REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNIVERSITY OF THE PHILIPPINES SYSTEM ADMIN, Petitioner,	**CTA EB NO. 1946** (CTA Case No. 8397)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 18 2020 4:16 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner University of the Philippines System Admin (**petitioner/UP**) seeking the

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[1] Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.
Sec. 3. *Who may appeal; period to file petition.* —
...
(b) Any party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

nullification of the Decision promulgated on 19 March 2018[2] and the subsequent Resolution dated 05 September 2018[3], respectively, of the Court's First Division[4] in CTA Case No. 8397, entitled *University of the Philippines System Admin v. Commissioner of Internal Revenue.*

The antecedent facts follow.

Petitioner UP has been organized and is existing in accordance with Act No. 1870[5], as modified by Republic Act (**RA**) No. 9500[6]. It is registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer Identification Number (**TIN**) 000-864-006.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), vested with the authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayer pursuant to the National Internal Revenue Code (**NIRC**) of 1997, as amended.

On 07 September 2007, respondent issued Letter of Authority (**LOA**) No. LOA 2001 00065623[7], authorizing the examination of petitioner's books of account and other accounting records for all internal revenue taxes covering taxable year (**TY**) 2006 or the period from 01 January to 31 December 2006. Subsequently, respondent invited petitioner to an informal conference[8] to give the latter an opportunity to present its side on the result of his investigation pursuant to the LOA.

Consequently, respondent issued a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies dated 18 December 2009[9], which petitioner received on 05 January 2010. Respondent assessed

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[2] Division Docket, Volume VI, pp. 3340-3372.
[3] Id., pp. 3408-3413.
[4] Penned by Associate Justice Cielito N. Mindaro-Grulla, and concurred in by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario, inhibited.
[5] AN ACT FOR THE PURPOSE OF FOUNDING A UNIVERSITY FOR THE PHILIPPINE ISLANDS, GIVING IT CORPORATE EXISTENCE, PROVIDING FOR A BOARD OF REGENTS, DEFINING THE BOARD'S RESPONSIBILITILES AND DUTIES, PROVIDING HIGHER AND PROFESSIONAL INSTRUCTION, AND FOR OTHER PURPOSES.
[6] AN ACT TO STRENGTHEN THE UNIVERSITY OF THE PHILIPPINES AS THE NATIONAL UNIVERSITY.
[7] Exhibit "R-2", BIR Records, p. 15.
[8] Exhibit "R-5", id., p. 52.
[9] Exhibit "R-10", id., pp. 299-301.

petitioner for deficiency value-added tax (**VAT**) and expanded withholding tax (**EWT**) for TY 2006 amounting to ₱6,093,433.49 and ₱3,058,456.15, respectively. In disagreement with respondent's action, petitioner filed its protest[10] to the PAN on 16 February 2010.

Later or on 15 January 2010, respondent issued the Final Assessment Notice (**FAN**)/Formal Letter of Demand[11] (**FLD**) with Assessment Notices demanding petitioner to pay the amounts of ₱6,093,433.49 and ₱3,058,456.15, corresponding to deficiency VAT and EWT, respectively.

In a letter dated July 2010[12], respondent addressed the protest to the PAN stating that he already issued the FAN/FLD on 15 January 2010. Petitioner received the said letter on 20 August 2010.

On 02 September 2010, petitioner manifested that it would like to file a protest to the FAN/FLD[13]. In reply, respondent informed petitioner that the case docket will be forwarded to Revenue District Office (**RDO**) No. 39 for appropriate action.[14]

In another letter dated 05 November 2010[15], Revenue District Officer Mahinardo G. Mailig (**RDO Mailig**) invited petitioner for yet another informal conference.

On 11 November 2010, petitioner filed another letter in connection with the supporting documents on the Post Reporting Notice[16] (**PRN**). On the same day, petitioner and respondent's authorized representative, RDO Mailig, met for the informal conference.

Later, petitioner alleged that it only received the FAN/FLD during the informal conference. Counting thirty (30) days therefrom, it

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10 BIR Records, p. 317; Annex "D", Petition for Review, Division Docket, Volume I, p. 43.
11 Exhibit "R-11", BIR Records, pp. 302-306.
12 BIR Records, p. 333.
13 See Letter dated 31 August 2010, id., p. 332.
14 See Reply Letter dated 15 October 2010, id., p. 340.
15 Id., p. 343.
16 Id., pp. 345-348.

filed its protest[17] to the FAN/FLD on 10 December 2010. Respondent, on the other hand, issued the Final Decision on Disputed Assessment[18] (**FDDA**) on 03 November 2011. Petitioner received the same on 17 November 2011.

Aggrieved, petitioner filed the Petition for Review (CTA Case No. 8397) before the Court in Division on 16 December 2011. There, it sought the cancellation and withdrawal of the FAN/FLD and the FDDA on its supposed VAT and EWT liabilities for TY 2006. Likewise, it prayed for the Court to affirm its exemption from both VAT and EWT, pursuant to RA 9500.[19]

After trial, the Court's First Division, in its now assailed 19 March 2018 Decision, denied the Petition for Review for lack of merit. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Likewise, the First Division denied petitioner's Motion for Reconsideration (**MR**) in its similarly questioned Resolution of 15 September 2018.

Undaunted, petitioner assigns the following errors to the actions of the First Division:

I.

THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT PETITIONER FAILED TO FILE A TIMELY PROTEST TO THE FINAL ASSESSMENT NOTICE (FAN) AND FORMAL LETTER OF DEMAND (FLD) DATED 15 JANUARY 2010.

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17 Id., p. 344.
18 Id., p. 370.
19 Supra at note 6.

II.

THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT RESPONDENT'S ASSESSMENT OF PETITIONER FOR ALLEGED DEFICIENCY VALUE-ADDED TAX AND EXPANDED WITHHOLDING TAX FOR TY 2006 HAS NOT YET PRESCRIBED; and,

III.

THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT PETITIONER IS LIABLE FOR ALLEGED DEFICIENCY VALUE-ADDED TAX AND EXPANDED WITHHOLDING TAX FOR TY 2006.

In support of its Petition for Review, petitioner puts forward the arguments below.

First, petitioner insists that it only received the FAN/FLD issued on 15 January 2010 during the informal conference held on 11 November 2010. It thus timely filed its protest thereto on 10 December 2010. In the July 2010 letter of respondent, while it did mention that FAN/FLD was already issued, respondent did not attach a copy of the FAN/FLD.

Furthermore, petitioner did not mention in the letter dated 31 August 2010 (filed on 02 September 2010) that it already received the FAN/FLD and only manifested its intention to file a protest to them. Therefore, petitioner maintains that the First Division erred in reckoning the 30-day period to file an administrative protest from 02 September 2010 or the supposed date of receipt of the FAN/FLD. Similarly, the letter dated 11 November 2010 was in relation to the PRN it received on 07 September 2007 and it had nothing to do with the FAN/FLD.

Petitioner contends as well that the fact that it was invited to an informal conference on 11 November 2010 was respondent's tacit recognition that the assessment has yet to become final and executory. In the same vein, the FDDA included the statement that petitioner may appeal to this Court within thirty (30) days from its receipt of the FDDA.

Petitioner also vehemently argues that respondent failed to show proof that it served the FAN/FLD on it on 15 January 2010 and that it received the same. In fact, respondent was quiet on the mode of service used. Absent such proof, it cannot be said that it indeed received the FAN/FLD at an earlier date and that it failed to seasonably file its administrative protest thereto.

Petitioner insists it only admitted the existence of the FAN/FLD and not the receipt thereof earlier than 11 November 2010.

Second, the FAN was issued merely ten (10) days from petitioner's receipt of the PAN on 05 January 2010, without waiting for its reply to the PAN. For petitioner, the reply to the PAN is indispensable and that the FAN should be issued only upon failure to respond to the PAN within the 15-day period prescribed (to reply thereto).

Petitioner likewise questions respondent's act of already preparing the FAN/FLD even before his invitation for an informal conference. This, to petitioner, defeated the purpose of an informal conference wherein it could explain its side. Hence, from respondent's actuations, it can be concluded that he was predisposed to demand and enforce the deficiency VAT and EWT against it, in clear violation of its right to due process.

Third, respondent's right to assess petitioner for TY 2006 has already prescribed. Respondent failed to prove that it issued and sent the assessment on 15 January 2010. To assume that the FAN/FLD was mailed on the same day that it was issued would set a dangerous precedent as any BIR employee could just antedate the issuance of the assessment.

Fourth, petitioner maintains that RA 9500 exempts it from the subject deficiency taxes. Contrary to the First Division's findings that revenues from activities conducted for profit regardless of its disposition of the income is subject to tax, Section 25[20] of RA 9500 provides that revenues and assets used for educational purposes or in support thereof shall be exempt from taxes and duties. Thus, it is not

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[20] **Sec. 25.** *Tax Exemptions.* – The provisions of any general or special law to the contrary notwithstanding:

(a) All revenues and assets of the University of the Philippines used for educational purposes or in support thereof shall be exempt from all taxes and duties[.]

...

the nature of the activity but rather the purpose for which the revenue will be used that is determinative of the exemption.

Moreover, Section 30(I)[21] of the NIRC of 1997, as amended, is inapplicable since RA 9500 is a special law. The provision on tax exemption provided under RA 9500 should govern notwithstanding the contrary provision under the NIRC of 1997, as amended.

Lastly, petitioner insists that respondent erred in assessing deficiency VAT on its sales/receipts amounting to ₱22,842,350.67 as the same should be considered as VAT-exempt rental income under Section 109(Q)[22] of the NIRC of 1997, as amended. Further, petitioner's lease to International Rice Research Institute (**IRRI**) is subject to zero-percent (0%) VAT.

As regards the EWT, petitioner avers that the income payments allegedly not subjected to EWT pertain to the seven (7) Constituent Universities (**CUs**) under the UP System. The income payments in the amounts of ₱1,365,973.15, ₱8,612,553.25 and ₱64,698,579.11 have already been subjected to EWT by the CU that incurred the expense and the correspondent EWT were remitted and paid to the BIR-RDO where the said CUs have been registered. Respondent also allegedly erroneously used the amounts of professional fees, janitorial expenses and rental expenses reflected in petitioner's income statements because such statements are the Consolidated Financial Statements for TY 2006.

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21 **Sec. 30.** *Exemptions from Tax on Corporations.* – The following organizations shall not be taxed under this Title in respect to income received by them as such:

...

(I) Government educational institution[.]

...

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

22 **Sec. 109.** *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

(Q) Lease of a residential unit with a monthly rental not exceeding Ten Thousand Pesos (P10,000): *Provided*, That not later than January 31, 2009 and every three (3) years thereafter, the amount herein stated shall be adjusted to its present value using the Consumer Price Index as published by the National Statistics Office (NSO)[.]

Respondent failed to file his Comment and Memorandum *per* Records Verification Report dated 16 January 2019 and 06 November 2019, respectively.

We rule below.

After an assiduous review of the records of the case and petitioner's arguments, We find no cogent reason to deviate from the earlier rulings of the Court's First Division.

We discuss petitioner's assigned errors, *in seriatim*.

I. NO VALID PROTEST FILED

Petitioner does not deny the receipt of the FAN/FLD, only that it is firm in its stand that it received them much later from the date of issuance. Interestingly, in between the date of issuance of the FAN/FLD and the date of the alleged actual receipt thereof, there have been exchanges of correspondences between the parties without any mention as to the receipt of the FAN/FLD.

It is quite unusual that, although petitioner denied the receipt of the FAN/FLD prior to the informal conference, it admitted the *fact of existence* of the same and went as far as manifesting to respondent its intention to file a protest thereto, as shown in its letter dated 31 August 2010. Moreover, petitioner never mentioned in its letters that it did not receive the issued FAN/FLD to at least inform the BIR of the same. A reasonably prudent taxpayer would have immediately clarified the non-receipt of the FAN/FLD with the BIR to prevent the assessment from becoming final.

Additionally, We do not find that petitioner was denied due process when the assessment was issued prior to the informal conference. On the contrary, petitioner was already invited to an informal conference in the PRN letter[23] it received on 15 February 2008, way ahead of the issuance of the PAN and FAN/FLD.

[23] Supra at note 8.

Neither do We find the issuance of the FAN/FLD violative of petitioner's right to due process. Although no reply to the PAN was filed yet at the time the FAN/FLD was issued, more than fifteen (15) days have lapsed from the issuance of the PAN (on 18 December 2009). At any rate, petitioner belatedly filed its reply to the PAN on 16 February 2010 or more than a month from its receipt on 05 January 2010. Petitioner then could not claim that it was not accorded fifteen (15) days to reply.

Incidentally, even if We deem that petitioner only received (for the first time) the FAN/FLD during the informal conference on 11 November 2010, there is nothing in the records that would show that petitioner nevertheless timely filed a valid protest to the FAN/FLD. While petitioner now claims to have seasonably filed its protest on 10 December 2010, it did not present or offer proof on the same. Instead, We find the letter dated 10 December 2010[24] in the BIR Records and reproduced below:

> ...
> 10 December 2010
>
> **MR. MAHINARDO G. MAILIG**
> Revenue District Officer
> RDO 39, South Quezon City
>
> Dear Mr. Mailig,
>
> In connection with the notice received by the University of the Philippines from the Bureau of Internal Revenue (ref: L/A No.00065623) for the assessment made on the Internal Revenue Tax Liabilities for taxable year 2006, we are submitting our reply and the attached supporting schedules for your consideration since there is no legal/factual basis for the assessment.
>
> Thank you.
>
> Respectfully yours,
>
> (signed)
> **VP EDGARDO G. ATANACIO**
> Vice President for Planning and Finance
> ...

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[24] BIR Records, p. 344.

At best, the above letter may be considered a mere transmittal letter. It is noted that the actual reply (protest) and the attached supporting schedules are not found in the case records.

At any rate, if We are to deem the 10 December 2010 letter as petitioner's protest to the FAN/FLD, it must have stated the facts, applicable law, rules and regulations, or jurisprudence on which it has been based. Revenue Regulations (**RR**) No. 12-99[25] provides:

> ...
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> 3.1.5. *Disputed Assessment.* – ...
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> ...
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> **The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*** If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**[26]
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> ...

With the above, this Court could not therefore consider the aforesaid letter as a valid protest to dispute the assessment that

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25 *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.*

26 Emphasis supplied and italics in the original text.

respondent issued against petitioner. Verily, absent proof that petitioner indeed timely filed the required protest to the FAN/FLD, We are constrained to rule that the assessment against it has already attained finality. It is noted that petitioner bears the burden of proving that it validly disputed the FAN/FLD. We quote the First Division's Decision:

> ...
>
> It is a well-settled rule that the party who alleges a fact has the burden of proving it. Section 1 of Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.
>
> ...

II. FAILURE TO PROVE THAT THE PERIOD TO ASSESS HAS PRESCRIBED

We also affirm the First Division's finding that petitioner failed to prove that the assessed portion pertained to the prescribed period, thus:

> ...
>
> Applying the above-stated provisions, respondent's right to assess petitioner for deficiency VAT and EWT for TY 2006 has already prescribed except for the 4^{th} quarter and December of TY 2006, respectively.
>
> Petitioner presented and formally offered several documentary evidence, however, most of the said pieces of evidence were denied either due to failure to submit the duly marked exhibits or failure to submit originals for comparison. Likewise, petitioner failed to present before this Court any schedule/summary or supporting documents for the Court to determine which portion of the amount assessed pertains to the prescribed period.
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> Accordingly, since the Court cannot ascertain which of the amount assessed refers to the prescribed period due to failure of petitioner to submit sufficient evidence to prove the same, the Court

is constrained to uphold the whole assessed amount as pertaining to the unprescribed period.

...

III. REPUBLIC ACT NO. 9500
IS NOT APPLICABLE

Assuming *arguendo* that petitioner did file a valid protest to the FAN/FLD, it could still not claim exemption under Section 25[27] of RA 9500 for the assessment covering TY 2006. RA 9500 was signed into law only on 29 April 2008 and took effect fifteen (15) days after its publication in the Official Gazette or in any newspaper of general circulation in the Philippines.

Applying the law prospectively, the exemption from all taxes and duties of all assets and revenues of UP used for educational purposes or in support thereof introduced in RA 9500 cannot cover the assessment for TY 2006 in herein case. Instead, Section 30(I) of the NIRC of 1997, as amended, should apply, to wit:

> ...
>
> **Sec. 30.** *Exemptions from Tax on Corporations.* – The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> ...
>
> (I) Government educational institution;
>
> ...
>
> Notwithstanding the provisions in the preceding paragraphs, the **income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit <u>regardless of the disposition</u> made of such income, shall be subject to tax** imposed under this Code.[28]
>
> ...

Although We agree with petitioner that Section 30 of the NIRC of 1997, as amended, and Section 25 of RA 9500 appear to be irreconcilable, there is no room for statutory construction for the

27 Supra at note 20.
28 Emphasis and underscoring supplied.

assessed TY. Regrettably, the Court cannot apply the exemption granted under RA 9500 as the law was not yet in existence at the time. It is a basic tenet that laws are to be applied prospectively, unless retroactive application was provided for[29].

Additionally, exemption is one thing while entitlement is another. Notwithstanding the exemption under the law, a taxpayer claiming such must factually prove its entitlement to the same. Unfortunately, petitioner was also remiss in proving its entitlement to the exemption. We quote in agreement the findings of the First Division in the assailed 19 March 2018 Decision:

> ...
>
> The well settled rule is that legal provisions providing for tax exemption are to be construed strictly against the grant and liberally in favor of the taxing power.
>
> ...
>
> This Court takes into consideration the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Young Men's Christian Association of the Philippines*, where the Supreme Court held that since taxes are the lifeblood of the government, the doctrine of strict interpretation and construction of provisions granting tax exemption must be applied. Likewise, the claimed exemption must expressly be granted in a statute stated in a language too clear to be mistaken, *viz*:
>
> > "**Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions**. Furthermore, a claim of statutory exemption from taxation should be manifest, and unmistakable from the language of the law on which it is based. Thus, the **claimed exemption 'must expressly be granted in a statute stated in a language too clear to be mistaken.'**
> >
> > xxx xxx xxx
> >
> > It is axiomatic that where the language of the law is clear and unambiguous, its express terms must be applied. Parenthetically, a consideration of the

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29 *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, 21 November 2017; CIVIL CODE OF THE PHILIPPINES: **Article 4.** Laws shall have no retroactive effect, unless the contrary is provided.

> question of construction must not even begin, particularly when such question is on whether to apply a strict construction or a liberal one on statutes that grant tax exemptions to 'religious, charitable and educational propert[ies] or institutions.'"

> ...

> Applying the foregoing to the instant case, *it is petitioner's duty to discharge such burden of proof that the assessed deficiency taxes fall under the afore-mentioned circumstances which are tax-exempt.* Failure to do so, the Court is constrained to uphold such assessment. And as observed by this Court, most of petitioner's documentary evidence were denied either due to failure to submit the duly marked exhibits or failure to submit the originals for comparison. *The Court also finds that there is no evidence presented to prove that the items subject of the assessment are tax-exempt.*[30]

> ...

As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment; such that the assessment was based on sufficient evidence. Upon the introductions 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 personnel 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.[31]

WHEREFORE, the foregoing considered, the instant Petition for Review filed by the University of the Philippines System Admin is hereby **DENIED** for lack of merit. Accordingly, the 19 March 2018 Decision and 05 September 2018 Resolution of the First Division, respectively, in CTA Case No. 8397, entitled *University of the Philippines System Admin v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**

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[30] Emphasis in the original text and italics supplied.

[31] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, 31 March 2005; Citations omitted.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(I join the Concurring Opinion of AJ MRSP since we have the same stand on the matter)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNIVERSITY OF THE PHILIPPINES SYSTEM ADMIN,	**CTA *EB* NO. 1946** (CTA Case No. 8397)
Petitioner,	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	NOV 18 2020 4:16 p.m.

x- x

DISSENTING OPINION

MANAHAN, *J.:*

With due respect to my esteemed colleague, Justice Jean Marie A. Bacorro-Villena, I respectfully disagree with the disquisition of the *ponencia* as far as the acquisition of jurisdiction of this Court on the instant case is concerned.

Petitioner, was originally created under **Act No. 1870, entitled "An Act For The Purpose Of Founding A University For The Philippine Islands, Giving It Corporate Existence, Providing For A Board Of Regents, Defining The Board's Responsibilities And Duties, Providing Higher And Professional Instruction, And For Other Purposes."** Subsequently in 2008, this law was amended by **Republic Act (RA) No. 9500, otherwise known as "The University of the Philippines Charter of 2008"**.

Under **Sections 2, 3, 11, and 28 of RA No. 9500**, amending Act No. 1870, petitioner's status and purpose were further elucidated on, to wit:

"SEC. 2. *Declaration of Policy.* — The University of the Philippines is hereby declared as the national university.

The State shall promote, foster, nurture and protect the right of all citizens to accessible quality education. Toward this end, it is the policy of the State to strengthen the University of the Philippines as the national university.

SEC.3. *Purpose of the University.* — As the national university, a public and secular institution of higher learning, and a community of scholars dedicated for the search of truth and knowledge as well as the development of future leaders, the University of the Philippines shall perform its unique and distinctive leadership in higher education and development. The University shall:

(a) Lead in setting academic standards and initiating innovations in teaching, research and faculty development in philosophy, the arts of humanities, the social sciences, the professions and engineering, natural sciences, mathematics and technology, and maintain centers of excellence in such disciplines and professions;

(b) Serve as a graduate university by providing advanced studies and specialization for scholars, scientists, writers, artists and professionals, especially those who serve on the faculty of state and private colleges and universities;

(c) Serve as a research university in a various field of expertise and specialization by conducting basic and applied research and development, and promoting research in various colleges and universities, and contributing to the dissemination and application of knowledge;

(d) Lead as a public service university by providing various forms of community, public, and volunteer service, as well as scholarly and technical assistance to the government, private sector, and civil society while maintaining its standards of excellence;

(e) Protect and promote the professional and economic rights and welfare of its academic and non-academic personnel;

(f) Provide opportunities for training and learning in leadership, responsible citizenship, and the development of democratic values, institutions and practice through academic and non-academic programs, including sports and the enhancement of nationalism and national identity;

(g) Serve as a regional and global university in cooperation with international and scientific unions, networks of universities, scholarly and professional associations in the Asia Pacific region and around the world; and

> (h) Provide democratic governance in the University based on collegiality, representation, accountability, transparency and active participation of its constituents, and promote the holding of fora for students, faculty, research, extension and professional staff (REPS), staff, and alumni to discuss non-academic issues affecting the University.
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> xxx xxx xxx
>
> SEC.11. *Institutional Autonomy as the National University.* — To provide greater flexibility, it shall be treated in a manner consistent with its institutional requirements as the national university by the service-wide agencies in the exercise of their respective jurisdiction. Taking into account national goals and priorities, it shall exclusively determine its teaching, research and extension thrusts, plans, policies, programs and standards, and, on the basis of such determination, the national university shall recommend its annual budget to the President of the Republic of the Philippines and Congress.
>
> xxx xxx xxx
>
> SEC.28. *Appropriations.* — The amount needed to carry out the implementation of this Act shall be charged against the lump sum appropriation of the current fiscal year and other internal funds of the national university. Thereafter, such lump sum representing the responsibility of the national government for the continued growth, operation maintenance of the national university shall be included in the annual General Appropriations Act (GAA).
>
> The national university may use unexpended balances in any appropriation for purposes that the Board determines.
>
> In addition to the regular appropriations and increases for the university under the annual GAA, a centennial fund shall be appropriated in the amount of One Hundred Million Pesos (P100,000,000.00) per year for a period of five years, which shall likewise be included in the annual GAA."

Based on the foregoing provisions of law, petitioner is a government entity whose budget is sourced from the national government, particularly through the General Appropriations Act, but operating autonomously. Further, petitioner's transactions are subject to government accounting and auditing rules and procedures.

Thus, it is considered an instrumentality of the government. **Section 2(10) of Executive Order No. 292 or the Administrative Code of 1987** defines an instrumentality of government as:

> "**SECTION 2**. *General Terms Defined.* — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
>
> xxx xxx xxx
>
> (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations."

Respondent, on the other hand, is publicly known as a national government agency. Both parties in the instant case are government instrumentality and/or agency of the government. Thus, the instant case is solely between government agencies with no private parties involved.

In *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*[1], the Supreme Court ruled that all disputes, among others, between the departments, bureaus, offices, agencies and instrumentalities of the National Government should be settled under the procedure provided by Presidential Decree (PD) No. 242, to wit:

> "The law is clear and covers "***all disputes, claims and controversies solely* between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements**." When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.
>
> The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**..."

The abovementioned case spoke of **ALL** kinds of disputes or controversies, **tax cases included,** between or among the departments, bureaus, offices, agencies and instrumentalities

[1] G.R. No. 198146, August 08, 2017.

of the National Government which should be resolved under the dispute mechanism provided under PD No. 242 and not by this Court. Thus, this Court has no jurisdiction to hear the case.

Parenthetically, **Sections 67 and 68, Chapter 14, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987",** as amended, provide which agency of the government will take jurisdiction over these inter-governmental disputes, i.e., Office of the Secretary of Justice or Office of the Solicitor General, to wit:

> "SECTION 67. *Disputes Involving Questions of Law.* — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.
>
> SECTION 68. *Disputes Involving Questions of Fact and Law.* — Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:
>
> (1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and
>
> (2) The Secretary of Justice, in all other cases not falling under paragraph (1)."

Given the nature of this case which involves tax assessments, the funds involved herein partake of public funds that goes in and out of the same pockets. Subjecting it to the rigors of long-drawn litigation causes prejudice to no less than the government itself. Thus, the rationale of an out-of-court-settlement of all government disputes, including tax cases, finds application in all fours in this case. This disposition using the *Psalm* case has already been applied by this Court in the following cases: *Duty Free Philippines Corporation vs. Bureau of Internal Revenue et. al., CTA EB No. 1911 dated December 13, 2019; Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9235 dated November 5, 2018,* *and Duty Free Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9640 dated March 2, 2018.*

WHEREFORE, I vote to: (1) **DENY** the Petition for Review; (2) **SET ASIDE** the assailed 19 March 2018 Decision and assailed 05 September 2018 Resolution of the First Division for lack of jurisdiction; and (3) **REFER** the same to the Office of the Secretary of Justice pursuant to PD No. 242.

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

UNIVERSITY OF THE PHILIPPINES SYSTEM ADMIN, *Petitioner,*	**CTA EB NO. 1946** (CTA Case No. 8397)
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,**
-versus-	**RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, JJ.**
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 18 2020 4:16p.m.

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CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia*'s denial of the Petition for Review filed by University of the Philippines System Admin for lack of merit.

Furthermore, I note with positivity that both the Court in Division and the *En Banc* had assumed jurisdiction over this case, which involves two public entities. This is consistent with my stand in past Decisions that the Court of Tax Appeals has jurisdiction over cases involving controversies among government officials and corporations.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice