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"AAA" ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each count of qualified rape in Criminal Case Nos. 3209-M-2000, 3206-M-2000 and 3207-M-2000 (qualified rape). Appellant is also ordered to pay interest at the legal rate of 6% *per annum* on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Mendoza,* and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 193100. December 10, 2014]

SAMAR-I ELECTRIC COOPERATIVE, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; THE GOVERNMENT IS ALLOWED ONLY THREE YEARS TO ASSESS THE CORRECT TAX LIABILITY OF A TAXPAYER; EXCEPTIONS; IN CASE OF FALSE RETURN, ASSESSMENT OR COLLECTION MAY BE MADE WITHIN TEN YEARS FROM DISCOVERY THEREOF.— [U]nder Section 203 of the NIRC of 1997. x x x *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court

[*] Per Special Order No. 1888 dated November 28, 2014.

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without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. x x x [T]he following exceptions are provided under Section 222 of the NIRC of 1997, *viz.*: *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. – (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. x x x In the case at bar, it was petitioner's substantial underdeclaration of withholding taxes in the amount of ₱2,690,850.91 which constituted the "falsity" in the subject returns – giving respondent the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission."

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES, RESPECTED. — We have consistently held that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under its special and technical training and knowledge. The findings of fact of these quasi-judicial agencies are generally accorded respect and even finality as long as they are supported by substantial evidence – in recognition of their expertise on the specific matters under their consideration.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; WRITTEN DETAILS ON THE NATURE, FACTUAL AND LEGAL BASES OF THE SUBJECT DEFICIENCY TAX ASSESSMENTS, MANDATORY.— Both Section 228 of the NIRC of 1997 and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments.

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> The reason for the mandatory nature of this requirement is explained in the case of *Commissioner of Internal Revenue v. Reyes*: x x x In *Commissioner of Internal Revenue v. Enron Subic Power Corporation,* we held that the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice, and that the alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. x x x In this case, we agree with the respondent that petitioner was sufficiently apprised of the nature, factual and legal bases, as well as how the deficiency taxes being assessed against it were computed.

APPEARANCES OF COUNSEL

Francisco I. Naputo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

At bar is a petition for review on *certiorari* of the Decision[1] of the Court of Tax Appeals *En Banc* (CTA EB) dated March 11, 2010 and its Resolution[2] dated July 28, 2010 in C.T.A. EB Nos. 460 and 462 (C.T.A. Case No. 6697) affirming the May 27, 2008 Decision[3] and the January 19, 2009 Amended Decision[4] of the CTA's First Division, and ordering petitioner to pay respondent Commissioner of Internal Revenue (CIR) deficiency withholding tax on compensation in the aggregate amount of ₱2,690,850.91, plus 20% interest starting September 30, 2002, until fully paid, pursuant to Section 249(c) of the National Internal Revenue Code (NIRC) of 1997.

The following facts are undisputed as found by the CTA's First Division and adopted by the CTA EB:

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[1] *Rollo,* pp. 28-57.

[2] *Id.* at 58-62.

[3] Records, pp. 426-457.

[4] *Id*. at 518-526.

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Samar-I Electric Cooperative, Inc. (Petitioner) is an electric cooperative, with principal office at Barangay Carayman, Calbayog City. It was issued a Certificate of Registration by the National Electrification Administration (NEA) on February 27, 1974 pursuant to Presidential Decree (PD) 269. Likewise, it was granted a Certificate of Provisional Registration under Republic Act (RA) 6938, otherwise known as the Cooperative Code of the Philippines on March 16, 1993, by the Cooperative Development Authority (CDA).

Respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer including *inter alia*, the power to issue tax assessment, evaluate, and decide upon protests relative thereto.

On July 13, 1999 and April 17, 2000, petitioner filed its 1998 and 1999 income tax returns, respectively. Petitioner filed its 1997, 1998, and 1999 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes on February 17, 1998, February 1, 1999, and February 4, 2000, in that order.

On November 13, 2000, respondent issued a duly signed Letter of Authority (LOA) No. 1998 00023803; covering the examination of petitioner's books of account and other accounting records for income and withholding taxes for the period 1997 to 1999. The LOA was received by petitioner on November 14, 2000.

Petitioner cooperated in the audit and investigation conducted by the Special Investigation Division of the BIR by submitting the required documents on December 5, 2000.

On October 19, 2001, respondent sent a Notice for Informal Conference which was received by petitioner in November 2001; indicating the allegedly income and withholding tax liabilities of petitioner for 1997 to 1999. Attached to the letter is a summary of the report, with an explanation of the findings of the investigators.

In response, petitioner sent a letter dated November 26, 2001 to respondent maintaining its indifference to the latter's findings and requesting details of the assessment.

On December 13, 2001, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations, good until March 29, 2002.

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On February 27, 2002, a letter was sent by petitioner to respondent requesting a detailed computation of the alleged 1997, 1998 and 1999 deficiency withholding tax on compensation.

On February 28, 2002, respondent issued a Preliminary Assessment Notice (PAN). The PAN was received by petitioner on April 9, 2002, which was protested on April 18, 2002. Respondent's Reply dated May 27, 2002, contained the explanation of the legal basis of the issuance of the questioned tax assessments.

However, on July 8, 2002, respondent dismissed petitioner's protest and recommended the issuance of a Final Assessment Notice.

Consequently, on September 15, 2002, petitioner received a demand letter and assessments notices (Final Assessment Notices) for the alleged 1997, 1998, and 1999 deficiency withholding tax in the amount of [₱]3,760,225.69, as well as deficiency income tax covering the years 1998 to 1999 in the amount of [₱]440,545.71, or in the aggregate amount of [₱]4,200,771.40.

Petitioner filed its protest and Supplemental Protest to the Final Assessment Notices on October 14, 2002 and November 4, 2002, respectively. But on the Final Decision on Disputed Assessment issued on April 10, 2003, petitioner was still held liable for the alleged tax liabilities.[5]

The CTA EB narrates the following succeeding events:

On May 29, 2003, the Petition for Review was filed by SAMELCO-I with the Court in division.

On May 27, 2008, the assailed Decision partially granting SAMELCO-I's petition was promulgated.

Dissatisfied, both parties sought reconsideration of the said decision. CIR filed the "Motion for Partial Reconsideration (Re: Decision dated 27 May 2008[)]" on June 13, 2008. On the other hand, SAMELCO-I's "Motion for Reconsideration" was filed on June 17, 2008.

On January 19, 2009, the Court in division promulgated its Amended Decision which denied CIR's motion and partially granted SAMELCO-I's motion.

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[5] *Id*. at 426-429. Citations omitted.

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Thereafter, CIR and SAMELCO-I filed their "Motion for Extension of Time to File Petition for Review" on February 6, 2009 and February 11, 2009, respectively. Both motions were granted by the Court.[6]

The following issues were raised by the parties in their petitions for review before the CTA EB. In C.T.A. EB 460, herein respondent CIR raised the following grounds:

I. Whether or not SAMELCO-I is entitled to tax privileges accorded to members in accordance with Republic Act No. 6938, or the Cooperative Code, or to privileges of Presidential Decree (PD) No. 269.

II. Whether or not SAMELCO-I is liable for the minimum corporate income tax (MCIT) for taxable years 1998 to 1999.

III. Whether or not SAMELCO-I is liable to pay the total deficiency expanded withholding tax of [₱]3,760,225.69 for taxable years 1997 to 1999.[7]

On the other hand, petitioner SAMELCO-I raised the following legal and factual errors in C.T.A. EB No. 462, *viz.*:

I. The Court in Division gravely erred in holding that the 1997 and 1998 assessments on withholding tax on compensation (received by SAMELCO-I on September 15, 2002), have not prescribed even if the waiver validly executed was good only until March 29, 2002.

II. The Court in Division erred in holding that CIR can validly assess within the ten (10)-year prescriptive period even if the notice of informal conference, PAN, formal letter of demand, and assessment notice mention not a word that the BIR is invoking Section 222 (a) of the 1997 Tax Code [then Sec. 223, NIRC], due to alleged false withholding tax returns filed by [SAMELCO-I] as the same assertions were mere afterthought to justify application of the 10-year prescriptive period to assess.

III. The Court in Division failed to consider that CIR made no findings as to SAMELCO-I's filing of a false return as clearly

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[6] *Rollo*, p. 33.

[7] *Id*. at 34.

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manifested by the non-imposition of 50% surcharge on the 1997, 1998 and 1999 basic withholding tax deficiency in the PAN, demand notice and even in the assessment notice other than interest charges.

IV. The Court in Division erred in not holding that given SAMELCO-I's filing of its 1997, 1998, and 1999 withholding tax returns in good faith, and in close consultation with the BIR personnel in Calbayog City where SAMELCO-I's place of business is located, the latter should no longer be imposed the incremental penalties (surcharge and interest).

V. The Court in Division failed to rule that since there was no substantial under remittance of 1998 withholding tax as the basic deficiency tax per amended decision is less than 30% of the computed total tax due per return, SAMELCO-I did not file a false return.

VI. The Court in Division overlooked the fact that for taxable year 1999, [SAMELCO-I] remitted the amount of [₱]844,958.00 as withholding tax in compensation instead of [₱]786,702.43 as indicated in Page 8, Annex C of the CTA (1st Division) Decision.

VII. The Court in Division erred in failing to declare as void both the formal letter of demand and assessment notice on withholding tax on compensation for 1997 taxable year, given its non-compliance with Section 3.1.4 of RR 12-99.[8]

On February 26, 2009, the CTA EB consolidated both cases. After the filing of the respective Comments of both parties, the cases were deemed submitted for decision. The CTA EB found that the issues and arguments raised by the parties were "mere reiterations of what have been considered and passed upon by the Court in division in the assailed Decision and the Amended Decision."[9] It ruled that SAMELCO-I is exempted in the payment of the Minimum Corporate Income Tax (MCIT); that due process was observed in the issuance of the assessments in accordance with Section 228 of the Tax Code; and that the 1997 and 1998 assessments on deficiency withholding tax on

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[8] *Id*. at 34-36. Underscoring in the original.

[9] *Id*. at 37.

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compensation have not prescribed. Finding no reversible error in the Decision and the Amended Decision, the CTA EB ruled, *viz.*:

> **WHEREFORE**, premises considered, We deny the petitions for lack of merit. Accordingly, We **AFFIRM** the May 27, 2008 Decision and the January 19, 2009 Amended Decision promulgated by the First Division of this Court.
>
> **SO ORDERED.**[10]

Petitioner moved for reconsideration. In a Resolution dated July 28, 2010, the CTA EB denied the motion. Petitioner now comes to this Court raising the following assignment of errors:

A. The Honorable CTA *En Banc* gravely erred in holding that respondent sufficiently complied with the due process requirements mandated by Section 228 of the 1997 Tax Code in the issuance of 1997-1999 assessments to petitioner, even if the details of discrepancies on which the assessments were factually and legally based as required under Section 3.1.4 of Revenue Regulations (RR) No[.] 12-99, were not found in the Formal Letter of Demand and Final Assessment Notice (FAN) sent to petitioner, in clear violation of the doctrine established in the case of *Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009*, applying Section 3.1.4 of RR 12-99 in relation to Section 228 NIRC.

B. The Honorable CTA *En Banc* erred in holding that respondent observed due process notwithstanding the missing Annex "A-1" that was meant to show Details of Discrepancies and to be attached to BIR's Letter of Demand/Final Notice dated September 15, 2002, which was not furnished to petitioner and worse, a file copy of which is not even found in the BIR records as part of its Exhibit "16" and neither is the same found in the CTA records.

C. In deciding that the 1997 and 1998 withholding tax assessments have not yet prescribed, the Honorable CTA *En Banc* failed to consider the singular significance of the Waiver of the Defense of Prescription validly agreed upon and executed by the parties.

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[10] *Id.* at 56. Emphasis in the original.

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D. The Honorable CTA *En Banc* erred in holding that respondent can validly assess within the ten (10)-year prescriptive period even if the Notice of Informal Conference, PAN, and Final Letter of Demand (dated September 15, 2002), mentioned not a word as to the falsity of the returns filed by petitioner, but as an afterthought that was raised rather belatedly only in the Answer and during the trial.

E. The Honorable CTA *En Banc* erred in holding as valid the **1997** deficiency withholding tax assessment being anchored on RR 2-98 (as cited in Notice of Informal Conference and PAN), as the said RR 2-98 governs compensation income paid beginning January 1, 1998.[11]

We shall resolve the instant controversy by discussing the following two main issues *in seriatim*: whether the 1997 and 1998 assessments on withholding tax on compensation were issued within the prescriptive period provided by law; and whether the assessments were issued in accordance with Section 228 of the NIRC of 1997.

On the issue of prescription, petitioner contends that the subject 1997 and 1998 withholding tax assessments on compensation were issued beyond the prescriptive period of three years under Section 203 of the NIRC of 1997. Under this section, the government is allowed a period of only three years to assess the correct tax liability of a taxpayer, *viz.*:

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

Relying on Section 203, petitioner argues that the subject deficiency tax assessments issued by respondent on September

[11] *Id.* at 12-13. Underscoring in the original.

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15, 2002 was issued beyond the three-year prescriptive period. Petitioner filed its *Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes* on the following dates: on February 17, 1998 for the taxable year 1997; and on February 1, 1999 for the year taxable 1998. Thus, if the period prescribed under Section 203 of the NIRC of 1997 is to be followed, the three-year prescriptive period to assess for the taxable years 1997 and 1998 should have ended on February 16, 2001 and January 31, 2002, respectively.

We disagree.

While petitioner is correct that Section 203 sets the three-year prescriptive period to assess, the following exceptions are provided under Section 222 of the NIRC of 1997, *viz.*:

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

(a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(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.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may

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be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however*, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree. (Emphasis supplied.)

In the case at bar, it was petitioner's substantial underdeclaration of withholding taxes in the amount of ₱2,690,850.91 which constituted the "falsity" in the subject returns – giving respondent the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission."[12]

The case of *Aznar v. Court of Tax Appeals*[13] discusses what acts or omissions may constitute falsity, *viz.*:

Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in

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[12] Sec. 222 (a), NIRC.

[13] 157 Phil. 510 (1974).

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court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity," "fraud" and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.

There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made.[14]

A careful examination of the evidence on record yields to no other conclusion but that petitioner failed to withhold taxes from its employees' 13th month pay and other benefits in excess of thirty thousand pesos (₱30,000.00) amounting to ₱2,690,850.91 for the taxable years 1997 to 1999 – resulting to its filing of the subject false returns. Petitioner failed to refute this finding, both in fact and in law, before the courts *a quo*.

We quote the following portion of the assailed Decision of the CTA EB, *viz.*:

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[14] *Id.* at 523-524.

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It is noteworthy to mention that during the trial, the witness for the CIR testified that SAMELCO-I did not file an accurate return, as follows:

ATTY. FRANCIA:
Q: Did the petitioner file an accurate Return?

MS. RAPATAN:
A: No.

ATTY. FRANCIA:
Q: Can you please explain?

MS. RAPATAN:
A: Because I based the computation of my deficiency withholding taxes on declared taxable income per alpha list submitted then, I have extracted a data from the Alpha List, particularly that of the manager and other officials, only their basic salary and their overtime pay were declared but the other benefits were not actually subjected to withholding tax. So, the deficiency withholding taxes from the taxes on the taxable 13th month pay and other benefits in excess of the [P]12,000.00 for 1997 and for the taxable years 1998 and 1999, in excess of the [P]30,000.00. I also noticed that the per diem of the Manager was not included in the withholding tax computation of SAMELCO[-]I.

ATTY. FRANCIA:
Nothing further, your Honors.

JUSTICE BAUTISTA:
Any re-cross?

ATTY. NAPUTO:
No re-cross, your Honors.[15]

We have consistently held that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under its special and technical training and knowledge.[16]

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[15] *Rollo*, pp. 44-45.

[16] *Quiambao v. Court of Appeals*, 494 Phil. 16, 37-38 (2005). Citations omitted.

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The findings of fact of these quasi-judicial agencies are generally accorded respect and even finality as long as they are supported by substantial evidence – in recognition of their expertise on the specific matters under their consideration.[17] In the case at bar, petitioner failed to proffer convincing argument and evidence that would persuade us to disturb the factual findings of the CTA First Division, as affirmed by the CTA EB. As such, we cannot but affirm the finding of petitioner's substantial underdeclaration of withholding taxes in the amount of ₱2,690,850.91 which constituted the "falsity" in the subject returns.

Anent the issue of violation of due process in the issuance of the final notice of assessment and letter of demand, Section 228 of the NIRC of 1997 provides:

SEC. 228. *Protesting of Assessment*. – x x x

x x x x x x x x x

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

Petitioner contends that as the Final Demand Letter and Assessment Notices (FAN) were silent as to the nature and basis of the assessments, it was denied due process,[18] and the assessments must be declared void. It likewise invokes Revenue Regulations (RR) No. 12-99 which states, *viz.*:

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. x x x

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[17] *Id.* at 38-39. Citations omitted.

[18] *Rollo*, p. 13.

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We uphold the assessments issued to petitioner.

Both Section 228 of the NIRC of 1997 and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments. The reason for the mandatory nature of this requirement is explained in the case of *Commissioner of Internal Revenue v. Reyes*:[19]

A void assessment bears no valid fruit.

The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.** The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for – not to mention the insufficiency of – the gross figures and details of the itemized deductions indicated in the notice and the letter. **This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at**. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." (Emphasis supplied; citations omitted)

In *Commissioner of Internal Revenue v. Enron Subic Power Corporation*,[20] we held that the law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice, and that the alleged

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[19] 516 Phil. 176, 189-190 (2006).

[20] 596 Phil. 229, 236 (2009).

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"factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. Thus:

> Both the CTA and the CA concluded that the deficiency tax assessment merely itemized the deductions disallowed and included these in the gross income. It also imposed the preferential rate of 5% on some items categorized by Enron as costs. The legal and factual bases were, however, not indicated.
>
> The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.
>
> We disagree. **The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment.** These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. **Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.**[21] (Emphasis supplied)

In this case, we agree with the respondent that petitioner was sufficiently apprised of the nature, factual and legal bases, as well as how the deficiency taxes being assessed against it were computed. Records reveal that on October 19, 2001, prior to the conduct of an informal conference, petitioner was already informed of the results and findings of the investigations made by the respondent, and was duly furnished with a copy of the summary of the report submitted by

[21] *Id.* at 235-236.

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Revenue Officer Elisa G. Ponferrada-Rapatan of the Special Investigation Division. Said summary report contained an explanation of Findings of Investigation stating the legal and factual bases for the deficiency assessment. In a letter dated February 27, 2002 petitioner requested for copies of working papers indicating how the deficiency withholding taxes were computed.[22] Respondent promptly responded in a letter-reply dated February 28, 2002 stating:

> please be informed that the cooperative's deficiency withholding taxes on compensation were due to the failure of the cooperative to withhold taxes on the taxable 13th month pay and other benefits in excess of P30,000.00 threshold pursuant to Section 3 of Revenue Regulation No. 2-95 implementing Republic Act No. 7833 and Section 2.78/1 B 11 of Revenue Regulation 2-98 implementing Section 32 B e of Republic Act No. 8424. Further, we are providing you hereunder the computational format on how deficiency withholding taxes were computed and sample computation from our working papers, for your information and guidance.[23]

On April 9, 2002, petitioner received the PAN dated February 28, 2002 which contained the computations of its deficiency income and withholding taxes. Attached to the PAN was the detailed explanation of the particular provision of law and revenue regulation violated, thus:

DETAILS OF DISCREPANCIES

1. Deficiency income taxes for 1998 and 1999 respectively result from non-payment of the minimum corporate income tax (MCIT) imposed pursuant to Section 27(E) of the 1997 Tax Reform Act.
2. Deficiency Withholding Taxes on Compensation for 1997-1999 are the total withholding taxes on compensation of all employees of SAMELCO[-]I resulting from failure of employer to withhold taxes on the taxable 13th month pay and other benefits in excess of [₱]30,000.00 threshold pursuant to Revenue Regulation 2-98.[24]

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[22] CTA records, pp. 19-22, 27.

[23] BIR records, pp. 121-122.

[24] *Id.* at 137.

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The above information provided to petitioner enabled it to protest the PAN by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency withholding taxes and assessment of minimum corporate income tax despite petitioner's position that it remains exempt therefrom.[25] In its letter-reply dated May 27, 2002, respondent answered the arguments raised by petitioner in its protest, and requested it to pay the assessed deficiency on the date of payment stated in the PAN. A second protest letter dated June 23, 2002 was sent by petitioner, to which respondent replied (letter dated July 8, 2002) answering each of the two issues reiterated by petitioner: (1) validity of EO 93 withdrawing the tax exemption privileges under PD 269; and (2) retroactive application of RR No. 8-2000.[26] The FAN was finally received by petitioner on September 24, 2002, and protested by it in a letter dated October 14, 2002 which reiterated in lengthy arguments its earlier interpretation of the laws and regulations upon which the assessments were based.[27]

Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.[28]

Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron.* Petitioner's right to due process was thus not violated.

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[25] CTA records, pp. 30-32.

[26] *Id.* at 33-39.

[27] *Id.* at 40-41, 46-61.

[28] Exhibit 17, BIR records, pp. 254-263.

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WHEREFORE, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Tax Appeals *En Banc* dated March 11, 2010 and July 28, 2010, respectively, in C.T.A. EB Nos. 460 and 462 (C.T.A. Case No. 6697), are hereby **AFFIRMED and UPHELD**.

With costs against the petitioner.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza,[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 193108. December 10, 2014]

MARILYN VICTORIO-AQUINO, *petitioner, vs.* **PACIFIC PLANS, INC. and MAMERTO A. MARCELO, JR. (Court-Appointed Rehabilitation Receiver of Pacific Plans, Inc.),** *respondents*.

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; REHABILITATION OF CORPORATION; UNDER AM NO. 04-9-07-SC, ALL DECISIONS OF THE REHABILITATION COURT SHALL BE BROUGHT TO THE COURT OF APPEALS VIA PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; APPLICABLE RULE AT THE TIME IN CASE AT BAR.— [T]he governing rule at the time respondent filed its petition for rehabilitation was the Interim Rules, which does not expressly state the mode of appeal from the decisions, orders

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[*] Designated as Acting Member per Special Order No. 1896 dated November 28, 2014.