Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB Case No. 1125** (CTA Case No. 7997)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
EL PASO PHILIPPINES ENERGY COMPANY, INC., Respondent.	**Promulgated:** NOV 11 2014 4:10 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review[1] filed by the Commissioner of Internal Revenue, from the Decision[2] dated October 29, 2013 and Resolution[3] dated February 5, 2014, both promulgated by Court of Tax Appeal's (CTA) Special First Division in CTA Case No. 7997, which partially granted El Paso Philippines Energy Company, Inc.'s Petition for Review by cancelling its deficiency income tax and deficiency value-added tax (VAT) assessments, reducing its basic deficiency final withholding tax (FWT) assessment to ₱442,973.93 and ordering it to pay interests and surcharges.

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[1] CTA *En Banc* Rollo, pp. 5-19
[2] Division Docket (Vol. III), pp. 1789-1825
[3] *Ibid.*, pp. 1905-1908

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent El Paso Philippines Energy Company, Inc. is a domestic corporation with principal place of business at Ground Floor PFDA Building, Navotas Fish Port Complex, Navotas City.[4]

The facts of the case, as found by the CTA Special First Division, are as follows:[5]

> "Petitioner [*respondent herein*] avers that on July 18, 2006, it received Letter of Authority (LOA) No. 00032295 dated July 7, 2006 from BIR Revenue Region No. 7, Revenue District Office (RDO) No. 43, authorizing the examination of its books for calendar year 2005. With the LOA is a letter dated July 18, 2006 requesting for petitioner's books of accounts, financial statements and other related accounting records and supporting documents.
>
> On January 18, 2008, petitioner, through its Group Controller, executed a Waiver of the defense of prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC).
>
> On January 21, 2008, the BIR issued a revalidation notice informing petitioner that LOA No. 00032295 had been revalidated as the "investigation is still on-going".
>
> On February 15, 2008, petitioner received from the BIR a final request for presentation of records and documents. Thereafter, it submitted to RDO No. 43 the Waiver of Statute of Limitations it earlier executed.

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[4] The Parties, Petition for Review, CTA *En Banc* Rollo, p. 6
[5] Decision, Division Docket (Vol. III), pp. 1790-1798

On March 26, 2008, petitioner received a copy of the Waiver of Statute of Limitations with the signature of the RDO in the "Accepted By" portion, *sans* the date of acceptance.

On July 25, 2008, petitioner received a Notice of Informal Conference with attached computation of deficiency taxes, for it to controvert the BIR findings.

On January 30, 2009, petitioner received from respondent [*petitioner herein*] through the Regional Director of Revenue Region No. 7 a Formal Letter of Demand (FLD) No. 43-180 dated January 14, 2009 with attached Assessment Notices, finding it liable for deficiency IT of P14,385,900.88, deficiency FWT of P6,850,981.93, and deficiency VAT of P2,843,835.63, inclusive of interests, in the aggregate amount of P24,080,718.44 for calendar year 2005. The Schedule 1 of the FLD reads:

DETAILS OF DISCREPANCIES

I. DEFICIENCY INCOME TAX

Income Payments not subjected to withholding tax (P28,255,462.21) – Verification disclosed that you failed to subject fully the interest expense to withholding tax as required under Revenue Regulations No. 2-98, as amended, thus disallowed as deductions from your gross income pursuant to Section 34(K) of the NIRC of 1997.

Interest Expenses per FS		P156,206,061
Less: Interest subject to Final Tax per 1601F	P148,267,753.83	
Less: Interest Expense pertaining to 2004	20,317,155.04	127,950,598.79
Interest Expense not subjected to withholding tax		**P28,255,462.21**

II. DEFICIENCY VALUE ADDED TAX

Verification disclosed that exempt sales amounting to P17,647,058.82 were not supported with sufficient evidence/documents, thereof, subject to 10% VAT pursuant to Section 106, 108 and 109 of the NIRC of 1997.

III. DEFICIENCY FINAL WITHHOLDING TAX

Verification disclosed that the following income payments were not fully subjected to Final withholding tax, hence, you are assessed pursuant to Revenue Regulations No. 2-98.

Interest Expenses per FS		P156,206,061.00
Less: Interest subject to Final tax per 1601F	P148,267,753.83	
Less: Interest Expense pertaining to 2004	20,317,155.04	127,950,598.79
Interest Expense not subjected to withholding tax		**P28,255,462.21**

IV. COMPROMISE PENALTY was imposed for the non-submission of schedules pursuant to Sections 250 and 255 of the NIRC of 1997 with reference to Revenue Memorandum Order (RMO) No. 1-90.

On February 27, 2009, petitioner protested the assessments.

In a letter dated March 11, 2009, the BIR Assessment Division informed petitioner that its protest letter would be forwarded to the RDO No. 43-A Pasig City.

In a letter dated May 20, 209 *[sic]*, RDO No. 43-A requested petitioner to submit documents in support of its protest. On July 6, 2009, petitioner submitted its letter reply, with the attached schedule of computations and documents.

On October 20, 2009, petitioner received a Preliminary Collection Notice from the Regional Task Force of Revenue Region No. 7-Quezon City dated August 10, 2009, stating the assessed deficiency taxes in the aggregate amount of P24,080,718.44.

On November 12, 2009, BIR Officer George Larin served upon petitioner a Final Notice Before Seizure dated August 17, 2009 issued by the Collection Task Force of Revenue Region No. 7-Quezon City states as follows:

> In this connection, we would like to inform you that we are giving you the last opportunity to settle said account within **FIVE (5)** days from receipt of this reminder letter.
>
> Should this office fail to hear from you within the time prescribed, we will be constrained, much to our regret, to enforce collection thereof thru summary and/or judicial remedies by issuing the corresponding Warrants of Distraint/Levy and filing the necessary action in the courts of law to protect the interest of the government.

On November 19, 2009, petitioner filed the instant Petition for Review raising the following grounds:

> I. THE ALLEGED DEFICIENCY INCOME TAX AND FINAL WITHHOLDING TAX ASSESSMENTS ARE DEVOID OF FACTUAL AND LEGAL BASIS *[sic]*, CONSIDERING THAT IT WAS BASED ON THE 'NET WORTH METHOD' ADOPTED BY RESPONDENT COMMISSIONER WITHOUT CAREFUL CONSIDERATION OF THE RECORDS AND DOCUMENTS PRESENTED DURING THE COURSE OF EXAMINATION OF PETITIONER'S BOOK OF ACCOUNTS.
>
> II. THE ALLEGED DEFICIENCY VALUE ADDED TAX (VAT) ASSESSMENTS ARE DEVOID OF FACTUAL AND LEGAL BASIS *[sic]*, CONSIDERING THAT PETITIONER EPPECI IS EXEMPT FROM PAYING VAT WITH RESPECT TO THE SUBJECT TRANSACTION.

In her Answer filed on January 25, 2010, respondent argues that the assessments for deficiency IT, FWT and VAT for calendar year 2005 in the amounts of P14,385,900.88, P6,850,981.93 and P2,843,835.63, respectively, were in accordance with law and regulations and are presumed correct and made in good faith.

On March 30, 2010, the parties filed their Joint Stipulation of Facts and Issues, which was approved on April 7, 2010.

In support of its case, petitioner presented its Officer-in-Charge, **Honorio S. Cruz**, who by way of a Judicial Affidavit, testified that on January 30, 2009, he received FLD No. 43-180 dated January 14, 2009 with attached Assessment Notices assessing petitioner of deficiency internal revenue taxes for calendar year 2005. In a separate FLD dated January 14, 2009, petitioner was also assessed Compromise Penalty of P8,000.00 for alleged non-submission of Quarterly Summary List of Sales and Purchases. On February 27, 2009, petitioner formally protested the assessments. In a letter dated March 11, 2009, the Assessment Division of Revenue Region No. 7 informed petitioner that its protest would be forwarded to the Revenue District Office No. 43-A, East Pasig City which office subsequently issued a Tax Verification Notice for the reinvestigation of petitioner for taxable period from January 1, 2005 to December 31, 2005. This was followed by another letter dated May 20, 2009, requesting for computations and documents in support of the protest.

On October 20, 2009, or after petitioner complied with the directive, it received a preliminary collection letter from Revenue Region No. 7, Regional Task Force, reiterating the assessed deficiency taxes contained in the FLD in the aggregate amount of P24,080,718.44.

On November 12, 2009, a Final Notice Before Seizure was served upon petitioner, hence, the instant petition.

Jaime B. Robles, also testified for petitioner. He declared in his Judicial Affidavit that while he was the Controller of petitioner, he supervised and monitored the recording and documentation of petitioner's business transactions. He also prepared and filed petitioner's internal revenue tax returns and supervised and reviewed all correspondences pertaining to any deficiency assessments.

He opined that the alleged deficiency IT assessment of P14,385,900.88 is erroneous because the item 'interest expense' of P28,255,462.21 should not be disallowed or be subject to any tax. He explained that the amount of P28,255,462.21 was arrived at by the BIR based on erroneous comparison of petitioner's interest expense per Financial Statements (FS) amounting to P156,206,061.39 with the one reported in its BIR Form No. 1601F (Final Withholding Tax Return) amounting to P127,950,598.00, net of P20,317,155.44 interest expense pertaining to year 2004. Had the BIR closely examined the components and supporting documents of the P156,206,061.39 interest expense per FS of 2005, to wit:

Description	Expense Amt.	Tax Base net of 10% VAT	EWT amount	EWT rate
Accrued interest pertaining to 2004	22,348,870.50	20,317,155.00	2,031,715.50	10%
Interest payments in 2005	131,089,479.74	119,172,254.31	16,253,157.21	15%
Non-deductible interest expense per ITR of 2005	2,725,121.39			
Realized forex loss	42,589.76			
Interest expense per FS	156,206,061.39		18,284,872.71	

It would have realized that there was really no difference between the said amount and the interest expense declared in petitioner's BIR Form No. 1601F for the year 2005. In view thereof, petitioner should not be assessed for the deficiency IT of P14,385,900.88 and deficiency FWT of P6,850,981.93.

The alleged deficiency VAT assessment of P2,843,835.63, inclusive of interest, is likewise erroneous. The supporting documents for sales receipts for services rendered to East Asia Utilities Corporation (EAUC) in the amount of P17,647,058.82 show that it is exempt from 10% VAT required under Sections 106, 108 and 109 of the NIRC of 1997 or is subject to VAT at zero-percent rate since EAUC is registered with the Philippine Economic Zone Authority (PEZA). As such, petitioner cannot be subject to VAT for its receipts from EAUC.

On November 5, 2010, the Court granted petitioner's Motion to Allow the Referral of Voluminous Documents to an Independent Certified Public Accountant and gave the ICPA thirty (30) days within which to submit her report.

The Court commissioned ICPA **Atty. Rosario S. Bernaldo** filed a Partial Report and a Final Report on February 14, 2011. On March 7, 2011, she filed a Revised Final ICPA Report only to correct some material errors.

She testified that the BIR's findings in its FLD No. 43-180 dated January 14, 2009 was derived by comparing the amount of interest expense reported in petitioner's FS and its interest expense subjected to FWT appearing in its BIR Form No. 1601F. Consequently, respondent disallowed as deductions from petitioner's gross income the amount of P28,255,462.21 under Section 34(K) of the NIRC of 1997 and correspondingly assessed petitioner IT and FWT.

Verification shows that petitioner paid and remitted to the BIR the corresponding FWT amounting to P21,678,205.38 on P152,923,806.16 interest expense. Thus, her recommendation to reduce the 15% FWT imposed on the alleged P28,255,462.21 interest expense not subject to withholding tax. The reduction and/or total elimination can be done after the P3,384,323.73 representing the remittance of withholding taxes on the accrual of interest expense for the period December 26-31, 2005 has been verified, as well as all the realized forex gains/losses arising from interest and FWT remittances of petitioner, which to date, only P982,500.82 has been validated.

With respect to the deficiency IT assessment, since it is premised on the non-deductibility of interest expenses for alleged non-withholding on the P28,255,462.21 interest expense, she recommends that P152,923,806.16 be allowed as 'interest expense' deduction for IT purposes.

Finally, her audit shows that the deficiency VAT assessment pertains to petitioner's sales in the form of management fees paid by EAUC by virtue of the Management Agreement entered into between petitioner and EAUC. As a PEZA registered entity, EAUC is subject to 5% special income tax in lieu of all other internal revenue taxes, including VAT. That being the case, the assessment of P2,843,835.63 on VAT, inclusive of interest up to February 14, 2009, should be cancelled.

After formal offer of exhibits, petitioner rested its case as indicated in the Resolution dated March 23, 2012, which admitted previously denied exhibits.

For her part, respondent presented Revenue Officer III **Ricardo C. Navarro** who testified, that pursuant to Referral Memorandum No. 043-2128-2007 dated October 5, 2007 issued by Revenue District Officer Florante R. Aninag, he continued the audit and investigation of all internal revenue taxes of petitioner for the year 2005. On February 28, 2008, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC, extending respondent's right to assess petitioner of its internal revenue taxes for taxable year 2005 until June 30, 2009. Thereafter, a Notice of Informal Conference with attached Computation of Deficiency Taxes was issued to allow petitioner to present its side on the result of the investigation. In his Memorandum Report, he recommended the issuance of assessment notices to petitioner.

Upon submission of the said Memorandum Report, the case was forwarded to the Assessment Division and a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated December 22, 2008 was issued against petitioner. This was followed by a FLD with Details of Discrepancies and Final Assessment Notices (FAN), all dated January 14, 2009.

When petitioner failed to reply on the Notice of Informal Conference, he forwarded the docket to the Assessment Division of the BIR.

On September 7, 2012, respondent formally rested its case.

In a Resolution dated December 20, 2012, the Court deemed the case submitted for decision." *(Citations Omitted)*

On October 29, 2013, the CTA Special First Division promulgated the assailed Decision the dispositive portion of which reads as follows:

"**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent Commissioner of Internal Revenue against petitioner El Paso Philippines Energy Company, Inc. for the calendar year 2005 covering deficiency Income Tax in the amount of P14,385,900.88 and deficiency Value-Added Tax in the amount of P2,843,835.63 are **CANCELLED** and **SET ASIDE**. However, the deficiency Final Withholding Tax assessment for calendar year 2005 is **UPHELD IN PART**. Accordingly, petitioner is hereby **DIRECTED TO PAY** respondent basic deficiency Final Withholding Tax in the amount of P442,973.93 and the corresponding twenty-five percent (25%) surcharge in the amount of P110,743.48 as imposed under Section 248(A)(3) of the NIRC of 1997, as amended, or in the sum of P553,717.41, computed as follows:

Basic Deficiency FWT	P 442,973.93
Add: 25% Surcharge	110,743.48
Total	**P553,717.41**

In addition, petitioner is **ORDERED TO PAY**: (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency FWT of P442,973.93 computed from January 15, 2006, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of 20% per annum on the total amount of P553,717.41 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 14, 2009 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

On November 29, 2013, herein petitioner filed a Motion for Reconsideration[6], praying that the assailed Decision be reversed and set aside, and herein respondent be ordered to pay deficiency Income Tax in the amount of ₱14,385,900.88, deficiency Final Withholding Tax in the amount of ₱6,850,981.93, deficiency Value Added Tax in the amount of ₱2,843,835.63, and compromise penalty in the amount of ₱8,000.00 for taxable year 2005 plus 25% surcharge and 20% annual interest for late payment from February 14, 2009 until fully paid, pursuant to Sections 248 (A) and 249 (B) of the NIRC of 1997, as amended.

On February 5, 2014, the CTA Special First Division rendered the assailed Resolution, denying the Motion for Reconsideration for lack of merit.

Hence, on March 13, 2014, petitioner filed the instant Petition for Review[7] with the Court *En Banc*.

On March 31, 2014, this Court issued a Resolution[8] ordering respondent to file its Comment to the Petition for Review within ten (10) days from receipt thereof.

After filing a Motion for Extension of Time to File Comment, respondent filed its Comment[9] on May 5, 2014.

Thereafter, in a Resolution[10] dated May 26, 2014, this Court resolved to give due course to the instant petition and required both parties to submit their respective Memorandum within a period of thirty (30) days from notice thereof. After which, the instant Petition for Review shall be considered submitted for decision.

On July 2, 2014, respondent filed its Memorandum[11], while petitioner filed her Memorandum[12] on July 28, 2014 after requesting for an extension of time to file memorandum.

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[6] Division Docket (Vol. III), pp. 1826-1832
[7] CTA *En Banc* Rollo, pp. 5-19
[8] *Ibid.*, pp. 67-68
[9] *Id.*, pp. 73-101
[10] *Id.*, pp. 103-104
[11] *Id.*, pp. 108-138
[12] *Id.*, pp. 139-151

Accordingly, in the August 15, 2014 Resolution[13], the instant case was deemed submitted for decision.

Petitioner raised the following errors[14] allegedly committed by the CTA Special First Division in her Petition for Review, to wit:

> THE SPECIAL FIRST DIVISION ERRED IN EXERCISING ITS JURISDICTION OVER THE INSTANT CASE.
>
> RESPONDENT HAS INTEREST EXPENSE NOT SUBJECTED TO WITHHOLDING TAX IN THE CLAIMED AMOUNT OF ₱28,255,462.21 SUBJECT OF THE FORMAL LETTER OF DEMAND NO. 43-180 DATED 14 JANUARY 2009.
>
> RESPONDENT HAS UNSUPPORTED VAT EXEMPT SALES IN THE CLAIMED AMOUNT OF ₱17,647,058.82 SUBJECT OF THE FORMAL LETTER OF DEMAND NO. 43-180 DATED 14 JANUARY 2009.
>
> RESPONDENT IS LIABLE TO PAY PETITIONER THE SUBJECT ASSESSMENTS, INCLUSIVE OF INTERESTS, IN THE ALLEGED SUMS OF:
>
> (a) Deficiency IT - ₱14,385,900.88
> (b) Deficiency FWT - ₱6,850,981.93
> (c) Deficiency VAT - ₱2,843,835.63
>
> RESPONDENT IS LIABLE TO PAY COMPROMISE PENALTY IN THE SUM OF ₱8,000.00.
>
> THE SUBJECT ASSESSMENTS HAVE BECOME FINAL AND EXECUTORY.

Petitioner primarily asserts that the Court *a quo* has no jurisdiction over respondent's claim since the subject assessments had already become final and executory. Petitioner insists that, counting from the time respondent filed its administrative protest with

[13] *Id.*, pp. 153-154
[14] Grounds for the Petition, Petition for Review, CTA *En Banc* Rollo, pp. 9-10

petitioner, respondent failed to submit relevant supporting documents to substantiate its claim within sixty (60) days therefrom and, also, more than one hundred eighty (180) days had already elapsed when it filed its judicial appeal *via* the Petition for Review with the CTA Special First Division. Thus, respondent failed to timely comply with the procedural requirements under Section 228 of the Tax Code.

As to the other issues raised, petitioner merely reiterated her arguments in assailing the findings of the Court *a quo* by claiming that respondent failed to fully subject the interest expense to withholding tax as required under Revenue Regulations (RR) No. 2-98, as amended, and submit sufficient proof to corroborate its claims. Hence, petitioner asserts that respondent is liable to pay the amounts of ₱14,385,900.88 as deficiency income tax; ₱6,850,981.93 as deficiency final withholding tax; and ₱2,843,835.63 as deficiency value added tax.

After due considerations, *We* find the instant Petition for Review bereft of merit.

THE SPECIAL FIRST DIVISION DID NOT ERR IN EXERCISING JURISDICTION OVER THE INSTANT CASE, and

THE SUBJECT ASSESSMENTS HAVE NOT YET BECOME FINAL AND EXECUTORY.

Section 228 of the NIRC of 1997, as amended, states that a taxpayer may protest an assessment within thirty (30) days from receipt thereof, and submit relevant supporting documents within sixty (60) days from the time the protest was filed. If the protest is denied, the taxpayer has thirty (30) days within which to appeal the decision to the CTA. However, in case the protest is not acted upon within one hundred eighty (180) days from submission of supporting documents, the taxpayer may appeal the inaction to CTA within thirty (30) days from the lapse of the 180-day period. The relevant portions of the said Section provide:

> "**SEC. 228.** ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that

> proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> *xxx xxx xxx*
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**" *(Emphases Ours)*

In the instant case, respondent received the Formal Letter of Demand No. 43-180 with attached Assessment Notices dated January 14, 2009 on January 30, 2009. Counting thirty (30) days from the date of receipt, respondent had until March 2, 2009 (taking into account that March 1 is a Sunday) within which to file its protest. Based on the records of the case, respondent filed its protest[15] on February 27, 2009. Thus, it was timely filed within the 30-day period.

Petitioner now claims that respondent failed to submit relevant supporting documents within sixty (60) days from February 27, 2009, thereby making the subject assessments final. She asserts that the submission of all the relevant supporting documents within the 60-day period from filing of the protest is mandatory.

We do not agree.

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[15] Exhibits "C" to "C-3", Division Docket (Vol. II), pp. 1092-1096; Par. 10, Stipulated Facts, Joint Stipulation of Facts and Issues, Division Docket (Vol. I), p. 208

While it is true that compliance with the requirement of submitting relevant supporting documents are directory, the decision of what documents are relevant to support its claim lies with the taxpayer. In the instant case, perusal of the records reveals that, upon filing of its administrative protest, respondent submitted therewith its relevant supporting documents, namely copies of BIR Form 1601-F for the months of January[16], April[17], May[18], July[19] and October[20] all for taxable year 2005 as *Annex A*; and East Asia Utilities Corporation's (EAUC) Certificate of Registration No. 98-01-U dated April 27, 1998 with the Philippine Economic Zone Authority (PEZA) as *Annex B*, and the EAUC's Board Resolution No. 00-033[21] stating its exemption from all national and local taxes as *Annex C* thereof. This was even supported by the testimony of respondent's Officer-in-Charge, Honorio S. Cruz, in his Judicial Affidavit[22] dated June 18, 2010.

This Court has consistently held that the BIR examiner **can require** the taxpayer to submit additional documents but the examiner **cannot demand** what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Furthermore, it also does not matter whether the relevant supporting documents are simultaneously submitted with the filing of the protest or submitted thereafter, but rather, they are submitted within sixty (60) days from filing of the protest.[23]

The case of *COMMISSIONER OF INTERNAL REVENUE vs. FIRST EXPRESS PAWNSHOP COMPANY, INC.,*[24] is instructive in the matter at hand. Thus:

> "The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a

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[16] Exhibit "P-5", Division Docket (Vol. II), pp. 1119-1120
[17] Exhibit "Q-6", *Ibid.*, pp. 1126-1127; "DF.2" to "DF.5", ICPA Report
[18] Exhibit "Q-7", *Id.*, pp. 1128-1129; "DG.2" to "DG.5", ICPA Report
[19] Exhibit "R-9", *Id.*, pp. 1138-1139; "AL.8", ICPA Report
[20] Exhibit "S-9", *Id.*, pp. 1148-1149; "AN.9", ICPA Report
[21] Exhibit "K", *Id.*, p. 1110
[22] Q&A No. 25 to Q&A No. 28, Exhibit "U" and "U-1", Division Docket (Vol. II), p. 1156
[23] CIR vs. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46, June 16, 2009
[24] *Ibid.*

> taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphasis Ours)*

Anent her second assertion, petitioner insists that more than one hundred eighty (180) days had elapsed from the time the protest was filed on February 27, 2009 when respondent filed its Petition for Review with the CTA Special First Division on November 19, 2009, thereby making the subject assessments final, executory and demandable.

A simple reading of Section 228 of the NIRC of 1997, as amended, clearly indicates that if the protest is denied or is not acted upon within one hundred eighty (180) days **from submission of documents**, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period. Stated otherwise, the 180-day period for the CIR to decide the protest is counted from the submission of documents and not from the filing of the protest.

Going back to the parties' Joint Stipulation of Facts and Issues[25] submitted on March 30, 2010, both parties admitted and stipulated, among others, the following facts:

> "13. **On May 29, 2009, petitioner EPPECI received from BIR-RDO No. 43-A a letter dated May 20, 2009 requesting for computations and documents to be submitted by petitioner EPPECI in order that the said office may act on its protest** of the assessments for internal revenue tax liabilities;
>
> 14. **On October 20, 2009, petitioner EPPECI received a preliminary collection letter dated August 10, 2009** from BIR-Revenue Region No. 7, Quezon City, Regional Task Force through its Regional Director, which enumerates the assessed deficiency taxes stated in the Formal Letter of Demand, in the aggregate amount of Php 24,080,718.44. Further, the said preliminary collection notice states:
>
>> 'To avoid the accumulation of interest and surcharges, it is requested that you pay the aforesaid

[25] Division Docket (Vol. I), pp. 204-213

> tax liability/ies within five (5) days from receipt hereof. However, if payment had already been made, please furnish us your copies of the receipt of payment together with this letter to be the basis for cancelling/closing your liability/ies. Otherwise, we shall be constrained to enforce the collection thereof thru administrative summary remedies as provided for by law, without further notice.'
>
> 15. **The above preliminary collection letter dated August 10, 2009 is deemed a denial of petitioner EPPECI's protest**;" *(Emphases Ours)*

Considering the foregoing stipulated facts, the preliminary collection letter dated August 10, 2009 was considered the denial of respondent's protest. Thus, the 30-day period within which to appeal the said denial to the CTA commenced to run from the time the letter was received by respondent, which was on October 20, 2009. Respondent's Petition for Review was filed on November 19, 2009. Clearly, the filing thereof falls well within the 30-day period provided under Section 228 of the NIRC of 1997, as amended.

RESPONDENT HAS NO INTEREST EXPENSE TO BE SUBJECTED TO WITHHOLDING TAX IN THE AMOUNT OF ₱28,255,462.21, BUT IS DIRECTED TO PAY BASIC DEFICIENCY FWT OF ₱442,973.93 PLUS INTERESTS AND SURCHARGES.

Petitioner alleges that respondent failed to fully subject its interest expense to withholding tax as required under Revenue Regulations No. 2-98, as amended. On the other hand, respondent argues that the interest expense not subjected to FWT is not taxable because such amount was erroneously arrived at based on its interest expense in its 2005 tax return (BIR 1601-F form) and its financial statements as follows:

Interest Expense per FS		₱ 156,206,061.00
Less: Interest subject to Final Tax per 1601F	₱ 148,267,753.83	
Less: Interest Expense pertaining to 2004	20,317,155.04	127,950,598.79
Interest Expense not subjected to withholding tax		**₱ 28,255,462.21**

Accordingly, finding no reversible error with regard to respondent's interest expense in the assailed Decision, *We* sustain the findings of the CTA Special First Division, to wit:

"From the foregoing, petitioner subjected to withholding its interest payments to EPEC Nederland Holding using the preferential tax rate of fifteen percent (15%), which was not disputed by the respondent.

The ICPA examined and verified the foregoing interest expense and was able to account the same as follows:

Exhibit No.	JV No.	Date	US $ Equivalent	Amount	Remarks
Y-Y.2	10514	01/31/05	$ 178,423.08	P 9,939,414.52	January Accrual
Z-Z.2	20512	02/28/05	165,215.05	9,052,330.85	February Accrual
AA-AA.2	30514	03/31/05	187,817.44	10,222,884.64	March Accrual
AB-AB.2	60507	06/07/05	59,458.22	3,297,966.45	Expense adjustment
Total			**590,913.79**	**32,512,596.46**	
AC-AC.3	40513	04/30/05	220,093.72	12,094,676.69	April Accrual
AD-AD.2	50518	05/30/05	229,440.05	12,469,745.69	May Accrual
AE-AE.2	60533	06/30/05	229,305.11	12,671,262.93	June Accrual
Total			**678,838.88**	**37,235,685.31**	
AF-AF.2	70522	07/31/05	244,044.12	13,704,211.47	July Accrual
AG-AG.1	80516	08/31/05	252,196.35	14,245,294.84	August Accrual
AH-AH.2	90527	09/30/05	260,229.75	14,420,853.32	September Accrual
Total			**756,470.22**	**42,370,359.63**	
AI-AI.4	12515	12/31/05	**833,317.78**	**44,087,419.99**	4th Quarter Accrual
Total Interest Expense during 2005 per Books			**$2,859,540.67**	**P156,206,061.39**	

xxx xxx xxx

From the foregoing, petitioner's total interest expense per books for the year 2005 amounted to US$2,861,482.30 with peso equivalent of P156,206,061.39, as summarized below:

Accrual of the Period	US $ Equivalent	Peso Equivalent
1st Quarter	531,455.57	29,214,630.01
2nd Quarter	680,779.91	37,235,685.31
FWT adjustment	59,458.22	3,297,966.45
3rd Quarter	756,470.22	42,370,359.62
4th Quarter	833,318.38	44,087,420.00
TOTAL	**2,861,482.30**	**156,206,061.39**

On the other hand, the total interest payment on petitioner's EPEC Nederland Holding loan (inclusive of FWT) amounted to US$2,797,512.95 with peso equivalent of P153,547,166.43, computed as follows:

2005	Interest Payments		FWT Remittances		Total	
	In Dollar	In Peso	In Dollar	In Peso	In Dollar	In Peso
First Quarter	$ 444,320.90	P 24,410,990.24	$ 44,432.09	P 2,430,346.51	$ 488,752.99	P 26,841,336.7
Adjustments	-	-	59,458.22	3,297,966.45	59,458.22	3,297,966.45
Second Quarter	588,881.80	32,977,380.80	88,332.27	4,918,252.46	677,214.07	37,895,633.2
Third Quarter	652,335.89	36,537,333.19	97,850.38	5,456,039.53	750,186.27	41,993,372.7
Fourth Quarter	714,696.87	37,943,256.82	107,204.53	5,575,600.43	821,901.40	43,518,857.2
Total	**$2,400,235.46**	**P131,868,961.05**	**$397,277.49**	**P21,678,205.38**	**$2,797,512.95**	**P153,547,166.**

Due to dissimilarity of dollar exchange rate at the time of accruals and the actual remittances, petitioner incurred foreign exchange loss from its interest payments on EPEC Nederland loan amounting to P795,771.33 and foreign exchange gain from remittance of final withholding taxes in the amount of P58,533.59, which both formed part of the total interest payment of P156,206,061.39, as shown below:

	Exhibit	Accrual of Interest on Loan		Exhibit	Payment of Interest on Loan	Forex Gain/(Loss)
January 2005	Y-Y.2	$ 162,202.80	P 9,035,831.38		P 8,911,421.83	P 124,409.5
February 2005	Z-Z.2	150,195.50	8,229,391.68		8,251,740.77	(22,349.0
March 1-25, 2005	AA-AA.2	131,922.60	7,180,533.93		7,247,827.64	(67,293.71
		444,320.90	**24,445,756.99**	AJ-AJ.5	**24,410,990.24**	**34,766.7**
March 26-31, 2005	AA-AA.2	38,820.53	2,112,997.57		2,173,949.68	(60,952.1
April 2005	AC-AC.3	191,385.84	10,425,169.48		10,717,607.04	(292,437.5
May 2005	AD-AD.2	199,513.09	10,843,257.12		11,172,733.04	(329,475.9
June 1-25, 2005	AE-AE.2	159,162.34	8,795,215.41		8,913,091.04	(117,875.6
		588,881.80	**32,176,639.58**	AL-AL.8	**32,977,380.80**	**(800,741.22**

June 26-30, 2005	AE-AH.2	40,233.41	2,223,676.43		2,253,473.29	(29,796.8
July 1-25, 2005	AH-AH.2	164,293.38	9,202,072.21		9,202,072.21	
July 26-31, 2005		47,918.90	2,683,937.59		2,683,937.59	
August 2005		219,301.17	12,283,058.53		12,283,058.53	
September 1-25, 2005		180,589.03	10,114,791.57		10,114,791.57	
		652,335.89	**36,507,536.33**	AN-AN.9	**36,537,333.19**	**(29,796.8**
September 26-30, 2005	AI-AI.4	45,697.71	2,426,091.42		2,426,091.42	
October 2005		239,913.26	12,736,994.97		12,736,994.97	
November 2005		240,853.94	12,786,935.67		12,786,935.67	
December 1-25, 2005		188,231.96	9,993,234.76		9,993,234.76	
		714,696.87	**37,943,256.82**	AP-AP.9	**37,943,256.82**	
TOTAL		**$ 2,400,235.46**	**P 131,073,189.72**		**P 131,868,961.05**	**₱ (795,771.3**

	Exhibit	Accrual of FWT		Exhibit	FWT Remittances	Forex Gain/(Loss
January 2005	Y-Y.2	$ 16,220.28	P 903,583.14			
February 2005	Z-Z.2	15,019.55	822,939.17			
March 1-25, 2005	AA-AA.2	13,192.26	718,053.39			
		44,432.09	**2,444,575.70**	AK-AK.3	**P 2,430,346.51**	**P 14,229.1**
March 26-31, 2005	AC-AC.3	5,823.08	317,031.55			
April 2005		28,707.88	1,563,775.42			
May 2005	AD-AD.2	29,926.96	1,626,488.57			
June 1-25, 2005	AE-AE.2	23,874.35	1,319,282.31			
		88,332.27	**4,826,577.85**	AM-AM.3	**4,918,252.46**	**(91,674.61**
	AB-AB.2	**59,458.22**	**3,297,966.45**	AB-AB.2	**3,297,966.45**	
June 26-30, 2005	AE-AH.2	6,035.01	333,551.46			
July 1-25, 2005	AH-AH.2	24,644.01	1,380,310.83			
July 26-31, 2005		7,187.84	402,590.64			
August 2005		32,895.18	1,842,458.78			
September 1-25, 2005		27,088.35	1,517,218.74			
		97,850.39	**5,476,130.45**	AO-AO.3	**5,456,039.53**	**20,090.9**
September 26-30, 2005	AI-AI.4	6,854.66	363,913.71			
October 2005		35,986.99	1,910,549.25			
November 2005		36,128.09	1,918,040.35			
December 1-25, 2005		28,234.79	1,498,985.21			
		107,204.53	**5,691,488.52**	AQ-AQ.9	**5,575,600.43**	**115,888.0**
TOTAL		**$ 397,277.50**	**P 21,736,738.98**		**P 21,678,205.38**	**P 58,533.5**

Note that there is a difference between petitioner's total interest expense per books and the total interest remittance amounting to US$63,969.35, computed as follows:

	In Dollar	In Peso
Interest Remittances	$ 2,797,512.95	P 153,547,166.43
(-) Forex Loss on Interest Payment		(795,771.33)
(+)Forex Gain on FWT Remittance		58,533.59
Total	2,797,512.95	152,809,928.69
Less: Interest Expense per books	2,861,482.30	156,206,061.39
Difference	**$ 63,969.35**	**P 3,396,132.70**

The difference actually pertains to the accrual for the period December 26-31, 2005 which remained outstanding as of the end of the fourth quarter of 2005. It was due for remittance to EPEC Nederland Holding not later than April 20, 2006.

As verified, the amount of P3,396,132.70 was included in the total interest expense per books of P156,206,061.39. On the other hand, the deductible interest expense per petitioner's 2005 ITR amounted to P153,480,940.00. The difference of P2,725,121.39 represents forty-two percent (42%) of the interest income subjected to final tax and claimed by petitioner as non-deductible interest expense in its 2005 ITR, in accordance with Section 34(B)(1) of the NIRC of 1997, as amended, which states:

> 'SEC. 34. ***Deductions from Gross Income.***— *xxx*
>
> *xxx* *xxx* *xxx*
>
> (B) *Interest.*—
>
> (1) *In General.*—The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: *Provided, however,* That **the taxpayer's otherwise allowable deduction for interest expense shall be reduced by forty-two percent (42%) of the interest income subjected to final tax**: *xxx' (Emphasis Supplied)*

Since petitioner already recorded and accrued as expense in its book the income payment of US$55,625.52 and the corresponding FWT of US$8,343.83 or in the total amount of US$63,969.35 with peso equivalent of P3,396,132.70, further claiming it as a deduction from its gross income under its 2005 Annual Income Tax Return; it is incumbent upon petitioner to withhold and remit to the collecting agent of the BIR the corresponding taxes thereon, pursuant to Section 2.57.4 of RR No. 2-98, as amended by Section 4 of RR No. 12-01, which provides:

> **Sec. 2.57.4.** ***Time of withholding.*** **– The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income *payment* is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.** The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.
>
> Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes. *(Emphasis Supplied)*

As clearly stated above, the duty of petitioner to withhold arises when the interest expense is paid, becomes payable, or is accrued/recorded as expense in petitioner's books, *whichever comes first.* In this case the accrual made on December 31, 2005 covering the interest expense for December 26 to 31, 2005 in the amount of P3,396,132.70 came first before the same became due and payable on April 20, 2006. As such, petitioner was obligated to withhold the FWT corresponding to the interest expense of P3,396,132.70 in 2005 and remit it to the BIR on or before January 15, 2006, pursuant to Section 2.58(A)(2) of Revenue Regulations 2-98, as amended by Revenue Regulations No. 17-03.

For petitioner's failure to show that it withheld and remitted the FWT of P442,973.93 (US$8,343.83 at P53.09), the assessment for the same must be sustained and petitioner should be held liable to pay basic deficiency FWT of P442,973.93 for calendar year 2005." *(Citations Omitted)*

RESPONDENT HAS SUFFICIENTLY SUPPORTED ITS VAT EXEMPT SALES.

Petitioner alleges that respondent reported exempt sales of ₱17,647,058.82 without submitting proof of exemptions/nature of transactions to verify the validity of the said transactions. Moreover, petitioner argues that sales to East Asia Utilities Corporation (EAUC), a

Philippine Economic Zone Authority (PEZA) registered company, do not automatically make it VAT-exempt. According to Section 23 of R.A. No. 7916, a PEZA-registered enterprise has the option to choose between two sets of fiscal incentives: (a) five percent (5%) preferential tax rate on its gross income under R.A. No. 7916, as amended; and (b) income tax holiday provided under the Omnibus Investment Code of 1987, as amended.

Again, finding no reversible error with regard to respondent's alleged unsupported VAT exempt sales in the assailed Decision, *We* sustain the findings of the CTA Special First Division, to wit:

> "In the BIR letter dated May 20, 2009, respondent requested petitioner to submit proof of sales in the amount of P17,647,058.82 in favor of EAUC, and to further submit a certification from the appropriate government office that EAUC is in good standing as of December 2005 as per Republic Act No. 7916 and paragraph 3 of Certificate of Board Resolution No. 00-033.
>
> In compliance with the said requirements, petitioner submitted the following documents:
>
> a. Management Service Agreement between petitioner and EAUC dated February 10, 2003;
> b. PEZA Certificate of Board Resolution;
> c. PEZA Certification dated July 18, 2005;
> d. PEZA Certification dated October 8, 2007;
> e. Petitioner's Journal Voucher No. 090501 dated September 2, 2005 to recognize the Management and Advisory Fee Income of P52,941,176.47;
> f. Petitioner's Invoice No. 0001 dated August 3, 2005 issued to Cebu Private Power Corporation (CPPC) for Management Services Fee of P35,294,117.65 subject to 10% VAT of P3,529,411.75;
> g. Petitioner's Invoice No. N530N531-004 dated August 3, 2005 issued to EAUC for Management Services Fee of P17,647,058.82;
> h. Petitioner's Official Receipt dated September 2, 2005 issued to CPPC;
> i. Petitioner's Acknowledgment Receipt dated September 2, 2005 for payment received from EAUC; and

j. Petitioner's Security Bank Peso Savings Account Passbook and Check Deposit Slip dated September 2, 2005." *(Citations Omitted)*

Petitioner further assails that respondent failed to clearly show whether EAUC availed of the five percent (5%) preferential tax rate or the income tax holiday. The choice of which fiscal incentive will a PEZA-registered enterprise will adopt is material because the five (5%) preferential tax rate on gross income is in lieu of all taxes, both direct and indirect, save only for real property tax. While, the income tax holiday incentive is exempt only from income tax not to other taxes, such as VAT.

On the contrary, simple scrutiny of the above documents submitted by respondent, namely, the PEZA Certificate of Board Resolution No. 00-033[26] dated January 28, 2000, and PEZA Certification No. 2005-137[27] dated July 18, 2005, clearly shows that EAUC was granted the five percent (5%) preferential rate by the PEZA as its fiscal incentive. In addition, PEZA Certification No. 2005-1061[28] dated October 8, 2007 attests that EAUC is a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers, such as herein respondent, in accordance with Sections 4.106-6 and 4.108-6 of Revenue Regulations No. 16-2005[29]. As held by the CTA Special First Division in the assailed Decision:

> "Scrutiny of the foregoing documents shows that the amount of P17,647,058.82 subject of the present deficiency VAT assessment pertains to sale of services to PEZA entity subject to zero percent VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, and as clarified in Revenue Memorandum Circular (RMC) No. 74-99. Consequently, the present assessment for deficiency VAT should be cancelled."

Lastly, as to the remaining arguments advanced by petitioner, the Court *En Banc* finds that they are mere rehash of the same facts and issues raised by petitioner in her previous pleadings which have already been analyzed, weighed and passed upon extensively in the assailed

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[26] Exhibit "K" for the petitioner, Division Docket (Vol. II), p. 1110
[27] Exhibit "L" for the petitioner, Division Docket (Vol. II), p. 1111
[28] Exhibit "M" for the petitioner, Division Docket (Vol. II), p. 1112
[29] Consolidated Value-Added Tax Regulations of 2005

Decision and Resolution. Petitioner did not raise anything new herein to merit any modification or reversal thereof. Accordingly, the Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution both rendered by the CTA Special First Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision and Resolution dated October 29, 2013 and February 5, 2014, respectively, of the CTA Special First Division in CTA Case No. 7997, are both **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
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 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