REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LKY PROPERTY HOLDINGS, INC., represented by MR. WILBERT T. LEE, Petitioner,	CTA CASE NO. 9066
	Members:
-versus-	
HON. KIM HENARES in her capacity as COMMISSIONER OF INTERNAL REVENUE, and ESMERALDA TABULE, in her capacity as Revenue Regional Director of Revenue Region No. 10, Legazpi City, Respondents.	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, JJ.
	Promulgated: DEC 14 2017 4:20 p.m.

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DECISION

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

In this Petition for Review dated May 14, 2015, petitioner LKY Property Holdings, Inc., prays to reverse the ruling of respondent Commissioner of Internal Revenue (CIR) in the Letter dated April 28, 2015, as well as the denial of its Request for Reconsideration of March 5, 2015 in the Letter dated March 18, 2015, both issued by the other respondent, Regional Director Esmeralda M. Tabule.

Petitioner also seeks to nullify the assessment issued against it for deficiency capital gains tax (CGT) and documentary stamp tax (DST) for the year 2007, and the Warrant of Distraint and/or Levy issued for the collection of the said deficiency taxes.

Petitioner is a domestic corporation with Securities and Exchange Commission (SEC) Registration No. IS095-000067. Its principal office is located at LKY Central Arcade, Magsaysay Street, Sorsogon City.

On the other hand, respondents Kim Henares and Esmeralda Tabule were, at the time of the filing of the instant case, the Commissioner of Internal Revenue (CIR) and the Regional Director of Revenue Region No. 10, Legazpi City, of the Bureau of Internal Revenue (BIR), the government agency tasked to assess and collect all national internal revenue taxes, fees and charges.

On May 21, 2007, petitioner and Mayon International Hotel, Inc. (MIHI) executed a Deed of Absolute Sale[1] for the latter's sale of a hotel facility in Legazpi City known as Mayon International Hotel in favor of petitioner.[2]

In the Deed of Absolute Sale, MIHI and petitioner stipulated on the payment of taxes, fees and other charges pertinent to the sale and transfer of the property sold to the petitioner, in this wise:

> 2. That LKY PROPERTY HOLDINGS, INC. shall advance the payment for the corresponding Capital Gains Tax and Documentary Stamp taxes that may fall due by virtue of this sale, and which amount shall be deducted from the said total purchase price; and the expenses of the Registration Fees and Transfer Fees shall be for the account of LKY PROPERTY HOLDINGS, INC.;[3]

The Capital Gains Tax (CGT) Return with PNB BTR-BIR Payment Slip[4], showing payment of CGT in the amount of P1,394,040.00, and DST Declaration/Return with PNB BTR-

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[1] Exhibits "P-4", "P-4-A", and "P-4-B", docket, pp. 352-354.
[2] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 279.
[3] Exhibit "P-4-A", docket, p. 353.
[4] Exhibits "P-5" and "P-5-A", docket, pp. 356-358.

BIR Payment Slip[5], showing payment of DST in the amount of P348,510.00, were filed on October 6, 2008.

Subsequently, the BIR, through respondent Regional Director Esmeralda Tabule, issued a Preliminary Assessment Notice[6] (PAN) dated November 6, 2014 with Details of Discrepancies (Assessment No. 067-07-004-201-934), assessing petitioner for deficiency CGT of P9,853,482.21 and DST of P2,473,352.24 or the total amount of P12,326,834.45 for the year 2007.[7] Petitioner received the PAN, with attached Details of Discrepancies, on November 29, 2014.[8]

On December 15, 2014[9], petitioner filed its Protest against the assessment through a Letter dated December 9, 2014.

In a Letter dated January 26, 2015,[10] with attached Formal Letter of Demand (FLD) and Details of Discrepancies[11], both dated December 3, 2014, and received by petitioner on February 28, 2015[12], respondent Tabule denied petitioner's protest against the PAN.

On March 10, 2015, petitioner filed a Request for Reconsideration dated March 5, 2015[13] addressed to respondent Tabule, again praying for the cancellation and setting aside of subject assessment.

On March 27, 2015, Revenue District Office (RDO) No. 67, Legazpi City, issued a Preliminary Collection Letter[14] against petitioner which it subsequently recalled in a Letter[15]

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[5] Exhibits "P-6" and "P-6-A", docket, pp. 360-361.
[6] Exhibit "P-7", docket, pp. 366-369; Exhibit "R-6", BIR Records, pp. 206-209.
[7] Par. 3, Admitted Facts, JSFI, docket, p. 279.
[8] Par. 11, Petition for Review, docket, p. 4.
[9] Exhibit "P-8", docket, pp. 372-374.
[10] Exhibits "P-9" and "P-9-A", docket, pp. 375-376.
[11] Exhibits "P-10" and "P-10-A", docket, pp. 377-380; Exhibit "R-8", BIR Records, pp. 313-316.
[12] Par. 13, Petition for Review, docket, p. 6. However, Exhibit "R-8" shows that the Formal Letter of Demand was received by a certain Agnes E. Pontuguez on February 12, 2015.
[13] Exhibits "P-11" to "P-11-F", docket, pp. 381-387.
[14] Exhibits "P-12" and "P-12-A", docket, pp. 388-389.
[15] Exhibit "P-13", docket, p. 391.

dated April 13, 2015, together with the Warrant of Distraint and/or Levy dated March 27, 2015.

On March 31, 2015[16], petitioner received the assailed Letter[17] dated March 18, 2015 of respondent Tabule, denying its Request for Reconsideration and demanding anew the payment of the assessed deficiency CGT and DST.

On April 21, 2015, petitioner appealed to respondent CIR the decision of respondent Tabule in a Request for Reconsideration[18] dated April 6, 2015.

On May 13, 2015[19], petitioner received a Final Notice Before Seizure[20] dated May 12, 2015 issued by RDO No. 67. On even date[21], petitioner received respondent CIR's Letter[22] dated April 28, 2015, dismissing petitioner's appeal.[23]

Hence, the present Petition for Review.

In their Answer[24], posted on August 20, 2015 and received by the Court on August 28, 2015, respondents maintain that the assessment for CGT and DST issued against petitioner is correct. While CGT and DST under the law are normally shouldered by the seller, such is subject to exceptions and stipulation by the parties, as in this case. When petitioner purchased the subject hotel from MIHI, the parties stipulated that the CGT and DST would be for the account of petitioner. Hence, petitioner is the proper party to be assessed for any deficiency in CGT and DST arising from the said sale transaction. This and the other factual and legal bases of the assessment were fully expounded in the Preliminary Assessment Notice with attached Details of Discrepancies, as well as in the Formal Letter of Demand with attached Details of Discrepancies issued to petitioner.

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[16] Par. 15, Petition for Review, docket, p. 15.
[17] Exhibits "P-3" to "P-3-E", docket, pp. 346-351.
[18] Exhibits "P-14" to "P-14-F", docket, pp. 392-398.
[19] Par. 19, Petition for Review, docket, p. 21.
[20] Exhibit "P-15", docket, p. 403.
[21] Par. 20, Petition for Review, docket, p. 21.
[22] Exhibit "P-2", docket, p. 345.
[23] Par. 4, Admitted Facts, JSFI, docket, p. 280.
[24] Docket, pp. 102-111.

Further, as the instant case involves a false or fraudulent return, respondents had ten (10) years to assess petitioner for any deficiency, making the subject assessment timely issued.

Finally, with the presumption of correctness in favor of the assessment, it is incumbent upon petitioner to prove its allegations.

On February 23, 2016, the Court issued a Pre-Trial Order[25] after the parties filed their Joint Stipulation of Facts and Issues[26] thereby terminating the Pre-Trial Conference.

In support of its case, petitioner presented its President and CEO and lone witness, **Wilbert T. Lee.**[27]

He testified that petitioner and MIHI entered into a contract of sale involving a hotel facility in Legazpi City with petitioner as the buyer and MIHI as the seller. While the parties in the contract stipulated that MIHI shall shoulder the payment of CGT and DST, nonetheless as part of the consideration for the purchase, petitioner would pay in advance to the seller the amount for the payment of CGT and DST. MIHI thereafter made the corresponding declaration, and paid the CGT and DST.

He further declared that on November 29, 2014, or five (5) years after the payments of CGT and DST by MIHI, respondent Tabule issued a PAN assessing petitioner for deficiency CGT and DST. Petitioner protested the PAN in a Letter dated December 9, 2014 but it was denied by respondent Tabule in her Letter dated January 26, 2015, received on February 28, 2015.

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[25] Docket, pp. 287-292.
[26] Docket, pp. 279-281.
[27] Minutes of the Hearing dated March 28, 2016, docket, p. 325; Exhibit P-16 (Judicial Affidavit of Mr. Wilbert T. Lee dated October 12, 2015), docket, pp. 404-413 and Exhibit P-17 (Supplemental Judicial Affidavit of Mr. Wilbert T. Lee dated February 24, 2016), docket, pp. 414-418; with cross examination, TSN dated March 28, 2016.

Petitioner filed another protest denominated as a Request for Reconsideration, however, it was likewise denied by respondent Tabule.

Before petitioner could appeal the denial of its protest, it received from RDO No. 67 of Legazpi City a Preliminary Collection Letter (PCL) with Warrant of Distraint and/or Levy (WDL) which was later recalled.

After the recall of the PCL and WDL, petitioner appealed the denial of its Request for Reconsideration by respondent Tabule to respondent CIR. The said appeal was denied by the latter in her Letter dated April 28, 2015.

On the same day it received the letter of denial, petitioner received a Final Notice Before Seizure in connection with the subject assessment prompting petitioner to elevate the matter to this Court.

After petitioner rested, respondents presented Revenue Officer **D'Joanna M. Diamante** of the BIR Revenue Region No. 10, Assessment Division in Legazpi City, as their lone witness.[28]

She testified that she reviewed the audit conducted in this case by another revenue officer and she found petitioner liable for deficiency CGT and DST on its purchase of a hotel facility from MIHI.

Her review revealed that the actual zonal value of the property sold, per BIR website, was P5,250.00 per square meter, or P72,564,250.00 and not P50,000,000.00, the tax base used in the computation of the CGT and DST by the taxpayer. She is however not aware of the reason for the use of the P50,000,000.00 in the computation of the CGT and DST nor its details. She further testified that the zonal valuation of P72,564,250.00, should have been the tax base

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[28] Minutes of the Hearing dated August 15, 2016, docket, p. 459; Exhibit R-10 (Judicial Affidavit of Revenue Officer D'Joanna M. Diamante dated June 15, 2016), docket, pp. 443-448; with cross examination, TSN dated August 15, 2016.

for purposes of computing the taxes due on the transaction as it was higher than the property's selling price of 20 million and its fair market value of P33,234,000.00.

The witness opined that it is the seller, like MIHI, who generally shoulders the CGT and DST as in fact, per BIR Record, it was MIHI who filed the DST Declaration Return with the BIR. However, evident from Deed of Sale executed by the parties that petitioner assumed the payment of the CGT and DST. These facts were written in the Memorandum dated May 19, 2009 which she prepared together with computation sheet.

On November 6, 2014, she issued a Preliminary Assessment Notice (PAN) with Assessment Notice No. 067-07-004-201-934, copies of which were sent to the registered addresses of petitioner reflected in the BIR database, i.e. Sorsogon City and Greenhills, San Juan.

There being no protest filed by petitioner against the PAN, she prepared a Formal Letter of Demand (FLD) dated December 3, 2014 and sent it to the registered address of petitioner in Greenhills, San Juan. However, it was returned by the post office unserved. This prompted her to personally serve another copy of the same FLD at the other registered address of petitioner in Sorsogon City on February 12, 2015. It was received by Agnes E. Pontuquez, who was authorized to receive it in behalf of petitioner. Another copy of the FLD was sent by registered mail under Registry Receipt No. 15-161 to the Sorsogon City address of petitioner and it was received on February 25, 2015 also by Agnes E. Pontuquez.

Respondents formally offered all its exhibits which were admitted in the Resolution[29] dated October 14, 2016.

The case was submitted for decision on December 14, 2016.[30]

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[29] Docket, pp. 482-483.
[30] Resolution dated December 14, 2016, docket, p. 520.

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STATEMENT OF ISSUES

The parties submitted the following issues[31] for the determination of the Court.

Main Issue:

Whether petitioner is liable to the amount of ₱12,462,256.53 representing deficiency Capital Gains Tax and Documentary Stamp Tax for taxable year 2007, plus 50% surcharge and 20% deficiency and delinquency interest for late payment until fully paid.

Corollary Issues:

1. Whether the period to assess has prescribed, taking into consideration that the case involves fraud assessment under Sec. 222 (a) of the Tax Code.

2. Whether the buyer may be held liable for Transfer Taxes, in this case the Capital Gains Tax and Documentary Stamp Tax, in a contract of sale of real property.

DISCUSSION/RULING

In her Letter[32] dated January 26, 2015 and Letter[33] dated March 18, 2015, respondent Tabule held petitioner liable for deficiency CGT and DST in the total amount of P12,462,256.53[34] on the basis of the parties' agreement in the Deed of Absolute Sale dated May 21, 2007, particularly, item number 2 of the "OTHER OBLIGATIONS" portion thereof stating that petitioner, as the buyer, "shall advance the payment for the corresponding Capital Gains Tax and Documentary Stamp taxes that may fall due by virtue of this sale".

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[31] Issues to be Tried or Resolved, JSFI, docket, p. 280.
[32] Exhibits "P-9" and "P-9-A", docket, pp. 375-376.
[33] Exhibits "P-3-B" to "P-3-C", docket, pp. 348-349.
[34] Exhibit "P-10", docket, pp. 377-378; Exhibit "R-8", BIR Records, pp. 315-316.

To back-up her stance, respondent Tabule cites (1) BIR Ruling {DA-(FIT-005)096} dated June 16, 2010, which states that: "in cases of sale, exchange or disposition by a corporation of lands and/or buildings classified as capital assets/ordinary assets, the burden of paying the 6% capital gains tax/creditable withholding tax rests upon the seller/transferor because the latter is the one who realized the capital gains tax/ordinary income subject to tax unless there is a stipulation to the contrary". Respondent Tabule likewise invokes the principle allegedly laid down in the case of *Tomas K. Chua vs. Court of Appeals and Encarnacion Valdez-Choy* (G.R. No. 119255, April 9, 2003), that "the buyer can retain the amount for the capital gains tax and pay it upon authority of the seller, or the seller can pay the tax, depending on the agreement of the parties".

In rejecting the foregoing arguments, petitioner states that as the buyer/transferee, it is not liable to pay the CGT and DST in relation to its purchase of a hotel facility from MIHI. The burden of paying the 6% CGT as well as the DST rests upon the MIHI, the seller/transferor, in accordance with law, in the case of CGT, and the terms and conditions in the Deed of Absolute Sale they executed on May 21, 2007, in the case of DST.

According to petitioner, the assessment issued against it by respondent Tabule is premised on her erroneous interpretation of the stipulation in the subject Deed of Absolute Sale stating that it "shall advance the payment for the corresponding Capital Gains Tax and Documentary Stamp taxes that may fall due by virtue of this sale."

Petitioner denies that it agreed to shoulder the payment of CGT and DST. According to petitioner, the stipulation was for it to advance to MIHI the amount to cover such taxes but MIHI would still be responsible for the same. Allegedly, it only agreed to shoulder the expenses for transfer and registration of the hotel facility in its name[35].

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[35] Exhibit "P-4-A", docket, p. 353.

It has been ruled that a contract must be interpreted from the language of the contract itself, according to its plain and ordinary meaning. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulations shall control[36].

Following the foregoing tenet, it is clear from the Deed of Absolute Sale of May 21, 2007 executed by and between MIHI, as seller, and petitioner, as buyer, that petitioner shall merely advance the amount for the payment of the CGT and DST to MIHI who shall still bear the burden of paying the said taxes. The amount advanced by petitioner shall be deducted from the total purchase price that petitioner would pay to MIHI. By no stretch of the imagination could such stipulation be construed to shift the liability to pay the corresponding CGT and DST from the sale transaction from MIHI to petitioner.

Hence, by agreement of the parties, MIHI, as the seller, shall bear the burden of paying the CGT and DST in connection with its sale of a hotel facility in favor of petitioner, the buyer, only that the latter shall advance the amount necessary for such payment[37].

In any event, the parties' agreement is in accord with Section 27(D)(5) of the National Internal Revenue Code of 1997, as amended, which provides, as follows:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
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> xxx xxx xxx
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> (D) *Rates of Tax on Certain Passive Incomes.* –

[36] Licomcen Incorporated vs. Foundation Specialists, Inc., G.R. No. 167022, April 04, 2011 and Foundation Specialists, Inc., Vs. Licomcen Incorporated, G.R. NO. 169678.

[37] Article 1306 of the Civil Code of the Philippines provides that "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

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> (5) *Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings.* - A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings.

The foregoing provision defines CGT is a tax imposed on the gains presumed to have been realized by the seller/transferor from the sale, exchange, or disposition of lands and/or buildings treated as capital assets. Thus, the party liable to pay the CGT is the seller or the person who is presumed to have realized a gain or profit from the sale, exchange or disposition of the land and/or building treated as capital assets.

In the case of *Tomas K. Chua vs. Court of Appeals and Encarnacion Valdes-Choy*[38] cited by respondents themselves, it was held that as far as the government is concerned, the CGT remains a liability of the seller since it is a tax on the seller's gain from the sale of the real estate.

It therefore follows that the burden to pay any deficiency CGT arising from the Deed of Absolute Sale executed by the parties in this case falls on MIHI as the seller, who is presumed to have realized gains or profit from the sale and not on petitioner, the buyer of the hotel facility.

DST, on the other hand is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. A DST is actually an

[38] G.R. No. 119255, April 9, 2003.

excise tax as it is imposed on the transaction rather than on the document. It is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[39]

Section 173 of the NIRC of 1997, as amended, expressly provides that DST shall be paid by the person making, signing, issuing, accepting or transferring the obligation, right or property, to wit:

> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same** wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax. (*Emphasis supplied*)

Per the above provision, DST may be levied and collected from and paid by any person making, signing, issuing, accepting, or transferring obligation, right or property. *A fortiori*, the burden of tax could either be upon the buyer or the seller.

Corollary to the foregoing is Revenue Regulations (RR) No. 9-2000[40], which specify the persons liable for DST, and

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[39] *Philippine Banking Corporation (now Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009.
[40] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

who, under certain conditions, shall be responsible for the payment/remittance thereof to the BIR, thus:

> SECTION 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax*. –
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> (a) *In General*. – The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "*the person making, signing, issuing, accepting, or transferring*" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.**
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> (b) *Exception*. – Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax. (*Emphasis supplied*)

As earlier stated and pursuant to the foregoing provision, any of the parties to a taxable transaction may be liable for DST. Therefore, the BIR may levy and collect DST from any of the parties to a taxable transaction. But again, the parties may agree as to who shall take the burden of paying the DST or any portion thereof and such agreement shall be binding upon them, subject to the exception that if one of the parties is exempt from the tax imposed, the other party not covered by such exemption shall be directly liable for the tax.

Note that in the present case, the parties had stipulated that the DST shall be for the account of MIHI only, that the amount for the payment of such tax shall be advanced by petitioner deductible from the total purchase price. The agreement being binding upon the parties, the obligation to pay DST rests upon the shoulder of MIHI.

Assuming for the sake of argument that no such agreement exists, before petitioner may be held liable for any deficiency DST, the requisites of due process must first be complied with.

Under Section 228 of the Tax Code, the taxpayer must be informed in writing of the law and the facts on which the assessment is made, lest the assessment is void. x x x 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 the legal provision indicates the mandatory nature of the requirements laid down therein.[41]

Thus, it is elementary under the due process requirement that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[42]

Undeniably, a PAN[43] was issued in this case.

Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, provides that "[I]f the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

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[41] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.
[42] Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006.
[43] Exhibit P-7, docket pp. 366-369.

By virtue of the above provision and the requirements of due process in Section 228 of the National Internal Revenue Code (NIRC), as amended, it is mandatory that a final assessment notice (FAN) be issued after the issuance of the PAN.

While the FLD, with Details of Discrepancies[44], was issued on December 3, 2014 and received by petitioner, no FAN was ever received by petitioner.

Thus, in the absence of a FAN, the subject assessment for CGT and DST against petitioner is void.

It may be argued that the FLD issued and received by petitioner may be deemed as the final assessment in compliance with the due process requirements of Section 228 of the NIRC, as amended. However, in the case of *Commissioner of Internal Revenue vs. Fitness By Design, Inc.,*[45] the Supreme Court elucidated on what a formal assessment notice must contain, to wit:

> The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. xxx
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> The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.
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[44] Exhibits "P-10" and "P-10-A", docket, pp. 377-380; Exhibit "R-8", BIR Records, pp. 313-316.
[45] G.R. No. 215957, November 9, 2016.

A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."

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The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay**.

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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.

First, **it lacks the definite amount of tax liability for which respondent is accountable**. **It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.** An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for**

the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.* (Emphasis Supplied)

Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** 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:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to

> present his or her case and produce evidence for substantiation. (*Emphasis supplied, citations omitted*)

As discussed above, a final assessment should contain the law and the facts upon which the assessment is based, as well as the exact amount due and demandable, with demand for payment within a prescribed period. In the cited case, the final assessment was invalidated for not containing the definite amount of tax liability for which the taxpayer is accountable, and there is no demand for payment of the tax due. Not only was there no due date for the payment of the tax, but there was also a statement that "the tax due is still subject to modification, depending on the date of payment," further emphasizing the lack of due date and that the assessed amount is not final.

A careful scrutiny of the subject FLD revealed that it is not a valid final assessment as it lacks the definite amount of tax liability for which petitioner is accountable, and a date certain for payment of the alleged tax liability by the taxpayer.

The subject FLD reads as follows:

> *Please note that the interest and the total amount due will have to be adjusted if paid beyond 1-5-2015.

Thus, the FLD in this case lacks a definite amount of tax liability for which petitioner is accountable, as the amount due may still be adjusted depending on the date of payment.

Without a definite amount of tax due, the FLD cannot be regarded as a demand for payment, which a final assessment notice should contain. Although the FLD provides for the computation of petitioner's tax liabilities, the amount remains indefinite for it still subject to modification.

Moreover, the subject FLD has no due dates rendering respondents' alleged demand for payment inutile. The last paragraph of the subject FLD states:

> In view thereof, you are requested to pay your aforesaid deficiency capital gains and documentary stamp tax liabilities through the duly authorized agent bank in which you are enrolled **within the time shown in the enclosed assessment notice**. (*Emphasis supplied*)

Although the subject FLD indicates that the due dates for payment of the taxes are shown in the enclosed assessment notice, the alluded assessment notice or FAN was not served on petitioner.

Without a valid final assessment, the requirements of due process were not complied with, making the subject assessment for CGT and DST issued against petitioner void.

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 within a prescribed period, thereby signalling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[46]

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[47]

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[46] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.
[47] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[48]

WHEREFORE, the Petition for Review dated May 14, 2015 filed by LKY Property Holdings, Inc., is hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated December 3, 2014, finding petitioner liable for deficiency capital gains tax and documentary stamp tax for taxable year 2007 in the total amount of P12,462,256.53, inclusive of surcharge and interest, is **CANCELLED** for being a void assessment. Consequently, the Warrant of Distrant and/or Levy issued in relation thereto is likewise void and hereby ordered **CANCELLED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[48] *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice