REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1366
(CTA Case No. 8438)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, JJ.

\- *versus* –

AYALA HOTELS, INC.,
Respondent.

Promulgated:
JUN 28 2016 3:36 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review[1] filed by the Commissioner of Internal Revenue on November 2, 2015 under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals. The Petition for Review seeks the reversal of the Decision dated March 31, 2015,[2] as well as the Resolution dated September 29, 2015[3] of the Third Division (Court in Division)[4] of this Court in CTA Case No. 8438, entitled *Ayala Hotels, Inc. v. Commissioner of Internal Revenue.*

[1] Court *En Banc's* Docket, pp. 8-19.
[2] *Ibid.*, pp. 20-42; *Annex "A"*.
[3] *Id.*, pp. 43-48; *Annex "B"*.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment issued by respondent on January 25, 2012 [is] set aside and hereby declared null and void and of no legal effect precluding respondent from collecting the P15,959,747.80 assessed deficiency taxes for the CY-ending December 31, 2008.
>
> Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P2,391,999.40** corresponding to the basic deficiency VAT paid under protest.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's 'Motion for Reconsideration (Re: Decision Promulgated 31 March 2015)' is hereby **DENIED** for lack of merit; the Final Decision on Disputed Assessment issued by respondent on January 25, 2012 remains null and void and of no legal effect.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner is the duly-appointed Commissioner of Internal Revenue (CIR), vested with authority to, among others, decide disputed assessments of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other laws administered by the Bureau of Internal Revenue (BIR), and holding office at the BIR National Office Building, Diliman, Quezon City.

Respondent Ayala Hotels, Inc. (Ayala Hotel) is a corporation duly organized and existing under Philippine laws primarily engaged in the business of owning, acquiring, selling, transferring or otherwise disposing of real and personal properties, including shares of stocks, securities and to engage in the general business of a hotel, resort, apartment and other allied businesses. It is duly registered with the BIR with principal office address at 19th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[5]

THE FACTS

The facts of this case, as found by the Court in Division in the assailed Decision, are as follows:

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

DEFICIENCY TAX (Tax Type)	AMOUNT	ASSESSMENT NOTICE No.
Income Tax (IT)	P 9,677,869.29	LTDO-122-IT-2008-00004
Value-Added Tax (VAT)	3,804,359.05	LTDO-122-VT-2008-00004
Withholding Tax - Expanded (EWT)	155,460.48	LTDO-122-WE-2008-00005
Fringe Benefit[s] Tax (FBT)	56,576.42	LTDO-122-WR-2008-00001
Documentary Stamp Tax (DST)	1,674,997.00	LTDO-122-DS-2008-00002
TOTAL	**P 15,369,262.24**	

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

> On February 6, 2012, petitioner received by way of personal delivery a copy of the FDDA issued by respondent dated January 25, 2012 denying the protest and directing

[5] Court *En Banc*'s Docket, p. 21.

petitioner to pay deficiency taxes amounting to an aggregate amount of P15,959,747.80, inclusive of interests and compromise penalty, summarized as follows:

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

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

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

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

On March 22, 2012 and prior to the scheduled Pre-Trial Conference, petitioner decided to pay through EFPS the correct deficiency DST due on its Lease Contracts with Manila Peninsula Hotel Inc. (MPHI) and Manila Mandarin Hotel Inc. (MMHI) taking into consideration the actual land lease income for CY 2008. Petitioner paid an aggregate amount of **TWO HUNDRED THIRTEEN THOUSAND NINE HUNDRED EIGHTY ONE AND 91/100 (P213,981.91)**, inclusive of interest and penalty, distributed as follows:

MPHI	P 107,496.80
MMHI	106,485.11
Total	**P 213,981.91**

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

In her Answer, respondent interposed the following Special and Affirmative Defenses, to wit:

> '7. Under Section 228 of the 1997 Tax Code, partly it provides as follows:
>
> "***SEC. 228. Protesting of Assessment.*** -
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> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."
>
> Implementing the aforesaid provision, **Section 3, 3.1.5 of Revenue Regulation[s] No. 12-99 dated September 6, 1999**, provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from the date of filing of his letter of protest, otherwise, the assessment shall become final, executory, and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.
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> In this instant case, petitioner was found to have failed to submit the required documents in support of its protest against the subject BIR Formal Assessment Notice (FAN) and Letter of Demand, filed on December 20, 2011. Hence, the

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assessed deficiency income tax, value-added tax, and documentary stamp tax for the taxable year December 31, 2008 has already become final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the petition.

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

> 'Such assessment may be protested administratively by filing a request for reconsideration and 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.' *(Emphasis supplied)*

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

> 'If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply

therewith may be raised in a motion to dismiss.'

Moreover, in the case of Yao vs. Court of Appeals, et al., G.R. No. 13248, October 24, 2000, the Supreme Court held and we quote:

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

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

xxx xxx xxx

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

January 25, 2012, which are briefly discussed hereunder, viz.:

A.) Income Tax

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

2. The taxes and licenses by petitioner in the amount of P1,062,500.00 pertains to the documentary stamp tax on the original issuance of shares of stock on investment was made, remitted and paid by Greenhaven Property Ventures, Inc. as evidenced by BIR Form 2000. Greenhaven Property Ventures, Inc. will be the one who should claim the expense and not herein petitioner, Ayala Hotels, Inc. since the cost of the imposition was borne by the corporation originally issuing the stock certificate. Hence[,] said expense claimed by petitioner was disallowed.

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

B.) Value Added Tax

1. The input tax claimed by petitioner which are (sic) supported by various invoices and receipts are (sic) not compliant with the

invoicing requirements under Section 113 (A) of the 1997 Tax Code [which] thus provides that aside from making it mandatory for [a] VAT registered person to issue an invoice or receipts for every sale transaction, it also requires said person, in addition to the information required under Section 237 of the NIRC of 1997, to reflect the information that the seller is a VAT registered person followed by his TIN and the total amount which the purchaser pays or is obliged to pay the seller with the indication that such amount includes the value-added tax. Hence[,] said input tax credits claimed by petitioner were disallowed.

C.) Documentary Stamp Tax:

1. Contracts/Agreements covering Lease Contracts with Manila Peninsula Hotels, Inc. and Manila Mandarin Hotel, Inc. was subjected to Documentary Stamp Tax covering the whole term of the contract of lease, pursuant to Section 194 of the NIRC. The DST on lease contract was based on petitioner's submitted schedule of rent income and indicating therein the minimum rent income of P1,000,000.00 per month of Manila Peninsula Hotels, Inc. and Manila Mandarin Hotels, Inc. Petitioner also failed to submit the Contract of Lease to verify the lease hiring agreements. Documentary stamp tax is collected on lease, agreements, memorandum or contract for hire, use or rent of any lands or tenements, or portions thereof, a documentary stamp ta[x] for each year of the term of the said contract or agreement which means on the total term of the contract and not on a yearly basis.

12. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12099, (sic) when the disputed Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) and Letter of Demand and Final Decision on Disputed Assessment (FDDA) dated January

25, 2012 were issue[d] to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the factual findings of the respondent CIR on its deficiency taxes for taxable year 2008 through the issuance of a Notice of Informal Conference, PAN and FAN and FLD. Likewise, petitioner was duly appraised (sic) by respondent of the factual and legal basis on how and why he arrived at such a deficiency income tax, vat and dst for 2008 through the issuance of details of discrepancies attached to the FAN, PAN, NIC as well as FDDA and other BIR correspondence which are found in the BIR Records of the case.

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

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

The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for the taxable year[s] 1982-1986

> as evidence[d] by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits (sic) documentary evidence to support its stand.
>
> As the facts would demonstrate, ***petitioner was never deprived of due process as it was fully appraised (sic) of the legal and factual basis of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessments, and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with***.' (Emphasis supplied)
>
> 14. The assessment issued against petitioner for deficiency income tax, vat and DST for taxable year December 31, 2008 were wade (sic) in accordance with law and regulations.
>
> 15. All presumptions are in favor of the correctness of tax assessments issued by the respondent.

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

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

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

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

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

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

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

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

Considering the Court's Resolution dated March 24, 2014, denying respondent's Motion for a Final Extension of [T]ime to Submit Memorandum filed on March 18, 2014, and the Court's Resolution dated April 11, 2014, admitting petitioner's Memorandum dated March 12, 2014, the above-captioned case is deemed submitted for decision."[6]

On March 31, 2015, the Court in Division issued the assailed Decision granting Ayala Hotel's Petition for Review and declaring the Final Decision on Disputed Assessment (FDDA) issued by the CIR on January 25, 2012 as null and void, thus precluding CIR from collecting the ₱15,959,747.80 assessed deficiency taxes for the calendar year (CY) ending December 31, 2008. In the assailed Decision, the Court in Division likewise ordered CIR to refund or to issue a tax credit certificate in favor of Ayala Hotel in the amount of ₱2,391,999.40 representing the basic deficiency value-added tax (VAT) the latter paid under protest.

Aggrieved, CIR filed a Motion for Reconsideration on April 27, 2015 which the Court in Division denied in the assailed Resolution.[7]

On November 2, 2015, the CIR filed the subject Petition for Review before the Court *En Banc* and raised the issue of whether the Court in Division erred in ruling that CIR violated Ayala Hotel's right to due process for her failure to comply with the requirements of Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC). Ayala Hotel filed its Comment to the Petition for Review on March 21, 2016.[8]

In a Resolution dated April 22, 2016,[9] the Court *En Banc* considered the instant Petition for Review submitted for decision.

[6] *Ibid.*, pp. 21-29. *(Citations omitted)*
[7] *Id.*, pp. 43-48.
[8] *Id.*, pp. 83-93.
[9] *Id.*, pp. 97-99.

THE PARTIES' ARGUMENTS

CIR claims that the administrative protest filed by Ayala Hotel was a mere request for reconsideration of the deficiency assessments because Ayala Hotel's letter-protest to the Formal Letter of Demand (FLD) and Assessment Notices (AN) is a complete rehash of its letter-protest to the Preliminary Assessment Notice and that there is no indication that Ayala Hotel requested time to submit additional supporting documents on its behalf.[10] According to CIR, Ayala Hotel's letter-protest to the FLD and AN is also not clear as to its nature since it merely indicated that it is "strongly protesting" the issuance of the assessments.[11] Consequently, CIR posits that the Court in Division erred in ruling that she has to wait for a period of sixty (60) days from date of filing of the protest within which Ayala Hotel may submit additional documents.[12]

CIR also avers that due process of law simply means giving opportunity to be heard before judgment is rendered.[13] When a party has been given such opportunity and has presented its case, according to CIR, the due process requirement under the law is deemed satisfied.[14]

Ayala Hotel, on the other hand, argues that Revenue Regulations (RR) No. 12-99 (the applicable regulation at the time the FAN for CY 2008 was issued) does not require a taxpayer to specifically state or allege the type of protest it is availing to contest a tax assessment.[15] Ayala Hotel thus argues that it cannot be faulted when it did not specifically state in its letter-protest whether it is filing a request for reconsideration or reinvestigation.[16]

Ayala Hotel likewise claims that, as proven during the trial, the tax assessments issued against it were not limited to legal issues only, but also involves factual issues which can only be resolved through the presentation of relevant supporting documents.[17]

THE COURT *EN BANC*'S RULING

The Petition for Review is bereft of merit.

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[10] *Id.*, pp. 13-14.
[11] *Id.*
[12] *Id.*, p. 14.
[13] *Id.*
[14] *Id.*
[15] *Id.*, p. 84.
[16] *Id.*
[17] *Id.*, p. 86.

After thorough evaluation of the case records, the Court *En Banc* finds no compelling reason to deviate from the holding of the Court in Division that Ayala Hotel was denied due process when CIR failed to accord Ayala Hotel the 60-day period to submit relevant supporting documents, pursuant to Section 228 of the 1997 NIRC and RR No. 12-99.

As stated above, CIR argues that Ayala Hotel's letter-protest is a mere request for reconsideration of the tax assessments issued against it. Thus, according to CIR, submission of additional evidence is not required.

The Court *En Banc* is not persuaded.

Section 228 of the 1997 NIRC, in part, provides:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> x x x
>
> 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."

While RR No. 12-99 (the implementing regulation of Sec. 228 of the NIRC) does not define the two kinds of protest, prior revenue issuance, *i.e.*, RR No. 12-85, provided their definition, and distinguished these two types of protest in the following manner:

> "**SECTION 6.** *Protest.* —
>
> x x x
>
> For the purpose of the protest herein —
>
> (a) Request for reconsideration — refers to a plea of re-evaluation of the assessment **on the basis of existing records without need of additional evidence**. It may involve both a question of fact or of law or both.
>
> (b) Request for reinvestigation — refers to a plea of re-evaluation of an assessment **on the basis of newly discovered**

or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both." *(Emphasis supplied)*

The main difference between these two types of protest lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly-discovered or additional evidence.[18] Taking into account both Section 228 of the 1997 NIRC and RR No. 12-85, if the protest is a request for reconsideration, the submission of additional or supporting documentary evidence is not required. Conversely, if the protest is a request for reinvestigation, the taxpayer is required to submit additional or supporting documents.[19]

A careful examination of Ayala Hotel's letter-protest dated December 19, 2011[20] reveals that the same is in the nature of a request for the reinvestigation of the deficiency tax assessments. Notably, Ayala Hotel submitted additional documentary evidence in support of its protest. The documents which were attached to the letter-protest are as follows:

1. Annual Income [Tax] Return (BIR Form [No.] 1702) for CY 2008;

2. Audited Financial Statements for CY 2008;

3. Documentary Stamp Tax Return (BIR Form [No.] 2000) for MPH;

4. Documentary Stamp Tax Return (BIR Form [No.] 2000) for MMH; and

5. Confirmation Receipts.

The submission of the foregoing documents simultaneously with the filing of the letter-protest only goes to show that Ayala Hotel is seeking re-evaluation of its tax assessments on the basis of additional evidence to be presented during the course of the investigation.

At any rate, the Supreme Court has ruled in *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc.*,[21] that if the letter-protest does not categorically state whether the taxpayer is requesting for

[18] *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, G.R. No. 167146, October 31, 2006.
[19] *Royal Bank of Scotland (Philippines), Inc. v. Commissioner of Internal Revenue*, CTA EB No. 446, October 23, 2009.
[20] Division Docket (CTA Case No. 8438) Vol. I, pp. 22-27.
[21] G.R. No. 76281, September 30, 1991.

"reinvestigation" or "reconsideration", as in the present case, the same is to be treated as letter of reinvestigation and reconsideration.

Considering that the present case involves a request for reinvestigation, Ayala Hotel must be fully accorded with the 60-day period from the date of filing of its protest within which to submit relevant supporting documents as expressly provided under Section 228 of the 1997 NIRC and Section 3.1.5 of RR No. 12-99.

The applicable portions of Section 228 of the 1997 NIRC and Section 3.1.5 of RR No. 12-99, read as follows:

> "**SEC. 228**. *Protesting of Assessment.* –
>
> x x x
>
> 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.** *(Emphasis supplied)*
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> x x x
>
> **SECTION 3.** *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> *3.1 Mode of procedures in the issuance of a deficiency tax assessment:*
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> x x x
>
> *3.1.5 Disputed Assessment.* —
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> x x x
>
> **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." *(Emphasis supplied)*

Based on the foregoing, it is clear that the law categorically grants the taxpayer a definite period within which to substantiate its administrative protest of the deficiency tax assessment issued against him. Accordingly, it is the considered view of the Court *En Banc* that such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.

Section 228 of the 1997 NIRC and RR No. 12-99, particularly Section 3 thereof, prescribe the due process requirement to be observed in issuing deficiency tax assessments. Strict compliance with these requirements is necessary to make the assessment valid. Indeed, there are numerous cases wherein the Supreme Court had declared void any assessment that fails to strictly comply with such due process requirement. These cases include the following:

1. *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[22] where the Supreme Court held that failure to send a Preliminary Assessment Notice (PAN) stating the facts and the law on which the assessment was made as required by Section 228 of 1997 NIRC rendered the assessment made by the CIR as void.

2. *Commissioner of Internal Revenue vs. Azucena T. Reyes*,[23] where the Supreme Court ruled as void an assessment for deficiency estate tax issued by the CIR for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of 1997 NIRC.

3. *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[24] where the Supreme Court ruled, among others, that the taxpayer was deprived of due process when the CIR failed to issue a notice of informal conference and a PAN as required by RR No. 12-99 in relation to Section 228 of the 1997 NIRC. Hence, the assessment is void.

Contrary to CIR's position, it bears stressing that due process requires more than giving a person the right to be heard.[25] In the landmark case of

[22] G.R. No. 185371, December 8, 2010, 637 SCRA 632.
[23] G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382.
[24] G.R. No. 172598, December 21, 2007, 541 SCRA 316.
[25] *Leonisa E. Suarez v. Commission on Audit*, G.R. No. 131077, August 7, 1998.

Ang Tibay v. Court of Industrial Relations et. al.,[26] the Supreme Court enumerated the following principles governing administrative due process, viz.:

1. The right to a hearing, which included the right to present one's case and **submit evidence in support thereof;**

2. **The tribunal must consider the evidence presented**;

3. The decision must have something to support itself;

4. The evidence must be substantial;

5. **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected**;

6. The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision; and

7. The board or body should in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered.[27] *(Emphasis supplied)*

In the present case, Ayala Hotel filed its letter-protest on December 20, 2011. As such, it has a period of 60 days counted from said date, or until February 18, 2012, within which to submit additional relevant supporting documents. However, CIR issued the FDDA in response to Ayala Hotel's protest on January 25, 2012, or only thirty five (35) days[28] from date of protest. Evidently, CIR failed to comply with the due process requirement prescribed under Section 228 of the 1997 NIRC and Section 3.1.5 of RR No. 12-99 when it precipitately issued the FDDA against Ayala Hotel. The premature issuance of the FDDA unduly deprives Ayala Hotel of an opportunity to thoroughly substantiate its arguments on its letter-protest especially considering that, as found by the Court in Division, there are

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[26] G.R. No. L-46496, February 27, 1940.

[27] See also *Department of Health v. Priscilla G. Camposano et. al.*, G.R. No. 157684, April 27, 2005; *Coalition of Associations of Senior Citizens in the Philippines, Inc. (Senior Citizens Party-List) v. Commission on Elections*, G.R. Nos. 206844-45, July 23, 2013.

[28] It should be thirty six (36) days.

factual issues involved therein that necessitate the submission of additional evidence for the resolution thereof.

In view of the foregoing, the Court *En Banc* holds that the Court in Division correctly declared as null and void the deficiency income tax, VAT and DST assessments against Ayala Hotel for CY 2008.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

with dissenting opinion

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's dissenting opinion.
Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* 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

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1366** (CTA CASE No. 8438)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
AYALA HOTELS, INC., *Respondent.*	Promulgated:
	JUN 28 2016 3:36 p.m.

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect to my colleagues in the majority opinion, I cannot assent to the finding that respondent Ayala Hotels, Inc.'s right to due process was violated which thereby rendered the Final Decision on Disputed Assessment (FDDA) issued against respondent fatally defective or void. The *ponencia's* conclusion is based on the premise that the 60-day period within which all relevant documents in support of a protest against the Final Assessment Notice may be submitted, as provided for in Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, must expire **before** the Commissioner of Internal Revenue (CIR) may render an FDDA. Reliance is then made on *CIR vs. Metro Star Superama, Inc. (Metro Star),*[1] *CIR vs. Azucena T. Reyes (Reyes),*[2] *and Pilipinas Shell Petroleum Corporation vs. CIR (Shell).*[3]

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[1] G.R. No. 185371, December 8, 2010.
[2] G.R. Nos. 159694 & 163581, January 27, 2006.
[3] G.R. No. 172598, December 21, 2007.

Records of the case disclosed that respondent's protest against the Formal Letter of Demand and Assessment Notices did not in any way indicate a desire or intent to submit additional documents in support thereof. Rather, the protest itself simply prayed for the nullification of the assessment while attaching the following documents, namely: *(1) Payment Form (BIR Form 0605) for the deficiency EWT (Annex A); (2) Filing Reference Number (Annex A-1); (3) EFPS Payment Form (Annex A-2); (4) Payment Form (BIR Form 0605) for the deficiency FBT (Annex B); (5) Filing Reference Number (Annex B-1); (6) EFPS Payment Form (Annex B-2); (7) Annual Income Return (BIR Form 1702) for CY 2008 (Annex C); (8) Audited Financial Statements for CY 2008 for CY 2008 (Annex D); (9) Documentary Stamp Tax Return (BIR Form 2000) for MPH (Annex E); (10) Confirmation Receipt (Annex E-1); (11) Documentary Stamp Tax Return (BIR Form 2000) for MMH (Annex F); and (12) Confirmation Receipt (Annex F-1).* The text of the protest reads in part:[4]

> "December 19, 2011
>
> **Bureau of Internal Revenue**
> **Large Taxpayers District Office-Makati**
> LTDO-Makati Atrium Bldg.
> Makati Avenue, Makati City
>
> Attention: **Mr. Alfredo V. Misajon**
> OIC-Assistant Commissioner
> Large Taxpayer Service
>
> Dear Sir:
>
> Re: Ayala Hotels Inc.
> Deficiency Tax Assessments
> CY 2008- P15,369,262.24
>
> This refers to Formal Letter of Demand (Demand Letter) issued against Ayala Hotels, Inc. (AHI) under LOA No. 00033608 dated June 23, 2009 assessing the company of the deficiency Income Tax (IT), Value-added Tax (VAT), Expanded Withholding Tax (EWT), Fringe Benefit Tax (FBT) and Documentary Stamp Tax (DST) assessments in the aggregate amount of P15,369,262.24 for calendar year (CY) ended 2008. A copy of the Demand Letter and the respective Assessment Notice for each item of tax assessment was received only by our office on November 22, 2011.

[4] BIR Records, pp. 693-698.

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xxx xxx xxx

> In order to expedite the disposition of the above tax assessments and to show sincerity in accepting the findings of the revenue examiners, we admit to the issuance of the deficiency tax assessment pertaining to EWT and FBT in the total amount of P212,036.90.
>
> xxx xxx xxx
>
> With regard to the remaining items of tax assessments, we strongly protest the issuance of said tax assessments on the ground of lack of legal and factual basis. xxx
>
> xxx xxx xxx
>
> In view of the foregoing discussions, we reiterate our request that the issuance of deficiency IT, VAT, DST for CY ended 2008 be withdrawn and cancelled for lack of factual and legal bases. We also reserve the right to submit a supplemental protest raising additional arguments in case the need arises.
>
> We trust that this will merit your usual prompt attention and favorable consideration.
>
> Very truly yours,
>
> *(Sgd)*
> **Elaine F. Alzona**
> Deputy Chief Finance Officer"

While respondent seems to have reserved "the right to submit a supplemental protest raising additional arguments in case the need arises," no reservation was actually made anent the submission of additional documents. Given this backdrop, it was indeed reasonable for the CIR to proceed on the assumption that the protest is complete in form and substance and eventually to resolve the controversy. Moreover, petitioner's witness, Ms. Neriza M. Manuel, Revenue Officer III, who conducted the examination of all internal revenue tax liabilities of petitioner for 2008, was categorical in refuting respondent's claim that it manifested a desire to submit additional documents. On the contrary, despite several follow-ups made by Ms. Manuel, respondent refused to heed the request for documents. The testimony of Ms. Manuel is most revealing:

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"26. Q: How did you respond to the protest filed by Petitioner?

A: We conducted a reexamination of Petitioner's tax liability and considered the recent payment it made. **We asked Petitioner upon several occasions as to whether it intended to submit additional documents**. Particularly, we requested Petitioner to furnish us with a copy of its Management Contract or any document tending to support the "Systems Cost" expense line in its Annual Income Tax Return for the taxable year 2008. **Petitioner refused**, and in fact, no longer submitted any supporting documents for its protest."[5]

Truth to tell, jurisprudence relating to submission of documents in proceedings before the Bureau of Internal Revenue, particularly with respect to claims for tax refund, recognizes the rationality of assuming the completeness of documents upon filing of the claim. The doctrine, which may be applied analogously to submission of documents in relation to protest of assessment, is essentially anchored on the procedural and evidentiary concept that he who alleges must prove; or that the burden to prove a claim - - or, in this case, the inaccuracy or error of the assessment - - rests upon taxpayer, *viz*:

> "In relation thereto, absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund** in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively."[6]

I submit that the *ponencia's* reliance *on the cases of Metro Star, Reyes, and Shell* to support its conclusion about the invalidity of the present FDDA is unwarranted.

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[5] Exhibit "9"; CTA Division Docket, pp. 773-781, 779.
[6] Applied Food Ingredients Company, Inc. vs. CIR, G.R. No. 184266, November 11, 2013.

Noteworthy, the *Metro Star case* involves the BIR's failure to send a Preliminary Assessment Notice (PAN) which is a **mandatory** requirement under Sec. 228 of the NIRC. The *Shell case* involves failure to issue the PAN and Notice of Informal Conference which again are **mandatory** requirements under aforestated provision of the NIRC *vis-à-vis* the doctrine laid down in *CIR vs. Metro Star Superama, Inc.*[7] In the *Reyes* case, the assessment did not state the facts and law upon which it was made which likewise constitutes a **mandatory** requirement under Sec. 228, *supra.*

In contrast, the 60-day period within which all supporting documents should have been submitted is not a mandatory or jurisdictional requirement before the CIR may act on a protest of assessment, after all, it is the taxpayer which determines which document it desires to present in support of its protest. In the language of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.,*[8] and *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*:[9]

> "The term '**relevant supporting documents**' should be understood as **those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer**. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[10]
>
> xxx xxx xxx
>
> "With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, **for purposes of determining when the supporting documents have been completed — it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in**

[7] G.R. No. 185371, December 8, 2010.
[8] G.R. Nos. 172045-46, June 16, 2009.
[9] G.R. No. 207112. December 8, 2015.
[10] Note 8, *supra*.

> **which case, the 120-day period is reckoned from the date of filing**. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.
>
> xxx xxx xxx
>
> **Thereafter, whether these documents are actually complete as required by law — is for the CIR and the courts to determine**. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State."[11]

Otherwise stated, the present case simply concerns the BIR's issuance of FDDA during the 60-day period within which a taxpayer is allowed to submit documents in support of the administrative protest pursuant to Section 228 of the 1997 NIRC,[12] and as implemented by Section 3 of RR 12-99.[13] While the law and regulation mandate the

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[11] Note 9, *supra*.

[12] SECTION 228. Protesting of Assessment.

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[13] 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: xxx

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. xxx

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taxpayer to submit relevant supporting documents within sixty (60) days from its protest, this should not be taken to mean as precluding the CIR from deciding the case before the lapse of the said 60-day period especially when the taxpayer already submitted relevant supporting documents at the time the administrative protest was filed, sans any indication that it would still submit additional documents during the 60-day period. Parenthetically, the NIRC plainly states the submission of supporting documents **within 60 days from filing of the protest** which could be made by the taxpayer even on the same date of filing of the protest.

As respondent already submitted supporting documents at the time of filing of its administrative protest and did not manifest its intention in said protest that it would still submit additional supporting documents, the CIR correctly issued an FDDA even before the lapse of the 60-day period.

Verily, to declare in this case that the taxpayer's right to due process of law was violated would expediently provide unscrupulous taxpayers, with or without the connivance of tax officials, the avenue of declaring void an assessment by belatedly claiming a purported desire to submit documents in support of a protest after an FDDA has already been issued. Such mischievous consequence should not be countenanced.

All told, I vote to GRANT the petition for review, and to REMAND the case to the Court in Division for a complete determination of the correctness of the disputed assessments.

ROMAN G. DEL ROSARIO
Presiding Justice

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." *(Boldfacing supplied)*