REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 485
(C.T.A. Case No. 7327)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

AEI INVESTMENTS, INC. (formerly PRISMA ENERGY PHILIPPINES CORP.),
Respondent.

Promulgated:
SEP 28 2009

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D E C I S I O N

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended

[1] *Rollo*, C.T.A. EB No. 485 (C.T.A. Case No. 7327), pp. 7 – 57, with Annexes.

by Republic Act Nos. 9282, and Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision[2] dated July 25, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7327, which partially granted herein respondent's Petition for Review and ordered herein petitioner to cancel and withdraw the deficiency tax assessments he issued against respondent in the aggregate amount of ₱4,928,841.77; and
2. the Resolution of the Court in Division promulgated on March 30, 2009, which denied petitioner's Motion for Partial Reconsideration for lack of merit.

Antecedent Facts

The background facts are succinctly recited in the Decision subject of the review as follows:

> Petitioner[3] is a corporation duly organized and existing under and by virtue of Philippine laws, with office address at the 3rd Floor Corinthian Plaza Building, Paseo de Roxas, Legaspi Village, Makati City.
>
> Respondent,[4] on the other hand, is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refund of internal revenue taxes, fees or other charge, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.
>
> The Task Force Independent Power Producers of the BIR conducted a tax examination of petitioner for taxable years 2000 and 2001 pursuant to Letter of Authority No. 00065327 dated October 18, 2002.
>
> On September 8, 2004, respondent issued Final Assessment Notices (FANs) and Formal Letters of Demand finding petitioner liable for deficiency income, expanded withholding, value-added, fringe benefit and documentary stamp taxes for taxable years 2000 and 2001. On

[2] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca Enriquez, concurring.
[3] Herein respondent.
[4] Herein petitioner.

November 26, 2004, petitioner protested the alleged deficiency tax assessments contained in the said FANs. The protest was received by respondent on December 3, 2004.

On July 29, 2005, respondent issued the Final Decision on Disputed Assessment holding petitioner liable for the following alleged deficiency taxes for taxable years 2000 and 2001 in the aggregate amount of P19,687,886.01:

Tax Type	Basic	Penalties	Total
Year 2000			
Income Tax	P 670,961.95	P 721,686.68	P 1,392,648.63
VAT	344,445.21	316,510.71	660,955.92
EWT	7,657.85	7,029.91	14,687.76
FBT	81,072.31	74,424.38	155,496.69
DST	3,635,264.70	3,393,883.12	7,029,147.82
Sub-total	P 4,739,402.02	P 4,513,534.80	P 9,252,936.82
Year 2001			
Income Tax	P 622,835.30	P 419,728.71	P 1,042,564.01
VAT	1,408,472.38	1,026,635.52	2,435,107.90
EWT	11,054.47	8,149.36	19,203.83
FBT	1,097,839.48	1,052,608.49	2,150,447.97
DST	2,761,666.75	2,025,958.73	4,787,625.48
Sub-total	P 5,901,868.38	P 4,533,080.81	P10,434,949.19
GRAND TOTAL	P10,641,270.40	P 9,046,615.61	**P19,687,886.01**

On August 31, 2005 and September 26, 2005, however, petitioner paid the following taxes out of the total assessments of P19,687,886.01:

Year 2000	Basic	Penalties	Total
Income tax	P 670,961.95	P 721,686.68	P 1,392,648.63
VAT	269,469.33	253,899.99	523,369.32
EWT	7,657.85	7,029.91	14,687.76
FBT	12,951.31	12,203.01	25,154.32
DST	3,635,264.70	3,393,883.12	7,029,147.82
Sub-total	P 4,596,305.14	P 4,388,702.71	P 8,985,007.85

Year 2001	Basic	Penalties	Total
Income tax	P 357,961.38	P 246,794.49	P 604,755.87
VAT	82,199.23	61,010.09	143,209.32
EWT	11,054.47	8,149.36	19,203.83
FBT	125,840.37	93,401.52	219,241.89
DST	2,761,666.75	2,025,958.73	4,787,625.48
Sub-total	P 3,338,722.20	P 2,435,314.19	P 5,774,036.39
TOTAL	P 7,935,027.34	P 6,824,016.90	**P14,759,044.24**

Hence, petitioner filed the instant Petition for Review before this Court disputing the alleged deficiency assessments for income tax, value-added tax (VAT) and fringe benefit tax (FBT) for taxable years 2000 and 2001, in the total amount of P4,928,841.77, broken down as follows:

Year 2000	**Basic**	**Penalties**	**Total**
VAT	P 74,975.88	P 62,610.72	P 137,586.60
FBT	68,121.00	62,221.37	130,342.37
Sub-total	P 143,096.88	P 124,832.09	P 267,928.97

Year 2001	**Basic**	**Penalties**	**Total**
Income Tax	P 264,873.92	P 172,934.22	P 437,808.14
VAT	1,326,273.15	965,625.43	2,291,898.58
FBT	971,999.11	959,206.97	1,931,206.08
Sub-total	P 2,563,146.18	P 2,097,766.62	P 4,660,912.80
TOTAL	P 2,706,243.06	P 2,222,598.71	**P 4,928,841.77**

The total VAT paid by petitioner for taxable year 2001 is P1,619,131.68, as appearing in its monthly and quarterly VAT returns and as certified by the Revenue Accounting Division of the BIR, and not just P439,475.36.

Respondent filed an Answer on November 9, 2005 raising Special and Affirmative Defenses, to wit:

> "7. The assessments have already become final, executory and unappealable due to the failure of the Petitioner to submit all relevant documents in support of its protest within sixty (60) days from filing its protest pursuant to the provisions of Section 228 of the NIRC of 1997 and Section 3.1.5 of Revenue Regulations No. 12-99, 'Implementing the Provisions of the National Internal Revenue Code of 1997 Governing 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', dated September 6, 1999, to wit:
>
> xxx xxx xxx

During trial, only petitioner presented testimonial and documentary evidence. As directed in the Resolution dated July 4, 2007 and the Order dated August 2, 2007, petitioner filed its Memorandum on August 28, 2007 while respondent failed to do so despite notice. Thus, this case was submitted for Decision on September 4, 2007.

Subsequently, petitioner filed a Manifestation (With Motion for Amendment of Caption) seeking for the revision of the caption of this case pursuant to the change of its corporate name from "Prisma Energy Philippines Corp." to "AEI Investments, Inc." This was duly noted by the Court and it ordered the amendment of the caption of this case in a Minute Resolution dated September 26, 2007.

Petitioner then filed its "Urgent Motion (To Suspend Collection of Tax)" and its "Manifestation (With Supplemental Motion To Suspend Collection of Tax)" on January 21, 2008 and February 13, 2008, respectively. Without respondent's comment, the Court granted the same in a Resolution dated February 27, 2008, and correspondingly ordered petitioner to submit various documents attached to the required bond, in accordance with Rule 10 of the Revised Rules of the Court of Tax Appeals, and A.M. 04-7-02-SC. On April 18, 2008, petitioner filed its Compliance thereto, submitting its Surety Bond numbered 200801005 issued by Malayan Insurance Company, Inc. covering the amount of P9,857,683.54, attaching therewith pertinent documents.

However, in a Resolution dated May 20, 2008, the Court further required petitioner to submit a duly certified true copy of the Certificate of Accreditation and Authority by the Office of the Court Administrator; and at the same time ordered petitioner to present the original copy of the Certificate of Accreditation and Authority (With Photos of the Authorized Agent of the Bonding Company). Consequently, petitioner filed on June 5, 2008 its Compliance thereto attaching pertinent documents. Accordingly, the Court noted said compliance and approved the surety bond in a Resolution dated June 25, 2008.[5]

The Ruling of the Court in Division

The following issues were submitted by the parties for resolution by the Court in Division:

1. Whether or not the assessment has become final due to the failure of the Petitioner[6] to submit all relevant documents in support of its protest;

2. Whether or not Petitioner has paid the amount of P14,759,044.24 representing deficiency documentary stamp tax, expanded withholding tax, income tax, VAT and FBT, as stated in Respondent's[7] Final Decision;

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[5] *Rollo*, pp. 31 – 36, citations omitted.
[6] Herein respondent.
[7] Herein petitioner.

3. Whether or not the leased vehicle amortization expenses of the Petitioner for taxable year 2001 are valid deductible expenses of the Petitioner for income tax purposes;

4. Whether or not the P141,808.00 corresponding to a car loan of an employee of Petitioner should be made part of Petitioner's taxable income for taxable year 2001;

5. Whether or not Respondent committed an error in the computation of the alleged deficiency VAT for taxable year 2000;

6. Whether or not Respondent erred in disallowing as input VAT for taxable year 2000 the amount of P35,950.91 representing the full amount paid to Bon Gavino on officer uniforms;

7. Whether or not Petitioner is liable to pay for deficiency VAT on the alleged sale of equipment and furniture in 2001;

8. Whether or not the amounts of P144,757.12 and P2,062,620.00 representing the performance bonuses of Mr. Miguel T. Gaffud, Jr., for 2000 and 2001, respectively, are still subject to FBT;

9. Whether or not there is basis to impose penalties on the basic income tax, VAT and FBT assessments issued by Respondent against the Petitioner.

On the first issue, the Court in Division ruled that the assessments did not attain finality since herein respondent submitted several relevant documents to the BIR as testified to by Mr. Wilfredo C. Luna.

On the second issue, the Court in Division found that respondent indeed paid ₱14,759,044.24 representing deficiency documentary stamp tax, expanded withholding tax, income tax, VAT and FBT as proven by the Certifications dated January 30, 2006 and January 31, 2006 issued by petitioner confirming the receipt of such payments.

With regard to the remaining issues, the Court in Division disposed of them as follows:

I. Deficiency Income Tax (Year 2001 only)

The remaining deficiency income tax assessment of ₱437,808.14 covered taxable year 2001 and arose from the disallowance of two expense items, namely: (1) leased vehicle and fuel in the amount of ₱685,923.00; and (2) expense under Accounts Payable in the amount of ₱141,808.14.

According to the Court in Division, the amount of ₱685,923.00 was a valid deduction against respondent's taxable gross income pursuant to Section 34(A)(1)(b) and (K) of the 1997 NIRC since the leased vehicle was already subjected to FBT. As to the expense under Accounts Payable, it found that while the amount of ₱141,808.00 was recorded under respondent's Accounts Payable, respondent did not claim that amount as an expense.

II. Deficiency Value-Added Tax

Year 2000

For the year 2000, the disallowed input VAT included the amount of ₱74,975.88 which consisted of the following:

Item	Amount
Disallowed input VAT taken up twice	₱ 42,620.06
Whole invoice amount is disallowed	32,355.82
TOTAL	₱ 74,975.88

With respect to the first disallowance, the Court in Division found that based on Annex "1-A" of the Final Assessment Notice for the taxable year 2000, certain items were indeed taken up twice.

As to the second disallowance, the Court in Division agreed with respondent that petitioner should have disallowed only the input VAT of ₱3,595.09 and not the entire invoice amount of ₱35,950.91. Thus, respondent should not be held liable for deficiency VAT in the amount of ₱32,355.82 which is the difference between the invoice amount of ₱35,950.91 and the input VAT of ₱3,595.09.

Year 2001

The disputed assessment for the deficiency basic VAT of ₱1,326,273.15 comprised the following: (a) imputed 10% VAT of ₱146,616.83 on the alleged sale of depreciable assets of ₱1,466,168.30; and (b) disallowed VAT payments of ₱1,179,656.32.

A. Sale of Depreciable Assets

Petitioner assessed deficiency VAT on the alleged sale of depreciable assets when the trial balance showed credits to the Property and Equipment account of respondent in the total amount of ₱1,466,168.30.

Since it was established that the amount of ₱1,466,168.30 credited to respondent's Property and Equipment account pertains to depreciation charges for the year 2001, and not to a sale of depreciable assets as alleged by petitioner, the Court in Division ruled that no deficiency VAT should be assessed thereon.

B. Disallowed VAT Payments

Out of respondent's reported VAT payments of ₱1,619,131.68 for the year 2001, petitioner recognized only the amount of ₱439,475.36 and disallowed the remaining amount of ₱1,179,656.32.

However, when the Court in Division examined respondent's Monthly VAT Declarations and Quarterly VAT Returns filed for the year 2001, it found that respondent's actual VAT payments amounted to ₱1,619,131.68. It also noted that petitioner admitted in the Joint Stipulation of Facts and Issues the fact of payment of the VAT amount of ₱1,619,131.68. Thus, it ruled that petitioner erroneously disallowed respondent's VAT payments of ₱1,179,656.32.

III. Deficiency Fringe Benefits Tax (Years 2000 and 2001)

Petitioner's assessment for deficiency FBT included the following:

	2000	2001
Additional bonus to Mr. Gaffud	₱ 144,757.12	₱ 2,062,620.00
Divided by	68%	68%
Grossed-up value	₱ 212,878.12	₱ 3,033,264.71
Tax rate	32%	32%
Fringe benefits tax	₱ 68,121.00	₱ 970,644.71

The Court in Division found that the additional bonus was for respondent's then president, Mr. Miguel T. Gaffud, Jr., and was actually ₱212,992.00 which was subjected to withholding tax on compensation at 32% (or ₱68,157.44) and that the net amount received by Mr. Gaffud was ₱144,834.56, not ₱144,757.12. It also found that a summary of Mr. Gaffud's salary for the year 2000 showed a total gross taxable income of ₱7,310,481.84 which included the ₱212,992.00 bonus. From the total gross taxable income, ₱2,291,554.19 in taxes were withheld and remitted.

According to the Court in Division, while respondent correctly excluded Mr. Gaffud's bonus of ₱2,062,620.00 in computing for the FBT due on fringe benefits given to its employees for the year 2001, respondent is still liable for a basic deficiency FBT in the amount of ₱1,354.82. The basic deficiency FBT of ₱1,354.82 arose from a mathematical error made by respondent in adding all the fringe benefits subject to FBT. Respondent's computation of total fringe benefits subject to FBT amounted to ₱1,451,521.40, instead of ₱1,454,400.40. Such error resulted in respondent's underpayment of FBT for the year 2001 in the amount of ₱1,354.82. The Court in Division then held that respondent is still liable to pay deficiency FBT for the year 2001 in the amount of ₱2,653.82 (inclusive of interest pursuant to Section 249 of the NIRC of 1997), computed as follows:

Deficiency FBT	₱ 1,354.82
Add: Interest as of 8-30-05 (95.88%)	1,299.00
Total amount still due on deficiency FBT	**₱ 2,653.82**

Thus, the Court in Division disposed of the case in this wise:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the deficiency tax assessments in the aggregate amount of P4,928,841.77 are hereby **CANCELLED and WITHDRAWN.** However, petitioner[8] is **ORDERED to PAY** the respondent[9] the reduced amount of P2,653.82, representing deficiency fringe benefit tax for taxable year 2001.
>
> **SO ORDERED.**

On August 15, 2008, petitioner filed a "Motion for Partial Reconsideration."[10]

Onn September 26, 2008, respondent filed its "Opposition"[11] to which petitioner filed his "Reply."[12] On December 23, 2008, respondent filed a "Rejoinder."[13]

On March 30, 2009, the Court in Division denied the "Motion for Partial Reconsideration" for lack of merit.[14]

The Issues

Hence, the instant Petition for Review where petitioner alleges that:

> The Honorable Court erred in finding that assessments have not become final for the failure of respondent to submit relevant documents in support of its protest.

[8] Herein respondent.
[9] Herein petitioner.
[10] *Records*, C.T.A. Case No. 7327, pp. 1176 – 1191.
[11] *Id.*, at pp. 1195 – 1213.
[12] *Id.*, at pp. 1235 – 1244.
[13] *Id.*, at pp. 1245 – 1248.
[14] *Rollo*, pp. 50 – 54.

> The Honorable Court has no jurisdiction over the instant case because respondent's right to file a petition for review is already barred by prescription.
>
> The Honorable Court erred in not finding respondent liable for deficiency documentary stamp tax, expanded withholding tax, income tax, VAT and FBT.

Petitioner's Arguments

Petitioner contends that the subject assessments have become final, executory and unappealable due to respondent's failure to submit all relevant documents in support of its protest within sixty (60) days from the filing of its protest pursuant to the provisions of Section 228 of the 1997 NIRC and Section 3.1.5 of Revenue Regulations No. 12-99 ("RR 12-99"). He alleges that the exhibits formally offered by respondent, particularly Exhibits "C" and "LL" - "VV" were all filed by respondent prior to the filing of its administrative protest.

Petitioner also avers that respondent failed to file its petition for review within thirty (30) days after the expiration of the one hundred eighty (180) - day period prescribed under Section 228 of the 1997 NIRC. Respondent filed its protest on December 3, 2004 but failed to submit relevant supporting documents within sixty (60) days. Thus, the 180-day period given to petitioner to decide the protest commenced on December 3, 2004 and lapsed on June 1, 2005. From the latter date, respondent had 30 days or until July 1, 2005 to file its petition for review with this Court. Respondent thus belatedly filed its petition on September 26, 2005, thereby depriving this Court of its jurisdiction to hear the same.

Lastly, petitioner insists that respondent should be held liable for deficiency income tax since the disallowances made by petitioner were due to substantiation issues *i.e. supporting documents do not show respondent as payee or payor*. It should also be held liable for deficiency VAT and EWT since it failed to dispute the assessments arising from additional output tax on the sale of office equipment for year 2001, disallowed input tax and from payment to Genesys Conferencing Pte. Ltd. It should likewise be held liable for deficiency FBT on meals, regular gasoline/maintenance of officer's vehicles since supporting documents do not show that respondent is the payee, and on credit card membership fees used for entertainment of clients since the use of such cards is not justified considering that respondent is a mere holding company. It should further be held liable for deficiency DST on debits to notes receivables for foreign-currency denominated loans.

Respondent's Counter-arguments

For its part, respondent asseverates that based on the records, it submitted additional documents in support of its protest. Hence, the assessments did not become final.

Respondent likewise posits that it seasonably filed its petition for review with this Court on September 26, 2005[15] which is thirty (30) days from August 26, 2005, the date it received the decision of petitioner on its protest.

Finally, respondent maintains that petitioner's deficiency assessments are without factual and legal basis.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The assessments did not attain finality

Petitioner protested the subject assessments pursuant to Section 228 of the 1997 NIRC as amended, which provides:

[15] The 30th day fell on September 25, 2005 which was a Sunday.

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: Provided, however, That a preassessment notice shall not be required in the following cases:

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.

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 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.**

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

Corollary thereto, RR 12-99, which implements the afore-quoted provision, reads:

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

3.1.5 **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. xxx

xxx xxx xxx

> **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.
>
> **If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.**
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> **If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period**, otherwise, the assessment shall become final, executory and demandable. *(Boldfacing supplied)*

Section 228 of the 1997 NIRC as implemented by RR 12-99, prescribes the remedy to dispute a tax assessment within a certain period of time. It provides that an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer.

Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

In the case at bench, petitioner issued to respondent Final Assessment Notices and Formal Letters of Demand, all dated September 8, 2004, for deficiency income, expanded withholding, value-added, fringe benefit and documentary stamp taxes for taxable years 2000 and 2001 in the aggregate amount of ₱19,687,886.01.[16] The said Notices and Letters were received by respondent on November 3, 2004. It is undisputed that respondent timely filed its protest on December 3, 2004.[17] In the protest, respondent requested for the cancellation of the said deficiency assessments.

The bone of contention is whether respondent filed supporting documents within the aforementioned 60-day period counted from December 3, 2004. According to the Court in Division, it did and We agree.

According to the Supreme Court, the term "relevant supporting documents" refer to 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.[18]

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[16] *Records*, pp. 648 – 720.
[17] *Id.*, pp. 366 – 386, *Exhibit "C"*.
[18] Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46, June 16, 2009.

A review of the records of this case reveals that respondent filed with the BIR on February 1, 2005, a letter[19] which states that respondent attached a copy of BIR Ruling DA088-04 dated March 1, 2004 which supports respondent's view that its transportation, gasoline and vehicle maintenance allowances should not be subjected to FBT under Revenue Regulations No. 3-98 as the same forms part of the employees' benefits included in their compensation income, which have been subjected to the proper withholding tax on compensation. We find that the said letter qualifies as a relevant supporting document of respondent's protest. And since it was filed within 60 days from December 3, 2004, the subject assessments did not become final.

It is also well to note that petitioner himself stated that respondent submitted supporting documents when he wrote in his Final Decision that:

> Inasmuch as **we have already considered your arguments and other supporting documents presented after the Final Assessment Notice**, it is requested that your aforesaid deficiency liabilities be paid immediately upon receipt, inclusive of penalties incident to delinquency. This is our final decision.[20]

The Petition for Review was timely filed

We reject petitioner's view that since respondent failed to file its petition for review within 30 days after the expiration of the 180-day period under Section 228 of the 1997 NIRC, this Court has no jurisdiction over this case.

The law is clear. In case the Commissioner failed to act on the disputed assessment within the 180-day period from the date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within

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[19] *Records*, p. 889, *Exhibit "WW"*.
[20] *Id.*, p. 351, *Exhibit "A"*.

30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. It bears stressing that the Supreme Court has ruled that these options under Section 228 of the 1997 NIRC as implemented by RR 12-99, are mutually exclusive, and resort to one bars the application of the other.[21]

Here, respondent chose the second option. Records show that petitioner's Final Decision[22] dated July 29, 2005 was received by respondent, through its counsel, on August 26, 2005.[23] Respondent had 30 days from August 26, 2005 or until September 25, 2005 to lodge its appeal with this Court. Its Petition for Review filed with the Court in Division on September 26, 2005 was thus seasonably filed considering that September 25, 2005 fell on a Sunday. Irrefragably, this Court has jurisdiction over this case.

Respondent is liable only for deficiency FBT

In general, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[24]

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and

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[21] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007, 522 SCRA 152.
[22] *Records*, pp. 341 – 362, *Exhibit "A"*.
[23] *Id.*, pp. 942 – 943, *Exhibit "EEE"*.
[24] Sy Po v. Court of Appeals, G.R. No. L-81446, 18 August 1988, 164 SCRA 524, 530, citations omitted.

capricious.[25] In other words, for the presumption to apply, such assessment must be based on sufficient evidence. This does not preclude, however, a taxpayer (like respondent) from presenting contrary evidence to refute this rebuttable presumption. Therefore, the determination by this Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

After reviewing the records of this case, We find that respondent satisfactorily proved, through documentary evidence (Exhibits "A" to "FFF-1"), and testimonial evidence (respondent's Head Office Controller, Mr. Wilfredo C. Luna and its Treasurer and Group Director for Finance, Ms. Wilma S. Mendiola), that petitioner's tax assessments amounting to ₱4,928,841.77 have no basis. And petitioner failed to adduce any supporting evidence to contradict respondent's refutation. Without supporting evidence on hand and in the face of substantial evidence presented by respondent, reliance on the presumption of correctness of tax assessment is improper.

In fine, We agree with the factual findings of the Court in Division that respondent is liable to pay only deficiency FBT for the year 2001 in the sum of ₱2,653.82. The Court in Division, in its Decision dated July 25, 2008, was able to discuss in full the basis for the cancellation of deficiency tax assessments in the aggregate amount of ₱4,928,841.77 as well as the imposition of the deficiency FBT in the sum of ₱2,653.82.

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[25] Commissioner of Internal Revenue v. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005, 454 SCRA 301.

WHEREFORE, the petition is **DISMISSED.** Accordingly, the impugned Decision dated July 25, 2008 and the Resolution promulgated on March 30, 2009, of the Court in Division in C.T.A. Case No. 7327 are **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice