REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1117
(CTA Case No. 8149)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

CTA EB No. 1119
(CTA Case No. 8149)

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

SEP 2 1 2015 3:00 pm

x--x

DECISION

UY, ***J.*:**

Before the Court *En Banc* are the consolidated Petitions for Review, respectively docketed as follows: **CTA EB No. 1117** filed by

Liquigaz Philippines Corporation (LPC) against the Commissioner of Internal Revenue (CIR) on February 21, 2014[1]; and **CTA EB No. 1119** filed by the CIR against LPC on February 24, 2014[2].

In both CTA EB No. 1117 and CTA EB No. 1119, the Petitions for Review filed therein similarly seek the modification of the Decision dated June 24, 2013,[3] and the Resolution dated January 20, 2014,[4] both promulgated by the Special Third Division of this Court (or the "Court in Division") rendered in **CTA Case No. 8149**, entitled *"Liquigaz Philippines Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

Decision dated June 24, 2013:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation for taxable year 2006 are hereby **AFFIRMED** with **MODIFICATIONS.** Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the reduced amount of **₱81,806,081.69**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
Value-added Tax	5,774,369.52	1,443,592.38	7,217,961.90
Expanded Withholding Tax	2,642,579.68	660,644.92	3,303,224.60
Withholding Tax on Compensation	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

> In addition, petitioner is hereby **ORDERED** to **PAY:**
>
> a) Deficiency interest at the rate of twenty

[1] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 73 to 150.
[2] EB Docket (CTA EB No. 1119), pp. 7 to 24.
[3] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Lovell R. Bautista, EB Docket (CTA EB No. 1117) - Vol. 1, pp. 152 to 198; EB Docket (CTA EB No. 1119), pp. 25 to 71.
[4] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 200 to 215; EB Docket (CTA EB No. 1119), pp. 72 to 87.

M

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

Tax Type	Deficiency Interest computed from
Income Tax	April 15, 2007
Value-added Tax	January 25, 2007
Expanded Withholding Tax	January 15, 2007
Withholding Tax on Compensation	January 15, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of **₱81,806,081.69** and on the 20% deficiency interest which have accrued as aforestated in (a), computed from October 31, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED".

Resolution dated January 20, 2014:

"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision dated June 24, 2013) are hereby **DENIED** for lack of merit.

Petitioner is **ORDERED** to **PAY** the additional amount still due pursuant to the Decision promulgated on June 24, 2013 and in accordance with this Resolution.

SO ORDERED".

However in **CTA EB No. 1117**, LPC further assails the Resolution dated January 3, 2014[5] of the Court in Division, which denied its Tender of Excluded Evidence on the ground that the pieces of evidence subject of petitioner's *Tender of Excluded Evidence* were

---

[5] Erroneously referred to as Resolution dated January 6, 2014 in LPC's Petition for Review [see Paragraphs 11, and 92 as well as the Prayer thereof, EB Docket (CTA EB No. 1117) - Vol. 1, pp. 78, 105, and 143, respectively]; EB Docket (CTA EB No. 1117) - Vol. 1, pp. 217 to 222; and Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2276 to 2281.

not presented, identified, and formally offered before this Court in accordance with the rules and jurisprudence, these documents are not the 'evidence' contemplated by Section 40, Rule 132 of the Rules of Court and thus, cannot be considered as proper subjects of a tender of excluded evidence under the aforesaid rule.[6]

THE FACTS

LPC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 004-735-924-000. Its principal office is situated in 3/F NOL Tower, Commerce Avenue, Madrigal Business Park, Alabang, Muntinlupa City.

The CIR is duly appointed and is empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204(B) of the NIRC of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 16, 2007, LPC filed with the BIR its Annual Corporate Income Tax Return (ITR) (BIR Form No. 1702) for the taxable year ending December 31, 2006.

For taxable year ending December 31, 2006, LPC also filed its Quarterly VAT Returns (BIR Form 255Q) and Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), and its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C), on the following dates:

Quarter	Date of Filing of BIR Form No. 2550Q
First Quarter of 2006	August 23, 2007
Second Quarter of 2006	July 28, 2006
Third Quarter of 2006	August 23, 2007
Fourth Quarter of 2006	August 22, 2007

Month	Date of Filing of BIR Form No. 1601-E	Date of Filing BIR Form No. 1601-C
January 2006	February 13, 2006	February 10, 2006
February 2006	March 10, 2006	March 10, 2006

[6] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 200 to 215; EB Docket (CTA EB No. 1119), pp. 72 to 87.

March 2006	April 11, 2006	April 11, 2006
April 2006	May 11, 2006	May 10, 2006
May 2006	June 13, 2006	June 13, 2006
June 2006	July 10, 2006	July 11, 2006
July 2006	August 11, 2006	August 10, 2006
August 2006	September 8, 2006	September 8, 2006
September 2006	October 11, 2006	October 11, 2006
October 2006	November 10, 2006	November 10, 2006
November 2006	December 11, 2006	December 11, 2006
December 2006	January 12, 2007	January 12, 2007

On August 31, 2007, the BIR issued a Letter of Authority (LOA) No. 2001-00040975, authorizing Revenue Officers Rosario A. Arriola, Ma. Catalina G. Benedicto and Larah N. Vito of the Large Taxpayers Audit and Investigation Division II (LTAID II) to examine LPC's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.

On August 27, 2009, the CIR issued a Notice of Informal Conference and Details of Discrepancies, which were received by LPC on August 28, 2009. On September 28, 2009, the CIR issued a Preliminary Assessment Notice (PAN) and Details of Discrepancies, which were received by LPC on the same date.

On October 20, 2009, LPC received the Formal Letter of Demand (FLD) dated October 16, 2009 and Assessment Notice (FAN) Nos. IT-06-00023, IT-06-00024, VAT-06-00027, WE-06-00053, and WC-06-00033 dated October 16, 2009, issued by the BIR Large Taxpayers Service, assessing LPC for alleged deficiency tax liabilities, inclusive of interest and compromise penalties, for the taxable year ending December 31, 2006.

On November 19, 2009, LPC filed its protest letter dated November 19, 2009 against the FLD and the FAN with the BIR LTAID II. On November 24, 2009, a Tax Verification Notice (TVN) was issued for the reinvestigation of LPC's deficiency tax liabilities for the taxable year ending December 31, 2006, pursuant to its protest letter dated November 19, 2009. LPC received said TVN on November 27, 2009. On January 18, 2010, LPC submitted to BIR LTAID II documents in support of its protest letter.

As no decision was issued by the CIR on its protest letter, LPC filed a Petition for Review on August 16, 2010 before the Court in Division. The case was docketed as CTA Case No. 8149.

The CIR filed her Answer in CTA Case No. 8149 on September 20, 2010, raising, among others certain special and affirmative defenses, to wit: the CIR's right to issue the necessary assessments against LPC has not yet prescribed, and that the Formal Letter of Demand and Final Assessment Notice (FAN) is valid as the deficiency taxes stated therein were computed in accordance with pertinent provisions of the National Internal Revenue Code of 1997, as amended.

After the pre-trial proceedings held on November 19, 2010, the parties submitted their Joint Stipulation of Facts and Issues on December 15, 2010. On the basis thereof, the Court in Division issued a Pre-Trial Order dated January 24, 2011.

During trial, the parties presented their respective witnesses in support of their respective claims and defenses. The case was submitted for decision on September 14, 2012, taking into consideration LPC's Memorandum filed on August 16, 2012 and the CIR's Memorandum filed on September 5, 2012.

On June 24, 2013, the Court in Division rendered the assailed Decision, affirming with modifications the assessments issued by the BIR against LPC. Accordingly, LPC was ordered to pay the CIR the reduced amount of ₱81,806,081.69, inclusive of the 25% surcharge. LPC was also ordered to pay 20% deficiency interest and 20% delinquency interest as indicated therein.[7]

On July 11, 2013, LPC filed a Motion for Reconsideration;[8] while the CIR filed her Motion for Partial Reconsideration (Re: Decision dated June 24, 2013) on July 12, 2013.[9]

In support of its Motion for Reconsideration, LPC filed, on July 15, 2013, a Manifestation submitting the Judicial Affidavit of Maricel R. Cambe.[10] Subsequently, LPC filed a Manifestation and Motion [To Set Petitioner's Motion for Reconsideration for Hearing][11] on July 22, 2013, praying that its Motion for Reconsideration be set for hearing in order to allow its witness to testify in support of said Motion. Said

---

[7] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 152 to 198; EB Docket (CTA EB No. 1119), pp. 25 to 71.
[8] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 1546 to 1585.
[9] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 1825 to 1837.
[10] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 1838 to 1866.
[11] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 2116 to 2120.

Motion To Set Petitioner's Motion for Reconsideration for Hearing was, however, in effect, denied by the Court in Division in the Resolution dated August 7, 2013.[12]

On August 29, 2013, LPC filed a Motion for Reconsideration [Re: 07 August 2013 Resolution],[13] which was likewise denied by the Court in Division in the Resolution dated October 22, 2013.[14]

In the meantime, LPC filed a Manifestation and Motion [Partial Payment of the Award Without Prejudice] on September 13, 2013[15] and a Manifestation and Compliance [Partial Payment of the Award Without Prejudice] on October 4, 2013[16], stating that it already paid the BIR the amount of ₱54,806,640.74, which represents partial payment of the judgment award pursuant to the assailed Decision, but without prejudice to the resolution of its Motion for Reconsideration (of the Court in Division's Decision). In the said Manifestation and Motion [Partial Payment of the Award Without Prejudice], LPC prayed that respondent be ordered to refund to petitioner the paid amount or a portion thereof, in case the said Motion for Reconsideration is wholly or partly granted.

On October 31, 2013, LPC filed a Tender of Excluded Evidence,[17] praying that Exhibits "A-MR" to "K-MR" be made part of the records of the case and be considered in the resolution of its pending Motion for Reconsideration. The CIR filed her Comment (Re: Petitioner's Tender of Excluded Evidence) on November 22, 2013;[18] and in response thereto, LPC filed its Reply to Respondent's Comment dated 20 November 2013, on December 11, 2013.[19]

In the assailed Resolution dated January 3, 2014,[20] the Court in Division denied admission of the pieces of evidence subject of the Tender of Excluded Evidence filed on October 31, 2013 by LPC, in this wise:

"Hence, considering that the pieces of evidence

[12] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 2127 to 2133.
[13] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 2159 to 2174.
[14] Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2245 to 2248.
[15] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 2195 to 2198.
[16] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 2219 to 2221.
[17] Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2254 to 2261.
[18] Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2264 to 2269.
[19] Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2270 to 2274.
[20] Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2276 to 2281.

subject of petitioner's *Tender of Excluded Evidence* were not presented, identified, and formally offered before this Court in accordance with the rules and jurisprudence, these documents are not the 'evidence' contemplated by Section 40, Rule 132 of the Rules of Court; thus, cannot be considered as proper subjects of a tender of excluded evidence under the aforesaid rule."

Subsequently, in the Resolution dated January 20, 2013, the Court in Division denied LPC's Motion for Reconsideration and the CIR's Motion for Partial Reconsideration (Re: Decision dated June 24, 2013), for lack of merit. [21] In the same Resolution, the Court in Division elucidated that in view of the partial payment made by LPC in the amount of ₱54,806,640.74 to the BIR on July 19, 2013, the same shall be considered in the computation of LPC's deficiency taxes still due and payable; and since the said payment does not cover the entire deficiency tax liability, including surcharges and interests due on the same date pursuant to the assailed Decision, LPC was declared liable to pay for the balance still due after deducting the amount paid.

Consequently, LPC and the CIR filed separate Petitions for Review before the Court *En Banc,* docketed as **CTA EB No. 1117** entitled *"Liquigaz Philippines Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent"* [22] and **CTA EB No. 1119** entitled *"Commissioner of Internal Revenue, Petitioner, versus Liquigaz Philippines Corporation, Respondent"* [23].

In **CTA EB No. 1117**, LPC prays that the Decision of the Third Division dated June 24, 2013 and the Resolutions dated January 3, 2014[24] and January 6, 2015 be PARTIALLY REVERSED/MODIFIED to CANCEL AND WITHDRAW the Final Decision on Disputed Assessment issued by the CIR against LPC for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) for taxable year 2006.

In addition, LPC prays that judgment be rendered GRANTING its Manifestation and Motion [Partial Payment of the Award Without

---

[21] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 200 to 215; EB Docket (CTA EB No. 1119), pp. 72 to 87; and Division Docket (CTA Case No. 8149) - Vol. 5, pp. 2283 to 2298.
[22] EB Docket (CTA EB No. 1117) - Vol. 1, pp. 73 to 150.
[23] EB Docket (CTA EB No. 1119), pp. 7 to 24.
[24] Erroneously referred as "January 6, 2015".

Prejudice] and ORDERING the CIR to refund and/or issue tax credit for the remaining balance after applying the partial payment to the taxes found by the Court in Division to be due to the government.

In **CTA EB No. 1119**, the CIR prays that the said Decision and the Resolution dated January 20, 2014 be modified and an order be issued declaring the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated October 16, 2009 valid and binding between the parties, and to declare LPC liable to pay deficiency income tax, expanded withholding tax, withholding tax on compensation and value-added tax for taxable year 2006 in the aggregate amount of ₱33,701,300.98, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, until fully paid, pursuant to Section 248 and 249 of the 1997 NIRC, as amended.

In the Minute Resolution dated March 3, 2014,[25] the Court *En Banc* ordered the consolidation of CTA EB Case No. 1119 with CTA EB Case No. 1117, the case bearing the lower docket number, pursuant to Section 1, Rule 31 of the Revised Rules of Court.

In the Resolution dated March 26, 2014, the Court *En Banc* required both parties to file their respective Comments, within ten (10) days from receipt thereof.[26] In compliance thereto, LPC, as respondent in CTA EB No. 1119, filed a Comment [To Commissioner of Internal Revenue's Petition for Review] on March 31, 2014;[27] while the CIR, as respondent in CTA EB No. 1117, filed her Comment on May 5, 2014.[28] On May 28, 2014, LPC filed a Reply to Respondent's Comment dated May 2, 2014.[29]

Thereafter, in the Resolution dated June 26, 2014,[30] the *Court En Banc* admitted the Comment filed by the CIR on May 5, 2014 and the Reply to Respondent's Comment dated May 2, 2014 filed by LPC. In the same Resolution, both parties were directed to submit their respective memorandum. LPC filed its Memorandum on August 8, 2014,[31] while the CIR filed her Memorandum on August 11, 2014.[32]

[25] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1207 to 1208.
[26] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1217 to 1218.
[27] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1219 to 1228.
[28] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1267 to 1275.
[29] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1296 to 1301.
[30] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1303 to 1305.
[31] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1306 to 1384.
[32] EB Docket (CTA EB No. 1117) - Vol. 3, pp. 1385 to 1403.

On September 24, 2014, the instant consolidated petitions were deemed submitted for decision.[33]

Hence, this Decision.

THE ISSUES

<u>CTA EB No. 1117</u>:

In its Petition for Review, LPC raises the following issues for the Court *En Banc*'s resolution:

"I.

WHETHER OR NOT THE THIRD DIVISION OF THIS HONORABLE COURT ERRED IN FINDING THAT PETITIONER WAS NOT DENIED OF *[DUE]* PROCESS OF LAW WHEN THE RESPONDENT HERSELF ADMITTED THAT IT MERELY MADE A <u>TABLE AUDIT</u> AND DID NOT EXAMINE AND REVIEW THE VOLUMINOUS DOCUMENTS PRESENTED BY PETITIONER.

II.

WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN DENYING PETITIONER'S TENDER OF EXCLUDED EVIDENCE FILED ON 31 OCTOBER 2013 AND IN DENYING ADMISSION OF THE EVIDENCE FORMALLY OFFERED ON 20 SEPTEMBER 2011.

III.

WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN IMPUTING THE ENTIRE ALLEGED DEFICIENCY EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, AND DEFICIENCY VAT TO THE UNPRESCRIBED QUARTER OF THE TAXABLE YEAR 2006, DESPITE ITS FINDINGS THAT THE

[33] Resolution dated September 24, 2014, EB Docket (CTA EB No. 1117) - Vol.3, pp. 1406 to 1407.

ASSESSMENTS RELATIVE THERETO FOR VARIOUS QUARTERS HAVE ALREADY PRESCRIBED. THE SAID FINDING/RULING OF THE THIRD DIVISION OF THE HONORABLE COURT IS CONFISCATORY, OPPRESSIVE, PRESUMPTUOUS AND WITHOUT ANY LEGAL AND FACTUAL BASIS.

IV.

WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN UPHOLDING THE VALIDITY OF THE PHP81,806,081.69 ASSESSMENT FOR ALLEGED DEFICIENCY INCOME TAX, EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, AND VAT NOTWITHSTANDING THE OVERWHELMING PIECES OF EVIDENCE LEADING TO THE NULLIFICATION OF THE FINAL LETTER OF DEMAND AND FINAL ASSESSMENT NOTICE.

V.

WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN APPLYING THE PARTIAL PAYMENT TO THE ENTIRE DEFICIENCY TAX LIABILITY AND FAILED TO APPLY THE RULE ON APPLICATION OF PAYMENTS."[34]

LPC's arguments:

With regard to the first issue, LPC asserts that the CIR failed to observe the fundamental and essential requirements of due process prescribed in Section 228 of the Tax Code and Revenue Regulations (RR) No. 12-99 in issuing the assailed FAN and FLD. According to LPC, it was denied due process when the CIR herself admitted that she merely made a table assessment and did not examine and review the voluminous documents presented by LPC in support of its protest. Moreover, while the PAN and FAN enumerated provisions of law on which the assessment is allegedly based, the CIR did not bother to explain how the figures were arrived at as well as the surrounding circumstances justifying the assessment.

---

[34] EB Docket (CTA EB No. 1117) - Vols. 1 and 3, pp. 84 to 85, and 1313 to 1314, respectively.

In connection with the second issue, LPC contends that the Court in Division abused its discretion in denying its Tender of Excluded Evidence. According to LPC, the introduction and/or presentation of additional pieces of evidence in support of its Motion for Reconsideration is not contrary to, but is sanctioned by, jurisprudence, citing the case of "*BPI-Family Savings Bank, Inc., vs. Court of Appeals, et al.*",[35] and the law that created this Court. LPC submits that in the case of "*Commissioner of Internal Revenue vs. De La Salle University*",[36] which allegedly squarely applies in the instant case, this Court *En Banc* has allowed the introduction of additional evidence even after the rendition of decision and through a motion for reconsideration. Furthermore, LPC maintains that the termination of the trial proper does not foreclose the taking of additional evidence as the charter of this Court empowers it to receive in evidence *"in any stage of the proceedings"*, citing as basis, Section 12 of Republic Act No. (RA) 1125[37].

Hence, LPC asks the indulgence of the Court *En Banc* to consider the pieces of evidence which were denied admission by the Court in Division in the Resolution dated June 11, 2012[38].

Anent the third issue, LPC avers that the imputation of the entire alleged EWT, WTC and VAT to the unprescribed months of taxable year 2006 is confiscatory, oppressive, presumptuous and without any legal and factual basis. Allegedly, there is no law or regulation that sanctions the ruling of the Court in Division nor does the case record support it. LPC argues that it cannot be made to prove that the alleged deficiency EWT and WTC pertain to the prescribed period; it is the CIR who is required under Section 228 to establish the factual and legal bases of the assessment. Also, it is LPC's position that rules on prescription under the Tax Code are liberally construed in favor of taxpayers to protect them from the CIR's unreasonable and clearly prescribed assessment; to further give due course to the CIR's FAN and FLD, in this case, would only run counter and undermine the *raison d'etre* of said legal provision.

As to the fourth issue, LPC contends that Court in Division erred in upholding the FLD and FAN notwithstanding the overwhelming pieces of evidence leading to its nullification for being arbitrary, unreasonable and devoid of factual and legal bases. Thus,

[35] G.R. No. 122480, April 12, 2000.
[36] CTA EB No. 622 (CTA Case No. 7303).
[37] AN ACT CREATING THE COURT OF TAX APPEALS.
[38] Refer to Division Docket (CTA Case No. 8149) - Vol. 3, pp. 1338 to 1355.

LPC raises to the Court *En Banc*'s consideration the deficiency taxes found by the Court in Division in the total amount of ₱81,806,081.69 including the imposition of the 25% surcharge.

Lastly, LPC implores the Court *En Banc* to apply the ₱54,387,640.74 partial payment to the principal amount and not to the entire tax deficiency in order to stop the running of interest and penalties, invoking Article 1252 of the Civil Code, which allegedly grants LPC the right to choose the application of its payments vis-a-vis its purported tax liabilities.

The CIR's counter-arguments:

In her Comment, the CIR counters that the requirement of due process was properly complied with in issuing the Formal Letter of Demand and Final Assessment Notice. According to the CIR, the PAN and FLD complied with Section 228 of the NIRC and LPC was apprised of and was able to effectively protest said assessments.

As regards the issue on the Court in Division's Resolution dated January 3, 2014 denying LPC's Tender of Excluded Evidence, the CIR submits that, any question pertaining to the validity of said resolution cannot be ventilated in the present Petition for Review because the same is an interlocutory order; thus, cannot be subject of the instant appeal.

<u>CTA EB No. 1119</u>:

The CIR raises, in effect, the following issues for the Court *En Banc*'s resolution, to wit:

1. Whether LPC is liable for deficiency VAT and deficiency income tax for taxable year 2006; and
2. Whether the requirement of due process was properly complied with in issuing the FLD and FAN.

The CIR's arguments:

The CIR maintains that the Court in Division erred in cancelling the deficiency VAT assessment on LPC's alleged underclaimed importation and deficiency Income Tax assessments on LPC's purported unrecorded sales on undeclared Petron purchases, unrecorded sales on importation and over-claimed importation. According to the CIR, the detailed explanation of the findings of her revenue officer as well as the legal basis of her assessment was clearly written in the FLD and that the process employed in obtaining data relating to LPC's importation is in accordance with Revenue Memorandum Order (RMO) No. 34-2004.

Moreover, the CIR points out that data upon which her findings on LPC's unrecorded sales and overclaimed importation was based, including the importation documents furnished by the Bureau of Customs, can be found in the BIR Records, which had been forwarded to the Court in Division and now forms part of the case records.

Lastly, the CIR contends that the requirement of due process was properly complied with in the issuance of the FLD and FAN. The CIR explains that, in compliance with Section 228 of the NIRC of 1997, as amended, the PAN and FAN/FLD contained the facts and law on which the assessments were based. Allegedly, the Details of Discrepancy and computations attached to the assessment notice are sufficient enough to inform LPC of the legal and factual basis of the assessment.

LPC's counter-arguments:

On the other hand, LPC counter-argues that it is not liable for deficiency VAT and income tax because it has no underclaimed importation for taxable year 2006 in the amount of ₱55,614,853.52. LPC points out that the FLD failed to provide a detailed computation on how the figure on unrecorded sales on underclaimed importation were arrived at and that the BOC records, upon which said amount was allegedly based, was never offered by the CIR in evidence nor attached to any of its pleadings. LPC adds that the alleged ₱11,892,375.63 over-claimed importation is likewise baseless as there was no computation included in the FAN and no supporting documents were presented during trial to explain the basis of the assessment. Thus, according to LPC, the ruling of the Court in Division cancelling the assessment for lack of factual and legal basis should be upheld.

Finally, LPC maintains that the CIR's Petition for Review is not fully compliant with Section 6, Rule 43 of the Rules of Court for her failure to attach the importation and BIR records referred to in her Petition for Review. Thus, pursuant to Section 7, Rule 43 of the

Rules of Court, said Petition for Review should be denied due course.

THE COURT *EN BANC*'S RULING

We shall resolve the foregoing issues *in seriatim.*

LPC was not deprived of its right to due process in the issuance of the subject assessments.

LPC raises the issue on the CIR's alleged non-observance of the due process requirements, pursuant to the case of *Ang Tibay vs. Court of Industrial Relations,*[39] particularly, on the requirement that the tribunal must consider the evidence presented; and under Section 228 of the NIRC of 1997, as amended, on the requirement of informing the taxpayer of the law and facts on which the assessment is made.

LPC alleges in its Petition for Review in CTA E.B. Case No.1117 that the CIR herself admitted that she did not examine the invoices, receipts, and other supporting documents of LPC before the assessment was made, and that neither did she exercise the powers granted to her under Section 5 of the NIRC, including but not limited to the power to obtain information, and to summon, examine and take testimony of persons other than person whose internal revenue tax liability is subject of audit or investigation.[40]

According to LPC, the supposed "bold admission" of the CIR did not escape the attention of the Court in Division, when it noted, at the hearing held on December 12, 2011 in CTA Case No. 8149, that what the CIR had done was a "table assessment", as stated in the testimony of her witness, Revenue Officer Rosario A. Arriola, to wit:

"MS. ARRIOLA

A The records were subpoenaed.

ATTY. CRISTOBAL

---

[39] G.R. No. L-46496, February 27, 1940.
[40] Petition for Review CTA EB No.1117, CTA EB No. 11`17 Docket, pp. 86-87

Q Did you or did you not go to the office of the petitioner when you conducted the assessment?

MS. ARRIOLA

A The subpoena ... Interrupted

ATTY. CRISTOBAL

Q Yes or no?

JUSTICE BAUTISTA

I think based on your testimony, what you have done is table assessment. **You have not gone to the office of the taxpayer, right?**

MS. ARRIOLA

A Yes, your Honors."[41] *(Emphases supplied)*

The foregoing testimony of Ms. Arriola cannot in any way be considered as indicative of an admission by the CIR that she did not examine the invoices, receipts, and other supporting documents of LPC before the assessment was made and that she did not exercise the powers granted to her under Section 5 of the NIRC.

What witness Arriola merely said was that she did not go to the office of LPC before making the assessments. However, she made mention about a "subpoena" for the production of records. To the mind of the Court *En Banc*, what was answered in the affirmative by Ms. Arriola is the said fact alone, based on the question raised by LPC's counsel, Atty. Cristobal. Said counsel did not ask whether or not she examined LPC's records and whether the CIR exercised her powers under the said Section 5.

And even granting that a table assessment (which can be understood in this context as making an assessment without going to the place of business or office of the taxpayer) was indeed made in this case, the same is of no moment. This must be so because the CIR ought to know the tax records of all taxpayers,[42] including that of

---

[41] Transcript of Stenographic Notes at the hearing held on December 12, 2011 in CTA Case No. 8149, p. 51.

[42] *BPI-Family Savings Bank. Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12,

LPC. Thus, the CIR is authorized to make an assessment, even without going to the office of the taxpayer.

Furthermore, We do not agree that there was a violation of the requirement that the tribunal must consider the evidence presented, pursuant to the case of *Ang Tibay vs. Court of Industrial Relations*. A more careful reading of the said requirement is plain and simple—that what is to be considered by the concerned tribunal is the evidence "presented". In the instant case, it is very apparent that the supposed "evidence", which were the subject of the subpoena, were never presented by LPC to the BIR. Thus, there is nothing for the BIR to consider.

Anent the supposed violations of the CIR of Section 228 of the NIRC of 1997, as amended, pertinent portions thereof and its implementing rules, RR No. 12-99,[43] are hereby quoted as follows:

> **Section 228 of the NIRC of 1997, as amended:**
>
> "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: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment shall be protested

2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

[43] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

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."

xxx xxx xxx

Revenue Regulation No. 12-99 :

Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx xxx

3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void.* xxx

xxx xxx xxx

3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx"

It is clear from the foregoing provisions that due process demands that the taxpayer shall be informed, in writing of the legal and factual bases of the assessment, and is given the opportunity to contest the assessment. In other words, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[44]

As aptly found by the Court in Division, the CIR complied with

---

[44] *Juan Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999.

the aforesaid twin requirements of due process in the conduct and issuance of the FAN and FLD, both dated October 16, 2009.

First. LPC was informed of the facts and the law on which the assessments were made.

Contrary to the assertion of LPC, Section 228 does not require the CIR to give a full narration of the details and circumstances surrounding the assessment. What said provision mandates is for the CIR to *"state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based"*.

With this yardstick, the Court *En Banc* finds that LPC was properly apprised of its tax deficiencies. The Details of Discrepancy attached to the FLD clearly indicates the factual findings which gave rise to the assessments and the particular legal provisions of the NIRC on which the deficiency income tax, VAT and withholding tax assessments were based. [45] Moreover, LPC managed to intelligently dispute the questioned assessment. It cannot now feign that the CIR failed to state the factual and legal bases of the assessment considering that it was able to effectively file a protest against the same. The extensiveness of its Protest-letter dated November 19, 2009[46] only shows that LPC clearly understood the nature and basis of the CIR's assessment.

Second. LPC was given the opportunity to protest the assessment and submit relevant documents in support thereof.

Records bear out that when the BIR issued the FLD, with attached details of discrepancy and FAN, LPC filed its Protest on November 19, 2009 and submitted supporting documents relative thereto on January 18, 2010.[47] Moreover, LPC admits receiving, on November 29, 2009, a TVN issued by the BIR for the reinvestigation of its protest-letter.

Clearly, LPC was accorded its right to be heard and to explain itself. We cannot therefore subscribe to the unfounded contention that the failure on the part of the CIR to review and examine the voluminous documents submitted by LPC in support of its protest is

[45] Exhibit "E-1", Division Docket (CTA Case No. 8149) Vol. 2, pp. 567 to 569.
[46] Exhibit "F", Division Docket (CTA Case No. 8149) - Vol. 2, pp. 594 to 655.
[47] Pars. 8 & 16, Stipulated Facts, Pre-Trial Order, Division Docket (CTA Case No. 8149) - Vol. 1, pp.320 to 321.

tantamount to a deprivation of the right to due process.

Time and again the Supreme Court has consistently ruled that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is *absolute* absence of the opportunity to be heard.[48] As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[49]

The Court in Division is correct in denying LPC's Tender of Excluded Evidence filed on October 31, 2013.

LPC contends that the Court in Division erred when it denied its Tender of Excluded Evidence filed on October 31, 2013. According to LPC, the remedy of Tender of Excluded Evidence, apart from being sanctioned by the Rules of Court, which applies suppletorily to cases before this Court, is proper under the circumstances obtaining in this case.

We disagree.

Section 40, Rule 132 of the Rules on Evidence provides as follows:

> "Sec. 40. *Tender of excluded evidence.* — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony."

---

[48] *Rolando Placido and Edgardo Caragay vs. National Labor Relations Commission and Philippine Long Distance Company Incorporated,* G.R. No. 180888, September 18, 2009.

[49] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, June 16, 2006, citing *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005.

In the case of *Yu vs. Court of Appeals*[50], the Supreme Court discussed the requirements for said procedural remedy, *viz:*

> **"It is thus apparent that before tender of excluded evidence is made, the evidence must have been formally offered before the court. And before formal offer of evidence is made, the evidence must have been identified and presented before the court.** xxx." *(Emphasis supplied)*

Clearly therefrom, only documents presented, identified and formally offered before the court, which were later on excluded by the latter, are proper subjects of a Tender of Excluded Evidence.

Similar to the aforecited case, the Tender of Excluded Evidence filed by LPC before the Court *a quo* is not the tender contemplated by the rules, inasmuch as the pieces of documents subject thereof were not formally offered in evidence before the Court in Division, much less, presented and identified, during trial. To be sure, the Judicial Affidavit of Ms. Maricel R. Cambe dated July 12, 2013 was submitted before the Court *a quo* through a mere Manifestation filed by LPC on July 15, 2013;[51] while the documents referred therein were merely attached to the Motion for Reconsideration filed by LPC on July 11, 2013.[52]

However, LPC asserts that its failure to comply with the requisite Formal Offer of Evidence with its Tender of Excluded Evidence was due to factors beyond its control. In particular, LPC faults the Court in Division for denying its Motion to Set the Motion for Reconsideration for Hearing, which allegedly prevented LPC from making a formal offer of the documentary exhibits referred therein.

We disagree.

LPC only has itself to blame for its failure to present and formally offer the subject judicial affidavit and documentary exhibits referred therein, as part of its evidence-in-chief. It cannot pass the blame to the Court in Division for said procedural lapses. Moreover, it is erroneous for LPC to conclude that were it not for the denial of its

---

[50] *Philip S. Yu vs. Court of Appeals and Viveca Lim Yu,* G.R. No. 154115, November 29, 2005.
[51] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 1838 to 1866.
[52] Division Docket (CTA Case No. 8149) - Vol. 4, pp. 1546 to 1824.

request to set its Motion for Reconsideration for hearing, it could have made a formal offer of the documents attached thereto, when neither the rules nor settled jurisprudence sanctions the introduction of new evidence through a motion for reconsideration.

In the case of *Cansino, et al. vs. Court of Appeals, et al.*,[53] the Supreme Court ruled that a motion for reconsideration cannot be used as a vehicle to introduce new evidence. The High Court explains:

> "**It is implicitly clear from Rule 37 that a motion for reconsideration cannot be used as a vehicle to introduce new evidence.** Petitioners correctly contend that if respondents wanted to present further evidence, they should have filed a motion for new trial based on newly discovered evidence. However, for newly discovered evidence to warrant a new trial, (a) it must have been discovered after trial, (b) it could not have been discovered or produced at the trial despite reasonable diligence, (c) it must be material and not merely collateral, cumulative, corroborative or purely for impeaching a witness, merely important evidence being not enough, and (d) if presented, would probably alter the result of the action.[54]
>
> **In the case at bar, respondents attached for the first time in their motion for reconsideration, evidence to prove their ownership over the parcel of land subject matter of this controversy. This cannot be countenanced.** For one, possession is the only issue in a case for unlawful detainer.[55] **More importantly, there is no justification for the delay in presenting said evidence.**" *(Emphases supplied).*

Thus, the denial of LPC's Tender of Excluded Evidence filed on October 21, 2013 is justified.

The documents attached to the Motion for Reconsideration filed by LPC on July 11, 2013 were properly denied admission.

[53] G.R. No. 125799, August 21, 2003.
[54] *Pantig v. Baltazar*, 191 SCRA 830 (1990).
[55] *Heirs of Roman Soriano v. Court of Appeals*, 363 SCRA 87 (2001).

LPC insists that the introduction of new evidence through a Motion for Reconsideration is not without judicial precedent. In particular, LPC cites the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*[56] (*BPI case*) and the case of *Commissioner of Internal Revenue vs. De La Salle University*[57] (*DLSU case*), claiming that these cases squarely apply in the instant case, where the introduction of additional evidence even after the rendition of judgment and through a motion for reconsideration was allowed by the court. In addition, LPC avers that this Court is empowered, under Section 12 of Republic Act No. 1125 (RA No. 1125), to receive evidence "in any stage of the proceedings", even after termination of the trial proper.

We are not swayed.

LPC's reliance on the aforesaid decisions and legal provision are manifestly misplaced.

First. LPC cannot find support on the decision promulgated by this Court in the *DLSU* case because the Supreme Court, in *Commissioner of Internal Revenue vs. San Roque Power Corporation*[58] has declared, in no uncertain words, that CTA decisions do not constitute as binding precedents, to wit:

> "xxx. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system (Emphasis supplied)."

Second. Contrary to LPC's assertion, the *BPI* case does not fall squarely with the instant case because of the significantly different factual milieu involved therein. For one, the *BPI* case involves a claim for tax refund of excess creditable withholding tax for taxable year 1989; while this case pertains to an appeal of an assessment for deficiency taxes for taxable year 2006. More importantly, LPC failed

---

[56] G.R. No. 122480, April 12, 2000.
[57] CTA EB No. 622 (CTA Case No. 7303), December 10, 2010.
[58] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

to consider that in the *BPI* case, there was only one document attached to the motion for reconsideration and said document was a copy of the Final Adjustment Return (FAR) for taxable year 1990, which clearly showed "the undisputed fact xxx that petitioner suffered a net loss in 1990; xxx." In this connection, it must be emphasized that tax returns, like the FAR, are presumed correct since these are filed under the penalty of perjury.[59]

Furthermore, in the *BPI* case, the BIR did not controvert the veracity of the FAR and did not even file an opposition to the motion for reconsideration and the return attached thereto, when it could have easily done so because it ought to have on file its own copy of the said FAR.[60]

In stark contrast to the *BPI* case, LPC attached more than one document in its Motion for Reconsideration before the Court *a quo*. These documents include:

1.	Invoice No. 83060057 issued by SHV Gas N.V. on September 30, 2006	*Annex "A-MR"*
2.	Invoice No. 83060071 issued by SHV Gas N.V. on September 30, 2006	*Annex "A-1-MR"*
3.	Remittance Instruction issued by LPC to ING Bank in Manila	*Annex "B-MR"*
4.	Printout of the Wire Transfer Notification sent by ING Bank	*Annex "B-1-MR"*
5.	General Ledger for employees' pre-pension	*Annexes "C-MR"*
6.	Reconciliation of Salaries & Wages	*Annex "D-MR"*
7.	Schedule of accrued bonuses	*Annex "D-1-MR"*
8.	General Ledger entries on accrued bonuses	*Annex "D-2-MR"*
9.	Analysis of EWT for taxable year 2006	*Annex "E-MR"*
10.	General Ledger for entries relating to EWT for four quarters of taxable year 2006	*Annex "F-MR"*
11.	General Ledger with entries pertaining to reclassification of items related to expenses to cost of sales	*Annex "G-MR"*
12.	Alphalist for expense/income payments for taxable year 2006	*Annex "H-MR"*
13.	General Ledger showing the creditable withholding tax payments for sales to PSPC	*Annex "I-MR"*

And unlike the FAR, the foregoing documents do not enjoy the same legal presumption of correctness; thus, it cannot be said that

[59] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.
[60] Refer to *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005.

the information contained therein are "undisputed facts" which this Court may reasonably consider on its face. It must likewise be noted that, in this case, the CIR filed an opposition to LPC's Motion for Reconsideration and the admission of the abovementioned documents.[61]

Therefore, inasmuch as the facts involved in *BPI* are essentially different from the facts in the case at bar, the doctrine laid down by the Supreme Court in the *BPI* case cannot be applied herein.

Third. Exhibits *"A-MR", "A-1-MR", "B-MR", "B-1-MR", "C-MR", "D-MR", "D-1-MR"* and *"D-2-MR"*, purportedly accounting for the discrepancy in the amount of ₱4,922,665.38 as LPC's offshore pension expense and accrued employees' salaries, as well as, Exhibits *"E-MR", "F-MR", "G-MR"* and *"H-MR"*, which allegedly prove that LPC's EWT liability should only be imposed on the discrepancy of ₱24,908,159.89, all attached to LPC's Motion for Reconsideration filed before the Court in Division, cannot be considered as evidence, nor can these be given evidentiary weight because these documents were not identified, presented and formally offered by LPC as part of its evidence-in-chief during trial.

Section 34, Rule 132 of the Revised Rules of Court provides that *"the court shall consider no evidence which has not been formally offered."* A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[62]

Lastly, LPC appears to have misinterpreted the provisions of Section 12 of RA No. 1125, as amended by RA 9282, authorizing the taking of evidence by a member of the Court, in any stage of the proceedings. Said provision reads:

---

[61] CIR's Comment (Re: Petitioner's Tender of Excluded Evidence), Division Docket (CTA Case No. 8149), Vol. 5, pp. 2264 to 2269.

[62] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R, No. 197515, July 2, 2014 citing *Heirs of Pedro Pasag, et al. vs. Spouses Parocha, et al.,* G.R. No. 155483, April 27, 2007.

"SEC. 12. *Taking of evidence.* – The Court may, upon proper motion or on its initiative, direct that a case, or any issue thereof, be assigned to one of its members for the taking of evidence, when the determination of a question of fact arises upon motion or otherwise in any stage of the proceedings, or when the taking of an account is necessary, or when the determination of an issue of fact requires the examination of a long account. The hearing before such member, shall proceed in all respects as though the same had been made before the Court.

Upon completion of such hearing before such member, he shall promptly submit to the Court his report in writing, stating his findings and conclusions; and thereafter, <u>the Court shall render its decision on the case</u>, adopting, modifying, or rejecting the report in whole or in part, as the case may be, or, the Court may, in its discretion recommit it with instructions, or receive further evidence." *(Emphasis and underscoring supplied).*

The foregoing provision must be read in consonance with Section 3, Rule 12 of the Revised Rules of the Court of Tax Appeals, as amended, which reads as follows:

"Rule 12
TRIAL

xxx xxx xxx

Sec. 3. *Taking of evidence by a justice.* - The Court may, *motu proprio* or upon proper motion, direct that a case, or any issue therein, be assigned to one of its members for the taking of evidence, when the determination of a question of fact arises upon motion or otherwise in any stage of the proceedings, or when the taking of an account is necessary, or when the determination of an issue of fact requires the examination of a long account. The hearing before such member, shall proceed in all respects as though the same had been made before the Court.

Upon completion of such hearing, the justice concerned shall promptly submit to the Court a written report thereon, stating therein the findings and conclusions. Thereafter, the Court shall render its decision on the case, adopting, modifying, or rejecting the report in whole or in part, or, the Court may, in its discretion recommit it to the justice with instructions, or receive further evidence."

Based on the judicial set-up of the Court of Tax Appeals, it may sit *en banc* or in three (3) divisions, each division consisting of three (3) justices.[63] For cases falling within the jurisdiction of the CTA in Division, trial is usually conducted before the three member-justices. An exception to this rule is provided under the legal provision aforequoted, wherein hearing for taking of evidence is allowed before a member-justice as though the same had been made before the CTA Division.

However, based on the aforequoted section of this Court's Revised Rules of procedure, the taking of evidence by a justice is included under the CTA rules on "TRIAL", and clearly, the said rule pertains to proceedings at the trial stage of a case pending before a Division of this Court, and not before the Court *En Banc,* considering that the jurisdiction of the Court *En Banc* is appellate. Therefore, contrary to LPC's claims, the aforequoted provision allowing any of a Division's member-justice to receive evidence pertains only to the trial stage, but not after judgment has already been rendered in a particular case.

What is clear and plain in Section 12 of R.A. No. 1125, as amended by R.A. 9282, and Section 3 of the CTA Revised Rules is that the taking of evidence in *"any stage of the proceedings"* by a member of the Court refers only to hearings conducted before the rendition of judgment in a case. This is so because upon completion of said hearing, that member-justice who solely conducted the hearing, is mandated to promptly submit his findings and conclusion to the Court, and **thereafter the Court shall render its decision on the case**, either, adopting, modifying, or rejecting said report or require reception of further evidence.

Verily, as things stand before Us, the documents attached to the Motion for Reconsideration filed by LPC before the Court in Division, bear no evidentiary weight. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him otherwise it is excluded and rejected and cannot even be taken

---

[63] Section 2, RA No. 1125, as amended by RA Nos. 9282 and 9503.

cognizance of on appeal. The rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.[64] Such being the case, there is no need for the Court *En Banc* to reexamine issues and arguments anchored on the appreciation and admission of said documents.

The Court in Division did not err in imputing LPC's deficiency tax assessment to the "unprescribed" portion of taxable year 2006.

LPC contends that it was erroneous for the Court in Division to impute the entire deficiency tax assessments to the unprescribed portion of taxable year 2006.

We do not agree.

It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments.[65] In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[66]

Correspondingly, while the Court in Division found that the CIR's right to assess LPC for deficiency VAT for the second quarter of 2006 and deficiency EWT and WTC for the months of January 2006 to September 2006 has prescribed, the burden is still upon LPC, as the taxpayer contesting the validity of the assessments issued by the CIR, to show which portion of said deficiency taxes pertain to the prescribed months. However, for its part, LPC merely alleges that "(t)*he invoices, receipts, tax returns and other voluminous records presented by the petitioner would readily show that there were numerous transactions during the quarters/period covered by the assessments which had already prescribed*",[67] without identifying

[64] *Jose R. Catacutan vs. People of the Philippines,* G.R. No. 175991, August 31, 2011.
[65] *Bonifacia Sy Po vs. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue,* G.R. No. 81446, August 18, 1988; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, April 17, 2007.
[66] *Bonifacia Sy Po vs. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue,* supra.
[67] Paragraph 111, Petition for Review (CTA EB No. 1117), EB Docket (CTA EB No. 1117) - Vol. 1, p. 113; and Paragraph 108, LPC's Memorandum, EB Docket (CTA EB

which of the said documents specifically show that the subject portion of the deficiency taxes fall under the months that have prescribed.

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[68] In the absence of proof, the Court in Division had no alternative but to uphold the validity and correctness of the assessment and consider the entire assessment as pertaining to the unprescribed portion of taxable year 2006.

LPC is liable for the total amount of ₱81,806,081.69, inclusive of 25% surcharge, plus interests.

As stated earlier, the Court in Division found that LPC is liable for the total amount of ₱81,806,081.69, inclusive of the 25% surcharge, broken down as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
VAT	5,774,369.52	1,443,592.38	7,217,961.90
EWT	2,642,579.68	660,644.92	3,303,224.60
WTC	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

The Basic Deficiency taxes are, in turn, respectively determined as follows by the Court in Division, to wit:

<u>Income Tax</u>:

Taxable Income per Return					₱ 64,702,897.40
Add:	Adjustments				
	a.	Overclaimed purchases from Asian Kunstruck		₱ 2,514,249.72	
	b.	Expenses not subjected to 1% EWT	₱ 59,717,961.72		
		Expenses not subjected to 2% EWT	102,270,003.14	161,987,964.86	
	c.	Salaries & wages not subjected to withholding tax		4,922,665.38	
	d.	Unsupported bad debts		8,431,934.00	
	e.	Undeclared sales to PSPC		85,946,167.89	263,802,981.85
Taxable Income per Investigation					₱328,505,879.25
Income Tax Rate					35%
Income Tax Due per Investigation					₱114,977,057.74
Less:	Prior year's excess credits			₱ 42,986,386.59	

No. 1117) - Vol. 3, p. 1352.

[68] *Ernesto Martin vs. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

	Creditable taxes withheld per BIR Forms 2307	₱18,337,632.00		
	Less: Unsupported / out-of-period creditable withholding taxes	2,286,475.68	16,051,156.32	59,037,542.91
Deficiency income tax				**₱ 55,939,514.83**

VAT:

Taxable sales per return			₱6,890,189,183.00
Add: Adjustments			
a. Sales to PSPC not subjected to output tax		₱85,946,167.89	
b. Income not subjected to output tax		4,418,775.00	90,364,942.89
Adjusted taxable sales per audit			₱6,980,554,125.89
Tax Rates	₱ 581,712,843.82	10%	58,171,284.38
	6,398,841,282.07	12%	767,860,953.85
Output tax per audit/investigation			₱ 826,032,238.23
Less: Input tax			
Carry-over from previous quarter		₱ 558,300.00	
Per return	₱ 814,102,324.00		
Deferred to succeeding period	8,009,192.00		
Total	₱ 806,093,132.00		
Less: Disallowed input tax (Asian Angle Konstruct)	339,149.99	805,753,982.01	806,312,282.01
VAT Payable per audit/investigation			₱ 19,719,956.22
Less: VAT payments for the year per VAT return			13,945,586.70
Deficiency VAT			**₱ 5,774,369.52**

EWT:

		Amount	Tax Rate	Deficiency EWT
Income payments subject to 1% EWT	₱ 242,267,449.61			
Less: Income payments erroneously treated by the CIR as pertaining to LPC's local purchases	(182,549,487.89)	₱ 59,717,961.72	1%	₱ 597,179.62
Income payments subject to 2% EWT		102,270,003.14	2%	2,045,400.06
Deficiency EWT				**₱2,642,579.68**

WTC:

Total Salaries & wages per LPC's FS as found by respondent	₱ 56,638,322.41
Less: Withholding tax on compensation remitted per BIR Form No. 1601-C	51,715,657.03
Salaries & wages still subject to withholding tax	₱ 4,922,665.38
Tax rate	22.11%
Deficiency WTC	**₱ 1,088,401.32**

In assailing the Decision rendered by the Court in Division upholding LPC's liability for deficiency WTC and EWT, albeit in reduced amounts, LPC asserts that the findings of the Court-commissioned Independent Certified Public Accountant (ICPA) and the documents attached to its Motion for Reconsideration filed with the Court *a quo* sufficiently account for the discrepancies found by the Court in Division.

We are not swayed.

Contrary to LPC's assertion, findings of the ICPA are not conclusive upon this Court. The ICPA report serves as a mere tool or guide to aid the Court in the resolution of the case. The merit or probative value of such report is for the Court to decide. The Court is free to adopt or disregard said findings based on its own evaluation of the evidence presented by both parties. This is the clear import of Section 3, Rule 13 of the 2005 Revised Rules of the Court of Tax Appeals, which reads as follows:

> "SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. T**he findings and conclusions of the independent CPA** may be challenged by the parties and **<u>shall not be conclusive upon the Court</u>, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" *(Emphases and underscoring supplied)*

After a careful evaluation of the findings of the Court in Division, the Court *En Banc* finds no reversible error on its findings that LPC is liable for deficiency WTC in the amount of ₱1,088,401.32 and deficiency EWT in the amount of ₱2,642,579.68.

As a consequence of sustaining the said deficiency WTC and deficiency EWT, three (3) of the items of "Adjustments" stated in computation of the deficiency income tax, specifically, the amounts of ₱59,717,961.72, ₱102,270,003.14, and ₱4,922,665.38, must likewise be upheld. Being part of the deductions from LPC's gross income which lead to the computation of LPC's Taxable Income per Return, the said amounts must perforce be disallowed as deductions in arriving at LPC's Taxable Income, pursuant to Section 34(K) of the NIRC of 1997, which provides:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> xxx xxx xxx
>
> (K) *Additional Requirements for Deductibility of Certain Payments.* – Any amount paid or payable which is

> otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction **only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue** in accordance with this Section, Sections 58 and 81 of this Code." *(Emphasis supplied)*

In other words, LPC must not be allowed to claim the amounts of ₱59,717,961.72, ₱102,270,003.14 and ₱4,922,665.38, as deductions in arriving at its Taxable Income, since it failed to withheld the taxes from said amounts of expenses.

Moreover, with regard to both the deficiency income tax and VAT, LPC failed to convincingly explain the finding of undeclared sales to Pilipinas Shell Petroleum Corporation (PSPC) in the amount of ₱85,946,167.89, which was determined by comparing the LPC's Summary Alphalist of Withholding Taxes and Summary List of Sales for 2006. Thus, the corresponding deficiency income tax and VAT assessments thereon must likewise be upheld.

With respect to the amount of ₱4,582,506.19, as found by the CIR, representing unsupported/out-of-period creditable withholding taxes, the same has already been reduced by the Court in Division to ₱2,286,475.68, after considering certain BIR Form 2307. We likewise see no reversible error in this finding of the Court in Division.

For its part, LPC failed to clearly show that there was error on the part of the Court in Division in arriving at the amounts of the deficiency income tax, VAT, WTC and EWT.

Upon the other hand, We likewise find no merit in the CIR's arguments that LPC should be held liable for the corresponding deficiency income tax on the: (a) ₱1,049,152.37 unrecorded sales on underdeclared Petron purchases; (b) ₱11,892,375.63 over-claimed importation; and for both deficiency income tax and VAT, on the ₱55,614,853.82 unrecorded sales on importations.

Contrary to the CIR's argument, evidence on record clearly show that LPC's purchases from Petron was properly reported and fully accounted for. Thus, the Court in Division was correct in cancelling the deficiency income tax assessment in the amount of ₱1,049,152.37.

Furthermore, as correctly found by the Court in Division, the CIR failed to present in evidence the importation data furnished by the Bureau of Customs to substantiate the figures indicated in the FAN and FLD in relation to LPC's purported over claimed importations and unrecorded sales on importations. While it may be true that such data can be found in the BIR records, the same was not identified, presented and formally offered in evidence during trial which would enable this Court to consider in the resolution of the instant consolidated petitions. Nonetheless, anent the supposed unrecorded sales on importation, it must be emphasized that the records of the BOC are merely indicative that importations were made. The said records do not suggest that sales by LPC were in fact made.

Correspondingly, the parties failed to convincingly assail the determinations decreed by the Court in Division of the basic deficiency income tax, VAT, WTC, and EWT.

As regards the 25% surcharge, LPC seeks the indulgence of the Court *En Banc* to reconsider the imposition thereof on the ground of equity and substantial justice.

We cannot grant LPC's prayer.

The payment of the surcharge is mandatory and the same cannot be condoned for flimsy reasons.[69] Not even the BIR is vested with any authority to waive the collection thereof.[70]

The pronouncement of the Supreme Court in the case of *Philippine Refining Company vs. Court of Appeals, et al.*[71] is enlightening:

> "xxx. **Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered**

---

[69] *Philex Mining Corporation vs. Commissioner of Internal Revenue, et al.,* G.R. No. 125704, August 28, 1998.

[70] Refer to *Philex Mining Corporation vs. Commissioner of Internal Revenue, et al.,* supra.

[71] G.R. No. 118794. May 8, 1996.

nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.

We have likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. **The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.** xxx." *(Emphases supplied).*

Anent the imposition of interests under Section 249 of the NIRC of 1997, the same will be addressed momentarily vis-à-vis LPC's partial payment in the amount of ₱54,806,640.74. At this juncture, however, it must already be stated that We do not totally agree with the imposition by the Court in Division of the interests under Section 249 of the NIRC of 1997.

LPC's partial payment in the amount of ₱54,806,640.74 entitles it to a reduction of its liability for interest.

Finally, invoking Article 1252 of the Civil Code, LPC implores the Court *En Banc* to apply the ₱54,806,640.74 partial payment made on July 19, 2013 to the basic tax deficiency and not to the entire tax liability in order to reduce interests and penalties.

We do not agree that said Article 1252,[72] which allows a debtor to choose to which debt the payment must be applied, is applicable. This must be so because the Government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its

[72] ARTICLE 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.
If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

corporate capacity, while taxes are due to the Government in its sovereign capacity.[73]

Nevertheless, We agree that the partial payment made by LPC in the amount of ₱54,806,640.74 should have the effect of reducing the interests to be imposed. Furthermore, the imposition of the deficiency interest and delinquency interest must be modified.

Section 249 of the NIRC of 1997 reads:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – **In case of failure to pay**:
>
> xxx xxx xxx
>
> (3) **A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.**" *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on "[a]*ny deficiency in the tax due, as the*

[73] *Philex Mining Corporation vs. Commissioner of Internal Revenue, et al.,* G.R. No. 125704, August 28, 1998.

term is defined in this Code", i.e., as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104, viz:

> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.—*
>
> xxx xxx xxx
>
> (B) *Assessment and Payment of Deficiency Tax.—* After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.
>
> As used in this Chapter[74], in respect of a tax imposed by this Title[75], the term **'deficiency'** means:
>
> (1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or
>
> (2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*
>
> "SEC. 93. *Definition of Deficiency.* — As used in this Chapter[76], the term **'deficiency'** means:

---
[74] Chapter IX – RETURNS AND PAYMENT OF TAX.
[75] Title II – TAX ON INCOME.
[76] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 104. *Definitions.* — xxx

The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[77] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Thus, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, with the exception of the deficiency income tax, no deficiency interest

[77] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

under Section 249(B) should be imposed on the deficiency VAT, deficiency EWT, and deficiency WTC assessed against LPC.

In addition, Sections 5 of RR No. 12-99 provides as follows:

> "**SECTION 5. Mode of Procedures in Computing for the Tax and/or Applicable Surcharge.** – Shown hereunder are illustrative cases for the computation and assessment of the tax, inclusive of surcharge (if applicable) and interest:
>
> xxx xxx xxx
>
> **5.4 Penalty of penalties for deficiency tax.** – As a rule, no surcharge is imposed on deficiency tax and on the basic tax. However, if the amount due inclusive of penalties is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed.
>
> xxx xxx xxx
>
> **Illustration No. 2: ABC CORPORATION** filed its income tax return for calendar year 1997 and paid on time its income tax shown hereunder, amounting to P100,000. Said taxpayer was investigated. Upon verification of its accounting records, it was disclosed that its deduction, from gross income, of representation expenses in the amount of P200,000.00 did not meet all the statutory requisites for deductibility. The corporation was duly notified of the said discrepancy through a Preliminary Assessment Notice. Based on the 35% income tax rate on corporations applicable in the year 1997, the income tax due after investigation amounts to P170,000.00. After deduction of income tax paid per return filed, the basic deficiency income tax amounts to P70,000, excluding penalties. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999, <u>requiring payment of the assessment not later than June 30, 1999</u>.

Calendar Year 1997

Income tax due per investigation	P170,000.00
Less: Income tax paid per return	P100,000.00

Deficiency income tax	P 70,000.00
Add: 20% int. p.a. fr. 4-15-98 to 6-30-99	
(P70,000 times .2415524)	P 16,908.67
Total amount still due	**P 86,908.67**

Illustration No. 3: XYZ CORPORATION filed its income tax return for calendar year 1997 with a net taxable income of P500,000.00. At the applicable income tax rate of 35% for the year 1997, its income tax amounted to P175,000. However, upon investigation, it was disclosed that its income tax return was false or fraudulent because it did not report a taxable income amounting to another P500,000.00. On its net income of P1,000,000.00, per investigation, the income tax due is P350,000.00. It was duly informed of this finding through a Preliminary Assessment Notice. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999 calling for payment of the deficiency income tax on or before June 30, 1999.

In this case, said corporation is liable for the civil penalties of 50% surcharge for having filed a false or fraudulent return, plus 20% interest per annum on the deficiency, computed as follows:

Calendar Year 1997

Income tax due per investigation		P350,000.00
Less: Income tax paid per return		P175,000.00
Deficiency income tax		P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)	P 87,700.00	
20% int. p.a. fr. 4-15-98 to 6-30-99 (P1`75,000.00 times .2415524)	P 42,271.67	P129,771.67
Total amount due		**P304,771.67**

5.5 Late payment of a deficiency tax assessed. – In general, the deficiency tax assessed shall be paid by the taxpayer within the time prescribed in the notice and demand, otherwise, such taxpayer shall be liable for the civil penalties incident to late payment.

Illustration: Based on the above Illustration No. 3, Scenario 4, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment, and assuming further that this assessment has already become final and collectible. In this case, such corporation shall be considered late in payment of the said assessment. Assuming, further, that the corporation pays its tax assessment only by July 31, 1999, the civil penalties for late payment shall be computed as follows:

Calendar Year 1997

Total deficiency income tax assessed on May 31, 1999		P304,771.67
Add: 25% surcharge for late payment (P304,771.67 times 25%)	P 76,192.92	
20% int. p.a. fr. 7-1-9 to 7-31-99 (P304,771.67 times .0166667)	P 5,079.54	P81,272.46
Total amount due		**P386,044.13**

5.6 Computation of 20% interest per annum in case of partial or installment payment of a tax liability. — Illustration No. 1: In case extended payment of the tax is duly authorized. — DEF CORPORATION, due to financial incapacity, requested that it be allowed to pay its income tax liability per return for calendar year 1998, in the amount of P1,000,000.00, in four (4) monthly installments, starting April 15, 1999. Its request has been duly approved pursuant to Sec. 53 of the Tax Code.

In this case, no 25% surcharge shall be imposed for late payment of the tax since its deadline for payment has been duly extended. However, 20% interest per annum for the extended payment shall be imposed, computed based on the diminishing balance of the ***'unpaid amount'***, pursuant to the provisions of Section 249 (D) of the Code.

No 25% surcharge on extended payment shall be imposed provided, however, that the taxpayer's request for extension of the period within which to pay is made on or before the deadline prescribed for payment of the tax due. Conversely, if such request is made after the deadline prescribed for payment, the taxpayer shall already be treated late in payment, in which case, the 25% surcharge shall be imposed, even if payment of the delinquency be allowed in partial amortization.

Example:

Calendar Year 1997

Income tax due per return	P1,000,000.00
Less: 1st installment of the tax on or before 4-15-99	P 250,000.00
Balance as of 4-15-99	P 750,000.00
Add: 20% int. p.a. from 4-15-99 to 5-15-99 (P750,000.00 times .0166667)	P 12,500.03
Amount due on 5-15-99	P 762,500.03
Less: 2nd installment on 5-15-99 (P250,000.00 plus P12,500.03 interest)	P 262,500.03
Balance as of 5-15-99	P 500,000.00
Add: 20% int. p.a. from 5-15-99 to 6-15-99 (P500,000.00 times .0166667)	P 8,333.35
Amount due on 6-15-99	P 508,333.35
Less: 3rd installment on 6-15-99 (P250,000.00 plus P8,333.35 interest)	P 258,333.35
Balance as of 6-15-99	P 250,000.00
Add: 20% int. p.a. from 6-15-99 to 7-15-99 (P250,000.00 times .0166667)	P 4,166.68
4th and final installment on 7-15-99	**P 254,166.68**

Illustration No. 2: Computation of tax delinquency in case of partial payment of the tax due without prior BIR authorization for extended payment.

—

Example: GHI CORPORATION did not file its final adjustment income tax return for the calendar year 1998 which was due on April 15, 1999. The BIR informed the corporation of its failure to file its said tax return and required that it file the same, inclusive of the 25% surcharge and 20% interest per annum penalties incident to the said omission. On May 15, 1999 it advised that its income tax due for the said year amounts to P1,000,000.00 but, however, due to its adverse financial condition at the moment, it will be unable to pay the entire amount, inclusive of the delinquency penalties. Hence, on May 15, 1999, it made a partial payment of P400,000.00. Assuming that the BIR demanded payment of the unpaid balance of its tax obligation payable by June 15, 1999, the unpaid balance of the corporation's delinquent income tax shall be computed as follows:

Calendar Year 1998

Income tax due per return		P1,000,000.00
Add: 25% surcharge for late filing and late payment	P250,000.00	
20% interest per annum from 4-15-99 to 5-15-99 (P1,000,000.00 times .0166667)	P 16,666.70	P 266,666.70
Amount due as of 5-15-99		P1,266,666.70
Less: Partial payment on 5-15-99		P 400,000.00
Balance as of 5-15-99		P 866,666.70
Add: 20% interest per annum from 5-15-99 to 6-15-99 (P866,666.70 times .0166667)		P 14,444.47
Amount still due (exclusive of the suggested compromise penalty for late filing and late payment		P 811,111.17

If the said taxpayer fails to pay the amount of P811,111.17 by June 15, 1999, no further 25% surcharge for late payment of the tax shall be imposed. Instead, only the 20% interest per annum shall be imposed against the taxpayer against the taxpayer, computed from due date thereof (i.e., June 15, 1999) until paid. If said taxpayer pays the same on partial payment basis, the 20% interest per annum shall be computed on the diminishing balance thereof, pursuant to the procedures in the preceding Illustration No. 1, Section 6.6 hereof."

Based on the above illustrations in RR 12-99, it is clear that the imposition of deficiency interest under Section 248(B) extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof; and that the imposition of the delinquency interest under Section 249(B) shall commence from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

Moreover, any partial payment of the tax liability shall have an impact on what is due at the time of such partial payment, and said tax liability shall accordingly be reduced.

Correspondingly, as applied to this case, the imposition of the deficiency interest of 20% *per annum* under Section 249(B) of the NIRC of 1997 on the deficiency income tax in the amount of ₱69,924,393.54, including the 25% surcharge, shall accrue from April 15, 2007 and until October 31, 2009—the deadline when the BIR set the time for payment of the assessed tax[78]. Anent the delinquency interest of 20% *per annum* under Section 249(C) of the same Code, the same shall be applied in this case as follows: (1) to the said total amount of ₱69,924,393.54, plus the said deficiency interest computed until October 31, 2009; and (2) to the amounts of ₱7,217,961.90, ₱3,303,224.60, and ₱1,360,501.65, respectively representing the amounts of deficiency VAT, deficiency EWT, and deficiency WTC, as determined by the Court in Division, including the 25% surcharge imposed on each item, commencing from November 1, 2009 until the same are paid.

In view, however, of the partial payment of ₱54,806,640.74 made on July 19, 2013 by LPC, the latter's tax liability shall be reduced accordingly. In accordance with Illustration No. 2 under Section 5.6 of RR No. 12-99, the reduced amount of LPC's liability, which is no longer subject to the additional 25% surcharge, but only the delinquency interest of 20% *per annum*, is computed as follows as of such date:

Deficiency income tax (with surcharge)	₱ 69,924,393.54
Deficiency Interest of 20% per annum from April 15, 2007 to October 31, 2009 (For the duration of this period the interest rate is 49.166667%)[79]	

---

[78] Refer to FAN No. LTAID-IT-06-00023, Division Docket (CTA Case No. 8149) - Vol. 2, p. 570.

[79] *Computation of Deficiency Interest Rate for 2 years and 5 ½ months:*
April 15, 2007 to April 14, 2008 20%

₱69,924,393.54 x 49.166667%	₱ 34,379,493.70
Delinquency interest for from November 1, 2009 to July 19, 2013 (For the duration of this period the interest rate is 74.583333%)[80] (₱69,924,393.54+₱34,379,493.70) x 74.583333%	₱ 77,793,315.37
Deficiency VAT, EWT, and WTC (with surcharges) (₱7,217,961.90+₱3,303,224.60+₱1,360,501.65)	₱ 11,881,688.15
Delinquency interest for the deficiency from November 1, 2009 to July 19, 2013 (For the duration of this period the interest rate is 74.583333%)[81] ₱11,881,688.15 x 74.583333%	₱ 8,861,759.04
Total Tax Liability as of July 19, 2013	₱202,840,649.80
Less: Partial Payment	₱ 54,806,640.74
Outstanding Tax Liability as of July 19, 2013	₱148,034,009.06

WHEREFORE, in the light of the foregoing considerations, the Petition for Review docketed as CTA EB No. 1119 is hereby **DENIED** for lack of merit.

On the other hand, the Petition for Review docketed as CTA EB No. 1117 is hereby **PARTLY GRANTED.**

Accordingly, the Decision dated June 24, 2013 of the Court in Division in CTA Case No. 8149 is hereby **MODIFIED** to read as

April 15, 2008 to April 14, 2009	20%
April 15, 2009 to October 31, 2009 (20% x 5 ½ / 12)	9.166667%
Deficiency Interest Rate	49.166667%

[80] *Computation of Deficiency Interest Rate for 3 years and 8 ¾ months:*

November 1, 2009 to October 31, 2010	20%
November 1, 2010 to October 31, 2011	20%
November 1, 2011 to October 31, 2012	20%
November 1, 2012 to July 19, 2013 (20% x 8 ¾ / 12)	14.583333%
Deficiency Interest Rate	75.583333%

[81] *Ibid.*

follows:

"**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation for taxable year 2006 are hereby **AFFIRMED** with **MODIFICATIONS.** Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the reduced amount of **₱81,806,081.69**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Deficiency	25% Surcharge	Total
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
Value-added Tax	5,774,369.52	1,443,592.38	7,217,961.90
Expanded Withholding Tax	2,642,579.68	660,644.92	3,303,224.60
Withholding Tax on Compensation	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

In addition, petitioner is hereby **ORDERED** to **PAY:**

a) Deficiency interest under Section 249(B) of the NIRC of 1997at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of ₱69,924,393.54, including the 25% surcharge, accruing from April 15, 2007 and until October 31, 2009;

b) Delinquency interest under Section 249(C) of the same Code of 20% *per annum*, imposed as follows: (1) to the said total amount of ₱69,924,393.54, plus the deficiency interest imposed under the said Section 249(B) beginning November 1, 2009 until full payment thereof ; and (2) to the said amounts of ₱7,217,961.90, ₱3,303,224.60, and ₱1,360,501.65, respectively representing the amounts of deficiency VAT, deficiency EWT, and deficiency WTC, commencing from November 1, 2009 until the same are fully paid.

SO ORDERED."

In view of the partial payment of LPC in the amount of

₱54,806,640.74, LPC is hereby **ORDERED TO PAY** the amount of ₱148,034,009.06, plus delinquency interest at the rate 20% *per annum* from July 19, 2013 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

~~*(With Dissenting Opinion)*~~ with concurring and dissenting opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LIQUIGAZ PHILIPPINES CORPORATION, *Petitioner,* -versus- **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA EB NO. 1117** (CTA CASE NO. 8149)

X---X

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- **LIQUIGAZ PHILIPPINES CORPOR ATION,** *Respondent*	**CTA EB NO. 1119** (CTA CASE NO. 8149) Present: **DEL ROSARIO,** *P.J.,* **CASTANEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.* Promulgated: SEP 2 1 2015 3:00pm

X--X

CONCURRING AND DISSENTING OPINON

DEL ROSARIO, P.J.:

I concur with the *ponencia* in so far as it upheld the imputation of Liquigaz Philippines Corporation (LPC)'s deficiency tax assessment by including the purportedly "unprescribed" portion of taxable year 2006.

Truth to tell, while there is no burden on the part of the government to prove that the amount of assessment has prescribed, the presumption on the correctness of a tax assessment remains a well-entrenched doctrine. Prescription is a matter of defense and the party who raises a fact as a matter of defense has the burden of proving it. There being no competent evidence presented by LPC on the amount of assessment which has prescribed, such defense must necessarily be rejected.

With all due respect, however, I dissent on the findings that the imposition of deficiency interest under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof, purportedly pursuant to Revenue Regulations No. 12-99, as amended.

A careful perusal of RR No. 12-99, as amended, shows that **nowhere in the said regulation limits the imposition of deficiency interest only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof**. In the sample illustrations in RR No 12-99, as amended, the deficiency interest were limited to certain dates (i.e. illustration 2, 6-30-99; illustration 4, 7-31-99) as said dates refer to the dates when payment is supposed to be made by the taxpayer. The illustrations do not in any way suggest that payment beyond the "due date" would not result in the imposition of additional deficiency interest.

To interpret RR No. 12-99 in a manner that limits the imposition of deficiency interest to the time when the taxpayer is required to pay the assessed tax after being informed thereof **instead of until full payment** would be contrary, or at least modify, the provisions of Section 249(B) of the NIRC of 1997, as amended.

In this regard, Section 249(B) of the NIRC of 1997, as amended, provides:

> "SEC. 249. Interest. –
>
> xxx xxx xxx
>
> (B) Deficiency Interest. – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection

Om

> (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment **until the full payment thereof**."

The above provision cannot be any clearer, any deficiency in the tax due is subject to deficiency interest **from the date prescribed for its payment until the full payment thereof**, and not up to the time when the taxpayer is required to pay the assessed tax. The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose.[1]

All told, I **VOTE** to partially grant the Petition for Review filed by Liquigaz Philippines Corporation in CTA EB No. 1117 and Liquigaz Philippines Corporation is ORDERED to PAY deficiency interest under Section 249(B) of the NIRC of 1997, as amended, at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of P69,924,393.54, including the 25% surcharge, accruing from April 15, 2007 until full payment thereof.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[1] *People v. Corpuz*, G.R. No. 180016, April 29, 2014.

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 1117
(CTA Case No. 8149)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

CTA CASE NO. 1119
(CTA Case No. 8149)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 2 1 2015 3:15 pm

x---x

CONCURRING AND DISSENTING OPINION

RINGPIS-LIBAN, ***J.*:**

I concur with the majority decision that the imposition of deficiency interest under Section 249(B) extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof; and that the imposition of the delinquency interest under Section 249 (B) shall commence from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand. Otherwise, the deficiency interest would be allowed to accrue at the same time that the delinquency interest begins to accrue, which will result in an unduly harsh, even usurious, 40% interest rate per annum, and be an absurd application of law.

As regards the delinquency interest under Section 249 (B) the same should only commence after the taxpayer's protest is properly disposed of and when stated in the formal letter of demand, because no interest shall be due unless it has been expressed in writing.[1]

However, with all due respect to my esteemed colleagues, I dissent from their reliance on the presumption that tax assessments by tax examiners are correct and made in good faith, and that it is the taxpayer contesting the validity or correctness of an assessment who must prove not only that the CIR is wrong but that the taxpayer is right, as basis for their decision that the Court in Division did not err in imputing petitioner's deficiency tax assessment to the "unprescribed" portion of taxable year 2006.

The Supreme Court in the case of Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.[2] has cautioned that the "prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without factual basis, meaning it is arbitrary and capricious. Consequently, when 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 this case, proof comes in the form of an admission by respondent CIR that only a "table assessment"[3], which as pointed by the majority can be understood as making an assessment without going to the place of business or office of the taxpayer.[4] A "table assessment" which the majority justifies as sufficient, purportedly because the "CIR ought to know the tax records of all taxpayers,"[5] may reveal the amounts paid on petitioner's transactions but will not evidence the date of the transactions themselves which will be the basis for the application of the prescription period for the assessment of taxes. Without an examination of said dates, it is clear that the "table assessment" was made to merely presume the dates of transactions and is therefore fatally incomplete. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption; hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[6]

In view of the foregoing, I respectfully vote that

a) the Petition for Review in CTA Case No. 1117 be granted;

---

1 Civil Code, Article 1956
2 G.R. No. 136975 dated March 3, 2005.
3 Transcript of Stenographic Notes at the hearing held on December 12, 2011 in CTA Case No. 8149, p. 51.
4 Decision,p. 16.
5 *Ibid.*
6 Collector of Internal Revenue vs. Benipayo, G.R. No. L-1365 dated January 31, 1962.

b) the Petition in CTA Case No. 1119 be denied and the assessments issued by respondent against petitioner covering deficiency income tax, value-added-tax, expanded withholding tax and withholding tax on compensation be likewise denied; and that

c) henceforth the imposition of deficiency interest under Section 249(B) extend only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof; and that the imposition of the delinquency interest under Section 249 (B) shall commence from the time when the concerned taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

Ma. Belen R L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice