Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

GS MTE GRAINS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8837
For*:* Assessment

Members:

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

Promulgated:

MAR 1 9 2018; 10:00 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed by GS MTE Grains Corporation against the Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a) (1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, Vol. I, pp. 12-34.

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

[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

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

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Petitioner seeks to set aside the Decision dated February 3, 2014 issued by the latter and to nullify of the Formal Letter of Demand (FLD) dated December 1, 2009, assessing the former for alleged deficiency income tax, expanded withholding tax (EWT), and compromise penalties in the total amount of ₱12,970,415.01 for calendar year (CY) 2006.

Petitioner GS MTE Grains Corporation is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at RD Building, Ireneo Santiago Boulevard, General Santos City. It is principally engaged in the business of buying and selling of rice, corn, and other agricultural products.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 28, 2007, petitioner received the Letter of Authority[7] (LOA) No. 200700022310 dated November 26, 2007, authorizing Revenue Officer (RO) Sophia D. Dipatuan under Group Supervisor Ashary B. Gampong of Revenue District Office (RDO) No. 110-Gen. Santos City to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.

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

[6] As culled from the Petition for Review and Exhibit "P-9", Docket, Vol. I, pp. 17 and 271.

[7] Exhibit "R-1", BIR Records, p. 22.

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The BIR issued a Notice for Informal Conference[8] on August 5, 2008, requesting petitioner to appear for an informal conference to enable it to present its side of the case.

On October 6, 2009, RO Sophia D. Dipatuan submitted her Memorandum Report[9] in connection with the examination and investigation of internal revenue tax liabilities of petitioner for CY 2006 pursuant to LOA No. 200700022310 dated November 26, 2007.

On October 15, 2009, the BIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies[10], assessing petitioner for deficiency income tax, EWT, and compromise penalties for CY 2006.

On February 19, 2010[11], petitioner received a copy of the Formal Letter of Demand (FLD) dated December 1, 2009[12] with attached Details of Discrepancies[13] issued by Regional Director Atty. Marcelinda Omila-Yap of Revenue Region No. 18-Cotabato City, demanding the payment of the aggregate amount of ₱12,970,415.01, allegedly representing deficiency income tax, EWT, and compromise penalties for CY 2006.

On March 4, 2010, petitioner filed a Letter[14] dated February 26, 2010 with the Regional Director requesting reinvestigation of the result of the audit. On March 19, 2010, petitioner received a copy of the Letter[15] from the Regional Director dated March 8, 2010. On May 5, 2010, petitioner submitted a Letter[16] dated May 3, 2010 to the Regional Director.

On September 29, 2010, petitioner received a copy of the Letter[17] dated August 16, 2010 issued by the Regional Director declaring that the request for reinvestigation cannot be given due

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[8] Exhibit "R-6", BIR Records, p. 60.
[9] Exhibit "R-7", BIR Records, pp. 61-62.
[10] Exhibit "R-8", BIR Records, pp. 102-104.
[11] Exhibit "P-2", Docket, Vol. I, p. 225.
[12] Par. 5, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 419.
[13] Exhibit "R-9", BIR Records, pp. 107-110.
[14] Exhibit "P-3", Docket, Vol. I, p. 226.
[15] Exhibit "P-4", Docket, Vol. I, pp. 227-228; Par. 2, JSFI, Docket, Vol. I, p. 419.
[16] Exhibit "P-5", Docket, p. 229.
[17] Exhibit "P-8", Docket, Vol. I, p. 270 and Par. 4, JSFI, Docket, Vol. I, p. 419.

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course. Petitioner filed its Protest[18] dated October 27, 2010 with respondent on November 3, 2010.

On March 7, 2014[19], petitioner received a copy of respondent's Decision[20] dated February 3, 2014, denying its protest and demanding from petitioner the payment of deficiency income tax, EWT, and compromise penalties in the total amount of ₱12,970,415.01 for CY 2006.

Petitioner filed the present Petition for Review, through registered mail on April 7, 2014 and received by the Court on June 18, 2014. Thereafter, respondent filed his Answer[21] through registered mail on September 15, 2014 and received by the Court on September 24, 2014, interposing the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Respondent hereby reiterates and re-pleads the preceding paragraphs of this *Answer* as part of her Special and Affirmative Defenses.
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> 5. The deficiency assessments for Income Tax, Expanded Withholding Tax and Compromise Penalty are valid since they were issued in accordance with law, rules and jurisprudence.
>
> **<u>THIS HONORABLE COURT DID NOT ACQUIRE JURISDICTION OVER THE CASE.</u>**
>
> 6. The assessment has become final, executory and demandable, hence, the court has no jurisdiction.
>
> 7. For quick reference, the pertinent laws and/or rules governing the protest against an assessment are as follows:

[18] Exhibit "P-9", Docket, Vol. I, pp. 271-281; "R-10", BIR Records, pp. 180-190.
[19] As culled from the Petition for Review and Judicial Affidavit of Mr. Ananias B. Dadivas filed on August 26, 2014, Docket, Vol. I, pp. 14 and 219.
[20] Exhibit "P-10", Docket, pp. 282-290.
[21] Docket, Vol. I, pp. 345-355.

> **SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings
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> x x x x
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

On the other hand, paragraph 3.1.5 of Revenue Regulations No. 12-99, significantly provides:

> 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.

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x x x x

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

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

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

x x x x (Emphasis supplied)

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I. Petitioner failed to submit relevant supporting documents within the time prescribed by law which rendered the assessment final, executory and demandable.

8. Petitioner filed its protest against an assessment on March 4, 2010. Paragraph 4 of the subject *Petition for Review* states:

> 'On February 19, 2010 the petitioner received a copy of the Formal Letter of Demand from the Regional Director, Revenue Region No. 18, Cotabato City dated December 1, 2009. On March 4, 2010 petitioner sent a letter dated February 26, 2010 requesting for an urgent reinvestigation or reconciliation of the audit result with respect to the alleged unsubstantiated costs and expenses.'

9. Based from the above-stated law and regulations, petitioner had sixty (60) days from the filing of the protest, or until 3 May 2010, within which to submit all relevant documents to support its administrative protest. Nevertheless, it was only on 5 May 2010 that petitioner submitted documents (i.e. unregistered delivery receipts), which was beyond the sixty days provided by the law and revenue regulations.

10. Petitioner however contends that the counting of the sixty (60)-day period should not start at the time it filed its request for reinvestigation on **4 March 2010**. Rather, it should start from **19 March 2010**, when petitioner received BIR's answer to its request for investigation.

11. But the language of the law and regulations are clear. It is explicitly stated that the taxpayer is given sixty days **from the filing of the protest** within which to submit all relevant documents to support its claim. Otherwise, the assessment issued against it shall become final. As held in **Garcia Jr. vs. Ermita et al.**:

> The rule is that where the provision of the law is clear and unambiguous, so that there no occasion for the court's seeking the legislative intent, the **law must be taken as it is,** devoid of judicial addition or subtraction.

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12. In paragraph 35 of the subject *Petition for Review*, petitioner reasoned out that at the time it sent the letter dated 26 February 2010, *it did not know what are those alleged unsubstantiated costs and expenses indicated in the demand letter.*

13. This is a weak excuse since as stated in the issued *Formal Letter of Demand (FLD)*, the complete details covering the discrepancies established during the investigation are shown in the accompanying Schedule I of the letter of demand.

14. Thus, for failure to follow the prescribed procedure, petitioner must suffer the consequences and should not and cannot be allowed to hamper the collection efforts of the government.

II. Petitioner's failure to timely protest the decision of the Respondent's duly authorized representative rendered the assessment final, executory and demandable.

15. As stated in the subject Petition for Review, on **29 September 2010,** petitioner received a copy of BIR's letter dated August 16, 2010 declaring that the request for reconciliation or reinvestigation cannot be given due course.

16. Thus, petitioner had until 29 October 2010 to file an appeal before the Commissioner of Internal Revenue (CIR) or the Court of Tax Appeals.

17. Based on the law and regulations previously cited, a taxpayer aggrieved by the decision rendered by the authorized representative of the CIR, within thirty (30) days from receipt of the decision, may either appeal the decision to the CIR or to the Honorable Court of Tax Appeals.

18. Petitioner alleges that it seasonably filed a protest to respondent on 27 October 2010. However, BIR Records show that the alleged protest was filed only on **3 November 2010**.

19. As the Honorable Court ruled in **Filipinas Palmoil Plantations, Inc. vs. CIR**:

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x x x x the final decision on disputed assessment rendered by the Commissioner of Internal Revenue should be appealed to the Court of Tax Appeals within thirty (30) days, otherwise, failure to appeal within the said period is fatal to the case. However, **when it is the Commissioner's duly authorized representative who denied the administrative protest with finality, the taxpayer has two options. It may either appeal directly to the Court of Tax Appeals or elevate its protest to the Commissioner of Internal Revenue both within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative**.

In this case, neither of the two remedies was availed of by petitioner within the period allowed by law.

Petitioner failed to exercise its right to bring the matter before this Court within the reglementary period upon receipt of the letter of Mr. Duncano dated December 27, 2000. Being a final disposition by the BIR, the same would have been a proper subject of an appeal. The period of thirty (30) days to appeal the adverse decision on petitioner's protest had already lapsed when the instant petition was filed with this Court only on April 10, 2002.

On the other hand, when petitioner elevated its protest to the Commissioner of Internal Revenue, it was again filed out of time. It should be noted that it was on January 27, 2001 when petitioner received Mr. Duncano's letter. Accordingly, petitioner has thirty (30) days from January 27, 2001 or until February 26, 2001 to elevate his case to the Commissioner. It was only on February 28, 2001 that the Commissioner of Internal Revenue received a letter from petitioner referring to the letter of Mr. Duncano dated December 27, 2000.

Clearly, the assessment becomes final, executory and demandable when petitioner failed to appeal within the period prescribed by law.

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20. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.

21. Consequently, the subject petition should not be given due course. The Honorable Court cannot take cognizance of the instant petition considering that it is a court of special jurisdiction and can only take cognizance of matters as are clearly within its jurisdiction.

RESPONDENT CORRECTLY DECLARED THAT 1) PETITIONER FAILED TO SUBMIT RELEVANT SUPPORTING DOCUMENTS WITHIN THE TIME PRESCRIBED AND 2) THE DOCUMENTS SUBMITTED BY PETITIONER CANNOT BE CONSIDERED TO SUBSTANTIATE COSTS AND EXPENSES. – RENDERING THE ASSESSMENT AS FINAL, EXECUTORY AND DEMANDABLE.

22. Respondent re-pleads the preceding paragraphs to reiterate its contention that petitioner failed to submit relevant documents within the time prescribed by law and regulations.

The delivery receipts submitted are unregistered, thus, cannot be considered to substantiate costs and expenses.

23. The documents cannot be considered as supporting documents for claimed costs and expenses because such documents were unregistered with the BIR.

24. Revenue Regulations No. V-1/The Bookkeeping Regulations provides:

> COLLECTOR'S PROVISIONAL RECEIPT. The so-called collector's provisional receipt and salesman provisional delivery receipt used by a corporation in connection with the sale of its products are, like the

> regular invoice and receipt, a part of its accounting system and, therefore, subject to the requirements of Revenue Regulations No. V-1, as amended. Accordingly, **said receipts should, prior to their case, be presented for approval and registration.'** (Emphasis supplied)

25. On the other hand, Section 2 of Revenue Regulations No. 2-90 likewise states:

> SECTION 2. Paragraph (4) of Section 19 of Revenue Regulations V-1, otherwise known as the 'Bookkeeping Regulations,' as amended by Section 3 of Revenue Regulations No. 2-78, is hereby amended to read as follows:
>
> 'Sec. 19. Authentication and registration of books, register, or records; authority to print receipts, sales or commercial invoices; and registration and stamping of receipts and invoices.'
> xxx xxx xxx
> '(d) Registration and stamping of receipts and invoices.
>
> Before being used, the printed receipts, sales or commercial invoices shall be registered with the revenue district officer where the principal place of business of the taxpayer is located within thirty (30) days from the date of printing the same. The registration of the printed receipts or invoices shall be evidenced by an appropriate stamp on the face of the taxpayer's copy of the authority to print as well as on the front cover, on the back of the middle invoice or receipt and on the back of the last invoice or receipt of the registered booklet or pad, authenticated by the signature of the officer authorized to place the stamp thereon.'

26. Accordingly, the supporting documents submitted by petitioner, being unregistered cannot be taken into consideration in the evaluation of its protest against the assessments issued against it.

PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX,

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EXPANDED WITHHOLDING TAX AND <u>COMPROMISE</u> <u>PENALTY.</u>

27. Petitioner GS MTE Grains Corporation is liable to pay its deficiency Income Tax, Expanded Withholding Tax and Compromise Penalty in the total amount of Twelve Million, Nine hundred Seventy-Thousand, Four Hundred Fifteen and 1/100 (Php12,970,415.01) for taxable year 2006. As provided in the Details of Discrepancies attached in the Formal Letter of Demand:

> 27.1 *Unsubstantiated Costs and Expenses (P20,570,457.16)* – Verification disclosed that the taxpayer claimed Purchases, Direct Labor and Operating Expenses per Financial Statements/Income Tax Return amounting to P31,430,751.11, P856,979.60 and P1,930,137.34, respectively. However, out of the total amount of P34,217,868.05 Costs and Expenses, only P13,647,410.88 were properly substantiated, hence, adjustment was made on the unsubstantiated claim of P20,570,457.17 which resulted to this assessment.
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> 27.2 *25% surcharge and 20% interest* amounting to P9,035.71 are imposes for late filing/payment of annual Income Tax Return due at time/s required by law pursuant to Revenue Regulations 12-99.
>
> 27.3 Verification disclosed that *Space Rentals* in the amount of P479,662.95 were not subjected to 5% expanded withholding tax, hence, assessment is made pursuant to Revenue Regulations No. 6-2001.

28. All told, there is no enough reason to nullify and set aside the Decision promulgated by respondent in the case entitled: '*In the Matter of the Request for Reconsideration of the Decision Denying the Protest of GS MTE Grains Corporation Against the Assessments Demanding the Payment of the Total Amount of P12,970,415.01 as Deficiency Income Taxes, Expanded Withholding Taxes and Compromise Penalties for Taxable Year 2006.*'

29. Consequently, the finding of deficiency tax liabilities against petitioner is proper in all respects. It is a well-settled principle that:

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> '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.
>
> Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The Pre-Trial Conference was scheduled on April 30, 2015.[22] Respondent's Pre-Trial Brief[23] was filed on February 6, 2015; while the Pre-Trial Brief (For the Petitioner)[24] was filed on April 28, 2015.

The parties filed their Joint Stipulation of Facts and Issues[25] on May 22, 2015, which was approved by the Court in its Resolution[26] dated September 22, 2015. The Court issued the Pre-Trial Order[27] on October 14, 2015.

Petitioner presented Mr. Ananias B. Dadivas[28] as its only witness. On the other hand, respondent presented Officer-in-Charge (OIC)-Assistant Chief Leilah Jane L. Dohinog[29] and RO Sophia D. Dipatuan.[30]

On October 9, 2015, petitioner filed its Formal Offer of Documentary Exhibits[31], offering Exhibits "P-17" to "P-88" as its documentary evidence. It further manifested that that it was adopting Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-

[22] Notice of Pre-Trial Conference dated February 16, 2015, Docket, Vol. I, p. 400.
[23] Docket, Vol. I, pp. 384-390.
[24] Docket, Vol. I, pp. 401-404.
[25] Docket, Vol. I, pp. 419-421.
[26] Docket, Vol. II, p. 528-529.
[27] Docket, Vol. II, pp. 541-554.
[28] Minutes of the hearing dated September 22, 2015, Docket, Vol. II, pp. 523-525.
[29] Minutes of the hearing dated January 28, 2016, Docket, Vol. II, pp. 580-581.
[30] Minutes of the hearing dated August 16, 2016, Docket, Vol. II, pp. 601-604.
[31] Docket, Vol. II, pp. 536-538.

10", and "P-11" to "P-16", which were formally offered in support of its application for temporary restraining order and/or writ of preliminary injunction[32] and which were admitted by the Court in its Resolution[33] dated September 12, 2014. Respondent filed his Comment [Re: Petitioner's Formal Offer of Evidence dated 7 October 2015][34] on October 19, 2015.

In the Resolution[35] dated December 7, 2015, the Court admitted Exhibits "P-17" to "P-88" as petitioner's documentary evidence. To wit:

Exhibits:	Document/s
P-1	Warrant of Distraint and/or Levy, dated July 24, 2014 consisting of one (1) page, issued by the Bureau of Internal Revenue District Office No. 110, General Santos City.
P-2	Formal Demand Letter dated December 01, 2009, issued by the Bureau of Internal Revenue, Revenue Region No. 18, Cotabato City.
P-3	Letter-request for re-investigation dated February 26, 2010, addressed to the Regional Director, BIR, Region No. 18, Koronadal City, sent by Mr. Ananias B. Dadivas, Accountant of the petitioner.
P-4	Letter reply of the Bureau of Internal Revenue, Revenue Region No. 18, Koronadal City addressed to Mr. Ananias B. Dadivas, CPA, dated March 8, 2010.
P-5	Letter response dated May 3, 2010 of the petitioner's accountant to the letter dated March 8, 2010 of the BIR, Region No. 18, Koronadal City, further requesting for reconciliation, with attached several delivery receipts.
P-6	Letter dated June 7, 2010 sent by the Regional Director, BIR Region No. 18, Koronadal City, to the petitioner's accountant, as response to the latter's letter dated May 3, 2010.
P-7	Letter reply dated July 21, 2010 of the petitioner's accountant to the letter of the BIR dated June 7, 2010.
P-8	Letter dated August 16, 2010, sent by the BIR Regional Office No. 18, Koronadal City, to the petitioner's accountant in reply to the letter dated July 21, 2010.

[32] Formal Offer of Documentary Exhibits filed on September 3, 2014, Docket, Vol. I, pp. 310-318.
[33] Docket, Vol. I, pp. 343-344.
[34] Docket, Vol. II, pp. 555-559.
[35] Docket, Vol. II, pp. 570-571.

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P-9	Formal Protest dated October 27, 2010 filed by the petitioner before the Commissioner of Internal Revenue.
P-10	Decision of the Commissioner of Internal Revenue, promulgated on February 3, 2014.
P-11 to P-16	Series of Bank documents.
P-17 to P-87	Set of Delivery Receipts from January 3, 2006 to December 28, 2006.
P-88	Summary of Analysis of Delivery Receipts dated 4-15-2010

On September 20, 2016, respondent filed his Formal Offer of Evidence[36], offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-11-a", "R-12", and "R-12-a" as his documentary evidence. Petitioner filed its Comment/Objection to the Respondent's Formal Offer of Exhibit[37] on November 2, 2016.

In the Resolution[38] dated December 20, 2016, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-11-a", "R-12", and "R-12-a" as respondent's evidence.

Respondent's documentary evidence are as follows:

Exhibits:	Description:
R-1	Letter of Authority No. 00022310 dated 29 November 2007
R-2	First Request for Presentation of Records dated 28 November 2007
R-3	Second Notice for Presentation of Records
R-4	Final Request for Presentation of Records
R-5	Subpoena Duces Tecum
R-6	Notice of Informal Conference
R-7	Memorandum recommending the issuance of a Preliminary Assessment Notice dated 6 October 2009
R-8	Preliminary Assessment Notice with attached Details of Discrepancies
R-9	Formal Letter of Demand, with attached Details of Discrepancies and Assessment Notices
R-10	Protest-Assessment No. 110-14-06-000174/2009

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[36] Docket, Vol. II, pp. 612-616.
[37] Docket, Vol. II, pp. 620-622.
[38] Docket, Vol. II, pp. 629-630.

R-11	Judicial Affidavit of RO Leila Jane I. Dohinog
R-11-a	Signature of RO Leila Jane I. Dohinog in her judicial affidavit
R-12	Judicial Affidavit of RO Sophia Dipatuan
R-12-a	Signature of RO Sophia Dipatuan in her judicial affidavit

The Memorandum (For the Petitioner)[39] was filed through registered mail on February 24, 2017 and received by the Court on March 8, 2017. Respondent however failed to file his memorandum.[40] Hence, the case was declared submitted for decision on March 20, 2017.[41]

The parties submitted the following issues for the Court's resolution:[42]

1. Whether the Court acquired jurisdiction over the instant case.

2. Whether petitioner is liable to pay the assessed amount of ₱12,970,415.01 representing its deficiency income tax, EWT and compromise penalty for taxable year 2006.

Firstly, the Court shall determine the timeliness of the filing of the Petition for Review.

Section 228 of the NIRC of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

[39] Docket, Vol. II, pp. 633-655.
[40] Records Verification dated February 17, 2017, Docket, Vol. II, p. 631.
[41] Resolution dated March 20, 2017, Docket, II, p. 658.
[42] JSFI, Docket, Vol. I, p. 420.

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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, as amended, petitioner has thirty (30) days from receipt of the FLD within which to file its administrative protest and another thirty (30) days from receipt of respondent's decision, or from the lapse of one hundred eighty (180) days, within which to file its Petition for Review with the Court of Tax Appeals.

Petitioner received the FLD dated December 1, 2009 with attached Details of Discrepancies issued by Regional Director Atty. Marcelinda Omila-Yap of Revenue Region No. 18-Cotabato City on February 19, 2010. Petitioner had thirty (30) days from February 19, 2010 or until March 22, 2010[43] to file its administrative protest. It

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[43] March 21, 2010 fell on a Sunday.

must be stressed that petitioner filed a Letter dated February 26, 2010 requesting an urgent reinvestigation or reconciliation of the audit result with respect to the alleged unsubstantiated costs and expenses on March 4, 2010.

Thereafter, petitioner received a copy of respondent's Decision dated February 3, 2014, demanding the payment of deficiency income tax, EWT, and compromise penalties in the total amount of ₱12,970,415.01 for CY 2006, on March 7, 2014. Counting thirty days from March 7, 2014, petitioner had until April 7, 2014[44] within which to file its Petition for Review with the Court. Hence, the Petition for Review was clearly filed by petitioner on April 7, 2014, within the thirty-day prescriptive period.

A review of petitioner's Memorandum shows that it raised as one of the issues, the validity of the LOA for lack of revalidation within the 120-day period. Thus, it is necessary to rule first on whether the Court has jurisdiction to decide on the question of validity of the LOA.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[45], the Supreme Court confirmed the jurisdiction of the Court to resolve the issue on the validity of the authority of revenue officers to conduct the audit under the phrase "other matters" under Section 7 of Republic Act (R.A.) No. 1125 or its amendment, R.A. No. 9282, as follows:

> "The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 *(R.A. No. 1125)* which in part provides:
>
> > Section 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of

[44] April 6, 2014 fell on a Sunday.
[45] G.R. No. 183408, July 12, 2017.

> internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x. (emphasis supplied)

Under the afore-cited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of '*other matters arising under the National Internal Revenue Code.*'

The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A No. 9282. Under R.A. No. 9282, Section 7 now reads:

Sec. 7. *Jurisdiction.* – The CTA shall exercise:

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

> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving 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

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> Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x.' (emphasis supplied)

Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?

It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. Section 2 of the NIRC states:

> Sec. 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the ***assessment*** and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (emphasis supplied)

In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary. Thus, to give more teeth to such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person. The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax.

It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of

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Lancaster, and eventually issue a deficiency assessment against it.

From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms 'other matters' under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA." (*Emphasis supplied*)

It must be emphasized that the validity of the assessment relies heavily upon the validity of the authority of the RO to conduct the audit pursuant to a valid LOA. The RO's authority to make an examination goes into the issue of the validity of the assessment itself. Thus, the Court has the power to resolve the validity of the LOA from which the RO derives its authority to conduct the audit and investigation of the taxpayer, that ultimately led to the issuance of the deficiency tax assessments, under the phrase "other matters" arising under the NIRC or other laws administered by the BIR.

The Court shall now address the issue pertaining to the validity of the LOA for lack of revalidation on or before the expiration of the 120-day period.

Petitioner contends that pursuant to Revenue Memorandum Circular (RMC) No. 36-99, the RO is allowed only 120 days from the date of the receipt of the LOA by the taxpayer to conduct the audit and submit the required report of investigation. It further asserts that if the RO is unable to submit the final report of investigation within the 120-day period, the RO must then submit a Progress Report to the head office and surrender the LOA for revalidation.

In the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation*[46], the CTA *En Banc* ruled on the 120-day period given to the RO to conduct an audit and submit a report,

[46] CTA EB No. 1535 (CTA Case No. 8655), January 4, 2018.

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as well as, the requirement of LOA revalidation in case the RO is unable to submit his report within the 120-day period, as follows:

> "There is likewise no merit in petitioner's claim that the Referral Memorandum gets its authority from the original LOA. *BIR's GAPD* provides the following:
>
> > 6. How much time does a Revenue Officer have to conduct an audit? A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation.
>
> Applying the above rule to the case at bar, the LOA was received by respondent through a certain Cornelia M. Saguit on September 4, 2007, counting one hundred and twenty (120)-days therefrom, the original RO had until January 2, 2008 to conduct the audit and to submit the report. However, an audit report was submitted by RO Marcellano only on April 19, 2010. Therefore, instead of continuing with the audit beyond the prescribed period, RO Marcellano should have just submitted a Progress Report and surrendered the LOA for revalidation, that is, for the issuance of a new LOA, which is wanting in this case. There was no record that the LOA was revalidated on or before the expiration of the given period. Having failed to prove that petitioner followed this procedure, the LOA has ceased to be valid. Thus, even if the Court *En Banc* finds merit in petitioner's claim that the Referral Memorandum derives its validity from the LOA, said LOA at that time was already ineffective. Therefore, the Referral Memorandum is invalid since it cannot derive validity from an ineffective LOA."

In this case, the LOA No. 200700022310 dated November 26, 2007 was received by petitioner on November 28, 2007, authorizing RO Sophia D. Dipatuan to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2006 to December 31, 2006. In this regard, RO Sophia D.

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Dipatuan had 120 days from November 28, 2007 or until March 27, 2008 to conduct the audit and submit the report. However, RO Sophia D. Dipatuan submitted the Memorandum Report only on October 6, 2009. Therefore, instead of continuing with the audit beyond the prescribed 120-day period, RO Sophia D. Dipatuan should have just submitted a Progress Report and surrendered the LOA for revalidation, that is, for the issuance of a new LOA, which is lacking in this case. There is no evidence that the LOA was revalidated on or before the expiration of the 120-day period. As a consequence, the LOA had ceased to be valid and the resulting assessment or examination is a nullity.

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[47], the Supreme Court stressed the importance of the grant of a LOA to the ROs who are assigned to perform the audit and examination of the taxpayer, to wit:

> "***The absence of an LOA violated MEDICARD's right to due process***
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
>> **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>>
>> (A) **Examination of Return and Determination of Tax Due**. - After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the**

[47] G.R. No. 222743, April 5, 2017.

> **examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an

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examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."

Clearly, there must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[48]

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[48] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

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In this case, the non-compliance of the concerned RO with the required procedure would inevitably render the LOA invalid. By continuing with the audit beyond the prescribed 120-day period, without submission of a Progress Report and without the surrender of the LOA for revalidation, RO Sophia D. Dipatuan had therefore acted without authority.

In the absence of competent proof that RO Sophia D. Dipatuan was duly authorized pursuant to a valid LOA, the deficiency tax assessments issued against petitioner, arising from the audit she conducted, is void *ab initio*.

Finding that the assessment for CY 2006 is void for having been issued without a valid authority, the Court finds it no longer necessary to discuss the other issues raised.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[49] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[50]

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Decision dated February 3, 2014 issued by respondent is **SET ASIDE** and the Formal Letter of Demand dated December 1, 2009 for calendar year 2006 is **CANCELLED**.

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[49] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

[50] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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
Chairperson, 1st Division

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

GS MTE GRAINS CORPORATION, Petitioner,	**CTA Case No. 8837**
	Members:
-versus-	Del Rosario, *Chairperson,* Uy, *and* Mindaro-Grulla, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 19 2018 ; 10:00 a.m.

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CONCURRING OPINION

DEL ROSARIO, PJ:

I concur in the result based **solely** on the ground that there was no valid assessment issued against petitioner.

On February 19, 2010, petitioner received the **Formal Letter of Demand** (FLD) dated December 1, 2009,[1] with attached **Details of Discrepancies**, issued by Regional Director Marcelinda Omila-Yap of Revenue Region No. 18, assessing petitioner for deficiency taxes for the year 2006. The last paragraph of the FLD reads:

> "In view thereof, you are requested to pay your aforesaid deficiency income tax and withholding tax liabilities through the duly authorized agent bank in which you are enrolled **within the time shown in the enclosed assessment notice**."[2] (Boldfacing supplied)

While the FLD states that petitioner must pay the deficiency taxes within the time shown in the allegedly enclosed assessment notice, a careful perusal of the records reveals that there is nothing

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[1] Exhibit R-9, BIR Records, pp.107-110.
[2] *Id.*

therein which would show that indeed, an assessment notice was issued and enclosed to the FLD.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides the procedure in issuing and protesting an assessment:

> "**SEC. 228.** *Protesting of Assessment.* —
>
> 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.**" (Boldfacing and underscoring supplied)

To implement the provisions of Section 228, *supra*, Revenue Regulations (RR) No. 12-99 was issued, Section 3.1.4 of which provides:

> "3.1.4. *Formal Letter of Demand and Assessment Notice.* - The **formal letter of demand and assessment notice shall be issued** by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void.* xxx **The same shall be sent to the taxpayer only by registered mail or by personal delivery**. xxx" *(Emphases supplied)*

Clearly, a formal letter of demand **AND** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.4 of RR No. 12-99 indicates the mandatory nature of the requirement**.[3]

In the absence of a valid assessment notice, there is no basis for respondent to issue the FLD demanding payment of the amount of ₱12,909,415.01 representing the alleged deficiency taxes, inclusive of legal increments for the year 2006. Since there was no assessment notice which was supposed to indicate the **due date** when the

[3] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

deficiency taxes must be paid, no proper demand for the payment of the deficiency taxes within a specific period was made.

In ***Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation***,[4] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> "An assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.
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> xxx xxx
>
> To start with, an assessment must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> xxx xxx xxx. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the <u>period</u> within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Xxx xxx." (Boldfacing and underscoring supplied)

In ***Commissioner of Internal Revenue vs. Fitness by Design, Inc.***,[5] the Supreme Court **invalidated** an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> "Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for**

[4] G.R. No. 128315, June 29, 1999.
[5] G.R. No. 215957, November 9, 2016.

payment were supposedly reflected in the attached assessment:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and <u>not the due date for payment of tax liabilities</u>. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay**.

Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality." (Boldfacing and underscoring supplied)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. In other words, no assessment can be regarded as valid absent a specific date or period within which the alleged tax liabilities must be settled or paid by the taxpayer.

Based on the foregoing, I submit that a void assessment bears no fruit,[6] which must be slain at sight.

All told, I **CONCUR** in the *result*.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.