REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ATENEO DE DAVAO UNIVERSITY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9779

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
SEP 23 2021 2:00 pm

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by petitioner Ateneo De Davao University praying for the cancellation of the deficiency expanded withholding tax (EWT) assessment for taxable year 2006, in the aggregate amount of ₱14,918,950.00, inclusive of surcharges, interests and compromise penalty.[1]

THE PARTIES

Petitioner Ateneo De Davao University is a non-stock, non-profit corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 001-921-709-000, with principal address at Emilio Jacinto St., Brgy. 32-D, Davao City.[3]

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[1]Statement of the Case, Amended Pre-Trial Order dated January 23, 2020, Docket – Vol. II, p. 948.
[2] Exhibits "P-1" and "P-1-1", Docket – Vol. II, pp. 659 to 669.
[3] Exhibit "P-2", Docket – Vol. II, pp. 670 to 671.

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Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other laws, rules and regulations.[4]

THE FACTS

Petitioner received a copy of respondent's Letter of Authority (LOA) No. 00052388 dated January 29, 2007 in May of 2007, authorizing Revenue Officer (RO) Ismael L. Marimon and Group Supervisor (GS) Dennis Michael Deluao of Revenue District Office (RDO) No. 113, to conduct the examination of petitioner's books of accounts and other accounting records for the period June 1, 2005 to May 31, 2006.[5]

On March 6, 2008, petitioner received respondent's Fifteen Day Notice for Conference (Notice for Conference) dated January 31, 2008,[6] informing petitioner that a report has been submitted to RDO No. 113 which recommended that petitioner be assessed for alleged deficiency income tax, value-added tax (VAT), and "final income withholding tax" for taxable year 2006, in the aggregate amount of ₱20,317,276.49, inclusive of surcharge, interest, and compromise penalty, broken down as follows:

	Income Tax	**VAT**	**Final Income Withholding Tax**
Basic	₱ 2,987,265.00	₱695,399.21	₱9,609,000.00
Surcharge	746,816.25		2,402,270.00
Interest	746,816.25	197,029.78	2,882,700.00
Compromise	25,000.00		25,000.00
Total	**₱4,505,897.50**	**₱892,428.99**	**₱14,918,950.00**

[4]Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 498.
[5]Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 498; Exhibit "P-3", Docket – Vol. II, p. 672; and Exhibit "R-1", BIR Records p. 29.
[6]Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p.499; Exhibits "P-4", Docket – Vol. II, pp. 673 to 674; and Exhibit "R-3", BIR Records, p. 230.

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Subsequently, on September 11, 2008, petitioner received the letter dated June 24, 2008 from BIR RDO No. 113, referring the case to the Legal Division, BIR, Revenue Region (RR) No. 19 for the resolution of the issues raised in the Notice of Conference.[7]

On January 21, 2009, petitioner received the letter dated January 9, 2009 from the Regional Director, BIR RR No. 19 upholding the proposed assessment against petitioner for taxable year 2006.[8]

On February 24, 2009, petitioner filed a letter appealing the ruling of the Regional Director in connection with the findings embodied in the *Notice of Conference.*[9]

On May 20, 2009, petitioner received respondent's Preliminary Assessment Notice (PAN) dated May 17, 2009 containing the following findings for taxable year 2006 in the aggregate amount of ₱20,317,376.49, inclusive of interest, broken down as follows:[10]

	Income Tax	**VAT**	**Expanded Withholding Tax**
Basic	₱ 2,987,265.00	₱695,399.21	₱9,609,000.00
Surcharge	746,816.25		2,402,270.00
Interest	746,816.25	197,029.78	2,882,700.00
Compromise	25,000.00		25,000.00
Total	**₱4,505,897.50**	**₱892,428.99**	**₱14,918,950.00**

On June 4, 2009, petitioner filed its Reply to the PAN dated June 3, 2009.[11]

Thereafter, petitioner received the Formal Letter of Demand (FLD) with the corresponding Assessment Notices, all dated July 29, 2009,[12] reiterating respondent's assessment against petitioner for deficiency income tax, VAT and EWT, in the total amount of ₱20,317,276.49, for fiscal year ending May 31, 2006.

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[7]Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 499; and Exhibit "P-6", Docket – Vol. II, p. 678.

[8]Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 499; and Exhibit "P-7", Docket – Vol. II, pp. 679 to 680.

[9] Exhibits "P-8", Docket – Vol. II, pp. 681 to 688.

[10]Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 499; and Exhibit "P-10", Docket – Vol. II, pp. 703 to 704; and Exhibit "R-7", BIR Records, p. 250.

[11] Exhibits "P-10", Docket – Vol. II, pp. 705 to 712.

[12] Exhibits "P-11", Docket – Vol. II, pp. 713 to 716; and Exhibits "R-8" and "R-8-1", BIR Records, p. 264, and pp. 261 to 263, respectively.

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On September 4, 2009, petitioner filed a Protest Letter dated September 1, 2009 against the said FLD and Assessment Notices,[13] disputing respondent's deficiency income tax, VAT and EWT assessment for taxable year 2006.

Subsequently, petitioner received the BIR's Preliminary Collection Letter (PCL) dated June 11, 2014 on June 13, 2014,[14] requesting petitioner to settle the alleged deficiency taxes for taxable year 2006 in the aggregate amount of ₱20,317,276.49.

On June 18, 2014, petitioner filed a letter dated June 17, 2014 to the BIR,[15] arguing that collection proceedings cannot be lawfully made since the subject tax assessments are still under protest.

On July 17, 2014, petitioner received the Final Notice Before Seizure (FNBS) dated July 14, 2014 from BIR RDO No. 113, requesting for the settlement of the subject assessments with a notice signifying the intent of respondent to serve and execute Warrants of Distraint and/or Levy and Garnishment to enforce the collection of the assessed deficiency taxes.[16]

On July 18, 2014, petitioner filed a letter reply with the BIR on the said FNBS,[17] reiterating its stance that collection proceedings cannot be lawfully made since the subject tax assessments are still under protest.

On July, 26, 2014, petitioner received the letter dated July 24, 2014 from BIR RDO No. 113, informing petitioner that the letter dated March 25, 2014 signed by Atty. Glen A. Geraldino, OIC-Regional Director of RR No. 19, has already been sent to petitioner in response to its protest. Furthermore, the BIR RDO No. 113 advised petitioner that the docket of the case has been endorsed to the Collection Section for the issuance of Warrants of Distraint and/or Levy against petitioner's properties.[18]

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[13] Exhibits "P-12", Docket – Vol. II, pp. 717 to 731.
[14] Exhibits "P-13", Docket – Vol. II, p. 737.
[15] Exhibits "P-14", Docket – Vol. II, pp. 738 to 758.
[16] Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 499; and Exhibit "P-15", Docket – Vol. II, p. 759.
[17] Exhibits "P-16", Docket – Vol. II, pp. 760 to 761.
[18] Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p.500; and Exhibit "P-17, Docket – Vol. II, pp. 762 to 763.

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The WDL was then served to petitioner on July 28, 2014.[19]

On July 30, 2014, petitioner filed with the BIR its letter on even date,[20] pointing out that it is crucial that the said letter dated March 25, 2014 be officially served upon petitioner to allow it to exhaust its administrative and judicial remedies under Section 228 of the 1997 NIRC, as amended and under Republic Act (RA) No. 9282.

On August 14, 2014,[21] petitioner filed an Administrative Appeal/Request for Reconsideration addressed to respondent appealing the denial of its protest by the Regional Director.[22]

On October 28, 2014, petitioner received the letter dated October 9, 2014 from Assistant Commissioner - Assessment Service, Erlinda A. Simple, informing petitioner that its Administrative Appeal/Request for Reconsideration has been endorsed to the Appellate Division for evaluation.[23]

On February 5, 2018, petitioner received respondent's Decision dated January 24, 2018, which affirmed the denial of petitioner's Protest with an order to pay the assessed deficiency income tax, VAT, and withholding tax for taxable year 2006, quoted as follows:

> "**WHEREFORE**, predicated on all of the foregoing, the Decision denying Ateneo's protest against the Formal Letter of Demand and Assessment Notice with Assessment Number 2006-000000 dated July 29, 2009 demanding payment of the total amount of P20,317,276.49 representing deficiency income tax, withholding tax, and value-added tax for fiscal year ending May 31, 2006 is hereby affirmed in all respects.
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> Consequently, Ateneo de Davao University is hereby ordered to pay the aforestated amount, plus increments that have accrued thereon until the actual date of payment, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from the receipt hereof, otherwise, collection thereof will be effected through the summary remedies provided by law.

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[19] Par. 9, Admitted Facts, JSFI, Docket – Vol. I, p. 500; Exhibit "P-18", Docket – Vol. II, 764.
[20] Exhibits "P-19", Docket – Vol. II, pp. 765 to 769.
[21] This date of receipt by the BIR is acknowledged by respondent in his *Decision* dated January 24, 2018. Refer to Exhibit "P-22", Docket – Vol. II, at p.855.
[22] Exhibit "P-20", Docket – Vol. II, pp. 776 to 800.
[23] Par. 10, Admitted Facts, JSFI, Docket – Vol. I, p. 500; Exhibit "P-21", Docket – Vol. II, p. 851.

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This constitutes the **Final Decision** of this Office on the matter."[24]

On February 12, 2018, petitioner received the Follow-Up Collection Letter dated February 8, 2018 from BIR RR No. 19, requesting petitioner to settle its alleged deficiency taxes for taxable year 2006 in the aggregate amount of ₱20,317,276.49.[25]

Petitioner filed the instant Petition for Review on March 2, 2018.[26]

Respondent posted his *Answer* to the Petition for Review on June 16, 2018.[27]

Respondent then transmitted the BIR Records of this case on June 29, 2018.[28]

On July 2, 2018, petitioner filed its Reply (To Respondent's Answer dated June 13, 2018).[29]

The Pre-Trial Conference was initially set on August 2, 2018.[30] However, upon the respective motions by both respondent and petitioner, the Court reset the Pre-Trial Conference to September 13, 2018.[31]

Respondent's Pre-Trial Brief was submitted on September 3, 2018,[32] while Petitioner's Pre-Trial Brief was filed on September 7, 2018.[33]

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[24]Par. 11, JSFI, Admitted Facts, JSFI, Docket – Vol. I, p. 500; Exhibit "P-22", Docket – Vol. II, pp. 852 to 864.
[25] Par. 12, Admitted Facts, JSFI, Docket – Vol. I, p. 500; Exhibits "P-23", Docket – Vol. II, p. 865.
[26] Docket – Vol. I, pp. 10 to 41.
[27] Docket – Vol. I, pp. 196 to 216.
[28]*Compliance* dated June 27, 2018, Docket – Vol. I, pp. 222 to 223.
[29] Docket – Vol. I, pp. 225 to 238.
[30]*Notice of Pre-Trial Conference* dated July 20, 2018, Docket – Vol. I, pp. 244 to 245.
[31]Respondent's *Urgent Motion to Reset Pre-Trial Conference Scheduled on August 2, 2018* filed on July 27, 2018, Docket – Vol. I, pp. 248 to 251; Petitioner's *Urgent Motion to Defer Pre-Trial Conference* filed on July 27, 2018, Docket – Vol. I, pp. 253 to 256; Order dated July 31, 2018, Docket - Vol. I, pp. 257.
[32] Docket – Vol. I, pp. 278 to 281.
[33] Docket – Vol. I, pp. 292 to 311.

On September 4, 2018, respondent filed another Motion to Reset Pre-Trial Conference,[34] which the Court granted in the Resolution dated September 10, 2018.[35] Hence, the Pre-Trial Conference was reset to October 11, 2018.

The Court thereafter issued the Order dated September 28, 2018, cancelling the Pre-Trial Conference scheduled on October 11, 2018, and resetting it to November 22, 2018.[36] However, for lack of quorum, the Pre-Trial was again reset to, and was eventually held on January 24, 2019.[37]

The parties submitted their Joint Stipulation of Facts and Issues (JSFI) on February 8, 2019.[38] In the Resolution dated February 20, 2019,[39] the Court noted the parties' submission of the JSFI, and ordered them to proceed and appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on March 13, 2019 for a possible amicable settlement of the case.

The Court then issued the Order dated March 25, 2019,[40] cancelling the hearings set until further orders.

On April 29, 2019, the parties requested for an extension of another thirty (30) days to reach an amicable settlement,[41] which the Court granted in the Resolution dated May 8, 2019.[42]

Thereafter, the parties filed a Joint Motion to Suspend Court Proceedings and Extension of Period of Mediation on June 7, 2019.[43] However, such joint motion was denied by the Court in the Resolution dated July 12, 2019.[44]

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[34] Docket – Vol. I, pp. 283 to 286.
[35] Docket – Vol. I, pp. 485 to 486.
[36] Docket – Vol. I, p. 487.
[37] *Notice of Resetting* dated November 20, 2018, Docket – Vol. I, p. 489; Minutes of the hearing held on, and Order dated January 24, 2019, Docket – Vol. I, pp. 490 to 493 and 495 to 496, respectively.
[38] Docket – Vol. I, pp. 498 to 514.
[39] Docket – Vol. I, pp. 522 to 523.
[40] Docket – Vol. I, p. 536.
[41] Docket – Vol. I, p. 538.
[42] Docket – Vol. I, pp. 541 to 542.
[43] Docket – Vol. I, pp. 543 to 545.
[44] Docket – Vol. I, pp. 555 to 556.

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Consequently, the Court issued the Pre-Trial Order on July 16, 2019,[45] deeming the termination of the Pre-Trial Conference.

On July 29, 2019, respondent filed his Motion With Leave of Court to Amend Pre-Trial Order dated 16 July 2019,[46] praying for the correction of the description of respondent's Exhibit "R-9".

The Court then received the Mediator's Report on August 16, 2019 signed by retired Judge Manuela F. Lorenzo, as Appellate Mediator,[47] declaring the subject mediation as unsuccessful.

Subsequently, on August 20, 2019, petitioner filed a Motion to Limit Issues,[48] requesting that the Court limit the issue in the resolution of this case with regard to the validity of EWT assessment for taxable year 2006. Attached to the said Motion is a Certificate of Availment (Compromise Settlement) dated December 18, 2018 signed by Mr. Alfredo V. Misajon, ACIR- Collection Service and Head, TWG on Compromise, of the BIR,[49] certifying, *inter alia*, that petitioner's application/s for compromise settlement of deficiency income tax and VAT has/have been approved by the National Evaluation Board (NEB).

On September 20, 2019, petitioner filed a Motion to Render Partial Judgment Based on Compromise Agreement and to Limit Issues.[50] Respondent, on the other hand, filed his Comment/ Manifestation thereto on October 11, 2019.[51]

In the meantime, petitioner presented its documentary and testimonial evidence. Petitioner proffered the testimonies of the following individuals, namely: (1) Mr. Jimmy E. Delgado,[52] petitioner's former Vice-President for Finance & Treasurer; and(2) Ms. Eugenia P Tesoro,[53] its Accounting Manager.

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[45] Docket – Vol. I, pp. 559 to 571.
[46] Docket – Vol. I, pp. 572 to 576.
[47] Docket – Vol. I, p. 578.
[48] Docket – Vol. I, pp. 586 to 589.
[49] Docket – Vol. I, p. 590.
[50] Docket – Vol. I, pp. 612 to 616.
[51] Docket – Vol. I, pp. 627 to 630.
[52] Exhibit "P-28", Docket – Vol. I, pp. 315 to 330; Minutes of the Hearing held on, and Order dated, August 22 2019, Docket – Vol. I, pp. 591 to 596.
[53] Exhibit "P-29", Docket – Vol. I, pp. 404 to 417; Minutes of the Hearing held on, and Order dated September 10, 2019, Docket – Vol. I, pp. 605 to 607.

Petitioner filed its Formal Offer of Evidence on November 4, 2019.[54] Respondent filed his Comment (on Petitioner's Formal Offer of Evidence) on November 19, 2019.[55]

The Court, in its Resolution dated January 14, 2020,[56] admitted petitioner's Exhibits, *except* for Exhibit "P-5", for failure to submit the original for comparison.

In the Resolution dated January 21, 2020,[57] the Court granted both petitioner's Motion to Render Partial Judgment Based on Compromise Agreement and to Limit the Issues and Motion to Limit Issues; and upheld the validity of respondent's approval of petitioner's Application for Compromise of its deficiency VAT and income tax assessments, and ordered that an Amended Pre-Trial Order be issued.

Consequently, the Amended Pre-Trial Order dated January 23, 2020 was issued by the Court.[58]

Respondent likewise set forth his documentary and testimonial evidence. He offered the testimonies of (1) Ms. Marilou E. Cubero,[59] Revenue Officer IV of the Assessment Division of RR No. 19, Davao City; and(2) Mr. Dennis Michael B. Deluao,[60] Chief Revenue Officer III, Large Taxpayers Division – Davao City.

Thereafter, respondent filed his Formal Offer of Evidence on February 21, 2020.[61]Petitioner submitted its Comment (Re: Respondent's Formal Offer of Evidence dated February 21, 2020) on June 25, 2020.[62]

In the Resolution dated July 7, 2020,[63] the Court admitted only Exhibit "R-1",and denied all the remaining exhibits.

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[54] Docket – Vol. II, pp. 643 to 657.
[55] Docket – Vol. II, pp. 903 to 905.
[56] Docket – Vol. II, pp. 913 to 914.
[57] Docket – Vol. II, pp. 936 to 945.
[58] Docket – Vol. II, pp. 948 to 960.
[59] Exhibit "R-10", Docket – Vol. I, pp. 273 to 277; Minutes of the hearing held on, and Order dated, January 23, 2020, Docket – Vol. II, pp. 961 to 964.
[60] Exhibit "R-11", Docket – Vol. I, pp. 264 to 268; Minutes of the hearing held on, and Order dated, February 11, 2020, Docket – Vol. II, pp. 967 to 973.
[61] Docket – Vol. II, pp. 978 to 982.
[62] Docket – Vol. II, pp. 990 to 993.
[63] Docket – Vol. II, pp. 996 to 997.

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Specifically, Exhibits "R-2", "R-3", "R-4", "R-5", "R-7", and "R-8", were denied as the offered exhibits do not correspond to the duly marked exhibits, while Exhibits "R-6" and "R-8-A", were denied for failure to present the duly marked exhibits.

On July 17, 2020, respondent filed a Motion for Reconsideration (of the Resolution dated 07 July 2020).[64]Respondent then posted his Memorandum on August 18, 2020.[65]

Petitioner filed its Memorandum on August 28, 2020.[66]It also filed a Comment Re: Respondent's Motion for Reconsideration (of the Resolution dated 07 July 2020) on September 18, 2020.[67]

In the Resolution dated October 1, 2020,[68] the Court resolved to grant respondent's Motion for Reconsideration (of the Resolution dated 07 July 2020),and admitted all of his exhibits.

In the same Resolution dated October 1, 2020, the case was submitted for decision.

THE ISSUE

The Court shall resolve the following lone issue, to wit:

> "Whether or not petitioner is liable to pay the assessed deficiency EWT, plus surcharge and interests and compromise penalty."[69]

Petitioner's arguments:

Petitioner argues that respondent's right to assess the alleged deficiency EWT for taxable year 2006 had already prescribed, hence the ensuing EWT deficiency tax assessment is void.

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[64] Docket – Vol. II, pp. 998 to 1002.
[65] Docket – Vol. II, pp. 1004 to 1020.
[66] Docket – Vol. II, pp. 1023 to 1057.
[67] Docket – Vol. II, pp. 1060 to 1062.
[68] Docket – Vol. II, pp. 1064 to 1066.
[69] Issue to be Resolved, *Amended Pre-Trial Order* dated January 23, 2020, Docket – Vol. II, p. 951.

Petitioner further contends that the EWT assessment is null and void for being issued in violation of the due process requirement under Section 228 of the 1997 NIRC, as amended, and Section 3.1.3 of RR No. 12-99, as amended. It avers that the EWT deficiency assessment is void, for failure to state the facts and the law on which such assessment was made.

Lastly, petitioner asserts that it is exempt from tax pursuant to Section 4(3), Article XIV of the 1987 Constitution, and thus, respondent's imposition of EWT against petitioner has no basis, and that it is not liable to pay compromise penalty on the alleged deficiency EWT.

Respondent's counter-arguments:

Respondent, on the other hand, maintains that the Court has no jurisdiction over the instant petition as the administrative appeal/request for reconsideration to respondent on the denial of the protest rendered by the Regional Director dated August 14, 2014 did not toll the thirty (30)-day period to make an appeal before this Court. He asserts that the decision of the Regional Director dated March 25, 2014 in response to the protest filed by petitioner should be treated as the decision of the CIR himself and that even if the thirty (30) day period to appeal to the Court is reckoned from the time petitioner acquired knowledge of the final decision of the CIR on July 26, 2014, it had until August 25, 2014 to file the Petition for Review before the Court. Having filed the Petition for Review only on March 2, 2018, respondent submits that the EWT assessment has become final, executory and demandable.

Respondent also contravenes the assertion of petitioner that his right to assess deficiency taxes for taxable year 2016 has already prescribed as the applicable prescriptive period is ten (10) years in accordance with the provisions of Section 222 of the 1997 NIRC, as amended. In particular, respondent insists that the assessment for VAT deficiency falls under the exceptional period of ten (10) years because of the substantial under-declaration of sales in petitioner's VAT and income tax returns which is a *prima facie* evidence of fraud and/or filing a false return. Further, respondent believes that a false return consists of "deviation from truth" whether intentional or not, further justifying the application of the ten (10) year period.

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On the substantive merits of the tax assessment, respondent cites the oft-repeated doctrine that assessments are presumed correct and made in good faith. He further contends that petitioner cannot invoke the tax exemption provided under Section 4(3), Article XIV of the 1987 Constitution because it was not able to prove that its interest and rental income were actually, directly and exclusively used in pursuance of its purpose as an educational institution.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

We first proceed to resolve the issue of jurisdiction.

The Court has jurisdiction over the instant Petition for Review.

Respondent posits the theory that the Petition for Review filed on March 2, 2018 was filed beyond the jurisdictional thirty (30)-day period from receipt of the decision dated March 25, 2014. According to respondent, failure to appeal respondent's decision makes the assessment final, executory and demandable by operation of law, hence, such assessment becomes indisputable.

We do not agree with the above contention.

Section 228 of the 1997 NIRC, as amended, provides as follows:

> "SEC. 228. *Protesting of Assessment.* – xxx
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> xxx xxx xxx
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> 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.

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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." (Emphasis supplied)

Implementing the foregoing provisions, Section 3.1.4 of RR No. 12-99,[70] as amended by RR No. 18-2013,[71],reads, in part, as follows:

"3.1.4 *Disputed Assessment.* – xxx

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeal (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

xxx xxx xxx

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

xxx xxx xxx." (Emphasis supplied)

Based on the foregoing provisions, in case the protest is denied, in whole or in part, the taxpayer's remedies significantly

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[70] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[71] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

depend on who rendered such denial. If the denial of the protest was issued by respondent's duly authorized representative, the concerned taxpayer may, within thirty (30) days from receipt of the decision, either: (1) appeal to this Court, or (2) elevate his protest through a request for reconsideration to respondent. On the other hand, if the denial of the protest was done by respondent himself or in case of his denial of an administrative appeal, the only remedy available to the taxpayer is to file an appeal before this Court within a period of thirty (30) days from receipt of the decision.

Thus, it was erroneous for respondent to simply identify the supposed date of receipt of the said decision dated March 25, 2014, and then compare it with the date of filing of the instant Petition for Review, to conclude that it was filed out of time, without identifying the signatory to the final decision, to prove that such filing was done beyond the thirty (30)-day period within which to appeal before this Court.

As borne out by the evidence in this case, petitioner filed its Protest Letter dated September 1, 2009 against the subject FLD and Assessment Notices on September 1, 2009. [72] However, it was only on July 26, 2014 when petitioner was actually informed of the BIR's action on its protest, in the letter dated July 24, 2014, attaching therewith the decision of Atty. Glen A. Geraldino, OIC-Regional Director of RR No. 19on such protest.[73] Nevertheless, on August 14, 2014,[74] petitioner filed its Administrative Appeal/Request for Reconsideration addressed to respondent appealing the denial of the Regional Director of its protest.[75] Respondent's Decision dated January 24, 2018 was then received by petitioner on February 5, 2018,[76]and thereafter on March 2, 2018, the instant *Petition for Review* was filed.[77]

With the foregoing circumstances *vis-à-vis* the aforequoted Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, the present Petition for Review was timely filed. Reckoned from July 26, 2014, the date when petitioner was furnished with the

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[72] Exhibits "P-12", Docket – Vol. II, pp. 717 to 731.
[73]Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p.500; and Exhibit "P-17, Docket – Vol. II, pp. 762 to 763.
[74]This date of receipt by the BIR is acknowledged by respondent in his *Decision* dated January 24, 2018. Refer to Exhibit "P-22", Docket – Vol. II, at p.855.
[75] Exhibit "P-20", Docket – Vol. II, pp. 776 to 800.
[76]Par. 11, JSFI, Admitted Facts, JSFI, Docket – Vol. I, p. 500; Exhibit "P-22", Docket – Vol. II, pp. 852 to 864.
[77] Docket – Vol. I, pp. 10 to 41.

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letter dated March 25, 2014 of Atty. Glen A. Geraldino, OIC-Regional Director of RR No. 19, petitioner had thirty (30) days or until August 25, 2014to file either an appeal before this Court or an administrative appeal to respondent. Having chosen the latter remedy, petitioner had validly done so by filing the same on August 14, 2014. Thereafter, upon receipt of respondent's Decision dated January 24, 2018 on February 5, 2018, petitioner had until March 7, 2018, within which to file its appeal before this Court. Since petitioner filed the instant Petition for Review on March 2, 2018, the Court clearly acquired jurisdiction over the case.

As regards the substantive and procedural formalities of the subject assessment, this Court finds that the EWT deficiency assessment is void, for failure to state the facts and the law on which such assessment was made.

Section 228 of the 1997 NIRC, as amended, likewise provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — xxx
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> 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.**
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> xxx xxx xxx." (Emphasis supplied)

Based on the foregoing provision, it is clear that the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

To implement the above-quoted Section 228 of the 1997 NIRC, as amended, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, provides as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes *shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,otherwise, the assessment shall be void*** *(see illustration in ANNEX 'B' hereof). xxx."* (emphasis supplied)

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the FLD/FAN must state the facts, the law, rules and regulations, or jurisprudence on which the assessments are based; otherwise, the FLD/FAN shall be void. The Annex "B" referred to under the same provision shows not only an FLD, but likewise prescribes the issuance therewith of "Details of Discrepancies", wherein the facts, the law, rules and regulations, or jurisprudence, are to be stated as bases for the assessments made in the same FLD. Thus, to put it succinctly, both the FLD and said "Details of Discrepancies" must be issued by the BIR as part of due process in the issuance of tax assessments.

In the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,*[78] the Supreme Court said:

> **"Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
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> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal**

[78] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Revenue's own rules, and with due regard to taxpayer's constitutional rights.

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In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

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In *Ang Tibay v. The Court of Industrial Relations*,[79] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

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[79] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

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Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**

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The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4[80] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. xxx.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment <u>Notices</u>, and the Final Decision on Disputed Assessment.

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In *Commissioner of Internal Revenue v. Reyes*,[81] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

[80]Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[81] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].

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> **Compliance with strict procedural requirements must be followed in the collection of taxes** as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[82]
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>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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>> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)
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> xxx. **[The Commissioner of Internal Revenue's] disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." (emphasis supplied)

An important rationale for the requirement of informing the taxpayers of the factual and legal basis of the assessments is to afford them the opportunity to contest them intelligently or to file an effective protest, if need be, against the said assessments. Such is a vital part of the due process requirement enshrined in the 1987 Constitution. This was explained by the Supreme Court in the case of *Samar-I Electric Cooperative vs. CIR,*[83]thus:

> "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**

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[82] 241 Phil. 829 (1988) [Per J. Cruz, First Division].
[83]G.R. No. 193100, December 10. 2014.

> **investigations; that taxpayers should be able to present their case and adduce supporting evidence.** In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."**(emphasis supplied)

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform his assessment functions in accordance with, and strict adherence to law, with their own rules of procedure, and always with regard to the basic tenets of due process. In case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect. Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the FLD/FAN. Specifically, respondent or his duly authorized representative must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

To emphasize, in case respondent or his duly authorized representative fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void. In this case, the BIR issued a one (1) -page FLD,[84] which merely enumerated the taxes and the corresponding amounts and computation, without informing petitioner of the facts and legal bases on which the assessments were made. And while the said one-page FLD is accompanied by corresponding Assessment Notices,[85] the information contained therein are practically the same as that found in the said FLD. Particularly, the FLD lacked the "Details of Discrepancies" prescribed under Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.

Such being the case, this Court concludes that petitioner was not informed of the facts, the law, rules and regulations, or jurisprudence, on which the assessments are based.

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[84] Exhibits "P-11", Docket – Vol. II, p. 713; and Exhibit "R-8", BIR Records, p. 264.

[85] Exhibits "P-11", Docket – Vol. II, pp. 714 to 716; and Exhibit "R-8-1", BIR Records, pp. 261 to 263, respectively.

Consequently, the subject one (1)-page FLD and corresponding Assessment Notices are void for being in violation of petitioner's right to due to process.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[86]

In view of the finding that the EWT assessment is invalid for violation of petitioner's right to due process, and thus, bears no valid fruit,[87]it becomes unnecessary to address the other matters raised by the parties. Nevertheless, we find it imperative and necessary to resolve the issue of prescription and hereby rule that the same has already prescribed.

Petitioner maintains that the assessment for deficiency EWT had already prescribed pursuant to Section 203 of the 1997 NIRC, as amended, which provides as follows, to wit:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **Except as provided in Section 222,internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Emphasis supplied)

Thus, except as provided in Section 222 of the 1997 NIRC, as amended, [88] the foregoing provision mandates the

[86] *Commissioner of Internal Revenue vs. BASF Coating + Inks, Phils., Inc.* G.R. No. 198677, November 26, 2014.
[87] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945, citing *Commissioner of Internal Revenue vs. Reyes,* G.R. Nos. 159694 and 163581, January 27, 2006.
[88] "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

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government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[89] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[90]

Contrary to respondent's contentions, there is nothing in the records to show any allegations of fraud or any of the exemptions provided under Section 222 of the 1997 NIRC of 1997, as amended, to justify the application of the extraordinary ten (10) year prescriptive period to assess deficiency taxes of petitioner. Both the PAN and the FAN do not contain any such allegations and neither did the respondent impose any fraud surcharge on petitioner's alleged deficiency taxes. Considering this, this Court shall refer to the specific provisions of the law and regulations prescribing the period within which to file the pertinent tax returns vis-à-vis the date of filing of the said tax returns by petitioner, to adjudge the commencement and end of the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended, for the instant case.

Section 2.58(A)(2)(a) of Revenue Regulations No. 2-98, as amended, states:

> "Sec. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* —
>
> (A) *Monthly return and payment of taxes withheld at source.* –
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> xxx xxx xxx
>
> (2) WHEN TO FILE —

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

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

[89] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

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

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(a) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements)[,] **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." (Emphasis supplied)

Thus, petitioner's withholding tax remittance returns for the twelve (12) months of taxable year 2006 should be filed within ten (10) days after the end of each month, except for the month of December 2005, in which case the said Return must be filed on or before January 15, 2006.

Correspondingly, the end of the three (3)-year prescriptive period under Section 203 of the 1997 NIRC, as amended, within which respondent may assess petitioner for deficiency EWT, is respectively determined as follows:

Period	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period[91]	End of the three-year prescriptive period
June 2005	July 8, 2005[92]	July 10, 2005	July 10, 2008
July 2005[93]	2005[94]	August 10, 2005[95]	August 10, 2008
August 2005	September 9, 2005[96]	September 10, 2005	September 10, 2008
September 2005	October 10, 2005[97]	October 10, 2005	October 10, 2008
October 2005	November 10, 2005[98]	November 10, 2005	November 10, 2008
November 2005	December 9, 2005[99]	December 10, 2005	December 10, 2008
December 2005	January 10, 2006[100]	January 15, 2006	January 15, 2009
January 2006[101]	February 2006[102]	February 10, 2006[103]	February 10, 2009

[91] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[92] Exhibit "P-26", Docket – Vol. II, pp. 875 to 876.
[93] Exhibit "P-26-1", Docket – Vol. II, p. 877.
[94]The specific date as to when the tax return was filed is unreadable.
[95]There being no indication that the tax return was filed out of time (as there is no penalties imposed or levied), the reckoning date is set on the last day prescribed by law for the filing of said tax return.
[96] Exhibit "P-26-2", Docket – Vol. II, p. 878.
[97] Exhibit "P-26-3", Docket – Vol. II, p. 879.
[98] Exhibit "P-26-4", Docket – Vol. II, p. 880.
[99] Exhibit "P-26-5", Docket – Vol. II, p. 881.
[100] Exhibit "P-26-6", Docket – Vol. II, p. 882.
[101] Exhibit "P-26-7", Docket – Vol. II, p. 883.
[102]The specific date as to when the tax return was filed is unreadable.
[103]There being no indication that the tax return was filed out of time (as there is no penalties imposed or levied), the reckoning date is set on the last day prescribed by law for the filing of said tax return.

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February 2006	March 10, 2006[104]	March 10, 2006	March 10, 2009
March 2006	April 10, 2006[105]	April 10, 2006	April 10, 2009
April 2006	May 10, 2006[106]	May 10, 2006	May 10, 2009
May 2006	June 9, 2006[107]	June 10, 2006	June 10, 2009

Considering that the subject FLD and the Assessment Notices were issued only on July 29, 2009,[108] prescription had already set in under the aforequoted Section 203 of the 1997 NIRC, as amended, and thus, the assessment for deficiency EWT is void[109] and must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the assailed FLD and Assessment Notices, all dated July 29, 2009, holding petitioner liable for deficiency EWT, for taxable period June 1, 2005 to May 31, 2006, in the total amount of ₱14,918,950.00, inclusive of surcharges, interests, and compromise penalty, are **CANCELLED** and **SET ASIDE**.

Respondent is hereby **ENJOINED** from proceeding with the collection of the assailed deficiency taxes against petitioner arising from the FLD/Assessment Notices dated July 29, 2009 for taxable period June 1, 2005 to May 31, 2006 in the total amount of ₱14,918,950.00.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[104] Exhibit "P-26-8", Docket – Vol. II, p. 884.
[105] Exhibit "P-26-9", Docket – Vol. II, p. 885.
[106] Exhibit "P-26-10", Docket – Vol. II, p. 886.
[107] Exhibit "P-26-11", Docket – Vol. II, p. 887.
[108] Exhibits "P-11", Docket – Vol. II, pp. 713 to 716; and Exhibits "R-8" and "R-8-1", BIR Records, p. 264, and pp. 261 to 263, respectively.
[109] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice