REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MAKATI
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB CASE No. 641
(CTA Case No. 7809)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

SEP 16 2011 9:10 a.m.

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DECISION

CASANOVA, J. **:**

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* filed by petitioner City of Makati, by way of a verified Petition for Review[1], seeking the reversal of the Decision[2] (*Assailed Decision*) promulgated on December 16, 2009 and Omnibus Resolution[3] *(Assailed Resolution)* promulgated on May 25, 2010, both by the Former Second Division of this Court in CTA Case No. 7809 entitled **"City of Makati v. Commissioner of Internal Revenue",**

[1] CTA En Banc Rollo, pp. 3-39.
[2] Division Docket, pp. 374-412.
[3] Ibid, pp. 597-612.

dismissing the Petition for Review and ordering petitioner to pay deficiency taxes for the taxable years 1999 to 2001 and 2002 to 2004 in the amounts of One Billion Forty Six Million Eight Hundred Eighty Three Thousand Eight Hundred Forty Six and 08/100 Pesos (P1,046,883,846.08) and Two Hundred Seventeen Million Eight Hundred Seven Thousand Three Hundred Thirty Nine and 66/100 Pesos (P217,807,339.66), respectively.

The facts of the case, as culled from the records[4] of the case, are briefly narrated as follows:

Petitioner, City of Makati, is a local government unit existing under its Charter by virtue of RA 7854, with office address at Makati City Hall, J.P. Rizal Street, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, charged with the assessment and collection of all national internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith, with office address at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

On September 20, 2002, Regional Director Antonio Ortega of Revenue Region No. 8, Makati City issued a Preliminary Assessment Notice (PAN) to petitioner in the amount of P1,320,980,395.63.

Petitioner filed a letter dated October 4, 2002, discussing the inaccuracies of the findings of the Revenue District Office (RDO) on its deficiency income tax, VAT and withholding tax on compensation for the taxable years 1999-2002.

On October 15, 2002, petitioner received assessment notices imposing deficiency taxes in the amount of P1,331,615,125.30 for the taxable years 1999-2002.

On October 29, 2002, petitioner, through its Vice Mayor, requested a reinvestigation of the said assessments, stating that it needed time to reconcile its records with the BIR.

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[4] CTA En Banc Rollo, pp. 42-50.

On January 29, 2003, petitioner, through its Accounting Department and duly noted by its City Treasurer, filed its protest dated December 26, 2002, citing discrepancies in the assessment for deficiency VAT, expanded withholding tax and withholding tax on compensation.

On April 30, 2003, Regional Director Anselmo Adriano of Revenue Region No. 8, Makati City, denied petitioner's protest and stated that the amount still due is P1,316,424,402.15. Petitioner received the denial on June 5, 2003.

On June 30, 2003, petitioner filed a letter dated June 27, 2003 reiterating its protest against the subject assessments. On September 3, 2003, it requested an extension of sixty (60) days within which to submit the documents supporting its protest letter.

On October 16, 2003, Regional Director Adriano issued Amended Assessment Notices to the petitioner in the amount of P1,146,883,843.08 for the taxable years 1999-2001.

On October 24, 2003, petitioner, through the City Treasurer, requested a recomputation of the deficiency tax assessments and submitted documents to support its claim that the computation made was excessive. On November 19, 2003, petitioner requested an extension of thirty (30) days within which to submit additional supporting documents.

In a letter dated August 18, 2004, Regional Director Adriano informed petitioner that the assessments against it were already final and executory.

On August 27, 2004, petitioner, through its Vice Mayor, advised Regional Director Adriano of its position that the subject assessments had not become final and executory as these were baseless and arbitrary, hence void and of no effect.

Petitioner, in a letter dated March 11, 2005, requested for the reopening and reinvestigation of the case, citing an agreement on the re-examination of petitioner's financial records allegedly reached between petitioner and Revenue Officer Martinez.

On April 26, 2005, a Tax Verification Notice was issued relative to petitioner's request for reinvestigation.

Regional Director Adriano, in a letter dated April 29, 2005, informed petitioner that its request for re-opening of the investigation for its tax deficiency assessments for the taxable years 1999-2001 was approved by then Commissioner Guillermo Parayno, with then Deputy Commissioner Jose Mario Buñag signing on his behalf.

On May 3, 2005, Regional Director Adriano requested petitioner to submit particular documents. On July 1, 2005, Revenue District office of RDO 49 also requested another set of records.

On August 4, 2005, Regional Director Adriano sent a letter to petitioner informing it of the newly revised assessment for the taxable years 1999-2001 in the amount of P520,829,896.92 and demanded its payment on or before August 31, 2005.

On September 1, 2005, a meeting, attended by Finance Secretary Teves, Mayor Binay, Vice Mayor Mercado, then BIR Assistant Regional Director Nelson Aspe, together with their staffs, was held at the Office of the Mayor of Makati to reconcile the records and positions of the petitioner and the BIR.

Pursuant to the directive of Finance Secretary Teves to settle the case fairly and reasonably, petitioner, on September 2, 2005, offered to pay P100 million in full settlement of the tax deficiency assessment for the taxable years 1999-2001 and tendered the amount of P20 million as initial payment.

On September 5, 2005, the said payment was officially accepted by Regional Director Adriano, who, at the same time, reminded the petitioner to pay the balance of P80 million by the end of the year.

On October 21, 2005, petitioner made another offer of compromise in the amount of P100 million, this time to settle its assessed deficiency taxes for the taxable years 2002-2004. This offer was made pursuant to the directive of Secretary Teves upon the parties to conclude the reconciliation of their records. On the same date, Regional Director Adriano accepted petitioner's offer on the condition that 30% (P30 million) of the proposed amount be paid on or before October 31, 2005. Petitioner, on October 28, 2005, paid the BIR the said amount of P30 million.

On February 22, 2006, petitioner made two payments: (a) P80 million representing the balance of the compromise for the taxable years 1999-2001; and (b) P70 million representing the balance of the compromise for the taxable years 2002-2004. As of this date, petitioner had already paid P200 million pesos to the BIR, in full settlement of the compromise amount for the taxable years 1999-2001 (P100 million) and for the taxable years 2002-2004 (P100 million).

On November 22, 2006, the new Regional Director Aspe informed petitioner that the offer of compromise settlement was not accepted and demanded that the balance of the assessed deficiency taxes for the taxable years 1999-2001 in the amount of P581,468,164.58 and the proposed assessment of P322,952,109.25 for the taxable years 2002-2004 be paid.

In a meeting between petitioner and Regional Director Aspe, in the presence of Finance Secretary Teves held on December 28, 2006, the parties agreed to set another meeting to finalize and conclude the ongoing reconciliation of their records.

On April 11, 2007, Regional Director Aspe issued the following:

(1) Assessment Notice No. WC-14523-02-07-0129 for deficiency withholding tax on compensation for the taxable year 2002, in the amount of P20,889,059.62;

(2) Assessment Notice No. MC-14523/17740/17741-02/03/04-07-0129 for compromise/penalties for the taxable years 2002-2004, in the amount of P206,000.00;

(3) Assessment Notice No. WE-14523-02-07-0129 for expanded withholding tax for the year 2002, in the amounts of P12,804,005.13 and P3,896,183.13;

(4) Assessment Notice No. WG-14523-02-07-0129 for deficiency withholding tax for the taxable year 2002, in the amount of P7,064,759.99;

(5) Assessment Notice No. VT-14523-02-07-0129 for value-added tax for the taxable year 2002, in the amount of P4,234,621.24;

(6) Assessment Notice No. WE-17740-03-07-0129 for deficiency expanded withholding tax for the taxable year 2003, in the amount of P28,939,658.45;

(7) Assessment Notice No. WC-17740-03-07-0129 for deficiency withholding tax on compensation for the taxable year 2003, in the amount of P33,232,829.50;

(8) Assessment Notice No. WG-17740-03-07-0129 for deficiency withholding tax for the taxable year 2003, in the amount of P103,134,743.24;

(9) Assessment Notice No. VT-17740-03-07-0129 for deficiency value-added tax for the taxable year 2003, in the amount of P6,439,821.47;

(10) Assessment Notice No. WE-17741-04-07-0129 for deficiency expanded withholding tax for the taxable year 2004, in the amount of P3,809,901.55;

(11) Assessment Notice No. WC-17741-04-07-0129 for deficiency withholding tax on compensation in the amount of P26,869.006.09 for the year 2004;

(12) Assessment Notice No. WG-17741-04-07-0129 for deficiency withholding tax for the taxable year 2004, in the amount of P62,340,387.12; and

(13) Assessment Notice No. No. VAT-17741-04-07-0129 for deficiency value-added tax, in the amount of P3,946,363.13 for the taxable year 2004.

On April 18, 2007, petitioner reminded Regional Director Aspe of what had transpired in their last meeting with Secretary Teves on December 28, 2006 during which they agreed to finalize the reconciliation of their respective records. Petitioner further requested that a meeting be set as previously agreed upon at Regional Director Aspe's earliest convenience.

On May 2, 2007 (received by petitioner of May 3, 2007), the Warrant of Garnishment No. RD49-WG-05-02-07 #0050 was issued by Roberto A. Baquiran, Revenue District Officer of RDO 49, BIR North Makati, calling for the payment P1,150,331,321.81 allegedly due from petitioner as deficiency assessment on Withholding Tax on Compensation, Expanded Withholding Tax, Value-Added Tax and Withholding Tax on VAT for the taxable years 1999-2004.

The said Warrant of Garnishment was based on a letter of demand and formal assessment notices dated April 11, 2007 issued by Regional Director Aspe.

On May 4, 2007, petitioner filed a Protest Letter dated May 3, 2007, impugning the said Warrant of Garnishment as well as the assessments on which it was based.

Revenue District Officer Baquiran, in a letter dated May 4, 2007 which was duly received by petitioner on May 7, 2007 lifted and withdrew the subject Warrant of Garnishment.

On May 11, 2007, Regional Director Aspe informed petitioner that its Protest Letter will be forwarded to the Revenue District Officer of RDO 49 North Makati for further verification, evaluation and necessary action.

On November 5, 2007, petitioner received a copy of a ruling dated October 9, 2007 issued by Regional Director Ma. Nieva A. Guerrero stating that petitioner is liable to pay the BIR the amount of P1,146,883,846.03 and P317,087,339.66 as deficiency withholding taxes, VAT and compromise penalties for the taxable years 1999-2001 and 2002-2004 respectively, under separate assessments dated October 16, 2003 and April 11, 2007. Regional

Director Guerrero asserted that both deficiency tax assessments have become final and executory.

On November 19, 2007, petitioner filed a Protest Letter dated November 16, 2007 before the office of the respondent, disputing the decision of Regional Director Guerrero.

Petitioner elevated the questioned ruling to the office of respondent, citing Section 228 of the 1997 NIRC, as implemented by Section 3.1.4 of Revenue Regulations 12-99.

On June 20, 2008, respondent issued a Decision[5] affirming the October 9, 2007 ruling of Regional Director Guerrero.

On July 15, 2008, petitioner filed its Petition for Review[6] before this Court's Former Second Division, seeking the reversal of respondent's Decision dated June 20, 2008.

Respondent filed her Answer[7] on September 5, 2008, where she averred the following special and affirmative defenses, to wit:

> "6. The assessments in question were made and issued in accordance with laws, rules and regulations.
>
> 7. The subject deficiency tax assessments have already become final, executory and demandable for failure of the petitioner to appeal to the Court of Tax Appeals or the Commissioner of the Internal Revenue within thirty (30) days from receipt of the FINAL DECISION dated October 16, 2003.
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> 8. As clearly shown in the records, the FINAL DECISION denying the protest on the disputed assessment for taxable years 1999-2001 was rendered on October 16, 2003 and was received by petitioner on October 20, 2003. Accordingly, petitioner has thirty (30) days from date of receipt of the FINAL DECISION on October 20, 2003, or until November 19, 2003, within which to appeal said decision. It is the Letter dated October 16, 2003 of Regional Director Anselmo G. Adriano that is appealable to the Court of Tax Appeals or to the Commissioner of Internal Revenue

[5] *Id.*, pp. 93-103.
[6] *Id.*, pp. 1-31.
[7] *Id.*, pp. 197-201.

pursuant to Section 3.1.5 of Revenue Regulations (RR) No. 12-99 implementing Section 228 of the Tax Code of 1997.

9. It should be noted that while a letter requesting for re-computation of the tax assessments with accompanying documents was indeed filed by petitioner on October 24, 2003, said letter was filed before the Office of the Regional Director of Makati and not before the Commissioner or before the Honorable Court as required by the rules.

10. From the tenor of the FINAL DECISION Letter dated October 16, 2003, it is unmistakable that the same is the final decision being referred to in the Regulations as one that is appealable either to the CTA or the Commissioner. The remedy of seeking reconsideration of the FINAL DECISION in the Office of the Regional Director is simply not a remedy allowed by law. Thus, when the petitioner chose to file a letter of reconsideration with the Office of the Regional Director, its right to appeal the FINAL DECISION before the CTA or to seek a reconsideration of the same before the Commissioner was already barred. Consequently, the Formal Assessment Notices (FAN) dated October 14, 2002 for various deficiency tax assessments in the aggregate amount of **P1,189,561,192.57** for taxable years 1999-2001, which after re-investigation was reduced to **P1,146,883,846.08** as contained in respondent's FINAL DECISION ON DISPUTED ASSESSMENT dated October 16, 2003 have already become final, executory, demandable and unappealable.

11. It is clear from the records of the case that when petitioner protested on October 29, 2002 to the FAN dated October 14, 2002, respondent issued his decision through the FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) dated October 16, 2003. The FDDA letter dated October 16, 2003 not only reconsidered petitioner's protest on its deficiency income taxes arising from proprietary activities for the taxable years 1999-2001 in the total amount of P21,771,860.12 and the penalties for late remittance of withholding taxes on compensation, expanded withholding tax, and withholding of value-added tax which were settled through petitioner's availment of Voluntary Assessment and Abatement Program, but likewise **reiterated** respondent's stand on petitioner's

other tax liabilities and demanded for the payment of the same. When respondent reiterated to petitioner his previous demand for petitioner to pay the deficiency tax assessments, and as can be clearly read in the letter itself which is "FINAL DECISION ON DISPUTED ASSESSMENT", this was respondent's denial of petitioner's protest, thus, this denial is the decision appealable directly to the Honorable Court, or to the Commissioner of Internal Revenue, for that matter.

12. The succeeding events that led to the re-opening of the case and reduction of assessments produced no legal effects because these took place after the assessments have become final, executory and demandable. It bears importance to repeat that by failing to exercise the appropriate remedy under the law, the respondent lost its right to question the validity of the assessments. By operation of law, the assessments can no longer be disturbed. Thus, the subsequent requests for reinvestigation or reopening of the case have no basis in law.

13. Petitioner's appeal on May 7, 2007 before the Commissioner of Internal Revenue was filed out of time. Hence, respondent Commissioner no longer review the merit of the assessments because the case is already a *collection case*. Well settled is the rule that the right to appeal is a purely statutory right, and he who wants to exercise it must comply with the statute. Moreover, it has been consistently held by the Courts that the failure of the taxpayer to appeal on time from assessments renders the assessment final, executory and demandable. Inasmuch as the petitioner failed to pursue the appropriate remedy provided for by law, its right to appeal the FINAL DECISION Letter dated October 16, 2003 is definitely barred. Necessarily, this failure to appeal on time renders the assessments final, executory and demandable.

14. Petitioner's Protest-Letter dated May 3, 2007 on the deficiency tax assessment notices for the years 2002-2004 contested only the validity of the deficiency withholding tax assessments on compensation income payments. Petitioner did not pose any objection on deficiency tax assessments on expanded withholding tax, value-added tax and withholding of value-added tax.

In the case of **3M Philippines vs. Commissioner of Internal Revenue, CTA Case No. 3856, August 14, 1987**, the Honorable Court held:

"Since petitioner did not protest or dispute administratively the disallowance of this pre-operational expense as capital expenditure, petitioner cannot raise this issue for the first time on appeal in this Court. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within their competence, and in much the same way that, on the judicial level issues not raise in the lower court cannot be raised for the first time on appeal. To sanction such a procedure whereby the court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum. **(Citing Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals, L-29790, February 25, 1982, 112 SCRA 136)**

15. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the tax assessment **(Bonifacio Sy Po vs. Court of Tax Appeals and Commissioner, 164 SCRA 524).**

On November 6, 2008, the parties filed their Joint Stipulation of Facts and Issues[8] which the Court approved per Resolution[9] promulgated on November 12, 2008. The Court, likewise, granted both parties forty (40) days from receipt of the Resolution to file their respective memorandum.

[8] *Id.*, pp. 243-250.
[9] *Id.*, p. 252.

On February 2, 2009, petitioner filed its Memorandum[10], while on March 20, 2009, respondent filed a Manifestation and Motion[11] praying that her Memorandum[12] filed on March 16, 2009 be admitted, which the Court granted in a Resolution dated April 28, 2009.

On June 5, 2009, petitioner filed a Motion for Leave of Court To File Supplement/Reply Memorandum[13], which the Court granted in a Resolution[14] dated July 1, 2009. On September 14, 2009, petitioner filed a Motion to Admit the Attached Supplemental Reply-Memorandum[15].

On December 16, 2009, this Court promulgated the Assailed Decision, dismissing the petitioner's Petition for Review for lack of merit. This Court further ordered the petitioner to pay the respondent the amount of P1,046,883,846.08 and P217,807,339.66 representing deficiency taxes for the taxable years 1999-2001 and 2002-2004 respectively.

On January 22, 2010, the petitioner filed a Motion for Reconsideration[16] of the abovementioned Decision.

On March 15, 2010, respondent filed her Comment (to Petitioner's Motion for Reconsideration) in compliance with the Resolution[17] of this Court dated January 28, 2010.

On March 29, 2010, petitioner filed a Motion for the Suspension of the Collection of Tax[18], and on April 14, 2010, respondent filed her Comment/Opposition (To Petitioner's Motion for the Suspension of Collection of Taxes)[19]. Pursuant to the Resolution[20] issued by this Court, petitioner filed its Memorandum[21] on April 16, 2010 while respondent filed his

[10] *Id.*, pp. 265-293.
[11] *Id.*, pp. 299-300.
[12] *Id.*, pp. 301-317.
[13] *Id.*, pp. 353-354.
[14] *Id.*, pp 357-358.
[15] *Id.*, pp. 359-360.
[16] *Id.*, pp. 413-434.
[17] *Id.*, p. 435.
[18] *Id.*, pp. 448-466.
[19] *Id.*, pp. 500-505.
[20] *Id.*, p. 507.
[21] *Id.*, pp. 508-525.

Memorandum[22] on April 16, 2010, in support of his Comment/Opposition to the Motion for Suspension of the Collection of Tax.

On April 20, 2010, this Court issued a Resolution[23] granting the petitioner's Motion For the Suspension of the Collection of Tax subject to the posting of an acceptable surety bond in the amount of P1,264,691,185.74.

On May 5, 2010, respondent filed her Motion for Reconsideration[24] of this Court's Resolution dated April 20, 2010. On May 25, 2010, this Court issued an Omnibus Resolution denying the petitioner's Motion for Reconsideration dated January 22, 2010 for lack of merit and setting aside this Court's Resolution dated April 20, 2010 on the ground that the surety bond issued in favor of the petitioner has been disapproved due to its defects.

Hence, petitioner filed the instant Petition for Review, raising the following issues:[25]

> 1. WHETHER OR NOT THE HONORABLE SECOND DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT RULED THAT THERE WAS A VALID ASSESSMENT MADE BY RESPONDENT BUREAU OF INTERNAL REVENUE PARTICULARLY THE ASSESSMENT LETTER DATED OCTOBER 16, 2003 FOR TAXABLE YEARS 1999 TO 2001 AND FOR TAXABLE YEARS 2002 TO 2004;
>
> 2. WHETHER OR NOT THE HONORABLE SECOND DIVISION OF THE COURT OF TAX APPEALS ERRED WHEN IT HELD THAT THE ASSESSMENT DATED OCTOBER 16, 2003 WAS THE FINAL ASSESSMENT CONTEMPLATED UNDER THE LAW WHICH COULD BE THE SUBJECT OF A PETITION FOR REVIEW WITH THE CTA GIVEN THE SUBSEQUENT ACTIONS OF THE BUREAU OF INTERNAL REVENUE AND THE HONORABLE SECRETARY OF FINANCE;

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[22] *Id.*, pp. 532-540.
[23] *Id.*, 528-531.
[24] *Id.*, pp. 584-593.
[25] CTA En Banc Rollo, pp. 10-11.

3. WHETHER OR NOT THE DISAPPROVAL OF THE PROPOSED COMPROMISE AGREEMENT CREATED AN OBLIGATION ON THE PART OF THE BUREAU OF INTERNAL REVENUE TO RETURN THE TWO HUNDRED MILLION PESOS (P200,000,000.00) PAID BY PETITIONER;

4. WHETHER OR NOT THE PROPERTIES OF PETITIONER CITY OF MAKATI IS SUBJECT TO ATTACHMENT, LEVY OR GARNISHMENT; AND

5. WHETHER OR NOT THERE IS BASIS FOR THE SUSPENSION OF THE COLLECTION OF THE TAX BY THE BUREAU OF INTERNAL REVENUE (BIR) DURING THE PENDENCY OF PETITION FOR REVIEW.

On the same day, petitioner filed a Manifestation[26] that the parties decided to continue the process of settling the case amicably while the case is pending.

On June 28, 2010, this Honorable Court promulgated a Resolution[27] ordering respondent to file her Comment.

In view of respondent's failure to file his Comment on petitioner's Petition for Review, the CTA *En Banc* promulgated a Resolution on August 27, 2010[28], deciding to give due course to the subject petition and requiring both parties to submit their respective memorandum within a non-extendible period of thirty (30) days from receipt of the Resolution.

On October 5, 2010, petitioner filed its Memorandum[29] in compliance with this Court's earlier Resolution. Upon verification[30] with the Records Section of this Honorable Court, respondent failed to file her Memorandum.

On October 21, 2010, this Court promulgated a Resolution[31] submitting this case for resolution.

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[26] *Id.*, pp. 1-2.
[27] *Id.*, pp. 264-265.
[28] *Id.*, pp. 268-269.
[29] *Id.*, pp. 270-307.
[30] *Id.*, p. 308.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleading, this Court finds no merit in the instant petition.

The Final Decision on Disputed Assessment dated October 16, 2003 issued against petitioner has factual and legal bases and is therefore valid.

Petitioner alleges that the Final Decision on Disputed Assessment dated October 16, 2003 is invalid on the ground that it lacks factual and legal bases, thereby violating the provisions of Section 228[32] of the 1997 NIRC where the law requires that the taxpayer be duly informed in writing of the law and the facts on which the assessment was based. Thus petitioner contends that as the subject assessment is void and produces no legal effect whatsoever citing the case of *Commissioner of Internal Revenue vs. Reyes*[33].

This Court finds no reason to deviate from the ruling of the CTA Former Second Division which found no merit in the said contention of petitioner. A careful study of the Final Decision on Disputed Assessment, together with the Amended Assessment Notice, both dated October 16, 2003, reveal that both complied with the requirements set forth in Section 228 of the 1997 NIRC and its implementing rules, particularly Section 3.1.6[34] of the

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[31] *Id.*, pp. 310-311.

[32] **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 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.

xxx xxx xxx

[33] G.R. No. 159694, January 27, 2006.

[34] **SEC. 3.1.6. Administrative Decision on a Disputed Assessment.** — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered as decision on a disputed assessment; and (b) that the same is his final decision.

Revenue Regulations 12-99. The subject assessment contains the facts and the applicable law, rules and regulations on which the tax deficiency imposed upon the petitioner were based. As quoted in the Assailed Decision, the pertinent portions of the subject assessment states:

> "This refers to the result of re-investigation on the deficiency tax assessments contained in our Final Assessment Notice (Fan) dated October 14, 2002, covering your deficiency taxes for taxable years 1999, 2000 and 2001, details of which as follows:
>
> ITEM A. UNDER WITHHOLDING OF TAX ON COMPENSATION (Details on Sched. "A"/"C")
>
> xxx xxx xxx
>
> ITEM B. INCOME TAX
> (Details on Sched "F")
>
> xxx xxx xxx
>
> ITEM C. VALUE-ADDED TAX
> (Details on Sched. "G")
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> xxx xxx xxx
>
> ITEM D. EXPANDED WITHHOLDING TAX
> (Details on Sched. "A"/"B")
>
> xxx xxx xxx
>
> ITEM E. PENALTIES FOR LATE REMITTANCE OF WITHHOLDING TAX ON COMPENSATION (Sched. "E")
>
> ITEM F. PENALTIES FOR LATE REMITTANCE OF EXPANDED WITHHOLDING TAX (Sched. "E")
>
> xxx xxx xxx
>
> ITEM G. LATE REMITTANCE OF WITHHOLDING TAX ON VAT (Sched. "E")
>
> xxx xxx xxx
>
> ITEM H. UNDERWITHHOLDING OF VAT
> (Sched. "A"/"D")
>
> xxx xxx xxx
>
> Grand Total P1,189,561,192.57
>
> On April 30, 2003, we replied to your protest letter dated December 26, 2002 (marked as Annex "A"), giving you additional time to submit documents in connection with the subject deficiency internal revenue tax assessment.
>
> On various dates, we receive the following letters containing your explanation as well as documents in support thereof:
>
> 1. June 20, 2003 — request for an extension of another 30 days to support your protest against our assessment, as well as your position on late remittance of taxes withheld on compensation and expanded withholding on certain months (ANNEX "B")

2. June 27 & 30, 2003 — submission of annual information return of income taxes withheld on compensation/alphabetical list of employees (1604-CF) and annual information return of creditable income taxes withheld EWT/alphabetical list of income payments (1604-E) for taxable years 1999-2002 (ANNEX "C").

3. July 8, 2003 — explanation on the variances on total compensation per Alpha List of employees against the total personal services (ANNEX "D").

After considering all the documents and explanation submitted by you as well as the evidence (sic) on record, this Office hereby resolved the following:

1. We grant your request for reconsideration on the deficiency income taxes arising from proprietary activities for taxable years 1999, 2000 and 2001 (ITEM B and schedule "F" attached). Hence, the same is hereby cancelled for lack of factual and legal basis.

2. On the issue involving penalties for late remittance of withholding tax on compensation, expanded withholding tax, and withholding of value added tax for taxable years 1999, 2000 and 2001 (ITEMS E, F, & G), the subject matter of your VAAP availment, the same will be forwarded for further review and evaluation by Head, TWG-IVD, Office of the DCIR-Operations Group which has exclusive jurisdiction of VAAP cases pursuant to RSO 604-2002 dated August 26, 2002 and RMO 32-2002 dated November 22, 2002 (Please see attached schedule "E").

3. We deny your request for reconsideration on the following:

a. Withholding tax on compensation/wages (ITEM A) — For your failure to withhold and remit the correct taxes due in violation of Section 78 of the Tax Code, as implemented by Section 2.78 of Revenue Regulations 2-98 and your failure to submit the Alpha List in prescribed form in accordance with Section 2.83.2 of Revenue Regulations No. 2-98 also (Sched. "A"/"C");

b. Deficiency Tax Assessment on Value-added tax (ITEM C) — For your failure to pay the VAT in violation of Section 105 of the Tax Code. Moreover, your failure to register as VAT-registered entity prohibits you from claiming input taxes (Sched. "G");

c. Deficiency Tax Assessment on Expanded Withholding taxes (ITEM D) — For your failure to withhold and remit the correct taxes on income payments in violation of 2.57.2 of Revenue Regulations No. 2-98 (Sched. "A"/"B");

d. Deficiency Tax Assessment on Withholding Value Added (ITEM H) Tax on Government Money Payments — For your failure to withhold and remit the correct taxes on purchases, services, and payments to public works contractors prescribed under Section 114 of the Tax Code of 1997, as implemented by Section 4.114 of Revenue Regulations No. 2-98 (Sched. "A"/"D").

Based on the foregoing, we recomputed the taxes due from you in the amount of P1,146,883,846.08, inclusive of interest computed from due date of the tax up to November 25, 2003, summarized as follows:

ITEM A. UNDER WITHHOLDING OF TAX ON COMPENSATION

(Details on Sched. "A"/"C")

xxx xxx xxx

ITEM B. INCOME TAX — CANCELLED

ITEM C. VALUE-ADDED TAX (Details on Sched. "G")

xxx xxx xxx

ITEM D. EXPANDED WITHHOLDING TAX (Details on Sched. "A"/"B")

xxx xxx xxx

ITEM E, F and G — SUBJECT OF VAAP AVAILMENT

ITEM H. UNDERWITHHOLDING OF VAT (Sched. "A"/"D")

xxx xxx xxx

Grand Total P1,146,883,846.08

In this connection, it is requested that the aforesaid deficiency internal revenue taxes be paid within thirty days from receipt of this letter. Otherwise, this Office shall be constrained to collect the same by means of summary remedies provided by law, in which case, the corresponding warrant of distraint and levy/garnishment of your bank accounts shall be issued by this Office for the collection of the same.

This is our final decision on the matter."[35]

The Final Decision on Disputed Assessment and the Amended Assessment Notice, both dated October 16, 2003 likewise show that the subject assessment is the result of the reinvestigation of the Formal

[35] CTA En Banc Rollo, pp. 55-58.

Assessment Notice issued on October 14, 2002, taking into account the explanation and the documents in support thereof submitted by petitioner as well as all the evidence on record.[36] The considerable changes resulting from the reinvestigation proves that the subject assessment has factual and legal bases, and therefore complies with the mandatory requirements under the law.

Also, as pointed out in the Assailed Decision and Assailed Resolution, the fact that petitioner was able to intelligently protest the subject assessment, as shown in the numerous correspondences between petitioner and respondent belies the allegation that the said assessment lacks basis. Petitioner could not have submitted its explanation and could not have protested on the imposition of tax deficiencies had it not been aware of the basis of the subject assessment.

As regards the assessment for tax deficiencies for the taxable years 2002 to 2004, we reiterate the ruling in the Assailed Decision and Assailed Resolution that the said assessment is likewise valid. Contrary to the allegation of petitioner, which it was not able to support with evidence, the assessment for the taxable years 2002 to 2004 has factual and legal bases, and therefore a valid assessment.

The Final Decision on Disputed Assessment dated October 16, 2003 is the Decision that is Appealable to the CTA.

Petitioner contends that the Final Decision on Disputed Assessment with Amended Assessment Notice was not the final decision that is appealable to this Court. It maintains its position that the subject assessment is null and void *ab initio* for failing to state its factual and legal bases, thus could not have become final and executory.

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[36] *Id.* p. 84.

To support its claim that the subject assessment did not attain finality, petitioner cited the communication and interaction that transpired between the parties in this case.

In her Final Decision on Disputed Assessment dated October 16, 2003, respondent cannot be clearer in stating that the same is her final decision on the matter. In the said decision, respondent, through Regional Director Adriano ordered petitioner to pay the stated deficiency internal revenue taxes within thirty (30) days from receipt of the letter, with a warning that failure to settle the mentioned tax obligation will give respondent right to collect the same by means of summary remedies provided by law, in which case, the corresponding warrant of distraint and levy/garnishment of petitioner's bank accounts shall be issued by respondent for the collection of the same. The finality of such decision was reiterated by Regional Director Adriano in his letter dated August 18, 2004.[37]

The subsequent reopening/reinvestigation of petitioner's assessment did not in any way reverse the finality of respondent's decision dated October 16, 2003. As correctly pointed out in the Assailed Decision and Resolution of the Former Second Division, it is the Commissioner of the BIR who has the power to reverse, revoke or modify any existing ruling of the Bureau, and such power cannot be delegated.[38] In the case at bench, the reopening/reinvestigation was initiated by a mere Revenue Officer and approved by a mere Deputy Commissioner. As the aforementioned actions were clearly done without the necessary authority, respondent cannot be

[37] *Id.*, pp. 220-221.

[38] Section 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner: Provided, However, That the following powers of the Commissioner shall not be delegated:

xxx xxx xxx

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

xxx xxx xxx

bound by the same. It is a settled rule that the government cannot be estopped from collecting taxes by the mistake, negligence or omission of its agents.[39]

It is therefore undeniable that the Final Decision on Disputed Assessment dated October 16, 2003 has become final and executory, hence the decision is appealable to the CTA.

The disapproval of the Compromise Agreement did not give rise to an obligation on the part of the Bureau of Internal Revenue to return the P200 Million paid by petitioner.

According to the petitioner, the disapproval of the proposed compromise agreement created an obligation on the part of respondent to return the Two Hundred Million pesos (P200,000,000.00) paid in connection with the said agreement, pursuant to the principle of *solution indebiti* under the Civil Code[40].

Solutio Indebiti is based on time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine.[41]

The Supreme Court, in the cases of *Roberto Genova vs. Levita De Castro*[42] *and Roberto Genova vs. Levita De Castro and the Court of Appeals*[43], laid down the requisites for *solution indebiti*, to wit:

> "xxx There is solutio indebiti where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. The quasi-contract of solutio indebiti is based on the ancient

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[39] Philippine National Oil Company vs. Court of Appeals, G.R. No. 112800, April 26, 2005.

[40] Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[41] The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, G.R. No. 147295. February 16, 2007, *citing* Commissioner of Internal Revenue v. Fireman's Fund Insurance Company G.R. No. L-30644, March 9, 1987*citing* Ramie Textile, Inc. v. Ismael Mathay, Sr., G.R. No. L-32364, April 30, 1979.

[42] G.R. No. 132076, July 22, 2003.

[43] G.R. No. 140989, July 22, 2003.

> principle that no one shall enrich himself unjustly at the expense of another."

The principle of *solutio indebiti* finds no application in the case at bench. While it is true that petitioner made the payment of P200 Million where there exists no binding relation between it and respondent, the fact remains that petitioner has the duty to pay respondent on the basis of the latter's Final Decision on Disputed Assessment which has become final and executory, hence enforceable and collectible. Moreover, petitioner's payment is made, not through mistake, but in partial settlement of its tax obligation in favor of respondent.

As petitioner's payment of P200 Million did not amount to any unjust enrichment on the part of respondent, this Court finds no merit in petitioner's argument that respondent now has the duty to return to it the abovementioned amount. The P200 Million paid by petitioner shall be considered as partial payment of its tax obligation and shall be duly deducted from the deficiency taxes it has to settle with respondent.

The properties of petitioner are subject to attachment, levy or garnishment.

Petitioner alleges that as the Assailed Decision, affirmed by the Assailed Resolution is not yet final and executory with the filing of the present Petition for Review within the reglementary period, this Court should not allow the distraint, levy or garnishment of any property of respondent and should just maintain *status quo.* Petitioner further alleges that according to the Revised Rules of the CTA, execution of judgment shall only issue as a matter of right, on motion upon judgment or order that disposes of the action or proceeding after the expiration of the period to appeal therefrom if no appeal has been duly perfected.[44]

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[44] Section 7, Rule 14, 2005 Revised Rules of the Court of Tax Appeals, as amended.

Petitioner however neglects to consider that the summary remedies of distraint and levy is specifically provided for in the 1997 NIRC, where it is provided:

> "**SEC. 205. Remedies for the Collection of Delinquent Taxes**. - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, that the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than One hundred pesos (P100).
>
> xxx xxx xxx

It is clear from the aforequoted provision of the 1997 NIRC that petitioner may pursue the collection of respondent's delinquent taxes through the summary remedies of distraint and levy and the institution of a civil or criminal action. The law further provides that it is upon the discretion of the respondent, as the taxing authority, to pursue either or both simultaneously the mentioned remedies.

Thus, as petitioner failed to settle its delinquent taxes within the prescribed period, respondent may resort to summary remedies of distraint and levy for the collection of the said taxes. Consequently, the properties of petitioner are subject to attachment, levy or garnishment.

Petitioner also argues that this court should take into consideration of the fact that petitioner is a local government entity which has the obligation to deliver the basic and other services to its constituents and that allowing the distraint and levy of its properties will curtail its ability to carry out the said obligation.

This Court understands petitioner's predicament, however, the undeniable is the fact that it has the obligation to settle its delinquent taxes in favor of respondent, the taxing authority of the whole country and that it has to settle it now. Records of the case reveal that too much leeway had already been extended to petitioner. Numerous opportunities had been given to it to voice out its defenses and substantiate the same with supporting documents. Contrary to the claim of petitioner, continuing with this leniency will cause injustice not only to its constituents but also to the whole nation as well. Taxes are the lifeblood of the government.[45] Without the necessary collection from taxes, the national government cannot perform its obligation of delivering various services to the people. This Court cannot subscribe to the position of petitioner for doing so will mean that this Court likewise believes that the causes put forward by petitioner takes precedence over the welfare of the whole Filipino nation.

There is no basis for issuing an Order for the Suspension of Collection of Tax during the pendency of the Petition for Review.

In the case at bench, petitioner further argues that the collection of deficiency taxes would adversely affect its interest, as well as that of the national government and the entire constituency of the City of Makati; that the immediate issuance of an Order suspending the collection of taxes is necessary to avoid the situation where its operations will be crippled to the detriment of its constituents.

[45] Commissioner of Internal Revenue vs. Algue, Inc. and the Court of Tax Appeals, G.R. No. L-28896, February 17, 1988.

The CTA Former Second Division held that the arguments of petitioner regarding this issue have merit. Thus in the Resolution[46] dated April 20, 2010, it granted petitioner's Motion for Suspension of Collection of Tax[47], to wit:

> "It appearing that the collection of the deficiency taxes for taxable years 1999-2004 will jeopardize the cash position of herein petitioner and thus will substantially affect the delivery of basic services to the City of Makati's constituents, pursuant to *Section 11 of RA 9282, as amended by RA 9503, in relation to Rule 10 of the 2005 Revised Rules of Court of Tax Appeals, as amended;* the 'Motion for the Suspension of the Collection of Tax' is hereby **GRANTED**, subject to the posting with this Court of an acceptable surety bond in the amount of ONE BILLION TWO HUNDRED SIXTY FOUR MILLION SIX HUNDRED NINETY ONE THOUSAND ONE HUNDRED EIGHTY FIVE PESOS and SEVENTY FOUR CENTAVOS (P1,264,691,185.74), within five (5) days from notice hereof.
>
> In addition, pursuant to *Supreme Court Circular A.M. No. 04-7-02-SC* dated July 20, 2004, petitioner is hereby ordered to submit/attach the following documents to the bond, within the same five day period:
>
> 1) Certified true copy of a valid Certificate of Accreditation and Authority issued by the Office of the Court Administrator;
> 2) Copy of the Certificate of Compliance with Circular No. 66 of the Insurance Commission duly certified by the Insurance Commission;
> 3) Proof of payment of legal fees under the Rules of Court and the documentary stamp tax (thirty centavos)P0.30) on each four pesos (P4,00) or fractional thereof, of the premium charged pursuant to *Section 187 Title VII of RA 8428)* and the Value-Added tax under the NIRC;
> 4) Photocopy of the Certificate of Accreditation and Authority issued by the Court administrator, containing the photograph of the authorized agent (after presentation to the Clerk of Court of the original copy thereof as Copy of the Certificate of Accreditation and Authority containing the photograph of the agent); and
> 5) Secretary's Certificate containing the specimen signatures of the agents authorized to transact business with the Courts.
>
> SO ORDERED."

However, petitioner failed to comply with the prerequisites provided in the law and enumerated in the abovequoted Decision. In the Assailed

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[46] *Id.*, 528-531.
[47] *Id.*, pp.448-466.

Resolution, the CTA Former Second Division stated its findings on the petitioner's Compliance as follows:

"A perusal of petitioner's 'Surety Bond' shows:

1) the Affidavit of Justification of the Surety Bond was not signed by Mr. Vicente B. Manliclic, Bonds Manager of the Surety Company;
2) the surety bond imposes, under paragraph 4 of the obligations, a condition that the surety companyshall be held liable for claims and damages only after the real & personal properties of the City of Makati shall have been used and availed of which is contrary to the obligation of a surety;
3) the total assets of the surety company is only P179,224,573.00, and is, therefore, insufficient to cover the amount it guaranteed to pay in the total amount of P1,264,691,185.74; and
4) that the surety bond has an expiry date of April 20, 2011, which is contrary to the provision of Section 177 of the Insurance Code.

In view of the above flaws, the Court has no alternative, but to **DISAPPROVE** the surety bond issued by CAP General Insurance Corporation No. 01296.

Considering that the bond posted by petitioner City of Makati has been disapproved, and considering further that its 'Motion for Reconsideration' of the Decision was denied for lack of merit, we have no alternative, but to **RECALL AND SET ASIDE** the Resolution dated April 20, 2010 granting petitioner's 'Motion for Suspension of the Collection of Tax.'[48]

In view of the foregoing, this Court affirms the ruling of the CTA Former Second Division recalling and setting aside the Order for the Suspension of Collection of Tax. The rules are clear, collection of tax will not be suspended except for meritorious cases where collection of taxpayer's liability may jeopardize the interest of the Government or taxpayer.[49] In the present petition, the CTA Former Second Division granted petitioner's Motion for Suspension of Collection of Tax in the interest of justice, subject to certain conditions, particularly on the filing of surety bond. As petitioner failed to comply with the given prerequisites, this Court is constrained to recall and set aside its Order suspending the collection of deficiency taxes from petitioner.

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[48] CTA En Banc Rollo, pp. 94-95.
[49] Sections 1 and 2, Rule 10, 2005 Revised Rules of the Court of Tax Appeals, as amended.

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision dated December 16, 2009 and in the Assailed Resolution dated May 25, 2010, both promulgated by the CTA Former Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the Assailed Decision dated December 16, 2009 and the Assailed Resolution dated May 25, 2010, promulgated both by the CTA Former Second Division are hereby **AFFIRMED *in toto*** and the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice