REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IP CONTACT CENTER OUTSOURCING, INC., *Petitioner,*	**CTA *EB* NO. 1492** (CTA Case No. 8605)
-versus-	
HON. KIM S. JACINTO-HENARES and HON. NESTOR S. VALEROSO, *Respondents.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1497** (CTA Case No. 8605)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
IP CONTACT CENTER OUTSOURCING, INC., *Respondent.*	Promulgated: AUG 04 2017 4:15 p.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the consolidated *Petition for Review*[1] filed by IP Contact Center Outsourcing, Inc. (IPCCO) on August 19, 2016 through registered mail, and the *Petition for Review*[2] filed

[1] *Rollo*, CTA EB No. 1492, pp. 128-148.
[2] *Rollo*, CTA EB No. 1497, pp. 1-6.

by the Commissioner of Internal Revenue (CIR) on July 29, 2016, also through registered mail, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.[3]

The IPCCO, under CTA EB No. 1492, seeks the partial reversal and setting aside of the April 18, 2016 *Decision*[4] and July 13, 2016 *Resolution*,[5] enunciated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8605, entitled "*IP Contact Center Outsourcing, Inc. vs. Hon. Commissioner Kim S. Jacinto-Henares, Hon. Nestor S. Valeroso, Regional Director, Revenue Region No. 8*" with respect to the cancellation of Assessment Notice No. IT-LA12555-08-12-0406 for deficiency Income Tax for taxable year 2008, and Assessment Notice No. WE-LA12555-08-12-0406 for deficiency Expanded Withholding Tax for taxable year 2008.[6]

On the other hand, the CIR, under CTA EB No. 1497, likewise seeks the partial reconsideration and setting aside of said decision and the rendition of a new one reiterating the VAT assessment against IPCCO.[7]

The dispositive portions of the assailed Decision and Resolution read:

Decision[8] dated April 18, 2016:

> "**WHEREFORE**, the Petition for Review dated February 5, 2013 of IP Contact Center Outsourcing, Inc. is hereby **PARTIALLY GRANTED**.
>
> Consequently, Assessment Notice No. VT- LA12555-08-12-0406 for deficiency VAT in the amount of P216,364.39 for taxable year 2008 is hereby **CANCELLED.**
>
> The Assessment Notice No. IT-LA12555-08-12-0406 for deficiency Income Tax and Assessment Notice No. WE-LA12555-08-12-0406 for deficiency Expanded Withholding Tax for taxable year 2008 are **AFFIRMED WITH**

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[3] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[4] *Rollo*, CTA EB No. 1492, pp. 151-170.
[5] *Rollo*, CTA EB No. 1492, pp. 172-174.
[6] *Id.* at 140.
[7] *Rollo*, CTA EB No. 1497, p. 6.
[8] *Supra*, Note 4.

MODIFICATIONS. Accordingly, petitioner IP Contact Center Outsourcing, Inc. is **ORDERED TO PAY ONE MILLION EIGHT HUNDRED NINETY THOUSAND EIGHT HUNDRED EIGHTY-ONE PESOS and 76/100 (P1,890,881.76)** for taxable year 2008, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended computed as follows:

Deficiency Tax	Basic	Surcharge	Total
Income Tax	P 118,007.58	P 29,501.90	P 147,509.48
Expanded Withholding Tax	1,394,697.82	348,674.46	1,743,372.28
Total	**P1,512,705.40**	**P378,176.36**	**P1,890,881.76**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax and Expanded Withholding Tax computed from the dates indicated below until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency interest compute from
Deficiency IT	P 118,007.58	April 15, 2009
Deficiency EWT	P1,394,697.82	January 11,2009

(b) Delinquency interest at the rate of 20% per annum on the total amount of **P1,890,881.76** and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from May 11, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended."

Resolution[9] dated July 13, 2016:

"**WHEREFORE**, petitioner's Motion for Partial Reconsideration (of the 18 April 2016 Decision) dated May 12, 2016, and respondent CIR's Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 12, 2016 and Supplemental Motion for Reconsideration (of the Decision dated 18 April 2016) dated May 20, 2016 are hereby **DENIED,** for lack of merit."

The Facts

Petitioner is a domestic corporation, with office address at 34th Floor Tower II Plaza, Ayala Avenue, Makati City.[10]

[9] *Supra*, Note 5.

Respondent Kim S. Jacinto-Henares is then the CIR with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[11]

The other respondent Nestor S. Valeroso is then the Regional Director of Revenue Region 8, with office address at the BIR Regional Office building at 313 Sen. Gil Puyat Avenue, Makati City.[12]

A Preliminary Assessment Notice (PAN) dated March 21, 2012, with Details of Discrepancies, was sent to petitioner assessing it of deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2008. Thereafter, petitioner received a Final Assessment Notice (FAN) dated April 11, 2012, with Details of Discrepancies, Assessment Notice No. IT-LA12555-08-12-0406, Assessment Notice No. VT-LA12555-08-12-0406 and Assessment Notice No. WE-LA12555-08-12-0406, for deficiency IT, VAT, and EWT in the total amount of One Million Nine Hundred Sixty-Nine Thousand Two Hundred Seventy-Four and 69/100 (Php1,969,274.69), inclusive of interest for taxable year 2008, broken down as follows:[13]

Deficiency Tax	**Basic**	**Interest**	**Total**
IT	Php118,007.58	Php72,679.74	Php190687.32
VAT	130,361.51	86,002.88	216,364.39
EWT	938,156.28	624,066.70	1,562,222.98
	Php1,186,525.37	Php782,749.32	Php1,969,274.69

On May 11, 2012, IPCCO filed its Protest Letter to the FAN with the Assessment Division of BIR Revenue Region No. 8-Makati.[14]

In a letter dated May 30, 2012 received on June 5, 2012, IPCCO was informed by Revenue Region No. 8 that the entire docket of its case together with its Protest Letter against the

[10] *Rollo*, CTA EB No. 1492, Decision dated April 18, 2016, p. 151.
[11] *Rollo*, CTA EB No. 1492, Decision dated April 18, 2016, p. 151.
[12] *Id.* at p. 152.
[13] *Id.*
[14] *Id.*

2008 FAN was indorsed to Revenue District Office (RDO) No. 50.[15]

In a letter dated July 10, 2012, IPCCO informed respondent Valeroso of its submission of supporting documents.[16]

On February 5, 2013, IPCCO filed a Petition for Review before this Court in Division,[17] which subsequently was partially granted under the assailed *Decision.*[18] Thus, IPCCO filed a Motion for Partial Reconsideration on May 12, 2016.[19] On the other hand, CIR filed its own Motion for Reconsideration on the same date and a Supplemental Motion for Reconsideration on May 20, 2016.[20] Said motions were eventually denied in the assailed *Resolution.*[21]

On August 1, 2016, IPCCO filed a Verified Motion for extension of Time to file Petition for Review[22] which was granted by the Court *En Banc* on August 3, 2016 for a final and non-extendible period of fifteen (15) days from August 4, 2016 or until August 19, 2016.[23] IPCCO eventually filed said petition on August 19, 2016 through registered mail[24] and received by this Court on September 1, 2016.[25]

On the other hand, CIR filed its own petition on July 29, 2016 which was received by this Court on August 12, 2016.[26] IPCCO was then required to file its comment on the said petition.[27]

Both petitions were eventually consolidated into one case on September 8, 2016[28] and petitioners were ordered to comment on their respective counterparts' petition for review.[29] IPCCO submitted its comment on September 29,

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[15] *Id.*
[16] *Rollo*, CTA EB No. 1492, Decision dated April 18, 2016, p. 153.
[17] *Id.*
[18] *Supra*, Note 4.
[19] *Rollo*, CTA EB No. 1492, Resolution dated July 13, 2016, p. 172.
[20] *Id.*
[21] *Supra*, Note 5.
[22] *Rollo*, CTA EB No. 1492, pp. 1-9.
[23] *Rollo*, CTA EB No. 1492, Minute Resolution dated August 3, 2016, p. 39.
[24] *Rollo*, CTA EB No. 1492, Ex-parte Manifestation, pp. 40-42.
[25] *Rollo*, CTA EB No. 1492, Petition for Review, p. 128.
[26] *Rollo*, CTA EB No. 1497, Petition for Review, p. 1.
[27] *Rollo*, CTA EB No. 1497, Resolution dated September 1, 2016, pp. 62-63.
[28] *Rollo*, CTA EB No. 1492, Minute Resolution dated September 8, 2016, p. 214.
[29] *Rollo*, CTA EB No. 1492, Resolution dated September 8, 2016, pp. 216-217.

2016[30] while both respondents under CTA EB No. 1492 did not file their respective comment.[31]

On December 6, 2016,[32] both parties were required to submit their respective Memoranda. IPCCO filed its Memoranda on February 13, 2017[33] while CIR did not file any.[34] Thus, this Court ruled that the instant consolidated cases were deemed submitted for decision.[35]

The Issue

Whether the Third Division of this Honorable Court erred in cancelling the deficiency VAT assessment, in upholding the deficiency IT and EWT assessments, and in imposing surcharge and interest penalties on the assessments against IPCCO.

Arguments of Petitioner IPCCO

In *Petition for Review*[36] under CTA EB No. 1492, IPCCO argues that the alleged deficiency IT was the result only of the comparison between the receipts per VAT Return and the receipts per books and the failure of the Court in Division to consider the adjusting entries for the year 2008. As to the alleged deficiency EWT, IPCCO argues that the amount referred to payments to general professional partnerships (GPP), hence, not subject to tax.

IPCCO also argued that since it is not liable to pay the alleged deficiency IT and EWT, there should be no interest imposed.[37]

Arguments of Petitioner CIR

In *Petition for Review*[38] under CTA EB No. 1497, CIR argues that IPCCO was informed of the law and facts upon

[30] *Rollo*, CTA EB No. 1492, Comment dated September 26, 2016, pp. 218-228.
[31] *Rollo*, CTA EB No. 1492, Records Verification dated November 8, 2016, p. 229.
[32] *Rollo*, CTA EB No. 1492, Resolution dated December 6, 2016, pp. 231-232.
[33] *Rollo*, CTA EB No. 1492, Memoranda dated February 13, 2016, pp. 233-251.
[34] *Rollo*, CTA EB No. 1492, Minute Resolution dated March 1, 2017, p. 252.
[35] *Rollo*, CTA EB No. 1492, Resolution dated March 21, 2017, pp. 254-255.
[36] *Supra*, Note 1.
[37] *Supra*, Note 33.
[38] *Supra*, Note 2.

which the assessment for deficiency VAT was based and hence, IPCCO must be held liable for the deficiency VAT.

Ruling of the Court *En Banc*

The Court observes that the points and arguments in the present Petition for Review had already been painstakingly discussed and substantially resolved by the CTA Third Division in its April 18, 2016 *Decision*[39] and July 13, 2016 *Resolution.*[40]

CTA EB No. 1492

Petitioner failed to prove that it is not liable for deficiency IT.

Petitioner argued that the Court in Division failed to consider the adjusting journal entries for the year 2008 as shown by its schedule of adjusting entries.

However, as discussed in the assailed decision, said entries were denied admission for petitioner's failure to present the originals for comparison. Neither were the bases of said adjustments substantiated nor the time or period when said entries were effected shown. Hence, the sole schedule of adjusting entries *sans* supporting documents was inadequate to invalidate the assessment made by the tax examiners.

It is a well-settled presumption that when a public officer acted in accordance with its official duty, such was regularly performed if not contradicted and overcome by other evidence.[41] In *Manila Electric Company v. The City Assessor and City Treasurer of Lucena City*[42] citing *Cagayan Robina Sugar Milling Co. v. Court of Appeals*,[43] it was ruled that:

> It is true that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise.

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[39] *Supra*, Note 4.
[40] *Supra*, Note 5.
[41] Section 3(m), Rule 131, Rules of Court.
[42] G.R. No. 166102, August 05, 2015.
[43] G.R. No. 122451. October 12, 2000.

Such presumption though is disputable in nature, thus, the taxpayer can refute such with other credible evidence. As pronounced in *People v. Obmiranis,*[44] *to wit*:

> It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. **The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law**. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. (Emphasis supplied)

However, even in the instant petition of IPCCO, it failed to adduce any controverting evidence to support its adjusting entries that will corroborate the invalidity of such assessment. There was no evidence of any transgression on the part of the revenue examiners that will indicate that such assessment was the result of an act performed in contravention of law, rules, or regulation. Petitioner merely reiterated its previous arguments on the said issue which were already amply clarified, and adequately explained by the Court in Division. Hence, its ruling must be sustained.

Petitioner must disprove its alleged EWT deficiency with credible evidence

Anent the deficiency EWT particularly on professional fees, the Court in Division found that the payment made to Arreza & Associates was included in petitioner's alphalist belying its claim that it was paid to a GPP. Moreover, petitioner failed to prove the alleged payment to another GPP, Punongbayan & Araullo, because it did not provide supporting documents to ascertain that such payments pertained to Punongbayan & Araullo, a GPP.

On the other hand, petitioner argued that the Court failed to recognize the audit and legal fees paid to the said GPPs as evidenced by its working trial balance as of December 31, 2008. *cm*

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[44] G.R. No. 181492, December 16, 2008.

Petitioner must be aware that a working trial balance is merely a working paper of unadjusted accounts in the trial balance with adjusting entries to produce the final or completed trial balance of temporary and real accounts. Said document will not prove the nature of whether said payment is indeed made to a GPP or otherwise.

The valid evidence that will show as to the nature of its payment is the official receipt which is required under Section 113(A)(2) of the 1997 Tax Code, as amended, since petitioner's business is that of rendering services. Further, Section 113(B)(3) of said code requires that the "date of transaction, quantity, unit cost and description of the goods or properties or nature of the service" should be indicated therein. Thus, the official receipt will definitely show the nature of service provided by those alleged GPPs. However, petitioner did not even present said document before the Court in Division. Hence, such argument is misplaced.

As to the other professional fees and the management fees subject of EWT, there is no indication in the said petition or memorandum that those are being contested by the petitioner. Thus, the Court will not dwell on those anymore.

Lastly, on petitioner's argument as to imposition of interest, such becomes moot since petitioner's liability for deficiency IT and EWT was properly established by the Court in Division.

CTA EB No. 1497

Evidence to be admitted must be offered

Anent the deficiency VAT assessment, petitioner CIR argued that IPCCO was informed of the facts and law upon which the assessment for deficiency was based. It insisted that the letter dated September 26, 2011 from the Finance Accounting Head with attachment of its VAT Analysis relating to its 2008 audit had formed part of the BIR records. Thus, CIR asseverates that when such letter was elevated to this Court, it became part of the records of the case which the court may consider in deciding the case.

The purpose of evidence under the Rules of Court[45] is to ascertain the truth respecting a matter of fact in a judicial proceeding. Litigations cannot be properly resolved by suppositions, or even presumptions, with no basis in evidence. The truth must have to be determined by the rules for admissibility and proof.[46] Evidence is required because of the presumption that the court is not aware of the veracity of the facts involved in a case. It is therefore incumbent upon the parties to prove a fact in issue through the presentation of admissible evidence.[47]

Hence, in order for the court to consider said evidence, it must be formally offered.[48] In *Natividad Candido v. Court of Appeals*,[49] the Supreme Court discussed the importance of such offer, to wit:

> **A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.** A formal offer is necessary since judges are required to base their findings of fact and judgment only -and strictly - upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case. (*Emphasis supplied*)

In the more recent case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,[50] the Supreme Court elucidated further on this matter, viz:

> Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their

[45] Section 1, Rule 128, Rules of Court.
[46] *Lagon v. Hooven Comalco Industries, Inc.*, G.R. No. 135657, January 17, 2001 (349 SCRA 363).
[47] Evidence, The Bar Lectures Series, Willard B. Riano, 2009, p. 2.
[48] Section 34, Rule 132, Rules of Court.
[49] G.R. No. 107493, February 1, 1996.
[50] G.R. No. 195876, December 05, 2016.

cases. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

> **Section 34.** *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. xxx in *Dizon v. CTA*, this Court underscored the importance of a formal offer of evidence and the corresponding admission thereafter. We quote: xxx

> A **formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.**
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."**
>
> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed

> to comply with their commitment and allowed almost five months to lapse before finally submitting it. **Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.** (Emphasis and underlining supplied)

> Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected. (*Citation omitted*)

In the assailed resolution, the Court in Division pointed out that such VAT analysis attached to the letter of the Finance Accounting Head was not offered in evidence and considering that it was not raised by CIR, IPCCO was not able to refute the usage of said computation or explain the details of such assessment for proper clarification. Hence, the argument of the CIR is untenable.

The assessments must show their details and should not be presumed.

CIR further posits that the computation in the said VAT analysis which was adopted by the revenue examiner during the course of the audit was already incorporated in the assessment, specifically on the details of the discrepancies attached to the PAN and FAN.

Such analysis, however, falls short of the standards prescribed under Section 228 of the 1997 Tax Code which, in part, provides:

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

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. (*Emphasis supplied*)

Moreover, Section 3.1.2 and 3.1.4 of Revenue Regulations No. 12-99 requires also the CIR that the assessment made against a taxpayer must show, among others, the details as to the facts from which such assessment was based.

A scrutiny of the details of discrepancies[51] will show that the alleged VAT analysis proffered by the witness of IPCCO was never even mentioned or cited in the CIR explanation as the basis for such findings. It merely mentioned the "Receipts subject to VAT per audit" without any explanation as to where the computation came from or the source of such computation. CIR would want IPCCO to presume that since it had already submitted such analysis, it would become the basis of its assessment without seeking further clarification or explanation from the CIR.

Furthermore, in *CIR v. Metro Star Superama, Inc.*[52], the Supreme Court held that the requirement of such information is not merely formal but substantive, to wit:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. **He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence. (*Emphasis supplied*)

Also, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[53] the Supreme Court further explains the rationale behind such requirement, viz.:

> Nevertheless, the requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied.

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[51] Docket, CTA Case No. 8605, Vol. 1, p. 45.
[52] G.R. No. 185371, December 08, 2010.
[53] G.R. Nos. 215534 and 215557, April 18, 2016.

> Emphasis on the purpose of the written notice is important. **The requirement should be in place so that the taxpayer could be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision.** (*Emphasis supplied*)

Considering that tax assessment and eventual tax collection by the BIR do constitute a diminution of the taxpayer's property rights, it should observe the caveat enshrined in our constitution, to wit:

> No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.[54]

For although we are mindful that damage to such property rights will generally take a back seat to the paramount need of the government for funds to sustain its operation,[55] this rule has to observe the due process required under our constitutional and statutory laws.

Hence, the deficiency VAT assessment in the PAN and the FAN as well as the corresponding Assessment Notice No. VT-LA12555-08-12-0406 is null and void.

WHEREFORE, premises considered, both Petitions for Review are hereby **DENIED** for lack of merit. The April 18, 2016 *Decision*[56] and July 13, 2016 *Resolution*,[57] of the CTA Third Division in CTA Case No. 8605, are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[54] Section 1, Article III – Bill of Rights, 1987 Philippine Constitution.
[55] Angeles City v. Angeles City Electric Corporation et. al., G.R. No. 166134, June 29, 2010.
[56] *Supra*, Note 4.
[57] *Supra*, Note 5.

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(Join PJ's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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IP CONTACT CENTER OUTSOURCING, INC., *Respondent.*	
	Promulgated: AUG 04 2017 4:15 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in affirming the assailed Decision and Resolution of the Court in Division but only in so far as IP Contact Center Outsourcing, Inc. (IPCCO) is directed to pay the following: (i) deficiency income tax and expanded withholding tax (EWT) in the total amount of P1,890,881.76, inclusive of the 25% surcharge; (ii) 20% deficiency interest on the basic deficiency income tax; and, (iii) 20% delinquency interest on the basic deficiency income tax and EWT, surcharge, and 20% deficiency interest on the basic deficiency income tax.

The point of my dissent relates to the *ponencia*'s affirmation of the **imposition of deficiency interest at the rate of 20% on the assessed deficiency EWT.** I reiterate the position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation*[1] 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)*,[2] 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 Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
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>> "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.
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[1] 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; and CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016.*

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

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

> **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."** (Emphasis supplied)

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 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." (Emphases supplied)

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.' (Emphasis supplied)

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."

Also apt is my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] 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. Therefore, it should 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."[5] Indeed, the imposition of

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[4] CTA EB No. 1035, February 9, 2016.
[5] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, *citing Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.

20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum <u>and</u> a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.

In fine, Section 249 (B) of the NIRC is clear and explicit as when **deficiency interest** may be imposed, i.e., it may be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* While there are many situations which could give rise to deficiency tax liabilities, **Section 249 (B) of the NIRC <u>qualified</u> the imposition of <u>deficiency interest</u> to "deficiency in the tax due, as the term is defined in the Code."** This evidently means that not all situations involving deficiency tax liabilities should be subjected to deficiency interest.

In contrast, Sections 248 **[Civil Penalties]** and 249(C) **[Delinquency Interest]** of the NIRC, both of which fall under Chapter I of Title X [Statutory Offenses and Penalties], prescribe "Additions to the Tax"; yet, these Sections **<u>did not provide the same qualification</u>** as that which is stated with respect to **deficiency interest**. Moreover, Section 248(A) of the NIRC imposes the 25% surcharge simply in addition to the tax required to be paid, and Section 248(B) imposes the penalty of 50% of the tax or of the deficiency tax, **<u>without qualification</u>** similar to that provided in Section 249(B) of the NIRC anent **deficiency interest**. In the same vein, **delinquency interest** provided in Section 249 of the NRIC is imposed **<u>without qualification</u>** on the amount of the tax due, or on the deficiency tax, or on any surcharge or interest thereon. Reasonably construed, in the absence of aforestated qualification, the "additions" to tax apply to all forms of tax.

While additions to tax that are "qualified" must be limited to the type of "deficiency in the tax due as the term is defined in the Code", to impose or demand payment of 20% deficiency interest on all deficiency tax liabilities would render senseless the unequivocal qualification in Section 249(B) of the NIRC that deficiency interest shall be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* Had it been the intention to impose deficiency interest on all deficiency tax liabilities, this specific qualification would not have been incorporated at all, similar to Sections 248 and 249 (C) of the NIRC.

Since it is only with respect to the donor's tax, income tax and estate tax which incorporate provisions that specifically **define "deficiency"** and considering that Section 249(B) of the NIRC is categorical that deficiency interest shall be imposed only on any deficiency in the tax due **as the term is defined in the NIRC**, I reiterate that the deficiency interest must be imposed only on these three (3) types of taxes. The liability to pay deficiency interest springs from Section 249(B) of the NIRC and its imposition must be strictly made in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "**Obligations derived from law are not presumed**. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; xxx xxx xxx."

In sum, deficiency interest may be imposed only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed on the EWT assessed against IPCCO.**

All told, **I VOTE to PARTIALLY GRANT** the Petition for Review filed by IPCCO in CTA EB No. 1492; to DENY the Petition for Review filed by the CIR in CTA EB No. 1497; and to affirm the assailed Decision of the Court in Division with modification relating to the assessed twenty percent (20%) deficiency interest on the deficiency EWT which should appropriately be **CANCELLED** and **SET ASIDE**.

ROMAN G. DEL ROSARIO
Presiding Justice