REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ATLAS PRECISION ENVIRONMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9043

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAR 30 2022
4:54 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The present *Petition for Review* prays for the revocation and cancellation of the *Final Decision on Disputed Assessment* (FDDA) issued by the Commissioner of Internal Revenue against petitioner, for alleged basic deficiency value-added tax (VAT) of ₱1,389,680.39, plus penalties and interest of ₱503,330.82, for a total of ₱1,893,011.21.[1]

[1] Summary of the Case, Pre-Trial Order dated March 29, 2016, Docket – Vol. 4, p. 1625.

The Parties

Petitioner Atlas Precision Environment Corporation is a corporation duly organized and existing under Philippine laws, with Certificate of Registration No. AS-095-011762. It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity,[2] with Tax Identification Number (TIN) 004-656-080-000, and address at 322 3/F Mile Long Building, Amorsolo St., Legaspi Village, Makati City.[3]

Petitioner is engaged in the supply, installation, maintenance of computer support systems, telecommunication systems, premise wiring systems, access floor system, system furniture, design and construction.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees, or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR, and holding office at the BIR National Office, Diliman, Quezon City.[5]

The Facts

In the course of its business, petitioner received the *Letter of Authority* (LOA) No. LOA-V08-2013-00000479 (SN: eLA201100053240) dated October 11, 2013, on October 14, 2013.[6]

On May 19, 2014, respondent served on petitioner, the *Preliminary Assessment Notice* (PAN)[7] of even date.[8] On May 30, 2014, petitioner disputed the PAN by filing a *letter-protest* with BIR's Revenue Region No. 8 – Makati,[9] based on the following grounds, to wit:

1) *First*, all VAT payments due on sales invoices issued from 1 January 2013 to 30 January 2013 have been actually fully paid;

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[2] Par. 2, Stipulation of Facts, *Joint Stipulation of Facts, Issues and Exhibits* (JSFIE), Docket – Vol. 4, p. 1595.

[3] Par. 2, *Petition for Review vis-a-vis* Par. 1, *Answer*, Docket – Vol. 1, p. 10, and Docket – Vol. 2, p. 918, respectively.

[4] Par. 4, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595.

[5] Par. 3, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595.

[6] Par. 4, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595.

[7] BIR Records (Exhibit "R-4"), pp. 124 to 126.

[8] Par. 5, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595.

[9] Par. 6, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595; BIR Records (Exhibit "R-4"), pp. 127 to 133.

2) *Second*, appropriate VAT payments have been made on the supposed unqualified zero-rated sale as shown in its 22 October 2013 and 18 November 2013 VAT return, extinguishing its tax liability;

3) *Third*, the government sales close to expense should be ₱2,178.26 only and not ₱3,292.56;

4) *Fourth*, the alleged unsupported input tax in the amount of ₱103,498.85 is actually supported by receipts which was presented during audit, and evidenced by the actual receipts attached to the letter-request;

5) *Fifth*, contrary to the claim of respondent that petitioner failed to pay the corresponding taxes due within the prescribed reglementary period, the VAT payments were made in accordance with Section 114 of the NIRC, and Revenue Regulations No. 16-2005;

6) *Lastly*, contrary to the claim of the respondent, excess input carried over for June 2013 in the amount of ₱32,840.30 was carried over to the succeeding period in accordance with Section 110(B) of the NIRC.[10]

On June 30, 2014, petitioner received from respondent a *Formal Letter of Demand* with *Formal Assessment Notice* (FLD/FAN) dated June 27, 2014,[11] assessing petitioner the amount of ₱1,494,193.02, plus interest of ₱298,019.87, and late increment of ₱1,701.62, or in the aggregate amount of ₱1,793,914.51.[12]

Thereafter, on July 30, 2014, petitioner, through counsel, contested the FLD/FAN by a *protest-letter* dated 25 July 2014, invoking the same arguments raised in the letter disputing the PAN.[13]

Subsequently, in response to petitioner's *protest-letter*, Regional Director Jonas DP. Amora issued the letter dated February 10, 2015,[14] informing petitioner that its request for reinvestigation was favorably granted, and requesting the payment of deficiency VAT in the amount of ₱1,832,093.71, inclusive of interest.

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[10] Par. 10, *Petition for Review vis-a-vis* Par. 1, *Answer*, Docket – Vol. 1, p. 12, and Docket – Vol. 2, p. 918, respectively.
[11] BIR Records (Exhibit "R-4"), pp. 140 to 145.
[12] Par. 7, Stipulation of Facts, JSFIE, Docket – Vol. 4, pp. 1595 to 1596.
[13] Par. 8, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1596; BIR Records (Exhibit "R-4"), pp. 149 to 158.
[14] Exhibit "R-2", BIR Records (Exhibit "R-4"), pp. 159 to 163.

Petitioner then filed an administrative appeal (letter dated March 12, 2015) on March 16, 2015,[15] seeking the partial reconsideration of the assessment against petitioner.

On April 13, 2015, petitioner received respondent's FDDA, partially granting the protest, but still finding petitioner liable for alleged basic deficiency VAT, plus penalties, in the total amount of ₱1,893,011.21.[16]

Petitioner filed the present *Petition for Review* on May 13, 2015.[17]

Respondent posted his *Answer* on September 4, 2015,[18] interposing the following special and affirmative defenses, to wit:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;

2. Examination of sales/receipts per issued invoices and official receipts taken collectively as against the income declared per VAT returns disclosed a discrepancy in the amount of P11,503,346.83, hence assessed pursuant to Sections 106 and 108 of the NIRC, as amended.

3. Assessment are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);

4. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (*Commissioner vs. Algue, Inc. L-28896, 17 February 1988*). Taxes are enforced proportional contribution from persons and property levied by the state, this, no one is considered entitled to recover that which he must give up to another- *Non videtur quisquam id capere quod ei necesse est alii restitutere.*"

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[15] BIR Records (Exhibit "R-4"), pp. 170 to 173.

[16] Par. 9, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1596; BIR Records (Exhibit "R-4"), pp. 186 to 191.

[17] Docket – Vol. 1, pp. 10 to 19 and Docket, Vol. 2, p. 910.

[18] Docket – Vol. 2, pp. 918 to 920.

Respondent forwarded the entire *BIR Records* of the present case on October 20, 2015.[19] On the same date, *Respondent's Pre-Trial Brief* was filed.[20]

The Pre-Trial Conference was initially set on November 17, 2015.[21] However, upon respondent's motion,[22] the Pre-Trial Conference was reset to, and held on, February 2, 2016.[23]

On February 18, 2016, the parties submitted their *Joint Stipulation of Facts, Issues and Exhibits.*[24] The Pre-Trial Order was subsequently issued on March 29, 2016.[25]

Trial then ensued.

On April 12, 2016, petitioner filed its *Omnibus Motion to Amend Pre-Trial Order and for Motion for Extension of Time to Submit and to Admit Revised Judicial Affidavit of Ms. Digna F. Danga.*[26] Respondent failed to file his comment thereon.[27] In the Resolution dated June 6, 2016,[28] the Court, *inter alia*, granted, in effect, the said *Omnibus Motion.*

Petitioner presented documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) of Ms. Digna F. Danga,[29] petitioner's Finance and Administrative Manager; and (2) Melvin C. Rosario,[30] the Court-commissioned Independent Certified Public Accountant (ICPA).[31]

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[19] Undated *Compliance*, Docket – Vol. 2, p. 951.
[20] Docket – Vol. 2, pp. 933 to 936.
[21] *Notice of Pre-Trial Conference* dated September 11, 2015, Docket – Vol. 2, pp. 922 to 923.
[22] *Motion to Reset Pre-Trial Conference* filed on October 6, 2015, Docket – Vol. 2, pp. 925 to 927.
[23] Resolution dated October 16, 2015, Docket – Vol. 2, p. 932; Minutes of the hearing held on February 2, 2016, and Resolution dated February 9, 2016, Docket – Vol. 4, pp. 1572, and 1587 to 1588, respectively.
[24] Docket – Vol. 4, pp. 1591 to 1606.
[25] Docket – Vol. 4, pp. 1625 to 1636.
[26] Docket – Vol. 4, pp. 1640 to 1651.
[27] Records of Verification dated May 13, 2016 issued by the Judicial Records Division of the Court, Docket – Vol. 4, p. 1816.
[28] Docket – Vol. 4, pp. 1822 to 1824.
[29] Exhibit "P", Docket – Vol. 6, pp. 2605 to 2615; Minutes of the hearing held on, and Order dated, October 3, 2016, Docket – Vol. 6, pp. 2619 to 2620.
[30] Exhibit "P-113", Docket – Vol. 5, pp. 2065 to 2076; Minutes of the hearing held on, and Order dated, January 24, 2017, Docket – Vol. 6, pp. 2621 to 2623.
[31] *Oath of Commission* dated July 4, 2016, Docket – Vol. 4, p. 1629; Minutes of the hearing held on, and Order dated, July 4, 2016, Docket – Vol. 4, pp. 1628 and 1630, respectively.

Petitioner's Formal Offer of Documentary Evidence was filed on February 8, 2017.[32] Respondent failed to file his comment thereon.[33] In the Resolution dated April 11, 2017,[34] the Court admitted petitioner's Exhibits "P", "P-a", "P-1", "P-1-a", "P-184", "P-283" and "P-283-a", and *denied* the following:

1. Exhibits "P-2", "P-3", "P-4", "P-4-a", "P-5", "P-5-a Series", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", "P-8-a", "P-9", "P-10", "P-11" to "P-183", "P-185" to "P-194", "P-196" to "P-262" and "P-265" to "P-281", for failure of the exhibits formally offered to correspond with the documents actually marked;

2. Exhibit "P-195", for not being found in the records of the case;

3. Exhibits "P-263" to "P-264", for failure of the exhibits formally offered to correspond with the documents actually marked and for failure to properly identify the exhibits; and

4. Exhibit "P-282", for failure to properly identify the exhibit.

Petitioner then filed its *Ex-Parte Urgent Motion for Reconsideration (To the Honorable Court's Resolution dated 11 April 2017 (With Profuse Apologies)* on June 15, 2017.[35] Respondent manifested that he will no longer file a comment thereon.[36] In the Resolution dated October 11, 2017,[37] the Court set the case for a commissioner's hearing for the re-marking of petitioner's exhibits, and directed petitioner to submit its amended formal offer of evidence within five (5) days after the date of the commissioner's hearing.

In the course of the proceedings relative to petitioner's *Ex-Parte Urgent Motion for Reconsideration (To the Honorable Court's Resolution dated 11 April 2017 (With Profuse Apologies)*, Mr. Melvin C. Rosario was recalled to the witness stand.[38]

[32] Docket – Vol. 6, pp. 2627 to 2671.
[33] Records of Verification dated March 6, 2016 issued by the Judicial Records Division of this Court, Docket – Vol. 7, p. 2678.
[34] Docket – Vol. 7, pp. 2689 to 2690.
[35] Docket – Vol. 7, pp. 2698 to 2703.
[36] Minutes of the hearing held on June 27, 2017, Docket – Vol. 7, p. 2709.
[37] Docket – Vol. 7, pp. 2712 to 2714.
[38] Exhibit "P-306", Docket – Vol. 7, pp. 2727 to 2738; Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. 7, pp. 3118 to 3120; Minutes of the hearing held on and Order dated, June 20, 2019, Docket – Vol. 7, pp. 3121 to 3123.

The *Formal Offer of Documentary Evidence (for the Petitioner)* was filed on July 5, 2019.[39] Respondent posted his *Comment (Petitioner's Formal Offer of Evidence)* on September 17, 2019.[40]

In the Resolution dated December 4, 2019,[41] the Court deems it proper to set aside the Resolution dated April 11, 2017 to avoid confusion. Moreover, the Court considered the *Formal Offer of Documentary Evidence (For the Petitioner)* filed on July 5, 2019 as its Amended Formal Offer of Evidence, and shall supersede *Petitioner's Formal Offer of Documentary Evidence* filed on February 8, 2017.

Furthermore, in the same Resolution, petitioner's *Ex-Parte Urgent Motion for Reconsideration (To the Honorable Court's Resolution dated 11 April 2017 (With Profuse Apologies)* was partially granted, and the Court admitted Exhibits "P", "P-a", "P-1", "P-1-a", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96", "P-97", "P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P-106", "P-107", "P-108", "P-109", "P-110", "P-111", "P-112", "P-113", "P-114", "P-115", "P-116", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", "P-144", "P-145", "P-146", "P-147", "P-148", "P-149", "P-150", "P-151", "P-152", "P-153", "P-154", "P-155", "P-156", "P-157", "P-158", "P-159", "P-160", "P-161", "P-162", "P-163", "P-164", "P-165", "P-166", "P-167", "P-168", "P-169", "P-170", "P-171", "P-172", "P-173", "P-174", "P-175", "P-176", "P-177", "P-178", "P-179", "P-180", "P-181", "P-182", "P-183", "P-184", "P-185", "P-186", "P-187", "P-188", "P-189", "P-190", "P-191", "P-192", "P-193", "P-194", "P-195", "P-196", "P-197", "P-198", "P-199", "P-200", "P-201", "P-202", "P-203", "P-204", "P-205", "P-206", "P-207", "P-208", "P-209", "P-210", "P-211", "P-212", "P-213", "P-214", "P-215", "P-216", "P-217", "P-218", "P-219", "P-220", "P-221", "P-222", "P-223", "P-224", "P-225", "P-226", "P-227", "P-228", "P-229", "P-230", "P-231", "P-232", "P-233", "P-234", "P-235", "P-236", "P-237", "P-238", "P-239", "P-240", "P-241", "P-242", "P-243", "P-244", "P-245", "P-246", "P-247", "P-248", "P-249", "P-250", "P-251", "P-252", "P-253", "P-254", "P-255", "P-256", "P-257", "P-258", "P-

[39] Docket – Vol. 7, pp. 3124 to 3169.
[40] Docket – Vol. 8, pp. 3196 to 3197.
[41] Docket – Vol. 8, pp. 3202 to 3212.

259", "P-260", "P-261", "P-262", "P-263", "P-264", "P-265", "P-266", "P-267", "P-268", "P-269", "P-270", "P-271", "P-272", "P-273", "P-274", "P-275", "P-276", "P-277", "P-278", "P-279", "P-280", "P-281", "P-282" "P-283", "P-284", "P-285", "P-286", "P-287", "P-288", "P-289", "P-305", "P-305-a", "P-306", "P-306-a", "P-306-b" and "P-306-c". However, the admission of the following exhibits was denied, *viz.*:

1. Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-12", "P-13", "P-291", "P-292", "P-293", "P-294", "P-295", "P-296", "P-297", "P-298", "P-299" to "P-300", "P-301" to "P-302" and "P-303" to "P-304", for failure to submit the exhibits marked/re-marked by the ICPA;

2. Exhibit "P-11, for not being found in the records of the case and for failure of the exhibit formally offered to correspond with the document identified; and

3. Exhibit "P-290", for not being found in the records of the case.

Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of Group Supervisor Renan A. Plata of the VAT Audit Group of the BIR.[42]

Respondent posted his *Formal Offer of Evidence* on November 19, 2020.[43] Petitioner filed its *Comments/Objections (To Respondent's Formal Offer of Evidence dated 19 November 2020)* on December 3, 2020.[44] In the Resolution dated February 11, 2021,[45] the Court admitted Exhibits "R-1", "R-1-a", "R-2", "R-2-a", "R-3", "R-3-a" and "R-4".

The *Memorandum (For the Petitioner)* was filed on May 17, 2021.[46] Respondent, however, failed to file his memorandum.[47]

On September 7, 2021, this case was deemed submitted for decision.[48]

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[42] Exhibit "R-3", Docket – Vol. 2, pp. 939 to 943; Minutes of the hearing held on, and Order dated, November 4, 2020, Docket – Vol. 8, pp. 3231 to 3233.
[43] Docket – Vol. 8, pp. 3242 to 3244.
[44] Docket – Vol. 8, pp. 3235 to 3239.
[45] Docket – Vol. 8, pp. 3255 to 3256.
[46] Docket – Vol. 8, pp. 3257 to 3270.
[47] Records Verification Report dated June 14, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. 8, p. 3275.
[48] Resolution dated September 7, 2021, Docket – Vol. 8, p. 3277.

The Issue

The following issue was stipulated by the parties for the Court's resolution, to wit:

> "Whether or not Petitioner is liable for deficiency Value-Added Tax in the aggregate amount of One Million Eight Hundred Ninety Three Thousand Eleven Pesos and 21/100 (P1,893,011.21), inclusive of interest for the period January 1, 2013 to June 30, 2013."[49]

Petitioner's arguments:

Petitioner claims that respondent turned a blind eye on the fact that the covered transactions subject of the sales invoices and official receipts pertain to the same transactions and hence, there is no deficiency to speak of; that respondent's admission that it continued to encounter mistakes of the same nature, similar to that of the petitioner's, from taxpayers similarly situated, despite its efforts to educate them, and that it has even been conducting one on one seminars with taxpayers before the release of Certificates of Registration is an indication that their efforts are not sufficient to eliminate such mistakes by the taxpayers; that the erroneous issuance of sales invoices and official receipts was not tantamount to generated income on the part of petitioner nor did it result to actual prejudice to respondent and the government; and that the issuance of a billing document twice may be as the fact shown, but in essence and in principle, no duplication of income took place and clearly, substance is superior than form in this case.

Respondent's counter-arguments:

Respondent argues that an examination of sales/receipts per issued invoices and official receipts taken collectively as against the income declared per VAT returns disclosed a discrepancy in the amount of ₱11,503,346.83, hence assessed pursuant to Sections 106 and 108 of the National Internal Revenue Code of 1997, as amended (1997 NIRC); that assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise; and that petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance.

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[49] Issue, JSFIE, Docket – Vol. 4, p. 1596.

This Court's Ruling

The present *Petition for Review* shall be granted.

Authority to Resolve Issues Not Specifically Raised by the Parties

While the validity of the assessment was not specifically raised as an issue, this Court is not precluded from taking cognizance of the same given that a void assessment bears no fruit.[50]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[51] the Supreme Court emphatically ruled that the Court of Tax Appeals can resolve an issue which was not specifically raised by the parties. The Supreme Court said:

> "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.* — x x x
>
> 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. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even**

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[50] *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.

[51] G.R. No. 183408, July 12, 2017.

> **though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied and citation omitted)*

Observance of Due Process in Tax Assessments

Section 228 of the 1997 NIRC prescribes the procedure to be observed for purposes of ensuring taxpayer's due process rights in tax assessments. The said provision, in relevant part, states:

> "SEC. 228. *Protesting of Assessment.* — 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)*

To implement the above-quoted provision, Section 3 of Revenue Regulations (RR) No. 12-99,[52] as amended by RR No. 18-2013,[53] provide as follows:

> "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**

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[52] 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

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

regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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." *(Emphasis supplied)*

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[54] the Supreme Court declared as void a tax assessment by reason of the CIR's total disregard of the due process as mandated by Section 228 of the 1997 NIRC and RR No. 12-99, as amended. Particularly, in the said case, the CIR failed to fully apprised the taxpayer of the legal and factual bases of the assessment issued against it. **Moreover, the taxpayer was left unaware on how the CIR or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.** For proper frame of reference, the relevant portions of the said decision are quoted below:

"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**

[54] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

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.

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Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. **There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

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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 conclusions are based, and those facts must appear in the record.**

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

In *Edwards v. McCoy*:

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.

> In *Ang Tibay*, this Court similarly ruled that '[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the tribunal must consider the evidence presented***.'
>
> x x x x x x x x x
>
> **Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest.** Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, 'The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple.'" *(Emphasis supplied and citations omitted)*

In the present case, the CIR issued a PAN against petitioner on May 19, 2014.[55] In reply to the same PAN, petitioner filed its *letter-protest* dated May 30, 2014 with BIR's Revenue Region No. 8 – Makati,[56] requesting for the revocation and cancellation thereof, and raising the following arguments, to wit:

1) *First*, all VAT payments due on sales invoices issued from 1 January 2013 to 30 January 2013 have been actually fully paid;

2) *Second*, appropriate VAT payments have been made on the supposed unqualified zero-rated sale as shown in its 22 October 2013 and 18 November 2013 VAT return, extinguishing its tax liability;

3) *Third*, the government sales close to expense should be ₱2,178.26 only and not ₱3,292.56;

[55] BIR Records (Exhibit "R-4"), pp. 124 to 126.
[56] Par. 6, Stipulation of Facts, JSFIE, Docket – Vol. 4, p. 1595; BIR Records (Exhibit "R-4"), pp. 127 to 133.

4) *Fourth*, the alleged unsupported input tax in the amount of ₱103,498.85 is actually supported by receipts which was presented during audit, and evidenced by the actual receipts attached to the letter-request;

5) *Fifth*, contrary to the claim of respondent that petitioner failed to pay the corresponding taxes due within the prescribed reglementary period, the VAT payments were made in accordance with Section 114 of the NIRC, and Revenue Regulation (RR) No. 16-2005;

6) *Lastly*, contrary to the claim of the respondent, excess input carried over for June 2013 in the amount of ₱32,840.30 was carried over to the succeeding period in accordance with Section 110(B) of the NIRC.[57]

On June 30, 2014, petitioner received the FLD/FAN dated June 27, 2014.[58] Notably, the VAT assessment in the said FLD/FAN is exactly the same as those stated in the PAN dated May 19, 2014. The only difference between the said PAN and the subject FLD/FAN is that the amounts of interest were adjusted. The basic tax due remained the same. In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the above-stated refutations and explanations made by petitioner in its *letter-protest* dated May 30, 2014. Consequently, petitioner was left unaware on how respondent or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of its right to administrative due process, thereby rendering the subject VAT assessment void.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill or Rights under the Constitution.[59]

In view of the finding that the subject VAT assessment is invalid for violation of petitioner's right to due process, and thus, bear no valid fruit,[60] it becomes unnecessary to address the issue and matters raised by the parties.

[57] Par. 10, *Petition for Review vis-a-vis* Par. 1, *Answer*, Docket – Vol. 1, p. 12, and Docket – Vol. 2, p. 918, respectively.

[58] BIR Records (Exhibit "R-4"), pp. 140 to 145.

[59] *Commissioner of Internal Revenue vs. BASF Coating + Inks, Phils., Inc.* G.R. No. 198677, November 26, 2014.

[60] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945, citing *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

WHEREFORE, premises considered, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD/FAN dated June 27, 2014 holding petitioner liable for deficiency VAT for taxable period January 1, 2013 to June 30, 2013, in the total amount of ₱1,793,914.51, is **CANCELLED and WITHDRAWN**; and the FDDA dated April 13, 2015 is **REVOKED and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice