Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

IZONE TECHNOLOGIES PHILIPPINES, Petitioner,	**CTA Case No. 8696** For: Assessment
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 29 2019 ; 10:22am

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DECISION

MINDARO-GRULLA, J.:

The instant case was deemed submitted for decision on April 30, 2018.

This refers to a Petition for Review[1] filed on August 15, 2013 by Izone Technologies Philippines, seeking the annulment of the issued assessments and the suspension of the collection of the alleged deficiency expanded withholding tax (EWT) and deficiency documentary stamp tax (DST) including interests, surcharges and penalties, for taxable year (TY) 2008.

Petitioner Izone Technologies Philippines is a corporation duly organized and existing under and by virtue of Philippines laws. It holds office at Suite 3004, 30/F Antel Global Corporate Center, Julia Vargas Ave., Ortigas, Pasig City, Metro Manila.[2]

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[1] Docket vol. I, pp. 14-28.
[2] Par. 1, Facts, Amended Pre-Trial Order, Docket vol. II, pp. 1087-1088.

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On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner received a Letter of Authority (LOA) from the Bureau of Internal Revenue for the purpose of investigating its tax liabilities for TY 2008.[3]

Thereafter, the BIR issued a Preliminary Assessment Notice (PAN) dated December 26, 2011, which was received by petitioner on January 9, 2012.[4] Petitioner sent a letter[5] dated February 17, 2012 to the BIR and submitted its supporting documents.

On April 10, 2012, petitioner received a letter[6] dated March 19, 2012 from Jonas DP. Amora, OIC-Regional Director of BIR Revenue Region No. 7, informing it that the BIR has issued the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) against petitioner. The four (4) FANs[7] and FLD[8] assessed petitioner for alleged deficiency EWT in the amount of ₱658,572.69, deficiency DST in the amount of ₱139,445.54, deficiency fringe benefits tax (FBT) in the amount of ₱195,199.14, and compromise penalty in the amount of ₱12,000.00, totaling ₱1,005,217.37, for TY 2008, broken down as follows:[9]

	Basic Tax	**Surcharge**	**Interest**	**Compromise Penalty**	**Total**
Deficiency EWT	₱ 408,807.88	₱ -	₱ 249,764.81	₱ -	₱ 658,572.69
Deficiency DST	74,756.00	18,689.00	46,000.54	-	139,445.54
Deficiency FBT	125,436.07	-	69,763.07	-	195,199.14
Non-/Late filing/ payment of DST				12,000.00	12,000.00
Total	**₱608,999.95**	**₱18,689.00**	**₱365,528.42**	**₱12,000.00**	**₱1,005,217.37**

3 Par. 3, Facts, Amended Pre-Trial Order, Docket vol. II, p. 1088.
4 Par. 4, Facts, Amended Pre-Trial Order, Docket vol. II, p. 1088.
5 Exhibit "P-1", Docket vol. I, p. 408.
6 Exhibit "P-2", Docket vol. I, p. 409.
7 Exhibits "P-3" to "P-6", Docket vol. I, pp. 410-413.
8 Exhibits "P-7" to "P-8, Docket vol. I, pp. 414-416.
9 Exhibit "P-7", Docket vol. I, pp. 414-415.

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Petitioner then protested the FAN and the FLD on April 12, 2012.[10]

Petitioner sent letters dated September 13, 2012 and January 11, 2013 to respondent to follow up on its Protest. Respondent, however, failed to reply.

On July 23, 2013, petitioner was informed that its account at Banco De Oro (BDO) was placed under garnishment when the bank received a Notice of Garnishment dated July 23, 2013.[11]

Petitioner considered the order of garnishment as a denial of its protest. Thus, on August 15, 2013, petitioner filed the instant Petition for Review[12].

On September 25, 2013, petitioner filed a Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy[13].

On November 22, 2013, a hearing on the Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy was held.[14] Petitioner presented as its witness its Chief Accountant, Ms. Jennifer Villareal[15].

Within the extended time granted by the Court,[16] respondent filed his Answer[17] on November 22, 2013, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

"22. The Honorable CTA has no jurisdiction over the Petition for Review. The herein Assessment has become

[10] Exhibits "P-9" and "P-10", Docket vol. I, pp. 417-418.
[11] Exhibit "P-13", Docket vol. I, p. 422.
[12] Docket vol. I, pp. 14-28.
[13] Docket vol. I, pp. 69-74.
[14] Minutes of the Hearing dated November 22, 2013, Docket vol. I, pp. 218-221.
[15] Judicial Affidavit of (Jennifer Villareal), Docket vol. I, pp. 94-107.
[16] Order dated September 26, 2013 and Resolution dated November 7, 2013, Docket vol. I, pp. 81 and 88, respectively.
[17] Docket vol. I, pp. 222-225.

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final and incontestable. The instant petition was filed beyond the 180 day period provided under the provisions of Section 228 of the NIRC of 1997, as amended. The Notice of Garnishment is in fact a preliminary step towards the collection of a delinquent tax due to the government and is not the Final Decision on Disputed Assessment."

Petitioner filed its Formal Offer of Evidence for the Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy[18] on November 27, 2013. This was resolved by the Court in the Resolution[19] dated March 20, 2014 and Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-9-1", "P-10", "P-10-1", "P-11", "P-11-1", "P-12", "P-12-1", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-18-1", "P-18-2", "P-18-3", "P-18-4", "P-18-5", "P-18-6", "P-18-7", "P-18-8", "P-18-9", "P-18-10", "P-18-11", "P-18-12", "P-18-13", "P-18-14", "P-18-15", "P-18-16", "P-18-17", "P-18-18", P-18-19", "P-18-20", "P-18-21", "P-18-22", "P-18-23", "P-18-24", "P-18-25", "P-18-26", "P-18-27", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-39", "P-40", "P-46", "P-52", "P-53", and "P-59" were admitted into evidence. However, the Court denied the admission of Exhibit "P-38" for failure to correspond to the document found in the records of this case; Exhibit "P-64" for failure to submit the original for comparison and for not being identified during trial; and Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-45", "P-47", "P-48", "P-49", "P-50", "P-51", "P-54", "P-55", "P-56", "P-57", "P-58", "P-60", "P-61", "P-62", "P-63", "P-65", and "P-66" for not being identified during trial.

Petitioner filed a Motion for Partial Reconsideration[20] through registered mail on April 22, 2014. In the Resolution[21] dated July 8, 2014, the Court partially granted petitioner's motion and set a hearing on September 2, 2014 for the presentation and identification of the denied exhibits.

On September 23, 2014, petitioner filed an Amended Formal Offer of Evidence for the Previously Denied Exhibits of Petitioner[22].

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[18] Docket vol. I, pp. 238-249.
[19] Docket vol. I, pp. 561-563.
[20] Docket vol. I, pp. 585-592.
[21] Docket vol. I, pp. 606-608
[22] Docket vol. II, pp. 775-786.

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This was resolved by the Court in the Resolution[23] dated November 13, 2014, and Exhibits "P-35", "P-40", "P-62", "P-66", and "P-66-1" were admitted into evidence. However, the Court still denied the admission of Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-46", "P-47", "P-48", "P-49", "P-50", "P-53", "P-54", "P-55", "P-56", "P-57", "P-59", "P-60", "P-61", "P-63", and "P-65" for failure to submit the duly marked exhibits.

Petitioner filed a Partial Motion for Reconsideration[24] through registered mail on December 4, 2014, praying for the admission of Exhibits "P-36", "P-37", "P-41", "P-42", "P-43", "P-44", "P-46", "P-47", "P-48", "P-49", "P-50", "P-53", "P-54", "P-55", "P-56", "P-57", "P-59", "P-60", "P-61", "P-63" and "P-65". This was denied by the Court for lack of merit in the Resolution[25] dated April 8, 2015.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Document:
P-1	Feb 17, 2012 transmittal letter to Jonas Amora
P-2	March 19, 2012 BIR Letter notifying iZone of the formal assessment, received on April 10, 2012
P-3	Assessment notice dated January 13, 2012 for Doc stamps for P139,445.54
P-4	Assessment notice dated January 13, 2012 for Fringe Benefits Tax for P195,199.14
P-5	Assessment notice dated January 13, 2012 for Income (withholding tax) for P658,572.69
P-6	Assessment notice dated January 13, 2012 for Doc stamps for P12,000.00
P-7	January 5, 2012 formal letter of demand
P-8	Details of discrepancies in connection with the Jan 5, 2012 formal letter of demand
P-9 P-9-1	Protest letter dated April 12, 2012 for documentary stamps tax Stamp received April 12, 2012
P-10 P-10-1	Protest letter dated April 12, 2012 for withholding taxes for general professional partnerships and fringe benefits tax Stamp received April 12, 2012
P-11 P-11-1	Follow up letter dated September 13, 2012 Date received September 19, 2012
P-12	Follow up letter dated Jan 11, 2013

[23] Docket vol. II, pp. 860-861.
[24] Docket vol. II, pp. 871-879.
[25] Docket vol. II, pp. 885-887.

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P-12-1	Date received Jan. 11, 2013
P-13	BDO letter informing iZone of the garnishment and levy
P-14	Fringe benefits tax return for 2008
P-15	Deposit slip for the fringe benefits tax 2008
P-16	Schedule of Fringe benefits tax submitted with the return
P-17	Service Agreement between Saphie Number One Limited and iZone
P-18	Official receipts issued by iZone to Saphie Number One Limited, a customer of iZone Philippines with OR No. 0003
P-18-1	Saphie Receipt with OR No. 0004
P-18-2	Saphie Receipt with OR No. 0005
P-18-3	Saphie Receipt with OR No. 0006
P-18-4	Saphie Receipt with OR No. 0007
P-18-5	Saphie Receipt with OR No. 0008
P-1-6	Saphie Receipt with OR No. 0009
P-18-7	Saphie Receipt with OR No. 0010
P-18-8	Saphie Receipt with OR No. 0011
P-18-9	Saphie Receipt with OR No. 0012
P-18-10	Saphie Receipt with OR No. 0013
P-18-11	Saphie Receipt with OR No. 0014
P-18-12	Saphie Receipt with OR No. 0015
P-18-13	Saphie Receipt with OR No. 0016
P-18-14	Saphie Receipt with OR No. 0017
P-18-15	Saphie Receipt with OR No. 0018
P-18-16	Saphie Receipt with OR No. 0019
P-18-17	Saphie Receipt with OR No. 0020
P-18-18	Saphie Receipt with OR No. 0021
P-18-19	Saphie Receipt with OR No. 0022
P-18-20	Saphie Receipt with OR No. 0023
P-18-21	Saphie Receipt with OR No. 0024
P-18-22	Saphie Receipt with OR No. 0025
P-18-23	Saphie Receipt with OR No. 0026

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P-18-24	Saphie Receipt with OR No. 0027
P-18-25	Saphie Receipt with OR No. 0028
P-18-26	Saphie Receipt with OR No. 0029
P-18-27	Saphie Receipt with OR No. 0030
P-19	Official receipt issued to iZone by Manabat Amper & Co. (accounting firm) a general professional partnership, dated May 28, 2008 with OR No. 10269
P-20	Official receipt issued to iZone by Manabat Amper & Co. (accounting firm) a general professional partnership, dated May 28, 2008 with OR No. 10477
P-21	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Jan 31 08 with OR No. 10548
P-22	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Feb 26 08 with OR No. 10978
P-23	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated April 30 08 with OR No. 11889
P-24	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Jun 13 08 with OR No. 12656
P-25	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated July 18 08 with OR No. 12937
P-26	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated July 18 08 with OR No. 12935
P-27	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated July 18 08 with OR No. 12936
P-28	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Aug 28 08 with OR No. 13768
P-29	Billing statement issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated March 21, 08 with Bill No. 15277
P-30	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Nov 11 08 with OR No. 14535
P-31	Billing statement issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Nov 30 08 with Bill No. 17976
P-32	Billing statement issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Aug 31 2008 with Bill No. 17976
P-33	Official receipt issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Nov 12 08 with OR No. 14536

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P-34	Billing statement issued to iZone by Isla Lipana & Co. (accounting firm) a general professional partnership, dated Jan 9 2009 with Bill No. 19632
P-35	Siguion Reyna, Montecillo & Ongsiako Counsellors-At-Law Official Receipt No. 3383 dated 24 January 2008 issued to petitioner for the amount of P16,800.00
P-39	Official receipt issued to Siguion Reyna Montecillo & Ongsiako Law Office, a general professional partnership, dated April 30 2008 with OR No. 3834
P-40	Siguion Reyna, Montecillo & Ongsiako Counsellors-At-Law Official Receipt No. 3833 dated 30 April 2008 issued to petitioner for the amount of P16,800.00
P-52	Official receipt issued to Siguion Reyna Montecillo & Ongsiako Law Office, a general professional partnership, dated April 30 2008 with OR No. 67650
P-59	Official receipt issued to Siguion Reyna Montecillo & Ongsiako Law Office, a general professional partnership, dated Nov 14 2008 with OR No. 68405
P-62	Siguion Reyna, Montecillo & Ongsiako Counsellors-At-Law Bill No. 007485 dated 10 February 2009 issued to Petitioner for the amount of US$12,057.00
P-66	Amended Judicial Affidavit of Jennifer Villareal
P-66-1	Signature appearing on top of the name of Jennifer Villareal in Page 14 of said Amended Judicial Affidavit

During the hearing on May 26, 2015 for the initial presentation of respondent's counter evidence on petitioner's Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy, respondent's counsel manifested that he will no longer present counter evidence.[26] The Court gave the parties fifteen (15) days or until June 10, 2015 within which to file their respective memoranda.

The Memorandum for the Respondent (On the opposition to the Motion of the Petitioner for Suspension of Collection of Taxes and Motion to Lift the Order of Distraint and Levy)[27] was filed on June 11, 2015.

Petitioner filed a Manifestation[28] through registered mail on June 15, 2015, stating that it is adopting its Petition for Review and Motion for the Suspension of Collection of Tax and Motion to Lift the Order of Distraint and Levy, together with their Annexes/Exhibits as its Memorandum.

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[26] Minutes of the Hearing dated May 26, 2015.
[27] Docket vol. II, pp. 892-894.
[28] Docket vol. II, pp. 895-899.

In the Resolution[29] dated July 7, 2015, the Court declared petitioner's Motion for Suspension of Collection of Tax and Motion to Lift the Order of Distraint and Levy submitted for resolution.

The Court denied petitioner's Motion for Suspension of Collection of Tax and Motion to Lift the Order of Distraint and Levy in the Resolution[30] dated September 9, 2015.

Subsequently, petitioner's Pre-Trial Brief[31] was filed on October 12, 2015, while the Pre-Trial Brief for the Respondent[32] was filed on February 9, 2016.

During the pre-trial conference[33] on February 11, 2016, petitioner's counsel manifested that it is adopting the testimony of its witness Ms. Jennifer Villareal, given during the hearing of the Motion for the Suspension of the Collection of Tax and Motion to Lift the Order of Distraint and Levy. The Court gave petitioner's counsel until February 26, 2016 within which to submit a Joint Stipulation of Facts and Issues, to be jointly filed and signed with respondent's counsel.

However, petitioner's counsel failed to submit a Joint Stipulation of Facts and Issues and was directed to show cause for her non-compliance in the Resolution[34] dated May 17, 2016.

On May 31, 2016, petitioner filed a Manifestation/Compliance[35] explaining why she was not able to submit a Joint Stipulation of Facts and Issues. This was noted by the Court in the Resolution[36] dated June 29, 2016, which deemed the parties to have waived their right to enter into admissions and stipulations of facts.

Thereafter, the Court issued the Pre-Trial Order[37] on July 26, 2016, which gave the parties a period of five (5) days from receipt to

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[29] Docket vol. II, p. 902.
[30] Docket vol. II, pp. 905-912.
[31] Docket vol. II, pp. 913-916.
[32] Docket vol. II, pp. 932-935.
[33] Minutes of the Hearing dated February 11, 2016, Docket vol. II, pp. 940-944.
[34] Docket vol. II, pp. 1015-1016.
[35] Docket vol. II, pp. 1020-1021.
[36] Docket vol. II, pp. 1027-1028.
[37] Docket vol. II, pp. 1031-1045

file the appropriate motion to correct and amend the Pre-Trial Order if warranted.

On August 10, 2016, petitioner filed through registered mail a Manifestation and Motion for Correction of Pre-Trial Order[38].

During the hearing on October 11, 2016, respondent's counsel failed to appear and petitioner's counsel moved that the presentation of respondent's evidence be considered waived since no motion for postponement was filed.[39] Petitioner's motion was granted and the parties were given a period thirty (30) days or until November 10, 2016 within which to file their respective memoranda.[40]

Respondent filed a Motion for Reconsideration[41] on November 4, 2016 for the Court to reconsider the Order made in open court on October 11, 2016 and to allow respondent's witness to appear before the Court on November 29, 2016 as indicated in the Pre-Trial Order.

Meanwhile, in the Resolution[42] dated January 16, 2017, the Court partially granted petitioner's Motion for Correction of Pre-Trial Order. Accordingly, an Amended Pre-Trial Order[43] was issued by the Court on January 27, 2017.

On February 2, 2017, petitioner filed through registered mail a Partial Motion for Reconsideration[44] of the Resolution dated January 16, 2017.

In the Resolution dated April 19, 2017, the Court granted respondent's Motion for Reconsideration and the case was set for initial presentation of respondent's evidence on June 6, 2017.

During the hearing on June 6, 2017, respondent's counsel manifested that his witness was unavailable and moved for a resetting.[45] This was granted by the Court subject to the condition

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[38] Docket vol. II, pp. 1046-1048.
[39] Minutes of the Hearing dated October 11, 2016, Docket vol. II, pp. 1056-1057.
[40] Order dated October 11, 2016, Docket vol. II, pp. 1058-1059.
[41] Docket vol. II, pp. 1061-1063.
[42] Docket vol. II, pp. 1077-1082.
[43] Docket vol. II, pp. 1087-1103.
[44] Docket vol. II, pp. 1113-1114.
[45] Minutes of the Hearing dated June 6, 2017.

that respondent would be presenting his two witnesses and that in the event they would not be presented on the said schedule, their presentation is deemed waived.[46]

Meanwhile, in the Resolution[47] dated December 6, 2017, the Court denied petitioner's Partial Motion for Reconsideration for lack of merit.

During the hearing on February 22, 2018 for the presentation of respondent's evidence, counsel for respondent failed to appear despite due notice.[48] Petitioner moved for the waiver of respondent's presentation of witness on the ground of the absence of respondent's counsel and his witness. The same was granted by the Court and the parties were directed to file their respective memoranda.[49]

Petitioner filed its Memorandum of Arguments[50] through registered mail on March 26, 2018. Meanwhile, respondent filed his Memorandum[51] on April 24, 2018. Thus, in the Resolution[52] dated April 30, 2018, the instant Petition for Review was declared submitted for decision.

On May 11, 2018, petitioner filed a Manifestation re Submission of Originally Marked Documents, which the Court duly noted.[53]

The parties admitted in their pleadings the following issues[54] for the Court's resolution:

1. Whether or not petitioner is liable for Expanded Withholding Tax and Deficiency Documentary Stamp Tax for taxable year 2008; and

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[46] Order dated June 6, 2017.
[47] Docket vol. II, pp. 1131-1132.
[48] Minutes of the Hearing dated February 22, 2018, Docket vol. II, pp. 1133-1134.
[49] Order dated February 22, 2018, Docket vol. II, pp. 1135-1136.
[50] Docket vol. II, pp. 1144-1158.
[51] Docket vol. II, pp. 1164-1172.
[52] Docket vol. II, p. 1175.
[53] Resolution dated February 14, 2019.
[54] Issues, Amended Pre-Trial Order, Docket vol. II, p. 1089.

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2. Whether or not respondent wrongly garnished petitioner's bank account.

The Court shall determine first whether it has jurisdiction to entertain the instant Petition for Review.

Respondent argues that the Court has no jurisdiction over the present case since the assessment issued against petitioner has allegedly become final, executory and demandable by reason of failure of petitioner to timely file the Petition for Review.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[55] The jurisdiction of the CTA regarding internal revenue tax assessments is provided under Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;"

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

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[55] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> > (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"

The term "other matters" has been ruled to include, but not limited to, review of the BIR's authority and decision to compromise,[56] prescription of the BIR Commissioner's right to collect taxes,[57] determination of the validity of a warrant of distraint and levy issued by the BIR Commissioner, and the validity of a waiver of the statute of limitations.[58]

Moreover, in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[59], the Supreme Court ruled that:

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

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[56] *Philippine National Oil Company vs. The Hon. Court of Appeals, et al. and Philippine National Bank vs. The Hon. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.

[57] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[58] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[59] G.R. No. 162852, December 16, 2004.

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In this case, while the matter in question is garnishment, the Court finds the above-mentioned ruling to be applicable. The Court therefore has jurisdiction to determine the validity of the Warrant of Garnishment. In this case, such determination also includes the determination of the validity of the assessments for which the Warrant of Garnishment was based. Since the Warrant of Garnishment was issued on July 23, 2013, petitioner had thirty days from said date or until August 22, 2013 within which to file the Petition for Review with the Court of Tax Appeals. Petitioner filed the Petition for Review on August 15, 2015. Thus, the Petition for Review was timely filed and the Court has jurisdiction over the present petition.

The Court will now proceed to determine the merits of this case.

Section 203 of the National Internal Revenue Code of 1997, as amended, provides that respondent has three (3) years from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess petitioner for deficiency taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

Anent the deficiency EWT and FBT assessments, the time for filing of the EWT and FBT returns is provided under Section 2.58 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03, and Section 5 of RR No. 04-02, respectively:

> "Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

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(A) *Monthly return and payment of taxes withheld at source.* –

xxx xxx xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." (*Emphasis supplied*)

"SECTION 5. *Time for Filing of Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File.* – The tax imposed under Sec. 33 of the Tax Code shall be treated as a final income tax on the employee that shall be withheld and paid by the employer, whether a large taxpayer or non-large taxpayer, **on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted,** provided, however that with respect to employers, whether Large or Non-Large Taxpayers, enrolled with the Electronic Filing and Payment System (EFPS), the deadline for e-filing the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefit Paid to Employees Other than Rank and File (BIR Form No. 1603) and e-paying the tax due thereon shall be five (5) days later than the deadline set herein." (*Emphasis supplied*)

Hence, for the Court to make a proper ruling on prescription, petitioner's EWT and FBT returns should be presented in evidence to prove the dates of their filing so that the Court will be able to determine

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when prescription began to run and when it lapsed. Unfortunately, petitioner did not present in evidence its EWT returns for TY 2008. Neither did respondent present in evidence any of the said EWT returns. The Court cannot assume that the returns were filed on or before the last day prescribed by law for purposes of determining if prescription has already set in. As such, the Court is constrained to proceed with determining the merits of the deficiency EWT assessment as if it has not yet prescribed.

As to the deficiency FBT assessment, the Details of Discrepancy[60] attached to the FLD shows that the deficiency FBT assessment only pertains to the first (1st) quarter of TY 2008. The last day for the filing of petitioner's FBT return for the 1st quarter of TY 2008 was on April 10, 2008. However, the records show that it was actually filed and the corresponding FBT was paid by petitioner on April 9, 2008.[61] Hence, respondent only had until April 10, 2011 to assess petitioner with deficiency FBT for the 1st quarter of 2008. Clearly, respondent's deficiency FBT assessment, which was received by petitioner on April 10, 2012, is already way beyond the three-year prescriptive period, and must then be cancelled and withdrawn.

With reference to the deficiency DST assessment, Section 222(a) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

The above provision enumerates three (3) instances when the running of the three-year prescriptive period does not apply, namely:

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[60] Exhibit "P-8", Docket vol. I, p. 416.
[61] Exhibits "P-14" to "P-15", Docket vol. I, pp. 423-424.

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(1) filing a false return; (2) filing a fraudulent return with intent to evade tax; and (3) failure to file a return. In all these instances, the period within which to assess deficiency taxes is ten (10) years from discovery of the fraud, falsification or omission.

In the present case, since the records are bereft of evidence that petitioner filed DST returns for the subject period or for the subject transactions, the ten-year prescriptive period under Section 222(a) of the Tax Code applies, reckoned from the discovery of the omission or failure to file returns. Such being the case, the date of petitioner's receipt of the Preliminary Assessment Notice on January 9, 2012[62] shall be considered as the date of discovery of the omission. Considering that the FAN[63] and the FLD[64] assessing petitioner for deficiency DST for TY 2008 were received by petitioner on April 10, 2012, then the deficiency DST assessment was timely issued within the ten-year period to assess.

I. Compromise Penalty – ₱12,000.00

Respondent imposed compromise penalty amounting to ₱12,000.00 for petitioner's non-/late filing/payment of DST.[65]

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[66] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the compromise penalty without the taxpayer's conformity is illegal and unauthorized.[67]

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[62] Par. 4, Facts, Amended Pre-Trial Order, Docket vol. II, p. 1088.
[63] Exhibit "P-3", Docket vol. I, p. 410.
[64] Exhibits "P-7" and "P-8", Docket vol. I, pp. 414-416.
[65] Exhibit "P-7", Docket vol. I, p. 414.
[66] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[67] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.,* G.R. No. L-35266, January 21, 1991.

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II. Deficiency EWT – ₱2,668,314.48

Respondent assessed petitioner of deficiency EWT for TY 2008, computed as follows:[68]

	Amount	Tax Rate	EWT Due
Rental	₱1,047,543.50	5%	₱ 52,377.18
Professional fees	2,276,204.65	15%	341,430.70
Director's fee	₱ 150,000.00	10%	15,000.00
Deficiency expanded withholding tax			**408,807.88**
Add: 20% interest p.a. (1.16.09 to 2.5.12)			249,764.81
TOTAL AMOUNT DUE			**₱658,572.69**

Respondent's verification disclosed that the income payments per analysis hereunder, were not subjected to EWT as required under RR No. 02-98, as amended.[69]

Income Payments	Per FS	Per Returns	Difference
Rental	₱22,938,240.00	₱21,890,696.50	₱1,047,543.50
Professional fees	2,470,649.00	₱ 194,444.35	2,276,204.65
Directors' fee	₱ 150,000.00	-	₱ 150,000.00

A. Rentals – ₱52,337.18

Petitioner did not dispute the deficiency EWT assessment on rentals, hence, the same shall not be disturbed.

B. Professional fees – ₱341,430.70

C. Directors' fee – ₱15,000.00

Petitioner asserts that the subject professional fees were paid to its retained law firm and accountants which are general professional partnerships (GPPs).

[68] Exhibit "P-7", Docket vol. I, p. 415.
[69] Exhibit "P-8", Docket vol. I, p. 416.

As for the directors' fee, petitioner's witness, Ms. Jennifer Villareal, explained in her Judicial Affidavit that:[70]

> "61. Q- Why did you not withhold the payments made to the directors.
>
> A- we did not hold payment from the law firm assigned directors who were sitting on the board (sic).
>
> 62. Q- What do you mean by law firm assigned directors?
>
> 63. A- These are directors who are sitting on the board as they were assigned to do so by their law office.
>
> 64. Q- Why did you not withhold from them just because they were law office assigned directors?
>
> A- These directors were sitting on the board of directors because they were assigned by our retained law offices to be their representative in our board. The fees due to the directors were then paid out to the law offices of the lawyers as part of the law offices' legal fees. This is why we did not deduct withholding taxes for these payments."

Petitioner cites Section 26 of the NIRC of 1997, as amended, which provides that:

> "SEC. 26. *Tax Liability of Members of General Professional Partnerships.* – A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

[70] Exhibit "P-66", Docket vol. I, p. 636.

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For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership."

In relation thereto, petitioner invokes Section 2.57.5(B)(5) of RR No. 02-98, as amended, which states:

"SECTION 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

xxx xxx xxx

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

xxx xxx xxx

(4) General professional partnerships;"

Petitioner posits that pursuant to the above provisions, the general professional partnership shall not be subject to income tax which is collected from the expanded withholding tax payments since it is the individual partners who are members of the general professional partnership who shall be subject to income tax from the income that they receive in their separate and individual capacities. According to petitioner, even the Billing Statements and Official Receipts issued by petitioner's retained law firm and accountants state that they are not subject to withholding tax as GPPs.

Petitioner's arguments are partially meritorious.

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The Court agrees with petitioner that income payments to GPPs shall not be subject to income tax and, consequently, to EWT pursuant to Section 26 of the NIRC of 1997, as amended, and Section 2.57.5(B)(4) of RR No. 02-98, as earlier cited.

Under Section 22 of the Tax Code, GPPs are defined as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. And this sole purpose of exercising a common profession can be confirmed in the Articles of Partnership. However, petitioner failed to present the same to the Court.

On the other hand, petitioner was able to present Billing Statements and Official Receipts[71] from the alleged GPPs to whom the income payments were made. However, these documents merely proved the existence of the transactions (*i.e.*, the services rendered to and the payments made by petitioner). They do not in any way prove that the persons who issued said documents are GPPs as defined in the Tax Code to warrant exemption from income tax and EWT.

Verily, petitioner failed to satisfactorily prove that the assessed income payments on professional fees and directors' fee were made to GPPs. Consequently, the subject income payments shall be treated as taxable.

III. Deficiency DST – ₱139,445.54

Respondent's verification disclosed that petitioner failed to subject its "Due to an affiliate" to DST, hence, the corresponding DST was assessed pursuant to Sections 173 and 179 of the NIRC of 1997, as amended, in relation to RR No. 13-04.[72]

Due to an affiliate		₱14,951,159.00
One peso on each two hundred pesos or fractional part thereof		
Deficiency documentary stamp tax		**₱ 74,756.00**
Add: 25% surcharge	₱18,689.00	
20% interest p.a. (1.8.09 to 2.5.12)	₱46,000.54	64,689.54
TOTAL AMOUNT DUE		**₱ 139,445.54**

[71] Exhibits "P-19" to "P-34", "P-35" to "P-65", Docket vol. I, pp. 471-486 and 718-770.
[72] Exhibit "P-7" to "P-8", Docket vol. I, pp. 414-416.

Petitioner asserts that it is not liable for deficiency DST for TY 2008 as there was no loan made to it by a related company, Saphie Number One Limited ("Saphie" for brevity). The money received by petitioner from Saphie in 2008 was payment by the latter under the Service Agreement[73] between the parties.

As explained by Ms. Villareal in her Judicial Affidavit, Saphie is not only a related company but also a client to petitioner, the payments that it made to petitioner were supposedly for services rendered by petitioner in favor of Saphie. Allegedly, the accountant during that time mistakenly indicated in the financial statements the payments made by Saphie as advances, when in truth they are actually part of the sales of petitioner.[74]

Petitioner points out that DST is an excise tax levied on documents, paper, and loan agreements. Since the subject payments made by Saphie to petitioner purportedly do not pertain to a loan as testified to by petitioner's accountant, petitioner maintains that it should not have been assessed of DST.

Further, petitioner avers that the assessed amount of ₱14,951,159.00 was taken from the 2007 comparative table figures of the Balance Sheet of petitioner's Audited Financial Statements (AFS) for 2008. Since it is the tax liability of petitioner for 2008 that is being investigated, respondent had no basis to impose deficiency DST on amounts incurred in 2007. Respondent is also allegedly prohibited from assessing deficiency DST on said 2007 figure due to prescription.

The Court upholds the assessment.

Petitioner misunderstood the assessment by respondent. What is being assessed for DST in this case is a Due "to" an affiliate amounting to ₱14,951,159.00. Otherwise stated, it is an amount payable to an affiliate Saphie Number One Limited, or a liability.

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[73] Exhibit "P-17", Docket vol. I, pp. 433-442.
[74] Q&A No. 49, Exhibit "P-66", Docket vol. I, pp. 632-633.

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However, petitioner claims that the Due to an affiliate-Saphie amounting to ₱14,951,959.00 is actually part of the sales of petitioner. If this is the case, then it should have been a receivable from Saphie (or the amount comprising the uncollected sales for the period), not a payable.

Since the assessed amount is a liability, it may fall within the category of loan agreements subject to DST under Section 179 of the Tax Code.

In *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[75] ("*Filinvest* case" for brevity), the Supreme Court ruled that Section 180 (now Section 179), when read in conjunction with Section 173 of the Tax Code, provides that loan agreements subject to DST covers instructional letters as well as journal and cash vouchers evidencing the advances to affiliates, to wit:

> "On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
>
>> Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** – *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary*

[75] G.R. Nos. 163653 and 167689, July 19, 2011.

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> *stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note:* **Provided,** *That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* **Provided however,** *That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. *Definition of Terms.* – For purposes of these Regulations, the following terms shall mean:
>
> (b) 'Loan agreement' – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the

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Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.

Section 6. *Stamp Tax on all Loan Agreements.* – All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code, as amended.

Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. xxx"

On the other hand, in the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[76], the CTA First Division ruled that the interpretation in the *Filinvest* case shall apply retroactively, ratiocinating as follows:

"In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the

[76] CTA Case No. 8892, September 30, 2016.

> scope of the word 'loan agreements' as being subject to DST, in that it includes '*instructional letters as well as the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates'.* Said Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in the Republic Act (RA) No. 8424, otherwise known as the 'Tax Reform Act of 1997'; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. **Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.,* December 23, 1994, up to the present time.**" (*Emphasis supplied*)

Clearly from the foregoing, petitioner's "Due to affiliate-Saphie" amounting to ₱14,951,159.00 is subject to DST.

Further, the Court cannot subscribe to petitioner's allegation that the amount of ₱14,951,159.00 pertains to the 2007 outstanding "Due to an affiliate", which is thus beyond the power of respondent to assess since the Letter of Authority only covers TY 2008. Petitioner did not present as evidence its 2007 AFS nor its 2008 AFS with comparative figures in 2007. As such the Court cannot ascertain if the assessed amount of ₱14,951,159.00 actually pertains to 2007 and not 2008.

For petitioner's failure to refute respondent's assessment, the Court shall not disturb the same. Settled is the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[77]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2008 covering deficiency FBT in

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[77] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

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the amount of ₱195,199.14 is **CANCELLED and SET ASIDE** while the deficiency EWT and DST assessments are **UPHELD.**

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO MILLION FIVE HUNDRED THIRTY-FOUR THOUSAND TWO HUNDRED EIGHTY-FOUR PESOS AND NINETY-TWO CENTAVOS (₱2,534,284.92)** representing basic deficiency EWT and DST for TY 2008, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as shown below:

	EWT	DST	Total
Basic Tax	₱ 408,807.88	₱ 74,756.00	₱ 483,563.88
25% Surcharge	102,201.97	18,689.00	120,890.97
20% Deficiency Interest:			
01/16/2009 to 02/13/2012 (₱408,807.88 x 20% x 1,124/365 days)	251,780.85		251,780.85
01/06/2009 to 02/13/2012 (₱74,756.00 x 20% x 1,134/365 days)		46,451.13	46,451.13
Total Amount Due, February 13, 2012	**₱ 762,790.70**	**₱139,896.13**	**₱ 902,686.83**
Deficiency interest (02/14/2012 to 12/31/2017):			
(₱408,807.88 x 20% x 2,148/365 days)	481,161.27		481,161.27
(₱74,756.00 x 20% x 2,148/365 days)		87,986.79	87,986.79
Delinquency interest (02/14/2012 to 12/31/2017):			
(₱762,790.70 x 20% x 2,148/365 days)	897,794.20		897,794.20
(₱139,896.13 x 20% x 2,148/365 days)		164,655.83	164,655.83
Total Amount Due, December 31, 2017	**₱2,141,746.17**	**₱392,538.75**	**₱2,534,284.92**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum on the unpaid EWT and DST of ₱762,790.70 and ₱139,896.13, respectively, totaling ₱902,686.83 as of February 13, 2012, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law,[78] and as implemented by RR No. 21-2018.

SO ORDERED.

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

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[78] *Alpha 245, Inc., (formerly ARC Worldwide Philippines Co., Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 9225, April 6, 2018.

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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, Special First Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

IZONE TECHNOLOGIES PHILIPPINES,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8696

Present:

DEL ROSARIO, *P.J., Chairperson*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 29 2019 10:22a

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that the Petition for Review should be granted.

Records show that the **Formal Letter of Demand (FLD) dated January 5, 2012 and Final Assessment Notices (FAN) dated January 13, 2012, subject of the present controversy, are null and void for having been issued in violation of petitioner's right to due process.**

Pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 3.1.2 of Revenue Regulations (RR) No. 12-99, a taxpayer shall be required to respond to the Preliminary Assessment Notice (PAN) within fifteen (15) days from receipt thereof. Upon the lapse of the 15-day period, the taxpayer is considered in default and the Bureau of Internal Revenue (BIR) shall issue a formal letter of demand and assessment notice.

In the case at bar, petitioner **received a copy of the Preliminary Assessment Notice (PAN) dated December 26, 2011 on January 9, 2012**. Petitioner, therefore, had **fifteen (15) days** or until **January 24, 2012** within which to file a reply or protest against the PAN.

Interestingly, **the BIR prepared the FLD on January 5, 2012 (before petitioner even received the PAN) and issued the FAN on January 13, 2012 (barely four (4) days after petitioner received the PAN)**. Evidently, the BIR did not wait for petitioner to reply to the PAN or within the fifteen (15)-day period provided in RR No. 12-99.

The right of the taxpayer to respond to the PAN is an important part of the due process. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[1] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[2] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process**.
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes

[1] G.R. Nos. 201398-99, October 3, 2018.
[2] G.R. Nos. 201418-19, October 3, 2018.

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a denial of due process and taints the administrative proceedings with invalidity.

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This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. Xxx:

xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the**

> **prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.** (Emphasis supplied)
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" (Citations omitted; additional boldfacing supplied))

Although petitioner received the FLD and FAN in February 2012[3] after it filed its protest to the PAN on February 17, 2012, **the fatal infirmity that attended its issuance <u>prior</u> to the lapse of the period to respond to the PAN is not cured thereby**. In view of the palpable violation of petitioner's right to procedural due process, the FLD and FAN - - being fatally infirm - - should be considered void.

All told, I VOTE to: (i) GRANT Izone Technologies Philippines' Petition for Review; (ii) DECLARE VOID the Formal Letter of Demand dated January 5, 2012, Final Assessment Notices dated January 13, 2012 (assessing Izone Technologies Philippines for deficiency expanded withholding tax, documentary stamp tax, fringe benefits tax, and compromise penalty, for the year 2008), for having been issued in violation of its right to due process; and, ultimately, (iii) CANEL and SET ASIDE the Formal Letter of Demand dated January 5, 2012, Final Assessment Notices dated January 13, 2012 and Notice of Garnishment dated July 23, 2013.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Exhibit P-9-1, CTA Docket, p. 417.