REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KULTURA STORE, INC.,
Petitioner,

CTA Case No. 9315

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 11 2019
1:55 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

The present Petition for Review filed by Kultura Store, Inc. seeks the cancellation of the deficiency tax assessments for income tax (IT), value added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and improperly accumulated earnings tax (IAET) in the total amount of ₱516,822,789.32, inclusive of interest and penalties, for taxable year 2010.

THE FACTS

Petitioner Kultura Store, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines. It holds its principal office at SM Corporate Offices Bldg. A, Pasay City.[1] Petitioner is primarily engaged in the business of trading, importing and exporting of goods such as but not limited to Philippine Arts & Crafts and other native products on wholesale and retail basis.[2]

On the other hand, respondent is being sued in his official capacity as the Commissioner of Internal Revenue (CIR), having been duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, penalties, fees and other charges imposed, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the 5th Floor, BIR National Office Bldg., BIR Road, Diliman, Quezon City.

On September 23, 2011, respondent, through Mr. Alfredo Misajon, then Officer in Charge – Assistant Commissioner for Large Taxpayers Service, issued a Letter of Authority (LOA) No. 116-2011-00000113[3] dated September 23, 2011 against petitioner to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2010.[4]

On June 9, 2014, respondent, through [*Alfredo V. Misajon*] Officer in Charge – Assistant Commissioner for Large Taxpayers Service, issued a Formal Letter of Demand/Assessment Notice[5] (FLD-FAN) dated June 9, 2014 against petitioner for alleged deficiency taxes, penalties and interests in relation to taxable year 2010.[6]

Thereafter, on September 24, 2015, petitioner received the Final Decision on Disputed Assessment[7] (FDDA) dated September 23, 2015, signed by Assistant Commissioner Nestor S. Valeroso, denying petitioner's protest in part and found petitioner liable for alleged deficiency taxes, penalties, and interests in relation to taxable year 2010 as follows:

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1 Exhibit "P-1".
2 Exhibit "P-1-1".
3 Exhibit "P-2"; Exhibit "R-1", BIR records, p. 1.
4 Paragraph 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket (vol. II), p. 623.
5 Exhibit "P-3"; Exhibits "R-10" to "R-11-e", BIR records, pp. 796-799 and 748-753.
6 Par. 3, Admitted Facts, JSFI, docket (vol. II), pp. 623-624.
7 Exhibits "P-5" to "P-5-16"; Exhibits "R-13" to "R14-e", BIR records, pp. 1567-1573.

Nature of Tax	Basic Tax	Increments	Total
IT	143,478,887.10	200,909,750.55	344,388,637.65
VAT	68,220,218.37	97,358,,662.19	165,578,880.56
EWT	773,385.29	734,398.00	1,507,783.29
WTC	1,012,315.32	832,706.00	1,845,021.32
IAET	1,592,327.60	1,910,138.90	3,502,466.50
Total	**215,077,133.68**	**301,745,655.64**	**516,822,789.32**

Petitioner filed a Motion for Reconsideration of the FDDA[8] on October 26, 2015. Then, on February 17, 2016, respondent rendered a decision[9] denying the motion for reconsideration and reiterated its assessment in the FDDA.[10]

Aggrieved, petitioner filed the present Petition for Review[11] with this Court, via a licensed private courier, on March 18, 2016.

After asking for and being granted several extensions, respondent filed his Answer[12] on June 29, 2016, interposing the following special and affirmative defenses, *viz.*:

> "4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses:
>
> **WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION, THE INSTANT PETITION IS FILED OUT OF TIME.**
>
> 5. Petitioner argued that on February 17, 2016, it received the Denial of the Motion for Reconsideration rendered by Commissioner Kim S. Jacinto-Henares. Accordingly, pursuant to the provision cited in Revenue Regulations (RR) No. 12-99, as amended by RR No. 19-2013, it has thirty days from February 17, 2016 or until March 18, 2016 within which to file the instant petition with

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[8] Exhibit "P-6".
[9] Exhibit "P-7".
[10] Par. 5, Admitted Facts, JSFI, docket (vol. II), p. 624.
[11] Docket (vol. I), pp. 12-71.
[12] *Id.*, pp. 492-514.

the Honorable Court. Hence, the instant petitioner allegedly filed on March 18, 2016 was timely filed.

6. Respondent differs. For quick reference, the following facts are undisputed, viz.:

a. On 09 June 2014, petitioner received the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN);

b. On 09 July 2014, petitioner allegedly filed its protest to the Formal Letter of Demand; and

c. On 24 September 2015, petitioner received the Final Decision on Disputed Assessment (FDDA).

d. On 26 October 2015, petitioner allegedly filed its motion for Reconsideration with the Commissioner of Internal Revenue.

7. Under Section 228 of The National Internal Revenue Code 1997 ('NIRC' for brevity), an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment. Section 228 provides:

'x x x

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 if not acted upon within one hundred (180) [*sic*] 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, executor and demandable (Emphasis supplied)

8. In the case at bar, the administrative protest was denied by a Final Decision on Disputed Assessment dated 23 September 2015 which was received by petitioner on 24 September 2015. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest before the Honorable Court.

9. Since petitioner received the denial of its administrative protest on 24 September 2015, it had only until 24 October 2015 within which to file a petition for review before the Honorable Court. However, it was only on 18 March 2016 when it filed the instant petition for review, hence, the same was filed out of time.

10. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same. In *Fishwealth Canning Corporation vs. Commissioner of Internal Revenue,* the Honorable Supreme Court ruled that a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA, hence:

> 'Respondent thereafter issued a Final Decision on Disputed Assessment dated August 2, 2005, which petitioner received on August 4, 2005, denying its letter of protest x x x Respondent added that if petitioner disagree [*sic*], it may appeal to the Court of Tax Appeals (CTA) 'within thirty days from date of receipt thereof, otherwise our said deficiency income and value-added tax assessments shall become final, executory and demandable.'
>
> Instead of appealing to the CTA, petitioner filed, on September 1, 2005, a Letter of Reconsideration dated August 31, 2005.
>
> x x x
>
> The petition is bereft of merit.

Section 228 of the 1997 Tax Code provides that an assessment

x x x 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 (180) [*sic*] 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. (Underscoring supplied)

In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA. (Underscored in the original)

Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. **For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA**.' (Emphasis and underscoring supplied)

11. Going by the established jurisprudence and statutory provision of the NIRC, petitioner's request for

reconsideration filed before the CIR does not toll the 30-day period to appeal to the CTA. Petitioner cannot find solace on its alleged reliance on subordinate legislation. Administrative rules and regulations, cannot override the statute it seeks to implement. As held time and again by the Honorable Supreme Court:

> After all, the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is found in the legislative enactment itself. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the Legislature. Thus, if a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails, because the law cannot be broadened by mere administrative issuance – an administrative agency certainly cannot amend an act of Congress.

ASSUMING WITHOUT CONCEEDING [*SIC*] THAT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT PETTION, THE ASSESSMENTS HAVE BASES BOTH IN FACT AND IN LAW.

12. Petitioner argued that it disagrees with the assailed Decision on the ground that the subject deficiency tax assessments lack factual and legal bases.

13. Respondent strongly submits that the assessments have bases both in fact and in law which can be gleaned from the following discussion.

I. PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX IN THE TOTAL AMOUNT OF ₱344,388,637.65 AND THE CORRESPONDING SURCHARGE AND INTEREST.

A. Petitioner is liable for deficiency Income Tax due from sales not subjected to Income Tax from

discrepancy per Terminal Accountability Report (TAR) vs. sales per Income Tax Return (ITR) in the amount of ₱137,292,760.04.

14. Petitioner argued that it properly declared its revenues for tax purposes.

15. Respondent differs. Verification of petitioner's sales per Department Stores and Terminal Accountability Report (TAR) as compared with the sales reported per ITR disclosed that petitioner failed to include as part of its sales the discrepancy amounting to ₱137,292,760.04. Hence, the corresponding gross profit from said undeclared sales should be subject to the applicable income tax pursuant to Section 32 of the Tax Code. The details of said discrepancy is shown as follows:

Sales Per Dept. Store		790,744,835.84
Sales Per TAR		
Sales Per TAR	672,746,909.17	
Less Discount:	14,915,548.48	57,831,360.89
Total Sales per Dept. Store & TAR		1,488,576,196.53
Divided by:		1.12
Total Sales per Investigation, net of VAT		1,293.371,604.44
Net Sales per ITR		1,156,078,844.00
Discrepancy		**₱137,292,760.04**

16. Petitioner argued that respondent failed to consider the sales discounts, however based on the records of the case, petitioner failed to submit supporting documents sufficient to prove grant of discounts as the documents were mere schedules and computer printouts and the actual invoices evidencing discounts were not submitted. Hence, the assessment was reiterated from the Formal Letter of Demand (FLD) to the Final Decision on Disputed Assessment (FDDA).

17. Consequently, the corresponding deficiency Value-Added Tax (VAT) was also assessed against petitioner for this particular audit finding.

B. Petitioner is liable for deficiency Income Tax due from other income not subjected to income tax in the amount of ₱220,310,622.51.

18. Petitioner argued that the amounts found in the assessed accounts are not income account and should not be subjected to income tax and VAT.

19. Respondent differs. Analysis of petitioner's Purchases and Accounts Payable (AP) and as presented in the walkthrough of petitioner's representative on 10 January 2014 disclosed that there were various deductions from petitioner's purchases/ AP accounts which it failed to justify by documentary evidence that the same were not in the form of other income. The amount credited from the purchases/ AP were considered as other income that should be included in petitioner's gross income pursuant to Section 32 of the Tax Code. The details of the audit finding is as follows:

A/P Trade-Clearing	P66,068,632.95
A/P Trade- Conversion Clearing	7,205,195.88
A/P Trade-RTV Clearing	39,134,907.20
A/P Non-Trade Clearing	2,860,878.93
AP VSRS Clearing	28,365,187.26
Promo/Display Allowance	60,446,606.95
Vendor Support- Ads Support	36,817,883.94
Vendor Support- Display Allowance	19,784.40
Total Other Income	**240,919,077.51**
Less: Vendor Support Reported per ITR	**20,608,455.00**
Other Income not subjected to Income Tax	**₱220,310,622.51**

20. Based on record, petitioner failed to submit supporting documents to support its arguments on this accounts. Hence, the audit assessment was reiterated from the FLD to the FDDA.

21. Consequently, the corresponding deficiency VAT was also assessed against petitioner.

C. Petitioner is liable for deficiency Income Tax due from unsupported purchases in the amount of ₱79,064,822.95.

22. Petitioner argued that the said purchases should not be disallowed as expense for the reason that these are valid expenses of petitioner.

23. Respondent differs. Vouching of the documents presented by petitioner during the conduct of the audit revealed that various purchases were not supported by any

documentary evidence to prove that the same were valid transactions and contrary to petitioner's allegation, despite persistent requests during the course of the audit, petitioner failed to substantiate said purchases.

24. Section 34 of the Tax Code provides explicitly, viz.:

> **SEC. 34. Deductions from Gross Income. –** Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income;
>
> **(A) Expenses. –**
>
> **(1) Ordinary and Necessary Trade, Business or Professional Expenses. –**
>
> x x x
>
> **(b) Substantiation Requirements. –** No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

25. Since petitioner was not able to properly substantiate with sufficient evidence the expenses claimed for, hence the expense claimed is disallowed and the corresponding income tax is assessed against petitioner.

26. Consequently, the input VAT claimed by petitioner in relation to these purchases is also disallowed pursuant to Section 110 of the Tax Code, viz.: Jr

SEC. 110. Tax Credits. –

A. Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x (Underscoring ours)

D. Petitioner is liable for deficiency Income Tax due from additional gross income in the amount of ₱15,069,993.46.

27. Petitioner argued that the assessments resulting from the comparison of the supposed third-party information and the company's report or any other information are mere naked assessments or has no leg to stand on absent the sworn statements/declarations from the said third-party sources.

28. Respondent differs. The RELIEF System which stands for 'Reconciliation of Listing for Enforcement' was purposely to detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources. **Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible**.

29. The Tax Reconciliation System (TRS) on the other hand is geared towards enhancing revenue collection by computerized matching of data available under the Bureau's Integrated Tax System (ITS). **Through the consolidation and cross-referencing of data from withholding agents (WAs) and declaration of income recipients, discrepancy reports can be generated to uncover violations on tax rules and regulations such under declaration of income, non-declaration of income, under remittance and/or non-remittance of taxes withheld, over withholding, under withholding, over**

declaration of credits to name a few. Timely recognition and accurate reporting of unregistered taxpayers and non-filers will also be possible.

30. Respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers. Such power of the Commissioner of Internal Revenue to obtain information from other sources is enshrined in Section 5 of the Tax Code which specifically provides:

> **Sec. 5. Power of the Commissioner to Obtain Information, and to Summon/Examine, and Take Testimony of Persons. –** In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> A. To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> B. **To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation xxx** (Emphasis ours)

31. Line-by-line analysis of petitioner's suppliers' data extracted from RELIEF/SLS versus petitioner's reported income payments per its Summary List of Purchases (SLP) disclosed that their sales reported by various suppliers that were either higher that petitioner's declared purchases or were not included in its SLP. The total discrepancy of ₱40,744,797.14 resulted to additional gross income of ₱15,069,993.46, which was added to petitioner's taxable income pursuant to Section 32 of the Tax Code, as amended. The additional taxable sales was [*sic*] computed using the formula as prescribed in Annex 'C' of Revenue Memorandum Order (RMO) 13-2012. Petitioner was provided

with the list of undeclared purchases attached as Schedule 4 and was made an integral part of the FDDA.

32. Consequently, the corresponding deficiency VAT was also assessed against petitioner.

E. Petitioner is liable for deficiency Income Tax due from income payments not subjected to Expanded Withholding Tax in the amount of ₱20,961,14.73. [*sic*]

33. Petitioner argued that it has properly withheld and remitted the expanded withholding tax on its income payments.

34. Respondent differs. Line-by-line analysis of petitioner's income payments per Summary List of Purchases (SLP) as compared with alphalist of annual information return of creditable income taxes withheld (BIR Form 1604E) disclosed that there were income payments in SLP that were partially or not subjected to expanded withholding tax all in violation of Revenue Regulations (RR) 2-98, as amended. The total discrepancy of ₱20,961,146.73 was disallowed due to failure to withhold and remit the corresponding withholding tax on the above mentioned income payments pursuant to Section 34 (K) of the Tax Code, viz:

> **SEC. 34. Deductions from Gross Income. –** Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income;
>
> x x x
>
> **(K) Additional Requirements for Deductibility of Certain Payments. –** Any amount paid or payable which is otherwise deductible from, or taken into

> account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Sections 58 and 81 of this Code. (Underscoring ours)

35. Further Section 6 of Revenue Regulation No. 14-2002 explicitly provides:

> **Section 6. Requirements for Deductibility of Certain Expenses. –** Section 2.58.5 of Revenue Regulations. [*sic*] No. 2-98 is hereby amended to read as follows:
>
> > "Sec. 2.58.5. Requirements for Deductibility – Any income payment which is otherwise deductible under the Code shall be allowed as deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

36. Respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers.

37. Consequently, the deficiency expanded withholding tax is assessed against petitioner for the audit finding.

F. Petitioner is liable for deficiency Income Tax due from salaries wages and benefits not subjected to withholding tax on compensation in the amount of ₱2,740,352.75.

38. Petitioner argued that it has already paid the supposed deficiency withholding tax due related to this

particular item. Hence, the audit findings with respect to this particular item should be removed.

39. Considering that petitioner still argued that the audit assessment is without factual and/ or legal basis and therefore not justified, respondent deems it proper to discuss the basis of the audit finding.

40. Audit verification of petitioner disclosed that it failed to fully withhold and remit the corresponding withholding taxes due on salaries, wages and benefits paid to its employees during the year. The total discrepancy of ₱2,740,352.75 was disallowed pursuant to Section 34 (K) of the Tax Code, as amended.

41. Consequently, the deficiency withholding tax on compensation is assessed against petitioner for the audit finding.

G. Petitioner is liable for deficiency Income Tax due from disallowed tax credit in the amount of ₱846,977.57.

42. Petitioner argued that the majority of the tax credits for income tax purposes is valid and properly supported by BIR Form 2307 certificates.

43. Respondent differs. Audit verification revealed that petitioner's creditable tax withheld at source disclosed that out of the ₱7,105,492.16 tax credit claimed per Income Tax Return, only ₱6,258,514.59 was properly supported by valid certificates. Hence, the difference of ₱846,977.57 was disallowed for failure to substantiate tax credits.

H. Petitioner is liable for the corresponding imposition of the 50% surcharge amounting to ₱71,739,443.55.

44. Petitioner argued that the imputation of fraud against petitioner by adding 50% surcharge of the alleged income tax liabilities can not [*sic*] hold water since the claimed fraudulent intent was merely deduced from the alleged underdeclaration of sales/ revenue/additional gross income and/or unsupported purchases which allegedly petitioner was able to prove to be non-existent.

45. Respondent differs. The Honorable Supreme Court in the case of *Aznar vs. CTA,* had the occasion to define fake or fraudulent return in this wise:

> 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. (Emphasis ours)

46. Since the correct sales/revenue/additional gross income and/or unsupported purchases of petitioner did not appear in its returns, there can only be one inevitable conclusion – that there was a **substantial under-declaration** of sales/revenue in its returns.

47. To reiterate, a false return implies **deviation from the truth, whether intentional or not.** Hence, the corresponding surcharge of 50% has legal and jurisprudential bases.

II. PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX (VAT) IN THE TOTAL AMOUNT OF ₱165,578,880.56 AND THE CORRESPONDING SURCHARGE AND INTEREST.

48. Petitioner argued that the deficiency VAT assessments pertaining to the first and second quarter of 2010 is already barred by prescription considering that the waiver executed in relation to this case was more than three years after it filed its VAT returns for the first and second quarter of 2010. Petitioner cited Section 203 of the Tax Code.

49. Respondent differs. The period provided in Section 203 of the Tax Code finds no application to the particular audit finding.

50. Respondent repleads the case of *Aznar.* Although the Aznar case distinguishes what constitute [*sic*] 'false returns' referring to mistake, carelessness or ignorance, from

that of 'fraudulent returns' referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of Aznar, the Supreme Court ruled in favor of the CIR for an extension of 10 years to assess the taxpayer, thus:

> The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue Code should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) of the NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and **should be the one enforced.**
>
> There being undoubtedly false returns in this case, We affirm the conclusion of the respondent CTA that Section 332 (a) (now Sec. 22) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made. (Emphases ours)

51. It is, therefore clear from the statutory provision in Section 222 of the NIRC of 1997 in the three different case of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time within 10 years after the discovery of the (1) falsity, (2) fraud, (3) omission. The discrepancy in petitioner's return manifests an evident substantial under declaration which eloquently demonstrates the falsity or fraudulence of the VAT returns with an intent to evade the payment of tax. Respondent, could therefore, rightfully invoke Section 222 because her right to assess has not yet prescribed.

52. To put emphasis, the corresponding surcharge of 50% was imposed against petitioner for the alleged false return.

A. Petitioner is liable for deficiency Value-Added Tax (VAT) due from sales not subjected to income tax in the amount of ₱78,122.683.91. [*sic*]

53. Petitioner's tax liabilities for deficiency VAT assessment for the above mentioned audit findings were discussed extensively in petitioner's liability for deficiency income tax. Respondent thus repleads the same.

B. Petitioner is liable for deficiency Value-Added Tax (VAT) due from other income not subjected to VAT in the amount of ₱240,919,077.51.

54. Petitioner's tax liabilities for deficiency VAT assessment for the above mentioned audit findings were discussed extensively in petitioner's liability for deficiency income tax. Respondent thus repleads the same.

C. Petitioner is liable for deficiency Value-Added Tax (VAT) due from additional taxable sales amounting to ₱55,814,790.60.

55. Petitioner's tax liabilities for deficiency VAT assessment for the above mentioned audit findings were discussed extensively in petitioner's liability for deficiency income tax. Respondent thus repleads the same.

D. Petitioner is liable for deficiency Value-Added Tax (VAT) due from disallowed input tax from unsupported purchases in the amount of ₱9,487,778.75.

56. Petitioner's tax liabilities for deficiency VAT assessment for the above mentioned audit findings were discussed extensively in petitioner's liability for deficiency income tax. Respondent thus repleads the same.

E. Petitioner is liable for deficiency Value-Added Tax (VAT) due from disallowed input tax for failure to meet the invoicing requirements in the amount of ₱13,749,653.37.

57. Audit verification of petitioner revealed that purchase invoices/ official receipts evidencing input tax claimed did not meet the invoicing requirements as set forth under Section 113 in relation to Sections 110 and 237 of the Tax Code.

58. Section 113 of the Tax Code provides:

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

(A) Invoicing Requirements. - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter, or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) <u>A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); (Underscoring supplied)</u>

59. In relation, Section 110 of the Tax Code provides:

SEC. 110. Tax Credits. –

A. Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or <u>official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax</u> xxx (Underscoring supplied)

60. Based on the above quoted provisions of the Tax Code, it is indispensable that the sales invoice or official

receipt supporting a claim for input tax shall bare the needed information before the same can be applied against petitioner's output tax. Without such vital information, the invoices should not be allowed as proper support for an input tax credit.

F. Petitioner is liable for corresponding 50% surcharge for deficiency Value-Added Tax (VAT).

61. As fully discussed in petitioner's liability for deficiency income tax, the corresponding 50% surcharge is also imposed on petitioner for its liabilities for deficiency VAT for substantial underdeclaration in its return.

III. PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX (WE) IN THE TOTAL AMOUNT OF ₱773,385.29 AND THE CORRESPONDING INTEREST.

62. This audit finding was fully disclosed in petitioner's liability for income tax. Hence, the corresponding expanded withholding tax were [*sic*] assessed from such income payments.

IV. PETITIONER IS LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION (WC)) [*SIC*] IN THE TOTAL AMOUNT OF ₱185,021.32 AND THE CORRESPONDING INTEREST.

63. This audit finding was fully discussed in petitioner's liability for income tax. In addition, audit of petitioner revealed that there were excess withholding amounting to ₱135,402.44 which were not refunded to petitioner's employees. Hence, the corresponding withholding tax on compensation were assessed.

V. PETITIONER IS LIABLE FOR IMPROPERLY ACCUMULATED EARNINGS TAX IN THE AMOUNT OF ₱3,502,466.50 INCLUDING

THE CORRESPONDING SURCHARGE AND INTEREST.

64. Examination of petitioner's retained earnings account disclosed that it exceeded the allowable amount which can be retained. Hence, the improperly accumulated earnings tax is assessed pursuant to Section 29(A) of the Tax Code and implemented by Revenue Regulation(RR) No. 2-2001, as amended by Revenue Memorandum Circular (RMC) No. 35-2011.

65. Based on the foregoing, the finding of deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WC) and Improperly Accumulated Earnings Tax liabilities against petitioner for taxable year 2010 is proper in all respects with details as follows:

Kind of Tax	Amount of Liability (inclusive of interest and surcharge)
Income Tax	₱344,388,637.65
Value-Added Tax (VAT)	₱165,578,880.56
Expanded Withholding Tax (EWT)	₱1,507,783.29
Withholding Tax on Compensation	₱1,845,021.32
Improperly Accumulated Earnings Tax	₱3,502,466.50
Total Tax Liabilities	**₱516,822,789.32**

66. On a final note, the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands* can well be used as a guide, to wit:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments**.' (Emphasis ours)" *(Citations omitted)*

On July 7, 2016, a Notice of Pre-Trial Conference[13] was issued by this Court. Accordingly, on December 1, 2016 both the Pre-Trial Brief for the Petitioner[14] and Respondent's Pre-Trial Brief[15] were simultaneously filed by the parties.

Thereafter, on January 6, 2017, the parties filed their Joint Stipulation of Facts and Issues[16]. Consequently, a Pre-Trial Order[17] was issued by this Court on January 17, 2017, adopting the parties' stipulations and, with their conformity, deemed the pre-trial terminated.

Meanwhile, on January 9, 2017, petitioner filed a Motion to Commission an Independent Certified Public Accountant[18]. Petitioner prays[19] that Ms. Madonna Mia S. Dayego, Partner of Uy, Singson, Abella & Co., CPAs (USA & Co., CPAs) be commissioned as the independent certified public accountant (ICPA) for the present case pursuant to Section 5(a), Rule 12 in relation to Section 1 of Rule 13 of the Revised Rules of the Court of Tax Appeals.

In the Order[20] dated March 28, 2017, this Court found merit and granted petitioner's Motion. As such, Ms. Madonna Mia S. Dayego was appointed and commissioned as the ICPA for the present case.

During trial, petitioner presented as witnesses Ms. Rosalyn V. Vinzon[21], petitioner's Controller; and Ms. Madonna Mia S. Dayego[22], the court-commissioned ICPA, who both testified on direct examination by way of judicial affidavits.

After completing their respective testimonies, a Formal Offer of Evidence for the Petitioner[23] was filed on July 25, 2017. In the Resolutions dated November 6, 2017[24] and January 26, 2018[25],

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[13] Docket (vol. II), pp. 515-516.
[14] *Id.*, pp. 553-560.
[15] *Id.*, pp. 580-587.
[16] *Id.*, pp. 623-630.
[17] Docket (vol. III), pp. 1083-1092.
[18] *Id.*, pp. 1094-1074.
[19] Manifestation dated March 24, 2017, docket (Vol. III), pp. 1113-1135.
[20] Docket (vol. III), pp. 1140-1141.
[21] Judicial Affidavit of Rosalyn V. Vinzon (In Question and Answer Form) dated January 9, 2017, docket (vol. II), pp. 634-679.
[22] Judicial Affidavit of Madonna Mia S. Dayego (In Question and Answer Form) dated May 25, 2017, docket (vol. III), pp. 1160-1227.
[23] Docket (vol. III), pp. 1247-1268.
[24] *Id.*, pp. 1520-1523.
[25] *Id.*, pp. 1556-1558.

respectively, this Court admitted all of petitioner's exhibits. Hence, petitioner was deemed to have rested its case.

When called to present his case, respondent offered as witnesses Revenue Officers Joel M. Aguila[26] and Maria Gracielle Cecilia S. Anaban[27], who also both testified on direct examination by way of judicial affidavits.

On April 4, 2018, respondent filed his Formal Offer of Evidence[28]. In the Resolution[29] dated September 10, 2018, this Court admitted all of respondent's exhibits. Thereafter, the parties were given a period of thirty (30) days within which to submit their respective memoranda.

On November 9, 2018, a Memorandum for the Petitioner[30] was filed, while respondent, on the other hand, failed to file his memorandum as per Records Verification[31] report dated November 13, 2018.

Accordingly, in the Resolution[32] dated November 23, 2018, the present case was deemed submitted for decision.

THE ISSUES

The issues[33] submitted by the parties for this Court's resolution are as follows:

A.) Whether the Honorable Court has jurisdiction over the instant petition; and

B.) Whether petitioner is liable for the alleged deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation, and Improperly Accumulated Earnings Tax for taxable year

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[26] Judicial Affidavit of Revenue Officer Joel M. Aguila dated November 29, 2016, docket (vol. II), pp. 571-579.
[27] Judicial Affidavit of Revenue Officer Maria Gracielle Cecilia S. Anaban dated November 29, 2016, docket (vol. II), pp. 595-601.
[28] Docket (vol. III), pp. 1565-1575.
[29] *Id.*, pp. 1594-1596.
[30] *Id.*, pp. 1603-1684.
[31] *Id.*, p. 1685.
[32] *Id.*, p. 1686.
[33] Issues, JSFI, docket (vol. II), p. 624.

2010 in the amount of ₱516,822,789.32, inclusive of interest and penalties.

THIS COURT'S RULING

In the present case, petitioner primarily claims that the deficiency tax assessments are entirely invalid due to lack of due dates for the payment of petitioner's alleged tax liabilities in the Assessments Notices issued against petitioner. Finally, maintains that all the assessment issues have no basis in fact and law. Thus, according to petitioner, it is not liable for any deficiency tax for taxable year 2010.

On the other hand, respondent argues that the Court has no jurisdiction over the instant petition considering that it was filed out of time. Further, respondent contends that assuming without conceding that the court has jurisdiction over the instant petition, absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved his superior officers will not be disturbed since all presumptions are in favor of the correctness of tax assessments.

After due consideration, this Court finds merit in the present Petition for Review.

The Court has jurisdiction over the present case.

This Court shall first address the timeliness of filing the present Petition. Perforce, Section 228 of the NIRC of 1997, as amended, provides as follows:

> **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 preassessment notice shall not be required in the following cases:
>
> x x x

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

Apropos, the implementing rules, Revenue Regulations (RR) No. 12-99, specifically Section 3.1.5, clearly defines what is a disputed assessment, to wit:

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. xxx

x x x

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 Commissioner's 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**." (*Emphasis supplied*)

Evidently, based on Section 228 of the NIRC of 1997, as amended, petitioner has 30 days from receipt of the FLD-FAN within which to file its administrative protest. And, another 30 days from receipt of respondent's decision, or from the lapse of one hundred eighty (180) days, within which to file its Petition for Review with the Court of Tax Appeals (CTA).

In the present case, petitioner received the FLD-FAN[34] dated June 9, 2014, issued by Officer-in-Charge (OIC) – Assistant Commissioner Alfredo V. Misajon of the BIR's Large Taxpayers Service. Following Section 228 of the NIRC of 1997, as amended, petitioner had 30 days from June 9, 2014 or until July 9, 2014 within which to file its administrative protest. Thus, by filing a Protest Letter[35] on July 9, 2014, petitioner has timely complied with the first 30-day period required by the said provision.

Thereafter, on September 24, 2015 petitioner received a decision via FDDA[36] dated September 23, 2015 signed by OIC-Assistant Commissioner Nestor S. Valeroso of the BIR's Large Taxpayers Service. The FDDA informed petitioner that after considering the documents it submitted together with its protest, there was still found due of deficiency taxes in the total amount of ₱516,822,789.32, inclusive of interest and penalties, for taxable year 2010.

Again, Section 228 of the said Tax Code is clear that upon receipt of respondent's final decision on the disputed assessment, the taxpayer may file a petition for review with this Court within 30 days after receipt of the said decision.

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[34] Exhibit "P-3"; Exhibits "R-10" to "R-11-e", BIR records, pp. 796-799 and 748-753.
[35] Exhibit "P-4".
[36] Exhibits "P-5" to "P-5-16"; Exhibits "R-13" to "R14-e", BIR records, pp. 1567-1573.

However, the implementing rules of the said Section further provides that if the final decision was only rendered by respondent's duly authorized representative, the taxpayer is given the option of whether (1) to elevate its protest to the CIR upon receipt of denial of protest by the authorized representative, or (2) to directly appeal such denial to the Court of Tax Appeals, again, both within thirty (30) days from receipt of the denial of the protest.

Applying the foregoing to the present case, though an FDDA was received on September 24, 2015, it was, nonetheless, issued only by respondent's duly authorized representative – OIC-Assistant Commissioner Nestor S. Valeroso of the BIR's Large Taxpayers Service. As such, pursuant to Section 3.1.5 of RR No. 12-99, petitioner is given the option to either elevate the decision to this Court, or appeal the same to respondent; bearing in mind that both must be done within 30 days from receipt of the denial of the protest. Thus, counting 30 days from September 24, 2015, petitioner had until October 24, 2015 within which to file appeal either to the Court or respondent. By choosing to appeal the FDDA to respondent via a Motion for Reconsideration[37] on October 26, 2015[38], petitioner has timely complied with the second 30-day period required by the said provision.

Accordingly, the FDDA issued by OIC-Assistant Commissioner Nestor S. Valeroso cannot therefore be considered yet as final, executory and demandable.

Then, on February 17, 2016 petitioner received a Letter[39] from respondent dated February 9, 2016 denying its Motion for Reconsideration. Hence, petitioner has 30 days or until March 18, 2016 within which to file an appeal before this Court. By filing the present Petition for Review, via registered mail, on March 18, 2016, petitioner is deemed to have complied within the period prescribed by law to within which to file the same.

All told, this Court has jurisdiction over the present case. Now, on to the substantive issue. ge

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[37] Exhibit "P-6".
[38] October 24, 2015 falls on a Saturday. Thus, petitioner has until the next working day to file its Motion for Reconsideration with respondent.
[39] Exhibit "P-7"; Exhibit "R-16", BIR records, p. 2066.

The assessments issued by respondent is a nullity in the absence of a definite due date for payment by petitioner.

Settled is the rule that, the issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment.[40] This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.[41]

However, not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. 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.[42]

In the present case, the last part of the subject FLD[43] dated June 9, 2014 states that the due dates for payment were supposedly reflected in the attached assessment notice, thus:

> "The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX A of this letter.
>
> The 20% interest per annum has been imposed pursuant to the provision of Section 249(B) of the National Internal Revenue Code of 1997.
>
> The twenty five percent (25%) and fifty percent (50%) surcharges have been imposed pursuant to the provisions of Section 248 of the National Internal Revenue Code of 1997.

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[40] *Commissioner of Internal Revenue vs. Dominador Menguito,* G.R. No. 167560, September 17, 2008.

[41] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.,* G.R. No. 215957, November 9, 2016, citing *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.,* G.R. No. 128315, June 29, 1999.

[42] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.,* G.R. No. 128315, June 29, 1999.

[43] Exhibit "P-3"; Exhibit "R-10", BIR records, pp. 796-799.

The compromise penalty was imposed pursuant to Sections 250 and 255 of the Tax Code, with reference to RMO No. 1-90, as amended by RMO No. 19-2007.

In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) **within the time shown in the enclosed assessment notice**. xxx" *(Emphasis supplied)*

However, careful scrutiny of the enclosed Audit Result/ Assessment Notices[44] referred to in the FLD reveals that there is no definite period or date certain within which petitioner must pay the alleged deficiency tax assessments. Remarkably, the due dates on the enclosed Audit Result/Assessment Notices were left blank. This fact was confirmed by respondent's own witnesses, Revenue Officers Joel M. Aguila and Ma. Gracielle Cecilia S. Anaban, during their respective cross-examinations, to wit:

"x x x

ATTY. YUMANG:

Q: In the case of this assessment, would you tell the Honorable Court how many Assessment Notices are there?

MR. AGUILA:

A: 6.

ATTY. YUMANG:

Q: And these six (6) Assessment Notices embrace all the assessments for all the tax types?

MR. AGUILA:

A: For the FLD, Sir.

ATTY. YUMANG:

[44] *See* attachments in Exhibit "P-3"; Exhibits "R-11" to "R-11-e", BIR records, pp. 748-753.

Q: In the FLD?

MR. AGUILA:

A: In the Formal Letter of Demand, yes, Sir.

ATTY. YUMANG:

Yes.

Now, I want you to look at the portion of the Assessment Notice where it indicates the due date.

Q: So, you have seen all the boxes, all the due dates on all these Assessment Notices?

MR. AGUILA:

A: Yes, Sir.

ATTY. YUMANG:

Q: And you will agree with me, Mr. Witness, that there is no due date indicated in those boxes denominated as due dates?

MR. AGUILA:

A: Yes, Sir.

x x x."[45] *(Emphasis supplied)*

"x x x

ATTY. YUMANG:

Q: So, these are the Assessment Notices attached to the FDDA?

MS. ANABAN:

A: Yes, Sir.

[45] Transcript of Stenographic Notes (TSN) dated March 20, 2018, pp. 10-12.

ATTY. YUMANG:

Q: And I want you to confirm, Ms. Witness, that in the space providing for the due date there are no entries in all these Assessment Notices for all the tax types?

MS. ANABAN:

A: Yes, Attorney, there was no entry.

ATTY. YUMANG:

Q: That would be all, your Honors.

x x x."[46] *(Emphasis supplied)*

Admittedly, the due dates on the enclosed Audit Result/Assessment Notices for all the assessment items were left unaccomplished. In the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[47], the Supreme Court cancelled the Final Assessment Notice as well as the Audit Result/Assessment Notices for failure to contain a definite period for payment of the tax assessed, reasoning as follows:

> "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> x x x
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.

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[46] TSN dated March 20, 2018, p. 38.
[47] G.R. No. 215957, November 9, 2016.

> Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment: x x x."

Apparently, the Supreme Court ruled that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue thereon.[48] Accordingly, the Supreme Court held that the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.

Applying the foregoing pronouncement by the Supreme Court, the subject FLD/FANs in the present case are likewise invalid for failure to demand payment of taxes within a prescribed period. Consequently, the Court deems it unnecessary to pass upon the remaining issues raised in this Petition.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's deficiency assessments for IT, VAT, EWT WTC, and IAET for taxable year 2010 issued against petitioner in the total amount of ₱516,822,789.32, inclusive of interest and penalties, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

On Leave
CIELITO N. MINDARO-GRULLA
Associate Justice

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[48] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*, G.R. No. 128315, June 29, 1999.

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice