Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

LIGHT RAIL TRANSIT AUTHORITY,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE represented by the COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8893
For: Assessment

Members:
DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
OCT 03 2016 ; 3:35 pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition For Review filed on September 18, 2014 by the Light Rail Transit Authority as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, for the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(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;
x x x x x x

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:

x x x x x x

Petitioner seeks the cancellation and/or abatement of the deficiency expanded withholding tax (EWT) assessment issued against it in the amount of ₱7,964,519.75 for taxable year 2006.

Petitioner Light Rail Transit Authority is a government instrumentality duly organized and existing by virtue of Executive Order (EO) No. 603.[3] It is primarily responsible for the construction, operation, maintenance and/or lease of light rail transit systems in the Philippines, giving due regard to the reasonable requirements of the public transportation system of the country.[4] Petitioner has its office address at 2F Administration Bldg., LRTA Compound, Aurora Boulevard, Pasay City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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(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;
x x x x x x

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.

[3] Summary of Admitted Facts, Joint Stipulation of Facts (JSF), Docket, p. 117.
[4] Section 2, Executive Order No. 603.

On February 10, 2011, petitioner received the Preliminary Assessment Notice[5] (PAN) dated February 2, 2011, assessing it for alleged deficiency EWT for taxable year 2006 in the amount of ₱10,071,147.30.[6] In its letter[7] dated February 25, 2011, petitioner requested an extension of time to protest the PAN; which was granted by respondent via letter[8] dated April 4, 2011.[9]

Petitioner protested the PAN on April 12, 2011.[10] Respondent, in turn, required petitioner to sign a waiver of prescription in his letter[11] dated May 26, 2011. However, in its letter[12] dated May 30, 2011, petitioner declined respondent's request, stating that the last waiver[13] it signed is valid up to June 30, 2011.

Respondent issued a Formal Assessment Notice[14] (FAN), with attached Details of Discrepancies[15] and Assessment Notice[16], all dated June 7, 2011. On July 7, 2011, petitioner protested the FAN.[17]

Thereafter, respondent sent a Preliminary Collection Letter[18] dated August 17, 2011 to petitioner,[19] which was received by the latter on August 18, 2011, demanding the payment of ₱10,489,012.10 consisting of (a) ₱5,526,110.59 as basic tax and (b) ₱4,962,901.51 as interest. On March 29, 2012, petitioner paid the amount of ₱4,746,312.58.[20]

[5] Exhibit "P-3", Docket, p. 192.
[6] Summary of Admitted Facts, JSF, Docket, p. 117.
[7] Exhibit "P-4", Docket, p. 195.
[8] Exhibit "P-5", Docket, p. 196.
[9] Summary of Admitted Facts, JSF, Docket, p. 117.
[10] Exhibit "P-7", Docket, p. 198.
[11] Exhibit "P-8", Docket, p. 199.
[12] Exhibit "P-9", Docket, p. 200.
[13] Exhibit "P-6", Docket, p. 197.
[14] Exhibit "P-10", Docket, p. 201.
[15] Exhibit "P-10-a", Docket, pp. 202-203.
[16] Exhibit "P-11", Docket, p. 204.
[17] Exhibit "P-12", Docket, p. 205; Summary of Admitted Facts, JSF, Docket, p. 118.
[18] Exhibit "P-13", Docket, p. 206.
[19] Summary of Admitted Facts, JSF, Docket, p. 118.
[20] Exhibits "P-15" and "P-16", Docket, pp. 208-209.

In its letter[21] dated April 4, 2012 addressed to respondent, petitioner requested for the waiver of the interest on the tax deficiency amounting to ₱5,461,408.10.

On August 20, 2014, petitioner received the amended Assessment Notice[22] and the Final Decision on Disputed Assessment[23] (FDDA) from the BIR, signed by Regional Director Jonas DP Zamora, stating that petitioner still has a tax liability in the amount of ₱7,964,519.75, broken down as follows:

EXPANDED WITHHOLDING TAX	
Basic Tax Due (Schedule 1) Add: Interest (1.16.07 to 03.29.12) Deficiency Tax	₱ 4,927,609.18 5,127,413.61 10,055,022.79
Less: Basic Tax paid on March 29, 2012	4,746,312.58
Amount Still Due Add: Interest (03-30-12 to 09-29-14) **TOTAL AMOUNT DUE**	5,308,710.21 2,655,809.54 **₱7,964,519.75**

As a result, petitioner filed the present Petition for Review before this Court on September 18, 2014.

Respondent filed an Answer[24] through registered mail on November 11, 2014 and received by the Court on November 19, 2014, interposing the following Special and Affirmative Defenses:

> "4. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
>
> 5. Petitioner was assessed for deficiency expanded withholding tax for taxable year 2006,

[21] Exhibit "P-17", Docket, p. 210.
[22] Exhibit "P-1", Docket, p. 187.
[23] Exhibit "P-2", Docket, pp. 188-189.
[24] Docket, pp. 61-64.

for the reason that during the administrative investigation of its tax case by the Bureau of Internal Revenue (BIR), petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated February 02, 2011, Formal Assessment Notice (FAN) dated June 07, 2011 and FDDA dated August 20, 2014, which are briefly discussed hereunder, viz:

EXPANDED WITHHOLDING TAX;

- **Basic Tax Due amounting to ₱4,927,609.18**:

- Verification disclosed that petitioner failed to withhold and remit the corresponding expanded withholding tax from income payments to MERALCO amounting to ₱5,526,110.59, pursuant to Section 2.57.3 of Revenue Regulations No. 2-98, as amended as shown below.

  SECTION 2.57.3. Persons Required to Deduct and Withhold. - The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:

  (A) **In general, any juridical person, whether or not engaged in trade or business**;

  (B) **An individual, with respect to payments made in connection with his trade or business.**

However, insofar as taxable sale, exchange or transfer of real property is concerned, individual buyers who are not engaged in trade or business are also constituted as withholding agents;

(C) **All government offices including government-owned or controlled corporations, as well as provincial, city and municipal governments**.

In addition, all income payments which are required to be subjected to withholding tax shall be subject to the corresponding tax rate to be withheld by the person having control over the payment and who, at the same time, claims the expenses.

6. Petitioner was assessed by respondent for deficiency expanded withholding tax for taxable year 2006 within the prescriptive period under Section 222 (b) of the 1997 Tax Code, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code duly executed by petitioner, extending the period of limitations until June 30, 2011;

7. Petitioner claimed that the deficiency tax should be abated in accordance with **Section 2.2 of Revenue Regulation 13-2001** which states that:

'Sec. 2. Instances when the penalties and/or interest imposed on the taxpayer may be abated or cancelled on the ground that the imposition thereof is unjust or excessive. - xxx

2.2. When taxpayer's mistake in the payment of his tax due to erroneous written official advice of a revenue officer.'

In the instant case, petitioner failed to present any document which will show that the mistake in the payment of their tax was due to the written official advice made by a revenue officer. On such a case, the claim of petitioner that the penalties and/or interest imposed on them by respondent must be abated or cancelled on the ground that the imposition thereof is unjust or excessive must fall;

8. The assessments issued against petitioner for deficiency expanded withholding tax for taxable year 2006 were made in accordance with law and regulations;

9. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed ***(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109)***."

The case was set for Pre-Trial Conference[25] on March 5, 2015 and the parties were ordered to submit their respective Pre-Trial Briefs at least three (3) days before the date of the Pre-Trial. In an Order[26] dated March 2, 2015, the Pre-Trial Conference originally set on March 5, 2015 was cancelled and reset to April 30, 2015. Petitioner filed its Pre-Trial

[25] Notice of Pre-Trial Conference, Docket, p. 67.
[26] Docket, p. 77.

Brief[27] on February 26, 2015; while respondent filed his Pre-Trial Brief[28] through registered mail on February 26, 2015 and received by the Court on March 5, 2015.

The parties filed their Joint Stipulation of Facts[29] on May 15, 2015. It was later approved by the Court in its Resolution[30] dated May 29, 2015.

During the hearing held on July 21, 2015, respondent manifested that he will not be presenting any witness.[31]

On August 3, 2015, petitioner filed its Formal Offer of Documentary Evidence[32], offering Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-3-a", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10-a", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", and "P-19" as its documentary exhibits. Respondent filed his Comment to Petitioner's Formal Offer of Evidence[33] through registered mail on August 6, 2015 and received by the Court on August 17, 2015.

In the Resolution[34] dated September 15, 2015, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10-a", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", and "P-19"; but denied Exhibits "P-3-a" and "P-18". In the same Resolution, the Court gave both parties a period of thirty (30) days to submit their respective memoranda.

Petitioner's admitted documentary exhibits are as follows:

[27] Docket, pp. 71-76.
[28] Docket, pp. 79-83.
[29] Docket, pp. 117-121.
[30] Docket, p. 123.
[31] Docket, pp. 175-176.
[32] Docket, pp. 180-186.
[33] Docket, pp. 216-217.
[34] Docket, pp. 222-223.

Exhibits	Description
P-1	Amended Assessment Notice dated 20 August 2014
P-2	Final Decision on Disputed Assessment (FDDA) dated 20 August 2014
P-2-a	Details of Discrepancies attached to the FDDA
P-3	Preliminary Assessment Notice (PAN) dated 01 February 2011
P-4	Request for extension to respond to the PAN dated 25 February 2011 signed by Atty. Jose Jabel V. Belarmino
P-5	Letter Reply from Jaime B. Santiago dated 4 April 2011 granting the request for extension
P-6	Waiver of the Defense of Prescription signed by Ms. Marilou Liscano executed on 11 March 2011
P-7	Protest on Preliminary Assessment signed by Jose Jabel V. Belarmino
P-8	Request for execution of Waiver of Prescription from RD Jaime B. Santiago dated 26 May 2011
P-9	Letter from Ms. Marilou Liscano of LRTA addressed to Mr. Manuel V. Mapay
P-10	Formal Assessment Notice dated 7 June 2011
P-10-a	Details of Discrepancies attached to the FAN
P-11	Assessment Notice dated 7 June 2011
P-12	Formal Assessment Appeal dated 7 July 2011
P-13	Preliminary Collection Letter dated 17 August 2011
P-14	Letter addressed to Ms. Corazon Montes dated 5 September 2011
P-15	BIR Tax payment (Landbank) deposit slip dated 29 March 2012

P-16	Payment Form 0605
P-17	Letter to Kim S. Jacinto-Henares requesting to waive the interest amounting to P5,461,408.10
P-19	Letter reply from Asst. Comm. Elvira R. Vera dated 20 April 2012

Respondent filed a Memorandum[35] through registered mail on October 15, 2015 and received by the Court on October 22, 2015; while petitioner filed a Motion to Admit[36] on October 29, 2015, praying that the attached Memorandum be admitted.

In the Resolution[37] dated November 11, 2015, the Court granted petitioner's Motion to Admit and accordingly admitted the attached Memorandum. In the same Resolution, the Court declared the case submitted for decision.

The parties submitted the following issue[38] for this Court's consideration:

> WHETHER THE DEFICIENCY TAX SHOULD BE ABATED IN ACCORDANCE WITH SECTION 2.2 OF REVENUE REGULATION NO. 13-2001.

The Court shall determine first whether it has jurisdiction over the subject matter of the controversy.

The Court has jurisdiction over the present case under the term "other matters" pursuant to Section 7(a)(1) of Republic Act No. 1125.

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[35] Docket, pp. 224-227.
[36] Docket, pp. 229-236.
[37] Docket, p. 238.
[38] Issue to be resolved, JSF, Docket, p. 118.

The Court of Tax Appeals (CTA) is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[39] The jurisdiction of this Court is conferred by Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

Section 7(a)(1) of R.A. No. 1125, as amended, states:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:

[39] *Allied Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, Resolution dated April 24, 2007.

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

(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**;" *(Emphasis supplied)*

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[40], the Supreme Court ruled that:

"The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. xxx"

Relative thereto is Section 204(B) of the National Internal Revenue Code of 1997, as amended, which is quoted as follows:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. - The Commissioner may -

xxx xxx xxx

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[40] G.R. No. 162852, December 16, 2004.

(B) Abate or cancel a tax liability, xxx"

Applying the foregoing to the present case, the subject issue -the abatement of petitioner's tax liability - clearly falls within the coverage of the phrase "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue" pursuant to Section 7(a)(1) of R.A. No. 1125, as amended, and Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals.

Further, Section 11 of R.A. No. 1125, as amended, provides that any party adversely affected by a decision or ruling of respondent may file an appeal with the Court of Tax Appeals within thirty (30) days after the receipt of such decision or ruling.

Records show that petitioner received the FDDA on August 20, 2014. Counting thirty days therefrom, it had until September 20, 2014 to file a Petition for Review. It must be pointed out that petitioner filed the present Petition for Review on September 18, 2014. Thus, the Court has jurisdiction over the present case.

Petitioner failed to present evidence proving that the payment of the tax was due to erroneous written official advice made by the BIR.

Petitioner seeks the abatement or cancellation of its deficiency EWT assessment in the amount of ₱7,964,519.75 for taxable year 2006.

In *People of the Philippines vs. Sandiganbayan, et al.*[41], the Supreme Court defines abatement or cancellation, as follows:

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[41] G.R. No. 152532, August 16, 2005.

> "xxx Abatement is the 'diminution or decrease in the amount of tax imposed.' It refers to 'the act of eliminating or nullifying; xxx of lessening or moderating xxx.' To abate is 'to nullify or reduce in value or amount'; while to cancel is 'to obliterate, cross out, or invalidate'; and 'to strike out; xxx delete; xxx erase; xxx make void or invalid; xxx annul; xxx destroy; xxx revoke or recall.'"

The authority of respondent to abate or cancel tax liabilities is derived from Section 204(B) of the NIRC of 1997, as amended, which reads:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may –
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due.
>
> All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud."

The BIR may therefore abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, if (1) its assessment is excessive or erroneous, or (2) if the administration costs involved do not justify the collection of the amount due.

Petitioner anchors its claim for abatement on the ground that the assessment is excessive or erroneous. In this regard, petitioner contends that the payment of its tax is due to an erroneous written official advice of the BIR.[42] On the other hand, respondent claims that petitioner failed to present the necessary document which will show that mistake in the payment of its tax was due to erroneous written official advice made by a revenue officer.[43]

Section 2 of Revenue Regulations No. 13-2001 laid down the instances when a tax liability imposed on the taxpayer may be abated or cancelled on the ground that the imposition is unjust or excessive, to wit:

> "SECTION 2. *Instances When the Penalties and/or Interest Imposed on the Taxpayer May be Abated or Cancelled on the Ground That the Imposition Thereof is Unjust or Excessive.* -
>
> xxx xxx xxx
>
> 2.2. When taxpayer's mistake in payment of his tax is due to erroneous written official advice of a revenue officer;"

Black defines the term *erroneous or illegal tax* as one levied without statutory authority.[44] As for excessive tax, excess is the "state of going beyond limits."[45]

An examination of the records of the case reveals that petitioner did not present even an iota of proof to show that

[42] Memorandum, Docket, pp. 233-235.
[43] Memorandum, Docket, p. 226.
[44] *Commissioner of Internal Revenue vs. Philippines National Bank,* G. R. No. 161997, October 25, 2005.
[45] *Forbes, et. al. vs. Chuoco Tiaco (alias Choa Tea), et. al.,* G.R. No. L-6157, July 30, 1910.

the assessment of its tax liability is excessive or erroneous. Petitioner failed to demonstrate that the assessment was levied without statutory authority or that it is beyond the limits of statutory authority.

Petitioner merely alleges that it entered into a compromise agreement with the BIR stating that it will pay the basic tax and the BIR shall waive the interest due thereon.[46] Thus, petitioner paid the amount of ₱4,746,312.58 on March 29, 2012. However, the records are bereft of any evidence of compromise agreement executed between petitioner and the BIR. It is also noteworthy that a compromise agreement is not a ground for abatement of tax liability.

In the same case of *People of the Philippines vs. Sandiganbayan, et al.*[47], the Supreme Court discussed the difference between a compromise and an abatement in the following manner:

> "Although referred to in the pleadings as a compromise, the matter at hand is actually an abatement or a cancellation. xxx
>
> xxx xxx xxx
>
> The BIR may therefore abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, if its assessment is excessive or erroneous; or if the administration costs involved do not justify the collection of the amount due. No mutual concessions need be made, because an excessive or erroneous tax is not compromised; it is abated or canceled. xxx"

Petitioner further claims that the payment of its tax was due to an erroneous written official advice of the BIR pursuant to Section 2.2 of Revenue Regulations No. 13-

[46] Par. 11, Petition for Review, Docket, p. 16.
[47] G.R. No. 152532, August 16, 2005.

2001. Petitioner argues that, in paying the amount of ₱4,746,312.58, it was made to believe that respondent will abate or cancel the interest due from it.[48] However, petitioner did not present the alleged official written advice of the revenue officer or any evidence for that matter to support its claim that it was in fact misled, through any official document by any revenue officer, resulting in the alleged erroneous payment of tax. These are pure allegations not supported by evidence to that effect.

It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[49] Aside from petitioner's mere assertions, no corroborative and competent evidence was adduced by it to substantiate its claims. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.[50]

In the case of *Spouses Ramos vs. Obispo, et al.*[51], the Supreme Court ruled that allegation of error or mistake must be proved by evidence, thus:

> "As to fraud, the rule is that he who alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and that private transactions have been fair and regular. **The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.** Moreover, fraud is not presumed - it must be proved by clear and convincing evidence." *(Emphasis supplied)*

In absence of proof, the presumption of correctness of assessment would prevail. After all, assessments are *prima*

[48] Memorandum, Docket, pp. 233-234.
[49] *Noblejas vs. Italian Maritime Academy Phils., Inc., et. al.* G.R. No. 207888, June 9, 2014.
[50] *Domingo vs. Robles, et. al.*, G.R. No. 153743, March 18, 2005.
[51] G.R. No. 193804, February 27, 2013.

facie presumed correct and made in good faith.[52] It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed and will justify judicial affirmance of said assessment.[53] Considering the failure of petitioner to prove that the deficiency tax assessment is "erroneous" or "excessive," the same may not be abated or cancelled.

The authority to abate taxes rests upon the sole discretion of respondent.

It must also be stressed that respondent has the sole authority to abate or cancel tax liability in accordance with Section 4 of Revenue Regulations No. 13-2001, which provides:

> "SECTION 4. *The Commissioner Has the Sole Authority to Abate or Cancel Tax, Penalties and/or Interest.* – The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the Code. xxx"

A reading of the FDDA shows that petitioner's request for abatement is yet to be approved by respondent, to wit:

> "xxx Further, your request for abatement of interest is subject to the approval of the Commissioner of the Internal Revenue, through the Technical Working Committee (TWC) pursuant to Revenue Regulation (RR) No. 13-2001."

[52] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.
[53] *Commissioner of Internal Revenue vs. Court of Appeals, et. al.,* G.R. No. 104151, March 10, 1995; *Atlas Consolidated Mining and Development Corporation vs. Court of Appeals, et. al.,* G. R. No. 105563, March 10, 1995.

There is nothing in the records that would indicate that petitioner's request for abatement has been approved by respondent. And the sole authority to abate tax liability rests upon the sole discretion of respondent and hence, cannot be interfered by the courts. This is the ruling of the Supreme Court in the case of *Republic of the Philippines (Presidential Commission on Good Government) vs. The Hon. Sandiganbayan, et al.*[54], to wit:

> "It should be emphasized here, as again stressed by the Court in the recent case of *Republic, et al. v. De Los Angeles, et al.*, G.R. No. L30240, March 25, 1988, that 'it is well-recognized principle that purely administrative and discretionary functions may not be interfered by the courts. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. There should be no thought of disregarding the traditional line separating judicial and administrative competence, the former being entrusted with the determination of legal questions and the latter being limited as a result of its expertise to the ascertainment of the decisive facts.' xxx"

To reiterate, since respondent has the sole authority or discretion to abate petitioner's tax liability, the Court therefore must not interfere with respondent's exercise of discretion as to whether or not to abate petitioner's tax liability in accordance with the parameters set forth in Section 204(B) of the NIRC of 1997, as amended, as implemented by Revenue Regulations No. 13-2001.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The deficiency EWT assessment issued by respondent against petitioner for taxable year 2006 is hereby **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FIVE MILLION ONE HUNDRED**

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[54] G.R. No. 88228, June 27, 1990.

SIXTY-SEVEN THOUSAND NINE HUNDRED EIGHTY-SEVEN PESOS AND 27/100 (₱5,167,987.27), computed as follows:

Basic EWT Due Less: Payment on March 29, 2012	₱ 4,927,609.18 4,746,312.58
Basic EWT Still Due	₱ 181,296.60
Add: 25% Surcharge[55]	45,324.15
Total	₱ 226,620.75
Add: 20% Deficiency interest for late payment of basic EWT of ₱4,746,312.58 computed from January 15, 2007 to March 29, 2012 (₱4,746,312.58 x 20% x 1900/365 days)	4,941,366.52
Total Amount Due	**₱5,167,987.27**

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

(a) deficiency interest at the rate of twenty percent (20%) per annum on basic deficiency EWT of ₱181,296.60 computed from January 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱226,620.75, representing the unpaid basic deficiency EWT of ₱181,296.60 and the twenty-five percent (25%) surcharge of ₱45,324.15 computed from September 22, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

(c) delinquency interest at the rate of 20% per annum on the deficiency interest of ₱4,941,366.52 computed from September 22, 2014 until full payment thereof pursuant to

[55] Imposed pursuant to Section 248(A)(3) of the NIRC of 1997, as amended.

Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

(with Concurring & Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

LIGHT RAIL TRANSIT AUTHORITY, *Petitioner,*	**CTA CASE NO. 8893**
-versus-	Members: **DEL ROSARIO**, *Chairperson,* **UY**, *and* **MINDARO-GRULLA, *JJ.***
BUREAU OF INTERNAL REVENUE represented by the Commissioner of Internal Revenue, *Respondent.*	**Promulgated:** OCT 03 2016; 3:35pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying the Petition for Review filed by Light Rail Transit Auhtority ("LRTA"). With due respect, however, I take exception to the imposition of twenty percent (20%) deficiency interest on the assessed deficiency expanded withholding tax (EWT).

Consistent with the position I have taken in a number of cases that deficiency interest may only be imposed on tax specifically covered and defined by the relevant provisions of the National Internal Revenue Code (NIRC), *i.e.*, income tax, donor's tax and estate tax, the imposition of deficiency interest on the assessed deficiency EWT in the present case must be cancelled. Quoted below is my discussion in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-*

Curing & Redrying Corporation[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. **I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes.** Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
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> > 'The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
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[1] CTA EB Nos. 1218 and 1220, April 11, 2016. This is consistent with my earlier opinion in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1062, January 15, 2016; CIR vs. Staedtler (Philippines), Inc., CTA EB No. 1310, January 28, 2016; Medicard Philippines, Inc. vs. CIR, CTA EB No. 1224, January 29, 2016; Lourdes College vs. CIR, CTA EB No. 1164, February 2, 2016; Philippine Aerospace Development Corporation vs. CIR, CTA EB No. 1035, February 9, 2016; CIR vs. BPI-Philam Life Assurance Corporation, CTA EB No. 1240, February 11, 2016; CIR vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. CIR, CTA EB Nos. 1210 & 1213, March 7, 2016; CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016; Lourdes College vs. Commissioner of Internal Revenue, CTA EB No. 1164, July 28, 2016;and Visayas Geothermal Company Power Company v. CIR, CTA EB No. 1291, September 21, 2016.*

[2] G.R. Nos. 106949-50, December 1, 1995.

[3] G.R. No. 146486, March 4, 2005.

> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented.'**

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51(c)(1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II.** Thus:

> **'It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax

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> Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.'

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
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> (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.'

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and

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> **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended.'

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Also apt is my discussion in my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[4] which I quote below:

> 'Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**'

In sum, deficiency interest may be imposed only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed on the EWT assessed against LRTA.**

The power of taxation is sometimes called also the power to destroy. It should, therefore, be exercised with caution to minimize

[4] CTA EB No. 1035, February 9, 2016.

injury to the proprietary rights of a taxpayer. **It must be exercised fairly, equally and uniformly, lest the tax collector kills the hen that lays the golden egg.**[5] **Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum and a surcharge of 25% on the amount due under Section 248 of the NIRC, is too burdensome for a taxpayer to survive and continue with its business affairs.'**[6]

In fine, I VOTE to DENY the Petition for Review filed by LRTA. The deficiency EWT assessment issued by respondent should be **AFFIRMED** but with modifications by deleting the imposition of 20% deficiency interest. Accordingly, LRTA should be **ORDERED** to **PAY** respondent in the total amount of ₱226,620.75 inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic EWT Due	₱ 4,927,609.18
Less: Payment on March 29, 2012	4,746,312.58
Basic EWT Still Due	₱ 181,296.60
Add: 25% Surcharge	45,324.15
Total Amount Due	₱ 226,620.75

In addition, LRTA should be held liable to pay delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱226,620.75 computed from September 22, 2014 until full payment thereof pursuant to Section 249 (C) of the 1997 NIRC.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Roxas vs. Court of Tax Appeals, G.R. No. L-25043, April 26, 1968.
[6] Commissioner of Internal Revenue vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB Nos. 1210 & 1213, July 1, 2016.