REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOYOTA MANILA BAY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8227

Members:

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

Promulgated:

SEP 03 2014 ; 3:30p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed by petitioner Toyota Manila Bay Corporation on February 4, 2011, praying that the assessment against petitioner for the alleged deficiency income tax, value added tax (VAT), documentary stamp tax (DST), and compromise penalty in the total amount of **ONE HUNDRED FIFTY TWO MILLION EIGHT HUNDRED NINETY THOUSAND ONE HUNDRED NINETY THREE PESOS AND SEVENTY SIX CENTAVOS (₱ 152,890,193.76)** be declared void and without merit; and that respondent Commissioner of Internal Revenue be ordered to cancel the Formal Assessment Notice and Assessment Notices, as well as the Warrant of Distraint and Levy dated January 6, 2011.

THE FACTS

Petitioner Toyota Manila Bay Corporation is a domestic corporation duly registered with the Securities and Exchange Commission.[1]

Respondent is the duly appointed Commissioner of Internal Revenue, empowered under the National Internal Revenue Code (NIRC) to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the Bureau of Internal Revenue ("BIR"). She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

Pursuant to Letter of Authority (LOA) No. 00045339 dated August 3, 2005, a tax investigation was conducted by representatives of the respondent Commissioner on the petitioner for the taxable year 2004.[3] Marita G. Posada, petitioner's accounting staff, received the said LOA.[4]

On December 21, 2005, petitioner remitted to respondent the total amount of ₱ 1,272,078.63, representing payment for basic deficiency taxes, interests and compromise penalties, relative to the audit of petitioner's internal revenue taxes for taxable year 2004 under the said LOA. The said amount is broken down as follows:[5]

Tax Type/Description	Amount (including interests and penalties)
Non-filing of 1604-E	₱ 1,000.00 [6]
Non-filing of 1604-CF	1,000.00 [7]
Non-filing of quarterly purchases diskette	25,000.00 [8]
Non-filing of Inventory List	2,000.00 [9]
Withholding Tax on Compensation	77,386.14 [10]
Expanded Withholding Tax	89,881.16 [11]
Income Tax	111,730.40 [12]
VAT	992,790.93 [13]
Total	**₱ 1,272,078.63**

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 164.
[2] Par. 2, JSFI, Docket, pp. 164 to 165.
[3] Par. 3, JSFI, Docket, p. 165.
[4] Par. 1, Addendum Joint Stipulation of Facts (AJSF), Docket, p. 490.
[5] Par. 2, Supplemental Joint Stipulation of Facts (SJSF), Docket, p. 476.
[6] BIR Records, pp. 88 to 89.
[7] BIR Records, pp. 90 and 93.
[8] BIR Records, pp. 91 and 104.
[9] BIR Records, pp. 105 to 106.
[10] BIR Records, pp. 107 to 108.
[11] BIR Records, pp. 109 to 110.
[12] BIR Records, pp. 111 to 112.
[13] BIR Records, pp. 113 to 114.

Subsequently, Marita Posada received a Letter Notice (LN No. 051-AS-04-00-00050) dated June 30, 2006. Attached to the said Letter Notice, as culled from the BIR Records, are "Details of Taxpayer's Supplier's Records for LN No. 051-AS-04-00-00050", consisting of eight (8) pages, showing the list of various names of petitioner's suppliers and the alleged amounts of sales made to petitioner amounting to a total of ₱ 1,996,120,840.85.[14]

On February 8, 2007, Michael Manalo, petitioner's accounting staff, received a copy of the Notice for Informal Conference. Attached to the said Notice are documents entitled "Computation Sheet Under Third Party Information Program Covered by a Letter Notice Pursuant to RMO 30-2003" consisting of four (4) pages.[15]

Thereafter, respondent issued a Revised Post Reporting Notice to petitioner which was received by Grace Espiritu, petitioner's executive secretary (or one of the secretaries employed by petitioner)[16], on June 27, 2007.[17]

On October 3, 2007, petitioner, through Grace Espiritu, received a Preliminary Assessment Notice (PAN) issued by respondent.[18]

On October 24, 2007, petitioner was issued a Formal Assessment Notice (FAN) with Details of Discrepancies, which was received by Grace Espiritu on November 7, 2007,[19] assessing petitioner for deficiency income tax, VAT, and DST, including surcharge and interests, computed as follows:[20]

INCOME TAX:

Net income per return			₱	7,870,107.00
Add: Undeclared Disbursement treated as undeclared income				206,260,123.85
Taxable income			₱	214,130,230.85
Tax Due			₱	68,521,673.87
Less: Tax paid				
Prior year excess credits	₱	5,733,429.00		
Add: Creditable withholding tax		4,391,524.00		
Total	₱	10,124,953.00		

[14] Par. 2, AJSF, Docket, p. 490.
[15] Par. 3, AJSF, Docket, p. 490.
[16] Par. 9, JSFI, Docket, p. 172.
[17] Par. 4, AJSF, Docket, p. 490.
[18] Par. 5, AJSF, Docket, p. 490.
[19] Par. 6, AJSF, Docket, pp. 490 to 491.
[20] Par. 3, JSFI, Docket, pp. 165 to 166.

Less: Amount forwarded to succeeding year	7,537,566.00	2,587,387.00
Deficiency tax		₱ 65,934,286.87
Add: Interest (4.16.05 to 11.29.07)		34,610,984.56
Total amount due		**₱ 100,545,271.43**

VALUE ADDED TAX:

Taxable sales per VAT Returns		₱ 1,764,332,057.00
Add: Undeclared Income	₱ 206,260,123.85	
Other income not subjected to VAT	6,666,859.00	212,926,982.85
Adjusted taxable sales		₱ 1,977,259,039.85
Output tax due		₱ 197,725,903.99
Less: Input tax		176,433,205.70
Basic deficiency tax		₱ 21,292,698.29
Add: Interest (1.26.05 to 11.29.07)		12,110,586.75
Total amount due		**₱ 33,403,285.04**

DOCUMENTARY STAMP TAX:

Tax Due	₱ 3,140,000.00
Add: Surcharge	785,000.00
Interest	1,820,339.73
Tax due	**₱ 5,745,339.73**

The Details of Discrepancies in the FAN show that the alleged discrepancy of ₱ 206,260,123.85 was computed as follows:

Schedule 1:

Per Summary List of Sales submitted by Suppliers	₱ 1,996,120,840.85
Less: Purchases Declared per VAT Returns	1,789,860,717.00
Undeclared Sales	₱ 206,260,123.85

The ₱ 206,260,123.85, which was the difference between the summary list of sales allegedly submitted by suppliers and the purchases declared per VAT Returns of petitioner, was treated as a undeclared sales and alleged income tax and VAT were imposed on the said amount.[21]

Another item of deficiency VAT arose from respondent's allegations that the other income classified as "Ancillary Income" and "Miscellaneous Income" in the amounts of ₱ 4,305,629.00 and ₱ 2,361,230.00, respectively, were not included as part of the gross sales/receipts that was subjected to VAT per petitioner's VAT Returns. Hence, the said items are being subjected by respondent to VAT, pursuant to Sections 105 and 105 of the NIRC, to wit:[22]

[21] Par. 11, AJSF, Docket, p. 491.
[22] Par. 12, AJSF, Docket, p. 491.

Schedule 2:

Other Income	
Ancillary income	₱ 4,305,629.00
Miscellaneous income	2,631,230.00
Total Other Income	₱ 6,666,859.00

Moreover, the deficiency DST arose from respondent's allegation that the Notes Payable in the amount of ₱ 628,000,000.00 booked and reflected in the Balance Sheet was not subjected to DST under the provisions of Section 180 of the NIRC. Thus, respondent subjected the said amount to DST in the total amount of ₱ 3,140,000.00, to wit:[23]

Schedule 3:

Notes Payable	₱ 628,000,000.00
Tax Due (₱ 1.00 for every ₱ 200)	₱ 3,140,000.00

On November 23, 2007, petitioner filed a letter with the Assessment Division of Revenue Region No. 08, requesting for a reinvestigation of its alleged tax liabilities for taxable year 2004.[24]

In a letter dated November 27, 2007, the OIC-Regional Director of Revenue Region No. 08, Ma. Nieva A. Guerrero, informed petitioner that it is given the opportunity to submit a valid letter of protest to contain certain data in accordance with Revenue Regulations (RR) Nos. 12-85 and 12-99, on or before December 3, 2007.[25]

On December 3, 2007, petitioner filed a letter to the Assessment Division of Revenue Region No. 08, requesting for an extension of thirty (30) days to submit the data requested by the BIR in its letter dated November 27, 2007.[26]

Subsequently, the Assessment Division of Revenue Region No. 08 issued the letter dated December 6, 2007, granting the afore-stated request for extension. Petitioner was given until January 4, 2008 to submit the data mentioned in the BIR's letter dated November 27, 2007.[27]

[23] Par. 13, AJSF, Docket, pp. 491 to 492.
[24] Exhibit "I-3", Docket, p. 371.
[25] Exhbit "I-4", Docket, p. 372.
[26] Exhibit "I-2", Docket, p. 370.
[27] Exhibit "I-5", Docket, p. 373.

On January 4, 2008, petitioner filed a letter dated January 4, 2008 to the Assessment Division of Revenue Region No. 08, reiterating its request for reinvestigation.[28]

On February 1, 2008, petitioner filed a letter dated February 1, 2008 to the Assessment Division of Revenue Region No. 08, stating facts allegedly relevant to the BIR's investigation and reiterating its request for reinvestigation.[29]

In a letter dated March 7, 2008, respondent informed petitioner that the entire docket together with the letter protest will be forwarded to the Revenue District Officer of Revenue District Office (RDO) No. 51 – Pasay City for further evaluation and necessary action.[30]

A Tax Verification Notice (TVN) with serial number 00051489 was issued to petitioner stating that a reinvestigation for the year 2004 will be conducted by Revenue Officer Cecilia S. Tan.[31] Petitioner received the TVN on May 26, 2008.[32]

On July 16, 2008, respondent issued a Final Decision on Disputed Assessment (FDDA) with details of discrepancies.[33] Allegedly, petitioner did not receive a copy of the FDDA and the details of discrepancies.[34]

On March 11, 2009, as a result of the reinvestigation, petitioner paid the amount of ₱240,914.23, representing payment for deficiency VAT, including interest and compromise penalties, for taxable year 2004.[35] On the same date, a Memorandum was issued by the RDO No. 51 to Revenue Region No. 08,[36] informing the latter that the protest letter filed by petitioner is meritorious. Revenue District Officer Ricardo Espiritu then recommended that an Authority to Cancel Assessment (ATCA) be approved. The ATCA was signed by Revenue District Officer Espiritu,[37] but was not signed by then

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[28] Exhibit "I-1", Docket, p. 369.
[29] Exhibit "I", Docket, pp. 367 to 368.
[30] Par. 4, JSFI, Docket, p. 166.
[31] Par. 5, JSFI, Docket, p. 166.
[32] Par. 7, AJSF, Docket, p. 491.
[33] Exhibits "K" and "K-1", Docket, pp. 376 to 379.
[34] Exhibit "Z" (Q78 and A78), Docket, pp. 419 to 436 (at p. 430).
[35] Par. 13, JSFI, Docket, p. 172; and Par. 3, SJSF, Docket, p. 477.
[36] This Memorandum was not signed by the Chief, Assessment Division and the Regional Director (Par. 16, JSFI, Docket, p. 173.)
[37] Par. 14, JSFI, Docket, pp. 172 to 173; Par. 11, AJSF, Docket, p. 491.

Commissioner, Sixto S. Esquivias, IV.[38]

On January 6, 2011, petitioner received the Warrant of Distraint and/or Levy (WDL) No. 2011-001 dated January 6, 2011[39], for the sum of ₱ 152,890,193.76, representing petitioner's alleged deficiency income tax, VAT, DST and compromise penalty.[40]

On February 4, 2011, petitioner filed the instant Petition for Review with Motion for Suspension of Collection of Tax.

In the Resolution dated February 25, 2011,[41] the Court granted petitioner's motion for suspension of collection of tax, subject to the depositing by petitioner of the amount indicated in the WDL, *i.e.*, the amount of ₱ 152,890,193.76 or the posting of a bond in the amount of ₱ 229,335,290.64. On March 9, 2011, petitioner posted the required surety bond.[42] Subsequently, on April 20, 2011, the Court issued a resolution enjoining respondent from enforcing the subject WDL.[43]

On April 5, 2011, respondent filed her Answer[44] raising therein, the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 5. The assessments in question were made and issued in accordance with law, rules and regulations;
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> 6. Under Section 228 of the Tax Code of 1997, as implemented by Revenue Regulations No. 12-99, assessment notice may be protested administratively by filing a request of reconsideration or reinvestigation, in such form and manner as may be prescribed by implementing rules and regulations, within thirty (30) days from receipt of the assessment, otherwise the assessment shall become final, executory and demandable.
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> 7. The petitioner failed to file a valid protest within thirty (30) days from receipt of the assessments, thus, the

[38] Par. 15, JSFI, Docket, p. 173.
[39] Par. 9, AJSF, Docket, p. 491.
[40] Par. 6, JSFI, Docket, pp. 166 to 167.
[41] Docket, pp. 61 to 63.
[42] Docket, pp. 64 to 89.
[43] Docket, pp. 129 to 130.
[44] Docket, pp. 121 to 126.

assessments have long become final, executory and demandable.

8. Petitioner's letter dated November 19, 2007 requesting for re-investigation of its 2004 tax liabilities cannot be considered as one disputing the assessments because petitioner failed to substantiate their claim that the deficiency assessments are contrary to law. First, petitioner did not actually contest the assessments because it failed to state in its November 19, 2007 letter the facts, the applicable law, rules and regulations, or jurisprudence on which its protest is based. Second, petitioner in the same letter avers that it will submit/present documents to refute some of the assessments but it failed to submit the same nonetheless. Petitioner should have submitted relevant documents in support of its protest, pursuant to *Section 6(b) of Revenue Regulations No. 12-85*. Since petitioner did not submit documents in support of its protest, the assessment against it for taxable year 2004 had also become final, executory and demandable, pursuant to *Section 3.1.5 of Revenue Regulations No. 12-99*, which provides: 'The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable', and *Section 228 of the NIRC of 1997, as amended*, which provides: 'Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise the assessment shall become final'. Hence, petitioner's letter dated November 19, 2007 requesting for a re-investigation of the assessments is nothing but a mere scrap of paper without any legal effect. And as a mere scrap of paper, it is as if no protest was ever filed. Therefore, the assessment has become final, executory and demandable.

9. Assuming without admitting that there was a valid protest filed by herein petitioner, nevertheless, the subject assessments had already become final, executory and demandable for failure of the petitioner to appeal to this Honorable Court or to the CIR within thirty (30) days from receipt of the final decision.

10. The subsequent proceedings that led to the re-opening/reinvestigation of the case and the preparation of Authority to Cancel Assessment (ATCA) by the then

Revenue District Officer of RDO No. 51, Pasay City after the assessments had already become final, executory and demandable, produced no legal effect, being contrary to law and jurisprudence.

11. In ***Hilado vs. Collector of Internal Revenue, et al., 100 PHIL. 228***, the Supreme Court ruled that an administrative officer, such as the BIR Commissioner, may revoke, repeal or abrogate the acts or previous rulings of his predecessor in office. The construction of a statute by those administering it is not binding on their successors if, thereafter, the latter becomes satisfied that a different construction should be given effect (***Philippine National Oil Company vs. Court of Appeals, 457 SCRA 102***).

12. Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 gives the Honorable Court the authority to order the suspension of tax collection when in its view, such collection would work to the serious prejudice of either the taxpayer or the Government. This ancillary remedy is available ONLY when there is a pending appeal over which the Court of Tax Appeals has JURISDICTION (**Commissioner of Customs vs. Alikpala, 36 SCRA 208**).

The Honorable Court has exclusive appellate jurisdiction over petition for review filed by taxpayers questioning –"decisions of the Commissioner of Internal Revenue in cases involving disputed assessments", among others. The taxpayer may appeal this decision with the Honorable Court within thirty (30) days from date of receipt hereof, otherwise the said deficiency internal revenue taxes shall become final, executory and demandable.

Appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non-compliance is fatal, having the effect of rendering judgment final and executory (**Cabellan vs. Court of Appeals, 304 SCRA 119**). Not only that, late appeals deprive the appellate court jurisdiction to alter the final judgment, much less entertain the appeal (**Pedrosa v. Hill, 257 SCRA 373**).

Stated differently, the right to appeal a decision of the Commissioner of Internal Revenue to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional. In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment (**Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 213**).

Thus, inasmuch as the Court of Tax Appeals['] authority to suspend the collection of taxes is merely an ancillary remedy which is available only when there is a pending appeal over which the Court of Tax Appeals has jurisdiction, it logically follows that the Tax Court has no jurisdiction to issue an injunction restraining the collection of taxes after it had ruled that the deficiency tax assessment ceases to be a disputed assessment; that the same having become final, executory and demandable, by operation of law the correctness of the same can no longer be disturbed; and that the same is already enforceable and collectible. In short, [i]f the Tax Court has no jurisdiction over the petition for review lodged before them, it is likewise divested of any authority to issue an Order suspending the collection of the taxes long overdue from the taxpayer.

13. The Assessment Notice dated October 24, 2007 clearly shows compliance with the requirements under Section 228 of the NIRC as implemented by Revenue Regulations No. 12-99. Petitioner was duly informed of the facts, applicable law, rules and regulations on which the assessment was based.

14. Section 5 of the NIRC allows the BIR to access from any person other than the person whose internal revenue tax liability is subject to audit or investigation all relevant or material records and data, and the BIR can accept documents which cannot be admitted in a judicial proceedings where the Rules of Court are strictly observed. (***Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005, 454 SCRA 301, 326***). To require the consent or

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conformity of the taxpayer as to the data gathered from third party would defeat the intent of the law to help the BIR assess and collect the correct amount of taxes.

15. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector Internal Revenue, 98 Phil. 290).**"

After the pre-trial held on May 13, 2011[45], the parties filed their Joint Stipulation of Facts and Issues on June 7, 2011,[46] and their Supplemental Joint Stipulation of Facts and Issues on June 10, 2011.[47] In the Resolution dated June 13, 2011,[48] the Court approved the same, and terminated the pre-trial.

During trial, petitioner presented and formally offered its testimonial and documentary evidence. The documentary evidence of petitioner were admitted by the Court in the Resolution dated September 13, 2012, ***except*** Exhibits "C-1", "C-2", "F-1", "F-2", "F-3", "I-6", "P" and "T" due to petitioner's failure to identify the same in Court.[49] Nevertheless, on October 5, 2012, the parties jointly filed their Supplemental Joint Stipulation of Facts dated October 4, 2012,[50] whereby respondent stipulated as to the existence and due execution of said Exhibits.

On November 20, 2012, petitioner filed a Motion to Admit Addendum to the Supplemental Joint Stipulation of Facts, attaching therewith a copy of the said Addendum.[51] The Court granted the said motion and resolved to admit the said Addendum in the Resolution dated November 22, 2012.[52] In the same Resolution, the Court gave respondent a period of fifteen (15) days from the date of the same within which to file her Formal Offer of Evidence.

On December 13, 2012, respondent filed a Motion to Admit (Formal Offer of Evidence), attaching therewith her Formal Offer of Evidence.[53] The Court granted said Motion to Admit in the Resolution

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[45] CTA Docket, p. 147
[46] Docket, pp. 164 to 174.
[47] Docket, pp. 180 to 184.
[48] Docket, pp. 187 to 188.
[49] Docket, pp. 474 to 475.
[50] Docket, pp. 476 to 477.
[51] Docket, pp. 486 to 493.
[52] Docket, p. 497.
[53] Docket, pp. 498 to 504.

dated January 10, 2013.[54] Thereafter, on February 21, 2013, the Court admitted Exhibits "1" to "18-a", inclusive of sub-markings, as respondent's evidence, and directed the parties to file their respective memorandum within thirty (30) days from notice.[55]

On March 21, 2013, petitioner filed its Memorandum.[56] On the other hand, respondent filed, on April 1, 2013, a Motion for Extension of Time to File Memorandum,[57] which the Court granted, and gave respondent until May 1, 2013 within which to file the same.[58] Respondent, however, failed to do so.

On May 3, 2013, respondent filed a Motion for Additional Time to File Memorandum.[59] Respondent was granted a non-extendible period of fifteen (15) days from May 2, 2013 or until May 17, 2013, within which to file her Memorandum.[60] Nevertheless, respondent still failed to file her memorandum within the given period. Thus, in the Resolution dated June 21, 2013,[61] the Court submitted the case for decision, sans respondent's Memorandum.

On July 3, 2013, respondent filed a Motion to Admit (Respondent's Memorandum).[62] The said Motion was granted and the attached signed Memorandum was admitted by the Court in the Resolution dated September 12, 2013, in the paramount interest of substantial justice.[63] In the same Resolution, the Court set aside its Resolution dated June 21, 2013, and submitted anew the instant Petition for Review for decision as of September 12, 2013.

Hence, this Decision.

THE ISSUES

The parties jointly submitted the following stipulated issues for the Court's consideration, to wit:

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[54] Docket, p. 509.
[55] Resolution dated February 21, 2013, Docket, p. 516.
[56] Docket, pp. 517 to 546.
[57] Docket, pp. 548 to 549.
[58] Order dated April 16, 2013, Docket, p. 551.
[59] Docket, pp. 552 to 553.
[60] Resolution dated May 14, 2013, Docket, p. 556.
[61] Docket, p. 559.
[62] Docket, pp. 560 to 578.
[63] Docket, p. 589.

> "1. Whether or not the respondent Commissioner of Internal Revenue or her duly authorized representative/s observed 'DUE PROCESS' in the conduct of the assessment of petitioner and in the issuance of the assessments for deficiency income tax, value added tax, documentary stamp tax and compromise penalty for the year 2004 as required by Section 228 of the National Internal Revenue Code of 1997 and Revenue Regulations No. 12-99 and other pertinent laws and regulations;
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> 2. Whether or not the right to the respondent to assess deficiency value added tax for the 1st to 3rd quarter of the year 2004 had already prescribed pursuant to Section 203 of the Tax Code of 1997;
>
> 3. Whether or not petitioner is liable for the alleged deficiency income tax, value added tax, documentary stamp tax and compromise penalty, which are the subject of the Warrant of Distraint and/or Levy;
>
> 4. Whether or not issues 1 & 2 were raised in the administrative level;
>
> 5. Whether or not petitioner filed a valid protest to the Formal Assessment Notice."[64]

Petitioner's Arguments

It is the contention of petitioner that respondent Commissioner of Internal Revenue, and/or her duly authorized representatives, failed to observe the requirements of "DUE PROCESS" in the conduct of the assessment and in the issuance of the assessments for deficiency income tax, VAT, DST and compromise penalty against petitioner for taxable year 2004. Petitioner points out that a reference to the assessment made by respondent would show that there are clear violations of Section 228 of the NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99.

Petitioner further argues that the assessment failed to correctly state the facts and the law on which the assessment is made. According to petitioner, it is at a loss as to why the difference

[64] Docket, p. 173.

between the alleged sales declared by the suppliers of petitioner in the Summary List of Sales and the amount of purchases declared by petitioner in its VAT Returns amounting to ₱206,260,123.85 is equated as an undeclared income. Petitioner points out that assuming the noted difference indeed exist, the deficiency in the reported purchases versus the actual purchases could not be equated as income, as this would defy the law of logic. Furthermore, according to petitioner, the said Summary List of Sales is not supported by sworn statements, and thus, the absence thereof makes the assessment void.

Moreover, petitioner asserts that Grace Espiritu is employed as its secretary; thus, her receipt of the FAN is not valid, making the assessment void. In the same light, petitioner submits that the WDL is not valid because it was not received by its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

Petitioner further submits that the right of respondent to assess petitioner for the alleged deficiency VAT for the first, second, and third quarters of taxable year 2004 had already prescribed at the time the FAN was issued to petitioner on November 7, 2007, pursuant to Section 203 of the NIRC of 1997. Thus, the deficiency VAT assessment pertaining to these periods is without legal basis.

Finally, anent the deficiency DST assessment, petitioner contends that respondent cannot simply make a sweeping statement that the balance of the loans payable per balance sheet is subject to DST and leave petitioner in the dark to determine which of the transactions included in this balance is subject to DST or not, or whether the DST is paid or not. According to petitioner, there being no factual and legal bases stated in the FAN and its attachment, the same should be treated as a void assessment.

Respondent's Counter-arguments

Respondent contends that there was no valid protest filed by petitioner as the letter dated November 19, 2007 cannot allegedly be considered as a protest-letter under Section 3.1.5 of RR 12-99, which requires that "(t)*he taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void, and without force and effect*". Respondent adds that "(i)*f the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice* *within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."*

According to respondent, petitioner never contested lack of due process, prescription and the validity of the assessments in the administrative level. In fact, in the course of the investigation, petitioner immediately made partial payments thereto.

Respondent also asserts that petitioner received (through Grace Espiritu) the Assessment Notices of the BIR and in fact, it was able to file various letters acknowledging receipt thereof, thus, petitioner's belated protestation that Grace Espiritu is not authorized to receive the same is a mere afterthought.

Lastly, respondent contends that the subsequent proceedings that led to the re-opening/reinvestigation of the case after the assessments had already become final, executory and demandable, produced no legal effect, being contrary to law and jurisprudence.

THE COURT'S RULING

We partially grant the instant Petition for Review.

The BIR observed due process in the conduct and issuance of the subject assessments.

Petitioner argues that respondent and/or her duly authorized representative/s failed to observe the requirement of due process in the conduct and issuance of the assessments.

We disagree.

Section 228 of the NIRC of 1997 provides as follows:

> "SEC. 228. *Protesting of Assessment.*— When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxxx
>
> xxx xxx xxx

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> **The taxpayer shall be informed in writing of <u>the law and the facts</u> on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

In relation thereto, Section 3.1.4 of Revenue Regulations No. 12-99[65] pertinently reads as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*—
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.*— The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, ***otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in ANNEX B hereof). xxx." *(Emphasis supplied)*

It is clear from the foregoing provisions that the taxpayer must be informed in writing of the facts and the law upon which the assessment is made.

In this case, petitioner was informed of the facts and the law on which the subject assessments were made. For easy reference, quoted herein are the Details of Discrepancies[66] issued by the BIR addressed to petitioner, to wit:

"DETAILS OF DISCREPANCIES

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[65] SUBJECT: 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-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[66] Exhibit "H-1", Docket, pp. 363 to 364.

INCOME TAX:

Undeclared disbursement treated as undeclared income, P206,260,123.85 – Base(d) on the information gathered from third party sources, your supplier have declared a total Sales of ***Php1,996,120,840.85*** from your Company, however, scrutiny of your Returns disclosed that only the amount of ***Php1,789,860,717.00*** was declared per your tax returns, thus, resulting to a discrepancy of ***Php206,260,123.85*** which you have continuously failed to support and justify despite several request were made by the examiner in charge to reconcile the same. In the case of *Perez vs. CTA and CIR L-10507 dated May 30, 1958* where the CTA held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported. Therefore, the discrepancy found thereof is hereto assessed under the provision of Section 32 of the NIRC, as amended in relation to the above decided case.

Schedule 1:

Per Summary List of Sales submitted by your suppliers	P	1,996,120,840.85
Purchases Declared per VAT Returns		1,789,860,717.00
Undeclared sales	P	206,260,123.85

Amount forwarded to succeeding year/qtr, P7,537,566.00 – Since this amount was already forwarded to the succeeding year and was claimed as *'prior year's excess tax credit'* on your 2004 ITR as provided under Section 76 of the Tax Code of 1997 as amended, the same was not considered in the computation of your deficiency taxes.

VALUE ADDED TAX:

Undeclared Income, P206,260,123.85 – As discussed above, under income tax, the under declaration of sales as a result of under declaration of your imported purchases is likewise subject to VAT under Title IV, Section 105, 106, and 108 of the NIRC, as amended.

> ***Section 105*** of the NIRC states that ' Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value added tax (VAT) imposed in sections 106 to 108 of this Code which reads as follows;
>
> ***Section 106. VAT on Sale of Goods or Properties***
> *(A) Rate and Base of Tax – There shall be levied assessed and collected on every sale, barter or exchange of goods or properties, a value added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such as tax to be paid by the seller or transferor.*

Other income not subjected to VAT, P6,666,859.00 – Verification disclosed that the other income classified as ***Ancillary Income*** and

Miscellaneous Income in the amount of P4,305,629.00 and P2,361,230.00 respectively was not included to be a part of the gross sales/receipts that was subjected to VAT per your VAT Declaration/Returns. Hence, the said items are hereto assessed pursuant to Section 105 and 106 of the NIRC as amended.

Schedule 2:

Other Income		
Ancillary Income	P	4,305,629.00
Miscellaneous Income		2,361,230.00
Total Other Income	P	6,666,859.00

DOCUMENTARY STAMP TAX:

Basic tax due on Notes Payable, P3,140,000.00 – Verification disclosed that the Notes Payable in the amount of Php628,000,000.00 booked and reflected in the Balance Sheet was not subjected to proper documentary stamp tax under the provision of Section 180 of the old Tax Code now Section 179 of the Tax Code as amended by Republic Act (RA) 9243. hence, the same amount is hereto assessed pursuant to the said Section.

Schedule 3:

Notes Payable	P	628,000,000.00
Tax Due (P 1.00 for every P200.00)	P	3,140,000.00"

A perusal of the foregoing Details of Discrepancies shows that the factual and legal bases for the said assessments were indicated therein. The deficiency income tax assessment is anchored on the finding that there were *"undeclared disbursements"*, which was equated to *"undeclared income"*, and thus, such non-declaration results in an assessment based on Section 32 of the NIRC, as amended, in relation to the alleged case of *Perez vs. CTA and CIR*. Anent the VAT assessment, the factual bases therefor are on the same *"undeclared income"* and the supposed non-inclusion of the *"Ancillary Income"* and *"Miscellaneous Income"*; while the legal bases therefor are Sections 105 and 106 of the NIRC, as amended. With regard to the DST assessment, the same is based on the fact that petitioner's Notes Payable was not subjected to DST, and on Section 180 (which is now Section 179) of the NIRC, as amended by Republic Act No. (RA) 9243.

Hence, the Court finds no merit in petitioner's contention that the FAN is invalid for failure to state the facts and the law on which the assessments were based.

Nevertheless, at this juncture, it must be emphasized that although the facts and the law upon which the assessment is made are stated in the assailed FAN, this Court is not precluded from making a thorough determination as to whether or not such facts and law are indeed free from error. As will be shown hereafter, the bases for the subject assessments are not entirely correct.

The right of respondent to assess the deficiency VAT for the second and third quarters of 2004 have already prescribed.

Petitioner submits that the right of respondent to assess petitioner for the alleged deficiency VAT for the first, second, and third quarters of taxable year 2004 have already prescribed.

This Court, however, finds that it is only the VAT assessments pertaining to the second and third quarters of 2004 which have already prescribed.

Sections 203 and 222(a) of the NIRC of 1997 provide as follows, *viz*:

> "SEC. 203. *Period of Limitation Upon Assessment.* — 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." *(Emphasis supplied)*
>
> "SEC. 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 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**: *Provided*, That in a fraud assessment which has become final and executory, the

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fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." *(Emphases supplied)*

Based on the foregoing provisions, internal revenue taxes shall, as a rule, be assessed within three (3) years after the last day prescribed by law for the filing of the return, or the actual filing thereof, whichever comes later. However, in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

In this case, petitioner offered in evidence its Quarterly VAT Returns for 2004, except for the first quarter thereof.[67] For the second quarter, the Quarterly VAT Return therefor was filed on July 26, 2004; while for the third quarter, the Return therefor was filed on October 20, 2004. Parenthetically, it must be stated that the due date for filing the Quarterly VAT Return is on the 25th day of the month following the close of the quarter, in accordance with Section 114 of the NIRC of 1997, to wit:

"SEC. 114. *Return and Payment of Value-added Tax.—*

(A) *In General.* — **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

xxx xxx xxx." *(Emphasis supplied)*

Correspondingly, on the basis of Section 203, anent the second quarter, the prescriptive period is from July 26, 2004 to July 26, 2007; and with regard to the third quarter, the prescriptive period is from October 25, 2004 to October 25, 2007. Such being the case, the VAT assessment pertaining to the second and third quarters of 2004 had already prescribed at the time the FAN was received by petitioner on November 7, 2007.

[67] Exhibits "V-2", "V-3", and "V-4", Docket, pp. 402 to 404.

As regards the right of respondent to assess the deficiency VAT for the first quarter, the Court finds that it had not prescribed for failure of petitioner to present its VAT Return for said quarter. In this regard, the issue boils down to which of the two parties herein have the burden of proving such failure to file said return. It is however clear that since prescription is one of the affirmative defenses set up by petitioner herein, it was incumbent upon the latter, if it wanted to avail itself of the benefits of Section 203 of the NIRC of 1997, to prove that it had submitted said returns, and that having failed to do so, the conclusion must be that no such return had been filed and that the Government had ten (10) years within which to make the corresponding assessments, as it did in this case.[68]

Petitioner's liability for the alleged deficiency income tax, VAT, DST and compromise penalty, which are the subject of the Warrant of Distraint and/or Levy.

Deficiency Income Tax

As can be gleaned from the subject deficiency income tax assessment, the factual basis therefor is that there is an *"undeclared disbursement"* in the amount of ₱ 206,260,123.85.

The Court disagrees with respondent.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[69] Income tax is assessed on income received from any property, activity or service.[70] Such being the case, in the imposition or assessment of income tax, it is not when there is an undeclared disbursement, but only when there was an income, and such income was received or realized by the taxpayer.

In this case, said elements are not present. The BIR merely imposed income tax on petitioner simply because there was an *"undeclared disbursement"*, nothing more.

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[68] *Taligaman Lumber Co., Inc. vs. Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962

[69] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

[70] *Supra.*

Furthermore, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[71] Hence, even granting that there is an undeclared disbursement, the same is not prohibited by law.

Thus, in simply relying on the fact that there is an undeclared disbursement, respondent's imposition or assessment of the subject income tax does not hold water. Such being the case, the subject deficiency income tax assessment should be cancelled.

Deficiency VAT

In the same vein, no deficiency VAT assessment should arise from the said *"undeclared disbursement"* of ₱ 206,260,123.85.

It must be remembered that the 10% VAT is imposed on the seller of the goods, pursuant to Section 105 of the NIRC of 1997, to wit:

> "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells,** barters, exchanges, leases **goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the Code.
>
> xxx xxx xxx." *(Emphases supplied)*

Furthermore, the VAT is assessed on the *"gross selling price or gross value in money of the goods or properties sold"* and is *"to be paid by the seller or transferor."*[72] In this connection, the law defines *"gross selling price"* as follows:

> "...the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross

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[71] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.
[72] Section 106(A), NIRC of 1997.

selling price."[73] *(Emphasis supplied)*

Thus, what is critical to be shown, in the imposition or assessment of VAT in the sale of goods or properties, is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.

Correspondingly, VAT should not be imposed on the supposed *"undeclared disbursement"* amounting to ₱ 206,260,123.85.

However, the Court sustains respondent's finding that the Other Income of petitioner amounting to ₱ 6,666,859.00 was not included as part of the gross sales/receipts and thus, was not subjected to VAT per petitioner's VAT Declarations/Returns. This must be so because, although petitioner's 2004 Annual Income Tax Return shows that the said amount was subjected to income tax, petitioner failed to establish: why no VAT should be imposed thereon, or that the same had been reported in its Quarterly VAT Returns for 2004, and that the corresponding VAT was paid. When the judicial mind is left in doubt, it is a sound rule to leave the assessment undisturbed.[74]

Thus, the Court finds petitioner liable for 10% VAT[75] in the amount of ₱ 666,685.90 imposed upon its Other Income amounting to ₱ 6,666,859.00.

Deficiency DST

In relation to the deficiency DST assessment, petitioner further points out that, as shown in its loans, the same were obtained from First Metro Investment Corporation (FMIC), a financial institution. Thus, according to petitioner, FMIC is the party responsible for the remittance of DST on the said loans, pursuant to Section 3(c)(4) of RR No. 9-2000.

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[73] *Supra.*
[74] *Army & Navy Club vs. Trinidad*, G.R. No. 19297, January 26, 1923.
[75] Now the VAT rate is 12%, pursuant to Republic Act No. 9337, which took effect on July 1, 2005, in relation to the Memorandum dated January 31, 2006 of Executive Secretary Eduardo R. Ermita (Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006).

We partly agree with petitioner.

Section 179 of the NIRC of 1997, as amended by RA 9243, provides as follows:

> "SEC. 179. *Stamp Tax on All Debt Instruments.*— **On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument**: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only on documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> **For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to** xxx **promissory notes, whether negotiable or non-negotiable**, except bank notes issued for circulation." *(Emphases supplied)*

In relation thereto, Sections 2 and 3 of RR No. 9-2000[76] provides as follows:

> "SECTION 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax.*—
>
> (a) *In General.*— The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against *'the person making, signing, issuing, accepting, or transferring'* the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due:** *Provided, however*, that

[76] SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) *Exception.*— Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.

SECTION 3. *Mode of Payment and Remittance of the Tax.*—

(a) *In General.*— **Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.**

xxx xxx xxx

(4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code**: Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding.

(a) **A bank**, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, as a rule, any of the parties to the transaction subject to DST shall pay and remit the full amount of DST. However, if one of the parties to the said transaction is a bank, *inter alia*, the remittance of the DST shall be the responsibility of such other party.

In this case, petitioner offered in evidence the following non-negotiable promissory notes executed in 2004 by petitioner in favor of FMIC (which was referred to therein as a "Bank"), viz:

Exhibit	Date	PN No.	Amount
"Y-1"[77]	January 26, 2004	9249	₱ 5,000,000.00
"Y-2"[78]	January 28, 2004	9251	10,000,000.00
"Y-3"[79]	February 5, 2004	9259	7,000,000.00
"Y-4"[80]	February 9, 2004	9260	7,000,000.00
"Y-5"[81]	February 11, 2004	9262	20,000,000.00
"Y-6"[82]	February 12, 2004	9264	27,000,000.00
"Y-7"[83]	February 13, 2004	9269	10,000,000.00
"Y-8"[84]	March 19, 2004	9278	20,000,000.00
"Y-9"[85]	March 23, 2004	9280	10,000,000.00
"Y-10"[86]	April 1, 2004	9287	25,000,000.00
"Y-11"[87]	April 22, 2004	9297	10,000,000.00
"Y-12"[88]	December 18, 2004	9388	20,000,000.00
"Y-13"[89]	December 20, 2004	9387	300,000,000.00
"Y-14"[90]	December 28, 2004	9396	10,000,000.00
		Total	**₱ 481,000,000.00**

Thus, considering that FIMC is a bank, it is the party responsible to remit the corresponding DST for the foregoing transactions. Such being the case, the assessed deficiency DST in the amount of ₱ 481,000,000.00 should not be imposed upon petitioner.

It must be remembered however that the total amount of the assailed DST assessment is imposed on the ₱ 628,000,000.00—the amount of Notes Payable found in petitioner's 2004 Financial Statements. Correspondingly, the balance of ₱ 147,000,000.00 (₱ 628,000,000.00 less ₱ 481,000,000.00) is subject to DST. This

[77] Docket, p. 405.
[78] Docket, p. 406.
[79] Docket, p. 407.
[80] Docket, p. 408.
[81] Docket, p. 409.
[82] Docket, p. 410.
[83] Docket, p. 411.
[84] Docket, p. 412.
[85] Docket, p. 413.
[86] Docket, p. 414.
[87] Docket, p. 415.
[88] Docket, p. 416.
[89] Docket, p. 417.
[90] Docket, p. 418.

must be so because petitioner failed to present evidentiary proof why the said amount should not be subject thereto. Aside from that, petitioner also failed to show that it is not the party obligated to remit the required DST in accordance with RR 9 -2000; or that petitioner is exempt from the imposition of DST for the amount of ₱ 147,000,000.00.

In summary, the basic DST to be imposed on petitioner should only be ₱ 735,000.00, computed as follows:

Notes Payable per Financial Statements	₱ 628,000,000.00
Less: Total amount of loan reflected on the promissory notes	481,000,000.00
Notes Payable subject to DST	₱ 147,000,000.00
Tax Due (₱ 1.00 for every ₱ 200)	₱ 735,000.00

Compromise penalty

Anent the compromise penalty, the same should not be imposed.

This must be so because compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer **in the event that a taxpayer refuses to pay the same.**[91] In other words, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other.[92] Thus, since in this case, there is no indication that petitioner is willing to pay the amount of compromise penalty, the same should not be imposed.

The subject assessments may not be considered as final and executory.

It is undisputed that petitioner failed to file a protest within thirty (30) days from receipt of the FAN, and that such fact was raised as a defense in respondent's Answer.[93] However, respondent should not be allowed to raise the same as a defense, because the BIR has

[91] Revenue Memorandum Order No. 1-90.

[92] Refer to *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

[93] Refer to paragraph 7, respondent's Answer, Docket, p. 122.

already admitted, in effect, at the administrative level that the subject assessments have **not** become final and executory upon such ground.

In this case, after the subject FAN was received by petitioner on November 7, 2007,[94] petitioner sent the letter dated November 19, 2007 to the BIR on November 23, 2007,[95] requesting for a reinvestigation of its supposed tax liabilities for taxable year 2004. Thereafter, the BIR sent to petitioner the letter dated November 27, 2007 as follows:

> "**TOYOTA MANILA BAY CORPORATION**
> Roxas Blvd., corner EDSA Extension
> Boulevard 2000, Pasay City
>
> **Attention:** **Ms. Elisa D. Julian**
> **Finance and Admin. Manager**
>
> **Subject :** ***Request for submission of valid letter of protest.***
>
> Madam,
>
> This has reference to your letter dated November 19, 2007 duly received by this Office on November 23, 2007, stating among others, your request for reinvestigation on findings contained in our **Formal Assessment Notice** (FAN) dated **October 24, 2007** which covers your company's deficiency taxes for the taxable year **2004** in the aggregate amount of **P139,718,896.20**.
>
> In reply, please be informed that under the provision of Revenue Regulation (RR) 12-99 which requires the **taxpayer to state the facts and the law and jurisprudence to which his protest is based, *otherwise, it shall considered without force and effect***. Nonetheless, you are hereby given the opportunity to submit your valid letter of protest on or before **December 3, 2007**, to contain the following data in accordance with Revenue Regulations Nos. 12-85 and 12-99, to wit:
>
> a) **Nature of request whether reinvestigation or reconsideration specifying new discovered evidence you intend to present, if it is a request for reinvestigation.**
> b) **The taxable period covered.**
> c) **Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.**

[94] Par. 3, Joint Stipulation of Facts and Issues, Docket, p. 165.
[95] Exhibit "I-3", Docket, p. 371; BIR Records, p. 210.

d) **Itemized schedule of the adjustments with which the taxpayer does not agree. Further, submit necessary documents to support your claims/disagreements.**
e) **A statement of facts and/or law in support of this protest.**

Please give this matter your preferential attention. Otherwise, this Office shall be constrained to issue enforce collection thru summary remedies provided for under the law.

For your information and guidance.

Very truly yours,

(signed)
MA. NIEVA A. GUERRERO
OIC- Regional Director"[96]

In response to the foregoing letter, petitioner sent its letter dated December 3, 2007, requesting for an extension of thirty (30) days to give petitioner more time to submit the data requested by the BIR.[97] The BIR granted the request for extension of petitioner and gave the latter until January 4, 2008 within which to submit the requested data; otherwise, the BIR will proceed with the collection of the deficiency taxes through summary remedies.[98]

On January 4, 2008, petitioner sent the following letter to the BIR:

"04 January 2008

MA. NIEVA A. GUERRERO
OIC-Regional Director

BIR RR-8

THRU: ASSESSMENT DIVISION

Madam:

Reference is made to your letter dated December 06, 2007 received by our office on the same date thru fax granting us the extension of thirty (30) days to file our valid letter of protest not later than January 04, 2008, relative to the issued Formal Assessment Notice dated October 24, 2007 covering our company's deficiency

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[96] Exhibit "I-4", Docket, p. 372.
[97] BIR Records, p. 211.
[98] Exhibit "I-5", Docket, p. 373; N.B.: The letter erroneously stated "January 4, 2007".

taxes and compromise penalty for the taxable year 2004 in the aggregate amount of P139,718,896.20.

We request that the re-investigation be done by examiner at Pasay City District because documents are voluminous.

As per our records, the following facts should be considered:

1) The Gross Profit pertaining to the undeclared purchases is much lesser than the undeclared disbursement which you considered as undeclared income.
2) Undeclared purchases should not be equal to undeclared sales.
3) Input taxes of our undeclared purchases should be considered in computing VAT deficiencies.

We hope that our request be granted as soon as possible.

TOYOTA MANILA BAY CORP.

(signed)
By: Elisa D. Julian
Finance & Admin Mgr"[99]

Subsequently, on February 1, 2008, the BIR received petitioner's letter dated February 1, 2008, with the following contents, to wit:

"01 February 2008

MA. NIEVA A. GUERRERO
OIC-Regional Director

BIR RR-8

THRU: ASSESSMENT DIVISION

Madam:

Reference is made to the verbal notice relayed to us by BIR Pasay City examiner-in-charge re: LOA# 45339 and LN 051-AS-04-00-00050 for the year 2004, requesting us to file a detailed valid letter of protest not later than February 1, 2008. In response, we wish to give you the following facts regarding your investigation:

1. INCOME TAX

Per summary list of sale submitted to suppliers	1,996,120,840.85
Purchases declared per VAT returns	1,789,860,717.00
	206,260,123.85

ny

[99] BIR Records, p. 213.

Most of the goods we purchase are finished goods (vehicles) from Toyota Motor Philippines and these are recorded using the "Specific Identification" method. Per our records, our purchases are well-accounted and declared. However, we have already requested our major suppliers for a reconciliation of their sales and our purchases because the difference indicated above might have been due to timing difference in recording as we have experienced in prior years.

2. VALUE ADDED TAX

Undeclared Income (as per assessment)	206,260,123.85
Other income not subject to VAT	6,666,859.00
	212,926,982.85

The alleged undeclared income is being reconciled with our supplier (please refer to Income Tax amount above).

3. DOCUMENTARY STAMP TAX

The documentary stamp tax (P1.00 for every P200.00) is automatically deducted when we avail of loan from the bank. We have already requested the bank to furnish us proof of remittance.

In view of the voluminous records that need to be retrieved and reconciled, we wish to reiterate our request that the re-investigation be done by examiner at Pasay City District.

We hope that our request be granted as soon as possible.

TOYOTA MANILA BAY CORP.

(signed)
By: Elisa D. Julian
Finance & Admin Mgr."[100]

Acting on the said letters of petitioner, the BIR issued the following Tax Verification Notice, *viz*:

"TAX VERIFICATION NOTICE

March 18, 2008

Toyota Manila Bay Corporation
EDSA corner Roxas Blvd.,
Pasay City

SIR/MADAM/GENTLEMEN:

This is to inform you that Revenue Officer Ma. Cecilia S. Tan of this Office is authorized to verify the supporting documents and/or pertinent records relative to your:

[100] BIR Records, pp. 216 to 217.

	Capital gains tax return
	Withholding tax return on property transactions
	Estate tax return Donor's tax return
	Donor's tax return
	Claim for ________________ tax credit/refund
xx	**Request for reinvestigation**

covering the taxable year/period 2004.

In this connection, please furnish him/her with the following documents on ___________ between __________ to _________.

____

____

____

Your preferential attention on this matter will be highly appreciated.

Very truly yours,
(signed)
RICARDO B. ESPIRITU
Signature of Authorized Officer
Revenue District Officer

Please contact the above Revenue Officer or
Group Supervisor Mario H. Eleda
through telephone number 5517019
4539/8.3.05 LN# 051-AS-04-00-00050"[101] *(Emphasis supplied)*

Eventually, the BIR issued the Final Decision on Disputed Assessment (FDDA) on July 16, 2008, as follows:

"Date of Issue 16 Jul 2008

FINAL DECISION ON DISPUTED ASSESSMENT

The President
TOYOTA MANILA BAY CORPORATION
EDSA cor. Roxas Blvd.,
Pasay City
TIN: 004-676-716

Attention: **Ms. Elisa D. Julian**
Finance and Admin. Manager

Madam;

This has reference to our ***Formal Letter of Demand and Assessment Notice*** dated ***October 27, 2004*** wherein you have submitted a letter of protest dated February 1, 2008 and have consequently requested for the reinvestigation of your **2004**

[101] Exhibit "11", BIR Records, p. 225.

> deficiency income tax, value added tax, documentary stamp tax and compromise penalty in the aggregate amount of **P139,718,896.20** respectively.
>
> Please be informed that your request for reinvestigation has been given due action but you failed to submit the documents relative to your protest within sixty (60) days upon filing of your letter of protest pursuant to Revenue Regulation 12-99 which states that xxx " *That taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable."* Hence, we reiterate our assessment on the said deficiency tax.
>
> In accordance with the provision of Section 228 of the NIRC as amended, there has been found due from you deficiency **<u>income tax, value-added tax, documentary stamp tax and compromise penalty</u>** for the taxable year **<u>2004</u>**, as shown hereunder
>
> xxx xxx xxx
>
> Very truly yours,
>
> **LILIAN B. HEFTI**
> **Commissioner of Internal Revenue**
> By:
> *(signed)*
> **MA. NIEVA A. GUERRERO**
> OIC – Regional Director"[102]

Thereafter, on March 13, 2009, the BIR prepared an Authority To Cancel Assessment (ATCA) for petitioner's deficiency income tax, VAT, documentary stamp tax assessments, and compromise penalty, upon the recommendation of Revenue District Officer Ricardo B. Espiritu.[103] In this connection, it must be noted that petitioner was able to obtain a copy of the said ATCA for its deficiency income tax assessment.[104]

Thus, upon the service of the subject Warrant of Distraint and/or Levy, it came as a surprise to petitioner that the BIR still proceeded with the collection of the subject tax assessments, as expressed in its letter dated January 26, 2011, to wit:

> "January 26, 2011
>
> Ms. Corazon M. Montes

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102 Exhibit "K", Docket, pp. 376 to 377.
103 BIR Records, pp. 266 to 277.
104 Exhibit "L", Docket, p. 380.

Revenue District Officer
Revenue District Office No. 51
Pasay City

Dear Ms. Montes,

In relation to the Warrant of Distraint and/or Levy issued to our company Toyota Manila Bay Corporation (TMBC) regarding the alleged delinquent accounts for 2004, we would like to request your good office to defer or hold the enforcement or execution of any collection procedure against the said delinquent account, and requests that this case be re-opened/reconsidered in the light of the reasons stated thereunder. We are currently seeking professional help from our counsel to help us evaluate all the documents and the events that transpired related to the investigation of taxable year 2004.

Please consider that, as an ordinary taxpayer, we are not very knowledgeable on the proper procedure or technicalities in the assessment of cases. It is worthy to note however that when we paid the assessments issued against us during the investigation in the total amount of P1,300,788.63, **we were made to understand that the case is already closed and completed. Likewise, when a reinvestigation was conducted, we have fully explained and reconciled the amounts being questioned and the then handling examiner (who we heard had been transferred to another district) had indicated to us that the case is already considered closed upon the payment of additional deficiency VAT of P 240,914.23 which we paid on March 11, 2009. In fact, the BIR had verbally indicated also that the Revenue District Officer had already signed the Authority to Cancel Assessment (ATCA).** Thus, when we received the Preliminary Collection Notice, we thought this has no implication and was sent by mistake as we know the case is already a closed case as represented by then officers of this Revenue District, Pasay.

In view of the above, we wish to appeal for a reconsideration that this case be reopened and be subjected to a full re-investigation so that we can have the chance to explain and reconcile again the assessments raised against us. As a taxpayer who had been complying with our tax obligations the best we can, we feel it is unfair to enforce this warrant when the then handling officers themselves assured us and led us to believe that the case is now closed. The changes of officers in the BIR, which may be a contributory factor in the mishandling of this case, is an event beyond our control.

In the light of all these, we earnestly appeal to your sense of fairness, to give us the last chance of explaining our side, which we can do only if this case be re-opened and that a reinvestigation be conducted.

Thank you very much for your kindness.

Very truly yours,

(signed)
HENRY T. SY
President"[105]
(Emphasis supplied)

The foregoing circumstances are sufficient justification to hold respondent in estoppel to raise the defense that petitioner failed to file a protest within thirty (30) days from its receipt of the subject FAN. It must be pointed out that while the BIR initially required petitioner to file a "valid protest", it subsequently recognized petitioner's letter dated February 1, 2008 as petitioner's "letter of protest" in its FDDA. Furthermore, if the BIR truly believes, at the administrative level, that petitioner did not file a valid protest letter, it could **not** have proceeded with the petitioner's "request for reinvestigation", prepared the above-stated ATCAs, and made the following statements in the said FDDA, to wit:

> "This has reference to our ***Formal Letter of Demand and Assessment Notice*** dated ***October 27, 2004*** wherein you have submitted a letter of protest dated February 1, 2008 and have consequently requested for the reinvestigation of your **2004** deficiency income tax, value added tax, documentary stamp tax and compromise penalty in the aggregate amount of **P139,718,896.20** respectively." *(Underscoring supplied)*

On the part of petitioner, the latter was lead to believe that the failure to file a "valid protest" within the thirty-day period was not an issue. In fact, it believed that the subject assessments will already be cancelled.

In light of the foregoing, estoppel has set in against respondent.

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result.[106]

[105] BIR Records, pp. 354 to 355.
[106] *Philippine National Bank vs. Court of Appeals, et al., etseq.*, G.R. Nos. L-30831 & L-31176, November 21, 1979.

For estoppel to exist, it is indispensable that there be a declaration, act or omission by the party who is sought to be bound. Nor is this all. It is equally a requisite that he, who would claim the benefits of such a principle, must have altered his position, having been so intentionally and deliberately led to comport himself thus, by what was declared or what was done or failed to be done. **If thereafter a litigation arises, the former would not be allowed to disown such act, declaration or omission. The principle comes into full play. It may successfully be relied upon. A court is to see to it then that there is no turning back on one's word or a repudiation of one's act.**[107]

Admittedly, the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.[108] Furthermore, it has already been ruled that the Commissioner of Internal Revenue may held in estoppel.[109]

In addition, in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.[110]

Furthermore, respondent cannot validly argue that the subject tax assessments have become final and executory because of the supposed failure of petitioner to submit relevant documents within sixty (60) days from the filing of the administrative protest.

As succinctly stated by the Supreme Court in the case of *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue,*[111] such an argument cannot prosper when petitioner CIR fails to identify what the said documents are, to wit:

> "The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, **when the CIR does not even identify what these documents are**. If the Court

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[107] *Dizon vs. Suntay*, G.R. No. L-30817, September 29, 1972.
[108] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 117982, February 6, 1997.
[109] Refer to *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.
[110] Article 10, Civil Code of the Philippines (Republic Act No. 386).
[111] G.R. No. 178797, August 4, 2009.

does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. **In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.**"

In this case, petitioner merely makes a broad and vague allegation that respondent failed to submit the relevant supporting documents within sixty (60) days of filing its protest, but does not identify what these documents are. Clearly, it would be inequitable to charge petitioner with failing to submit documents in support of his protest, when respondent has not specified what these documents are.

After all, the term "relevant supporting documents" under Section 228[112] of the National Internal Revenue Code (NIRC) of 1997 should be understood as those documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer**. **The BIR can only inform the taxpayer to submit additional documents.** The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[113]

In sum, petitioner's basic tax liabilities for taxable year 2004 shall consist only of: (1) VAT in the amount of ₱ 666,685.90, arising from petitioner's Other Income amounting to ₱ 6,666,859.00; and (2) DST amounting to ₱ 735,000.00, which corresponds to the portion of Notes Payable per petitioner's 2004 Financial Statements that were

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[112] "SEC. 228. *Protesting of Assessment.*— When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all **relevant supporting documents** shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx." *(Emphasis supplied)*

[113] *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.

not proven by petitioner as not subject to DST, or that it is the not the party obligated to remit the required DST in accordance with RR 9-2000 or it is exempt from the imposition of the DST.

WHEREFORE, all the foregoing considered, the Petition for Review is **PARTIALLY GRANTED**. The Formal Assessment Notice dated October 24, 2007 and the Warrant of Distraint and Levy No. 2011-001 dated January 6, 2011, issued by respondent against petitioner, are hereby **MODIFIED**, so as to reflect only the basic deficiency VAT assessment amounting to ₱ 666,685.90, and basic deficiency DST assessment in the amount of ₱ 735,000.00, plus surcharges and interests.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the total amount of ₱ 1,752,107.33, inclusive of surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	₱ 666,685.90	₱ 166,671.48	₱ 833,357.38
Documentary Stamp Tax	735,000.00	183,750.00	918,750.00
Total	₱ 1,401,685.90	₱ 350,421.48	₱ 1,752,107.38

In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱ 666,685.90 and basic deficiency DST of ₱ 735,000.00, computed from January 25, 2005 and January 5, 2005, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱ 1,401,685.90, computed from November 24, 2007 until full payment thereof, pursuant to Section 249(C) of the same Code.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

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

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

TOYOTA MANILA BAY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8227

Members:

DEL ROSARIO, *Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 03 2014 3:30p.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With all due respect, I humbly dissent on the opinion of the majority that the subject Formal Assessment Notice (FAN) may not be considered as final and executory. It is my view that the FAN has become final and executory as petitioner failed to file a valid protest within the thirty-day period provided under Section 228 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, *viz.*:

> "SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> Xxx xxx xxx.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If

the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Section 3.1.5 of Revenue Regulations No. 12-99, which implements Section 228 of the 1997 NIRC, as amended, provides for the manner in which an assessment, which is otherwise presumed correct, should be assailed, *viz.*:

"Section 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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

On November 7, 2007, petitioner received the subject Formal Assessment Notice (FAN). On November 23, 2007, petitioner filed a letter-response to the FAN by filing a request for reinvestigation, *viz.*:

"19 November 2007

MA. NIEVA A. GUERERO
OIC-Regional Director

BIR RR-8

Thru: Assessment Division

Madam:

May we request a re-investigation of our tax liabilities for the year 2004 as stated in Assessment No. IT-45339-04-07-0431, VT-45339-04-07-0431, DS 45339-04-07-0431, MC-45339-04-07-0431. We will be presenting documents to the examiner as to refute some of the assessment.

We hope that our request be granted as soon as possible.

TOYOTA MANILA BAY CORP.

By: (signed)
Elisa D. Juan
Finance & Admin Manager"[1]

To my mind, petitioner's letter-response to the FAN does not constitute a valid protest. It is a mere request for reinvestigation of petitioner's tax liabilities for 2004. It does not in any way dispute the assessments by stating the facts, the applicable laws, rules and regulations, or jurisprudence.

On the other hand, petitioner's letter[2] dated December 3, 2007, which was received by the Bureau of Internal Revenue (BIR), Revenue Region No. ~~m~~

[1] Exhibit I-3, *CTA Docket*, p. 371.

8 on the same date, was a mere request for extension of time to submit data to the BIR, *viz.*:

"03 December 2007

MA. NIEVA A. GUERRERO
OIC-Regional Director

BIR RR-8

THRU: ASSESSMENT DIVISION

Madam,

Reference is made to your letter dated November 27, 2007 faxed to our office on November 29, 2007 giving us the opportunity to submit valid letter of protest on or before December 03, 2007 to contain the following data in accordance with Revenue Regulations Nos. 12-85 and 12-99, to wit:

a) Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence you intend to present, if it is a request for reinvestigation.

b) The taxable period covered

c) Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.

d) Itemized schedule of the adjustments with which the taxpayer does not agree. Further, submit necessary documents to support your claims/disagreements.

e) A statement of facts and/or law in support of this protest.

We would like to request for an extension of *thirty (30) days* to give us more time to submit the abovementioned.

We hope that our request warrants your favorable approval.

TOYOTA MANILA BAY CORP.

(signed)
By: Elisa D. Julian
Finance & Admin Mgr"

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[2] Exhibit I-2, *CTA Docket*, p. 370

Likewise, petitioner's letter[3] dated January 4, 2008, which was received by BIR Revenue Region No. 8 on the same date, was a mere reiteration of its request for reinvestigation, *viz.*:

> "04 January 2008
>
> **MA. NIEVA A. GUERRERO**
> OIC-Regional Director
>
> BIR RR-8
>
> THRU: ASSESSMENT DIVISION
>
> Madam,
>
> Reference is made to your letter dated December 06, 2007 received by our office on the same date thru fax granting us the extension of thirty (30) days to file our valid letter of protest not later than January 04, 2008, relative to the issued Formal Assessment Notice dated October 24, 2007 covering our company's deficiency taxes and compromise penalty for the taxable year 2004 in the aggregate amount of P139,718,896.20.
>
> We request that the re-investigation be done by examiner at Pasay City District because documents are voluminous.
>
> As per records, the following facts should be considered:
>
> a) The gross profit pertaining to the undeclared purchases is much lesser than the undeclared disbursement which you considered as undeclared income.
>
> b) Undeclared purchases should not be equal to undeclared sales
>
> c) Input taxes of our undeclared purchases should be considered in computing VAT deficiencies.
>
> We hope that our request be granted as soon as possible.
>
> TOYOTA MANILA BAY CORP.
>
> (signed)
> By: Elisa D. Julian
> Finance & Admin Mgr"

It is noted than on February 1, 2008, petitioner filed a letter[4] dated February 1, 2008 with the BIR Revenue Region No. 8 stating relevant facts relative to the BIR's investigation and reiterating that its request for

[3] Exhibit I-1, *CTA Docket*, p. 369.
[4] Exhibit I, *CTA Docket*, pp. 367 to 368.

reinvestigation be done by examiner at Pasay City District Office. Although its letter dated February 1, 2008 may be regarded as a valid protest for stating facts relevant to the BIR's investigation, the same was filed beyond thirty (30) days from petitioner's receipt of the FAN on November 7, 2007. Hence, the filing of said letter beyond the 30-day period to file protest did not prevent the FAN from becoming final, executory and demandable.

While it is true that the then Regional Director of Revenue Region No. 08 had granted petitioner an opportunity to file a valid protest until January 4, 2008, **the same is not valid as there is nothing in the 1997 NIRC, as amended, or in RR No. 12-99 which gives the Regional Director the authority to extend the thirty-day period within which the taxpayer should protest the FAN**. The extension of the period to file a protest which was granted by the Regional Director without authority could not set aside the mandatory provision of Section 228 of the 1997 NIRC, as amended, regarding the finality of an assessment which has not been disputed within the 30-day period to file a valid protest.

Interestingly, in the recent case of **J Square C Construction Supply, Inc. vs. Commissioner of Internal Revenue**,[5] this Court ruled that, by operation of law, the assessment against petitioner became final and executory for petitioner's failure to file a valid protest within the prescribed period, to wit:

> "While in the letter dated 29 July 2011 signed by Regional Director Nestor Valeroso, which petitioner received on August 10, 2011, petitioner purportedly was given fifteen (15) days from receipt thereof to file a protest on the final assessment notice, **the same could not validly brush aside the legal consequences which Section 228 of the NIRC of 1997 itself has provided**, *i.e., the assessment shall become final, executory and demandable if the taxpayer fails to file a protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.* In other words, **the mandatory provision on protesting a tax assessment within the statutory period cannot be rendered nugatory by the mere issuance of a letter by respondent's representative, which act is not expressly sanctioned by law**. Interestingly, the Regional Director's letter was issued way beyond May 15, 2011 - - the last day within which a valid Protest could have been made - - obviously in an attempt to cure petitioner's failure to file a timely protest. Such action of the Regional Director is irregular, to say the least.
>
> It is long and firmly settled rule of law that the Government is not bound by errors or mistakes committed by its agents, moreso when

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[5] CTA Case No. 8455, July 31, 2014; penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla.

> they are tainted with illegality. The government cannot be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents." *(Emphasis supplied; citations omitted)*

At any rate, even assuming that the Regional Director validly extended the thirty-day period to protest, records show that said extension was until January 4, 2008 only.[6] A perusal of petitioner's letter[7] dated January 4, 2008, which was received by the Assessment Division of BIR Revenue Region No. 8 on even date, reveals that the same could not constitute as a valid protest since petitioner merely requested that a reinvestigation be conducted by the BIR, *sans* any statement of facts, applicable laws and jurisprudence, rules and regulations to dispute the assessments.

Based on the foregoing, it is indubitable that petitioner failed to file a valid protest within the 30-day period, as required by Section 228 of the 1997 NIRC, as amended and Section 3.1.5 of RR No. 12-99. Consequently, I find that the subject FAN has become **final, executory, demandable and unappealable.**[8]

Collection of deficiency tax assessments pursuant to the final and executory FAN

As a consequence of the FAN becoming final, executory and demandable, respondent issued the subject WDL which petitioner received on January 6, 2011. The act of respondent in issuing the WDL is consistent with the pronouncement of the Supreme Court in *Ferdinand R. Marcos II vs. Court of Appeals,*[9] *viz.*:

> "**Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax**. Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes." *(Emphasis supplied)*

Petitioner filed the present Petition for Review on February 4, 2011, or within thirty (30) days from receipt of the WDL on January 6, 2011. Respondent argues that this Court has no jurisdiction over the present

[6] Exhibit I-5, *CTA Docket,* p.373
[7] Exhibit I-1, *CTA Docket,* p. 369
[8] Protector's Services, Inc. vs. Court of Appeals, 330 SCRA 404.
[9] G.R. No. 120880, June 5, 1997, 273 SCRA 47.

petition as it involves an undisputed assessment or a FAN that has become final, executory and demandable.

In *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[10] the Supreme Court affirmed the CTA's jurisdiction to rule on "other matters" arising under the NIRC or other laws administered by the BIR, thus:

> "Plainly, the assailed CTA En Banc Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> 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 the case at bar, the issue at hand is whether or not the BIR's right to collect taxes had already prescribed and that is a subject matter falling under Section 223 (c) of the 1986 NIRC, the law applicable at the time the disputed assessment was made. To quote Section 223 (c):
>
>> Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax. (Emphases supplied.)
>
> In connection therewith, Section 3 of the 1986 NIRC states that the collection of taxes is one of the duties of the BIR, to wit:
>
>> Sec. 3. Powers and duties of Bureau. — The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws. (Emphasis supplied.)
>
> Thus, from the foregoing, the issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.

[10] G.R. No. 169225, November 17, 2010.

Furthermore, **the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other.** This runs counter to petitioner's theory that the latter is qualified by the status of the former, i.e., an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.

Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling.** The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.** However, the *validity of the assessment* itself is a separate and distinct issue from the issue of whether the right of the CIR to *collect* the validly assessed tax has prescribed. **This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**" *(Emphases supplied)*

Applying *Hambrecht*, it is my view that this Court has jurisdiction over the present petition since petitioner questions the right of respondent to issue the subject WDL. Certainly, this issue falls under "other matters" arising under the NIRC or other laws administered by the BIR.

Section 222(c) of the 1997 NIRC, as amended, states that internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment. In **Bank of the Philippine Islands vs. Commissioner of Internal Revenue,**[11] the Supreme Court clarified:

"**When the BIR validly issues an assessment, within either the three-year or ten-year period**, whichever is appropriate, then the BIR has another three years [now five years] **after the assessment** within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. **The assessment of the tax is deemed made and the three-year period [now five-year period] for collection of the assessed tax begins to run on <u>the date the</u>**

[11] G.R. No. 139736, October 17, 2005.

> **assessment notice had been released, mailed or sent by the BIR to the taxpayer.**
>
> In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. FAS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. **Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989.** Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST." *(Emphases supplied)*

If there is no showing as to when the assessment was *released, mailed or sent* to the taxpayer by the BIR, the five-year period to collect shall be counted from the *date of receipt* of the assessment by the taxpayer.

Since it was not established when the FAN was released, mailed or sent by the BIR to petitioner, the five-year period to collect shall be counted from November 7, 2007, the date when petitioner received the FAN. Thus, the BIR had five (5) years from November 7, 2007 or until **November 7, 2012** within which to collect the deficiency taxes. The subject WDL, which was issued by the BIR on **January 6, 2011** and received by petitioner on the same date, was issued within the five-year prescriptive period to collect.

In *BPI*, the Supreme Court emphasized that **when an assessment is validly issued, within either the three-year or ten-year period**, the BIR is given a period of five (5) years within which to collect the tax assessed. Thus, the right of the BIR to collect shall extend to deficiency taxes which were validly assessed within the period provided under Section 203 and 222 of the 1997 NIRC, as amended, which state:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, **internal revenue taxes shall be assessed within three 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-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." *(Emphasis supplied)*

"**SEC 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 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**: 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.

xxx xxx xxx." *(Emphasis supplied)*

A perusal of the records reveals the following:

a) Petitioner filed its Annual Income Tax Return[12] (ITR) for taxable year ending 2004 on April 15, 2005;

b) Petitioner failed to present evidence to prove that it filed its Quarterly VAT Return for the first quarter of 2004; but petitioner presented evidence to prove that it filed its Quarterly VAT Returns for the second,[13] third[14] and fourth quarters[15] of 2004 on July 26, 2004, October 20, 2004 and January 25, 2005, respectively; and,

c) Petitioner failed to present evidence to establish that it filed DST Return in 2004.

In view of the foregoing, the subject FAN which was received by petitioner on **November 7, 2007**, assessing petitioner for deficiency income tax, VAT, DST and compromise penalty for the taxable year 2004 were issued within the three-year period and the ten-year period, as the case may be, except for the VAT assessment for the *second and third quarters of 2004, viz.*:

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[12] Exhibit R, *CTA Docket*, pp. 385 to 387.
[13] Exhibit V-2, *CTA Docket*, p. 402.
[14] Exhibit V-3, *CTA Docket*, p. 403.
[15] Exhibit V-4, *CTA Docket*, p. 404.

Return Filed (2004)	Date Filed	Last Day to File Return	Last Day to Assess	Date of Issuance of the FAN
Annual ITR	April 15, 2005	April 15, 2005	April 15, 2008	**November 7, 2007**
Quarterly VAT Return for the first quarter	-	-	Within ten (10) years from date of discovery (in the absence of evidence, the ten-year period shall be reckoned from August 3, 2005, the date of issuance of LOA No. 00045339; thus, the last day to assess is on August 3, 2015)	
Quarterly VAT Return for the second quarter	July 26, 2004*	July 26, 2004	**July 26, 2007**	
Quarterly VAT Return for the third quarter	October 20, 2004	October 25, 2004	**October 25, 2007**	
Quarterly VAT Return for the fourth quarter	January 25, 2005	January 25, 2005	January 25, 2008	
Documentary Stamp Tax	-	-	Within ten (10) years from date of discovery (in the absence of evidence, the ten-year period shall be reckoned from August 3, 2005, the date of issuance of LOA No. 00045339; thus, the last day to assess is on August 3, 2015)	

*July 25, 2004 fell on a Sunday

Considering the foregoing, in determining the total amount of deficiency taxes that respondent can collect from petitioner, I believe that the Court should take into consideration the effect of prescription on the BIR's right to assess petitioner for deficiency VAT for the second and third quarters of 2004. Since respondent's right to assess petitioner for deficiency VAT for the second and third quarters of 2004 has already prescribed, in my mind, respondent has no right to collect the same.

As can be gathered from the FAN issued by respondent against petitioner, the deficiency VAT assessment of ₱33,403,285.04 resulted from respondent's imposition of VAT on the following:

Undeclared income	₱ 206,260,123.85
Other income not subjected to VAT	6,666,859.00
Total	₱ 212,926,982.85

om

Undeclared Income - ₱206,260,123.85

After comparing the alleged sales declared by the suppliers of petitioner in their Summary List of Sales and the amount of purchases declared by petitioner in its VAT returns, respondent found a difference of ₱206,260,123.85 and inferred that the same represents petitioner's undeclared income for taxable year 2004, computed as follows:

Per Summary List of Sales submitted by suppliers	₱ 1,996,120,840.85
Purchases declared per petitioner's VAT returns	1,789,860,717.00
Undeclared income	₱ 206,260,123.85

A review of the Details of Taxpayer's Suppliers' Records[16] for LN No. 051-AS-04-00-00050 and Schedule of Purchases per Letter Notice less per VAT Return [17] reveals that the alleged undeclared income of ₱206,260,123.85 can be further broken down as follows:

2004	Exhibit	Purchases per Letter Notice	Exhibit	Purchases per VAT Return	Discrepancy
1st	B-6	₱ 458,895,466.80	E-4	₱ 456,619,647.00	₱ 2,275,819.80
2nd	B-7	501,346,868.50	E-4	422,463,270.00	78,883,598.50
3rd	B-8	546,907,611.76	E-4	445,962,630.00	100,944,981.76
4th	B-8	488,970,893.79	E-4	464,815,170.00	24,155,723.79
		₱ 1,996,120,840.85		**₱ 1,789,860,717.00**	**₱ 206,260,123.85**

Considering that respondent's right to assess petitioner of deficiency VAT for the second and third quarters of 2004 had already prescribed, the deficiency VAT assessment on the alleged undeclared income covering the second and third quarters of 2004 in the amount of ₱17,982,858.03, as computed below, shall accordingly be cancelled and withdrawn:

	2nd Quarter	3rd Quarter	Total
Purchases per Letter Notice	₱ 501,346,868.50	₱ 546,907,611.76	₱ 1,048,254,480.26
Purchases per VAT Return	422,463,270.00	445,962,630.00	868,425,900.00
Undeclared Income	₱ 78,883,598.50	₱ 100,944,981.76	₱ 179,828,580.26
Multiply by VAT rate	10%	10%	10%
Deficiency VAT	**₱ 7,888,359.85**	**₱ 10,094,498.18**	**₱ 17,982,858.03**

cm

[16] Exhibits B-1 to B-8, *CTA Docket*, pp. 338 to 345.
[17] Exhibit "E-4", *CTA Docket*, p. 352.

<u>Other Income not subjected to VAT - ₱6,666,859.00</u>

Respondent imposed 10% VAT on petitioner's Other income in the amount of ₱6,666,859.00 in view of petitioner's alleged failure to include the same as part of its gross sales/receipt subjected to VAT per its VAT Declaration/Returns, pursuant to Sections 105 and 106 of the 1997 NIRC, as amended, *viz.*:

Other Income	
Ancillary Income	₱ 4,305,629.00
Miscellaneous Income	2,361,230.00
Total Other Income	₱ 6,666,859.00

A perusal of petitioner's 2004 Annual ITR[18] shows that the Other Income of ₱6,666,859.00 formed part of petitioner's total gross income that was subjected to income tax.

As earlier stated, respondent's right to assess petitioner of deficiency VAT for the second and third quarters of 2004 had already prescribed. Petitioner was, however, unable to establish that the Other Income of ₱6,666,859.00 or a portion thereof pertained to the second and third quarters of 2004. In the absence of proof to the contrary, it is proper to consider the amount of ₱6,666,859.00 as pertaining to the first and fourth quarters of 2004. On the basis of the foregoing, I find that that the cancellation of the basic deficiency VAT assessment of ₱17,982,858.03 on the undeclared income of ₱179,828,580.26 for the second and third quarters of 2004 is warranted. Consequently, the WDL, in so far as it collects from petitioner the aforesaid basic deficiency VAT assessment of ₱17,982,858.03, should be cancelled and withdrawn.

On the other hand, in my mind, the FAN and the WDL should be affirmed insofar as they pertain to the deficiency income tax, VAT for the first and fourth quarters, DST and compromise penalty, all for taxable year 2004. Considering that said deficiency taxes were validly assessed by the BIR within the period provided under Section 203 and 222 of the 1997 NIRC, and that petitioner failed to file a valid protest within the period prescribed under Section 228 of the 1997 NIRC, as amended, the BIR has the right to collect the same, as the FAN has become final, executory and demandable.

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review. The Formal Assessment Notice dated October 24, 2007 as well as the

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[18] Line 17C, Exhibit R, *CTA Docket*, pp. 385 to 387.

Warrant of Distraint and Levy No. 2011-001 dated January 6, 2011, issued by respondent against petitioner, covering deficiency income tax, VAT, DST and compromise penalty, for taxable year 2004, should be **AFFIRMED** except for the basic deficiency VAT assessment of ₱17,982,858.03 on the undeclared income of ₱179,828,580.26 for the second and third quarters of 2004 which should be **CANCELLED** and **WITHDRAWN**.

Accordingly, petitioner should be **ORDERED** to **PAY** respondent in the total amount of ₱90,505,158.92 inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Income Tax	₱ 65,934,286.87	₱ 16,483,571.72	₱ 82,417,858.59
Value-Added Tax	3,309,840.26[19]	827,460.07	4,137,300.33
Documentary stamp tax	3,140,000.00	785,000.00	3,925,000.00
Compromise penalty	25,000.00	-	25,000.00
Total	**₱ 72,409,127.13**	**₱ 18,096,031.78**	**₱ 90,505,158.92**

In addition, petitioner should be held liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱65,934,286.87, value-added tax of ₱3,309,840.26 and documentary stamp tax of ₱3,140,000.00 computed from April 15, 2005, January 25, 2005 and January 5, 2005, respectively, until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱90,505,158.92, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 24, 2007 until full payment thereof pursuant to Section 249 (C) of the 1997 NIRC.

ROMAN G. DEL ROSARIO
Presiding Justice

[19] ₱21,292,698.29 less ₱17,982,858.03