REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

KEPCO ILIJAN CORPORATION,
Petitioner,

CTA Case No. 9261

Members:

- versus -

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 24 2017 ; 2:00 pm

x- -x

DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review filed by petitioner Kepco Ilijan Corporation against respondent Commissioner of Internal Revenue, praying for the cancellation and withdrawal of the Final Decision on Disputed Assessment dated October 7, 2015, assessing petitioner of deficiency Value Added Tax (VAT) in the total amount of Thirty-Four Million Two Hundred Eighty Nine Thousand Seven Hundred Twenty Two Pesos and Eighteen Centavos (₱34,289,722.18) for taxable year 2012.

PARTIES

Petitioner Kepco Ilijan Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[1] Its principle place of business is at the 18th Floor Citibank Tower, 8741 Paseo De Roxas, Salcedo Village, Makati City.[2] Petitioner is a company registered with the Board of Investments (BOI)

[1] Facts Admitted, Joint Stipulation of Facts and Issues ("JSFI"), CTA Docket, p. 311.
[2] Petition for Review, CTA Docket, p. 12.

whose sole business operation is to sell the power generated by its Ilijan power plant to the National Power Corporation (NPC), a government-owned and controlled corporation (GOCC).[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested with the authority to carry out all the functions, duties and responsibilities of the said Office, including *inter alia*, the power to decide tax protests.[4] Respondent holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

FACTS

On November 5, 1997, petitioner and NPC entered into an Energy Conversion Agreement (ECA) wherein petitioner agreed to exclusively sell all its generated electricity to the NPC.[6] Pursuant to Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act (EPIRA), most of NPC's obligations were transferred to another GOCC – the Power Sector Assets and Liabilities Management Corporation (PSALM).[7]

Pursuant to LOA-LV3-2013-00000006 dated September 20, 2013,[8] respondent conducted an audit of petitioner's books of accounts and other accounting records for taxable year 2012.

On May 13, 2015, respondent, through Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service, issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancy for deficiency VAT for taxable year 2012, which was received by petitioner on May 14, 2015.[9]

In a letter dated May 28, 2015, petitioner filed its protest to the PAN, which was received by respondent on May 29, 2015.[10]

---

[3] Exhibit P-30, pp. 266-274.
[4] Facts Admitted, JSFI, CTA Docket, p. 311.
[5] Petition for Review, CTA Docket, p. 12.
[6] Exhibit P-30, pp. 266-274.
[7] Statement of Facts, Petitioner's Memorandum, p. 541.
[8] Facts Admitted, JSFI, CTA Docket, p. 311.
[9] BIR Records, pp. 433-437.
[10] BIR Records, pp. 460-463.

On June 23, 2015, petitioner received a Formal Letter of Demand (FLD) dated June 23, 2015 issued by the respondent, assessing the amount of ₱47,167,275.23 (inclusive of interest) representing deficiency VAT, Final Withholding VAT (FVAT) and administrative penalty for taxable year 2012.[11]

On July 23, 2015, petitioner filed its protest letter assailing the FLD.[12]

On October 8, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) dated October 7, 2015, signed by the OIC-Assistant Commissioner of the Large Taxpayers Services, Mr. Nestor M. Valeroso, which cancelled the assessments for FVAT and administrative penalty but sustained the deficiency VAT assessment arising from disallowed input VAT. Thus, under the FDDA, petitioner was found liable for the total amount of ₱34,289,722.18, computed as follows:[13]

Type of Tax	Basic	Interest	Compromise	Total
VAT	₱22,235,491.36	₱11,964,230.82	0.00	₱34,289,722.18

On November 6, 2015, petitioner filed with the CIR an Administrative Appeal with request for reconsideration appealing the October 7, 2015 FDDA.[14]

Due to the alleged inaction of respondent on petitioner's administrative appeal, petitioner filed a Petition for Review with this Court on February 16, 2016.[15]

On March 28, 2016, respondent filed a Motion for Additional Time, praying for an additional period of thirty (30) days from March 26, 2016 or until April 25, 2016 to file Answer.[16] The Court granted respondent's motion in an Order dated March 29, 2016.[17]

---

[11] Facts Admitted, JSFI, CTA Docket, p. 312; Exhibit "P-1", CTA Docket, pp. 370-378.
[12] Facts Admitted, JSFI, CTA Docket, p. 312.
[13] Facts Admitted, JSFI, CTA Docket, p. 312.
[14] Facts Admitted, JSFI, CTA Docket, p. 312.
[15] Petition for Review, CTA Docket, pp. 10-32, 11.
[16] CTA Docket, 129-132.
[17] CTA Docket, p.135.

On April 25, 2016, respondent filed another Urgent Motion for Extension of Time to File Answer, praying for an additional fifteen (15) days from April 25, 2016 or until May 10, 2016 to file her Answer.[18]

On May 13, 2016, respondent filed a Motion for Leave to Admit Attached Answer.[19]

On May 19, 2016, the Court promulgated a Resolution granting respondent's Urgent Motion for Extension of Time to File Answer and granting respondent a non-extendible period of thirty (30) days from April 25, 2016 or until May 25, 2016 within which to file his Answer, instead of the fifteen (15) days as earlier prayed for.[20]

On May 25, 2016, petitioner filed a Motion for Leave to File and Admit Reply.[21]

On May 31, 2016, the Court promulgated a Resolution granting both respondent's Motion for Leave to Admit Attached Answer and petitioner's Motion for Leave to File and Admit Reply. Accordingly, the Court admitted respondent's Answer and petitioner's Reply.[22]

On July 18, 2016, petitioner filed its Pre-Trial Brief,[23] while respondent filed a Pre-Trial Brief on July 28, 2016.[24]

On August 4, 2016, the parties filed their Joint Stipulation of Facts and Issues,[25] which the Court approved in a Resolution dated August 22, 2016.[26] The Court issued a Pre-Trial Order on November 14, 2016.[27]

During the hearing on November 15, 2016, petitioner presented its sole witness, Ms. Jane T. Pagkalinawan.[28] On December 13, 2016, petitioner filed its Formal Offer of Evidence[29] and respondent's

---

[18] CTA Docket, pp. 137-140.
[19] CTA Docket, pp. 142-154.
[20] CTA Docket, p. 157.
[21] CTA Docket, pp. 158-164.
[22] CTA Docket, p. 179.
[23] CTA Docket, pp. 180-188.
[24] CTA Docket, pp. 301-305.
[25] CTA Docket, pp. 311-316.
[26] CTA Docket, p. 323.
[27] CTA Docket, pp. 353-360.
[28] CTA Docket, pp. 344-347.
[29] CTA Docket, pp. 361-369.

comment thereon was filed on December 15, 2016.[30] The Court admitted petitioner's evidence in a Resolution dated January 19, 2017.[31] In view of respondent's manifestation that he shall not be presenting evidence,[32] the Court ordered the parties to submit their respective memoranda.[33]

As directed by the Court, petitioner filed its Memorandum on February 21, 2017,[34] while respondent filed a Manifestation on February 17, 2017 stating that he is adopting his Answer to the Petition for Review as his Memorandum.[35]

The case was submitted for decision on March 1, 2017,[36] hence this decision.

THE ISSUES

The parties submitted the following issues for the Court's resolution:

1. Whether or not under Section 228 of the National Internal Revenue Code, as amended, the Petition for Review was filed out of time; and

2. Assuming the Honorable Court has jurisdiction and further assuming that it can decide on the validity of the assessment, whether or not petitioner is liable for deficiency VAT in the aggregate amount of ₱34,289,722.18 for taxable year 2012.[37]

THE PARTIES' ARGUMENTS

Petitioner asserts that this Court has jurisdiction over the case as it filed its Petition for Review on February 16, 2016 which is within the 30-day period after the lapse of 180 days from respondent's inaction on its letter protest filed on July 23, 2015. Petitioner avers that the

[30] CTA Docket, pp. 525-527.
[31] CTA Docket, pp. 532-533.
[32] JSFI and Pre-Trial Order, CTA Docket, pp. 311-316, 353-360.
[33] Resolution dated January 19, 2017, CTA Docket, pp. 532-533.
[34] CTA Docket, pp. 540-559.
[35] CTA Docket, pp. 534-537.
[36] CTA Docket, p. 561.
[37] JSFI and Pre-Trial Order, CTA Docket, pp. 311-316, 353-360.

ᴍ

FDDA it received on October 8, 2015, which was signed by the CIR's duly authorized representative, has not attained finality as petitioner opted to elevate its protest to respondent through an Administrative Appeal pursuant to Revenue Regulation (RR) No. 18-2013.[38]

Petitioner also argues that it already paid the 5% FVAT due from its sales of electricity to NPC-PSALM; that imposing deficiency input VAT from petitioner would amount to double tax recovery for respondent; and, that under the National Internal Revenue Code of 1997, as amended, (NIRC) and RR No. 16-2005, petitioner's liability for non-compliance with substantiation requirements of input VAT is, at most, limited to the imposition of administrative penalty.[39]

On the other hand, respondent contends that the FDDA was appealed beyond the statutory period provided under Section 228 of the NIRC, as amended. Respondent points out that a decision on petitioner's protest has been issued by respondent's authorized representative, hence, there was no inaction to speak of. Finally, respondent argues that even assuming that this Court has jurisdiction to act on the case, the assessment issued against petitioner has legal and factual bases.[40]

THE COURT'S RULING

Petitioner's appeal was filed within the statutory period provided under Section 228 of the NIRC, as amended, and as implemented by RR No. 12-99, as amended by RR No. 18-2013

Section 228 of the NIRC, as amended, provides for the procedure and manner in which tax deficiency assessments should be issued and protested, *viz.*:

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

[38] Petitioner's Memorandum, CTA Docket, pp. 543-547.
[39] Petitioner's Memorandum, CTA Docket, pp. 547, 555 and 556.
[40] Respondent's Answer, CTA Docket, pp. 147, 150 and 151.

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

RR No. 12-99, as amended by RR No. 18-2013, implements Section 228 of the NIRC, as amended. Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, states:

> "3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> xxx xxx xxx
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
>
> 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 Appeals (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.
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> **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 said 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.
>
> **If the <u>protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest</u>, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other." (Boldfacing and underscoring supplied)

Based from the foregoing, the taxpayer is authorized to elevate his protest through request for reconsideration / administrative appeal to the CIR within thirty (30) days from date of receipt of the decision of the CIR's representative. If the CIR does not act on the request for reconsideration / administrative appeal within one hundred eighty (180) days **from the date of filing of the protest**, the taxpayer may appeal to the CTA within thirty (30) days **from the expiration of the one hundred eighty (180)-day period.**

cm

Relative to petitioner's protest and the eventual filing of a Petition for Review before this Court, records disclose the following:

Action	Date
BIR Large Taxpayers Service issued the FLD to petitioner	June 23, 2015
Petitioner received the FLD (signed by Assistant Commissioner of Large Taxpayers Service, Nestor S. Valeroso)	June 23, 2015
Petitioner filed the Protest to FLD with the Large Taxpayer Audit and Investigation Division I (LTAID I)	July 23, 2015
FDDA was issued to petitioner (signed by OIC-Assistant Commissioner, Large Taxpayers Service, Nestor S. Valeroso)	October 7, 2015
Petitioner received the FDDA	October 8, 2015
Petitioner filed an Administrative Appeal with Request for Reconsideration with the Office of the CIR	November 6, 2015
Petitioner filed the Petition for Review with CTA	February 16, 2016

As shown above, petitioner's Protest to the FLD was filed on **July 23, 2015**. Pursuant to the aforequoted Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, respondent had 180 days counted from the date of filing of the protest within which to act on petitioner's Administrative Appeal with Motion for Reconsideration. To be specific, respondent had until **January 19, 2016** within which to act thereon. Since the 180-day period lapsed without any action on the part of respondent, petitioner opted to appeal the inaction to the CTA. Petitioner had thirty (30) days from lapse of the 180-day period on January 19, 2016 or until **February 18, 2016** within which to file a petition for review with this Court. The Petition for Review filed on February 16, 2016 was therefore timely filed.

The Formal Letter of Demand dated June 23, 2015 and the Final Decision on Disputed Assessment dated October 7, 2015 must be cancelled and set aside

Respondent disallowed petitioner's input VAT in the amount of ₱22,325,491.36 allegedly for failing to meet the substantiation requirements. Respondent maintains that although the 5% FVAT on petitioner's services to NPC-PSALM constitutes as a final VAT payment (as opposed to creditable), petitioner is still required to meet the substantiation requirements for input VAT, albeit petitioner's actual input VAT remains unutilized. Since petitioner failed to meet the substantiation requirements of its input VAT in the amount of ₱22,325,491.36, petitioner is liable for basic deficiency input VAT in the amount of ₱22,325,491.36.

On the other hand, petitioner argues that its VAT returns clearly show that petitioner strictly applied the procedure with regard to payment of the VAT due on its sales of electricity to NPC-PSALM. Petitioner claims that the VAT Returns it filed and the Certificates of Final Tax Withheld at Source issued by PSALM, clearly show that the required VAT to be paid on its services to NPC-PSALM has been fully paid and remitted to the government as NPC-PSALM subjected to 5% FVAT the payments made to petitioner. Petitioner argues that, even assuming that its input VAT of ₱22,325,491.36 is not properly substantiated, it would not result to any deficiency VAT as petitioner never utilized said input VAT to pay for its VAT liabilities.

The Court rules in favor of petitioner.

Section 114 (C) of the NIRC provides:

> "SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> xxx xxx xxx
>
> (C) *Withholding of Value-Added Tax.* - **The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof**: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent." (Boldfacing supplied)

In line with this, Section 4.114-2 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, provides:

> "SEC. 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. –
>
> (a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on

> account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, **deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.**
>
> **The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs <u>in lieu of the actual input VAT</u> directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost.**
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as private corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:
>
> (1) Lease or use of properties or property rights owned by nonresidents; and
>
> (2) Other services rendered in the Philippines by non-residents.
>
> xxx xxx xxx." (Boldfacing supplied)

Indubitably, sales to the government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, of goods and services are subject to 12% VAT. The government is, however, mandated to withhold a <u>final VAT at the rate of 5% on its gross payment.</u> The amount withheld by the government represents the net VAT payable by the seller. **This means that once the 5% FVAT is withheld by the government on its payments to the seller, the VAT due on the sale is considered fully paid.** The seller is not required to pay the difference between the 12% VAT and the 5% FVAT withheld by the government. Thus, the seller's actual input VAT which are attributable to its sales to government remain intact or unutilized.

Stated differently, the seller's actual input VAT which are attributable to its sales to government would not be utilized to pay for the output VAT due on the seller's sales to government. The seller is neither allowed to apply the actual input VAT attributable to sales to government as credits against the output VAT due on its VATable sales to private entities or individuals nor to seek a refund or tax credit of the same. As to what would happen to the seller's actual input VAT, Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007, is categorical in providing that **should the actual input VAT exceeds the standard input VAT (7% of gross payments), the excess may form part of the seller's expense or cost**; and **if the actual input VAT is less than the standard input VAT, the difference shall be closed to expense or cost.**

Simply put, if the seller's actual input VAT exceeds the standard input VAT, the excess shall be treated as input VAT expense, which is deductible expense for income tax purposes. On the other hand, if the seller's actual input VAT is less than the standard input VAT, the difference shall be deducted from the seller's "deductible expense" which means that the difference is treated as "other income" which is subject to income tax.

In the present case, petitioner's sales of electricity only pertain to NPC-PSALM. Records show that NPC-PSALM already withheld a final VAT rate of 5% from petitioner's gross sales, as evidenced in petitioner's 2012 Monthly VAT Tax Declarations (BIR Form No. 2550-M), Quarterly VAT Tax Returns (BIR Form No. 2550-Q)[41] and the corresponding Certificates of Final Tax Withheld at Source (BIR Form No. 2036) issued by NPC-PSALM.[42] Having sufficiently shown that the final VAT rate of 5% has already been withheld, petitioner's VAT liability is deemed to have been fully paid. Clearly, petitioner's actual input VAT were not utilized by petitioner in paying the VAT due on its sales to NPC-PSALM. The disallowance of petitioner's actual input in the amount of ₱22,325,491.36, for allegedly failing to comply with the substantiation requirements, does not result to any VAT liability against petitioner.

Interestingly, petitioner's alleged non-compliance with substantiation requirements for input VAT in the amount P22,325,491.36 would affect the amount treated by petitioner as "other income" for income tax purposes. **As borne by the records, petitioner's actual input VAT was less than the standard input VAT**. Pursuant to Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007, petitioner closed the difference to expense or cost.[43] If the disallowed input VAT would be deducted from petitioner's actual input VAT, the difference between petitioner's substantiated actual input and the standard input VAT would be higher which means that

---

[41] Exhibits "P-6" – "P-17".
[42] Exhibits "P-18" – "P-29".
[43] Exhibits "P-6", "P-7", "P-9", "P-10", "P-12", "P-13", "P-15" and "P-16", pp. 476-479, 482 – 485, 488-491, 494-497.

petitioner should have declared a higher amount of "other income" for income tax purposes. In short, the effect of the disallowance of petitioner's actual input VAT in the amount of ₱22,325,491.36 is on the income tax paid by petitioner rather than the VAT. It is, however, beyond the province of the Court to determine and assess petitioner for deficiency income tax, if any, as the function to do so is exclusively lodged with the BIR.

The CTA has no assessment powers and its jurisdiction is confined to reviewing on appeal the decision or inaction of the CIR or his representatives on disputed assessment. The case of ***SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue***[44] is instructive, *viz.:*

> "**The Court of Tax Appeals has no power to make an assessment at the first instance**. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.
>
> Section 7(a)(1) and Section 7(a)(2) of Republic Act No. 1125, as amended by Republic Act No. 9282, provide that the **Court of Tax Appeals reviews decisions and inactions of the Commissioner of Internal Revenue** in disputed assessments and claims for tax refunds. Thus:
>
> > SEC. 7. Jurisdiction.- The CTA shall exercise:
> >
> > a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
> > 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 or other laws administered by the Bureau of Internal Revenue;
> >
> > 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.] (Emphasis supplied) Based on these provisions, the following must be present for the Court of Tax Appeals to have

---

[44] G.R. No. 175410, November 12, 2014.

jurisdiction over a case involving the BIR's decisions or inactions:

a) A case involving any of the following:

i. Disputed assessments;

ii. Refunds of internal revenue taxes, fees, or other charges, penalties in relation thereto; and

iii. Other matters arising under the National Internal Revenue Code of 1997.

b) Commissioner of Internal Revenue's decision or inaction in a case submitted to him or her

Thus, the BIR first has to make an assessment of the taxpayer's liabilities. When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.

When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. **In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities**. The Court of Tax Appeals may not make such determination before the BIR makes its assessment and before a dispute involving such assessment is brought to the Court of Tax Appeals on appeal.

xxx xxx xxx

Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. **Tax deficiencies should be subject to assessment procedures and the rules of prescription**. **The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight**. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers." *(Boldfacing supplied)*

While this Court is allowed to make its own determination of the taxpayer's liability in the process of reviewing the BIR's assessment, any determination however in excess of what the BIR had assessed could not simply be included in the computation of tax liability, for to do otherwise would only be arrogating unto the Court a duty which rightfully belongs to the BIR.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated June 23, 2015 and the Final Decision on Disputed Assessment dated October 7, 2015 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice