**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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|---|---|
| **AXEIA DEVELOPMENT CORPORATION** | **CTA CASE NO. 9816** |
| *Petitioner,* | Members: CASTAÑEDA, JR., Chairperson, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.* |
| -versus- | |
| **COMMISSIONER OF INTERNAL REVENUE** *Respondent.* | Promulgated: SEP 16 2019 3:20 p.m. |

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# DECISION

***MINDARO-GRULLA, J.:***

Submitted for decision on April 4, 2019 is a Petition for Review,[1] filed by petitioner Axeia Development Corporation ("Axeia") on April 16, 2018, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125,[3] as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] *Docket*, pp. 10-38.
[2] Sec. 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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[3] Act Creating the Court of Tax Appeals.
[4] Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of

Petitioner is a corporation duly organized and existing under the laws of the Philippines and with principal address at Bock 4, Lot 87, Phase 1B, Alta Tierra Homes, Aldiano Olaes, G.M.A., 4117-Cavite, duly registered with the Bureau of Internal Revenue with Tax Identificaiton No. 000-436-566, particularly with revenue District Office No. 054A, Trece Martires, Cavite.[6]

Respondent, through the Revenue District Officer, Consuelo O. De Asis, Revenue District Office No. 054A, with office address at BIR Building, Trece Mortirez, Cavite, is a government agency, with various Revenue District Offices, headed by its Commissioner, with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.

Sometime in July 2017, petitioner received the Letter of Authority (LOA)[7] dated July 6, 2017 issued by Regional Director, Region 9A-CABAMIRO, Romulo L. Aguila, Jr., covering the taxable period January 1, 2014 to December 31, 2014.

In response to the LOA, on July 25, 2017, petitioner through its Chief Accountant, Armizo Enoc, served the letter compliance,[8] furnishing copies of the documents required to be submitted, and the same was received by Cristina V. Igarta, Revenue Officer authorized to examine the same, on July 26, 2017.

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internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[5] Sec. 4. Where to appeal; mode of appeal.-

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Exhibit "P-1", *Docket,* p. 265.
[7] Exhibit "P-4", *Docket,* p. 331.
[8] Exhibit "P-5", *Docket,* p. 333.

Having submitted the documents required by the respondent as contained in the LOA, petitioner through its Chief Accountant, Armizo Enoc, coordinated with respondent, through the Regional Director, Romulo L. Aguilo, Jr.[9] and the Revenue Officer on the status of the case.

On October 18, 2017, petitioner received an electronic mail,[10] from the Revenue Officer, Cristina V. Igarta, simply stating: "Hi, Please refer to enclosed. Thank you." Attached to the email above mentioned are the various payment forms[11] containing the tax deficiency assessment for various taxes including a document[12] signed by the Mayeth C. Roda and Cristina V. Igarta, Group Supervisor and Revenue Officer, respectively of RDO 054A, Trece Martires, Cavite, detailing the basis for the tax deficiency as follows:

| | Amount Due |
|---|---|
| Income Tax (IT) | ₱ 3,884,583.72 |
| Value-Added Tax (VAT) | 5,446,888.02 |
| Expanded Withholding Tax (EWT) | 493,578.30 |
| Documentary Stamp Tax (DST) | 418,747.42 |
| Total Deficiency Taxes Inclusive of Increments | 10,263,797.45 |

In response thereto, On October 26, 2017, petitioner paid[13] the assessment, however, paying under protest the income tax deficiency of ₱3,884,583.72.

On October 27, 2017, petitioner served a letter[14] and protest on the assessment for income taxes by reason of the disallowance of interest expense for failure of petitioner to withhold the necessary taxes in payment thereof.

Notwithstanding receipt of the protest letter, no action was taken by respondent.

On April 16, 2018, petitioner filed its Petition for Review.

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[9] Exhibits "P-5-a" to "P-5-c", *Docket*, pp. 334-336.
[10] Exhibits "P-6" and "P-6a", *Docket*, pp. 337-338.
[11] Exhibits "P-6-b" to "P-6-e", *Docket*, pp. 339-342.
[12] Exhibit "P-6-f", *Docket*, pp. 343-344.
[13] Exhibits "P-7" to "P-7-c", *Docket*, pp. 345-352.
[14] Exhibits "P-8" to "P-8-a", *Docket*, pp. 353-354.

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On July 19, 2018, an Answer[15] was filed by the CIR. Both parties' Pre-Trial Briefs[16] were filed on August 24, 2018.

The parties filed their Joint Stipulation of Facts[17] on September 19, 2018.

On November 5, 2018, petitioner filed its Formal Offer of Evidence[18] offering Exhibits "P-1" and "P-1-a", "P-2" to "P-2-j" and its submarkings, "P-3" to "P-3-g" and its submarkings, "P-4" to "P-4-a", "P-5" to "P-5-c", "P-6" to "P-6-f" and its submarkings, "P-7" to "P-7-c", "P-8" to "P-8-a", and "P-9" as its documentary evidence. The CIR filed his Comment[19] thereto on November 9, 2018, raising no objections as to the admission of the exhibits.

In a Resolution[20] dated November 2, 2017, the Court admitted Exhibits "P-3" to "P-3-g" and its submarkings, "P-4" to "P-4-a", "P-5" to "P-5-c", "P-6" to "P-6-f" and its submarkings, "P-7" to "P-7-c", "P-8" to "P-8-a", and "P-9" but denied the admission of Exhibits "P-1" and "P-1-a", "P-2" to "P-2-j" and its submarkings for failure to present the originals for comparison.

Petitioner's documentary exhibits are as follows:

| **Exhibit:** | **Description:** |
|---|---|
| **P-3 to P-3-g and its submarkings** | Financial Statements December 31, 2014, namely: Statements of Financial Position, Statements of Income, Statements of Comprehensive Income, Statements of Cash Flows, Notes to Financial Statements consisting of 45 pages. Independent Auditor's Report dated March 20, 2015 consisting of 2 pages. |
| **P-4** | Letter of Authority No. LOA-54A-2017-0000026 dated July 6, 2017. |
| **P-4-a** | Checklist of Requirements. |
| **P-5** | Letter dated July 25, 2017. |

[15] *Docket*, pp. 152-161.
[16] *Ibid.*, pp. 170-180, 231-235.
[17] *Ibid.*, pp. 238-242.
[18] *Docket*, pp. 258-264.
[19] *Ibid*, pp. 363-366.
[20] *Ibid*, pp. 275-276.

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|---|---|
| **P-5-a** | Letter dated August 17, 2017 |
| **P-5-b** | Letter dated August 22, 2017 |
| **P5-c** | Letter dated August 29, 2017 |
| **P-6 to P-6-f and its submarkings** | Print out of electronic mail dated October 18, 2017 together with its attachments namely: Payment Forms and Tax Deficiency Assessment its Factual and Legal Basis. |
| **P-7 to P-7-c** | Print out of "BIR eFPS has received the payment confirmation for your tax return from SBTC". |
| **P-8 and P-8-a** | Letter dated October 27, 2017 (2 pages) |
| **P-9** | Updated Certificate of Registration dated September 21, 2018 |

The CIR, through counsel, verbally offered Exhibits "R-1", "R-1-A", "R-1-B", "R-2", "R-3" and "R-4".[21] There being no objections from petitioner's counsel, Exhibits "R-1", "R-1-A", "R-1-B", "R-2", "R-3" and "R-4" were all admitted.[22]

Respondent's documentary exhibits are as follows:

| Exhibit: | Description: |
|---|---|
| **R-1** | Notice of Informal Conference signed by RDO Consuelo O. De Asis on October 18, 2017 |
| **R-1-a** | Audit Sheet |
| **R-1-b** | Payment Forms 0605 |
| **R-2** | Petitioner's Letter dated October 27, 2017 |
| **R-3** | Payment Forms (BIR Form 0605) with Payment Confirmations attached to petitioner's letter dated October 27, 2017 |
| **R-4** | Letter of Authority LOA 54A-2017-00000026/SN: eLA20150062512 dated July 6, 2017 |

The Memorandum[23] for petitioner was filed on March 6, 2019, while the Memorandum[24] for the CIR was filed on April 1, 2019. Hence, the case was declared submitted for decision on April 4, 2019.[25]

The Court shall determine first whether it has jurisdiction to entertain the instant case. Thus:

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[21] *Order* dated February 4, 2019, *Docket*, p. 386.
[22] *Ibid.*
[23] *Docket,* pp. 393-404.
[24] *Ibid.,* pp. 405-414.
[25] *Ibid.,* p. 415.

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> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits"[26]

Considering that this Court is a court of special jurisdiction, it can only take cognizance of matters which are clearly within its jurisdiction. Section 7(a)(1) and (2) of R.A. No. 1125, as amended by R.A. Nos. 9282[27] and 9503[28] provides:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving

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[26] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666,February 4, 2015, further citations omitted.

[27] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, And For Other Purposes

[28] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for other Purposes.

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<u>disputed assessments</u>, <u>refunds of internal revenue taxes,</u> fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

xxx xxx xxx" (Underlining supplied.)

In relation thereto, Section 3, Rule 4 and Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals state:

"RULE 4

Jurisdiction of the Court

xxx xxx xxx

SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. - The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) <u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes</u>, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, xxx;

xxx xxx xxx

RULE 8

Procedure in Civil Cases

xxx xxx xxx

> SECTION 3. Who May Appeal; Period to File Petition. - (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, xxx may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." (Underlinings supplied.)

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the manner to protest an assessment, to wit:

> "*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,*

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*however*, that a preassessment notice shall not be required in the following cases:

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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 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 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."

Based on the above provision, decisions as well as the inaction by the CIR in cases involving disputed assessments or refund of internal revenue taxes are necessary in order to vest this Court with jurisdiction to entertain the appeal.[29]

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[29] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24,2007.

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In the case of *Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al.*,[30] the Supreme Court held that "an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments." The Final Arbiter emphasized that an "assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period."[31] Therefore, an assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof.[32]

The document attached to the electronic mail sent by Revenue District Officer Cristina V. Igarta reads as follows:

| | | | | | ***FACTUAL BASIS*** | ***LEGAL BASIS*** |
|---|---|---|---|---|---|---|
| **I. INCOME TAX** | | | | | | |
| | Net Taxable Income per Annual ITR filed | | 51,706,864.00 | | | |
| | Add: Discrepancies per investigation | | | | | |
| | 1. Disallowed expenses due to non-substantiation ***(Figure 1)*** | 1,273,238.40 | | | Books of accounts, schedules and Returns filed | SEC 34(A)(1)(b) and SEC 34(k) of the NIRC. RR12-2013 |
| | 2. Disallowed interest expense due to non-withholding ***(Figure 3)*** | 7,253,149.00 | 8,526,387.40 | | | |
| | Adjusted taxable income | | 60,233,251.40 | | | |
| | Multiply by: Tax Rate | | 30% | | | |
| | Adjusted Income Tax Due | | 18,069,975.42 | | | |
| | Less: Income Tax Payments/Credits | | | | | |
| | Tax Paid | 930,196.00 | | | | |
| | Tax credits | 14,581,862.80 | 15,512,058.80 | | | |
| | **Deficiency Income Tax** | | **2,557,916.62** | | | |
| | Add: Interest Income from 4-16-2015 to 10-20-2017 | 1,286,667.10 | | | | |
| | Compromise | 40,000.00 | 1,326,667.10 | | | |
| | **Total Amount Due** | | **3,884,583.72** | | | |
| **II. VALUE ADDED TAX** | | | | | | |
| | Gross vatable sales per vat declaration | | 2,981,075.30 | | | |
| | Add: Discrepancy per investigation | | | | | |
| | 1. interest income from installment contract receivables | 21,800,500.34 | | | Books of accounts; vat declarations; Schedules | Sec. 3 of RR 4-2007; RR 3-2012 |
| | 2. rental income | 1,099,967.29 | | | | |
| | 3. Other miscellaneous income ***(Figure 2)*** | 5,850,438.74 | 28,750,906.37 | | | |
| | Adjusted Taxable sales | | 31,731,981.67 | | | |
| | Adjusted output tax due | | 3,807,837.80 | | | |
| | Less: Creditable input tax | | | | | |
| | Input tax carry-over form previous year | 1,246,418.88 | | | | |
| | Claimed per return filed | | 1,246,418.88 | | | |
| | Adjusted value-added tax payable | | 2,561,418.92 | | | |
| | Less: VAT Payment | | | | | |
| | Tax Paid | | | | | |
| | Creditable VAT on sales to government (Deferred) | 4,867,716.04 | | | | |
| | Creditable VAT on sales to government | 41,953.38 | | | | |
| | Excess carry-over in succeeding year | (5,810,359.25) | (900,689.83) | | | |
| | **Deficiency Value-Added Tax** | | **3,462,108.75** | | | |
| | Add: Interest from 1-25-2015 to 10-20-2017 | 1,964,779.27 | | | | |
| | Compromise | 40,000.00 | 2,004,779.27 | | | |
| | **Total Amount Due** | | **5,466,888.02** | | | |
| **III. EXPANDED WITHHOLDING TAX** | | | | | | |
| | | **Amount of Income Payment** | **Rate of Tax** | **Tax Withheld** | | |
| | Professional fee | 9,425,596.70 | 10% | 942559.67 | Books of accounts; AFS, Alphalists of payees; | Sec 57(B) of the NIRC, RMC 72-2004 |
| | Professional fee | 4,230,705.13 | 15% | 634605.7695 | | |
| | Rental-Equipment | 658,602.40 | 5% | 32930.12 | | |
| | Commission/Sales incentive | 78,467,306.40 | 10% | 7846730.64 | | |

[30] G.R. No. 128315, June 29, 1999.
[31] Cited in the case of *The Land Bank of the Philippines vs. The Honorable Commissioner of Internal Revenue*, CTA EB No. 1462, August 1, 2017.
[32] *Republic vs. Lim De Yu*, G.R. No. L- 17438, (10 SCRA 737).

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| | | | | Schedules, documents submitted | |
|---|---|---|---|---|---|
| Interest of CTS/bank loans (Figure 3) | 15,253,801.25 | 2% | 305076.025 | | |
| Prime/Subcontractors | 156,177,592.00 | 2% | 3123551.84 | | |
| Top 20K-Services | 10,333,692.00 | 2% | 206673.84 | | |
| Top 20K-Goods | 257,111,587.00 | 1% | 2571115.87 | | |
| Expanded withholding tax due | 531,658,882.88 | | 15663243.77 | | |
| less: Payments | | | 15358167.75 | | |
| **Deficiency Expanded Withholding tax** | | | **305,076.03** | | |
| Add: Interest from 1-16-2015 to 10-20-2017 | | 168,502.27 | | | |
| Compromise | | 20,000.00 | 188,502.27 | | |
| **Total Amount Due** | | | **493,578.30** | | |
| **IV. DOCUMENTARY STAMP TAX** | | | | | |
| Advances from affiliates - BHSI (per Official Receipts issued) | | 147,001,690.32 | | per Official Receipts issued | Sec. 5 of RR 13-2004, RMC 48-2011 |
| Multiplied by: tax rate | | 0.30/200.00 | | | |
| Documentary Stamp Tax due | | 220,502.70 | | | |
| Less: payments | | | | | |
| **Deficiency Documentary Stamp Tax** | | **220,502.70** | | | |
| Add: Surcharge | 55,125.68 | | | | |
| Interest from 1-5-2015 to 10-20-2017 | 123,119.04 | | | | |
| Compromise | 20,000.00 | 198,244.72 | | | |
| **Total Amount Due** | | **418,747.45** | | | |
| ***TOTAL DEFICIENCY TAXES INCLUSIVE OF INCREMENTS*** | | **10,263,797.45** | | | |

Prepared by:

(signed)
**Cristina V. Igarta**
Revenue Officer II (A)

Noted by:

(signed)
**Mayeth C. Rada**
Group Supervisor

A cursory reading would show that the same cannot be considered as an assessment constituting a demand for payment nor a final decision of the CIR. It is a mere computation of deficiency taxes, notifying petitioner of the amounts stated therein. There was even neither demand for payment indicated in the tenor of the electronic mail, nor in the document attached therein. As stated in the Judicial Affidavit of Revenue District Officer Cristina V. Igarta,[33] the electronic mail was sent merely to inform petitioner of its liabilities and this was considered as the BIR's Notice of Informal Conference.

A Notice of Informal Conference is described in Section 3.1.1 of Revenue Regulations (R.R.) No. 12-99,[34] which states:

> "3.1.1. Notice for Informal Conference.-The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall

[33] Exhibit "R-5", *Docket,* pp. 377-383.
[34] 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.

> be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted."

This is precisely the tenor of the letter presented by respondent as Exhibit "R-1",[35] receipt of which was not disputed by petitioner and in fact admitted by this Court during respondent's Formal Offer of Evidence. The document notifies petitioner of its tax liabilities for the purpose of "Informal Conference," in order to afford it with an opportunity to present its side within fifteen (15) days from date of receipt and if considered in default, Revenue Officer Consuelo de Asis shall endorse the case to the higher authorities for appropriate review and appropriate action.

It does not formally inform petitioner of its tax liabilities and there is no formal demand to pay the same. Thus, in the instant case, there is no disputed assessment to speak of. The document is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that would require a protest from petitioner.

In the case of *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue*,[36] the Supreme Court held as follows:

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[35] *BIR Records*, p. 992.
[36] G.R. No. L-25289, June 28, 1974.

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> "Prescinding from all the foregoing, we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this indicium indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. xxx" (Underlinings supplied.)

Prior to the final decision appealable before this Court, there may still be exchanges between the CIR and the taxpayer. As stated in the case of *Lancaster Colors International. Inc. vs. Commissioner of Internal Revenue,*[37] "the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review."[38]

In the instant case, records reveal that at the time of the filing of the instant Petition for Review, no final assessment notice has yet been issued by the CIR. Thus, the appeal of this case over the alleged assessment is premature. This Court reiterates that the decision contemplated in R.A. 1125 is one which constitutes a final decision or inaction from a disputed assessment of the CIR. Consequently, the so-called assessment arrived at resulting from the mere computation of deficiency taxes is not the appealable decision for there is no disputed assessment yet.[39]

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[37] CTA Case No. 8933, October 1, 2018.
[38] Citing *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.
[39] WGC, Inc., represented by its President, William G. Chu, vs. Bureau of Internal Revenue, BIR Revenue District Region No. 16 and BIR Revenue District Region No. 98, Cagayan De Oro City, and Regional Trial Court Branch 38, Cagayan De Oro City, CTA AC No.124, October 27, 2015.

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From the foregoing, petitioner wrongly considered that respondent has already rendered a final decision or inaction on the matter that is appealable before this Court.

As to petitioner's claim for refund of income tax deficiency of ₱3,884,583.72, Section 229 of the NIRC of 1997, as amended, states:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> xxx xxx xxx" (Underlinings supplied.)

Therefore, petitioner's remedy is to first file a claim for refund or credit with the CIR. From the records, instead of filing an administrative claim for refund under Section 229 of the NIRC of 1997, as amended, petitioner filed a letter-protest questioning the imposition of deficiency tax against it by the CIR. Clear as a day that no administrative claim for refund was filed by petitioner, as mandated under Section 229 of the NIRC of 1997, as amended.

**WHEREFORE,** premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

**SO ORDERED.**

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

WE CONCUR:

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

## ATTESTATION

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

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice