REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALPHALAND MAKATI PLACE, INC., *Petitioner,*	**CTA CASE NO. 9609** For: Assessment
	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: JAN 15 2020 4:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 11, 2019 is a *Petition for Review* filed by Alphaland Makati Place, Inc. on June 5, 2017 praying that the assailed assessments, *Final Decision on Disputed Assessment* (FDDA) and assailed *Decision* issued by the Commissioner of Internal Revenue, holding petitioner liable for alleged deficiency value-added tax (VAT) in the amount of ₱10,708,088.80, and compromise penalty in the amount of ₱50,000.00, for the period of January 1, 2014 and June 30, 2014, be declared null and void and/or be cancelled.[1]

Petitioner Alphaland Makati Place, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at Sime Darby Building, Ayala corner Malugay Street, Makati City, Metro Manila.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 000-499-448-00000.[3]

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[1] Summary of the Case, Pre-Trial Order dated November 21, 2017, Docket – Vol. I, p. 332.
[2] Exhibit "P-1", Docket – Vol. II, pp. 582 to 592.
[3] Exhibit "P-2", Docket – Vol. II, pp. 593 to 594.

On the other hand, respondent Commissioner of Internal Revenue is the public officer authorized under the Tax Code to examine any taxpayer and to assess the correct amount of tax. He holds office at Room 511, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

On August 12, 2014, the *Letter of Authority* (LOA) No. eLA201100086467 was issued by Mr. Nestor S. Valeroso, OIC-Assistant Commissioner (ACIR), Large Taxpayers Service of the BIR, authorizing revenue officers Ivy Claudette Puno, Margie Padre, and Group Supervisor (GS) Mariesol Girang, to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2014 to June 30, 2014, pursuant to Revenue Memorandum Order No. 19-2012.[5]

Subsequently, petitioner received the *Preliminary Assessment Notice* (PAN) dated October 9, 2015 on the same date,[6] finding it liable for deficiency VAT in the amount of ₱33,948,551.10 and compromise penalty in the amount of ₱50,000.00.

On October 29, 2015, petitioner received *the Formal Letter of Demand* (FLD) dated October 27, 2015 with *Details of Discrepancies* and the corresponding *Audit Result/Assessment Notices*,[7] informing petitioner that it has been found liable for VAT and compromise penalty for the 1st semester of 2014, in the respective amount of ₱34,245,433.92 and ₱50,000.00.

Thereafter, OIC-ACIR Nestor S. Valeroso issued the FDDA dated June 20, 2016 with *Details of Discrepancies* and the corresponding *Audit Result/Assessment Notices*,[8] requesting petitioner to pay the reduced deficiency VAT in the amount of ₱10,391,816.14, and compromise penalty in the amount of ₱50,000.00 for the 1st semester of 2014. The said FDDA was received by petitioner on June 29, 2016.[9]

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[4] Par. 2.2, The Parties, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 10 to 11, and 110, respectively.
[5] Exhibit "R-1", BIR Records, p. 1.
[6] Exhibit "R-6", BIR Records, pp. to 119 to 122; Exhibit "P-3", Docket – Vol. II, pp. 595 to 598.
[7] Exhibit "R-8", BIR Records, pp. 129 to 134; Exhibit "P-4", Docket – Vol. II, pp. 599 to 602.
[8] Exhibit "P-13", Docket – Vol. I, pp. 76 to 79.
[9] Supra.

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Petitioner then filed the letter dated July 14, 2016[10] with respondent on July 28, 2016, requesting reconsideration of the said FDDA dated June 20, 2016.

On May 5, 2017, petitioner received the undated letter from respondent,[11] denying its request for reconsideration.

On June 5, 2017, petitioner filed the instant *Petition for Review*.[12]

Respondent filed his *Answer* on September 13, 2017,[13] interposing the following defenses:

> "3.1 Petitioner in its [Petition for Review] never alleged any facts or law that would invalidate the assessment issued by respondent.
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> 3.2 Petitioner in its Request for Reinvestigation (attached as Annex 'H' of the petition), alleged that the Formal Letter of Demand and Assessment Notices was not properly served.
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> 3.3 Such argument lacks factual and legal basis. The person who received the Preliminary Assessment Notices is also the one who received the Formal Letter of Demand and Assessment Notices. (The first page of the Preliminary Assessment Notice and Formal Letter of Demand are attached hereto as Annex 'A' and 'B' respectively)
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> 3.4 Further, petitioner never contested the authority of the person who received the Formal Letter of Demand in its protest letter dated November 3, 2015. To subsequently question the same was a mere afterthought and is only made to disturb the assessment validly issued and served by respondent to petitioner.

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[10] Exhibit "P-14", Docket – Vol. II, pp. 626 to 628.
[11] Exhibit "P-15", Docket – Vol. I, p. 92.
[12] Docket – Vol. I, pp. 10 to 18.
[13] Docket – Vol. I, pp. 110 to 114.

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3.5 Estoppel can be applied in the present case. The essence of estoppel and laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it although there is no absolute rule as to what constitutes staleness of demand as each case is to be determined according to its particular circumstances.

3.6 Petitioner is liable to pay the assessed deficiency VAT in the amount of ₱10,708,088.80 and compromise penalty in the amount of ₱50,000.00.

3.7 Disallowed input tax from downpayments ₱4,380,355.28

Verification disclosed that part of input taxes claimed for VAT returns represents input taxes from prior period downpayments made to suppliers/contractors wherein official receipts have already been issued at the time the downpayment was made. Vouching of supporting invoices and receipts disclosed that input taxes pertains to prior period amounting to ₱4,380,355.28, hence, disallowed as deduction from VAT liability as this are out of period transaction and were not properly supported pursuant to the provisions of Section 110, in relation to Section 113 of the NIRC of 1997, as amended.

3.8 Disallowed input tax from retention payable ₱2,090,597.82

Verification disclosed that input taxes amounting to ₱2,090,597.82 came from retention payable and are not properly supported with receipts hence disallowed as deductions to VAT liability pursuant to the provisions of Section 110, in relation to Section 113 of the NIRC of 1997, as amended.

3.9 Disallowed input tax-out of period ₱1,025,119.80

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Verification disclosed that purchases from suppliers amounting to ₱8,542,665.02 were made from prior period, hence, the corresponding input tax amounting to ₱1,025,119.80 are disallowed to VAT liability pursuant to Section 110 of the NIRC of 1997, as amended.

3.10 A compromise penalty for failure to file/pay any internal revenue tax at the time required by Regulation or Law and for failure to file certain information returns (₱50,000.00)

3.11 It was directed that a compromise penalty be imposed per Revenue Memorandum Order No. 7-2015- 'Revised Consolidated Schedule of Compromise Penalties for Violation of the NIRC' Basic VAT ₱7,496,072.90 is equivalent to ₱50,000.00 compromise penalty for failure to file and/or pay any internal revenue tax at the time required by regulation and law.

3.12 On a final note, the Decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* can be well use as a guide, to wit:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'** (Emphasis ours)"

The pre-trial conference was scheduled and held on October 12, 2017.[14]

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[14] Notice of Pre-Trial Conference dated September 15, 2017, Docket – Vol. I, pp. 117 to 118; Minutes of the hearing held on, and Order dated, October 12, 2017, Docket – Vol. I, pp. 305 to 306.

Petitioner's *Pre-Trial Brief* was filed on October 9, 2017;[15] while *Respondent's Pre-Trial Brief* was filed on October 9, 2017.[16]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on November 16, 2017.[17] In the Pre-Trial Order dated November 21, 2017,[18] the said JSFI was approved and adopted by this Court, and the Pre-Trial was deemed terminated.

The trial of the case then proceeded.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of (1) Ms. Jennette M. Manlosa,[19] petitioner's Vice President for Finance; and (2) Mr. Michael L. Aguirre,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

The ICPA Report was submitted on February 19, 2018.[22]

Respondent transmitted the *BIR Records* for the instant case on April 17, 2018.[23]

On April 23, 2018, petitioner filed its *Formal Offer of Evidence*.[24] Respondent filed his *Comment Re: Petitioner's Formal Offer of Evidence* on April 27, 2018.[25]

In the Resolution dated July 4, 2018,[26] the Court admitted petitioner's Exhibits, *except* for Exhibit "P-5", for failure to present

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[15] Docket – Vol. I, pp. 119 to 127.
[16] Docket – Vol. I, pp. 299 to 304.
[17] Docket – Vol. I, pp. 328 to 330.
[18] Docket – Vol. I, pp. 332 to 336.
[19] Exhibit "P-16", Docket – Vol. I, pp. 209 to 217; Minutes of the hearing held on, and Order dated, November 22, 2017, Docket – Vol. I, pp. 337 and 339, respectively.
[20] Exhibit "P-17", Docket – Vol. I, pp. 418 to 430; Exhibit "P-18", Docket — Vol. I, pp. 471 to 476; Minutes of the hearing held on, and Order dated, February 26, 2018, Docket – Vol. II, pp. 513 to 514.
[21] *Oath of Commission* dated January 17, 2018, Docket – Vol. I, p. 369; Minutes of the hearing held on, and Order dated, January 17, 2018, Docket – Vol. I, pp. 368 and 370.
[22] Docket – Vol. I, pp. 371 to 410 (including Exhibit "P-19").
[23] *Compliance*, Docket – Vol. II, pp. 560 to 561.
[24] Docket – Vol. II, pp. 568 to 580.
[25] Docket – Vol. II, pp. 638 to 640.
[26] Docket – Vol. I, pp. 645 to 647.

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the original thereof for comparison, and Exhibits "P-11-A" and "P-12-A", for not being found in the records of the case.

On July 25, 2018, petitioner filed a *Motion for Partial Reconsideration*,[27] wherein petitioner prayed to reconsider the admission of Exhibit "P-5". Respondent failed to file his comment thereon.[28] However, in the Resolution dated September 18, 2018,[29] the Court denied petitioner's *Motion for Partial Reconsideration* for lack of merit.

Petitioner then filed a *Motion to Tender Excluded Evidence* on October 10, 2018,[30] praying that Exhibit "P-5" described as *"Protest Letter dated 03 November 2015"*, be attached and made part of the record of the case. Respondent failed to file his comment to the said *Motion*.[31] In the Resolution dated January 15, 2019,[32] the Court granted petitioner's *Motion to Tender Excluded Evidence*, and thus, Exhibit "P-5" formed part of the records of the instant case.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Articles of Incorporation of petitioner AMPI
P-2	BIR Certificate of Registration of petitioner AMPI
P-3	Preliminary Assessment Notice (PAN) dated 9 October 2015
P-4	Formal Letter of Demand (FLD) dated 27 October 2015
P-5	Protest Letter dated 03 November 2015
P-6	Final Notice Before Seizure dated 15 December 2015
P-7	Warrant of Distraint and/or Levy dated 05 January 2016
P-8	Request for Re-investigation and Lifting of Warrant of Distraint dated 06 January 2016
P-9	Request for Re-investigation and Lifting of Warrant of Distraint dated 12 January 2016
P-10	Letter dated 05 May 2016 of the BIR denying petitioner AMPI's Protest

[27] Docket – Vol. II, pp. 648 to 653.
[28] Records Verification dated August 28, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 657.
[29] Docket – Vol. II, pp. 660 to 665.
[30] Docket – Vol II, pp. 711 to 713.
[31] Records Verification dated December 12, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 754.
[32] Docket – Vol. II, pp. 763 to 764.

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P-11	Letter dated 17 May 2016 seeking reconsideration of the Letter dated 05 May 2016 of the BIR
P-12	Letter dated 13 June 2016 of petitioner AMPI
P-13	Final Decision on Disputed Demand dated 20 June 2016
P-14	Letter dated 14 July 2016 of petitioner AMPI seeking reconsideration of the FDDA
P-15	Letter of the Commissioner of Internal Revenue denying petitioner AMPI's request for reconsideration
P-16	Judicial Affidavit of Jennette M. Manlosa
P-16A	Signature of Ms. Manlosa in her Judicial Affidavit
P-17	Judicial Affidavit of Michael L. Aguirre (Mr. Aguirre) dated 12 January 2018
P-17A	Signature of Mr. Aguirre in his Judicial Affidavit dated 12 January 2018
P-18	Supplemental Judicial Affidavit of Michael L. Aguirre dated 23 February 2018
P-18A	Signature of Mr. Aguirre in his Judicial Affidavit dated 23 February 2018
P-19	Report of the Independent Certified Accountant to the Court of Tax Appeals
P-19A	Signature of the ICPA, Mr. Aguirre on the ICPA Report
P-1-A to P-1-J-ICPA	AMPI's Petition for Review
P-2-A to P-2-D-ICPA	Final Decision on Disputed Assessment
P-3-A to P-3-D-ICPA	Formal Letter of Demand
P-4-A to P-4-F-ICPA	Letter of Award/Notice to Proceed
P-5-A.1 to P-5-F.3-ICPA	2014 Accounting Process Documentation Attachments (General Contractors) – Official Receipts of Down Payments and Payments for Progress Billings, Progress Billings, Supporting Computations, Accounting Entries and Other Attachments
P-6-A.1 to P-6-AY.2-ICPA	2013 Documents Supporting the Transactions/Purchases of Datem, Inc. – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.1-A.1 to P-7.1-O-ICPA	2014 Documents Supporting the Transactions/Purchases of Datem, Inc. – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.2-A.1 to P-7.2-C.4-	2014 Documents Supporting the Transactions/Purchases of AC Technical – Official

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ICPA	Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
p-7.3-A.1 to P-7.2-C.4-ICPA	2014 Documents Supporting the Transactions/Purchases of Walls in Motion – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.4-A.1 to P-7.4-D.4-ICPA	2014 Documents Supporting the Transactions/Purchases of Jose Aliling Construction Management, Inc. – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.5-A-ICPA	2014 Documents Supporting the Transactions/Purchases of Trend and Technologies Inc.– Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.6-A to P-7.6-B-ICPA	2014 Documents Supporting the Transactions/Purchases of Ralgo Industries Inc.– Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.7-A-ICPA	2014 Documents Supporting the Transactions/Purchases of Robros Inc.– Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.8-A to P.7.8-B-ICPA	2014 Documents Supporting the Transactions/Purchases of Beta Electrical Corporation– Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.9-A to P-7.9-B-ICPA	2014 Documents Supporting the Transactions/Purchases of Citiaire Industrial Services Corp.– Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.10-A to P-7.10-B-ICPA	2014 Documents Supporting the Transactions/Purchases of Rider Levett Bucknall Phil. Inc. – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-7.11-A-ICPA	2014 Documents Supporting the Transactions/Purchases of Compuwell Fire – Official Receipts, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-8-A.1 to P-8-C.3-ICPA	2014 Accounting Process Documentation Attachments (Suppliers) – Official Receipts of Down Payments and Payments for Progress

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	Billings, Progress Billings, Supporting Computations, Accounting Entries, and Other Attachments
P-9.1-A.1 to P-9.1-A.6-ICPA	2014 Documents Supporting the Transactions/Purchases with Suppliers – Official Receipts, Billing Statement, Accounting Entries, and Other Attachments for SGV and Co.
P-9.2-A.1 to P-9.2-C.3-ICPA	2014 Documents Supporting the Transactions/Purchases with Suppliers – Official Receipts, Billing Statement, Accounting Entries, and Other Attachments for Donlyn Merchandise
P-9.3-A.1 to P-9.3-A.10-ICPA	Collection receipt, check disbursement voucher, invoices, accounting entry and other relevant documents for Pag-asa Steel Works, Inc.
P-9.4-A-1 to P-9.4-A.20-ICPA	Official receipts, check disbursement vouchers, accounting entries and other relevant documents for Integrated Pipe Specialist
P-9.5-A.1 to P-9.5-E.4-ICPA	Official receipts, billing statements, accounting entries and other relevant documents for Jomatech Enterprises
P-9.6-A.1 to P-9.6-A.5-ICPA	Official receipts, check disbursement voucher, billing statements, accounting entries and other relevant documents for Rider Levett Bucknail Philippnes, Inc.
P-9.7-A.1 to P-9.7-B.2-ICPA	Official receipt, billing statement and accounting entries for Bio Tech Environment Services Phils.
P-10-A to P-10-L.2-ICPA	Quarterly VAT Returns for 2012
P-11-A to P-11-L.2-ICPA	Quarterly VAT Returns for 2013
P-12-A to P-12-L.2-ICPA	Quarterly VAT Returns for 2014
P-13-A to P-13-G-ICPA	Summary List of Purchases (SLP) for 2012
P-14-A to P-14-R-ICPA	SLP for 2013
P-15-A to P-15-M-ICPA	SLP for 2014
P-16-ICPA	Electronic Copy of Exhibits
Annex A.1 to A.3 – ICPA	AMPI Accounting Process Documentation of Transactions with General Contractors
Annex B – ICPA	AMPI Accounting Process Documentation of Transactions with Suppliers
Annex C-ICPA	Schedule of Purchases made by AMPI to Datem, Inc. for 2013
Annex D.1 – ICPA	Schedule of Vouched Purchases – Datem, Inc.
Annex D.2-	Schedule of Vouched Purchases – AC Technical

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ICPA	Services, Inc.
Annex D.3-ICPA	Schedule of Vouched Purchases – Walls in Motion Inc.
Annex D.4 – ICPA	Schedule of Vouched Purchases – Jose Aliling Construction Management, Inc.
Annex D.5-ICPA	Schedule of Vouched Purchases – Trend and Technologies, Inc.
Annex D.6 - ICPA	Schedule of Vouched Purchases – Ralgo Industries, Inc.
Annex D.7-ICPA	Schedule of Vouched Purchases – Robros Inc.
Annex D.8-ICPA	Schedule of Vouched Purchases – Beta Electrical Corporation
Annex D.9 – ICPA	Schedule of Vouched Purchases – Citiaire Industrial Services Corp.
Annex D.10-ICPA	Schedule of Vouched Purchases – Rider Levett Bucknail Phil Inc.
Annex D.11-ICPA	Schedule of Vouched Purchases -Compuwell Fire
Annex E.1-ICPA	Schedule of Vouched Purchases -SGV and Co.
Annex E.2-ICPA	Schedule of Vouched Purchases -Donlyn Merchandise
Annex E.3-ICPA	Schedule of Vouched Purchases for Pag-asa Steel Works, Inc. (Out of Period)
Annex E.4-ICPA	Schedule of Vouched Purchases for Integrated Pipe Specialist (Out of Period)
Annex E.5-ICPA	Schedule of Vouched Purchases for Jomatech Enterprises (Out of Period)
Annex E.6-ICPA	Schedule of Vouched Purchases for Rider Levett Bucknail Philippines, Inc. (Out of Period)
Annex E.7-ICPA	Schedule of Vouched Purchases for Bio Tech Environment Services Phils. (Out of Period)
Annex F-ICPA	Summary of VAT Deficiency Computation

Respondent likewise presented his documentary and testimonial evidence. His lone witness is Ms. Ivy Claudette Puno,[33] a Revenue Officer of the BIR.

Thereafter, *Respondent's Formal Offer of Evidence* was filed on October 29, 2018.[34] Petitioner filed its *Comment (to the Respondent's Formal Offer of Evidence)* on May 11, 2018.[35]

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[33] Exhibit "R-12", Docket – Vol. II, pp. 670 to 675; Minutes of the hearing held on, and Order dated, October 17, 2018, Docket – Vol. I, pp. 724 to 725.
[34] Docket – Vol. I, pp. 728 to 732.
[35] Docket – Vol. I pp. 744 to 747.

Respondent offered the following documentary exhibits, to wit:

Exhibit:	Description:
R-1	Letter of Authority LOA LV1-2014-00000065 dated August 12, 2014
R-2	Letter dated August 13, 2014
R-3	First Request for Presentation of Records dated August 26, 2014
R-4	Second & Final Notice dated September 15, 2014
R-5	Memorandum dated October 7, 2015
R-6	Preliminary Assessment Notice dated October 9, 2015
R-7	Memorandum dated October 27, 2015
R-8	Formal Letter of Demand with Final Assessment Notice dated October 27, 2015
R-9	Final Decision on Disputed Assessment dated June 20, 2016
R-10	Memorandum dated August 15, 2016
R-11	Letter denying petitioner's Motion for Reconsideration

In the Resolution dated December 5, 2018,[36] the Court admitted respondent's Exhibits, and gave the parties a period of thirty (30) days from notice to file their respective memorandum.

Subsequently, respondent filed his *Memorandum* on January 9, 2019,[37] while the *Memorandum (For the Petitioner)* was submitted on February 4, 2019.[38]

The instant case was considered submitted for decision on February 11, 2019.[39]

THE ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[40]

[36] Docket – Vol. I, pp. 752 to 753.
[37] Docket – Vol. I, pp. 755 to 760.
[38] Docket – Vol. I, pp. 770 to 779.
[39] Resolution dated February 11, 2019, Docket – Vol. II, p. 781.
[40] Par. 2, JSFI, Docket – Vol. I, p. 328.

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"Issue for respondent:

a. Whether petitioner is liable to pay the assessed deficiency VAT in the amount of P10,708,088.80 and compromise penalty in the amount of P50,000.00.

Issues for petitioner:

a. Whether the disallowed input taxes amounting to P4,380,355.28 were supported by VAT Official Receipts.

b. Whether the disallowed input taxes amounting to Php2,090,597.82 were supported by VAT Official Receipts.

c. Whether the input taxes amounting to Php1,025,119.80 arising from the purchase of goods may be claimed as input tax.

d. Whether the right of petitioner to due process was violated when the respond[ent] issued a Final Notice Before Seizure and Warrant of Distraint and/or Levy without resolving first the Protest Letter of [petitioner] AMPI and despite the pendency of the Protest.

e. Whether the Assessment has legal and factual basis.

f. Whether petitioner AMPI is liable for deficiency VAT in the amount of P10,708,088.80.

g. Whether petitioner AMPI is liable for compromise penalty in the amount of P50,000.00."

Petitioner's arguments:

Petitioner argues that the FLD and *Assessment Notices* were not properly served to the petitioner, since it is only its President Atty. Mario A. Oreta who is authorized to receive the same.

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Moreover, petitioner avers that it should not be held liable for deficiency VAT in the amount ₱10,708,088.80, and compromise penalty in the amount of ₱50,000.00.

Respondent's counter-arguments:

Respondent claims that petitioner never alleged any facts or law that would invalidate the assessment issued by respondent; and that petitioner cannot allege that the subject FLD and *Assessment Notices* were not properly served as the same were received by the same person whose authority was not contested by petitioner.

According to respondent, petitioner is liable to pay the assessed deficiency VAT in the amount of ₱10,708,088.80, and the compromise penalty in the amount of ₱50,000.00.

THE COURT'S RULING

Notwithstanding the issues raised by the parties, this Court resolves to raise, and rule on, the following related issue, which it deems as necessary to achieve an orderly disposition of the instant case, before looking into the issues raised by the parties, if still warranted, to wit:

> **"Whether or not the subject FLD is a valid assessment."**

It must be remembered that the instant *Petition for Review* seeks the declaration of nullity of the subject assessments for VAT and compromise penalty in the amounts of ₱10,708,088.80, and ₱50,000.00. Thus, it is proper to primarily resolve the said issue raised by this Court.

Moreover, there is legal basis allowing this Court to resolve the same issue.

Legal basis to resolve the foregoing issue.

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Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. – *Rendition of judgment* – xxx

In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." *(Emphasis supplied)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[41] Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[42] *viz*:

"**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

SECTION 1. *Rendition of judgment.* – xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

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[41] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[42] G.R. No. 183408, July 12, 2017.

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The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphases ours)*

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[43] the Supreme Court held:

"The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

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The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax <u>when compelling reasons so warrant or when justice requires it</u>. What constitutes good and sufficient cause that would merit suspension of the rules is <u>discretionary upon the courts</u>. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

<u>The appellate court may, in the interest of justice, properly take into</u>

[43] G.R. No. 163835, July 7, 2010.

> **consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
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> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance**." *(Emphases and underscoring ours)*

On the basis of the foregoing doctrinal pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance*.

In this case, whether or not the subject tax assessments are valid is a *matter of record*, and *of public importance*. The said issue is a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Moreover, the issue raised by this Court has some bearing on the issues submitted by the parties. Furthermore, the same issue can be deemed as *matter of public importance*, simply because a void assessment bears no valid fruit.[44] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment.

[44] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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Correspondingly, We see no legal obstacle to resolve the above-stated issue raised by this Court.

The subject VAT assessment is void since petitioner's tax liability remains indefinite.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (hereinafter referred to as the "*Fitness By Design* case"),[45] the Supreme Court said:

> "**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> xxx xxx xxx
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx **it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly**

[45] G.R. No. 215957, November 9, 2016.

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be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)
>
> xxx xxx xxx."

In this case, the contents of the FLD dated October 27, 2015 issued against petitioner,[46] state, in part, as follows:

"FORMAL LETTER OF DEMAND

THE PRESIDENT
ALPHALAND MAKATI PLACE, INC.
Sime Darby Building Ayala Ave. Cor. Malugay Street, Makati City
TIN: 000-499-448

Sir/Madam:

Please be informed that after investigation of your Value – Added tax liabilities for the 1st Semester January 01, 2014 to June 30, 2014 pursuant to Letter of Authority

[46] Exhibit "R-8", BIR Records, pp. 129 to 134; Exhibit "P-4", Docket – Vol. II, pp. 599 to 602.

No. LOA-LV1-2014-00000065 dated August 12, 2014, there has been found deficiency Value – Added Tax for the 1st Semester of 2014, as shown hereunder:

xxx xxx xxx

Please take note that the interest will have to be adjusted if paid beyond November 20, 2015.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX -A of this letter.

The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.

The compromise penalty has been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 7-2015.

Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof. However, if you are amenable, you may pay the above assessment using the BIR Payment Form (BIR Form 0605) through eFPS. Afterwards, submit proof of payment thereof to out Office located at Room 213, VAT Audit Group, BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records and the cancellation of the herein FLD, if warranted.

We hope that you will give this matter your preferential action.

Very truly yours,

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(SIGNED)
NESTOR S. VALEROSO
OIC- Assistant Commissioner
Large Taxpayers Service"
(Emphases and underscoring ours)

A careful reading of the foregoing would reveal that the subject tax assessment lacks the definite amount of tax liabilities for which petitioner is accountable. Specifically, the FLD states that the interest will still *"be adjusted if paid beyond November 20, 2015."* Similar to the *Fitness By Design* case, although the disputed notice provides for a computation of petitioner's VAT liability, the amount thereof remains indefinite, since the said tax assessment is still subject to modification or adjustment, depending on the date of payment by petitioner.

Such being the case, the subject VAT assessment is void, and thus, bears no valid fruit.[47]

Petitioner is not liable to pay the subject compromise penalty.

Since the subject VAT assessment is void, petitioner cannot likewise be held liable to the compromise penalty in the amount of ₱50,000.00. Nevertheless, it must be stressed that a compromise is, by its nature, mutual in essence.[48] It implies agreement. One party cannot impose it upon the other.[49] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[50] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

[47] Refer to *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.
[48] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[49] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[50] Refer to Part III.4, Revenue Memorandum Order No. 7-2015.

In view of the finding that the subject assessments are invalid and the subject compromise penalty may not be imposed in this case, it becomes unnecessary to address the other issues and arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the assailed subject assessments and FDDA, and respondent's *Decision*, holding petitioner liable for deficiency VAT in the amount of ₱10,708,088.80, and compromise penalty in the amount of ₱50,000.00, for the period of January 1, 2014 and June 30, 2014, are **CANCELLED and SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

Juanito C. Castañeda, Jr.
(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(Joins the Separate Concurring Opinion of AJ Castañeda)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

A T T E S T A T I O N

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.
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ALPHALAND MAKATI PLACE, INC. Petitioner,	**CTA CASE NO. 9609**
	Members:
-versus-	Castañeda, Jr., Chairperson, Mindaro-Grulla, and Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 15 2020 4:30 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I concur with the decision of J. Mindaro-Grulla which declared the Value-Added Tax assessment against the petitioner void based on the holding in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[1]

I wish to reiterate further that in the case of *Fitness By Design, Inc.*, the Supreme Court concluded that the disputed Final Assessment Notice was *not* a valid assessment because it also did "not purport to be a *demand for payment* of tax due, which a final assessment notice should supposedly be", had no due dates and was barred by prescription, thus:

> "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This

[1] G.R. No. 215957, November 9, 2016.

demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'

The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.'" (*Underscoring supplied and citations omitted*)

To demand means to "require (a person) to do"[2] and is also defined as "the assertion of a legal right", "an imperative request preferred by one person to another under a claim of right, requiring the latter to do or yield something or to abstain from some act."[3]

In this case, an examination of the tenor of the Formal Letter of Demand (FLD)[4] would reveal that there is *no* demand or requirement for the taxpayer to pay the taxes due. The phrase "you *may* pay the above assessment xxx" negates the imperative nature of the request to pay as it gives the taxpayer the option *not* to pay if it is not amenable to the assessment:

"Sir/Madam:

Please be informed that after investigation of your Value-Added tax liabilities for the 1st Semester January 01, 2014 to June 30, 2014 pursuant to Letter of Authority No. LOA-LV1-2014-00000065 dated August 12, 2014, there has been found deficiency Value-Added Tax for the 1st Semester of **2014**, as shown hereunder:

xxx xxx xxx

Please take note that the interest will have to be adjusted if paid beyond November 20, 2015. *9z*

[2] Shorter Oxford English Dictionary (6th Edition), Vol. I, p. 639.
[3] Black's Law Dictionary (Abridged 5th Edition), pp. 223-224.
[4] Exhibit R-8, BIR Records, pp. 133-134.

The complete details covering the aforementioned discrepancies established during the investigation of this case are show in the accompanying ANNEX-A of this letter.

The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.

The compromise penalty has been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No 7-2015.

<u>Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof</u>. However, <u>if you are amenable</u>, **<u>you may pay the above assessment using the BIR Payment Form (BIR Form 0605) through eFPS.</u>** Afterwards, **submit proof of payment thereof to our Office located at Room 213, VAT Audit Group, BIR National Office Building, BIR Road, Diliman, Quezon City** for updating of your records and cancellation of there herein FLD, if warranted.

We hope that you will give this matter your preferential action.

Very truly yours,

(signed)
NESTOR S. VALEROSO
Assistant Commissioner
Large Taxpayers Service"
(*Underscoring supplied*)

Finally, the FLD also *violates* Section 228 of the National Internal Revenue Code of 1997, as amended, as it only gives the taxpayer fifteen (15) days to protest the assessment which is less than the thirty (30) days expressly provided for by law.

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