REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 989
(CTA Case No. 8141)

- versus-

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

x- -x

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

CTA EB No. 990
(CTA Case No. 8141)

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

Del Rosario, PJ,
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* are the consolidated petitions for review, filed by the parties, to appeal the Decision[1], dated

[1] *Rollo*, C.T.A. EB Case No. 989, pp. 19-43.

November 22, 2012, and Resolution[2], dated February 20, 2013 of the Former Second Division of the Court of Tax Appeals in CTA Case No. 8141 entitled *Liquigaz Philippines Corporation v. Commissioner of Internal Revenue*. The Decision cancelled and withdrew the assessments for deficiency expanded withholding tax and fringe benefit tax against Liquigaz Philippines Corporation (Liquigaz), while affirming with modification the assessment for deficiency withholding tax on compensation for taxable year 2005.

The Commissioner of Internal Revenue (CIR) received a copy of the Resolution, dated February 20, 2013, denying the parties' Motions for Partial Reconsideration. Liquigaz received its copy on February 20, 2013. After praying for, and having been granted an extension, the parties filed their respective petitions for review before the Court *En Banc* on March 22, 2013, docketed as CTA EB Case Nos. 989 and 990. CTA EB Case No. 990 was subsequently consolidated with CTA EB Case No. 989, on April 4, 2013.[3]

The Facts

The facts, as found by the Division, are as follows:

> "Petitioner [now respondent] is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal address at 3/F NOL Tower, Commerce Avenue, Madrigal Business Park, Alabang, Muntinlupa City.
>
> On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) [now petitioner], who was duly appointed and is empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (R.A.) No. 8424, otherwise known as the "Tax Reform Act" (TRA) of 1997.
>
> On July 11, 2006, petitioner received a copy of a Letter of Authority (LOA) No. 00067824 dated July 4, 2006 issued by the respondent, authorizing the investigation of all internal revenue taxes of petitioner for taxable year 2005.

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[2] *Rollo*, pp. 44-53.
[3] *Rollo*, pp.57-58.

> Petitioner received, on April 9, 2008, an undated letter purporting to be a Notice of Informal Conference as well as the detailed computation of petitioner's alleged tax deficiency.
>
> Petitioner received, on May 28, 2008, a copy of the Preliminary Assessment Notice (PAN) dated May 20, 2008, together with the attached details of alleged discrepancies, for the calendar year ending December 31, 2005.
>
> On June 25, 2008, petitioner received a copy of the Formal Letter of Demand/Formal Assessment Notice and attached details of alleged discrepancies dated June 16, 2008, covering calendar year ending December 31, 2005.
>
> Petitioner filed its protest relative to the respondent's Formal Letter of Demand/Formal Assessment Notice on July 25, 2008.
>
> Petitioner submitted, on September 23, 2008, to the respondent the supporting documents relative to its protest.
>
> Petitioner received on July 1, 2010 a copy of the assailed FDDA dated June 28, 2010, covering the tax investigation/audit under LOA No. 00067824 for the calendar year ending December 31, 2005.
>
> On the basis of the FDDA, which constitutes as a denial of petitioner's protest, petitioner filed its Petition for Review before this Court on July 29, 2010, in accordance with the provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997, which provides: xxx"[4] (*Citations omitted*)

After trial, the Division rendered the Assailed Decision, dated November 22, 2012, disposing of the case as follows:

> "WHEREFORE, the *Petition for Review* is hereby PARTIALLY GRANTED. Accordingly, the assessments for deficiency expanded withholding tax in the amount of P3,479,426.75 and fringe benefits tax in the amount of P14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby CANCELLED and WITHDRAWN for being void.

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[4] *Rollo*, pp. 20-21.

However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby AFFIRMED with MODIFICATIONS. Accordingly, petitioner is hereby ORDERED to PAY respondent the amount of P2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Salaries per ITR	P 52,239,313.00
Less: Salaries Per Alphalist	42,921,057.16
Discrepancy	P 9,318,255.84
Tax Rate	25.40%
Basic Withholding Tax on Compensation	P 2,366,836.98
Add: 25% Surcharge	591,709.25
Total Amount Due	**P 2,958,546.23**

In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency withholding tax on compensation of P2,958,546.23 computed from January 20, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of P2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

The compromise penalty of P25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties."[5]

The parties filed their respective Motions for Partial Reconsideration[6], which were denied in the Resolution dated February 20, 2013.[7] Consequently, the parties filed their respective Petitions for Review before the Court *En Banc*, which were consolidated on April 4, 2013.[8]

On April 25, 2013, the Court ordered the filing of Comments to the petitions for review, which the CIR complied with on May 20, 2013.[9] Liquigaz, after being granted an extension, filed its Comment on June 3, 2013.[10]

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[5] *Rollo*, pp. 41-42.
[6] Division Docket, pp. 514-521 and pp. 522-536.
[7] *Rollo*, pp. 44-53.
[8] *Rollo*, pp. 57-58.
[9] *Rollo*, pp. 62-68.
[10] *Rollo*, pp. 75-94.

In its July 8, 2013 Resolution, the Court *En Banc* resolved to give due course to the Petitions for Review, and ordered the submission of memoranda.[11] The CIR [hereafter, petitioner] filed a Manifestation that she is adopting the arguments raised in her Petition for Review and Comment.[12] On the other hand, Liquigaz [hereafter, respondent] filed its Memorandum on September 2, 2013.[13]

The case was deemed submitted for decision on September 18, 2013.[14]

Issues

The issues raised by petitioner are as follows:

1. Whether or not the Final Decision on Disputed Assessment is void.

2. Whether or not the requirement of due process was observed by petitioner in issuing the Final Decision on Disputed Assessment.[15]

Respondent raised the sole issue of:

> Whether or not the Second Division of this Honorable Court correctly upheld the assailed Final Decision on Disputed Assessment issued by the respondent(now, petitioner) in so far as it holds the petitioner(now, respondent) liable for deficiency withholding tax on compensation income for taxable year 2005.[16]

Ruling of the Court

Clearly, the parties have once again raised the issue of the validity of the Final Decision on Disputed Assessment (FDDA), and the assessments contained therein. Petitioner CIR argues that the FDDA was validly issued and compliant with

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[11] *Rollo*, pp. 97-98.
[12] *Rollo*, pp. 100-102.
[13] *Rollo*, pp. 106-142.
[14] *Rollo*, pp. 145-146.
[15] *Rollo*, pp. 11-12.
[16] *Rollo*, p. 110.

procedural due process. On the other hand, respondent Liquigaz argues that the FDDA is void for being arbitrary and devoid of procedural process; and that the assessments therein are erroneous and lack factual and legal basis.

After due and careful review, the Court *En Banc* finds no compelling reason to warrant the modification or the reversal of the assailed Decision.

We affirm the Division's ruling that the requirement that "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void" applies to the FDDA.[17] Indeed, it is the FDDA which will determine the final tax liability of the taxpayer which may be the subject of appeal before the Court of Tax Appeals.[18]

The pertinent portions of Section 228 of the 1997 NIRC, as amended; and its implementing Revenue Regulations No. 12-99, are hereby quoted below:

> "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: xxx
>
> xxx
>
> 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.
>
> xxx"
>
> * * *
>
> "Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
>
> xxx
>
> 3.1.6. Administrative Decision on a Disputed Assessment. – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise the decision shall be void (see illustration in

[17] *Rollo*, p. 48.
[18] *Ibid.*

> Annex C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision."

From the foregoing, it is clearly necessary for petitioner to have informed respondent of the facts, law, rules and regulations, and jurisprudence on which the decision is based, otherwise, the decision shall be void.[19]

In the instant case, while petitioner's FDDA indicated the legal provisions relied upon for the assessment, the basis or the source of the amounts from which the assessments arose were not shown.[20]

The need for stating the factual basis, i.e. for specifying the source of the amounts used in the assessment, gains more prominence in the instant case, where the FDDA reflects different amounts than that contained in the Formal Assessment Notice, as follows:

Basic Deficiency Tax	**Expanded Withholding Tax**	**Withholding Tax on Compensation**	**Fringe Benefits Tax**	**Total**
Per FLD	P3,675,048.78	P2,981,841.84	P9,501,564.07	P16,158,454.72
Per FDDA	1,823,782.67	2,366,836.98	7,572,236.16	11,762,855.81
Difference	**P1,851,266.11**	**P615,004.89**	**P1,929,327.91**	**P4,395,598.91**

An examination of the FDDA reveals that it does not have an accompanying schedule to detail how the said amounts were arrived at. The taxpayer, and this Court, cannot determine whether the protest filed against the FLD was considered in the assessments contained in the FDDA. Furthermore, without the statement of the factual basis, or details of the assessment, the FDDA suffers from the appearance of being a mere arbitrary reduction of the assessments previously reflected in the FLD. This failure to present the factual basis of the assessment cannot be countenanced by the Court. Thus, We affirm the Division's ruling that the portions of the FDDA relating to the assessed deficiency expanded withholding tax and fringe benefits tax are void.

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[19] *Ibid.*
[20] *Rollo*, p. 39, 48.

As to the assessment for deficiency withholding tax on compensation, We find that the basis for the assessment was the same for the FLD and the FDDA. That is, comparing the declared Salaries per ITR in the amount of P52,239,313.00, and Salaries per Alphalist which reflected only P42,921,057.16, would give rise to a discrepancy of P9,318,255.84, which was the basis for the assessment in both the FLD and the FDDA. The change in the amount of assessed deficiency withholding taxes on compensation simply arose from the revision of the tax rate used, as illustrated below:

	Per FLD	**Per FDDA**
Salaries Per ITR	P 52,239,313.00	P 52,239,313.00
Per Alphalist	42,921,057.16	42,921,057.16
Discrepancy	P 9,318,255.84	P 9,318,255.84
Tax Rate	32%	25.40%
Tax Due	**P 2,981,841.87**	**P 2,366,836.98**

In this instance, there is no question about the source of the figures used in determining the deficiency withholding tax on compensation. Thus, respondent was sufficiently informed about the factual basis of the assessment for deficiency withholding tax on compensation.

Respondent explained that "[t]he amount reported in the ITR and that stated in the Alphalist will not be equal because [the] amount in the former reflects the gross amount of salaries while the amount in the latter shows the *taxable* compensation income which is arrived at after deductions and exemptions applicable to the former have been deducted."[21]

However, respondent failed to specify how much of the salaries account pertain to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to SSS, Medicare and Pag-Ibig Fund.[22] Even the Court-commissioned independent CPA reported that respondent was not able to substantiate the discrepancy found by petitioner on respondent's withholding tax liability on compensation.[23]

Thus, We uphold the assessment for deficiency withholding tax on compensation.

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[21] *Rollo*, p. 121.
[22] *Rollo*, p. 38.
[23] *Ibid.*

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the Decision in CTA Case No. 8141, dated November 22, 2012, is **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 989** (CTA Case No. 8141)
-versus-	
LIQUIGAZ PHILIPPINES CORPORATION, Respondent.	

x- -x

LIQUIGAZ PHILIPPINES CORPORATION, Petitioner,	**CTA EB NO. 990** (CTA Case No. 8141)
-versus-	*Present:* Del Rosario, PJ, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 2 2 2014 2:40pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur in the *ponencia* of Honorable Associate Justice Amelia R. Cotangco-Manalastas in so far as it upholds the assessment for deficiency withholding tax on compensation issued against Liquigaz Philippines Corporation (Liquigaz). As correctly reported by the Court-commissioned Independent Certified Public Accountant (CPA), Liquigaz failed to substantiate the discrepancy noted by the Bureau of Internal Revenue (BIR) between the amount reported in Liquigaz's Income Tax Return (ITR) and the amount stated in its Alphalist.

With due respect, however, I dissent on the *ponencia* when it affirms the assailed decision of the Court in Division which cancelled and withdrew the deficiency expanded withholding tax (EWT) and deficiency fringe benefits tax (FBT) *assessments* as a consequence of the nullification of the Final Decision on Disputed Assessment (FDDA).

Section 3.1.6 of RR No. 12-99 provides that "the decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, **otherwise, the decision shall be void** *(see illustration in ANNEX C hereof)*, **in which case, the same shall not be considered a decision on a disputed assessment**; and (b) that the same is his final decision." Clearly, RR No. 12-99 does not consider the assessment itself, which is the subject of the void FDDA, as invalid.

In the present case, even if the FDDA is considered void for failure to state the facts on which the decision is based, I am of the humble view that the same should not automatically result in the cancellation and withdrawal of the Final Assessment Notice (FAN). To hold otherwise would set a dangerous precedent wherein the CIR or her duly authorized representative by, wittingly or unwittingly, rendering a decision that is non-compliant with the requirements laid down in Section 3.1.6 of RR No. 12-99 can actually cause the cancellation and withdrawal of an otherwise valid FAN.

Stated differently, I submit that a void decision rendered by the CIR or her duly authorized representative cannot result in the automatic abatement or cancellation of a tax liability without disregarding the explicit provisions of Section 204 of the 1997 NIRC, as amended, that pertain to the authority of the CIR to abate or cancel a tax liability as well as pertinent BIR issuances that provide for the procedure to be observed in connection therewith. It has been ruled that what one cannot do directly, he cannot do indirectly.[1]

Since Section 3.1.6 of RR No. 12-99 is categorical in stating that a void decision shall not be considered as a decision on a disputed assessment, it is as if no FDDA was issued by the BIR in the present case. Similar to a case when the BIR has not issued a decision on a disputed assessment (that is, when there is inaction on the part of the BIR), the present case should have been resolved on the merits taking into consideration the FAN and the

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[1] Alvarez vs. PICOP Resources, Inc., G.R. No. 162243, December 3, 2009; PICOP Resources, Inc. vs. Alvarez, G.R. No. 164516, December 3, 2009; and Reyes vs. Paper Industries Corp. of the Philippines (PICOP), G.R. No. 171875, December 3, 2009.

corresponding protest, together with supporting documents, offered by Liquigaz.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LIQUIGAZ PHILIPPINES, CORPORATION,
Respondent.

CTA EB NO. 989
(CTA Case No. 8141)

x---x

LIQUIGAZ PHILIPPINES, CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 990
(CTA Case No. 8141)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

The ponencia of my esteemed colleague, the Honorable Associate Justice Amelia R. Cotango-Manalastas, dismissed the Petitions for Review for lack of merit.

Majority of this Court sustained the findings of the former Second Division that the portions of the FDDA relating to the assessed deficiency expanded withholding tax and fringe benefits tax are void; and that respondent was sufficiently informed about the factual basis of the assessment for deficiency withholding tax on compensation for taxable year 2005.

The taxpayer's remedy of protesting assessments made by the Bureau of Internal Revenue is governed by Section 228 of the National Internal Revenue Code of 1997, as amended. Section 228 requires that the taxpayer "shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

The FDDA, on the other hand, is an administrative decision on a disputed assessment. It is governed by Section 3.1.6 of Revenue Regulation No. 12-99[27], which states:

> "3.1.6. *Administrative Decision on a Disputed Assessment.* – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise the decision shall be void x x x, in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision."

There is a material difference between a disputed *assessment* and the *decision* thereon of the CIR. The difference is substantial enough that the Supreme Court drew the distinction between them as early as 1968, in *Commissioner of Internal Revenue vs. Leonardo S. Villa.*[28] In that case, the Supreme Court En Banc held that what becomes final and subject to judicial review are the decisions of the CIR on the protest of the taxpayer against the assessments, not the assessments themselves.

Their legal consequences are thus different. If the CIR fails to act on a taxpayer's protest on a disputed assessment within the 180-day period prescribed by the National Internal Revenue Code (NIRC), the lapse of the 180-day period does not commence the 30-day period within which the taxpayer should file an appeal before the Court of Tax Appeals. Instead, the taxpayer acquires the option of waiting for the CIR's final decision on the protested assessment, before his 30-day period for making the appeal starts.[29]

Indeed, this was what happened in this case because the FDDA was issued on June 28, 2010, well beyond the 180-day period from the time Liquigaz Philippines submitted its supporting documents on September 23, 2008 to buttress the protest it filed on July 25, 2008.

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[27] BIR REVENUE REGULATIONS NO. 12-99, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.
[28] G.R. No. L-23988, January 2, 1968, 130 Phil. 3.
[29] See *Lascona Land Co. vs Commissioner of Internal Revenue*, G.R. No. 171251, March 5, 2012, and *Rizal Commercial Banking Corporation vs Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

Due Process; For FDDA, the CIR is Required Merely to State the Facts and the Law

Liquigaz Philippines alleged that the FDDA "failed to state the facts and the law on which it is based" and that it contained "an empty enumeration of the laws and regulations upon which the assessment is allegedly based." Additionally, Liquigaz Philippines contended that "With the manner the said Final Decision was drafted, the petitioner was effectively deprived of the information necessary to appraise *(sic)* it of the substance and details of the deficiency taxes."[30]

In claiming that it was deprived of due process, Liquigaz Philippines invoked both Section 228 of the NIRC of 1997 and Section 3.1.6 of RR No. 12-99. Although Liquigaz Philippines conceded that the CIR's FDDA enumerated the laws and regulations on which it was allegedly based, Liquigaz Philippines complained that there was no *explanation* as to how the figures in the assessment were arrived at.

But by what yardstick of law or jurisprudence may a taxpayer demand the right to an *explanation*? Neither Section 228 of the NIRC nor Section 3.1.6 of RR No. 12-99 speaks of any *explanation*. What Section 228 of the NIRC requires is merely written *information* as to the law and the facts on which the assessment is made, while Section 3.1.6 of RR No. 12-99 requires the CIR's decision on a disputed assessment only to *state* the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based. Liquigaz Philippines did not cite any jurisprudence categorically supporting its view that an *explanation* is mandatory; neither can the undersigned find any such jurisprudence.

The FDDA must be viewed in conjuction with and in the context of the PAN/FAN.

Furthermore, Liquigaz Philippines wants this Court to view the FDDA as a document separate from the Formal Letter of Demand, Final Assessment Notice, and the other documents that preceded it. To allow this would be absurd, because Liquigaz Philippines very well knew of the existence of these documents that preceded the FDDA, and thus was able to protest the FAN. The extensive 18-page protest (excluding supporting documents) filed by Liquigaz Philippines on July 25, 2008 showed that it was indeed sufficiently apprised of the factual and legal bases of the FAN, so as to be able to meet them point-by-point with its defenses.

Liquigaz Philippines' witness, Juliet A. Abano, cannot feign ignorance of the factual and legal bases of the BIR's assessments. Nor can her observation that "there was no explanation whatsoever on every item of the assessment"[31] be given decisive weight, for all that Section 228 of the NIRC requires is that "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made." It is

[30] No. 27, Petition for Review, pp. 11-12, in CTA Case No. 8141.
[31] Judicial affidavit of Juliet A. Albano, p. 3, in CTA Case No. 8141.

sufficient to identify the law and recite the facts; Section 228, which is applicable to assessments, does not demand a full explanation of every legal and factual basis. Nor is a full explanation required by Section 3.1.6 of RR No. 12-99; it is sufficient for the FDDA, as the decision of the CIR or his duly authorized representative, to state the facts, applicable laws, rules and regulations, or jurisprudence on which such decision is based.

The FDDA clearly stated the legal basis for each type of tax for which a deficiency was assessed, to quote:

> "1. Deficiency EWT on Income Payments amounting to P1,823,782.67 was assessed in accordance with Sections 57 & 58 of the Tax Code, as amended and implemented by RR 2-98.
>
> "2. Unpaid Withholding Tax on Salaries of P2,366,836.98 was assessed pursuant to Section 80 & 81 of the Tax Code, as amended.
>
> "3. Unpaid FBT of P7,572,236.16 is assessed pursuant to Section 33 of the Tax Code, as amended, and RR 3-98."

Indeed, I find that the CIR's FDDA meets the indicia of validity enunciated by the Supreme Court in *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*:[32]

> "[T]he [CIR] should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of [RA 1125], as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the [CIR], this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the [CIR] from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[33]"

Based on the foregoing, I find that the FDDA was certainly valid, especially considering that the FDDA was issued after Liquigaz Philippines failed to substantiate the allegations raised in its protest.

Lack of Evidence to Overturn the Presumption of a Correct Assessment

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[32] G.R. No. 148380, December 9, 2005, 477 SCRA 205, 211-212.
[33] Citing *Surigao Electric Co., Inc. vs Court of Tax Appeals*, G.R. No. L-25289, June 28, 1974, 57 SCRA 523. Cited in *Commissioner of Internal Revenue vs Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007, 521 SCRA 373.

Liquigaz Philippines professed having been perplexed by the assessments made by the CIR and claimed that its voluminous evidence in support of its protest was not properly appreciated or was ignored by the CIR. Apparently, Liquigaz Philippines wanted an explanation why its evidence was given scant weight by the CIR in its FDDA.

In assailing the assessments made by the CIR against it, Liquigaz Philippines argued, among others: (1) that it "subjected some of the questioned [commission] expenses" to only to 2% expanded withholding tax and not 10% because they were "merely in the nature of 'service fees';"[34] (2) that it should not be held accountable for expanded withholding tax (EWT) in relation to income payments to brokers because, under Section 2.57.2 of RR No. 2-98, withholding of creditable income tax "applies only to income payments to persons residing in the Philippines," and not to foreign brokers;[35] (3) that payments it made to C.L. Manabat & Co., Punongbayan & Araullo and Joaquin Cunanan & Co., under Section 24(a) of the Tax Code of 1997, they being general professional partnerships, are exempt from income tax and thus also from withholding tax;[36] (4) that payments Liquigaz Philippines made to the Financial Executive Institute of the Philippines and to Jifeng Petroleum Consulting Co., Ltd. are exempt from withholding tax, they being non-stock, non-profit organizations, and the latter not residing in the Philippines;[37] (5) that payments made by Liquigaz Philippines to Porter & Miles Inc., M.C. Swann Trading, Raymbert Institute of Management, Mariano De Guzman Jr., Jennifer Gabriel, Emiliano S. Martin Jr., and John Francis Gatus, were all casual purchases, each below Ten Thousand Pesos (P10,000.00), and thus not subject to EWT under Section 2.57.2 (M) of Revenue Regulation (R.R.) No. 2-98, as amended;[38] and (6) that it purchased electric power from the Peninsula Electric Cooperative which was exempted from income tax by Republic Act (R.A.) 7279, and thus the payments for such purchases should not be subject to EWT.[39]

Most of the foregoing partake of the nature of tax exemptions. The condonation of a tax liability is in the nature of a tax exemption.[40] The rule is that statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken.[41]

Indeed, taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by

[34] Protest on FAN, p. 2, in CTA Case No. 8141.
[35] Protest on FAN, No. 2, p. 3 in CTA Case No. 8141.
[36] Protest on FAN, pp. 5-6, in CTA Case No. 8141.
[37] Protest on FAN, p. 6, in CTA Case No. 8141.
[38] Protest on FAN, p. 6, in CTA Case No. 8141.
[39] Protest on FAN, p. 7, in CTA Case No. 8141.
[40] *Surigao Consolidated Mining Co., Inc. vs Collector of Internal Revenue and Court of Appeals*, G.R. No. L-14878, December 26, 1963, en banc.
[41] *Diageo Philippines, Inc. vs Commissioner of Internal Revenue*, G.R. No. 183553, November 12, 2012, citing *Quezon City vs ABS-CBN Broadcasting Corp.*, G.R. No. 166408, October 6, 2008, 568 SCRA 496, 515.

the exemption so claimed.[42] Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.[43] Tax exemptions are not to be presumed.[44]

Although the law states that proceedings before this Court shall not be governed strictly by technical rules of evidence,[45] it would be remiss of me to turn a blind eye to the glaring failure of Liquigaz Philippines to adduce evidence that the entities it mentioned were indeed, at the time, general professional partnerships, or non-stock and non-profit organizations, or non-residents in the Philippines, or tax-exempt electric cooperatives, and as such were entitled by law to tax exemption, exemption from withholding tax, or a lower rate of withholding tax.

Absent such evidence from Liquigaz Philippines, the CIR through its FDDA properly denied the former's protest letter dated May 15, 1999. Voluminous as the supporting documents submitted by Liquigaz Philippines were, they were rendered irrelevant by the lack of competent proof that the entities named were indeed validly entitled to certain tax exemptions or lower tax rates during taxable year 2005. Before they can enjoy such entitlement, the validity of the entitlement for the taxable period must first be established.

Liquigaz Philippines claimed that the Peninsula Electric Cooperative, from which it purchased electricity, "is a duly registered electric cooperative and derives its exemption from income tax from R.A. 7279."[46] This is confusing, because R.A. 7279 is the Urban Development and Housing Act of 1992.

In its Pre-Trial Brief, Liquigaz Philippines stated that its documentary proof included certified machine copies of the articles of incorporation of Peninsula and its certificate of exemption from income taxes and EWT. Liquigaz Philippines also submitted the Bureau of Internal Revenue's (BIR) ruling on this entity's tax exemption. Under R.A. 9238 which amended the NIRC of 1997 in 2004, sales by electric cooperatives are exempt from VAT (not all taxes) if the cooperative is registered either with the Cooperative Development Authority or the National Electrification Administration.[47]

Liquigaz Philippines alleged that it is not accountable for EWT in relation to income payments it made to brokers Premiership/Wheterby and Haydock/Clipper Posh, because these were allegedly not persons *residing* in the Philippines.[48] In its Pre-

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[42] *National Power Corporation vs Province of Isabela*, G.R. No. 165827, June 16, 2006, citing *Cyanamid Philippines, Inc. vs Court of Appeals*, 379 Phil. 689, 703 (2000).
[43] *Ibid.*, citing *Philippine Long Distance Telephone Company, Inc. vs City of Davao*, 447 Phil. 571, 585-586 (2003).
[44] *Lealda Electric Co., Inc. vs Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. L-16428, April 30, 1963, en banc.
[45] Section 8, R.A. No. 1125, as amended; see also *Filinvest Development Corporation vs Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. 146941, August 9, 2007, 529 SCRA 605.
[46] Protest on FAN, p. 7, in CTA Case No. 81.
[47] Section 109(s) of the NIRC of 1997, as amended by Sec. 2 of R.A. 9238. Actually, the 1997 provision remained unchanged.
[48] Protest on FAN, No. 2, p. 3, in CTA Case No. 8141.

Trial Brief, Liquigaz Philippines identified as its documentary evidence in support of this claim the "Negative Certificate from the SEC" on Wheterby and Clipper Posh, to prove that these were foreign corporations *not doing business* in the Philippines.[49] Obviously, this is *non sequitur*, for a foreign corporation may be both non-resident of the Philippines and non-registered with the Securities and Exchange Commission (SEC), yet may be doing business in the Philippines, without the SEC's knowledge.

Under the NIRC, the term "nonresident foreign corporation" applies to "a foreign corporation not engaged in trade or business within the Philippines."[50] The definition has nothing to do with registration or non-registration with the SEC. Under Section 23(F) of the NIRC, a foreign corporation "whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines." Section 28(B)(1) of the NIRC provides further:

> "(1) *In General.* - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs (C) and (d): Provided, That effective 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%)."

What Liquigaz Philippines should have further established was the *source* of the income payments made to brokers Premiership/Wehterby and Haydock/Clipper Posh. If the income received by them during the taxable year was derived from a source within the Philippines, then that gross income is subject to income tax and, thus, to withholding tax. The determinant factor for "source of income" is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered.[51]

To prove that the income paid by it to the foreign brokers were "earned by the foreign brokers outside the Philippines," Liquigaz Philippines, in its Pre-Trial Brief, stated that among its documentary evidence were "schedule of income payments made to foreign brokers and copies of contracts, invoices, vouchers and official receipts issued therefor." These hardly prove that the activity or service for which it paid these brokers were performed entirely outside the Philippines. Liquigaz Philippines simply relied on the fact that these brokers, as well as the Jifeng Petroleum Consulting Co., Ltd., were non-resident in the Philippines.

Liquigaz also alleged that its payments made to the Financial Executives Institute of the Philippines and to Jifeng Petroleum Consulting Co., Ltd. are exempt from withholding tax, because they are non-stock, non-profit organizations. However,

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[49] Pre-Trial Brief of petitioner, No. 7, p. 5, in CTA Case No. 8141.
[50] Section 22(I).
[51] *Commissioner of Internal Revenue vs Juliane Baier-Nickel*, G.R. No. 153793, August 29, 2006, 500 SCRA 87.

not *all* non-stock, non-profit organizations are tax-exempt. This is clear from Section 30 of the NIRC --

> "**Section 30.** *Exemptions from Tax on Corporations.* - The following organizations shall not be taxed under this Title in respect to income received by them as such: xxx (E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person; xxx
>
> Notwithstanding the provisions of the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition of such income, shall be subject to tax imposed under this Code."

Thus, it is not enough for Liquigaz Philippines to allege that the Financial Executives Institute of the Philippines (FINEX) and the Jifeng Petroleum Consulting Co., Ltd. are non-stock, non-profit organizations. Liquigaz Philippines must further establish that each of them qualifies for tax exemption under Section 30 of the NIRC. In the case of FINEX, it must qualify as an association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes. The same standard should apply to Jifeng. However, all that Liquigaz proffered as evidence in its Pre-Trial Brief were the articles of incorporation and certificate of tax residency from the country where the entity is registered.

Indeed, even tax-exempt non-stock and non-profit organizations and associations are not absolutely exempt from all taxes. Under Revenue Memorandum Circular 76-2003[52], they are subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on their income derived from any of their properties, real or personal, or any activity conducted <u>for profit</u> regardless of the disposition thereof (*i.e.* rental payment from their building/premises), which income should be returned for taxation. Non-stock, non-profit educational institutions are subject to internal revenue taxes on income from trade, business or other activity, the conduct of which is not related to the exercise or performance by such educational institutions of their educational purposes or functions (Sec. 1 of Department of Finance Order No. 137-87[53]), *i.e.*, rental payment from their building/premises.

Any claim to tax exemption or lower tax rates must therefore be strictly scrutinized. The Supreme Court recently expounded:

> "There is no dispute that St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes. This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not ipso facto tax exempt. To be exempt from real property taxes, Section 28(3), Article VI of the Constitution requires that a charitable institution use the property "actually, directly and

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[52] RMC No. 76-2003, Clarifies the tax exemptions of non-stock, non-profit corporations and non-stock, non-profit educational institutions, November 17, 2003.

[53] Amending Sec. 2, Finance Department Order No. 137-87 as amended by Finance Department Order No. 92-88.

exclusively" for charitable purposes. To be exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be "organized and operated exclusively" for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

x x x

[T]he last paragraph of Section 30 provides that if a tax exempt charitable institution conducts **"any"** activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] **organized and operated exclusively** for x x x charitable x x x purposes x x x." It likewise qualifies the requirement in Section 30(G) that the civic organization must be "operated exclusively" for the promotion of social welfare.

x x x

A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.[54]" *(Underscoring supplied)*

Did the public benefit from the trainings conducted by the FINEX and the Jifeng Petroleum Consulting Co., Ltd. for Liquigaz Philippines, and for which they were paid? Liquigaz Philippines did not even attempt to show this.

Moreover, in the case of the Jifeng Petroleum Consulting Co., Ltd., it is doubtful whether its foreign character can qualify it for the tax exemption granted to non-stock, non-profit educational organizations or associations created or organized under Philippine laws.[55]

I agree, therefore, with the observation made by the CIR in its Memorandum in the proceedings before the Second Division, to wit:

"The allegations of petitioner that certain individuals should not be taxed for commission income which has 10% EWT rate but to a much lower service fee income which has a 2% EWT rate remain to be bare allegations. Petitioner claims that certain brokers were actually foreign and not residing in the Philippines remain to be unfounded claims. Petitioner's claim that they should not be held liable for the purchase of goods, services, professional fees and rentals remain to be unsubstantiated claims. In fine, there was no proper substantiation of the self-serving claims of petitioner.[56]"

Given the foregoing, there is nothing arbitrary in the CIR's decision, as contained in the FDDA, to reduce the deficiency taxes assessed in the Formal Letter of Demand, with Final Assessment Notice, from P24,332,347.20, to P22,380,025.19.

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[54] *Commissioner of Internal Revenue vs St. Luke's Medical Center*, G.R. No. 195909, September 26, 2012.
[55] See BIR Ruling No. 019-2001 dated May 10, 2001, where the BIR ruled that a foreign non-stock, non-profit corporation or NGO, whether resident or non-resident in the Philippines, cannot be accredited as a donee institution unless it is created or organized under Philippine law.
[56] *Rollo,* pp. 478-479, Respondent's Memorandum, pp. 5-6, in CTA Case No. 8141.

The reduction by P1,952,322.01 (or 8.02%) was all that Liquigaz Philippines was able to substantiate with its supporting documents. Had the CIR failed or refused "to consider and examine the documents presented and discussions/explanations of the petitioner,"[57] as Liquigaz Philippines alleged, such a reduction would not have been made at all, or a smaller round figure or percentage might have been adopted instead of re-computing each deficiency tax item/category.

I reiterate the hornbook doctrine that the determinations and assessments made by the Bureau of Internal Revenue are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments.[58] 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 is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[59]

Neither am I persuaded by the findings and conclusions of the Independent CPA commissioned by the Second Division. The 22-page ICPA Report dated May 16, 2011 submitted by Antonio O. Maceda Jr., partner of Maceda Farnacio & Co., who was commissioned by the Court on March 31, 2011 as Independent CPA to verify the documentary evidence of Liquigaz Philippines, simply adopted the tax rates proposed by Liquigaz Philippines and its claims that some of the entities to which it made payments were tax-exempt for one reason or another. The ICPA Report failed to cite the legal bases for its conclusions that the correct taxes were duly withheld by Liquigaz Philippines.

Liquigaz Philippines faults the BIR for failing or refusing to see things its way. Yet Liquigaz Philippines also failed, in its July 25, 2008 protest of the BIR's FAN, to cite laws, rules, regulations, rulings or jurisprudence to support each imputation of error in the BIR's procedures, standards and findings. Liquigaz Philippines alleged that some of its payees for training were "general professional partnerships" or "non-stock, non-profit organizations" or "non-resident foreign entity", so as to exempt them from withholding tax, yet failed to prove that they were indeed what it claimed them to be. The same lack of proof may be noted as to allegations of "one-time purchases." What Liquigaz presented to this Court were thus in the nature of mere self-serving opinions.

We reiterate the pronouncement of the Supreme Court en banc in *Republic vs Hon. Ramon S. Caguioa, et al.*:[60]

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[57] No. 34, Petition for Review, p. 14, in CTA Case No. 8141.
[58] *Sy Po vs Court of Appeals*, G.R. No. L-81446, 18 August 1988, 164 SCRA 524, 530, cited in *CIR vs Bank of the Philippine Islands*, G.R. No. 134062, *supra*.
[59] Marcos II vs Court of Appeals (G.R. No. 120880, June 5, 1997, 273 SCRA 47, at 66-67), reiterated in CIR vs Hon. Raul M. Gonzalez, G.R. No. 177279, October 13, 2010.
[60] G.R. No. 168584, October 15, 2007, 536 SCRA 193.

> "As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed. In case of doubt, non-exemption is favored." *(Citations omitted.)*

Based on the foregoing, I vote to **GRANT** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 989 and **DENY** the Petition for Review filed by Liquigaz Philippines, Corporation in CTA EB No. 990.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice