REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1855** (CTA Case No. 8715)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
RIECKERMANN PHILIPPINES, INC., Respondent.	Promulgated: AUG 27 2019 11:20 a.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated January 15, 2018 ("Assailed Decision") and Resolution[2] dated May 02, 2018 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), partially upholding the assessment Petitioner issued against Respondent for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT") and withholding tax on compensation ("WTC") for calendar year ("CY") 2007 amounting to Php131,100.67 basic tax

[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Catherine T. Manahan concurring; Docket, pp. 692-733.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Catherine T. Manahan concurring; *Id.*, pp. 750-754.

and twenty-five percent (25%) surcharge, plus deficiency and delinquency interests.

The Facts

The facts as found by the Second Division are as follows:

"[Respondent] Rieckermann Philippines, Inc. is a domestic corporation organized and existing under Philippine laws, with address at 89 West Capitol Drive, Kapitolyo, Pasig City.

On the other hand, [Petitioner] 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 the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 17, 2010, [Respondent] received the Preliminary Assessment Notice (PAN) dated December 14, 2010. Petitioner filed a Letter of Protest against the PAN on December 29, 2010.

On January 7, 2011, [Respondent] received the FLD dated January 3, 2011 with attached Details of Discrepancies and Assessment Notices.

On January 25, 2011, [Respondent] filed a Letter of Protest to the FLD dated January 20, 2011 [*sic*].

On March 16, 2011, [Respondent] received a Letter from [Petitioner] dated February 25, 2011, informing it that the case will be forwarded to Revenue District No. 43-A for appropriate action.

On September 11, 2012, [Respondent] received a Letter dated August 30, 2012, informing it that Revenue Officer Elmer O. Jimenez under Group Supervisor Aurea S. Guevarra recommended the reiteration of the assessments in the FLD.

On September 13, 2012, [Respondent] submitted a Letter dated September 12, 2012, in response to [Petitioner]'s Letter dated August 30, 2012.

On September 3, 2013, [Respondent] received the Final Decision dated August 28, 2013 signed by Regional Director Jonas DP. Amora which noted the recommendation of the investigating officer for the reiteration of the assessments and demanded [Respondent] to pay its tax liabilities as contained in the FLD dated January 3, 2011. The August 28, 2013 letter further stated:

'This is our **FINAL DECISION**. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our [sic] said deficiency tax liabilities shall become final, executory and demandable.'

Accordingly, [Respondent] filed the present Petition for Review on October 3, 2013. x x x"[3]

The Ruling of the Second Division

On January 15, 2018, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by [Petitioner] against [Respondent] for calendar year 2007 covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation are **PARTIALLY UPHELD**. Accordingly, [Respondent] is **ORDERED TO PAY** the amount of **ONE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED PESOS AND SIXTY-SEVEN CENTAVOS ([Php]131,100.67)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	[Php] 6,886.01	[Php] 1,721.50	[Php] 8,607.51
Value-Added Tax	65,308.76	16,327.19	81,635.95
Expanded Withholding Tax	10,963.26	2,740.81	13,704.07
Withholding Tax on Compensation	21,722.51	5,430.63	27,153.14
TOTAL	**[Php]104,880.54**	**[Php]26,220.13**	**[Php]131,100.67**

[3] *Id.*, pp. 693-694.

In addition, [Respondent] is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic	Deficiency Interest Computed From
Income Tax	[Php] 6,886.01	April 15, 2008
Value-added Tax	65,308.76	January 25, 2008
Expanded Withholding Tax	10,963.26	January 15, 2008
Withholding Tax on Compensation	[Php]21,722.51	January 15, 2008

(b) Delinquency interest at the rate of 20% per annum on the total amount of [Php]131,100.67 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 3, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

However, the following partial payments made by [Respondent] shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest and delinquency interest:

Tax Type	Basic	25% Surcharge	Total
Income Tax	[Php]512,461.70		[Php]512,461.70
Value-added Tax	878,959.36		878,959.36
Withholding Tax on Compensation	21,722.51	[Php]13,259.66	34,982.17
TOTAL	**[Php]1,413,143.57**	**[Php]13,259.66**	**[Php]1,426,403.23**

SO ORDERED."[4]

Aggrieved, Petitioner filed a "Motion for Partial Reconsideration"[5] on January 31, 2018, which the Second Division denied in the Assailed Resolution on May 02, 2018, thus:

"**WHEREFORE**, premises considered, [Petitioner]'s **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

[4] *Id.*, pp. 709-710.
[5] *Id.*, pp. 734-741.

SO ORDERED."[6]

On May 21, 2018, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[7], which the Court granted in a Minute Resolution dated May 22, 2018.[8]

On June 07, 2018 Petitioner filed the present "Petition for Review"[9].

On June 29, 2018, the Court issued a Resolution[10] which ordered Respondent to comment on the Petition for Review. Consequently, on October 04, 2018, Respondent filed its "Comment to Petition for Review"[11].

On October 24, 2018, the Court issued a Resolution[12] which gave due course to the Petition for Review, and submitted the instant case for decision.

The Issues

Petitioner raises the following grounds in support of its petition:

1) The subject assessments had become final, executory, and demandable by reason of the failure of Respondent to timely file its Petition for Review pursuant to the provisions of Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended;

2) Respondent was fully informed of the factual and legal bases of the subject deficiency assessments; and

3) Respondent is liable for deficiency taxes subject of the assessments.[13]

The Ruling of the Court

---

6 *Id.*, p. 754.
7 Rollo, pp. 1-2. Record shows that Petitioner received the Assailed Resolution on May 08, 2018; Docket, p. 749.
8 *Id.*, p. 3.
9 *Id.*, pp. 4-13.
10 *Id.*, pp. 68-69.
11 *Id.*, pp. 70-74.
12 *Id.*, pp. 76-77.
13 *Id.*, p. 6.

The Court En Banc has jurisdiction over the present petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Partial Reconsideration", on May 02, 2018. Petitioner received said Resolution on May 08, 2018. Pursuant to Rule 4, Section 2(a)(1)[14] in relation to Rule 8, Section 3(b)[15] of the Revised Rules of the Court of Tax Appeals[16] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until May 23, 2018 within which to file its petition for review.

On May 21, 2018, Petitioner timely filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days or until June 07, 2018 within which to file its petition for review. The Court granted the same in a Minute Resolution dated May 22, 2018.

On June 07, 2018, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

Having ruled that this Court has jurisdiction take cognizance of the instant petition, We now proceed to the merits of the case.

Petitioner failed to show any reason why the findings of the Second Division should be reversed

---

[14] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[15] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[16] A.M. No. 05-11-07-CTA, November 22, 2005.

Petitioner claims that with the failure of Respondent to appeal to the court *a quo* within thirty (30) days following the lapse of the 180-day period provided under Section 228 of the NIRC of 1997, as amended, the deficiency assessments already became final, executory and demandable.

Moreover, Petitioner maintains that Respondent was fully apprised of the facts and the law on which the final assessment was issued. The Final Assessment Notice (FAN), Demand Letter and Details of Discrepancies which were all sent together and received by Respondent, contained in detail, the manner of computation, the facts on which the assessment was based and the provisions of law used in arriving at such deficiency assessment.

Lastly, Petitioner submits that tax assessments are presumed correct and made in good faith and it is incumbent upon the party questioning the same to adduce proof to prove otherwise.

The Court *En Banc* is not persuaded.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the instant Petition for Review is a reproduction of the "Motion for Partial Reconsideration"[17] filed by Petitioner on January 31, 2018 before the Second Division, which the latter noted as mere rehash of the grounds and arguments already passed upon and resolved in the Assailed Decision.[18]

At the risk of sounding repetitive, if only to emphasize the point, We must reiterate that in order to validly appeal a disputed assessment to this Court and to prevent the same from becoming final, executory and demandable, the taxpayer must file a petition within the periods provided under the last paragraph of Section 228 of the NIRC of 1997, as amended, *viz*:

> "**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: x x x
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

---

17 Docket, pp. 734-741.

18 *Id.*, Resolution dated May 02, 2018 p. 752.

> 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."[19]

In explaining the meaning of the last paragraph of Section 228 in instances when there is inaction (*i.e.*, failure by the Commissioner of Internal Revenue to act upon the protest within one hundred eighty (180) days from submission of documents), the High Court in *Lascona Land Co. Inc. v. Commissioner of Internal Revenue*[20] held:

> "In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, **a taxpayer can <u>either</u>: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; <u>or</u> (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.**
>
> xxx xxx xxx
>
> Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, **it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period.** Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. **<u>A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment.</u>** More so, because the law and

---

[19] *Emphasis supplied.*
[20] G.R. No. 171251, March 05, 2012.

jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment."[21]

Following the doctrine in *Lascona*, Respondent had the option to either file a petition for review with the Court *a quo* within thirty (30) days after the expiration of the 180-day period **or** wait for the final decision of the Commissioner of Internal Revenue ("CIR") on the disputed assessment, even after the expiration of the 180-day period fixed by law for the CIR to act on the disputed assessment, and appeal such final decision within thirty (30) days after the receipt of a copy of such decision.

The rule on disputed assessments is unlike the rule on refund of excess input VAT. In input VAT refund claims, following Section 112(C)[22] of the NIRC of 1997, as amended, the taxpayer can file the judicial claim only (1) within thirty (30) days after the CIR partially or fully denies the claim within the 120-day period, or (2) within thirty (30) days from the expiration of the 120-day period if the CIR does not act within the 120-day period.[23] In other words, when the 120-day period of inaction lapses, taxpayers should no longer wait for the CIR to come up with a decision thereafter. They should already file an appeal with the Court of Tax Appeals, or else they will lose the sole remedy.[24]

In the present case where there was inaction on a disputed assessment, Respondent chose the second option under Section 228 of the NIRC of 1997, as amended. It opted to await the final decision on the protested assessment. On September 03, 2013, Respondent received the Final Decision[25] dated August 28, 2013 signed by Regional Director Jonas DP. Amora. Accordingly, Respondent timely filed a "Petition for Review"[26] with the Second Division on October 03, 2013, preventing the assessment from becoming final, executory and demandable.

---

[21] *Emphasis and underscoring supplied.*

[22] SEC. 112. Refunds or Tax Credits of Input Tax. —

xxx xxx xxx

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – x x x

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.".

[23] Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. Nos. 187485, 196113 and 197156, February 12, 2013; Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014.

[24] Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015; Silicon Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182737, March 02, 2016.

[25] Docket, Exhibit "P-8", p. 292.

[26] *Id.*, pp. 17-28.

As for Petitioner's contention that Respondent was fully apprised of the facts and the law on which the final assessment was issued, it must be noted that the Court in Division had already affirmed such assertion. In the Assailed Resolution[27], the Court *a quo* ruled:

> "Moreover, the Court already ruled that considering that the Final Decision is just a reiteration of the assessments in the Formal Letter of Demand (FLD) dated January 3, 2011, the reference to the latter is sufficient to inform [Respondent] of the factual and legal bases of the Final Decision."

Finally, We find the Second Division's computation of Respondent's deficiency tax liability as proper. It must be emphasized that the Court in Division had painstakingly discussed Respondent's liability for each of the subject deficiency assessments. The bare allegation of Petitioner that its assessment for income tax, VAT, WTC and EWT is presumed correct, without any document or evidence presented in support of the same, cannot hold water.

From all the foregoing, We see no cogent reason to deviate from the findings and conclusion of the Court *a quo.*

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on June 07, 2018 is **DENIED** for lack of merit. The Assailed Decision dated January 15, 2018 and Assailed Resolution dated May 02, 2018 are **AFFIRMED with MODIFICATION** in the computation of the deficiency interest and delinquency interests in view of the effectivity of Republic Act No. 10963 ("TRAIN Law")[28] on January 01, 2018 and the issuance of Revenue Regulation ("RR") No. 21-2018[29] dated September 14, 2018.

The assessment issued by CIR against Petitioner for calendar year 2007 covering deficiency income tax, VAT, WTC and EWT is **UPHELD** Accordingly, Respondent is **ORDERED TO PAY FIVE HUNDRED FIFTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-EIGHT PESOS AND TWO CENTAVOS (Php554,758.02)** representing deficiency taxes for calendar year 2007, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under

---

[27] *Id.*, Resolution dated May 02, 2018 p. 753.

[28] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

[29] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. I 0963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under the TRAIN Law, thus:

	IT	VAT	EWT	WTC	TOTAL
Basic Tax Due	Php6,886.01	Php65,308.76	Php10,963.26	Php21,722.51	Php104,880.54
Add: 25% Surcharge	1,721.50	16,327.19	2,740.82	5,430.63	26,220.14
20% Deficiency Interest from April 16, 2008 to September 03, 2013					
[Php6,886.01 x 20% x 1967/365 days]	7,421.80				7,421.80
20% Deficiency Interest from January 26, 2008 to September 03, 2013					
[Php65,308.76 x 20% x 2048/365 days]		73,288.95			73,288.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
[Php10,963.26 x 20% x 2058/365 days]			12,362.95		12,362.95
20% Deficiency Interest from January 16, 2008 to September 03, 2013					
[Php21,722.51 x 20% x 2058/365 days]				24,495.85	24,495.85
Total Amount Due, September 03, 2013	**Php16,029.31**	**Php154,924.90**	**Php26,067.03**	**Php51,648.99**	**Php248,670.23**
Add: 20% Deficiency Interest from September 04, 2013 to December 31, 2017					
[Php6,886.01 x 20% x 1580/365 days]	5,961.59				5,961.59
[Php65,308.76 x 20% x 1580/365 days]		56,541.28			56,541.28
[Php10,963.26 x 20% x 1580/365 days]			9,491.48		9,491.48
[Php21,722.51 x 20% x 1580/365 days]				18,806.34	18,806.34

20% Delinquency Interest from September 04, 2013 to December 31, 2017					
[Php16,029.31 x 20% x 1580/365 days]	13,877.43				13,877.43
[Php154,924.90 x 20% x 1580/365 days]		134,126.77			134,126.77
[Php26,067.03 x 20% x 1580/365 days]			22,567.62		22,567.62
[Php51,648.99 x 20% x 1580/365 days]				44,715.29	44,715.29
Total Amount Due, December 31, 2017	**Php35,868.33**	**Php345,592.95**	**Php58,126.13**	**Php115,170.61**	**Php554,758.02**

In addition, Respondent is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of September 03, 2013 in the amount of **Php248,670.23**, as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by TRAIN Law and implemented by RR No. 21-2018.

However, the following partial payments made by Respondent shall have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest and delinquency interest:

Tax Type	Basic	25% Surcharge	Total
Income Tax	Php 512,461.70		Php 512,461.70
Value-added Tax	878,959.36		878,959.36
Withholding Tax on Compensation	21,722.51	Php 13,259.66	34,982.17
TOTAL	**Php1,413,143.57**	**Php13,259.66**	**Php1,426,403.23**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice