**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***THIRD DIVISION***

**AYALA HOTELS, INC.,**
*Petitioner,*

**CTA CASE NO. 8438**
**For:** Cancellation of Tax Assessment

**-versus-**

**Members:**
**BAUTISTA,** Chairperson;
**FABON-VICTORINO,**
**RINGPIS-LIBAN,** ***JJ.***

**COMMISSIONER OF INTERNAL REVENUE**
*Respondent.*

**Promulgated:**
MAR 31 2015
2:10 p.m.

x------------------------------------------------------------------------------------------x

# DECISION

***RINGPIS-LIBAN, J.:***

Before the Court is a Petition for Review [1] filed by petitioner Ayala Hotels, Inc. (AHI) on January 25, 2012, assailing the Final Decision on Disputed Assessment (FDDA) [2] issued by the Commissioner of Internal Revenue (CIR) directing AHI to pay the following taxes:

| | | |
|---|---|---|
| Deficiency Income Tax (IT) | P | 9,930,231.89 |
| Deficiency Value-Added Tax (VAT) | | 4,354,518.91 |
| Deficiency Documentary Stamp Tax (DST) | | 1,674,997.00 |

AHI seeks the cancellation of the above-enumerated deficiency tax assessments for the calendar year (CY)-ending December 31, 2008 amounting to an aggregate amount of **FIFTEEN MILLION, NINE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED FORTY SEVEN PESOS and 80/100 (P15,959,747.80)**, inclusive of interest and compromise penalties.

[1] Petition for Review dated March 6, 2012 pursuant to Section 3(a), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals; Docket, pp. 6 to 33 with Attachments.

[2] Final Decision of Disputed Assessment dated January 25, 2012; Docket, pp. 28 to 30 marked as Exhibit "7" by respondent; pp. 703 to 708 of BIR Records.

## THE PARTIES

Petitioner Ayala Hotels, Inc. is a domestic corporation duly organized and existing under the Philippine laws primarily engaged in the business of owning, acquiring, selling, transferring or otherwise disposing of real and personal properties, including shares of stock, securities and to engage in the general business of a hotel, resort, apartment and other allied businesses. Petitioner is duly registered with the Bureau of Internal Revenue (BIR) [3] with principal office address at 19th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with the exclusive and original jurisdiction: ***(1)*** to interpret the provisions of Republic Act No. 8424 otherwise known as the "Tax Reform Act of 1997", as amended ("Tax Code"), and other tax laws subject to review of the Secretary of Finance; and , ***(2)*** to decide disputed assessments and claim for refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code and other laws administered by the BIR subject to the exclusive appellate jurisdiction of the Court of Tax Appeals [4].

## STATEMENT OF FACTS

The factual antecedents of this case reveal that on November 22, 2011, petitioner received a Formal Letter of Demand (FLD) [5] and Assessment Notices from the BIR Large Taxpayers District Office (LTDO) – Makati City assessing the company with a number of deficiency taxes covering the CY 2008 in the aggregate amount of P15,369,262.24, inclusive of surcharges, interest and compromise penalty, broken down as follows:

| **DEFICIENCY TAX (Tax Type)** | **AMOUNT** | **ASSESSMENT NOTICE No.** |
|---|---|---|
| Income Tax (IT) | P 9,677,869.29 | LTDO-122-IT-2008-00004 |
| Value-Added Tax (VAT) | 3,804,359.05 | LTDO-122-VT-2008-00004 |
| Withholding Tax – Expanded (EWT) | 155,460.48 | LTDO-122-WE-2008-00005 |
| Fringe Benefit Tax (FBT) | 56,576.42 | LTDO-122-WR-2008-00001 |
| Documentary Stamp Tax (DST) | 1,674,997.00 | LTDO-122-DS-2008-00002 |
| **TOTAL** | **P15,369,262.24** | |

[3] Registered TIN 000-437-612-000 (Marked as Exhibit "A-1") as per BIR Certificate of Registration (COR) No. OCN 8RC0000018227 dated January 1, 1997 (Marked as Exhibit "A"); Docket, p. 283.

[4] Joint Stipulations of Facts, paragraph 2; Docket, p. 140 to 147.

[5] Formal Letter Demand dated November 9, 2011, BIR Records, pp. 660 to 671 marked as Exhibit "6" by respondent, with Computation of Deficiency Tax Due (Exhibit "6-a") and Annexes as well as Details of Discrepancies (Exhibit "6-b").

Thereafter, petitioner filed its Letter-Protest [6] on December 20, 2011 opposing the deficiency IT, VAT and DST assessments issued by respondent. Likewise, petitioner admitted the revenue examiners' findings in connection with the issued deficiency EWT and FBT assessments and voluntarily paid the assessed amount of P155,460.48 [7] and P56,576.42 [8], respectively (total amount of P212,036.90) through the BIR's Electronic Filing and Payment System (EFPS).

On February 6, 2012, petitioner received by way of personal delivery a copy of the FDDA issued by respondent dated January 25, 2012 denying the protest and directing petitioner to pay deficiency taxes amounting to an aggregate amount of P15,959,747.80, inclusive of interests and compromise penalty, summarized as follows:

| TAX TYPE | BASIC | INTEREST | COMPROMISE PENALTY | TOTAL |
|---|---|---|---|---|
| IT | P 6,309,064.90 | P 3,596,166.99 | P 25,000.00 | P 9,930,231.89 |
| VAT | 2,391,999.40 | 1,937,519.51 | 25,000.00 | 4,354,518.91 |
| DST | 549,999.00 | 1,099,998.00 | 25,000.00 | 1,674,997.00 |
| **Total** | **P 9,251,063.30** | **P 6,633,684.50** | **P 75,000.00** | **P 15,959,747.80** |

On February 17, 2012, despite the issuance of the FDDA, petitioner still submitted to the BIR LTDO – Makati City, the documents in support of its protest.

On March 6, 2012, petitioner filed the instant Petition for Review.

The Court gave due course to the Petition for Review and set the same for Pre-Trial Conference on June 22, 2012.[9]

On March 22, 2012 and prior to the scheduled Pre-Trial Conference, petitioner decided to pay through EFPS the correct deficiency DST due on its Lease Contracts with Manila Peninsula Hotel Inc. (MPHI) and Manila Mandarin Hotel Inc. (MMHI) taking into consideration the actual land lease income for CY 2008. Petitioner paid an aggregate amount of **TWO HUNDRED THIRTEEN THOUSAND NINE HUNDRED EIGHTY ONE AND 91/100 (P 213,981.91)**, inclusive of interest and penalty, distributed as follows:

[6] Letter-Protest dated December 19, 2011; BIR Records, pp. 693 to 698.
[7] EFPS Payment Transaction No. 113485297 dated December 6, 2011 with BIR Form No. 0605, BIR Records, pp. 684 to 686.
[8] EFPS Payment Transaction No. 113485313 dated December 6, 2011 with BIR Form No. 0605; BIR Records, pp. 680 to 682.
[9] Pre-trial Conference

| | |
|---|---|
| MPHI | P 107,496.80 [10] |
| MMHI | 106,485.11 [11] |
| **Total** | **P 213,981.91** |

Similarly on March 27, 2012, petitioner paid under protest the basic deficiency VAT as stated in the FDDA amounting to **TWO MILLION THREE HUNDRED NINETY ONE THOUSAND NINE HUNDRED NINETY NINE PESOS AND 40/100 (P2,391,999.40)**. The following day, petitioner sent a letter [12] to the BIR LTDO – Makati City directed to the OIC-Assistant Commissioner, Large Taxpayer Service, informing the said office about petitioner's decision to pay under protest the basic deficiency VAT assessment [13] amounting to P2,391,999.40.

In her Answer [14], respondent interposed the following Special and Affirmative Defenses, to wit.

> "7. Under Section 228 of the 1997 Tax Code, partly it provides as follows:
>
> "**SEC. 228.** ***Protesting of Assessment.*** **–**
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."
>
> Implementing the aforesaid provision, **Section 3, 3.1.5 of Revenue Regulation No. 12-99 dated September 6, 1999**, provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory, and demandable. The phrase "submit the required documents" include submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue

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10 Exhibits "S", "S-1" and "S-2"
11 Exhibits "T", "T-1" and "T-2"
12 Letter dated March 28, 2012
13 Joint Stipulation of Facts, par. 11;
14 Docket; pp. 38 to 45

Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.

In this instant case, petitioner was found to have failed to submit the required documents in support of its protest against the subject BIR Formal Assessment Notice (FAN) and Letter of Demand, filed on December 20, 2011. Hence, the assessed deficiency income tax, value-added tax, and documentary stamp tax for the taxable year December 31, 2008 has already become final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the petition.

8. Well-settled is the rule that if the Court has no jurisdiction over the nature of an action, its only jurisdiction is to DISMISS the case. The Court could not decide the case on the merits ***(De Guzman, et al. vs. Escalana, et al. G.R. No. L-51773, May 16, 1980)***. The Court of Tax Appeals, being a court of Special Jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction ***(Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150).***

> "Such assessment may be <u>protested administratively</u> by filing a request for reconsideration and reinvestigation <u>within thirty (30) days from receipt of the assessment</u> in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final." *(Emphasis supplied)*

9. The Supreme Court in the case of ***Ker & Company, Ltd., vs. CTA, et al. L-12396, January 31, 1962*** and ***Commissioner of Internal Revenue vs. Joseph, et al. L-14034, August 30, 1962***, has ruled that:

> "If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss."

Moreover, in the case of Yao vs. Court of Appeals, et al., G.R. No. 132428, October 24, 2000, the Supreme Court held and we quote:

"***The right to appeal is not constitutional, natural and inherent right.*** It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural right nor part of due process. ***It may be exercised only in the manner and in accordance with the provisions of law. Corollary, its requirements must be strictly complied with.***

***That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional.*** Non-compliance with such legal requirement is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision."

xxx xxx xxx

11. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner were assessed for deficiency income tax, value-added tax, and documentary stamp tax for taxable year December 31, 2008, for the reason that during the administrative investigation of this tax case by the BIR, petitioner failed to substantiate or controvert by substantial evidence the BIR factual findings, as shown under the Details of Discrepancies attached to the Formal Assessment Notice (FAN) and Letter of Demand, Preliminary Assessment Notice (PAN) and Final Decision on Disputed Assessment (FDDA) dated January 25, 2012, which are briefly discussed hereunder, viz.:

**A.) Income Tax**

1. Petitioner failed to declare in its protest the discrepancy on salaries and wages reflected in the financial statement as against the declared alpha-list in the amount of P140,300.39, hence, said expense claimed by petitioner was disallowed.

2. The taxes and licenses by petitioner in the amount of P1,062,500.00 pertains to the documentary stamp tax on the original issuance of shares of stock on investment was made, remitted and paid by Greenhaven Property Ventures, Inc. as evidenced by BIR Form 2000. Greenhaven Property Ventures, Inc. will be the one who should claim the expense and not herein petitioner, Ayala

Hotels, Inc. since the cost of the imposition was borne by the corporation originally issuing the stock certificate. Hence said expense claimed by petitioner was disallowed.

3. The system cost expense claimed by petitioner in the amount of P16,823,096.17 was disallowed since petitioner failed to submit the management contract between Ayala Hotels, Inc. and Ayala Land, Inc. which would determine the basis of the management fee that ALI charged to AHI on a monthly basis. Further, the system cost expense is not necessary and ordinary in the nature of business of petitioner AHI which is rental and holding company and it does not need technical consultancy services to maximize it operations.

**B.) Value Added Tax**

1. The input tax claimed by petitioner which are supported by various invoices and receipts are not compliant with the invoicing requirements under Section 113 (A) of the 1997 Tax Code thus provides that aside from making it mandatory for VAT registered person to issue an invoice or receipts for every sale transaction, it also requires said person, in addition to the information required under Section 237 of the NIRC of 1997, to reflect the information that the seller is a VAT registered person followed by his TIN and the total amount which the purchaser pays or is obliged to pay the seller with the indication that such amount includes the value-added tax. Hence said input tax credits claimed by petitioner were disallowed.

**C.) Documentary Stamp Tax:**

1. Contracts/Agreements covering Lease Contracts with Manila Peninsula Hotels, Inc. and Manila Mandarin Hotel, Inc. was subjected to Documentary Stamp Tax covering the whole term of the contract of lease, pursuant to Section 194 of the NIRC. The DST on lease contract was based on petitioner's submitted schedule of rent income and indicating therein the minimum rent income of P1,000,000.00 per month of Manila Peninsula Hotels, Inc. and Manila Mandarin Hotels, Inc. Petitioner also failed to submit the Contract of Lease to verify the lease hiring agreements. Documentary stamp tax is collected on lease, agreements, memorandum or contract for hire, use or rent of any lands or tenements, or portions thereof, a documentary stamp ta for each year of the term of the said

contract or agreement which means on the total term of the contract and not on a yearly basis.

12. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12099, when the disputed Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) and Letter of Demand and Final Decision on Disputed Assessment (FDDA) dated January 25, 2012 were issue to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the factual findings of the respondent CIR on its deficiency taxes for taxable year 2008 through the issuance of a Notice of Informal Conference, PAN and FAN and FLD. Likewise, petitioner was duly appraised by respondent of the factual and legal basis on how and why he arrived at such a deficiency income tax, vat and dst for 2008 through the issuance of details of discrepancies attached to the FAN, PAN, NIC, as well as the FDDA and other BIR correspondence which are found in the BIR Records of the case.

13. This Honorable Court in the case of ***IDL Logistics (Phil's), Inc. vs. CIR***, CTA Case no. 7540, May 20, 2010, citing the ruling in ***BPI vs. CIR***, CTA Case No. 7397 April 9, 2008, thoroughly discussed the due process rule in taxation, as follows:

"Revenue Regulation No. 12-85 provides for the procedure covering the Administrative Protest on Assessments of the BIR. Under the said BIR RR, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice if the issuance of the PAN upon finding of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5, of the same RR provides that "in the event that the taxpayer fails to respond to the PAN within the prescribed period… he should be informed of such fact and the report of investigation shall be given due course."

The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for the taxable year 1982-1986 as evidence by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on

> September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.
>
> As the facts would demonstrate, ***petitioner was never deprived of due process as it was fully appraised of the legal and factual basis of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessments, and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with***." (Emphasis supplied)
>
> 14. The assessment issued against petitioner for deficiency income tax, vat and DST for taxable year December 31, 2008 were wade in accordance with law and regulations.
>
> 15. All presumptions are in favor of the correctness of tax assessments issued by the respondent."

During the scheduled Pre-Trial Conference on June 22, 2012, petitioner raised to the attention of this Court the circumstances in connection with the payment of the deficiency DST and payment under protest of deficiency VAT assessments, and manifested its intention to amend its Petition for Review.

On July 9, 2012, petitioner filed before the Court a "Motion for Leave of Court to Amend Petition for Review" stating as ground the occurrence of subsequent events that affects the allegations as well as the reliefs prayed for in the original petition for review *i.e.* payment of DST and VAT and considering that the VAT payment was made under protest, petitioner likewise amended its prayer by seeking a claim for refund once deficiency tax assessments are cancelled and withdrawn. In a Resolution promulgated July 12, 2012, this Court granted petitioner's motion to amend its Petition for Review.

In a Resolution issued September 25, 2012, this Court required the parties to submit their Joint Stipulation of Facts and Issues which shall include the list of their respective documents and witnesses for approval hereof. On September 10, 2012, the parties submitted their "Joint Stipulation" which was approved by this Court in a Resolution dated October 2, 2012.

In the course of trial, petitioner presented the testimony of its first witness, Ms. Nenita A. Lorbis [15], its former Chief Accountant. Ms. Lorbis attested that petitioner was deprived of procedural due process and identified various documentary exhibits to prove that petitioner is not liable to the assessed deficiency Income Tax amounting to P9,930,231.89.

Thereafter, petitioner presented the testimony of Ms. Luisa D. Chiong [16], its Chief Finance Officer (CFO). Similar to the first witness, Ms. Chiong identified various documentary exhibits ***(1)*** in support of the cancellation of the deficiency DST assessment and ***(2)*** in support of the claim for refund in connection with the payment of the basic deficiency VAT assessment.

On April 22, 2012, petitioner filed its "Formal Offer of Evidence" [17]. Thereafter, the parties filed a "Joint Manifestation and Motion" dated April 23, 2013 for the purpose of correcting some details in the records of this case as well as in the markings of the petitioner's documentary exhibits [18]. On May 22, 2013, this Court issued a Resolution admitting all of the documentary exhibits duly identified by the two (2) witnesses. The resolution likewise set the initial presentation of respondent's evidence.

On the other hand, respondent presented, Ms. Neriza M. Manuel [19], Revenue Officer III of the Large Taxpayer's Divison (LTD), BIR Makati City, as her lone witness. Ms. Manuel testified and outlined the conduct of the tax audit investigation in connection with petitioner's books of accounts and the issuance of the alleged deficiency tax assessments on the basis of the said investigation.

On November 5, 2013, Respondent filed her "Formal Offer of Exhibits". Respondent's exhibits were admitted by this Court in a Resolution dated January 3, 2014. In this respect, respondent having deemed to have rested her case, this Court required the parties to submit their respective Memoranda.

Considering the Court's Resolution dated March 24, 2014, denying respondent's Motion for a Final Extension of time to Submit Memorandum filed on March 18, 2014, and the Court's Resolution dated April 11, 2014, admitting petitioner's Memorandum dated March 12, 2014, the above-captioned case is deemed submitted for decision.

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[15] Sworn Statement of Ms. Nenita A. Lorbis dated November 27, 2012 and marked as Exhibit "*U*"; Docket, pp. ___

[16] Sworn Statement of Ms. Luisa D. Chiong dated February 22, 2013 and marked as Exhibit "V"; Docket, pp. 711 to 735.

[17] Docket, pp. 252 to 282

[18] Granted by this Court in a Resolution dated April 30, 2013

[19] Sworn Statement of Ms. Neriza M. Manuel dated August 2, 2013 and marked as Exhibit "_"; Docket, pp. ____

## THE ISSUES

The parties jointly raised the following issues [20] for the resolution of this Court, as follows:

I. Whether or not the FDDA was hastily issued by the Respondent within the sixty (60) day period after the filing of the Petitioner's Protest?

II. Whether or not Petitioner was deprived of its statutory right to submit the relevant supporting documents when the FDDA was issued on January 25, 2012?

III. Whether or not Petitioner can claim as deduction for income tax purposes the amount of One Million Six Hundred Sixty Two Thousand Five Hundred Pesos (P1,062,500.00) pertaining to the DST payment on the original issuance of shares of stocks of GPVI?

IV. Whether or not Petitioner can claim as deduction for income tax purposes the amount of Sixteen Million Eight Hundred Twenty Three Thousand Ninety Six Pesos and 17/100 (P16,823,096.17) pertaining to the System Cost/ Management Fees paid to Ayala Land Inc. (ALI)?

V. Whether or not Petitioner can claim as input VAT credits the amounts reflected in the VAT invoices/official receipts (issued by its supplier of goods and services) despite the lack and/or absence of Petitioner's own TIN imprinted thereon?

VI. Whether or not the deficiency DST assessment issued against the Petitioner in the amount of P 1,674,997.00 has legal and factual bases?

VII. Whether or not Petitioner is entitled to a refund in the total amount of P 2,391,999.40 corresponding to the basic deficiency VAT assessment PAID UNDER PROTEST for CY 2008?

VIII. Whether or not the assessed deficiency IT, VAT and DST for CY 2008 has already become final and executory for failure of the Petitioner to submit the required documents in support of the protest, pursuant to Section 228 of the Tax Code, as implemented by Section 3 of Revenue Regulations 12-99 dated September 6, 1999, hence, this

[20] Joint Stipulation of Facts and Issues dated September 10, 2012; Docket, pp. 144 to 145.

Honorable Court has no jurisdiction to act on the instant petition?

Whether or not Respondent fully complied with the due process requirements mandated under Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99 relative to the issuance of the disputed deficiency IT, VAT and DST for CY 2008?

IX. Whether or not Petitioner is liable to pay the assessed deficiency IT, VAT and DST for CY 2008?

The foregoing may however be summed up into the following issues, to wit:

**I. Whether or not there is factual basis for the issuance of the Final Decision on Disputed Assessment;**

**II. Whether or petitioner is liable to pay the assessed deficiency Income Tax, Value-Added Tax and Documentary Stamp Tax for the CY-ending December 31, 2008.**

**III. Whether or not petitioner is entitled to a refund amounting P2,391,999.40 representing payment of basic deficiency VAT under protest."**

## THE COURT'S RULING

***Respondent's Final Decision on Disputed Assessment is devoid of factual and legal basis and therefore null and void.***

Section 228 of the National Internal Revenue Code of 1997, as amended ("Tax Code"), as implemented by Section 3, 3.1.5 of Revenue Regulation (R.R.) No. 12-99 [21] outlines the process of disputing a tax assessment within a certain period of time, thus:

"**SEC. 228.** ***Protesting of Assessment.*** – When the Commissioner or his duly authorized representatives finds that proper taxes should be assessed, he shall first notify the taxpayer of

[21] September 6, 1999

> his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from the receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final</u>.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Underscoring ours)*

Relative thereto, Revenue Regulation (RR) No. 12-99 [22], more particularly, Section 3.1.5, provides for the administrative remedies available to a taxpayer in disputing assessment. Section 3.1.5 is quoted hereunder:

> "3.1.5. *Disputed Assessment* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from day of receipt thereof...
>
> xxx xxx xxx
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based,

[22] Dated September 6, 1999 issued by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue to implement the provision of the NIRC on assessment of the National Internal Revenue Taxes.

> otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the dispute and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from the filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation of the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report or investigation.
>
> If the taxpayer fails to file a valid protest against the formal letter demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final and executory and demandable.
>
> xxx xxx xxx" *(Underscoring ours)*

Based on the afore-quoted provisions, it is clear that a taxpayer is granted a period of 60 days within which to submit all relevant documents in order to substantiate its claim embodied in the protest.

Respondent, citing Section 228 of the Tax Code and R.R. No. 12-99, argued that petitioner failed to submit within the 60-day period the documents in support of its administrative protest against the subject deficiency tax assessments embodied in the FAN and Final Letter of Demand [23]. Hence, respondent posits that the assessed deficiency IT, VAT and DST has already become final and executory.

On the other hand, petitioner anchors its case upon the same provisions cited by respondent. Petitioner maintains that its right to make use of the period expressly granted by Section 228 to submit documents in support of its

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[23] Filed December 20, 2011.

Letter-Protest against the FAN has been violated since the FDDA was issued thirty five (35) days after the filing of the administrative protest or less than the sixty (60) days within which the submission of the said documents can be made.

Petitioner argues that the determination of the deficiency tax assessments are not limited to legal issues but also involves factual issues which can be resolved through submission of relevant documents within the period allowed by law. For failure to consider factual issues, petitioner claims that the FDDA issued by respondent is null and void because it is devoid of factual and legal bases other than the assertions made in the letter-protest, thus null and void.

It is undisputed that petitioner filed its Letter-Protest on December 20, 2011 contesting the validity of FLD and Assessment Notices issued by the respondent on November 9, 2011. Petitioner then has sixty (60) days or until February 18, 2012 within which to submit relevant documents in support of its administrative protest. Respondent, for unspecified reasons, issued the FDDA on January 25, 2012 or thirty five (35) days before the lapse of the 60-day period.

Petitioner's witness, its former Chief Accountant Ms. Nenita A. Lorbis, stated in her sworn statement [24] that the protest can be resolved only through the submission of relevant documents and that both petitioner and respondent had an ongoing discussion on the remaining issues to be resolved and they agreed on what documents to submit in order to shorten the evaluation of the case [25]. The pertinent portion of Ms. Lorbis' testimony, as follows:

> Q11 What happened, if any, after the filing of the Protest Letter?
>
> A11 After the filing of the Protest Letter, there had been an ongoing discussion between AHI's representatives and the revenue examiners about the remaining deficiency tax assessments. <u>We told the examiners that we would be submitting the relevant supporting documents to the Protest Letter for their reference and in order to expedite the disposition of the case</u>.
>
> Q12 What is the reason or reasons, if any, for the submission of the relevant supporting documents to the Protest Letter?
>
> A12 <u>The deficiency tax assessments issued against AHI involved not only legal issues and but, more importantly, factual issues that can be resolved only through the presentation of relevant supporting documents</u>. For

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24 *Ibid.*

25 Exhibit "*U*", p. 2; Docket, p. 694.

> instance, in contesting the deficiency IT assessment, AHI needs to submit the DST Declaration/ Return (BIR Form 2000) to prove it was the one that prepared the BIR tax return and paid the tax due on the transaction. Likewise, in contesting the deficiency VAT assessment, AHI should submit the Quarterly VAT returns for CY 2008 together with the Summary List of Purchases for each quarter in order to validate the transactions between the Company and its sellers of services. Finally, in contesting the deficiency DST assessment, AHI would still need to submit the Contract of Lease between the Company and its two (2) lessees and the respective Renewal Contract to determine the actual DST due on the transactions. *(Underscoring ours)*

The existence of the factual issues and the need to submit the relevant documents in order to resolve the same was thereafter confirmed by no other than respondent's witness, Ms. Neriza M. Manuel, Revenue Officer III, BIR Large Taxpayer's Division, City of Makati, when she testified [26] that:

> "Atty. Reyes:
>
> Q. Going back to the 3 tax types that you mentioned a while ago, do you agree with me that this assessment can be resolved through the submission of supporting documents, meaning, the issues involved are factual?
>
> Ms. Manuel:
>
> A. Yes, sir."

On cross-examination [27], Ms. Manuel stated that:

> "Atty. Reyes
>
> Q. And in question no. 26, you mentioned that after the receipt of the Protest Letter, you requested on several occasions from the petitioner to submit the supporting documents in support of the protest?
>
> Ms. Manuel
>
> A. Yes, sir.
>
> Atty. Reyes

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[26] Transcript of Stenographic Notes, October 24, 2013, p.5.
[27] Transcript of Stenographic Notes, October 24, 2013, pp. 4 to 5.

> Q. Do you have proof to show that you made such request from the petitioner?
>
> Ms. Manuel
>
> A. Actually, the request is only through the telephone and on various meetings with the accountant.
>
> Atty. Reyes
>
> Q. So you are saying that you do not have any written request from the petitioner?
>
> Ms. Manuel
>
> A. None, sir."

It can be discerned from Ms. Manuel's testimony that she asked for the submission of supporting documents. Thus, it is imperative for the respondent to wait for the expiration of the 60-day period prescribed by law within which petitioner may submit the said relevant supporting documents.

As explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc.*** [28], the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. <u>The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit</u>. In ***Tutuban Properties, Inc. vs. Commissioner of Internal Revenue*** [29], this Court stated that the BIR should inform the taxpayer to submit whatever documents are lacking in order that a complete determination of the proprietary of the assessment may be had. Further, this Court reiterates that the requirement on the submission of all the relevant supporting documents within the 60-day period from filing protest is merely Directory." *(Underscoring ours)*

Respondent's issuance of the FDDA before the expiration of the 60-day period prescribed by law is deemed premature. Petitioner may still utilize the remaining 25-day period to gather documents deemed to be relevant to support their claim and thereafter submit the same to the BIR.

[28] G.R. Nos. 172045 - 46, June 16, 2009.

[29] CTA Case No. 7536, December 13, 2010, citing ***Standard Chartered Bank - Philippine Branches vs. Commissioner of Internal Revenue,*** CTA Case No. 5696, August 16, 2001.

To the mind of this Court, the law grants the taxpayer the option of submitting the necessary documents in support of its administrative protest within 60-days from filing thereof. Where the taxpayer decides to forego with its opportunity to present such documents, it merely loses its chance to further contest the assessment.

Non-compliance with the submission would mean that the taxpayer no longer wishes to further submit any document or that the taxpayer has failed to comply with mandate of the law.

Therefore, it is incumbent upon the taxpayer to advice the BIR that it no longer seeks to present any document in support of its claim. On the other hand, it is the BIR's duty to remain passive until the lapse of the 60-day period, as provided under Section 228 and R.R. No. 12-99, where the taxpayer has clearly failed to submit any documents for the BIR examiner's scrutiny. In the present petition, it should be the responsibility of the revenue officers to notify the taxpayer of the fact that it has yet to submit the agreed documents within the period prescribed. Failure to observe the same, respondent has violated petitioner's right to due process when it prematurely issued the FDDA thus rendering the deficiency assessments null and void for failure to inform petitioner of the facts and the laws to which the assessment is based.

This Court would like to emphasize that the mandatory requirement of Section 228 regarding deficiency tax assessments [30] *"that the taxpayer shall be informed in writing of the law and facts on which the assessment was made; otherwise, the assessment shall be void"* is also relevant in determining the validity of the FDDA issued by respondent since *ultimately, at the administrative level, it is the FDDA which will determine the final tax liability of the taxpayer and which may be the subject of appeal before this Court* [31]. This is in line with the provision of Section 3.1.6 of RR No. 12-99, which provides:

> "**Section 3.** ***Due process requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1.6. *Administrative Decision on Disputed Assessment.* – The decision of the Commissioner or his duly authorized representatives shall (a) <u>state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void, in which case, the same shall not be considered a decision on a disputed assessment</u>; and (b) the same is his final decision." *(Underscoring ours)*

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[30] In reference to the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN).

[31] ***Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue,*** CTA Case No. 8141, February 20, 2013.

This is also consistent with provisions of Section 3.1.5 of RR No. 18-2013, which states:

> "3.1.5. *Final Decision on a Disputed Assessment (FDDA).* — The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void xxx xxx xxx, and (ii) that the same is his final decision."

The importance of complying with the mandatory due process requirements under Section 228 is adequately explained by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*** [32], stated as follows:

> "It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in ***Commissioner of Internal Revenue v. Algue, Inc.***, it was said —
>
> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for

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

> its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate . . . that the law has not been observed."

Based on the foregoing, petitioner was denied due process for respondent's failure to consider the factual bases upon which the decision on the deficiency tax assessments were based. Stated differently, respondent violated due process by her failure to fully comply with the requirements of Section 228 and allow petitioner to submit the relevant documents agreed upon and consider the same in rendering a sound and informed decision. Instead, respondent blankly issued the FDDA with nothing but petitioner's assertions and representations in its Letter-Protest.

This Court therefore finds the decision on the assessed deficiency IT, VAT and DST null and void following the mandate of Section 3.1.6 of RR No. 12-99.

Verily, the 60-day period must be utilized in full for the benefit of both the petitioner and respondent and any limitation to do so shall be regarded as a violation of due process. In ***Perf Restaurants Inc. vs. Commissioner of Internal Revenue*** [33], this Court ruled that "Section 228 of the NIRC of 1997 operates for the benefit of both the taxpayer and the government. Said section guarantees "a taxpayer due process" before it may be held liable to pay tax found due. On the other hand, the government is given an opportunity to assess and collect internal revenue taxes, interests, and penalties from delinquent taxpayers or tax evaders within the prescriptive period."

In view of the foregoing, the Court finds that is it no longer necessary to dwell on the merits of the assessments.

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[33] CTA Case No. 7334, March 5, 2010.

***PETITIONER'S RIGHT TO A CLAIM FOR REFUND AMOUNTING TO P2,391,999.40 AROSE FROM THE NULLITY OF THE FDDA.***

Section 229 [34] of the Tax Code provides that all suits or proceedings shall be filed before the expiration of the two (2) years from the date of payment of the tax or penalty, regardless of supervening cause that may arise after payment. This finds supported in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, [35] where the Supreme Court stated that -

> "A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. <u>In both cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods which will file the administrative and judicial claims would result in the denial of his claim."</u> *(Underscoring ours)*

However, the circumstances in the present petition demand a different treatment. In ***Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.*** [36], the Supreme Court ruled that "<u>The prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained</u> which can only be determined after a final adjusted return is accomplished, regardless of any supervening cause that may arise thereafter." *(Underscoring ours)*

Applying the afore-mentioned ruling, this Court has determined that the FDDA issued by respondent is null and void for being in violation of the

[34] "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceedings shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.
<u>In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment</u>: Provided however, That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Underscoring ours)*.

[35] G.R. No. 184823, October 6, 2010.

[36] 244 SCRA 447 (1995).

provisions of Section 228 and has finally ascertained petitioner's right to a claim for refund on account of its payment of basic deficiency VAT assessment. Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adopt their judgments to the special circumstances of cases, are incompetent to do so. [37] Thus, the interpretation on the law on prescription may be relaxed for equitable ends and allow petitioner to claim for refund paid under protest.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment issued by respondent on January 25, 2012 set aside and hereby declared null and void and of no legal effect precluding respondent from collecting the P15,959,747.80 assessed deficiency taxes for the CY-ending December 31, 2008.

Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P2,391,999.40** corresponding to the basic deficiency VAT paid under protest.

**SO ORDERED**.

Ma. Belen S

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**LOVELL R. BAUTISTA**
*Associate Justice*

**ESPERANZA R. FABON-VICTORINO**
*Associate Justice*

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[37] ***Manila Electric Company vs. Commissioner of Internal Revenue***; CTA Case No. 7242, December 6, 2010, citing ***Tamio vs. Ticson***, G.R. No. 154895, November 18, 2004

## 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.

**LOVELL R. BAUTISTA**
*Associate Justice*
*Chairperson*

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court in Division before the case was assigned to the writer of the opinion of this Court.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*