Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SPLASH CORPORATION, Petitioner,	**CTA Case No. 8904**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 02 2018 4:10 p.m.

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DECISION

CASANOVA, J.:

This resolves the Petition for Review, filed on October 8, 2014, seeking the cancellation of the assessment against petitioner-Splash Corporation for the alleged deficiency income tax liabilities for calendar year (CY) 2010 in the amount of Eighty Million Nine Hundred Eighty-Four Thousand Seven Hundred and Forty-Five Pesos and Seventy-Five Centavos (₱80,984,745.75).

The facts, as stated in the parties' Joint Stipulation of Facts and Issues[1], and, as found in the records of this case, are as follows:

Petitioner Splash Corporation is a domestic corporation duly incorporated under Philippine laws and registered with the Securities and Exchange Commission (SEC) with Company Registration No. ASO91-196206 issued by the SEC on July 14, 2011.[2] Its primary purpose is to develop or acquire technology to manufacture and sell personal care, pharmaceuticals, food, health, home, household care

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[1] Docket (Vol. II), pp. 800-806.
[2] Exhibits "P-1" and "P-2".

(hazardous and non-hazardous) and other ancillary products in the Philippines and abroad.[3]

Respondent-Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law.[4]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as shown in its Certificate of Registration No. OCN No. 8RC0000020865 with Tax Identification Number 001-096-221-000.[5]

On February 26, 2014, petitioner received a Preliminary Assessment Notice (PAN) with details of discrepancy and computation of deficiency income tax dated February 17, 2014, assessing petitioner of deficiency income taxes arising from "Disallowed Income Tax Exemption on Net Income in the amount of ₱159,490,000.00.[6]

Petitioner filed its response to the PAN dated March 12, 2014, and filed with the Bureau of Internal Revenue's (BIR) Large Taxpayers Service on March 13, 2014, contending that it is entitled to the exemption granted under Section 6 of Republic Act (RA) No. 7459.[7]

Thereafter, on March 19, 2014, petitioner received from the BIR a Formal Letter of Demand (FLD) dated March 15, 2014, with attached Details of Discrepancies and Audit Result/Assessment Notice dated March 18, 2014.[8]

The BIR issued a Letter dated March 25, 2014, withdrawing/cancelling the FLD and Final Assessment Notice received by petitioner on March 19, 2014.[9]

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[3] Exhibits "P-1" to "P-3".
[4] Paragraph 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 800.
[5] Exhibit "P-5".
[6] Exhibit "P-6".
[7] Exhibit "P-10".
[8] Exhibit "P-7".
[9] Exhibit "P-11".

On April 7, 2014, another FLD was later received by the petitioner dated April 4, 2014, from the BIR with the Attached Details of Discrepancies and Audit Result/Assessment Notice dated March 28, 2014, finding that petitioner has deficiency income tax liability for the CY 2010 in the total amount of ₱76,580,200.00, inclusive of interest and penalties.[10]

Petitioner thereafter filed on May 7, 2014 a Letter of Protest dated May 7, 2014, requesting for reinvestigation of the deficiency income tax assessment.[11]

On July 7, 2014, petitioner submitted additional documents in support of its Letter of Protest dated May 7, 2014.[12]

Subsequently, on September 8, 2014, petitioner received from the BIR a Final Decision on Disputed Assessment (FDDA) dated August 20, 2014, with attached Memorandum dated August 20, 2014, stating that, as per their reinvestigation, petitioner is liable for deficiency income tax and increments in the aggregate amount of ₱80,984,745.75.[13]

In view thereof, petitioner filed the instant Petition for Review[14] on October 8, 2014

On December 19, 2014, respondent filed an Answer [15] interposing the following special and affirmative defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her *(sic)* Special and Affirmative Defenses:
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> **Petitioner's constitutionally protected right to due process has not been violated.**

[10] Exhibit "P-8".
[11] Exhibit "P-12".
[12] Exhibit "P-13".
[13] Exhibit "P-9".
[14] Docket (Vol. I), pp. 6-30.
[15] Docket (Vol. I), pp. 89-101.

5. Simply put, petitioner contended that since it received two (2) Formal Letters of Demand/Formal Assessment Notices (FLD/FAN) the Bureau of Internal Revenue violated its right to due process.

6. Petitioner's argument is clearly erroneous and blindly ignored, for its own benefit, the reason behind the issuance of the two (2) FLD/FAN.

7. What happened here was simple. Respondent issued a FAN/FLD after the lapse of the fifteen (15) day period allotted to protest/reply to the Preliminary Assessment Notice (PAN). Subsequently, the revenue officers handling the assessment found out that a protest/reply was filed by petitioner – which was inadvertently endorsed to them after the issuance of the first FLD/FAN.

8. Accordingly, upon finding out that the protest was filed by petitioner within the reglementary period provided by the rules, respondent, highly cognizant of the due process requirement under our laws, wrote a letter to petitioner informing it that upon consideration of its arguments, respondent cannot concur with its position as regards the assessment. Respondent further informed petitioner that a new FLD/FAN will be issued to give it a fresh period of fifteen (15) days to protest the new FLD/FAN.

9. From the foregoing, petitioner concluded that its right to due process had been violated since the use of 'an' in Section 3 of Revenue Regulations No. 18-2003 implies that only one (1) FLD/FAN can be issued, to wit:

> If the taxpayer, within fifteen (15) days from date of receipt of PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, **an FLD/FAN shall be issued** within fifteen (15) days from filing/submission of the taxpayer's response, calling for the payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (**Emphasis supplied**)

10. Respondent vehemently disagrees with this position since the issuance of the new FLD/FAN was exactly to give petitioner the opportunity to present its case and dispute the assessment after due consideration of its protest/reply to the PAN.

11. Due process simply means the opportunity to be heard. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.

12. In the case at hand, petitioner's opportunity to be heard was not and was never violated. In fact, it was given all the opportunity to present its side since respondent gave it a fresh period from the receipt of the new FLD/FAN. Thus, to invoke due process, just because its opinion as to its taxability does not align with that of respondent is not only erroneous but a flawed interpretation of the law and relevant rules and regulations.

13. Moreover, such limited and narrow interpretation of Revenue Regulations No. 18-2013 – as argued by petitioner – would subvert its ultimate and legitimate objective; that is to give taxpayers the opportunity to present their side and for the Bureau of Internal Revenue to consider the evidence presented by the taxpayer.

14. Thus, from the foregoing, petitioner's contention must fail.

The PAN and the FLD/FAN were issued in accordance with the relevant law and issuances of the Bureau of Internal Revenue.

15. Petitioner contended that the PAN and FLD/FAN did not state the factual and legal basis of the assessment since respondent merely stated that it

cannot claim the exemption since it is not the inventor of the qualified products under Republic Act No. 7459.

16. Petitioner is clearly misguided;

17. The records would show that respondent has explained to petitioner, not only in the PAN but also in the FLD/FAN with attached Details of Discrepancies, the factual and legal basis of the assessment, to wit:

DETAILS OF DISCREPANCIES

I. INCOME TAX
(P79,580,200.00)

A. Disallowed Income Tax Exemption on Net Income of P159,490,000.00

Splash Corporation if not the inventor (but Dr. Rolando Hortaleza) of qualified invented products under Republic Act No. 7459 otherwise known as Inventors and Incentives Act of the Philippines that may claim an income tax exemption from income taxes on its sale of said products.

Thus, Splash should pay income taxes on its net income from allegedly tax exempt operation pursuant to Section 27 of the Tax Code. The 20% interest is added to the deficiency income tax pursuant to Section 249 of the Tax Code. The P25,000.00 penalty is suggested in lieu of the penal provisions pursuant to Revenue Memorandum Order No. 19-2007.

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(**Emphasis supplied**).

18. As seen from the above, respondent clearly informed petitioner of the factual and legal basis of the assessment; that is petitioner is not the inventor of the qualified invented products.

19. Moreover, in petitioner's protest-letter to the FLD/FAN, petitioner comprehensively discussed its disagreement with the assessment. This points to no other conclusion but that petitioner fully understood the factual and legal basis of the assessment as well as the provisions of law which justifies the assessment.

20. Finally, it must be pointed out that while it is true that due process requires that the taxpayer be informed of the basis of the assessment, it does not necessarily mean that respondent is required to furnish taxpayers all the documents upon which the assessment was based. The case of Lim v. Commissioner of Internal Revenue is enlightening:

> In addition, there is nothing in the provision of the law or in its implementing rule requiring the respondent to furnish taxpayers of the documents upon which the assessment was based. It is sufficient that the law and the facts are stated in the assessment notice.

21. Thus, to say that respondent was amiss in its duty to inform petitioner of the factual and legal basis of the assessment is evidently erroneous.

Petitioner is liable for deficiency income tax in the aggregate amount of P80,984,745.75

I. Only sales made by inventors and/or patent holders are exempt from the payment of income tax pursuant to Republic Act No. 7459

22. At the outset, it must be emphasized that it was never contested that Dr. Rolando Hortaleza, not petitioner, is the inventor and patent holder of the qualified products in question. In fact, the BIR Ruling granting tax exemption and the Endorsement by the Filipino Inventors Society were issued in his name and not to petitioner.

23. Petitioner argued that the exemption attaches to the income derived from the sale of inventions and other technologies covered by the law, regardless of the seller.

24. Respondent is mistaken.

25. Section 2 of Republic Act No. 7459 otherwise known as Inventors and Inventions Incentives Act of the Philippines states:

> SEC. 2. Declaration of National Policy and Program. – It is hereby declared to be the national policy to give priority to invention and its utilization on the country's productive systems and national life; **and to this and provide incentives to inventors and protect their exclusive right to their invention**, particularly when the invention is beneficial to the people and contributes to national development and progress.
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> -xxx-
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> (**Emphasis supplied**)

26. The afore-quoted provision is clear, the ultimate goal of the enactment of the law was to provide incentives to inventors; and not to the commercial manufacturer - who is not the inventor – of such inventions.

27. This is further bolstered by the last provision of Section 6 of Republic Act No. 7459 stating that the tax exemption incentives shall be extended to the legal heirs or assignee upon the death of the inventor which clearly suggest that the exemption benefit pertains to the inventor, to wit:

> SEC. 6. Tax Exemptions. – To promote, encourage, develop and accelerate commercialization of technologies developed by local researchers or adapted locally from foreign sources including inventions, any income derived from these technologies shall

> be exempted from all kinds of taxes during the first ten (10) years from the date of the first sale, subject to the rules and regulations of the Department of Finance: **Provided, That this tax exemption privilege pertaining to invention shall be extended to the legal heir or assignee upon the death of the inventor**.
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> The technologies, their manufacture or sale, shall also be exempt from payment of license, permit fees, customs duties and charges on imports.
>
> (**Emphasis supplied**)

28. Thus, it cannot be doubted that the tax exemption incentive given by Republic Act No. 7459 pertains only to the inventor and patent holder and not to the commercial manufacturer – who is not the inventor – of such inventions.

29. Moreover, petitioner's reliance in the case of Commissioner of Internal Revenue vs. Splash Corporation is misplaced. In the said case, the Honorable Court ruled in favor of Splash Corporation since it has Certificates of Registration from the Bureau of Patent and Intellectual Property of the Philippines and as such exempt from the payment of income tax.

30. This is not the case here, the tax exemption was issued not to petitioner but rather to Dr. Rolando Hortaleza. Accordingly, any tax exemption should pertain only to him and not extend[ed] *(sic)* to Splash Corporation.

II. The term 'inventor' does not include business conduit selling the technologies and inventions.

31. Petitioner further argued that under the assumption that the tax incentive can only be invoked by the inventor, then the term 'inventor' should be construed

to include a business conduit established by the inventor for the purpose of selling the technologies and inventions.

32. Respondent vehemently opposes petitioner's arguments since it is against the very principle of a tax exemption. The Honorable Supreme Court has been constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris.

33. Section 3 of Republic Act No. 7459 defines an 'inventor' as the patentee/s, heir/s or assignee/s of an Invention letters patent. Utility Model letters or Industrial Design letter patent.

34. As here, a plain reading of the definition would indicate that petitioner's position is untenable. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or verbal egis. It is expressed in the maxim, index animi sermo, or 'speech is the index of intention.' Furthermore, there is the maxim verbal egis non est recedendum, or 'from the words of a statute there should be no departure'.

35. Thus, petitioner's argument that an 'inventor' should include a business conduit must fail.

III. Dr. Rolando Hortaleza and petitioner, Splash Corporation are distinct and separate personalities; and as such petitioner cannot claim the tax exemption of Dr. Rolando Hortaleza.

36. Finally, petitioner reasoned that since Splash Corporation is partly owned by Dr. Rolando Hortaleza, it should be treated one and the same for purposes of claiming the tax exemption. Also, petitioner claimed that

Splash Corporation was established to commercialize his inventions.

37. This is entirely against the basic tenets not only of our Tax Code but also of our Corporation Code.

38. Well settled is the rule that corporations have personalities separate and distinct from that of its stockholders. Thus, it is absurd that petitioner is suggesting that Dr. Rolando Hortaleza and Splash Corporation be treated as one and the same just because he owns shares of stock in the holding company owning majority shares of stock of petitioner.

39. Thus, from this very basic principle, petitioner's argument must fail.

40. At this juncture, while it is no longer necessary to belabor on other defects of petitioner's arguments, still respondent deems it appropriate to present the same to strengthen its position that Splash Corporation cannot claim the tax exemption incentive given to Dr. Hortaleza.

41. A careful perusal of the records would show that the ownership of the rights to manufacture and market the qualified products has always remained with Dr. Hortaleza. In fact, petitioner acquired some of Dr. Hortaleza's right sometime in 2010 through a purchase agreement. If we should follow petitioner's claim that Dr. Hortaleza and Splash Corporation are one and the same, then Dr. Hortaleza should not have executed the said purchase agreement. Obviously, the arm's length sale of Dr. Hortaleza's right for a valuable consideration impliedly recognized that Splash Corporation and Dr. Hortaleza are separate and distinct from each other.

42. Also, while Dr. Hortaleza owns the rights to the inventions, petitioner owns the products from the time they were manufactured up to the time they were sold. Thus, gains and/or profits realized from the sale of the products accrued to petitioner. Corollary thereto, all product related losses and product risks which arose from the sale of the products were all shouldered by petitioner. Dr. Hortaleza, on the other hand, just like

any other shareholder, is liable only to the extent of his subscriptions from any claims against petitioner.

43. Likewise, there is no law or regulation that obligates the shareholders to pay taxes due from the corporation or vice-versa. By analogy a tax exemption granted to a shareholder cannot be claimed by the corporation just because he or she is majority shareholder thereto. The Honorable Supreme Court in the case of PNP v. Hydro ruled that:

> A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. **In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder**. This protection from liability for shareholders is the principle of limited liability.
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> -xxx-
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> (**Emphasis supplied**)

44. Thus, it cannot be seriously argued that petitioner and Dr. Hortaleza are one and the same. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.

45. Finally, petitioner's contention that Splash Corporation was created to commercialize Dr. Hortaleza's

invention is misleading. The fact is, Splash Corporation was established approximately ten (10) years before Dr. Hortaleza developed and applied for registration of the qualified product. Accordingly, it cannot be honestly claimed by petitioner that it was established for the purpose of commercializing the qualified product in the instant case.

46. Therefore, since the person who was given the tax exemption benefit under Republic Act No. 7459 was Dr. Rolando Hortaleza, and not Splash Corporation, petitioner should be held liable for deficiency income tax."

The case was set for Pre-Trial Conference on January 6, 2015.[16] Petitioner's Pre-Trial Brief[17] was filed on January 30, 2015, while Respondent's Pre-Trial Brief[18] was filed on January 29, 2015.

On February 25, 2015, the parties filed with this Court their Joint Stipulation of Facts and Issues, which was approved in the Pre-Trial Order[19] dated March 12, 2015.

Subsequently, during trial, petitioner presented the following witnesses: its Corporate Secretary, Atty. Henry Yaokasin, Jr.,[20] its Financial Account Manager, Mr. Jose Enrique D. Santos[21], its Research and Development Manager for Personal Care, Ms. Christina Buenafe,[22] and the Independent Certified Public Accountant (CPA), Mr. Rafael C. Miguel[23].

On November 16, 2015, petitioner formally offered its documentary evidence such as Exhibits "P-1" to "P-80-1", which was resolved by the Court in a Resolution dated January 18, 2016 and June 2, 2016, respectively[24].

[16] Docket (Vol. I), p. 102.
[17] Docket (Vol. I), pp. 124-139.
[18] Docket (Vol. I), pp. 103-108.
[19] Docket (Vol. II), pp. 817-825.
[20] Minutes of the Hearing held on March 16, 2015, Docket (Vol. II), p. 826, Exhibit "P-70".
[21] Minutes of the Hearing held on June 15, 2015, Docket (Vol. II), p. 870, Exhibit "P-71".
[22] Minutes of the Hearing held on July 8,2015, Docket (Vol. II), p. 1483; Exhibit "P-151".
[23] Minutes of the Hearing held on August 10, 2015, Docket (Vol. II), p. 1516-A; Exhibit "P-154".
[24] Docket (Vol. IV), pp. 2042-2049 and 2135-2136, respectively.

As for respondent, he presented his lone witness Mr. Nicasio H. Lumagui, Jr.[25] during the hearing held on July 18, 2016. After marking, identification and formal offer, the Court admitted as part of respondent's documentary evidence Exhibits "R-1" to "R-16-a".[26]

Thus, on January 31, 2017, petitioner filed its Memorandum[27], while respondent manifested[28] that he is adopting the arguments raised in his Answer filed on December 19, 2014 as his Memorandum. Accordingly, the case was submitted for decision[29] on February 3, 2017.

The parties submitted for this Court's disposition the lone issue[30] on "Whether Petitioner is liable for deficiency income tax for taxable year 2010 in the aggregate amount of Php80,984,745.75".

Petitioner alleges that its right to due process was violated by the issuance of two FLDs.

According to petitioner, the PAN dated February 17, 2014 was received by petitioner on February 26, 2014. Thus, it had until March 13, 2014 to respond, which is exactly fifteen days from receipt of the PAN in accordance with RR No. 118-2013.

Petitioner then sent its response to the PAN on March 13, 2014, which is well within the period provided by the law.

Thereafter, the BIR issued the 1st FLD on March 15, 2014, which was received by petitioner on March 19, 2014. Despite the issuance of an FLD dated March 15, 2014, petitioner received another missive from the BIR dated March 25, 2014, which, though acknowledging receipt of the response filed by petitioner, withdrew and cancelled the said FLD. It also stated that an FLD sent to petitioner will again be sent to it within fifteen (15) days from receipt of the protest letter. e

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[25] Minutes of the Hearing held on July 18, 2016, Docket (Vol. IV), p. 2139; Exhibit "R-16".
[26] Resolution dated October 27, 2016, Docket (Vol. IV), pp. 2184-2185.
[27] Docket (Vol. IV), pp. 2202-2241.
[28] Respondent's Manifestation filed on December 14, 2016, Docket (Vol. IV), p. 2194.
[29] Resolution dated February 13, 2017, Docket (Vol. IV), p. 2242.
[30] Statement of the Issues, JSFI, Docket (Vol. II), p. 801.

Petitioner further alleges that the issuance and subsequent withdrawal of the FLD/FAN, and the issuance of a new one is not outlined by the laws and rules regarding assessments. Thus, petitioner concludes that respondent failed to comply with the cardinal principles of administrative due process.

Petitioner, likewise, avers that the PAN and FLD issued to the petitioner lacked factual and legal basis and are, thus, void. Petitioner mentions that a reference to the FLD and the Details of Discrepancies attached thereto would show that the Details of Discrepancies merely state that the petitioner cannot claim the exemption granted under RA No. 7459 as it is not the inventor of qualified products under the said law. It did not state the specific legal basis for declaring that petitioner is not the inventor of the qualified products. Neither did it state why it is necessary for petitioner to be classified as the inventor of the products mentioned. For failure to state the correct legal basis, the assessment should be considered void.

Additionally, petitioner states that the FLD and the Details of Discrepancies attached thereto do not state the necessary facts to allow the petitioner to formulate a proper response to the assessment, as they merely show that the assessments for deficiency income tax are being assessed based on mere imputations and without categorically stating the factual considerations upon which the assessment is based. It merely states the total amount of sales of the Corporation, and based thereon, a deficiency tax was assessed. According to petitioner, there is no indication as to what sales were included in the assessment, and what specific item of income is being taxed. It merely presupposes that the sales of petitioner are income for which it may be taxed. It did not consider the fact that such income was actually derived from the commercial sale of product inventions mentioned under RA No. 7459, and thus, income derived therefrom is exempt from the imposition of income tax.

Since the PAN and FLDs issued against it allegedly failed to state the facts and the law upon which they are based, the assessment is thus void.

Petitioner, likewise, alleges that it should not be assessed for the alleged deficiency income tax since the income subject of the FLD is exempt from income tax pursuant to RA No. 7459.

Petitioner further emphasizes that the provisions of RA No. 7459 clearly provide that the tax exemption therein granted attaches to "any income" derived from the sale of technologies and inventions, without regard as to who the actual inventor is.

The term "inventor" under RA No. 7459 should allegedly be construed to include a business conduit established by the actual inventor for the purpose of selling technologies and inventions.

Petitioner further mentions that the income subject of the assessment is exempt under RA No. 7459 as the Corporation claiming the exemption should be treated as the same person as Dr. Rolando Hortaleza, the alleged inventor of qualified technologies.

Contrary to petitioner's averments, respondent claims that the PAN and the FLD/FAN were issued in accordance with the relevant law and issuances of the BIR.

Respondent further alleges that only sales made by inventors and/or patent holders are exempt from the payment of income tax pursuant to RA No. 7459 because the ultimate goal of the enactment of the law was to provide incentives to inventors; and not to the commercial manufacturer - who is not the inventor – of such inventions

Respondent, likewise, argues that the term "inventor" does not include business conduit selling the technologies and inventions.

Section 3 of RA No. 7459 defines an "inventor" as the patentee/s, heir/s or assignee/s of an Invention letters patent. Utility Model letters or Industrial Design letter patent. Thus, petitioner's argument that an "inventor" should include a business conduit must fail.

Lastly, respondent alleges that Dr. Rolando B. Hortaleza and petitioner, Splash Corporation are distinct and separate personalities; and as such petitioner cannot claim the tax exemption of Dr. Rolando B. Hortaleza.

As to the issue on respondent's violation of petitioner's right to due process, the Court finds pertinent Section 228 under the NIRC of 1997, as amended which provides:

> "SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **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*)

The law requires that the taxpayers should be informed of the legal and factual bases of the assessment. However, the assessment notices need not be a full narration of the facts and laws on which the assessment is based. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[31]

In this case, respondent assessed petitioner for deficiency income tax for CY 2010 in the amount of ₱76,580,200.00[32]. The said amount arose from the alleged disallowed income tax exemption on net income of ₱159,490,000.00 computed as follows:

ASSESSMENT NO. ELTAD-II-OT-10-0006

I. INCOME TAX

	Exempt	Regular	Total
Sales	2,128,215,503.00	796,582,802.00	2,924,798,305.00
Less: Cost of Sales	963,688,365.00	347,269,467.00	1,310,957,832.00
Gross Income from Operation	1,164,527,138.00	449,313,335.00	1,613,840,473.00
Add: Non-Operating & Taxable Other Income	-	24,978,141.00	24,978,141.00
Total Gross Income	1,164,527,138.00	474,291,476.00	1,638,818,614.00
Less: Deductions	1,024,476,957.00	474,291,476.00	1,498,768,433.00

[31] *Calma vs. Court of Appeals*, G.R. No. 122787, February 9, 1999.
[32] As per the FDDA, the total amount of deficiency income tax liability is ₱80,984,745.75.

Taxable Income per Return	140,050,181.00	-	140,050,181.00
Add: Reconciling Item per Note 26 C	19,439,819.00		19,439,819.00
Taxable Income per Audit	159,490,000.00		159,490,000.00
Tax rate			30%
Tax Due			47,847,000.00
Total Income Tax Still Due			47,847,000.00
Add: Interest p.a. 20%(April 16, 2011 to April 15, 2014)			28,708,200.00
Compromise penalty			25,000.00
Total Income Tax Due and Payable			76,580,200.00

Based on the Details of Discrepancies attached to the FLD, petitioner is not the inventor of the qualified invented products under R.A. No. 7459. In view thereof, respondent concludes that petitioner should pay income taxes on its net income from its allegedly tax exempt operation, pursuant to Section 27 of the NIRC of 1997.[33] The Court, likewise, notes that petitioner had the opportunity to effectively oppose these findings by filing a protest on May 7, 2014.[34] Thus, it is clear from the assessment and the subsequent acts of petitioner that it was sufficiently informed of the factual and legal basis of the assessment.

Petitioner also points out that its right to due process was violated by the issuance of two (2) FLDs.

We do not agree.

The issuance of the two FLDs/FAN against petitioner is of no moment considering that a letter was already sent to petitioner withdrawing the 1st FLD[35] and that the 2nd FLD/FAN dated April 4, 2014 contained a statement cancelling the 1st FLD/FAN dated March 15, 2014. Also, the 2nd FLD/FAN was issued before the lapse of the 3-year prescriptive period provided by law for the issuance of an assessment.[36] In effect, the 2nd FLD/FAN validly superseded the 1st FLD/FAN. Thus, its right to due process was not violated by respondent.

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[33] Exhibit "P-8".
[34] Exhibit "P-12".
[35] Exhibit "P-11".
[36] See Section 203 of the NIRC of 1997, as amended.

Now, as to whether petitioner is liable to pay the amount assessed, it appears from the findings of respondent that there is no question as to whether the disallowed income was earned from the commercial sale of the qualified invented products under RA No. 7459. Thus, the Court shall only determine the correctness of respondent's finding that petitioner, being merely the manufacture and seller of the qualified product, and not the inventor, is not exempt from income tax under Section 6 of RA No. 7459 on its commercial sale of the qualified invented products.

In resolving the said issue, the Court finds instructive Section 6 of RA No. 7459[37] which reads:

> "SECTION 6. Tax Exemption. — To promote, encourage, develop and accelerate commercialization of technologies developed by local researchers or adapted locally from foreign sources including inventions, **any income derived from these technologies shall be exempted from all kinds of taxes during the first ten (10) years from the date of the first sale**, subject to the rules and regulations of the Department of Finance: Provided, that this tax exemption privilege pertaining to invention shall be extended to the legal heir or assignee upon the death of the inventor.
>
> **The technologies, their manufacture or sale**, shall also be exempt from payment of license, permit fees, customs duties and charges on imports." (Emphasis supplied)

Based on the records, petitioner manufactures and sells products invented by Dr. Rolando B. Hortaleza and are covered by several Utility Model (UM) Registration/Patent Registration[38] detailed as follows:

[37] An Act providing Incentives to Filipino Inventors and Expanding the Functions of the Technology Application and Promotion Institute, Appropriating funds thereof and for other purposes.

[38] Exhibits "P-43 to P-56" and "P-74 to P-74-16".

TITLE OF UTILITY MODEL	COVERED BY UTILITY MODEL NO./ PATENT REGISTRATION NO.
SKIN CARE COMPOSITION	2-2001-000110
A PALATABLE COCONUT OIL FOOD SUPPLEMENT	1-2005-00239
A SKIN LOTION COMPOSITION WITH VIRGIN COCONUT OIL	2-2006-000391
SKIN WHITENING COSMETIC COMPOSITION	2-2007-000192
A TOPICAL SKIN CARE COMPOSITION	2-2007-000428
BABY OIL COMPOSITION	2-2008-000002
LIQUID BODY POWDER COMPOSITION	2-2008-000020
BODY WASH COMPOSITION	2-2008-000099
SKIN LOTION COMPOSITION	2-2008-000196
A RINSE-OFF SKIN WHITENING COMPOSITION	2-2008-000258
FEMININE SPRAY COMPOSITION	2-2008-000338
HAIR CUTICLE COAT COMPOSITION	2-2008-000422
SKIN CARE COMPOSITION	2-2009-000187
COSMETIC COMPOSITION	2-2009-000277
HAND SANITIZING COMPOSITION	2-2010-000419
HAIR DYE POWDER COMPOSITION	2-2010-000536

Also, respondent issued BIR Ruling Nos. 717-2006[39], 391-2007[40], 680-2007[41], 141-2008[42], 386-2008[43], 317-2008[44], 318-2008[45], and 430-2009[46] stating that sales of the patented inventions of Dr. Hortaleza, which are being manufactured and sold by petitioner, are exempt from income tax for a period of ten (10) years from the date of its first sale on a commercial scale pursuant to RA No. 7459, the pertinent portions of which reads:

> "In reply, please be informed that f RA No. 7459, as implemented by RR No. 19-93 dated July 27, 1993, particularly Section 6 thereof states that:
>
> 'Sec. 6. Tax Exemption. — To promote, encourage, develop and accelerate commercialization of technologies developed by local researchers or adapted locally from foreign sources including inventions, *any income derived from these technologies shall be exempted from all kinds of taxes during the first ten (10) years from the date of the first sale*, subject to the rules

[39] Exhibit "P-73-2".
[40] Exhibit "P-73-1".
[41] Exhibit "P-73-3".
[42] Exhibit "P-73-4".
[43] Exhibit "P-73-5".
[44] Exhibit "P-73-6".
[45] Exhibit "P-73-7".
[46] Exhibit "P-73-8".

and regulations of the Department of Finance: xxx.' (Italics supplied)

In effect, the inventor is still subject to the following taxes:

1. 20% final withholding taxes on interest from currency bank deposit and yield or any other monetary benefit substitutes and from trust funds and similar arrangements and 7 ½% final withholding tax on interest from foreign currency deposit;

2. Capital gains tax on sale of shares of stock prescribed under Section 24(C) of the Tax Code of 1997;

3. Capital gains stocks on sale of real property prescribed under Section 24(C) of the Tax Code of 1997;

4. Income tax on income not arising from the inventor's productive activity such as interest, royalties, prizes, winnings and dividends;

5. Value-added tax (VAT) on the gross receipts/revenues derived from the sale of the said invention products, and also VAT for which the inventor is not directly liable, e.g., VAT on his purchases of raw materials, supplies and equipment/machinery, which may be shifted to him as part of the cost of goods sold or for services rendered; and

6. Other percentage taxes under Title V of the Tax Code; and

7. Excise taxes directly payable in connection with the sale of invention products;

8. Documentary stamp tax on documents, instruments and papers.

The said exemption can be availed of during the first ten (10) years from the date of the first sale on a commercial scale, provided that said exemption privileges pertaining to the invention shall be extended to the legal heir or assignee upon the death of the inventor.

It is important to note that the Final Resolution of the Office of the President (OP), in OP Case No. 03-G-422 dated February 2, 2004, affirming the finding of the Department of Finance denying the appeal of an inventor relative to his tax exemption privileges granted by this Office, clarifies that <u>the only tax exemption granted by the first paragraph of Section 6 of RA 7459 merely refers to income tax.</u>"

As clearly provided by Section 6 of RA No. 7459, "any income" derived from the sale of the patented products shall be exempt from the payment of income taxes for a period of ten (10) years from the date of the product's first sale on a commercial scale, subject to the rules and regulations of the Department of Finance.

At this juncture, it bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[47]

Notably, in the CTA Case No. 8530 dated May 19, 2016 and CTA EB Case No. 330 dated May 5, 2008, both entitled *Commissioner of Internal Revenue vs. Splash Corporation,* this Court already held that petitioner, who is the manufacturer and seller of the inventions made by Dr. Hortaleza, is entitled to tax incentives under RA No. 7459 for a period of 10 years from the date of first sale of the inventions involved.

Therefore, following the previous pronouncements of this Court, and applying Section 6 of RA No. 7459, the income of petitioner for CY 2010 in the total amount of ₱159,490,000.00 pertaining to the commercial sale of qualified invented products is exempt from income tax pursuant to RA No. 7459. Thus, the assessment issued by

[47] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013, citing the case of *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court and BF Homes, Inc.,* G.R. No. 74851, December 9, 1999.

respondent against petitioner arising from the disallowed exempt sales in the instant case must be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax assessment issued against petitioner for CY 2010 in the amount of Eighty Million Nine Hundred Eighty-Four Thousand Seven Hundred and Forty-Five Pesos and Seventy-Five Centavos (₱80,984,745.75) is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice