19-000082-0111

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SPECIAL FIRST DIVISION**

**CTA CASE NO. 10040**

**BETA ELECTROMECHANICAL CORPORATION,**
Petitioner,

- versus -

**NOTICE OF DECISION**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo Street, Legazpi Village, Makati City

**ATTY. MARVEEN B. DE LA PAZ**
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
BIR Road, Diliman, Quezon City

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*(Collaborating counsel for the petitioner)*
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4 ADB Avenue, Ortigas Center, 1605 Pasig City, Metro Manila

***GREETINGS:***

You are hereby notified by these presents that on **March 5, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 7, 2024.**

**Atty. Maria Johoanna F. Chan-Te**
Executive Clerk of Court II

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SPECIAL FIRST DIVISION***

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| **BETA ELECTROMECHANICAL CORPORATION,** *Petitioner,* | **CTA Case No. 10040** Members: |
| *-versus-* | **DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: MAR 05 2024; 2:00PM |

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# DECISION

**MANAHAN, *J.*:**

## THE CASE

This is a *Petition for Review with Omnibus Motion to Suspend Collection of Taxes; for the Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and/or to Dispense with the Requirement to Post a Bond,* filed on March 1, 2019, praying that: (1) a decision be rendered nullifying, invalidating, and cancelling the *Warrant of Distraint and/or Levy* (WDL) No. 121.2019.2004, the Collection Letter dated January 9, 2018, and the assessment for being void; (2) that a Writ of Preliminary Injunction or an Order be issued suspending the implementation of the said WDL and Collection Letter; and (3) that an order be issued dispensing with the posting of the required bond.[1]

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[1] Prayer, *Petition for Review*, Docket, Vol. I, p. 59.

## THE PARTIES

Petitioner Beta Electromechanical Corporation is a domestic corporation organized and existing under and by virtue of Philippine laws and with address at No. 18, Bagong Calzada Street, Barangay Ususan, Taguig City.[2] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-308-348-00000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), empowered under the 1997 National Internal Revenue Code (NIRC), as amended, to authorize the examination of any taxpayer, to assess the correct amount of tax, and to decide disputed assessments arising under the laws administered by the BIR. He may be served with decisions, resolutions, orders, notices, pleadings, and other processes of this Court at his official station at the 7th Floor, Rm. 703, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

On May 16, 2014, petitioner received the *Letter of Authority* (LOA) No. 121-2014-00000081, authorizing Revenue Officers (ROs) Teodoro Matibag, Malik Dimakuta, Alfred Manodon, Myrna Ramirez, and Group Supervisor (GS) Monica Zamora, to conduct the audit/investigation of all internal revenue taxes including documentary stamp tax and other taxes of petitioner for the calendar year (CY) 2012.[5]

On July 8, 2015, petitioner received an undated *Preliminary Assessment Notice* (PAN),[6] to which petitioner filed with the BIR's Large Taxpayers Service, on July 22, 2015, its letter dated July 21, 2015,[7] requesting for the immediate

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[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, Vol. V, p. 2335.
[3] Par. 3, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336; Exhibit "P-2", Docket, Vol. V, pp. 2388 to 2399.
[4] Par. 2, Stipulation of Facts, JSFI, Docket, Vol. V, pp. 2335 to 2336.
[5] Par. 4, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336; Exhibit "P-3", Docket, Vol. V, p. 2390.
[6] Par. 5, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336. Refer also to Exhibit "P-5" (Docket, Vol. V, pp. 2392 to 2397), and Exhibit "R-4" [BIR Records (Exhibit "R-11"), pp. 271 to 276].
[7] Exhibit "P-6", Docket, Vol. V, pp. 2398 to 2405; BIR Records (Exhibit "R-11"), pp. 284 to 291.

consideration of petitioner's arguments and cancellation of the alleged deficiency tax assessments.

On October 26, 2015,[8] petitioner received the *Formal Letter of Demand* (FLD) issued on October 21, 2015 by the BIR. On November 23, 2015,[9] petitioner filed its letter with the BIR's Large Taxpayers Service to request for a reconsideration of the assessments made in the said FLD.

On January 25, 2018, petitioner received the Collection Letter dated January 9, 2018 issued by respondent in line with the CY 2012 audit.[10]

Thereafter, on February 1, 2019, the WDL of even date was issued by respondent and was received by petitioner.[11]

**PROCEEDINGS BEFORE THIS COURT**

Petitioner filed the present *Petition for Review with Omnibus Motion to Suspend Collection of Taxes; for the Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and to Dispense with the Requirement to Post a Bond* on March 1, 2019.[12]

In the Resolution dated March 26, 2019,[13] the Court: (1) set for hearing the above-stated *Omnibus Motion* on March 28, 2019; (2) gave petitioner a period of five (5) days before the said hearing within which to submit the judicial affidavits of its witnesses; and (3) respondent was granted a period of five (5) days from notice to file his comment/opposition to the said Omnibus Motion.

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[8] Par. 6, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336. Refer to Exhibits "P-9" to "P-9-d", Docket, Vol. V, pp. 2411 to 2420.
[9] Exhibits "R-7" to "R-7-a", BIR Records (Exhibit "R-11"), pp. 337-344.
[10] Par. 7, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336; Exhibit "P-30", Docket, Vol. V, p. 2446; and BIR Records (Exhibit "R-11"), p. 400.
[11] Exhibits "P-32" and "R-10", Docket, Vol. V, p. 2464. As to the existence of the WDL, refer to par. 8, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336.
[12] Docket, Vol. I, pp. 12 to 61.
[13] Docket, Vol. I, pp. 181 to 182.

On March 26, 2019, respondent filed a *Motion for Extension of Time to File Answer,*[14] which was granted by the Court in its Order dated April 2, 2019.[15]

On April 1, 2019, respondent filed an *Urgent Motion for Extension of Time to File Comment/Opposition (to Petitioner's Omnibus Motion to Suspend Collection of Taxes; for Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and to Dispense with the Requirement to Post a Bond).*[16] The said *Urgent Motion* was granted by the Court in its Order dated April 3, 2019.[17] Then, on April 5, 2019, respondent filed his *Comment/Opposition (to Petitioner's Omnibus Motion to Suspend Collection of Taxes; for Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and to Dispense with the Requirement to Post a Bond).*[18] Petitioner submitted its *Reply* on April 15, 2019.[19]

Relative to the said *Omnibus Motion,* petitioner presented both documentary and testimonial evidence in support thereof. It presented the testimonies of Ms. Maureen F. Yu Jeco,[20] petitioner's Accounting Manager and Comptroller, and Mr. Efren M. Gancayco,[21] petitioner's President.

On April 25, 2019, respondent filed another *Urgent Motion for Additional Time to File Answer,*[22] which was granted by the Court in its Resolution dated May 6, 2019.[23]

On May 27, 2019,[24] respondent filed his *Answer* where he raised the following special and affirmative defenses: (1) the court has no jurisdiction over the present case as the assessment has become final, demandable and executory; (2) the assessment is valid as it contains a demand and specifies the period within which to pay the assessed taxes; (3) the LOA

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[14] Docket, Vol. I, pp. 183 to 186.
[15] Docket, Vol. I, p. 194.
[16] Docket, Vol. I, pp. 189 to 192.
[17] Docket, Vol. I, p. 196.
[18] Docket, Vol. I, pp. 198 to 209.
[19] Docket, Vol. II, pp. 419 to 429.
[20] Exhibit "P-1", Docket, Vol. I, pp. 216 to 231; Minutes of the hearing held on, and Order dated, April 10, 2019, Docket, Vol. II, pp. 408 to 410.
[21] Exhibit "P-3", Docket, Vol. II, pp. 435 to 459; Minutes of the hearing held on, and Order dated, June 6, 2019, Docket, Vol. I, pp. 877 to 881.
[22] Docket, Vol. II, pp. 829 to 832.
[23] Docket, Vol. II, pp. 836 to 837.
[24] Docket, Vol. II, pp. 839 to 868.

issued against the Petitioner remains valid even without revalidation and despite reassignment of the conduct of audit to another revenue officer; (4) the Honorable Court's power of judicial review over decisions of the CIR on Disputed Assessment is by nature exclusive and appellate. Petitioner should not be allowed to raise issues for the first time on appeal; and, (5) the assessment has legal and factual basis and thus valid and binding against the petitioner.

On July 1, 2019, [25] petitioner filed its *Reply [to Respondent's Answer Dated May 27, 2019]*. On even date, petitioner filed a *Motion for Leave of Court to Recall Witness*, particularly, Mr. Efren M. Gancayco, for him to present and identify the substituted and additional documentary evidence of petitioner.[26] On July 31, 2019,[27] respondent filed a *Motion to Admit Attached Comment/ Opposition (Re: Motion for Leave of Court to Recall Witness)*,[28] with appended *Comment/ Opposition (Re: Motion for Leave of Court to Recall Witness)*. On August 8, 2019,[29] the Court issued a resolution granting the said motion and admitting respondent's *Comment/ Opposition (Re: Motion for Leave of Court to Recall Witness)*.

On August 30, 2019, the Court granted petitioner's *Motion for Leave of Court to Recall Witness*, and set the hearing for the same on October 15, 2019.[30] Consequently, petitioner submitted the *Supplemental Judicial Affidavit of Mr. Efren M. Gancayco* on October 10, 2019,[31] and the latter was recalled to testify on October 15, 2019.[32]

On November 22, 2019, petitioner filed its *Formal Offer of Exhibits (For the Omnibus Motion to Suspend Collection of Taxes, etc.)*.[33] On November 29, 2019, respondent submitted his *Comment (Petitioner's Formal Offer of Evidence)*.[34]

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[25] Docket, Vol. II, pp. 929 to 949.
[26] Docket, Vol. II, pp. 921 to 926.
[27] Docket, Vol. II, pp. 965 to 968.
[28] Docket, Vol. II, pp. 960 to 963 and 966.
[29] Docket, Vol. II, p. 971.
[30] Resolution dated August 30, 2019, Docket, Vol. II, pp. 976 to 978.
[31] Petitioner's *Submission/ Compliance* dated October 9, 2019, Docket, Vol. II, pp. 979 to 981; Exhibit "P-4", Docket, Vol. II, pp. 982 to 989.
[32] Minutes of the hearing held on, and Order dated, October 15, 2019, Docket, Vol. II, pp. 998-a to 1000.
[33] Docket, Vol. III, pp. 1013 to 1021.
[34] Docket, Vol. III, pp. 1615 to 1617.

In the Resolution dated January 10, 2020,[35] the Court admitted petitioner's offered exhibits.

On January 20, 2020, petitioner filed its *Memorandum [for the Omnibus Motion to Suspend Collection of Taxes, etc.]*.[36] On January 27, 2020, respondent submitted a *Manifestation* stating that he will no longer file a memorandum, and that he will be adopting the arguments in his *Comment/Opposition (to Petitioner's Omnibus Motion to Suspend Collection of Taxes; for Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and to Dispense with the Requirement to Post a Bond)* dated April 5, 2019.[37]

In the Resolution dated March 11, 2020,[38] the Court: (1) partially granted petitioner's *Omnibus Motion to Suspend Collection of Taxes; for the Lifting and Invalidation of the Warrant of Distraint and/or Levy, and/or Assessment of Taxes; and to Dispense with the Requirement to Post a Bond*; (2) suspended the collection of the alleged deficiency taxes for taxable year 2012; and (3) enjoined respondent from collecting the said deficiency taxes during the pendency of the case and until the case has been resolved with finality.

On June 17, 2020, respondent filed a *Motion for Reconsideration (Re: Resolution dated 11 March 2020)*, praying for the reversal and setting aside of the Resolution dated March 11, 2020.[39]

On June 30, 2020, petitioner filed a *Manifestation and Compliance (with Motion to Refer the Case to Mediation)*.[40] Respondent filed a *Manifestation (On Petitioner's Motion to Refer the Case to Mediation)* on July 22, 2020, stating that he has no objection to petitioner's motion.[41]

Meanwhile, in the Resolution dated July 9, 2020,[42] the Court noted that the supersedeas bond submitted by petitioner was not compliant with the Resolution dated March 11, 2020,

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[35] Docket, Vol. IV, pp. 1628 to 1629.
[36] Docket, Vol. IV, pp. 1630 to 1658.
[37] Docket, Vol. IV, pp. 1659 to 1660.
[38] Docket, Vol. IV, pp. 1666 to 1682.
[39] Docket, Vol. IV, pp. 1683 to 1696.
[40] Docket, Vol. IV, pp. 1700 to 1703.
[41] Docket, Vol. IV, pp. 1726 to 1727.
[42] Docket, Vol. IV, pp. 1723 to 1725.

which suspended the collection of the alleged deficiency taxes. Thus, the said Resolution was revoked and deemed without force and effect due to petitioner's failure to submit the required/compliant surety bond.

On July 24, 2020, petitioner filed a *Motion for Reconsideration (Re: Resolution dated 9 July 2020) (with Motion for Leave to Admit Reformed Supersedeas Bond)* with attached *Supersedeas Bond,*[43] praying for the Court to set aside and vacate the said Resolution, and admit and recognize the attached Supersedeas Bond. Meanwhile, respondent did not file his comment.[44]

On September 29, 2020, respondent filed a *Motion to Admit Attached Comment/Opposition (Re: Motion for Reconsideration*),[45] with appended *Comment/Opposition (Re: Motion for Reconsideration).*[46] The Court granted respondent's motion and admitted his *Comment/Opposition (Re: Motion for Reconsideration)* in its Resolution dated October 6, 2020.[47]

In the Resolution dated October 16, 2020,[48] the Court: (1) denied respondent's *Motion for Reconsideration (Re: Resolution dated 11 March 2020)* for lack of merit; (2) granted both petitioner's *Motion for Reconsideration (Re: Resolution dated 9 July 2020) (with Motion for Leave to Admit Reformed Supersedeas Bond) and Motion to Refer the Case to Mediation*; (3) set aside the Resolution dated July 9, 2020; (4) reinstated the Resolution dated March 11, 2020; (5) admitted and approved petitioner's reformed Supersedeas Bond; and, (6) directed the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on November 19, 2020.

On March 8, 2021, petitioner filed a *Manifestation* stating, among others, that the BIR has not yet communicated its decision about petitioner's counter-offer amounting to ₱6,082,334.00. Thus, it prays for the Court to note its Manifestation and to wait for the decision of respondent

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[43] Docket, Vol. IV, pp. 1729 to 1738.
[44] Records Verification dated September 15, 2020 issued by the Judicial Records Division of this Court, Docket, Vol. IV, p. 1743.
[45] Docket, Vol. IV, pp. 1744 to 1747.
[46] Docket, Vol. IV, pp. 1749 to 1751.
[47] Docket, Vol. IV, p. 1754.
[48] Docket, Vol. IV, pp. 1757 to 1763.

regarding the said counter-offer.[49] However, petitioner's prayer to wait for the decision of the respondent was denied by the Court in its Resolution dated May 19, 2021.[50]

The parties failed to come into an agreement.[51] Thus, the Pre-Trial Conference was set and held on June 24, 2021.[52] Prior thereto, petitioner's *Pre-Trial Brief*[53] and respondent's *Pre-Trial Brief*[54] were submitted on June 18, 2021.

On July 14, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[55] which was approved by the Court in its Resolution dated September 29, 2021,[56] thereby deeming the termination of the Pre-Trial. The Court then issued the Pre-Trial Order dated November 9, 2021.[57]

During trial, petitioner offered the testimonies of the following witnesses: (1) Ms. Maureen F. Yu Jeco[58] - petitioner's Accounting Manager and Comptroller; (2) Mr. Gremy Luck T. Roa[59] - petitioner's Accounting Supervisor; (3) Ms. Maricris M. Tomas[60] - petitioner's General Accountant; and (4) Ms. Madonna Mia S. Dayego[61] - Court-commissioned Independent Certified Public Accountant (ICPA).[62]

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[49] Docket, Vol. IV, pp. 1776 to 1779.
[50] Docket, Vol. IV, p. 1821.
[51] Mediator's Report dated May 20, 2021, Docket, Vol. IV, p. 1822.
[52] *Notice of Pre-Trial Conference* dated May 21, 2021, Docket, Vol. IV, pp. 1828 to 1830; Minutes of the hearing held on, and Order dated, June 24, 2021, Docket, Vol. V, pp. 2291to 2297.
[53] Docket, Vol. IV, pp. 1839 to 1866.
[54] Docket, Vol. V, pp. 2232 to 2236.
[55] Docket, Vol. V, pp. 2335 to 2352.
[56] Docket, Vol. V, pp. 2366 to 2367.
[57] Docket, Vol. V, pp. 2570 to 2586.
[58] Exhibit "P-44", Docket, Vol. IV, pp. 2036 to 2043; Order dated November 9, 2021, Docket, Vol. V, pp. 2588 to 2590.
[59] Exhibit "P-45", Docket, Vol. IV, pp. 2093 to 2102; Order dated November 9, 2021, Docket, Vol. V, pp. 2588 to 2590.
[60] Exhibit "P-42", Docket, Vol. IV, pp. 2154 to 2160; Minutes of the hearing held on, and Order dated, March 24, 2022, Docket, Vol. VI, pp. 2738 to 2741, and 2742 to 2742-A.
[61] Exhibit "P-43", Docket, Vol. V, pp. 2319 to 2325; Minutes of the hearing held on, and Order dated, March 5, 2019, Docket, pp. 185 to 191; Exhibit "P-88", Docket, Vol. V, pp. 2662 to 2684; Minutes of the hearing held on, and Order dated, March 24, 2022, Docket, Vol. VI, pp. 2738 to 2742-A.
[62] *Oath of Commission* dated November 9, 2021, Docket, Vol. V, p. 2599; Order dated November 9, 2021, Docket, Vol. V, pp. 2588 to 2590.

The *Report* of the ICPA was posted on December 27, 2021.[63]

On March 29, 2022, petitioner filed its *Formal Offer of Exhibits*.[64] On March 31, 2022,[65] respondent submitted his *Comment (On Petitioner's Formal Offer of Evidence)*. On June 1, 2022, the Court issued a Resolution[66] partially admitting petitioner's exhibits.

For his part, respondent offered the testimony of his lone witness, Mr. Alfred B. Manodon,[67] Chief Revenue Officer I at the BIR's Large Taxpayers Value-Added Tax (VAT) Audit Unit.

On September 9, 2022, respondent filed his *Formal Offer of Evidence*.[68] On September 19, 2022,[69] petitioner filed its *Comment (To the Formal Offer of Evidence of the Respondent)*. On November 18, 2022, the Court issued a Resolution[70] partially admitting respondent's exhibits.

On December 22, 2022, respondent submitted a *Manifestation* stating that he will adopt the arguments stated in his *Answer* filed on May 27, 2019 as his *Memorandum*.[71] On February 20, 2023, petitioner filed its *Memorandum*.[72]

On March 6, 2023,[73] the Court issued a resolution submitting the case for decision. Hence, this Decision.

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[63] Exhibit "P-86", Docket, Vol. V, pp. 2606 to 2655.
[64] Docket, Vol. VI, pp. 2745 to 2794.
[65] Docket, Vol. VI, pp. 2796 to 2798.
[66] Docket, Vol. VI, pp. 2804 to 2809.
[67] Exhibit "R-12", Docket, Vol. V, pp. 2241 to 2246; Minutes of the hearing held on, and Order dated, August 30, 2022, Docket, Vol. VI, pp. 2819 to 2821.
[68] Docket, Vol. VI, pp. 2825 to 2830.
[69] Docket, Vol. VI, pp. 2831 to 2841.
[70] Docket, Vol. VI, pp. 2847 to 2848.
[71] Docket, Vol. VI, pp. 2849 to 2851.
[72] Docket, Vol. VI, pp. 2854 to 2966.
[73] Minute Resolution dated March 6, 2023, Docket, Vol. VI, pp. 2854.

## THE ISSUES

The parties submitted the following issues for this Court's resolution:

"9.1. Whether or not the Honorable Court has jurisdiction over the instant case;

9.2. Whether or not petitioner is liable to pay the amount of Php170,673,457.84 representing petitioner's deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), inclusive of interest, for taxable year 2012, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, pursuant to Section 249(C) of the NIRC of the 1997; and delinquency interest at the rate of 12% per annum from January 1, 2018 until the amount is fully paid pursuant to Section 249(C) of the NIRC of 1997, in relation to Section 249(A) of the same Code, as amended by the TRAIN LAW."[74]

***Petitioner's arguments:***

Petitioner argues that: (1) it firmly established that this Court has jurisdiction over the subject matter of this *Petition for Review*; (2) it presented more than sufficient evidence to prove that the WDL and prior notices by the respondent are violative of its right to substantive and procedural process; and, (3) it has demonstrated and shown uncontroverted evidence to establish the invalidity and infirmity of the tax assessment.

***Respondent's counter-arguments:***

On the other hand, respondent argues that: (1) the Court has no jurisdiction over the present case as the assessment has become final, demandable and executory; (2) the assessment is valid as it contains a demand and it specifies the period within which to pay the assessed taxes; (3) the LOA issued against petitioner remains valid even without revalidation and despite reassignment of the conduct of audit to another revenue officer;

[74] Issues, JSFI, Docket, Vol. V, pp. 2336 to 2337.

(4) the Court's power of judicial review over decisions of the respondent on disputed assessment is by nature exclusive and appellate and, thus, petitioner should not be allowed to raise issues for the first time on appeal; and, (5) the assessment has legal and factual basis and therefore valid and binding against the petitioner.

**THE COURT'S RULING**

The *Petition for Review* is granted.

***This Court has jurisdiction over the case***

On this score, respondent alleges in his *Answer* that:

> "17. Moreover, without conceding that a valid protest was filed, still the Court has no jurisdiction over the present case for failure to file a timely appeal. Petitioner alleged in paragraph 44 of the petition that the Warrant of Distraint and/or Levy it received constitutes an act of the CIR on 'other matters' arising under the Tax Code or other laws administered by the BIR which maybe the subject of an appeal before the CTA as provided in Section 7(1) of R.A. 1125.
>
> 18. This, however, is misplaced given the circumstances of the case since petitioner admitted to have duly received the Collection Letter which served as the FDDA the receipt thereof reckons the period to appeal in CTA."

The Court disagrees with respondent.

Respondent's argument must fail in light of Section 7(a)(1) of Republic Act (RA) No. 1125,[75] as amended by RA No. 9282,[76]

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[75] AN ACT CREATING THE COURT OF TAX APPEALS.

[76] 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.

which confers upon this Court the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the 1997 NIRC, as amended. Said provision reads:

> "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 Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphasis supplied)*

Based on the foregoing provision, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the 1997 NIRC, as amended, or related laws administered by respondent.[77]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue* (*Philippine Journalists* case),[78] the Supreme Court held that:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis supplied)*

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[77] *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[78] G.R. 162852, December 16, 2004.

Based on the *Philippine Journalists* case, the validity of a WDL is an issue that falls under "*other matters arising from the National Internal Revenue Code (NIRC)*" that is within the jurisdiction of this Court to decide upon. Here, petitioner also assails the validity of WDL No. 121.2019.2004 issued by respondent on February 1, 2019.[79] As such, the Court may take cognizance of the same.

In instances when respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, the Supreme Court has considered this an implied denial.[80] The taxpayer's remedy then was to appeal to this Court within thirty (30) days from the date that it was notified of the warrant or collection suit.[81]

Relatively, Section 11 of RA No. 1125, as amended by RA No. 9282, pertinently states:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue...**may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." *(Emphasis supplied)*

Thus, petitioner had thirty (30) days from receipt of the said WDL No. 121.2019.2004 on February 1, 2019,[82] or until March 3, 2019, within which to file its appeal before this Court. Correspondingly, the filing of the present *Petition for Review* on March 1, 2019[83] was timely made.

Nevertheless, it must be pointed out that this Court is not unaware of the case where the Supreme Court considered a collection letter having the character of finality, such as the

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[79] Exhibits "P-32" and "R-10", Docket, Vol. V, p. 2464.
[80] *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 Phil. 829 (1988) [Per J. Cruz, First Division].
[81] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.
[82] Exhibits "P-32" and "R-10", Docket, Vol. V, p. 2464. As to the existence of the WDL, refer to par. 8, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336.
[83] Docket, Vol. I, pp. 12 to 61.

subject Collection Letter dated January 9, 2018,[84] which may already be considered as respondent's final decision that is appealable to this Court. Particularly, the case referred to is *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[85] where the High Court ruled as follows:

> "In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.
>
> This Court holds that the **Collection Letter** dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The **Collection Letter** dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. The **Collection Letter** was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon 'failed to submit supporting documents within 60-day period.' This **Collection Letter** demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.
>
> Avon received the **Collection Letter** dated July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.
>
> **In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on 'other matters' arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. v. CIR*, may be the subject of an appropriate appeal**

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[84] Par. 7, Stipulation of Facts, JSFI, Docket, Vol. V, p. 2336; Exhibit "P-30", Docket, Vol. V, p. 2446; and BIR Records (Exhibit "R-11"), p. 400.
[85] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> **before the Court of Tax Appeals**." [86] *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncements, it is clear that a collection letter, having the character of finality, may be treated as respondent's final decision, which, in turn, may already be appealed to this Court. However, it is likewise clear that such collection letter may fall under the category of "other matters" pursuant to the earlier quoted *Philippine Journalists* case, which, as earlier shown, categorically ruled that this Court's jurisdiction also includes the power "*to determine if the warrant of distraint and levy issued by the BIR is valid*".

Thus, based on the rulings in the *Avon* case and the *Philippine Journalists* case, it is not hard to discern that this Court has jurisdiction, not only over cases questioning or assailing collection letters which has the character of finality, but also over WDLs.

In any event, applying the *Philippine Journalists* case, the Court has jurisdiction to rule on questions surrounding the WDL No. 121.2019.004 issued by the BIR on February 1, 2019.

**The subject income tax, VAT and EWT assessments are void for violation of petitioner's right to administrative due process**

Before proceeding, it is noteworthy that the parties did not raise the invalidity of the assessments due to non-observance of due process in their joint stipulation.

In this regard, Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) pertinently reads:

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[86] *Id.*, citing 488 Phil. 218 (2004) [Per J. Ynares-Santiago, First Division]; G.R. No. 162852, December 16, 2004.

> "SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**" *(Emphasis supplied)*

Based on the foregoing provision, the Court is not limited to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. This authority is confirmed in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[87] *viz*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
>> SECTION 1. *Rendition of judgment.* – xxx
>>
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. xxx."

Likewise, the Supreme Court held in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[88] that:

> "As the CTA *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was

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[87] G.R. No. 183408, July 12, 2017.
[88] G.R. No. 222476, May 5, 2021.

denied due process even though it was not expressly raised by respondent in its petition for review. xxx."

Finally, in *Comilang v. Burcena, et al.*,[89] the Supreme Court also held that:

> "Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law. Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned.
>
> xxx xxx xxx
>
> **Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances:** (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; **(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;** (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; **(e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent**."[90] *(Emphasis supplied)*

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[89] G.R. No. 146853, February 13, 2006.

[90] Cited also in *M/V "Don Martin" Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. v. Hon. Secretary of Finance, et al.* (G.R. No. 160206, July 15, 2015), wherein the Supreme Court recognizes this Court's jurisdiction to determine an issue not raised by the parties.

On the basis of the foregoing jurisprudence, it is clear that this Court, as an appellate court, is not limited to review solely assigned errors in the appeal. To be sure, although the issue of non-observance of due process in the issuance of the subject tax assessments was not specifically raised or assigned as an error in the present case, the consideration thereof is necessary to arrive at a just and complete resolution of the case.

Relative thereto, it must be emphasized that tax assessments issued in violation of the due process rights of a taxpayer are null and void.[91] Thus, assuming that the said issue is answered in the affirmative, as determined by this Court, it would be unjust on the part of petitioner to be held liable under an invalid tax assessment.

In the same vein, the issue raised by this Court is closely related to the second issue raised by the parties, *i.e.*, whether petitioner is liable for the assessed taxes. Corollarily, the said second issue is dependent upon and integral to the said issue raised by this Court.

As such, the Court will now proceed to determine the validity of the subject assessments.

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

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> **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.**
>
> xxx xxx xxx." *(Emphasis supplied)*

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[91] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[92] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[93] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[94] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[95]

In relation thereto, Section 3 of Revenue Regulations (RR) No. 12-99,[96] as amended by RR No. 18-2013,[97] pertinently provides:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes the said office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or

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92 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

93 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

94 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

95 *Id.*, citing *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, January 27, 2006, 516 Phil. 176, 189 (2006).

96 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

97 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN 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 assessment shall be void*** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision." *(Emphases and underscoring supplied)*

The foregoing provisions require that the PAN, FLD/FAN and FDDA must state the facts and the law on which the assessment is based. Otherwise, the assessment shall be void.

In the *Avon* case,[98] the Supreme Court found that:

> Avon asserts feigned compliance by the Bureau of Internal Revenue officials and agents of their duties under the law and revenue regulation. It adds that the administrative proceeding conducted by the Bureau of Internal Revenue was 'a farce,' an idle ritual tantamount to a denial of its right to be

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[98] See Note 86.

heard. It specifies the Bureau of Internal Revenue's inaction throughout the proceedings as follows:

> First, during the informal conference, Avon orally rebutted and submitted a written Reply dated November 26, 2002, with attached supporting documents, to the summary of audit findings of the Bureau of Internal Revenue. Revenue Examiner Enrico Z. Gesmundo (Gesmundo), on cross-examination, admitted receiving its Reply with the appended documents and that this Reply should be the basis of the Preliminary Assessment Notice.
>
> However, the Commissioner issued the Preliminary Assessment Notice dated November 29, 2002, which simply reiterated the rebutted audit findings. The alleged under-declared sales was increased by more than 300% based on the alleged sales discrepancy in the Third Quarter VAT Return *vis à vis* Financial Statement, without justifiable reason and despite clean opinion of Avon's external auditor on its financial statements.
>
> Second, in its protest letter to the Preliminary Assessment Notice, Avon explained the error in the presentation of export sales in the Third Quarter VAT Return. That is, instead of presenting the total sales for the third quarter alone, the presentation was a cumulative or year-to-date sales presentation. Avon appended copies of the Third Quarter VAT Return and the General Ledger Pages of Export Sales to its protest letter to prove the cumulative presentation of its sales. The Bureau of Internal Revenue Examiners accepted their explanation during their meeting.
>
> However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. The Bureau of Internal Revenue chose to ignore Avon's explanations and refused to cancel the

assessments unless Avon would agree to pay the other deficiency assessments.

Third, since the Final Assessment Notices merely reiterated the findings in the Preliminary Assessment Notice, Avon resubmitted its protest letter and supporting documents. During the conference with the revenue officers on August 4, 2003, Avon explained that it had already submitted all the reconciliation, schedules, and other supporting documents. It also submitted additional documents as directed by the revenue officers on June 26, 2003, and presented the original General Ledger Book for 1999 for comparison by the Bureau of Internal Revenue's officers with the copies previously submitted. Again, Avon explained the alleged sales discrepancy to the revenue officers, who were convinced that there was no under-declaration of sales, and that the sales discrepancy between the Annual Income Tax Return and Quarterly VAT Return was merely due to erroneous presentation of sales in the Third Quarter VAT Return.

By this time, hoping that the Commissioner would cancel the deficiency income and VAT assessments arising from the alleged sales discrepancy, Avon informed the Bureau of Internal Revenue examiners that it would make a partial payment of the assessments, which it did.

Fourth, however, the Commissioner issued the Collection Letter dated July 9, 2004 without deciding on the protest letter to the Final Assessment Notices. Once again, she failed to even comment on the arguments raised or address the documents submitted by Avon. Even the amounts supposedly paid by Avon were not deducted from the amount demanded in the Collection Letter. To justify its issuance, the Commissioner falsely alleged Avon of failing to submit its supporting documents.

Fifth, Avon filed a request for withdrawal of the Collection Letter, but it was likewise ignored.

> Finally, the documents which reveal the events after the filing of the protest to the Final Assessment Notices on May 9, 2004 were missing from the Bureau of Internal Revenue Records. These were (a) the handwritten Minutes of the Bureau of Internal Revenue/Taxpayer Conference on June 26, 2003; (b) Avon's letter dated August 1, 2003, with supporting documents, received by Revenue Officer Gesmundo on August 4, 2003, showing Avon's submission of the documents required by the Revenue Officers during the June 26, 2003 meeting; and (c) the two (2) Bureau of Internal Revenue Tax Payment Confirmations dated January 30, 2004, and Payment Forms called Bureau of Internal Revenue Form No. 0605."

In ruling against the CIR, the Supreme Court held that:

"The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

xxx xxx xxx

<u>**The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable.**</u> **Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, <u>**Section 3.1.4**</u>

**requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

**'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the** Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

xxx xxx xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must**

> **give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**
>
> xxx xxx xxx
>
> **The Commissioner's total disregard of due process rendered the identical** Preliminary Assessment Notice, **Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.**" *(Emphases and underscoring supplied)*

Based on the foregoing, due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer in rendering a decision based on these submissions. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

In this case, as stated in the undated PAN,[99] the BIR found the following deficiency taxes due from petitioner for taxable year 2012, to wit:

| Type of Tax | Basic | Interest | Administrative Penalties | Total |
|---|---|---|---|---|
| Income | ₱48,946,570.64 | ₱24,881,173.41 | ₱25,000.00 | ₱73,852,744.05 |
| VAT | 44,393,589.02 | 22,320,060.71 | 25,000.00 | 66,738,649.73 |
| EWT | 949,297.72 | 479,917.46 | 20,000.00 | 1,449,215.18 |

The *Details of Discrepancy* for the said PAN read, in part, as follows:

> "INCOME TAX
>
> Upon verification, the following are the adjustments per audit that has resulted to a basic deficiency income tax of ₱48,946,570.64;

[99] Exhibit "P-5", Docket, Vol. V, pp. 2392 to 2397.

A. Unreported Sales (SAWT versus SLS) -₱29,114,381.45
This represents comparison of Income payment reported in BIR Form 2307 (SAWT) versus Summary List of Sales. The amount of ₱29,114,381.45 representing unreported sales is subject to Income Tax rate of 30%, hence, assessed pursuant to Section 27 (A) of the Tax Code as amended.

B. Unaccounted Sales subjected to VAT - ₱25,378,288.04
This represents discrepancies on reported Vatable Sales per VAT return amounting to ₱1,300,336,595.65 as against total amount subject to VAT (see schedule) in the amount of ₱1,274,958,307.61. The discrepancy amounting to ₱25,378,288.04 representing unaccounted sales is subject to regular income tax rate, hence, assessed pursuant to Section 27(A) of the Tax Code as amended.

C. Disallowance for non-withholding of Taxes - ₱30,412,249.82
Income payments not subjected to Expanded Withholding Tax: This represents discrepancy resulting from a reconciliation of expenses per Financial Statements/Trial Balance versus that in the Monthly Alphalist of Payees and remittances as reflected in BIR Form 1601E. Investigation revealed that certain income payments were not subjected to the requisite withholding taxes, thus the corresponding expense/payment was disallowed. Sec. 34(K), NIRC, as amended, provides for additional requirements for deductibility of certain income payments, thus:
'(K) Additional Requirement for Deductibility of Certain Payments. – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income... may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld has been paid to the Bureau of Internal Revenue...'

D. Unreported Gain on Sales of PPP - ₱167,592.92
The computation on Sales of Property Plant and Equipment (see Schedule) disclosed gain on sales of ₱168,485.92 as against reported gain on sales per Cash flow for only ₱893.00. The discrepancy representing unreported gain of ₱167,592.92 is subject to regular income tax rate, hence, assessed pursuant to Section 27 (A) of the Tax Code as amended.

E. Undeclared Income (Matching MAP versus Purchases - ₱4,924,251.16)
Matching Summary of Monthly Alphalist of supplier versus SLP of Beta Electric Corporation showed unreported purchases amounting to ₱48,138,804.21. Dividing the said amount by the COS ratio of 90.72% has resulted to additional sales of ₱53,063,055.79. The gross income of ₱4,924,251.16 (₱53,063,055.79-48,138,804.63) was subjected to regular corporate

income tax rate of 30% pursuant to Section 27 of the Tax Code, as amended.

F. Undeclared Income (Discrepancy on Compensation) – ₱73,158,472.09
The total Gross Compensation reported per F/S (page 235) amounted to ₱240,487,167.90 as against Gross Compensation per Return amounting to ₱313,645,639.99 leaving a difference of ₱73,158,472.09 is subject to regular income tax rate, hence, assessed pursuant to Section 27 (A) of NIRC, as amended.

**TOTAL INCOME TAX DUE W/ INCREMENTS ₱73,827,744.05**

**Assessment No. _____**

II. VALUE-ADDED TAX

A. Unreported Sales (SAWT v. SLS) - ₱29,114,381.45
This represent comparison of Income payment reported in BIR Form 2307 (SAWT) versus Summary List of Sales. The amount of ₱29,114,381.45 representing unreported sales is subject to 12% Value added taxes, hence, assessed pursuant to Section 106 of NIRC, as amended.

B. Undeclared Sales (Matching MAP versus SLP) - ₱53,063,055.79
The output taxes resulting from the matching of Monthly alphalist (MAP) of supplier versus SLP resulting from the under declaration of sales of ₱53,063,055.79 the 12% output taxes were assessed pursuant to Section 106 of the tax code as amended.

C. Unreported Collection - ₱58,322,981.36
The unreported collection is based on the analysis of 2012 Gross receipts submitted by the subject taxpayer by using its beginning and ending summary list of Account Receivable as compared to the 2012 schedule of Taxable Income (page 232). The amount of ₱58,322,981.36 representing unreported collections is subject to 12% Value added taxes, hence, assessed pursuant to Section 106 of the Tax Code as amended.

D. Prepaid Output Value Added Taxes - ₱27,549,150.00
This account per F/S pertain to unremitted value added taxes on customer deposits, hence, assessed pursuant to Section 106 of the NIRC, as amended.

**TOTAL VAT DUE W/ INCREMENTS ₱66,713,649.73**

**Assessment No. _____**

III. EXPANDED WITHHOLDING TAX

A. Analysis of all accounts that should have been subjected to Expanded Withholding Taxes per F/S versus per return revealed some untaxed discrepancies amounting to ₱30,412,249.82 resulted to basic ewt of ₱608,245.00 such are being assessed pursuant to Section 57 and Section 249 of the NIRC, as amended and RR 12-01.

B. Matching SLP versus Monthly Alphalist revealed some untaxed discrepancies amounting to ₱24,275,544.37 resulted to basic tax on EWT amounting to ₱341,052.72 such are being assessed pursuant to Section 57 and Section 249 of the NIRC as amended and RR 12-01.

**TOTAL EWT DUE W/ INCREMENTS ₱1,429,215.18"**

In response to the said PAN, on July 22, 2015, petitioner sent its protest letter dated July 21, 2015 to the BIR.[100] In the said letter, petitioner laid out its arguments against the deficiency taxes, particularly, the income tax and VAT, imposed by the BIR. Specifically, petitioner raised the following arguments in its protest letter, to wit:

**"I. Income Tax**

**I.A. Unreported Sales (SAWT versus SLS)**

- VAT on Customer's Deposit

Since we are engaged on a construction business, the basis of recording of sales is through progress billing. The remittance of output tax to BIR for customer's deposit is being made upon collection. We record the recoupment of down payment upon progress billing.

Upon receipt of down payment by the customer, we record it in our books as follows:

For instance, Project B has a total contract amounting to ₱1,000,000.00 with 30% DP& progress billing with 10% retention. Upon receipt of the 30% DP the entry would be:

| | | |
|---|---|---|
| Cash in Bank | 294,642.86 | |
| Prepaid Output tax | 32,142.86 | |
| Accounts Receivable EWT | 5,357.14 | |
| Customer Deposit | | 5,357.14 |
| Customer Deposit | | 294,642.86 |
| Output tax | | 32,142.86 |

Let us say we billed them 50% work accomplishment. Assuming the GPR is 85%. The billing entry would be as follows:

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[100] Exhibit "P-6", Docket, Vol. V, pp. 2398 to 2405.

| | | |
|---|---|---|
| Accounts Receivable - Trade | 500,000.00 | |
| Cost of Taxable services | 379,464.29 | |
| Accrued Cost | | 379,464.29 |
| Taxable Sales-Service | | 446,428.57 |
| Deferred Output tax | | 53,571.43 |
| Customer Deposit | 150,000.00 | |
| Accounts Receivable - Trade | | 150,000.00 |
| Deferred Output tax | 16,071.43 | |
| Prepaid Output tax | | 16,071.43 |

Entry upon collection:

| | | |
|---|---|---|
| Cash in Bank | 294,642.86 | |
| Account Receivable-EWT | 5,357.14 | |
| Deferred Output tax | 32,142.86 | |
| Accounts Receivable -Trade | | 294,642.86 |
| Accounts Receivable -Trade | | 5,357.14 |
| Output Tax | | 32,142.86 |

- Accounts Receivable-EWT
  The certificate of Creditable Withholding Tax (CWT) issued by customers were used in the reporting of Income Tax Return of Beta Electric Corporation for the year ended December 2012 but were recorded under "Accrued Others" in the books. These certificates were received after the remittance of VAT Payable. The remittance of the output taxes pertaining to these certificates were made in the first quarter of 2013.

  Also, there are cases wherein certificates were received after the external audit and thus we could not record the CWT anymore for the year 2012. These were recorded and used in 2013.

- Other discrepancies refer to VAT on retention & other adjustments.

- The unreported sales amounting to ₱276,035.67 of The Residences at Greenbelt Condo Corp. customer as reflected on the schedule was reported under Ayala Property Management Corp. customer.

- Please take note of the errors on tagging of customers

  DMCI-Beta Tewet Joint Venture Corp. was erroneously reported to BIR under DMCI account resulting to unreported sales amounting to ₱6,696,650.67.

  Per BIR 2012 Summary List of Sales JTKC Land Inc. had taxable sales amounting to ₱78,147,297.26. But per books has only ₱74,727,862.58. The accounted difference amounting to ₱3,419,434.68 should be for Madrigal Bayot & Dev't Corp.

**I.B. Unaccounted Sales subjected to VAT (VAT per return versus Sales)**

- Output taxes as per our VAT returns are based on collection whereas Output taxes per Sales Revenue are recorded under Deferred Output Tax account. This Deferred VAT is remitted upon collection of progress billing.

- As per BIR computation, collections were presented at gross amount while as per VAT return it is at net of VAT.

**I.C. Disallowance of non-withholding of taxes**

We have complied with the Revenue Regulation No. 14-2008 issued by the BIR which states that:

'The term *'goods'* pertains to tangible personal property. It does not include intangible personal property, as well as real property.

'The term *'local/resident suppliers of goods'* pertains to a supplier from whom any of the **<u>top twenty thousand (20,000) private corporations</u>**, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchase made from a non-regular supplier and oftentimes involving a single purchase. However, a single purchase which involves Ten thousand pesos (₱10,000.00) or more shall be subject to a withholding tax. The term *'regular suppliers'* refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax.

- As per your schedule, you have assessed Beta Electric Corporation of the disallowance for non-withholding of taxes amounting to ₱30,412,249.82. Please take note that certain income payments were not subjected to the requisite withholding taxes because not all expenses are vatable and not all suppliers are regular. During the 2012 year-end reporting of the Annual Information Return or BIR Form 1604E, we have indicated our regular suppliers whose income payments are exempt from withholding of taxes but subject to income tax. These are the Gancayco Law Office and SGV. Co. because they are General Professional Partnership whose income payments shall not be subject to income tax since they are the individual partners subject to income tax in their separate and individual capacities.

- Beta Electric Corporation is included in the top 20,000 required to withheld taxes. Incurred expenses involve numerous but small transactions at project sites. The usual expenses that may involve purchases from non-regular suppliers are transportation, notary, meal reimbursement, representations, club and association dues and others.

To be considered as our regular supplier, we have noted the prerequisites to be followed. All of our one time purchases amounting to 10,000 and above are subjected to EWT.

- Another possible difference was the comparison to operating expenses and cost of sales. The total expenses derived from 2012 AFS consist mainly of administrative expenses & those closed to COS. Other expenses such as jobs in process or purchases of materials or fixed assets and advances to suppliers etc.

**I.D. Unreported Gain on Sales**

- The only disposal of fixed assets that occurred in 2012 was the sale of defective CPUs as evidenced by OR#24003.
- The cost of the service vehicle which was damaged due to a typhoon with plate no. PNl-793 was compensated by a claim from an insurance company. The income generated from the retirement was booked under 'Miscellaneous Income'.

- The service vehicle with plate no. XDY-839 was property of Raco-Haven Automation Phils Inc. (RHAPI). RHAPI suffered from bankruptcy. The proceeds from this sale were used to offset from our receivable from them.

- Some fixed assets like tools being used by our workers are part of their accountabilities and are charged to them should they lost it. Reversal of depreciation expenses from these assets are recorded under 'JIP Others' account.

**I.E. Undeclared income (Matching MAP versus Purchases)**

- Discrepancy comprises of reported withholding taxes to 'VARIOUS SUPPLIERS' account. Some differences as verified and reviewed consist of non-vatable suppliers, retention on progress billings by our sub-contractors (recorded as Prepaid Input Tax) and advances to suppliers. Also included are payment to association dues and general professional partnership which are subject to input tax but not subject to EWT.

**I.F. Undeclared Income (Discrepancy on Compensation)**

- The total compensation as per return is higher than that reported per FS due to unbilled revenue for 2012. Breakdown of JIP-Labor as of December 2012 shows a total amount of 75,132,620.97. The expenses that should have been declared are still part of our asset under JIP-labor account.

xxx xxx xxx

**II. Value-Added Tax**

**II.C. Unreported Collection**

We remit output taxes upon collection. Thus, output tax from Customer Deposit is reported upon collection. The entry upon collection is a debit to Prepaid Output Tax and a credit to Output tax. The discrepancies noted as per BIR audit are due to the recoupment of these customer deposits. The entry on the VAT portion upon recoupment is a debit to Deferred Output Tax and a credit to Prepaid Output Tax.

**II.D. Prepaid Value Added taxes**

The balance of Prepaid Output VAT as per books is the un-recouped down payment. The output tax from customers deposits are being remitted to BIR upon collection of down payment.
Supporting documents are ready to be verified and vouched in our office at No. 18 Bagong Calzada St., Ususan, Taguig City."

Notwithstanding the foregoing arguments, the subject FLD did not address any of them. The BIR only reiterated *verbatim* in the *Details of Discrepancy* of the said FLD, what it stated in the *Details of Discrepancy* of the undated PAN, save for the adjustments in one basic income tax due and basic deficiency VAT only.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or his authorized representatives appreciated the explanations or defenses raised by petitioner in connection with the assessments. Correspondingly, as part of the due process requirement in the issuance of tax assessments, respondents must give reason(s) for rejecting petitioner's refutations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. Respondent has obviously not observed such requirement in the issuance of the subject FLD.

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the 1997 NIRC, as amended, in relation to Section 3.1.3 of RR No. 12-99, as amended, was violated by respondent. As a consequence of such violation, the said deficiency income tax and VAT assessments are rendered void.

With respect to respondent's assessment of deficiency EWT, the same was computed by respondent in this manner:[101]

| | | | Tax Due |
|---|---|---|---|
| Taxable basis per Return | ₱930,674,541.18 | | |
| Add: Transactions not subjected to EWT | | | |
| Discrepancy on Services at 2% | 30,412,249.82 | ₱ | 608,245.00 |
| Matching SLP versus MAP (various) | 24,275,544.37 | | 341,052.72 |
| Taxable amount per Audit | ₱985,362,335.37 | ₱ | 949,297.72 |
| Taxable basis per Return | 930,674,541.18 | | |
| Taxable basis per Audit | ₱ 54,687,794.19 | | |
| Basic Expanded Withholding Deficiency | | ₱ | 949,297.72 |
| Add: Interest (1-10-2013 to 12-31-2015) | | | 559,025.61 |
| **TOTAL AMOUNT DUE** | | | **₱1,508,323.33** |

The items of assessment for deficiency EWT are described by respondent in the *Details of Discrepancy* as follows:[102]

A. Analysis of all accounts that should have been subjected to Expanded Withholding Taxes per F/S versus per return revealed some untaxed discrepancies amounting to ₱30,412,249.82, resulting to basic ewt of ₱608,245.00 such are being assessed pursuant to Section 57 and Section 249 of the 1997 NIRC, as amended, and RR No. 12-01.

B. Matching SLP versus Monthly Alphalist revealed some untaxed discrepancies amounting to ₱24,275,544.37, resulted to basic tax on EWT amounting to ₱341,052.72 such are being assessed pursuant to Section 57 and Section 249 of the 1997 NIRC, as amended, and RR No. 12-01.

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[101] Exhibit "P-9", Docket, Vol. V, p. 2412.
[102] Exhibit "P-9", Docket, Vol. V, p. 2415.

The Court notes that the alleged untaxed discrepancies in the amount of ₱30,412,249.82 (Item A) is connected with the previously cancelled income tax deficiency and, therefore, must likewise be cancelled.

As to the alleged untaxed discrepancies in the amount of ₱24,275,544.37 (Item B), as a result of the Matching Summary List of Purchases (SLP) versus Monthly Alphalist of Payees (MAP), the ICPA noted that "the BIR did not provide any reconciliation regarding this assessment, thus, petitioner cannot provide schedules and documents to prove that the BIR's assessment is invalid".[103] Moreover, this Court, upon scrutiny of the records, confirms that respondent, indeed failed to provide the details of the computation or source of the discrepancy being assessed in the subject PAN and FLD. Thus, this Court cannot verify the basis of the said untaxed discrepancies.

Consequently, the foregoing statements in the *Details of Discrepancy* cannot be considered as sufficient basis for a valid assessment of deficiency EWT, pursuant to the aforementioned jurisprudence and Section 3.1.4 of RR No. 12-99, as amended. Thus, this item of assessment should likewise be cancelled.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[104] Furthermore, a void assessment bears no valid fruit.[105] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent or the BIR has no right to collect the same.

Considering that the subject deficiency taxes are void for violation of petitioner's right to administrative due process, it is no longer necessary to address the other respective arguments raised by the parties.

**WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD dated October 21, 2015 and *Audit Result/Assessment Notices* attached thereto,[106] assessing petitioner for deficiency income tax, VAT, EWT, and administrative penalties, for taxable year 2012, in the aggregate

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[103] Page 32 of 49 of Exhibit "P-86", Docket, Vol. V, p. 2638.
[104] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., etseq.*, supra.
[105] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[106] Exhibits "P-9" to "P-9-d", Docket, Vol. V, pp. 2411 to 2420.

amount of **₱135,926,357.83**,[107] inclusive of interests, as well as the Collection Letter dated January 9, 2018 and WDL No. 121.2019.2004, are **CANCELLED and SET ASIDE**.

Respondent or the BIR is **ENJOINED and PROHIBITED** from collecting the amount sought under the subject tax assessments.

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

107

| | Deficiency Tax | Interest up to 31 Dec 2015 | Administrative Penalty | Total |
|---|---|---|---|---|
| Income tax | ₱ 43,661,590.89 | ₱ 23,650,028.40 | ₱ 25,000.00 | ₱ 67,336,619.29 |
| VAT | 42,279,597.12 | 24,756,818.09 | 25,000.00 | 67,061,415.21 |
| EWT | 949,297.72 | 559,025.61 | 20,000.00 | 1,528,323.33 |
| **TOTAL** | **₱86,890,485.73** | **₱48,965,872.10** | **₱ 70,000.00** | **₱135,926,357.83** |

## 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 before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice