REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

UPS INTERNATIONAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7675

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

AUG 4 2011
2:30 p.m.

x- x

DECISION

BAUTISTA, *J.*:

The case involves the Petition for Review filed by UPS International, Inc., praying for the cancellation of the Warrant of Distraint and/or Levy issued by the Commissioner of Internal Revenue in relation to the assessment issued against it for alleged deficiency income tax and withholding tax for taxable year 2002.

Petitioner UPS International, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at UPS Intra-Asia Hub, Civil Aviation Complex, Diosdado Macapagal International Airport, Clark Special Zone, Pampanga.[1]

[1] Exhibit "A"

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connected therewith. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is engaged in the business of operating airhubs, cargo handling/distribution centers, aircraft maintenance base, and in other allied services.[2]

It is registered with Clark Development Corporation (CDC) as a Clark Special Economic Zone Enterprise, as evidenced by Certificate of Registration No. 2001-071 dated November 9, 2001. As such, petitioner enjoys the privileges laid down under Section 15 of Republic Act No. 7227, Section 5 of Executive Order No. 80, and Proclamation No. 163. Thus, it is required to pay only five percent (5%) tax on its gross profit in lieu of all local and national taxes.[3]

Petitioner only started its commercial operations on April 4, 2002, despite the fact that it is already registered with the Securities and Exchange Commission since September 14, 2001. It then applied for and was issued a Certification from CDC as a Regional Enterprise, dated June 14, 2002. CDC also issued a Permit to Operate No. PTO 2002-138 in favor of petitioner. As a registered Regional Enterprise, petitioner, in addition to privileges being enjoyed by it, is entitled to the availment of

---

[2] Par. 3, Admitted facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 183
[3] Exhibit "M"; Par. 9, Admitted Facts, JSFI, docket, p. 185

expanded deductions under Section 2 of Revenue Regulations (RR) No. 16-99 dated September 27, 1999.[4]

On May 24, 2004, respondent issued a Letter of Authority to one of its revenue officers to examine all of petitioner's internal revenue taxes for the period covering January 1, 2002 to December 31, 2002.[5]

On February 16, 2006, petitioner received a Preliminary Assessment Notice (PAN), finding it liable for deficiency income tax and final tax on fringe benefits amounting to P1,777,638.03 and P3,728,314.31, respectively.[6]

On March 3, 2006, petitioner filed a protest against the PAN.[7]

The Regional Director of Pampanga issued a Formal Letter of Demand[8] dated February 23, 2006, reiterating the matters alleged in the PAN, detailed as follows:

TAX TYPE	**AMOUNT**
Income Tax	P 1,876,100.84
Final Withholding Tax on Fringe Benefits	3,861,325.22
TOTAL	**P5,737,426.06**

The Formal Letter of Demand was received by petitioner on March 10, 2006.[9]

On March 31, 2006, petitioner filed a protest to the Formal Letter of Demand, reiterating the arguments it raised in the protest against the PAN.[10]

In the Regional Director's letter dated August 14, 2006, which was received by petitioner on August 29, 2006, the former denied the protest to the Formal Letter of Demand and found the latter liable for the total amount of P5,737,426.06,

---

[4] Pars. 10 and 11, Admitted Facts, JSFI, docket, pp. 185-186
[5] Exhibit "1"
[6] Exhibit "6"; Par. 4, Admitted Facts, JSFI, docket, pp. 183-184
[7] Exhibit "D"
[8] Exhibit "C"
[9] Par. 5, Admitted Facts, JSFI, docket, p. 184
[10] Exhibit "E"

representing alleged deficiency income tax and final withholding tax on fringe benefits.[11]

Petitioner then interposed an appeal dated September 28, 2006 with the Commissioner of Internal Revenue.[12]

Notwithstanding the appeal of the decision before the Office of the Commissioner, Revenue District Office No. 21 (San Fernando, Pampanga) still sent a Final Notice Before Seizure ordering petitioner to pay the amounts of P1,876,100.84 and P3,861,325.22, representing income and withholding taxes.[13]

On July 25, 2007, petitioner received the Warrant of Distraint and/or Levy[14], authorizing the Chief of Collection and Enforcement Division of the BIR to sell or forfeit the properties belonging to petitioner to satisfy its tax liabilities.

As a consequence, petitioner filed a Petition for Review on August 23, 2007 before this Court.

On October 30, 2007, respondent filed his Answer[15] raising the following Special and Affirmative Defenses:

> "20. The petition is filed out of time. Section 228 of the NIRC provides the following periods governing the rule on protesting of assessment: (a) an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the said assessment; (b) within 60 days from the filing of the protest, supporting documents must be submitted; (c) 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 may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from the lapse of the 180-day period. Petitioner filed its Motion for Reconsideration to the Decision of the Regional Director of Revenue Region No. 4, Pampanga on October

---

[11] Exhibit "F"
[12] Exhibit "G"
[13] Exhibit "J"; Par. 7, Admitted Facts, JSFI, docket, p. 184
[14] Exhibit "K"
[15] Docket, pp. 89-96

2, 2006 before the Commissioner of Internal Revenue and filed the instant Petition for Review on August 27, 2007. Clearly, the Petition for Review is filed out of time.

21. The Petition for Review fails to state a cause of action. The July 9, 2007 Warrant of Distraint and/or Levy is not a Decision of the Commissioner of Internal Revenue on the Motion for Reconsideration of Petitioner of the Decision of the Regional Director of Revenue Region No. 4 of Pampanga. The Warrant of Distraint and/or Levy is signed only by the Regional District Officer of RDO No. 4 who, under Revenue Regulations No. 12-99 is not the duly delegated authority to deny the Motion for Reconsideration."

On December 17, 2007, petitioner filed its Reply[16] to respondent's Answer.

Pre-trial was then set on January 25, 2008.

On March 17, 2008, this Court issued a Resolution[17] terminating the pre-trial and approving the parties' Joint Stipulation of Facts and Issues.

During trial, both parties presented and formally offered documentary and testimonial evidence in support of their respective claims and arguments.

On July 28, 2010, the case was submitted for decision after petitioner filed its Memorandum[18] on July 12, 2010 and respondent filed his Memorandum[19] on July 23, 2010.

The issues[20], as stipulated by the parties and submitted for this Court's resolution, are as follows:

"14. Whether or not the assessment against Petitioner is void for failure to comply with the requirements set under Section 228 of Republic Act No. 8424?

[16] Docket, pp. 119-131
[17] Docket, p. 190
[18] Docket, pp. 605-651
[19] Docket, pp. 652-659
[20] Docket, pp. 186-187

15. Whether or not Petitioner is entitled to the deductions excluded/disallowed by Respondent in computing the income subject to 5% tax?

16. Whether or not Respondent is correct in asserting that the travel and lodging expenses incurred by Petitioner were fringe benefits subject to fringe benefits tax?

17. Whether or not the right of the Respondent to assess the 2002 withholding tax had already prescribed?"

Petitioner avers that under Section 228 of the National Internal Revenue Code (NIRC), the Formal Letter of Demand and Assessment Notice shall state the facts, the law, rules or regulations, and jurisprudence on which the assessment is based; otherwise, the Formal Letter of Demand and Assessment Notice shall be void. Petitioner maintains that respondent fell short of complying with this requirement since he merely laid down the computation in the Formal Letter of Demand without relating the facts and the law on which said computations were based.

Petitioner likewise asserts that assuming respondent's assessment is valid, the assessment of income tax is still without basis due to the fact that petitioner is entitled to all the deductions excluded by respondent in the computation of its taxable income. It is also not liable for fringe benefits tax for the expenses incurred for its employees' travels abroad since the same were incurred in furtherance of petitioner's business.

Lastly, petitioner alleges that respondent's right to assess petitioner for withholding taxes on fringe benefits has already prescribed. It claims that it paid and filed its return on January 10, 2003; hence, respondent has three years or until January 10, 2006 within which to issue an assessment against petitioner. However, since respondent issued the Formal Letter of Demand only on February 24, 2006, respondent's right to issue an assessment has already prescribed.

Respondent counters that the assessment he issued is valid since the complete details required by Section 228 of the NIRC were attached as annexes in the Formal Letter of Demand.

Respondent points out that petitioner acquired its status as Regional Enterprise only on June 14, 2002. Therefore, only the transactions that transpired from such date onwards shall enjoy the expanded deductions provided under Section 15 of Republic Act No. 7727, Section 5 of Executive Order No. 80, Proclamation No. 163, and Revenue Regulations No. 16-99.

He likewise claims that the Court has no jurisdiction over the instant petition since it was filed out of time. Respondent avers that Section 228 of the NIRC provides that petitioner has 30 days from the denial of its protest within which to file an appeal with the Court of Tax Appeals. Respondent claims that petitioner received the denial by the Regional Director of its protest on August 29, 2006. However, instead of filing an appeal with the CTA, petitioner filed its Motion for Reconsideration with respondent. It only filed its Petition for Review before the CTA on August 23, 2007.

Finally, respondent asserts that petitioner is liable for withholding taxes on fringe benefits for its employees' expenses for travels abroad due to its failure to present official communications from its business meetings abroad which is a pre-requisite under RR No. 3-98.

The Court reckons it proper to determine first whether the Petition for Review was filed out of time.

In his Memorandum, respondent argues that the Court has no jurisdiction over the case since the present Petition for Review was filed out of time. He asserts that instead of filing an appeal with this Court after receiving the denial of its protest by the Regional Director, petitioner filed a Motion for Reconsideration with respondent. Respondent points out that the same is misplaced as the correct remedy is for the taxpayer to file an appeal with the Court of Tax Appeals.

The Court does not agree.

In the case of *Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue*[21], the CTA *En Banc* held that the decision of the Regional Director cannot be considered as a final decision on a taxpayer's protest if the taxpayer appeals the decision of the Regional Director to the Commissioner of Internal Revenue. The CTA *En Banc* further ruled that the Court may only take cognizance of cases involving "decisions of the Commissioner of Internal Revenue." We quote in *verbatim* the pertinent portions of said Decision, to wit:

> "The Court of Tax Appeals is a court of special appellate jurisdiction...as such, the Court's jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act No. 1125 xxx
>
> Under R.A. No. 1125, the appellate jurisdiction of the Court of Tax Appeals is limited to the review of:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National

[21] CTA EB No. 44, May 10, 2005

> Internal Revenue Code or other laws or part of law administered by Bureau of Internal Revenue;
>
> xxx xxx xxx

Thus, in order to successfully invoke the jurisdiction of the Court of Tax Appeals a '*decision of the Commissioner of Internal Revenue*' on a disputed assessment is necessary except when the ground relied upon is the inaction of the Commissioner of Internal Revenue. In which case, Sec. 7 (a) 2 of R.A. No. 9282 now provides that the inaction by the Commissioner of Internal Revenue shall be deemed a denial of the disputed assessment. Hence, as stated at the outset, the Court of Tax Appeals is a court of special appellate jurisdiction. As such, the Court can only try cases permitted by statute. Therefore, petitioner's argument that 'failure to comply with the doctrine of exhaustion of administrative remedies results in the absence of a cause of action but does not affect the jurisdiction of the Honorable Court' is untenable. The abovementioned laws require a decision by the Commissioner of Internal Revenue before the Court could acquire jurisdiction over a disputed assessment.

Moreover, the NIRC of 1997 provides in Section 228 thereof that:

> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment ***in such form and manner as may be prescribed by implementing rules and regulations***. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the decision shall become final, executory and demandable.
>
> 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. (Italics supplied)

The foregoing provision also requires a *decision* on the administrative protest before judicial relief from the Court can be sought. And since the law itself calls for the adoption of its implementing rules and regulations, the Department of Finance issued Revenue Regulations No. 12-99. Section 3.1.5 of Revenue Regulations No. 12-99 provides:

> 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If the there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the

> Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that *if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioners duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.***
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Italics and emphasis supplied).

The Court finds that the above-cited provision of Revenue Regulations No. 12-99 is not inconsistent with Sec. 228 of the NIRC of 1997. On the contrary, it merely implements Sec. 228 by establishing a clear guideline on the nature of a decision rendered by the *authorized representative* of the Commissioner of Internal Revenue on a disputed assessment. The taxpayer is given a choice whether to appeal the decision to the Commissioner of Internal Revenue or to the Court of Tax Appeals. It further provides that the decision of the authorized representative *will not attain finality* if the taxpayer appeals the same to the Commissioner of Internal Revenue who shall then be required to decide the protest himself.

> In the case at bar, the petitioner appealed the decision of the Regional Director of the Bureau of Internal Revenue to the Commissioner of Internal Revenue. In doing so, **the decision of the Regional Director cannot be considered as the *final decision* on petitioner's protest since the power of the Commissioner of Internal Revenue to review the acts of his subordinates was invoked by the petitioner itself. It is as if the Regional Director did not render any decision on petitioner's protest at all. There being no decision to speak of, the petitioner could not yet invoke the appellate jurisdiction of the Court pursuant to Section 7 of R.A. No. 1125 as amended by R.A. No. 9282.** As stated in the Court's Resolution promulgated on October 14, 2004, the premature invocation of the Court's intervention is fatal to one's cause of action." *(Emphasis supplied)*

Moreover, the case cited by respondent entitled *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue*[22], where the Supreme Court held that a Motion for Reconsideration does not stop the period to appeal to the CTA, does not find application in the present case. In said case, the Commissioner of Internal Revenue himself issued the final decision on the taxpayer's protest. Thus, the CTA may definitely take cognizance of the case since it is clearly within its jurisdiction to rule on decisions rendered by the Commissioner of Internal Revenue.

However, in the present case, it is the Regional Director's decision which is being appealed before the Commissioner of Internal Revenue. This Court therefore cannot subscribe to respondent's insistence that it is the Regional Director's decision which should have been appealed before this Court inasmuch as the very regulation implementing Section 228 specifically states that if the taxpayer appeals the Regional Director's decision with the Commissioner, the former's decision does not constitute a final decision appealable before the CTA.

---

[22] G.R. No. 179343, January 21, 2010

Accordingly, it is clear from the foregoing that the Court has jurisdiction over the present case since petitioner correctly appealed the decision of the Commissioner of Internal Revenue and not that of the Regional Director before the Court, and petitioner timely filed its Petition for Review on August 23, 2007 after receipt of respondent's Warrant of Distraint and/or Levy on July 25, 2007, which act can be considered as respondent's decision to deny petitioner's protest.[23]

The Court now proceeds to address the issue pertaining to the validity of the assessment.

Section 228 of the NIRC explicitly provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.

To implement Section 228 of the NIRC, the Bureau of Internal Revenue issued Revenue Regulations No. 12-99[24], Section 3.1.4 of which provides:

> "3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, the rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** xxx" *(Emphasis supplied)*

The rationale for the requirement was expounded by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[25], in this wise:

---

[23] *Producers Bank of the Philippines v. Commissioner of Internal Revenue*, CA-G.R. SP No. 48937, August 28, 2003.

[24] "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"

[25] G.R. No. 166387, January 19, 2009

"It is clear from the foregoing that **a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word 'shall' in these legal provisions indicates the mandatory nature of the requirements laid down therein.** We note the CTA's findings:

> In [this] case, [the CIR] merely issued a formal assessment and indicated therein the supposed tax, surcharge, interest and compromise penalty due thereon. The Revenue Officers of the [the CIR] in the issuance of the Final Assessment Notice did not provide Enron with the written bases of the law and facts on which the subject assessment is based. [The CIR] did not bother to explain how it arrived at such an assessment. Moreso, he failed to mention the specific provision of the Tax Code or rules and regulations which were not complied with by Enron.

Both the CTA and the CA concluded that the deficiency tax assessment merely itemized the deductions disallowed and included these in the gross income. It also imposed the preferential rate of 5% on some items categorized by Enron as costs. The legal and factual bases were, however, not indicated.

xxx xxx xxx

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. **Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process.** In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void." *(Emphasis supplied)*

Here, it is apparent that respondent did not state the legal and factual bases of the assessment in the Formal Letter of Demand. The Court quotes in *verbatim* the questioned Formal Letter of Demand, to wit:

"REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
OFFICE OF THE REGIONAL DIRECTOR
Revenue Region No. 4
City of San Fernando

UPS INTERNATIONAL, INC.
Edwin-Andrew Ave., CSEZ
Clarkfield 2009

FORMAL LETTER OF DEMAND

Sir:

Please be informed that as a result of the re-investigation by our district office there have been found due from you deficiency income (5%) and final withholding tax for fringe benefits for taxable year **2002** computed as follows:

		Income		***Withholding***
Tax Base per return	₱	1,742,269.00	₱	6,098,865.43
Add: Adjustment per audit		23,631,065.52		6,034,708.07
Adjusted Taxable Income	₱	25,373,334.52	₱	12,133,573.50
Tax due thereon	₱	1,268,666.73	₱	2,860,302.33
Tax paid/credits		87,113.00		929,195.65
Deficiency Tax	₱	1,181,553.73	₱	1,931,106.58
Add: 25% Surcharge				486,554.69
20% Interest p.a.		669,547.11*		1,158,663.95*
Compromise Penalty		25,000.00		285,000.00
Total Deficiency Tax	**₱**	**1,876,100.84***	**₱**	**3,861,325.22***
TOTAL AMOUNT DUE AND COLLECTIBLE			**₱**	**5,737,426.06***

*Please take note that the interest and the total amount due will have to adjusted if paid beyond March 30, 2006.

The discrepancies noted per audit are shown in the attached Annexes of this letter of demand.

The 25% surcharge was imposed pursuant to the provisions of Section 248 (A) of the National Internal Revenue Code.

The 20% interest per annum was imposed pursuant to the provisions of Section 249 (A) of the National Internal Revenue Code.

Compromise penalties were imposed pursuant to RMO 1-90.

> In view thereof, you are requested to pay the aforesaid deficiency income and withholding taxes through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> Very truly yours,
>
> **JOSE N. TAN**
> Regional Director"

Respondent contends that he has properly apprised petitioner of the legal and factual bases of the assessment. To prove this, he submitted and offered in evidence the "Memorandum Report of Revenue Officer Cherryl Anne R. Mesina" in his Formal Offer of Evidence dated February 22, 2010.

As aptly observed by petitioner, the "Memorandum Report of Revenue Officer Cherryl Anne R. Mesina" is a mere internal memorandum as it is addressed to the Regional Director and not to petitioner. The memorandum is likewise simply a part of the investigation, examination and review process of respondent's revenue officer. What the law requires, however, is that the factual and legal bases of the assessment be communicated to the **taxpayer** in the Formal Letter of Demand. Therefore, the Court cannot subscribe to respondent's claim that the assessment he issued is valid since the purported complete details required by Section 228 of the NIRC were attached as annexes in the Formal Letter of Demand.

Given that the assessment made by respondent did not comply with Section 228 of the NIRC, the Court no longer deems it necessary to pass upon the other issues as the source of the right to issue the Warrant of Distraint and/or Levy has been extinguished due to its invalidity.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated July 9, 2007 is hereby **CANCELLED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

See attached Separate Concurring Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice