REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PACIFICHUB CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8895

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 3 1 2017
2:05 p.m.

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DECISION

***Fabon-Victorino, J.*:**

For determination is the *Petition for Review*[1] filed by petitioner Pacifichub Corporation on September 22, 2014, praying to declare as null and void the Warrant of Distraint and/or Levy (WDL) dated September 12, 2014 as well as the Notice of Denial dated January 10, 2014, issued by respondent Commissioner of Internal Revenue (CIR).

First, the facts.

Petitioner Pacifichub Corporation is a domestic corporation, with principal office at 11th Floor Robinsons Equitable Tower, 4 ADB Avenue corner Poveda Street, Ortigas Center, Pasig City 1605.[2]

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[1] Docket, vol. 1, pp. 12-29.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 2, p. 918; Exhibit "P-8", docket, vol. 3, pp. 1003-1026.

Respondent CIR, on the other hand, is the head of the Bureau of Internal Revenue (BIR), with authority to decide on disputed assessments, claims for refund of internal revenue taxes, fees or other charges, as well as penalties imposed under the National Internal Revenue Code (NIRC). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

For taxable years (TYs) 2005 to 2006, petitioner filed its monthly returns for withholding tax on compensation (WTC)[3] and expanded withholding tax (EWT).[4] For the said TYs, its WTC and EWT due amounted to ₱24,697,150.26[5] and ₱5,723,167.83[6], respectively. Of the said amounts, it remitted only ₱11,611,897.87[7] for WTC and ₱3,400,561.09[8] for EWT. In other words, it had a total unremitted WTC of ₱13,085,252.39[9] and EWT of ₱2,322,606.74,[10] or a total of ₱15,407,859.13 unremitted withholding taxes. It also had deficiency in Value-Added Tax (VAT) in the amount of ₱72,371.98 as it only paid ₱492,927.45 instead of ₱565,299.43.

On October 16, 2008, petitioner sent a letter[11] to the BIR indicating its willingness to pay the amount of ₱15,480,231.11 in deficiency taxes with a request for abatement of penalties, surcharges and interests incident thereto due to its alleged continued financial losses.

On July 24, 2009, petitioner filed an *Application for Abatement or Cancellation of Tax, Penalties and/or*

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[3] Exhibits "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P17", "P-18", "P-19", "P-20", "P-21", and "P-22", docket vol. 3, pp. 1027, 1029, 1031, 1033, 1035, 1037, 1039, 1041, 1043, 1045, 1047, 1049, 1051, and 1053.

[4] Exhibits "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", and "P-36", docket vol. 3, pp. 1055, 1057, 1059, 1061, 1063, 1065, 1067, 1069, 1071, 1073, 1075, 1077, 1079, and 1081.

[5] Exhibit "P-37", docket vol. 3, p. 1083; Exhibit "R-1", BIR Records, p. 37.

[6] Exhibit "P-37", docket vol. 3, p. 1084; Exhibit "R-1", BIR Records, p. 36.

[7] Exhibits "P-9-b", "P-10-b", "P-11-b", "P-12-b", "P-13-b", "P-14-b", "P-15-b", "P-16-b", "P17-b", "P-18-b", "P-19-b", "P-20-b", "P-21-b", and "P-22-b", docket vol. 3, pp. 1028, 1030, 1032, 1034, 1036, 1038, 1040, 1042, 1044, 1046, 1048, 1050, 1052, and 1054.

[8] Exhibits "P-23-b", "P-24-b", "P-25-b", "P-26-b", "P-27-b", "P-28-b", "P-29-b", "P-30-b", "P-31-b", "P-32-b", "P-33-b", "P-34-b", "P-35-b" and "P-36-b", docket vol. 3, pp. 1056, 1058, 1060, 1062, 1064, 1066, 1068, 1070, 1072, 1074, 1076, 1078, 1080, and 1082.

[9] Exhibit "P-37", docket vol. 3, p. 1083; Exhibit "R-1", BIR Records, p. 37.

[10] Exhibit "P-37", docket vol. 3, p. 1083; Exhibit "R-1", BIR Records, p. 37.

[11] Exhibit "P-37", docket vol. 3, pp. 1083-1084; Exhibit "R-1", BIR Records, pp. 36-37.

Interest[12] for its deficiency WTC, EWT, and VAT for TYs 2005 to 2006.

On January 5, 2010, petitioner paid its basic deficiency WTC, EWT and VAT for TYs 2005 to 2006 in the aggregate amount of ₱15,480,231.11.[13]

On August 20, 2014, petitioner received from the BIR a Notice of Denial[14] dated January 10, 2014 of its application for abatement of the penalties, surcharge and interest on the EWT and WTC.[15]

On September 12, 2014, respondent issued and served upon petitioner a WDL[16] to enforce collection of the increments incident to its deficiency WTC and EWT for TYs 2005 to 2006, in the aggregate amount of ₱13,792,867.56.

On September 22, 2014, petitioner filed the instant *Petition for Review*, assailing the validity of the Notice of Denial dated January 10, 2014 and the WDL dated September 12, 2014. Incorporated in the said Petition was its *Motion to Suspend Collection of Surcharges, Interests and Penalties*, being enforced under the WDL dated September 12, 2014, pending determination of its *petition*. The said Motion was granted on November 14, 2014.

On November 17, 2014, respondent filed his *Answer,*[17] claiming lack of jurisdiction on the part of the Court since no decision on disputed assessment has been issued that could be the subject of review by the Court. Assuming that the Court has jurisdiction over the Petition, the subject WDL was validly issued as petitioner even without prior assessment was aware of its liabilities thus, it cannot claim denial of procedural due process due to lack of assessment before it was held liable to pay deficiency taxes which in fact

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[12] Exhibit "P-38", docket, vol. 3, p. 1085.
[13] Exhibits "P-40", "P-40-a", "P-40-b", "P-41", "P-41-a", "P-41-b", "P-42", "P-42-a", "P-42-b", "P-43", "P-43-a", and "P-43-b", docket, vol. 3, pp. 1410-1418.
[14] Exhibit "P-1", docket, vol. 1, p. 35; Exhibit "R-3", BIR Records, p. 127.
[15] Par. 8, Summary of Admitted Facts, JSFI, docket, vol. 2, p. 919.
[16] Exhibit "P-2", docket, vol. 1, p. 36.
[17] Docket, vol. 1, pp. 192-211.

unequivocally admitted. Moreover, the Notice of Denial of petitioner's request for abatement complied with all the requirements laid down in the Tax Code and all relevant BIR issuances.

To prove its case, petitioner presented (1) its Senior Director for Corporate Finance Administrative and Facilities, Alex G. Coralde III[18], and (2) its Senior Manager for Accounting, Procurement and Asset Management, Jennifer B. Santos[19].

By way of a Judicial Affidavit, **Alex G. Coralde III** declared that as petitioner's Senior Director for Corporate Finance, Administration and Facilities, he handles and oversees petitioner's tax assessment which includes coordination with the BIR.

According to the witness, petitioner has a total basic deficiency WTC, EWT and VAT of ₱15,480,231.11 for TYs 2005 to 2006. On October 16, 2008, petitioner sent a letter to the BIR requesting for the abatement of surcharge, interest and penalty imposed by reason of its tax deficiencies with the promise to pay in full its basic deficiency taxes in the total amount of ₱15,480,231.11. The said application for abatement was primarily due to its financial difficulties in servicing its operations and current liabilities.

On January 5, 2010, petitioner, under improved financial condition in 2008 and 2009, was able to secure a bank loan, thus, was able to pay in full its basic deficiency withholding taxes for TYs 2005-2006 in the amount of ₱15,480,231.11.

On August 20, 2014, petitioner received from the BIR a Notice of Denial dated January 10, 2014, denying its application for abatement of surcharge, interest and

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[18] Minutes of the Hearing dated July 7, 2015, docket, vol. 2, p. 973; Judicial Affidavit [Alex G. Coralde III], docket, vol. 1, pp. 282-304.
[19] Minutes of the Hearing dated July 7, 2015, docket, vol. 2, p. 973; Judicial Affidavit [Jennifer B. Santos], docket, vol. 1, pp. 477-492.

compromise penalty imposed on its WTC and EWT deficiencies for TYs 2005-2006. Petitioner was surprised as the Tax Code itself allows abatement of taxes when the taxpayer is suffering from financial difficulties. Besides, respondent failed to provide the reason for the disapproval of its application for abatement. Such flaw, according to petitioner's lawyers, rendered the Notice of Denial void since petitioner was not informed of the facts and the law upon which the disapproval was based in violation of its right to due process. The Notice of Denial also violated Revenue Regulations (RR) No. 13-2001, which mandates that the reason for the denial of abatement of taxes should be stated.

For this reason, the WDL is also void as it emanated from the void Notice of Denial of January 10, 2014. The witness also stressed that the WDL was issued without any assessment for deficiency taxes issued against petitioner. There being no such assessment issued from the time petitioner filed its WTC and EWT returns for TYs 2005 to 2006, respondent's right to assess had prescribed.

Witness **Jennifer B. Santos,** in her Judicial Affidavit, merely corroborated the testimony of the first witness concurring that the issuance of the WDL of September 12, 2014 without any assessment against petitioner violated the latter's right to due process.

In the Resolution[20] dated August 25, 2015, petitioner was deemed to have rested its case.

For his part, respondent presented Revenue Officers (1) Cynthia A. Yabut[21] and (2) Ednafe D. Cruz[22] as his witnesses.

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[20] Docket, vol. 3, pp. 1464-1465.

[21] Minutes of the Hearing dated September 22, 2015, docket, vol. 3, p. 1466; Judicial Affidavit of Revenue Officer Cynthia A. Yabut, docket, vol. 1, pp. 261-266.

[22] Minutes of the Hearing dated February 29, 2016, docket, vol. 3, p. 1468; Judicial Affidavit of Revenue Officer Ednafe D. Cruz, docket, vol. 1, pp. 247-251.

Revenue Officer (RO) III **Cynthia A. Yabut** declared in her Judicial Affidavit that she is currently assigned at the Accounts Receivable Monitoring Division of the BIR, formerly known as its Collection and Enforcement Division. One of her functions is to evaluate applications for compromise and abatement and petitioner's application was assigned to her on October 16, 2008. She however found the application not proper, thus, the recommendation in the Evaluation Sheet, for the denial of petitioner's request for abatement. On January 10, 2014, a Notice of Denial was prepared. Thereafter, petitioner's case docket was forwarded to Revenue Region No. 7 through a Memorandum with the request to: (a) Mail the Notice of Denial to petitioner; (b) Enforce immediate collection; and (c) If petitioner refuses to pay, enforce the collection through administrative remedies.

Revenue Officer II **Ednafe D. Cruz** also executed a Judicial Affidavit stating that she is currently assigned at the Collection Division - Arrears Management Team, Revenue Region No. 7. She is tasked to conduct evaluations of delinquent accounts and the propriety of taxpayers' application for compromise and abatement.

She testified that petitioner's case was assigned to her for continuation of summary remedies pursuant to the Memorandum issued by the Assistant Commissioner on Collection Service. In connection with such assignment, she served the Notice of Denial to petitioner and prepared the WDL dated September 12, 2014, which was reviewed and signed by the Chief of the Collection Division of Revenue Region No. 7.

On June 2, 2016, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.[23]

With the parties filing of their respective memoranda, the case was deemed submitted for decision on August 31, 2016.

[23]Resolution, docket, pp. 1494-1495.

THE ISSUES

For Petitioner:

1. Whether the Warrant of Distraint and/or Levy No. RR7-2014-608 dated September 12, 2014 is void for having been issued without the benefit of an assessment for deficiency taxes against petitioner;

2. Whether the right of respondent to assess petitioner for deficiency taxes on WTC and EWT for TYs 2005 and 2006 has prescribed;

3. Whether the Notice of Denial is void for having been issued in violation of petitioner's right to due process;

4. Whether petitioner is entitled to abatement of penalties, surcharges and interest for deficiency WTC and EWT for TYs 2005-2006.

For Respondent:

Whether petitioner is liable for the amount of ₱13,792,867.56 representing interest, surcharge and compromise penalties imposed on its deficiency EWT and WTC for TYs 2005-2006.

THE COURT'S RULING

The Court has jurisdiction over the present case under the term "other matters" pursuant to Section 7(a)(1) of Republic Act No. 1125, as amended.

Respondent questions the jurisdiction of the Court over the present Petition for Review saying that no decision on disputed assessment was issued to be reviewed to by the Court. Moreover, the power to grant or deny a request for abatement is based solely on his discretion.

The Court does not agree.

The Court has jurisdiction over the present case as it falls under Section 7 (a) (1) of Republic Act (RA) No. 1125,[24] as amended by RA No. 9282 and RA No. 9503, which provides as follows:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

In relation thereto, Section 3(a)(1), Rule 4 of the Revised Rules of the CTA states:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.*- The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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[24] An Act Creating the Court of Tax Appeals.

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

Significantly, the Supreme Court made the following pronouncement in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[25]:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid..."

In the instant case, petitioner prays for an order declaring both the WDL dated September 12, 2014 and the Notice of Denial dated January 10, 2014 void and of no legal force and effect.

The Notice of Denial dated January 10, 2014 issued by respondent is a denial of petitioner's application for abatement, thus for sure involves the interpretation and application of Section 204(B) of the NIRC of 1997, as amended. In other words, it falls under the phrase *"other*

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[25] G.R. No. 162852, December 16, 2004.

matters arising from the NIRC", pursuant to Section 7 (a) (1) of R.A. No. 1125, as amended.

The same is true with the issuance of the WDL dated September 12, 2014, as it is one of the modes of collection sanctioned under Section 205(a) of the NIRC of 1997, as amended.

Given that petitioner received the WDL on September 12, 2014, it had thirty days therefrom or until October 12, 2014, to appeal or challenge its validity. Undoubtedly, the instant Petition for Review seasonably filed on September 22, 2014 vested the Court with the jurisdiction to hear and determine the present action.

The right of respondent to assess petitioner for deficiency EWT and WTC for TYs 2005 to 2006 has not yet prescribed.

Petitioner believes that the period to issue an assessment against it for deficiency taxes has prescribed. Allegedly, the ten-year prescriptive period is unavailing in the absence of fraud. Besides, there is no finding of any false or fraudulent return with intent to evade tax.

Section 203[26] of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.

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[26] 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 (3)-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.

On the other hand, Section 222(a) of the NIRC of 1997, as amended,[27] provides the exceptions to the three-year period to assess, namely: (1) when a false return is filed, (2) when a fraudulent return is filed with intent to evade tax or (3) when there is failure to file a return. In any of the foregoing instances, the period within which to assess tax is ten years from discovery of the fraud, falsification or omission.[28]

In the case of *Jose B. Aznar vs. Court of Tax Appeals and Collector of Internal Revenue,*[29] the Supreme Court held that the above-mentioned provision should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return; which is strengthened immeasurably by the last portion of the provision that segregates the situations into three different classes, namely "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

A review of the record shows that petitioner filed the following EWT and WTC Returns for taxable years 2005 to 2006:

Withholding Tax on Compensation (WTC)		
	Amount Due[30]	**Declared and Remitted**
2005		
May	₱1,404,419.61	₱181,825.83[31]

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[27] SEC. 222.*Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or 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.

[28] *Commissioner of Internal Revenue vs. Arturo Tulio,* G.R. No. 139858, October 25, 2005.

[29] G.R. No. L-20569, August 23, 1974.

[30] Exhibit "P-37", docket, vol. 3, p. 1083; Exhibit "R-1", BIR Records, p. 37.

[31] Exhibit "P-9", docket, vol. 3, p. 1027.

June	1,156,761.55	148,382.24[32]
July	969,371.30	152,087.91[33]
August	976,972.44	98,911.11[34]
September	879,820.07	-
October	891,450.23	-
November	914,587.37	-
December	724,507.50	-
2006		
January	847,181.75	-
February	860,681.45	-
March	1,008,141.11	719,436.93[35]
April	748,157.76	751,690.64[36]
May	871,657.10	944,908.22[37]
June	1,168,655.33	1,386,239.37[38]
July	1,172,289.68	1,136,034.70[39]
August	1,322,198.18	1,373,863.95[40]
September	1,569,027.59	1,382,770.73[41]
October	1,956,346.59	941,182.50[42]
November	2,498,585.48	1,180,346.30[43]
December	2,759,338.17	1,214,217.44[44]

Expanded Withholding Tax (EWT)		
	Amount Due[45]	**Declared and Remitted**
2005		
May	₱ 14,436.55	₱ 11,971.91[46]
June	351,212.63	19,813.86[47]
July	36,992.24	36,992.24[48]
August	85,453.46	13,247.09[49]
September	34,782.08	-
October	35,220.99	-
November	23,825.16	-

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[32] Exhibit "P-10", docket, vol. 3, p. 1029.
[33] Exhibit "P-11", docket, vol. 3, p. 1031.
[34] Exhibit "P-12", docket, vol. 3, p. 1033.
[35] Exhibit "P-13", docket, vol. 3, p. 1035.
[36] Exhibit "P-14", docket, vol. 3, p. 1037.
[37] Exhibit "P-15", docket, vol. 3, p. 1039.
[38] Exhibit "P-16", docket, vol. 3, p. 1041.
[39] Exhibit "P-17", docket, vol. 3, p. 1043.
[40] Exhibit "P-18", docket, vol. 3, p. 1045.
[41] Exhibit "P-19", docket, vol. 3, p. 1047.
[42] Exhibit "P-20", docket, vol. 3, p. 1049.
[43] Exhibit "P-21", docket, vol. 3, p. 1051.
[44] Exhibit "P-22", docket, vol. 3, p. 1053.
[45] Exhibit "P-37", docket, vol. 3, p. 1084; Exhibit "R-1", BIR Records, p. 36.
[46] Exhibit "P-23", docket, vol. 3, p. 1055.
[47] Exhibit "P-24", docket, vol. 3, p. 1057.
[48] Exhibit "P-25", docket, vol. 3, p. 1059.
[49] Exhibit "P-26", docket, vol. 3, p. 1061.

December	876,400.89	-
2006		
January	232,299.50	-
February	179,008.34	-
March	119,217.81	119,217.81[50]
April	236,363.15	236,363.15[51]
May	300,052.52	300,052.52[52]
June	467,757.70	467,757.70[53]
July	579,110.90	579,110.90[54]
August	294,331.97	294,331.97[55]
September	308,392.16	308,392.16[56]
October	322,774.96	322,774.96[57]
November	354,752.26	354,752.26[58]
December	870,782.56	335,782.56[59]

Based on the foregoing, all the WTC Returns that petitioner filed for TYs 2005 to 2006 are false returns. On the other hand, the EWT Returns that petitioner filed in May, June, July, and August 2005 and in December 2006 are false returns. Clearly, the amounts that petitioner declared and remitted were not the same as the amounts actually due per its admission in its letter dated October 16, 2008.

Moreover, petitioner failed to file WTC and EWT Returns for the months of September, October, November, and December 2005, and for January and February 2006.

Considering that petitioner filed false returns and failed to file returns for its WTC and EWT for TYs 2005 to 2006, the ten (10)-year prescriptive period to assess under Section 222(a) of the NIRC of 1997, as amended, applies in its case.

Given that respondent discovered the falsity and the failure to file returns by petitioner via the letter[60] dated

[50] Exhibit "P-27", docket, vol. 3, p. 1063.
[51] Exhibit "P-28", docket, vol. 3, p. 1065.
[52] Exhibit "P-29", docket, vol. 3, p. 1067.
[53] Exhibit "P-30", docket, vol. 3, p. 1069.
[54] Exhibit "P-31", docket, vol. 3, p. 1071.
[55] Exhibit "P-32", docket, vol. 3, p. 1073.
[56] Exhibit "P-33", docket, vol. 3, p. 1075.
[57] Exhibit "P-34", docket, vol. 3, p. 1077.
[58] Exhibit "P-35", docket, vol. 3, p. 1079.
[59] Exhibit "P-36", docket, vol. 3, p. 1081.
[60] Exhibit "P-37", docket, vol. 3, p. 1083; Exhibit "R-1", BIR Records, p. 37.

October 16, 2008, informing respondent about its balance pertaining to EWT and WTC for TYs 2005 to 2006 in the total amount of ₱15,407,859.13, *a fortiori,* respondent has ten years from October 16, 2008, or until October 16, 2018, within which to assess petitioner for deficiency WTC and EWT for TYs 2005 to 2006.

The Warrant of Distraint and Levy dated September 12, 2014 is void for having been issued without a valid assessment.

Petitioner argues that the WDL dated September 12, 2014 is void for having been issued without the benefit of an assessment for deficiency taxes against petitioner.

On this regard, respondent argues that Section 205 of the Tax Code authorizes the issuance of a WDL for the collection of taxes, fees, or charges and any increment thereto resulting from delinquency. For respondent, a taxpayer is considered delinquent in the payment of his tax when the self-assessed tax per return by taxpayer on the prescribed date was not paid at all or was only partially paid. In the instant case, petitioner is considered a delinquent taxpayer as it failed to pay on the prescribed date the entire amount of taxes due which resulted to a deficiency withholding tax in the total amount of ₱15,407,859.13.

The Court rules for petitioner.

The issuance of the WDL begins the summary remedy of distraint and levy.[61] The summary remedy of distraint and levy is one of the remedies for collection of taxes available to respondent.

In this case, petitioner already paid its basic EWT and WTC for taxable years 2005 to 2006.[62] Therefore, the WDL[63]

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[61] *Clara Diluangco Palanca, et al. vs. Commissioner of Internal Revenue, et al.,* G.R. No. L-16661, January 31, 1962.
[62] Exhibits "P-40", "P-40-a", "P-40-b", "P-41", "P-41-a", "P-41-b", "P-42", "P-42-a", "P-42-b", "P-43", "P-43-a", and "P-43-b", docket vol. 3, pp. 1410-1418.

dated September 12, 2014 was issued for the collection of petitioner's penalties, surcharge and interest for the late remittance of its EWT and WTC for TYs 2005 to 2006.

Section 247(a) of the NIRC of 1997, as amended, reads as follows:

> SEC. 247. *General Provisions*. –
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

Based on the foregoing provision, additions to the tax or deficiency tax, shall be collected at the same time, in the same manner and as part of the tax. Thus, the surcharge, interests and compromise penalty that respondent is collecting from petitioner are additions to the tax which should be collected in the same manner as a tax.

In the recent case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[64], the Supreme Court emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes, to wit:

> **The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand**

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[63] Exhibit "P-2", docket vol. 1, p. 36.
[64] G.R. No. 215957, November 9, 2016.

> **for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.** (*Emphasis supplied*)

From the foregoing tenet, a valid formal assessment is a substantive prerequisite for the collection of petitioner's penalties, surcharge and interest for the late remittance of its EWT and WTC for TYs 2005 to 2006.

Moreover, the Court cannot give credence to respondent's argument that petitioner is considered a delinquent taxpayer and that Section 205 of the NIRC of 1997, as amended, which authorizes the issuance of a WDL for the collection of taxes, fees, charges and any increment thereto resulting from delinquency, applies in this case.

Section 205 of the NIRC of 1997, as amended, provides for remedies for the collection of delinquent taxes. Hence, before the remedies provided therein can be availed of by respondent, the taxpayer should first be considered a delinquent taxpayer.

Both Sections 205 and 207 of the NIRC of 1997, as amended, deal with civil remedies for collection of delinquent taxes. In order to determine if petitioner can be considered a delinquent taxpayer, the Court will apply its earlier ruling in the cases of *Golden Harvest Global Corporation vs. Commissioner of Internal Revenue*[65] and *Ishida Philippines Tube Co., Inc. vs. Commissioner of Internal Revenue*[66].

In the case of *Golden Harvest Global Corporation vs. Commissioner of Internal Revenue*[67], this Court ruled, thus:

> "The essence of Section 228 is due process, that is, the taxpayer shall be accorded the opportunity to present his side

[65] CTA Case No. 7503, September 18, 2009
[66] CTA Case No. 7633, February 6, 2009.
[67] CTA Case No. 7503, September 18, 2009

and prove his defenses. Reading Section 228 with Sections 207 subparagraphs (A) and (B), no taxpayer should be considered delinquent unless there has been a previous demand to pay taxes which remained unheeded. Stated simply, the taxpayer should be informed of its assessed deficiency taxes. This has been settled in **Commissioner of Internal Revenue vs. PASCOR Realty and Dev't. Corp., et al.**, where the Supreme Court held that:

> 'An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. . . .
>
> **To start with, assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period.**Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> The issuance of an assessment is vital in determining

> the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.
>
> **It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.**'

xxx xxx xxx

The meaning of procedural due process is that a party to a case must be given sufficient opportunity to be heard. Its very essence is to allow all parties the opportunity to present evidence. Petitioner should be given the chance to refute any assessment against it. In this case, since there is no assessment to begin with,

> petitioner cannot be considered a delinquent taxpayer. Consequently, there is no basis for the issuance of the Final Notice Before Seizure or the Warrant of Distraint and/or Levy."*(Emphasis supplied)*

Reading Section 228 with Section 207(A) and (B), reveals that no taxpayer should be considered delinquent unless there has been a previous demand to pay taxes which remained unheeded. In other words, the taxpayer should be informed of its assessed deficiency taxes, which is simply not obtaining in the present case, as admitted by respondent.

In view of the foregoing, Section 205 of the NIRC of 1997, as amended, must be read together with Section 228 of the NIRC of 1997, as amended, which provides for the procedure of assessing taxes that results in the taxpayer's delinquency. Section 228 pertinently provides, thus:

> 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: xxx
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for

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> reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Clearly, when respondent or his duly authorized representative finds that proper taxes should be assessed, a written notice to the taxpayer informing him of the law and the facts upon which the assessment is based is necessary. If there is no valid notice sent, the assessment is void.

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.[68]

Since there was no valid formal assessment issued by respondent against petitioner upon which the WDL dated September 12, 2014 is based, it is therefore considered void and cannot be enforced.

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[68] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, citing *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694, January 27, 2006.

The Notice of Denial dated January 10, 2014 has no force and effect for failure to state the "reasons" for the denial of petitioner's request for abatement.

Petitioner claims that the Notice of Denial dated January 10, 2014, denying its request for abatement violated its constitutional right to due process for failure to state the grounds or basis of denial. Hence, for petitioner, the same is null and void.

Again, the Court agrees with petitioner.

A plain reading of the Notice of Denial dated January 10, 2014, readily reveals that it failed to state the reasons for the denial of petitioner's request for abatement in utter disregard of the mandatory requirement of Section 4 of Revenue Regulations No. 13-2001, to wit:

> SECTION 4. *The Commissioner Has the Sole Authority to Abate or Cancel Tax, Penalties and/or Interest.* — The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the Code. This authority is generally applicable to surcharge and compromise penalties only, however, in meritorious instances, the Commissioner may likewise abate the interest as well as basic tax assessed, provided, however, that cases for abatement or cancellation of tax, penalties and/or interest by the Commissioner shall be coursed through the following officials: xxx
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> xxx xxx xxx

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> The application for abatement or cancellation of tax, penalties and/or interest should state the reasons and causes for such request. Documentary proofs for the underlying reasons and causes aforestated should be appended to the "Application for Abatement or Cancellation of Tax, Penalties and/or Interest" (Annex "A"). On the other hand, denial of the application for abatement or cancellation of tax, penalties and/or interest **should state the reasons therefor**.

The Notice of Denial dated January 10, 2014, is quoted hereunder for easy reference:

> **NOTICE OF DENIAL**
>
> Notice is hereby given to
>
> **PACIFICHUB CORPORATION**
>
> of 11thFlr. Robinsons Equitable Tower, ADB Ave., Cor. Poveda Ortigas Center, Pasig City, with Tacpyaer Identification Number **(TIN) 229-344-619-000**, that its application for abatement pursuant to Revenue Regulations No. 13-2001 of the surcharge, interest and compromise penalty imposed on its Expanded Withholding Tax and Withholding Tax on Compensation for taxable year 2005-2006 in the total amount of **THIRTEEN MILLION SEVEN HUNDRED NINETY TWO THOUSAND EIGHT HUNDRED SIXTY SEVEN PESOS AND 56/100 (P13,792,867.56)** has been **DISAPPROVED** by the Commissioner of Internal Revenue.
>
> Issued this 10th day of January, 2014.

A declaration that the Notice of Denial dated January 10, 2014 has no force and legal effect, does not however mean that petitioner is already entitled to its request for abatement of surcharge, interest and compromise penalty in the aggregate amount of ₱13,792,867.56. It must be stressed that respondent has the sole authority to abate or cancel tax liability in accordance with Section 4 of RR No. 13-2001.

Since respondent has the sole authority or discretion to abate petitioner's tax liability, the Court therefore must not interfere with such exercise of discretion as to whether or not to abate petitioner's tax liability in accordance with the parameters set forth in Section 204(B) of the NIRC of 1997, as amended, as implemented by RR No. 13-2001.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. The Warrant of Distraint and/or Levy dated September 12, 2014, as well as, the Notice of Denial dated January 10, 2014, are **NULL** and **VOID**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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