REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CITY OF MAKATI,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7809

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:
DEC 16 2009
2:05 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. Hence, it was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of its tax liability on the merits. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense. Once, the matter has reached the stage of finality in view of the failure to appeal, it logically follows that it could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy *(Commissioner of Internal Revenue vs. Concepcion, 22 SCRA 1061-1062)*.

THE CASE

This is a Petition For Review filed by the City of Makati (hereafter "petitioner") praying for the reversal of the Decision dated June 20, 2008 dismissing the appeal of the City Government of Makati City from the Decision of OIC-Regional Director Ma. Nieva A. Guerrero, Revenue Region (RR) No. 8, Makati City, denying the City's Protest against the assessments on deficiency withholding and value-added taxes in the amount of P1,146,883,846.08 for taxable years 1999, 2000 and 2001, and for this Court to order the Commissioner of Internal Revenue to revoke and cancel the assessment notices dated April 11, 2007 in the amount of P317,087,339.66 for taxable years 2002 to 2004.

THE PARTIES

Petitioner, City of Makati, is a local government unit existing under its Charter by virtue of RA 7854, with office address at Makati City Hall, J. P. Rizal Street, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, charged with the assessment and collection of all national internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith, with office address at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as stipulated by the parties, are as follows:

"1.3. That on 2 May 2007 (received by petitioner on 3 May 2007), Warrant of Garnishment No. RD49-WG-05-02-07 #0050 was issued by Roberto A. Baquirin, Revenue District Officer, RDO No. 49, Bureau of Internal Revenue calling for the payment of P1,150,331,321.81 allegedly due from the petitioner as deficiency assessment on Withholding Tax on Compensation, Expanded Withholding Tax, Value-Added Tax and Withholding Tax on VAT for the years 1999-2004.

1.4. That the Warrant of Garnishment was based on a letter of demand and formal assessment notices dated 11 April 2007 issued by Nelson M. Aspe, Regional Director, Revenue Regional Office No. 8, Makati City.

1.5. That on 4 May 2007, petitioner in a Protest Letter to respondent dated 3 May 2007 disputed the validity of said Warrant of Garnishment and the assessment notices on which it was based.

1.6. That on 7 May 2007, petitioner received a letter from Revenue District Officer Baquiran dated 4 May 2007 lifting and withdrawing the Warrant of Garnishment which he issued and caused to be served to various banks.

1.7. That on 11 May 2007, Regional Director Aspe informed the petitioner that its 3 May 2007 Protest Letter would be forwarded to the Revenue District Officer, RDO No. 49, North Makati for further verification, evaluation and necessary action.

1.8. That in a letter dated 9 October 2007 (received by the petitioner on 5 November 2007), Regional Director Ma. Nieva A. Guerrero, Revenue Region No. 8, Makati City ruled that petitioner is liable to pay the Bureau of Internal Revenue the amounts of P1,146,883,846.08 for the years 1999-2001 and P317,087,339.66 for the years 2002-2004 as deficiency withholding taxes/value-added taxes/compromise penalties under separate deficiency assessments dated 16 October 2003 and 11 April 2007, respectively. Regional Director Guerrero asserted that both deficiency assessments have become final and executory.

1.9. That on 19 November 2007, petitioner filed a Protest Letter dated 16 November 2007 in the office of the respondent disputing the decision of Regional Director Guerrero.

1.10. That petitioner elevated the questioned ruling of Regional Director Guerrero for resolution by the Honorable Commissioner pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended by R.A. No. 8424, as implemented by Section 3.1.5 of Revenue Regulations No. 12-99.

1.11. That in its decision of 20 June 2008, respondent merely reiterated the ruling of Regional Director Guerrero. Respondent asserts that the disputed assessments for taxable years 1999-2001 issued on 16 October 2003 by the Region had become final and executory for failure of the petitioner to elevate its protest to the Court of Tax Appeals or the respondent's office within thirty (30) days from receipt thereof.

1.12. That respondent further stated that petitioner's appeal of 7 May 2007 was thus filed out of time. Hence, respondent found no reason to review it on its merits because the case is already a collection case.

1.13. That finally, respondent ordered petitioner City of Makati to pay the amount of P1,146,883,846.08 (less the

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amount of P100 million already paid) representing various deficiency tax assessments for taxable years 1999-2001.

1.14. That on 20 September 2002, Regional Director Antonio I. Ortega of Revenue Region No. 8, Makati City issued a Preliminary Assessment Notice (PAN) to the petitioner in the amount of P1,320,980,395.63.

1.15. That on 4 October 2002, petitioner filed a letter explaining the inaccuracies of the findings of the Revenue District Office on its deficiency income, VAT and withholding on compensation for the years 1999-2002.

1.16. On 15 October 2002, petitioner received assessment notices totaling P1,331,615,125.30 for the years 1999-2002.

1.17. That on 29 October 2002, petitioner, through its Vice Mayor, requested a reinvestigation of the said assessments stating that it needed time to reconcile its records with those of the BIR.

1.18. That on 29 January 2003, petitioner, through its Accounting Department noted by the City Treasurer, filed a protest letter dated 26 December 2002 against the report of Group Supervisor Alexander Martinez citing certain discrepancies in the withholding tax on compensation, expanded withholding tax, VAT withholding and value-added tax.

1.19. That on 30 April 2003, Regional Director Anselmo G. Adriano, Revenue Region No. 8, Makati City denied petitioner's protest stating that the amount still due totaled to P1,316,424,402.15. This denial was received by the petitioner on 5 June 2003.

1.20. That on 30 June 2003, petitioner filed a letter dated 27 June 2003 reiterating its protest against the assessments. On 3 September 2003, petitioner requested an extension of 60 days within which to submit the additional documentary requirements.

1.21. That on 16 October 2003, Regional Director Adriano issued Amended Assessment Notices to the petitioner in the total amount of P1,146,883,843.08 for the years 1999-2001. That THIS IS WHAT RESPONDENT COMMISSIONER OF INTERNAL REVENUE CLAIMS TO HAVE PURPORTEDLY BECOME FINAL AND EXECUTORY.

1.22. That on 24 October 2003, petitioner, through the City Treasurer, requested a recomputation of the deficiency tax assessments and submitted documents to support its claim that the computation made was excessive. On 19 November 2003, petitioner further requested an extension of 30 days to submit the additional documentary requirements.

1.23. That on 18 August 2004, Regional Director Adriano in a letter to petitioner informed it that the existing assessments were already final and executory.

1.24. That on 27 August 2004, petitioner, through the Vice Mayor, advised Regional Director Adriano that the said assessments had not become final and executory because said assessments were baseless and arbitrary; hence void and of no effect.

1.25. That on 11 March 2005, petitioner requested the reopening and reinvestigation of the case. In that letter, petitioner's Vice Mayor cited an agreement reached with Revenue Officer Martinez to re-examine petitioner's financial records.

1.26. That on 26 April 2005, a Tax Verification Notice was issued relative to the request for reinvestigation of the petitioner.

1.27. That on 29 April 2005, Regional Director Adriano in a letter informed the petitioner that its request for re-opening the 1999-2001 internal revenue tax case was approved by the Commissioner. The approval was signed for the Commissioner (Guillermo Parayno) by then Deputy Commissioner Jose Mario C. Buñag.

1.28. That on 3 May 2005, Regional Director Adriano requested the petitioner to submit specified documents. On 1 July 2005, the Revenue District Officer of RDO 49 also requested another set of records.

1.29. That on 4 August 2005, Regional Director Adriano sent a letter to the petitioner informing it of the newly revised assessment for the years 1999-2001 in the amount of P520,829,896.92 and demanded its payment on or before 31 August 2005.

1.30. That on 1 September 2005, a meeting presided by Finance Secretary Margarito Teves was held in the Office of the Mayor of Makati for the purpose of reconciling the records and positions of the petitioner and the BIR. This meeting was attended by the Mayor, Vice Mayor of Makati Ernesto S. Mercado, then BIR Assistant Regional Director Nelson Aspe and the staffs of the respective parties.

1.31. That on 2 September 2005, pursuant to the directive of the Secretary of Finance for the parties to settle the case fairly and reasonably, the petitioner offered to pay P100 million for the full settlement of the 1999-2001 deficiency taxes and tendered the amount of P20 million as initial payment of this offer. That this amount was paid to the Bureau on 5 September 2005.

1.32. That on 5 September 2005, this payment was officially accepted by Regional Director Adriano. He formally reminded the petitioner to pay the balance of P80 million by the end of the year.

1.33. That on 21 October 2005, another offer to compromise was made by the petitioner to settle the 2002-2004 deficiency taxes in the amount of P100 million; That this offer of compromise was suggested by Regional Director Adriano, apropos to the directive of Secretary Teves for the parties to conclude the reconciliation of their records.

1.34. That on the same date, Regional Director Adriano accepted the offer of settlement of the 2002-2004 deficiency taxes on the condition that 30% (P30 million) of the proposed amount be paid on or before 31 October 2005.

1.35. That on 28 October 2005, the petitioner paid the amount of P30 million to the BIR, representing 30% of P100 million.

1.36. That on 22 February 2006, the petitioner made two payments: (a) the balance of the compromise in the amount of P80 million for the years 1999-2001; and (b) the balance of P70 million for the years 2002-2004. On said date, therefore, P150 million was paid by the petitioner to the Bureau; That at this point, the petitioner had already paid the total compromise amount of P200 million to the Bureau as full settlement of the deficiency taxes for the years covering 1999-2001 (P100 million) and the years 2002-2004 (P100 million).

1.37. That on 22 November 2006, the new Regional Director Nelson M. Aspe informed the petitioner that the offer of compromise settlement was not accepted and demanded that the balance of P581,468,164.58 for the year 1999-2001 and also the proposed assessment for the year 2002-2004 in the amount of P322,952,109.25 be paid.

1.38. That on 28 December 2006, petitioner again met with Regional Director Aspe in the presence of Finance Secretary Teves. In that meeting, the parties concurred to set another meeting to finalize and conclude the ongoing reconciliation of their records.

1.39. That on 11 April 2007, Regional Director Aspe issued Assessment Notice No. WC-14523-02-07-0129 for withholding tax on compensation in the amount of P20,889,059.62 for taxable year 2002; Assessment Notice No. MC-14523/17740/17741-02/03/04-07-0129 for compromise/penalties in the amount of P206,000.00 for the years 2002 to 2004; Assessment Notice No. WE-14523-02-07-0129 for expanded withholding tax in the amount of

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P12,804,005.13 and P3,896,183.13, both for the year 2002; Assessment Notice No. WG-14523-02-07-0129 for deficiency withholding tax in the amount of P7,064,759.99 for the year 2002; Assessment Notice No. VT-14523-02-07-0129 for value-added tax in the amount of P4,234,621.24 for the year 2002; Assessment Notice No. WE-17740-03-07-0129 for deficiency expanded withholding tax in the amount of P28,939,658.45 for the year 2003; Assessment Notice No. WC-17740-03-07-0129 for deficiency withholding tax on compensation in the amount of P33,232,829.50 for the year 2003; Assessment Notice No. WG-17740-03-07-0129 for deficiency withholding tax in the amount of P103,134,743.24 for the year 2003; Assessment Notice No. VT-17740-03-07-0129 for deficiency valued-added tax in the amount of P6,439,821.47 for the year 2003; Assessment Notice No. WE-17741-04-07-0129 for deficiency expanded withholding tax in the amount of P3,809,901.55 for the year 2004; Assessment Notice No. WC-17741-04-07-0129 for deficiency withholding tax on compensation in the amount of P26,869,006.09 for the year 2004; Assessment Notice No. WG-17741-04-07-0129 for deficiency withholding tax in the amount of P62,340,387.12 for the year 2004; Assessment Notice No. VAT-17741-04-07-0129 for deficiency value-added tax in the amount of P3,946,363.13 for the year 2004.

1.41. That on 18 April 2007, petitioner reminded Regional Director Aspe of their last meeting with Secretary Teves on 28 December 2006 during which they agreed to finalize the reconciliation of their respective records. Petitioner requested that a meeting be set as previously agreed upon at Regional Director Aspe's earliest convenience.

1.42. That on 2 May 2007, the Writ of Garnishment was issued and served to the banks to withhold the amount being collected by the government from the deposit of the petitioner; That as mentioned earlier, petitioner filed its 3 May 2007 protest letter which resulted in the eventual lifting of the garnishment on 7 May 2007.

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> 1.43. That thereafter, on 9 October 2007, Regional Director Guerrero issued a ruling (received by the petitioner on 5 November 2007) declaring the 16 October 2003 deficiency assessment for the years 2002-2004 as final and executory; That this ruling was subsequently affirmed relative to the 1999-2001 assessments on 20 June 2008 by the respondent Commissioner of Internal Revenue in the Decision questioned herein."

In his "Answer" filed on September 5, 2008, respondent, by way of special and affirmative defenses, averred the following: the subject assessments had already become final, executory and demandable for failure of the petitioner to appeal to this Court or the CIR within thirty (30) days from receipt of the final decision dated October 16, 2003. Petitioner received the Final Decision dated October 16, 2003 on October 20, 2003, petitioner had therefore, until November 19, 2003, within which to appeal said decision. While a letter requesting for re-computation of the tax assessment with accompanying documents was indeed filed by petitioner on October 24, 2003, said letter was filed before the Office of the Regional Director of Makati, and not before the Commissioner. Neither did petitioner appeal said decision to the CTA, as required by the rules. Thus, when petitioner opted to file a letter of reconsideration with the office of the Regional Director, its right to appeal the Final Decision to the CTA or to seek a reconsideration of the same with the CIR was already barred. Thus, the Formal Assessment

Notices dated October 14, 2002 for various deficiency tax assessments in the aggregate amount of P1,189,561,192.57 for taxable years 1999-2001, which after reinvestigation was reduced to P1,146,883,846.08, as contained in respondent's Final Decision on Disputed Assessment dated October 16, 2003, had already become final, executory, demandable and unappealable; the succeeding events that led to the re-opening of the case and reduction of assessments produced no legal effects because these took place after the assessments had already become final, executory and demandable. Petitioner's appeal on May 7, 2007 with the CIR was filed out of time. Hence, respondent CIR no longer reviewed the merits of the assessments, because the case is already a collection case. Petitioner's Protest-Letter dated May 3, 2007 on the deficiency tax assessment notices for the years 2002-2004 contested only the validity of the deficiency withholding tax assessments on compensation income payments, and petitioner did not object to the deficiency tax assessments on expanded withholding tax, and value-added tax.

On September 22, 2008, petitioner filed a "Motion for Leave to Admit Attached Reply", which the Court granted in a Resolution dated September 24, 2008.

Upon motion of counsel for both parties on the ground that there are no questions of facts and only legal issues are involved in this case, the parties were granted forty (40) days from notice to file their respective memorandum. Thereafter, the case shall be deemed submitted for decision.

On February 2, 2009, petitioner filed its Memorandum, while on March 20, 2009, respondent filed a Manifestation with Motion praying that its Memorandum filed on March 16, 2009 be admitted, which the Court granted in a Resolution dated April 28, 2009.

On March 24, 2009, the Court ordered petitioner to pay the balance of the docket fee in the amount of P2,106,291.07. On April 29, 2009, petitioner filed a Manifestation that on April 27, 2009, it tendered the amount of P2,106,291.07, in compliance with the Resolution dated March 24, 2009, which the Court noted.

On June 5, 2009, petitioner filed a "Motion for Leave of Court To File Supplement/Reply Memorandum", which the Court granted in a Resolution dated July 1, 2009.

On September 14, 2009, petitioner filed a "Motion to Admit the Attached Supplemental Reply Memorandum", which was granted.

Hence, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE AMENDED ASSESSMENT NOTICE DATED OCTOBER 16, 2003 IS NULL AND VOID.

II

ASSUMING ARGUENDO THAT THE AMENDED ASSESSMENT NOTICE OF OCTOBER 16, 2003 IS VALID, WHETHER OR NOT SAID ASSESSMENT HAS BEEN CANCELLED AND SUPERSEDED BY THE REVISED ASSESSMENT DATED AUGUST 4, 2005.

III

WHETHER OR NOT RESPONDENT WAIVED ITS RIGHT TO INVOKE PRESCRIPTION.

IV

WHETHER OR NOT THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DATED OCTOBER 16, 2003 IS THE RESPONDENT'S FINAL DECISION THAT IS APPEALABLE TO THE HONORABLE COURT.

V

WHETHER OR NOT THE SUBJECT DEFICIENCY TAX ASSESSMENTS HAD ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE WHEN THE INSTANT PETITION FOR REVIEW WAS FILED ON JULY 15, 2008.

THE COURT'S RULING

The petition has no merit.

Being interrelated, the foregoing issues will be discussed jointly.

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1999 to 2001 Deficiency Tax Assessment

The Final Decision on Disputed Assessment dated October 16, 2003 Stated the Facts, Applicable Law, Rules and Regulations, and Jurisprudence on which Such Decision is Based and is the Final Decision on the Matter.

Petitioner contends that the Final Decision on Disputed Assessment dated October 16, 2003 has not become final and executory since the assessment is null and void *ab initio*. It did not state the facts and the law on which the assessment is based, particularly the deficiency withholding tax assessment, which is the main bulk of the alleged deficiency taxes. Citing the case of *Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006*, petitioner alleges that a void assessment cannot become final, executory and demandable.

Petitioner's contention is devoid of merit.

Section 3.1.6 of Revenue Regulations 12-99, implementing *Section 228 of the NIRC of 1997, as amended, provides*:

> "SEC. 3.1.6. Administrative Decision on a Disputed Assessment. – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered as decision on a disputed assessment; and (b) that the same is his final decision."

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A perusal of the Final Decision on Disputed Assessment dated October 16, 2003 shows that the same complied with the foregoing requirements. Petitioner was informed of the facts, applicable law, rules and regulations on which the assessment was based. Pertinent portion of the final decision reads:

> "This refers to the result of re-investigation on the deficiency tax assessments contained in our Final Assessment Notice (Fan) dated October 14, 2002, covering your deficiency taxes for taxable years 1999, 2000 and 2001, details of which as follows:
>
> ITEM A. UNDER WITHHOLDING OF TAX ON COMPENSATION
> *(Details on Sched. "A"/"C")*
>
> xxx xxx
>
> ITEM B. INCOME TAX
> *(Details on Sched. "F")*
>
> xxx xxx
>
> ITEM C. VALUE-ADDED TAX
> *(Details on Sched. "G")*
> xxx xxx
>
> ITEM D. EXPANDED WITHHOLDING TAX
> *(Details on Sched. "A"/"B")*
>
> xxx xxx
>
> ITEM E. PENALTIES FOR LATE REMITTANCE OF WITHHOLDING TAX ON COMPENSATION *(Sched. "E")*
>
> ITEM F. PENALTIES FOR LATE REMITTANCE OF EXPANDED WITHHOLDING TAX *(Sched. "E")*
>
> xxx xxx
>
> ITEM G. LATE REMITTANCE OF WITHHOLDING TAX ON VAT
> *(Sched. "E")*

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xxx xxx

ITEM H. UNDERWITHHOLDING OF VAT
(Sched. "A"/"D")

xxx xxx

Grand Total	P1,189,561,192.57

On April 30, 2003, we replied to your protest letter dated December 26, 2002 (marked as Annex "A"), giving you additional time to submit documents in connection with the subject deficiency internal revenue tax assessment.

On various dates, we receive the following letters containing your explanation as well as documents in support thereof:

1. June 20, 2003 – request for an extension of another 30 days to support your protest against our assessment, as well as your position on late remittance of taxes withheld on compensation and expanded withholding on certain months (ANNEX "B")

2. June 27 & 30, 2003 – submission of annual information return of income taxes withheld on compensation/alphabetical list of employees (1604-CF) and annual information return of creditable income taxes withheld EWT/alphabetical list of income payments (1604-E) for taxable years 1999 – 2002 (ANNEX "C").

3. July 8, 2003 – explanation on the variances on total compensation per Alpha List of employees against the total personal services (ANNEX "D").

After considering all the documents and explanation submitted by you as well as the evidence (sic) on record, this Office hereby resolved the following:

1. We grant your request for reconsideration on the deficiency income taxes arising from proprietary activities for taxable years 1999, 2000 and 2001 (ITEM B and schedule "F" attached). Hence, the same is hereby cancelled for lack of factual and legal basis.

2. On the issue involving penalties for late remittance of withholding tax on compensation, expanded withholding tax, and withholding of value added tax for taxable years 1999, 2000 and 2001 (ITEMS E, F, & G), the subject matter of your VAAP availment, the same will be forwarded for further review and evaluation by Head, TWG-IVD, Office of the DCIR-Operations Group which has exclusive jurisdiction of VAAP cases pursuant to RSO 604-2002 dated August

26, 2002 and RMO 32-2002 dated November 22, 2002 (Please see attached schedule "E").

3. We deny your request for reconsideration on the following:

a. Withholding tax on compensation/wages (ITEM A) – For your failure to withhold and remit the correct taxes due in violation of Section 78 of the Tax Code, as implemented by Section 2.78 of Revenue Regulations 2-98 and your failure to submit the Alpha List in prescribed form in accordance with Section 2.83.2 of Revenue Regulations No. 2-98 also (Sched. "A"/"C");

b. Deficiency Tax Assessment on Value-added tax (ITEM C) – For your failure to pay the VAT in violation of Section 105 of the Tax Code. Moreover, your failure to register as VAT-registered entity prohibits you from claiming input taxes (Sched. "G");

c. Deficiency Tax Assessment on Expanded Withholding taxes (ITEM D) – For your failure to withhold and remit the correct taxes on income payments in violation of 2.57.2 of Revenue Regulations No. 2-98 (Sched. "A"/"B");

d. Deficiency Tax Assessment on Withholding Value Added (ITEM H) Tax on Government Money Payments – For your failure to withhold and remit the correct taxes on purchases, services, and payments to public works contractors prescribed under Section 114 of the Tax Code of 1997, as implemented by Section 4.114 of Revenue Regulations No. 2-98 (Sched. "A"/"D").

Based on the foregoing, we recomputed the taxes due from you in the amount of P1,146,883,846.08, inclusive of interest computed from due date of the tax up to November 25, 2003, summarized as follows:

ITEM A. UNDER WITHHOLDING OF TAX ON COMPENSATION
(Details on Sched. "A"/"C")

xxx xxx

ITEM B. INCOME TAX - CANCELLED

ITEM C. VALUE-ADDED TAX *(Details on Sched. "G")*

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ITEM D. EXPANDED WITHHOLDING TAX *(Details on Sched. "A"/"B")*

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> xxx xxx
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> ITEM E, F and G – SUBJECT OF VAAP AVAILMENT
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> ITEM H. UNDERWITHHOLDING OF VAT *(Sched. "A"/"D")*
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> xxx xxx
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> Grand Total P1,146,883,846.08
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> In this connection, it is requested that the aforesaid deficiency internal revenue taxes be paid within thirty days from receipt of this letter. Otherwise, this Office shall be constrained to collect the same by means of summary remedies provided by law, in which case, the corresponding warrant of distraint and levy/garnishment of your bank accounts shall be issued by this Office for the collection of the same.
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> This is our final decision on the matter."

From the foregoing, it is clear that the assessment has factual and legal bases. Petitioner was initially issued a Preliminary Assessment Notice dated September 20, 2002 for deficiency Income Tax for taxable years 1999 to 2001, VAT for taxable years 1999 to 2001, Expanded Withholding Tax (Underwithholding) for taxable years 1999 to 2002, Withholding Tax on Compensation (Underwithholding) for taxable years 1999 to 2002, Expanded Withholding Tax (Late Remittance) for taxable years 2000 to 2001, Withholding Tax on Compensation (Late Remittance) for taxable years 1999 to 2000, Creditable Withholding Tax on VAT (Under Remittance) for taxable years 1999 to 2002, and Creditable Withholding Tax on VAT (Late Remittance) for taxable years 1999 to 2001 *(Annex "I", Petition for Review)*, which petitioner contested in a

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letter of the City Treasurer filed with respondent on October 4, 2002 *(Annex "J", Petition for Review)*.

Then, a Formal Assessment Notice was issued on October 14, 2002 to petitioner *(Annex "K", Petition for Review)*, against which petitioner requested for a reinvestigation of the assessment and for a conference for reconciliation of its records with the records of the respondent, in a one-page letter filed with respondent on October 30, 2002 *(Annex "L", Petition for Review)*.

Subsequently, in a letter dated November 6, 2002, Group Supervisor Alexander Martinez of Revenue District 49 furnished its report to the petitioner, which the latter exhaustively protested in a letter dated December 26, 2002 *(Annex "M", Petition for Review)*. On April 30, 2003, after several meetings were held on October 29, 2002, November 7, 2002, December 5, 2002, and December 13, 2002 between petitioner and respondent, OIC Regional Director, Anselmo Adriano ("Regional Director Adriano") replied to the protest letter of petitioner, giving petitioner additional ten (10) days to submit documents in support of its protest for deficiency assessments on Withholding Tax on Compensation (Underwithholding) and Expanded Withholding Tax *(Annex "O", Petition for Review)*. On June 20, 2003, petitioner requested for another thirty (30) days to support its protest. On June 30, 2003, petitioner reiterated its

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protest against the foregoing deficiency tax assessments and submitted annual information return of income taxes withheld on compensation/alphabetical list of employees (BIR Form 1604-CF), and annual information return of creditable income taxes withheld-EWT/alphabetical list of income payments (BIR Form 1604-E) for taxable years 1999 to 2002. On July 8, 2003, petitioner filed an explanation on the variances of total compensation, per Alpha List of employees against the total personal services. On September 3, 2003, petitioner requested for additional sixty (60) working days to submit the additional documents.

Records show that on October 16, 2003, Acting Regional Director Anselmo G. Adriano, Revenue Region No. 08, Revenue District No. 49, North Makati, issued the assailed Final Decision on Disputed Assessment, which: 1) cancelled the deficiency assessment on Income Tax of P21,771,860.12; 2) considered the deficiency assessments as penalties for late remittance of withholding tax on compensation of P1,867,668.68, penalties for late remittance of expanded withholding tax of P1,688,565.70, and late remittance of withholding on VAT of P17,349,251.99, subject to the availment of the Voluntary Assessment and Abatement Program; and 3) sustained the deficiency assessments on withholding tax on compensation of P740,796,701.56, on VAT of

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P7,899,471.71, on expanded withholding tax of P66,577,963.00, and on underwithholding of VAT of P331,609,709.81, or for the aggregate reduced deficiency assessment in the amount of P1,146,883,846.08.

From the foregoing events that transpired, and as shown in the above exchange of communications between petitioner and respondent, we find that petitioner was sufficiently informed of the factual and legal bases of the aforesaid assessments and was afforded the opportunity to present its side. In its protest, petitioner even cited certain discrepancies in the withholding tax on compensation, expanded withholding tax, VAT withholding tax and VAT. Petitioner could not have intelligently protested the assessments had it not been aware of the basis thereof. The purpose of the law having been served, We rule that *Section 228 of the NIRC of 1997, as amended*, has been complied with.

As Regards The Deficiency Assessment for Taxable Years 1999 to 2001, the Final Decision on Disputed Assessment dated October 16, 2003 is the Decision that is Appealable to this Court

We now address the question of whether the Final Decision on Disputed Assessment dated October 16, 2003 constitutes the decision that is appealable to this Court.

In the case of *Dy Pac & Company Inc. vs. Court of Tax Appeals, 79 SCRA 445-446*, the Supreme Court ruled, as follows:

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> "Paragraph 1, Section 11 of Republic Act No. 1125, in express terms, allows appeal from the 'decision or ruling of the Commissioner of Internal Revenue.' The word 'decision' has been interpreted to mean decisions of the Commissioner of Internal Revenue on protests of taxpayers against assessments. And, in computing the 30-day period for appeal to the Tax Court, counting should begin from the date of receipt of the decision of the Commissioner on the disputed assessment. However, where several request for reconsideration have been filed with the Commissioner, it would appear that the communication from the latter overruling taxpayer's request for reconsideration and affirming the disputed assessment in terms clearly indicating finality of the action taken, constitutes the appealable decision or ruling.
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> Considering the substance of the letter of the respondent Commissioner of October 18, 1967, it is evident that the said letter constitutes his 'decision'; it has the unmistakable tenor of finality that would make it the appealable decision or ruling under Section 7 and 11 of Republic Act No. 1125."

Pursuant to the foregoing ruling, when several requests for reconsideration have been filed with the BIR, the decision of respondent CIR that is appealable to this Court must have the unmistakable tenor of finality. *Revenue Regulations 12-99* expressly provides that the Decision on Disputed Assessment must state that the same is the final decision.

The reason for stating the tenor of finality in the CIR's decision was clearly enunciated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands, 521 SCRA 386-387*, to wit:

> "The CIR should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of RA 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on

> the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
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> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently, the collection of the amount demanded as taxes – by repeated requests for recomputation and reconsideration. On the part of the CIR, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the CIR from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action."

A perusal of the Final Decision on Disputed Assessment dated October 16, 2003 clearly shows that the same is the respondent's final decision on the matter, to wit:

> "xxx xxx
>
> In this connection, it is requested that the aforesaid deficiency internal revenue taxes be paid within thirty days from receipt of this letter. Otherwise, this Office shall be constrained to collect the same by means of summary remedies provided by law, in which case, the corresponding warrant of distraint and levy/garnishment of your bank accounts shall be issued by this Office for the collection of the same.
>
> This is our final decision on the matter."

In resolving petitioner's protest in the said Final Decision on Disputed Assessment dated October 16, 2003, Regional Director Adriano ordered petitioner to pay said amended deficiency assessment, within thirty (30) days from receipt; otherwise, respondent will be constrained to collect the same by means of summary remedies provided by law, and categorically stated that it is the "final decision on the matter". The finality of the Amended Assessments dated October 16, 2003 was reiterated by Regional Director Adriano in his letter dated August 18, 2004 *(Annex "T", Petition for Review)*, after petitioner filed a protest to said Final Decision on Disputed Assessment and Amended Assessment, both dated October 16, 2003 *(Annex "R", Petition for Review)*.

Considering the substance of the Final Decision on Disputed Assessment dated October 16, 2003, the Court rules that said decision constitutes the decision that is appealable to the CTA for review *(Commissioner of Internal Revenue vs. Isabela Cultural Corporation, 361 SCRA 76)*.

For Failure of Petitioner To Appeal the Final Decision on Disputed Assesssment Dated October 16, 2003 to the Court of Tax Appeals, the Assessment Had Become Final, Executory and Demandable

Section 228 of the NIRC of 1997, as amended, expressly provides that the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals, within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. Or, in case the decision was rendered by a duly authorized representative of the Commissioner, the taxpayer may elevate his protest

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to the Commissioner, within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, in which case, the latter's decision shall not be considered final, executory and demandable, and the protest shall be decided by the Commissioner *(Section 3.1.5 of Revenue Regulations 12-99)*.

Records show that petitioner received the Final Decision on Disputed Assessment dated October 16, 2003 on October 20, 2003 *(Original Docket, pp. 141-145)*. From October 20, 2003, petitioner has thirty (30) days, or until November 19, 2003, within which to appeal said final decision to this Court, as provided in *Section 228 of the NIRC of 1997, as amended*, or to elevate his protest to the Commissioner, as provided in *Section 3.1.5. of Revenue Regulations 12-99.*

However, instead of appealing the Final Decision on Disputed Assessment dated October 16, 2003 to this Court, or elevating its protest to the Commissioner, petitioner filed another protest dated October 24, 2003 with Regional Director Adriano, praying for a recomputation of the Final Assessment Notice dated October 15, 2003, regarding the deficiency taxes for taxable years 1999 to 2001. Evidently, petitioner availed of a wrong remedy before the wrong forum. A request for reconsideration directed to a person who is not authorized by law to review decisions of the CIR did not suspend the running of the

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1407

reglementary period within which to appeal *(Dy Pac & Company, Inc. vs. Court of Tax Appeals, supra, 448).* This is a settled rule in this jurisdiction.

Not contented, on November 19, 2003, petitioner asked Regional Director Adriano for a thirty (30)-day extension to submit additional supporting documents. However, in a letter dated August 18, 2004, Regional Director Adriano reiterated that the deficiency assessments against petitioner had become final, executory and demandable, pursuant to *Section 228 of the NIRC of 1997, as amended (Annex "T", Petition for Review).*

Pursuant to *Section 228 of the NIRC of 1997, as amended,* petitioner's failure to appeal the Final Decision on Disputed Assessment dated October 16, 2003 to the Court of Tax Appeals, within the statutory period, rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defense of legality or validity of the assessment *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221).* The assessment ceases to be a disputed assessment, and the same can no longer be contested by means of a disguised protest *(Marcos II vs. Court of Appeals, 273 SCRA 67).* Thus, in the case of *Commissioner of Internal Revenue vs. Concepcion, 22 SCRA 1061-1062,* the Supreme Court ruled:

> "For subsequently, in *Republic v. Lim Tian Teng Sons & Co. Inc.*, the above doctrine was reaffirmed categorically in this language: 'Taxpayer's failure to appeal to the Court of Tax Appeal in due time made the assessment in question final, executory and demandable. And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense.' Once, the matter has reached the stage of finality in view of the failure to appeal, it logically follows, in the appropriate language of Justice Makalintal, in *Morales v. Collector of Internal Revenue*, that it 'could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy"

Clearly, the letter dated October 24, 2003 of petitioner requesting for recomputation of the Final Assessment Notice dated October 16, 2003 *(Annex "R", Petition for Review")* is not the remedy prescribed by law. Once the assessment has become final, executory and demandable in view of the failure to appeal, it logically follows that the Final Assessment Notice dated October 16, 2003 can no longer be reopened. The subsequent proceedings that led to the reopening of the case and reduction of the assessment after the Final Decision on Disputed Assessment had become final, executory and demandable, produced no legal effect, being contrary to law and jurisprudence.

It must be emphasized that though the Final Decision on Disputed Assessment dated October 16, 2003 had already become final, executory and demandable, hence, unappealable, records show that the decision that was appealed to this Court in the present Petition For Review is the

1409

Decision dated June 20, 2008 of then Commissioner Lilian B. Hefti dismissing the appeal of the City Government of Makati City from the decision of OIC-Regional Director Ma. Nieva A. Guerrero, Revenue Region (RR) No. 8, Makati City, denying the City's protest against the assessments on deficiency withholding and value added taxes in the amount of P1,146,883,846.08 for taxable years 1999, 2000 and 2001.

The Reopening of the Case and Reduction of the Tax Liability is Not a Waiver of Respondent's Right to Invoke Prescription

It cannot be argued by petitioner that the act of respondent in granting the request for re-opening of the case and reducing the tax liability may be considered as a waiver of respondent's right to invoke prescription. First, the reopening was made pursuant to a mere agreement between Revenue Officer Alex Martinez and petitioner. Revenue Officer Martinez was not authorized to conduct a reinvestigation after the Final Assessment dated October 16, 2003 had already become final, executory and demandable.

Second, the re-opening of the case, which resulted to a reduction of petitioner's tax liabilities for taxable years 1999 to 2001, did not revoke or modify the Final Decision on Disputed Assessment dated October 16, 2003, which had already become final and executory. "The general rule

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is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the NIRC, enumerated in *Section 7. As amended by RA 8424, Section 7 of the Tax Code* authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, **except the following**: (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance; (b) The power to issue rulings of first impression or **to reverse, revoke or modify any existing ruling of the Bureau**; xxx" *(Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, 477 SCRA 213).*

In the case at bench, the ruling/decision dated August 4, 2005 revoking/modifying the Final Decision on Disputed Assessment dated October 16, 2003 was rendered by a mere Regional Director *(Annex "X", Petition for Review)*. Even granting that the reopening was favorably acted upon and approved by then Commissioner Guillermo Parayno, Jr., as petitioner now claims, however, as stipulated by the parties, the same was merely signed by then Deputy Commissioner Jose Mario C. Buñag *(Joint Stipulation of Facts and Issues, Original Docket, p. 246)*. Pursuant to the aforequoted *Section 7 of the Tax Code*, the revocation of a BIR ruling cannot be delegated by the CIR. Therefore, the ruling/decision dated August 4, 2005 of Regional Director Adriano revoking/modifying the Final Decision on Disputed Assessment dated October 16, 2003 has no basis in law; hence, null and void.

Third, the act of Regional Director Adriano allowing the reopening of the case, which resulted to the reduction of petitioner's tax liability for taxable years 1999 to 2001, was denied by no less than then Commissioner Lilian B. Hefti. In her Decision dated June 20, 2008, subject of the instant petition, then Commissioner Lilian B. Hefti aptly ruled, as follows:

> "The succeeding events that led to the re-opening of the case and reduction of assessment produced no legal effects because these took place after the assessments have become final, executory and demandable. It bears importance to repeat that by failing to exercise the appropriate remedy under the law, the City lost its right to question the validity of the assessments. By operation of law, the assessments can no longer be disturbed. Thus, the subsequent requests for reinvestigation or reopening of the case of the City have no basis in law."

Settled is the rule that though the authority to make tax assessments may be delegated to subordinate officers, said assessments have the force and effect as that issued by the Commissioner himself, if not reviewed or revised by the Commissioner *(Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, supra 214).*

In *Hilado vs. Collector of Internal Revenue, et al., 100 Phil 288*, the Supreme Court ruled that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given effect *(Philippine National Oil Company vs. Court of Appeals, 457 SCRA 102)*.

Therefore, the act of the previous Regional Director allowing the re-opening of the case and reducing petitioner's 1999 to 2001 tax liability did not estop the subsequent Commissioner from revoking said previous acts and ruling of the Regional Director. More so, when the ruling/action revoked involved an assessment that had already become final, executory and demandable, as in the present case.

There was no Formal Compromise Agreement Executed by Petitioner and the Commissioner of Internal Revenue That was Approved by the National Evaluation Board

Although petitioner made an offer in the amount of P100,000,000.00 to compromise its tax liabilities for taxable years 1999 to 2001, records show that there was no formal compromise agreement that was executed by the petitioner and the Commissioner of Internal Revenue, pursuant to *Section 204 of the NIRC of 1997, as amended.*

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Even assuming for the sake of argument that there was a formal Compromise Agreement executed by the parties, still petitioner's offer of compromise was not approved by the National Evaluation Board *(Annex "GG", Petition for Review). Section 204 of the NIRC of 1997, as amended*, provides that when the basic tax involved exceeds P1,000,000.00, or where the settlement offer is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board, composed of the Commissioner and four (4) Deputy Commissioners.

However, considering that petitioner already paid the amount of P100,000,000.00, by way of alleged compromise agreement, the same shall be deducted from its tax liabilities.

In sum, the deficiency assessment dated October 16, 2003 for taxable years 1999 to 2001 having become final, executory and demandable, by operation of law the correctness of the same can no longer be disturbed. The same is already enforceable and collectible. Therefore, petitioner's tax liability for taxable years 1999 to 2001, less the amount of P100,000,000.00 already paid is P1,046,883,846.08 (P1,146,883,846.08 – P100,000,000.00).

2002 to 2004 Deficiency Tax Assessment

As regards the deficiency tax assessment against petitioner for Withholding Tax on Compensation, Expanded Withholding Tax, VAT,

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and Withholding of VAT for taxable years 2002 to 2004, petitioner contends that said assessments did not state the facts on which the assessment was based, hence the assessment is null and void *ab initio*; in denying the protest only against its tax assessment for taxable years 1999-2001, respondent in effect abandoned collection of the 2002 to 2004 assessment, being null and void *ab initio*; and said assessments were already compromised by the Bureau.

Respondent, on the other hand, counters that petitioner contested only the validity of the deficiency withholding tax assessment on compensation, but did not interpose any objection to the deficiency tax assessments on Expanded Withholding Tax, Value-Added Tax and Withholding of VAT, and Regional Director Guerrero had ruled that the assessments for taxable years 2002 to 2004 had already become final, executory and demandable for petitioner's failure to submit relevant documents in support of its protest, within the sixty (60)-day period prescribed under *Section 228 of the Tax Code*.

We agree with the respondent.

A perusal of the Formal Assessment Notice dated April 11, 2007 *(Annex "A", Petition for Review)* shows that the same complied with the requirements prescribed in *Section 3.1.4 of Revenue Regulations 12-99*, as illustrated in Annex "B" thereof. It stated the facts on which the assessment was based, and the provisions of the law used in arriving at such deficiency assessments, as shown in the Details of Discrepancies, attached to the Formal Assessment Notice *(Annex-A of Annex "A", Petition for Review)*.

On the other hand, a scrutiny of petitioner's Protest Letter dated May 3, 2007 *(Annex "C", Petition for Review)* reveals that the same is more of a protest against the Warrant of Garnishment No. RD49-WG-05-02-07 issued by Revenue District Officer Roberto Baquiran. While *Section 3.1.4 of Revenue Regulations 12-99* requires that a formal letter of demand calling for payment of the taxpayer's deficiency taxes shall state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based, otherwise the formal letter of demand and assessment notice shall be void, *Section 3.1.5 of the same Revenue Regulations* provides that a taxpayer shall also state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

Although in its Protest Letter dated May 3, 2007, petitioner stated that the warrant was issued pursuant to the formal assessment notice dated April 11, 2007, it merely protested the assessment against it for deficiency withholding taxes on salaries and wages. In the concluding paragraph of its Protest Letter dated May 3, 2007, petitioner prayed: "In view of the foregoing, it is earnestly requested that the aforementioned Warrants of Garnishment be immediately withdrawn and revoked for lack of factual and legal basis. Its continued enforcement jeopardizes and unduly paralyzes the operations of the Government of the City of Makati. It had negatively impacted on Makati's delivery of basic services, the payment of wages and mid-year bonuses of our employees, among others. We thus, strongly move that the aforesaid assessment for deficiency withholding taxes on compensation income payments be recalled and cancelled for lack of factual and legal basis." *(Original Docket, p. 54)*.

From the foregoing, it is clear that petitioner did not contest the deficiency assessment against it for Expanded Withholding Tax, VAT and Withholding of VAT. For failure to contest the correctness of the assessment for Expanded Withholding Tax, VAT and Withholding of VAT, petitioner had, in effect, admitted the correctness of the same.

While petitioner alleges that the deficiency assessment on Withholding Tax on Compensation lacked factual and legal basis being merely based on the lump sum amount of compensation paid to employees, petitioner failed to adduce proof of the correct computation of the amount of withholding tax due. Since petitioner is contesting the validity of the assessment of respondent, which computation of the deficiency assessment was shown in the Details of Discrepancies of the Formal Assessment Notice *(Annex-A of Annex "A", Petition for Review)*, the burden of proof to show that indeed respondent's computation is erroneous is on the part of petitioner. However, records show that petitioner did not submit any documentary evidence in support of its protest. Since no evidence was presented to substantiate the errors that are alleged to have been committed by the respondent in making the assessments, applying the principle that all presumptions are in favor of the correctness of tax assessments, the burden of proof is on the taxpayer to show the contrary *(Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 974)*, the Court finds that petitioner has failed to discharge the burden of proof.

Furthermore, considering that petitioner's Protest Letter dated May 3, 2007 partakes of the nature of a request for reinvestigation, petitioner should have submitted relevant documents in support of its protest, pursuant to *Section 6 (b) of Revenue Regulations 12-85*. Since petitioner did not submit documents in support of its protest, the assessment against it for taxable years 2002 to 2004 had also become final, executory and demandable, pursuant to *Section 3.1.5 of Revenue Regulations 12-99*, which provides: "The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable", and *Section 228 of the NIRC of 1997, as amended,* which provides: "Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise the assessment shall become final".

Counting sixty (60) days from May 7, 2007, the date of filing of petitioner's protest against the assessment notice dated April 11, 2007, petitioner had until July 6, 2007, within which to submit relevant documents in support of its protest. But, as the records show, petitioner failed to do so, hence, We agree with respondent that the assessment for deficiency taxes against petitioner for taxable years 2002 to 2004 had also become final, executory and demandable.

It cannot be argued by petitioner that its 2002-2004 tax liabilities were already compromised. While petitioner offered the amount of P100,000,000.00 to compromise its tax liabilities for taxable years 2002 to 2004 *(Annex "BB", Petition for Review)*, records show that there was no formal compromise agreement that was executed by the parties, as petitioner's offer for compromise was not approved by the National Evaluation Board *(Annex "GG", Petition for Review)*. Pursuant to *Section 204 of the NIRC of 1997, as amended*, when the basic tax involved exceeds One Million Pesos (P1,000,000.00), or where the settlement offer is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board, which shall be composed of the Commissioner and four (4) Deputy Commissioners.

Accordingly, considering that petitioner already paid the amount of P100,000,000.00, as supposed compromise settlement of its 2002 to 2004 tax liabilities, the amount of P100,000,000.00 shall be deducted from its tax liability. Therefore, petitioner's tax liabilities for taxable years 2002 to 2004 is P217,807,339.60 (P317,807,339.66 – P100,000,000.00).

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner City of Makati is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the following:

1) the amount of **ONE BILLION FORTY SIX MILLION EIGHT HUNDRED EIGHTY THREE THOUSAND EIGHT HUNDRED FORTY SIX and 08/100 PESOS (P1,046,883,846.08)**, representing its deficiency taxes for taxable years 1999 to 2001; and

2) the amount of **TWO HUNDRED SEVENTEEN MILLION EIGHT HUNDRED SEVEN THOUSAND THREE HUNDRED THIRTY NINE and 66/100 PESOS (P217,807,339.66)**, representing its deficiency taxes for taxable years 2002 to 2004.

In addition, petitioner is hereby **ORDERED TO PAY** a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P1,046,883,846.08 from November 19, 2003, until fully paid, and on the amount of P217,807,339.66 from November 20, 2007, until fully paid, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division