REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MINDANAO SANITARIUM AND HOSPITAL, INC.,
Respondent.

CTA *EB* NO. 1610
(CTA Case No. 8700)

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

Promulgated:
MAR 21 2018 3:29 p.m.

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DECISION

BAUTISTA, J.:

The Case

This is a Petition for Review[1] under *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals*[3] *("RRCTA")*, praying *(1)* for the

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[1] *Rollo, CTA EB No. 1610, Petition for Review ("PFR")*, pp. 8-46, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[3] *A.M. No. 05-11-07-CTA*, November 22, 2005.

Court *En Banc* to recall the Amended Decision[4] promulgated on December 16, 2016[5] and the Resolution[6] promulgated on February 21, 2017[7] by the Second Division of the Court of Tax Appeals ("CTA") ("Court in Division"); and *(2)* for the issuance of a new decision denying the Petition for Review filed by respondent before the Court in Division.[8]

The Parties[9]

Petitioner Commissioner ("CIR") of the Bureau of Internal Revenue ("BIR") is duly appointed to exercise the powers and perform the duties of his office, including, *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the *1997 National Internal Revenue Code, as amended ("1997 NIRC").* He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Mindanao Sanitarium and Hospital, Inc. is a non-stock, non-profit charitable institution, organized and existing under the laws of the Republic of the Philippines, with principal office at National Highway, San Miguel, Iligan City.

The Facts

On June 7, 2010, petitioner issued Letter of Authority No. 000175492 to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2009 to December 31, 2009.[10] Petitioner then released a Notice for Informal Conference on August 15, 2011.[11]

On September 24, 2012, petitioner allegedly issued, through registered mail, a Preliminary Assessment Notice ("PAN") against

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[4] *Records, CTA Case No. 8700, Vol. 2, Amended Decision,* pp. 1157-1170, penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring.
[5] Erroneously dated August 8, 2016 by petitioner in his Prayer.
[6] *Records, Vol. 2, Resolution,* pp. 1187-1197, penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring.
[7] Erroneously dated December 16, 2016 by petitioner in his Prayer.
[8] *Rollo, PFR, Prayer,* p. 14.
[9] *Records, Vol. 2, Decision, The Facts,* pp. 1095-1096.
[10] *Id.* at 1096.
[11] *Id.* at 1096-1100.

respondent. Said PAN was received by a certain Mr. Edpalina on October 17, 2012.[12] However, respondent denies due receipt thereof.[13]

Consequently, petitioner sent to respondent a Formal Letter of Demand ("FLD") and Assessment Notices ("FANs"), all dated October 17, 2012, finding respondent liable to pay deficiency income tax of Php25,118.44, Value Added Tax ("VAT") of Php35,975.31, Withholding Tax on Compensation ("WTC") of Php20,429.19, and Expanded Withholding Tax ("EWT") of Php2,816,087.55, in the aggregate amount of Php2,897,610.48.[14] Respondent received the FLD and FANs on November 5, 2012.[15]

On November 29, 2012, respondent filed a Letter Request for Reconsideration against said assessments, emphasizing that it is not requesting for reinvestigation.[16] On December 11, 2012, petitioner issued a Reply Letter to respondent requiring it to present the necessary documents within sixty (60) days from the filing of the Letter Request.[17]

On July 25, 2013, petitioner issued to respondent a Warrant of Distraint and/or Levy dated July 23, 2013.[18] Hence, on August 22, 2013, respondent filed a Petition for Review with the Court in Division.[19]

On August 8, 2016, the Court in Division promulgated a Decision[20], the dispositive portion[21] thereof reads in the following manner:

> **WHEREFORE**, in view thereof, the instant Petition for Review is **DENIED**, for lack of jurisdiction.
>
> **SO ORDERED.**[22]

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[12] *Records, Vol. 2, Decision, The Facts,* p. 1096.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* at 1096-1097.
[18] *Records, Vol. 2, Decision, The Facts,* p. 1097.
[19] *Id.*
[20] *Records, Vol. 2, Decision,* pp. 1095-1123.
[21] *Id., Dispositive Portion,* p. 1122.
[22] Emphases retained.

Unsatisfied with the above Decision, respondent filed its Motion for Reconsideration[23] on August 23, 2016. As a result, the Court in Division issued an Amended Decision[24] partially granting respondent's Motion for Reconsideration. The dispositive portion[25] of the Amended Decision reads as follows:

> **WHEREFORE**, in view thereof, [respondent]'s Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated August 8, 2016 is **AMENDED**, as follows:
>
> > "**WHEREFORE**, in view thereof, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [respondent] is liable for deficiency income tax and [VAT] amounting to P[hp]45,493.75, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the [1997 NIRC], summarized as follows:
> >
> > | | Basic Tax Due | | Surcharge (25%) | | Total | |
> > |---|---|---|---|---|---|---|
> > | Income Tax | [Php] | 16,543.18 | [Php] | 4,135.80 | [Php] | 20,678.98 |
> > | VAT | | 19,851.82 | | 4,962.96 | | 24,814.78 |
> > | **Total** | **[Php]** | **36,395.00** | **[Php]** | **9,098.76** | **[Php]** | **45,493.76** |
> >
> > In addition, petitioner should be held liable to pay:
> >
> > (a) Deficiency interest at the rate of 20% per annum pursuant to Section 249(B) of the [1997 NIRC] on the basic deficiency income tax and [VAT], computed from April 15, 2010 and January 25, 2010, respectively, until full payment thereof; and
> >
> > (b) Delinquency interest at the rate of 20% per annum on the total amount due of P[hp]45,493.75 and on the deficiency interest which have accrued as aforestated in (a), computed from December 5, 2012 until full payment thereof, pursuant to Section 249(C) of the [1997 NIRC].
>
> **SO ORDERED.**"[26]

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[23] *Records, Vol. 2, Motion for Reconsideration*, pp. 1126-1147, with annexes.
[24] *Id., Amended Decision*, pp. 1157-1170.
[25] *Id., Dispositive Portion*, pp. 1169-1170.
[26] Emphases retained.

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This time, it was petitioner who filed his Motion for Reconsideration (Re: Decision dated 16 December 2016)[27] on January 12, 2017. This prompted the Court in Division to issue a Resolution[28] dated February 21, 2017. Reproduced below is the dispositive portion[29] of the said Resolution:

> **WHEREFORE**, in view thereof, the instant Motion for Reconsideration (Re: Decision dated 16 December 2016) is **DENIED**[] for lack of merit. Accordingly, the Amended Decision dated December 16, 2016 is **AFFIRMED**.
>
> **SO ORDERED.**[30]

Not satisfied with the Amended Decision and the Resolution of the Court in Division, on March 10, 2017, petitioner filed by registered mail with the Court *En Banc* his Motion for Extension of Time to File Petition for Review[31]; which was granted in a Minute Resolution[32] dated March 21, 2017.

On March 27, 2017, petitioner submitted the present Petition for Review[33].

On April 12, 2017, the Court *En Banc* directed respondent to file its comment,[34] to which it complied by filing a Comment (On Petition for Review)[35] on May 2, 2017.

In a Resolution[36] dated May 15, 2017, the Court *En Banc* ordered the parties to submit their respective memoranda within a period of thirty (30) days from receipt thereof. Accordingly, respondent filed its Memorandum[37] on June 6, 2017; while petitioner failed to file his memorandum *per* Records Verification Report[38] dated July 13, 2017.

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[27] *Records, Vol. 2, Motion for Reconsideration (Re: Decision dated 16 December 2016),* pp. 1171-1177.
[28] *Id., Resolution,* pp. 1187-1197.
[29] *Id., Dispositive Portion,* p. 1197.
[30] Emphases retained.
[31] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-5.
[32] *Id., Minute Resolution,* p. 7.
[33] *Id., PFR,* pp. 8-46, with annexes.
[34] *Id., Resolution,* pp. 48-49.
[35] *Id., Comment (On Petition for Review),* pp. 50-58.
[36] *Id., Resolution,* pp. 60-61.
[37] *Rollo, Memorandum,* pp. 62-75.
[38] *Id., Records Verification Report,* p. 76.

Consequently, the Court *En Banc* promulgated a Resolution[39] on July 25, 2017 submitting the case for decision.

However, on September 13, 2017, petitioner filed his Motion to Admit Attached Memorandum with Entry of Appearance, annexed thereto is his Memorandum.[40] He avers that his failure to file a Memorandum was due to mere inadvertence; that the case was just recently assigned to the undersigned counsel, as the original handling lawyer tendered her resignation; that the former handling lawyer inadvertently overlooked to account the need to file a memorandum; and that he prays that the Court *En Banc* enter the appearance of the undersigned counsel.

In the interest of substantial justice, petitioner's Motion to Admit Attached Memorandum is hereby **GRANTED**. Accordingly, the annexed Memorandum is hereby **ADMITTED**.

Acting on the Entry of Appearance of Atty. Ayesha Hania Guiling-Matanog as counsel for petitioner, the same is hereby **NOTED**. Henceforth, let all copies of pleadings, orders, and processes be served and furnished to Atty. Ayesha Hania Guiling-Matanog at the BIR Litigation Division, Room 703, BIR Building, Diliman, Quezon City.

Having resolved the foregoing Motion to Admit Attached Memorandum with Entry of Appearance; the Court *En Banc* shall proceed to decide this case.

The Assigned Error/Issue[41]

> WHETHER THE COURT IN DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW, CANCELLING PETITIONER'S ASSESSMENT FOR DEFICIENCY INCOME TAX, VAT, WTC, AND EWT IN THE AGGREGATE AMOUNT OF PHP2,897,610.48, AND ORDERING RESPONDENT TO

[39] *Rollo, Resolution,* pp. 78-79.
[40] *Id., Motion to Admit Attached Memorandum with Entry of Appearance,* pp. 80-89.
[41] *Id., PFR, Issue,* p. 10.

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PAY ONLY THE DEFICIENCY INCOME TAX AND VAT IN THE AGGREGATE AMOUNT OF PHP45,493.75.

Petitioner's Arguments[42]

Petitioner avers that the Final Notice Before Seizure ("FNBS") is admissible in evidence since it is part of the judicial records of the case, being part of the BIR Records required to be transmitted to the Court; and that the BIR Records were duly identified by petitioner's witnesses. Even under the assumption that the BIR Records were not identified by a witness, the FNBS is still admissible, being a public document.

Respondent's Arguments[43]

Respondent claims that the FNBS was not identified by petitioner's witness, despite the Court in Division's reminder; that even if the FNBS is part of the BIR Records, it is inadmissible for lack of identification and formal offer; that there is no basis to relax the Rules on Formal Offer of Evidence; that the Court in Division reminded petitioner to identify the BIR Records containing the FNBS but neglected to do so; that after 2012, petitioner's witnesses were no longer assigned to the case, and collection efforts were only initiated in 2013; that the BIR Records were not identified in the Judicial Affidavit; that the witnesses did not identify the BIR Records, and could not answer questions as to the whole set of BIR documents; and that the assessment is factually defective with mistakes in computation and has no legal basis.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review, and sees no ample justification to reverse the assailed Amended Decision and Resolution.

In the original Decision, the Court in Division proclaimed that the FNBS is the Final Decision on Disputed Assessments ("FDDA") contemplated in the case, and not the Warrant of Distraint and/or Levy ("WDL"). However, it found that the FNBS was not formally

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[42] *Rollo, Memorandum, Arguments/Discussion,* pp. 86-88.
[43] *Id., Memorandum, Discussions,* pp. 64-75.

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offered in evidence; and that in fact, the entire BIR Records were denied admission in a Resolution dated April 30, 2015. However, a re-evaluation of the antecedent circumstances made the Court in Division consider the same as evidence. From there, the Court in Division found that respondent belatedly filed the Petition for Review, resulting to its dismissal, and to the assessment attaining finality. It explained that since the FNBS was received by respondent on June 3, 2013, the latter only had until July 3, 2013 to file a Petition for Review with the Court in Division; hence, the same was belatedly filed on August 22, 2013.

Respondent then filed a Motion for Reconsideration questioning the original Decision. It claimed that the Court in Division gravely erred in holding that the entire docket referred to by petitioner's witnesses in their Judicial Affidavit as the very same BIR Records containing the FNBS that was accorded probative value; that it erred in giving probative value to the BIR Records, despite failure of any witness to identify the same, even after the Court's reminder during the August 18, 2014 hearing, and after the Court in Division categorically denied its admission *per* April 30, 2015 Resolution, and in relaxing the Rules on Formal Offer of Evidence for failure to identify; and that the FNBS was still non-existent at the time the said witnesses were assigned to investigate and/or evaluate the dockets.

In the Amended Decision, while the Court in Division still insisted that the FNBS is the FDDA contemplated in the case, it added that the surrounding circumstances deserve a re-examination of the Decision. The Court in Division found that, indeed, petitioner failed to have the BIR Records identified; and that absent the FNBS, there is no FDDA issued, hence, it is deemed as if no decision was rendered by petitioner. The Court in Division explained that respondent chose to await the final decision of the CIR and appeal the same to the CTA thirty (30) days from receipt thereof. However, due to the inadmissibility of the FNBS, it is as if no decision was rendered by petitioner. Accordingly, respondent's Motion for Reconsideration was partially granted and it was found liable for less and lower taxes.

Thereafter, the Court in Division denied petitioner's Motion for Reconsideration in the assailed Resolution. It explained that evidence not identified cannot be admitted as evidence, even if it forms part of the BIR Records; that even if the FNBS is considered a public document, it must still conform with the form and manner required under the *Rules on Evidence*; and that the careless preparation of petitioner's counsel does not constitute excusable negligence to warrant the presentation of witness with respect to the FNBS.

In the present Memorandum, petitioner avers that the FNBS is admissible in evidence since it is part of the judicial records, being part of the BIR Records. He further claims that the BIR Records were duly identified by its witnesses; and that even under the assumption that the BIR Records were not identified by a witness, petitioner insists that the FNBS is still admissible, being a public document.

The Court *En Banc* is unmoved by petitioner's contentions.

The FNBS is inadmissible for failure of any witness to identify the same.

As discussed in *China Banking Corporation v. Commissioner of Internal Revenue*[44], to determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the record, either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.

Further, in the case of *Dizon v. Court of Tax Appeals, et. al.*[45] *("Dizon")*, the Supreme Court explained that under *Section 8 of RA No. 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. Therefore, no evidentiary value can be given to pieces of evidence which were not formally offered before the CTA, pursuant to *Section 34, Rule 132 of the Revised Rules on Evidence*.

In fact, even if a particular document is identified and marked as an exhibit, it does not mean that it has already been offered as part of the evidence of a party.[46] In the relaxation of this rule, the Supreme Court still required that the evidence must have been duly identified by testimony duly recorded, and it must have been incorporated in the records of the case.

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[44] G.R. No. 172509, February 4, 2015, 749 SCRA 525.
[45] G.R. No. 140944, April 30, 2008, 553 SCRA 111.
[46] *Dizon v. Court of Tax Appeals, et. al.*, G.R. No. 140944, April 30, 2008, 553 SCRA 111.

In the *Dizon* case, the Supreme Court explained that while the CTA is not governed strictly by technical rules of evidence, the presentation of 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 the party's claims.

In view of the foregoing, the Court *En Banc*, in order to determine whether the right to appeal has prescribed, needs to refer to the date when the FDDA (or its equivalent) was received.

In this case, the FNBS was not admitted as evidence by the Court in Division since respondent never offered the same; and while the Formal Offer of Evidence[47] filed by petitioner includes the entire BIR Records as *Exhibit* "R-8," the Court in Division denied[48] it for failure to identify.

A reading of the records[49] would reveal that on August 18, 2014, petitioner presented two of its witnesses: *(1)* Ronalene Joy B. Achas ("Ms. Achas"), and *(2)* Ayres Floran L. Capitan ("Ms. Capitan"). In Ms. Capitan's Judicial Affidavit[50], she identified *Exhibits* "R-3," "R-3-1," "R-5," and "R-9;" while Ms. Achas identified *Exhibits* "R-6," "R-6-1," "R-7," "R-7-1," "R-7-2," "R-7-3," "R-7-4,"and "R-10," in hers[51].

During the August 18, 2014 hearing, petitioner had *Exhibits* "R-8-A," "R-8-B," "R-8-C," "R-8-D," "R-8-E," "R-11," "R-11-1," "R-12," and "R-12-1" marked in open court.[52] While it is apparent that some documents in the BIR Records were marked, the FNBS was not among them. Likewise, *Exhibit* R-8, as a whole, was never identified. Reproduced hereunder are the relevant portions of the Transcript of Stenographic Notes ("TSN"), *viz.*:[53]

APPEARANCES:

ATTY. FRANCISCO I. NAPUTO
Counsel for [Respondent]

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[47] *Records, Vol. 1, Formal Offer of Evidence,* pp. 907-925, see pp. 915-916.
[48] *Id., Resolution,* pp. 942-915.
[49] *Id., Minutes of Hearing,* p. 837.
[50] *Id., Exhibit "R-11," Judicial Affidavit of Ms. Ayres Floran L. Capitan (in lieu of direct testimony),* pp. 818-821.
[51] *Id., Exhibit "R-12," Judicial Affidavit of Ms. Ronalene Joy B. Achas (in lieu of direct testimony),* pp. 832-835.
[52] *Transcript of Stenographic Notes ("TSN"), August 18, 2014 Hearing,* pp. 1-35.
[53] *Id.* at 2, 6-15, 32-34.

ATTY[S]. FELIX PAUL R. VELASCO III &
MICHELLE V. UY-SORIANO
Counsels for [Petitioner]

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CROSS EXAMINATION OF MS. AYRES FLORAN CAPITAN BY ATTY. NAPUTO:

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JUSTICE CASTAÑEDA	:	Have those been marked in evidence?
ATTY. UY-SORIANO	:	No, your Honors, only the entire records, your Honors.
JUSTICE COTANGCO-MANALASTAS	:	The entire records?
ATTY. UY-SORIANO	:	Yes, your Honors.
JUSTICE COTANGCO-MANALASTAS	:	What evidence is that?
ATTY. UY-SORIANO	:	"R-8", your Honors.
JUSTICE COTANGCO-MANALASTAS	:	Maybe you should sub-mark the one she mentioned.
JUSTICE CASTAÑEDA	:	Yes.
JUSTICE COTANGCO-MANALASTAS	:	"R-8-A", "R-8-B"...
JUSTICE CASTAÑEDA	:	Before you conduct your re-direct, sub-mark the documents that you think [are] relevant to your *ano*[.] [S]ub[-]mark[] the pertinent documents.
ATTY. VELASCO	:	<u>Your Honors, the entire BIR records was not identif[ied] [i]n the judicial Affidavit, may counsel conduct direct just for identification, your Honors.</u>
JUSTICE CASTAÑEDA	:	Ok, proceed.
ATTY. NAPUTO	:	Your Honors, are we talking [about], for a direct or a redirect?
JUSTICE CASTAÑEDA	:	We will allow but you may raise your objection. She will identify the entire BIR records. You may conduct your cross again.

ADDITIONAL DIRECT BY ATTY. UY-SORIANO:

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ATTY. UY-SORIANO	:	<u>Ms. Witness, who compiled this whole BIR records?</u>
WITNESS	:	<u>For the entire records, I am not sure. I am not in the position to answer that question.</u>
JUSTICE COTANGCO-MANALASTAS	:	<u>Not in a position to answer for the whole of the documents?</u>
WITNESS	:	<u>Yes, your Honors.</u>
JUSTICE COTANGCO-MANALASTAS	:	Be specific. Mark those that she identified. She already identified the documents during the cross-examination. What document is that?
ATTY. UY-SORIANO	:	Your Honors, transmittal of the whole docket dated September 8, 2011 be marked as Exhibit "R-8-1".
JUSTICE COTANGCO-MANALASTAS	:	"R-8-A" because you said the entire document is "R-8", right?
ATTY. UY-SORIANO	:	Yes, your Honor.
JUSTICE COTANGCO-MANALASTAS	:	So sub-marking *na lang*.
ATTY. UY-SORIANO	:	BIR Form 0500 for Income Tax, "R-8-B", BIR Form 0507, Exhibit "R-8-C", BIR Form 0508 as Exhibit "R-8-D", BIR Form 0509 as Exhibit "R-8-E".
JUSTICE CASTAÑEDA	:	Counsels, take note that if counsel for [respondent] does not pointed out this you would not have marked in evidence all these documents [*sic*]. Mark them.

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EXECUTIVE CLERK	:	Your Honors, part of the BIR Records, your Honors that are supposedly the evidence to be submitted by [petitioner] were already pre-marked your Honors in the BIR records.

JUSTICE COTANGCO-MANALASTAS	:	So not the entire folder was marked as "R-8", and then after marking the entire folder, you marked some of the documents in the folder? (interrupted)
JUSTICE CASTAÑEDA	:	Are the documents identified now, have they been pre-marked?
ATTY. UY-SORIANO	:	Not yet, your Honors.
JUSTICE CASTAÑEDA	:	Alright, proceed with the marking if you want to proceed.
JUSTICE COTANGCO-MANALASTAS	:	Done with the marking, but the entire folder was marked as "R-8" and then inside the folder you marked the documents again?
ATTY. UY-SORIANO	:	Some documents, your Honors that were mentioned in the Judicial Affidavit.
JUSTICE CASTAÑEDA	:	But you mentioned that the records has not yet been identified by any witness for that matter, as you mentioned. So, proceed.
JUSTICE COTANGCO-MANALASTAS	:	Done with the marking.
ATTY. UY-SORIANO	:	No further questions, your Honors.
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JUSTICE CASTAÑEDA	:	Alright, in the meantime, you still have not yet identified the records. You note that, we take note of that. Please note the observation of the court.
ATTY. VELASCO	:	Yes, your Honors.
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2nd witness
MS. RONALENE JOY B. ACHAS

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REDIRECT EXAMINATION OF MS. ACHAS BY. ATTY. UY-SORIANO
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ATTY. VELASCO	:	And your Honors, may we be allowed, your Honors to present other Revenue Officer, your Honors to identify the transmittal of the entire records, your Honors.
ATTY. NAPUTO	:	May I know, your Honors please, if I may, if the other witness sought to be presented by counsel of the respondent, were they identified in the Pre-Trial Order?
JUSTICE CASTAÑEDA	:	They were not, but in the interest of justice we will allow. But can you stipulate so that they don't need to present a witness that have the records? That these are the BIR records, in fact?
ATTY. NAPUTO	:	Your Honors, these are not the BIR Records I relied upon when I presented evidence.
JUSTICE CASTAÑEDA	:	He will not stipulate.
ATTY. NAPUTO	:	I cannot stipulate, your Honors.
JUSTICE CASTAÑEDA	:	Alright, they'll have two (2) more witnesses then. Since the subpoena will take some[]time, we will set an earlier hearing for the identification of these BIR Records.
ATTY. VELASCO	:	Yes, your Honors.
xxx		xxx xxx
JUSTICE CASTAÑEDA	:	Are your sure you can secure your witness, and then an earlier hearing for identification of the records?
EXECUTIVE CLERK	:	Your Honors, the presentation of respondent's witness who will identify the BIR records, your Honors which will also come from Mindanao, is set on September 24, 2014 at 9[] o'clock in the morning.
ATTY. NAPUTO	:	I am sorry, your Honors I am not available. I have a previous… I'm sorry.
JUSTICE CASTAÑEDA	:	Alright, maybe we can defer the hearing so that both your witnesses can attend. Ok so how will we determine the date?
ATTY. VELASCO	:	October 15

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JUSTICE CASTAÑEDA	:	Alright, October 15.
ATTY. NAPUTO	:	What time[?]
EXECUTIVE CLERK	:	9:00 a.m.
JUSTICE CASTAÑEDA	:	Alright, next case.

xxx xxx xxx[54]

The TSN[55] reproduced below was recorded during the October 15, 2014 hearing:

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ATTY. VELASCO	:	Thank you, your Honors. It appears that our subpoenaed witness did not arrive from Mindanao. In that case, your Honors, may we ask for a resetting for presentation of our next witness. It could mean the same witness, your Honors. In that case, we would be asking for another subpoena.

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JUSTICE CASTAÑEDA	:	Alright. Do you have any other witness?
ATTY. VELASCO	:	Probably, this is the last, your Honors. Although, we had one to identify the BIR records, but I guess it is not contentious, it is not an issue anymore, your Honors.

xxx xxx xxx[56]

Thereafter, respondent for petitioner never presented any witness to identify the BIR Records. Petitioner had every opportunity to mark the BIR Records, or at least the FNBS, and to have the same identified by a witness, which it failed to do. Also, at no time did petitioner provide any justifiable reason for this error. Accordingly, the Court in Division had no choice but to deny the same when offered.

Additionally, instead of appealing the denial and providing its arguments for the Court in Division to reconsider its Resolution, petitioner proceeded to file a Motion for Extension of Time to File Memorandum[57] and its Memorandum[58]. Therefore, the issue was laid to rest. In view of these, the Court *En Banc* finds that the Court in Division rightfully did not consider the FNBS as the FDDA in its Amended Decision.

Assuming for the sake of argument that the FNBS is a public document, petitioner

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[54] Underscoring ours.
[55] *TSN, October 15, 2014 Hearing,* pp. 3, 5.
[56] Underscoring ours.
[57] *Records, Vol. 1, Motion for Extension of Time to File Memorandum,* pp. 952-956.
[58] *Id., Memorandum,* pp. 958-966.

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failed to provide the requisite proof.

Petitioner, likewise, claims that the FNBS is still admissible since it is a public document, hence, self-authenticating and requires no further authentication in order to be presented as evidence in court. This issue was already touched upon in the assailed Resolution but the Court *En Banc* would like to elaborate on this matter, referring to *Rule 132 of the Revised Rules on Evidence, viz.*:

RULE 132
Presentation of Evidence

xxx xxx xxx

B. AUTHENTICATION AND PROOF OF DOCUMENTS

SECTION 19. *Classes of documents.* — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

xxx xxx xxx

SECTION 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate

> may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.[59]

Even if the Court *En Banc* assumes that the FNBS is a public document under *Section 19(a), Rule 132 of the Revised Rules on Evidence, Section 24 of the same Rule* still requires that it be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, which petitioner still failed to do.

The Court in Division erred in declaring that respondent opted to appeal the inaction of the CIR.

The Court in Division erred in finding that the WDL cannot be deemed as the FDDA.

As to the running of the period to file a Petition for Review before the Court in Division, *Section 228 of the 1997 NIRC* is instructional as to the remedies of a taxpayer in a protested assessment, to wit:

> SEC. 228. *Protesting of Assessment.* –
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> xxx xxx xxx
>
> 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 said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[60]

Section 3.1.5 of Revenue Regulations ("RR") No. 12-1999[61], which implemented the above *Section 228 of the 1997 NIRC*, reads as follows:

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[59] Underscoring ours.
[60] Underscoring ours.
[61] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-

> 3.1.5 *Disputed Assessment.* - xxx
>
> xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> xxx xxx xxx
>
> If the Commissioner or his[/her] duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[62]

Records reveal that respondent filed its Protest[63] to the FLD and FANs on November 29, 2012, with emphasis that it is not requesting for a reinvestigation. On December 11, 2012, petitioner issued a Reply Letter[64] to respondent requiring it to present the necessary documents within sixty (60) days from the filing of the Letter Request. No additional documents were submitted by respondent, which is in line with its statement that it is not requesting for a reinvestigation but only a reconsideration. Even if respondent is requesting for a reinvestigation, it cannot be required to present documents.[65] Having said the foregoing, the counting of the one hundred and eighty (180)-day period shall commence from the date of filing of the Protest on November 29, 2012. Hence, the CIR had until May 28, 2013 to decide the Protest.

The Court in Division, in assuming inaction on the part of petitioner, failed to discuss if the Petition for Review was indeed timely filed by counting the number of days between the lapse of the

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Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[62] Underscoring ours.

[63] *Records, Vol. 1, Exhibit "P-7," Protest to FLD/FAN,* pp. 271-272.

[64] *BIR Records, Vol. 1, Exhibit "P-10," Reply Letter,* pp. 469-470.

[65] *Commissioner of Internal Revenue v. First Express Pawnshop Co. Inc.,* G.R. No. 172045-46, June 16, 2009, 589 SCRA 253.

one hundred and eighty (180) days and the filing of the Petition for Review. Instead, it just referred to the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[66] *("Liquigaz")*, which stated that a void FDDA may still be appealed before the CTA, and the assessment may be evaluated on the basis of available evidence and documents. The Court *En Banc* does not agree therewith. It must be emphasized that in the case of *Liquigaz*, the taxpayer therein only received a void FDDA, it did not receive a WDL. Hence, *Liquigaz* is not on all fours with the case at bar. Moreover, a scrutiny of the dates involved, would reveal that under the Court in Division's theory of inaction by petitioner, respondent belatedly filed its Petition for Review. If the Protest was submitted with petitioner on November 29, 2012, respondent can file an appeal with the CTA within thirty (30) days from May 28, 2013 or until June 27, 2013. However, it only filed its Petition for Review on August 22, 2013, out of time.

In sum, the Court *En Banc* begs to differ from the Court in Division's finding that respondent opted to appeal the inaction of petitioner, instead it opted to appeal the denial of petitioner in the form of the WDL. As to the WDL, although it was not offered[67] as evidence by both parties, hence was not admitted[68] as evidence by the Court in Division; the Joint Stipulation of Facts and Issues[69] ("JSFI") provides as follows:

> 5. On July 25, 2013, [petitioner] issued to [respondent] a Warrant [of] Distraint and/or Levy (WDL) dated July 23, 2013.

The Supreme Court has declared that once stipulations are reduced into writing and signed by the parties and their counsels, they become judicial admission of the fact or facts stipulated and become binding on the parties who made them.[70] As compared to the FNBS, which was not included in the parties' JSFI nor admitted into evidence, the WDL was included in the JSFI.

Based on the special circumstances surrounding the case at bar, the WDL can be considered as the FDDA, since it is the only admissible evidence which respondent can refer to in order to determine whether

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[66] G.R. Nos. 215534 & 215557, April 18, 2016.
[67] *Records, Vol. 1, Formal Offer of Evidence,* pp. 260-261; *Records, Vol. 1, Formal Offer of Evidence,* pp. 907-925.
[68] *Records, Vol. 1, Resolution,* pp. 789-790; *Records, Vol. 1, Resolution,* pp. 942-915.
[69] *Records, Vol. 1, Joint Stipulation of Facts and Issues, Summary of Admitted Facts, par. 5,* pp. 242-244.
[70] *Bayas, et. al. v. The Sandiganbayan, et. al.,* G.R. Nos. 143689-91, November 12, 2002, 391 SCRA 415

its Protest was denied or granted. The Court *En Banc* wishes to point out that respondent filed its Protest on November 29, 2012 and received no other response from petitioner, save for the WDL received on July 25, 2013; that the WDL was received two hundred and thirty-eight (238) days after filing the Protest; and that the CIR is only given one hundred and eighty (180) days to act on a Protest. Therefore, the only logical inference respondent can gather from the circumstances is that the WDL is in response to its Protest, which was denied in view of the commencement of collection proceedings.

Considering that the WDL was served upon respondent on July 25, 2013, it had until August 24, 2013 to file a Petition for Review. Accordingly, the Petition for Review filed with the Court in Division on August 22, 2013 was filed on time.

While the Court in Division may have erred in declaring that respondent opted to appeal the inaction of the CIR, and in finding that the WDL cannot be deemed as the FDDA; the overall outcome of the case is still the same - the Petition for Review filed with the Court in Division was timely made. The Court *En Banc* will not dwell on the computations made by the Court in Division, for petitioner did not raise the same as an issue, considering that his arguments revolved around the admissibility of the FNBS.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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