REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MIFFI LOGISTICS CO., INC. *Petitioner,*	**CTA Case No. 9122**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MANAHAN,** *JJ.*
	Promulgated: AUG 01 2018 4:10 p.m.

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review filed on August 20, 2015 by MIFFI Logistics, Co., Inc. as petitioner, against the Commissioner of Internal Revenue, as respondent, before the Court in Division.

Petitioner seeks the quashal of the Warrant of Distraint and/or Levy issued by respondent and the cancellation and withdrawal of the deficiency income tax and compromise penalty for fiscal year (FY) 2006 in the total amount of Php32,140,714.19.

THE PARTIES

Petitioner is a domestic corporation organized and existing under the Republic of the Philippines with principal place of business at HICAP FG & VMI Warehouse Phase V, Special Export Processing Zone, Laguna Technopark, Binan, Laguna. It is engaged in the business of establishing a warehouse facility for the storage, deposit, safekeeping of goods, including raw materials used in the electronic or computer industry as well as various finished products for subsequent transfer or distribution directly to the ecozone plant of the PEZA registered export enterprise-owner or consignee thereof.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS

As stated in the Joint Stipulation of Facts and Issues (JSFI)[2] filed with this Court on February 29, 2016, the factual antecedents are as follows:

"4. Petitioner received a copy of respondent's Preliminary Assessment Notice (PAN) dated May 13, 2010 with attached Details of Discrepancies in which respondent through the Regional Director of RR No. 9, informed petitioner of the proposed assessment for deficiency income tax and compromise penalty for FY 2006 in the aggregate amount of Php31,656,053.12.

5. On June 15, 2010 respondent, through the Regional Director of RR No. 9, issued the Formal Letter of Demand (FLD) with attached Details of Discrepancies. In the FLD, respondent ordered petitioner to pay its alleged deficiency income tax liability and compromise penalty for FY 2006 in the total amount of Php32,140,714.19, broken down as follows:

Income Tax		P42,224,916.86
Adjusted Total Revenue		P14,039,784.86
Tax Due		
Add: Surcharge 50%	P7,019,892.43	
Interest (07-16-06 to 06-15-10	P11,001,036.90	
Compromise Penalty	50,000.00	P18,070,929.33
Total Tax Deficiency		P32,110,714.19
Total Amount Due		P32,140,714.19

[1] Petitioner's Articles of Incorporation, Court Docket, pp. 36-45.
[2] JSFI, Court Docket, pp 316-329.

6. Petitioner received a Preliminary Collection Letter dated September 7, 2012, demanding payment of the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php32,140,714.19.

7. On November 12, 2012, petitioner received a Final Notice Before Seizure demanding the payment of the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php32,140,714.19, with a stern warning that failure to settle such will constrain respondent to enforce collection through summary remedies under the Tax Code.

8. On July 21, 2015, petitioner was served WDL No. 09-AMT-142-15 pertaining to the alleged deficiency income tax and compromise penalty for FY 2006 in the total amount of Php32,140,714.19."

On November 26, 2015, respondent filed his Answer[3] wherein he interposed special and affirmative defenses against the Petition for Review.

On December 22, 2015, petitioner filed a Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte)[4] on the ground that respondent filed the Answer only on November 26, 2015 or five (5) days after the lapse of the deadline fixed by the Court. Petitioner avers that several extensions of time were granted by the Court in favor of respondent to file his Answer only to file it belatedly on November 26, 2015 without a Motion to Admit Answer that could have provided the justification for late filing.

On January 25, 2016, respondent filed his Comment to petitioners Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte).

On February 4, 2016, the Court denied petitioner's Motion to Declare Respondent in Default (With Motion to Present Evidence Ex Parte) on the ground that the ends of justice would be best served if there is proper determination of the merits of the case.[5] Consequently, the Court admitted the Answer filed by respondent.

A pre-trial conference was held on February 4, 2016 where the Court directed both parties to file their respective JSFI

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[3] Court docket, pp. 158-166.
[4] Court Docket, pp. 181-185.
[5] Court Docket, pp. 294-298.

within a period of fifteen (15) days from said pre-trial conference.

The parties filed their JSFI on February 29, 2016.[6]

On March 7, 2016, the Court issued a Pre-Trial Order[7] approving and adopting the parties' joint stipulations and terminating the pre-trial.

During trial, petitioner presented Atty. Myla S. Maralit for commissioning as Independent CPA and the Court consequently appointed her as the Independent CPA for this case. Petitioner then presented its Senior Finance Manager, Ms. Lucila C. Javina.

Petitioner formally offered the testimonies of Atty. Myla S. Maralit and Ms. Lucila C. Javina and Exhibits "P-1" to "P-305".[8]

The Court, in a Resolution dated July 15, 2016[9], admitted the testimonies of Atty. Myla S. Maralit and Ms. Lucila C. Javina but denied the admission of Exhibits "P-15" to "P-26", inclusive of submarkings; "P-27", "P-28 to "P-39", inclusive of sub-markings; "P-43"' "P-50" and "P-50-a"; "P-300"; "P-301". "P-302", "P-303", "P-304" and "P-305".

On August 3, 2016, petitioner filed a Motion for Partial Reconsideration (Re: Resolution dated July 15, 2016), praying for the reconsideration of the resolution denying the aforesaid exhibits.

Pending the Resolution of the Court on petitioner's Motion for Partial Reconsideration, respondent filed a Motion to Dismiss[10] assailing this Court's jurisdiction.

On January 31, 2017, the Court issued a Resolution[11], resolving petitioner's Partial Motion for Reconsideration and respondent's Motion to Dismiss. In this Resolution, the Court admitted Exhibits "P-45", "P-45-a", "P-50", P-50-a" and "P-300" to "P-305" but still denied the admission of Exhibit "P-43". This same Resolution denied respondent's Motion to Dismiss because the Court ruled that the issues raised in said Motion

[6] Court Docket, pp. 316-329.
[7] Court Docket, pp. 331-336.
[8] Court Docket, pp 779-794.
[9] Court Docket, pp.1450-1456.
[10] Court Docket, pp. 1437-1493.
[11] Court Docket, pp1528-1532. on

involve questions of fact as well as law that are best determined in a full blown trial.

On February 24, 2017, petitioner filed a Motion for Leave of Court to Present Supplemental Evidence[12] which the Court granted in a Resolution dated April 11, 2017.[13]

On May 22, 2017, petitioner filed its Supplemental Offer of Evidence and offered Exhibits "P-43", "P-306", "P-306-a", "P-307", "P-307-a". The Court admitted all the aforesaid exhibits in a Resolution dated August 1, 2017.[14]

As trial continued, respondent presented Revenue Officer Sonny Boy M. Lambarte as his lone witness.

Respondent formally offered Exhibits "R-1" to "R-4",[15] which were all admitted in evidence in the Resolution of this Court[16] dated September 20, 2017.

This case was declared submitted for decision on January 8, 2018, considering the filing of the petitioner's Memorandum[17] on December 21, 2017 and respondent's Memorandum[18] on November 2, 2017.

ISSUES

The parties submitted the following issues[19] for this Court's disposition:

1. Whether or not the jurisdiction of the Honorable Court is limited to the collection procedure itself post-assessment;

2. Whether or not respondent's right to assess deficiency tax against petitioner for FY 2006 has prescribed;

[12] Court Docket, pp. 1553-1559.
[13] Court Docket, pp. pp. 1602-1606.
[14] Court Docket, pp. 1641- 1645.
[15] Court Docket, pp.1650-1653.
[16] Court Docket, pp 1672-1673.
[17] Court Docket, pp. 1761-1814
[18] Court Docket, pp. 1684-1692.
[19] Submitted Issues for Trial, JSFI, Court Docket, pp. 316-329.

3. Whether or not the assessment is null and void for failure to state the legal and factual basis thereof, in violation of petitioner's right to due process.

4. Whether or not petitioner had unaccounted trade receivables amounting to Php17,297,838.26 that should be subject to income tax for FY 2006;

5. Whether or not petitioner made payments of salaries and wages for FY 2006 amounting to Php5,808,918.60 which were not subjected to withholding tax on compensation hence disallowed as expense deductions;

6. Whether or not petitioner made payments for outside services for FY 2006 amounting to Php4,656,871 which were not subjected to expanded withholding tax, hence disallowed as expense deductions;

7. Whether or not petitioner's rental payments for FY 2006 amounting to Php4,103,355 are not subject to the expanded withholding tax, hence should be allowed as expense deductions;

8. Whether or not petitioner's storage charges for FY 2006 amounting to Php10,200,000 are not subject to the expanded withholding tax, hence should be allowed as expense deductions;

9. Whether or not respondent erred in disallowing petitioner's foreign exchange losses for FY 2006 amounting to Php157,934 as expense deductions;

10. Whether or not respondent may impose compromise penalty amounting to Php30,000 without petitioner's consent;

11. Whether or not the Warrant of Distraint and/or Levy were (sic) issued pursuant to a valid assessment.

Petitioner's Arguments

Petitioner primarily challenges the right of the respondent to assess its alleged income tax liabilities for FY 2006 due to prescription. Citing Section 203 of the 1997 National Internal Revenue Code (1997 NIRC) which provides for a three (3) year prescriptive period to assess income tax liabilities, petitioner strongly asserts that the issuance of the assessment for FY 2006 falls outside the three (3) year period hence should be rendered void.

Petitioner narrates that it filed its tentative and amended annual income tax returns (ITRs) for FY 2006 on July 21, 2006 and August 23, 2006, respectively, thus it theorizes that the respondent had three (3) years from August 23, 2006 or until August 23, 2009 within which to issue the deficiency income tax assessment. Petitioner concludes its argument on prescription by stating that the FLD was issued only on June 15, 2010 which makes it fall outside the the three-year prescriptive period. Additionally, petitioner asserts that there are no allegations of fraud or falsity of the ITR that would justify the application of the ten (10)-year prescriptive period to assess deficiency income taxes.

Petitioner further maintains that the assessment is null and void as it violates its right to due process. This conclusion was borne out of petitioner's observation that the income tax assessment did not contain the law and the facts on which the assessment is made as mandated by Section 228 of the 1997 NIRC. Petitioner claims that the Preliminary Assessment Notice (PAN) ; the Final Assessment Notice and Formal Letter of Demand (FAN/FLD) merely contain a computation of the deficiency tax assessment with no accompanying legal nor factual information which would apprise a taxpayer of the circumstances and reasons why it is being called to pay further tax liabilities.

Petitioner assails the validity of the income tax assessment as being contrary to the relevant laws and implementing regulations thus violating its right to due process. Petitioner also stresses the argument that respondent did not give it a chance to respond to the PAN within the period allowed by law and regulations.

Based on the date indicated in the FLD, petitioner insists that respondent already prepared the FAN/FLD even ahead of its deadline to respond to the PAN giving rise to the conclusion that the issuance of the PAN was only perfunctory and that the FAN was set to be issued regardless of any reply or evidence that may be adduced against the PAN.

One other procedural/technical defect raised by petitioner is the respondent's failure to revalidate the Letter of Authority (LOA).

Based on the testimony of revenue officer, Sonny Boy Lambarte, the LOA was issued on October 4, 2007 while the PAN was dated May 13, 2010. Other documents such as the Memorandum (dated June 17, 2009) ; Notice of Informal Conference (dated September 28, 2009) and the Memorandum (dated October 12, 2009), all issued by the representatives of respondent were issued outside of the 120-day period from the date of the LOA without the latter being re-validated nor a waiver secured from petitioner. These facts, according to petitioner, prove that respondent continued to conduct its audit investigation armed with an invalid LOA. Petitioner submits that this is a clear violation of its right to due process as supported by several decisions of this Court and the Supreme Court.

Respondent's Counter-Arguments

Respondent questions petitioner's resort to the Court under the guise of assailing the WDL. He maintains that the real purpose of petitioner is for the cancellation and withdrawal of the income tax assessment issued for FY 2006. Respondent adds that petitioner can no longer challenge the validity of the assessment as this has become final, executory and demandable.

Respondent belittles the reliance of petitioner on the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* because the phrase "other matters" (mentioned in Republic Act (RA) 1125, as amended by RA 9282) which was ruled upon by the Supreme Court, refers to challenging the collection procedure itself "post-assessment". Respondent maintains that the collection procedure may be challenged before the Court but the assessment remains valid and final. Based on the decision of the Supreme Court in *FMF Development Corporation vs. Commissioner of Internal Revenue*[20], respondent concludes that the manner of disputing the assessment has its own procedure and is not subsumed under the phrase "other matters".

Respondent insists that the income tax assessment is already final, executory and demandable for failure of the petitioner to state the facts, law and applicable jurisprudence

[20] Respondent's Memorandum, Court Docket, page 1686.

on which its protest is based thus making the same void and without any effect.

In his Answer[21] and Memorandum[22], respondent stands by the validity of the WDL issued against petitioner anchored as it is, on his theory that the petitioner is already delinquent in paying the tax liabilities covered by the subject assessment. Respondent calls the attention of the Court to petitioner's own admissions that it was validly served with notices informing it of its tax liabilities hence it can no longer deny that the WDL was lawfully issued.

RULING OF THE COURT

The Court has jurisdiction on the validity of the Warrant of Distraint and/or Levy issued by respondent

In the hierarchy of issues presented by both parties as narrated above, the jurisdiction of this Court takes precedence over all other issues. As consistently held by the Supreme Court and recently reiterated in the case of *Bernadette S. Bilag, et.al. vs. Estela Ay-Ay, et.al.*[23], jurisdiction is a primordial issue that must be passed upon by a court before any other issue is adjudicated upon, thus:

> "Jurisprudence has consistently held that jurisdiction is defined as the power and authority of a court to hear, try and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire among others, jurisdiction over the subject matter. xxx xxx **Thus when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action**. xxx xxx" (emphasis supplied)

Jurisdiction is conferred by law. The Court of Tax Appeals (CTA), as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[24]

Section 7(a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the Court's jurisdiction, thus:

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[21] Court Docket, pp. 158-167.
[22] Court Docket, pp. 1684- 1693.
[23] G.R. No. 189950, April 24, 2017.
[24] Commissioner of Internal Revenue vs. Silicon Philippines, Inc., G.R. No. 169778, March 12, 2014.

"Section 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).

The Revised Rules of the Court of Tax Appeals (RRCTA), Section 3(a) (1), Rule 4 further provides as follows:

Rule 4

Sec.3. Cases within the jurisdiction of the Court in Divisions. –

The Court in Division shall exercise:

(a) Exclusive original 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 instant case, petitioner filed its Petition for Review with this Court challenging the issuance of the WDL on the ground that it stemmed from a void assessment and prayed for its quashal and cancellation.

As a general rule, this Court acquires jurisdiction over a decision of the Commissioner of Internal Revenue (CIR) on a "disputed assessment" which in turn is elevated by a taxpayer to this Court via a Petition for Review. However, this Court in many instances has also taken cognizance of cases falling under the category of "other matters" including the determination of the validity of the WDL. an

In the case of *Philippine Journalists, Inc. vs. CIR*[25], the Supreme Court affirmed the jurisdiction of the CTA and clarified the coverage of the term "other matters" as follows:

> "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. **The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of the Statue of Limitations was validly effected.**" (emphasis supplied)

In the case of *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*[26] , the Supreme Court had the occasion to rule on the phrase "other matters" within the jurisdiction of the CTA, thus :

> "Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."

In addition, the Supreme Court has pronounced that the appellate jurisdiction of the Court of Tax Appeals (CTA) extends to matters that are under the administration of the BIR such as the determination of the validity of a compromise agreement which is subsumed under the phrase "other matters".[27]

Thus, we find that this Court has jurisdiction over this case under the term "other matters" pursuant to the aforequoted Section 7 (a) (1) of RA No. 1125 and Section 3 (a) (1), Rule 4 of the RRCTA.

Having assumed jurisdiction over a case under the phrase "other matters", this Court is also called upon to rule and

[25] G.R. No. 162852, December 16, 2004.
[26] G.R. No. 169225, November 17, 2010.
[27] Consolidated cases of Philippine National Oil Company vs. CA and PNB, G.R. Nos. 109976 and 112800, April 26, 2005.

consider the period within which to appeal to the CTA because this matter is equally essential to determine jurisdiction.

Section 11 and Section 7 (a) (2) of the RRCTA provide the answer, thus:

> "Section 11. Who may appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry and the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA *within thirty (30) days* after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7 (a) (2) herein" (italics ours)."
>
> Section 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal as herein provided:
>
> (2) Inaction by 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)

An analysis of the above provisions leads to the conclusion that the thirty (30)-day period to appeal to this Court similarly applies to those cases falling under "other matters" which in the instant case is the validity of the WDL issued by respondent.

The reckoning date of the thirty-day period may not have been mentioned in the afore-cited provisions but logic dictates that it should run from the time the taxpayer becomes aware or is notified of the existence of the WDL.

This Court finds that the contention of respondent that the thirty-day period to appeal begins from the receipt of the Final Notice Before Seizure (FNBS) is misplaced. What is being questioned in this case is the validity of the WDL based on the allegation that it stems from a void assessment and not the decision of respondent on a disputed assessment, hence the thirty-day period is reckoned from the time the petitioner receives the WDL and is made aware of its issuance. The phrase "other matters" does not include an appeal on a decision on a disputed assessment which has its own set of criteria and time frames where the thirty-day period should be counted. The issue of whether the FNBS is the final decision appealable to this Court is a non-issue in the instant case.

Records show that petitioner was served with WDL No. 09-AMT-142-15[28] on July 21, 2015 pertaining to its income tax deficiencies for FY 2006.

On August 20, 2015, petitioner filed its Petition for Review with this Court which is within the thirty-day period mentioned above, thus this Court finds that the appeal is timely filed.

The WDL is invalid because it stems from a void assessment

Petitioner asserts that the income tax assessment embodied in the FLD was issued only on June 15, 2010 or beyond the three (3) year prescriptive period provided under Section 77 (B) of the 1997 NIRC in relation to Section 203 of the same Code.

We find for the petitioner.

Section 203 of the 1997 NIRC, as amended, provides for the period of limitation of assessment and collection of national internal revenue taxes, to wit:

> "Section 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Section 222 of the 1997 NIRC, as amended, provides the exceptions to the above-mentioned period of limitation of assessment and collection of taxes, to wit:

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[28] Exhibit, "P-13", Court Docket, page 266.

"Section 222 . *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment at any time within the ten (10) years after the discovery of the falsity, fraud or omission: Provided that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

xx xxx xxx

Based on the foregoing provisions, the regular prescriptive period for the assessment and collection of taxes is three (3) years. The exceptional ten (10) year prescriptive period is applicable only if the taxpayer a) fails to file a return; b) files a false or fraudulent return with the intent to evade tax; c) there is a waiver of the prescriptive period of assessment of the tax which is agreed upon in writing by the Commissioner and the taxpayer.

There is nothing in the FAN/FLD nor the accompanying Details of Discrepancy that would suggest that there were findings of fraud nor falsity in the returns filed by petitioner, save for the sentence appearing in the FLD that a 50% surcharge was being imposed. We provide hereunder the wordings of the FLD with Details of Discrepancy sent by respondent to petitioner:

Sir:

Please be informed that after investigation, there has been found due from you deficiency income tax for the taxable fiscal year ending March 31, 2006, as shown hereunder:

FORMAL LETTER OF DEMAND

INCOME TAX

Income Tax		P42,224,916.86
Adjusted Total Revenue		P14,039,784.86
Tax Due		
Add: Surcharge 50%	P7,019,892.43	
Interest (07-16-06 to 06-15-10	P11,001,036.90	
Compromise Penalty	50,000.00	P18,070,929.33
Total Tax Deficiency	P32,110,714.19	

COMPROMISE PENALTY

Non-filing of Quarterly ITR P30,000.00

TOTAL AMOUNT PAYABLE P32,140,714.19

**Please note that the interest and the total amount due will have to be adjusted if paid beyond the due date.

The sales deficiency tax assessment was due to the violation/non-compliance of:

I. Section 27A of NIRC of 1997, as amended and Section 32 and 57 of the same code

II. Section 250 of NIRC of 1997, as amended and RMO No. 1-90.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex A of this Formal Letter of Demand.

The 50% surcharge has been imposed pursuant to the provisions of Section 248 (B) of the National Internal Revenue Code, as amended by RA 8424, which took effect on January 1, 1998. In case of willful neglect to file the return within the period prescribed or by the rules ad regulations, or in case of any false or fraudulent return is willfully made. Provided, that a substantial under declaration of taxable sales, as determined by the Commissioner of (sic) his duly authorized representative, shall constitute prima facie evidence of a false or fraudulent return.

xxx xxx xxx

Annex A

DETAILS OF DISCREPANCY

I. Income Tax – Verification disclosed that due to disallowances, taxpayer was assessed resulting to deficiency tax pursuant to the provision of Section 27A of the NIRC of 1997, as amended in relation to the provision of Section 32 and 57 of the same code.

A. Discrepancy/Adjustment to revenue		
1. Unaccounted trade receivables		
Revenue per ITR – page 26	P51,895,631.00	
Add: Trade Receivable, beg- Page 20	21,154,476.00	
Amount Collectible	73,050,107.00	
Total Collection per ITRS-LN-page 81	49,165,976.74	
Uncollectible Balance	23,884,130.26	
Less: Trade Receivables, end-page 20	6,586,292.00	17,297,838.26

2. Salaries, Wages and Benefits		
Compensation per FORM 1601-C	17,757,495.60	
Claim per ITR – page 7	11,948,577.00	5,808,918.60
B. Disallowances		
1. Outside Services		
Claim per ITR – page 8	13,129,899	
Payment per 1601-E	8,473,028.00	4,656,871.00
2. Rentals		
Claim per ITR – page 2	4,224,555.00	
Payment per 1601-E	121,200.00	4,103,355.00
C. Storage Charges – Page 24		10,200,000.00
D. Losses – page 24		
Total Adjustment to Revenue		157,934.00
		42,224,916.86
Note : Tax Rate 2005.32 x7/12	0.1867	
2006.35 x 5/12	0.1458	
	33.25	

II. Compromise Penalty – Further included is the corresponding penalty. Non-filing of List of Quarterly Income tax returns – P30,000, pursuant to the provision of Section 250 of the NIRC of 1997 in relation to the provision of RMO No 1-90. (italics ours)

It is a well -entrenched rule that fraud is not lightly presumed; fraud must be proven by clear and convincing evidence, mere preponderance of evidence not even being adequate.[29] Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[30]

A mere cursory review of the FLD/FAN and Details of Discrepancy do not show that petitioner intended to defraud the government. In fact, we believe that the FLD/FAN with the Details of Discrepancy issued by respondent do not pass the test of properly informing the taxpayer of the facts and the law on which the assessment is made in violation of the requirements under Section 228 of the 1997 NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99.

Section 228 of the 1997 NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.[31]

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[29] Alejandro V. Tankeh vs. DBP et.al., G.R. No. 171428, Nove,ber 11, 2013.
[30] Yutivo & Sons Hardware Co. vs. CTA, L-13203, January 28, 1961, quoted in the case of Commissioner of Internal Revenue vs. Melchor Javier and the CTA, G.R. 78953, July 31, 1991.
[31] Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009.

We quote the relevant portion of Section 228 of the 1997 NIRC, thus:

> Section 228. *Protesting of Assessment.*
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise the assessment shall be void.

We are inclined to agree with the observation of petitioner that the FAN/FLD with Details of Discrepancy merely reflected the computation of petitioner's alleged deficiency income tax liabilities and failed to state the facts and circumstances which constitute the alleged violations, in clear contravention of the due process requirements of the law.

The Supreme Court in one case[32] has clearly provided the strict standards in alleging fraud in tax assessments, viz:

> "Fraud entails corresponding sanctions under the tax law. **Therefore it is indispensable for the Commissioner of Internal Revenue to include the basis of the allegations of fraud in the assessment notice."** (emphasis supplied).

On its face, the FLD/FAN and even the Details of Discrepancy would make it difficult for a taxpayer to provide sufficient bases or grounds to dispute it because it contains figures without or little explanation as to how the examiners came up with such a conclusion. It is not surprising then for respondent to allege that the protest filed by petitioner was void for failure of the petitioner to provide the legal and factual bases of its arguments for how can the latter do so in the face of an incomplete income tax assessment containing little details on the grounds for its issuance.

The pleadings filed by respondent in Court do not even contain any allegations of fraud nor of any other circumstance that would justify the application of the exceptional period of ten years to assess the income tax liabilities of petitioner. In sum, respondent failed to prove by clear and convincing evidence that fraud was committed by the taxpayer.

We therefore find that the three-year period to assess the income tax liabilities of petitioner applies in the instant case, thus the FLD/FAN for FY 2006 issued on June 15, 2010 falls

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[32] Commissioner of Internal Revenue vs. Fitness By Design , G.R. No. 215957, November 9, 2016.

outside the three-year prescriptive period provided under the aforequoted Section 203 of the 1997 NIRC making such assessment void and without any effect. Conjoined with the issue of the validity of the WDL, we also find the WDL without any effect as it stems from a void assessment. Respondent is then mistaken in his notion that the determination of the validity of the WDL is separate from the issue of the validity of the assessment issued against petitioner. In fact, the issue of the legality of the WDL rests upon the validity of the tax assessment itself and we cannot but rule on both issues.

It is well established that a void assessment bears no fruit.[33] Noteworthy is the provision in the 1997 NIRC which cites the three (3) instances where a collection case may be filed in court without a corresponding assessment, i.e., a) filing of a false return; b) filing of a fraudulent return and c) failure to file a return.[34] Unfortunately, none of the three instances was established in this case, hence the validity of the mode of collection is intimately linked with the validity of the assessment.

Having concluded that the subject income tax assessment for FY 2006 is void together with the WDL, this Court finds that the discussion on the other issues becomes unnecessary .

WHEREFORE, the instant Petition for Review filed by MIFFI Logistics Co., Inc. is hereby **GRANTED.**

Accordingly, the FAN/FLD issued by respondent for alleged deficiency income taxes for FY 2006 as well as the WDL issued against petitioner as a result thereof are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[33] Samar-I Electric Cooperative vs. CIR, G.R. No. 193100, December 10, 2014.

[34] Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –*

a) *In the case of a false or fraudulent return with intent to evade a tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment,* at any time within ten (10) years after the discovery of the falsity, fraud or omission xxx xxx xxx (italics ours)

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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