REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MARIPOSA PROPERTIES, INC.,
Petitioner,

C.T.A. EB No. 371
(C.T.A. Case No. 6402)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 1 2 2008 [illegible signature]
1:15 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by petitioner on March 17, 2008, praying for the reversal of:

1. the Decision dated February 13, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6402,

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[1] *Rollo*, pp. 9 – 198 with Annexes.

dismissing the Petition for Review filed by petitioner for lack of merit, and thereby, affirming with some modifications the Decision of the Commissioner of Internal Revenue ("CIR") dated January 30, 2002, and ordering petitioner to pay respondent the amount of P2,994,799.10 representing deficiency income tax for the taxable year 1997, plus 20% delinquency interest per annum from February 4, 2002 until such time the said amount is fully paid; and

2. the Resolution dated February 8, 2008, denying petitioner's Motion for Reconsideration for lack of merit.

Antecedent Facts

The facts of the case, as found by the Court in Division, are as follows:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City.
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, duly authorized to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204 (B) of the National Internal Revenue Code (NIRC) of 1997 and to enforce the provisions of the Code, with office address at the Fourth Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> During the year of 1997, petitioner made a series of donations in cash and property totaling P4,500,000.00 to Mariposa Foundation, Inc. (Foundation), a non-stock, non-profit corporation

duly organized and existing under and by virtue of the laws of the Philippines, financed and maintained by means of donations and contributions from any persons or entities, and recognized as a qualified donee institution.

On December 7, 1998, respondent issued Letter of Authority No. 138537 authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1 to December 31, 1997. This Letter of Authority was revalidated on June 15, 2000.

Consequently, on July 1, 2001, petitioner received the letter of respondent of same date, inviting the former for an informal conference to enable the petitioner to go over the findings of the examiner and to submit whatever documentary evidence it may have to support any objection against said findings.

On October 31, 2001, petitioner received from respondent Formal Assessment Notices all numbered LA-138537-97-01-852 and dated October 24, 2001, informing it of the deficiency income tax (P2,615,267.49), value-added tax (P33,223.64), expanded withholding tax (P1,325.41) and documentary stamp tax (P2,402.50) assessments for taxable year 1997 together with the letter of discrepancy, in the aggregate amount of P2,652,219.04.

On November 26, 2001, petitioner, through its external auditor, filed with the respondent's Bureau of Internal Revenue (BIR) its protest letter dated November 23, 2001 contesting the propriety and legality insofar as the subject deficiency income tax assessment issued against it for the taxable year 1997 is concerned. On the other hand, likewise stated in said protest letter, petitioner signified its willingness to pay the amounts of deficiency value-added tax (P33,223.64), expanded withholding tax (P1,325.41) and documentary stamp tax (P2,402.50) assessments for taxable year 1997.

In a letter dated January 30, 2002 from the Regional Director of the Revenue Region No. 8 of the BIR, received on February 4, 2002 by petitioner through its external auditor, petitioner was informed that its request in the protest letter of November 23, 2001 that the issues raised therein be first resolved before the payment of the deficiency taxes attributable to undisputed portion of the deficiency tax assessment was denied for lack of legal and factual basis.

On March 1, 2002, the instant Petition for Review was filed by the petitioner.

In his Answer filed on May 30, 2002, which was admitted by this Court in the Resolution dated July 18, 2002, respondent asserts the following Special and Affirmative Defenses:

> '3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Section 228 of the (1997) Tax Code, partly provides:
>
>> "Sec. 228. Protesting of Assessment. —(xxx) Such assessment may be ***protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment*** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; ***otherwise, the assessment shall become final.' (Emphasis supplied)***
>
> Considering the failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing its protest, the assessments have already become final by operation of law;
>
> 5. Since the assessments have become final, this Honorable Court has no jurisdiction to act on the instant petition;
>
> 6. Assuming that this Honorable Court has jurisdiction over the case, the assessments issued against petitioner for deficiency income tax, value-added tax, expanded withholding tax and documentary stamp tax for taxable year 1997, covered under Final Assessment Notices all numbered LA-138537-97-01-852 all dated October 24, 2001 were made in accordance with law and regulations;
>
> 7. Based on the records, petitioner failed to comply with the requirements **under Section 29 (h)(2)(C)(ii) of the 1993 Tax Code** which provides that (in order for a) *"donation made to qualified institutions to be deductible in full, such recipient institutions must utilize the donations not later than the fifteenth day of the third month after the close of the recipient institutions' taxable year in which the donations were received."* From the foregoing, the claimed

243

deduction of petitioner for donations made to Mariposa Foundation, Inc., in the amount of P4,500,000.00 is not deductible in full since only the amount of P1,296,291.26 was utilized by the foundation as of March 15, 1998. Hence, the amount of P4,323,685.35 should be disallowed as valid deduction from its gross income for taxable year 1997;

8. Petitioner failed to withhold and remit the corresponding withholding tax on commission income payments, hence, the amount of P7,500.00 representing commission expense due should be disallowed as valid deduction from its gross income, pursuant to Section 29 (J) of the Tax Code, as amended, which provides that *"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 disallowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the BIR in accordance with this Section, Sections 51 and 74 of the Tax Code"*;

9. Petitioner violated the provision under **Section 29 (a)(1) of the 1993 Tax Code** since per comparison of its Financial Statement for the year 1997 and Alpha List of employees, petitioner overstated the claimed salaries and wages expense, hence, it cannot claimed (sic) the amount of P6,318.00 as valid deduction from its gross income for 1997;

10. Petitioner violates the provision under **Section 100 (a) of the 1993 Tax Code (now Section 106 [A] of the 1997 Tax Code)** since it failed to subject to value-added tax (VAT) the amount of P188,000.00 which is the proceeds derived by petitioner from the sale of its Smile City Homes residential unit;

11. Petitioner failed to subject to the 10% expanded withholding tax rate imposed under Revenue Regulations No. 6-85, the amount of P7,500.00 which represents the discrepancy per comparison of the income payments from petitioner's financial statement as against the Alphalists in the amounts of P15,000.00 and P7,500.00, respectively;

12. Petitioner failed to pay documentary stamp tax due on the lease of its real properties with total lease contracts in the amount of P1,912,320.00, in violation of **Section 194 of the 1997 Tax Code** which provides that *"on each lease, agreement, memorandum, or contract for hire, use or*

> *rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp (tax) of three pesos (P3.00) for the first Two Thousand pesos (P2,000.00), or fractional thereof, in excess of the first Two Thousand pesos (P2,000.00) for each year of the term of said contracts or agreement*"; and
>
> 13. All presumptions are in favor of the correctness of tax assessments.'

In a Resolution promulgated on September 6, 2002, this Court denied petitioner's Motion for Reconsideration of the Resolution dated July 18, 2002 denying petitioner's Motion to Declare Respondent in Default and therefore, admitted respondent's Answer; hence, the case was set for pre-trial. However, on November 22, 2002, petitioner filed a 'Motion to Defer Pre-trial' on the ground that it filed a Petition for Certiorari with the Court of Appeals raising the issue on the propriety of the Resolution dated September 6, 2002, which this Court granted in its Order dated November 27, 2002.

The Second Division of the Court of Appeals, in two Resolutions dated November 15, 2002 and April 11, 2003, dismissed the aforesaid petition by reasons of deficiencies and for failure to comply with the pertinent Rules on Civil Procedure. Thus, petitioner filed its 'Manifestation and Motion' on May 21, 2003 before this Court stating that it has already subscribed to the judgment of the Court of Appeals and moved to set the case for pre-trial. The Court granted said motion and proceeded with the pre-trial conference on June 27, 2003.

As previously manifested by petitioner, it is willing to settle the deficiency assessments except the income tax assessment. Accordingly, on September 12, 2003, petitioner paid the amounts corresponding to the subject deficiency value-added tax, expanded withholding tax and documentary stamp tax. Thus, what remains for determination is the validity of the deficiency income tax in the amount of P2,615,267.49 for taxable year 1997.

During trial, petitioner's Assistant Treasurer, Marilyn A. Silvala, testified to prove that the BIR disallowed the donation of petitioner to Mariposa Foundation in the amount of P4,500,000.00 in cash and shares of stocks; while its witness Rosario M. Garado, Accountant of the Foundation, testified, among others, that the Foundation accepted the said donation and the shares of stocks donated were recorded at its fair market value. Both witnesses identified numerous documents in relation thereto. Respondent,

247

on the other hand, did not present any evidence, but merely marked his documentary exhibits.

Both parties were allowed to file their respective memoranda within thirty (30) days from notice.

However, on September 6, 2004, petitioner, through its new counsel, filed an 'Urgent Omnibus Motion' to: (a) re-open case for trial and leave of court to present additional evidence; and (b) to defer submission of memoranda, which was granted in open court and confirmed in the Resolution of October 28, 2004. Therefore, petitioner's witnesses were re-called, and further testified and identified additional documentary evidence.

Finally, in a Resolution dated November 22, 2005, petitioner was deemed to have rested its case. Accordingly, the parties were allowed to file their respective memoranda within thirty (30) days from notice. Only petitioner filed its Memorandum."[2] *(Citations omitted)*

The Ruling of the Court in Division

On February 13, 2007, the Court in Division dismissed the Petition for Review filed by petitioner on March 1, 2002, praying for the cancellation of the deficiency tax assessments issued by the BIR against the petitioner.

The Court in Division in its Decision resolved the following issues:

"a) Whether or not the petitioner was furnished in writing of the factual basis for the issuance of the deficiency income tax assessment for the year 1997;

b) Whether or not the donation made by the petitioner to Mariposa Foundation, Inc. in the amount of P4,500,000.00 should be allowed as deduction from its gross income for the year 1997 pursuant to Section 29 (H)(2)(C)(ii) of the National Internal Revenue Code, as amended;

[2] *Rollo*, pp. 46 – 52, Assailed Decision dated February 13, 2007, pp. 1 – 7.

c) Whether or not the recipient of the above donation, Mariposa Foundation, Inc. has complied with the requirements on the utilization of the aforesaid donation pursuant to Section 29 (H)(2)(C) of the National Internal Revenue Code, as amended, in order that said donation would be considered as allowable deduction of petitioner for 1997; and

d) Whether or not petitioner is liable for deficiency income tax assessment in the amount of P2,615,267.49 for taxable year 1997."[3]

Anent the first issue, the Court in Division found that petitioner was sufficiently informed of the law and the facts on which the subject assessments were made. It pointed out that the computations in the "Details of Discrepancies"[4] attached to the Formal Assessment Notices clearly show both the factual and legal bases contemplated under Section 228 of the NIRC of 1997, in relation to Section 3 of Revenue Regulations No. 12-99.

The remaining issues, being interrelated and intertwined, were tackled jointly by the Court in Division.

The Court in Division declared that the series of donations made by petitioner to the Foundation in the year 1997 amounting to P4,500,00.00, which consist of cash, evidenced by various Certificates of Donations and official receipts issued by the latter, and of personal property in the form of shares of stock under the Deed of Donation dated August 25, 1997, were actually perfected and consummated within the year 1997. It affirmed the

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[3] *Rollo*, pp. 90 – 91, Joint Stipulation of Facts and Issues, pp. 4 – 5.
[4] Exhibit "3," *BIR Records*, p. 452.

contention of petitioner that as long as a portion of such donations/contributions was proven to be utilized in any of the manner provided for in Section 29 (h) (2) (c) of the NIRC of 1993[5] and Section 2 (R), paragraphs (a) to (d) of BIR-NEDA Regulations No. 1-81, as amended, it may be deducted in full from the donor's gross income.

Nonetheless, the Court in Division ruled that neither the Foundation's income tax return and audited financial statements, nor the annual information report duly certified by the authorized official of the Foundation containing the annual information report required by Section 11 of BIR Regulations No. 1-81 was ever presented or submitted by the petitioner. The Court in Division said that although petitioner may have substantially complied with the substantiation requirements for the donors, it however failed to establish that the Foundation has been complying with the substantiation requirements for the donees. Hence, the same cannot be claimed as a deduction.

The Court in Division likewise agreed with respondent in disallowing the commission expenses and salaries and wages expenses in the amounts of P7,500.00 and P6,318.00, respectively. It pointed out that since there are discrepancies between the amounts stated in the Alphalists and in the Financial Statements, petitioner should have at least explained

[5] Now Section 34 (H) (2) (c) (2) of the NIRC of 1997. Please note that all reference to the term "private foundation" has been replaced by "nongovernment organization."

why such discrepancies exist and attempted to reconcile the same in order to be allowed as a valid deduction from its gross income.

Finally, the Court in Division modified the Assessment Notice by including a 25% surcharge and a 20% delinquency interest in addition to the income tax due. Thus, the Court in Division disposed of the case in this wise:

> "**WHEREFORE**, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision of the Commissioner of Internal Revenue dated January 30, 2002 is hereby **AFFIRMED** with some modifications.
>
> Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **TWO MILLION NINE HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED NINETY NINE PESOS and 10/100 (P2,994,799.10)** representing deficiency income tax for the taxable year 1997, plus 20% delinquency interest per annum from February 4, 2002 until such time the said amount is fully paid.
>
> **SO ORDERED.**"[6]

On March 5, 2007, petitioner filed a Motion for Reconsideration[7] of the Decision dated February 13, 2007. It argued that the Court in Division imposed an overly strict rule on petitioner for the full deductibility of the expense considering that the NIRC of 1993 does not require the donor to prove compliance with the NEDA-Prescribed Donee Reporting Requirements set out in Section 11 (B) of the BIR-NEDA Regulations No. 1-81. It reasoned out that to add such condition is a clear violation of the doctrine enunciated in *Commissioner of Internal Revenue v. Seagate*

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[6] *Rollo*, p. 67.
[7] *Id.*, pp. 160 – 187.

249

Technology (Philippines)[8] that an administrative issuance cannot amend the law.

In addition, it maintained its position that it was not furnished in writing the factual basis for the issuance of the deficiency tax assessment for the year 1997, and thus, pursuant to Section 228 of the NIRC of 1997, the assessment is void.

Finally, petitioner asserted that assuming that the assessments is valid, the expense for commissions should not be added to its 1997 taxable income as it has already paid its deficiency EWT assessment on commissions in the amount of P1,325.41 on September 12, 2003, as shown in the BIR Tax Payment Deposit Slip issued by the Land Bank of the Philippines and the BIR Payment Form (BIR Form 0605) both dated September 12, 2003.[9]

In support of its Motion, petitioner submitted additional documents[10] as evidence, which the Court in Division resolved to admit in a Resolution dated January 2, 2008.[11]

On February 8, 2008, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit. It said that BIR-NEDA Regulations 1-81 does not go beyond the confines of what has been

[8] G.R. No. 153866, 451 SCRA 132, February 11, 2005.
[9] Exhibits "D" and "D-2", *Records*, pp. 119 – 120.
[10] *Rollo*, pp. 188 – 191.
[11] *Id.*, pp. 192 – 193.

provided in the NIRC of 1993 as it merely supplies the details and guidelines that will help in carrying out the provisions necessary in claiming donations as tax deductions. It reiterated its finding that the reportorial requirements under BIR-NEDA Regulations 1-81 have not been satisfied by petitioner.

The Issues

Hence, the instant recourse where petitioner contends that:

> "THE SECOND DIVISION ERRED BY DECIDING QUESTIONS OF SUBSTANCE IN A MANNER THAT IS NOT IN ACCORD WITH LAW AND JURISPRUDENCE, IN THAT:
>
> I. PETITIONER'S EVIDENCE PROVES THAT IT COMPLIED WITH THE REQUIREMENTS FOR THE DEDUCTION, IN FULL, OF ITS DONATIONS TO THE MARIPOSA FOUNDATION, INC. FROM ITS GROSS INCOME FOR THE YEAR 1997.
>
> II. PETITIONER'S EVIDENCE PROVES THAT THE LEVEL OF THE FOUNDATION'S ADMINISTRATIVE EXPENSES DID NOT EXCEED 30% OF ITS TOTAL UTILIZATION DURING THE TAXABLE YEARS INVOLVED.
>
> III. THE EXPENSES FOR SALARIES/WAGES AND COMMISSIONS SHOULD NOT HAVE BEEN INCLUDED IN PETITIONER'S TAXABLE INCOME FOR 1997."[12]

Based on petitioner's arguments, the foregoing assignment of errors may be summed up into two main issues, to wit:

[12] *Rollo*, p. 20.

(1) Whether or not BIR-NEDA Regulations No. 1-81 is a valid administrative issuance; and

(2) Whether or not the petitioner was informed in writing of the law and of the facts on which the assessment was made.

The Ruling of the Court En Banc

The Petition for Review has no merit.

BIR-NEDA Regulations No. 1-81 was issued within the scope of the law and within the quasi-legislative authority of the Secretary of Finance.

Petitioner maintains its stand that the NIRC of 1993 does not require, as a condition for deductibility, that the donor prove that the donee institution complied with the NEDA-Prescribed Donee Reporting Requirements set out in Section 11 (B) of BIR-NEDA Regulations No. 1-81. It argues that BIR-NEDA Regulations No. 1-81, as amended, does not make the substantiation requirement or compliance with the NEDA-Prescribed Donee Reportorial Requirements as a condition precedent to the full deductibility of a donation, and does not penalize the donor unless it is shown that the donor has participated or consented to any violation of the donee of the requirements imposed on it.

Thus, petitioner is of the view that to add such condition before a donation may be deducted in full by the donor is a clear violation of the doctrine enunciated in *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[13] that an administrative issuance, like a BIR regulation, cannot amend the law.

We do not subscribe to petitioner's view.

Quasi-legislative or rule-making power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of certain powers flowing from the separation of the great branches of the government.[14] The rule is that as long as administrative issuances relate solely to carrying into effect the provisions of the law, they are valid and have the force of law.[15]

In this case, BIR-NEDA Regulations No. 1-81 was promulgated pursuant to Section 326 of the then NIRC of 1977, which expressly authorized the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provision of the said Code.

Section 11 of the said regulation provides that:

> ***"SEC. 11. Verification procedure and substantiation requirements.***

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[13] *Supra* at note 8.

[14] Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission and Regional Tripartite Wages and Productivity Board, G.R. No. 144322, 514 SCRA 346, February 6, 2007.

[15] Republic of the Philippines v. Hizon, G.R. No. 130430, 320 SCRA 574, December 13, 1999.

A. For Donors. — Donors claiming deduction from their taxable income for donations authorized by Batasan Pambansa Blg. 45 should submit evidence of the BIR showing submission of the Certificate of Donation and/or Notice of Donation.

(a) Actual receipt by the donee of the donation and the date of receipt thereof; and

(b) The amount of the donation, if in cash; if real property, the value thereof at the time of the donation, which shall be based on the assessors' most recent valuation; and if personal property had already been used at the time of donation, the depreciated or book value thereof.

B. **For Donees. — Donees shall include in their income tax return an annual information report with the BIR,** Provided, that donees covered by the national priority plan, must furnish the NEDA with the annual information report by accomplishing NEDA Forms 3A, 3B and 3C. **The report shall be certified by the authorized official of the Institution or Association and shall contain:**

(a) A list of the donations and income received during the year, showing the name and address of the donor; the source of income; the amount or market value of each donation and items of income and the disposition thereof;

(b) A list of the activities and/or project undertaken by the institution and the cost of each undertaking indicating in particular where and how the donation has been utilized;

(c) A list of projects; their corresponding costs; the amount 'set aside' and the status of funds balances at the end of the year;

(d) That the utilization requirements under Section 9 of these Regulations have been sufficiently complied with;

> (e) That no part of its net income inures to the benefit of any private stockholder or individual." *(Emphasis supplied)*

After a careful and thorough reading of Section 11 of BIR-NEDA Regulations No. 1-81, We find no sufficient reason to deviate from the ruling of the Court in Division that the said provision does not go beyond the confines of what has been provided in the NIRC of 1993. It only supplies the details necessary for carrying out the law, by enumerating the procedures and requirements necessary for claiming donations as tax deductions. It merely provides guidelines for the implementation of the law, which the administrative agency is in charge of enforcing.

Considering that the said provision is within the delegated authority of the administrative agency, petitioner must adhere to it in order to be entitled to a tax deduction.

However, records show that petitioner failed to present evidence to establish that the Foundation has been complying with the substantiation requirements for the donees. In this connection, We quote with approval pertinent portions of the Decision of the Court in Division, to wit:

> "A careful review of the records shows that **neither the Foundation's income tax return and audited financial statements, nor the annual information report duly certified by the authorized official of the Foundation containing the above-enumerated information, was ever presented or submitted by petitioner in this case.** Although petitioner may have substantially complied with the substantiation requirements for the donors, it however miserably failed to establish that the Foundation has been complying with the substantiation requirements for the donees.

> The significance of the aforesaid requirements is further bolstered by the fact that in the Foundation's Certificates of Registration dated October 29, 1993 and January 10, 2002, submission of its Annual Information Return with the lists of donations and income received, activities and/or projects undertaken, projects and amounts set aside, among others, is one of the terms and conditions to be complied with in order to entitle the donor (petitioner) to full deduction and the donee (Foundation) to exemption from donor's tax pursuant to the applicable provisions of the law. In view of the foregoing considerations, this Court is constrained to deny petitioner's claim for the deduction of its series of donations for its failure to establish with clear and convincing evidence that the Foundation complied with the substantiation requirements set forth in Section 11 (B) of BIR-NEDA Regulations No. 1-81, as amended."[16] *(Emphasis supplied)*

For this reason, the full deduction of the donation in the amount of P4,500, 000.00 was properly disallowed.

Petitioner was informed in writing of the factual and legal bases for the issuance of the deficiency tax assessment for the year 1997.

Petitioner contends that the Court in Division should, at the very least, declare the deficiency income tax assessment for 1997 as partially void for failing to comply with Section 228 of the NIRC of 1997 which provides that "[t]he taxpayer shall be informed in writing of the law and facts on which the assessment is made."

Petitioner claims that the document entitled: "Details of Discrepancies" dated October 24, 2001 is vague, unclear, and confusing. It avers that the assessment for the withholding tax on commissions does not

[16] *Rollo*, pp. 64 – 65.

explain to whom or to what entity the said payment was made, while the assessment for the salaries and wages expenses does not state the recipient of these payments nor the form of compensation given. It further says that the amount of disallowance for the salaries and wages was arrived at by simply getting the difference between the amount of salaries appearing in the alpha list and the amount of salaries and wages appearing in the financial statements. Due to the foregoing, petitioner insists that it was unable to intelligently respond to the said assessment. Thus, petitioner is adamant that the assessment must be declared void with respect to the commissions, salaries and wages.

Petitioner's contention holds no water.

We are well-aware that under the present provisions of the NIRC of 1997 and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[17] The underlying reason for the law is the basic constitutional requirement that "no person shall be deprived of his property without due process of law.[18]"

In this case, We find that the Formal Assessment Notices together with the "Details of Discrepancies" dated October 24, 2001[19] sufficiently

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[17] Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. Nos. 159694 and 163581, 480 SCRA 382, January 27, 2006.
[18] Commissioner of Internal Revenue v. Bank of the Philippine Islands, G.R. No. 134062, 521 SCRA 373, April 17, 2007.
[19] *Supra,* at note 4.

complies with the requirements of Section 228 of the NIRC of 1997, in relation to Section 3 of Revenue Regulations No. 12-99[20].

Although the assessment does not state to whom or to what entity the payment of the commissions, salaries and wages were given, nevertheless, it still contains details on how the deficiency taxes were arrived at, which is more than enough to enable petitioner to intelligently refute the assessment.

A careful perusal of the "Details of Discrepancies" shows that that the commission in the amount of P7,500.00 did not qualify as a deduction from the gross income pursuant to Section 29 (J) of the NIRC of 1993 because petitioner failed to withhold and remit the corresponding expanded withholding tax ("EWT") on the said income payment. The "Details of Discrepancies" likewise reveals that the amounts stated in the Alphalists and in the Financial Statements submitted by petitioner do not tally. Thus, the salaries and wages deduction was overstated by P6,318.00, in violation of Section 29 (a) (1) of the NIRC of 1993.

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[20] **"SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —**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. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for in behalf of the taxpayer, if acknowledged received by a person other than taxpayer himself; and (d) date of receipt thereof."

As We see it then, the "Details of Discrepancies" adequately explained why the commission expenses in the amount of P7,500.00 and the salaries and wages expenses in the amount of P6,318.00 were not allowed as deductions from petitioner's gross income for the taxable year 1997. It contains not only the specific provisions of law but also the facts upon which the computation of the deficiency taxes are based.

Hence, We find no error on the part of the Court in Division in disallowing the commission expenses and the salaries and wages expenses in the amounts of P7,5000.00 and P6,318.00, respectively.

However, considering that petitioner already paid its deficiency EWT assessment on its commission expenses in the amount of P1,325.41[21] to the BIR, as evidenced by the Land Bank of the Philippines BIR Tax Payment Deposit Slip and the Payment Form (BIR Form No. 0605) filed by petitioner with the Land Bank of the Philippines, J.P. Rizal Branch on September 12, 2003,[22] petitioner may validly claim the commission expenses in the amount of P7,500.00 as a deduction from its gross income, pursuant to Section 29((j) of the 1995 Tax Code, which provides that:

> " (j) Additional requirement 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**

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[21] Basic Tax plus Interest (P750.00 + 575.41).
[22] *Supra*, at note 9.

paid to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code." *(Emphasis supplied)*

Consequently, the commission expenses in the amount of P7,500.00 should be deducted from petitioner's taxable income for 1997.

We are therefore constrained to modify the computation of the deficiency assessment, as follows:

Taxable Income Per Return		P1,377,155.00
Add: Discrepancies Per Audit		
Donations and Contributions	P4,323,685.35	
Salaries and Wages Expense	6,318.00	4,330,003.35
Taxable Income Per Audit		P5,707,158.35
Income Tax Rate		35%
Income Tax Payable Per Audit		P1,997,505.42
Less: Tax Paid Per Return		482,004.00
Tax Still Due Thereon		P1,515,501.42
Add: 20% Interest (04-16-98 to 11-26-01)		1,096,972.97
25% Surcharge		378,875.35
TOTAL AMOUNT DUE		**P2,991,349.74**

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** The assailed Decision dated February 13, 2007 is hereby **AFFIRMED** with modification as above stated, regarding the computation of the deficiency income tax for the taxable year 1997.

Accordingly petitioner is **ORDERED TO PAY** respondent the amount of **TWO MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED FORTY NINE PESOS and 74/100 (P2,991,349.74)** representing deficiency income tax for the taxable year

1997, plus 20% delinquency interest per annum from February 4, 2002 until such time the said amount is fully paid.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice