REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

WESTERN GUARANTY CORPORATION, *Petitioner,*	**CTA Case No. 9338**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 24 2020; 9:00 A.M.

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DECISION

MANAHAN, *J.*:

This *Petition for Review* filed by Western Guaranty Corporation (WGC) against the Commissioner of Internal Revenue (CIR) prays that its *Letter-Protest* and *Motion for Reconsideration* be given due course and the *Final Decision on Disputed Assessment* issued by respondent on March 18, 2016 finding petitioner liable for deficiency value-added tax (VAT) and documentary stamp tax (DST), interests, compromise penalty and surcharges for taxable year 2011 in the total amount of ₱53,434,094.30 be set aside.[1]

THE PARTIES

Petitioner WGC is a domestic corporation duly organized and existing under Philippine laws, with principal office at Suite 508 BPI Office Condominium, Plaza Cervantes, Binondo, Manila, Philippines.[2]

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[1] Docket, CTA Case No. 9338, Vol. 2, Summary of the Case, Pre-Trial Order dated December 14, 2016, p. 641.
[2] *Id.*, Vol. 2, Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), p. 632.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with office address at the BIR, Agham Road, Diliman, Quezon City, Philippines.[3]

THE FACTS

Respondent issued the *Letter of Authority* (LOA) No. 125-2013-00000103/SN eLA201100007176 dated May 29, 2013,[4] authorizing Revenue Officer Agnes Sison and Group Supervisor Edenny Lingan of the BIR's Large Taxpayers Regular Audit Division 2, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period covering January 1, 2011 to December 31, 2011.

On October 22, 2014, petitioner received the *Preliminary Assessment Notice* (PAN) dated October 21, 2014,[5] finding due from petitioner deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding VAT (FWVAT), and Documentary Stamp Tax (DST), including interests and compromise penalties, for taxable year 2011, in the total amount of ₱82,543,396.96, broken down as follows:

Income tax	₱24,503,517.64
VAT	24,211,553.48
Percentage tax	10,263.14
EWT	5,597,482.91
WTC	5,823,444.04
FVAT	78,367.01
DST	22,318,768.74
Grand Total	**₱82,543,396.96**

On November 5, 2014, petitioner filed a letter rebutting the findings stated in the PAN.[6]

Subsequently, on March 10, 2015, petitioner received respondent's *Final Assessment Notice* (FAN) dated March 5, 2015 with attached *Assessment Notices* and *Details of*

[3] Docket, Vol. 2, Par. 2, JSFI, p. 632.
[4] *Id.*, Vol. 2, Pars. 3 and 4, JSFI, p. 632; Exhibit "R-1", BIR Records, p. 257.
[5] *Id.*, Vol. 2, Pars. 3 and 4, JSFI, p. 632 to 633; Exhibit "P-2", BIR Records, pp. 539 to 548.
[6] *Id.*, Vol. 1, Petition for Review, p. 13; Docket, Vol. 2, Memorandum for the Petitioner, pp. 804-805.

Discrepancies, all dated March 5, 2015,[7] assessing petitioner with deficiency IT, VAT, percentage tax, EWT, FWVAT, and DST, including interests and compromise penalties, for taxable year 2011, in the total amount of ₱68,415,353.83, computed as follows:

Income tax	₱ 14,040,158.27
VAT	25,305,319.47
Percentage tax	8,654.01
EWT	5,655,711.11
FWVAT	81,786.57
DST	23,323,724.40
Grand Total	**₱68,415,353.83**

On March 16, 2015, petitioner filed a Request for Reconsideration/Reinvestigation to the said FAN.[8]

On March 29, 2016, petitioner received the FDDA with *Details of Discrepancies* and *Audit Results/Assessment Notices,* all dated March 18, 2016,[9] finding petitioner liable for deficiency VAT and DST, compromise penalty, interests and surcharges for EWT and FWVAT for taxable year 2011 in the total amount of ₱53,434,094.30, broken down as follows:

VAT	₱ 31,745,790.74
DST	20,687,133.33
EWT	989,144.86
FWVAT	12,025.37
Grand Total	**₱53,434,094.30**

The IT and percentage tax were not anymore included in the abovementioned FDDA because of the adjustments made by respondent and payment made by petitioner, respectively.[10] Petitioner also made a series of partial payments on several deficiency taxes in the FAN.[11]

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[7] Docket, Vol. 2, Pars. 3 and 4, p. 632 to 633; Exhibits "P-4" and "R-5", "R-6", "R-6-1", "R-6-2", "R-6-3", "R-6-4", "R-6-5", and "R-6-6", BIR Records, pp. 599 to 606.
[8] *Id.*, Vol. 1, Petition for Review, p. 13; Docket, Vol. 2, Memorandum for the Petitioner, p. 805.
[9] *Id.*, Vol. 2, Pars. 3 and 4, p. 632 to 633; Exhibits "P-1" and "R-8", Exhibits "R-9", "R-9-1", "R-9-2", and "R-9-3", BIR Records, pp. 768 to 777.
[10] BIR Records, p. 756.
[11] *Id.*

Petitioner filed the instant *Petition for Review* on April 28, 2016.[12] The instant case was initially raffled to this Court's Third Division.

Respondent filed his *Answer* on June 20, 2016,[13] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent repleads and adopts the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

THE FORMAL ASSESSMENT NOTICE IS VALID FOR HAVING INFORMED PETITIONER OF FACTUAL AND LEGAL BASES OF THE ASSESSMENT.

5. Petitioner was properly informed in writing of the law and the facts on which the assessment was based through the issuance and service of the Preliminary Assessment Notice (PAN), Formal Assessment Notice and Final Assessment Notice (FAN), and Final Decision on Disputed Assessment (FDDA).

6. Petitioner's allegation that assessment has merely stated a factual statement without legal basis is clearly bereft of merit.

7. Section 228 of the Tax Code provides the requirements for a valid assessment, viz:

> **SEC. 228. Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings x x x x
>
> x 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.

8. Petitioner contends that the FDDA failed to explain how it arrived at the computation of the amounts stated in the assessment, and that the FAN and FDDA provide summaries of the discrepancies without any details.

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[12] Docket, Vol. 1, pp. 11 to 19.
[13] *Id.*, Vol. 1, pp. 59 to 69.

However, such contentions are clearly misplaced and improper.

9. The Details of Discrepancies of the Final Decision on Disputed Assessment (FDDA) provides the details that petitioner is looking for; a copy of the Final Decision on Disputed Assessment (FDDA) is attached hereto as **Annex '1'**, and made integral part hereof (the original included in the BIR Records). The factual and legal bases on which the assessments for value-added tax (VAT), and documentary stamp tax (DST) were explained as follows:

> **VALUE-ADDED TAX**
>
> **<u>Premium Receipts/Collection Not Subjected to VAT per Audit - P125,849,554.62</u>**
> Verification of Premium Receipts/Collection per your IC report compared to Premiums subjected to VAT per your VAT Returns disclosed untaxed receipts or P125,849,554.62, on which 12% Value-added Tax was assessed pursuant to Section 108 of the Tax Code as amended. Computation is shown hereunder:
> X x x x
>
> **<u>Unallowable Input Tax Allocable to Exempt Sales</u>**
> Input tax allocable to exempt sales is disallowed pursuant to Section 110(A)(3) of the Tax Code as amended.
> x x x x
>
> **DOCUMENTARY STAMP TAX**
>
> **<u>DST on Untaxed Transactions Net of Deficiency DST Installments - P9,283,208.09-</u>**
> Analysis of accounts per your IC Reports/Financial Statement/Income Tax Return against your DST returns disclosed various transactions not subjected to DST as enumerated hereunder excluding the DST on duly supported policies spoiled and taken up twice, hence assessed pursuant to Sections 174, 179, 183, 185 and 188 of the Tax Code as amended.
>
> x x x x

10. As regards the assessments for expanded withholding tax (EWT) and final withholding VAT, the Details of Discrepancies of the Formal Assessment Notice (FAN) provides the factual and legal bases, the pertinent portions state:

EXPANDED WITHHOLDING TAX

Non-Withholding on Income Payments (TB/FS/ITR/IC Report Vs. EWT Alphalist) – P28,066,852.31
Verification of various income payments per account analysis of your trial balance, financial statements, income tax returns and IC Report as compared to your EWT Returns and Alphalist of income payments subjected to EWT disclosed non-withholding on various income payments (as shown in Schedule 2). Hence, the corresponding expanded withholding tax of P3,546,779.24 exclusive of penalties, was assessed pursuant to Section 2.57.2 of Revenue Regulations No. 2-98, in relation to Section 57 of the Tax Code as amended.

EWT on Discrepancy per CAATTS Findings (SAWT Master file Vs. EWT Alpha list) P9,141.19
Likewise, the SAWT Master file from CAATTs compared to your income payments subjected to expanded withholding tax per your EWT alpha list disclosed non-withholding on various purchases totaling P457,059.39 as shown in Sch.6, hence the corresponding expanded withholding tax of P9,141.19 is assessed pursuant to Sec. 2.57.2 of Revenue Regulation No. 2-98, as amended.
X x x x

FINAL WITHHOLDING VAT

Income Payments to NRFC/Individual Not subjected to Final VAT – P371,530.26 – Income payments to Non Resident Foreign Corporation/Individual as shown in your Alphalist of Income Payments subjected to Final Tax was not subjected to Final VAT, hence 12% final withholding VAT is assessed pursuant to section 114(C) of the Tax Code as amended and Sec. 4.114 of Revenue Regulations No. 2-98.

A copy of the Formal Assessment Notice (FAN) is attached hereto as **Annex '2'**, and made integral part hereof (the original included in the BIR Records).

11. From the foregoing, respondent substantially complied with the requirements for assessment as provided in Section 228 of the Tax Code. Respondent clearly provides the fact and the law on which the assessments are based.

12. Petitioner alleged that the FDDA based the deficiency taxes on the Insurance Commission Report (ICR) which allegedly contradicts the figures it submitted.

13. Petitioner cannot contend that respondent did not consider the documents and accounting records that it submitted. Respondent in fact, considered to examine such documents, compared the same with other relevant records such as the Insurance Commission Report (ICR), after which the discrepancies were ascertained.

14. Credence cannot be given to petitioner's argument that it could not have the opportunity to refute the figures stated in the ICR. Noteworthy to state that petitioner was given ample opportunity to challenge the assessments in its **protests** against the Preliminary Assessment Notice, the Formal Assessment Notice, and the Final Decision on Disputed Assessment.

15. Respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner of Internal Revenue (CIR) has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers. Such power of the CIR to obtain information from other sources is enshrined in Sections 5 and 6 of the Tax Code.

16. Petitioner challenged the assessment contending that the same has no real basis. However, respondent maintains that the discrepancies resulting to assessment were ascertained in accordance with actual facts and law.

17. The discrepancies were discovered pursuant to Section 5 of the Tax Code which provides the power of the CIR to ascertain the correctness of the return filed in order to determine the liability for any internal revenue tax, thus:

> **'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** an

> **tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities,** including the Bangko Sentral ng Pilipinas and government-owned or –controlled corporations, **any information** such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;
> xxx xxx' (Emphases supplied)

18. Corollary to the abovementioned power, the CIR has the authority to determine the correct tax. Section 6 of the Tax Code provides:

> **'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** -

(A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.
X x x x

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the **Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.**

(C) Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts. – x x x x x

> When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, <u>after taking into account the sales receipts, income or other taxable base of other persons engaged in similar businesses</u> under similar situations or circumstances or <u>after considering other relevant information</u> may **prescribe a minimum amount of such gross receipts, sales and taxable base,** and such amount so _prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.' (Emphases supplied)

19. Consistent with the foregoing provisions of law, audit procedures and analysis were adopted by respondent to determine whether income reported by petitioner truly reflects the actual results of its business operations.

20. Moreover, with regard to the assessed EWT and Final Withholding VAT, note that petitioner had already paid the assessed taxes. Only their interests and surcharges for delinquency are due from petitioner.

21. The said payment shows positive act of petitioner which concludes its admission of its own tax liabilities for taxable year 2011, hence, it voluntarily performed its legal obligation to pay the tax due.

22. Petitioner is estopped from contesting the assessment for EWT and Final VAT. Respondent submits that, as compared to the validity of waiver, the validity of assessment is likewise affirmed where petitioner partially made payment of the assessments against it, thus estopped from questioning their validity. As held in *RCBC vs. CIR, G.R. No. 170257, Sept. 7, 2011:*

> Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.

> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBCs subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately paid on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.

23. Clearly, petitioner's payment of the assessed EWT and Final VAT implies that it abandoned or waived its question on respondent's assessments of deficiency EWT and Final VAT for taxable year 2011.

THE ASSESSMENT ISSUED AGAINST PETTIONER IS VALID AND LAWFUL.

24. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates if *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. (*Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997.)*

25. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. (*Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.)*"

The Pre-Trial Conference was set and held on October 11, 2016.[14]

Respondent's Pre-Trial Brief was filed on October 4, 2016;[15] while the *Petitioner's Pre-Trial Brief* was submitted on October 7, 2016.[16]

The parties then filed their *Joint Stipulation of Facts and Issues* (JSFI) on November 10, 2016.[17] In the Pre-Trial Order dated December 14, 2016,[18] the Court approved and adopted the said JSFI, and deemed the Pre-Trial terminated.

Trial of the case ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner's lone witness is Mr. Johnson Kwan,[19] petitioner's Vice President.

Petitioner filed its *Formal Offer of Evidence* on March 28, 2018.[20] On April 23, 2018, respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence.*[21] In the Resolution dated May 25, 2018,[22] the Court admitted petitioner's exhibits, but denied the following:

1. Exhibits "P-3", and "P-5", for failure to identify the same during trial;

2. Exhibits "P-6", "P-7", "P-8", and "P-9", for failure to submit the duly marked exhibits; and

3. Exhibits "P-10", and "P-11", for failure to present the originals for comparison.

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[14] Docket, Vol. 1, *Notice of Pre-Trial Conference* dated June 22, 2016, pp. 87 to 88; Minutes of the hearing held on, and Order dated, October 11, 2016, Docket, Vol. 2, pp. 618, and 620 to 621, respectively.
[15] *Id.*, Vol. 1, pp. 108 to 111.
[16] *Id.*, Vol. 1, pp. 367 to 371.
[17] *Id.*, Vol. 2, pp. 632 to 636.
[18] Docket, Vol. 2, pp. 641 to 646.
[19] *Id.*, Vol. 1, *Judicial Affidavit of Johnson Kwan*, Docket, Vol. 1, pp. 125 to 128, and 374 to 376; Minutes of the hearing held on, and Order dated, March 13, 2018, Docket, Vol. 2, pp. 702 to 703.
[20] *Id.*, Vol. 2, pp. 706 to 708.
[21] *Id.*, Vol. 2, pp. 712 to 714.
[22] *Id.*, Vol. 2, pp. 717 to 718.

On August 7, 2018, respondent presented his sole witness, Ms. Agnes I. Sison,[23] a Revenue Officer of the BIR.

Respondent then filed his *Formal Offer of Evidence* on August 17, 2018.[24] On December 19, 2018, petitioner filed its *Comment on Respondent's Formal Offer of Evidence.*[25] In the Resolution dated January 30, 2019,[26] the Court admitted respondent's exhibits.

In the meantime, the instant case was transferred to this Court's First Division, pursuant to the Order dated September 20, 2018.[27]

Subsequently, counsel for petitioner manifested on May 2, 2019 that he would no longer present any rebuttal evidence and would rest his case.[28] Accordingly, the Court gave the parties a period of thirty (30) days from the said date or until June 1, 2019, within which to file their respective memorandum.[29]

Respondent filed his *Memorandum* on June 3, 2019,[30] while the *Memorandum for the Petitioner* was filed on June 24, 2019.[31]

In the Resolution dated July 3, 2019,[32] the case was considered submitted for decision.

ISSUES

The parties submitted the following issues for this Court's resolution,[33] to wit:

> "1. Whether herein petitioner is liable to pay the assessed deficiency Value-Added Tax,

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[23] *Id.*, Vol. 1, Exhibit "R-11", pp. 99 to 107; Docket, Vol. 2, Minutes of the hearing held on, and Order dated, August 7, 2018, pp. 732 and 733, respectively.
[24] *Id.*, Vol. 2, pp. 734 to 739.
[25] *Id.*, Vol. 2, pp. 764 to 769.
[26] *Id.*, Vol. 2, p. 773.
[27] Docket, Vol. 2, pp. 742.
[28] *Id.*, Vol. 2, Minutes of the hearing held on, and Order dated, May 2, 2019, pp. 776 to 778.
[29] *Id.*
[30] *Id.*, Vol. 2, pp. 788 to 797.
[31] *Id.*, Vol. 2, pp. 804 to 810.
[32] *Id.*, Vol. 2, p. 813.
[33] *Id.*, Vol. 2, Stipulated Issues, JSFI, p. 633. *an*

Documentary Stamp Tax, and penalties due on Expanded Withholding Tax and on Final Withholding Tax, for taxable year 2011, in the aggregate amount of P53,434,094.30 plus 25% surcharge, 20% deficiency interest pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

2. Whether or not the Formal Assessment Notice and the Final Decision on Disputed Assessment are defective for having failed to state the legal and factual bases on which the Assessments are made.

3. Whether or not the Formal Assessment Notice and the Final Decision on Disputed Assessment are valid."

Petitioner's Arguments

Petitioner argues that the FAN is defective for having failed to state the legal and factual bases on which the assessment is made; that the FDDA received by it failed to explain how respondent arrived at the computation of the amounts stated in the assessment based on the FDDA and the FAN that it issued; that tax assessments must be based on actual facts and not on mere presumption no matter how reasonable or logical said presumption may be; and that for being denied due process of law, the assessments made by respondent are therefore void and petitioner is not legally liable to pay the same.

Respondent's Arguments

On the other hand, respondent argues that petitioner was properly informed in writing of the law and the facts on which the assessment was based through the issuance and service of the PAN, FAN, and FDDA; that the discrepancies resulting in assessment were ascertained in accordance with actual facts and law; that petitioner is estopped from contesting the assessment for EWT and Final VAT; and that assessments are presumed correct and made in good faith.

RULING OF THE COURT

This Court shall determine first whether it has jurisdiction on the instant petition. Sections 7(a) and 11 of Republic Act (RA) No. 1125[34], as amended by RA No. 9282[35], provides as follows:

> "SEC. 7. ***Jurisdiction.*** **– The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> > **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law_for actions as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia*, to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

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[34] AN ACT CREATING THE COURT OF TAX APPEALS.

[35] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

In the instant case, petitioner filed the instant Petition for Review to appeal the FDDA issued by Assistant Commissioner Nestor S. Valeroso on March 18, 2016 which it received on March 29, 2016. Such is the final decision of the respondent on this case, hence, within the jurisdiction of this Court.

Also, petitioner had 30 days or until April 28, 2016 to file the required Petition for Review. Thus, petitioner's filing of the instant petition on April 28, 2016 was on time.

Having settled the issue of jurisdiction, this Court will tackle next the second and third issues, as their outcome will logically impact on the resolution of the first issue, i.e. petitioner's liability to pay the deficiency tax assessments.

The FAN is valid

Upon a closer look at the FAN[36] with its attached Assessment Notices and Details of Discrepancies, the following features are revealed:

1) There are **definite deficiency tax computations** for income tax, value-added tax, percentage tax, expanded withholding tax, compromise penalty, final withholding VAT, and documentary stamp tax;

2) The factual findings were specifically explained and the legal bases of said deficiency tax assessments, i.e., relevant sections of the NIRC and applicable revenue regulations and revenue memorandum orders, were cited in the **Details of Discrepancies** which was attached as **Annex A** to the FAN; and

3) There was a **definite due date for payment** for the deficiency income tax, VAT and final withholding VAT which was **March 31, 2015** as shown on the face of their respective assessment notices.

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[36] *Supra.*, Note 7.

Apparent from the computation of the interest charges on the deficiency taxes was the cut-off date of **March 31, 2015** which was just consistent with the Due Date of Payment indicated on the assessment notices. Thus, the insertion of the notation, *"xxx the interest will have to be adjusted if paid beyond the date specified therein."*, in the FAN merely reminds the taxpayer of the legal consequence of paying beyond the due date in accordance with the NIRC provision, but it does not detract from the definite amount of basic deficiency taxes, surcharges and interests due for payment on the final date indicated in the assessment notice. Hence, the FAN was not defective and therefore found to be valid.

The FDDA was defective for failure to indicate the due date for payment

The FDDA[37] with Details of Discrepancies as Annex A substantially mirrored the FAN and its Details of Discrepancies. The difference in the computed deficiency taxes was attributed to the installment payments made by petitioner for the previous deficiency tax dues found in the FAN and the increased amount of interest penalties due to the additional year of delay in the payment of said taxes, i. e., from 2015 to 2016. Thus, the FDDA did not have any new explanation on the resulting deficiency tax assessments other than the installment payments made by the petitioner earlier and the imposition of surcharge and interest penalties on the earlier basic taxes settled.

What stands out as a glaring defect in the FDDA was the absence of a fixed date for payment of the deficiency taxes. The phrase, "xxx be paid immediately upon receipt thereof.", cannot be deemed as the final date of payment. *Sans* such element in the FDDA, the decision is deemed void.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* ("*Fitness By Design* case"),[38] the Supreme Court said:

> **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 provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code

[37] *Supra.*, Note 9.
[38] G.R. No. 215957, November 9, 2016.

> 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.
>
> xxx xxx xxx
>
> 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." *(Emphases supplied)*

However, in *Commissioner Internal Revenue v. Liquigaz Philippines Corporation*[39], the Supreme Court ruled that the invalidity of one does not affect the other as respondent's decision is different from the final assessment notice, to wit:

> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other**—unless the law or regulations otherwise provide. (*Emphasis supplied*)

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[39] G.R. Nos. 215534 and 215557, April 18, 2016.

Also, in the same *Liquigaz case*, the Supreme Court ruled that a subsequent explanation as to the imposition of subject deficiency taxes is a substantial compliance of Section 228 of the 1997 NIRC, as amended, to wit:

> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated.
>
> Thus, substantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer would be eventually apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.

In the instant case, respondent was able to explain fully the remaining deficiency taxes in the Details of Discrepancies and was able to reconsider the imposition of deficiency IT and Percentage Tax. Hence, there was a substantial compliance with Section 228 of the 1997 NIRC, as amended.

Petitioner is liable for VAT and DST

As abovementioned, petitioner received the FAN with attached Audit Results/Assessment Notices and Details of Discrepancies on March 10, 2015,[40] assessing it for deficiency income tax, VAT, percentage tax, expanded withholding tax ("EWT"), final withholding VAT ("FWVAT"), DST, and compromise penalties, summarized as follows:

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[40] BIR Records, Exhibits "P-4" and "R-5", "R-6", "R-6-1", "R-6-2", "R-6-3", "R-6-4", "R-6-5", and "R-6-6", pp. 599 to 590, 606, 605, 604, 603, 602, 601, and 600, respectively.

Tax Type	Basic Tax	Interest	Compromise	Total
Income tax	₱ 8,820,302.97	₱ 5,219,855.30	₱ -	₱ 14,040,158.27
VAT	15,456,297.06	9,824,022.41	25,000.00	25,305,319.47
Percentage tax	5,281.99	3,372.02	-	8,654.01
EWT	3,446,292.80	2,209,418.31	-	5,655,711.11
FWVAT	44,583.63	28,702.94	8,500.00	81,786.57
DST	14,160,478.66	9,163,245.74	-	23,323,724.40
Compromise penalties	-	-	25,000.00	25,000.00
Total	**₱41,933,237.11**	**₱26,448,616.72**	**₱ 58,500.00**	**₱68,440,353.83**

Thereafter, petitioner made a series of full or partial payments[41] for the above assessments, as summarized below:

Tax Type	Date Paid[42]	Basic Tax	Interest	Compromise	Total
VAT	29-Dec-2015	₱ 500,000.00	₱ -	₱ -	₱ 500,000.00
Percentage tax	06-May-2015	5,281.99	3,372.02	-	8,654.01
EWT	18-May-2015	2,800,000.00	-	-	2,800,000.00
	29-Jun-2015	646,292.80	2,209,418.31	-	2,855,711.11
FWVAT	06-May-2015	44,583.63	28,702.94	8,500.00	81,786.57
DST	30-Jul-2015	1,000,000.00	-	-	1,000,000.00
	27-Aug-2015	3,000,000.00	-	-	3,000,000.00
	30-Sep-2015	2,000,000.00	-	-	2,000,000.00
	30-Oct-2015	500,000.00	1,000,000.00	-	1,500,000.00
	27-Nov-2015	1,000,000.00	-	-	1,000,000.00
Compromise penalty	06-May-2015	-	-	25,000.00	25,000.00
Total		**₱11,496,158.42**	**₱3,241,493.27**	**₱ 33,500.00**	**₱14,771,151.69**

The above payments were considered by respondent in adjusting petitioner's deficiency tax liabilities upon his issuance of the *Final Decision on Disputed Assessment* ("FDDA") with *Details of Discrepancies* and *Audit Results/Assessment Notices*, which was received by petitioner on March 29, 2016.[43]

Based on the FDDA, the deficiency income tax was already cancelled in totality, while the deficiency percentage tax was cancelled by virtue of petitioner's payment on May 6, 2015.

The deficiency EWT and FWVAT as stated in the FAN were likewise cancelled. However, respondent, in issuing the FDDA, additionally assessed the same with: (1) surcharges;

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41 *Id.*, pp. 730-756.
42 Expressed in dd-mmm-yyyy.
43 BIR Records, Exhibits "P-1" and "R-8", "R-9", "R-9-1", "R-9-2", and "R-9-3", pp. 777 to 772; 771, 770, 769, and 768, respectively.

and (2) interests from March 31, 2015, the due date stated in the FAN,[44] until the dates of payment, summarized as follows:

	EWT	FWVAT	Total
Surcharge	₱ 861,573.20	₱ 11,145.91	₱ 872,719.11
Interest from 3/31/15-5/14/2015[45] & 6/29/2015 respective of 2 installments	127,571.66	-	127,571.66
Interest from 3/31/2015 up to 5/6/2015	-	879.46	879.46
	₱989,144.86	**₱12,025.37**	**₱1,001,170.23**

On the other hand, the deficiency VAT and DST assessments were maintained in the FDDA, albeit in the reduced amount by virtue of the previous payments made by petitioner, summarized as follows:[46]

	VAT	DST
Basic deficiency tax due	₱ 15,456,297.06	₱ 14,160,478.66
Less: Payments after FAN	285,446.13	4,877,270.57
Remaining balance of basic deficiency tax due	***15,170,850.93***	***9,283,208.09***
Add:		
Interest up to 31-Mar-2016	12,900,419.42	11,486,535.00
Less: Payments after FAN	214,553.87	3,622,729.43
Remaining balance of interest	12,685,865.55	7,863,805.57
Surcharge	3,864,074.27	-
Compromise penalty	25,000.00	3,540,119.67
Total tax due	**₱31,745,790.75**[47]	**₱20,687,133.33**

These payments after FAN considered by respondent tallies with the payments made by petitioner as summarized earlier, thus:

	VAT	DST
Payments after FAN as applied to:		
Basic deficiency tax due	₱ 285,446.13	₱ 4,877,270.57
Interest	214,553.87	3,622,729.43
Total	***₱500,000.00***	***₱8,500,000.00***
Date[48] of payment per BIR Forms No. 0605:		
29-Dec-2015	₱ 500,000.00	
30-Jul-2015		₱ 1,000,000.00
27-Aug-2015		3,000,000.00
30-Sep-2015		2,000,000.00
30-Oct-2015		1,500,000.00

[44] Exhibits "R-6-3" and "R-6-2", *BIR Records*, pp. 603 and 604, respectively.
[45] May 14, 2015 was the filing date. Actual payment date was on May 18, 2015. *BIR Records*, pp. 738 and 736, respectively.
[46] Exhibit "R-7", Memorandum for Nestor S. Valeroso, OIC Asst. Commissioner, LTS, *BIR Records*, pp. 765 to 766.
[47] ₱31,745,790.74 per FDDA. ₱0.01 difference in footing.
[48] Expressed in dd-mmm-yyyy.

27-Nov-2015		1,000,000.00
Total	***₱500,000.00***	***₱8,500,000.00***
Difference	₱ -	₱ -

However, as clearly stated in the BIR Forms No. 0605, the whole ₱500,000.00 paid by petitioner on December 29, 2015 only pertains to the basic VAT due. Likewise, all the DST payments made in various dates only pertain to the basic tax due, except for the payment dated October 30, 2015 wherein out of the ₱1,500,000.00 payment, only ₱500,000.00 of which pertains to the basic tax, while the ₱1,000,000.00 pertains to interest.

Thus, it was erroneous for respondent to apply a portion of the amounts paid to the interest when the BIR Forms No. 0605 only applied the payments to the basic tax due.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for TY 2011 covering the compromise penalty is **CANCELLED and SET ASIDE** while the assessments for deficiency VAT and DST and penalties on deficiency EWT and FWVAT are **UPHELD**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱82,121,697.84** representing: (1) the basic deficiency VAT and DST for TY 2011, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, respectively; and, (2) the 25% surcharge on the basic deficiency EWT and FWVAT for TY 2011, inclusive of the 20% delinquency interest imposed under Section 249(C) of the NIRC of 1997, as amended, computed until December 31, 2017, less the payments that have been made by petitioner, as shown below:

	VAT	EWT	FWVAT	DST	Total
Basic tax	₱15,456,297.06	₱ -	₱ -	₱14,160,478.66	₱29,616,775.72
Surcharge (25%)	3,864,074.27	861,573.20	11,145.91	3,540,119.67	8,276,913.05
Deficiency interest					
VAT - 26-Jan-2012 to 29-Dec-2015					
(₱15,456,297.06 x 20% x	12,144,838.35	-	-	-	12,144,838.35

1,434/365 days)					
VAT - 30-Dec-2015 to 31-Mar-2016					
[(₱15,456,297.06 – 500,000.00) x 20% x 93/365 days]	762,156.51	-	-	-	762,156.51
EWT - 16-Jan-2012 to 18-May-2015					
(₱3,446,292.80 x 20% x 1,219/365 days)		2,301,934.75			2,301,934.75
EWT - 19-May-2015 to 29-Jun-2015					
[(₱3,446,292.80 – 2,800,000) x 20% x 42/365 days]		14,873.59			14,873.59
FWVAT - 11-Jan-2012 to 06-May-2015					
(₱44,583.63 x 20% x 1,212/365 days)			29,608.42		29,608.42
DST - 06-Jan-2012 to 30-Jul-2015					
(₱14,160,478.66 x 20% x 1,302/365 days)	-	-	-	10,102,434.64	10,102,434.64
DST - 31-Jul-2015 to 27-Aug-2015					
[(₱14,160,478.66 – 1,000,000.00) x 20% x 28/365 days]	-	-	-	201,914.19	201,914.19
DST - 28-Aug-2015 to 30-Sep-2015					
[(₱14,160,478.66 – 1,000,000.00 – 3,000,000.00) x 20% x 34/365 days]	-	-	-	189,291.11	189,291.11
DST - 01-Oct-2015 to 30-Oct-2015					
[(₱14,160,478.66 – 1,000,000.00 – 3,000,000.00 – 2,000,000.00) x 20% x 30/365 days]	-	-	-	134,144.85	134,144.85
DST - 31-Oct-2015 to 27-Nov-2015					
[(₱14,160,478.66 – 1,000,000.00 – 3,000,000.00 – 2,000,000.00 – 500,000.00) x 20% x 28/365 days]	-	-	-	117,530.63	117,530.63
DST - 28-Nov-2015 to 31-Mar-2016					
[(₱14,160,478.66 – 1,000,000.00 – 3,000,000.00 – 2,000,000.00 – 500,000.00 – 1,000,000.00) x 20% x 125/365 days]	-	-	-	456,197.17	456,197.17
Total amount due as of March 31, 2016	***32,227,366.19***	***3,178,381.54***	***40,754.33***	***28,902,110.92***	***64,348,612.98***
Deficiency interest					
VAT - 01-Apr-2016 to 31-Dec-2017					
[(₱15,456,297.06 – 500,000.00) x 20% x 640/365 days]	5,244,948.01	-	-	-	5,244,948.01
DST - 01-Apr-2016 to 31-Dec-2017					

[(₱14,160,478.66 – 1,000,000.00 – 3,000,000.00 – 2,000,000.00 – 500,000.00 – 1,000,000.00) x 20% x 640/365 days]	-	-	-	2,335,729.50	2,335,729.50
Delinquency interest					
VAT - 01-Apr-2016 to 31-Dec-2017					
(₱32,227,366.19 x 20% x 640/365 days)	11,301,651.70	-	-	-	11,301,651.70
EWT - 01-Apr-2016 to 31-Dec-2017					
[₱3,178,381.54 – 2,209,418.31) x 20% x 640/365 days]	-	339,800.80	-	-	339,800.80
FWVAT - 01-Apr-2016 to 31-Dec-2017					
[(₱40,754.33 - 28,702.94) x 20% x 640/365 days]	-	-	4,226.24	-	4,226.24
DST - 01-Apr-2016 to 31-Dec-2017					
[(₱28,902,110.92 – 1,000,000.00) x 20% x 640/365 days]	-	-	-	9,784,849.86	9,784,849.86
Deficiency tax due as of December 31, 2017	**48,773,965.90**	**3,518,182.34**	**44,980.57**	**41,022,690.28**	**93,359,819.09**
Less: Payments made on the following dates					
29-Dec-2015	500,000.00	-	-	-	500,000.00
29-Jun-2015	-	2,209,418.31	-	-	2,209,418.31
06-May-2015	-	-	28,702.94	-	28,702.94
30-Jul-2015	-	-	-	1,000,000.00	1,000,000.00
27-Aug-2015	-	-	-	3,000,000.00	3,000,000.00
30-Sep-2015	-	-	-	2,000,000.00	2,000,000.00
30-Oct-2015	-	-	-	1,500,000.00	1,500,000.00
27-Nov-2015	-	-	-	1,000,000.00	1,000,000.00
Total payments made	***500,000.00***	***2,209,418.31***	***28,702.94***	***8,500,000.00***	***11,238,121.25***
Remaining amount due as of December 31, 2017	**₱48,273,965.90**	**₱1,308,764.03**	**₱16,277.63**	**₱32,522,690.28**	**₱82,121,697.84**

In addition, petitioner is liable to pay delinquency interest at the rate of twelve percent (12%) per annum on the total amount due as of March 31, 2016 less payments made before March 31, 2016 totaling ₱53,110,491.73, as summarized below, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law,[49] and as implemented by Revenue Regulation No. 21-2018.

	VAT	**EWT**	**FWVAT**	**DST**	**Total**
Total amount due as of March 31, 2016	₱ 32,227,366.19	₱3,178,381.54	₱ 40,754.33	₱ 28,902,110.92	₱ 64,348,612.98

[49] *Alpha 245, Inc., (formerly ARC Worldwide Philippines Co., Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 9225, April 6, 2018.

Less: Payments made before March 31, 2016	500,000.00	2,209,418.31	28,702.94	8,500,000.00	11,238,121.25
Base amount of 12% delinquency interest	**₱31,727,366.19**	**₱968,963.23**	**₱12,051.39**	**₱20,402,110.92**	**₱53,110,491.73**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice