REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

MY SOLID TECHNOLOGIES & DEVICES CORPORATION, Petitioner,	**CTA CASE NO. 10293** Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 0 6 2025

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review, filed on June 30, 2020, praying that this Court cancel and withdraw the assessment against it for alleged deficiency value-added tax ("VAT") for the 3rd and 4th quarters of calendar year ("CY") 2017.

The Parties[1]

Petitioner is a taxpayer registered with the Bureau of Internal Revenue ("BIR").

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, among others, the power to decide on disputed assessments.

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[1] *See* Pre-Trial Order, p. 2, *Rollo*, p. 277.

The Facts

On March 8, 2019, petitioner received a Preliminary Assessment Notice ("PAN") assessing it for alleged deficiency VAT for the 3rd and 4th quarters of CY 2017. It then filed its Reply to the PAN on March 22, 2019.[2]

Petitioner then received a Formal Assessment Notice ("FAN") on April 16, 2019.[3]

Afterwards, petitioner filed a Request for Reinvestigation on May 16, 2019,[4] where it stated that it would "[endeavor] to submit" various supporting documents in the near future, pursuant to *Section 228 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), and *Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR. No. 18-13.*[5] It then submitted additional documents in support of its Request for Reinvestigation on August 28, 2019.[6]

On March 6, 2020, petitioner received a Final Decision on Disputed Assessment ("FDDA"), denying its Request for Reinvestigation.[7]

Aggrieved, petitioner filed the instant Petition on June 30, 2020. Respondent filed an Answer[8] to the same via registered mail on November 16, 2020.

After the conduct of a full-blown trial, the Court directed the parties to file their respective memoranda.[9] Petitioner filed its Memorandum[10] on June 10, 2024, while respondent filed his Memorandum[11] via registered mail on June 13, 2024. The Court consequently submitted this case for decision on June 27, 2024.[12]

Hence, this Decision.

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2 Petition for Review, p. 2, *id.* at 8.
3 Petition for Review, p. 3, *id.* at 9
4 *Id.*
5 Request for Reinvestigation, dated May 16, 2019, p. 4, *id.* at 82.
6 Petition for Review, p. 3, *id.* at 9.
7 *Id.*
8 *Id.* at 135-149.
9 Resolution, dated May 6, 2024, *id.* at 459-460.
10 *Id.* at 461-485.
11 *Id.* at 486-498.
12 Minute Resolution, dated June 27, 2024, *id.*, unpaginated.

The Issues

The sole issue for this Court's resolution is whether petitioner is liable to pay the assessed deficiency VAT for the 3rd and 4th quarters of CY 2017, inclusive of interest.[13]

Arguments of the Parties

Petitioner's Arguments

Petitioner raises the following arguments:

I. This Court has jurisdiction over this case as a failure to submit additional documents within the 60-day period provided by *Section 228 of the NIRC* does not actually render the assessment final;[14]

II. As the FAN does not constitute a *demand* for payment and did not consider petitioner's arguments, respondent violated petitioner's right to due process, rendering the assessment void;[15] and

III. The assailed assessment lacks factual and legal bases.[16]

Respondent's Arguments

Respondent counters the above with the following contentions:

I. Respondent substantially complied with the due process requirements of *Section 228 of the NIRC*;[17] and

II. Petitioner's claims lack evidence.[18]

The Ruling of the Court

The Petition cannot be granted.

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13 Pre-Trial Order, p. 2, *id.* at 277.
14 Memorandum for Petitioner, pp. 7-10, *id.* at 467-470.
15 Memorandum for Petitioner, pp. 10-17, *id.* at 470-477.
16 Memorandum for Petitioner, pp. 17-23, *id.* at 477-483.
17 Memorandum for Respondent, pp. 2-6, *id.* at 487-491.
18 Memorandum for Respondent, pp. 6-12, *id.* at 491-497.

The Court has jurisdiction over the case at bar

Under *Section 7(1)(a) of Republic Act No. 1125, as amended*, and *Rule 4, Section (3)(a)(1) of the Revised Rules of the Court of Tax Appeals, as amended* ("*RRCTA*"), this Court has jurisdiction over appeals from final decisions of the CIR in cases involving disputed assessments. A restriction on this jurisdiction is laid down in *Rule 8, Section (3)(a) of the RRCTA*, which requires taxpayers to file their judicial protest with this Court within 30 days from receipt of the assailed administrative decision.

Here, petitioner received the assailed FDDA on March 6, 2020. This normally would have given it until April 5, 2020 within which to file a Petition. However, *Supreme Court Administrative Circulars Nos. 31-2020, 35-2020, and 39-2020* effectively extended this period to July 1, 2020.

As petitioner filed the instant Petition for Review on June 30, 2020, the same was filed on time, and the Court properly gained jurisdiction over this case.

The assessment is final, executory, and unappealable due to petitioner's failure to timely elevate documents in support of its administrative protest

To review, petitioner claims that the assailed assessment has not yet attained finality despite its previous failure to elevate all its supporting documents for its Request for Reinvestigation within 60 days from filing the latter.

We disagree.

Section 228 of the NIRC requires documents in support of an administrative protest to be submitted within 60 days from the filing of said protest:

> 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.*
> (Italics supplied.)

The above provision is clear. If the protesting taxpayer fails to submit "all relevant supporting documents" within 60 days from filing the administrative protest, the assessment becomes final. The assessment, in other words, can no longer be protested, whether administratively or judicially.

Here, petitioner filed its Request for Reinvestigation on May 16, 2019. This gave it until July 15, 2019, within which to submit all relevant supporting documents. However, it only submitted such documents on August 28, 2019, 104 days after the filing of its Request for Reinvestigation and 44 days after the last day for such submission. The assailed assessment consequently became final, executory, and unappealable.

The decisions cited by petitioner are inapplicable here. All three involve taxpayers who did not submit *additional* documents to substantiate their respective protests. In other words, therein taxpayers considered the supporting documents filed with their protests to be complete. All relevant documents *had been* submitted. This passage from *Commissioner of Internal Revenue v. First Express*[19] is instructive:

> We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
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> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

In the above-cited Decision, the Supreme Court forbade the BIR from demanding *additional* supporting documents when the taxpayer had already submitted all such documents it deemed necessary for its protest. What legal documents are necessary for supporting a protest is determined by the taxpayer, so the BIR cannot fault it for not further submitting additional documents which would, by then, be superfluous. The finality caused by a failure to submit supporting documents within 60 days only comes into play if said documents are still incomplete after such period, and if the taxpayer *itself* deems such documents as incomplete. Much the same can be read off the CTA Decisions[20] cited by petitioner.

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[19] G.R. Nos. 172045-46, June 16, 2009.

[20] *ITW Texwipe Philippines v. Commissioner of Internal Revenue*, CTA Case No. 7353, June 17, 2009; *Max's Sta. Mesa, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8786, September 28, 2018.

As this case involves a taxpayer who *did* submit additional documents, albeit after the lapse of the period for such, and thus *did not* consider the documents initially attached to its protest complete, the three cited Decisions are inapplicable.

Furthermore, petitioner's theory, if taken seriously, would render *Section 228 of the NIRC* ineffectual. Under said interpretation, whether a taxpayer intends to submit additional documents or not, the lapse of the 60-day period has no bearing on the finality of the assessment. In other words, under no circumstance does the lapse of the 60-day period result in the assessment becoming final. But *Section 228 of the NIRC* explicitly says the opposite: that such a lapse results in the assessment becoming final. So as not to contradict what is directly decreed by law, then, the Court must reject petitioner's interpretation of the provision.

Here, not all supporting documents had been elevated when petitioner filed its Request for Reinvestigation, with petitioner instead filing such documents months later. Had these documents been complete, had petitioner itself considered these complete, then petitioner would not have submitted additional documents after its Request for Reinvestigation. Indeed, petitioner practically admitted the incompleteness of its documents near the end of its Request for Reinvestigation when discussing the "Disallowed Claims for Input Tax" from the FAN:

> The Company respectfully submits that there is no basis for the disallowance because all input taxes claimed in its VAT returns for the 3rd and 4th quarters of CY 2017 are duly supported by VAT invoices and official receipts. *In this regard,* ***the Company endeavors to submit*** *a summary of all local purchases and input taxes and copies of the VAT official receipts and invoices on local purchases for the 1st and 2nd quarters of CY 2017* ***during the 60-day period granted under Section 228, Tax Code and Rev. Regs. 12-99, as amended by Rev. Regs. No. 18-2013.*** (Emphasis and italics supplied.)

From the above, various important supporting documents, such as VAT invoices and official receipts, were still missing when petitioner filed its Request for Reinvestigation. The importance of such additional documents is further emphasized by the fact that petitioner did, indeed, submit additional supporting documents. These documents would have served as the factual bases for part of its protest and substantiated its claims. Without them, the administrative protest remained incompletely substantiated and lacking in factual bases, even as the 60-day period lapsed. The Request for Reinvestigation was consequently invalid. There being no valid protest filed within the allowed period, the assessment became final, executory, and unappealable.

This Court consequently cannot grant petitioner's prayer to cancel and withdraw the assessment against it.

There is also no longer any need to cover petitioner's arguments regarding the FAN as, to repeat, the assessment's finality bars this Court from withdrawing it. It shall suffice to simply raise two points regarding the alleged violation of due process: (1) the argument on the tenor of an assessment notice was only forwarded by the litigant in *Commissioner of Internal Revenue v. Fitness By Design, Inc.* but then *completely ignored* by the Supreme Court itself, so this Court cannot consider respondent's use of a polite and respectful tone as enough to nullify the assessment; and (2) the very nature of interest involves adjustments and changes, so informing the taxpayer of this issue should not be taken to void an assessment—especially considering that not mentioning such interest would be a failure to inform the taxpayer of the details of the assessment, while not imposing such interest would contradict the requirement to do so under the *NIRC*.

In sum, the Petition cannot be granted.

ACCORDINGLY, the instant Petition for Review, filed on June 30, 2020, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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