REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ALPHA RIGGING & MOVING SYSTEMS, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8135

Members:

Bautista, *Chairperson*
Cotangco-Manalastas, *JJ.*

Promulgated:

JUL 1 2 2013
ABFernando 10:31 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This case involves a Petition for Review filed by petitioner Alpha Rigging & Moving System, Inc. Petitioner prays for the cancellation and/or withdrawal of the Warrant of Distraint and/or Levy No. 059-10-018[1] dated June 15, 2010 issued by respondent Commissioner of Internal Revenue and the withdrawal and/or cancellation of the corresponding deficiency tax assessments covering taxable years 2000 and 2001 and/or such taxable years as may have been contemplated in said Warrant of Distraint and/or Levy.

FACTS

Petitioner is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) with registered address at Maharlika Highway, San Roque, Santo Tomas, Batangas.[2] It provides services primarily in the fields of industrial transfer, rigging, hauling, machinery moving, engineering, civil works and crating, machinery and equipment moving, installation, repair and maintenance, sales and leasing of machinery, equipment and tools.[3]

[1] Exhibit "S", docket, p. 383.
[2] Exhibit "A", docket, pp. 334 and 335.
[3] Par. 1.1, Stipulated Facts, Pre Trial Order, docket, p. 193.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR National Office Building, Diliman, Quezon City. She is vested with the authority under the National Internal Revenue Code (NIRC) of 1997 to exercise functions of said office, including, *inter alia*, the power to decide disputed assessments.

Petitioner filed its Annual Income Tax Returns for taxable years 2000[4] and 2001[5] with the Bureau of Internal Revenue (BIR) on April 18, 2001 and April 15, 2002, respectively.

On October 2, 2002, Letter of Authority[6] (LOA) No. 1999 00052679 was issued against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year January 1, 2000 to December 31, 2000.

On January 24, 2003, petitioner, through its representative, Mr. Emiliano S. Gianzon, Jr., executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code"[7] covering tax liabilities for year 2000 (2000 Waiver).

On August 15, 2003, respondent issued LOA No. 2000 00059409[8] against petitioner for the examination of its books of accounts and other accounting records for all internal revenue taxes for taxable year January 1, 2001 to December 31, 2001.

On February 10, 2004, petitioner, through its representative, Mr. Gianzon, Jr., executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code"[9] covering tax liabilities for year 2001 (2001 Waiver).

On March 29, 2005, a Preliminary Ten (10) Day Assessment Notice[10] (2000 Ten-Day PAN) was issued against petitioner by Revenue District Officer Juan P. Leron of Revenue District Office (RDO) No. 59, assessing petitioner for deficiency income tax, value-added tax (VAT), documentary

[4] Exhibit "T", docket, pp. 384 to 388.
[5] Exhibit "U", docket, pp. 389 to 392.
[6] Exhibit "V", docket, p. 394; Exhibit "1", BIR Records, p. 174.
[7] Exhibit "C", docket, p. 353.
[8] Exhibit "W", docket, p. 395; Exhibit "12", BIR Records, p. 76.
[9] Exhibit "D", docket, p. 354.
[10] Exhibit "E", docket, p. 356; Exhibit "16", BIR Records, pp. 237 to 238.

stamp tax (DST), and compromise penalties for taxable year 2000. On the same date, Revenue District Officer Juan P. Leron also issued another PAN[11] (2001 Ten-Day PAN) against petitioner, assessing petitioner for deficiency taxes in the amount of P12,373,897.39 for taxable year 2001.

On May 9, 2005, Acting Regional Director Merlinda L. Ordoyo of Revenue Region (RR) No. 9 issued a Preliminary Assessment Notice[12] (2000 PAN), assessing petitioner for deficiency income tax, VAT, DST, and compromise penalties for taxable year 2000.

On May 31, 2005, a Formal Letter of Demand[13] (2000 FLD) and Assessment Notices (FAN) No. 59/2000[14] were issued by Acting Regional Director Ordoyo against petitioner, assessing petitioner for deficiency income tax, VAT, DST, and compromise penalties for taxable year 2000, in the total amount of P34,715,373.06, inclusive of interest, 25% surcharge, and compromise penalties, broken down as follows:

Nature of Tax	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	P 10,526,698.87	P 00.0	P 8,690,842.59	P 25,000.00	P 19,242,541.46
VAT	7,248,446.51	1,812,111.63	6,306,148.46	25,000.00	15,391,706.60
DST	12,500.00	3,125.00	12,500.00	3,000.00	31,125.00
Compromise Penalties					
Failure to file quarterly income tax return	25,000.00				25,000.00
Failure to keep/preserve records (books of accounts)	25,000.00				25,000.00
TOTAL					**P 34,715,373.06**

On June 3, 2005, petitioner wrote a letter[15] to Revenue District Officer Leron stating its objections to the deficiency tax assessments as contained in the 2000 PAN.

On August 11, 2005, Acting Regional Director Ordoyo issued a Preliminary Assessment Notice[16] (2001 PAN) with Details of Discrepancies[17], assessing petitioner for deficiency

[11] Exhibit "Y", docket, p. 397; Exhibit "34", BIR Records, p. 100.
[12] Exhibit "F", docket, pp. 357 to 359; Exhibit "2", BIR Records, pp. 261 to 263.
[13] Exhibit "G", docket, pp. 360 to 362; Exhibit "10", BIR Records, pp. 264 to 266.
[14] Exhibits "18", "18-a", "18-b" and "18-c", BIR Records, pp. 267 to 270.
[15] Exhibit "H", docket, pp. 363 to 364.
[16] Exhibit No. "21", BIR Records, p. 127.
[17] Exhibit No. "22", BIR Records, pp.124 to 126.

income tax, expanded withholding tax (EWT), and fringe benefits tax (FBT) for taxable year 2001.

On October 11, 2005, petitioner received the Formal Letter of Demand[18] (2001 FLD) and FAN No. 59/2001[19], all dated September 30, 2005, assessing petitioner for deficiency income tax, EWT, and FBT for taxable year 2001, in the total amount of P13,769,750.60, inclusive of interest, 25% surcharge, and compromise penalties, broken down as follows:

Nature of Tax	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	P3,669,877.35	P 00.0	P 2,541,390.06	P 25,000.00	P 6,236,267.41
EWT	615,151.33	153,787.83	456,319.23	20,000.00	1,245,258.39
FBT	3,144,504.87	786,126.22	2,332,593.71	25,000.00	6,288,224.80
TOTAL					**P 13,769,750.60**

On October 25, 2005, petitioner filed its protest letter[20] dated October 17, 2005, protesting the 2001 FLD and FAN No. 59/2001.

On November 15, 2005, OIC-Revenue District Officer Oden S. Lucman of RDO No. 59 issued a Final Notice[21] against petitioner urging petitioner to pay its deficiency tax assessment per 2000 FLD within ten (10) days from receipt of said Final Notice; otherwise, the RDO shall enforce the collection of said deficiency tax assessment through the summary remedies of distraint and levy.

In response to the Final Notice dated November 15, 2005, petitioner wrote a letter[22] dated November 26, 2005 addressed to the Revenue District Officer of RDO No. 59. Said letter was filed by petitioner with RDO No. 59 on November 30, 2005.

On December 19, 2005, respondent granted petitioner's request for reinvestigation covering taxable year 2001 and issued the corresponding Tax Verification Notice (TVN) No. 2002 00191609.[23]

On November 23, 2006, OIC-Revenue District Officer Rodolfo B. Tamani of RDO No. 59 issued a Final Notice Before Seizure[24], requesting petitioner to settle its deficiency tax

[18] Exhibit "I", docket, pp. 365 to 368; Exhibit "5", BIR Records, pp. 128 to 131.
[19] Exhibits "23", "23-a" and "23-b", BIR Records, pp. 132 to 134.
[20] Exhibit "J", docket, pp. 369 to 371.
[21] Exhibit "K", docket, p. 372.
[22] Exhibit "M", docket, p. 374.
[23] Exhibit "X", docket, p. 396.
[24] Exhibit "L", docket, p. 373.

assessment per 2000 FLD and FAN No. 59/2000; otherwise, said RDO will proceed with the collection of the same through summary remedies of distraint and levy or garnishment, without notice.

On March 6, 2008, petitioner availed of the Tax Amnesty Program under Republic Act (RA) No. 9480 by paying the amnesty tax amounting to P100,000.00,[25] and filing a Notice of Availment of Tax Amnesty[26], Tax Amnesty Return (BIR Form No. 2116)[27], Tax Amnesty Payment Form (BIR Form No. 0617)[28], Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005[29].

In a letter[30] dated February 22, 2010, Revenue District Officer Rebe D. Detablan of RDO No. 59 informed petitioner that it is not entitled to enjoy the benefits and privileges granted under the Tax Amnesty Program, pursuant to Revenue Memorandum Circular (RMC) No. 19-2008 dated February 22, 2008. In said letter, petitioner was requested to pay the deficiency tax due for the year 2000; otherwise, said RDO will be constrained to collect said deficiency tax through distraint and/or levy or garnishment.

On June 15, 2010, Warrant of Distraint and/or Levy (WDL) No. 059-10-018[31] was issued against petitioner, pertaining to petitioner's deficiency tax liabilities for taxable years 2000 and 2001, to wit:

Assessment Notice No.	Date issued	Kind of Tax	Year	Amount
59-2000	05-31-05	Income	2000	P19, 242,541.46
59-2000	05-31-05	VAT	2000	15,391,706.00
59-2000	05-31-05	Doc. Stamps	2000	34,125.00
59-2000	05-31-05	Compromise	2000	50,000.00
59-2001	09-30-05	Income	2001	6,236,267.41
59-2001	09-30-05	EWT	2001	1,245,258.39
59-2001	09-30-05	Fringe Benefits Tax	2001	6,288,224.80
TOTAL				**P48,488,123.06**

Since petitioner's authorized personnel refused to receive WDL No. 059-10-018,[32] the officers of respondent left the copy of the WDL in the premises, with a notation that it was

[25] Exhibit "Q-1", docket, p. 381.
[26] Exhibit "N", docket, p. 375.
[27] Exhibit "O", docket, p. 376.
[28] Exhibit "Q", docket, p. 379.
[29] Exhibit "P", docket, p. 378.
[30] Exhibit "R", docket, p. 382.
[31] Exhibit "S", docket, p. 383.
[32] Par. 21, Petition for Review, docket, p. 6.

constructively served on June 23, 2010, and witnessed by Mary Grace I. Endaya and Zenaida B. Datingaling.

On July 23, 2010, petitioner filed the instant Petition for Review seeking the cancellation and/or withdrawal of WDL No. 059-10-018 as well as the corresponding deficiency tax assessments covering taxable years 2000 and 2001, in the total amount of P48,488,123.06.

On September 6, 2010, respondent filed her Answer[33] to the Petition for Review and raised the following Special and Affirmative Defenses:

> "6. The taxes were assessed within the period allowed by law. Section 203 of the Tax Code of 1997 states:
>
> > 'SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.'
>
> 7. Section 222 (a) of the Tax Code of 1997 clearly states the period to assess can be validly extended beyond the three (3) year period provided for in Section 203 of the same law in case of failure to file a return, to wit:
>
> > '(a) In the case of a false or fraudulent return with intent to evade taxes or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided: That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.'
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> 8. In the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.* the Supreme Court enunciated the doctrine that the prescriptive period to

[33] Docket, pp. 66 to 84.

assess the correct taxes in case of false returns is ten years from discovery of the falsity, fraud or omission.

9. In this instance, respondent issued her preliminary assessment notice (PAN) after investigation revealed that there was no proof of payment of income, value-added, and documentary stamp taxes made by petitioner for taxable year 2000. As per BIR records, respondent issued her PAN for deficiency tax liabilities for taxable year 2000 against petitioner on May 9, 2005 or well within the ten (10) year period allowed by law to assess. Attached hereto are copies of the PAN dated May 9, 2005 as Annex '1' as well as the Registry Receipt of the said PAN which indicates that it was received by respondent on May 19, 2005 as Annex '2'. Both annexes are made an integral part hereof.

10. On the other hand, respondent issued her PAN for taxable year 2001 after investigation revealed that petitioner failed to file and pay withholding and fringe benefit taxes for the said year as well as having unsupported claims of interest expenses. As per BIR records, respondent issued her PAN for deficiency tax liabilities for taxable year 2000 against petitioner on August 11, 2005 or well within the ten (10) year period allowed by law to assess in case of failure to file returns. Attached hereto are copies of the August 11, 2005 PAN as Annex '3' as well as the Registry Receipt of the said PAN which indicates that it was received by respondent on September 5, 2005 as Annex '4'. Both annexes are made an integral part hereof.

11. Alternatively, respondent submits that Section 222 (b) of the Tax Code of 1997 applies in this case. This provision clearly states the period to assess can be validly extended beyond the three (3) year period provided for in Section 203 of the same law with the execution of a waiver, to wit:

> '(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.'

12. Based on BIR records, petitioner executed two (2) waivers, both of which were executed prior to the lapse of prescriptive period provided for under the law.

13. The waiver covering taxable period 2000 was executed on January 24, 2003 and was signed by Emiliano S. Gianzon, Jr., the duly authorized representative of petitioner under a board resolution certified by petitioner's corporate secretary. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2000 was extended until December 31, 2005. This waiver was executed within the three (3) year period provided for in the law for the Bureau of Internal Revenue to issue an assessment. Attached hereto as Annex '5' is a copy of the Secretary's Certificate indicating petitioner's Board of Directors' authorization for the execution of the waiver, and is made an integral part hereof.

14. Moreover, the waiver covering taxable period 2001 was executed on February 10, 2004 signed by Emiliano S. Gianzon, Jr., the duly authorized representative of petitioner under a board resolution certified by petitioner's corporate secretary. By virtue of this waiver, the period to assess the internal tax liabilities for the year 2001 was extended until December 31, 2005. This waiver was executed within the three (3) year period provided for in the law for the Bureau of Internal Revenue to issue an assessment. Attached hereto as Annex '6' is a copy of the Secretary's Certificate indicating petitioner's Board of Directors' authorization for the execution of the waiver, and is made an integral part hereof.

15. Alternatively, respondent submits that the assessments from which the warrant of distraint and levy was issued had long become final and executory. In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*, the Honorable Court En Banc states:

> An administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality of an assessment. It is absolutely necessary for the taxpayer to file and (sic) administrative protest for the court to acquire jurisdiction. Precisely, one of the grounds that a taxpayer can raise in protesting an assessment is the defense of prescription, which if found to be meritorious, provides legal justification for the BIR to revoke an assailed assessment. Clearly, even an assessment which is contrary to law can attain finality if the same is not protested. Not being jurisdictional, prescription is a mere defense that must be invoked at the proper time; otherwise, it shall be considered waived.

16. Section 228 of the Tax Code of 1997 provides the guide in protesting assessments, to wit: /

> 'Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from the receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment becomes final.'

17. This provision is further clarified in Section 3.1.5 of Revenue Regulations No. 12-99 which states:

> '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.'

18. In this case, petitioner did not properly protest the assessments made by respondent. As per BIR records, petitioner did not comply with the requirements of submitting all relevant documents within the sixty (60) day period from receipt of protest by respondent. Consequently, the assessments had long become final and executory after the lapse of the sixty (60) day period for petitioner to submit all relevant documents.

19. As per BIR records, petitioner filed its protest to respondent's Formal Letter of Demand for taxable year 2001 on October 17, 2005. Counting the sixty (60) day period, petitioner had until December 16, 2005 to submit to respondent all relevant documents in support of its protest. However, the records are bereft of any such documents. Consequently, the assessments covered by the Formal Letter of Demand for taxable year 2001 had become final and executory.

20. On the other hand, petitioner's protest against the assessments dated June 3, 2005 was not properly substantiated. The BIR records do not show that petitioner submitted all relevant documents to support its protest within the provided sixty (60) day period. Consequently

when respondent issued its Final Notice covering assessments made for the taxable year 2000 on November 15, 2005, the assessments had long become final and executory.

21. In the case of *'Commissioner of Internal Revenue vs. Isabela Cultural Corporation'*, the Honorable Supreme Court pronounced:

> 'In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given 'this LAST OPPORTUNITY to pay otherwise, its properties would be subjected to distraint and levy.' How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?'

22. Alternatively, respondent submits that the waivers remained valid invoking the doctrine of *laches*. In the case of *'Spouses Morris Carpo and Socorro Carpo vs. Ayala Land Incorporated'*, the Supreme Court stated:

> By laches is meant the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit (citing Caltex (Philippines), Inc. v. Court of Appeals).

23. In this instance, *laches* have set in. Petitioner failed to assert the defense of prescription to refute the assessment notices covering taxable years 2000 and 2001 when respondent issued the same in 2005. Instead, petitioner chose to protest the assessment based on other grounds. Petitioner's acts unequivocally show that it did not believe respondent's assessment has prescribed.

24. Instead of asserting prescription in response to respondent's Formal Letter of Demand and Final Notice Before Seizure, petitioner in its protest questioned the

computation in the assessment without substantiating the same.

25. Another opportunity to assert the defense of prescription presented itself to petitioner when respondent granted petitioner's protest. However, instead of raising prescription as a defense, petitioner requested for reinvestigation of the assessment. This is evidenced by Tax Verification Notice dated December 19, 2005 issued by respondent granting petitioner's request for reinvestigation. Attached hereto as Annex '7' is a copy of the said Tax Verification Notice and is made an integral part hereof.

26. All told, petitioner through its negligence or omission as borne by the records is guilty of *laches*. Consequently, petitioner must not be permitted to rely on the defense of prescription due to *laches* for having unreasonably(*sic*) delay in raising the issue before respondent on multiple occasions.

27. In the case *Continental Micronesia, Inc. – Philippine Branch vs. Commissioner of Internal Revenue*, the Honorable Court stated:

> 'To emphasize, the Supreme Court in the case of *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.* held that 'there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when his repeated requests or positive acts, the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government.'

28. Throughout this period, petitioner remained silent and did not raise the matter of prescription with respect to the assailed assessments in any action or protest before the Bureau of Internal Revenue. On the other hand, petitioner through various letters repeatedly requested respondent to reinvestigate the findings of the assessment. Petitioner should not be permitted to claim that the actions have prescribed after leading respondent to re-evaluate its protests on multiple occasions and after failing to validly substantiate the protest with all relevant supporting documents.

29. Additionally, the Honorable Court En Banc in the case of *'Bank of Commerce vs. Commissioner of Internal Revenue'*, considered the taxpayer's act of paying the deficiency tax assessment as constituting an admission

that the waiver relative to the assessment was valid. To wit:

> 'Records show that the petitioner executed several waivers starting December 1, 1997 for the purpose of extending up to November 30, 2000 respondent's right to assess petitioner of deficiency business and income taxes for taxable years 1994 and 1995. A perusal of the first waiver executed by petitioner on December 1, 1997, which extended the period to assess business and income taxes for taxable years 1994 and 1995, shows that the same was not signed by the BIR Commissioner nor by his duly authorized official. Notwithstanding such infirmity in the waiver, petitioner paid on October 24, 2000 the proposed assessment for 1994 deficiency GRT of P324,674.29. Petitioner's act of paying on October 24, 2000 the 1994 deficiency GRT assessment constitutes admission on its part that the waiver covering the same is valid. As such, We cannot allow petitioner to adopt inconsistent postures regarding the said waiver. As aptly ruled by the First Division, petitioner is estopped from questioning the validity of the subject waivers.'

30. Furthermore, the benefits and immunities provided in Section 6 of Republic Act No. 9480 are contingent on the proper availment of tax amnesty earlier outlined in Section (5) of the same law, to wit:

> **'SEC. 5. *Grant of Tax Amnesty.*** — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

(b) Corporations

(1) With subscribed capital of above P50 Million	5% or P500,000 whichever is higher
(2) With subscribed capital of above P20 Million up to P50 Million	5% or P250,000, whichever is higher
(3) With subscribed capital of P5 Million to P20 Million	5% or P100,000, whichever

	is higher
(4) With subscribed capital of below P5 Million	5% or P25,000, whichever is higher'

31. As per BIR records, petitioner failed to comply with the abovementioned requirements of the law. Specifically, petitioner failed to pay the proper prescribed amount of tax amnesty payment. In petitioner's accomplished Tax Amnesty Payment Form (BIR Form No. 0617) accomplished by Allan P. Almeda, petitioner's Senior CEO Representative dated March 6, 2008, it indicated payment of P100,000. This notwithstanding that petitioner ought to have paid 5% of its declared net-worth of P6,446,409.84 or the amount of P322,320.49 indicated in the accompanying Statement of Assets, Liabilities & Net-worth (SALN) with its payment form. Attached hereto are copies of petitioner's Tax Amnesty Payment Form, Revenue Official Receipt, Notice of Availment of Tax Amnesty, and SALN as Annexes '8', '9', '10', '11', and are made integral parts hereof.

32. The law is clear as to the amount to be paid by way of tax amnesty payment. In this instance, petitioner's payment of P100,000 did not comply with the requirements of the law. Petitioner should have paid 5% of its declared net-worth as this is the higher amount as opposed to the minimum tax amnesty amount which in this case is P100,000. Consequently, petitioner cannot claim the benefits and immunities provided in Republic Act No. 9480.

33. Assuming *arguendo* that petitioner validly availed Tax Amnesty on March 6, 2008, this act has legal implications. In availing the benefits of tax amnesty afforded by Republic Act No. 9480, petitioner has recognized the validity of the assessment against it.

34. As aptly ruled by the Honorable Court En Banc in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*:

> 'Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax all of which were covered by the same waivers if petitioner really believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.

In one case, the Supreme Court ruled that a party is stopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it paid the same for the tax year. In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay.

To reiterate, petitioner received a letter of authority relative to the examination of all its internal revenue taxes from January 1, 1995 to December 31, 1995. On January 23, 1997, it executed waivers extending the period to assess up to December 31, 2000. On January 27, 2000, an undated letter of demand with fourteen (14) assessment notices attached were issued by the respondent. On December 6, 2000, petitioner received another formal demand letter with recomputed assessments. On the same day, petitioner paid the deficiency taxes assessed except for the onshore tax and documentary stamp tax on special savings account.

In disputing the assessments for these onshore and documentary stamp taxes, petitioner now assails the validity of the waivers which covered all the other assessed taxes it already paid.

We hold that petitioner is stopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid. Petitioner cannot now deny their validity. This court cannot countenance petitioner's act of adopting inconsistent postures regarding the waivers.

35. The doctrine enunciated in the aforementioned case is applicable in this case. In this instance, the amnesty paid for by petitioner covered the assessment from which its petition arose.

36. Again, assuming *arguendo*, that petitioner validly availed tax amnesty, respondent's assessments on deficiency withholding taxes remained. As provided for in Section 8 (1) of Republic Act No. 9480:

'**SEC. 8. *Exceptions***. – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act: *l*

> 1. Withholding agents with respects to their withholding tax liabilities:'
>
> 37. Moreover, after claiming certain benefits as a result of its availment of the said amnesty, petitioner should not be permitted to question the assessments that remained as a result thereof. A party shall not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction.
>
> 38. Respondent calls the Honorable Court's attention to the pronouncements in the case of *'Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue'*:
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> 'Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.'
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> 39. In any case, since what is sought to be collected from petitioner are penalties for failure to withhold and remit taxes, the period of limitation provided in Section 203 of the Tax Code of 1997 finds no application.
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> 40. Finally, 'it is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. It is the lifeblood of the government and so should be collected without unnecessary hindrance.'
>
> 41. All told, petitioner's petition for review filed before the Honorable Court should be denied for lack of merit." *(Citations omitted)*

On September 7, 2010, this Court issued a Notice of Pre-Trial Conference[34] notifying the parties that the case is set for Pre-Trial Conference on September 24, 2010 and ordering the parties to file their Pre-Trial Briefs.

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[34] Docket, p. 104.

On September 17, 2010, respondent filed her Pre-Trial Brief.[35] On the other hand, petitioner filed its Pre-Trial Brief[36] on September 22, 2010.

During the pre-trial on September 24, 2010, the parties were given a period of fifteen (15) days from said date within which to file their Joint Stipulation of Facts and Issues.[37]

The parties filed their Joint Stipulation of Facts and Issues[38] on October 8, 2010. On November 4, 2010, this Court issued the Pre-Trial Order[39], setting forth, among others, the parties' stipulated facts, stipulated issues, the evidence to be presented by both parties and the hearing dates, and terminating the pre-trial stage.

During trial, petitioner presented its testimonial and documentary evidence. On June 13, 2011, petitioner filed an Omnibus Motion A. For Leave of Court for Early Resolution of the Issue of Prescription and Confirmation of Petitioner's Rights and Immunities under the Tax Amnesty Act of 2007; B. To Allow Petitioner to File its Formal Offer of Evidence Relative to the Issue on Prescription; C. Postponement of Petitioner's Presentation of Evidence on the Validity of the Assessments on the Merits until the Issue on Prescription is Resolved.[40] On July 4, 2011, respondent filed her Comment (petitioner's Omnibus Motion Re: Resolution dated 17 June 2011)[41].

In the Resolution[42] dated August 31, 2011, this Court partially granted petitioner's Omnibus Motion. Petitioner was given fifteen (15) days from notice to file its Formal Offer of Evidence pertinent to the issues on prescription and proper availment of the tax amnesty under RA No. 9480. On the other hand, respondent was granted the same period from receipt of petitioner's Formal Offer of Evidence to file her comment thereto. Petitioner's motion for the early resolution of the issues on prescription and proper availment of the tax amnesty under RA No. 9480 and the cancellation and withdrawal of the assailed assessments was held in abeyance.

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[35] Docket, pp. 105 to 110.
[36] Docket, pp. 113 to 124.
[37] Minutes of the Pre-Trial dated September 24, 2010, docket, p. 166.
[38] Docket, pp. 172 to 175.
[39] Docket, pp. 193 to 198.
[40] Docket, pp. 281 to 306.
[41] Docket, pp. 310 to 313.
[42] Docket, pp. 316 to 318.

On September 16, 2011, petitioner filed its Formal Offer of Exhibits.[43] Respondent filed her Comment[44] thereto on October 3, 2011. In the Resolutions[45] dated October 27, 2011 and March 13, 2012, petitioner's Exhibits were admitted as evidence.

On the other hand, after presenting her testimonial and documentary evidence, respondent filed her Formal Offer of Documentary Evidence[46] on September 19, 2011. In the Resolution[47] dated November 27, 2012, respondent's Exhibits were admitted as evidence.

The case was submitted for decision on February 14, 2013[48], taking into consideration the Memorandum for Petitioner[49] filed on February 8, 2013 and respondent's Memorandum[50] filed on December 13, 2012.

ISSUES

The parties submitted the following issues[51] for this Court's resolution:

1. Whether or not the WDL is valid.

2. Whether or not laches prevents petitioner from asserting the defense of prescription.

3. Whether or not petitioner is entitled to the benefits of the tax amnesty.

DISCUSSION/RULING

I. The Court's Jurisdiction

This Court shall determine first its jurisdiction to entertain the Petition for Review, which was filed by petitioner to seek the cancellation of WDL No. 059-10-018 dated June

[43] Docket, pp. 319 to 331.
[44] Docket, pp. 414 to 416.
[45] Docket, pp. 419 to 420 and 480 to 481.
[46] Docket, pp. 536 to 560.
[47] Docket, pp. 600 to 601.
[48] Resolution dated February 14, 2013, docket, p. 669.
[49] Docket, pp. 649 to 667.
[50] Docket, pp. 606 to 631.
[51] Stipulated Issues, Pre-Trial Order dated November 4, 2010, docket, p. 195; Stipulation of Issues, Joint Stipulation of Facts and Issues, docket, p. 174.

15, 2010 issued by respondent, and the related deficiency tax assessments for taxable years 2000 and 2001.

In the case of **Philippine Journalists, Inc. vs. Commissioner of Internal Revenue**[52], the Supreme Court emphasized that the Court of Tax Appeals (CTA) has jurisdiction to decide on other cases arising under the NIRC or related laws administered by the BIR, to wit:

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

Thus, pursuant to Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended,[53] this Court has the exclusive appellate jurisdiction to review by appeal WDL No. 059-10-018 issued by respondent.

As borne by the records of this case, WDL No. 059-10-018 was constructively served on petitioner on June 23, 2010. On July 23, 2010, petitioner filed the instant Petition for Review seeking the cancellation and/or withdrawal of WDL No. 059-10-018 as well as the corresponding deficiency tax assessments covering taxable years 2000 and 2001.

[52] G.R. No. 162852, December 16, 2004.
[53] SEC. 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

Clearly, petitioner filed the instant Petition for Review with this Court within the thirty-day period required under Section 11 of RA No. 1125, as amended.[54] As such, this Court has jurisdiction to take cognizance of the same.

This Court shall now proceed to discuss the issue which pertains to petitioner's entitlement to the benefits of the Tax Amnesty Program under RA No. 9480.

II. Availment of the Tax Amnesty Program

The pertinent provisions of RA No. 9480[55] are quoted hereunder:

> "**SECTION 1.** ***Coverage.*** — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: *Provided, however,* That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
>
> **SEC. 2.** ***Availment of the Amnesty.*** — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR.
>
> xxx xxx xxx
>
> **SEC. 5.** ***Grant of Tax Amnesty.*** — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of

[54] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx.

[55] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

amnesty tax rates and minimum amnesty tax payments required:

(a) Individuals (whether resident or nonresident citizens, including resident or nonresident aliens), Trusts and Estates	5% or P50,000, whichever is higher
(b) Corporations	
(1) With subscribed capital of above P50 Million	5% or P500,000 whichever is higher
(2) With subscribed capital of above P20 Million up to P50 Million	5% or P250,000, whichever is higher
(3) With subscribed capital of P5 Million to P20 Million	5% or P100,000, whichever is higher
(4) With subscribed capital of below P5 Million	5% or P25,000, whichever is higher
(c) Other juridical entities, including, but not limited to, cooperatives and foundations, that have become taxable as of December 31, 2005	5% or P50,000, whichever is higher.

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall **amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in networth**: *Provided*, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.

SEC. 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, **and have fully complied with all its conditions** shall be entitled to the following immunities and privileges:

(a) The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

(b) The taxpayer's Tax Amnesty Returns and the SALN as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is a defendant or respondent, and except for the purpose of ascertaining the networth beginning January 1, 2006, the same shall not be examined, inquired or looked into by any person or government office. However, the taxpayer may use this as a defense, whenever appropriate, in cases brought against him.

(c) The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives, and/or exemptions under existing laws.

All these immunities and privileges shall not apply where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

xxx xxx xxx

SEC. 8. *Exceptions*. — The tax amnesty provided in Sec. 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> (f) Tax cases subject of final and executory judgment by the courts." *(Emphasis supplied)*

Petitioner contends that respondent's Letter[56] dated February 22, 2010 is void. Said letter states that petitioner is no longer entitled to enjoy the benefits and privileges granted under RA No. 9480 on the ground that its account has been considered delinquent or receivable asset of the government pursuant to Revenue Memorandum Circular (RMC) No. 19-2008. This Court agrees with petitioner.

Section 8 of RA No. 9480 enumerates the cases or persons who may not be entitled to the benefits of the law. Petitioner does not fall under any of the above enumerated exceptions; thus, petitioner is eligible to avail of the benefits of the Tax Amnesty Program under Section 6 of RA No. 9480. Contrary to respondent's claim, delinquent accounts are not included in the exceptions enumerated under Section 8 of RA No. 9480.

As correctly pointed out by petitioner, in the case of **Commissioner of Internal Revenue vs. Pilmico Foods Corporation**[57], the CTA *En Banc* has declared RMC No. 19-2008 void in so far as it includes "delinquent accounts" as exceptions in the application of RA No. 9480.

Petitioner claims that it is entitled to the benefits of the Tax Amnesty Program under RA No. 9480 since petitioner already paid the amnesty tax amounting to P100,000.00[58], and submitted the Notice of Availment of Tax Amnesty[59], Tax Amnesty Return (BIR Form No. 2116)[60], Tax Amnesty Payment Form (BIR Form No. 0617)[61], and Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005[62] to the BIR. In view thereof, petitioner believes that respondent

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[56] Exhibit "R", docket, p. 382.
[57] CTA EB Case No. 430, March 31, 2009.
[58] Exhibit "Q-1", docket, p. 381.
[59] Exhibit "N", docket, p. 375.
[60] Exhibit "O", docket, p. 376.
[61] Exhibit "Q", docket, p. 379.
[62] Exhibit "P", docket, p. 378.

has no basis to issue WDL No. 059-10-018 for purposes of collecting petitioner's deficiency tax liabilities for the years 2000 and 2001.

On the other hand, respondent contends that petitioner failed to pay the correct amnesty fee and thus, it is disqualified from availing the benefits and immunities under RA No. 9480. Respondent argues that petitioner should have paid the higher amount of P322,320.49 (which is 5% of petitioner's networth in the amount of P6,446,409.84) rather than the minimum amount of P100,000.00.

To be qualified to avail of the benefits of the Tax Amnesty Program, petitioner is required to fully comply with all its conditions, which include the payment of the correct amount of amnesty tax in accordance with the schedule provided under Section 5 of RA No. 9480.

Based on the Tax Amnesty Return[63] submitted by petitioner, it appears that there is no change or amendment in petitioner's networth as of December 31, 2005. Since there is no change in petitioner's networth, this Court holds that petitioner should have paid an amnesty tax equal to 5% of its net worth as of December 31, 2005 as declared in its SALN, or the absolute minimum amnesty tax, whichever is higher.

Considering that petitioner's authorized capital is P20,000,000.00 of which P5,000,000.00 is subscribed[64], then under R.A. 9480, petitioner falls under Section 5(b)(3) whose absolute minimum amnesty tax is P100,000.00.

However, pursuant to the same Section 5, petitioner must pay the higher of P100,000.00 or 5% of its net worth as of December 31, 2005. Petitioner's declared net worth is P6,446,409.84, 5% of which is P322,320.49, clearly higher than the absolute minimum of P100,000.00.

Considering that petitioner did not pay the correct amount of amnesty tax, petitioner has not sufficiently shown that it complied with all the conditions required to be entitled to the immunities and privileges enumerated under Section 6 of RA No. 9480. Stated differently, here, petitioner failed to prove that it is immune from the payment of taxes and penalties for taxable year 2005 and prior years.

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[63] Exhibit "O", docket. p. 376.
[64] Exhibit "A", docket, p. 339.

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[65]

With regard to respondent's argument that petitioner is no longer permitted to question the validity of the assessments when petitioner availed of the Tax Amnesty Program, this Court finds the same bereft of merit.

In the case of **Commissioner of Internal Revenue vs. Philex Mining Corporation**[66], this Court *En Banc* has already ruled that a taxpayer's availment of the tax amnesty does not mean that it is admitting the validity of any prior assessments or waivers. Relevant portions of this Court *En Banc's* decision are quoted below:

> "The Court En Banc quotes with approval the disquisition made by the Court in Division in the Resolution dated December 19, 2009, to wit:
>
> > Section 1 of R.A. No. 9480 provides that the tax amnesty covers all national internal revenue taxes for taxable year 2005 and prior years, with or without assessments, that have remained unpaid as of December 31, 2005. **Clearly, the availment of the said tax amnesty does not necessarily mean that a taxpayer admits the validity of any prior assessments and waivers, as argued by respondent; since the tax amnesty covers even those without any assessment. The law does not impose such conditions, save for the taxpayer to satisfy all the qualification requirements.** *(Boldfacing supplied)*
>
> In addition, with the findings that the waivers were null and void which consequently failed to extend the period within which the CIR may assess PMC for any deficiency taxes, the assessment issued therefor was made outside of the prescribed period and is thus, void. Therefore, **PMC's availment of the tax amnesty program**

[65] *Philippine Banking Corporation (now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009, citing *Commissioner of Internal Revenue vs. Marubeni Corp.*, 423 Phil. 862, 874 (2001).
[66] CTA EB Case No. 578, June 28, 2010.

> **would fall under those without any assessments required.**" *(Emphasis supplied)*

Based on the above-cited case, respondent erred in concluding that petitioner's availment of the Tax Amnesty Program automatically meant that petitioner has acquiesced to the validity of the deficiency tax assessments.

This Court shall now proceed to resolve the first issue which pertains to the validity of WDL No. 059-10-018.

III. Validity of WDL No. 059-10-018

Petitioner argues that the 2000 FLD and FAN No. 59/2000 are not valid for respondent's failure to properly serve the same upon petitioner and for being issued beyond the prescriptive period prescribed by law. Petitioner also asserts that it was deprived of its right to file a Reply because it did not receive the 2001 Ten-Day PAN.[67]

Petitioner avers that Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99 set forth the due process requirements in issuing and serving assessment notices to taxpayer; that the requirements must be strictly complied with in order to protect the rights of the concerned taxpayer; that based on RR No. 12-99, the due process requirements are as follows: (1) a notice of informal conference; (2) a preliminary assessment notice sent to taxpayer at least by registered mail; and (3) a formal letter of demand and assessment notice sent to the taxpayer only by registered mail or by personal delivery; that the absence of one requirement shall render the entire process null and void.[68]

Pursuant to RR No. 12-99, service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. It is settled in our jurisprudence that if the assessment is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received said assessment in the regular course of mail[69] pursuant to Section 3 (v), Rule 131 of the Rules of Court.[70]

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[67] Exhibit "Z", docket, p. 408.
[68] Petitioner's Omnibus Motion, docket, pp. 293 to 295.
[69] *CAL Holdings Philippines. Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6882, May 26. 2006.
[70] SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx xxx xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail;

The facts to be proved in order to raise this presumption are: (a) **that the letter was properly addressed with postage prepaid**; and (b) **that it was mailed**. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail.[71] But if one of the said facts fails to appear, the presumption does not lie.[72]

This Court shall now determine if the evidence presented by respondent gave rise to the presumption that the 2000 FLD and FAN No. 59/2000 and the 2001 Ten-Day PAN were received by petitioner in the regular course of mail.

2000 FLD and FAN No. 59/2000

To prove the foregoing necessary facts, respondent's witness, Ms. Virginia T. Cueto testified that the FAN was sent through registered mail as evidenced by the registry receipt and that said registry receipt was received by a certain AF Panganiban.[73]

A perusal of FAN No. 59/2000 reveals that it was properly addressed to petitioner. However, while respondent's witness made mention of a registry receipt, supposedly to establish the fact of mailing and receipt of the FAN by petitioner, respondent's witness failed to properly identify any registry receipt during trial. Moreover, no registry receipt was marked, offered and admitted as evidence for respondent.

Section 34 of Rule 132 of the Rules of Court explicitly provides:

> "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In the case of **Rafael Arsenio S. Dizon vs. Court of Tax Appeals, *et al.***[74], the Supreme Court emphasized that no evidentiary value can be given to pieces of evidence that were not formally offered before the CTA. Relevant portions of said decision read:

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[71] *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965.
[72] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, citing *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965.
[73] Transcript of Stenographic Notes (TSN), April 23, 2012, pp. 11 to 14.
[74] G.R. No. 140944, April 30, 2008.

> "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. xxx"

The testimonial evidence presented by respondent was not sufficient to give rise to the presumption that the 2000 FLD and FAN No. 59/2000 were received by petitioner in the regular course of mail.

Moreover, even assuming that the evidence presented by respondent has given rise to the presumption that the 2000 FLD and FAN No. 59/2000 were received by petitioner in the regular course of mail, said presumption is merely a disputable presumption. In the case of **Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue**[75], the Supreme Court already ruled that a direct denial of the receipt of the mail shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Pertinent portions of the Supreme Court's decision are quoted hereunder:

> "(A)n assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent.
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> xxx xxx xxx
>
> (W)hen a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise the presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, there is still merely a disputable presumption subject to controversion, and a direct denial thereof shifts the burden upon the

[75] G.R. No. 157064, August 7, 2006.

> party favored by the presumption to prove that the mailed letter was indeed received by the addressee."

In this case, considering that petitioner denies receiving the 2000 FLD and FAN No. 59/2000, the burden rests on respondent to prove that the 2000 FLD and FAN No. 59/2000 were indeed served and received by petitioner. Sadly, respondent failed to present sufficient evidence to prove that the 2000 FLD and FAN No. 59/2000 were properly served and received by petitioner.

In the case of **Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue**[76], the Supreme Court enunciated that it is a requirement of due process that the taxpayer must actually receive the assessment. Relevant portion of said Supreme Court's decision states:

> "**(D)ue process requires at the very least that such notice actually be received**. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer." *(Emphasis supplied)*

Indeed, due process requires that the FAN must be served on, and received by the taxpayer.[77] This will give the taxpayer the opportunity to file a protest against the FAN. If a taxpayer did not receive the assessment, the assessment could not become final and executory.[78]

Here, respondent failed to prove that the 2000 FLD and FAN No. 59/2000 were indeed served and received by petitioner. As such, there is no assessment to begin with, and petitioner cannot be considered a delinquent taxpayer.[79] Consequently, there is no basis for the issuance of WDL No. 059-10-018. Stated differently, WDL No. 059-10-018 issued

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[76] G.R. No. 155541, January 27, 2004.
[77] *Commissioner of Internal Revenue vs. Menguito*, G.R. No. 167560, September 17, 2008.
[78] *Republic of the Philippines vs. De la Rama, et al.*, G.R. No. L-21108, November 29, 1966.
[79] *Ishida Philippines Tube Co., Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7633, February 6, 2009.

by respondent to petitioner, in so far as it seeks to collect from petitioner deficiency taxes for year 2000, is void.

In view of the foregoing, the resolution of the issue on prescription of respondent's right to assess petitioner for deficiency taxes for the year 2000 is no longer necessary.

2001 FLD and FAN No. 59/2001

Petitioner contends that it was deprived of its right to file a Reply because it did not receive the 2001 Ten-Day PAN.[80] On the other hand, during trial, respondent's witness testified that petitioner was served with the 2001 Ten-Day PAN through registered mail and that said 2001 Ten-Day PAN was received by petitioner as evidenced by a return card sent to the office of respondent's witness.[81] Respondent's counsel clarified during trial that the 2001 Ten-Day PAN is actually the Notice of Informal Conference contemplated under RR No. 12-99.[82]

With regard to the 2001 PAN, respondent's witness testified on cross-examination that the 2001 PAN was sent to petitioner by registered mail as evidenced by a return card.[83]

Again, to raise the disputable presumption that petitioner received the 2001 Ten-Day PAN and the 2001 PAN in the regular course of mail, respondent must prove that they were properly addressed to petitioner with postage prepaid, and that they were mailed.

However, while respondent's witness testified that the 2001 Ten-Day PAN and the 2001 PAN were sent through registered mail to petitioner as supposedly evidenced by return cards, said return cards were not properly identified and marked during trial. More so, they were not offered or admitted as evidence for respondent.

As discussed earlier, this Court cannot give evidentiary value to pieces of evidence that were not formally offered. In this case, the testimony of respondent's witness alone could not give rise to the presumption that the 2001 Ten-Day PAN (Notice of Informal Conference) and the 2001 PAN were served and received by petitioner in the regular course of mail. Since

[80] Exhibit "Z", docket, p. 408.
[81] TSN, July 2, 2012, pp. 18 to 19.
[82] TSN, July 2, 2012, pp. 53 to 55.
[83] TSN, July 2, 2012, pp. 43 to 44.

respondent failed to adduce sufficient proof that petitioner received the 2001 Ten-Day PAN (Notice of Informal Conference) and the 2001 PAN in the ordinary course of mail, it cannot be presumed that petitioner received them.

In the case of **Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue**[84], the Supreme Court ruled that failure to comply with the procedures laid down in RR No. 12-99, relative to the issuance of assessment, amounts to a violation of the taxpayer's right to due process. Relevant portion of said decision reads:

> "What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. **The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference and a preliminary assessment notice, as required.** PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.
>
> PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs via the formal letter of demand and assessment notice. For being formally defective, the November 15, 1999 formal letter of demand and assessment notice is void. xxx
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> xxx xxx xxx
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> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.** Respondent must be more circumspect in the exercise of his functions, xxx" *(Emphasis supplied)*

Furthermore, in the case of **Commissioner of Internal Revenue vs. Metro Star Superama, Inc.**[85], the Supreme Court emphasized the requirement to strictly comply with the

[84] G.R. No. 172598, December 21, 2007.
[85] G.R. No. 185371, December 8, 2010.

notice requirements prescribed under Section 228 of the NIRC of 1997, as amended and RR No. 12-99, and that failure to do so amounts to a denial of due process. Pertinent parts of said decision read:

> "This now leads to the question: Is the failure to strictly comply with notice requirements prescribed under Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations (R.R.) No. 12-99 tantamount to a denial of due process? Specifically, are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
>
> The answer to these questions requires an examination of Section 228 of the Tax Code which reads:
>
> xxx xxx xxx
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
>
> This is confirmed under the provisions of R.R. No. 12-99 of the BIR which pertinently provide:
>
> xxx xxx xxx
>
> (I)t is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process**. Thus, **for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void**.
>
> xxx xxx xxx

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

The due process requirements in the issuance of a deficiency tax assessment are laid down in Section 3 of RR No. 12-99, which provides the need for (1) a notice for informal conference, (2) a preliminary assessment notice, and (3) a formal letter of demand and assessment notice sent to the taxpayer. Evidently, respondent failed to prove that it complied with the first two requirements, and such failure violated petitioner's right to due process. Said failure on the part of respondent makes the 2001 FLD and FAN No. 59/2001 as well as the WDL No. 059-10-018 invalid.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[86]

Considering that the 2001 FLD and FAN No. 59/2001 as well as the WDL No. 059-10-018 are invalid, this Court finds the remaining stipulated issue relative to the timeliness of the assessment, no longer necessary for the disposition of this case.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand and Assessment Notices No. 59/2000, all dated May 31, 2005, assessing petitioner for deficiency income tax, value-added tax, documentary stamp tax, and compromise penalties for taxable year 2000, in the total amount of P34,715,373.06, inclusive of interest, 25% surcharge, and compromise penalties, as well as the Formal Letter of Demand and Assessment Notice No. 59/2001, dated September 30, 2005,

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[86] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra.*

assessing petitioner for deficiency income tax, expanded withholding tax, and fringe benefits tax for the year 2001, in the total amount of P13,769,750.60, inclusive of interest, 25% surcharge, and compromise penalties are hereby **CANCELLED** and **WITHDRAWN**.

Consequently, the Warrant of Distraint and/or Levy No. 059-10-018 dated June 15, 2010 is hereby declared **NULL** and **VOID**. Respondent is now precluded from collecting the amount of P48,488,123.06, representing petitioner's tax liability for taxable years 2000 and 2001.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice