Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	**CTA Case No. 8425** For: Assessment
	Members:
-versus-	**DEL ROSARIO, *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 17 2014 ; 9:52 a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition For Review filed by Visayas Geothermal Power Company, as petitioner, against the Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. *C*

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(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;
x x x x x x

2 RULE 4
JURISDICTION OF THE COURT

Petitioner seeks the cancellation and nullification of Assessment Notices and Preliminary Collection Letter issued by respondent CIR for alleged deficiency final withholding tax (FWT) and value-added tax (VAT) for taxable year 2002 in the aggregate amount of ₱26,236,354.41, inclusive of interest and penalties.

Petitioner Visayas Geothermal Power Company is a general partnership registered with the Securities and Exchange Commission, and may be served with summons, pleadings, notices and other processes through its counsel at Cabrera Lavadia and Associates, 28th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.[3]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected

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:

x x x x x x

(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;

x x x x x x

RULE 8
PROCEDURE IN CIVIL CASES

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.

[3] Exhibits "A" and "A-1".

with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 1, 1996, petitioner executed a Service Agreement[4] with CalEnergy Company, Inc. whereby the latter shall provide corporate management, financial planning support, and technical and administrative support services for the operation of the Malitbog Geothermal Power Plant in the Philippines.

Petitioner filed its Monthly Remittance Returns of Final Income Taxes Withheld[5] and Monthly Remittance Returns of Value-added Tax and Other Percentage Taxes Withheld on the following dates:[6]

FINAL WITHHOLDING TAX – 2002	
MONTH	**DATE FILED**
January	February 11, 2002
February	March 11, 2002
March	April 9, 2002
April	May 10, 2002
May	June 7, 2002
June	July 9, 2002
July	August 8, 2002
August	September 6, 2002
September	October 9, 2002
October	November 7, 2002
November	December 9, 2002
December	January 10, 2003

WITHHOLDING VALUE-ADDED TAX - 2002	
MONTH	**DATE FILED**
January	February 8, 2002
February	March 8, 2002
March	April 29, 2002
April	May 10, 2002
May	June 7, 2002
June	July 9, 2002
July	August 8, 2002
August	September 6, 2002
September	October 10, 2002
October	November 8, 2002

[4] Exhibits "B", "R-14" and "JJJ".
[5] Exhibits "N" to "Y", with submarkings.
[6] Exhibits "Z" to "KK", with submarkings.

November	December 10, 2002
December	January 10, 2003

On July 4, 2005, petitioner received a Letter of Authority authorizing Revenue Officer Elizabeth Olaguer of Revenue District Office (RDO) No. 89-Ormoc City to examine its books of accounts and other accounting records for income taxes covering the period January 1, 2002 to December 31, 2002.[7]

Petitioner received a letter from respondent's representative on January 13, 2006, informing it that the Audit Report on its internal revenue taxes due for the period January 1, 2002 to December 31, 2002 was already submitted. The said letter also invited petitioner to an informal conference in case it did not agree with the findings.[8]

On February 9, 2006, petitioner received a second letter from respondent's representative stating therein that she has made an amended report and gave petitioner a period of five (5) days from receipt of the letter to present in writing its side of the case as well as to submit supporting documents.[9]

On May 5, 2006, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated April 20, 2006.[10] According to the PAN, petitioner is liable for final withholding tax on gross amount of income derived from all sources within the Philippines by non-resident foreign corporation and final withholding of VAT in the amount of ₱25,923,652.90 due to its alleged failure to withhold final income taxes and final VAT on Management Service Fees it paid to MidAmerican Energy Holdings Company (formerly CalEnergy Company, Inc.) for taxable year 2002; citing as basis paragraphs 1 and 2(b)(ii) of Article 13 of the RP-US Tax Treaty, Section 7 of Revenue Regulations (RR) No. 14-

[7] Exhibit "C".
[8] Exhibit "R-2", "R-2-A", and "R-2-B".
[9] Exhibits "R-3" and "R-3-B".
[10] Exhibits "D" and "D-1".

2002, and Sections 108 and 106 of the National Internal Revenue Code (NIRC) of 1997.

On May 19, 2006, petitioner, through Isla Lipana & Co., filed its protest to the PAN dated April 20, 2006 before the BIR.[11] Petitioner argued that Management Service Fees are not royalty payments nor involve a grant of a license for the use of proprietary rights; the services of MidAmerican Energy Holdings Company were performed outside of the Philippines; and the right of respondent to assess petitioner already prescribed. Thus, petitioner prayed that the PAN issued against it be cancelled and withdrawn.

On June 23, 2006, petitioner received two (2) Assessment Notices, both numbered 014-089-WT-2002-079-06 and issued on June 20, 2006.[12] The said Assessment Notices stated that petitioner is liable for deficiency FWT and final withholding tax on VAT (WVAT) amounting to ₱26,236,354.41, inclusive of surcharges, interest, and penalties.

Petitioner filed its protest dated July 13, 2006 with the BIR on July 19, 2006.[13]

Petitioner received a letter dated August 15, 2006 on August 22, 2006, signed by Regional Director Atty. Estrella V. Martinez, denying its protest dated July 13, 2006.[14] The Regional Director explained that Section 42(4)(f) expanded the meaning of royalties; the RP-US Treaty does not limit permanent establishment as a "fixed base of business" but also includes furnishing of consultancy services by a resident of one of the Contracting States; and that the submission of petitioner's FWT and VAT returns does not hold probative value for the said returns pertain to entities other than MidAmerican Energy Holdings Company.

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[11] Exhibits "E" and "E-1".
[12] Exhibits "F", "F-1", "G", "G-1", "R-6", "R-6-A", "R-7", "R-7-A", and "PP".
[13] Exhibits "H" and "H-1".
[14] Exhibits "I", "R-9", "R-9-A", and "R 9-B".

On September 20, 2006, petitioner filed with then BIR Commissioner Jose Mario C. Buñag a request for reconsideration of the decision of Regional Director Martinez denying its protest dated July 13, 2006.[15]

In a decision issued on June 2, 2010, the BIR Commissioner denied petitioner's request for reconsideration.[16]

Consequently, petitioner filed with the BIR Commissioner letters[17] dated June 22, 2010 and March 28, 2011, which were received on June 23, 2010 and March 28, 2011, respectively. The June 22, 2010 letter requested an urgent review and reconsideration of the BIR Commissioner's decision based on factual and legal grounds; while the March 28, 2011 letter reiterated petitioner's position that it is not liable for deficiency FWT and WVAT.

On January 9, 2012, petitioner received a Preliminary Collection Letter from respondent stating therein that the constructive receipt of the decision of the BIR Commissioner dated June 2, 2010 by petitioner rendered the said decision final and that the request for reconsideration does not affect the finality of the decision considering that it is not an available remedy. Respondent requested petitioner to pay ₱26,236,354,41, representing petitioner's purported deficiency FWT and WVAT for the taxable year 2002.[18]

On February 3, 2012, petitioner filed the instant Petition for Review before this Court.

In the Answer (with Motion to Dismiss)[19] filed via registered mail on March 15, 2012, respondent interposed the following Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

[15] Exhibits "J", "J-1", "R-10", and "R-10-A".
[16] Exhibits "R-11" and "R-11-A".
[17] Exhibits "K", "K-1", "R-12", "R-12-A", "L", and "L-1".
[18] Exhibits "M" and "M-1".
[19] Docket, pp. 183-201.

"13. Petitioner's claim for the cancellation of assessment against it in the instant Petition for Review has no basis in fact and in law, for the following reasons:

14. Procedurally, the instant Petition for Review lacks merit and is riddled with fatal flaws. Perusal of the instant Petition will show, and as factually and judicially admitted by the petitioner in its pleading, that it made an appeal on 20 September 2006 of the assessment made by the Bureau of Internal Revenue. Further allegations by Petitioner is that there was a denial of the same appeal despite the absence of such an alleged ruling in its Petition;

15. Petitioner attempts to assail said assessment, which is admittedly allowed under the law. As provided for by Section 228 of the 1997 National Internal Revenue Code, as amended ('Tax Code' for brevity):

> '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 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 the filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

<u>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</u>. *(Emphases and underlining all provided)*

16. However, as provided for by the law, only thirty (30) days from receipt of the final decision or from the lapse of the one hundred eighty (180)-day period from inaction is allowed for the petitioner to protest the said final decision with the Court of Tax Appeals, otherwise, the final decision shall become final, executory, and demandable;

17. Furthermore, the Revised Rules of Court of Tax Appeals (*'CTA Rules'* for brevity) provides that:

'Rule 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 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, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> 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. xxx

xxx xxx xxx

18. The CTA Rules enunciates that *'the Rules of Court in the Philippines shall apply suppletorily to these Rules* (Rule 1, Sec. 3, CTA Rules).' Also, Rule 50, Sec. 1 of the Revised Rules of Court of the Philippines (*'Rules'* for brevity) provides that:

'RULE 50
DISMISSAL OF APPEAL

SECTION 1. **Grounds for dismissal of appeal. – <u>An appeal may be dismissed</u> by the Court of Appeals, on its own motion or on that of the appellee, on the following ground:**

(a) **<u>Failure of the record of appeal to show on its face that the appeal was taken within the period fixed by these Rules</u>;**

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 4 of Rule 41;

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in section 4 of 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record, as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) **<u>The fact that the order or judgment appealed from is not appealable.</u>** (1a)' *(Emphases and underlining all provided)*

19. As judicially admitted by the petitioner, it was on 20 September 2006 that it made the appeal with the Commissioner of Internal Revenue ('CIR' for brevity). Under the laws and rules above-cited, petitioner only have 30 days from receipt of the decision by the CIR denying its appeal within which to question the same or from 180 days from the inaction of the CIR. Thus, even if there is no denial and we will just count on the inaction by the CIR, it is crystal clear that the reglementary period within which to elevate the questioned assessment before this Honorable Court has long passed, thus, barring petitioner from instituting this instant action. Perfunctorily, the instant petitioner[sic] must be dismissed by this Honorable Court.

20. It must be stressed that the annexes of the Petition even show that not all relevant documents were submitted by the petitioner in its 20 September 2006 appeal before the CIR. We ask, what is the effect if there is no such admission of all relevant documents to support the appeal? Let us refer once more to the relevant provisions of the Tax Code:

'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:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</u>

<u>If the protest is denied in whole or in part, or is not acted upon within one</u>

> **<u>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</u>.** *(Emphases and underlining all provided)*

21. Applying the quoted provision of the law, and considering that not all relevant supporting documents were submitted by petitioner, then the logical and legal result is that the assessment has long become final long before the instant Petition was filed by petitioner. Thus, the petitioner has no cause of action to question the assessment as it has long become final, and is due and demandable already way back 2006. Perforce, only the dismissal of the instant Petition is the logical and necessary result of such absence of a cause of action on petitioner's part;

22. Assuming for the sake of argument ***but without admitting*** that petitioner validly filed its alleged supplemental letters on 22 June 2010 and 28 March 2011, still, by force of the Tax Code and of the CTA Rules, and as judicially admitted by petitioner, that there was no action by the CIR, then the reglementary period of 30 days to file the Petition for Review started its count not in this year, 2012 but in 2011, as we count the 180-days inaction from the last paper allegedly filed by petitioner on 28 March 2011. Thus, the 180-days inaction period plus the 30-days filing reglementary period will necessarily fall at the most on November 2011. And as the instant Petition was filed only on 03 February 2012, it is manifestly beyond the reglementary period provided for by the law;

23. At the expense of being repetitious, the CTA Rules provide a period within which to file the necessary Petition for Review in assailing an assessment. And the instant Petition involves a question of taxation, which is highly impressed with public interest, overriding any invocation by petitioner

of liberality on its part. As a matter of fact, petitioner so as to be allowed to avail of any remedy before the courts must follow strictly the rules, especially as the instant action is a Petition for Review. As provided by the Honorable Supreme court in the case of ***Barangay Dasmariñas vs. Creative Play Corner School, et al.*** **(G.R. No. 169942, January 24, 2011):**

> 'As to petitioner's invocation of liberal application of the rules, we cannot heed the same. It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. **However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.**' *(Emphases and underlining all provided)*

24. Hence, the petitioner cannot now be allowed to avail of the remedy of the Petition for Review for having been taken out of time. Therefore, the instant Petition for Review must be dismissed by the Honorable Court of Tax Appeals;

25. As to the allegations that the assessment has been issued well beyond the three-year prescriptive period and is null and void for the right by the CIR to assess is already prescribed. Suffice it to state that petitioner is gravely mistaken in making such assumptions, as we will elucidate below;

26. Petitioner insists that the assessment made by the Bureau of Internal Revenue ('BIR' for brevity) is already prescribed as it was made beyond three-years, the regular prescriptive period for the BIR to make an assessment. However, petitioner conveniently forgotten that an express provision under the Tax Code allows the BIR to render an assessment even beyond the three-year prescriptive period, as

provided by Sec. 222 of the Tax Code, where it provides that:

> '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.
>
> (b) xxx *(Emphases and underlining all provided)*

27. As stated in the findings of the Regional Director, Revenue Region 14 of the BIR (Annex 'G' of the Petition), as reproduced below:

> 'Your submission of alleged FWT and VAT returns marked Annexes A to X, did not have any probative value because they were all filed for Brooks Automation PTE, and PB Power New Zealand PTD LTD. xxx.
>
> Since the right of the BIR to collect withholding taxes have not prescribed due to your omission to file the appropriate FWT and VAT returns, we strongly reiterate to collect the deficiency FWT (Management Fees) ₱15,508,391.74 and Final VAT (₱10,415,261.16) within fifteen (15) days from receipt hereof xxx.'

28. As found by the Regional Director, Revenue Region 14 of the BIR, there was failure to file a return on the part of the petitioner regarding the Final Withholding Tax ('FWT' for brevity) and Value-Added Tax ('VAT' for brevity) that is due the latter; only FWT and VAT Returns for another *entities*, Brooks Automation PTE and PB Power New Zealand PTD LTD were filed by petitioner. We ask, what other evidence

were presented by herein petitioner so as to disprove such finding by the Regional Director, Revenue Region 14 of the BIR? Nothing, but mere allegations that the assessments were null and void, mere afterthought, and has no basis under the facts and the law;

29. Petitioner alleges that Respondent is cavalier, arbitrary, capricious and whimsical in the way the latter treated the case of the former. Respondent would like to put it in record that such allegations were bereft of any factual and/or legal merit, and is a mere biased opinion on its part. As a matter of fact, nowhere may it be found on the record any resolution to the effect as alleged by petitioner, except for its allegations. It is worthy to note that allegations without any substantiation can never be treated as an evidence;

30. Even if we assume for the sake of argument that the allegations by petitioner that the assessment has not attained finality because of lack of actual or constructive notice of the decision by the CIR on its protest dated 20 September 2006, still such an argument will not hold any water, as the law requires petitioner that despite there being no final decision on its protest, it must elevate the question before this Honorable Court. Otherwise stated, any allegations as to the failure to effect service of notice as to the denial of protest, for the sake of argument, will not have any bearing regarding the instant case, as what is provided under Sec. 228 of the Tax Code will take effect or attach against the interest of the petitioner, in that the assessment shall become final, executory, and demandable, depriving herein petitioner any right to assail anymore the same assessment for its failure to make a timely appeal;

31. Regarding the allegations of the petitioner as to the failure of the BIR to issue an assessment in writing, there is no basis for such an allegation as reflected by the record of the case. It is seen that there were several written notices sent by the BIR to herein petitioner, belying its allegations, thus, petitioner's imputation should not be given even the scantiest consideration;

32. As to the allegations by petitioner that the assessments made by the BIR, suffice it to state that considering that no evidence was submitted by the petitioner to disprove such findings by the respondent, then the assailed assessments are to be presumed correct. As held by the Honorable Supreme Court in the case of ***Tan Guan vs. The Court of Tax Appeals*** **(G.R. No. L-23676, April 27, 1967):**

> 'The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that **the expenses in the amount of P206,870.00 are fictitious.** **Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayers to rebut such presumption** ***(Perez vs. Court of Tax Appeals, et al. L-10507,*** **May 30, 1958). Tan Guan failed to overcome his burden. Hence, the finding that the expenses are fictitious must be sustained. And being fictitious, the expenses cannot be claimed as deduction from gross income.**' *(Emphases and underlining all provided)*

33. And as further held by the Honorable Supreme Court in the case of ***Collector of Internal Revenue vs. Bohol Land Transportation Co.*** **(G.R. Nos. L-13099 & L-13462, April 29, 1960):**

> '**Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessment for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments'. The burden of proof is on the taxpayer to show the contrary. This the company failed to do.** This action finds support in the following authorities:
>
> > '**All presumptions are in favor of the correctness of tax assessments. the good faith of tax assessors and**

the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attentions was called. No presumption can be indulged that all of the public officials of the state in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.

'As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.' (51 Am. Jur. pages 620-621).' ***(Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue,*** **98 Phil. 290; 52 Off. Gaz., [2] 791.)**

'When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention.'** ***(Behn, Meyer & Co. vs. Collector of Customs,*** **26 Phil., 647)**

'That the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct' ***(Perez vs. Court of Tax Appeals, et al,*** **G.R. No. L-10507, May 30, 1958).'** ***(Emphases and underlining all provided)***

34. Petitioner cannot question the assessments made against it for: ***a)*** All presumptions are **<u>in favor of tax assessments</u>** ***(Interprovincial Autobus Co., Inc. vs. Collector*** **[98 Phil. 290];** ***Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner*** **[L39910, Sept. 26, 1988]; and** ***Bonifacia Sy Po v. CTA & Commissioner,*** **[G.R. No. 81446, Aug. 18, 1988]);** and ***b)*** The assessment being assailed by petitioner is **<u>already, final, executory and demandable</u>**, as provided for by Section 228 of the NIRC;

35. It must be stressed that remedies afforded a person under the law must be complied strictly for the effective and valid invocation of such remedies. In this case, petitioner was remiss, in that contrary to petitioner's stance that the instant Petition for Review is seasonably made, it is in truth and in fact belatedly made, making the assessment final, executory, and demandable;

36. The Honorable Supreme Court is emphatic on the assessment being unquestionable for failure to make the timely protest by way of an appeal, as it clearly spoke in the case of ***CIR vs. Hambrecht & Quist Philippines, Inc.*** **(G.R. No. 169225, November 17, 2010):**

> '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.**
>
> **<u>To be sure, the fact that an assessment has become FINAL for failure of the taxpayer to file a protest within the</u>** *(

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 and underlining all provided)*

37. Thus, applying the pertinent provisions of the law, rules, and jurisprudence in the matter at hand, **it is crystal clear that the instant Petition for Review lacks basis and merit, and should be dismissed outright by this Honorable Court.** Consequently, **petitioner should already be made to pay the deficient taxes for the same are already final, executory, and demandable under the facts and the law;**"

In its Comment/Opposition (to Respondent Commissioner of Internal Revenue's Answer with Motion to Dismiss)[20] filed by means of registered mail on April 16, 2012, petitioner asserted that the arguments stated by respondent in her Motion to Dismiss can only be determined in a full blown trial of this case and that said arguments are contrary to the decisions promulgated by the Supreme Court and by this Court. Thus, petitioner prayed, among others, that respondent's Motion to Dismiss be denied.

In a Resolution[21] dated May 30, 2012, this Court denied respondent's Motion to Dismiss.

Trial proceeded during which petitioner presented Leilah Yasmin E. Alpad, Carlos Carado II, and Trinity S. Gatuz as witnesses. On March 25, 2013, petitioner formally offered[22] its testimonial and documentary evidence.

[20] Docket, pp. 210-222.
[21] Docket, pp. 225-230.
[22] Docket, pp. 541-569.

On the other hand, respondent filed via registered mail her Comment and/or Opposition to Petitioner's Formal Offer of Evidence[23] on April 24, 2013. In response thereto, petitioner filed its Reply with Motion to Admit Secondary Evidence (to Respondent Commissioner of Internal Revenue's Comment and/or Opposition to Petitioner's Formal Offer of Evidence)[24] on May 21, 2013. In a Resolution[25] dated July 4, 2013, this Court admitted into evidence petitioner's formally offered exhibits with the exception of Exhibits "RR", "SS", "TT", "UU", "VV", and "WW" and set the date for the initial presentation of evidence for respondent.

Petitioner's documentary exhibits are as follows:

Exhibit	Description
A	SEC Articles of Partnership.
A-1	SEC Amended Articles of Partnership.
B	Service Agreement entered into on 01 June 1996 between Calenergy Company, Inc. and Petitioner.
C	Letter of Authority (LOA) No. 00082827 dated 27 June 2005.
C-1	Date of Receipt by the Petitioner's Accounting Manager – 04 July 2005.
D	Preliminary Assessment Notice (PAN) dated 20 April 2006.
D-1	Stamp Received dated 27 April 2006.
E	Protest Letter to the PAN filed by Petitioner on 19 May 2006.
E-1	Date of Filing of Protest letter – 19 May 2006.
F	Assessment Notice No. 014-089-WT-2002-079-06.
F-1	Date of Issuance – 20 June 2006.
F-2	Total Amount Due and Collectible - 15,695,849.69.
G	Assessment Notice No. 014-089-WT-2002-079-06.

[23] Docket, pp. 944-947.
[24] Docket, pp. 958-967.
[25] Docket, pp. 976-981.

G-1	Date of Issuance - 20 June 2006.
G-2	Total Amount Due and Collectible – 10,540,504.73.
H	Protest Letter of Petitioner dated 13 July 2006.
H-1	Date of Receipt by the Respondent through Rowedah G. Avila – 19 July 2006.
I	Denial of Protest letter dated 15 August 2006.
J	Appeal letter to the Office of the Commissioner dated 20 September 2006.
J-1	Stamp Received dated 20 September 2006.
K	Supplemental Letter dated 22 June 2010.
K-1	Stamp Received dated 23 June 2010.
L	Supplemental Letter dated 28 March 2011.
L-1	Stamp Received dated 28 March 2011.
M	Preliminary collection Letter issued by RDO 47 dated 06 January 2012.
M-1	Stamp Received dated 09 January 2012.
N	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of January 2002.
N-1	Stamp Received by the BIR dated 11 February 2002.
O	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of February 2002.
O-1	Stamp Received by the BIR dated 11 March 2002.
P	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of March 2002.
P-1	Stamp Received by the BIR dated 09 April 2002.
Q	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of April 2002.
Q-1	Stamp Received by the BIR dated 10 May 2002.

R	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of May 2002.
R-1	Stamp Received by the BIR dated 07 June 2002.
S	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of June 2002.
S-1	Stamp Received by the BIR dated 09 August 2002.
T	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of July 2002.
T-1	Stamp Received by the BIR dated 08 August 2002.
U	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of August 2002.
U-1	Stamp Received by the BIR dated 06 September 2002.
V	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of September 2002.
V-1	Stamp Received by the BIR dated 09 October 2002.
W	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of October 2002.
W-1	Stamp Received by the BIR dated 07 November 2002.
X	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of November 2002.
X-1	Stamp Received by the BIR dated 09 December 2002.
Y	BIR Form No. 1601-F Monthly Remittance Return of Final Income Taxes Withheld for the Month of December 2002.
Y-1	Stamp Received by the BIR dated 10 January 2003.
Z	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of January 2002.

Z-1	Stamp Received by the BIR dated 08 February 2002.
AA	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of February 2002.
AA-1	Stamp Received by the BIR dated 08 March 2002.
BB	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of March 2002.
BB-1	Stamp Received by the BIR dated 09 April 2002.
CC	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of April 2002.
CC-1	Stamp Received by the BIR dated 09 May 2002.
DD	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of May 2002.
DD-1	Stamp Received by the BIR dated 07 June 2002.
EE	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of June 2002.
EE-1	Stamp Received by the BIR dated 09 July 2002.
FF	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of July 2002.
FF-1	Stamp Received by the BIR dated 08 August 2002.
GG	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of August 2002.
GG-1	Stamp Received by the BIR dated 06 September 2002.
HH	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of September 2002.
HH-1	Stamp Received by the BIR dated 10 October 2002.

II	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of October 2002.
II-1	Stamp Received by the BIR dated 08 November 2002.
JJ	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of November 2002.
JJ-1	Stamp Received by the BIR dated 10 December 2002.
KK	BIR Form No. 1600 Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld for the Month of December 2002.
KK-1	Stamp Received by the BIR dated 10 January 2003.
LL	Audited Financial Statements of Visayas Geothermal Power Company for the years ended 31 December 2002 and 2001.
MM	Proof of Residency of MidAmerican Energy Holdings Company (MEHC) for the taxable years 2002 to 2012.
NN	Judicial Affidavit of Leilah E. Alpad.
NN-1	Signature of Leilah E. Alpad.
OO	Certificate of Non-Registration of Company issued by the SEC.
PP	Judicial Affidavit of Carlos T. Carado II.
PP-1	Signature of Carlos T. Carado II.
QQ	Duly filed Form 8-K12G3 confirming the merger between CalEnergy and MidAmerican and the subsequent reincorporation of CalEnergy as MEHC.
QQ-1	Consularized Articles of Merger.
XX	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of January 2002 in the amount of US$16,455.90.
YY	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of February 2002 in the amount of US$26,223.70.

ZZ	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of March 2002 in the amount of US$16,277.40.
AAA	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of April 2002 in the amount of US$15,574.60.
BBB	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of May 2002 in the amount of US$19,954.70.
CCC	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of June 2002 in the amount of US$19,279.60.
DDD	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of July 2002 in the amount of US$12,837.20.
EEE	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of August 2002 in the amount of US$15,543.40.
FFF	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of September 2002 in the amount of US$18,138.20.
GGG	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of October 2002 in the amount of US$17,314.10.
HHH	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of November 2002 in the amount of US$16,423.30.
III	Invoice issued by MEHC to VGPC reflecting the monthly management service fee billed for the month of December 2002 in the amount of US$19,674.50.
JJJ	Judicial Affidavit of Trinity S. Gatuz.
JJJ-1	Signature of Trinity S. Gatuz.

On August 5, 2013, respondent filed a Manifestation with urgent Ex Parte Motion for Issuance of Subpoena Ad Testificandum[26], praying that this Court issue a Subpoena Ad Testificandum to Revenue Officer Elizabeth Olaguer to appear and testify relative to her report of investigation on petitioner's FWT and WVAT assessments for the taxable year 2002. The said subpoena was issued by this Court August 7, 2013.[27]

On August 5, 2013, petitioner filed a Manifestation with Motion for Leave of Court to Present Additional Evidence (of Petitioner Visayas Geothermal Power Company)[28] to request this Court to allow it to present the original paper-based information/original written correspondences, which were scanned and sent by facsimile transfer, for purposes of comparison with Exhibits "RR", "SS", "TT", "UU", "VV", and "WW" that were received by its witness.

On September 26, 2013, during the presentation of its witness Revenue Officer Elizabeth L. Olaguer, respondent moved for the issuance of a Subpoena Ad Testificandum to Atty. Angel G. Pasion. This Court granted respondent's prayer and ordered the issuance of a subpoena for the appearance of the said witness. Meanwhile, petitioner manifested that it is withdrawing its Manifestation with Motion for Leave of Court to Present Additional Evidence (of Petitioner Visayas Geothermal Power Company), which the Court noted.[29]

On October 29, 2013, respondent presented Atty. Angel G. Pasion as witness. Respondent likewise moved for a period of twenty (20) days within which to submit her Formal Offer Evidence; while petitioner moved for a period of ten (10) days from receipt thereof to file its comment. The Court granted both motions.[30]

[26] Docket, pp. 988-989.
[27] Docket, p. 996.
[28] Docket, pp. 990-995.
[29] Docket, pp. 1034-1037.
[30] Docket, pp. 1049-1053.

Respondent filed her Formal Offer of Evidence[31] on December 5, 2013; while petitioner filed its Comment[32] thereto on December 16, 2013.

In a Resolution[33] dated January 29, 2014, this Court admitted in evidence respondent's formally offered exhibits with the exception of Exhibit "R-3-A" and ordered both parties to submit their Memoranda.

The documentary exhibits formally offered by respondent are as follows:

Exhibit	Description
R-1	BIR Records bearing the internal revenue tax liabilities of petitioner for taxable year 2002.
R-2	BIR First Notice for Informal Conference dated January 12, 2006.
R-2-A	Name and specimen signature of CHRISTINE MIJARES-CARDONA, Revenue District Officer, BIR RDO No. 89-Ormoc City, Leyte.
R-2-B	Date of receipt of petitioner of the said BIR First Notice for Informal Conference dated January 12, 2006.
R-3	BIR Second Notice for Informal Conference dated February 8, 2006.
R-3-B	Date of receipt of petitioner of the said BIR Second Notice for Informal Conference dated February 8, 2006.
R-4	Memorandum Report dated April 10, 2006 of Revenue Officer ELIZABETH L. OLAGUER.
R-4-A	Name and specimen signature of Revenue Officer ELIZABETH L. OLAGUER.
R-5	BIR Preliminary Assessment Notice (PAN) dated April 20, 2006. C

[31] Docket, pp. 1074-1095.
[32] Docket, pp. 1099-1102.
[33] Docket, pp. 1106-1107.

R-5-A	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-5-B	Details of Discrepancies attached to the said BIR Preliminary Assessment Notice (PAN) dated April 20, 2006.
R-5-C	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-6	BIR Assessment Notice No. 014-089-WT-2002-079-06 dated June 20, 2006, bearing the assessed deficiency Final Withholding Tax on Income of petitioner for taxable year 2002.
R-6-A	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-7	BIR Assessment Notice No. 014-089-WT-2002-079-06 dated June 20, 2006, bearing the assessed deficiency Final Withholding on VAT of petitioner for taxable year 2002.
R-7-A	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-8	BIR Formal Demand Letter dated June 20, 2006 addressed to petitioner.
R-8-A	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-9	Decision Letter dated August 15, 2006 of the Regional Director, BIR Revenue Region No. 14-Palo, Leyte, denying with finality the Letter Protest dated July 13, 2006 of petitioner.
R-9-A	Name and specimen signature of ESTRELLA V. MARTINEZ, Regional Director, BIR Revenue Region No. 14-Palo, Leyte.
R-9-B	Date of receipt of petitioner of the said Decision Letter dated August 15, 2006, which denied with finality its Letter Protest dated July 13, 2006 against the FAN.
R-10	Letter Request for Reconsideration dated September 20, 2006 of petitioner, appealing the Decision Letter dated August 15, 2006 of the Regional Director, BIR Revenue Region 14,

	Palo, Leyte to the Office of the Commissioner of Internal Revenue (CIR), BIR National Office, Diliman, Quezon City.
R-10-A	Date of Receipt by the respondent CIR of the said Letter Request for Reconsideration dated September 20, 2006 of petitioner.
R-11	Decision dated June 2, 2010 of the Commissioner of Internal Revenue (CIR) in reply to the Letter Request for Reconsideration dated September 20, 2006 of petitioner assailing the Decision dated August 15, 2006 of the Regional Director, BIR Revenue Region 14, Palo, Leyte.
R-11-A	Name and specimen signature of JOEL L. TAN-TORRES, Commissioner of Internal Revenue.
R-12	Letter Request dated June 22, 2010 of petitioner, requesting for an Urgent Review and Reconsideration of the said Decision on Appeal dated June 2, 2010 of the respondent CIR.
R-12-A	Date of Receipt by the respondent CIR of the said Letter Request dated June 22, 2010 of petitioner.
R-13	Memorandum Report dated December 1, 2010 of Atty. ANGEL G. PASION, Chief Appellate Division, BIR National Office, Diliman, Quezon City.
R-13-A	Name and specimen signature of Atty. ANGEL G. PASION.
R-14	Service Agreement dated June 1996 entered into by petitioner and CALENERGY COMPANY, INC. (now MidAmerican Energy Holdings Company).
R-15	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of January 2002.
R-16	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of February 2002.
R-17	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of March 2002.

R-18	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of April 2002.
R-19	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of May 2002.
R-20	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of June 2002.
R-21	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of July 2002.
R-22	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of August 2002.
R-23	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of September 2002.
R-24	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of October 2002.
R-25	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of November 2002.
R-26	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) of petitioner for the month of December 2002.
R-27	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of January 2002.
R-28	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of February 2002.
R-29	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of March 2002.
R-30	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of April 2002.
R-31	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of May 2002.

R-32	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of June 2002.
R-33	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of July 2002.
R-34	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of August 2002.
R-35	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of September 2002.
R-36	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of October 2002.
R-37	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of November 2002.
R-38	Monthly Remittance Return of VAT and other Percentage Taxes Withheld (BIR Form 1600) of petitioner for the month of December 2002.
R-39	Judicial Affidavit dated September 16, 2013 of Revenue Officer ELIZABETH L. OLAGUER.
R-39-A	Name and specimen signature of Revenue Officer ELIZABETH L. OLAGUER.
R-40	Judicial Affidavit dated October 14, 2013 of Atty. ANGEL G. PASION, Chief Appellate Division, BIR National Office, Diliman, Quezon City.
R-40-A	Name and specimen signature of Atty. ANGEL G. PASION.

On March 21, 2014, respondent filed by registered mail, her Manifestation and Motion, stating that aside from the arguments mentioned in the said manifestation and motion, she is adopting all her arguments found in the special and affirmative defenses of her Answer.

On April 28, 2014, the case was submitted for decision considering respondent's Manifestation and Motion filed on

March 21, 2014 and petitioner's Memorandum filed on March 31, 2014.[34]

The issues as stated in the Joint Stipulation of Facts and Issues[35] are as follows:

> "1. Whether or not the assessment issued by Respondent Commissioner of Internal Revenue against Petitioner for claimed deficiency FWT and WVAT for taxable year 2002 were validly issued;
>
> 2. Whether the Respondent Commissioner of Internal Revenue's right assessment of Petitioner's tax liabilities regarding the deficiency FWT and WVAT for taxable year 2002 were issued within the prescriptive period provided under the Tax Code;
>
> 3. Whether there are factual and legal bases to hold Petitioner liable for the claimed deficiency FWT and WVAT for taxable year 2002 in the amount of Pesos: Twenty-Six Million Two Hundred Thirty-Six Thousand Three Hundred Fifty-Four & 41/100 (₱26,236,354.41), inclusive of interests and penalties;
>
> 4. Whether the Respondent Commissioner of Internal Revenue may be enjoined from collecting Petitioner's deficiency FWT and WVAT for taxable year 2002."

This Court has exclusive appellate jurisdiction over decisions and cases of inaction of the BIR Commissioner over disputed assessments. Section 7(a)(1) and (2) of Republic Act No. 1125, as amended, provides:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: ℓ

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[34] Docket, p. 1151.
[35] Docket, p. 260.

(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;

(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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

In relation thereto, Section 228 of the NIRC of 1997, as amended, is instructive as to the remedies of a taxpayer in case of inaction of the BIR Commissioner on the protested assessment, to wit:

SEC. 228. *Protesting of Assessment*. – xxx

xxx xxx xxx

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.** *(Emphasis supplied)*

To implement Section 228 of the NIRC of 1997, Revenue Regulations No. 12-99 was issued by the BIR. Pertinent to this case is Section 3.1.5 of the said regulation, which provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* – xxx
>
> xxx xxx xxx
>
> 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.

Based on the foregoing provisions of law and revenue regulation, the taxpayer has thirty (30) days from receipt of the decision or inaction by the Commissioner of Internal Revenue over its protest to file an appeal before this Court.

Respondent argued that petitioner's act of filing a letter request[36] dated June 22, 2010 to request an urgent review and reconsideration of respondent's decision dated June 2, 2010, proved that petitioner constructively received the decision of the BIR Commissioner. Considering that petitioner failed to file an appeal before this Court within thirty days from "receipt" of the said decision, respondent asserted that the assessment must be considered final, executory and demandable. Petitioner, on the other hand, contended that testimonies of respondent's witness proved that it was not notified of the decision of the BIR Commissioner regarding its protest and that there was no constructive notice validly given by respondent regarding her decision on petitioner's protest.

A careful examination of the June 2, 2010 decision[37] of the BIR Commissioner denying petitioner's request for reconsideration reveals that no receipt of the said decision was acknowledged by petitioner or by its duly authorized representative. Furthermore, what was proven during the hearing[38] conducted on October 29, 2013 is that the original decision of the BIR Commissioner was still in the case docket of the BIR during the meeting on June 16, 2010 and as of that date, no mailing was ever made. The pertinent portions of the transcript of stenographic notes of the said hearing are quoted hereunder for ready reference:

"JUSTICE GRULLA

Mr. Witness, you testified that you do not have actual proof of the receipt of the (interrupted)

[36] Exhibit "R-12".
[37] Exhibits "R-11" and "R-11-A".
[38] TSN, October 29, 2013.

ATTY. PASION
Actual mailing, your Honors.

JUSTICE GRULLA
And yet when you were asked by your counsel, you said that you (surmise) from the, when you met on June 16. Now, what was the basis of your statement that you (surmise) that they have actual receipt of the decision?

ATTY. PASION
Based on this request that on the sentence, we respectfully request an urgent review and reconsideration of the said decision on the appeal based on legal and factual grounds discussed here under, your Honors.

JUSTICE GRULLA
What decision is being referred to, there is no date?

ATTY. PASION
I want to clarify, your Honors, because under our rules, based on regulation 12-99 implementing Section 228 of the Tax Code, when a taxpayer received an assessment, they protest the assessment by means of reconsideration or reinvestigation on the regional level. If the same assessment or protest was denied, then he makes an appeal to the Commissioner. This is appeal that was denied by the Commissioner and this appeal was being requested by the taxpayer counsel for an urgent review and reconsideration. It is this appeal not the protest on the regional level, your Honors. This appeal is different mode of procedure.

JUSTICE GRULLA
When you met on June 16, you said that there were lawyers around, you mentioned the name. Now, did you not ask if they actually received the decision or did you assign a date as to when the decision has received?

ATTY. PASION

Your Honors, during that meeting, I have many superiors, they are the ones asking the questions.

JUSTICE GRULLA
So, that was a knowledge which you should have known. So, how could you have not asked that question as to when they received? Is that not important?

ATTY. PASION
As I answered earlier, your Honors, I didn't see the actual mailing because the decision is still in the docket.

JUSTICE UY
Again?

ATTY. PASION
The decision of the Commissioner is still in the case docket, your Honors."

Based on the copy of the decision of the Commissioner and what transpired during the October 29, 2013 hearing, it is clear that there was no receipt of the decision of the Commissioner. Consequently, the question is when will the thirty-day period start within which petitioner may appeal the case before this Court?

Applying by analogy the case of *Commissioner of Internal Revenue vs. Union Shipping Corporation, et al.*[39], the start of the thirty-day period wherein a taxpayer may appeal his case before this Court is the time a taxpayer received a notice of an action for collection by the BIR for the same may be considered a denial of a taxpayer's request for reconsideration/reinvestigation. In the instant case, petitioner received a Preliminary Collection Letter from respondent on January 9, 2012. Counting thirty (30) days from that date, petitioner had until February 8, 2012 to appeal its case before this Court. Considering that the Petition for Review was filed on February 3, 2012, the instant case was filed on time. Clearly, this Court has jurisdiction to entertain the instant petition.

[39] G.R. No. L-66160, May 21, 1990.

The Court shall now proceed to resolve the other issues.

In general, a non-resident foreign corporation is liable for gross income tax on income derived from all sources within the Philippines. Section 28(B)(1) of the NIRC of 1997, as amended, provides:

> SEC. 28. *Rates of Income Tax on Foreign Corporations.* –
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* –
>
> *(1) In General.* – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c): *Provided,* That effective January 1, 2009, the rate of income shall be thirty percent (30%).

On the otherhand, to be liable for VAT, a non-resident foreign corporation should render service in the Philippines. Sections 105 and 108(A) of the NIRC of 1997, as amended, state:

> 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 this Code.
>
> xxx xxx xxx

> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business.
>
> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> *(A) Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx

Petitioner argues that its income payments in favor of MidAmerican Energy Holdings Company are not subject to tax considering that under the "source rule" of income taxation, MidAmerican Energy Holdings Company's services are performed in the United States not in the Philippines.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[40] In this regard, the Court finds that petitioner failed to prove that respondent's assessment is incorrect.

Based on above-mentioned provisions of the NIRC, in order for petitioner not to be subject to FWT, it must prove that MidAmerican Energy Holdings Company is (1) a foreign corporation not engaged in business in the Philippines; and (2) its source of income came from outside of the Philippines. On the other hand, in order for petitioner not to be subject to WVAT, it must prove that MidAmerican Energy Holdings Company is (1) a non-resident foreign corporation; and (b) it rendered services outside of the Philippines. C

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[40] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

Furthermore, as stated by the Supreme Court, "source of income" relates to the property, activity or service that produced the income.[41] In petitioner's case, the source of income of MidAmerican Energy Holdings Company is its corporate management, financial planning support, and technical and administrative support services it provides to petitioner.

Petitioner, in an attempt to prove that MidAmerican Energy Holdings Company's services are performed abroad, presented, among others, the Judicial Affidavit[42] of its witness. The Court finds the testimony of petitioner's witness in the Judicial Affidavit insufficient to establish its allegation. Similarly, the Service Agreement[43] between petitioner and MidAmerican Energy Holdings Company (CalEnergy Company, Inc.) merely stipulates the kinds of services that MidAmerican Energy Holdings Company will perform but not the manner and the place where the said services will be performed. What it merely proves is that MidAmerican Energy Holdings Company is a foreign corporation not engaged in business in the Philippines as shown by its Proof of Residency for taxable years 2002 to 2012[44] and Certification of Non-Registration of Company[45] issued by the SEC. Consequently, petitioner is liable for FWT and WVAT.

Finally, the Court finds that respondent's right to assess and/or collect from petitioner deficiency FWT and WVAT has not yet lapsed.

Internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return. Section 203 of the NIRC of 1997, as amended, provides:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222,

[41] *Commissioner of Internal Revenue vs. Juliane Baier-Nickel as represented by Marina Q. Guzman (Attorney-in-fact)*, G.R. No. 153793, August 29, 2006.
[42] Exhibit "JJJ".
[43] Exhibits "B" and "R-14".
[44] Exhibit "MM".
[45] Exhibit "OO".

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.

However, in case of false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within ten (10) years after the discovery of the falsity, fraud or omission. Section 222(a) of the NIRC of 1997, as amended, states:

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 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.

Petitioner argues that respondent's right to assess it has already prescribed, applying Section 203 of the NIRC of 1997. Respondent counters that since petitioner failed to indicate in its returns the income payments made in favor of MidAmerican Energy Holdings Company, petitioner's returns are considered false, warranting the application of the ten (10)-year prescriptive period under Section 222 of the NIRC of 1997. As a result, the assessment issued against petitioner has not yet prescribed.

A false return implies deviation from the truth whether intentional or not.[46] Since petitioner failed to prove that MidAmerican Energy Holdings Company's source income is derived from sources outside the Philippines and that it rendered services outside of the Philippines, the returns filed are considered false, justifying the application of the ten-year prescriptive period under Section 222 of the NIRC of 1997.

The various returns[47] of petitioner for FWT and WVAT were filed in 2002 and 2003. Counting ten years from those years, respondent had until 2012 and 2013 to assess petitioner for deficiency FWT and WVAT. Since the PAN[48], the FAN[49], and the Preliminary Collection Letter[50] were received by petitioner on May 5, 2006, June 23, 2006, and January 9, 2012, respectively, respondent's right to assess and/or collect from petitioner deficiency FWT and WVAT has not yet prescribed.

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

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[46] *Aznar vs. Court of Tax Appeals and Collector of Internal Revenue,* G.R. No. L-250569, August 23, 1974.
[47] Exhibits "N" to "Y" and "Z" to "KK", with submarkings.
[48] Exhibits "D" and "D-1".
[49] Exhibits "F", "F-1", "G", "G-1", "R-6", "R-6-A", "R-7", "R-7-A", and "PP".
[50] Exhibits "M" and "M-1".

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice