

Accordingly, three requirements must be complied with before the Court can declare the defending party in default: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare him in default; and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rules of Court *(De los Santos v. Carpio, 501 SCRA 390).*

A careful perusal of the records shows that the three requirements before a Court can declare the defending party in default, as prescribed by the rules, are wanting in this case.

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WHEN THERE IS NO MOTION, THERE CAN BE NO DECLARATION OF DEFAULT

At the outset, respondent Wintelecom did not file a Motion To Declare petitioner CIR in default. Respondent, in fact, admitted in its "Comment" that it did not file any motion to declare petitioner CIR in default, but justified the same by alleging that the motion is already unnecessary given the circumstances of the case.

The rule is settled that an order of default can be made only upon motion of the claiming party *(Mediserv, Inc. v. China Banking Corporation, 356 SCRA 616)*. It can be properly issued against the defending party who failed to file the Answer within the prescribed period only if the claiming party files a motion to that effect with notice to the defending party. The rule on default requires the filing of a motion and notice of such motion to the defending party. It is not enough that the defendant fails to answer the complaint within the reglementary period. The court has no authority to *motu proprio* declare the defendant in default *(Viacrusis v. Estenzo, 115 Phil. 556; Trajano v. Cruz, 80 SCRA 712)*, as the rules leave it up to the claiming party to protect his or its interests. The trial court should not under any circumstances act as counsel of the claiming party *(Sablas vs. Sablas, 526 SCRA 292)*.

Furthermore, it follows that the required notice of the motion to the defending party, was also not met since no motion to declare petitioner CIR in default was filed by the respondent. The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments. The notice of a motion is required when the party has the right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard *(Yap v. Court of Appeals, 200 Phil. 509, 514).*

It is evident from the foregoing that there was no order declaring petitioner CIR in dafault. Petitioner CIR was denied her day in court; there was lack of due process.

WHEN THERE IS NO DECLARATION OF DEFAULT, ANSWER MAY BE ADMITTED EVEN IF FILED OUT OF TIME

It has been repeatedly held that it is within the sound discretion of the trial court to permit the defendant to file his Answer and to be heard on the merits even after the reglementary period for filing the Answer expires *(De Dios v. Court of Appeals, 212 SCRA 519).* More importantly, *Section 11, Rule 11 of the 1997 Rules of Civil Procedure, as amended,* gives discretion to the court not only to extend the time to file Answer, but also to allow an Answer to be filed after the time fixed by the Rules.

In this case, record shows:

1) On October 14, 2004, petitioner CIR filed a "Motion for Extension of Time to File Answer" praying for an additional period of fifteen (15) days from October 15, 2004 or until October 30, 2004 to file Answer, on grounds of heavy pressure of work and for lack of material time, which the Court in Division granted in its Order dated October 20, 2004;

2) On October 27, 2004, petitioner CIR filed a second "Motion for Extension of Time to File Answer" praying for another period of fifteen (15) days from October 30, 2004 or until November 14, 2004 to file Answer, again on grounds of heavy volume of work and for lack of material time, which the Court in Division granted in its Order dated November 2, 2004;

3) On November 16, 2004, petitioner CIR filed a third "Motion for Final Extension of Time to File Answer" praying for another period of fifteen (15) days from November 14, 2004 or until November 29, 2004 to file Answer, on the ground that the draft of the Answer is still with the Office of the Solicitor General for review and approval. The motion was

granted and petitioner CIR was given a final extension of fifteen (15) days from November 14, 2004 or until November 29, 2004 to file Answer;

4) On November 26, 2004, petitioner CIR filed its fourth "Motion for Further Extension of Time to File Answer" praying for additional extension of ten (10) days from November 29, 2004 or until December 9, 2004 to file Answer, on the ground that an additional period is needed for completion, revision and final approval of the Answer, which the Court in Division granted;

5) On December 15, 2004, petitioner CIR, through the Office of the Solicitor General (OSG), filed her fifth "Motion for Extension of Time to File Answer" praying for another ten (10) days from December 9, 2004 to file Answer, on the ground that some vital arguments which require a thorough review have to be included in the Answer. The motion was denied by the Court in Division in its Order dated December 17, 2004, a copy of which was received by both parties on January 5, 2005;

6) On December 20, 2004, petitioner CIR filed the Answer; and

7) On January 13, 2005, the OSG filed a "Motion for Reconsideration" of the December 17, 2004 Order, which was denied with finality by the Court in Division in its Resolution dated May 20,

2005. In the same Resolution dated May 20, 2005, the *ex parte* presentation of evidence for respondent Wintelecom was set on July 5, 2005.

We agree with the Court in Division that the granting of additional time within which to file Answer is a matter largely addressed to the sound discretion of the court. Although, We do not countenance repetitive extensions of time to file pleadings, especially in this case when petitioner CIR had already been granted a total extension of fifty five (55) days to file the Answer, We are, however, governed by the Rules, and as a Court, We are bound to enforce them.

In the instant case, record shows that in the Resolution dated May 20, 2005, the Court in Division denied with finality petitioner CIR's "Motion For Reconsideration" of the Resolution dated December 17, 2004, denying petitioner CIR's fifth "Motion For Extension of Time to File Answer", and set the *ex parte* presentation of evidence for respondent Wintelecom on July 5, 2005, without an order declaring petitioner CIR in default.

When the Court in Division ordered the *ex parte* presentation of herein respondent's evidence, it in effect declared petitioner CIR in default. However, such order is not the order of default contemplated by the Rules of Court. Even if We consider the same as an order of default, the declaration of default against petitioner CIR is tainted with procedural defects considering that there was no motion filed by respondent Wintelecom and no notice was given to petitioner CIR.

WHERE ANSWER HAS BEEN FILED, THERE CAN BE NO DECLARATION OF DEFAULT ANYMORE

The rule is that the Answer should be admitted where it is filed before a declaration of default and no prejudice is caused to the plaintiff *(Trajano v. Cruz, supra; Mercader vs. Bonto, 92 SCRA 665, 677).* Where the Answer is filed beyond the reglementary period but before the defendant is declared in default, and there is no showing that defendant intends to delay the case, the Answer should be admitted.

It is, therefore, contrary to rules and settled jurisprudence when petitioner CIR's Answer, which was filed within the period sought to be extended in her fifth "Motion for Extension of Time to file Answer", was denied admission by the Court in Division, as there was no showing that the admission will prejudice the respondent, nor was there a showing that respondent was deprived of any substantial right considering that respondent did not file any motion to declare petitioner CIR in default to

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protect its interest. Neither was there a showing that petitioner CIR intended to delay the case. Petitioner CIR in her fifth Motion for Extension requested for another ten (10) days from December 9, 2004 or until December 19, 2004 to file the Answer. Record shows that petitioner CIR filed the Answer on December 20, 2004 (December 19, 2004 being a Sunday), which was within the period sought to be extended. Clearly, the Answer had already been filed on December 20, 2004, within the extended period requested in petitioner CIR's fifth "Motion For Extension of Time To File Answer", when the Court in Division denied with finality petitioner CIR's "Motion For Reconsideration" of the Order dated December 17, 2004 on May 20, 2005. The Answer having been filed on December 20, 2004, within the extended period requested, in the interest of substantial justice, the Answer should have been admitted and the Resolution ordering the *ex-parte* presentation of evidence for Wintelecom, without an order declaring the CIR in default, should not have been issued.

In *Cathay Pacific Airways, Ltd. v. Hon. Romillo, Jr.* (225 Phil. 397), the Supreme Court ruled that it was an error to declare the defending party in default after the Answer was filed. The Supreme Court was in fact even more emphatic in *Indiana Aerospace University v. Commission* *on Higher Education (356 SCRA 367)* when it pronounced that no practical purpose was served in declaring the defendants in default when their Answer had already been filed – albeit after the 15-day period, but before they were declared as such.

**DEFAULT JUDGMENT
WHERE THERE IS NO PROPER
DECLARATION OF DEFAULT
IS NULL AND VOID**

Since the record shows that there is no motion to declare petitioner CIR in default ever filed and there is no order declaring petitioner CIR in default, as mandated by *Section 3, Rule 9 of the 1997 Rules of Civil Procedure, as amended,* consequently, the default-judgment rendered against petitioner CIR is a patent nullity. The issuance of an order of default is a condition *sine qua non* in order that a judgment by default be clothed with validity *(Vlason Enterprises vs. CA, 310 SCRA 26)*. Therefore, a default judgment erroneously rendered where defendant was not declared in default may be vacated.

For all the foregoing, We have no recourse, but to nullify and set aside the Decision dated February 20, 2008 and Resolution dated August 5, 2008 for being rendered in violation of petitioner CIR's due process and the rules of procedure.

DEFAULT ORDERS AND JUDGMENTS ARE FROWNED UPON

The policy of the law is to have every litigant's case tried on the merits as much as possible. Hence, judgments by default are frowned upon. A case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. The parties are thus given the chance to be heard fully and the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts *(Sablas vs. Sablas, 526 SCRA 299).*

As much as possible, suits should be decided on the merits and not on technicalities *(Diaz vs. Diaz, 331 SCRA 302).* For this reason, courts have repeatedly been admonished against default orders and judgments that lay more emphasis on procedural niceties at the expense of substantial justice. Not being based upon the merits of the controversy, such issuances may indeed amount to a considerable injustice resulting in serious consequences on the part of the defendant *(Oaminal vs. Castillo, 413 SCRA 189, 202).*

JUDGMENTS SHOULD BE DECIDED ON THE MERITS

A perusal of the records shows that the assessment against respondent involves a sizable amount of P553,344,468.98 of unpaid taxes which seems to have a legitimate basis. Hence, the Court cannot just deprive petitioner CIR of her day in court to prove the same due to technicalities, taking into consideration that the defending party is just protecting the rights of the government for its survival. Accordingly, in order that the parties are given the amplest opportunity to fully ventilate their claims and defenses brushing aside technicalities, in order to truly ascertain the merits of this case, and pursuant to settled jurisprudence, We deem it prudent to admit the Answer of petitioner CIR and remand the case for further proceedings. Indeed, judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities *(Acaylar Jr. vs. Harayo, 560 SCRA 624).* Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided *(Telan vs. Court of Appeals, 202 SCRA 534, 541).* The court is not supposed to grab the first opportunity, no matter how unsubstantial, to knock the defendant out of court *(Africa vs. Intermediate Appellate Court, 188 SCRA 586).*

Thus, in the case of *Philippine Amusement and Gaming Corporation vs. Angara (475 SCRA 41),* the Supreme Court categorically declared:

> "While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, it nevertheless must not be met at the expense of substantial justice. Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities."

The above ruling applies with cogent force in the present case.

PRESUMPTION IN FAVOR OF ASSESSMENTS

Finally, it bears stressing that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Sy Po v. Court of Appeals, 164 SCRA 524, 530).* It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR officer regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC *(CIR vs. Hantex Trading Co., Inc., 454 SCRA 301).*

It must be noted that in this case, herein respondent Wintelecom filed C.T.A. Case No. 7056 with the Court in Division, assailing the assessment made by petitioner CIR against it, therefore, respondent has the burden to overcome the presumption on assessments. A careful perusal of the Decision dated February 20, 2008 shows that the Court in Division cancelled certain portions of the assessment on the ground that petitioner CIR failed to prove the alleged third party information from which petitioner's examiners based their assessment. But, record shows that it was the Court which prevented the CIR from presenting her evidence when it *motu proprio* set the case for the *ex parte* presentation of evidence for respondent Wintelecom, without an order declaring petitioner CIR in default. This Court notes that the BIR Records form part and parcel of the docket of this case, which appears to be substantial to prove the alleged third party information, but unfortunately, was not considered by the Court in Division in rendering the assailed Decision. Record shows that the BIR Records are attached to the records of C.T.A. Case No. 7056 and the documents appended thereto, such as the certifications from respondent's suppliers, which seem to be sufficient for the proper determination of the basis of the assessment. True, petitioner CIR was not able to participate in the proceedings of this case, but respondent has the burden of proving its case and must be able to overturn the presumption in favor of the validity of the subject assessment. Respondent Wintelecom's mere denial of the assessment without presenting clear and convincing evidence to controvert the same cannot overturn the said presumption.

Well settled is the rule that the plaintiff is not automatically entitled to the relief prayed for, once the defendant is declared in default, as the plaintiff must still present the same quantum of evidence that would be required if the defendant was still present. To win, the plaintiff must still present the quantum of evidence that the Rule requires. The *ex parte* presentation of evidence does not lower the degree of proof required. If the evidence presented does not support a judgment for the plaintiff, the complaint should be dismissed.

For all the foregoing and finding substantial merit in petitioner CIR's claim that the subject assessment has supporting documents attached to the BIR Records of this case, the re-opening of the case for trial on the merits is in accord with the principles of substantial justice.

Time and again, We are constrained to uphold the doctrine that taxes are what civilized people pay for civilized society. They are the lifeblood of the nation, without which it cannot properly perform its functions. Also, it has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers *(Republic of the Philippines v. Heirs of Felix Caballero, 208 SCRA 726).* This is particularly true in the collection of legitimate taxes due where the collection has to be made whether or not there is error, complicity, or plain neglect on the part of the collecting agents. In *CIR v. CTA (243 SCRA 348),* the Supreme Court held:

> "It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. Thus, it should be collected without unnecessary hindrance or delay."

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Resolution dated May 20, 2005, Decision dated February 20, 2008 and Resolution dated August 5, 2008 rendered by the Court in Division in C.T.A. Case no. 7056 are **ANNULLED** and **SET ASIDE.** The Answer filed by petitioner CIR is hereby **ADMITTED**. The case is **REMANDED** to the Court in Division for further proceedings.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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