Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

FABTECH EXPORT INDUSTRIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8435

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 18 2014
2:30 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1], filed by petitioner-Fabtech Export Industries, Inc. against Commissioner of Internal Revenue, seeks to reverse and set aside the Formal Letter of Demand with Final Assessment Notice dated April 11, 2011 on deficiency Value-Added Tax (VAT) in the amount of Three Million One Hundred Ninety Thousand Five Hundred Fourteen Pesos and 96/100 (Php3,190,514.96) for taxable year 2007.

Petitioner is a domestic corporation, duly incorporated on March 15, 2007 per its Certificate of Incorporation issued by the Securities and Exchange Commission[2]. Its principal office is located at Blk. 6A Lot 1-A Filinvest Technology Park, Calamba City, Laguna 4027. It is likewise a registered taxpayer[3].

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[1] Docket, pp. 6-39

[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 303, Exhibit "B"

[3] Par. 3, Stipulation of Facts, JSFI, Ibid, Exhibit "F"

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, authorized to review protests on deficiency tax assessments based on Section 3.1.5 of Revenue Regulation 12-99 (RR 12-99), implementing Section 228 of the National Internal Revenue Code of 1997 (NIRC), with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

On April 19, 2007, petitioner was issued a Certificate of Registration No. 07-29 by the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise at the Clark Special Economic Zone[5]. It was engaged in the production of foodservice utensils and equipment, architectural designs and refrigeration and was entitled to incentives granted to non-pioneer projects[6]. It relocated its business operations from Clark Special Economic Zone Clarkfield, Pampanga to Filinvest Technology Park, Calamba, Laguna. Accordingly, it was issued a new Certificate of Registration on 27 March 2008 by the Bureau of Internal Revenue, Revenue Region No. 009, Revenue District No. 056 as a manufacturer of fabricated metal products with registered business address at Blk. 6A, Lot1A, Filinvest Technology Park, Calamba City, Laguna[7]. Consequently a new Certificate of Registration No. 08-26 was issued to it by the Philippine Economic Zone Authority (PEZA)[8] on May 12, 2008.

On May 5, 2008, Emily E. Artos, petitioner's representative, applied for a tax clearance[9]. As a result, respondent, through Revenue District No. 56, Calamba City, issued a Certificate of No Outstanding Liability in favor of petitioner on May 6, 2008.[10]

Despite the aforesaid certification, respondent through Revenue Region No. 9, San Pablo City issued Letter of Authority[11] with No. 200800007920 on September 11, 2008 authorizing RO Jeanefer B. Reyes/GS Arturo V. Santos, Jr., to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2007 to December 31, 2007. The said Letter of Authority was revalidated on January 20, 2009[12]; and a Post Reporting Notice[13] was issued on January 29, 2010 for deficiency VAT, deficiency

[4] Par. 1, Summary of Admitted Facts, Respondent's Pre-Trial Brief, Id., p. 277
[5] Par. I(b), Stipulation of Facts, JSFI, Ibid, pp. 303-304; Exhibit "D"
[6] Exhibit "E"
[7] Par. I(c), Id, Exhibit "F"
[8] Exhibits "H" and "I"
[9] Exhibits "G-1" and "G-1-a"
[10] Exhibit "G"
[11] Exhibit "J"
[12] Exhibit "K"
[13] Exhibit "L"

withholding tax and compromise penalty in the aggregate amount of P3,114,471.15.

On the other hand, respondent through Bureau of Internal Revenue, Letter Notice Task Force – National Office (BIR, LN Task Force) issued a Letter of Authority[14] with No. 2009 00010290 on May 11, 2010 authorizing RO Lalaine F. Faraon/Team Head Satina B. Marinduque, to examine petitioner's books of account and other accounting records for income tax, value added tax, withholding tax issues based per LN No. 056 TRS 07-00-00014 and the corresponding preprocessed data under TRS for taxable year 2007. Subsequently, respondent issued a Notice for Informal Conference[15] and Preliminary Assessment Notice[16].

On January 24, 2011, pursuant to LOA No. 2009 00010290 and Letter Notices 056-TRS-07-00-00014 respondent (BIR, LN Task Force) issued a Final Assessment Notices[17] with Details of Discrepancies[18] and Assessment Notice[19] assessing petitioner for deficiency value-added tax and deficiency income tax, as follows:

I. DEFICIENCY VALUE ADDED TAX

Discrepancy per Letter Notice (Sales)	P	66,276,327.00
Less: Adjustments per Evaluation		-
Net Discrepancy	P	66,276,327.00
Multiply by VAT Rate		12%
Deficiency VAT	P	7,953,159.24
Add: Surcharge 50%		3,976,579.62
20% interest p.a. up to (1-31-11)		4,802,403.86
TOTAL AMOUNT DUE	**P**	**16,732,142.72**

II. DEFICIENCY INCOME TAX

Discrepancy per Letter Notice (Sales)	P	6,143,714.41
Multiply by Gross Profit Rate		7.96%
Additional Gross Income	P	489,039.67
Net Taxable Income per Annual ITR filed		-
Total Taxable Income	P	489,039.67
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due	P	171,163.88

[14] Exhibit "M"
[15] Exhibit "N"
[16] Exhibit "O"
[17] Exhibit "P"
[18] Exhibit "Q"
[19] Exhibits "R" & "S"

Less: Income tax due per ITR filed		-
Deficiency Income Tax	P	171,163.88
Add: Surcharge 50%		-
20% interest p.a. up to (1-31-11)		95,757.97
TOTAL AMOUNT DUE		**266,921.85**

In a letter dated March 2, 2011, to which petitioner protested the said Final Assessment Notice[20], respondent replied on March 30, 2011[21]. Respondent (BIR, LN Task Force), likewise, sent a Letter[22] dated May 11, 2011 to petitioner informing the latter that she was withdrawing and cancelling the Final Assessment Notice.

On April 11, 2011, respondent, through BIR, Revenue Region No. 9, San Pablo City, issued the subject Formal Letter of Demand[23], Details of Discrepancies[24] (Annex "A" of Formal Letter of Demand) and Audit Results/Assessment Notice[25] for deficiency value-added tax and compromise penalty, assessing petitioner as follows:

I. VALUE ADDED TAX		
Local Sales		P 13,665,397.08
Tax Rate		12%
Deficiency Tax Due		**P 1,639,847.65**
Add: 25% Surcharge	P 409,961.91	
Interest (1/26/2008 – 4/5/2011)	1,047,705.40	
Compromise Penalty	25,000.00	1,482,667.31
Total Amount Due		**P 3,122,514.96**
II. COMPROMISE PENALTY		**P 68,000.00**
GRAND TOTAL		**P 3,190,514.96**

In a letter dated June 7, 2011, petitioner protested the Formal Letter of Demand dated April 11, 2011[26] and submitted its supporting documents on August 2, 2011[27].

[20] Exhibit "T"
[21] Exhibit "U"
[22] Exhibit "Z"
[23] Exhibit "V"
[24] Exhibit "W"
[25] Exhibits "X" & "Y"
[26] Exhibit "AA"
[27] Exhibit "BB"

On November 21, 2011, petitioner received respondent's letter-reply dated September 20, 2011, to petitioner's protest-letter.

Subsequently, Regional Director Jose N. Tan forwarded petitioner's case to the Chief of Legal Division of Revenue Region 9, San Pablo City thru a 2nd Indorsement dated February 28, 2012.

Due to inaction of respondent on its protest, petitioner filed the instant Petition for Review[28] on February 28, 2012.

After the two Motions for Extension of Time to File Answer were granted[29], respondent filed a Motion to Admit Attached Answer[30] on May 8, 2012 which was denied by the Court per Resolution[31] dated June 6, 2012. Respondent moved for the reconsideration[32] of the same on June 29, 2012.

In the meanwhile, petitioner filed the Motion to Declare Respondent in Default[33] on July 6, 2012.

On September 14, 2012, the Court granted respondent's Motion for Reconsideration[34]. Consequently, the Answer was admitted and petitioner's Motion to Declare Respondent in Default became moot.

In her Answer, respondent interposed the following special and affirmative defenses[35]:

> "Petitioner Fabtech Export Industries Inc. is liable to pay the amount of Three Million One Hundred Ninety Thousand Five Hundred Fourteen Pesos and 96/100 (P3,190,514.96) representing deficiency Value-Added Tax (VAT) inclusive of interest, surcharges and penalties for the taxable year 2007 in view of the following grounds:
>
> ***The deficiency tax assessment is rendered final, executory and unappealable***

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28 Docket, pp. 6-39
29 Court Orders dated March 30, 2012 and April 16, 2012, Docket, pp. 138 & 143.
30 Docket, pp. 156-184
31 Docket, pp. 200-203
32 Ibid, pp. 206-213
33 Id., pp. 221-223
34 Resolution, Docket, pp. 267-269
35 Docket, pp. 163-184

Respondent humbly submits that the Honorable Court has no jurisdiction to try and hear the instant petition for review considering that the deficiency tax assessments against petitioner have already become final, executory and unappealable.

Petitioner was accorded due process when it exercised its right to file its administrative protest to the FAN on June 9, 2011. As provided under Section 228 of the NIRC

In relation thereto, Section 228 of the NIRC explicitly 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: xxx
>
> 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 and underscoring supplied)

As provided in the aforesaid provision of law, after the lapse of the period of 180 days period *(sic)* without respondent finally acting of *(sic)* the administrative protest, petitioner may appeal the inaction to the Court of Tax Appeals via a Petition for Review within 30 days from the lapse of said period. Counting 180 days from the time of filing of its protest on June 9, 2011, the reckoning period for the filing of the Petition for Review was on October 7, 2011. Ergo, petitioner has until November 6, 2011 within which to file its judicial appeal. Petitioner however, filed its Petition for Review before the CTA only on February 28, 2012. Ergo, the Petition was filed out of time.

A careful scrutiny of the administrative protest would reveal that petitioner opted to request for a reconsideration of the assessment notice against it and did not request for a reinvestigation of the case. Petitioner prayed that the Formal Letter of Demand and FAN dated April 11, 2011 be reconsidered and set aside and that the same be cancelled and/or withdrawn for want of authority, allegedly for being contrary to law and existing rules and regulations and for being violative of due process. Hence, there is no need for it to submit additional documents in support of its administrative protest as the only prayer requested is for a reconsideration of the respondent's FAN considering the available and existing documents at hand. Petitioner would have been required to submit additional documents had it requested for the reinvestigation of the case as it would entail another round of audit subject to the documents presented before revenue officers of respondent.

In the case entitled '*Commissioner of Internal Revenue vs. Philippine Global Communications, Inc.*'

> Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:
>
> Section 6. Protest. – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars: xxx

xxx

For the purpose of protest herein –

(a) ***Request for reconsideration*** – refers to a plea for a re-evaluation of an assessment **on the basis of existing records without need of additional evidence**. It may involve both a question of fact or of law or both.

(b) ***Request for reinvestigation*** – refers to a plea for re-evaluation of an assessment **on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation**. It may also involve a question of fact or law or both.

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when reinvestigation is requested by a taxpayer and is granted by the CIR. The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue* explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax xxx' (Emphasis and underscoring supplied)

Assuming without however conceding that the administrative protest filed by petitioner required the submission of additional documents, hence, a request for reinvestigation of the case, still, the FAN shall be considered final and executory because petitioner failed to submit all relevant documents in support of its administrative protest within sixty (60) days from filing in total disregard and violation of Section 228 of the NIRC of 1997 and its implementing regulations, RR12-99.

Section 228 of the NIRC of 1997 provides as follows:

> 'Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **<u>Within sixty (60) days from filing of the protest</u>**, all relevant documents shall have been submitted; otherwise the **<u>assessment shall become final</u>**.' (Emphasis and underscoring supplied)

In relation thereto, Section 3.1.5 of the RR No. 12-99 explicitly states:

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

The administrative protest filed by petitioner challenged the validity of the deficiency VAT found in the Formal Letter of Demand and/or Final Assessment Notice without however, attaching the necessary documents to support its allegations.

In its Petition for Review, petitioner stated that it submitted the document in support of its protest in a letter dated August 2, 2011. However, upon examination of the of the seven documents submitted, it would be revealed that these involve only : PEZA registration, letter of authorities no. 00007920 and 000010290, revalidation notice dated January 20, 2009, FAN dated January 24, 2011, BIR letter dated May 11, 2011 and FLD with FAN issued by RR No. 9.

The aforesaid documents submitted are not relevant and in support of its protest considering that these documents are already existing and present in the BIR records. The PEZA registration was already presented by petitioner during the audit, the rest of the documents are issued by respondent and not in any way could affect or alter the FAN by way of a request for reinvestigation. Ergo, the baseless assertions made by petitioner claiming that the FAN should be withdrawn and cancelled allegedly for null and void, contrary to law and existing rules and regulations, and violative of due process should be outrightly denied.

It has always been held that all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. It is incumbent upon the taxpayer to prove the contrary and failure to so do *(sic)* shall vest legality to respondent's actions and assessments.

The Final Assessment Notice was valid and binding and issued within the prescriptive period.

At the outset, it must be emphasized that assessments are prima facie presumed correct and made in good faith. Petitioner has the bounden duty to prove otherwise. In the absence of any irregularities in the performance of official duties, assessments made are presumed correct and issued in accordance with laws and regulations, hence, valid and binding. All presumptions are in favor of the tax assessments.

The Final Assessment Notice subject of the instant case was issued against petitioner on the strength of a Letter of Authority No. 00007920 dated September 11, 2008 signed by Araceli M. Francisco, OIC- Regional Director, RR No. 9 – San

Pablo City, authorizing Revenue Officer Jeanefer B. Reyes to conduct investigation of the books of accounts and other accounting records of petitioner for taxable year 2007.

On the basis of the documents submitted by petitioner, it was revealed that there has been found due from petitioner deficiency Value-added tax (VAT) for taxable year 2007 in the amount of P3,190,514.96 inclusive of surcharge, interest and other penalties pursuant to the provision of Section *(sic)* 106 and 108 of the National Internal Revenue Code (NIRC) of 1997, as implemented by RR 16-2005 amended by Revenue Regulations No. 4-2007.

> 'Section 106 – Value Added-Tax on Sale of Goods and Services
>
> A. Rate and Base of Tax. – There shall be levied, assessed, and collected on every sale, barter or exchange of goods and *(sic)* properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered, or exchanged, such tax to be paid by the seller or transferor. xxx' (Emphasis and underscoring supplied)

Upon verification, it was disclosed that petitioner failed to file VAT returns for taxable year 2007 relative to its local sales and in view thereof, failed to subject said sales to 12% VAT pursuant to the aforesaid provisions of law.

A Formal Letter of Demand (FLD) dated April 11, 2011 was issued against petitioner requesting it to pay the deficiency tax liability through respondent's authorized agent bank, attached thereto is the aforementioned Details of Discrepancies which contains the itemized descriptions of the local suppliers and the corresponding sales not subjected to the 12% VAT. Photocopies of the FLD and Details of Discrepancies are hereto attached as Annexes 'A' and 'B'.

A copy of the Final Assessment Notice duly signed by Regional Director Rodita P. Galanto was likewise served to petitioner simultaneous to the FLD. A copy of the FAN is hereto attached as Annex 'C'.

Corollary thereto, Section 203 of the National Internal Revenue Code (NIRC) explicitly provides:

> 'Section 203. Period of Limitation Upon Assessment and Collection of Taxes.
>
> > **<u>Except as provided in Section 222</u>**, internal revenue taxes shall be assessed **<u>within three (3) years after the last day prescribed by law for filing of the return</u>**, and no proceeding in court without assessment, for the collection of such taxes shall be begun after the expiration of such period : Provided, That in a case where a return in filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered *(sic)* filed on such day.' *(sic)*

However, Section 222 of the NIRC provides the exceptions as regards to the provisions laid down under Section 203. In particular, as shown under Section (a) thereof, the three (3) *(sic)* period limitation in making assessment shall <u>not</u> apply in cases where it involves false or fraudulent return or in cases *<u>where there is failure to file a return on the person obliged to file such return</u>*. Section 222(a) of the National Internal Revenue Code provides:

> 'Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a false or fraudulent return with intent to evade tax or *(sic)* **<u>failure to file a return</u>**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **<u>within ten (10) years</u>**

> **after the discovery of the falsity, fraud or omission**; Provided, That in a fraud assessment which has become final and executor *(sic)*, the fact of fraud shall be judicially taken cognizance of in the civil and criminal action for the collection thereof.' (Emphasis and underscoring supplied)

Such being the case, the three (3) *(sic)* period of limitation for the assessment of internal revenue tax liabilities reckoned from the last day prescribed by law for the filing of the return shall not apply in the case at hand for the simple reason that petitioners *failed to file the required VAT returns* for taxable year 2007 in relation to its local sales. Such being the case, the applicable provision shall be Section 222(a) where the period of limitation provides that the assessment may be made within ten (10) years after the discovery of falsity, fraud or omission. In the case at hand, the reckoning period was from the time of petitioner's submission of supporting documents during the conduct of audit in 2008. Indubitably, the Formal Letter of Demand dated April 11, 2011 was issued and received by petitioner within the prescriptive period provided by law. Such being the case, the FLD is considered valid and has the force and effect of law.

Respondent observed due process in the issuance of the Letter of Authority and conduct of its examination.

In the Petition for Review, petitioner manifested that the Final Assessment Notice (FAN) should be considered null and void allegedly on account of the failure of respondent to observe due process and to follow the periods and requirements mandated by Revenue Memorandum Order No. 12-2007 in the issuance of the Letter of Authority and conduct of its examination.

Petitioner stated that pursuant to Paragraph 4.20 of RMO 12-2007 it should be categorized as a medium taxpayer as its gross receipts for 2007 was within the range of P5,000,000 – P50,000.000, hence, respondent's report of investigation should be submitted within ninety (90) days from the date of the issuance of the Letter of Authority.

It went further by lamenting that the revalidation notice was likewise violative of petitioner's right to due process considering that the revalidation notice itself because *(sic)* the basis for which the same was issued was void, allegedly on the ground that the request for the extension of the submission of the report of investigation was not due to constraints attributable to petitioner.

Respondent utterly disagrees with the misinterpretations made by petitioner.

First and foremost, Revenue Memorandum Orders (RMOs) are issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing. These are internal directives or rules and procedure given to the revenue officers and or concerned BIR employees with the end view of implementing the programs of respondent. As applied in the instant case, RMO 12-2007 is issued for purposes of prescribing uniform policies, guidelines and procedures in the conduct of audit and investigation of tax returns by the Revenue District Offices. Hence, petitioner is not privy to these policies, guidelines and procedures and therefore, cannot just make its own conjectures, interpretation and assumptions with regard to the audit program of the RDO.

Petitioner assumed that it should be considered as a medium taxpayers as its gross receipts ranges from P5,000,000 to P50,000.000. However, other that *(sic)* said bare allegations petitioner has not proven that indeed it should be considered within said coverage. Jurisprudence dictates that bare allegations without any evidence to prove the same should be outrightly denied for want of merit. Hence, her allegations that the report of investigation should be submitted within 90 days from the issuance of the Letter of Authority should be utterly disregarded for having no leg to stand on.

Anent the issue of the revalidation notice, to reiterate, petitioner manifested that the same is void considering that it was issued in violation of Paragraph IV.30.

Petitioner quoted *(sic)* its Petition for Review said provision of RMO. It is best that the same should likewise be included in this pleading so that petitioner may be further enlightened.

> 'IV. Policies and Procedures.
>
> xxx
>
> 30. In case the report of investigation cannot be rendered within the aforementioned time frame <u>due to constraints attributable to the taxpayer</u>, the RO may request for the revalidation of the LA by preparing a progress report with a valid reason for the request for revalidation, duly noted by the Group Supervisor and approved by the RDO. The RDO shall transmit the entire docket of the case, including all notices with checklist of documentary requirements served to the taxpayer, to the RD for revalidation of the LA. The previously issued LA shall be stamped "Revalidated on _____" and shall be signed by the RD.
>
> The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. <u>Failure on the part of the RO to request for revalidation or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued</u>. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO. xxx'

In assuming that the revalidation notice is void, petitioner, in its Petition for Review, stated that revenue officer Jeanefer Reyes's *(sic)* alleged failure to render a report of investigation was not due to constraints attributable to petitioner but was based solely on the fact that the investigation was still on-going, claiming that the same was contrary to the policies and procedures quoted in the aforesaid section of RMO.

Petitioner is totally mistaken.

Respondent humbly manifests that the Letter of Authority dated September 11, 2008 was received by petitioner, acting through the representation of her counsel, Atty. Achernar Tabuzo on September 19, 2008. Atty. Tabuzo's position then was petitioner's Finance Manager. Attached to the Letter of Authority is the First Notice re: Submission of Documentary Requirements for taxable year 2007 which was likewise received by Atty. Tabuzo on September 19, 2008. . *(sic)* Photocopies of the Letter of Authority showing Atty Tabuzo's receipt of the First Notice are hereto attached as Annex *(sic)* 'D' and 'E'.

Instead of complying with the submission of the documentary requirements, Atty. Tabuzo, acting in representation of petitioner, requested for extension of time within which to submit documents. She requested for the Revenue Audit Memorandum Order Number upon which petitioner was selected as a subject of examination and likewise questioned the Letter of Authority No. 00007920. This led to the issuance of the Final Request for the Presentation of Evidence dated November 14, 2008 which was served to petitioner by registered mail. A photocopy of said Final Request is hereto attached as Annex 'F'.

To refresh the memory of Atty. Tabuzo, in a letter dated January 5, 2009 which was served to respondent on January 6, 2009, she manifested that she had received a copy of the aforesaid Final Request for the Presentation of Evidence and clearly requested that the examination of petitioner's books and records be conducted on February 16, 2009 at 10:00 a.m. Said letter was duly signed by no less that *(sic)* Atty. Tabuzo herself. A photocopy of said letter is hereto attached as Annex 'G'.

Thereafter, the Letter of Authority was revalidated on January 20, 2009, copy furnished, petitioner primarily because of the request of Atty. Tabuzo to have the examination of petitioner's book of accounts and records on February 16, 2009, hence, the investigation is therefore, still on-going.

How could petitioner, through Atty. Tabuzo, question the validity of the revalidation notice when she herself contributed to the very reason why respondent's report of investigation was not completed within the period provided by law? Is it not that the investigation was extended to accommodate petitioner's request? In fact, in said January 5, 2009, the very reason given by Atty. Tabuzo in requesting for a February 16, 2009 examination is due to the voluminous year end transactions and compliance with various government agencies. The Letter of Authority should therefore be revalidated to be able to conduct the investigation on the requested date prayed for by Atty. Tabuzo.

In a letter dated January 9, 2009, respondent agreed to the request of petitioner and manifested that the revenue officers will conduct the examination from February 17 to 20, 2009 within petitioner's premises.

In the light of the foregoing, the revalidation notice is therefore considered valid and binding between the parties as the same was issued undeniably due to *constraints attributable to petitioner*. Hence, the Letter of Authority was revalidated it *(sic)* compliance with the provision of aforesaid Paragraph 4.30 of RMO 12-2007.

As a PEZA-registered entity, petitioner is only exempt from the payment of income tax, hence, liable to pay VAT.

While it is admitted that petitioner, being a PEZA-registered ecozone, still, such fact, standing alone, does not exempt it from the payment of VAT.

As borne by the BIR records, the PEZA Certification issued to petitioner on May 2, 2007 entitles it to incentives granted to non-pioneer projects under RA 7916. Among the many incentives granted, petitioner enjoys corporate income tax holiday (ITH) for four (4) years for original project effective on the committed date of start of commercial operations or the actual date of start of commercial operations, whichever is earlier. It can be further extended provided specific criteria are met. A copy of said PEZA certification is hereto attached as Annex 'H'.

None of the privileged outlined therein indicates that petitioner is exempt from the payment of VAT, contrary to the allegation of petitioner.

In said PEZA certification, petitioner is entitled to VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements. With all due respect, petitioner must have misinterpreted the said incentive to mean that petitioner is VAT exempt entity, hence, not liable to pay VAT.

A careful examination of said incentive would reveal that the VAT zero-rating pertains to its local purchases or those done outside PEZA zone. It is therefore granted to its local suppliers, subject to compliance with BIR and PEZA requirements. Suffice it to say that the entitlement to VAT zero-rating is specifically given to its local suppliers and not to petitioner.

Ergo, the sales made by petitioner itself to its local customers is therefore subject to the payment of VAT as it is not within the incentive accorded to a PEZA registered ecozone. Local sales made by petitioner should be subjected to the rate of 12% pursuant to the provision of Section 106 of the NIRC as amended by RR 16-2005. It is therefore under obligation to declare the same in the VAT returns for taxable year 2007, file the same with RDO 56 which has jurisdiction over it and pay the corresponding VAT liability within the period granted by law.

Petitioner, however, did not pay and file the corresponding VAT returns relative to aforesaid local sales for taxable year 2007.

Due process of law was accorded petitioner relative to the issuance of the Assessment Notice and Formal Letter of Demand

In its Petition for Review, petitioner averred that it was denied due process for failure on the part of respondent to issue PAN and informal conference.

Respondent humbly states otherwise.

Contrary to the claim of petitioner, respondent, after the conduct of investigation, informed petitioner of her audit findings in a Post Reporting Notice ('Notice', for brevity) dated January 29, 2010 issued by RDO Benito Wong, of Revenue District Office No. 56 – Calamba City. Said notice was served to petitioner by registered mail. A copy of said Post Reporting Notice is hereto attached as Annex 'I'.

Through said notice, respondent informed petitioner that a total deficiency taxes in the amount of P3,114,471.15 were found due from the latter. In case petitioner was not agreeable, it was requested to submit documentary evidence in support of its argument within the period of fifteen (15) days from receipt of the Notice.

Respondent strongly maintains that said notice partakes the nature of a Notice for Informal Conference. Though the January 29, 2010 letter is not captioned as Notice for Informal Conference, still, the body of the letter clearly states that petitioner was informed of the audit findings and was given the opportunity to present its side of the case by submitting within the period of 15 days from receipt of the letter to submit supporting documents to controvert the audit findings.

A Preliminary Assessment Notice (PAN) was issued and served to petitioner by registered mail on March 10, 2011. Due process was observed in the service of the PAN to petitioner.

Section 7 Rule 13 of the Revised Rules of Court of the Philippines clearly provides:

> 'Section 7. Service by mail. – Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known,

> otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail. (5a, Bar Matter No. 803, 17 February 1998)'

As culled from the records of the case, the notice of informal conference (Post Reporting Notice) was served, by way of registered mail, to the registered address of petitioner as appearing on its Certificate of Registration. Hence, there can be no dispute that petitioner was duly informed of the audit findings and was afforded the opportunity to present any controverting evidence in its defense.

On the subject of the questioned PAN, respondent maintains that the issuance and service of the same was regularly performed and in accordance with established procedures, that is, that the PAN was issued against petitioner and eventually sent to the taxpayer's place of business as appearing in its registration certificate.

As held by the Supreme Court in several decided cases, it is not the issue date of the notice assessment that is the reckoning point in prescription but rather, it is the date when the said notice was mailed or sent to the taxpayer at its registered business address that constitutes actual assessment. (Republic v. Limaco & De Guzman Commercial Co., Inc., et al., L-13081, August 31, 1962; Basilan Estates, Inc. v. Commissioner of Internal Revenue, et al., L-22492, September 5, 1967)

The Final Assessment Notice that was withdrawn was pursuant to a letter notice issued by the LN Task Force and not from the Letter of Authority No. 00007920

In its Petition for Review, petitioner alleged that it is not liable to pay VAT deficiency for 2007 on account of the fact that the FAN dated January 11, 2011 issued by Nelson M. Aspe, Deputy Commissioner – Operations Group assessing petitioner deficiency VAT and Income Tax in the total amount of P16,999,064.57 has already been cancelled and withdrawn in a letter dated May 11, 2011 duly signed by Salina Marinduque, Head of LN Task Force. In addition, petitioner likewise manifested that a Certificate of No Outstanding Liability was previously issued to it, hence, it is indeed not liable for the payment of deficiency taxes.

Respondent humbly disagrees.

Respondent does not deny the fact that a FAN dated January 24, 2011 was issued to petitioner finding petitioner liable for the payment of deficiency Income Tax and VAT. The same was subsequently withdrawn and cancelled by Salina Marinduque, Head, Team D (RR) of the LN Task Force. However, it must be stressed that said withdrawn FAN arose from the Letter Notice No. 056-TRS-07-00-00014 dated March 25, 2010 and Letter of Authority No. 2009-00010290 dated May 11, 2010 issued to the Head of the LN Task Force and not from the Letter of Authority No. 00007920 dated September 11, 2008 issued to revenue officer Jeanefer Reyes of RDO No. 56-Calamba, Laguna which resulted to the issuance of the FAN subject of the instant case.

The withdrawn FAN arose from the information/data gathered from Hanjin Heavy Industries and Construction Company, Ltd., a withholding agent/payor relative to its sales transactions with petitioner. The details gathered were sourced from the withholding tax returns (Alphalist) by said agent.

The Final Assessment Notice that revealed the tax deficiencies subject of the instant case arose from petitioner's failure to file and pay the corresponding VAT returns on account of its sales made to its local customers. Hence, the same should exist as it arose from a different letter of authority. Said letter of authority to conduct investigation of books of account and accounting records of petitioner is at the time when petitioner was still under the jurisdiction of RDO 56 Calamba, Laguna. In fact the Certificate of Registration dated March 15, 2007 issued by said RDO to petitioner bearing OCN 1RC0000307502 involve the following tax type : Income Tax, VAT, Withholding Tax – Expanded and Withholding Tax –

Compensation. Hence, the deficiency assessment subject of the instant case should therefore stand.

As stated earlier, petitioner likewise manifested that it shall not be considered liable for the payment of deficiency tax liabilities on account of the receipt of a 'Certificate of Outstanding Liability issued by RDO-56, Calamba, Laguna duly signed by Rustico M. Bayani, Asst. Revenue District Officer.

The Certificate of No Outstanding Liability ('Certificate', for brevity) issued only certifies that, on the basis of existing records, petitioner has no outstanding liability as of May 6, 2008. It bears stressing that said certification was issued prior to the issuance of the Letter of Authority dated September 11, 2008 given to Jeanefer Reyes of RDO 56 – Calamba, Laguna or prior to the time of the conduct of investigation and examination of the books of accounts and accounting records of petitioner for taxable year 2007. Hence, after the conduct of investigation, a deficiency tax assessment may be issued against petitioner. In addition, a notation was placed therein whereby the tax liabilities from other BIR offices are not included in said certification. Hence, the Certification does not absolutely absolve petitioner payment of deficiency tax liabilities as it could be possible that there exists tax liabilities that may be pending with other BIR offices which are not covered by said certification. Such being the case, the Certificate cannot serve as conclusive evidence to prove that petitioner is not liable for taxable year 2007 tax deficiencies."

Respondent's Pre-Trial Brief[36] was filed on October 4, 2012, while Pre-Trial Brief for the Petitioner[37] was submitted on October 25, 2012.

The parties' Joint Stipulation of Facts and Issues[38], filed on November 5, 2012, was approved in open court on November 8, 2012[39]. In the same hearing, the Pre-Trial was terminated.

During trial, petitioner and respondent presented their respective sole witnesses, namely: Wilson K. Go and Mitzi Lisette O. Belen.

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[36] Docket, pp. 276-283
[37] Docket, pp. 285-302
[38] Docket, pp. 285-302
[39] Minutes of the Hearing, Docket, p. 306

After the Court considered the Memorandum for the Petitioner[40], filed on August 2, 2013, and the Report [41]dated August 28, 2013 of this Court's Records Division that no memorandum had been filed by the respondent, this instant Petition for Review was submitted for decision on August 30, 2013[42].

The parties submitted the following issues[43] to be resolved by this Court:

1. Whether or not petitioner is liable to pay for the deficiency Value-Added Tax in the amount of P3,190,514.96 inclusive of interest, surcharges and penalties for the taxable year 2007;

2. Whether or not the Formal Letter of Demand with Audit Results/Assessment Notice dated 11 April 2011 was issued in violation of petitioner's right to due process; and

3. Whether or not the instant petition is filed within the reglementary period prescribed in Section 228 of the Tax Code.

The Court will determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "Sec. 228. *Protesting Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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[40] Docket, p. 480-494
[41] Records Verification, Ibid, p. 498
[42] Resolution, Docket, p. 499
[43] Par. II, JSFI, Docket, p. 304

> 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."

Petitioner received the Formal Letter of Demand[44] dated April 11, 2011 with Details of Discrepancies[45] and Audit Results/Assessment Notice[46] on May 11, 2011 and filed its Letter of Protest[47] on June 9, 2011, one day before the lapse of the period within which to file the same. Petitioner had sixty (60) days from June 9, 2011 or until August 8, 2011, within which to submit its supporting documents. Petitioner submitted its supporting documents on August 3, 2011[48].

Respondent had one hundred eighty (180)-day period or up to January 30, 2012 to act on petitioner's Letter of Protest, which she failed to do. Petitioner had thirty (30) days therefrom or until February 29, 2012 within which to appeal respondent's inaction. Petitioner filed this Petition for Review on February 28, 2012.

Thus, it is clear that this Petition forReview was timely filed.

[44] Exhibit "V".
[45] Exhibit "W".
[46] Exhibit "X" & "Y".
[47] Exhibit "AA"
[48] Letter dated August 2, 2011, BIR records, p. 196.

Respondent's Right to Assess

Section 222(a) of the National Internal Revenue Code, as amended, states that:

> "Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> (a) **In the case** of a false or fraudulent return with intent to evade tax or **of failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (Emphasis supplied.)

In relation thereto, Section 114 of the NIRC of 1997 provides:

> "SEC. 114. *Return and Payment of Value-added Tax.* –
>
> *(A) In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis."

Based on the foregoing provisions, respondent has ten (10) years within which to assess petitioner for deficiency VAT. The ten-year period commences from the omission of petitioner to file its return, which is twenty-five (25) days following the close of each taxable quarter, as follows:

VAT Returns	Required Date of Filing	Last Day to Assess
1st Quarter	April 25, 2007	April 25, 2017
2nd Quarter	July 25, 2007	July 25, 2017
3rd Quarter	October 25, 2007	October 25, 2017
4th Quarter[49]	January 25, 2008	January 25, 2018

[49] Exhibit "CC-4".

Considering that the Formal Letter of Demand with Details of Discrepancies and Audit Results/Assessment Notice ware received by petitioner on May 11, 2011, respondent, therefore, timely assessed petitioner for deficiency VAT for taxable year 2007.

Petitioner contends that the assailed Formal Letter of Demand is void for failure to comply with the substantive requirement. Before the taxpayer is assessed of proper taxes, he should first be notified in writing of the findings stating the law and the facts upon which the assessment is made. It alleges that respondent did not dispute that neither Notice for Informal Conference, Preliminary Assessment Notice nor Final Assessment Notice was ever issued to the petitioner prior to the issuance of the assailed Formal Letter of Demand in connection with the tax investigation under LOA No. 7920. It, likewise, argues that Section 3.1.2 of Revenue Regulation No. 12-99 mandates the issuance of preassessment notice before the issuance of a tax assessment. Petitioner has cited the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[50], stating that the issuance of preassessment notice is an essential part of due process. As such, respondent violated petitioner's statutory and procedural right to due process.

Petitioner further points out that Letters of Authority Nos. 7920 and 10290 cover the same taxable period and internal revenue taxes. It argues that the issuance of these two LOAs violated its right to due process on the ground that one Letter of Authority shall be issued for each taxable year under audit, to include all internal revenue tax liabilities. It further posits that respondent violated Revenue Memorandum Order No. 5-2009. Considering that the investigation under LOA No. 10290 was fully compliant with law and procedure, RDO No. 56 should have cancelled the LOA No. 7920 and desisted from the conduct of any further tax investigation thereon, pursuant to the aforesaid memorandum which mandates the automatic cancellation and invalidation of an LOA that has been issued to the taxpayer for the same taxable period.

The Court partly agrees with petitioner's argument.

The instant case involves two letters of authority which were both issued covering the same taxable year Letter of Authority No. 2008 00007920[51] was issued by Revenue Region No. 9, San Pablo City, which led to the issuance of a Formal Letter of Demand. The said Formal Letter of

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[50] G.R. No. 185371, December 8, 2010.
[51] Exhibit "J".

Demand is the subject of this instant petition. The other Letter of Authority with No. 2009 00010290 was issued by Letter Notice Task Force – National Office, which led to the issuance of the Preliminary Assessment Notice and Final Assessment Notice. However, the said Final Assessment Notice was cancelled and withdrawn.

It is a basic rule that one Letter of Authority shall be issued for each taxable year under audit to include all internal revenue tax liabilities of the taxpayers pursuant to Revenue Memorandum Order Nos. 71-1999 and 36-2000.

Further, Par. II (D) (1) of Revenue Memorandum Order No. 5-2009, provides that all issues concerning duplicate or multiple LAs issued to a single taxpayer for a particular taxable period prior to the promulgation of the said Order shall be immediately elevated by the Offices that issued the LAs to the Office of the Commissioner for review and evaluation.

Despite the aforesaid provision, Revenue Region 9, San Pablo City and Letter Notice Task Force – National Office did not elevate the existing conflicts to the Office of the Commissioner for review and evaluation.

Thus, the Court is confronted with the issue of who has the primary jurisdiction to conduct audit or investigation over petitioner's tax liability.

As provided under Par. II (A) 1 and 2 of Revenue Memorandum Order No. 5-2009, it is the general rule that the Investigating Office shall exercise primary jurisdiction over the conduct of an audit/investigation into the tax liabilities of the taxpayer for a given taxable period where the taxpayer is registered or which has specific jurisdiction over a taxpayer. As such, the Revenue District Office shall exercise primary jurisdiction in the conduct of audits/investigations over taxpayer registered in its Revenue District.

The exceptions to the above-mentioned general rule on primary jurisdiction are (1) cases where there is prima facie evidence of tax fraud; or (2) cases falling under the Run After Tax Evaders (RATE) Program[52], wherein the jurisdiction to conduct audit/investigation rests upon the National Investigation Division (NID) or the Regional Special Investigation Divisions (SIDs)[53]. ea

[52] Par. II (B) (1) of Revenue Memorandum Order No. 5-2009.
[53] Par. II (B) (2), Ibid.

It is worthy to note that the **LN Task Force in the National Office has been created** to be composed of Revenue Officers –Assessment (ROs-A) **performing supervisory functions in the Revenue District Offices** (RDOs) who will be assigned in a concurrent capacity to be covered by a Revenue Special Order (RSO), **to handle 2006 LNs**. This LN Task Force shall be supervised by the Assessment Service of the National Office[54]. (Emphasis supplied.)

Based from the foregoing, it is clear that between Revenue Region 9, San Pablo City and LN Task Force – National Office, it is the former that has primary jurisdiction to conduct audit/investigation over the taxpayer's tax liability.

The Court finds merit in petitioner's argument that respondent failed to issue Preassessment Notice.

The afore-cited Section 228 of the National Internal Revenue Code, as amended, provides that when the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. The taxpayers shall likewise be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

As held in the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[55], "the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word '*shall*' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process."

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal

[54] Par. III (4) of Revenue Memorandum Order No. 32-2007.
[55] G.R. No. 185371, December 8, 2010

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[56]

After careful evaluation of the records, it appears that there was no preassessment notice issued in connection with Letter of Authority LOA No. 2008 00007920. Despite respondent's failure to notify petitioner of its assessment, the former still issued the subject Formal Letter of Demand, Details of Discrepancies and Audit Results/Assessment Notices. It is worthy to note that the Preliminary Assessment Notice[57] attached in the record was issued in connection with the Letter of Authority LOA No. 2009 00010290, but not with the LOA No. 2008 00007920.

Clearly, respondent violated petitioner's right to due process. Thus, the Formal Letter of Demand, Details of Discrepancies and Audit Results/Assessment Notices are null and void.

IN VIEW THEREOF, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand, Details of Discrepancies and Audit Results/Assessment Notices No. 56/2007, all dated April 11, 2011, assessing petitioner for deficiency value-added tax and compromise penalty for taxable year 2007, in the total amount of P3,190,514.96, inclusive of interest, 25% surcharge, and of compromise penalty, are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[56] Commissioner of Internal Revenue v. Metro Star Superama, Inc., Ibid.
[57] Exhibit "O".