REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NEWSPAPER PARAPHERNALIA, INC., *Petitioner,*	**CTA CASE NO. 8599**
	Members: ***Bautista***, *Chairperson* ***Fabon-Victorino***, *and* ***Ringpis-Liban, JJ.***
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2015 3:52 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review filed by petitioner Newspaper Paraphernalia, Inc. ("NPI") on December 17, 2012, pursuant to *Section 7(a)(1)*[1] *of Republic Act ("RA") No. 1125*,[2] as amended by *RA No. 9282*[3] and *RA No. 9503*,[4] which seeks for the Court to declare respondent Commissioner of Internal Revenue's ("CIR") right to assess its 2007 tax liabilities as prescribed; to declare void and order the cancellation and withdrawal of Final Assessment

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[1]Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[2] *An Act Creating the Court of Tax Appeals, as amended.*

[3] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*

[4] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*

Notice ("FAN") Nos. F-049-LNTF-07-IT and F-049-LNTF-07-VT, dated June 6, 2011 for having been issued out of time.[5]

The Parties

Petitioner is engaged in the trading of newspaper suppliers, other goods and merchandise on wholesale or retail.[6] It is represented by its counsel Gerodias Suchianco & Estrella Law Firm with office address at Suite 2404 Discovery Center, 25 ADB Avenue, Ortigas Center, Pasig City.

The Bureau of Internal Revenue ("BIR"), through the public respondent Commissioner of Internal Revenue ("CIR"), is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties, including, among others, the power to examine tax returns and determine the tax due, credit or refund of internal revenue taxes erroneously/excessively or illegally paid, assessed or collected.[10] She is represented by the legal officers of the Legal Division, Revenue Region 8 ("RR 8"), Makati City, with office address at the 2/F Legal Division, BIR Building, No. 313 Sen. Gil Puyat Avenue, Makati City.[11]

The Facts

Petitioner received BIR Letter Notice ("LN") No. 049-TRS-07-00-00019 dated July 1, 2009 and signed by the then CIR,[12] informing petitioner of the discrepancies in Income Tax ("IT"), Value Added Tax ("VAT"), Percentage Tax, Withholding Tax on Compensation ("WTC"), Expanded Withholding Tax ("EWT"), and Final Withholding Tax ("FWT") for the calendar/fiscal year ending 2007, as follows:

AGENT-TAXPAYER RECONCILIATION

A. Gross Sales/ Income Payment *per* Alphalists of payors to one & the same payee			781,190,896.80
	VAT	**PERCENTAGE**	**INCOME TAX**
B. Gross sales/income/receipts *per* payee's returns filed	817,883,158.91	X	0.00

[5] *Records*, pp. 7-85, with Annexes.
[6] *Id., Joint Stipulation of Facts and Issues ("JSFI")*, p. 401.
[10] *Id.*
[11] *Id.*
[12] *Id., Exhibit* "P-26,"pp. 313-314.

C. Discrepancy on gross sales/revenues/receipts (A-B)	0.00	0.00	781,190,896.80
D. Percentage (%) of discrepancy on sales/revenues/receipts (C/A)	0.00	0.00	100.00
E. Tax withheld *per* alphalists of all payors			7,818,145.32
F. Tax withheld claimed *per* returns filed by the payee			8,495,906.00
G. Discrepancy on Taxes Withheld claimed by payee (F-E)			677,760.68

AGENT RECONCILIATION

	COMPENSATION	EXPANDED	FINAL
H. Total withholding tax due *per* annual alphalists	2,064,876.18	6,313,551.16	0.00
I. Total remittance *per* monthly/quarterly returns	2,162,712.34	6,313,551.16	343,400.00
J. Discrepancy on remittance (H-I)	97,836.16	0.00	0.00
K. Penalties for late filing/payment			
L. Non-compliance of year end adjustment	1,000.00		
M. Other withholding tax violations			
N. Discrepancy on total remittances	1,000.00	0.00	0.00

Petitioner received a Follow-Up Letter dated August 17, 2009, serving as the final notice to petitioner of the findings under LN No. 049-TRS-07-00-00019, giving it the last chance to settle the basic taxes – Value Added Tax ("VAT") and Income Tax ("IT") without corresponding interests and penalties.[14]

On August 25, 2009, petitioner transmitted[15] to the BIR a copy of BIR Payment Form (1601F), BIR Form 1702Q (1st to 3rd Quarters)[17], BIR Form 1702[18], and BIR Form 2307, all for 2007.

On September 7, 2009, petitioner transmitted[19] to the BIR a copy of BIR Form 2307,[20] Summary of BIR Form 2307, and its Annual Income Tax Return and Financial Statements[21], all for 2007.

On September 28, 2009, petitioner paid its EWT deficiency amounting to Php240,096.14, inclusive of interest and compromise

[14] *Id., Exhibit* "P-27," p. 315.
[15] *Id., Exhibits* "P-31" to "P-31-2," p. 322.
[17] *BIR Records*, pp. 6-11.
[18] *BIR Records*, pp. 3-5.
[19] *Records, Exhibit* "P-32," p. 323; *BIR Records*, p. 97.
[20] *BIR Records*, pp. 61-95.
[21] *BIR Records*, pp. 26-56.

penalty.[23] It likewise paid its IT deficiency amounting to Php103,409.20, inclusive of interest and compromise penalty.[25]

On October 14, 2009, petitioner transmitted its sales reconciliation with schedule.[26]

On May 28, 2010, petitioner received Letter of Authority ("LOA") No. 2009 00017059 dated April 30, 2010, authorizing Revenue Officer Elisa F. Guilalas ("RO Guilalas") of the Letter Notice Task Force ("LNTF") - National Office, to examine petitioner's books of accounts and other accounting records for "IT, VAT & WT issues based per LN No. 049-TRS-07-00-00019 and the corresponding preprocessed data under RELIEF," relating to taxable year 2007.[28] Attached to the said LOA is a Notice of Informal Conference ("NIC") requesting it to appear for an informal conference.[29]

In a letter dated November 3, 2010 and received on November 4, 2010, addressed to RDO No. 49 through RO Guilalas, petitioner requested for an appointment regarding the result of the examination.[30]

On July 17, 2011[31], petitioner received a Preliminary Assessment Notice ("PAN")[32] dated May 4, 2011, informing petitioner that it has deficiency VAT in the amount of Php600,926.36, and IT in the amount of Php237,003.81 for taxable year 2007, as follows:

I. <u>DEFICIENCY VALUE ADDED TAX</u>

Discrepancy *per* Letter Notice (Undeclared Sales)	P 2,851,177.11
Multiply by VAT Rate	12%
Deficiency VAT	342,141.25
Add: 20% interest p.a. up to (5/30/2011)	233,785.11
Compromise Penalty	25,000.00
TOTAL AMOUNT DUE	P 601,926.36

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[23] *Records, Exhibit* "P-35-1," p. 327.
[25] *Id., Exhibit* "P-36,"p. 328.
[26] *Id., Exhibit* "P-33," p. 324.
[28] *Id., Exhibit* "P-28," p. 316; *BIR Records,* p. 123.
[29] *Id., Exhibit* "P-28-1," p. 317.
[30] *Id., Exhibit* "P-34," p. 325.
[31] *Id., JSFI,* p. 402.
[32] *Id., Exhibit* "P-29," pp. 318-320.

II. DEFICIENCY INCOME TAX

Discrepancy *per* Audit/Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by Gross Profit Rate***		9%
Additional Gross Income	P	256,605.94
Add: Net Taxable Income *per* Annual ITR filed		19,250,457.00
Total Taxable Income	P	19,507,062.94
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due	P	6,827,472.03
Less: Income Tax due *per* ITR		6,737,660.00
Basic Deficiency Income Tax	P	89,812.03
Add/(Less): Discrepancy on Amount of Tax Withheld Claimed by Payee		45,499.19
Total/Net Deficiency Income Tax	P	135,311.22
Add: 20% interest p.a. up to (5/30/2011)		85,692.59
Compromise Penalty		16,000.00
TOTAL AMOUNT DUE	**P**	**237,003.81**

* Please note that the interest and the total amount due will have to be adjusted if paid beyond May 30, 2011.

On September 22, 2011[33], petitioner received a Final Assessment Notice ("FAN") with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050, all dated June 6, 2011, informing petitioner of its deficiencies in VAT and IT for taxable year 2007 in the amount of Php601,859.39 and Php238,132.85, respectively, both inclusive of compromise penalty and interest, with no due dates.[35] Details of the FAN are as follows:

I. DEFICIENCY VALUE ADDED TAX

Discrepancy *per* Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by VAT Rate		12%
Deficiency VAT		342,141.25
Add: 20% interest p.a. up to (6/30/2011)		234,718.14
Compromise Penalty		25,000.00
TOTAL AMOUNT DUE	P	601,859.39

II. DEFICIENCY INCOME TAX

Discrepancy *per* Audit/Letter Notice (Undeclared Sales)	P	2,851,177.11
Multiply by Gross Profit Rate***		9%
Additional Gross Income	P	256,605.94
Add: Net Taxable Income *per* Annual ITR filed		19,250,457.00
Total Taxable Income	P	19,507,062.94
Multiply by Normal Income Tax Rate		35%
Adjusted Income Tax Due	P	6,827,472.03
Less: Income Tax due *per* ITR		6,737,660.00
Basic Deficiency Income Tax	P	89,812.03

33 *Id.*, *JSFI*, p. 402.
35 *Id.*, *Exhibit* "P-22," pp. 303-307; *BIR Records*, *Exhibits* "R-9" to "R-12," pp. 163-167.

Add/(Less): Discrepancy on Amount of Tax Withheld Claimed by Payee		45,499.19
Total/Net Deficiency Income Tax	P	135,311.22
Add: 20% interest p.a. up to (6/30/2011)		86,821.63
Compromise Penalty		16,000.00
TOTAL AMOUNT DUE	**P**	**238,132.85**

* Please note that the interest and the total amount due will have to be adjusted if paid beyond June 30, 2011.

On September 26, 2012, petitioner filed its Letter Protest to the FAN,[36] on the ground that the assessment for deficiency VAT and IT for CY 2007 has prescribed.

On October 22, 2012, respondent issued its Final Decision on Disputed Assessment ("FDDA")[37] informing petitioner that it considered the protest void and without force and effect due to its failure to state the facts, the applicable law, rules and regulations, or jurisprudence on which the protest is based, pursuant to *Section 3.1.5 of Revenue Regulations ("R.R.") No. 12-99*. Likewise, respondent stated that the assessment has become final, executory and demandable due to petitioner's failure to file a valid protest against the FLD and assessment notice within thirty (30) days from date of receipt thereof.

On December 17, 2012, petitioner filed, by registered mail, the instant Petition for Review[38].

On February 8, 2013, respondent filed, by registered mail, a Motion for Extension of Time to File an Answer.[39] On March 13, 2013 and through registered mail, respondent filed her Answer (with Motion to Dismiss),[40] raising the following Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

> **17.** She reiterates, restates, and repleads the preceding paragraphs of the Answer as part of her Special and Affirmative Defenses.
>
> **18.** Petitioner's claim for cancellation of assessment against it in the instant Petition for Review has no

[36] *Id., Exhibit "P-23,"* pp. 308-310.
[37] *Id., Exhibit* "P-30," p. 321.
[38] *Id.*, pp. 7-85, with Annexes.
[39] *Id.*, pp. 89-91.
[40] *Id.*, pp. 95-107.

basis in fact and in law and being mere options, for the following reasons:

18.1. On the question of the assessment of Deficiency Income Tax, along with Deficiency Value-Added Tax. Per verification made by the BIR, it was disclosed that there were discrepancies resulting from the Reconciliation of Listing for Enforcement ("*RELIEF*") and Third Party Matching-BOC & TRS Data Program as declared by petitioner in its tax returns, thus, it was assessed in accordance with Revenue Memorandum Order ("*RMO*") No. 17-2009 and Sections 31, 32, 106 and 109 of the National Internal Revenue Code of 1997, as amended ("*Tax Code*"). The resulting finding is shown:

A. Undeclared Sales

TRINITAS PUBLISHING, INC.	P	832,701.91
KAGITINGAN PRTG PRESS INC.		249,113.00
KAMAHALAN PUBL CORP		31,362.00
THE HOUSE PRINTERS CORP		321.43
LEXMEDIA DIGITAL CORP		1,737,678.77
Discrepancy on Gross Sales Revenues/ Receipts	P	2,851,177.11

18.2. Petitioner's burden to show its entitlement to its claim. In a catena of cases, the Honorable Supreme Court has laid down the rule that in tax cases, **<u>all presumptions are in favour of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called.</u> No presumption can be indulged that all of the public officials who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.** As a logical outgrowth of the presumption in favour of the validity of assessments, **<u>when such</u>**

<u>assessments are assailed, the burden of proof is upon the taxpayer to clearly show that the assessment is erroneous, in order to relieve himself from it.</u>

18.3. Considering that there was no evidence introduced by petitioner so as to corroborate its allegations and overthrow the validity of the assessments as stated in the Final Decision on Disputed Assessment (*"FDDA"*), and worse, it failed to properly and timely interpose an appeal of the assessment within thirty (30) days from receipt of the assessment notice, suffice it to state that petitioner's case has no merit and cannot be given even the smallest of consideration.

19. No evidence was submitted by the petitioner to disprove such findings by the Respondent. Thus, **the assailed assessments are to be presumed correct.** As held by the Honorable Supreme Court in one case:

> The Commissioner of Internal Revenue, sustained by the Tax Court, found for a fact that the expenses in the amount of P206,870.00 are fictitious. **<u>Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayers to rebut such presumption</u>** *(Perez vs. Court of Tax Appeals, et al., L-10507, May 30, 1958).* **<u>Tan Guan failed to overcome his burden. Hence, the finding that the expenses cannot be claimed as deduction from gross income.</u>**" *(Emphases and underlining provided)*

20. Indeed, mere allegations will never suffice to overthrow the presumption in favour of taxation. **Only evidence presented to substantiate errors in assessment will be given merit,** As held by the Honorable Supreme Court in one case:

Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessment for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments'. The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action finds support in the following authorities:

> 'All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.
>
> 'As a logical outgrowth of the presumption in favor of the validity of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.' (51 *Am. Jur.* Pages 620-621)' *(Interprovincial Autobus Co., Inc. vs. Collector of Internal*

> *Revenue,* 98 Phil., 290; 52 Off. Gaz [2] 791.)
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> 'When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, **the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention."** *(Behn, Meyer & Co. vs. Collector of Customs, 26 Phil., 647)*
>
> **'That the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct."** *(Perez vs. Court of Tax Appeals, et. al.,* G.R. No. L-10507, May 30, 1958)." *(Emphases and underlining all provided)*

21. Petitioner cannot question the assessments made against it for all presumptions are **in favour of tax assessments** ***(Interprovincial Autobus Co., Inc. vs. Collector [98 Phil. 290]; Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner,*** **[G.R. No. 81446, Aug. 18, 1998]).**

22. It must be stressed that remedies afforded a person under the law must be complied strictly for the effective and valid invocation of such remedies. In this case, petitioner was remiss, in that contrary to petitioner's stance that **the instant Petition for**

Review is seasonably made, **it is in truth and in fact <u>belatedly made, making the assessment final, executory, and demandable</u>; thus, <u>the Honorable Court of Tax Appeals has no jurisdiction, considering that petitioner failed to perfect its appeal in the manner and within the period mandatorily laid down by law</u>**

23. The petitioner, as it has judicially admitted in its Petition for Review, received the FDDA on **22 October 2012,** informing it that petitioner's protest is denied. Petitioner attempts to assail said assessment under the FDDA, which is admittedly allowed under the law. As provided for by Section 228 of the Tax Code:

> "**SECTION 228.** ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> >
> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax

for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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 may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed

> **by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; OTHERWISE, THE DECISION SHALL BECOME FINAL, EXECUTORY AND DEMANDABLE."** *(Emphases and underlining all provided)*

24. However, as provided for by the law, **only thirty (30) days from receipt of the final decision is allowed for the petitioner to protest the said final decision with the Court of Tax Appeals, otherwise, the final decision shall become final, executory, and demandable.**

25. Republic Act No. 1125, otherwise known as the CTA Law, as amended ('CTA Law'), provides that;

> **'SECTION 11.** *Who may Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue,** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action** as referred to in

Section 7(a)(2) herein. Xxx.' ***(Emphases and underlining all provided)***

26. In relation to the abovesaid provision, the CTA Rules provides that:

Rule 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. ***Who may appeal; period to file petition.*** **-** (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed **within thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx xxxx

27. The CTA Rules enunciates that *"the Rules of Court in the Philippines shall apply suppletorily to these Rules* (Rule 1, Sec. 3, CTA Rules)." Now, Rule 50, Sec. 1 of the Revised Rules of Court of the Philippines provides that:

RULE 50
DISMISSAL OF APPEAL

SECTION 1. Grounds for dismissal of appeal. -An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following ground:

> (a) **<u>Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;</u>**
>
> xxx xxx xxx
>
> (i) **<u>The fact that the order or judgment appealed from is not appealable.</u>** (1a) ***Emphases and underlining all provided)***

28. A reading of the instant *Petition for Review* will show that the same was filed only on the **8th day of January, 2013.** If the filing date will be counted from 22 October, 2012, the date of receipt of the FDDA, it will be seen that **<u>seventy-seven (77) days has lapsed from said date within which to make the appropriate judicial appeal, which means that the Petition for Review is belatedly made, belying petitioner's allegation that the instant case is seasonably made.</u>** Thus, applying the provisions of the rules and the law in the instant petition, only the **<u>DISMISSAL OF THE CASE</u>** will be the necessary result, for **<u>the petitioner has no cause of action</u>** against the herein respondent, **<u>and for failure of the petitioner to show that the instant petition is in truth and in fact taken within the period provided for by law and the assessment being no longer appealable for being final, executory, and demandable.</u>**

29. The Honorable Supreme Court is emphatic on the assessment being unquestionable for failure to make the timely protest by way of an appeal, as it clearly spoke in this wise:

> "Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282,

belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling.** The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely filing of an appeal operates to validate the exercise of jurisdiction by the CTA.

To be sure, the fact that an assessment has become FINAL for failure of the taxpayer to file a protest within the time allowed only means that THE VALIDITY OR CORRECTNESS OF THE ASSESSMENT MAY NO LONGER BE QUESTIONED ON APPEAL. xxx" ***(Emphases and underlining all provided)***

30. The Honorable Supreme Court ruled that the taxpayer's failure to appeal **deprived him of the right to question the Commissioner's authority to collect the tax within the prescriptive period provided by law. The taxpayer's failure to appeal in due time makes the assessment final, executory and demandable. Thus, petitioner is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.**

31. **Appeal is not a natural right or a part of due process** but a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law granting the right. As a purely statutory right, **it is not an inherent right; it is not also a necessary element of due process of law.**

32. The fundamental nature of appeal as a mere statutory right requires the party seeking to avail himself of the right to **faithfully comply with the rules granting and providing for it. Appeal is a privilege** established by the positive laws which prescribe the cases where appeal may be taken, the procedure to be followed, the courts from which appeal is taken, and the courts by which the appeal shall be proceeded with and decided. As such, **a plea to liberalize or relax the rules on appeal is, as a general rule, not favoured.**

33. Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. **Failing to do so, the right to appeal is lost. Since the perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, the failure to perfect his appeal rendered the questioned decision final and executory.** The rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised in accordance with the provisions of the law.

34. **A taxpayer who had lost his right to dispute the validity of an assessment by failing to appeal to the Court of Tax Appeals within the thirty (30) day period makes the assessment in question final, executory, and demandable. He is already barred in a subsequent proceeding from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits.** Otherwise, the period of thirty (30) days for appeal to the Court of Tax Appeals would make little sense.

35. Finally, **allegations of prescription by the taxpayer must be clearly shown. Since prescription is one of the affirmative defences of the taxpayer, it is incumbent upon him to positively establish when**

the prescriptive period started to run and when the same ended.

36. Thus, applying the pertinent provisions of the law, rules, and jurisprudence on the matter at hand, it is crystal clear that **the instant *Petition for Review* lacks basis and merit, and should be dismissed outright** by this Honorable Court. Consequently, **petitioner should already be made to pay the deficient taxes for the same are already final, executory, and demandable under the facts and the law.**

On April 10, 2013, the case was transferred from the Third Division to the Second Division,[41] pursuant to *CTA Administrative Circular No. 01-2013*,[42] dated March 26, 2013.

On April 11, 2013, petitioner filed its Comment/Opposition (Re: Motion to Dismiss by Respondent dated 13 March 2013).[43]

On May 10, 2013,[44] the Court issued a Resolution denying respondent's Motion to Dismiss.

On June 5, 2013, the case was transferred back to the Third Division, pursuant to *Section 5, Rule V, Internal Rules of the Court of Tax Appeals*.[45]

On August 12, 2013 and by registered mail, the parties, through their respective counsels, filed their Joint Motion to Approve Stipulation of Facts and Issues.[46]

On August 29, 2013, a Pre-trial Order[47] was issued by the Court terminating pre-trial and setting the date/s for the presentation of evidence by the parties.

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[41] *Id.*, p. 117.
[42] *Reorganization of the Three Divisions of the Court of Tax Appeals.*
[43] *Records*, pp. 111-116.
[44] *Id.*, pp. 120-122, issued by the Second Division.
[45] *Id.*, p. 124.
[46] *Id.*, pp. 401-405.
[47] *Id.*, pp. 414-424.

On October 2, 2013, respondent filed a second Motion to Dismiss,[48] which was denied by the Court in its Resolution[49] dated November 22, 2013.

On December 13, 2013, respondent filed a Motion for Reconsideration[50] by registered mail, which was denied by the Court in its Resolution[51] dated February 17, 2014.

During trial, petitioner presented the Judicial Affidavits ("JA") of the following witnesses: (1) Ms. Rhodora D. Roco[52], Docket Clerk of Gerodias Suchianco Estrella Law Firm;[53] (2) Ms. Cristina D. Acebedo[54], Business Advisor, Tax Compliance and Billing Section, Print Town Group of Companies;[55] and (3) Ms. Yvette V. Castillo[56], Assistant Vice President for Finance, Print Town Group of Companies.[57]

On April 15, 2014, petitioner filed its Formal Offer of Evidence.[58]

On June 17, 2014, the Court issued a Resolution[59] admitting *Exhibits* "P-1" to "P-3-1," "P-6" to "P-28," "P-29" to "P-43," and denying "P-4" to "P-5-1," and "P-28-1."

During trial, respondent presented the JA of RO Elisa F. Guilalas[60] in *lieu* of her direct testimony.

On August 11, 2014, respondent filed her Formal Offer of Evidence by registered mail.[61]

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[48] *Id.*, pp. 434-440.
[49] *Id.*, pp. 444-449.
[50] *Id.*, pp. 487-493.
[51] *Id.*, pp. 510-511.
[52] *Id.*, *Exhibit "P-43,"* pp. 362-366.
[53] *Id.*, Minutes of Hearing dated August 29, 2013, Docket (Vol. I), p. 412.
[54] *Id.*, *Exhibit "P-42,"* pp. 351-361.
[55] *Id.*, Minutes of Hearing dated March 31, 2014, Docket (Vol. I), p. 512.
[56] *Id.*, Exhibit *"P-41,"* pp. 334-349.
[57] *Id.*, Minutes of Hearing dated March 31, 2014, Docket (Vol. II), p. 513.
[58] *Id.*, pp. 516-528.
[59] *Id.*, pp. 534-535.
[60] *Id.*, *Exhibit "R-15,"* pp. 367-377.
[61] *Id.*, pp. 545-549.

On September 10, 2014, the Court issued a Resolution[62] admitting *Exhibits* "R-1," "R-1-a," "R-1-b," "R-1-c," "R-2," "R-2-a," "R-3," "R-3-a," "R-3-b," "R-4," "R-5," "R-6," "R-6-a," "R-7," "R-7-a," "R-7-b," "R-8," "R-9," "R-9-a," "R-9-b," "R-10," "R-11," "R-12," "R-13," "R-14," "R-14-a," "R-15," and "R-15-a."

On November 7, 2014, the Court resolved[63] to submit the case for decision, taking into consideration the Memorandum filed by petitioner on October 17, 2014[64] and the Records Verification Report of the Judicial Records Division dated October 20, 2014,[65] stating that no memorandum was filed by respondent.

Hence, this Decision.

The Issues[66]

For the Court's resolution are the following issues:

1. WHETHER OR NOT PETITIONER FILED THE INSTANT PETITION ON TIME;

2. WHETHER OR NOT THE ASSESSMENT AGAINST PETITIONER HAS ALREADY PRESCRIBED;

3. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENT VALUE-ADDED TAX FOR 2007 IN THE AMOUNT OF PHP601,859.39, INCLUSIVE OF INTERESTS; AND

4. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENT INCOME TAX FOR 2007 IN THE AMOUNT OF PHP238,132.85, INCLUSIVE OF INTERESTS.

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[62] *Id.*, pp. 559.
[63] *Id.*, p. 581.
[64] *Id.*, pp. 560-578.
[65] *Id.*, p. 579.
[66] *Id.*, *JSFI*, p. 402.

Petitioner's Arguments

Petitioner maintains that respondent's authority to issue an assessment against petitioner has already prescribed because the FAN was issued beyond the three (3)-year prescriptive period provided under *Section 203 of the 1997 National Internal Revenue Code ("NIRC")*. Having been issued beyond the prescriptive period, the FAN did not attain finality nor become executory or demandable.

It asserts that it timely filed the instant Petition for Review pursuant to *Section 228 of the 1997 NIRC*, as amended. It alleges that it received the FDDA dated October 22, 2012 on November 15, 2012, thus, it had a period of thirty (30) days from date of receipt, or until December 15, 2012, to file a Petition for Review. However, since the latter date fell on a Saturday, it had until December 17, 2012 to file the present judicial claim.

Lastly, it asserts that it did not give its consent to any compromise penalty that respondent may impose in settling its alleged tax deficiencies, neither did respondent prove any basis in support of the assessment for compromise penalties. Petitioner maintains that *Section 3.1.4 of RR No. 12-99* requires the basis of the compromise penalty to be indicated in the Formal Letter of Demand and Assessment Notice.

Respondent's Counter-Arguments

Respondent counter argues that allegations of prescription by the taxpayer must be clearly shown. Since prescription is one of the affirmative defenses of the taxpayer, it is incumbent upon him to positively establish when the prescriptive period started to run and when the same ended.

She alleges that *per* verification made by the BIR, there were discrepancies resulting from the Reconciliation of Listing for Enforcement ("RELIEF") and Third Party Matching-BOC and TRS Data Program as declared by petitioner in its tax returns, thus, it was assessed in accordance with *Revenue Memorandum Order ("RMO") No. 17-2009* and *Sections 31, 32, 106 and 109 of the 1997 NIRC.*

She maintains that all presumptions are in favor of the correctness of tax assessments, and that the assessment has become final, executory, and demandable due to petitioner's failure to file the instant Petition for Review within the period allowed by law.

The Ruling of the Court

The Court finds the Petition for Review meritorious.

Section 203 of the 1997 NIRC, as amended, mandates that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid, save in certain cases, to wit:

> SECTION 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That <u>in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed</u>. For purposes of this Section, <u>a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day</u>. *[Emphases ours]*

Since the instant case involves deficiency Income Tax and VAT, the prescribed due dates for filing of the returns, to be used as bases for the three (3)-year prescriptive period, varies accordingly.

Income Tax

Section 77(B) of the 1997 NIRC, as amended, provides that the filing of the Income Tax Return shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* -

xxx xxx xxx

(B) Time of Filing the Income Tax Return. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

Value-added Tax

The filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter. Section *114(A) of the 1997 NIRC* provides, as follows:

SEC. 114. Return and Payment of Value-added Tax.-

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

A perusal of the records of the case reveal that petitioner's returns for taxable year 2007 were filed on the dates provided below:

TAX RETURNS	EXHIBIT	DATE OF FILING
Income Tax – Annual filing		
Amended Annual Income Tax Return	BIR Records	July 10, 2008[67]
VAT – Quarterly filing		
Amended 1st Quarter VAT Return	"P-10" to "P-10-1"	March 7, 2008[68]
2nd Quarter VAT Return	"P-15" to "P-15-1"	July 25, 2007[69]

[67] *Id.*, pp. 59-60.
[68] *Id., Exhibits "P-10"* and *"P-10-1,"* pp. 279-280.

3rd Quarter VAT Return	"P-18" to "P-18-1"	October 25, 2007[70]
4th Quarter VAT Return	"P-21" to "P-21-1"	January 25, 2008[71]

The table below will help shed light into the reckoning date of the three (3)-year period to assess:

TAX RETURNS	ACTUAL DATE OF FILING	LAST DATE TO FILE RETURN	LAST DAY TO ASSESS
Income Tax – Annual filing			
Amended Annual Income Tax Return	July 10, 2008	April 15, 2008	July 10, 2011[72]
VAT – Quarterly filing			
Amended 1st Quarter VAT Return	March 7, 2008	April 25, 2007	March 7, 2011
2nd Quarter VAT Return	July 25, 2007	July 25, 2007	July 25, 2010
3rd Quarter VAT Return	October 25, 2007	October 25, 2007	October 25, 2010
4th Quarter VAT Return	January 25, 2008	January 25, 2008	January 25, 2011

As enunciated by the Supreme Court in *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*[83]:

> In the case of *Collector of Internal Revenue vs. Bautista*, this Court held that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within the said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent. *(underscoring ours)*

While respondent issued the FAN with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050 on June 6, 2011, the same was sent by registered mail only on September 20, 2011,[84] and was actually received by petitioner on September 22, 2011.[85]

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[69] *Id., Exhibits "P-15"* and *"P-15-1,"* pp. 289-290.
[70] *Id., Exhibits "P-18"* and *"P-18-1,"* pp. 295-296.
[71] *Id., Exhibits "P-21"* and *"P-21-1,"* pp. 301-302.
[72] July 10, 2011 falls on a Sunday, thus, respondent has until the next working day to issue the assessment.
[83] G.R. No. 157064, August 7, 2006, 498 SCRA 126.
[84] *Records, Exhibit "R-9-b,"* p. 167.
[85] *Id., Exhibit "P-22,"* pp. 303-307.

Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer,[86] September 20, 2011 shall be considered as the date of assessment. Looking into the last dates to assess on the table above, respondent's right to assess all the foregoing taxes have already prescribed.

Considering the foregoing, the Court finds it unnecessary to discuss the other issues raised for being moot and academic.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, Final Assessment Notice with Demand Nos. F-049-LNTF-07-IT-050 and F-049-LNTF-07-VT-050,[90] all dated June 6, 2011, assessing petitioner with deficiency income tax and value-added tax amounting to Php238,132.85 and PhP601,859.39, respectively, is hereby **CANCELLED** and **WITHDRAWN** on account of prescription.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[86] *Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et. al.,* G.R. No. L-22492, September 5, 1967, 21 *SCRA* 17.
[90] *Records, Exhibit "P-22,"* p. 303.

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice