

SECOND DIVISION

[G.R. No. 215534, April 18, 2016]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
LIQUIGAZ PHILIPPINES CORPORATION, RESPONDENT.**

[G.R. NO. 215557]

**LIQUIGAZ PHILIPPINES CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

Presented before us is a novel issue. When may a Final Decision on Disputed Assessment (*FDDA*) be declared void, and in the event that the *FDDA* is found void, what would be its effect on the tax assessment?

Assailed in these consolidated petitions for review on certiorari filed under Rule 45 of the Rules of Court are the May 22, 2014 Decision^[1] and the November 26, 2014 Resolution^[2] of the Court of Tax Appeals (*CTA*) En Banc which affirmed the November 22, 2012 Decision^[3] of the *CTA* Division, Second Division (*CTA* Division).

Liquigaz Philippines Corporation (*Liquigaz*) is a corporation duly organized and existing under Philippine laws. On July 11, 2006, it received a copy of Letter of Authority (*LOA*) No. 00067824, dated July 4, 2006, issued by the Commissioner of Internal Revenue (*CIR*), authorizing the investigation of all internal revenue taxes for taxable year 2005.^[4]

On April 9, 2008, Liquigaz received an undated letter purporting to be a Notice of Informal Conference (*NIC*), as well as the detailed computation of its supposed tax liability. On May 28, 2008, it received a copy of the Preliminary Assessment Notice^[5] (*PAN*), dated May 20, 2008, together with the attached details of discrepancies for the calendar year ending December 31, 2005.^[6] Upon investigation, Liquigaz was initially assessed with deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of P23,931,708.72, broken down as follows:

Expanded Withholding Tax (<i>EWT</i>)	P5,456,141.82
Withholding Tax on Compensation (<i>WTC</i>)	P4,435,463.97
Fringe Benefits Tax (<i>FBT</i>)	P14,040,102.93
TOTAL	P23,931,708.72

Thereafter, on June 25, 2008, it received a Formal Letter of Demand^[7] (FLD)/Formal Assessment Notice (FAN), together with its attached details of discrepancies, for the calendar year ending December 31, 2005. The total deficiency withholding tax liabilities, inclusive of interest, under the FLD was P24,332,347.20, which may be broken down as follows:

EWT	P 5,535,890.38
WTC	P 4,500,169.94
FBT	P 14,296,286.88
TOTAL	P 24,332,347.20

On July 25, 2008, Liquigaz filed its protest against the FLD/FAN and subsequently submitted its supporting documents on September 23, 2008.

Then, on July 1, 2010, it received a copy of the FDDA^[8] covering the tax audit under LOA No. 00067824 for the calendar year ending December 31, 2005. As reflected in the FDDA, the CIR still found Liquigaz liable for deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of P22,380,025.19, which may be broken down as follows:

EWT	P 3,479,426.75
WTC	P 4,508,025.93
FBT	P14,392,572.51
TOTAL	P 22,380,025.19

Consequently, on July 29, 2010, Liquigaz filed its Petition for Review before the CTA Division assailing the validity of the FDDA issued by the CIR.^[9]

The CTA Division Ruling

In its November 22, 2012 Decision, the CTA Division partially granted Liquigaz's petition cancelling the EWT and FBT assessments but affirmed with modification the WTC assessment. It ruled that the portion of the FDDA relating to the EWT and the FBT assessment was void pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as implemented by Revenue Regulations (RR) No. 12-99.

The CTA Division noted that unlike the PAN and the FLD/FAN, the FDDA issued did not provide the details thereof, hence, Liquigaz had no way of knowing what items were considered by the CIR in arriving at the deficiency assessments. This was especially true because the FDDA reflected a different amount from what was stated in the FLD/FAN. The CTA Division explained that though the legal bases for the EWT and FBT assessment were stated in the FDDA, the taxpayer was not notified of the factual bases thereof, as required in Section 228 of the NIRC.

On the other hand, it upheld the WTC assessment against Liquigaz. It noted that the factual bases used in the FLD and the FDDA with regard thereto were the same as

the difference in the amount merely resulted from the use of a different tax rate.

The CTA Division agreed with Liquigaz that the tax rate of 25.40% was more appropriate because it represents the effective tax compensation paid, computed based on the total withholding tax on compensation paid and the total taxable compensation income for the taxable year 2005. It did not give credence to Liquigaz's explanation that the salaries account included accrued bonus, 13th month pay, *de minimis* benefits and other benefits and contributions which were not subject to withholding tax on compensation. The CTA Division relied on the report prepared by Antonio O. Maceda, Jr., the court-commissioned independent accountant, which found that Liquigaz was unable to substantiate the discrepancy found by the CIR on its withholding tax liability on compensation. The dispositive portion of the CTA Division decision reads:

WHEREFORE, the *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency expanded withholding tax in the amount of P3,479,426.75 and fringe benefits tax in the amount of P14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby **CANCELLED** and **WITHDRAWN** for being void.

However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of P2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Salaries per ITR	P52,239,313.00
Less: Salaries per Alphalist	P42,921,057-16
Discrepancy	P9,318,255-84
Tax rate	25.40%
Basic Withholding Tax on Compensation	P2,366,836.98
Add: 25% Surcharge	P591,709.5
Total Amount Due	P2,958,546.23

In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum of the basic deficiency withholding tax on compensation of P2,958,546.23 computed from January 20, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of P2,958,546.23 and on the deficiency interest which have accrued as aforesaid in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(0)(3) of the NIRC of 1997, as amended.

The compromise penalty of P25,000.00, originally imposed by respondent

is hereby excluded there being no compromise agreement between the parties.

SO ORDERED^[10]

Both the CIR and Liquigaz moved for reconsideration, but their respective motions were denied by the CTA Division in its February 20, 2013 Resolution.

Aggrieved, they filed their respective petitions for review before the CTA *En Banc*.

The CTA En Banc- Ruling

In its May 22, 2014 Decision, the CTA *En Banc* affirmed the assailed decision of the CTA Division. It reiterated its pronouncement that the requirement that the taxpayer should be informed in writing of the law and the facts on which the assessment was made applies to the FDDA— otherwise the assessment would be void. The CTA *En Banc* explained that the FDDA determined the final tax liability of the taxpayer, which may be the subject of an appeal before the CTA.

The CTA *En Banc* echoed the findings of the CTA Division that while the FDDA indicated the legal provisions relied upon for the assessment, the source of the amounts from which the assessments arose were not shown. It emphasized the need for stating the factual bases as the FDDA reflected *different* amounts than that contained in the FLD/FAN.

On the other hand, the CTA *En Banc* sustained Liquigaz' WTC assessment. It observed that the basis for the assessment was the same for the FLD and the FDDA, which was a comparison of the salaries declared in the Income Tax Return (*ITR*) and the Alphalist that resulted in a discrepancy of P9,318,255.84. The CTA *En Banc* highlighted that the change in the amount of assessed WTC deficiency simply arose from the revision of the tax rate used—from 32% to the effective tax rate of 25.40% suggested by Liquigaz.

Further, it disregarded the explanation of Liquigaz on the ground of its failure to specify how much of the salaries account pertained to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to the Social Security System, Medicare and Pag-Ibig Fund. The CTA *En Banc* reiterated that even the court-commissioned independent accountant reported that Liquigaz was unable to substantiate the discrepancy found by the CIR.

Both parties moved for a partial reconsideration of the CTA *En Banc* Decision, but the latter denied the motions in its November 26, 2014 Resolution.

Not satisfied, both parties filed their respective petitions for review, anchored on

SOLE ISSUE

WHETHER THE COURT OF TAX APPEALS *EN BANC* ERRED IN PARTIALLY UPHOLDING THE VALIDITY OF THE ASSESSMENT AS TO THE WITHHOLDING TAX ON COMPENSATION BUT DECLARING

INVALID THE ASSESSMENT ON EXPANDED WITHHOLDING TAX AND FRINGE BENEFITS TAX.

The present consolidated petitions revolve around the same FDDA where Liquigaz seeks the cancellation of its remaining tax liability and the CIR aims to revive the assessments struck down by the tax court. Basically, Liquigaz asserts that like its assessment for EWT and FBT deficiency, the WTC assessment should have been invalidated because the FDDA did not provide for the facts on which the assessment was based. It argues that it was deprived of due process because in not stating the factual basis of the assessment, the CIR did not consider the defenses and supporting documents it presented.

Moreover, Liquigaz is adamant that even if the FDDA would be upheld, it should not be liable for the deficiency WTC liability because the CIR erred in comparing its ITR and Alphalist to determine possible discrepancies. It explains that the salaries of its employees reflected in its ITR does not reflect the total taxable income paid and received by the employees because the same refers to the gross salaries of the employees, which included amounts that were not subject to WTC.

On the other hand, the CIR avers that the assessments for EWT and FBT liability should be upheld because the FDDA must be taken together with the PAN and FAN, where details of the assessments were attached. Hence, the CIR counters that Liquigaz was fully apprised of not only the laws, but also the facts on which the assessment was based, which were likewise evidenced by the fact that it was able to file a protest on the assessment. Further, the CIR avers that even if the FDDA would be declared void, it should not result in the automatic abatement of tax liability especially because RR No. 12-99 merely states that a void decision of the CIR or his representative shall not be considered as a decision on the assessment.

The Court's Ruling

Central to the resolution of the issue is Section 228^[11] of the NIRC and RR No. 12-99,^[12] as amended. They lay out the procedure to be followed in tax assessments. Under Section 228 of the NIRC, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In implementing Section 228 of the NIRC, RR No. 12-99 reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special