REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOYOTA MANILA BAY CORPORATION, Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1280** **(CTA CASE NO. 8227)**

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **TOYOTA MANILA BAY CORPORATION,** Respondent.	**CTA EB NO. 1287** **(CTA CASE NO. 8227)** Present: Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, and Ringpis-Liban, *JJ.* Promulgated: OCT 0 3 2016 3:10 p.m.

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D E C I S I O N

CASTAÑEDA, JR., J.:

Before Us are consolidated Petitions for Review, docketed as CTA EB No. 1280, filed by Toyota Manila Bay Corporation (Toyota), petitioner, against the Commissioner of Internal Revenue (CIR), respondent, on March

25, 2015, and as CTA EB No. 1287, filed via registered mail by the CIR, petitioner, against Toyota, respondent, on March 25, 2015.

Both petitions assail the September 3, 2014 Decision and February 17, 2015 Resolution promulgated by the First Division of the Court in CTA Case No. 8227, entitled "Toyota Manila Bay Corporation vs. Commissioner of Internal Revenue", the dispositive portions of which respectively read:

September 3, 2014 Decision:

> "**WHEREFORE**, all the foregoing considered, the Petition for Review is **PARTIALLY GRANTED**. The Formal Assessment Notice dated October 24, 2007 and the Warrant of Distraint and Levy No. 2011-001 dated January 6, 2011, issued by respondent against petitioner, are hereby **MODIFIED**, so as to reflect only the basic deficiency VAT assessment amounting to ₱666,685.90, and basic deficiency DST assessment in the amount of ₱735,000.00, plus surcharges and interests.
>
> Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the total amount of ₱1,752,107.33, inclusive of surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	666,685.90	166,671.48	833,357.38
Documentary Stamp Tax	735,000.00	183,750.00	918,750.00
Total	1,401,685.90	350,421.48	1,752,107.38

> In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱666,685.90 and basic deficiency DST of ₱735,000.00, computed from January 25, 2005 and January 5, 2005, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱1,401,685.90, computed from November 24, 2007 until full payment thereof, pursuant to Section 249(C) of the same Code.
>
> **SO ORDERED.**"

February 17, 2015 Resolution:

> "**WHEREFORE**, all the foregoing considered, petitioner's Motion for Reconsideration filed October 1, 2014 and respondent's Motion for Partial Reconsideration filed on October 8, 2014 are hereby **DENIED** for lack of merit. *gl*

SO ORDERED."

THE FACTS

As gleaned from the records of the case, the facts are stated below.

Toyota Manila Bay Corporation (Toyota) is a domestic corporation duly registered with the Securities and Exchange Commission[1] engaged in the business of car dealership.[2]

Respondent in the case *a quo*, on the other hand, is the Commissioner of Internal Revenue, empowered under the National Internal Revenue Code (NIRC) to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue (BIR). She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On August 8, 2005,[4] Marita G. Posada, Toyota's accounting staff, received a Letter of Authority (LOA) No. 00045339 dated August 3, 2005 covering all internal revenue taxes for the period beginning January 1, 2004 to December 31, 2004.[5] The LOA was signed by Regional Director Anselmo G. Adriano of Revenue Region No. 8 and was issued through Revenue District Officer Elenita B. Quimosing of Revenue District Office (RDO) No. 51.[6]

By virtue of the LOA, an investigation was conducted by the CIR's Revenue Officer Gene Etorma and Group Supervisor Mario Eleda for the taxable year covered.[7]

Thereafter, on December 21, 2005, Toyota remitted to the CIR the total amount of ₱1,272,078.63, representing payment for basic deficiency taxes, interests and compromise penalties, detailed as follows:[8]

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[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 164.
[2] Exhibit R, Annual Income Tax Return, Calendar Year 2004; Exhibit T, Annual Income Tax Return, Calendar Year 2005; Formal Offer of Evidence, Division Docket, pp. 385 and 394; Exhibit 2, Memorandum for the Revenue District Officer dated January 16, 2006, Formal Offer of Evidence, BIR Records, p. 87.
[3] Par. 2, JSFI, Division Docket, pp. 164-165.
[4] Exhibit A, Formal Offer of Evidence, Division Docket, p. 336; Exhibit Z, Questions 5 to 8, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, p. 420; Exhibit 1, Formal Offer of Evidence, BIR Records, p. 1.
[5] Par. 1, Addendum Joint Stipulation of Facts (AJSF), Division Docket, p. 490; Exhibit A and Exhibit Z, Questions 5 to 7, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 336, 419-436; Exhibit 1, Formal Offer of Evidence, BIR Records, p. 1.
[6] Exhibit A, Formal Offer of Evidence, Division Docket, pp. 336, 419-436; Exhibit 1, Formal Offer of Evidence, BIR Records, p. 1.
[7] Par. 3, JSFI, Division Docket, p. 165; Please refer to the Revenue Officer's Audit Reports, various returns, schedules and other supporting documents and memoranda, BIR Records, pp. 2-87.
[8] September 3, 2014 Decision, Division Docket, p. 596; Rollo (EB 1287), p. 30.

Tax Type / Description	Amount (including interests and penalties)
Non-filing of 1604-E	₱ 1,000.00[9]
Non-filing of 1604-CF	1,000.00[10]
Non-filing of Quarterly Purchases Diskette	25,000.00[11]
Non-filing of Inventory List	2,000.00[12]
Withholding Tax on Compensation	77,386.14[13]
Expanded Withholding Tax	89,881.16[14]
Income Tax	111,730.40[15]
Value-Added Tax (VAT)	992,790.93[16]
Total	**₱ 1,272,078.63**[17]

The outcome of the investigation under the LOA, which formed the basis of the payments above, was subsequently reported in a Memorandum dated January 16, 2006 prepared by the examiners Gene Etorma and Mario Eleda:[18]

"January 16, 2006

MEMORANDUM FOR:
The Revenue District Officer
Revenue Region No. 8
Revenue District No. 51
Pasay

RE: TOYOTA MANILA BAY CORP.
EDSA cor Roxas Blvd., Pasay City

This is a report on the original investigation for **all internal revenue taxes** of the above-named taxpayer covering the calendar year of 2004 pursuant to LA No. 45339 dated August 3, 2005.

Preliminary verification disclosed that the subject taxpayer is a corporation engaged in the car dealership business. The taxpayer's principal place of business is located at the above address.

The audit procedures adopted are clearly indicated in the audit program and upon completion of the audit the taxpayer was found to have kept and maintained the prescribed books of accounts and accounting records (General and subsidiary ledgers, cash receipts and disbursement books, general and special journals, sales invoices, official receipts, expense vouchers/receipts, etc.).

Findings of the examination are taken up in the discussion that follows.

INCOME TAX

Annual income tax return (BIR Form No. 1702) and quarterly income tax returns (17020) were filed on time. However, the taxpayer failed to give supporting documents for Miscellaneous Expense amounting to P241,215.69 and Communication Expense.

These expenses were disallowed in accordance with Revenue Regulation V-1 as amended (The Bookkeeping Regulation) Chapter IV, Section 14 (d) which states that 'Every purchase or expenditure by a taxpayer subject of these regulations shall be duly supported by receipt or invoice issued by the vendor or the person rendering the service in accordance with Section 15 of these

[9] BIR Records, pp. 88-89; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[10] BIR Records, pp. 90-93; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[11] BIR Records, pp. 91 and 104; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[12] BIR Records, pp. 105-106; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[13] BIR Records, pp. 107-108; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[14] BIR Records, pp. 109-110; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[15] BIR Records, pp. 111-112; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[16] BIR Records, pp. 113-114; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[17] Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477. The correct sum of the amounts paid should be ₱1,300,788.63.
[18] February 17, 2015 Resolution, pp. 9-11, Rollo (EB 1287), pp. 92-94; Exhibit 2, Formal Offer of Evidence, Division Docket, p. 501; BIR Records, pp. 86-87.

regulations. Should any of these receipts or invoices lack any information required to be indicated therein, such receipts or invoices shall be deemed inadequate for documentation and substantiation of the particular transaction.'

These disallowed expense resulted to a deficiency income tax of **P111,730.4** including increments. The taxpayer was also penalized P2.000 for non-filing of beginning and ending inventory list in accordance with section 250 of the NIRC.

WITHHOLDING TAX

Audit of the withholding taxes on compensation and income payments were found to have no discrepancy. The supporting documents and other related records were likewise examined and determined to be in accordance with the requirements of the law and revenue regulations. However the taxpayer filed their April 1601 C and 1601 E late which resulted to the corresponding penalties of **P89,881.16** and **P77,386.13**. The taxpayer was also penalized **P2,000** for failure to file 1604CF and 1604E.

VALUE ADDED TAX

Examination disclosed that they complied with the provision of the Tax Code by filing the quarterly and monthly value added tax returns (BIR Form No. 2550 & 2550A). All sales and purchases per VAT return reconciled with the accounting records of the taxpayer. However, input tax claimed in the amount of P822,100 were from non-VAT source. This resulted to a deficiency VAT of **P992,790.93** including increments. The taxpayer was also penalized **P25,000** for failure to file Diskette of quarterly purchases.

The total deficiency tax assessment was formally discussed and presented to subject taxpayer through their authorized representative. Upon conduct of actual evaluation and verification of noted discrepancies subject objected to some of the findings and accordingly manifested their willingness to pay the other assessment that they were agreeable to.

In view thereof, it is respectfully recommended that the corresponding payment order be issued to effect the immediate collection of the noted deficiency assessment per investigation. Furthermore, it is also recommended that this case be considered closed and filed for future reference upon full settlement of the deficiency tax assessment.

Submitted By:

(signed)
GENE G. ETORMA
Revenue Officer II

(signed)
MARIO H. ELEDA
Group Supervisor

Noted By:
(signed)
CESAR D. ESCALADA
OIC-Revenue District Officer

Reviewed By:

MIRIAM P. AGUILA
Chief, Assessment Division

Approved By:

ANSELMO G. ADRIANO
Regional Director"[19]

Subsequently, in a Letter Notice (LN No. 051-AS-04-00-00050) dated June 30, 2006 and signed by CIR Jose Mario C. Buñag, Toyota was requested to provide a reconciliation of discrepancies noted in its local purchases when the summary list of sales of its suppliers were compared with the domestic purchases reported in its returns:[20]

[19] February 17, 2015 Resolution, pp. 9-11, Rollo (EB 1287), pp. 92-94; Exhibit 2, Formal Offer of Evidence, Division Docket, p. 501; BIR Records, pp. 86-87.
[20] Par. 2, AJSF, Division Docket, p. 490; Exhibit B, Formal Offer of Evidence, Division Docket, pp. 337-345; BIR Records, pp. 131-139.

Local Purchases

Per Summary List of Sales submitted by your suppliers	₱ 1,996,120,840.85
Domestic Purchases per Tax Return	445,962,630.00
Under-declaration of Domestic Purchases	₱ 1,550,158,210.85
Percentage (%) of Discrepancy	77.66%

The LN, which was received by Toyota's accounting staff, Marita Posada,[21] had an attachment "Details of Taxpayer's Supplier's Records for LN No. 051-AS-04-00-00050", consisting of eight (8) pages, showing the list of various names of Toyota's suppliers and various sales made to it amounting to a total of ₱1,996,120,840.85.[22]

On February 8, 2007, Michael Manalo, Toyota's accounting staff, received a copy of the Notice for Informal Conference.[23] Attached to said Notice are documents entitled "Computation Sheet Under Third Party Information Program Covered by a Letter Notice Pursuant to RMO 30-2003" consisting of four (4) pages.[24]

Thereafter, the CIR issued a Revised Post Reporting Notice, which was received by Grace Espiritu, Toyota's executive secretary, on June 27, 2007.[25]

On October 3, 2007, Toyota, again through Grace Espiritu, received a Preliminary Assessment Notice (PAN) with Details of Discrepancies finding deficiency income tax, VAT and DST due.[26]

On October 24, 2007, a Formal Assessment Notice (FAN) with Details of Discrepancies was issued, received by Grace Espiritu on November 7, 2007.[27] The FAN assessed Toyota for deficiency income tax, VAT, and DST, including surcharge and interests, computed as follows:[28]

<u>INCOME TAX</u>		
Net income per return		₱ 7,870,107.00
Add: Undeclared Disbursement treated as undeclared income		206,260,123.85
Taxable Income		214,130,230.85
Tax Due		68,521,673.87
Less: Tax Paid		
Prior Year Excess Tax Credit	₱ 5,733,429.00	

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[21] Exhibit Z, Questions 8 to 14, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 419-436.
[22] Par. 2, AJSF, Division Docket, p. 490; BIR Records, pp. 131-139.
[23] Exhibit D, Formal Offer of Evidence, Division Docket, pp. 348-352.
[24] Par. 3, AJSF, Division Docket, p. 490.
[25] Par. 4, AJSF, Division Docket, p. 490.
[26] Par. 5, AJSF, Division Docket, p. 490; Exhibit 6, Formal Offer of Evidence, Division Docket, pp. 256-360; BIR Records, pp. 177-181.
[27] Par. 6, AJSF, Division Docket, p. 490-91; Exhibits H and H-1, Formal Offer of Evidence, Division Docket, pp. 361-365; BIR Records, pp. 196-200.
[28] *Id.*

Add: Creditable Withholding Tax	4,391,524.00	
Total	₱ 10,124,953.00	
Less: Amount forwarded to succeeding year	7,537,566.00	2,587,387.00
Deficiency tax		65,934,286.87
Add: Interest (4.16.05 to 11.29.07)		34,610,984.56
Total Amount Due		**₱ 100,545,271.43**

VALUE-ADDED TAX

Taxable sales per VAT Returns		1,764,332,057.00
Add: Undeclared income	206,260,123.85	
Other income not subjected to VAT	6,666,859.00	212,926,982.85
Adjusted taxable sales		1,977,259,039.85
Output tax due		197,725,903.99
Less: Input tax		176,433,205.70
Basic deficiency tax		21,292,698.29
Add: Interest (1.26.05 to 11.29.07)		12,110,586.75
Total amount due		**₱ 33,403,285.04**

DOCUMENTARY STAMPS TAX

Tax Due	3,140,000.00
Add: Surcharge (25%)	785,000.00
Interest (1.06.05 to 11.29.07)	1,820,339.73
Total Amount Due	**₱ 5,745,339.73**

First, the Details of Discrepancies in the FAN[29] show that the alleged undeclared income of ₱206,260,123.85 was computed by allegedly comparing Toyota's purchases based on the Summary List of Sales submitted by its suppliers and Toyota's own declaration in its VAT returns. Thus:[30]

Schedule 1

Per Summary List of Sales submitted by Suppliers (4 Quarters)	₱ 1,996,120,840.85
Less: Purchases Declared per VAT Returns (4 Quarters)	1,789,860,717.00
Undeclared Sales	**₱ 206,260,123.85**

Jc

[29] Exhibit H-1, Formal Offer of Evidence, Division Docket, pp. 363-365.
[30] Details of Discrepancy dated October 24, 2007, BIR Records, p. 185.

Toyota Manila Bay Corporation - Per VAT Returns - Calendar Year 2004[31]							
	Sales	Output	Goods	Input	VAT Payable	Exhibit	Date Filed
January	111,865,810.00	11,186,581.00	146,872,330.00	14,687,233.00	(3,500,652.00)		20-Feb-04
February	138,589,960.00	13,858,996.00	152,561,320.00	15,256,132.00	(1,397,136.00)		
March	(250,455,770.00)	(25,045,577.00)	(299,433,650.00)	(29,943,365.00)	4,897,788.00		
1st Quarter	-			-	-		
April	156,461,440.00	15,646,144.00	182,452,380.00	18,245,238.00	(2,599,094.00)		
May	-			-	(2,599,094.00)		
June	241,650,670.00	24,165,067.00	240,010,890.00	24,001,089.00	(2,435,116.00)		
2nd Quarter	398,112,110.00	39,811,211.00	422,463,270.00	42,246,327.00	(2,435,116.00)	V-2	26-Jul-04
July	138,000,540.00	13,800,054.00	158,752,340.00	15,875,234.00	(2,075,180.00)		20-Aug-04
August	128,860,320.00	12,886,032.00	152,723,900.00	15,272,390.00	(2,386,358.00)		20-Sep-04
September	166,846,800.00	16,684,680.00	134,486,390.00	13,448,639.00	3,236,041.00		
3rd Quarter	433,707,660.00	43,370,766.00	445,962,630.00	44,596,263.00	(1,225,497.00)	V-3	20-Oct-04
October	175,004,350.00	17,500,435.00	205,456,700.00	20,545,670.00	(3,045,235.00)		22-Nov-04
November	-			-	(3,045,235.00)		
December	272,503,160.00	27,250,316.00	259,358,470.00	25,935,847.00	(1,730,766.00)		
4th Quarter	447,507,510.00	44,750,751.00	464,815,170.00	46,481,517.00	(1,730,766.00)	V-4	
TOTAL	1,279,327,280.00	127,932,728.00	1,333,241,070.00	133,324,107.00	(5,391,379.00)		

The ₱206,260,123.85, which was the difference between the summary list of sales allegedly submitted by suppliers and the purchases declared per VAT Returns of Toyota, was treated as undeclared sales and, consequently, income tax and VAT were imposed on the amount.[32]

Second, aside from the ₱206,260,123.85 as alleged "Undeclared Income", the CIR also assessed Toyota deficiency VAT on "Other income not subject to VAT" in the amount of ₱6,666,859.00. This item arose from the allegations that the other income classified as "Ancillary Income" and "Miscellaneous Income" in the amounts of ₱4,305,629.00 and ₱2,361,230.00, respectively, were not included as part of the gross sales/receipts that was subjected to VAT per VAT Returns. Hence, said items were assessed VAT, pursuant to Sections 105 and 106 of the NIRC:[33]

Schedule 2	
Other Income	
Ancillary income	₱ 4,305,629.00
Miscellaneous income	2,361,230.00
Total Other Income	**₱ 6,666,859.00**[34]

Third, the alleged deficiency DST arose from CIR's findings that the Notes Payable in the amount of ₱628,000,000.00 booked and reflected in

[31] Par. 10, AJSF, Division Docket, p. 491; Exhibits V-2, V-3 and V-4.
[32] Par. 11, AJSF, Division Docket, p. 491.
[33] Par. 12, AJSF, Division Docket, p. 491.
[34] Par. 12, AJSF, Division Docket, p. 491.

Toyota's Balance Sheet was not subjected to DST under Section 180 of the NIRC. Accordingly, the amount was imposed DST in the total amount of ₱3,140,000.00:[35]

Schedule 3	
Notes Payable	₱ 628,000,000.00
Tax Due (₱1.00 for every ₱200)	**₱ 3,140,000.00**

Thereafter, on November 23, 2007, Toyota filed a letter dated November 19, 2007 signed by Elisa Julian, Finance and Administrative Manager, with the Assessment Division of Revenue Region No. 8 requesting for a reinvestigation of its alleged tax liabilities for the taxable year 2004.[36]

In a letter dated November 27, 2007, the OIC-Regional Director of Revenue Region No. 8, Ma. Nieva A. Guerrero, informed Toyota that it is given the opportunity to submit a valid letter of protest supported with a list of requirements in accordance with Revenue Regulations (RR) Nos. 12-85 and 12-99, on or before December 3, 2007.[37]

On December 3, 2007, Toyota filed a letter, signed by Elisa Julian, Finance and Administration Manager, addressed to Ma. Nieva Guerrero of the Assessment Division of Revenue Region No. 8, requesting for an extension of thirty (30) days to submit the data requested by the BIR.[38]

Subsequently, in a letter dated December 6, 2007, OIC-Regional Director of Revenue Region No. 8 Nieva Guerrero granted Toyota an extension until "January 4, 2007 (sic)" to submit the data mentioned in the CIR's November 27, 2007 letter:[39]

"December 6, 2007

TOYOTA MANILA BAY CORPORATION
Roxas Blvd. corner EDSA Extension
Boulevard 2000, Pasay City

Attention: **Ms. Elisa D. Julian**
Finance and Admin Manager

Subject: ***Request for thirty (30) days extension granted***

Madam,

This has reference to your letter dated December 3, 2007 duly received by this Office on same date concerning your request for an extension of thirty (30) days to file your valid protest relative to the issued Formal Assessment Notice dated October 24, 2007 covering your company's deficiency taxes and compromise penalty for the taxable year 2004 for the aggregate amount of P139,718,896.20.

In reply thereto, please be informed that your request for an extension of time is hereby granted provided that no more extension shall be granted after this request. In view thereof, please

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[35] Par. 13, AJSF, Division Docket, pp. 491-492.
[36] Exhibit I-3, Formal Offer of Evidence, Division Docket, p. 371; See Acknowledgement Receipt, (Protest Letter), Assessment Division, Revenue Region No. 8, BIR Records, p. 211.
[37] Exhibit I-4, Formal Offer of Evidence, Division Docket, p. 372.
[38] Exhibit I-2, Formal Offer of Evidence, Division Docket, p. 370.
[39] Exhibit I-5, Formal Offer of Evidence, Division Docket, p. 373; September 3, 2014 Decision, p. 29; The date should have been January 4, 2008.

submit the same on or before **January 4, 2007 (sic)** to contain the data mentioned in our letter dated November 27, 2007. Otherwise, this office is of no other recourse but to enforce collection of the deficiency taxes through summary remedies provided for under the law.

For your information and guidance.

Very truly yours,
(signed)
MA. NIEVA A. GUERRERO
OIC - Regional Director"[40]

On January 4, 2008, Toyota filed a letter of even date to the Assessment Division of Revenue Region No. 8, reiterating its request for reinvestigation due to voluminous documents pertaining to Gross Profit, Undeclared Purchases and Input Tax on the Undeclared Purchases.[41]

On February 1, 2008, Toyota filed another letter of even date to the Assessment Division of Revenue Region No. 8. The letter explained that the discrepancy noted between the summary list of sales and the purchases declared in the VAT returns could be reconciled due to timing differences, that other reconciliation statements were being prepared in coordination with the suppliers, and that the DST on the loan was automatically deducted by the bank and will be documented with the bank's proof of remittance.[42] The letter also reiterated the January 4, 2008 request that the reinvestigation be conducted by the examiner at Pasay City Revenue District Office due to the volume of records needed to support Toyota's reconciliation.[43]

Through a letter dated March 7, 2008, the CIR informed Toyota that the entire docket together with the letter protest will be forwarded to Revenue District Office (RDO) No. 51 - Pasay City for further evaluation and necessary action.[44]

Accordingly, a Tax Verification Notice (TVN) dated March 18, 2008 with serial number 00051489 and Checklist of Requirements dated May 22, 2008 was issued by Revenue Region No. 8, RDO No. 51 – Pasay City and signed by Revenue District Officer Ricardo B. Espiritu, stating that a reinvestigation for the year 2004 will be conducted by Revenue Officer Cecilia S. Tan:[45]

"SIR/MADAM/GENTLEMEN:

This is to inform you that Revenue Officer Ma. Cecilia S. Tan of this Office is authorized to verify the supporting documents and/or pertinent records relative to your:

	Capital gains tax return
	Withholding tax return on property transactions
	Estate tax return
	Donor's tax return
	Claim for _______________ tax credit/refund

[40] Exhibit I-5, Formal Offer of Evidence, Division Docket, p. 373.
[41] Exhibit I-1, Formal Offer of Evidence, Division Docket, p. 369.
[42] Exhibit I, Formal Offer of Evidence, Division Docket, pp. 367-368.
[43] Exhibit I, Formal Offer of Evidence, Division Docket, p. 368.
[44] Par. 4, JSFI, Division Docket, p. 166.
[45] Par. 5, JSFI, Division Docket, p. 166; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375; Exhibit 11, Formal Offer of Evidence, Division Docket, p. 502, BIR Records, p. 225.

| XX | **Request for reinvestigation**

covering the taxable year/period 2004.

In this connection, please furnish him/her with the following documents on ___________ between ____________ to ____________.

____
____
____

Your preferential attention on this matter will be highly appreciated.

Very truly yours,

(signed)
RICARDO B. ESPIRITU
____

Authorized Revenue Officer

Revenue District Officer
____

Please contact the above Revenue Officer or
Group Supervisor Mario H. Elada
through telephone number 5517019
45339 / 8.3.05 LN# 051-AS-04-00-00050"[46] (emphasis supplied)

On May 26, 2008, the TVN together with the Checklist of Requirements was received by Grace Espiritu of Toyota.[47] The Checklist of Requirements was a pro-forma listing of documents commonly requested from taxpayers. However, it did not specify, through a ticking on said list, which specific documents the taxpayer was required to submit to convince the examiners.[48]

In a Second Request for Presentation of Books of Account dated June 3, 2008, received by Grace Espiritu of Toyota, the CIR again requested for the presentation of accounting records listed in the May 22, 2008 Checklist:[49]

"June 3, 2008

SECOND REQUEST FOR PRESENTATION OF BOOKS OF ACCOUNT

Toyota Manila Bay Corp.
EDSA Cor. Roxas Blvd.
Pasay City

Gentlemen:

In connection with the **TVN No. 2003-00051489** dated **March 18, 2008** for taxable year **2004** which was served to you on **March 26, 2008** together with the Checklist of Requirement as our First Request which you failed to present up to this writing, you are, therefore, again requested to present the accounting records as listed in our first request **within five (5) days** upon receipt in order to allow us to conduct the required examination for internal revenue tax purposes.

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[46] Exhibits 11 and 12, Formal Offer of Evidence, BIR Records, pp. 224-225; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375.
[47] Par. 7, AJSF, Division Docket, p. 491; Exhibits 11 and 12, Formal Offer of Evidence, Division Docket, p. 502; BIR Records, pp. 224-225.
[48] Exhibits 12, Formal Offer of Evidence, Division Docket, p. 502; BIR Records, p. 224.
[49] Exhibit 13, Formal Offer of Evidence, BIR Records, p. 226.

This request is made pursuant to the provisions of Sec. 20 of Revenue Regulations No. V-1 (Bookkeeping Regulations). The pertinent provision of Revenue Regulations No. V-1, Bookkeeping Regulations, is quoted hereunder for your information:

XXX XXX XXX

Your cooperation in this regard would facilitate our investigation and ensure early termination of this case.

Very truly yours,
(signed)
MA. CECILIA S. TAN
Revenue Officer

Noted by:

(signed)
MARIO H. ELEDA
Group Supervisor"

In a 3rd and Final Notice dated June 11, 2008, the CIR again reiterated her request for the documents, thus:

"3rd AND FINAL NOTICE

June 11, 2008

Toyota Manila Bay Corp.
EDSA Cor. Roxas Blvd., Pasay City

Attention: **MS. ELISA D. JULIAN**
Finance & Admin Manager

Madam:

This refers to your protest letter dated February 1, 2008 requesting for reinvestigation of your 2004 Tax Case relative to the Final Assessment Notice No. 45339-04-07-0431 dated October 24, 2007 covering income, value-added, documentary stamp and miscellaneous taxes.

Please be reminded that up to this date you have not presented the records necessary for the conduct of investigation of your tax liabilities as indicated in the checklist of requirements attached to the Tax Verification Notice dated March 18, 2008. A second notice was also sent and received by one of your staff, Ms. Grace Espiritu, on June 4, 2008. There are also no records attached to your protest letter above mentioned sufficient to rebut the assessment already issued.

Despite all these, we deem it just to give you another opportunity to present records as requested within five (5) days from receipt of this letter. Your failure to do so will compel us to recommend the immediate collection of your tax liabilities to protect the interest of the government.

Your immediate action on the matter is hereby requested.

Very truly yours,
(signed)
RICARDO B. ESPIRITU
Revenue District Officer"[50] (underscoring supplied)

In a Memorandum dated June 20, 2008,[51] addressed to the Regional Director, the Revenue Officers from RDO No. 51 wrote:

"June 20, 2008

MEMORANDUM FOR:
The Regional Director
This Region
Thru Channels

[50] Exhibit 14, Formal Offer of Evidence, Division Docket, p. 502; BIR Records, p. 228.
[51] Exhibit 15, Formal Offer of Evidence, Division Docket, p. 503; BIR Records, p. 230.

Subject: **TOYOTA MANILA BAY CORP.**
EDSA cor. Roxas Blvd., Pasay City

This refers to the report on the request for reinvestigation filed by the taxpayer on February 1, 2008 relative to its 2004 Tax Case with Final Assessment Notice No. 45339-04-07-0431 dated October 24, 2007 pursuant to Tax Verification Notice No. 2003 00051489 dated March 18, 2008.

Please be informed that the taxpayer failed to submit additional records to support their claim in the said protest letter. Under existing regulations, taxpayer has 60 days from filing of the protest letter to submit additional documents. Said period had already lapsed in April 2008. However, since a Tax Verification Notice was issued for the reinvestigation of the case, taxpayer was given three (3) notices to comply with the submission of requirements. As of date, taxpayer have not submitted any documents nor requested an extension of time to submit the same. Taxpayer opted not to respond to the three notices already issued in their name.

In view of the foregoing, it is already recommended that the case be returned to the Assessment Division for appropriate action and to effect collection of the above assessment.

Submitted by:

(signed)
MA. CECILIA S. TAN
Revenue Officer
(signed)
MARIO H. ELEDA
Group Supervisor

Noted by:

(signed)
RICARDO B. ESPIRITU
Revenue District Officer

Reviewed by:

MIRIAM P. AGUILA
Chief, Assessment Division

Approved by:

MA. NIEVA A. GUERRERO
OIC-Regional Director"[52]

On July 16, 2008, the CIR issued a Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies.[53] Toyota asserted that it did ***not*** receive a copy of the FDDA and the Details of Discrepancies.[54]

On March 11, 2009, "as a result of the reinvestigation", Toyota paid the amount of ₱240,914.23, "representing payment for deficiency VAT, including interest and compromise penalties, for taxable year 2004" under TVN No. 2003-00051489 dated March 18, 2008.[55]

In a Memorandum dated March 11, 2009 issued by the RDO and addressed to the Regional Director, it was stated that the grounds in the protest letter were meritorious and it was, thus, recommended that "the Authority to Cancel Assessment (ATCA) together with this report be approved and the case filed for future reference."[56] Although the

[52] Exhibit 15, Formal Offer of Evidence, Division Docket, p. 503; BIR Records, p. 230.
[53] Exhibits K and K-1, Formal Offer of Evidence, Division Docket, pp. 376-379.
[54] Exhibit Z, Question 78, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 419-436.
[55] Par. 13, JSFI, Division Docket, p. 172; Par. 3, Supplemental JSF dated October 4, 2012, Division Docket, p. 477; BIR Records, pp. 264-265.
[56] BIR Records, pp. 284-287.

Memorandum was addressed to the Regional Director, it was unsigned by him and by the Chief of the Assessment Division.[57]

An ATCA dated March 13, 2009 was issued and signed by Revenue District Officer Espiritu[58] but the same was not signed by then Commissioner Sixto S. Esquivias, IV.[59]

Thereafter, on January 6, 2011, the CIR issued a Warrant of Distraint and/or Levy (WDL) No. 2011-001[60] for the sum of ₱152,890,193.76, representing alleged deficiency income tax, VAT, DST and compromise penalty.[61]

On February 4, 2011, Toyota filed before the Court in Division a Petition for Review with Motion for Suspension of Collection of Tax. Toyota prayed that the Court:

1. Render a judgment declaring the assessment for the alleged deficiency income tax, value added tax (VAT), documentary stamp tax (DST), and compromise penalty "in the total amount of ₱152,890,193.76 as void and without merit"; ordering the CIR "to cancel the FAN and Assessment Notices, as well as the Warrant of Distraint and Levy dated January 6, 2011";[62] and,

2. Issue an order "suspending collection of the disputed tax assessment and/or enjoining respondent from enforcing a warrant of distraint and levy."[63]

In a Resolution dated February 25, 2011,[64] the Court granted Toyota's motion for suspension of collection of tax, subject to the deposit of the amount indicated in the WDL, i.e. ₱152,890,193.76, or the posting of a bond in the amount of ₱229,335,290.64.

On March 9, 2011, Toyota posted the required surety bond.[65]

On April 5, 2011, the CIR filed her Answer raising therein special and affirmative defenses.[66]

On April 20, 2011, the Court issued a Resolution enjoining the CIR from enforcing the WDL.[67]

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[57] Par. 14-16, JSFI, Division Docket, pp. 172-173; See Footnote 36, September 3, 2014 Decision, p. 36.
[58] Par. 14, JSFI, Division Docket, pp. 172-173; Par. 8, Addendum JSF dated November 20, 2012, Division Docket, p. 491; Authority to Cancel Assessment, Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[59] Par. 15, JSFI, Division Docket, p. 173; Authority to Cancel Assessment (ATCA), Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[60] Par. 9, Addendum JSF, Division Docket, p. 491; Exhibit M, Formal Offer of Evidence, Division Docket, p. 381.
[61] Par. 6, JSFI, Division Docket, pp. 166-167; Exhibit M, Formal Offer of Evidence, Division Docket, p. 381.
[62] Petition for Review, Division Docket, p. 25.
[63] Petition for Review, Division Docket, p. 25.
[64] Division Docket, pp. 61-63.
[65] Compliance, Division Docket, pp. 64-89.
[66] Division Docket, pp. 121-126.
[67] Division Docket, pp. 129-130.

After the pre-trial held on May 13, 2011,[68] the parties filed their Joint Stipulation of Facts and Issues on June 7, 2011,[69] and their Supplemental Joint Stipulation of Facts and Issues on June 10, 2011.[70] In the Resolution dated June 13, 2011,[71] the Court approved the same, and terminated the pre-trial.

Trial commenced and, after presentation of evidence, Toyota filed its Formal Offer of Evidence on March 9, 2012.[72]

On October 5, 2012, the parties filed their Supplemental Joint Stipulation of Facts.[73]

On November 20, 2012, petitioner filed a Motion to Admit Addendum to the Supplemental Joint Stipulation of Facts with attached copy of said Addendum.[74] In a Resolution dated November 22, 2012,[75] the Court resolved to admit the Addendum and noted that the CIR manifested that she will no longer present any witness.

On December 13, 2012, the CIR filed a Motion to Admit (Formal Offer of Evidence) with attached Formal Offer of Evidence, which the Court granted in a Resolution dated January 10, 2013.[76]

Toyota filed its Memorandum on March 21, 2013[77] while the CIR filed her Memorandum on July 3, 2013.[78]

On September 3, 2014, the Court *a quo* rendered its assailed Decision which partially granted Toyota's Petition and modified the FAN and the WDL to reflect only deficiency VAT and DST assessments plus surcharges and interests.[79]

In a Resolution dated February 17, 2015, the Court in Division denied both the Motions for Reconsideration of the parties.[80]

Accordingly, on March 25, 2015, Toyota filed its Petition for Review under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which was docketed as CTA EB Case No. 1280.[81]

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[68] Division Docket, p. 147.
[69] Division Docket, pp. 164-174.
[70] Division Docket, pp. 180-184.
[71] Division Docket, pp. 187-188.
[72] Division Docket, pp. 323-454.
[73] Division Docket, pp. 476-477.
[74] Division Docket, pp. 486-493.
[75] Division Docket, p. 497.
[76] Division Docket, pp. 498-504, 509.
[77] Division Docket, pp. 517-547.
[78] Motion to Admit (Respondent's Memorandum), Division Docket, pp. 560-578; Granted in a Resolution dated September 12, 2013, Division Docket, p. 589.
[79] Division Docket, pp. 594-648.
[80] Division Docket, pp. 712-725.
[81] Rollo (CTA EB No. 1280), pp. 8-40.

Likewise, on March 25, 2015, the CIR filed her Petition for Review via registered mail which was docketed as CTA EB Case No. 1287.[82]

In a Resolution dated June 19, 2015, after considering the arguments raised by the CIR in her Petition for Review and by Toyota in its Comment filed on June 1, 2015, the Court *En Banc* resolved to give due course to her Petition for Review in CTA EB Case No. 1287.[83]

In a Resolution dated June 30, 2015, after considering the issues raised by Toyota and for failure of the CIR to file her Comment within the period granted, the Court *En Banc* resolved to give due course to its Petition for Review in CTA EB Case No. 1280.[84]

Toyota filed its Memoranda on August 28, 2016 in CTA EB No. 1287[85] and on September 7, 2015 in CTA EB No. 1280.[86] However, the CIR did not file her Memoranda in either of the cases.

On September 10, 2015, the Court *En Banc* in a Minute Resolution resolved to consolidate CTA EB No. 1287 with CTA EB No. 1280.[87]

In a Resolution dated October 8, 2015, the consolidated cases were deemed submitted for decision.[88]

Hence, this Decision.

THE ISSUES

The issues to be resolved by the Court *En Banc* can be summarized as follows:

1. Whether Toyota's advanced payment of ₱1,272,078.63 on December 21, 2005 should reduce its tax liability under the assailed Decision?

2. Was due process sufficiently accorded Toyota when the assessment was conducted and when the FAN was finally issued?

3. Is the CIR barred by estoppel from questioning the validity of the protest letter? *gr*

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[82] Rollo (CTA EB No. 1287), pp. 6-27.
[83] Rollo (CTA EB No. 1287), pp. 134-135.
[84] Rollo (CTA EB No. 1280), pp. 118-119.
[85] Rollo (CTA EB No. 1287), pp. 141-173.
[86] Rollo (CTA EB No. 1280), pp. 125-154.
[87] Division Docket, p. 742.
[88] Rollo (CTA EB No. 1280), pp. 157-159.

THIS COURT'S RULING

Both Petitions must fail.

Toyota's advanced payment of ₱1,272,078.63 on December 21, 2005 should <u>not</u> reduce its tax liability under the assailed Decision

This is not the first time Toyota has raised this point. In fact, The Court in Division has laid the issue to rest by addressing it head on in its February 17, 2015 Resolution.

As the Court in Division stressed, the bases of the ₱1,272,078.63 tax payments are not the same as the items of assessment covered by the FAN. Thus, they cannot be considered in the computation of Toyota's liabilities under the assailed Decision:

> "However, as borne out in the BIR Records, the bases of the foregoing amounts are not the same as that indicated in the said FAN. In the Memorandum dated January 16, 2006, the following are stated:
>
> XXX XXX XXX
>
> As a corollary, as We have pointed out earlier and in the assailed Decision, <u>the facts and law upon which the subject assessments were made are very much different from the reasons above-stated</u>.
>
> Thus, insofar as petitioner's Motion is concerned, the supposed *'advanced payments'* cannot be treated in the computation of petitioner's reduced tax liabilities as decreed in the assailed Decision. And as regards respondent's Motion, the said *'partial payments'* made by petitioner cannot be taken against the latter."[89]

Toyota's advanced payment of ₱1,272,078.63 on December 21, 2005 pertains to items in the examiner's findings pursuant to the audit under the August 3, 2005 LOA. This is clear from a reading of the CIR's January 16, 2006 Memorandum, which was prepared *subsequent* to the December 21, 2005 payment and *prior* to the October 24, 2007 FAN.

Tax Types / Description	**Amount (including interest and penalties)**	**CIR's January 16, 2006 Memorandum**
Non-filing of 1604-E	₱ 1,000.00[90]	Penalty for failure to file BIR Form 1604-E
Non-filing of 1604-CF	1,000.00[91]	Penalty for failure to file BIR Form 1604-CF
Non-filing of Quarterly Purchases Diskette	25,000.00[92]	Penalty for non-filing of Quarterly Purchases Diskette (VAT)

gz

[89] February 17, 2015 Resolution, pp. 8-11; Division Docket, pp. 720-723.
[90] BIR Records, pp. 88-89; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[91] BIR Records, pp. 90-93; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[92] BIR Records, pp. 91 and 104; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.

Non-filing of Inventory List	2,000.00[93]	Penalty for non-filing of inventory list under Section 250 of the NIRC
Withholding Tax on Compensation	77,386.14[94]	Penalty for late filing of BIR Form 1601-C
Expanded Withholding Tax	89,881.16[95]	Penalty for late filing of BIR Form 1601-E
Income Tax	111,730.40[96]	Disallowed Miscellaneous and Communication Expenses under Revenue Regulation V-1, Chapter 14(d)
Value-Added Tax (VAT)	992,790.93[97]	Input VAT from non-VAT source
Total	**₱ 1,272,078.63[98]**	

The assessments detailed in the FAN, on the other hand, pertain to the audit findings which proceeded by virtue of the June 30, 2006 LN. Said LN was issued only *after* the initial payment of ₱1,272,078.63 was made by Toyota. Accordingly, when the FAN was issued, it was based on the audit findings which differ from the factual outcome of the former audit.

Due process was sufficiently accorded Toyota when the assessment was conducted and when the FAN was issued

Under the second and third assignment of errors, Toyota asserts that it was denied due process when the FAN was issued insofar as it failed to state the factual and legal bases for the assessment and it did not constitute a definite and unequivocal demand for payment.[99]

The Court *En Banc* is not persuaded.

Section 228 of the NIRC provides the procedure for protesting a FAN:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> XXX XXX XXX
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[93] BIR Records, pp. 105-106; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[94] BIR Records, pp. 107-108; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[95] BIR Records, pp. 109-110; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[96] BIR Records, pp. 111-112; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[97] BIR Records, pp. 113-114; Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, pp. 476-477.
[98] Par. 2, Supplemental JSF dated October 4, 2012, Division Docket, p. 476-477. The correct sum of the amounts paid should be ₱1,300,788.63.
[99] Petition for Review, Rollo (CTA EB Case No. 1280), pp. 17-32.

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 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.

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."

Revenue Regulations No. (RR) 12-99 implements the provisions of the NIRC governing rules on assessment of national internal revenue taxes, specifically Section 228 above. Section 3 outlines the due process requirement in the issuance of a deficiency tax assessment, thus:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* — <u>The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case</u>. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* — <u>If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or</u> Jr

> taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 3.1.3 *Exceptions to Prior Notice of the Assessment.* — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:
>
> XXX XXX XXX
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (underscoring supplied)

The facts clearly show that the foregoing procedures were followed by the CIR before arriving at the deficiency tax assessments. Prior to the issuance of the FAN, the CIR has, on several instances, more than sufficiently informed Toyota of the bases of the income tax, VAT and DST assessments. Thus:

1. In the LN dated June 30, 2006, which was received by Toyota's accounting staff, Marita Posada,[100] Toyota was requested to provide a reconciliation of discrepancies noted in its local purchases when the summary list of sales of its suppliers were compared with the domestic purchases reported in its returns.[101] The LN had an attachment "Details of Taxpayer's Supplier's Records for LN No. 051-AS-04-00-00050", consisting of eight (8) pages, showing the list of various names of Toyota's suppliers and various sales to it amounting to a total of ₱1,996,120,840.85.[102] gc

[100] Exhibit Z, Questions 8 to 14, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 419-436.
[101] Par. 2, AJSF, Division Docket, p. 490; Exhibit B, Formal Offer of Evidence, Division Docket, pp. 337-345; BIR Records, pp. 131-139.
[102] Par. 2, AJSF, Division Docket, p. 490; BIR Records, pp. 131-139.

2. On February 8, 2007, Michael Manalo, Toyota's accounting staff, received a copy of the Notice for Informal Conference.[103] Attached to said Notice are documents entitled "Computation Sheet Under Third Party Information Program Covered by a Letter Notice Pursuant to RMO 30-2003" consisting of four (4) pages.[104]

3. Thereafter, the CIR issued a Revised Post Reporting Notice, which was received by Grace Espiritu, Toyota's executive secretary, on June 27, 2007.[105]

4. On October 3, 2007, Toyota, again through Grace Espiritu, received a Preliminary Assessment Notice (PAN) with Details of Discrepancies finding deficiency income tax, VAT and DST due.[106] The PAN together with the Details of Discrepancies summarized how the deficiency tax assessments, surcharges were computed and explained at length why they were considered deficiencies and the legal bases for the same.

When the assessment was finally issued against Toyota, it had been sufficiently informed of the bases of the assessment, through the correspondences, computation sheets, reports, notices, PAN, FAN and the Details of Discrepancies attached to the latter two.

In *Samar-I Electric Cooperative v. CIR*,[107] the Supreme Court concluded that the taxpayer's right to due process was not violated when it expressly recognized the validity of the process *prior* to the issuance of the FAN which apprised the taxpayer of the results and findings of the investigations made by the examiners and of the nature, factual and legal bases of the assessments. Thus, it held that although the FAN and the demand letter issued to the Samar-I were not accompanied by a written explanation of the legal and factual bases of the deficiency tax assessed there was nonetheless substantial compliance with the requirement of Section 228 considering the exchange of correspondence and documents between the parties, thus:

> "In this case, we agree with the respondent that petitioner was sufficiently apprised of the nature, factual and legal bases, as well as how the deficiency taxes being assessed against it were computed. Records reveal that on October 19, 2001, prior to the conduct of an informal conference, petitioner was already informed of the results and findings of the investigations made by the respondent, and was duly furnished with a copy of the summary of the report submitted by Revenue Officer Elisa G. Ponferrada-Rapatan of the Special Investigation Division. Said summary

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[103] Exhibit D, Formal Offer of Evidence, Division Docket, pp. 348-352.
[104] Par. 3, AJSF, Division Docket, p. 490.
[105] Par. 4, AJSF, Division Docket, p. 490.
[106] Par. 5, AJSF, Division Docket, p. 490; Exhibit G, Formal Offer of Evidence, Division Docket, pp. 356-360; BIR Records, pp. 177-181.
[107] G.R. No. 193100, December 10, 2014.

> report contained an explanation of Findings of Investigation stating the legal and factual bases for the deficiency assessment. In a letter dated February 27, 2002 petitioner requested for copies of working papers indicating how the deficiency withholding taxes were computed. Respondent promptly responded in a letter-reply dated February 28, 2002 stating:
>
> XXX XXX XXX
>
> On April 9, 2002, petitioner received the PAN dated February 28, 2002 which contained the computations of its deficiency income and withholding taxes. Attached to the PAN was the detailed explanation of the particular provision of law and revenue regulation violated, thus:
>
> DETAILS OF DISCREPANCIES
>
> XXX XXX XXX
>
> The above information provided to petitioner enabled it to protest the PAN by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency withholding taxes and assessment of minimum corporate income tax despite petitioner's position that it remains exempt therefrom. XXXX.
>
> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated." (underscoring supplied; citations omitted)

In this case, when the FAN was issued, the attached "Details of Discrepancy" stated very explicitly the schedules, computations, documents where the figures were taken and the legal footing of the assessed items. As the Court in Division correctly observed, Toyota was thoroughly informed in compliance with Section 228 of the NIRC and RR 12-99:

> "In this case, petitioner was informed of the facts and the law on which the subject assessments were made. For easy reference, quoted herein are the Details of Discrepancies issued by the BIR addressed to petitioner, to wit: Je

'DETAILS OF DISCREPANCIES

XXX XXX XXX

A perusal of the foregoing Details of Discrepancies shows that the factual and legal bases for the said assessments were indicated therein. The deficiency income tax assessment is anchored on the finding that there were '*undeclared disbursements'*, which was equated to '*undeclared income'*, and thus, such non-declaration results in an assessment based on Section 32 of the NIRC, as amended, in relation to the alleged case of *Perez* vs. *CTA and CIR.* Anent the VAT assessment, the factual bases therefor are on the same *'undeclared income'* and the supposed non-inclusion of the *'Ancillary Income'* and *'Miscellaneous Income'*; while the legal bases therefor are Sections 105 and 106 of the NIRC, as amended. With regard to the DST assessment, the same is based on the fact that petitioner's Notes Payable was not subjected to DST, and on Section 180 (which is now Section 179) of the NIRC, as amended by Republic Act No. (RA) 9243.

Hence, the Court finds no merit in petitioner's contention that the FAN is invalid for failure to state the facts and the law on which the assessments were based."[108] (underscoring supplied; citations omitted)

For the foregoing reasons, there was *more than* substantial compliance with the due process requirement when the FAN was issued against Toyota.

Finally, contrary to Toyota's second assignment of error,[109] a careful reading of the FAN dated October 24, 2007 will reveal that there was a definite date set for the payment of thereof. There was, in fact, a statement informing the taxpayer that interest and the total amount due will be adjusted if paid beyond the due date of November 29, 2007:

"INCOME TAX

XXX XXX XXX

Deficiency tax	65,934,286.87
Add: Interest (4.16.05 to **11.29.07**)	34,610,984.56
Total Amount Due	**₱ 100,545,271.43**

VALUE-ADDED TAX

XXX XXX XXX

Basic deficiency tax	21,292,698.29
Add: Interest (1.26.05 to **11.29.07**)	12,110,586.75
Total amount due	**₱ 33,403,285.04**

DOCUMENTARY STAMPS TAX

XXX XXX XXX

Tax Due	3,140,000.00
Add: Surcharge	785,000.00
Interest (1.06.05 to **11.29.07**)	1,820,339.73
Tax due	**₱ 5,745,339.73**

[108] September 3, 2014 Decision, Division Docket, pp. 610-612.
[109] Petition for Review, Rollo (CTA EB No. 1280), pp. 17-21.

Please note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein." (underscoring supplied)

It must be noted that the taxpayer cannot feign ignorance of the payment due date when the *identical* signatures of Grace Espiritu, Toyota's executive secretary, which were duly identified by its Senior Finance and Administration Manager Elisa Julian, appear as "grace 11/7" on the lower right hand corners of each page of the FAN[110] and the Assessment Notices.[111]

The CIR is barred by estoppel from questioning the validity of the protest letter

Estoppel, an equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them.[112]

The principle of estoppel is codified in Article 1431 of the Civil Code, which provides:

> "Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon."

Estoppel is likewise articulated in Rule 131, Section 2(a) of the Rules of Court:

> "Sec. 2. *Conclusive presumptions.* — The following are instances of conclusive presumptions:
>
> (a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

As applied in this case, the Court in Division found that several of the CIR's acts and declarations led Toyota to rely on the belief that it was granted the time necessary to file its protest and, having filed a "letter of protest"[113] dated February 1, 2008 was granted the reinvestigation it requested with the issuance of a TVN. Specifically, the Court *a quo*, noted that:

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[110] Par. 6, AJSF, Division Docket, pp. 490-91; Exhibits H and H-1, Formal Offer of Evidence, Division Docket, pp. 361-365; BIR Records, pp. 196-200. The signatures "grace 11/7" are identical to the signature appearing on the Revised Post Reporting Notice (Exhibit 7, BIR Records, p. 159) which was properly identified by Elisa Julian in her September 26, 2011 Judicial Affidavit, Exhibit Z, Division Docket, p. 425.
[111] BIR Records, pp. 201-204.
[112] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005.
[113] Final Decision on Disputed Assessment, Exhibit K, Division Docket, pp. 376-377.

"The foregoing circumstances are sufficient justification to hold respondent in estoppel to raise the defense that petitioner failed to file a protest within thirty (30) days from its receipt of the subject FAN. It must be pointed out that while the BIR initially required petitioner to file a "valid protest", it subsequently recognized petitioner's letter dated February 1, 2008 as petitioner's "letter of protest" in its FDDA. Furthermore, if the BIR truly believes, at the administrative level, that petitioner did not file a valid protest letter, it could not have proceeded with the petitioner's "request for reinvestigation", prepared the above-stated ATCAs, and made the following statements in the said FDDA, to wit:

> 'This has reference to our Formal Letter of Demand and Assessment Notice dated October 27, 2004 wherein you have submitted a letter of protest dated February 1, 2008 and have consequently requested for the reinvestigation of your 2004 deficiency income tax, value added tax, documentary stamp tax and compromise penalty in the aggregate amount of P139,718,896.20 respectively.'(Underscoring supplied)

On the part of petitioner, the latter was lead to believe that the failure to file a "valid protest" within the thirty-day period was not an issue. In fact, it believed that the subject assessments will already be cancelled.

In light of the foregoing, estoppel has set in against respondent."[114] (underscoring supplied)

A careful review of the foregoing factual findings clearly shows that they are well-supported by evidence on record. The chain of letters, internal memoranda and other documents issued by the CIR unequivocally and consistently point to her intention to accept the February 1, 2008 "letter of protest"[115] and to grant reinvestigation upon which Toyota had justifiably relied.

1. The November 27, 2007 letter signed by the OIC-Regional Director which granted Toyota's request to submit a letter of protest.[116]

2. The December 6, 2007 letter signed by the OIC-Regional Director which extended the time for Toyota to submit the requested data.[117]

3. The March 7, 2008 letter where the CIR informed Toyota that the entire docket of the case together with the letter protest will be forwarded to the RDO No. 51 – Pasay City for further evaluation and necessary action.[118]

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[114] September 3, 2014 Decision, Division Docket, p. 629.
[115] Exhibit K, Final Decision on Disputed Assessment, Formal Offer of Evidence, Division Docket, pp. 376-377.
[116] Exhibit I-4, Formal Offer of Evidence, Division Docket, p. 372.
[117] Exhibit I-5, Formal Offer of Evidence, Division Docket, p. 373; September 3, 2014 Decision, p. 29; The December 6, 2007 letter granted Toyota until January 4, 2007 to submit the data which should have been January 4, 2008.
[118] Par. 4, JSFI, Division Docket, p. 166.

4. The March 18, 2008 Tax Verification Notice with serial number 00051489 and Checklist of Requirements dated May 22, 2008 was issued by Revenue Region No. 8, Revenue District Office No. 51 – Pasay City and signed by Revenue District Officer Ricardo B. Espiritu, stating that a *reinvestigation* for the year 2004 will be conducted by Revenue Officer Cecilia S. Tan:[119]

"SIR/MADAM/GENTLEMEN:

This is to inform you that Revenue Officer Ma. Cecilia S. Tan of this Office is authorized to verify the supporting documents and/or pertinent records relative to your:

	Capital gains tax return
	Withholding tax return on property transactions
	Estate tax return
	Donor's tax return
	Claim for ________________ tax credit/refund
XX	**Request for reinvestigation**

covering the taxable year/period 2004.

In this connection, please furnish him/her with the following documents on ___________ between _____________ to _____________.

____
____
____

Your preferential attention on this matter will be highly appreciated.

Very truly yours,

(signed)
RICARDO B. ESPIRITU
____

Authorized Revenue Officer

Revenue District Officer
____

Please contact the above Revenue Officer or
Group Supervisor Mario H. Elada
through telephone number 5517019
45339 / 8.3.05 LN# 051-AS-04-00-00050"[120] (emphasis supplied)

5. In the Second Request for Presentation of Books of Account dated June 3, 2008, the CIR requested for the presentation of accounting records listed in the May 22, 2008 Checklist:[121]

Aside from this stipulation, there is a 1st Endorsement dated February 4, 2008 signed by OIC-Regional Director which has a tenor similar to the March 7, 2008 letter. It states: "Forwarded to the Revenue District Officer, RDO No. 51-Pasay City the herein tax docket of TOYOTA MANILA BAY CORPORATION xxxx inviting attention to the herein letter of Ms. Elisa D. Julian, for and in behalf of the subject taxpayer, for further evaluation and necessary action." BIR Records, p. 220.

[119] Par. 5, JSFI, Division Docket, p. 166; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375; Exhibit 11, Formal Offer of Evidence, Division Docket, p. 502, BIR Records, p. 225.

[120] Exhibits 11 and 12, Formal Offer of Evidence, BIR Records, pp. 224-225; Exhibit J, Formal Offer of Evidence, Division Docket, p. 375.

[121] Exhibit 13, Formal Offer of Evidence, BIR Records, p. 226.

6. In the 3rd and Final Notice dated June 11, 2008, the CIR again reiterated her request for the documents.[122]

7. In a Memorandum dated June 20, 2008, addressed to the Regional Director, the Revenue Officers from RDO No. 51 recommended that the case be *returned* to the Assessment Division of the Revenue Region for appropriate action and to effect collection.[123]

8. On July 16, 2008, the CIR issued an FDDA with Details of Discrepancies.[124] Toyota asserted that it did ***not*** receive a copy of the FDDA and the Details of Discrepancies.[125] Significantly, Toyota's denial of the receipt of the FDDA remain uncontested by the CIR as her counsels manifested before the Court in Division that they will no longer present any witness.[126] Neither did the CIR present a copy of the FDDA which would have helped clarify the circumstances surrounding the service of the FDDA to Toyota.[127]

As correctly observed by the Court in Division, the foregoing acts have clearly communicated to Toyota that the reinvestigation was still pending at that time. These acts and representations could not have been interpreted by Toyota otherwise. In fact, the subsequent acts of the CIR only confirmed and further cemented Toyota's belief that it filed a valid protest on which reinvestigation was granted, thus:

1. On March 11, 2009, "as a result of the reinvestigation," Toyota paid the amount of ₱240,914.23, "representing payment for deficiency VAT, including interest and compromise penalties, for taxable year 2004."[128]

2. In a Memorandum dated March 11, 2009 addressed to the Regional Director, it was stated that:

> "This refers to the 2004 Income, Value-Added and Documentary Stamp Tax liabilities of the above taxpayer under Final Assessment Notice No. 45339-04-07-0431 dated October 24, 2007.
>
> Please be informed that the taxpayer repeatedly filed a protest letter against the issued assessment on the following

[122] Exhibit 14, Formal Offer of Evidence, Division Docket, p. 502; BIR Records, p. 228.
[123] Exhibit 15, Formal Offer of Evidence, Division Docket, p. 503; BIR Records, p. 230.
[124] Exhibits K and K-1, Formal Offer of Evidence, Division Docket, pp. 376-379.
[125] Exhibit Z, Question 78, Judicial Affidavit of Elisa Julian, Senior Finance and Administration Manager, Formal Offer of Evidence, Division Docket, pp. 419-436.
[126] November 22, 2012 Resolution, Division Docket, p. 497; Minutes of November 22, 2012 Hearing, Division Docket, p. 495.
[127] The CIR's Formal Offer of Evidence, which covered several pieces of evidence relevant to the assessment, significantly, did not include the FDDA which would have aided her cause, Division Docket, pp. 501-504.
[128] Par. 13, JSFI, Division Docket, p. 172; Par. 3, Supplemental JSF dated October 4, 2012, Division Docket, p. 477; BIR Records, pp. 264-265.

> grounds which were found meritorious by the undersigned, xxxx.
>
> xxx xxx xxx
>
> In view of the foregoing, it is respectfully recommended that the Authority to Cancel Assessment together with this report be approved and the case filed for future reference."[129]

3. An ATCA dated March 13, 2009 was finally issued and signed by Revenue District Officer Espiritu.[130]

In *British American Tobacco v. Camacho, et al.*, the Supreme Court *En Banc* enumerated the elements of estoppel which are present in this case.

> "The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action."[131]

Estoppel bars the CIR from now raising the argument that Toyota did not file a valid protest letter which is inconsistent with her prior acts. There is no doubt that Toyota relied upon the foregoing communications sent by the CIR before the issuance of the WDL. Hence, expectedly it came as a surprise when *after about two (2) years from the issuance of the ATCA*, the WDL was served on Toyota. In other words, the CIR cannot, to the prejudice of Toyota which relied upon her representations, go back on the same by reneging on her explicit statements that the docket of the case was endorsed back to the RDO No. 51 for reinvestigation, on her repeated requests for the documents in support of Toyota's protest letter, on her recommendation for the cancellation of the assessment having found said protest meritorious and on the eventual issuance of the ATCA.

Finally, it must be underscored that this assessment has already resulted in Toyota's payment of ₱1,272,078.63 on December 21, 2005 and of ₱240,914.23 on March 11, 2009. Je

[129] BIR Records, pp. 284-287.
[130] Par. 14, JSFI, Division Docket, pp. 172-173; Par. 8, AJSF dated November 20, 2012, Division Docket, p. 491; Authority to Cancel Assessment, Exhibit L, Formal Offer of Evidence, Division Docket, p. 380.
[131] G.R. No. 163583, August 20, 2008.

Although we are well-aware that estoppel as an equitable principle must be sparingly applied, we find that the application of the doctrine is justified in this case. The application of estoppel would prevent injustice and avert the accomplishment of a wrong and undue advantage.[132]

After a careful review of the case, we find no reason to disturb the holding by the Court in Division as both parties failed to raise grounds sufficient to warrant the reversal of the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petitions for Review filed by Toyota in CTA EB Case No. 1280 and by the CIR in CTA EB Case No. 1287 are **DENIED** for lack of merit. Accordingly, the September 3, 2014 Decision and the February 17, 2015 Resolution are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO see Dissenting Opinion
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[132] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

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

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TOYOTA MANILA BAY CORPORATION, *Petitioner,*	**CTA EB NO. 1280** (CTA Case No. 8227)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1287** (CTA Case No. 8227)
	Present: **DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, *and* **RINGPIS-LIBAN**, *JJ.*
-versus-	
TOYOTA MANILA BAY CORPORATION, *Respondent.*	Promulgated: OCT 03 2016 3:10 p.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, PJ.:

I maintain my Dissenting Opinion on the assailed Decision dated September 3, 2014 which I quote below for ease of reference:

"With all due respect, I humbly dissent on the opinion of the majority that the subject Formal Assessment Notice (FAN) may not be considered as final and executory. It is my view that the FAN has become final and executory as petitioner failed to file a valid protest within the thirty-day period provided under Section 228 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, *viz.*:

> 'SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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 (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.
>
> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'

Section 3.1.5 of Revenue Regulations No. 12-99, which implements Section 228 of the 1997 NIRC, as amended, provides for the manner in which an assessment, which is otherwise presumed correct, should be assailed, *viz.*:

'Section 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 date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall 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. If there are several issues involved in the disputed assessment 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 date of 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 by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.'

On November 7, 2007, petitioner received the subject Formal Assessment Notice (FAN). On

November 23, 2007, petitioner filed a letter-response to the FAN by filing a request for reinvestigation, *viz.*:

'19 November 2007

MA. NIEVA A. GUERERO
OIC-Regional Director

BIR RR-8

Thru: Assessment Division

Madam:

May we request a re-investigation of our tax liabilities for the year 2004 as stated in Assessment No. IT-45339-04-07-0431, VT-45339-04-07-0431, DS 45339-04-07-0431, MC-45339-04-07-0431. We will be presenting documents to the examiner as to refute some of the assessment.

We hope that our request be granted as soon as possible.

TOYOTA MANILA BAY CORP.

By: (signed)
Elisa D. Juan
Finance & Admin Manager'[1]

To my mind, petitioner's letter-response to the FAN does not constitute a valid protest. It is a mere request for reinvestigation of petitioner's tax liabilities for 2004. It does not in any way dispute the assessments by stating the facts, the applicable laws, rules and regulations, or jurisprudence.

On the other hand, petitioner's letter[2] dated December 3, 2007, which was received by the Bureau of Internal Revenue (BIR), Revenue Region No. 8 on the same date, was a mere request for extension of time to submit data to the BIR, *viz.*:

'03 December 2007

MA. NIEVA A. GUERRERO
OIC-Regional Director

[1] Exhibit I-3, *CTA Docket*, p. 371.
[2] Exhibit I-2, *CTA Docket*, p. 370

BIR RR-8

THRU: ASSESSMENT DIVISION

Madam,

Reference is made to your letter dated November 27, 2007 faxed to our office on November 29, 2007 giving us the opportunity to submit valid letter of protest on or before December 03, 2007 to contain the following data in accordance with Revenue Regulations Nos. 12-85 and 12-99, to wit:

a) Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence you intend to present, if it is a request for reinvestigation.

b) The taxable period covered

c) Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.

d) Itemized schedule of the adjustments with which the taxpayer does not agree. Further, submit necessary documents to support your claims/disagreements.

e) A statement of facts and/or law in support of this protest.

We would like to request for an extension of *thirty (30) days* to give us more time to submit the abovementioned.

We hope that our request warrants your favorable approval.

TOYOTA MANILA BAY CORP.

(signed)
By: Elisa D. Julian
Finance & Admin Mgr'

Likewise, petitioner's letter[3] dated January 4, 2008, which was received by BIR Revenue Region No. 8 on the same date, was a mere reiteration of its request for reinvestigation, *viz.*:

[3] Exhibit I-1, *CTA Docket*, p. 369.

'04 January 2008

MA. NIEVA A. GUERRERO
OIC-Regional Director

BIR RR-8

THRU: ASSESSMENT DIVISION

Madam,

Reference is made to your letter dated December 06, 2007 received by our office on the same date thru fax granting us the extension of thirty (30) days to file our valid letter of protest not later than January 04, 2008, relative to the issued Formal Assessment Notice dated October 24, 2007 covering our company's deficiency taxes and compromise penalty for the taxable year 2004 in the aggregate amount of P139,718,896.20.

We request that the re-investigation be done by examiner at Pasay City District because documents are voluminous.

As per records, the following facts should be considered:

a) The gross profit pertaining to the undeclared purchases is much lesser than the undeclared disbursement which you considered as undeclared income.

b) Undeclared purchases should not be equal to undeclared sales

c) Input taxes of our undeclared purchases should be considered in computing VAT deficiencies.

We hope that our request be granted as soon as possible.

TOYOTA MANILA BAY CORP.

(signed)
By: Elisa D. Julian
Finance & Admin Mgr'

It is noted than on February 1, 2008, petitioner filed a letter[4] dated February 1, 2008 with the BIR Revenue Region No. 8 stating relevant facts relative to the BIR's investigation and reiterating that its request for reinvestigation be done by examiner at Pasay City District Office. Although its letter dated February 1, 2008 may be regarded as a valid protest for stating facts relevant to the BIR's investigation, the same was filed beyond thirty (30) days from petitioner's receipt of the FAN on November 7, 2007. Hence, the filing of said letter beyond the 30-day period to file protest did not prevent the FAN from becoming final, executory and demandable.

While it is true that the then Regional Director of Revenue Region No. 08 had granted petitioner an opportunity to file a valid protest until January 4, 2008, **the same is not valid as there is nothing in the 1997 NIRC, as amended, or in RR No. 12-99 which gives the Regional Director the authority to extend the thirty-day period within which the taxpayer should protest the FAN**. The extension of the period to file a protest which was granted by the Regional Director without authority could not set aside the mandatory provision of Section 228 of the 1997 NIRC, as amended, regarding the finality of an assessment which has not been disputed within the 30-day period to file a valid protest.

Interestingly, in the recent case of **J Square C Construction Supply, Inc. vs. Commissioner of Internal Revenue**,[5] this Court ruled that, by operation of law, the assessment against petitioner became final and executory for petitioner's failure to file a valid protest within the prescribed period, to wit:

> 'While in the letter dated 29 July 2011 signed by Regional Director Nestor Valeroso, which petitioner received on August 10, 2011, petitioner purportedly was given fifteen (15) days from receipt thereof to file a protest on the final assessment notice, **the same could not validly brush aside the legal consequences which Section 228 of the NIRC of 1997 itself has provided**, *i.e., the assessment shall become final, executory and*

om

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[4] Exhibit I, *CTA Docket*, pp. 367 to 368.
[5] CTA Case No. 8455, July 31, 2014; penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla.

> *demandable if the taxpayer fails to file a protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.* In other words, **the mandatory provision on protesting a tax assessment within the statutory period cannot be rendered nugatory by the mere issuance of a letter by respondent's representative, which act is not expressly sanctioned by law**. Interestingly, the Regional Director's letter was issued way beyond May 15, 2011 - - the last day within which a valid Protest could have been made - - obviously in an attempt to cure petitioner's failure to file a timely protest. Such action of the Regional Director is irregular, to say the least.
>
> It is long and firmly settled rule of law that the Government is not bound by errors or mistakes committed by its agents, moreso when they are tainted with illegality. The government cannot be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents.'

At any rate, even assuming that the Regional Director validly extended the thirty-day period to protest, records show that said extension was until January 4, 2008 only.[6] A perusal of petitioner's letter[7] dated January 4, 2008, which was received by the Assessment Division of BIR Revenue Region No. 8 on even date, reveals that the same could not constitute as a valid protest since petitioner merely requested that a reinvestigation be conducted by the BIR, *sans* any statement of facts, applicable laws and jurisprudence, rules and regulations to dispute the assessments.

Based on the foregoing, it is indubitable that petitioner failed to file a valid protest within the 30-day period, as required by Section 228 of the 1997 NIRC, as amended and Section 3.1.5 of RR No. 12-99. Consequently, I find that the subject FAN has become **final, executory, demandable and unappealable**.[8]

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[6] Exhibit I-5, *CTA Docket,* p.373
[7] Exhibit I-1, *CTA Docket,* p. 369
[8] Protector's Services, Inc. vs. Court of Appeals, 330 SCRA 404.

Collection of deficiency tax assessments pursuant to the final and executory FAN

As a consequence of the FAN becoming final, executory and demandable, respondent issued the subject WDL which petitioner received on January 6, 2011. The act of respondent in issuing the WDL is consistent with the pronouncement of the Supreme Court in *Ferdinand R. Marcos II vs. Court of Appeals,*[9] *viz.*:

> '**Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax**. Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes.'

Petitioner filed the present Petition for Review on February 4, 2011, or within thirty (30) days from receipt of the WDL on January 6, 2011. Respondent argues that this Court has no jurisdiction over the present petition as it involves an undisputed assessment or a FAN that has become final, executory and demandable.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[10] the Supreme Court affirmed the CTA's jurisdiction to rule on "other matters" arising under the NIRC or other laws administered by the BIR, thus:

> 'Plainly, the assailed CTA En Banc Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled that **the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers**

[9] G.R. No. 120880, June 5, 1997, 273 SCRA 47.
[10] G.R. No. 169225, November 17, 2010.

other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).

In the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223 (c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223 (c):

Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax. (Emphases supplied.)

In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:

Sec. 3. Powers and duties of Bureau. — The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)

Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other**. This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said**

> **party may file an appeal with the CTA within 30 days from receipt of such decision or ruling**. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.
>
> To be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal**. However, the *validity of the assessment* itself is a separate and distinct issue from the issue of whether the right of the CIR to *collect* the validly assessed tax has prescribed. **This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide**.'

Applying *Hambrecht*, it is my view that this Court has jurisdiction over the present petition since petitioner questions the right of respondent to issue the subject WDL. Certainly, this issue falls under "other matters" arising under the NIRC or other laws administered by the BIR.

Section 222(c) of the 1997 NIRC, as amended, states that internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment. In **Bank of the Philippine Islands vs. Commissioner of Internal Revenue**,[11] the Supreme Court clarified:

> '**When the BIR validly issues an assessment, within either the three-year or ten-year period**, whichever is appropriate, then the BIR has another three years [now five years] **after the assessment** within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on <u>the date the assessment notice had been released, mailed or sent</u> by the BIR to the taxpayer**.
>
> In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-

[11] G.R. No. 139736, October 17, 2005.

> 85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. **Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989.** Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.'

If there is no showing as to when the assessment was *released, mailed or sent* to the taxpayer by the BIR, the five-year period to collect shall be counted from the *date of receipt* of the assessment by the taxpayer.

Since it was not established when the FAN was released, mailed or sent by the BIR to petitioner, the five-year period to collect shall be counted from November 7, 2007, the date when petitioner received the FAN. Thus, the BIR had five (5) years from November 7, 2007 or until **November 7, 2012** within which to collect the deficiency taxes. The subject WDL, which was issued by the BIR on **January 6, 2011** and received by petitioner on the same date, was issued within the five-year prescriptive period to collect.

In *BPI*, the Supreme Court emphasized that **when an assessment is validly issued, within either the three-year or ten-year period**, the BIR is given a period of five (5) years within which to collect the tax assessed. Thus, the right of the BIR to collect shall extend to deficiency taxes which were validly assessed within the period provided under Section 203 and 222 of the 1997 NIRC, as amended, which state:

> '**SEC. 203**. *Period of Limitation Upon Assessment and Collection*. - Except as provided in Section 222, **internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted

from the day the return was filed. For purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.'

'**SEC 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

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

xxx xxx xxx.'

A perusal of the records reveals the following:

a) Petitioner filed its Annual Income Tax Return[12] (ITR) for taxable year ending 2004 on April 15, 2005;

b) Petitioner failed to present evidence to prove that it filed its Quarterly VAT Return for the first quarter of 2004; but petitioner presented evidence to prove that it filed its Quarterly VAT Returns for the second,[13] third[14] and fourth quarters[15] of 2004 on July 26, 2004, October 20, 2004 and January 25, 2005, respectively; and,

c) Petitioner failed to present evidence to establish that it filed DST Return in 2004.

In view of the foregoing, the subject FAN which was received by petitioner on **November 7, 2007**, assessing petitioner for deficiency income tax, VAT, DST and compromise penalty for the taxable year 2004 were issued within the three-year period and the ten-year period, as the case may be, except for the VAT assessment for the *second and third quarters of 2004*, *viz.*:

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[12] Exhibit R, *CTA Docket*, pp. 385 to 387.
[13] Exhibit V-2, *CTA Docket*, p. 402.
[14] Exhibit V-3, *CTA Docket*, p. 403.
[15] Exhibit V-4, *CTA Docket*, p. 404.

Return Filed (2004)	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**	**Date of Issuance of the FAN**
Annual ITR	April 15, 2005	April 15, 2005	April 15, 2008	November 7, 2007
Quarterly VAT Return for the first quarter	-	-	Within ten (10) years from date of discovery (in the absence of evidence, the ten-year period shall be reckoned from August 3, 2005, the date of issuance of LOA No. 00045339; thus, the last day to assess is on August 3, 2015)	
Quarterly VAT Return for the second quarter	July 26, 2004*	July 26, 2004	**July 26, 2007**	
Quarterly VAT Return for the third quarter	October 20, 2004	October 25, 2004	**October 25, 2007**	
Quarterly VAT Return for the fourth quarter	January 25, 2005	January 25, 2005	January 25, 2008	
Documentary Stamp Tax	-	-	Within ten (10) years from date of discovery (in the absence of evidence, the ten-year period shall be reckoned from August 3, 2005, the date of issuance of LOA No. 00045339; thus, the last day to assess is on August 3, 2015)	

*July 25, 2004 fell on a Sunday

Considering the foregoing, in determining the total amount of deficiency taxes that respondent can collect from petitioner, I believe that the Court should take into consideration the effect of prescription on the BIR's right to assess petitioner for deficiency VAT for the second and third quarters of 2004. Since respondent's right to assess petitioner for deficiency VAT for the second and third quarters of 2004 has already prescribed, in my mind, respondent has no right to collect the same.

As can be gathered from the FAN issued by respondent against petitioner, the deficiency VAT assessment of ₱33,403,285.04 resulted from respondent's imposition of VAT on the following:

Undeclared income	₱ 206,260,123.85
Other income not subjected to VAT	6,666,859.00
Total	₱ 212,926,982.85

Undeclared Income - ₱206,260,123.85

After comparing the alleged sales declared by the suppliers of petitioner in their Summary List of Sales and the amount of purchases declared by petitioner in its VAT returns, respondent found a difference of ₱206,260,123.85 and inferred that the same represents petitioner's undeclared income for taxable year 2004, computed as follows:

Per Summary List of Sales submitted by suppliers	₱ 1,996,120,840.85
Purchases declared per petitioner's VAT returns	1,789,860,717.00
Undeclared income	₱ 206,260,123.85

A review of the Details of Taxpayer's Suppliers' Records [16] for LN No. 051-AS-04-00-00050 and Schedule of Purchases per Letter Notice less per VAT Return[17] reveals that the alleged undeclared income of ₱206,260,123.85 can be further broken down as follows:

2004	Exhibit	Purchases per Letter Notice	Exhibit	Purchases per VAT Return	Discrepancy
1st	B-6	₱ 458,895,466.80	E-4	₱ 456,619,647.00	₱ 2,275,819.80
2nd	B-7	501,346,868.50	E-4	422,463,270.00	78,883,598.50
3rd	B-8	546,907,611.76	E-4	445,962,630.00	100,944,981.76
4th	B-8	488,970,893.79	E-4	464,815,170.00	24,155,723.79
		₱ 1,996,120,840.85		**₱ 1,789,860,717.00**	**₱ 206,260,123.85**

Considering that respondent's right to assess petitioner of deficiency VAT for the second and third quarters of 2004 had already prescribed, the deficiency VAT assessment on the alleged undeclared income covering the second and third quarters of 2004 in the

[16] Exhibits B-1 to B-8, *CTA Docket*, pp. 338 to 345.
[17] Exhibit "E-4", *CTA Docket*, p. 352.

amount of ₱17,982,858.03, as computed below, shall accordingly be cancelled and withdrawn:

	2nd Quarter	3rd Quarter	Total
Purchases per Letter Notice	₱ 501,346,868.50	₱ 546,907,611.76	₱ 1,048,254,480.26
Purchases per VAT Return	422,463,270.00	445,962,630.00	868,425,900.00
Undeclared Income	₱ 78,883,598.50	₱ 100,944,981.76	₱ 179,828,580.26
Multiply by VAT rate	10%	10%	10%
Deficiency VAT	**₱ 7,888,359.85**	**₱ 10,094,498.18**	**₱ 17,982,858.03**

<u>Other Income not subjected to VAT - ₱6,666,859.00</u>

Respondent imposed 10% VAT on petitioner's Other income in the amount of ₱6,666,859.00 in view of petitioner's alleged failure to include the same as part of its gross sales/receipt subjected to VAT per its VAT Declaration/Returns, pursuant to Sections 105 and 106 of the 1997 NIRC, as amended, *viz.*:

Other Income	
Ancillary Income	₱ 4,305,629.00
Miscellaneous Income	2,361,230.00
Total Other Income	₱ 6,666,859.00

A perusal of petitioner's 2004 Annual ITR [18] shows that the Other Income of ₱6,666,859.00 formed part of petitioner's total gross income that was subjected to income tax.

As earlier stated, respondent's right to assess petitioner of deficiency VAT for the second and third quarters of 2004 had already prescribed. Petitioner was, however, unable to establish that the Other Income of ₱6,666,859.00 or a portion thereof pertained to the second and third quarters of 2004. In the absence of proof to the contrary, it is proper to consider the amount of ₱6,666,859.00 as pertaining to the first and fourth quarters of 2004. On the basis of the foregoing, I find that that the cancellation of the basic deficiency VAT assessment of ₱17,982,858.03 on the undeclared income of ₱179,828,580.26 for the second and third quarters of 2004 is warranted. Consequently, the WDL, in so far as it collects from petitioner the aforesaid basic deficiency VAT assessment of ₱17,982,858.03, should be cancelled and withdrawn.

[18] Line 17C, Exhibit R, *CTA Docket*, pp. 385 to 387.

On the other hand, in my mind, the FAN and the WDL should be affirmed insofar as they pertain to the deficiency income tax, VAT for the first and fourth quarters, DST and compromise penalty, all for taxable year 2004. Considering that said deficiency taxes were validly assessed by the BIR within the period provided under Section 203 and 222 of the 1997 NIRC, and that petitioner failed to file a valid protest within the period prescribed under Section 228 of the 1997 NIRC, as amended, the BIR has the right to collect the same, as the FAN has become final, executory and demandable." (Emphases supplied)

Moreover, consistent with the position I have taken in a number of cases that deficiency interest may only be imposed on tax specifically covered and defined by the relevant provisions of the National Internal Revenue Code (NIRC), *i.e.*, income tax, donor's tax and estate tax, the imposition of deficiency interest on the assessed deficiency VAT and DST in the present case must be cancelled. Quoted below is my discussion in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation* [19] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[20] which somehow made mention of deficiency interest under the NIRC of 1977. **I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes.** Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former*

[19] CTA EB Nos. 1218 and 1220, April 11, 2016. This is consistent with my earlier opinion in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1062, January 15, 2016; CIR vs. Staedtler (Philippines), Inc., CTA EB No. 1310, January 28, 2016; Medicard Philippines, Inc. vs. CIR, CTA EB No. 1224, January 29, 2016; Lourdes College vs. CIR, CTA EB No. 1164, February 2, 2016; Philippine Aerospace Development Corporation vs. CIR, CTA EB No. 1035, February 9, 2016; CIR vs. BPI-Philam Life Assurance Corporation, CTA EB No. 1240, February 11, 2016; CIR vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. CIR, CTA EB Nos. 1210 & 1213, March 7, 2016; CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016; and Lourdes College vs. Commissioner of Internal Revenue, CTA EB No. 1164, July 28, 2016.*

[20] G.R. Nos. 106949-50, December 1, 1995.

Deputy Ombudsman for the Visayas Arturo C. Mojica,[21] is instructive:

> 'The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented.'**

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51(c)(1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **'It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section

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[21] G.R. No. 146486, March 4, 2005.

> 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.'

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.'

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended.'

om

xxx xxx xxx

Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[22] which I quote below:

> 'Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**'

The power of taxation is sometimes called also the power to destroy. It should, therefore, be exercised with caution to minimize injury to the proprietary rights of a taxpayer. **It must be exercised fairly, equally and uniformly, lest the tax collector kills the hen that lays the golden egg.[23] Indeed, the imposition of 20% deficiency interest per annum on a <u>tax not clearly within the context of the law</u>, in addition to 20% delinquency interest per annum and a surcharge of 25% on the amount due under Section 248 of the NIRC, is too burdensome for a taxpayer to survive and continue with its business affairs.'[24]**

In fine, I VOTE to PARTIALLY GRANT the respective Petitions for Review filed by Toyota Manila Bay Corporation (Toyota) and the Commissioner of Internal Revenue (CIR). The Formal Assessment Notice dated October 24, 2007 as well as the Warrant of Distraint and Levy No. 2011-001 dated January 6, 2011, issued by the CIR against Toyota, covering deficiency income tax, VAT, DST and compromise penalty, for taxable year 2004, should be **AFFIRMED** except for the basic deficiency VAT assessment of ₱17,982,858.03 on the undeclared income of ₱179,828,580.26 for the second and third quarters of 2004 which should be **CANCELLED** and **WITHDRAWN**.

Accordingly, Toyota should be **ORDERED** to **PAY** the CIR in the total amount of ₱90,505,158.92 inclusive of the 25% surcharge

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[22] CTA EB No. 1035, February 9, 2016.
[23] Roxas vs. Court of Tax Appeals, G.R. No. L-25043, April 26, 1968.
[24] Commissioner of Internal Revenue vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB Nos. 1210 & 1213, July 1, 2016.

imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Income Tax	₱ 65,934,286.87	₱ 16,483,571.72	₱ 82,417,858.59
Value-Added Tax	3,309,840.26[25]	827,460.07	4,137,300.33
Documentary stamp tax	3,140,000.00	785,000.00	3,925,000.00
Compromise penalty	25,000.00	-	25,000.00
Total	**₱ 72,409,127.13**	**₱ 18,096,031.78**	**₱ 90,505,158.92**

In addition, Toyota should be held liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱65,934,286.87, computed from April 15, 2005, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱90,505,158.92, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 24, 2007 until full payment thereof pursuant to Section 249 (C) of the 1997 NIRC.

ROMAN G. DEL ROSARIO
Presiding Justice

[25] ₱21,292,698.29 less ₱17,982,858.03