REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ARMADILLO HOLDINGS, INC.,
Respondent.

CTA EB No. 1245
(CTA Case No. 8323)

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

Promulgated:

JUL 21 2016 11:15 a.m.

x - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review posted on November 12, 2014 and received by the Court on November 19, 2014 against the Resolution of this Court's First Division in CTA Case No. 8323 denying on October 9, 2014 the petitioner's Motion for Reconsideration of the First Division's Decision of June 11, 2014 which partially granted the Petition for Review.

The assailed Decision's dispositive portion reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency income tax assessment in the amount of ₱23,708,554.47 is hereby **CANCELLED**, while the deficiency VAT and EWT are **UPHELD** with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the

amount of **₱754,818.99**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

	BASIC	**SURCHARGE**	**TOTAL**
Deficiency VAT	₱ 569,732.89	₱ 142,433.22	₱ 712,166.11
Deficiency EWT	34,122.30	8,530.58	42,652.88
TOTAL	**₱ 712,166.11**	**₱ 150,963.80**	**₱ 754,818.99**

In addition, petitioner is hereby **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱569,732.89 and on the basic deficiency EWT in the amount of ₱34,122.30 computed from January 25, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱754,818.99 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from July 21, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

The Petition for Review in CTA Case No. 8323 was filed pursuant to Section 7(a)(1) of Republic Act No. (RA) 1125, as amended[1], as well as Rule 4, Section 3(a)(1)[2] in relation to Section 4(a) of Rule 8[3] and Rule 4 of the Revised

[1] Sec. 7. Jurisdiction. –The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

xxx xxx

[2] Rule 4. Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

xxx xxx

Rules of the Court of Tax Appeals (RRCTA), to seek cancellation of Assessment Notice Nos. IT-LA1048-07-11-0179, VT-LA1048-07-11-0179, and WE-LA1048-07-11-0179 assessing Armadillo Holdings, Inc. in the total amount of Twenty-Nine Million Seven Hundred Thirty Thousand Five Hundred Sixty-Three and 80/100 Pesos (₱29,730,563.80), allegedly representing its deficiency taxes for taxable year 2007.

THE PARTIES

The petitioner, Commissioner of Internal Revenue (CIR), is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties, and fines connected with such taxes, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR. She holds office at the BIR National Office Building, Diliman, Quezon City.

The respondent is Armadillo Holdings, Inc. (Armadillo), a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 770 E. Rodriguez Extension, Malibay, Pasay City. It is primarily engaged in the business of investing funds in commercial, industrial, financial, and real estate management enterprises as well as in other corporations, foreign and domestic, within the limits provided by law.[4]

THE COURT'S JURISDICTION

On October 14, 2014, petitioner received a copy of the First Division's Resolution dated October 9, 2014. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[5] petitioner had fifteen (15) days from receipt of the said Resolution, or until October 29, 2014, within which to appeal to the Court En Banc by way of a petition for review.

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[3] Rule 8. Sec. 4. Where to appeal; mode of appeal. –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[4] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFI), Docket, p. 154.

[5] Dated November 22, 2005, and which took effect starting December 15, 2005.

On October 29, 2014, petitioner filed a "Motion for Extension of Time to File Petitioner for Review" asking for fifteen (15) days from October 29, 2014 or until November 13, 2014 within which to file the petition.

As the Petition for Review was posted on November 12, 2014 which the Court received on November 19, 2014, the Petition was timely filed.

THE FACTS[6]

The CIR issued Letter of Authority (LOA) No. 2007-00001048[7] on July 29, 2008, authorizing Revenue Officer Marilan Dela Cruz under the supervision of Group Supervisor Rebecca Victoria Martinez of Revenue District Office (RDO) No. 51 – Revenue Region No. 8 to examine Armadillo's internal revenue taxes for the period from January 1, 2007 to December 31, 2007.[8]

The CIR issued a Revalidation/Reassignment Notice[9] on May 25, 2009, informing Armadillo that a newly assigned revenue examiner, Revenue Officer Liza C. Dimaya, was replacing Revenue Officer Marilan Dela Cruz to continue the examination of its taxes for the taxable year 2007.[10]

After the Revenue Officer conducted her examination of the records of Armadillo, which included their duly filed tax returns, books and other accounting records, she submitted her Post Reporting Notice dated October 12, 2009 that found Armadillo liable for alleged deficiency internal revenue taxes for the taxable year 2007 in the total amount of ₱40,226,827.33, including increments, to wit:[11]

TAX TYPE	BASIC	INTEREST	COMPROMISE PENALTY	TOTAL
Income Tax	₱ 17,248,695.16	₱ 5,174,608.55	₱ 25,000.00	₱ 22,448,303.71
Value-added Tax	13,150,758.38	4,602,765.38	25,000.00	17,778,523.62
TOTAL				**₱40,226,827.33**

Armadillo received an undated Revised Post Reporting Notice[12] on December 16, 2010 with the revised assessment of the deficiency internal revenue taxes in the amount of ₱28,958,752.86, including increments, as follows:[13]

[6] The facts of this case were culled from the Decision of the First Division in CTA Case No. 8323 dated June 11, 2014.
[7] Exhibit "B".
[8] Par. 3, Stipulation of Facts, JSFSI, Docket, p. 155.
[9] Exhibit "C".
[10] Par. 4, Stipulation of Facts, JSFSI, Docket, p. 155.
[11] Par. 5, Stipulation of Facts, JSFSI, Docket, p. 155.
[12] Exhibit "E".
[13] Par. 6, Stipulation of Facts, JSFSI, Docket, p. 156.

TAX TYPE	BASIC	SURCHARGE	INTEREST	TOTAL
Income Tax	₱ 14,153,782.11	-	₱ 7,507,321.14	₱ 21,661,103.25
Value-added Tax	4,612,365.10	-	2,651,162.21	7,263,527.31
Expanded Withholding Tax	34,122.30	-	-	34,122.30
TOTAL				**₱28,958,752.86**

Despite the series of informal discussions on the position of Armadillo on the above-mentioned assessments, the CIR still issued a Preliminary Assessment Notice[14] (PAN) dated December 28, 2010 with alleged deficiency taxes, inclusive of interest and compromise penalties in the total amount of ₱29,339,106.63, broken down as follows:[15]

TAX TYPE	BASIC	SURCHARGE	INTEREST	TOTAL
Income Tax	₱ 14,153,782.11	-	₱ 7,778,763.54	₱ 21,932,545.65
Value-added Tax	4,612,365.10	-	2,739,618.53	7,351,983.68
Expanded Withholding Tax	34,122.30	-	20,455.00	54,577.30
TOTAL				**₱29,339,106.63**

On January 14, 2011, the CIR issued a Formal Assessment Notice[16] (FAN) and Assessment Notices, reiterating the deficiency internal revenue taxes contained in the PAN, but in the total amount of ₱29,730,563.80.

On February 18, 2011, Armadillo submitted its administrative protest[17] together with supporting documents.

On March 24, 2011, Armadillo received a letter[18] from the CIR dated March 21, 2011, informing them that by reason of its protest to the FAN, the docket of the case was being forwarded to RDO No. 51-Pasay City for further evaluation and necessary action.[19]

As a result of forwarding the case to RDO No. 51, a letter dated April 1, 2011 was issued by the CIR to notify Armadillo of the designation and reassignment of Revenue Officer Narissa B. Ty to continue the examination of petitioner's records.[20]

On July 21, 2011, Armadillo received a Final Decision on Disputed Assessment[21] (FDDA) dated July 18, 2011 from the CIR, through Mr. Jaime B.

[14] Exhibit "F".
[15] Par. 7, Stipulation of Facts, JSFSI, Docket, p. 156.
[16] Exhibit "G".
[17] Exhibit "K".
[18] Exhibit "L".
[19] Par. 8, Stipulation of Facts, JSFSI, Docket, p. 157.
[20] Par. 9, Stipulation of Facts, JSFSI, Docket, p. 157.
[21] Exhibit "A".

Santiago, Regional Director of Revenue Region No. 8, denying petitioner's protest letter dated February 18, 2011.[22]

The CIR explained that Armadillo "failed to withhold taxes part of its salaries and wages in the total amount of ₱1,331,450.31 and should be disallowed as a deduction from gross income by merely comparing the salaries and wages per ITR and alphalist," computed as follows:[23]

Salaries and Wages per ITR	₱ 55,374,798.44
Salaries and Wages per Alphalist	54,043,348.13
Difference	**₱ 1,331,450.31**

The CIR also said that "[Armadillo] failed to reflect sources of funds amounting to ₱20,880,331.95 which is construed as undeclared revenue by mere assumptions and by simply comparing the income payments per Income Tax Return (ITR)/Financial Statements (FS) with the Alphalist, without looking into the nature of each transaction," as follows:[24]

Total Income Payments per ITR/FS	₱ 10,197,031.90
Total income Payments per Alphalist	31,077,363.85
Unaccounted Income Payment	**(₱ 20,880,331.95)**

The CIR added that "input tax carried forward to succeeding quarter from fourth quarter of 2007 in the amount of ₱364,863.29 should be deducted from the allowable tax credit considering that the said amount has been forwarded to the succeeding period."[25]

On August 22, 2011, Armadillo filed its Petition for Review with the Court of Tax Appeals, docketed as CTA Case No. 8323, before the First Division.

On September 26, 2011, the CIR filed her Answer[26], alleging the following special and affirmative defenses: a) the assessment was issued in accordance with law, rules, and regulations; b) the PAN dated December 28, 2010 was received by Armadillo on December 29, 2010; c) an assessment notice may be administratively protested within thirty (30) days from receipt in accordance with Section 228 of the NIRC in relation to Revenue Regulations No. (RR) 12-99, otherwise it shall become final, executory and demandable; d) Armadillo failed to file a valid protest and the assessments have become final executory and demandable; e) Armadillo's February 18, 2011 letter cannot be

[22] Par. 10, Stipulation of Facts, JSFSI, Docket, p.157.
[23] Par. 14, Stipulation of Facts, JSFSI, Docket, p. 158.
[24] Par. 15, Stipulation of Facts, JSFSI, Docket, p. 159.
[25] Par. 16, Stipulation of Facts, JSFSI, Docket, p. 159.
[26] Docket, pp. 128-131.

considered a valid protest for failure to state the applicable law, rules, and regulations on which it was based and failure to submit documents in support of its protest; f) assuming protest was valid, the assessments had already become final, executory and demandable as Armadillo failed to file supporting documents within sixty (60) days; g) the Assessment Notices and the FDDA are compliant with Section 228 of the NIRC; h) assessments enjoy the presumption of correctness in the absence of proof of irregularities; and h) taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

After both parties filed their respective Pre-Trial briefs, the Pre-Trial Conference[27] was held on October 27, 2011. The parties also filed their Joint Stipulation of Facts and Simplification of Issues[28] on November 24, 2011, which the Court approved in its November 28, 2011 Resolution.[29] In the same Resolution, the Court declared the pre-trial terminated.

Acting on Armadillo's motion[30], the Court appointed Ms. Ofelia Flores of OCF Business Consulting as an Independent Certified Public Accountant (ICPA)[31] who submitted the ICPA Report on May 29, 2012, and then, later on, her Final Amended ICPA Report[32] on September 17, 2012.

Trial ensued and on December 4, 2012, Armadillo filed its Formal Offer of Evidence[33], offering Exhibits "A" to "DDDD-1", inclusive of sub-markings. After the Court's initial denial[34] of some exhibits were reconsidered[35], all exhibits of Armadillo were admitted with the exception of Exhibits "F", "EI-1", and "GV-2".[36]

On the other hand, the CIR filed her Formal Offer of Evidence[37] on March 14, 2013, offering Exhibits "1" to "14-a", inclusive of sub-markings.[38] The Court admitted all exhibits offered by the CIR[39] and ordered both parties to submit their memoranda within thirty (30) days.

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[27] Docket, p. 134.
[28] Docket, pp. 154-161.
[29] Docket, p. 163.
[30] Motion to Commission an Independent Certified Public Accountant filed on March 21, 2012, Docket, pp. 224-227.
[31] Pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97 and the RRCTA.
[32] Exhibits "CCCC" and "CCCC-1".
[33] Docket, pp. 310-359.
[34] Resolution dated January 22, 2013, Docket, p. 361.
[35] Resolution dated March 4, 2013, Docket, pp. 422-423.
[36] Assailed Decision, pp. 9-56.
[37] Docket, pp. 425-428.
[38] Assailed Decision, pp. 56-57.
[39] Resolution dated April 19, 2013, Docket, pp. 480-481.

On July 16, 2013, the case was submitted for decision, taking into consideration Armadillo's Memorandum[40] and the CIR's Memorandum[41], both filed on June 28, 2013.[42]

On June 18, 2014, Armadillo, through counsel, received a copy of the Decision dated June 11, 2014 of the Court in Division partially granting the Petition.

On July 2, 2014, the CIR filed her Motion for Reconsideration which was denied in a Resolution dated October 9, 2014.

On November 12, 2014, the CIR posted her Petition for Review through registered mail with the CTA En Banc which the Court received on November 19, 2014.

On April 14, 2015, Armadillo was ordered to file its Comment. Armadillo filed its "Comment/Opposition" on April 28, 2015.

In a Resolution dated May 22, 2015, the Petition for Review was given due course and the parties were granted thirty (30) days within which to submit their respective Memoranda, after which the Petition for Review would be deemed submitted for decision.

On July 13, 2015, Armadillo filed its Memorandum. On August 4, 2015, the Court issued a Resolution that considering the Records Verification Report of the Judicial Records Division dated July 21, 2015 that the CIR failed to file her Memorandum, the case was submitted for decision.

THE ASSIGNMENTS OF ERROR

The petition raises three assignments of errors of this Court's First Division in the assailed Decision, as follows:

First, the Court in Division erred in partially granting Armadillo's petition on the ground that its administrative protest was filed out of time;

Second, the Court in Division erred in partially granting Armadillo's petition on the ground that it failed to submit relevant documents in support of its protest; and

[40] Docket, pp. 488-512.
[41] Docket, pp. 513-521.
[42] Docket, pp. 159-160.

Third, the Court in Division erred in partially granting Armadillo's petition on the ground that it failed to file a valid administrative protest.

APPLICABLE LAW

The assessment of deficiency taxes against Armadillo was made by the CIR under the National Internal Revenue Code of 1997 (Tax Code), as amended. Relevant therein is Section 228 which reads as follows:

> "SEC. 228. **Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> x x x x x x x x x
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)

days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Also applicable is Section 3.1.5 of RR 12-99 which provides:

"3.1.5 **Disputed Assessment.** – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof.

x x x x x x x x x

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

x x x x x x x x x

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."

Both shall be applied in the resolution of the instant petition.

THE RULING OF THE COURT

The Court notes, on the outset, that the CIR did not take issue with the Court in Division's computation of Armadillo's deficiency tax liabilities which was comprehensively tackled in the assailed Decision that resulted in a partial grant of Armadillo's petition.

Instead, the crux of the instant petition is the invalidity of Armadillo's administrative protest which issue was never raised during the trial as borne by the records of this case. It was only in her Motion for Reconsideration of the Assailed Decision that the CIR raised the matter, based primarily on the Dissenting Opinion of Presiding Justice Roman G. Del Rosario.

It is also worth mentioning that the CIR's petition is a mere rehash of issues already presented, duly resolved and passed upon by the Court in

Division in their October 9, 2014 Resolution. In fact, the CIR's discussion in the instant petition is a word for word replication of her discussion in her Motion for Reconsideration of the Assailed Decision. No reference has been made to the Court *a quo's* discussion of the legal basis and relevant jurisprudence used to arrive at the conclusion of the Assailed Resolution either.

As the Petition fails to allege new matters and show reversible errors committed by the Court *a quo* that would warrant a modification, much less reversal, of the Assailed Decision and Resolution, we uphold the same.

Here is why.

In the instant Petition, the CIR propounds that Armadillo a) failed to file a valid administrative protest; b) failed to submit relevant documents in support of its protest; and c) filed its protest letter out of time, all circumstances of which rendered the assessment final, executory and demandable.

Conversely, Armadillo argues in its Comment and Memorandum that the CIR's issuance of the FDDA, giving due course to its letter-protest, renders any issue on the validity or belated filing of protest moot and academic. Thus, the CIR is estopped from questioning the validity of its administrative protest. Armadillo further argues that contrary to the CIR's claim, relevant supporting documents were duly submitted in support of its administrative protest.

Administrative Protest Invalid for Lack of Conformity with Law and Rules

In the section of this Decision entitled "Applicable Law", we quoted relevant excerpts of Section 228 of the NIRC on "Protesting of Assessment" and Section 3.1.5 of RR 12-99 on "Disputed Assessment".

Section 228 of the Tax Code requires that the request for reconsideration or reinvestigation be in such form and manner as may be prescribed by implementing rules and regulations. RR 12-99, on the other hand, is the Revenue Regulation laying down the procedure covering administrative protests. The rules require that the request for reconsideration or reinvestigation shall state **the facts, the applicable law, rules and regulations, or jurisprudence** on which the taxpayer's protest is based.

Armadillo's February 18, 2011 Letter-Protest is quoted below for reference:

"February 18, 2010[43]

Mr. Jaime B. Santiago
Regional Director
Revenue Region No. 8
Makati City

Dear Sir:

Glory to GOD!

This is in reference to your Formal Assessment Notice for LOA # 00001046 dated January 14, 2011 which we received on January 20, 2011 covering 2007 deficiency tax, we would like to submit the following reconciliations for your copy and review:

1. Reconciliation of Deficiency Tax.
2. Analysis on Withholding Tax – Compensation (Sched 1)
3. Reconciliation of unaccounted Income Payments (Sched 2)
4. Reconciliation of undeclared Revenue (Sched 3).

We are available at your most convenient time and place to explain the above analysis and reconciliations. Please call us at our cell nos. 0917-890-7796 for Len Grande and 0917-8913663 for Mhina Simafranca.

Thank you and God Bless you.

(signed)
Eleanor B. Grande
Group Accounting Manager"

Based on the Letter-Protest above, the Court in Division concluded that Armadillo failed to file an administrative protest in conformity with the rules, as the same did not state any question of fact or of law to point out any erroneous or illegal assessment made by the CIR.

The Court in Division discussed how they arrived at their conclusion in this wise:

[43] Typographical error which should read 2011.

"In the case of *Tongonan Holdings and Development Corporation vs. Atty. Francisco Escaño, Jr.*, the Supreme Court distinguished or defined a question of law as against a question of fact. Thus:

> 'A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.** Thus, the **test of whether a question is one of law or of fact** is not the appellation given to such question by the party raising the same; rather, it **is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence**, in which case, it is a question of law; otherwise it is a question of fact.'[44]

In relation to the pronouncement of the Supreme Court in the above-cited case, the letter dated February 18, 2010 failed to state what doubt or issue is to be resolved by respondent or what particular matter it disputes, *i.e.*, the truth or falsity of the alleged facts or, in this case, the correctness or illegality of the assessment based on documents submitted by petitioner; or the inapplicability of any law, rule or regulation applied by respondent in making the assessment.

Corollary thereto, the tenor of said letter instantly reveals that petitioner merely used it as an avenue to facilitate a meeting with Mr. Jaime B. Santiago, Revenue Regional Director of Region No. 8, where it can *(sic)* explain the analysis and reconciliation schedules enumerated therein. Clearly and applying the provisions of RR 12-99 respecting the form of a valid protest, **this is not the protest envisioned by the NIRC as part of the procedure in disputing assessments.**" *(Boldface supplied).*

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[44] G.R. No. 190994, September 7, 2011.

We agree and find no reason to overturn this finding. However, the question remains, is the CIR estopped from questioning the validity of Armadillo's administrative protest at this point?

After Giving Due Course to Armadillo's Letter-Protest and Issuing the FDDA, BIR is in Estoppel

Article 1431 of the Civil Code defines estoppel as follows:

> "Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

Under the doctrine of estoppel, a party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.[45]

The general rule is that estoppel cannot lie against the Government as it involves the exercise of an inherent power by the government to collect taxes.[46] Errors, omissions or flaws committed by BIR inspectors and representatives while in the performance of their duties cannot be set up as estoppel nor estop the Government from collecting a tax legally due.[47] However, the rule admits of **exceptions** in cases where **it will result in an injustice to taxpayers.**

The Court in Division explains it in this wise:

> "In the case of *Commissioner of Internal Revenue vs. Petron Corporation*,[48] Petron Corporation (**Petron**) was an assignee of several Tax Credit Certificates (TCCs) from various BOI-registered enterprises which petitioner utilized to pay its excise tax liabilities for the taxable years 1995 to 1998. The transfers and assignments of the said TCCs were approved by the Department

[45] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 170257, September 7, 2011.
[46] Consolidated cases of Philippine National Oil Company vs. Court of Tax Appeals and Philippine National Bank vs. Court of Tax Appeals, G.R. Nos. 109976 & 112800, April 26, 2005, Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez and L.M. Camus Engineering Corporation, G.R. No. 177279, October 13, 2010.
[47] Consolidated cases of La Suerte Cigar & Cigarette Factory v. CA, G.R. No. 125346, CIR v. Fortune Tobacco, G.R. Nos. 136328-29, CIR v. La Suerte Cigar & Cigarette Factory, G.R. No. 144942, Sterling Tobacco Corp. v. CIR, G.R. No. 148605, La Suerte Cigar & Cigarette Factory v. CIR, G.R. No. 158197, and La Suerte Cigar & Cigarette Factory v. CIR, G.R. No. 165499, Nov. 11, 2014, SC En Banc.
[48] G.R. No. 185568, March 21, 2012.

of Finance's One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (**Center**).

In a post-audit conducted by the Center, it was found that the TCCs issued to several enterprises-assignors of TCCs to Petron were fraudulently obtained and were fraudulently transferred to the latter. Thus, the TCCs and the Tax Debit Memos (**TDM**) issued by the Center to Petron against said TCCs were cancelled by the Department of Finance (**DOF**). Prior to the cancellation of the aforesaid TCCs and TDMs, Petron had utilized the same in the payment of its excise tax liabilities. With such cancellation, the TCCs and TDMs lost its value in money or money's worth and, therefore, the excise taxes for which they were used as payment are now deemed unpaid.

Considering the foregoing, Petron contended that the Center continually approved the TCCs which were subsequently declared void, as payment for its excise tax liabilities. On the other hand, then Commissioner of Internal Revenue (**CIR**) insisted that the government is not *estopped* from collecting from Petron the excise tax liabilities that had accrued to the latter as a result of the voidance of these TCCs.

In ruling in favor of Petron and applying the principle of *estoppel* against the BIR, the Supreme Court held that:

> 'We recognize the well-entrenched principle that estoppel does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. As an exception, however, this general rule cannot be applied if it would work injustice against an innocent party.
>
> Petron, in this case, was not proven to have had any participation in or knowledge of the CIR's allegation of the fraudulent transfer and utilization of the subject TCCs. Respondent's status as a transferee in good faith and for value of these TCCs has been established and even stipulated upon by petitioner. Respondent was thereby provided ample protection from the adverse

> findings subsequently made by the Center. Given the circumstances, the CIR's invocation of the non-applicability of estoppel in this case is misplaced.'"

Having laid out the general rule and the exception, the question that must be answered in the context of the instant case is -- have there been representations made by the CIR that Armadillo relied on? And, corollarily, will it work an injustice on Armadillo if those representations were denied by the CIR?

The FDDA is Exhibit "12" in the record, an exhibit offered by the CIR and admitted by the Court *a quo*. Portions thereof relevant to our discussion are quoted below:

> "This has reference to your letter dated February 18, 2011, concerning your protest against our Formal Assessment Notice dated January 14, 2011, bearing deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax in the amounts of Php 22,227,254.53, Php 7,448,021.97 and Php 55,287.30, respectively, inclusive of increments for the taxable year 2007.
>
> x x x   x x x   x x x
>
> In view thereof, you are requested to pay the aforesaid deficiency tax liabilities through the authorized agent bank in which you are enrolled using the BIR Payment Form (BIR Form 0605) attached herewith. Afterwards, submit copy thereof to the Assessment Division, this Region, located at 3rd Floor, BIR bldg., 313 Sen. Gil Puyat Avenue, Makati City for updating of your records and cancellation of herein FDDA, if warranted.
>
> **This is our final decision. If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue (CIR) or with the Court of Tax Appeals (CTA)** within thirty (30) days from date of receipt hereof; **otherwise this decision shall become final, executory and demandable.**"

The consequence of such language and phrasing as laid out in jurisprudence has been discussed by the Court *a quo,* thus:

"In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*,[49] the Supreme Court said:

'xxx

In this case, records show that petitioner disputed the PAN but not the Formal Letter of Demand with Assessment Notices. Nevertheless, we cannot blame petitioner for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. **We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues.** Viewed in the light of the foregoing, **respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision**.

Moreover, we cannot ignore the fact that in the Formal Letter of Demand with Assessment Notices, respondent used the word 'appeal' instead of 'protest', 'reinvestigation', or 'reconsideration'. Although there was no direct reference for petitioner to bring the matter directly to the CTA, it cannot be denied that the word 'appeal' under prevailing tax laws refers to the filing of a Petition for Review with the CTA. As aptly pointed out by petitioner, under Section 228 of the NIRC, the terms 'protest', 'reinvestigation' and 'reconsideration' refer to the administrative remedies a taxpayer may take before the CIR, while the term 'appeal' refers to the remedy available to the taxpayer before the CTA. Section 9 of RA 9282, amending Section 11 of RA 1125, likewise uses the term 'appeal' when referring to the action a taxpayer must take when adversely affected by a decision, ruling, or inaction of the CIR. As we see it then, petitioner in appealing the Formal Letter of Demand with Assessment Notices to the CTA merely took the cue from respondent. Besides, any doubt in the

[49] G.R. No. 175097, February 5, 2010.

> interpretation or use of the word 'appeal' in the Formal Letter of Demand with Assessment Notices should be resolved in favor of petitioner, and not the respondent who caused the confusion.'
>
> In the *Allied Banking Corporation* (**Allied**) *case*, Allied disputed the Preliminary Assessment Notice instead of the Final Assessment Notice. Thereafter, the CIR issued a Formal Letter of Demand with Assessment Notices to Allied where it used the word "appeal" instead of "protest", "reinvestigation", or "reconsideration." As such, Allied was led to believe by the CIR that the denial of its protest of PAN is the final decision appealable before the Court.
>
> In the same vein, respondent in this case took cognizance of and explicitly recognized that the February 18, 2011 letter is a request for reinvestigation. Proceeding therefrom, respondent clearly and unequivocally stated that it is their final decision. Hence, after expressly considering the February 18, 2011 letter, from which the Final Decision on Disputed Assessment dated July 18, 2011 was based, as a request for reinvestigation, respondent is now *estopped* from questioning the validity of the protest at this time."

The evidence shows that Armadillo's Letter-Protest dated February 18, 2011 in response to the FAN[50] was treated and considered as a valid administrative protest by the CIR as reflected in the language and tenor of the FDDA.

The FDDA likewise contains an explicit admission from the CIR, through the Office of the Regional Director, that Armadillo's request for reinvestigation was granted, thus: *"x x x In reply thereto, this office has granted your request for re-investigation. x x x"*. Even the instant Petition itself contains a similar admission. In arguing that Armadillo failed to submit relevant documents in support of their protest, the CIR alleged in page 7 of her Petition, *"In view of the foregoing and* ***considering that respondent was granted reinvestigation of this case****, their failure to submit relevant documents in support of their protest x x x."*

Simply put, this means that the Letter-Protest was indeed treated as a valid administrative protest and the same was scrutinized, evaluated, and given due course.

Moreover, Armadillo argues that if the CIR considered it an invalid protest, the BIR could have just easily issued a preliminary collection letter or a

[50] Dated January 14, 2010.

notice of levy before seizure which it did not. While the Court deigns to engage in speculation, considering the zeal of the CIR in issuing the FAN a mere ten days after Armadillo received the PAN without giving it the opportunity to be heard or for a protest to the PAN to be filed, it would be uncharacteristic for the CIR to not proceed with collection and enforcement measures had she considered Armadillo's administrative protest invalid.

All these circumstances lead to one indubitable conclusion -- that the CIR recognized Armadillo's February 18, 2011 letter as a valid administrative protest. Consequently, Armadillo was led to believe that its administrative protest was legally given due course, and in pursuit of the legal remedies available to it, sought relief from this Court. The CIR is estopped from questioning the validity of the administrative protest filed by Armadillo. To allow the CIR to backpedal on her representations after participating in and engaging in the time and expense of litigation in order to determine the tax liability of Armadillo would certainly work an injustice and run counter to the principle of equity.

Armadillo's Protest was Timely Filed

The CIR argues in its Petition that Armadillo failed to file its protest timely in accordance with Section 228 of the NIRC in relation to Section 3.1.5 of RR 12-99 which requires that the protest be filed "within thirty (30) days from date of receipt thereof", otherwise, "the assessment shall become final, executory and demandable."

The CIR claims that Armadillo received a copy of the FAN on January 14, 2011 as evidence by the BIR Records. Counting thirty (30) days from receipt of the FAN, Armadillo had only until February 13, 2011 within which to file their protest. However, records will show that it filed its protest only on February 18, 2011, five (5) days beyond the 30-day reglementary period within which to file the same. This makes the assessments against Armadillo final, executory and demandable.

On the other hand, Armadillo argues that the CIR has not presented any evidence or proof, in the course of trial or at any stage of the proceedings, that its administrative protest was filed out of time. Furthermore, as the BIR Records were not identified or testified to during trial, they cannot be considered as evidence as they lack proper authentication. As they have not been offered into evidence, they have no probative value.

We agree with Armadillo.

Under Section 8 of Republic Act No. 1125[51], the CTA is categorically described as a court of record. Being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases.[52] Judicial claims are being decided based on what has been presented and formally offered by party litigants during trial.[53]

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[54], the Supreme Court reiterated this principle in this wise:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated de novo. Thus, **respondent should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim.**"[55] *(Emphasis ours)*

Section 34, Rule 132 on "Offer of Evidence" states that, *"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."* This is the general rule. However, there are admitted exceptions to this rule which enable the court to consider evidence not formally offered. In order for the exception to apply, the following requisites must be present: 1) the same must have been duly identified by testimony duly recorded; and 2) the same must have been incorporated in the records of the case.

As discussed by the Court in Division, the case of *Rafael Arsenio S. Dizon vs. Court of Appeals*[56] elucidates when the exceptions are applicable, to wit:

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered

[51] RA 1125, Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
[52] Dizon vs. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[53] Commissioner of Internal Revenue v. Philex Mining Corporation, CTA EB No. 1116, January 7, 2015.
[54] G.R. No. 180290, September 29, 2014.
[55] *Id.*
[56] G.R. No. 140944, April 30, 2008.

before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

xxx xxx xxx

The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a* and *People v. Mate* on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after Vda. de Oñate, we held that courts cannot consider evidence which has not been formally offered, nevertheless, petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*, this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

> From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the**

> **foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.:** ***first***, the same must have been duly identified by testimony duly recorded and, ***second***, the same must have been incorporated in the records of the case.

From the foregoing declaration, however, it is clear that **Vda. de Oñate is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.**

In this case, we find that these requirements have not been satisfied. The assailed pieces of evidence were presented and marked during the trial particularly when Alberto took the witness stand. Alberto identified these pieces of evidence in his direct testimony. He was also subjected to cross-examination and re-cross examination by petitioner. **But Alberto's account and the exchanges between Alberto and petitioner did not sufficiently describe the contents of the said pieces of evidence presented by the BIR**. In fact, petitioner sought that the lead examiner, one Ma. Anabella A. Abuloc, be summoned to testify, inasmuch as Alberto was incompetent to answer questions relative to the working papers. The lead examiner never testified. **Moreover, while Alberto's testimony identifying the BIR's evidence was duly recorded, the BIR documents themselves were not incorporated in the records of the case.**

A common fact threads through *Vda. de Oñate* and *Ramos* that does not exist at all in the instant case. In the aforementioned cases, the exhibits were marked at the pre-trial proceedings to warrant the pronouncement that the same were duly incorporated in the records of the case. Thus, we held in *Ramos*:

> In this case, we find and so rule that these requirements have been satisfied. **The exhibits in question were presented and marked during the pre-trial of the case thus, they have been incorporated into the records.** Further, Elpidio himself explained the contents of these exhibits when he was interrogated by respondents' counsel...

> x x x x
>
> But what further defeats petitioner's cause on this issue is that respondents' exhibits were marked and admitted during the pre-trial stage as shown by the Pre-Trial Order quoted earlier.

> While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, **the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate.** The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR." *(Emphasis supplied)*

Applying the above principles to the instant case, the records show that the BIR Records purportedly showing that Armadillo received the FAN on January 14, 2011 was never identified during the trial proceedings, not marked in evidence, and neither was it formally offered in evidence by the CIR. As such, it cannot fall under the given exceptions; neither can it be given any probative value.

Furthermore, as the purported late filing of the protest was merely raised for the first time by the CIR in her Motion for Reconsideration of the Decision of the Court *a quo*, Armadillo was never given the opportunity to cross-examine the CIR's witnesses testifying to such fact which runs counter to due process.

Nonetheless, since the Court has already determined that the CIR is estopped from questioning the validity of Armadillo's administrative protest, this issue has been rendered moot.

Submission of Relevant Supporting Documents Lies Within the Discretion of Armadillo

As its final assignment of error, the CIR claims that Court in Division erred in finding that Armadillo submitted relevant supporting documents in support of its protest. Instead, the CIR claims that Armadillo's failure to submit the same rendered the assessments final, executory and demandable.

The term "relevant supporting documents" has already been defined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[57] to wit:

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

This is still the prevailing doctrine on the subject. This Court has consistently held, in a long line of cases[58], that the submission of supporting documents lies within the sound discretion of the taxpayer for it is in the best position, being the affected party, to determine which documents are necessary and essential to garner a favorable decision.

Given the foregoing, Armadillo's submission of reconciliation schedules attached to its administrative protest is considered submission of "relevant supporting documents".

All in all, while Armadillo's letter dated February 18, 2011 does not constitute the administrative protest as provided for under Section 228 of the Tax Code in relation to RR 12-99 as it failed to state the facts and pertinent laws, rules, regulations or jurisprudence in support thereof, the CIR is estopped from raising the issue of its invalidity. The actuations of the CIR in leading Armadillo to believe that their administrative protest was legally valid by evaluating, scrutinizing and giving due course to the same cannot be denied by the CIR this late in the day when Armadillo has expended considerable time and expense pursuing its judicial remedies as a measure of relief from the assessments. To do so would be unjust.

Likewise, the Court cannot give probative value to the receiving copy of the FAN which forms part of the BIR records as it has not been identified, testified to or formally offered in evidence. The CIR's argument that Armadillo failed to submit relevant supporting documents pursuant to Section 228 of the Tax Code must also fail, in view of the discussion above.

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[57] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.

[58] CIR v. Coral Bay Nickel Corporation, CTA EB No. 1 133, Jan. 7, 2015. CIR v. Philex Mining Corporation, CTA EB No. 1168, June 19, 2015; Team Sual Corporation (formerly: Mirant Sual Corporation) v. CIR, and CIR v. Team Sual Corporation (formerly Mirant Sual Corporation), CTA EB Nos. 649 & 651, Resolution dated Mar. 21, 2012.

WHEREFORE, premises considered, the assailed Decision of the First Division dated June 11, 2014, and its Resolution dated October 9, 2014, are hereby **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

(With Concurring & Dissenting Opinion)
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1245** (CTA Case No. 8323)
	Present:
- versus -	**DEL ROSARIO, *P.J.*,** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS, *and*** **RINGPIS-LIBAN, *JJ.***
ARMADILLO HOLDINGS, INC., Respondent.	
	Promulgated:

JUL 2 1 2016 11:15 a.m.

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect to my esteemed colleague, I cannot assent to affirm the assailed Decision and Resolution of the Court in Division which cancelled the deficiency income tax assessment and upheld with modification the deficiency VAT and EWT assessment. I maintain my Dissenting Opinion dated June 11, 2014 on the assailed Decision of the Court in Division in view of the fact that the Final Assessment Notice ("FAN") has long become final and executory for respondent's failure to file on time a valid protest.

The *ponencia* did not give probative value to the BIR Records showing the actual receipt by respondent of the FAN on January 14, 2011 on the ground that the same was never identified during trial, and was not marked and offered in evidence. The *ponencia* cited the case of *Rafael Arsensio S. Dizon vs. Court of Appeals*,[1] which reiterated the ruling in *Vda. de Oñate vs. Court of Appeals*,[2] that for evidence to be considered, albeit not formally offered, the same must have been duly identified by testimony duly recorded, and must have been incorporated in the records of the case.

The case of *Vda. de Oñate*, however, is not applicable in this case and an important distinction must be made between the case at bar and that of *Vda. de Oñate*.

The *Vda. de Oñate* case involved an action for specific performance with damages filed with the Court of First Instance ("CFI") of Cagayan. Petitioner therein appealed to the Court of Appeals, contending that the trial court erred when it took cognizance of the plaintiff's evidence, particularly Exhibits "F," "F-1," "F-2" and "F-3," which had been marked but never formally submitted in evidence as required by the Rules of Court. **What is involved therein is an action that is <u>initially</u> litigated before the CFI, with both parties being confronted with each other's documentary evidence for the first time. The proper inclusion of documentary evidence through its formal offer is necessary for such evidence to be considered, the rationale behind being that the Court may not reasonably give probative value to evidence -- the existence, nature or significance of which the adverse party has not been previously made aware of in a prior proceeding.**

The case at bar, however, pertains to a continuation of administrative proceedings in the Bureau of Internal Revenue ("BIR") where both parties were involved. Relatedly, pursuant to Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals, the BIR is mandated to transmit all the records of the case in their possession to the CTA for the latter's appreciation and consideration in the final disposition of the case.

In CTA case *Continental Micronesia Inc. – Philippine Branch vs. Commissioner of Internal Revenue*,[3] penned by Associate Justice Caesar A. Casanova, and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, **the Court in Division held that although respondent did not formally**

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[1] G.R. No. 140944, April 30, 2008.
[2] G.R. No. 116149, November 23, 1995.
[3] CTA Case No. 6191, March 22, 2006, penned by Associate Justice Caesar A. Casanova and concurred in by former Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

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offer his entire marked documentary exhibits, such may be considered in the disposition of the case, considering that they were all found in the BIR Records, which forms part of the official records of the case. Said the decision:

> "Finally, We do not concur with petitioner's position that respondent failed to support the subject deficiency assessments with factual evidence. **While it is true that respondent did not formally offer his entire marked documentary exhibits, however, what We have considered in the disposition of the case were all found in the BIR Records.** In the case of Dionisio Lazaro, owner of M/B Elizabeth & Divina I vs. Comissioner of Customs, CTA Case No. 3035, dated June 28, 1982, the Court ruled **that the documents found in the BIR Records, although not formally offered, forms part of the official records of the case pursuant to Section 2 Rule 7 of the Rules of the Court of Tax Appeals.**"

More importantly, in *Commissioner of Customs vs. Court of Tax Appeals, et al.,*[4] the Supreme Court held that the records of the proceedings before the Collector of Customs -- which are no different from the records of the BIR -- form part of the records of the case which the Court can properly consider *sans* the need of any formal offer of evidence. Thus:

> "...Private respondent next contends that the Court erred in relying on the documents and portions of the transcript of the stenographic notes contained in the records of the proceedings before the Collector of Customs to establish fraud on its part. It is contended that these were not marked, identified and offered as evidence during the proceedings at the CTA as required by Rule 132, §34.
>
> The contention also has no merit. **The documents and transcript of stenographic notes in question were formally offered during the hearings conducted by the Collector of Customs, throughout which private respondent was represented by present counsel. As such, they form part of the records of the case which this Court can properly consider. The proceedings conducted by the Collector of Customs do not have the effect of vacating the records of the prior proceedings.** In addition, the Court also cited documents presented by private respondent itself during the proceedings in the CTA to show that there was fraud in the importation of the seized articles, a fact which private

[4] G.R. No. 132929, July 3, 2000.

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respondent does not refute in its present motions." (Emphases supplied)

Consistent with *Commissioner of Customs*, *supra*, I respectfully reiterate my previous Dissenting Opinion in the Court in Division's Decision, viz:

"<u>The protest letter is void and without force and effect.</u>

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**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.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> xxx xxx xxx."

Corollary thereto, Section 3.1.5 of Revenue Regulations No. 12-99 provides:

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> "3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof. xxx
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, **otherwise, his protest shall be considered *void and without force and effect*.** xxx
>
> xxx xxx xxx.
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.**"

Pursuant to the above provisions, the protest letter must state the **facts, the applicable law, rules and regulations or jurisprudence on which the protest is based**. Failure to comply therewith shall render the protest letter void and without force and effect.

In this regard, a careful scrutiny of the protest letter shows that petitioner failed to state the facts and applicable law on which the protest is based. **Petitioner merely attached reconciliation schedules, and did not even submit any documents in support of the said schedules**, viz.:

> "February 18, 2010
>
> Mr. Jaime B. Santiago
> Regional Director
> Revenue region No. 8
> Makati City
>
> Dear Sir:
>
> Glory to GOD!
>
> This is in reference to your Formal Assessment Notice for LOA #00001046 dated January 14, 2011 which we received on January 20, 2011 covering 2007 deficiency tax, we would like to submit the following reconciliations for your copy and review:
>
> 1. Reconciliation of Deficiency Tax.

2. Analysis on Withholding Tax- Compensation (Sched1).
3. Reconciliation of Unaccounted Income Payments (Sched 2).
4. Reconciliation of Undeclared Revenue (Sched 3).

We are available at your most convenient time and place to explain the above analysis and reconciliations. Please call us at our cell nos. 0917-890-7796 for Len Grande and 0917-8913663 for Mhina Simafranca.

Thank you and God Bless You.

(signed)
Eleanor B. Grande
Group Accounting Manager"

Pursuant to Section 228 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations 12-99, the protest letter is void and without force and effect.

Petitioner did not only fail to state the applicable law, rules and regulations or jurisprudence on which its protest is based; it also failed to substantiate, with relevant supporting documents, the reconciliation schedules which petitioner submitted to the Bureau of Internal Revenue (BIR). There is no denying that in the Final Decision on Disputed Assessment (FDDA), the BIR emphasized that petitioner failed to submit the documents in support of its protest within sixty (60) days from the date of filing of the protest.

Since the petitioner failed to file a valid protest against the subject Final Assessment Notices (FANs), the FANs have become final, executory and demandable.

<u>The protest letter was belatedly filed.</u>

Pursuant to the afore-quoted provision of Section 228 of the NIRC of 1997, as amended, a valid protest must be filed **with thirty (30) days from receipt of the assessment notice**.

In its protest, petitioner alleges that it received the FANs on January 20, 2011. This allegation, however, is completely belied by the BIR records. A perusal of the BIR records shows that petitioner received the FANs, dated January 14, 2011, on the same date. Petitioner, therefore, had **until February 13,**

2011 to file a protest. Petitioner filed its protest only on **<u>February 18, 2011</u>**, which is five (5) days beyond the 30-day reglementary period within which to file the same.

It is true that the FANs, as can be found in the BIR Records, have not been formally offered as evidence by either of the parties. Although the rule is that "evidence not formally offered during the trial cannot be used for or against a party litigant", but once the BIR records are elevated to this Court, they form part of the records of the case which the Court may aptly consider in deciding the case.

Section 5(b) of the Revised Rules of the Court of Tax Appeals provides:

> "(b) *Transmittal of records.*- The respondent Commissioner of Internal Revenue, Commissioner of Customs, the Secretary of Finance, the Secretary of Agriculture, or the Secretary of Trade and Industry, within ten days after filing an answer, the chairman of the Central Board of Assessment Appeals and the presiding judges of the Regional Trial Courts, within ten days from receipt of notice, shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. xxx"

xxx xxx xxx

Considering that the protest is void and without force and effect for failure to state the factual and legal basis and for having been filed way beyond the 30-day prescribed period, the FANs have long become final and executory. In fine, this Court has no jurisdiction to take cognizance of the Petition for Review filed by petitioner.

For all the foregoing, I vote to dismiss the present Petition for Review for lack of jurisdiction." (citations omitted)

For all the foregoing, I vote to grant the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1245** (CTA Case No. 8323)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
ARMADILLO HOLDINGS, INC., Respondent.	**Promulgated:** JUL 21 2016 11:15 a.m.

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CONCURRING AND DISSENTING OPINION

UY, *J.*:

With all due respect with the learned ponente and my other colleagues, while I concur that the arguments raised in the instant Petition for Review deserve scant consideration, it is my humble view that the assailed Decision must be modified to remove the imposition of deficiency interest on the deficiency value-added tax (VAT) and expanded withholding tax (EWT) under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997 against respondent, and the inclusion of said deficiency interest in the computation of delinquency interest under Section 249(C) of the same Code.

Section 249 of the NIRC of 1997 reads:

"SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on "[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, viz:

"SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.*—

xxx xxx xxx

(B) *Assessment and Payment of Deficiency Tax.*— After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter[1], in respect of a tax imposed by this Title[2], the term **'deficiency'** means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 93. *Definition of Deficiency.* — As used in this Chapter[3], the term **'deficiency'** means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts

[1] Chapter IX – RETURNS AND PAYMENT OF TAX.
[2] Title II – TAX ON INCOME.
[3] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

> previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*
>
> "SEC. 104. *Definitions.* — xxx
>
> The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[4] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, no deficiency interest under Section 249(B) should be imposed on the deficiency VAT and EWT assessed against petitioner. Thus, the computation of the delinquency interest imposed under Section 249(C) should not as well include the said deficiency interest.

Correspondingly, I vote that the dispositive portion in CTA Case No. 8323 be modified so as to exclude: (1) the imposition of deficiency interest under Section 249(B) of the NIRC of 1997 on the deficiency VAT and EWT assessed against petitioner, and (2) in the computation of delinquency interest imposed on the said taxes under Section 249(C) of the same Code.

ERLINDA P. UY
Associate Justice

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[4] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).