REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CRU CONCEPTS, INC., *Petitioner,*	**CTA CASE NO. 9389** For: Assessment
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 4, 2019 is a Petition for Review filed by petitioner CRU Concepts, Inc. against respondent Commissioner of Internal Revenue (CIR) on July 20, 2016, praying for the cancellation and nullification of respondent's Formal Letter of Demand (FLD) with Assessment Notice dated December 3, 2015, which found petitioner liable for alleged deficiency tax assessments for taxable year 2012.

Petitioner avers that it is a corporation duly organized and existing under the laws of the Republic of the Philippines[1]. According to the Secretary's Certificate attached to its petition, its principal address is 80, E. Rodriguez Jr. Avenue, Bagumbayan, Libis, Quezon City.[2]

Respondent CIR is the head of the Bureau of Internal Revenue, the government agency charged with implementing the

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[1] Docket (Vol. I), Par. 1, p. 14.
[2] Docket (Vol. I), p. 31.

National Internal Revenue Code ("NIRC") and collecting all internal revenue taxes. Respondent holds office at the BIR National Office Bldg., BIR Road, Diliman, Quezon City where he may be served with the processes of this Court.

Petitioner avers that on July 31, 2016, it received from respondent Office of the Regional Director, BIR Revenue Region No. 7 (Quezon City) an Electronic Letter of Authority eLA20110037706 (LOA-040-2013-00000411) dated July 24, 2013 authorizing several revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable period January 1 to December 31, 2012.[3]

On November 6, 2015, petitioner received from the BIR Revenue Region No. 7 a Preliminary Assessment Notice ("PAN") evenly dated, assessing petitioner of the following deficiency tax liabilities:[4]

Income Tax	₱ 4,427,127.12
Expanded Withholding Tax	30,546.35
Value-Added Tax	1,514,792.38

Petitioner avers that it filed its Reply to the PAN on November 23, 2015.[5]

On December 3, 2015, respondent Office of the Regional Director, BIR Revenue Region No. 7 issued a Formal Letter of Demand ("FLD") with Demand No. 040-B092-12[6], assessing petitioner of the following amounts for taxable year 2012:

Income Tax	₱ 4,475,074.35
Expanded Withholding Tax	30,866.77
Value-Added Tax	1,530,737.46

Petitioner avers that it filed its protest to the FLD on December 23, 2015.[7]

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[3] Docket (Vol. I), Par. 5, p. 15.
[4] Docket (Vol. II), Par. 1, p. 534.
[5] Docket (Vol. I), Par. 9, p. 16.
[6] Docket (Vol. II), Par. 2, p. 534.
[7] Docket (Vol. I), Par. 13, p. 16.

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Petitioner also alleges that it received a Letter dated January 21, 2016 from the Revenue District Office ("RDO") No. 40 Re: Continuance of Audit and Reinvestigation informing petitioner that they have assigned Revenue Officer Ma. Lourdes E. Ereno under Group Supervisor Ricardo L. Limlingan to continue the audit and reinvestigation of the tax case.[8]

Petitioner alleges that it received on February 9, 2016 a reply from the Office of the Regional Director that the entire tax docket together with petitioner's protest will be forwarded to the RDO 40 – Cubao under 1st Indorsement dated January 22, 2016 for reconsideration.[9]

Petitioner also avers that it received a letter from RDO 40 OIC Asst. Revenue District Officer Evelyn Paunel-Ang, informing it that the findings in the said Demand Notice were valid and that the assessment shall become final, executory and demandable as stated in the Tax Code.[10]

According to petitioner, its counsel replied to the letter from OIC Asst. Revenue District Officer Paunel-Ang that they took the April 11, 2016 letter to mean that the protest was denied and that petitioner is filing a Petition for Review with the Court of Tax Appeals ("CTA") within 30 days as provided by the Tax Code.[11]

Petitioner avers that it received a letter dated April 27, 2016 signed by a certain Lorna Sun-Tobias, informing it that the entire docket was already reported to the Assessment Division on April 18, 2016 for issuance of the Final Decision on Disputed Assessment and for further appropriate action.[12]

Petitioner also avers that on May 3, 2016 it wrote Regional Director Alfredo V. Misajon a letter seeking clarification on the reckoning point in filing its appeal with the Court.[13]

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[8] Docket (Vol. I), Par. 14, p. 16.
[9] Docket (Vol. I), Par. 15, p. 17.
[10] Docket (Vol. I), Par. 16, p. 17.
[11] Docket (Vol. I), Par. 17, p. 17.
[12] Docket (Vol. I), Par. 18, p. 17.
[13] Docket (Vol. I), Par. 19, p. 17.

Moreover, petitioner alleges that it received on May 6, 2016 a letter from Ms. Paunel-Ang clarifying that the reckoning point for filing the Petition for Review with the CTA is thirty (30) days from receipt of the Final Decision on Disputed Assessment.[14]

Due to respondent's inaction on the administrative protest, petitioner filed the present Petition for Review on July 20, 2016.[15]

On July 26, 2016, this Court issued summons against respondent who was ordered to submit an Answer to the said petition.[16] On August 9, 2016, respondent filed through registered mail a Motion for Extension of Time to File Answer[17], which the Court granted in an Order dated August 22, 2016.[18] Respondent filed his *Answer*[19] on September 6, 2016, interposing the following:

> 1. He **DENIES** the material allegations contained in paragraphs under the heading "NATURE. TIMELINESS OF AND BASIS FOR THE PETITION" for being mere opinions, conjectures, gratuitous assertions and conclusions bereft of merit in fact and in law and for lack of knowledge and information sufficient to form a belief as to the truth of said allegations;
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> 2. He **DENIES** the material allegations contained in paragraph 1 under the heading "THE PARTIES" for lack of knowledge and information sufficient to form a belief as to the truth of said allegations;
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> 3. He **ADMITS** the material allegations contained in paragraphs 2, 3 and 4 under the heading "THE PARTIES" of the Petition for Review;
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> 4. He **DENIES** the material allegations contained in paragraphs 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 under the heading "STATEMENT OF THE FACTS AND ANTECEDENT PRECEDINGS" for lack of knowledge and information

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[14] Docket (Vol. I), Par. 22, p. 18.
[15] Docket (Vol. I), pp. 12-365.
[16] Docket (Vol. I), p. 366.
[17] Docket (Vol. I), pp. 386-389.
[18] Docket (Vol. I), p. 390.
[19] Docket (Vol. I), pp. 391-395.

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sufficient to form a belief as to the truth thereof; moreover, this Petition for Review is filed beyond the reglementary period. In the case of Surigao Electric Co. Inc. vs. Court of Tax Appeals *(L-25289, June 28, 1974, 57 SCRA 524)* the court considered a mere demand letter sent to the taxpayer after his protest of the assessment notice as the final decision of the Commissioner of Internal Revenue on the protest. The demand letter verily signified a character of finality. Therefore, it was tantamount to a rejection of the request for reconsideration. Hence, the filing of the petition on November 8, 1991 was held clearly beyond the reglementary period.

In the case of *Oceanic Wireless Network vs. CIR (G.R. No. 148380, December 9, 2005)*, the Supreme Court held that:

"Hence, petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon the receipt of the demand letter reiterating the assessed delinquent taxes and denying its request for reconsideration which constituted the final determination by the Bureau of Internal Revenue on petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals.

The rule is that for the CTA to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.

We agree with the factual findings of the Court of Tax Appeals that the demand letter may be presumed to have been duly directed, mailed and was received by petitioner in the regular course of the mail in the absence of evidence to the contrary. This is in accordance with Section 2(v), Rule 131 of the Rules of Court and in this case, since the period to appeal has commenced to run from the time the letter of demand was presumably received by petitioner within a reasonable time after January 24, 1991, the period of thirty (30) days to appeal the adverse decision on the request for reconsideration had already lapsed when the petition was filed with the Court of Tax Appeals on November 8, 1991. Hence, the Court of Tax Appeals properly dismissed the petition as the tax delinquency assessment had long become final and executory."

5. He **DENIES** the material allegations contained in paragraphs under the heading "DISCUSSION" for being as a whole, false the truth being that the collection of the deficiency taxes is valid and effectual due to the failure of the Petitioner to validly protest the assessment within the reglementary period. Hence, the assessment is considered to be final and demandable. The petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon receipt of the demand letter reiterating the assessed delinquent taxes which constituted the final determination by the Bureau of Internal Revenue on Petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals. Moreover, collection proceedings are to be construed as denial of the protest. Petitioner filed this Petition for Review only on March 21, 2016, which was beyond the thirty-day reglementary period;

6. Petitioner failed to present proof to the contrary as to the following findings by the BIR examiners/revenue officers:

a) Undeclared income in the amount of Php 2,611,290;
b) Unaccounted salaries and wages – Php 382.690;
c) Unsupported purchases – Php 4,778,974.58;
d) Disallowed expenses due to non-withholding – Php 1,949,198.63;

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e) Undeclared sales – Php 1,790,245.88 and
f) Disallowed input taxes – Php 744,021.89;

7. The Supreme Court held that it is the legal obligation of the taxpayer to support his return filed with corresponding accounting records, *(submitting documents to prove specific business transaction)* otherwise the Commissioner of Internal Revenue or duly [*sic*] his authorized representative may assess the proper tax based on best evidence obtainable, in which case, the examination may be made through estimate or close approximation, bearing heavily if he chooses, upon the taxpayer whose inexactitude (inexactness) is of his own making. *(Mariano Zamora vs. Collector of Internal Revenue (G.R. No. L-15290, May 31, 1963);*

8. Settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith *(Cagayan Robina Sugar Milling Co. vs. Court of Appeals, G.R. No. 122451, October 12, 2000).* It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices; and

9. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the assessments *(Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 134062, April 17, 2007).*

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On September 14, 2016, this Court set the pre-trial conference of the instant case and ordered both parties to submit their respective pre-trial brief.[20] On September 21, 2016, petitioner and respondent filed an Urgent Motion to Reset Trial[21] and Motion for Resetting of Pre-Trial Conference[22], respectively, which the Court granted.[23]

On September 30, 2016, petitioner filed its Reply.[24]

Petitioner filed its pre-trial brief[25] on November 4, 2016.

On November 4, 2016, respondent filed a Motion for Resetting of Pre-Trial Conference[26], which the Court granted.[27] On January 16, 2017, respondent filed another Motion for Resetting of Pre-Trial Conference[28], which the Court granted[29] over the objection of petitioner's counsel.

On February 23, 2017, respondent filed his pre-trial brief.[30]

On March 30, 2017, this Court ordered[31] the parties to file a joint stipulation of facts and issues which they submitted on April 19, 2017.[32] On even date, petitioner filed a Motion to Commission Independent Certified Public Accountant.[33]

On May 2, 2017, the Court issued its Pre-trial Order.[34]

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[20] Docket (Vol. I), Notice of Pre-Trial Conference, pp. 396-397.
[21] Docket (Vol. I), pp. 403-409.
[22] Docket (Vol. I), pp. 399-402.
[23] Docket (Vol. I), Order dated September 22, 2016, p. 398.
[24] Docket (Vol. I), pp. 410-415.
[25] Docket (Vol. II), pp. 416-426.
[26] Docket (Vol. II), pp. 502-504
[27] Docket (Vol. II), Order dated November 8, 2016, p. 505.
[28] Docket (Vol. II), pp. 508-511.
[29] Docket (Vol. II), Order dated January 19, 2017, p. 515.
[30] Docket (Vol. II), pp. 516-519.
[31] Docket (Vol. II), pp. 526-527.
[32] Docket (Vol. II), pp. 534-538.
[33] Docket (Vol. II), pp. 528-533.
[34] Docket (Vol. II), pp. 546-550.

On May 16, 2017, petitioner filed an Urgent Motion for Extension to File Motion to Commission an Independent CPA[35], which the Court granted.[36]

On June 2, 2017, petitioner filed its Motion to Commission Independent Certified Public Accountant[37], which the Court granted.[38]

To prove its case, petitioner presented as witnesses Rizza F. Yu[39], petitioner's freelance accountant, and Lilibeth Samonte[40], the Court-commissioned Independent CPA.

On October 9, 2017, petitioner filed its Formal Offer of Evidence.[41]

On January 15, 2018, the Court admitted petitioner's exhibits, except for Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-A", "P-6", "P-7", "P-8-A", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18 to P-18H", "P-19A to P-19CC", "P-20", "P-21", "P-22 to P-22-K", "P-23", "P-24 to P-24-K", "P-25", "P-25-A", "P-30A to P-30X", "P-31-1 to P-31-1050", "P-32-1 to P-32-82", and "P-33-1 to P-33-96", for failure to submit the duly marked documents.

Petitioner's admitted documentary exhibits are the following:

Exhibit:	Description:
P-5	Preliminary Assessment Notice (PAN) dated November 6, 2015
P-8	Formal Letter of Demand with Demand No. 040-B092-12 dated December 3, 2015
P-26	Judicial Affidavit of Ms. Nilda S. Fisalbon dated November 3, 2016
P-27	Judicial Affidavit of Ms. Rizza F. Yu, C.P.A. dated July 14, 2017
P-28	Cru Concepts, Inc. Final Report on the Examination of Voluminous Records for

[35] Docket (Vol. II), pp. 553-558.
[36] Docket (Vol. II), Order dated May 18, 2017, p. 566.
[37] Docket (Vol. II), pp. 567-572.
[38] Docket (Vol. II), Order dated June 22, 2017, pp. 591-592.
[39] Docket (Vol. III), Order dated July 19, 2017, p. 982.
[40] Docket (Vol. III), Orders dated August 9, 2017 and September 13, 2017, pp. 1250 and 1278, respectively.
[41] Docket (Vol. IV), pp. 1280-1906.

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	period ending in December 31, 2012 dated July 21, 2017 by Independent CPA (ICPA) Ms. Lilibeth I. Samonte, C.P.A.
P-28-a	Signature of ICPA on the Cru Concepts, Inc. Final Report on the Examination of Voluminos Records for period ending in December 31, 2012 dated July 21, 2017
P-29	Judicial Affidavit of Ms. Lilibeth I. Samonte, C.P.A.

On February 20, 2018, respondent filed an Urgent Motion to Reset and Cancel Hearing[42]. On February 21, 2018, the Court reset the initial presentation of evidence for respondent to May 28, 2018, at 8:30 a.m. in view of the absence of respondent's counsel and considering respondent's Motion to Reset Hearing filed on February 20, 2018.[43]

On May 23, 2018, respondent filed an Urgent Motion to Reset Hearing.[44] In an Order dated May 28, 2018[45], the Court reset the initial presentation of evidence for respondent for the last time to August 15, 2018, at 8:30 a.m., upon motion of respondent's counsel, on the ground that petitioner's application for compromise settlement is still pending with the BIR, and by agreement of the parties.

On August 14, 2018, respondent filed an Urgent Motion to Reset Hearing.[46] On August 15, 2018, the Court reset the initial presentation of evidence for respondent again for the last time to October 24, 2018, at 8:30 a.m., considering the Urgent Motion to Reset Hearing, filed by respondent's counsel on August 14, 2018, alleging that she is indisposed. [47]

On September 4, 2018, petitioner's counsel filed a Notice of Withdrawal[48], requesting that they be allowed to withdraw their appearance as counsel for petitioner, which the Court granted.[49]

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[42] Docket (Vol. V), pp. 1913-1917.
[43] Docket (Vol. V), Order dated February 21, 2018, p. 1919.
[44] Docket (Vol. V), pp. 1920-1924.
[45] Docket (Vol. V), p. 1926.
[46] Docket (Vol. V), pp. 1927-1931
[47] Docket (Vol. V), Order dated August 15, 2018, p. 1933.
[48] Docket (Vol. V), pp. 1935-1939.
[49] Docket (Vol. V), p. 1940.

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On October 24, 2018, respondent's counsel manifested that she will no longer present evidence.[50]

On January 4, 2019, the case was submitted for decision[51] in view of the filing of respondent's Memorandum on November 27, 2018[52] and the Report of the Records Division dated December 6, 2018[53] that no memorandum has been filed by petitioner.

ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[54]

1. Whether or not the Respondent erred in its assessment of income tax deficiency in the amount of **FOUR MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND SEVENTY-FOUR PESOS and 35/100 (Php4,475,074.15),** expanded withholding tax deficiency in the amount of **THIRTY-THOUSAND FIVE HUNDRED FORTY-SIX and 35/100 (Php30,546.35)** and VAT deficiency in the amount of **ONE MILLION FIVE HUNDRED THIRTY THOUSAND SEVEN HUNDRED THIRTY-SEVEN and 49/100 (Php1,530,737.49).**

2. Whether or not Petitioner is liable to pay the Respondent's assessment of income tax deficiency in the amount of **FOUR MILLION FOUR HUNDRED TWENTY-SEVEN THOUSAND AND ONE HUNDRED TWENTY-SEVEN PESOS and 12/100 (Php4,427,127.12)**, expanded withholding tax deficiency in the amount of **THIRTY-THOUSAND FIVE HUNDRED FORTY-SIX and 35/100 (Php30,546.35)** and VAT deficiency in the amount of **ONE MILLION FIVE HUNDRED THIRTY**

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[50] Docket (Vol. V), Order dated October 24, 2018, p. 1942.
[51] Docket (Vol. V), Resolution dated January 4, 2019, p. 1953.
[52] Docket (Vol. V), pp. 1943-1951.
[53] Docket (Vol. V), p. 1592.
[54] Docket (Vol. II), Joint Stipulation of Facts and Issues, Stipulation of Issues, p. 535.

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THOUSAND SEVEN HUNDRED THIRTY-SEVEN and 49/100 (Php1,530,737.49).

The jurisdiction of the Court is heavily hinged on the protest filed with the respondent CIR on December 23, 2015 allegedly without waiting for the latter's decision.

In this case, a perusal of the allegations in the Petition for Review would show that upon receipt of the FLD with Assessment Notice, petitioner filed a protest on December 23, 2015. Several correspondences were exchanged between petitioner and respondent, ending on a letter issued by the respondent, which was received by petitioner on May 6, 2016, that there is still no FDDA.

Section 228 of the National Internal Revenue Code is instructional as to the remedies of a taxpayer in case of the inaction of the Commissioner on the protested assessment, to wit:

> "SEC. 228. Protesting of Assessment. –
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> x x x x x x x
>
> 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 (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable."

Upon filing of the protest on December 23, 2015, the respondent has 180 days to decide on it. As stated in the Supreme Court case of *Lascona Land Co. Inc. vs. Commissioner of Internal Revenue,*[55] in case the CIR failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with this Court within 30 days after the expiration of the 180-day period; or (2) await the final decision of the CIR on the disputed

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[55] G.R. No. 171251, March 5, 2012

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assessments and appeal such final decision to this Court within 30 days after receipt of a copy of such decision.

Well-settled is the rule that it is the final decision of the CIR or his authorized representative on disputed assessment that is appealable before this Court. The said final decision normally takes the form of the FDDA.[56]

In the instant case, the Petition for Review itself states that there is no FDDA yet that is appealable before this Court which petitioner could appeal before this Court within the 30-day period from receipt thereof. Therefore, petitioner opted to file a petition for review with this Court within 30 days after the expiration of the 180-day period for the respondent to decide upon the protest filed by petitioner.

Since the protest was filed on December 23, 2015, counting the 180-day period for the respondent to decide therein, the respondent deemed denied the petitioner's protest on June 20, 2016. Counting 30 days for petitioner to file its Petition for Review before this Court, petitioner timely filed its petition on July 20, 2016.

Considering that the Court acquired jurisdiction over the case, this Court shall now proceed to resolve the propriety of the assessment against petitioner.

Petitioner anchors its claim that the assessed undeclared income and the undeclared sales come from service charges, by examining the sample single receipts and payroll summary indicating that the service charges collected were distributed to petitioner's employees and taxes were withheld accordingly, formally offered as Exhibits "P-18" to "P-18-H".

On the other hand, the unaccounted salaries and wages are allegedly *de minimis* benefits not subject to income tax, as evidenced by the summaries of photocopies of the invoices and receipts for employee benefits, insurance and uniforms of individual employees, offered as Exhibits "P-19A" to "P-19CC".

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[56] *Agusan Del Norte Electric Cooperative vs. Commissioner of Internal Revenue, et. al.,* CTA Case No. 9376, August 5, 2019.

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Petitioner's purchases are also allegedly supported by summaries with photocopies of invoices and receipts as proof of transaction with its suppliers, attached in a letter sent to the Office of the Regional Director, which was offered as Exhibit "P-20" and sample receipts and invoices for the taxable year 2012 as proof of transactions with the suppliers, offered as Exhibit "P-21".

The alleged timing difference for the disallowed expenses due to non-withholding were also offered as Exhibits "P-22" to "P-22-K," corresponding to Form 1601-C (Monthly Remittance Return of Income Taxes Withheld on Compensation).

Lastly, the disallowed input taxes is rebutted by Exhibit "P-23," which is the summary of local purchases and the corresponding invoices in support of the claim for the petitioner's input tax, Exhibits "P-24" to "P-24-K", which are the Form 1601-E (Monthly Remittance Return of Creditable Income Taxes), Exhibit "P-25," which is the petitioner's Form 1604-E (Annual Information Return of Creditable Income Taxes Withheld/Income Payments exempt from Withholding Tax), and Exhibit "P-25-A," which is the Alphalist of Payees subject to Expanded Withholding Tax.

This Court rules to deny the petition.

It is a well-settled rule that the party who alleges a fact has the burden of proving it. Section 1 of Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.

Parenthetically, the substantiation requirement for allowable expenses and deductions are primarily for verification that the entries claimed by the taxpayer as expenses and deductions in its income tax are legitimate business costs and deductions. The whole amount claimed must be substantiated by documents. For that reason, it is material that the document purportedly substantiating a claimed expense or deduction would clearly show that it is properly be accounted for. It is therefore imperative that the taxpayer claiming the expense or deduction should submit the necessary documents as evidence to substantiate the same.

Unfortunately, on this aspect, petitioner failed. Although petitioner presented and formally offered the above-mentioned documentary evidence, however, all of the said pieces of evidence were denied due to failure to submit the duly marked exhibits. Since petitioner's supporting documents were not admitted by the Court as evidence, these cannot be given evidentiary value. By failing to present any documentary evidence to support its explanation and thereby refute respondent's assessment, petitioner's assertions remain self-serving and uncorroborated, even if supported by testimonial evidence through the Final Report and judicial affidavits admitted as evidence. The testimonial evidence presented by petitioner, without supporting documents mentioned in the report and affidavits, are not sufficient to give rise to the presumption that there are errors in respondent's assessment. It is a quandary why petitioner did not bother to move for a reconsideration of the admission of its documents as evidence by presenting the duly marked exhibits to corroborate its claims. As such, this Court has no point of reference in ascertaining or validating the veracity of petitioner's claims. Consequently, this Court is constrained to uphold respondent's assessment.

While this Court agrees with petitioner that service charges should not be translated into income, it is, however, incumbent upon petitioner to prove that the alleged service charges indeed did not form part of its gross income and properly distributed to the employees and for the management in accordance with Article 96[57] of the Labor Code of the Philippines.

As to the undeclared sales allegedly anchored from service charges, petitioner still has the burden of proving which of these amounts did not translate to sales during the assessed taxable period. Unfortunately, by not again providing supporting documents to corroborate its arguments, petitioner failed to sway this Court. Hence, the deficiency assessment for the same is upheld.

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[57] **Art. 96. Service charges**. All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of the employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages.

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As to all other claims, petitioner did not provide any reconciliation to explain the disallowances noted by the respondent. Neither did it provide supporting documents to corroborate its assertions. This Court cannot assume that there were proper allowable expenses and deductions, which could have been explained by presenting substantial documents as evidence before this Court.

In the absence of any contrary evidence, the Court considers the FLD with Assessment Notice dated December 3, 2015 as correct, pursuant to Section 3(m) of Rule 131 of the Rules of Court stating the presumption of regularity in the performance of official duty. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith.[58] The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed.[59] All presumptions are in favor of the correctness of tax assessments.

The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right.[60] Otherwise the presumption of correctness of tax assessment stands.[61]

To reiterate, the documents pertained to were not admitted by the Court. Therefore, any conclusion that may arise from evidence not admitted by this Court as evidence is suspect to an invalid premise. It is a time-honored principle that a judgment has to be based on facts.[62] Further, a conclusion cannot be based on a premise which, in itself, requires proof and it is petitioner's duty to discharge such burden of proof that the assessed deficiency taxes fall under the circumstances which are either excluded or deductible. Failure to do so, the Court is constrained to uphold

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[58] *Marcos II vs. Court of Appeals,* GR. No. 120880, June 5, 1997.
[59] *Ibid.*
[60] *Commissioner of Internal Revenue vs. Hantex Trading Co. Inc.*, G.R. No. 136975, March 31, 2005, citing *Tan Guan vs. Court of Tax Appeals*, 19 SCRA 903
[61] *Ibid.,* citing Sy Po vs. Court of Tax Appeals, 164 SCRA 524.
[62] *Spouses William Guidangen and Mary Guidangen vs. Devota B. Wooden*, G.R. No. 174445, February 15, 2012.

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such assessment. As observed by this Court, most of petitioner's documentary evidence were denied admission due to failure to submit the duly marked exhibits. The Court also finds that there is no evidence presented to prove that the items pertained in the assessment are erroneously subjected to tax by the respondent.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

<u>A T T E S T A T I O N</u>

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2^{nd} Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice