Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AA COMMERCIAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8290

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JAN 28 2016
1:15 p.m.

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DECISION

CASANOVA, *J.*:

This resolves the Petition for Review[1], filed on May 13, 2011, by petitioner AA Commercial, Inc. seeking the cancellation and withdrawal of the deficiency Income Tax, Value-Added Tax ("VAT") and Expanded Withholding Tax ("EWT") assessments against it for calendar year (CY) 2006 in the total amount of ₱33,242,400.54.

The facts, as borne by the records of this case, are as follows:

Petitioner AA Commercial, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with Securities and Exchange Commission ("SEC") Company Registration No. 35875.[2]

Petitioner was incorporated with the following primary purpose:

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[1] Docket (Vol. I), pp. 1-26.
[2] Par. 1, Admitted Facts I, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 107.

> "To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic and deal in and with, and otherwise operate, manage, enjoy and dispose of, any and all properties of every kind and description and wherever situated as and to the extent permitted by law, including, but not limited to, buildings, tenements, warehouses, factories, edifices and structures and other improvement, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations created, negotiated or issued by any corporation, association, or other entity, foreign or domestic and while the owner, holder, or possessor thereof, to exercise all the rights, powers and privileges of ownership or any other interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income, derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting powers, so owned or held."[3]

Petitioner is a registered taxpayer at the Bureau of Internal Revenue ("BIR"), Revenue Region No. 7, Revenue District Office ("RDO") No. 38, Quezon City, with Tax Identification No. ("TIN") 000-413-447-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code ("Tax Code"). She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On April 16, 2007, petitioner filed its Annual Income Tax Return for CY 2006 (BIR Form 1702) with the BIR.[6]

[3] Par. 2, Admitted Facts I, JSFI, Docket (Vol. I), pp. 107-108.
[4] Par. 3, Admitted Facts I, JSFI, Docket (Vol. I), p. 108.
[5] Par. 4, Admitted Facts I, JSFI, Docket (Vol. I), p. 108.
[6] Par. 6, Admitted Facts II, JSFI, Docket (Vol. I), p. 116.

Petitioner filed its original Quarterly VAT Returns for CY 2006 (BIR Form 2550Q) on the following dates[7]:

Taxable Quarter	**Date of Filing**
1st Quarter, CY 2006	April 25, 2006
2nd Quarter, CY 2006	July 25, 2006
3rd Quarter, CY 2006	October 23, 2006
4th Quarter, CY 2006	January 25, 2007

It filed its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E) for the period January to December 2006 on the following dates[8]:

Month	**Date of Filing**
January 2006	February 10, 2006
February 2006	March 7, 2006
March 2006	April 7, 2006
April 2006	May 9, 2006
May 2006	June 9, 2006
June 2006	July 10, 2006
July 2006	August 7, 2006
August 2006	September 4, 2006
September 2006	October 9, 2006
October 2006	November 7, 2006
November 2006	December 7, 2006
December 2006	January 15, 2007

Petitioner availed of the government's tax amnesty program under R.A. No. 9480 (the "Tax Amnesty Law") covering all "national internal revenue taxes for taxable year 2005 and prior years, with or without assessments duly issued therefore" that have remained unpaid as of December 31, 2005.[9]

On November 8, 2007, petitioner received a Letter of Authority dated September 6, 2007 from the BIR, RDO No. 38, authorizing Revenue Officer Victoria T. Ondaro and Revenue Supervisor Rubi Ruth G. Magtanob to examine the books of accounts and accounting

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[7] Par. 7, Admitted Facts II, JSFI, Docket (Vol. I), p. 116.
[8] Par. 8, Admitted Facts II, JSFI, Docket (Vol. I), p. 116.
[9] Par. 9, Admitted Facts II, JSFI, Docket (Vol. I), p. 117.

records of petitioner for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.[10]

In compliance with the BIR's Letter of Authority, petitioner submitted the following documents to the BIR, RDO No. 38 on December 4, 2007:

(i.) Annual Registration Fee (BIR Form 0605),
(ii.) Articles of Incorporation and By-Laws,
(iii.) Annual and Quarterly Income Tax Returns for CY 2006,
(iv.) Monthly Remittance Returns and Annual Information Return of Income Taxes Withheld on Compensation for CY 2006,
(v.) Monthly Remittance Returns and Annual Information Return of Creditable Income Taxes Withheld (Expanded) for CY 2006,
(vi.) Quarterly Income Taxes Withheld of Final Income Taxes Withheld for CY 2006,
(vii.) Monthly VAT Declarations and Quarterly VAT Returns for CY 2006,
(viii.) Contract of Lease and Proof of Payments of Documentary Stamp Tax for CY 2006,
(ix.) Summary List of Local Purchases, and
(x.) Summary List of Sales.[11]

On August 26, 2008, the BIR issued a *Subpoena Duces Tecum*[12] requiring the petitioner to submit additional books of accounts and accounting records.

On September 30, 2008, petitioner paid the amount of ₱10,000 as penalty for failure to obey summons (Section 266, Tax Code), and undertook to submit the documents required under the *Subpoena Duces Tecum*.[13]

[10] Par. 5, Admitted Facts I, JSFI, Docket (Vol. I), p. 108.
[11] Exhibit "X".
[12] Exhibit "Z".
[13] Exhibits "Y" to "Y-3".

In compliance with its letter of undertaking[14], petitioner submitted the following accounting records to the BIR, RDO No. 38 on June 22, 2009:

(i.) Columnar Book-Cash Disbursements Book, which includes the records of purchases and the payment vouchers of petitioner;
(ii.) Journal Book-Various Adjusting Entries and Cash Receipts Books, which include the records of sales/receipts of petitioner; and
(iii.) Clearances from the Legal Division of the BIR.

On June 25, 2009, petitioner received a Post Reporting Notice dated June 23, 2009 from the BIR RDO No. 38, which states that based on the report of Revenue Officer Victoria Ondaro, petitioner is liable for deficiency income tax in the amount of Php900,763.23 and VAT in the amount of Php869,836.99 for CY 2006.[15]

On October 30, 2009, respondent issued a Preliminary Assessment Notice ("PAN")[16] for taxable year 2006. Thereafter, on November 27, 2009, respondent issued the Final Assessment Notice (FAN) with Formal Letter of Demand No. 38-06-0175 and Details of Discrepancies all dated November 27, 2009[17].

On September 16, 2010, petitioner received a copy of respondent's Preliminary Collection Notice dated August 13, 2010, demanding payment of deficiency income tax, VAT, and expanded withholding tax ("EWT") for CY 2006 in the total amount of Php33,242,400.54, broken down as follows[18]:

Kind of Tax	**Basic**	**Interest**	**Total**
Income Tax	Php 1,659,859.74	Php 897,688.53	Php 2,557,548.27
VAT	19,354,879.20	11,326,581.36	30,681,460.56
EWT	2,132.23	1,259.48	3,391.71
Total	**Php21,016,871.17**	**Php12,225,529.37**	**Php33,242,400.54**

[14] Exhibit "Y-1".
[15] Par. 6, Admitted Facts I, JSFI, Docket (Vol. I), pp. 108-109.
[16] Exhibit "4".
[17] Exhibits "5" to "5-c".
[18] Par. 7, Admitted Facts I, JSFI, Docket (Vol. I), p. 109.

After receiving the Preliminary Collection Letter dated August 13, 2010, petitioner proceeded to the Collection Division of the BIR, Revenue Region No. 7 (the "Collection Division") to review the records of the alleged deficiency tax assessments. Petitioner found in the BIR records copies of the following documents:

(i) Preliminary Assessment Notice ("PAN") dated October 30, 2009, assessing petitioner deficiency income tax, VAT and EWT for CY 2006 in the total amount of ₱32,562,951.00; and

(ii) Formal Letter of Demand ("FLD") dated November 27, 2009 with attached Final Assessment Notices ("FAN"), assessing petitioner deficiency income tax, VAT and EWT for CY 2006 in the total amount of ₱33,242,400.54.[19]

Based on the FLD, the deficiency income tax, VAT and EWT assessments for CY 2006 were computed as follows[20]:

I. DEFICIENCY INCOME TAX

Taxable income per ITR				₱ 1,637,058.00
Add:	Adjustments per investigation:			
	Disallowed expenses – 50% Rule		₱ 1,691,162.35	
	Professional fees not subjected to withholding		21,322.31	
	Unaccounted outside services		47,667.30	1,760,151.96
Taxable income per investigation				₱ 3,397,204.96
Income tax due thereon				₱ 1,189,021.74
Add:	Disallowed tax credits/payments:			
	Unexpired excess of Prior Year's MCIT over NIT		₱ 239,473.00	
	Prior Year's excess credits		628,495.00	
	Creditable tax withheld		234,408.00	
	Total		₱ 1,102,376.00	
	Less: Unsupported Unexpired excess of Prior Year's MCIT over NIT	₱239,473.00		
	Unsupported Prior Year's excess credits	628,495.00		
	Unsupported creditable tax withheld	175,839.00		
	Excess tax credits carried-over to the succeeding period	529,407.00	1,573,214.00	470,838.00
Deficiency Income Tax				₱ 1,659,859.74
Add:	20% interest p.a. (04.17.07 to 12.28.09)			897,688.53
TOTAL AMOUNT DUE				**₱ 2,557,548.27**

[19] Par. 8, Admitted Facts I, JSFI, Docket (Vol. I), p. 109.
[20] Par. 9, Admitted Facts I, JSFI, Docket (Vol. I), pp. 109-110.

II. DEFICIENCY VALUE ADDED TAX

Taxable revenue per VAT return			₱ 6,573,370.33
Add: Adjustment per investigation			
Gross receipts not subjected to VAT		₱ 994,639.72	
Unaccounted outside services		47,667.30	1,042,307.02
Taxable revenue per investigation			₱ 7,615,667.35
	Amount	Output tax	
January	₱ 370,370.40	₱ 37,037.04	
February to December	7,247,306.95	869,676.83	₱ 906,713.87
Add: Disallowed tax credits/payments:			
Input tax carried-over from previous period		₱ 19,169,372.60	
Payments		27,476.94	
Input tax credits per VAT returns		60,429.84	
Total		₱ 19,257,279.38	
Less: Disallowed input tax carried over from previous period	₱19,169,372.60		
Disallowed input tax	60,429.84		
Excess input tax carried-over to succeeding period	18,475,642.27	37,705,444.71	18,448,165.33
Deficiency Value Added Tax			₱ 19,354,879.20
Add: 20% Interest p.a. (01.26.07 to 12.28.09)			11,326,581.36
TOTAL AMOUNT DUE			**₱ 30,681,460.56**

III. DEFICIENCY EXPANDED WITHHOLDING TAX

Professional fees not subjected to EWT	₱ 21,322.31
Deficiency Expanded Withholding Tax	₱ 2,132.23
Add: 20% Interest p.a. (1.16.07 to 12.28.09)	1,259.48
TOTAL AMOUNT DUE	**₱ 3,391.71**

In the Details of Discrepancies attached to the FAN, respondent stated that due to petitioner's continued and unjustifiable refusal to prove with documentary evidence the correctness of its tax return for CY 2006, respondent resorted to the *Best Evidence Rule* in determining petitioner's income tax liability pursuant to Revenue Memorandum Circular ("RMC") No. 23-2000. Respondent applied the 50% rule of approximation as enunciated in the case of *Mariano Zamora vs. Collector of Internal Revenue*[21] and automatically disallowed 50% of petitioner's Direct Costs and Operating Expenses.[22]

Respondent disallowed the professional fees paid to petitioner's external auditors, Constantino Gualdalquiver & Co., on the ground that petitioner failed to subject the professional fees to withholding tax as required under RR. No. 2-98, as amended.[23]

[21] G.R. No. L-15290, May 31, 1963.
[22] Par. 18, Admitted Facts I, JSFI, Docket (Vol. I), p. 114.
[23] Par. 19, Admitted Facts I, JSFI, Docket (Vol. I), p. 114.

Likewise, respondent disallowed the excess of petitioner's Prior Year's Minimum Corporate Income Tax ("MCIT") over normal income tax ("NIT") on the alleged ground that the claim is not supported with appropriate documentary evidence.[24]

Moreover, respondent also disallowed the petitioner's Prior Year's Excess Credits in the amount of ₱628,495.00 on the alleged ground that it is not supported by documentary evidence.[25]

Lastly, respondent disallowed the input tax carried over from previous taxable period in the amount of ₱19,169,372.60 on the alleged ground that it is not supported with valid documentary evidence.[26]

On October 15, 2010, petitioner filed a protest against respondent's FAN/FLD and Preliminary Collection Notice dated August 13, 2010.[27]

Thereafter, on November 5, 2010, petitioner received a copy of the BIR's Final Notice Before Seizure dated October 5, 2010 demanding payment of petitioner's alleged deficiency income tax, VAT and EWT assessments for CY 2006 in the total amount of ₱33,242,400.54.[28]

On November 19, 2010, petitioner filed with the BIR, Collection Division a letter-reply to the Final Notice Before Seizure. In its letter-reply, petitioner informed the Collection Division that petitioner has a pending protest against deficiency income tax, VAT and EWT assessments for CY 2006.[29]

On December 9, 2010, petitioner through its counsel, received a letter from the BIR Collection Division informing the petitioner that the docket of the case has been forwarded to the Legal Division of BIR, Revenue Region No. 7 for proper resolution of the legal issues raised in the protest.[30]

[24] Par. 21, Admitted Facts I, JSFI, Docket (Vol. I), p. 115.
[25] Par. 22, Admitted Facts I, JSFI, Docket (Vol. I), p. 115.
[26] Par. 23, Admitted Facts I, JSFI, Docket (Vol. I), p. 115.
[27] Par. 1, Admitted Facts II, JSFI, Docket (Vol. I), p. 115.
[28] Par. 2, Admitted Facts II, JSFI, Docket (Vol. I), p. 115.
[29] Par. 3, Admitted Facts II, JSFI, Docket (Vol. I), p. 115.
[30] Par. 4, Admitted Facts II, JSFI, Docket (Vol. I), p. 115.

In view of respondent's inaction on petitioner's administrative protest, petitioner filed the instant Petition for Review on May 13, 2011.

As of date of filing of the Petition for Review, respondent has not yet acted on petitioner's administrative protest against the deficiency income tax, VAT and EWT assessments for CY 2006.[31]

Within the extended time granted by the Court[32], respondent filed her Answer[33] on July 7, 2011, and interposed the following defenses:

> "4. The assessment for calendar year 2006 in the total amount of ₱33,242,400.54 was issued in accordance with law and regulations. The factual and legal bases of the subject assessment are contained in the Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies and was served within the three-year prescriptive period provided in Sec. 203 of the Tax Code, as amended.
>
> 5. Verification disclosed that petitioner continuously and unjustifiably refused to prove with documentary evidence the correctness of petitioner's tax returns for calendar year 2006, thus, applying the 50% rule of approximation (Mariano Zamora vs. Collector of Internal Revenue), with the amount of ₱1,691,162.35 expenses disallowed, pursuant to Revenue Memorandum Circular (RMC) No. 23-2000.
>
> 6. Verifications disclosed that petitioner failed to subject professional fees of ₱21,322.21 to withholding tax as required under Revenue regulation No. 2-98.
>
> 7. Verification disclosed that petitioner has unaccounted outside services amounting to ₱47,667.30 which were not reported in the financial statements pursuant to Sec. 31 of the Tax Code, as amended.

[31] Par. 5, Admitted Facts II, JSFI, Docket (Vol. I), p. 116.
[32] Resolution dated June 17, 2011, Docket (Vol. I), p. 74.
[33] Docket (Vol. I), pp. 76-80.

8. Verification disclosed that petitioner claimed unsupported unexpired excess of prior year's MCIT over NTT in the amount of ₱239,473.00.

9. Verification disclosed that claimed Prior Year's Excess Credits amounting to ₱628,495.00 was unsupported, thus, disallowed pursuant to Sec. 76 of the Tax Code, as amended.

10. Verification disclosed that claimed tax credits in the amount of ₱175,839.00 was unsupported, hence, disallowed pursuant to Sec. 2.583 of RR. No. 2-98.

11. Verification disclosed that the gross receipts of ₱994,639.72 was not subjected to 12% Value-Added Tax pursuant to Sec. 106 and 108 of the Tax Code, as amended.

12. Verification disclosed that the unaccounted services of ₱47,667.00 is subject to VAT pursuant to Sec. 106 and 108 of the Tax Code, as amended.

13. Verification disclosed that petitioner failed to substantiate input tax amounting to ₱19,169,372.60, carried over from previous period, hence, disallowed pursuant to Sections 110, 113 and 237 of the Tax Code, as amended.

14. Verification disclosed that petitioner failed to substantiate with valid documentary evidence, input tax of ₱60,429.84, therefore disallowed pursuant to Sections 110, 113 and 237 of the Tax Code, as amended.

15. Verification disclosed that professional fees of ₱21,322.31 were not subjected to Expanded Withholding Tax pursuant to Revenue Regulation No. 2-98.

16. Finally, settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith (Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 671). It is the taxpayer and not the Bureau of Internal Revenue who has the duty of

proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The case was set for Pre-Trial Conference on August 4, 2011.[34] Accordingly, Respondent's Pre-Trial Brief[35] and Petitioner's Pre-Trial Brief[36] were filed on August 1, 2011.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[37] on August 16, 2011 which was approved by the Court in the Pre-Trial Order[38] dated September 12, 2011.

During trial, petitioner presented: Mr. Ericson Salvador, its Audit Manager, and Ms. Susan Cabrera, its Accountant.

On May 30, 2012, petitioner filed its Formal Offer of Evidence[39]. and the Court admitted as evidence for petitioner Exhibits "A", "A-1", "A-2", "B", "B-1", "C", "C-1", "D", "D-1", "E", "E-1", "F", "F-1", "G", "G-1", "H", "H-1", "I", "I-1", "J", "J-1", "K", "K-1", "L", "L-1", "M", "M-1", "N", "N-1", "O", "O-1", "P", "P-1", "Q", "Q-1", "R", "R-1", "S", "S-1", "T", "U", "U-1", "U-2", "U-3", "U-4", "V", "V-1", "V-2", "V-3", "V-4", "V-5", "V-6", "V-7", "V-8", "V-9", "V-10", "V-11", "V-12", "V-13", "V-14", "V-15", "V-16", "V-17", "V-18", "V-19", "V-20", "V-21", "V-22", "V-23", "V-24", "W", "W-1", "X", "Y", "Y-1", "Y-2", "Y-3", "Z", "AA", "BB", "BB-1", "DDD" and "DDD-1".[40]

For her part, respondent presented Revenue Officer Victoria Ondaro, Mr. Joseph E. Rodriguez, Mr. Arnold C. Larossa and Mr. Wendell C. Virtucio as her witnesses, and, on October 25, 2013, she filed her Formal Offer of Evidence[41]. In a Resolution[42] dated January

[34] Notice of Pre-Trial Conference dated July 8, 2011, Docket (Vol. I), p. 81.
[35] Docket (Vol. I), pp. 82-86.
[36] Docket (Vol. I), pp. 87-105.
[37] Docket (Vol. I), pp. 107-121.
[38] Docket (Vol. I), pp 137-152.
[39] Docket (Vol. I), pp. 214-233.
[40] Docket (Vol. I), pp. 350-351.
[41] Docket (Vol. I), pp. 479-486.

7, 2014, the Court admitted respondent's Exhibits "1", "2", "2-a", "2-b", "2-c", "2-d", "3", "3-a", "4", "5", "5-a", "5-b", "5-c", "6", "7", "7-a", "8", "8-a", "9", "10", "10-a", "10-b", "10-c", "11", "12", "12-a", "12-b", "12-c", "12-d", "12-e", "12-f", "12-g", "12-h", "12-i", "12-j", "14", "15", "16", "17", "18", "20", "21", "22", "23", "24", "25" and "25-a". However, the Court denied admission of Exhibits "13", "13-a", "19" and "19-a", described as the Judicial Affidavits of her Administrative Aid II, Mr. Arnold C. Larrosa and the Letter Carrier, Mr. Wendell C. Virtucio, for failure to comply with the Section 3(c) of A.M. No. 12-8-8-SC, otherwise known as the Judicial Affidavit Rule.

Respondent filed, on January 14, 2014, an Omnibus Motion for Partial Consideration and To Admit the Attached Amended Judicial Affidavit (Resolution of 08 January 2014)[43]. In the Resolution[44] dated February 28, 2014, the Court granted respondent's Omnibus Motion and admitted her Exhibits "13", "13-a", "19" and "19-a".

Petitioner presented its Accounting Head, Ms. Mary Grace E. Pascua-Tapia for its rebuttal evidence. Petitioner's Supplemental Formal Offer of Evidence[45] was filed on June 2, 2014. Thereafter, petitioner's Exhibit "EEE" and the sworn statement of its witness, Ms. Mary Grace E. Pascua-Tapia, were admitted by the Court in the Resolution dated June 23, 2014.[46]

On August 27, 2014, within the extended time granted by the Court[47], respondent filed her Memorandum[48].

On the same date, petitioner filed an Urgent Omnibus Motion i. Reopen Case for the Presentation of Additional Evidence; and ii. Defer the Submission of Memoranda[49], which granted by the Court in the Resolution[50] dated September 26, 2014.

Petitioner's witness, Ms. Mary Grace E. Pascua-Tapia was recalled during the hearing on October 20, 2014[51]. Petitioner

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[42] Docket (Vol. I), pp. 588-589.
[43] Docket (Vol. I), pp. 590-593.
[44] Docket (Vol. I), pp. 630-633.
[45] Docket (Vol. II), pp. 643-646.
[46] Docket (Vol. II), pp. 649-650.
[47] Order dated July 30, 2014, Docket (Vol. II), p. 656.
[48] Docket (Vol. II), pp. 657-670.
[49] Docket (Vol. II), pp. 671-678.
[50] Docket (Vol. II), pp. 686-689
[51] Minutes of Hearing dated October, 20, 2014, Docket (Vol. II), pp. 732-733.

submitted its Supplemental Formal Offer of Evidence[52] on November 10, 2014. Its Exhibits "FFF", "GGG, "HHH", "III", "III-a", "JJJ", "KKK", "LLL", "MMM" and "MMM-a" were admitted by the Court in the Resolution dated December 19, 2014.

On February 9, 2015, respondent filed her Supplemental Memorandum[53] while petitioner filed its Memorandum[54] on March 2, 2015. Accordingly, the case was submitted for decision on March 6, 2015.[55]

The issues[56] submitted for the resolution of this Court are the following:

> "1. Whether or not deficiency tax assessments against petitioner for CY 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations No. 12-99.
>
> 2. Whether or not respondent's right to assess petitioner's deficiency taxes for CY 2006 had already prescribed, in view of the lapse of the three-year prescription period provided under Section 203, Tax Code.
>
> 3. Assuming *arguendo* that the period to issue the assessment notice has not yet prescribed, whether or not the deficiency income tax, VAT and EWT assessments against the petitioner for CY 2006 should be cancelled and withdrawn for lack of legal and factual basis.
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> 3.1. Income Tax Assessment
>
> (i) Whether or not respondent correctly disallowed half of petitioner's Direct Costs and Operating Expenses in the amount of

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[52] Docket (Vol. II), pp. 736-741.
[53] Docket (Vol. II), pp. 775-779.
[54] Docket (Vol. II), pp. 790-832.
[55] Docket (Vol. II), p. 833.
[56] Issues, JSFI, Docket (Vol. I), pp. 118-120.

Php1,691,162.35 on the basis of the Best Evidence Obtainable Rule under Revenue Memorandum Circular No. 23-2000.

(ii) Whether or not respondent correctly disallowed the professional fees in the amount of Php21,322.31 on the ground that petitioner allegedly failed to subject said professional fees to withholding tax pursuant to RR No. 2-98.

(iii) Whether or not the deficiency income tax assessment arising from the alleged 'unaccountable outside services' in the amount of Php47,667.30 is valid.

(iv) Whether or not respondent correctly disallowed petitioner's creditable withholding taxes in the amount of Php175,839.00 on the alleged ground that they are unsupported by Certificates of Creditable Tax Withheld at Source (BIR Form 2307).

(v) Whether or not respondent correctly disallowed the excess of petitioner's Prior Year's MCIT over NIT on the alleged ground that the claim is not supported with appropriate documentary evidence.

(vi) Whether or not respondent correctly disallowed petitioner's Prior Year's Excess Credits in the amount of Php628,495.00 on the alleged ground that it is not supported by documentary evidence.

3.2 <u>Deficiency VAT Assessment</u>

(i) Whether or not the deficiency VAT assessments arising from the gross receipts allegedly not subjected to VAT

(Php994,639.72 and unaccounted outside services (Php47,667.30) are valid.

(ii) Whether or not respondent correctly disallowed the input tax carried over from previous taxable period in the amount of Php19,169,372.60 on the alleged ground that it is not supported with valid documentary evidence.

(iii) Whether or not there is legal and/or factual basis for the disallowance of the input VAT carried over to the succeeding taxable periods in the amount of Php18,475,642.27.

(iv) Whether or not respondent correctly disallowed petitioner's input VAT credits in the amount of Php60,429.84 on the alleged ground that such input taxes are unsupported by documentary evidence.

3.3 Deficiency EWT Assessment

(i) Whether or not the professional fees paid to petitioner's external auditors, Constantino Gualdalquiver & Co., a general professional partnership, are subject to EWT under RR. No. 2-98."

The foregoing issues may be summarized as follows:

"Whether or not the assessments against petitioner for deficiency income tax, VAT and EWT for CY 2006 are valid?"

The deficiency tax assessments against petitioner for CY 2006 are null and void.

The Court shall resolve first the issue of whether the deficiency tax assessments against petitioner for CY 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations (RR) No. 12-99.

Petitioner argues that the deficiency tax assessments against petitioner for CY 2006 are null and void due to respondent's failure to serve to it copies of the PAN and FLD/FAN in violation of the mandatory requirements under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, RR No. 12-99 and prevailing jurisprudence.

Respondent, on the other hand, contends that the deficiency tax assessments against petitioner for CY 2006 are valid. She argues that the due process requirement under the law and RR No. 12-99 have been observed and strictly followed.

At the outset, it must be emphasized that the requirement of informing the taxpayer of the assessment is mandatory as provided in Section 228 of the NIRC of 1997, as amended, to wit:

> "SEC. 228. **Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation

> within thirty (30) days from 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 shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis ours*)

To implement the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99 was issued. Sections 3.1.2 and 3.1.4 of RR No. 12-99 reads:

> "SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment.** —
>
> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, <u>it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based</u> (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the

said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis ours)*

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[57], held that procedures provided in Section 228 of the NIRC and Section 3 of RR No. 12-99 are mandatory, noncompliance therewith renders the assessment void.

Respondent, through its witness Mr. Arnold C. Larrosa, contends that the PAN[58] and the FAN[59] dated October 30, 2009 and November 27, 2009 were served to petitioner through registered mail, to wit:

"3. What do you usually do when notices such as PAN and FAN are sent to your office for mailing?

[57] G.R. No. 197515, July 2, 2014.
[58] Exhibit "4".
[59] Exhibit "5" to "5-c".

Upon receipt of the Preliminary Assessment Notices and Final Assessment Notices for mailing with the endorsements from the Assessment Division, I personally put these letters/ notices inside window envelopes. After which, I personally go to the Post Office to mail them thru registered mail with postage stamp affixed.

xxx xxx xxx

5. In relation to this case, do you recall having mailed notices to taxpayer AA Commercial, Inc. sometime in 2009?

I cannot recall, because that was about four (4) years ago, but I have a copy of the endorsements of the PAN and FAN of AA Commercial, Inc. dated October 30, 2009 and November 27, 2009 respectively, which bears the names, address, taxable year, kind of tax, amounts and registry numbers of AA Commercial, Inc."[60]

However, there is no actual showing that petitioner actually received the PAN and the FAN/FLD. Petitioner's witness, Mr. Ericson Salvador testified in his Sworn Statement[61] that petitioner only learned of the deficiency tax assessments for CY 2006 when it received a copy of the Preliminary Collection Notice on September 16, 2010, to wit:

"Q10: Mr. Salvador, you mentioned that the BIR did not assess the Company within the prescriptive period provided under Section 203, National Internal Revenue Code of 1997 (the 'Tax Code'). How, then, did you find out of the BIR's deficiency tax assessments for CY 2006?

A10: On September 16, 2010, we received a copy of the BIR, Revenue District Office ('RDO') No. 38's Preliminary Collection Notice wherein the BIR demanded payment of deficiency income tax, VAT and EWT for CY 2006 in the total amount of Php33,242,400.54.

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[60] Exhibit "13".
[61] Exhibit "W".

Q11: What did you do after you received a copy of the BIR's Preliminary Collection Notice?

A11: After we received the Preliminary Collection Notice, we proceeded to the Collection Division of the BIR, Revenue Region No. 7 to review the records of the case. At this instance, we found copies of the BIR's (i) Preliminary Assessment Notice ("PAN") dated October 30, 2009 assessing the Company deficiency income tax, VAT and EWT for CY 2006 in the total amount of Php32,562,951.00, and (ii) FLD dated November 27, 2009 with attached Final Assessment Notice ("FAN") assessing the Company deficiency income tax, VAT and EWT for CY 2006 in the total amount of Php33,242,400.52."

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[62], the Supreme Court held 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.

To prove that PAN and FAN were duly served and mailed to petitioner, respondent presented (i) certified xerox copies of endorsements of the PAN and FAN from the Assessment Division to the Administrative Division for mailing[63]; (ii) certified xerox copy of page 5 of Administrative Division's logbook indicating the letters that were mailed but returned to sender with reasons indicated[64]; and (iii) certified xerox copies of the Certifications from the Philippine Postal Corporation dated October 5, 2010[65].

Respondent also presented the letter carrier Mr. Wendell C. Virtucio, who testified that he was not able to deliver the letter to petitioner, as he was informed that petitioner had moved out of the premises, to wit:

"5. And do you recall having delivered mails sometime in October 30, 2009 and November27,

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[62] G.R. No. 157064, August 7, 2006, citing *Republic of the Philippines vs. The Court of Appeals and Nielson & Co., Inc.,* G.R. No. L-38540, April 30, 1987.
[63] Exhibits "14" and "15".
[64] Exhibit "16".
[65] Exhibits "17" and "18".

> **2009 for the BIR at #11772 Edsa, Unang Sigaw, Quezon City for AA Commercial, Inc.?**
>
> Yes, but the security guard on duty whose name is Leopoldo B. Vargas, Jr. told me that the Company AA Commercial, Inc. had moved out of the premises. He also told me that AA Commercial, Inc. had transferred to its main office located at Makati, but he did not specify the complete address where in Makati.
>
> **6. Do you recall what happened when you delivered those mails?**
>
> Yes, after the conversation between me and the security guard, I left the place, and brought back the letter to the Post Office and made a notation that this letter of the BIR be returned to sender."

It is clear from the foregoing that petitioner did not receive the PAN and the FAN as they were returned to sender. The fact of non-receipt is bolstered by the Certifications from the Philippine Postal Corporation dated October 5, 2010[66] stating that the Registered Letter Nos. 4246 and 4650 addressed to AA Commercial, Inc. #1172 EDSA, Unang Sigaw, Quezon City and posted at BIR PO on October 30, 2009 and November 27, 2009, respectively, were delivered by Mr. Wendell Virtucio and were returned to sender on November 10, 2009 and December 9, 2009, respectively.

Moreover, respondent knew of the fact that petitioner did not receive the PAN and the FAN. This is clear from the testimony of her witness, Mr. Arnold C. Larrosa, to wit:

> **"7. How would you know if the same notices were received by the taxpayer?**
>
> I would not know if it was received, however, the postman/courier would bring with him the letters/notices with Registry Return Receipt, if they were returned to sender.

[66] Exhibits "17" and "18".

8. What happened then to the notices issued to AA Commercial, Inc?

I receive the returned notices, refer them to the Assessment Division and record them in my logbook.

9. Do you also have a copy of the said logbook?

Yes, Ma'm. Also, I have a certified photocopy of the page in said logbook of return to sender letters with corresponding reasons.

10. And what was the reason stated there?

It says here "moved out"." (*Emphasis ours*)

Knowing that petitioner failed to receive the PAN and the FAN/FLD, respondent should have tried again to serve the same to petitioner.

Furthermore, respondent's allegation that there was a deliberate misinformation on the part of the taxpayer to avoid the receipt of the PAN and the FAN/FLD, when the security guard authorized to receive mail matters inadvertently signified that petitioner has moved out already, deserves scant consideration. It was explained that there was a miscommunication between the guard on duty and the letter carrier, Mr. Wendell Virtucio.[67] However, respondent was not able to present proof that the miscommunication was deliberately done by petitioner to avoid the receipt of the PAN and the FAN/FLD.

Considering the foregoing, respondent failed to discharge the burden of proving that the PAN dated October 30, 2009 and the FAN/FLD dated November 27, 2009 were actually received by petitioner. Thus, the deficiency tax assessments against petitioner for CY 2006 are null and void for having been issued in violation of the due process requirements under the law and Revenue Regulations No. 12-99.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.

[67] Exhibits "20" to "23".

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.[68]

The right of respondent to issue any deficiency income tax, VAT and EWT assessments against petitioner for calendar year 2006 has already prescribed.

Petitioner contends that in view of respondent's failure to serve the FAN/FLD within the three-year prescriptive period provided in Section 203 of the NIRC of 1997, as amended, respondent has already lost the right to assess petitioner's alleged deficiency taxes for CY 2006.

Respondent, on the other hand, argues that her right to assess petitioner did not prescribe and in fact has become final and executory for petitioner's failure to protest the same within the reglamentary period of thirty (30) days from receipt of the FAN/FLD.

The period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

> "Sec. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Sec. 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

[68] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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."

It is clear from the foregoing that internal revenue taxes must be assessed within three (3) years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

In this case, the date of filing of petitioner's Annual Income Tax Return and Quarterly VAT Returns for taxable year 2006 as well as the end of the three-year prescriptive period are as follows:

Tax Return	Date of Actual Filing	End of 3 Year Prescriptive Period
VAT 1st Quarter, CY 2006[69]	April 25, 2006[70]	April 25, 2009
VAT 2nd Quarter, CY 2006[71]	July 25, 2006[72]	July 25, 2009
VAT 3rd Quarter, CY 2006[73]	October 23, 2006[74]	October 25, 2009
VAT 4th Quarter, CY 2006[75]	January 25, 2007[76]	January 25, 2010
Annual Income Tax 2006[77]	April 16, 2007[78]	April 16, 2010

On the other hand, for petitioner's EWT for calendar year 2006, the due date for the filing of the monthly remittance returns, the actual date of filing thereof and the lapse of the three-year prescriptive period are as follows:

[69] Exhibit "B".
[70] Exhibit "B-1".
[71] Exhibit "D".
[72] Exhibit "D-1".
[73] Exhibit "E".
[74] Exhibit "E-1".
[75] Exhibit "F".
[76] Exhibit "F-1".
[77] Exhibit "A".
[78] Exhibit "A-1".

Month	Due Date of Filing of Monthly Remittance Returns	Date of Filing of Monthly Remittance Returns	End of 3 Year Prescriptive Period
January	February 10, 2006	February 10, 2006[79]	February 10, 2009
February	March 10, 2006	March 7, 2006[80]	March 10, 2009
March	April 10, 2006	April 7, 2006[81]	April 10, 2009
April	May 10, 2006	May 9, 2006[82]	May 10, 2009
May	June 10, 2006	June 9, 2006[83]	June 10, 2009
June	July 10, 2006	July 10, 2006[84]	July 10, 2009
July	August 10, 2006	August 7, 2006[85]	August 10, 2009
August	September 10, 2006	September 4, 2006[86]	September 10, 2009
September	October 10, 2006	October 9, 2006[87]	October 10, 2009
October	November 10, 2006	November 9, 2006[88]	November 10, 2009
November	December 10, 2006	December 7, 2006[89]	December 10, 2009
December	January 15, 2007	January 15, 2007[90]	January 15, 2010

Considering that petitioner did not receive the PAN and the FAN/FLD, and the end of the three-year prescriptive period has long ended, respondent's right to issue any deficiency income tax, VAT and EWT assessments against petitioner for taxable year 2006 has already prescribed.

WHEREFORE, in view of the foregoing, this instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax, value-added tax and expanded withholding tax assessments against petitioner for calendar year 2006 amounting to ₱33,242,400.54 is **CANCELLED** and deemed **WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[79] Exhibit "H-1".
[80] Exhibit "I-1".
[81] Exhibit "J-1".
[82] Exhibit "K-1".
[83] Exhibit "L-1".
[84] Exhibit "M-1".
[85] Exhibit "N-1".
[86] Exhibit "O-1".
[87] Exhibit "P-1".
[88] Exhibit "Q-1".
[89] Exhibit "R-1".
[90] Exhibit "S-1".

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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