REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

STRADCOM CORPORATION, Petitioner,	**CTA Case No. 9125**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 29 2018 : 3:50 pm

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DECISION

UY, J.:

Before this Court is the *Petition for Review*[1] filed on August 25, 2015, by Stradcom Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, praying that judgment be rendered ordering respondent to refund or issue in favor of petitioner, a tax credit certificate (TCC) in the amount of ₱325,381,412.81, allegedly representing erroneously and illegally collected basic tax and interest which was garnished in relation to a deficiency income tax liability for calendar year (CY) 2011.

THE FACTS

Petitioner Stradcom Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Quezon Boulevard, Poblacion Sur, Bayambang, Pangasinan.[2]

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[1] Docket – Vol. I. pp. 10 to 41.
[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. II, p. 704; Par. II (A)(1), Pre-Trial Order dated June 17, 2016, Docket – Vol. II, p. 750.

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the duty to act upon and approve claims for refund or tax credit pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules, and regulations.[3]

On March 26, 1998, the Republic of the Philippines, through the Department of Transportation and Communications (DOTC), entered into a Build-Own-Operate Agreement (the BOO Agreement) with petitioner, to undertake the Information Technology (IT) Project of the DOTC.[4] In accordance with the BOO Agreement, the parties agreed that the DOTC shall pay petitioner in Philippine currency in a local bank within 30 calendar days from receipt of billing, based on the number of motor vehicles' registration and the number of drivers' licensing transaction handled, the inspection report and other documents which may be required by the DOTC and the Commission on Audit; and that the DOTC shall collect all Fees from the end-users and/or beneficiaries of the IT Based Services and remit therefrom, the agreed payment to the petitioner.

On December 6, 2001, petitioner, the DOTC, and the Landbank of the Philippines (LBP) executed an Escrow Agreement,[5] wherein petitioner and the DOTC agreed to designate the LBP as their escrow agent for the collection and maintenance of a trust account for all transaction fees due petitioner for the IT Based Services.

On April 29, 2003, the same parties entered into an Amended Escrow Agreement,[6] introducing certain amendments to the Escrow Agreement entered into on December 6, 2001.

However, on February 10, 2011, the Republic of the Philippines through the Land Transportation Office (LTO) filed with the Regional Trial Court (RTC) of Quezon City a *Complaint* (for Interpleader under Rule 62 of the Revised Rules of Court) entitled *"Republic of the Philippines, through the Land Transportation Office vs. Stradcom Corporation, as represented by Cezar T. Quiambao, and Stradcom Corporation, as represented by Bonifacio C. Sumbilla*", and docketed

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[3] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 705; Par. II (A)(2), Pre-Trial Order dated June 17, 2016, Docket- Vol. II, p. 750.
[4] Exhibit "P-1", Docket – Vol. II, pp. 871 to 897.
[5] Exhibit "P-2", Docket – Vol. II, pp. 898 to 903.
[6] Exhibit "P-3", Docket – Vol. II, pp. 904 to 909.

as Special Civil Action No. Q-11-68723.[7] In said complaint, it was alleged that there is a conflicting claim between Cezar T. Quiambao (Quiambao Group) and Bonifacio C. Sumbilla (Sumbilla Group), as to who has control over the management of petitioner. Hence, the Republic prayed, among others, that a court order be issued directing the defendants to litigate with one another in order to determine who between the opposing groups has the rightful control and management of Stradcom Corporation, including the receipt of computer fees due to said entity.

Subsequently, the RTC QC-Branch 222 issued the Order dated June 21, 2011,[8] directing the defendants (the Quiambao and Sumbilla Groups) in Special Civil Action No. Q-11-68723, to interplead with each other, and in the interest of justice, directed the Republic to deposit with the RTC the subject current amount of its contractual obligations to petitioner.

On July 6, 2011, petitioner, as represented by Cezar T. Quiambao, filed a *"Petition for Certiorari and Prohibition (With application for issuance of a temporary restraining order and/or writ of preliminary injunction)"* before the Supreme Court,[9] docketed as G.R. No. 197311 entitled *"Stradcom Corporation, represented by its President, Cezar T. Quiambao versus Hon. Edgar Dalmacio Santos, in his capacity as Presiding Judge of the Regional Trial Court of Quezon City (Branch 222), Republic of the Philippines, through the Land Transportation Office (represented by Assistant Secretary Virginia Torres) and Bonifacio C. Sumbilla, representing himself to be the representative of Stradcom Corporation"* assailing the said RTC-Branch 222's Order dated June 21, 2011. Private respondent, as represented by Bonifacio C. Sumbilla, filed a *Verified Opposition With Motion To Dismiss* on July 11, 2011.[10] Public respondent, the Republic, likewise filed its *Opposition* Ad Cautelam to the said *Petition* on July 12, 2011.[11] Petitioner, filed a *"Reply (Re: Office of the Solicitor General's Opposition Ad Cautelam dated 11 July 2011)"* on July 26, 2011[12] and a *"Reply With Opposition (To Private Respondent Bonifacio C. Sumbilla's Verified Opposition with Motion to Dismiss dated 11 July 2011)"* on July 25, 2011.[13]

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[7] Exhibit "P-4", Docket – Vol. II, pp. 910 to 925.
[8] Exhibit "P-5", Docket – Vol. II, pp. 926 to 932.
[9] Exhibit "P-6", Docket – Vol. II, pp. 933 to 992.
[10] Exhibit "P-8", Docket – Vol. II, pp. 1025 to 1049.
[11] Exhibit "P-7", Docket – Vol. II, pp. 993 to 1024.
[12] Exhibit "P-9", Docket – Vol. II, pp. 1050 to 1071.
[13] Exhibit "P-10", Docket – Vol. II, pp. 1074 to 1107.

Thereafter, the Supreme Court *En Banc* issued a Notice of Resolution on August 23, 2011,[14] directing RTC-Branch 222, to forward with dispatch the entire records of Q-11-68723 to the Office of the Executive Judge of the RTC of Quezon City for re-raffle to a designated Special Commercial Court therein.

On September 12, 2011, petitioner, as represented by Cezar T. Quiambao, filed a "*Motion for Reconsideration (Re: Resolution dated 23 August 2011)*" before the Supreme Court.[15] In the Notice of Resolution dated January 24, 2012,[16] the High Court denied with finality the said "*Motion for Reconsideration*".

On April 16, 2012, petitioner filed its Annual Income Tax Return (BIR Form No. 1702 or the ITR) with the Bureau of Internal Revenue (BIR) for CY 2011.[17]

On January 8, 2013, Secretary Joseph Emilio A. Abaya of the DOTC issued a "*Memorandum*"[18] addressed to Virginia Torres, Assistant Secretary of the LTO, enjoining the latter to immediately effect payment of the following obligations of petitioner, to wit:

1. ₱317,000,000.00 for the BIR;
2. ₱183,000,000.00 for working capital and other trade payables (in order for petitioner to be able to continue its operations); and
3. ₱500,000,000.00 to banks/creditors of petitioner for overdue accounts and interest payments.

On July 19, 2013, petitioner received the letter dated July 5, 2013, from Assistant Commissioner of Internal Revenue (ACIR) Alfredo V. Misajon,[19] demanding the payment of income tax covering taxable year 2011 in the amount of ₱488,377,342.81, inclusive of interest.

Respondent thereafter issued a *Warrant of Distraint and/or Levy* (WDL) against petitioner on July 31, 2013.[20] On the same date,

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[14] Exhibit "P-11", Docket – Vol. II, pp. 1109 to 1117.
[15] Exhibit "P-12", Docket – Vol. II, pp. 1118 to 1141.
[16] Exhibit "P-13", Docket – Vol. II, pp. 1142 to 1145.
[17] Exhibit "P-14", Docket – Vol. II, pp. 1146 to 1150.
[18] Exhibit "P-23", BIR Records, p. 123.
[19] Exhibit "P-17", BIR Records, p. 121 to 122.
[20] Exhibit "P-18", BIR Records, p. 120.

respondent also issued a *Warrant of Garnishment* (WOG) upon LBP, covering petitioner's bank accounts.[21]

Petitioner filed the letter dated August 8, 2013 to the BIR, Attention: ACIR Misajon, of even date,[22] requesting for the cancellation of the WDL and any warrants of garnishment that may have been issued against petitioner. Allegedly, the issuance thereof was precipitous and in complete derogation of petitioner's right to due process as respondent never issued a Preliminary Assessment Notice (PAN) and/or Final Assessment Notice (FAN).

Upon the advice of ACIR Misajon, petitioner filed the letter dated August 13, 2013,[23] formalizing petitioner's proposal to pay the demanded amount and continue operations at the same time. Respondent, however, found the said proposal unacceptable, as stated in the letter dated August 14, 2013.[24]

On August 29, 2013, the BIR collected the total aggregate amount ₱488,377,342.81 for the year ended December 31, 2011, representing petitioner's alleged deficiency income tax liability for CY 2011 in the amount of ₱385,672,285.00 and the interest thereto in the amount of ₱102,705,057.81, through garnishment.[25] Hence, in a letter dated August 28, 2013, respondent lifted the WOG.[26] Moreover, in a letter dated September 5, 2013, respondent quashed the WDL against petitioner.[27]

Subsequently, on May 15, 2015, petitioner filed with the BIR-Large Taxpayers Excise Audit Division II (LTEAD II) an administrative claim dated May 14, 2015,[28] requesting for the refund, or issuance of a TCC in the amount, of ₱325,381,413.00, allegedly for erroneously collected basic tax and interest which was garnished by the BIR on August 29, 2013, in relation to petitioner's deficiency income tax liability for CY 2011. Petitioner attached to its administrative claim for refund the relevant documents required by laws and pertinent regulations.

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[21] Exhibit "P-19", BIR Records, p. 118.
[22] Exhibit "P-20", Docket – Vol. II, pp. 1207 to 1210.
[23] Exhibit "P-21", Docket – Vol. II, pp. 1214 to 1217.
[24] Exhibit "P-22", Docket – Vol. II, pp. 1218 to 1219.
[25] Payment Form, Exhibit "P-24", BIR Records, p. 115.
[26] Annex "Q" of Petition for Review, Docket – Vol. I, p. 175
[27] Annex "S", Petition for Review, Docket – Vol. I, p. 176
[28] Exhibit "P-25", BIR Records, pp. 228 to 253.

Considering that said claim has not been granted nor denied by respondent, petitioner filed the instant *Petition for Review* on August 25, 2015. [29]

Respondent filed his *Answer* on December 7, 2015,[30] interposing the following Special and Affirmative Defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION BECAUSE THE CLAIM FOR REFUND WAS FILED OUT OF TIME.

6. Petitioner contends that since the Bureau of Internal Revenue (BIR) collected the total amount of P488,377,342.81 representing petitioner's income tax liability for calendar year 2011, through garnishment on 29 August 2013, it has two (2) years from 29 August 2013 or until 28 August 2015 within which to file its claims for refund.

7. With all due respect, respondent submits that the Honorable Court has no jurisdiction over the present case as the claim for refund has already prescribed.

8. As mentioned in Section 204 (C) and 229 of the Tax Code:

'(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as written claim for credit or refund.

xxx xxx'

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[29] Docket – Vol. I, pp. 10 to 41.
[30] Docket – Vol. I. pp. 219 to 235.

> '**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** – no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> xxx xxx'

9. As here, the law does not pertain to actual payment of tax. The date of payment which is the reckoning period for computing the 2-year prescriptive period refers to the date of filing the return pursuant to Section 77 (C), to wit:

> '(C) Time of Payment of the Income Tax. – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner.'

<u>Therefore, the date of payment of tax due cannot go beyond the due date for the filing of return.</u>

10. It was held in *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957 (1991)* that in every claim for refund, the two-year prescriptive period shall commence from the date of filing of the final adjustment return.

11. Consistent therewith, in *COMMISSIONER OF INTERNAL REVENUE vs. COURT OF APPEALS, G.R. No. 117254, January 21, 1999,* the Supreme Court held:

> 'Thus, it can be deduced from the foregoing that, in the context of Sec. 230, which provides for a <u>two-year period of prescription counted "from the date of payment of the tax' for actions for refund of corporate income tax,</u> **the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return.** This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under Sec. 49(a) of the NIRC, **payment is made at the time the return is filed.**" (Emphases supplied)

12. Note that petitioner alleged in its petition that it filed its administrative claim for refund on May 15, 2015 and judicial claim for refund on August 25, 2015. The claims for refund, both administrative and judicial, were filed beyond the 2 year prescriptive period considering that the prescriptive period commenced from 16 April 2012 (the due date for filing petitioner's income tax return for taxable year 2011, 15 April 2012 being a Sunday and 16 April 2012 is the next business date).

13. Even assuming *arguendo*, but without admitting, that there has been no payment of the subject tax on the due date for filing of income tax return for taxable year 2011 on 16 April 2012, the claim for refund has still prescribed.

14. It is noteworthy to state that on 24 January 2013, the Department of Transportation and Communications (DOTC), pursuant to Memorandum dated 8 January 2013, has released the amount of One Billion Pesos (P1,000,000,000.00) from the escrow account to petitioner, thus, as alleged by petitioner, the current provision for income tax on revenue arising from the Land Transportation Office (LTO) transactions for the year ended December 31, 2011 is deemed to be due and payable on 24 January 2013.

15. As alleged, on 24 January 2013, upon the release of funds held under escrow and trust account to petitioner, the tax liability of petitioner became due and payable. Hence, assuming arguendo that the payment of tax was not made on 16 April 2012, the payment of tax shall be considered to be on 24 January 2013, and the counting of the 2 year prescriptive period also commenced from such date.

16. Therefore, petitioner clearly failed to file its claim for refund or issuance of tax credit certificate within the statutory period of two years.

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COURT HAS JURISDICTION, THERE HAS BEEN NO VIOLATION OF DUE PROCESS IN THE INSTANT CASE.

17. Respondent has the legal authority to examine and investigate the returns filed by taxpayers. The Tax Code provides the power of the Commissioner or his duly authorized representatives to investigate and to correct the tax due after the return has been filed. It states:

> '**SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** – In ascertaining the correctness of any return, or in making a return when

> none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry,
>
> XXX XXX'

18. The collection of deficiency income tax on 29 August 2013 was valid and did not violate the due process requirement provided by Section of 228 of the Tax Code.

19. 'The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.' (*RAY PETER O. VIVO vs. PHILIPPINE AMUSEMENT AND GAME CORPORATION, G.R. No. 187854, November 12, 2013.)*

20. The Annual Income Tax Return (ITR) filed by petitioner on 16 April 2012 for the calendar year 2011 has an attachment entitled 'Reconciliation of Net Income per Books against Taxable Income for the Calendar Year Ended December 31, 2011' (ITR Reconciliation). In the said attachment, the revenue from LTO transactions was deducted from the total sales/receipts/fees of petitioner. To quote:

> 'Out of the total sales/receipts/fees of P2,409,595,151 shown in the Company's 2011 financial statements, P1,809,576,241 pertains to revenue arising from Land Transportation Office (LTO) transactions.
>
> The Company is the subject of an interpleader case filed by the LTO with the Quezon City Regional Trial Court (RTC) to determine the ownership rights between two parties claiming to be the owners and management of the Company.
>
> In its Resolutions dated August 23, 2011 and January 24, 2012, the Supreme Court confirmed that the LTO, as payor, was justified in being uncertain as to whom payment of the end user fees should be made. The Supreme Court went on to say on its January 24, 2012 Resolution that 'as the Republic, being the payor, is in a quandary as to which group should be recognized as having legal control over Stradcom and therefore, entitled to payment, it was but appropriate and judicious for the Republic to avail of the Interpleader as a remedy under the Rules' (Stradcom Corporation represented by its President Cezar T. Quiambao vs Dalmacio Santos, G.R. No. 197311, Resolution dated January 24, 2012).

As of April 2, 2012, the date of the auditor's report, the interpleader case is still pending with the Quezon City RTC.

The pending interpleader case, highlighted by the Supreme Court's affirmation of the necessity to determine the Company's rightful representative, prevents the Company's right to the computer fees from being fixed and unconditional. Hence, the Company cannot recognize the computer fees as revenue until and unless it secures a favorable ruling in the interpleader case.

<u>Current provision for income tax on the revenue arising from LTO transactions for the year ended December 31, 2011 as shown in the financial statements is deemed to be due and payable</u> **upon the release of funds held under the escrow and trust account,** which, in turn, is dependent upon the compliance by the contracting parties to the LTO IT Project BOO Agreement and the Amended Escrow Agreement as well as the resolution of the ongoing interpleader case.' (Emphases supplied)

21. Also, in petitioner's Audited Financial Statement (FS) which was received by respondent on 16 April 2012, the current provision for Income Tax is indicated, to wit:

	2011
xxx xxx	
PROVISION FOR INCOME TAX (Note 19)	
Current *	385,672,285
Deferred	(69,995,795)
xxx xxx	

**Representing current provision for income tax on the revenue arising from LTO transactions for the year ended December 31, 2011 as shown in the financial statements is deemed to be due and payable upon the release of funds held under the escrow and trust account, which, in turn, is dependent upon the compliance by the contracting parties to the LTO IT Project BOO Agreement, and the Amended Escrow Agreement, as well as the resolution of the ongoing interpleader case.*

22. In view of the foregoing, assessment prior to collection is not material in the present case.

23. There is no need of assessment notice to petitioner and opportunity to be heard considering that petitioner itself has indicated in its own ITR and in Audited FS that it is obliged to pay

its income tax on revenue arising from LTO transactions for taxable year 2011 when it becomes due and payable upon the release of funds held under escrow and trust account to petitioner.

24. Otherwise stated, petitioner need not be notified of its income tax liability through assessment, because it was petitioner that served notice of its own liability, thus, it cannot point out any violation of due process.

25. As alleged by petitioner, its income tax liability became due and payable on 24 January 2013, when the DOTC, pursuant to a Memorandum dated 8 January 2013, released the amount of One Billion Pesos from the escrow account to petitioner.

26. Moreover, assuming that the income tax liability of petitioner became due and payable on 24 January 2013, respondent in a letter dated July 5, 2013, reiterated the demand for payment of the subject income tax due. To quote:

> 'At this juncture, please allow us to reiterate our demand for the payment of the income tax due as shown in your audited financial statements covering taxable year 2011. <u>You have stated in the ITR reconciliation that the 'current provision for income tax on the revenue arising from LTO transactions for the year ended December 31, 2011, as shown in the financial statements is deemed to be due and payable upon the release of funds held under escrow and trust account</u>, which, in turn, is dependent upon compliance by the contracting parties to the LTO IT project BOO Agreement and the Amended Escrow Agreement as well as the resolution of the on-going interpleader case'
>
> Since the resolution of the issue on ownership could pave the way for the release of the funds, **the payment of the income tax due reflected in the financial statements as 'provision for income tax-current' amounting to P385,672,285.00 can now be collected from your end.**
>
> xxx xxx' (Emphases supplied)

27. There is clear showing that petitioner unjustifiably disregarded its admission of its obligation to pay the deficiency income tax and that petitioner failed to perform its obligation upon the release of funds from the escrow account to petitioner on 24 January 2013.

28. In light of the foregoing, respondent did not violate petitioner's right to due process because assessment was not necessary for petitioner to perform its obligation to pay the deficiency tax due in accordance with its ITR reconciliation and

Audited FS, hence, the collection of tax due was valid for the satisfaction of petitioner's legal obligation.

PETITIONER'S DEFICIENCY INCOME TAX LIABILITY FOR CALENDAR YEAR 2011 HAS BASES IN FACT AND IN LAW.

<u>He who comes to court must come with clean hands</u>

29. As can be gleaned, respondent computed petitioner's deficiency income tax based on the provision for income tax – current as indicated in petitioner's ITR reconciliation and Audited FS.

30. The amount of P385,672,285 indicated in petitioner's Audited FS as provision for income tax – current is the deficiency income tax liability of petitioner for calendar year 2011 which should have been paid on 16 April 2012 had there been no deference on the release of funds from LTO transactions.

31. As indicated in petitioner's Audited FS for 2011, out of the total sales/receipts/fees of P2,409,595,151, the amount of P1,809,576,241 pertains to revenue arising from LTO transactions.

32. Such revenue arising from LTO transactions was expressly recognized by petitioner in its ITR reconciliation and Audited FS.

33. However, due to conflicting claims of the 'Quiambao group' as represented by Cezar Quiambao and the 'Sumbilla group' as represented by Bonifacio Sumbilla, as to the lawful representative of petitioner, the LTO, though willing and ready to perform its obligation to release funds from escrow account, could not determine which account shall the funds be deposited to, and it is only but legal for the Republic of the Philippines through the LTO, to file an interpleader case to settle the conflicting claims.

34. As justified by the Supreme Court, in the Resolution dated 24 January 2012:

> 'Necessarily, there is a conflict of claims in this case. As the Republic, being the payor, is in quandary as to which should be recognized as having legal control over Stradcom and therefore, entitled to payment, it was but appropriate and judicious for the Republic to avail of the Interpleader as a remedy under the Rules.'

35. Furthermore, the interest in the amount of P102,705,057.81 was legally imposed and properly computed.

36. As provided by Section 249 of the Tax Code:

> 'SEC. 249. Interest. –
> (A) In General. – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment** until the amount is fully paid.' (Emphasis supplied)

37. Contrary to the contention of petitioner that collection of interest in the amount of P102,705,057.81 is invalid because the end-user fees should be treated as income only when they were released on 24 January 2013, it is submitted that the end-user fees were considered as income of petitioner in 2011 when petitioner's right to payment arose.

38. The obligation of petitioner to pay its income tax is an obligation which arises from law as provided in Article 1157 and 1158 of the Civil Code of the Philippines. Hence, as provided by law, particularly by the Tax Code, income tax shall be paid on the due date for filing Annual Income Tax Return, which in this case, on 16 April 2012.

39. From the foregoing, as required by law, petitioner's income tax for 2011 became due and demandable on 16 April 2012. It was the legal obligation of petitioner.

40. However, due to said conflicting claims which prevented the release of funds from escrow account, petitioner obliged itself in its ITR and Audited FS that its income tax shall be payable upon the release of funds from escrow.

41. Despite there was no actual release of funds from the escrow account to petitioner due to the pending interpleader case, LTO was willing and ready to perform its obligation to release the funds from escrow, hence, LTO's obligation was deemed fulfilled as the revenue arising from LTO transactions was, in fact, expressly recognized by petitioner itself.

42. Note that it was through the fault of petitioner that the LTO was not able to release the funds to petitioner. Had there been no conflicting claims as to the lawful representative of petitioner, the funds as payment for services rendered by petitioner would have been released from the escrow account to petitioner.

43. 'The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or payment, which characterizes the cash method of accounting. Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability." (*COMMISSIONER OF INTERNAL REVENUE vs. ISABELA CULTURA CORPORATION, G.R. No. 172231, February 12, 2007.*)

44. Clearly, the taxpayer in this case is not Quiambao group nor Sumbilla group, but petitioner Stradcom Corporation. Thus, failure to deposit to the account of Quiambao group or Sumbilla group the payment for the services rendered by petitioner does not necessarily mean that the right of Stradcom to receive the payment has not become fixed and unconditional.

45. Stated otherwise, the right of Stradcom Corporation to receive the payment has become fixed and unconditional notwithstanding the failure to deposit the payment to the account of Quiambao group or Sumbilla group.

46. Stradcom Corporation is a juridical entity separate and distinct from the persons composing it. Thus, the obligation of LTO to remit payment became uncontested and certain and the right of Stradcom Corporation to receive payment became fixed and unconditional as of 2011. It is not the Quiambao group nor the Sumbilla group who is entitled to payment, but Stradcom Corporation.

47. 'A corporation has a personality distinct and separate from its individual stockholders or members. Being an officer or stockholder of a corporation does not make one's property also of the corporation and vice-versa, for they are separate entities. Shareowners are in no legal sense the owners of corporate property (or credits) which is owned by the corporation as a distinct legal person. As a consequence of the separate juridical personality of a corporation, <u>the corporate debt or **credit** is **not** the debt or credit of the stockholder, **nor** is the stockholder's debt or **credit** that of the corporation."</u> *(GOOD EARTH EMPORIUM INC., AND LIM KA PING vs. HONORABLE COURT OF APPEALS, G.R. No. 82797, February 27, 1991)*

48. Considering that the income accrued as of 2011, the income tax liability should have been paid on 16 April 2012, and in case of non-payment of tax due on such date, interest is also computed from such date.

IT IS INCUMBENT UPON PETITIONER TO PROVE THAT IT IS ENTITLED TO THE REFUND SOUGHT BECAUSE A CLAIM FOR REFUND IS NOT IPSO FACTO GRANTED UPON FILING OF CLAIM.

49. The taxpayer has the burden of proving that it has the right to claim for refund. As provided by Section 1, Rule 131 of the Rules of Court:

> '**Section 1.** *Burden of proof.* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

ND

> 50. Finally, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

On December 22, 2015, petitioner filed a *Motion for Extension of Time to File Reply (Re: Respondent's Answer dated December 4, 2015)*,[31] which the Court granted in the Order dated January 6, 2016.[32] Thereafter, petitioner filed a second *Motion for Additional Time to File Reply (Re: Respondent's Answer dated December 4, 2015)* on January 13, 2016[33], which was granted by the Court in the Resolution dated January 22, 2016.[34]

Petitioner filed its *Reply (Re: Respondent's Answer dated 4 December 2015)* on January 22, 2016,[35] alleging among others, that this Court has jurisdiction over the instant case; that petitioner is entitled to due process whereby it is entitled to be informed of the facts and law upon which the assessments against it are based; and the deficiency tax on the end-user fees became due only when these fees were released by the government. Said Reply was noted by the Court on January 27, 2016.[36]

In the meantime, the Pre-Trial Conference was held on April 14, 2016.[37] On May 5, 2016, the parties filed their *Joint Stipulation of Facts and Issues*,[38] which was approved by the Court in its Resolution dated May 13, 2016.[39] Thereafter, the Court issued a Pre-Trial Order on June 17, 2016.[40]

During trial, petitioner presented the following witnesses : Atty.

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[31] Docket – Vol. I, pp. 243 to 245.
[32] Docket – Vol. I, p. 246.
[33] Docket – Vol. I, pp. 247 to 249.
[34] Docket – Vol. I, p. 252.
[35] Docket – Vol. I, pp. 253 to 262.
[36] Minute Resolution dated January 27, 2016, Docket – Vol. I, p. 263.
[37] Notice of Pre-Trial Conference dated December 14, 2015, Docket – Vol. I. pp. 238 to 239.
[38] Docket – Vol. II, pp. 704 to 711.
[39] Docket – Vol. II, p. 744.
[40] Docket – Vol. II, pp. 749 to 756.

Eric Gene C. Pilapil[41]; Rodolfo B. Sta. Maria[42]; and the Court commissioned ICPA Jerome Antonio B. Constantino[43].

Upon conclusion of its presentation of evidence, petitioner filed its *Formal Offer of Evidence* on November 7, 2016.[44]

Respondent filed his *Comment with Manifestation (Re: Petitioner's Formal Offer of Evidence)* on November 28, 2016[45] alleging, among others, that respondent has no objection to the admission of petitioner's enumerated exhibits, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents as required under Section 4, Rule 12 of the Revised Rules of the Court of Tax Appeals; and without necessarily admitting the truth of the contents, relevancy, materiality, probative value of said evidence and the validity of the purposes for which said exhibits were offered. Moreover, respondent further manifests that to date, no report of investigation has been issued by the revenue officers authorized to conduct investigation of this case, hence, no witness will be presented for respondent. Thus, in the Order dated January 26, 2017[46], the Court cancelled the hearing set on January 31, 2017 supposedly scheduled for the presentation of respondent's evidence.

Thereafter, the Court resolved petitioner's Formal Offer of Evidence in the Resolution dated March 6, 2017[47] admitting most of petitioner's evidence and directed the parties to file their respective Memorandum within thirty (30) days from notice.

Subsequently, on March 23, 2017, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated July 27, 2016)*,[48] praying for the admission of petitioner's denied exhibits. In the Resolution dated April 3, 2017,[49] the Court ordered respondent to file his comment on the said motion within ten (10) days from notice.

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[41] Minutes of Hearing and Order, both dated July 5, 2016, Docket – Vol. II, pp. 771 to 774.
[42] Minutes of Hearing and Order, both dated August 2, 2016, Docket – Vol. II, pp. 781 to 784.
[43] Minutes of Hearing and Order, both dated September 6, 2016, Docket – Vol. II, pp. 819 to 824.
[44] Docket – Vol. II, pp. 836 to 870.
[45] Docket – Vol. III, pp. 1250 to 1252.
[46] Docket – Vol. III, p. 1262.
[47] Docket – Vol. III, pp. 1266 to 1275.
[48] Docket – Vol. III. pp. 1276 to 1287.
[49] Docket – Vol. III, p. 1298.

Meanwhile, respondent filed a *Motion to Defer Filing of Memorandum* on April 5, 2017,[50] while petitioner filed a *Motion for Extension of Time to File Memorandum* on April 7, 2017.[51] Both motions were granted by the Court, per its Order dated April 11, 2017.[52]

Pending resolution of its *Motion for Partial Reconsideration*, petitioner filed its *Memorandum* on April 12, 2017.[53]

Respondent filed the required *Comment* on April 17, 2017.[54] Correspondingly, petitioner's *Motion for Partial Reconsideration (Re: Resolution dated July 27, 2016)* was submitted for resolution on April 20, 2017.[55] On June 28, 2017, the Court partially granted petitioner's *Motion for Partial Reconsideration.*

Respondent filed a *Motion for Extension of Time to File Memorandum* on July 10, 2017,[56] praying for additional fifteen (15) days from July 9, 2017 or until July 24, 2017, to file his *Memorandum.* The said *Motion* was granted by the Court on July 13, 2017.[57] Thereafter, respondent filed his *Memorandum* on July 21, 2017.[58] The case was then declared submitted for decision on August 4, 2017.[59]

Hence, this Decision.

THE ISSUES

The parties presented the following main issues and sub-issues for this Court's resolution,[60] to wit:

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[50] Docket – Vol. III, p. 1299 to 1301.
[51] Docket – Vol. III, pp. 1303 to 1305.
[52] Docket – Vol. III, p. 1306.
[53] Docket – Vol. III. pp. 1314 to 1362.
[54] Docket – Vol. III, pp. 1308 to 1310.
[55] Resolution dated April 20, 2017, Docket – Vol. III, p. 1313.
[56] Docket – Vol. III, pp. 1371 to 1373.
[57] Order dated July 13, 2017, Docket – Vol. III, p. 1375.
[58] Docket – Vol. III, pp. 1377 to 1389.
[59] Resolution dated August 4, 2017, Docket – Vol. III. p. 1392.
[60] Par. II (B) and (C), Pre-Trial Order dated June 17, 2016, Docket – Vol. II, pp. 750 to 751; JSFI, Docket – Vol. II. p. 705.

Main Issues:

"1. Whether the Honorable Court has jurisdiction over the instant case; and

2. Whether petitioner is entitled to a refund or TCC in the total amount of Php325,381,413.00 representing basic tax and interest which was garnished by respondent on 29 August 2013."

Sub-issues:

"1. Whether respondent violated petitioner's right to due process;

2. Whether respondent was correct that petitioner's income tax due for CY 2011 was really Php385,672,285.00;

3. Whether respondent was correct in imposing interest starting from 16 April 2012; and

4. Whether the end-user fees should have been treated as income for tax accounting purposes prior to its release in 2013."

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the case considering that the BIR collected the total amount of ₱488,377,342.81 representing petitioner's alleged income tax liability for CY 2011, through garnishment on August 29, 2013. Hence, it had until August 28, 2015, within which to file its claim for refund pursuant to Sections 204(C) and 229 of the NIRC.

The garnishment made by respondent is allegedly null and void for being violative of the due process requirements under Section 228 of the NIRC and Revenue Regulations (RR) No. 12-99, as amended; and there was no valid justification for respondent to garnish petitioner's bank account without the prior issuance of both a *Preliminary Assessment Notice* (PAN) and a *Final Assessment Notice* (FAN).

As to the collection of interest in the amount of ₱102,705,057.81, the same is allegedly invalid because the transaction fees should be treated as income for tax accounting purposes only when they were released on January 24, 2013; that no income may be recognized by the latter prior to the release of the end-user fees since it did not possess a clear right to receive the same while it was held under escrow and the subject of the interpleader case. Under the terms of the Escrow Agreement, petitioner will only be entitled to the funds upon written order of the LTO to the LBP to release the funds. Hence, prior to this written command, petitioner may not enjoy the benefits of the income nor direct the use thereof. Considering that the income tax for CY 2011 was not due and demandable until the release of the end-user fees, respondent should not have imposed interest on petitioner's income tax liability until it was released from the escrow account.

According to petitioner, the correct computation of petitioner's income tax liability for CY 2011 is ₱145,459,928.00 and the corresponding interest that must be due is ₱17,536,002.00, which must be computed from January 24, 2013 (*i.e.*, the date when the end-user fees were released) to August 29, 2013 (*i.e.*, date of garnishment).

Finally, petitioner submits that the amount garnished by respondent exceeds petitioner's correct income tax due for CY 2011; and that respondent erred when it based petitioner's alleged deficiency income tax liability (exclusive of interest) for CY 2011 solely on the "provision for income tax-current" indicated in petitioner's audited financial statements.

Respondent's counter-arguments:

Respondent counter-argues that the Court has no jurisdiction over the instant petition because the claim for refund was filed out of time as the claims for refund, both administrative and judicial, were filed beyond the 2-year prescriptive period. Allegedly, the prescriptive period commenced from April 16, 2012 (the due date for filing petitioner's income tax return for taxable year 2011, April 15, 2012 being a Sunday and April 16, 2012 is the next business date).

Assuming without admitting that there has been no payment of the subject tax on the due date for filing of income tax return for taxable year 2011 on April 16, 2012, the claim for refund is allegedly still barred by prescription, if the date of payment of tax would be counted on January 24, 2013, when the DOTC released the amount of One Billion Pesos from the escrow account to petitioner.

Assuming further that the Court has jurisdiction, there has been no violation of due process in the instant case as there is allegedly no need of assessment notice to petitioner and opportunity to be heard, considering that petitioner itself has indicated, in its own ITR and in its audited financial statements, that it is obliged to pay its income tax on revenue arising from LTO transactions for taxable year 2011 when it becomes due and payable upon the release of funds held under escrow and trust account to petitioner. Allegedly, petitioner need not be notified of its income liability through assessment, because it was petitioner that served notice of its own liability, and thus, it cannot point out any violation of due process.

The assessment for deficiency income tax liability for calendar year 2011 against petitioner has bases in fact and in law as the same was computed based on the provision for income tax – current, as indicated in petitioner's ITR reconciliation and audited financial statements.

As regards the imposition of interest in the amount of ₱102,705,057.81, the same was legally imposed and properly computed. The obligation of petitioner to pay its income tax is an obligation which arises from law as provided in Article 1157 and 1158 of the New Civil Code of the Philippines. Considering that the income accrued as of 2011, petitioner's income tax for 2011 became due and demandable on April 16, 2012 and the interest is also computed from such date.

Finally, respondent contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of the claim.

THE COURT'S RULING

We find merit in the instant *Petition for Review.*

The Court has jurisdiction over the instant case.

Respondent claims that the Court has no jurisdiction over the instant petition because the claims for refund, both administrative and judicial, were filed beyond the 2-year prescriptive period, considering that the said period commenced from April 16, 2012 (the due date for filing petitioner's ITR for taxable year 2011). He invokes the ruling of the Supreme Court in *ACCRA Investments Corporation vs. Court of Appeals, et al.*,[61] and *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals, and Bank of the Philippine Islands*,[62] (collectively referred to herein as the "*ACCRA* and *BPI* cases").

We disagree.

Section 204(C) and 229 of the NIRC of 1997 provides, *viz*:

> "SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two (2) years after the payment of the tax</u> or penalty:** *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphases and underscoring supplied)*
>
> "SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any

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[61] 204 SCRA 957 (1991).
[62] G.R. No. 117254, January 21, 1999.

> penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases and underscoring supplied)*

Clearly from foregoing legal provisions, a claim for the refund of erroneously or illegally assessed or collected tax should be made **within two (2) years from the date the tax was paid**. In other words, the two (2)-year prescriptive period commences to run from the time the refund is ascertained, ***i.e.*, the date such tax was paid**, and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes.[63]

Furthermore, it can easily be deduced from the aforequoted Sections 229 that both administrative and judicial claims should be brought within the said two (2)-year prescriptive period. Otherwise, they shall forever be barred.[64]

Considering therefore that petitioner paid the amount of ₱488,377,342.81 (which supposedly includes part of the amount being refunded in this case) on August 29, 2013,[65] the two (2) year prescriptive period should be reckoned from such date. Counting from the said date, petitioner had until August 29, 2015 to file both its administrative and judicial claims with the BIR and this Court, respectively.

And it appearing that petitioner filed its administrative claim on

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[63] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

[64] *CE Luzon Geothermal Power Co., Inc. vs Commissioner of Internal Revenue,* G.R. No. 197526 & 199676-77, July 26, 2017.

[65] Exhibit "P-24", BIR Records, p. 115.

May 15, 2015,[66] and its judicial claim on August 25, 2015,[67] petitioner fulfilled the requirements of the law. Such being the case, this Court has acquired jurisdiction to entertain the present case.

Respondent's reliance on the ruling in the *ACCRA* and *BPI* cases to the effect that the two (2)-year prescriptive period shall commence from the date of filing of the final adjustment return is misplaced. The pivotal issues in said cases arose from the fact that final adjustment returns were filed by the taxpayers-claimants, and it was from the filling date of said returns that the two-year prescriptive period was reckoned by the taxpayers-claimants.

In fact, in the *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*,[68] the Supreme Court elucidated on the *ratio decidendi* of its ruling in the *ACCRA* and *BPI* cases, *inter alia,* to wit:

> "In this case, Metrobank insists that the filing of its administrative and judicial claims on December 27, 2002 and September 10, 2003, respectively, were well-within the two (2)-year prescriptive period. Citing *ACCRA Investments Corporation v. Court of Appeals*,[69] *CIR v. TMX Sales, Inc.*,[70] *CIR v. Philippine American Life Insurance, Co.*,[71] and *CIR v. CDCP Mining Corporation*,[72] Metrobank contends that the aforesaid prescriptive period should be reckoned not from April 25, 2001 when it remitted the tax to the BIR, but rather, from the time it filed its Final Adjustment Return or Annual Income Tax Return for the taxable year of 2001, or in April 2002, as it was only at that time when its right to a refund was ascertained.
>
> **Metrobank's contention cannot be sustained.**
>
> As correctly pointed out by the CIR, **the cases cited by Metrobank involved corporate income taxes, in which the corporate taxpayer is required to file and pay income tax on a quarterly basis, with such**

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[66] Exhibit "P-25", BIR Records, pp. 228 to 253.
[67] Docket – Vol. I, p. 10.
[68] G.R. No. 182582, April 17, 2017.
[69] 281 Phil. 1060 (1991).
[70] 282 Phil. 199 (1992).
[71] 314 Phil. 349 (1995).
[72] 362 Phil. 349 (1995).

> **payments being subject to an adjustment at the end of the taxable year.** As aptly put in *CIR v. TMX Sales, Inc.* 'payment of quarterly income tax should only be considered [as] mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. x x x Consequently, the two-year prescriptive period x x x should be computed from the time of filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax.' **Verily, since quarterly income tax payments are treated as mere 'advance payments' of the annual corporate income tax, there may arise certain situations where such 'advance payments' would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.**" *(Emphases supplied)*

As gleaned from the foregoing jurisprudential pronouncement, the rule that the reckoning of the two (2)-year prescriptive period should be from the time of the filing of the final adjustment return or annual ITR, contemplates claims for refund which are ascertained from the date of said filing, because it is only at that point that the corporate taxpayer will be able to determine whether or not it has paid an amount exceeding its annual income tax liability, taking into consideration the previously made quarterly "advance payments".

The instant case contemplates a totally different scenario. Thus, the aforementioned jurisprudence invoked by respondent cannot be applied in this case.

Herein petitioner's claim for refund arose, or was determined, not through the filing of a final adjustment return or annual ITR, but through payment by petitioner of the amount demanded by respondent, after the latter garnished petitioner's bank account.

Moreover, to rule in the instant case, that the filing date of the final adjustment return or annual ITR should be the reckoning date of the two (2)-year prescriptive period, would result in absurdity or unreasonableness. This is so because We would be allowing a situation wherein the reckoning of the two (2)-year prescriptive period to claim a refund will be pegged from April 16, 2012 (the date that petitioner filed its Annual Income Tax Return for CY 2011[73]), while the tax sought to be refunded had yet to be collected by the government on said date, as the said subject tax was only paid (*i.e.*, on August 29, 2013[74]), which is clearly after the filing of the said return.

Needless to state, a more important rule of statutory construction dictates that laws should be construed in a manner that avoids absurdity or unreasonableness.[75]

Respondent violated petitioner's right to due process when he failed to conduct an informal conference and issue a PAN and FAN.

Petitioner avers that the garnishment made by respondent is null and void for being violative of the due process requirements under Section 228 of the NIRC and Revenue Regulations (RR) No. 12-99, as amended; and that there was no valid justification for respondent to garnish petitioner's bank account without the prior issuance of both a PAN and a FAN.

We agree with petitioner.

Section 228 of the NIRC of 1997 provides as follows:

> "SECTION 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:

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[73]Petitioner's Annual Income Tax Return (ITR) filed with the BIR for CY 2011, Exhibit "P-14", Docket – Vol. II, pp. 1146 to 1150
[74] Exhibit "P-24", BIR Records, p. 115.
[75] *Microsoft Corporation vs. Manansala, et al.*, G.R. No. 166391, October 21, 2015.

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

xxx xxx xxx" *(Emphasis supplied)*

To implement the provisions of Section 228 of the NIRC of 1997, Revenue Regulation (RR) No. 12-99 was issued which specify the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of Section 3 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:

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, **for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.** 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, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, <u>the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment</u>**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (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.

3.1.3 *Exceptions to Prior Notice of Assessment.* — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

> (i) When the finding for any deficiency tax is the result of a mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
>
> (ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries, and spare parts, has been sold, traded or transferred to non-exempt persons."

3.1.4 Formal Letter of Demand and Assessment Notice. — **The formal letter of demand and assessment notice <u>shall</u> 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.** xxx." *(Emphases and underscoring supplied)*

Based on the foregoing provisions, there are certain due process requirements which must be fulfilled by the BIR in the issuance of an assessment, to wit: (1) a notice of informal conference; (2) a PAN, unless a pre-assessment notice is not required under the law; and (3) a FAN. These notices are jurisprudentially recognized as indeed part of due process.

As for the notice of informal conference, the Supreme Court said, in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* ("*Fitness By Design* case")[76], *viz*:

"**The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a**

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[76] G.R. No. 215957, November 9, 2016.

> **clear definite requirement.** Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.
>
> **Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice of informal conference.** The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for 'Informal Conference.' **The informal conference gives the taxpayer an opportunity to present his or her side of the case.**
>
> xxx xxx xxx." *(Emphases supplied)*

With regard to the issuance of a PAN, In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[77] the High Court ruled:

> "**Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes <u>through the sending of a PAN</u>.** 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.
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> xxx xxx xxx
>
> **From the provision quoted above, it 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**

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[77] G.R. No. 185371, December 8, 2010.

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." *(Emphases supplied)*

And as regards the issuance of a FAN, in *Commissioner of Internal Revenue vs. Menguito,*[78] the Supreme Court decreed as follows:

"xxx. **The issuance of a valid formal assessment is a substantive prerequisite to tax collection**, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. **Due process requires that it must be served on and received by the taxpayer.**" *(Emphases supplied)*

In the instant case, respondent, in effect, admits that the BIR did not issue a notice of informal conference, a PAN, and a FAN to petitioner. However, respondent contends that there has been no violation of due process in the instant case. Allegedly, there is no need of assessment notice to petitioner and opportunity to be heard, because petitioner itself indicated, in its own ITR and in its audited financial statements, that it is obliged to pay its income tax on revenue arising from LTO transactions for taxable year 2011 when it becomes due and payable, upon the release of funds held under escrow and trust account to petitioner. Thus, petitioner need not be notified of its income liability through assessment, because it was petitioner that served notice of its own liability, and hence, it cannot point out any violation of due process.

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[78] G.R. No. 167560, September 17, 2008, citing *Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, 498 SCRA 126 and *Commissioner of Internal Revenue v. Pascor Realty & Devt. Corp.,* 368 Phil. 714 (1999).

Respondent is certainly mistaken.

The NIRC of 1997 and RR No. 12-99 do not provide any exception to the issuance of a notice of informal conference and FAN. Notably, while Section 228 of the same law and Section 3.1.3 of RR No. 12-99 provide certain exceptions to the issuance of a PAN, the instant case does not fall under any of the same. Thus, the reasons provided by respondent do not justify the non-issuance of the said notice of informal conference, PAN, and FAN, to petitioner.

In fact, as a corollary to the said Section 228 and the provisions of RR No. 12-99, Section 6(A) of the NIRC of 1997 provides as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—*
>
> (A) *Examination of Return and Determination of Tax Due.—* **<u>After a return has been filed</u> as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer <u>and the assessment of the correct amount of tax</u>**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
>
> xxx xxx xxx." *(Emphases supplied)*

It is clear from the foregoing that after a return has been filed by the taxpayer, it behooves respondent or his duly authorized representative to authorize the examination of the said taxpayer **and the assessment of the correct amount of tax**. In other words, the examination of the taxpayer and the assessment of the correct amount of tax **must occur <u>after</u> the tax return is filed**. Such being the case, there can be no valid basis for respondent's contention that considering that there is an indication, in petitioner's ITR and audited financial statements, that it is obliged to pay its income tax on the revenue arising from LTO transactions for taxable year 2011 when it becomes due and payable, there is no more need of an assessment notice to petitioner and opportunity to be heard.

To stress, in the *Fitness By Design* case, the Supreme Court further declared:

> "Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. **Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. <u>Tax collection should be premised on a valid assessment</u>, which would allow the taxpayer to present his or her case and produce evidence for substantiation.**
>
> The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to ₱10,647,529.69, inclusive of surcharges and interest for lack of due process. **Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect.**
>
> Taxes are the lifeblood of government and should be collected without hindrance. **However, <u>the collection of taxes should be exercised 'reasonably and in accordance with the prescribed procedure.'</u>**
>
> The essential nature of taxes for the existence of the State grants government with vast remedies to ensure collection. **However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.**" *(Emphases supplied)*

In fine, considering respondent's utter disregard of the due process requirements in this case, petitioner is entitled to its refund claim.

With the foregoing findings, the Court deems it unnecessary to address the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **THREE HUNDRED TWENTY FIVE MILLION THREE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED TWELVE PESOS AND EIGHTY ONE CENTAVOS (₱325,381,412.81)**, representing illegally collected income tax for taxable year 2011.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division