

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB CASE NO. 661
(CTA Case No. 7038)

For: Cancellation of Assessment
for Deficiency Income Tax

-versus-

**AVON PRODUCTS
MANUFACTURING, INC.,**

Respondent.

X-----X

**AVON PRODUCTS
MANUFACTURING, INC.,**

Petitioner,

CTA EB CASE NO. 663
(CTA Case No. 7038)

Present:

ACOSTA, P.J.,

CASTAÑEDA, JR.

BAUTISTA

UY

CASANOVA

PALANCA-ENRIQUEZ

FABON-VICTORINO

MINDARO-GRULLA

COTANGCO-MANALASTAS, JJ.

-versus-

**COMMISSIONER OF INTERNAL
REVENUE**

Respondent.

Promulgated:

NOV 09 2011

Lita Apolinario
11:00 a.m.

X-----X

DECISION

MINDARO-GRULLA, J.:

Submitted for decision are consolidated cases of two (2) Petitions for Review before the Court *En Banc*, separately filed by the Commissioner of Internal Revenue ("CIR") as petitioner on August 16, 2011.

2010, docketed as CTA EB Case No. 661¹, and by Avon Products Manufacturing, Inc. ("AVON") as petitioner on August 18, 2010, docketed as CTA EB Case No. 663², under Section 2(a)(1), Rule 4, in relation to Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, of the Decision³ and Resolution⁴ dated May 13, 2010 and July 12, 2010, in CTA Case No. 7038, respectively, rendered by the Special First Division of this Court.

The dispositive portions thereof, respectively, read as follows:

Decision dated May 13, 2010:

"**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO CANCEL/WITHDRAW** the Final Demand and Final Assessment Notices: (1) **Assessment No. LTAID-ET-99-00011** for deficiency Excise Tax, (2) **Assessment No. LTAID-II-VAT-99-00017** for deficiency Value Added Tax, (3) **Assessment No. LTAID-II-WTC-9900002** for deficiency Withholding Tax on Compensation – Under Withholding and Later Remittance, and (4) **Assessment No. LTAID-EWT-99-00010** for deficiency Expanded Withholding Tax.

However, petitioner is **ORDERED TO PAY** respondent the deficiency Income Tax under **Assessment No. LTAID-II-IT-99-00018** in the amount of P357,345.88 for taxable year 1999.4

¹ Filed by Commissioner of Internal Revenue within the extended period of time granted by the Court *En Banc* in a Resolution dated July 29, 2010, docketed as CTA EB No. 661.

² Filed by Avon Products Manufacturing, Inc. within the extended period of time granted by the Court *En Banc* in a Resolution dated August 3, 2010, docketed as CTA EB No. 663.

³ Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista. Associate Justice Caesar A. Casanova was on leave. CTA EB No. 661, Docket, pp. 35-73.

⁴ Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova, CTA EB No. 661, Docket, pp. 74-81.

In addition, petitioner is liable to pay: i) a deficiency interest on the deficiency basic income tax due of P100,761.01 at the rate of 20% per annum from January 31, 2004 until fully paid pursuant to Section 249(B) of the 1997 NIRC and ii) a delinquency interest on the total amount due (inclusive of the deficiency interest) at the rate of 20% per annum from July 24, 2004 until fully paid pursuant to Section 249(C)(3) of the 1997 NIRC.

SO ORDERED."

Resolution dated July 12, 2010:

"**WHEREFORE**, premises considered, the respective Motions for Partial Reconsideration of petitioner and respondent are hereby **DENIED** for lack of merit.

SO ORDERED."

In CTA EB Case No. 661, the CIR seeks the partial nullification of the aforementioned Decision and Resolution.

In CTA EB Case No. 663, AVON seeks that judgment be rendered: (1) declaring the remaining deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of P357,345.88 for the taxable year 1999, including increments, as void and/or devoid of factual or legal basis; and (2) cancelling the said deficiency tax assessment.

The antecedent facts as culled from the Decision of the Court *quo* are as follows:

"Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at the Calamba Premiere Industrial Park, Barangay Batino, Calamba Laguna."

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City, where he may be served with summons.

Petitioner filed its VAT Returns and the Monthly Remittance Returns of Income Tax Withheld for the taxable year 1999 on the following dates:

Return		Date Filed
3 rd Quarter VAT Return		October 25, 1999
4 th Quarter VAT Return		January 25, 2000
Monthly Remittance Return of Income Taxes Withheld	Expanded	Compensation
January	February 25, 1999	February 25, 1999
February	March 25, 1999	March 25, 1999
March	April 26, 1999	April 26, 1999
April	May 25, 1999	May 25, 1999
May	June 25, 1999	June 25, 1999
June	July 26, 1999	July 26, 1999
July	August 25, 1999	August 25, 1999
August	September 27, 1999	September 27, 1999
September	October 25, 1999	October 25, 1999
October	November 25, 1999	November 25, 1999
November	December 27, 1999	December 27, 1999
December	January 25, 2000	January 25, 2000

Petitioner signed two Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.

On July 14, 2004, revenue agents from respondent's Large Taxpayers Collection & Enforcement Division served on petitioner a Collection letter dated July 9, 2004. The Collection Letter required petitioner to pay an aggregate amount of Eighty Million Two Hundred Forty Six Thousand Four Hundred Fifty Nine Pesos and Fifteen Centavos (P80,246,459.15) representing deficiency income tax, excise tax, value added tax, withholding tax on compensation and expanded withholding tax, inclusive

of interest and compromise penalties for the taxable year 1999. The amount of P80,246,459.15 demanded in the Collection Letter is broken down as follows:

KIND OF TAX	YEAR	BASIC TAX	INTEREST	COMPROMISE	TOTAL AMOUNT
II	1999	P22,012,984.19	P13,207,790.51	P25,000.00	P35,245,774.70
II	1999	913,514.87	658,675.57	73,200.00	1,645,390.44
VAI	1999	20,286,033.82	13,254,677.47	50,000.00	33,590,711.29
WC	1999	4,702,116.38	3,040,229.28	45,000.00	7,787,345.66
WI	1999	1,187,610.88	764,626.18	25,000.00	1,977,237.06
TOTAL		P49,102,260.14	P30,925,999.01	P218,200.00	P80,246,459.15

The deficiency tax assessments covered by the Collection letter are the very same deficiency taxes covered by the Preliminary Assessment Notice dated November 29, 2002, which was received by petitioner on December 23, 2002.

In replying to the Preliminary Assessment Notice, petitioner requested for an extension of time which was granted by respondent. Petitioner was prompted to request for extension of time to reply to the Preliminary Assessment Notice because of the Christmas holidays and the volume of work required to prepare the reply.

On February 14, 2003, petitioner filed a letter dated February 13, 2003 protesting against the Preliminary Assessment Notice.

Without ruling on the protest of petitioner to the Preliminary Assessment, respondent prepared the Final Assessment Notices and Formal Letter of Demand, all dated February 28, 2003, copy of which were received by petitioner on April 11, 2003. Except for the amount of interest, the Formal letter of Demand is the same as the Preliminary Assessment Notice.

The Formal Letter of Demand breaks down the alleged deficiency taxes as follows:

Assessment No. LTAID-II-IT99-00018

Income Tax

TAXABLE INCOME (LOSS) PER INCOME TAX RETURN	P 208,181,930.00
ADD: ADJUSTMENTS	
1. DISCREPANCY IIR & VAT RETURN SALES FIGURES	P62,911,619.58
2. TAXES & LICENSES (FRINGE BENEFIT TAX)	
34% TAX OF MR. KIN GIBSON	152,632.10

DECEMBER 1998 FBI PAYMENT ADJUSTMENT	927.27	
3. DISCREPANCY ON ENDING INVENTORIES REFLECTED IN BALANCE SHEET VS. COST OF SALES	2,597,951.72	65,663,130.67
TAXABLE INCOME PER INVESTIGATION		273,845,060.67
INCOME TAX RATE		33%
INCOME TAX DUE PER INVESTIGATION		90,368,870.02
LESS INCOME TAX PAID PER RETURN	68,700,037.00	
UNSUPPORTED CREDIBLE TAX WITHHELD	344,151.17	68,355,885.83
BASIC DEFICIENCY INCOME TAX DUE		P 22,012,984.19
ADD PENALTIES		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003		13,207,790.51
COMPROMISE		25,000.00
TOTAL DEFICIENCY INCOME TAX DUE		P 35,245,774.70

Assessment No. LTAID-ET-99-00011

Excise Tax

SALES SUBJECT TO EXCISE TAX PER BOOK		P 388,450,462.43
ADD: SALES RETURN		4,536,996.85
SALES SUBJECT TO EXCISE TAX PER INVESTIGATION		392,987,459.28
EXCISE TAX RATE		20%
EXCISE TAX DUE PER INVESTIGATION		78,597,491.86
BEG. BALANCE		1,627,792.86
DEPOSITS		77,300,000.00
AVAILABLE		78,927,792.89
LESS ENDING BALANCE		1,243,815.90
APPLIED EXCISE TAX		77,683,976.99
BASIC DEFICIENCY EXCISE TAX DUE		913,514.87
ADD: PENALTIES		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003	658,675.57	
COMPROMISE	73,200.00	731,875.57
TOTAL DEFICIENCY INCOME TAX DUE		P 1,645,390.44

Assessment No. LTAID-II-VAT-99-00017

Value Added Tax

	3 RD QUARTER	4 TH QUARTER	TOTAL
TAXABLE SALES PER RETURN	496,799,677.80	183,051,559.00	679,851,236.80
ADD: UNSUPPORTED EXPORT SALES		57,614,117.83	57,614,117.83
TOTAL TAXABLE SALES	496,799,677.80	240,665,676.83	737,465,354.63
OUTPUT TAX	49,679,967.78	24,066,567.68	73,746,535.46

LESS ALLOWABLE INPUT TAX			
INPUT TAX PER RETURN	34,586,639.09	28,983,826.88	63,570,465.97
INPUT TAX CARRIED OVER		(10,678,670.98)	(10,678,670.98)
CREDITABLE INPUT TAX PER VAT RETURN	34,586,639.09	18,305,155.90	52,891,794.99
FROM NON VAT SUPPLIER	(104,428.96)	(999,892.80)	(1,104,321.76)
INPUT TAX ON LOCAL PURCHASES			
ALLOCABLE TO OTHER QUARTER	(3,582,693.75)	(4,768,311.71)	(8,351,005.46)
INPUT TAX ON IMPORTATION ALLOCABLE			
TO OTHER QUARTER	(224,684.00)	(570,642.00)	(795,326.00)
OVER CLAIMED INPUT TAX PER VAT			
SCHEDULE	(18,156.00)	(12,578.39)	(30,734.39)
OVER CLAIMED INPUT FROM TKS		(4,056,052.62)	(4,056,052.62)
DISALLOWED INPUT TAX ON PURCHASES			
OF AUTOMOBILES		(187,181.81)	(187,181.81)
	(3,929,962.71)	(10,594,659.33)	(14,524,622.04)
ALLOWABLE INPUT TAX PER INVESTIGATION	30,656,676.38	7,710,496.57	38,367,172.95
VAT PAYABLE	19,023,291.40	16,356,071.11	35,379,362.51
LESS VAT PAYMENT PER RETURN	15,093,328.69		15,093,328.69
BASIC DEFICIENCY VAT DUE	3,929,962.71	16,356,071.11	20,286,033.82
ADD PENALTIES			
20% INTEREST FROM DUE DATE TO APRIL 15, 2003	2,724,056.34	10,530,621.13	13,254,677.47
COMPROMISE	25,000.00	25,000.00	50,000.00
TOTAL DEFICIENCY VAT TAX DUE	6,679,019.05	26,911,692.24	33,590,711.29

Assessment No. LTAID-II-WTC-99-00002

Withholding Tax on Compensation – Under withholding

TAXABLE BASIS PER RETURN/ALPHA LIST	P	158,894,693.86
ADD: ADJUSTMENTS		
COMPENSATION NOT SUBJECT TO WITHHOLDING TAX		14,248,837.51
TAXABLE BASIS PER AUDIT		173,143,531.37
TAX DUE		33,628,347.24
LESS: PAYMENT PER RETURN		28,926,230.86
BASIC DEFICIENCY WITHHOLDING TAX ON COMPENSATION		4,702,116.38
ADD: PENALTIES		
25% SURCHARGED		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003	P	3,027,390.00

COMPROMISE	25,000.00	3,052,390.00
TOTAL DEFICIENCY WITHHOLDING TAX ON COMPENSATION	P	7,754,506.38

Assessment No. LTAID-II-WTC-99-00002

Withholding Tax on Compensation – Late Remittance

TAX WITHHELD PER BOOK FOR THE MONTH OF DECEMBER 1999	P	3,542,158.51
LESS: REMITTANCE ON JANUARY 25, 2000		2,960,860.27
AMOUNT OF LATE REMITTANCE		581,298.24
REMITTED ON FEBRUARY 28, 2000	506,757.15	
REMITTED ON APRIL 25, 2000	74,541.09	581,298.24
PENALTIES ON LATE REMITTANCE		
20% INTEREST FROM DUE DATE TO DATE OF REMITTANCE		12,839.28
COMPROMISE		20,000.00
TOTAL DEFICIENCY WITHHOLDING TAX ON COMPENSATION	P	32,839.28

Assessment No. LTAID-II-EWT-99-00010

Withholding Tax - Expanded

TAXABLE BASIS PER RETURN	P	1,008,066,201.30
ADD: ADJUSTMENTS		
INCOME PAYMENTS/EXPENSES NOT SUBJECT TO EWT		113,877,579.13
TAXABLE BASIS PER INVESTIGATION		1,121,943,780.43
EXPANDED WITHHOLDING TAX DUE		13,718,505.15
LESS: PAYMENTS PER RETURN		12,530,894.27
BASIC DEFICIENCY EXPANDED WITHHOLDING TAX		1,187,610.88
ADD PENALTIES		
20% INTEREST FROM DUE DATE TO APRIL 15, 2003		764,626.18
COMPROMISE		25,000.00
TOTAL DEFICIENCY EXPANDED WITHHOLDING TAX	P	1,977,237.06

The alleged undeclared income of P62,911,619.58 arose from the discrepancy between the sales per Monthly and Quarterly VAT Returns and the reported sales per Financial Statement and Income Tax Return.

Petitioner paid the amount of disallowed taxes and licenses of P152,632.10 and December 1998 FBT payment adjustment of P927.27 or a total of P153,559.37.

In the adjustment to income captioned "Discrepancy on ending inventories reflected in balance sheet vs. cost of sales – P2,597,951.72", respondent is imputing additional income on the

D E C I S I O N

alleged difference in the amount of ending inventories per balance sheet of P215,793,000 which is higher than the amount of ending inventories per Schedule of Cost of Goods Manufactured and Sold of P213,195,572.28.

With regard to the "*Unsupported Creditable Tax Withheld – P344,151.17*", respondent alleges that: (a) petitioner over-claimed withholding tax credits by P203,645.89 because the total amount indicated in the certificate of creditable tax is P12,705,654.11 while the amount claimed in the Income Tax Return is P12,909,300.00 and (b) petitioner's customer over-issued the certificate of creditable withholding tax by P140,505.28 representing the withholding tax on sales made in 1998 but paid in 1999.

With regard to the assessment for deficiency VAT captioned "*Unsupported export sales – P57,614,119.83*", respondent alleges that exempt and zero-rated sales reported in the VAT returns and export sales book amounted to P57,614,119.83, however, documents/papers needed to substantiate the export sales were not provided or furnished to the Revenue Officers.

The input VAT in the amount of P1,104,321.76 was disallowed because it allegedly came from non-VAT taxpayers.

With regard to the input VAT disallowance captioned "*Input tax on local purchases from other quarters – P8,351,005.46*", respondent disallowed the input tax credits claimed by petitioner for the 3rd and 4th quarters of 1999 for the sole reason that the supporting supplier's VAT invoice are dated prior to the particular quarter (Schedule 6 of Details of Discrepancy).

Respondent argues that under Section 110(A)(2)(a) of the Tax Code, input tax on domestic purchase is creditable to the purchaser upon consummation of the sale of goods or purchase. Hence, input taxes with supporting invoices bearing dates of the prior quarters should be disallowed.

With regard to the input VAT disallowance captioned "*Input tax on importation from other quarters – P795,326.00*", respondent maintained that the input tax on importation is creditable to the importer upon payment of the VAT prior to the release of the goods from Customs and disallowed the input taxes paid by petitioner in previous quarters. 

With regard to the input VAT disallowance captioned "Overclaimed input tax – P30,734.39", respondent compared the input taxes on importation of goods reflected in the VAT return for the 4th quarter of 1999 and the input tax per Schedule attached to the Quarterly VAT Return and noted that the amount per Schedule is more than the amount per VAT Return.

The alleged over-claimed input tax from LKS of P4,056,052.62 represents the difference between the input tax claimed by petitioner based on the invoices issued by LKS Construction and Development Corp. in December 1999 of P5,853,011.07 and the input tax of P1,796,958.45 determined by respondent from the payments made by the supplier in 1999 of P19,586,847.15 (net of 1% withholding tax).

Respondent disallowed the excess input tax of P10,678,670.98 in the Quarterly VAT Return for the 4th Quarter of 1999 which was carried over by petitioner to the first quarter of 2000.

As detailed in Schedule "F" of the Details of Discrepancy, the assessment for deficiency expanded withholding tax arose from the difference between the balances of the following general ledger accounts and certain income payment per Alphalist:

Raw Material Purchases

Ingredients	P 283,684,015.00
Container	478,848,271.00
Packers	9,257,633.00
Plates & Moulds	5,187,722.00

Supplies and Facilities

Uniform Mgt.	727,147.39
Uniform R and I	184,771.71
Technical Supplies	2,740,316.55
Production Supplies	4,408,447.71
Non Cap Equipment	903,316.39
Office Supplies	984,576.80
Books and Subscription	19,468.84

Outside Services

Security	3,645,821.47
Facility Expense - Cleaning	814,357.09
Outside Agency Labor	2,910,776.00

Repairs and Maintenance

Repairs and maintenance - Materials	5,662,562.72
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	Repairs and maintenance Gasoline	169,100.20
	Repairs and maintenance Contract	303,504.82
	Non cap Software Purchase	51,256.34
	Other transpo Miscellaneous	2,127,198.76
Operating Expenses		
	Uniform Mgt.	556,651.91
	Uniform R and I	467,186.55
	Production Supplies	30,760.75
	Non Cap Equipment	584,395.84
	Office Supplies	1,321,429.12
	Books and Subscription	240,821.97
	Repairs and maintenance Gasoline	43,037.32
	Repairs and maintenance Contract	10,555.03
	Repairs and maintenance Materials	92,736.90
	Repairs and maintenance Vehicles	12,827.06
	Data Proc Maint	1,258,755.82
	Data Proc Supplies	800,258.74
	Non Cap Swarc	894,938.86
	Comp Swarc Maint	377,922.56
Acquisition of Property, Plant and Equipment		485,397,352.00
Acquisition of Computer Software		750,190.00

In a letter dated May 9, 2003 which petitioner filed with respondent on the same day, petitioner protested the Final Assessments. In as much as the Preliminary Assessment was the same as the Final Assessment, petitioner re-submitted its protest to the Preliminary Assessment and adopted the same as its protest to the Final Assessment.

Petitioner paid the following portions of the Final Assessment on January 30, 2004:

- a. Disallowed taxes & licenses/Fringe Benefit Tax adjustment – P153,559.37; and
- b. Withholding Tax on Compensation – Late Remittance P32,829.28.

Respondent's Revenue Officers prepared a Memorandum dated May 27, 2004 recommending the enforcement and collection of the deficiency tax assessments on the sole justification that petitioner failed to submit supporting documents within the 60-day period to submit all relevant supporting documents from the filing of the protest as required under Section 228 of the Tax Code. 

Based on the Memorandum dated May 27, 2004, the docket of the assessment was forwarded by the LT Audit & Investigation Division II to the LT-Collection & Enforcement Division, under a 1st Indorsement dated May 27, 2004.

The LT Collection & Enforcement Division served the Collection Letter dated July 9, 2004 on petitioner on July 14, 2004.

In a letter to the Deputy Commissioner for Large Taxpayers Service dated July 27, 2004 which was filed with respondent on the same date, petitioner requested for reconsideration and withdrawal of the Collection Letter on the ground that it is devoid of any legal an[d]/or factual basis and is premature since the respondent has not issued a decision on petitioner's protest letter to the Final Assessment.

Respondent did not act on petitioner's request for reconsideration and withdrawal of the Collection Letter. Thus, petitioner was constrained to treat the Collection Letter as the respondent's denial of the protest, hence, the Petition for Review to protect the interest of petitioner.

Petitioner filed the Petition for Review on August 13, 2004. Thereafter, on August 24, 2004, it filed an Urgent Motion for the Suspension of Collection of Tax.

On October 15, 2004, respondent filed his Answer, after submission of two extensions of time to submit Answer which were all granted by the Court in the Orders dated September 16, 2004 and October 4, 2009. The BIR Records were also forwarded on October 26, 2004.

In his Answer, respondent raised the following special and affirmative defenses:

"8. Section 222 of the Tax Code authorizes the taxpayer and the government to extend by mutual agreement the prescriptive periods for the assessment and collection of taxes. The assessments, all dated February 28, 2003 and received by Petitioner on April 11, 2003, are not barred by prescription as Petitioner's executed valid waivers of the defense of prescription dated October 14, 2002 and December 27, 2002.▲

waiving the defense of prescription until January 14, 2003 and April 14, 2003, respectively;

9. The mere fact that petitioner was not allegedly furnished with copies of the accepted waivers did not invalidate the same, because such requirement in Revenue Memorandum Order No. 20-90 is merely formal in nature (*Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, CA-GR Sp. No. 72128, August 5, 2003);

10. The assessments had already become final, executory and unappealable in view of the failure of the Petitioner to submit the pertinent documents in support of its protest within sixty (60) days from filing thereof as provided in Section 228 of the Tax Code;

xxx xxx xxx

16. The assessment for deficiency excise tax in the amount of P1,534,821.84 arose from the fact that Petitioner failed to pay excise tax on its sales returns which it admits to be subject to excise tax (Paragraph 49, Petitioner);

xxx xxx xxx

23. The input tax in the amount of P187,181.18 was disallowed, as input tax on purchases of automobiles is not allowed as creditable input tax under Section 110(A)(1)(a)(v) of the NIRC of 1997;

24. The assessment for deficiency withholding tax in the amount of P7,548,386.21 is the difference between the withholding tax per audit against the amount of such tax withheld and remitted by the taxpayer;

xxx xxx xxx

26. The assessment for deficiency expanded withholding tax in the amount of P1,925,177.41 arose from income payments/expenses not subjected to withholding taxes as detailed in Schedule F attached to the Final Assessment Notices, in violation of Section 2.57.2 of Revenue Regulation No. 2-98; 

27. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (*CIR vs. Construction Resources of Asia, Inc.*, 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. CIR*, 1 SCRA 538; *CIR vs. Tuazon, Inc.*, 173 SCRA 397) and failure to do so shall vest legality to respondent's actions and assessments."⁵

On May 13, 2010, the Court *a quo* rendered a Decision⁶ partially granting the Petition for Review insofar as it ordered the cancellation of the Final Demand and Final Assessment Notices for deficiency Excise Tax, deficiency Value-Added Tax, deficiency Withholding Tax on Compensation – Under Withholding and Later Remittance and deficiency Expanded Withholding Tax for the taxable year 1999. It however ordered petitioner to pay deficiency Income Tax in the amount of P357,345.88 for the taxable year 1999 including 20% deficiency interest on deficiency basic income tax due and another 20% deficiency interest on the total amount due pursuant to *Sections 249(B) and 249(C)(3) of the 1997 NIRC*, respectively.

Significantly, the Court *a quo* made the following pronouncements:

- a. There was no deprivation of due process in the issuance by the CIR of the assessment for deficiency income tax, deficiency

⁵ CTA EB No. 661, Docket, pp. 36-47.

⁶ *Supra* note 3.

excise tax, deficiency VAT, deficiency final withholding tax on compensation and deficiency expanded withholding tax against AVON for the latter was afforded an opportunity to explain and present its evidence;

- b. The Waivers of the Statute of Limitations executed by AVON are invalid and ineffective as the CIR failed to provide the former a copy of the accepted Waivers, as required under *Revenue Memorandum Order No. 20-90*. Hence, the assessment on AVON's deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation is considered to have prescribed;
- c. AVON's failure to submit the relevant documents in support of its protest did not make the assessment final and executory;
- d. As to assessment on AVON's deficiency Income Tax,

(1) there was no undeclared sales/income in the amount of P62,911,619.58 per ITR for the taxable year 1999;

(2) AVON's liability for disallowed taxes and licenses and December 1998 Fringe Benefit Tax payment adjustment in the amount of P152,632.10 and P927.27, respectively, or a total of P153,559.37 is extinguished in view of the payment made;

(3) the discrepancy between Ending Inventories reflected in Balance Sheet and Cost of Sales represents

variance/adjustments on standard cost to actual cost allocated to ending inventories and not under-declaration as alleged by CIR;

(4) AVON's claimed tax credits in the amount of P203,645.89 was disallowed as the same was unsupported by withholding tax certificates as required under *Section 2.58.3 (B) of Revenue Regulations No. 2-98*. However, the amount of P140,505.28 was upheld as a proper deduction from its 1999 income tax due; and

e. As to assessment on AVON's deficiency excise tax, the same is deemed cancelled and withdrawn in view of its Application for Abatement over its deficiency excise tax assessment for the year 1999 and its corresponding payment thereto.

The Motions for Partial Reconsideration filed by the parties on June 2, 2010⁷ and June 3, 2010⁸, respectively, were subsequently denied for lack of merit in a Resolution⁹ dated July 12, 2010.

Both parties thereafter filed their respective Petitions for Review before the *Court En Banc*.

The CIR assigns the following issues, to wit:¹⁰ 

⁷ Filed by Avon Products Manufacturing, Inc., CIA Case No. 7038, Docket, pp. 692-709.

⁸ Filed by Commissioner of Internal Revenue, CIA Case No. 7038, Docket, pp. 711-726.

⁹ *Supra* note 4.

¹⁰ CIA EB No. 661, Docket, pp. 20-21.

1. Whether or not respondent is liable for deficiency income tax, excise tax, value-added tax, withholding tax on compensation and expanded withholding tax assessments for taxable year 1999;
2. Whether or not assessments for value-added tax and withholding taxes for taxable year 1999 have prescribed;
3. Whether or not the assessments for deficiency income tax, excise tax, value-added tax, withholding tax on compensation and expanded withholding tax assessments for taxable year 1999 against respondent has become final, executory and demandable.

AVON, in turn, raises the sole issue of whether or not the Court *a quo* erred in applying the "presumption of regularity" in favor of the CIR and ruling that its right to due process was not violated by the actuations of CIR's officers and agents.¹¹

In CTA EB Case No. 661, the petition is devoid of merit.

As to the issues on the period of assessment and filing of the petition for review, suffice it to say that the Waivers of the Statute of Limitations executed by the parties are defective, thereby rendering the assessment on AVON's deficiency VAT, expanded withholding tax and withholding tax on compensation to have prescribed.

The CIR asseverates that the assessments for value added tax and withholding taxes for the taxable year 1999 have not yet prescribed because the waivers on the defense of prescription executed by both parties were valid and the requirement to furnish

¹¹ CTA EB No. 663, Docket, pp. 17-33.

AVON with copies of accepted waivers under *Revenue Memorandum Order (RMO) No. 20-90* is merely formal in nature.¹²

However, AVON claims that the assessments for value-added tax and withholding taxes for the taxable year 1999 have already prescribed in view of the CIR's failure to provide AVON with copies of the accepted Waivers of the Statute of Limitations as prescribed under *RMO No. 20-90*.¹³

Sections 203 and 222 of the *NIRC of 1997* provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation.¹⁴ Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.¹⁵

As a rule, the government is mandated under *Section 203 of the NIRC of 1997* to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Thus, an

¹² CTA EB No. 661, Docket, pp. 27-28.

¹³ *Id.* at 190-194.

¹⁴ *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004 citing J.C. Vitug and E.D. Acosta, *TAX LAW AND JURISPRUDENCE* 295 (2nd ed. 2002), citing Report of the Tax Commission, Vol. I, p. 98.

¹⁵ *Id.*

assessment notice issued after the three-year prescriptive period is no longer valid and effective.

However, Section 222 of the NIRC of 1997 provides for exceptions to the above-cited rule. Paragraph B thereof clearly states that the period of limitation of assessment and collection of taxes may be extended through execution of a written agreement between the CIR and taxpayer before expiration of the three-year period, thus:

Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

xxx

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx

In implementing the aforesaid waiver of the statute of limitations, RMO 20-90 and Revenue Delegation of Authority Order (RDAO) No. 05-01 were issued on April 4, 1990 and August 2, 2001, respectively, in order to delineate the procedure for the proper execution of the said waiver, viz:¹⁶

"1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after 19__", which indicates the expiry date of the period agreed upon to assess/collect the

¹⁶ *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. **The waiver must be executed in three copies**, the original copy to be attached to the docket of the case, **the second copy for the taxpayer** and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.**"¹⁷ [Emphasis supplied.]

Significantly, the strict compliance with the procedure for proper execution of the waiver of the statute of limitations has been underscored by the Supreme Court in the case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***¹⁸, the pertinent portion of which reads:☞

¹⁷ *Id.*

¹⁸ G.R. No. 162852, December 16, 2004.

“A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers’ right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed [See *Ouano v. Court of Appeals*, G.R. No. 129279, 4 March 2003, 398 SCRA 525, citing *People v. Donato*, G.R. No. 72969, 5 June 1991, 198 SCRA 130]. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. xxx”¹⁹ [Emphasis supplied.]

Therefore, contrary to the CIR’s stance that the requirement to furnish AVON with copies of accepted waivers under RMO No. 20-90 is merely formal in nature, the Supreme Court in the same case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***²⁰ emphasized the importance of the taxpayer’s actual receipt of the accepted waiver; otherwise, failure to do so shall render the waiver invalid and ineffective, thus:

“Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason”

¹⁹ *Id.*

²⁰ *Id.*

copies are furnished is for a party to be notified of the existence of a document, event or proceeding.

The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. **There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement.**"²¹ [Emphasis supplied.]

Similarly, the CIR's argument that AVON is already estopped to repudiate the waiver of the statute of limitations and to raise the issue of prescription because it has benefited from it²² is totally misplaced. The Supreme Court held in the recent case of **Commissioner of Internal Revenue v. Kudos tal Corporation**²³ that the BIR cannot apply the doctrine of estoppel to cover its failure to comply with the procedures for proper execution of the waiver of statute of limitations under RMO 20-90 and RDAO 05-01. The pertinent portion of which reads:

"The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right [*La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87]. As such, the doctrine of estoppel cannot give validity to an act that is prohibited

²¹ *Id.*

²² CIA FB No. 661, Docket, p. 123, the CIR's Memorandum.

²³ G.R. No. 178087, May 5, 2010.

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by law or one that is against public policy [*Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003)]. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate [*C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 290 (2002)]. Simply put, the doctrine of estoppel must be sparingly applied.

Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued.** As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer.** To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed [*Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, *supra* note 19 at 231-232]."²⁴ [Emphasis supplied.]

Based on the foregoing, it is evidently clear that the CIR's failure to furnish the taxpayer of copies of the accepted Waivers of the Statute of Limitations renders the said waiver invalid and unenforceable. Hence, it does not toll the running of the three (3)-year period of prescription under *Section 203 of the NIRC of 1997*.

A close scrutiny of the records of this case reveals that the CIR and AVON executed two (2) waivers of the statute of limitations on October 14, 2002 and December 27, 2002 which expired on January 14, 2003 and April 14, 2003, respectively. However, AVON was able to

²⁴ *Id.*

DECISION

prove that it was not furnished with copies of the accepted Waivers of the Statute of Limitations contrary to the procedural mandate provided under RMO No. 20-90.²⁵ Thus, the aforesaid waivers are incomplete and defective and did not toll the running of the 3-year prescriptive period.

Accordingly, and as correctly observed by the Court *a quo*, the assessments on deficiency VAT, expanded withholding tax and withholding tax on compensation shall have prescribed on the following dates:

VAT Return	Date Filed²⁶	Prescription Date
3 rd Quarter of 1999	October 25, 1999	October 25, 2002
4 th Quarter of 1999	January 25, 2000	January 25, 2003

Monthly Remittance Return of Income Taxes Withheld (TY 1999)	Expanded²⁷ (Date Filed)	Compensation²⁸ (Date Filed)	Prescription Date
January	February 25, 1999	February 25, 1999	February 25, 2002
February	March 25, 1999	March 25, 1999	March 25, 2002
March	April 26, 1999	April 26, 1999	April 26, 2002
April	May 25, 1999	May 25, 1999	May 25, 2002
May	June 25, 1999	June 25, 1999	June 25, 2002
June	July 26, 1999	July 26, 1999	July 26, 2002
July	August 25, 1999	August 25, 1999	August 25, 2002
August	September 27, 1999	September 27, 1999	September 27, 2002
September	October 25, 1999	October 25, 1999	October 25, 2002
October	November 25, 1999	November 25, 1999	November 25, 2002
November	December 27, 1999	December 27, 1999	December 27, 2002
December	January 25, 2000	January 25, 2000	January 25, 2003

²⁵ CIA Case No. 7038, Docket, p. 424; Exhibits "O-3" and "P-2", Formal Offer of Evidence dated February 7, 2008.

²⁶ *Id.*, Joint Stipulation of Facts and Issues, par. 17, p. 133.

²⁷ *Id.*

²⁸ *Id.*

The records disclose that AVON received the Final Assessment Notices and Formal Letter of Demand, all dated February 28, 2003, only on April 11, 2003 or way beyond the 3-year period provided by law to assess AVON over its deficiency VAT, expanded withholding tax and withholding tax on compensation as shown in the table above. Consequently, the assessments for AVON's deficiency VAT, expanded withholding tax and withholding tax on compensation issued by the BIR beyond the three-year period have already prescribed.

The CIR restates that the assessments for deficiency income tax, excise tax, value added tax, withholding tax on compensation and expanded withholding tax for taxable year 1999 against AVON have become final and executory for failure to appeal its administrative protest within the 30-day period reckoned from the lapse of the 180-day period before the Court of Tax Appeals pursuant to *Section 228, NIRC of 1997*.²⁹

However, AVON counters that the foregoing assessments did not become final, executory, and demandable because it had timely filed the Petition for Review before the Court of Tax Appeals within 30 days following the CIR's final decision on the disputed assessment pursuant

²⁹ CTA EB No. 661, Docket, pp. 28-29.

to Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals.³⁰

Also, the CIR's belated attack on the timeliness of its filing of the Petition for Review and the CTA's jurisdiction over the case will indubitably transgress its right to due process.³¹

We agree with AVON.

The remedies of taxpayers in cases of administrative protests on the deficiency tax assessments are laid down in Section 228 of the NIRC of 1997, which reads:

Sec. 228. Protesting of Assessment. –

x x x

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 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. [Emphasis supplied.]

Corollary thereto, Section 7 of Republic Act (R.A.) No. 9282,³²

³⁰ *Id.* at 194-195.

³¹ *Id.* at 196-197.

³² 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.

amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*, provides:

“Sec. 7. *Jurisdiction.* — The CTA 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 or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

x x x

Similarly, Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals provides:

RULE 4

JURISDICTION OF THE COURT

x x x

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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; **L**

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(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; **Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules**; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; x x x [Emphasis supplied.]

RULE 8

PROCEDURE IN CIVIL CASES

x x x

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.** In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law. ⚡

from payment or collection of the taxes. (n) x x x [Emphasis supplied.]

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,³³ the Supreme Court had an occasion to interpret the foregoing provisions and categorically ruled that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue, thus:

"From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. **The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments.** This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other." [Emphasis supplied.] ◀

³³ G.R. No. 168498, April 24, 2007.

To reiterate, *Section 228 of the NIRC of 1997* provides two mutually exclusive options on the part of the taxpayers aggrieved by the inaction of the CIR on disputed assessments within the 180-day period from submission of complete documents. *First*, a taxpayer may file a Petition for Review before the CTA within 30 days from the lapse of the 180-day period. *Second*, a taxpayer may opt to await the final decision of the CIR on disputed assessments and appeal such final decision within 30 days from receipt thereof.

In the instant case, AVON opted to resort to the second remedy, *i.e.*, to await the final decision of the CIR and appeal the said decision before the CTA within 30 days from receipt thereof. Considering that AVON only received the Collection Letter dated July 9, 2004 on July 14, 2004,³⁴ which also served as a final decision denying the protest, the filing of the Petition for Review before this Court on August 13, 2004 was well within the 30-day period provided under *Section 228 of the NIRC of 1997*. Hence, this Court has jurisdiction over the present controversy.

Evidently, it is established that the assessments on deficiency VAT, expanded withholding tax and withholding tax on compensation have already prescribed and that the Petition for Review before this Court was timely filed. 

³⁴ CIA Case No. 7038, Joint Stipulation of Facts and Issues, par. 13, Docket, p. 132.

On the remaining assessments on deficiency income tax and excise tax, AVON's deficiency income tax assessment in the amount of P35,245,774.70 may be summarized as follows³⁵ :

1. Discrepancy IIR & VAT Return Sales Figures	P 62,911,619.58
2. Taxes & Licenses (Fringe Benefit Tax)	
34% Tax of Mr. ken Gibson	152,632.10
December 1998 FBI Payment Adjustment	927.27
3. Discrepancy on Ending Inventories reflected in Balance Sheet vs. Cost of Sales	2,597,951.72
4. Unsupported Creditable Tax Withheld	344,151.17

As to the discrepancy between the ITR and VAT Return Sales Figures, the CIR asserts that the alleged undeclared income of P62,911,619.58 arose from the discrepancy between the sales per Monthly and Quarterly VAT Returns and the reported sales per Financial Statement and Income Tax Return.³⁶

The CIR's argument is not tenable.

As aptly discussed by the Court *a quo*, the discrepancy alleged by the CIR does not amount to under-declaration of sales per ITR for the taxable year 1999 and should be accordingly cancelled. The pertinent portion of the decision reads:

"A scrutiny of petitioner's Quarterly VAT Returns for the year 1999 shows that the sales figure of P1,453,792,238.12 used by the BIR examiner in arriving at the alleged undeclared sales of P62,911,619.58 was higher by P176,441,375.60 when compared to the actual sales amount of P1,277,350,862.52 declared by petitioner in its Quarterly VAT Returns, as shown below: 

³⁵ *Id.*, par. 8, p. 129-130.

³⁶ *Id.*, par. 18, p. 133.

DECISION

Sales per VAT Return	Per BIR Investigation	Per VAT Return	Difference
taxable			
1 st quarter (Exhibit BB-6)	P 285,790,660.90	P 109,349,285.30	P 176,441,375.60
2 nd quarter (Exhibit BB-7)	295,629,784.50	295,629,784.50	
3 rd quarter (Exhibit BB-8)	496,799,677.80	496,799,677.80	
4 th quarter (Exhibit BB-9)	183,051,559.00	183,051,559.00	
Subtotal	P 1,261,271,682.20	P 1,084,830,306.60	P 176,441,375.60
Exempt (export)			
1 st quarter (Exhibit BB-6)	P 26,122,623.86	P 26,122,623.86	
2 nd quarter (Exhibit BB-7)	31,491,493.97	31,491,493.97	
3 rd quarter (Exhibit BB-8)	113,324,595.59	113,324,595.59	
4 th quarter (Exhibit BB-9)	21,581,842.50	21,581,842.50	
Subtotal	192,520,555.92	192,520,555.92	
Total	P 1,453,792,238.12	P 1,277,350,862.52	P 176,441,375.60

As correctly found by the Court-commissioned independent CPA, the discrepancy of P176,441,375.60 represents petitioner's sales for the months of January and February 1999 which were not included in the first Quarterly VAT Return but were declared in the respective Monthly VAT Declarations, as shown below:

	January Exhibit BB-10	February Exhibit BB-11	Total
Output tax as reflected	P 7,822,320.14	P 9,821,817.42	P 17,644,137.56
Sales Net of VAT	78,223,201.40	98,218,174.20	176,441,375.60

Moreover, to adopt respondent's computation of the alleged undeclared sales of P62,911,619.58 and deduct the actual sales figure of P1,277,350,862.52 shown in the Quarterly VAT Returns from the sales/income of P1,390,880,618.54 reflected in petitioner's income tax return for the year 1999 will even show an overstatement of sales per ITR in the amount of P113,529,756.02 as shown below:

	Per BIR Investigation	Per VAT Return	Difference
Sales per VAT Return	P 1,453,792,238.12	P 1,277,350,862.52	P 176,441,375.60
	Per BIR Investigation	Per VAT Return	Difference
Less: Sales reported per ITR			
Domestic Sales (Exhibit BB-2)	P1,254,789,455.45	P1,254,789,455.45	
Export Sales (Exhibit BB-3)	130,096,055.13	130,096,055.13	
Export not to ITC (Exhibit BB-4)	4,810,382.96	4,810,382.96	
Subtotal	P1,389,695,893.54	P1,389,695,893.54	
Add: Other Income (Exhibit BB-5)			
Other Income	P 467,126.00	P 467,126.00	
Gain on sale of property	264,512.00	264,512.00	
Foreign exchange gain	453,087.00	453,087.00	

DECISION

Subtotal	P 1,184,725.00	P 1,184,725.00	
Total	P1,390,880,618.54	P1,390,880,618.54	
Understated (overstated) sales	P 62,911,619.58	P (113,529,756.02)	P 176,441,375.60

Patently, it is erroneous for the respondent to conclude hastily that petitioner had under-declared its sales for income purposes in the amount of P62,911,619.58 merely on the basis of comparing the sales figure per petitioner's VAT returns and those reflected in its ITR. A further investigation should have been performed by the BIR to support its claim of under-declaration.

Clearly, as per the reconciliation established by the Court-commissioned Independent CPA (ICPA), the P62,911,619.58 sales discrepancy does not constitute taxable income on the part of the petitioner for income tax purposes, thus:

Total Sales per VAT Return			P1,453,792,238.12
Add:	(deduct) reconciling items:		
1	1 st and 2 nd quarter export sales per GI included in the 3 rd quarter export sales amount per VAT return	Annex 1	(58,408,045.61)
2	Domestic sales to Alcos for the 1 st , 3 rd and 4 th quarters included in both export and domestic sales amount per VAT return	Annex 2	(2,729,156.09)
3	Sale of obsolete ingredients and containers directly credited to inventory account and reported as domestic sale in the 3 rd and 4 th quarter VAT returns.	Annex 3	(2,124,057.28)
4	Foreign exchange gain subjected to income tax but not subjected to VAT since these resulted from export sales.	Table I.A.1	453,087.00
5	Net book value of assets sold subjected to VAT but not subject to income tax.	Annex 5	(280,903.30)
6	Difference in sale to Avon Cosmetics Inc. (ACI) between VAT returns vs. GI/ITR (VAT lower).	Annex 3	172,283.55
7	Other income amount per GI not included in VAT return.	Annex 3	21,673.16
8	VAT output on fully depreciated fixed assets (16,500.00)	Annex 5	(16,500.00)
9	Difference in Alcos amount recorded in VAT returns vs. amount in export GI (VAT higher).	Annex 3	(0.85)
10	Rounding off difference		(0.16)
	Total reconciling items		(62,911,619.58)
Total Sales per ITR			P1,390,880,618.54

Based on the above reconciliation, the discrepancy of P62,911,619.58 was largely due to the amount of P58,408,045.61 representing the sum of the export sales for the first and second quarters of 1999 in the respective amounts of P26,122,623.86 and P32,285,421.75 as recorded in petitioner's General Ledger (GL). It is to be noted that the sales figures recorded in petitioner's GL make up the total amount of sales declared by petitioner in its income tax return for the year 1999. 

Aside from declaring the amount of P58,408,045.61 in the first and second Quarterly VAT Returns, petitioner also reflected the same amount in the third Quarterly VAT Returns because the amount of P113,324,595.59 declared therein by petitioner represents the export sales balance per GL as of September 30, 1999 which covers the first, second and third quarters of 1999. Clearly, petitioner did not under-declare its sales per ITR but erroneously overstated its sales per VAT returns in the amount of P58,408,045.61.

However, it was noted that the export sales for the first and second quarters per GL in the amount of P58,408,045.61 do not tally with the export sales of P57,614,117.83 reflected per petitioner's Quarterly VAT Returns for the same periods. The difference of P793,927.78 pertains to petitioner's domestic sales to Alcos Global Corporation for the second quarter of 1999 which was erroneously booked under the "Gross Sales – Others – Export" account in the GL but correctly included in the domestic sales and excluded from export sales in the second Quarterly VAT Return.

As to the reconciling item amounting to P2,729,156.09, the same pertains to petitioner's domestic sales to Alcos Global Corporation for the first, third and fourth quarters which were included in both export and domestic sales per VAT returns. Again, petitioner did not under-declare its sales per income tax return but erroneously overstated its sales per VAT returns in the amount of P2,729,156.09.

As to the reconciling item amounting to P2,124,057.28, it actually pertains to petitioner's sale of obsolete ingredients and containers directly credited to inventory account and reported as domestic sales in its third and fourth Quarterly VAT Returns for the year 1999. Since these items were sold at cost, there was neither a gain nor loss to be reported for income tax purposes.

As to the foreign exchange gain of P453,087.00 which represents the difference between the peso equivalent of petitioner's US denominated export sales at the time of sale and at the time of collection, the same was not subjected to VAT but was included in petitioner's taxable income for the year 1999.

With regard the reconciling amount of P280,903.30, records show that the same represents the net book value of assets sold by petitioner for the year 1999, computed as follows: ◀

Fixed Assets	P	1,235,145.33
Less: Accumulated Depreciation		954,242.25
Net Book Value of Assets Sold	P	280,903.08

The net book value of P280,903.08 is not subject to income tax. However, the proceeds from the aforesaid sale amounting to P545,415.29 formed part of the P561,915.30 sales of fixed assets that were subjected to VAT in petitioner's 1999 fourth Quarterly VAT Return while the related gain in the amount of P264,512.21 was included in petitioner's taxable income for 1999:

Proceeds Net of VAT	P	545,415.29
Less: Net Book Value Sold		280,903.08
Net Book Value of Assets Sold	P	264,512.21

With reference to the reconciling amount of P172,283.55, the same pertains to the difference in sales to Avon Cosmetics, Inc. (ACI) as reflected in the VAT returns and as declared in the income tax return for 1999, computed as follows:

1999	Sales Per VAT Return	Sales Per GL/ITR	Sales per GL/ITR is over(under)
1 st Qtr	P 284,142,516.00	P 284,142,272.93	P (243.07)
2 nd Qtr	294,705,572.30	294,777,480.83	71,908.53
3 rd Qtr	495,690,693.10	495,690,693.08	(0.02)
4 th Qtr	180,078,390.50	180,179,008.61	100,618.11
Total	<u>P 1,254,617,171.90</u>	<u>P 1,254,789,455.45</u>	<u>P 172,283.55</u>

Petitioner's sales to ACI, as reported in its ITR, was higher by P172,283.55 due to the difference in sales amounting to P71,908.53 which was subjected to income tax but was not subjected to VAT and sales returns amounting to P100,618.11 erroneously debited to Ingredients inventory account in the GL instead of sales returns and allowances subjected to income tax as found by the ICPA.

With regard the reconciling amount of P21,673.16, the same refers to the other income (scrap sales to petitioner's employees) not subjected to VAT; but included as part of petitioner's gross income per ITR, computed as follows:

Sales to APMI Employees - Scrap			
1999	Sales Per VAT Return	Sales Per GL/ITR	Sales per GL/ITR is over(under)
1 st Qtr	P 156,754.10	P 164,718.59	P 7,964.49
2 nd Qtr	130,284.40	130,283.86	(0.54)

3 rd Qtr	66,236.62	76,769.26	10,532.64
4 th Qtr	92,177.90	95,354.47	3,176.57
Total	P 445,453.02	P 467,126.18	P 21,673.16

Regarding the reconciling item amounting to P16,500.00, the same refers to the 10% output VAT due on the P165,000.00 sale of fully-depreciated fixed assets, computed as follows:

Sales per VAT Return	P 165,000.00
Gain on Sale per ITR	148,500.00
VAT Output	P 16,500.00

The taxable sale for VAT purposes is the gross amount of P165,000.00 while the taxable income for income tax purposes is based on the gain on sale of P148,500.00, resulting to a reconciling amount of P16,500.00.

In summary, therefore, it was established that petitioner had no undeclared sales per ITR for taxable year 1999. The P62,911,619.58 undeclared sales/income being charged by respondent against petitioner is erroneous and should be cancelled."³⁷

Consequently, we see no cogent reason to deviate from the factual findings of the Court *a quo* in dismissing the CIR's claim of under-declaration of sales solely based on the existence of disparity between the sales per Monthly and Quarterly VAT Returns and the reported sales per Financial Statement and Income Tax Return. Evidently, there is no basis to assess AVON of undeclared sales/income in the amount of P62,911,619.58; hence, the same should therefore be cancelled.

On the Taxes & Licenses (Fringe Benefit Tax), as stipulated upon by the parties, AVON has paid the amount of the *disallowed taxes and*

³⁷ CTA EB No. 661, Docket, pp. 62-68.

licenses of P152,632.10 and December 1998 FBT payment adjustment of P927.27 or in the total amount of P153,559.37.³⁸ In effect, AVON has acknowledged the disallowance of the foregoing taxes, and in view of the payment thereof, its liability insofar as these taxes are concerned is therefore extinguished.

As to the discrepancy on ending Inventories reflected in the Balance Sheet vs. Cost of Sales, the CIR maintains that the alleged discrepancy arose from the difference in the amount of ending inventories per balance sheet of P215,793,000.00 which is higher than the amount of ending inventories per Schedule of Cost of Goods Manufactured and Sold of P213,195,572.28.³⁹

However, AVON claims that the alleged discrepancy represents variations of actual cost from standard cost allocated to ending inventories and is part of item "Variations – P15,798,844.41".⁴⁰

AVON's claim is tenable.

As correctly observed by the Court *a quo*, there was no under-declaration on the part of AVON in the alleged discrepancy between ending inventories reflected in the Balance Sheet and Cost of Goods Manufactured and Sold as the alleged inventory overstatement merely represents variance/adjustments on standard cost to actual cost.

³⁸ CTA Case No. /038, Joint Stipulation of Facts and Issues, par. 19, Docket, p. 133.

³⁹ *Id.*, par. 20, p. 133.

⁴⁰ CTA EB Case No. 661, AVON's Memorandum, par. 65, Docket, p. 164.

allocated to ending inventories.⁴¹ Indeed, as records of the case would reveal, the apparent discrepancy arose from the difference in the presentation of ending inventories per Balance Sheet and per Schedule of Cost of Goods Manufactured and Sold. Hence, the said assessment must necessarily be cancelled.

On the unsupported Creditable Tax Withheld, the CIR reiterates her argument that AVON over-claimed its tax credit in the amount of P344,151.17, broken down as follows⁴²:

- a. Over-claimed withholding tax credits by P203,645.89 arising from the difference between the total amounts stated in the certificate of creditable tax (P12,705,654.11) and the amount claimed in the ITR (P12,909,300.00); and
- b. Over-issuance of certificate of creditable tax withheld by Avon Cosmetics, Inc. (ACI) by P140,505.28 representing withholding tax on sales made in 1998 but paid in 1999 in violation of Sec. 2.58.3 (A) of Revenue Regulations No. 2-98.

But Avon maintains that the variance between the amount of creditable tax per certificates of tax withheld issued by the withholding agent and the amount per books as reflected in its ITR are mere timing differences between the issuance of the certificate of withholding tax by the withholding agent and its recording of the creditable withholding tax when income is collected.⁴³

⁴¹ *Id.* at 68-69.

⁴² *Id.*, the CIR's Memorandum, pp. 119-120.

⁴³ *Id.*, AVON's Memorandum, par. 70, p. 167.

We affirm the ruling of the Court *a quo* in finding the CIR's disallowance of AVON's claimed tax credits amounting to P203,645.89 proper but not as to the amount of P140,505.28.

Section 2.58.3 (B) of Revenue Regulations No. 2-98 provides:

SECTION 2.58.3. Claim for Tax Credit or Refund. –

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**

Proof of remittance is the responsibility of the withholding agent. [Emphasis supplied.]

It is clear from the foregoing that a copy of the withholding tax certificate duly issued by the payor to the payee is a requisite in claiming creditable withholding tax.

In the instant case, records would reveal that AVON failed to present the withholding tax certificates in its claimed tax credits in the amount of P203,645.89. Instead, in a futile attempt to prove its entitlement to the claimed creditable withholding tax, AVON submitted a print-out of "Browse Account Document Details of Accrued Income Tax-ACI"⁴⁴ for the year 1999. However, a close scrutiny of the records reveals that AVON's customer, ACI, issued AVON's

⁴⁴ CTA Case No. 7038, Avon's Formal Offer of Evidence, Exhibit "CC", Docket, p. 428.

a withholding tax credit certificate amounting to P140,505.28 in 1999 for sales made in 1998 but paid in 1999. Therefore, contrary to AVON's claim, ACI in fact recognizes the withholding tax not from accrual of sales but upon payment. Clearly then, the timing difference in the recognition of tax credits as alleged by AVON is unwarranted. Hence, the CIR is correct in disallowing the same as a deduction from AVON's income tax liability.

As to the Deficiency Excise Tax, the CIR assessed AVON of its deficiency excise tax in the amount of P1,645,390.44, inclusive of interest and compromise for the taxable year 1999.⁴⁵ However, during the pendency of the instant Petition, AVON filed an Application for Abatement over its deficiency excise tax pursuant to *Revenue Regulations (RR) No. 15-2006* and paid 100% of the basic deficiency excise tax due in the amount of P913,514.87. Consequently, the parties filed a Joint Manifestation⁴⁶ on February 21, 2007 stating therein AVON's application for abatement of its deficiency excise tax and payment thereof. The Court *a quo* noted the joint manifestation filed by the parties and ordered the cancellation of the deficiency excise tax assessment of AVON for the taxable year 1999.⚡

⁴⁵ *Id.*, Joint Stipulation of Facts and Issues, par. 8, p. 130.

⁴⁶ *Id.* at 284-289.

Considering AVON's availment of the abatement program pursuant to RR No. 15-2006 and its corresponding payment of the basic deficiency excise tax, the interest and compromise therein were abated. Thus, the assessment for deficiency excise tax against AVON for the taxable year 1999 is deemed cancelled and withdrawn.

In CTA EB No. 663, AVON's petition similarly lacks merit.

On the issuance of the assessments for deficiency income tax, excise tax, value added tax, withholding tax on compensation, and expanded withholding tax, AVON restates that it was deprived of its right to due process when the CIR issued identical Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), and Collection Letter despite its protests, supporting documents and conferences with the BIR examiners.⁴⁷ Thus, it asseverates that the presumption of regularity cannot be applied in favor of the CIR as the latter's inaction and failure to give due consideration to the evidence submitted before it is a blatant transgression of its right to due process as explained in *Ang Tibay v. Court of Industrial Relations*⁴⁸ and *Mendoza v. Commission on Elections*^{49,50}

We disagree. 

⁴⁷ CTA EB No. 663, Docket, p. 31.

⁴⁸ 69 Phil. 635 (1940).

⁴⁹ C.R. No. 188308, 603 SCRA 692, October 15, 2009.

⁵⁰ CTA EB No. 663, Docket, p. 33.

Well-settled is the rule that tax assessments by tax examiners are *prima facie* presumed correct and made in good faith.⁵¹ Absent any proof of any irregularities in the performance of official duties, an assessment will not be disturbed.⁵²

Likewise, the essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.⁵³ It must be underscored that "[w]hat the law proscribes is the lack of opportunity to be heard. 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."⁵⁴

In the instant case, the records clearly show that AVON was accorded by the CIR a reasonable opportunity to explain and present its evidence consisting of its letter-reply, financial statements and other supporting documents. It cannot therefore be argued that AVON was denied of due process.◀

⁵¹ *Commission of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

⁵² J.C. Vilug and E.D. Acosta, *TAX LAW AND JURISPRUDENCE*, (3rd ed. 2006), p. 293.

⁵³ *Aquilino T. Larin v. The Executive Secretary, et al.*, G.R. No. 112745, October 16, 1997 citing *Midas Touch Food Corp. vs. NLRC*, G.R. No. 111639, July 29, 1996, 259 SCRA 652.

⁵⁴ *Spouses Estares v. Court of Appeals, et al.*, G.R. No. 144755, June 8, 2005.

Further, as correctly pointed out by the Court *a quo*, the CIR's failure to appreciate the supporting documents presented by AVON before her is not tantamount to denial of due process, thus:

"It is not the lack of opportunity to present its side, but the respondent's failure to appreciate the documents submitted by petitioner that beset the latter. **The difference in the appreciation by the respondent of petitioner's supporting documents which led to respondent's assessment of petitioner's deficiency taxes is not violative of due process.**

The respondent has the duty to receive the clarifications, explanations and conjectures forwarded to him by the taxpayer, however, he does not have the duty to accept them on face value. The determination of the actual liability of a taxpayer in an assessment relies on respondent's appreciation of the evidence presented before him. And absent any arbitrariness, the presumption is that respondent has made the assessment based on his findings and in good faith.

As a logical outgrowth of the presumption in favor of the validity of the assessments, when such assessments are assailed, the burden 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."⁵⁵ [Emphasis supplied.]

In fine, this Court finds that the CIR's non-appreciation of AVON's arguments and supporting documents submitted before her which led to the subsequent issuance of identical PAN, FAN, and Collection Letter cannot in any way be construed as deprivation of AVON's right to due process absent any proof of any irregularity in the performance of her duties. Thus, the presumption of regularity in the performance of the CIR's official duties shall therefore stand.☞

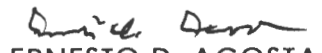
⁵⁵ CIA EB No. 661, Docket, pp. 52-53.

WHEREFORE premises considered, the respective Petitions for Review of the CIR and AVON in CTA EB Case Nos. 661 and 663 are hereby **DENIED**. The Decision and Resolution of the Special First Division of this Court in CTA Case No. 7038 dated May 13, 2010 and July 12, 2010 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

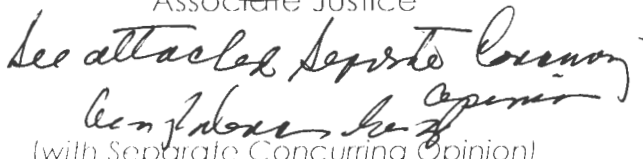

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

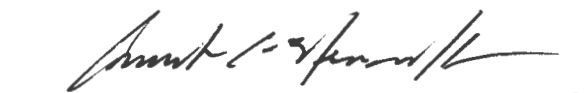

LOVELL R. BAUTISTA
Associate Justice


ERLINDA B. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice

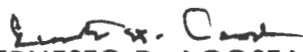

(with Separate Concurring Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

(on wellness leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, **C.T.A. EB NO.661**
(C.T.A. CASE NO. 7038)
Petitioner,

-versus-

AVON PRODUCTS MANUFACTURING,
INC.,

Respondent.

X-----X

AVON PRODUCTS MANUFACTURING, **C.T.A. EB NO.663**
INC., (C.T.A. CASE NO. 7038)
Petitioner,

Present:

-versus-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

NOV 09 2011

Antopolinario
11:00 a.m.

X-----X

SEPARATE CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

Prior to the enactment of RA 8424, otherwise known as the NIRC of 1997, as amended, taxpayers were required to wait for the decision of the

Je

Commissioner before they may appeal to the CTA, as the inaction of the Commissioner to their protests was then not appealable to the CTA. Thus, Collections Letters were considered as a denial of the taxpayer's protest on the assessment that may be appealed to the CTA. However, with the amendment on the inclusion of the provision on inaction of the Commissioner within a period of 180-days , introduced in *Section 228* of the *NIRC of 1997, as amended*, the lawmakers clearly intended to add another ground when the taxpayer may appeal to the CTA and when an assessment may become final. As a consequence thereof, Collection Letters issued after the lapse of the 180-day period cannot be considered as the decision of the Commissioner on the taxpayer's protest on the assessment that is appealable to the CTA.

Section 228 of the NIRC of 1997, as amended, provides:

“xxx 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.

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.”

Pursuant to the above provision, it is clear that a taxpayer adversely affected by the decision or inaction of the CIR within the 180-day period, may appeal to the Court of Tax Appeals (“CTA”), within thirty (30) days from receipt of the decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory and demandable. Settled is the rule that if a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requisite is jurisdictional and failure to comply therewith may be raised in a motion to dismiss (*Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, 491 SCRA 221).

Moreover, it is a well-settled rule that if the words of the law are clear and free of ambiguity, it must be given its literal meaning and applied without any interpretation (*Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, 554 SCRA 398, 409). The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act is not to be extended by implication (*Commissioner of Internal Revenue vs. Ariete*, 610 SCRA



472).

Clearly, the period to appeal within 30-days after the lapse of the 180-day period under *Section 228 of the NIRC of 1997, as amended*, is mandatory and jurisdictional.

On the other hand, *Section 3, Rule 4 of the 2005 Revised Rules of the CTA, as amended*, provides, as follows:

“SEC. 3. Cases Within the Jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

xxx

xxx

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of



these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

xxx xxx.”

The above provision was applied by the Supreme Court in the case of *RCBC vs. Commissioner of Internal Revenue*, 522 SCRA 152-153, as follows:

“From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.”



Hence, based on the RCBC case and the aforequoted *Section 3, Rule 4 of the 2005 Revised Rules of the CTA, as amended*, in case of inaction of the CIR to decide the protest within the 180-day period, a second option is afforded to the taxpayer, to wit: to wait for the final decision of the CIR on the disputed assessment even after the expiration of the 180-day period and appeal such final decision to the CTA, within 30 days from receipt of the decision. However, nowhere in *Section 228 of the NIRC of 1997, as amended*, is there a provision that the taxpayer is given a second option to wait for the CIR's decision even after the expiration of the 180-day period. *Section 228* is explicit in providing that should the taxpayer fails to appeal within 30 days after the expiration of the 180-day period, the decision shall become final, executory and demandable.

It is my humble opinion that the second option afforded to the taxpayer in *Section 3, Rule 4 of the 2005 Revised Rules of the CTA, as amended*, is without legal basis as it would render nugatory the 180-day period for the CIR to decide the protest under *Section 228*. Well-settled is the rule that rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes. Thus, in the recent case of *Lokin, Jr. vs. Commission on Elections, G.R. Nos. 179431-32 and*



180443, June 22, 2010, the Supreme Court ruled, as follows:

“The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes. The function of promulgating IRRs may be legitimately exercised only for the purpose of carrying out the provisions of a law. The power of administrative agencies is confined to implementing the law or putting it into effect. Corollary to this is that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.”

There is absolutely no legal basis to rule that taxpayers may wait indeterminately for the decision of the Commissioner, as the inevitable consequence thereof would nullify the intent of the law in providing for the 180-day and 30-day periods under *Section 228* and make the assessments, which are subject to the reconsideration of the Commissioner, imprescriptible. Moreover, it will just encourage taxpayers to sleep on their duties and hope that the BIR forgets to collect or collects after the prescriptive period of collection.

In view, however, of the ruling of the Supreme Court in the RCBC case, and the Supreme Court, being the court of last resort, and is the final



arbiter of all legal questions properly brought before it, and considering that its decision in any given case constitutes the law of that particular case; I have no alternative, but to follow the ruling of the Supreme Court in the *RCBC case*.

For all the foregoing, I am therefore constrained to concur with the Majority in ruling that the Petition for Review filed in C.T.A. Case No. 7038 was filed on time.


OLGA PALANCA-ENRIQUEZ
Associate Justice