

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

SYDENHAM LABORATORIES, INC.,
Petitioner,

C.T.A. CASE NO. 7416

Members:

**ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JL.***

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondents.

Promulgated:

MAY 12 2010 ; 3:38 pm

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DECISION
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ACOSTA, *P.J.*:

Before Us is a Petition for Review seeking the cancellation and setting aside of the assessment and Formal Letter of Demand issued by respondent against petitioner for the alleged deficiency Income Tax in the amount of P250,955.06, Value-Added Tax (VAT) in the amount of P1,572,580.24, Documentary Stamp Tax in the amount of P76,339.76, and Expanded Withholding Tax in the amount of P156,548.37, for taxable calendar year 2001.

The antecedent facts culled from the records are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at E. Aguinaldo Hi-way cor. Governor's Drive, Dasmarinas, Cavite.¹

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¹ Joint Stipulation of Facts and Issues (JSFI), records, p. 100.

Respondent is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes.

For taxable year 2001, petitioner filed its Annual Corporation Income Tax Return (ITR) with the Bureau of Internal Revenue (BIR) on April 15, 2002.

Petitioner received a Preliminary Assessment Notice (PAN) dated October 27, 2004 from respondent assessing petitioner for alleged deficiency income tax, documentary stamp tax, value added tax, and expanded withholding tax for calendar year 2001. Petitioner contested the said assessment through a letter dated December 1, 2004 for lacking of factual and legal basis.

On December 21, 2004, petitioner received an Assessment Notice and a Formal Letter of Demand (FLD) both dated December 15, 2004; stating that petitioner is liable for deficiency income tax, documentary stamp tax, value added tax, and expanded withholding for taxable calendar year 2001. The FLD² contains the following details:

INCOME TAX

Net Income per income statement		P (2,373,753.00)
Add: Over declaration of depreciation	P 281,851.32	
Gain on sale of fixed asset	1,632,570.97	
Loss corresponding to ITII	1,439,000.74	
Less: Rental of equipment	<u>(509,484.66)</u>	<u>2,843,938.37</u>
Adjusted gross income per audit		<u>P 470,185.37</u>

TAX DUE

Basic		P 150,459.32
Add: interest(4/16/02 - 12/15/04)	P 80,495.74	
compromise	<u>20,000.00</u>	<u>100,495.74</u>
Total deficiency income tax due		<u>P 250,955.06</u>

DOCUMENTARY STAMP TAX

On lease contracts	P 17,974.00
On stock issuance	<u>31,104.00</u>

² Exhibit "D", records, pp. 266-267; Exhibit "2", BIR Records, pp. 302-304.

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Total basic tax due		49,078.00
Less: tax paid		<u>31,104.00</u>
Deficiency		17,974.00
Add: 25% surcharge on P49,078.00	P 12,269.50	
interest (04/06/00-12/15/04)	33,596.26	
compromise	<u>12,500.00</u>	<u>58,365.76</u>
Total deficiency DST due		P 76,339.76

VALUE ADDED TAX

Sale of Fixed Assets		<u>P 8,472,000.00</u>
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TAX DUE

Basic		P 847,200.00
Add: 25% surcharge	P 211,800.00	
interest (01/25/02-12/15/04)	488,580.24	
compromise	<u>25,000.00</u>	<u>725,380.24</u>
Total deficiency VAT due		P 1,572,580.24

EXPANDED WITHHOLDING TAX

	Gross		Tax Due
Professional fees	867,906.54	10%	86,790.65
Rental	3,804,187.43	5%	190,209.37
Security Services	418,823.49	1%	4,188.23
Security Services	130,909.08	2%	2,618.18
Janitorial Services	212,905.51	1%	2,129.06
Janitorial Services	93,135.81	2%	1,862.72
Brokerage	88,949.76	5%	4,447.49
Director's fees	93,000.00	10%	9,300.00
Director's fees	42,000.00	20%	8,400.00
Services	8,848,800.62	1%	88,488.01
Services	1,392,638.18	2%	<u>27,852.76</u>
Total			426,286.47
Less: tax paid			<u>334,608.68</u>
Deficiency			91,677.79
Add: interest (01/25/02 - 12/15/04)	P 52,870.58		
compromise	12,000.00		<u>64,870.58</u>
Total deficiency EWT due			P 156,548.37

Petitioner filed its protest to the above assessment on January 18, 2005. Thereafter, petitioner issued a letter dated February 24, 2005³ addressed to the BIR Revenue District Office No. 054, submitting relevant and pertinent documents in support of its protest.

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³ Exhibit "J", records, pp. 280-281.

On February 1, 2006⁴, petitioner received a letter which in effect denied petitioner's protest on the ground that its alleged supporting documents did not substantiate its protest.

Hence, the instant Petition for Review filed on March 2, 2006.

Respondent filed his Answer on April 25, 2006, setting up his defenses, pertinent hereto are:

"6. xxx petitioner was assessed deficiency income tax due to over-declaration of depreciation expense but denies the rest of the allegations for being false, the truth being that examination of petitioner's books of accounts and other accounting records disclosed that petitioner committed over-declaration of depreciation;

7. xxx petitioner was assessed for deficiency income tax due to its failure to report its gain on sale of fixed assets but denies the rest of the allegation for being false, the truth being that examination of petitioner's books of accounts and other accounting records disclosed that petitioner failed to include in its taxable income its gain on sale of fixed assets;

8. xxx petitioner was assessed for deficiency income tax for deducting losses from ITH from its gross income tax in the amount of P1,439,000.74 but denies the rest of the allegation for being erroneous conclusions of fact and law;

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xxx

10. He denies the allegations under the heading 'Nature of the Petition' for being erroneous conclusion of fact and law, the truth being that petitioner failed to duly protest the assessment issued against it;

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12. xxx that investigation disclosed that petitioner failed to remit the corresponding documentary stamp tax on its lease agreement. There was late remittance of documentary stamp tax on its issuance of capital stock amounting to P31,104.00 in violation of Sections 194 and 176, respectively, of the National Internal Revenue Code of 1997;

13. xxx verification disclosed that petitioner failed to pay the value added tax on the sale of its fixed asset in violation of Section 106 of the National Internal Revenue Code of 1997;



⁴ Exhibit "K", records, p. 282; Exhibit "7", BIR Records, p. 394.

14. xxx [v]erification disclosed that petitioner failed to remit the correct expanded withholding tax on its income payments subject to expanded withholding tax in violation of Sections 80 and 57, respectively, of the National Internal Revenue Code of 1997;

15. xxx that due to deficiency taxes, petitioner is liable to surcharges and interest in accordance with the provisions of Sections 248 and 249 of the NIRC of 1997;

16. xxx examination of petitioner's books of accounts and other accounting records disclosed that petitioner is liable for deficiency income tax (P250,955.06); documentary stamp tax (P76,339.76); value-added tax (P1,572,580.24); and expanded withholding tax (P156,548.37);

17. 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 (*CIR vs. Construction Resources of Asia, Inc.* 145 SCR 4 671). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR*, 1 SCR 4 538; *CIR vs. Tuazon, Inc.*, 173 SCR 4 397) and failure to do so shall vest legality to respondent's actions and assessments."

Petitioner and respondent filed their respective Formal Offer of Evidence on February 18, 2008 and September 17, 2008, which were admitted by this Court on April 1, 2008 and October 22, 2008, respectively.

In a Resolution dated January 7, 2009, this case was deemed submitted for decision after the Court considered the parties' Memoranda.

However, the Court issued an Order on November 10, 2009, requiring petitioner to submit the previously admitted exhibits "FF","GG","HH","II","JJ-1", and "JJ-2", which were found to be missing from the records.

Petitioner complied with the order of the Court on November 18, 2009. In a Resolution dated November 26, 2009, the case was re-submitted for decision.

The parties jointly submitted the following issues for resolution:



1. Whether or not, under the facts and the law, petitioner is liable for alleged deficiency income tax, documentary stamp tax, value added tax, and expanded withholding tax for the taxable calendar year 2001;

2. Whether or not petitioner duly protested the assessments.

***Liability for the alleged deficiency income tax,
documentary stamp tax, value added tax, and
expanded withholding tax for the taxable
calendar year 2001***

Deficiency Income and Value-Added Tax

A review of the records would show that the assessment for income tax due and value added tax (VAT) are rooted on the alleged sale of fixed assets by petitioner in 2001.

Respondent explains, through his witness, Mr. Edwin Aritumba, the Revenue Officer tasked to investigate petitioner's books of accounts; that petitioner entered into a contract of sale with UCPB Leasing and Finance Corporation on August 30, 2001 and December 11, 2001 but eventually leased them back. What had actually happened was a sale-leaseback transaction. Thus, petitioner is liable for deficiency VAT on the sale of its fixed assets.

Petitioner's deficiency income taxes results from a recognition of the sale resulting to the over declaration of depreciation expense for the sold assets, recognition of the rental thereof and identifying sales subject to Income Tax Holiday in accordance with the Board of Investments' (BOI) registration. In sum, the bases for the alleged deficiency income tax are as follows:

Net Loss per Income Tax Return	P(2,373,753.00)
Add: Over-declaration of depreciation	281,851.32
Gain on sale of fixed asset	1,632,570.97
Loss corresponding to ITH	1,439,000.74
Less: Rental of fixed assets	(509,484.66)



Petitioner denies entering into any sale transaction for the taxable year 2001 and stands firm that the said fixed assets are still intact and form part of its inventory. Petitioner continues that the alleged over declaration of depreciation for taxable year 2001 is a result of the provision for depreciation of its property and equipment using the straight line method based on the useful life of related assets. In other words, the alleged depreciation was in truth and in fact legitimate depreciation incurred in the conduct of its trade or business.

As to the loss pertaining to petitioner's Income Tax Holiday, petitioner asserted that there is no basis on respondent's position to add back the loss corresponding to its Income Tax Holiday on the ground that petitioner allegedly deducted loss corresponding to Income Tax Holiday in the amount of P1,439,000.00.

This Court finds for the petitioner.

The various pieces of evidence submitted by the parties to this Court failed to show that petitioner entered into a contract of sale. The existence of proofs to this matter is very crucial considering that the assessment was based on the alleged sale of fixed assets.

This Court recognizes that tax assessments by tax examiners are presumed correct and made in good faith. The presumption on the correctness of assessments carries with it the assumption that the assessment is not baseless but founded on sufficiently relevant pieces of evidence.

The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments⁵. Once petitioner has presented its evidence to rebut the presumption, it becomes incumbent upon respondent to present controverting evidence to refute petitioner's position. It follows that

⁵ Sy Po vs. Court of Tax Appeals, G.R. No. L-81446, August 18, 1988.

determination of the correct amount of taxes due will still depend on the pieces of evidence submitted to the Court.

Well pronounced is the ruling of the Supreme Court in the case of the *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*⁶:

“If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a ‘naked assessment,’ *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. **Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.**” (*Emphasis supplied.*)

In this case, petitioner submitted to this Court the following pieces of evidence to contest respondent’s assessment for deficiency VAT and income tax brought about by petitioner’s alleged sale of fixed assets:

Exhibit P	Copy of the Audited Financial Statements of Sydenham Laboratories for taxable years 2002 and 2001	To prove that the fixed assets, subject of assessment in the instant case are intact, and form part of the inventory of petitioner for the year 2001 and 2002. As such no sale of fixed assets to speak of contrary to the findings of respondent.
Exhibit AA	Affidavit of Maria Isabel T. Bolarion dated November 6, 2006	To prove that petitioner incurred no deficiency income tax, documentary stamp tax, expanded withholding tax, and VAT due for taxable year 2001

⁶ G.R. No. 136975, March 31, 2005.



Exhibits BB, BB-1, BB-2, BB-3, BB-4, BB-5, and CC	Various Schedule of Fixed Assets, an Analysis of Depreciation as of December 31, 2001 and a Schedule of Leasehold Improvements	To prove that the alleged sale of fixed assets amounting to P8,472,000.00 are included in the Schedule of Fixed Assets and the truth of the matter there were no sale of fixed assets for year 2001; and to prove that the fixed assets are further classified as Machinery & Equipment, Laboratory & Glasswares, Office Equipment, Furniture & Fixtures, and Leasehold Improvements.
Exhibits DD, DD-1, DD-2, DD-3, DD-4, DD-5, and DD-6	Schedule of Fixed Assets for December 31, 2000, Schedule of Accumulated Depreciation as of December 31, 2000, various Lapsing Schedule, and Schedule of Construction In Progress as of December 31, 2000.	To prove the Schedule of Fixed Assets and Schedule of Accumulated Depreciation for year 2000; and to prove that the Schedule of Fixed Assets for the calendar year 2000 (ending balance) clearly show that the same is intact and the same is the beginning balance for the Schedule of Fixed Assets for Calendar Year 2001.
Exhibit EE	Affidavit of Edwin Baysa dated May 30, 2007	To prove that petitioner incurred no deficiency income tax, documentary stamp tax, VAT and expanded withholding tax due for the taxable year 2001.
Exhibit FF	Schedule of Depreciation	To prove that the Independent Certified Public Accountant commissioned by the Honorable Court has verified the account "Property, Plant, and Equipment" of petitioner and was able to ascertain that the same was stated at cost and the basis of computing the depreciation is on a straight line method in accordance with the Generally Accepted Accounting Principles in relation to Section 34(F)(2)(a) of the National Internal Revenue Code, as amended.
Exhibit GG	Schedule of Fixed Assets	To prove the beginning and ending balance of fixed assets of petitioner for taxable year 2001; and to prove that there had been an increase in the amount of fixed assets from the year 2000 to 2001, contrary to the findings of the Bureau of Internal Revenue that there had been an

		occurrence of sale of fixed assets.
Exhibit II	Lease Contract with UCPB Leasing and Finance Corporation	To prove that petitioner and UCPB Leasing and Finance Corporation entered into a lease agreement over the properties allegedly subject to VAT. Said properties were never disposed of and in fact and in truth are owned by UCPB Leasing and Finance Corporation.
Exhibits JJ-1, JJ-2	List of various equipments	To prove that the properties subject to VAT amounting to P8,472,000.00 has no factual and legal basis at all as the said properties subject to VAT are owned by UCPB Leasing Corporation. The said properties were leased but not sold to the petitioner.
Exhibit KK	Independent CPA Report dated January 17, 2008	To prove that Mr. Eliseo A. Aurellado has conducted special audit procedures pursuant to being commissioned by the Honorable Court as an Independent Certified Public Accountant, relative to the alleged deficiency tax assessment of petitioner covering the taxable year ended December 31, 2001; To prove that he has physically examined the original copies of the available supporting documents, such as the books of accounts, sales invoices, official receipts, cash vouchers, contracts and other relevant documents which were served and used as the basis of his report; To prove that Mr. Aurellado has performed the necessary procedures in accordance with the Philippine Accounting Standards and Generally Accepted Accounting Principles; and To prove that the assessment for the year 2001 has no factual and legal basis and that the principal amount of assessment in the amount of P1,107,311.11

should be correspondingly reduced by P1,098,838.11, thereby leaving the tax due to only P8,473.00.

The above-mentioned pieces of evidence bolster petitioner's claim. The findings of the Certified Public Accountant (CPA) commissioned by this Court to examine petitioner's voluminous documents agree that there are no proofs as to the sale of the fixed assets, to quote:

"A. INCOME TAX

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Over-declaration of depreciation

Based on the examination of supporting documents, we have verified the account 'Property, Plant, and Equipment' of SYDENHAM and was able to ascertain that the same is stated at cost and the basis of computing the depreciation is on a straight line method in accordance with the Generally Accepted Accounting Principles in relation to Section 34(F)(2)(a) of the National Internal Revenue Code, as amended.

Gain on sale of fixed asset

SYDENHAM is being assessed by the BIR for the alleged gain on sale of fixed assets; we have ascertained that there had been no occurrence of any sale of fixed assets of the company.

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C. VALUE ADDED TAX

As discussed above on income tax 2001, our examination showed that there had been no sale of fixed assets for the subject taxable year. We also noted that what has transpired were additions to the schedule of fixed assets."

For his part, respondent offered the affidavit of the Revenue Officer who was authorized to examine the books of accounts and accounting records of petitioner (Exhibit 1), Formal Letter of Demand (Exhibit 2), Assessment Notices (Exhibits 3-6), and the Letter from the Bureau of Internal Revenue's (BIR) Assessment Division ordering petitioner to pay the assessed taxes (Exhibit 7).

[Handwritten signature]

Respondent's exhibits failed to prove the sale of petitioner's fixed assets which is the basis for the alleged deficiency VAT and Income Tax, due to over depreciation and unreported gain on sale. Although, the BIR Records were forwarded to this Court, yet, it was not formally offered except for the above-mentioned exhibits of respondent. Being so, this Court cannot consider the entire records in resolving the issue on hand irrespective of whether they may contain the best evidence to prove respondent's assertions.

It is well-settled that the courts cannot consider evidence which has not been formally offered. Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.⁷

Pertinent hereto is Section 34, Rule 132 of the Revised Rules on Evidence, which reads:

“SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.”

The Supreme Court had the occasion to explain the applicability of the afore-quoted provision with respect to the BIR Records in the case of *Rafael Arsenio S. Dizon vs. Court of Tax Appeals and Commissioner of Internal Revenue*⁸, thusly:

“While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause.”

Taking into consideration the supporting evidence of petitioner in light of respondent's evidence, this Court decides to take petitioner's side and cancel the

⁷ Far East Bank & Trust Co., vs. Commissioner of Internal Revenue, G.R. No. 149589, September 15, 2006.

⁸ G.R. No. 140944, April 30, 2008.

assessments on income tax due to over declaration of depreciation expense and unreported gain on sale of assets and the assessment for VAT.

Anent the loss corresponding to income tax holiday, a review of the records would show the loss corresponding to ITH, allegedly deducted by petitioner from its gross income, is computed as follows:

Net loss per ITR	P (2,373,753.00)
Add: Over-declaration of depreciation	281,851.32
Less: Rental-Lease of equipment	509,484.66
Adjusted net loss	<u>P (2,601,386.34)</u>

Loss corresponding to ITH period:

$$\frac{\text{Declared sales during the ITH period}}{\text{Declared total sales}} \times \text{Adjusted net loss} = \frac{P21,691,748.75}{P39,213,752.29} \times P(2,601,386.34) = \underline{\underline{P(1,439,000.74)}}$$

This Court agrees that any loss corresponding to ITH should be added back. The amount, however, is computed based on the actual net loss per ITR instead of the adjusted net loss considering that the over declaration of depreciation expense and the rental expenses should not be recognized in the first place. The loss corresponding to ITH should be computed as follows:

$$\frac{P21,691,748.75}{P39,213,752.29} \times P(2,373,753.00) = \underline{\underline{P(1,313,081.53)}}$$

Notwithstanding the foregoing, there is still no basis for the deficiency income tax brought about by the loss corresponding to income tax holiday because petitioner is not in a taxable position, *that is*, petitioner incurred a net loss of P1,060,671.47 for 2001, computed as follows:

Net Loss per ITR	P (2,373,753.00)
Add:	
Loss corresponding to ITH	1,313,081.53
Adjusted Net Loss	<u>P (1,060,671.47)</u>

Deficiency Documentary Stamp Tax

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The Formal Letter of Demand⁹ shows that the assessment for deficiency documentary stamp tax arose from the late remittance of documentary stamp tax (DST) on the issuance of capital stock and failure to remit the corresponding documentary stamp tax on its lease agreement,¹⁰ in the total amount of P76,339.76, to wit:

On lease contracts	P	17,974.00
On stock issuance		31,104.00
Total DST due	P	49,078.00
Less tax paid		31,104.00
DST still due	P	17,974.00
25% surcharge (on P49,078.00)		12,269.50
Interest (4/6/00 to 12/15/04)		33,596.26
Compromise		12,500.00
Total deficiency DST due	P	76,339.76

Petitioner contends that respondent's assessment for deficiency DST on lease contracts amounting to P17,974.00 is without factual and legal basis. The Court-commissioned independent CPA¹¹ found that the contract stipulated that Real Property Taxes, City and Municipal Licenses shall be for the account of the lessor. Further, in the absence of any express agreement, the payment of the DST shall be for the sole account of the lessor.¹²

Furthermore, on the assessment for late remittance of DST on stock issuance of P31,104.00, petitioner maintains that petitioner already paid the DST thereof as shown by its DST Declaration/Return¹³. Furthermore, the right of respondent to assess it of deficiency DST had already prescribed pursuant to Section 203 of the NIRC of 1997.

This Court agrees with petitioner that the assessment for deficiency DST has already prescribed.

Section 203 of the NIRC of 1997, provides as follows:

"SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such

⁹ Exhibit "D", records, pp. 266-267; Exhibit "2", BIR Records, pp. 302-304.

¹⁰ JSFL, records, p. 102.

¹¹ Mr. Eliseo A. Aurellado.

¹² Exhibit "KK", Summary of Findings (B), records, p. 383.

¹³ Exhibit "L", records, p. 283.

period: Provided, That in a case where a return is 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 as filed on such last day.”

Corollary thereto, Section 200(B) of the NIRC of 1997 provides that:

“SEC. 200. *Payment of Documentary Stamp Tax:-*

(B) *Time for Filing and Payment of the Tax.* — Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.”

Pursuant to the aforesaid Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of DST, it is within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred. Hence, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Therefore, respondent had until the following dates within which to assess petitioner for deficiency DST or for late remittance of DST:

Reference	Particulars	Date	Date Filed	Last Day to File Return	Last Day to Assess
Exhibit IIII	Lease contract - TCT360374	10-Mar-00	-	10-Apr-00	10-Apr-03
Exhibit IIII	Lease contract - TCT360373	10-Mar-00	-	10-Apr-00	10-Apr-03
Exhibit I.	DST Declaration/Return		12-Mar-01		12-Mar-03

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Clearly, the DST assessment is already barred by prescription since the Preliminary Assessment Notice (PAN)¹⁴, and the Assessment Notice¹⁵ and Formal Letter of Demand¹⁶ for deficiency DST covering the year 2001 were issued only on October 27, 2004 and December 15, 2004, respectively.

Deficiency Expanded Withholding Tax

Respondent assessed petitioner of deficiency Expanded Withholding Tax (EWT) for taxable year 2001 in the amount of P156,548.37, computed as follows:¹⁷

	<u>Gross Amount</u>		<u>Tax Rate</u>	<u>Tax Due</u>	
Professional fees	P	867,906.54	10%	P	86,790.65
Rental		3,804,187.43	5%		190,209.37
Security services		418,823.49	1%		4,188.23
Security services		130,909.08	2%		2,618.18
Janitorial services		212,905.51	1%		2,129.06
Janitorial services		93,135.81	2%		1,862.72
Brokerage		88,949.76	5%		4,447.49
Director's fees		93,000.00	10%		9,300.00
Director's fees		42,000.00	20%		8,400.00
Services		8,848,800.62	1%		88,488.01
Services		1,392,638.18	2%		27,852.76
TOTAL	P	15,993,256.42		P	426,286.47
Less tax paid					334,608.68
EWT still due				P	91,677.79
Interest (1/25/02 to 12/15/04)					52,870.58
Compromise					12,000.00
Total deficiency EWT				P	156,548.37

Petitioner contends that the assessment has no leg to stand on. It points out that some of the payments made to suppliers of goods and services are not subject to withholding taxes for the reason that income recipients are exempt from income taxes. This explains the difference or the discrepancy as regards to the expanded withholding taxes.

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¹⁴ JSFI, paragraph 4, records, p. 101.

¹⁵ Exhibit "F", records, p. 269.

¹⁶ Exhibit "D", records, pp. 266-267; Exhibit "2", BIR Records, pp. 302-304

¹⁷ *Id.*

The independent CPA found that the alleged discrepancy is merely a result of the timing difference considering that expenses were charged against the income tax prior to the remittance of the corresponding expanded withholding tax.¹⁸

However, a verification of the records disclosed that petitioner failed to prove its allegations. Considering that all presumptions are in favor of the correctness of tax assessments, the Court upholds respondent's assessment of deficiency EWT. Petitioner is liable to pay deficiency EWT in the amount of P144,548.37, computed below:

Total EWT per Audit	P	426,286.47
Less EWT paid		<u>334,608.68</u>
EWT still due	P	91,677.79
Interest (1/25/02 to 12/15/04)		<u>52,870.58</u>
Total EWT deficiency	P	<u><u>144,548.37</u></u>

Due Protest to the Assessments

Respondent in his Memorandum stands that petitioner's administrative protest is merely pro-forma because the documents submitted by petitioner did not serve to substantiate its protest. Failure on the part of the taxpayer to submit relevant supporting documents on the administrative level, such as in the instant case, renders such protest *pro forma* and shall be construed as if no administrative protest was filed at all and thus, renders the assessments final, executory, and demandable.

We are unconvinced. Section 228 of the 1997 Tax Code provides:

“Section 228. Protesting an Assessment. — . . .

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. . .”**
(*Emphasis supplied.*)

This Court believes that what are “relevant supporting documents” lies on the sound discretion of the taxpayer filing the protest. The purpose is to prevent the BIR from abusing its power by always declaring insufficient the documents that petitioner will

¹⁸ Exhibit KK, Summary of Findings (D), records, p. 384.

submit. This will lead to an unending cycle and the taxpayer's protest will never be decided.

In the case at bar, the February 26, 2004 letter¹⁹ of petitioner showed that it submitted documents which it deemed relevant to support its protest. Thus, respondent cannot say that petitioner did not submit documents in accordance to Section 228 of the 1997 Tax Code.

WHEREFORE, the instant Petition for review is **PARTIALLY GRANTED**. Respondent's assessment for deficiency Income Tax, VAT, and DST in the amounts of P250,955.06, P1,572,580.24, P76,339.76 , respectively, inclusive of interest, surcharge and compromise penalty for taxable year 2001 is hereby ordered **CANCELLED**. However petitioner is **ORDERED TO PAY** the deficiency Expanded Withholding Tax in the amount of **P144,548.37**, computed as follows:

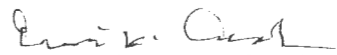
Basic	P 91,677.79
Interest	<u>52,870.58</u>
TOTAL	<u>P 144,548.37</u>

The compromise penalty of P12,000, imposed by respondent is excluded, there being no compromise agreement between the parties. In addition, petitioner is liable to pay 20% delinquency interest on the amount of P144,548.37, computed from January 14, 2005 until full payment thereof pursuant to Section 249(c)(3) of the 1997 Tax Code, as amended.

SO ORDERED.

We concur:

LOVELL R. BAUTISTA
Associate Justice


ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE

CAESAR A. CASANOVA
Associate Justice

¹⁹ Exhibit J.

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice