REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

MORNING STAR MILLING CORPORATION,
Respondent.

CTA EB NO. 2419
(CTA Case No. 9294)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:
JUN 2 1 2022 3:35pm

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue on February 15, 2021 within the extended period granted by this Court.[2] It seeks the reversal of the Decision dated August 26, 2020,[3] (Assailed Decision) as well as the Resolution dated January 13, 2021[4] (Assailed Resolution) of the Second Division (Court in Division)[5] of this Court in CTA Case No. 9294.

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[1] Court *En Banc's* Docket, pp. 7-21.
[2] Minute Resolution dated February 1, 2021, *En Banc* Docket, p. 6.
[3] Court *En Banc's* Docket, pp. 27-69.
[4] *Id.*, pp. 70-75.
[5] Composed of Associate Justice Juanito C. Castañeda, Jr. *(ponente)* and Associate Justice Jean Marie A. Bacorro-Villena.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

'**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Respondent's *Decision* dated January 7, 2016, affirming the deficiency withholding tax assessments for the period January 1, 2003 to December 31, 2003, in the aggregate amount of ₱25,076,377.60, inclusive of surcharge and legal interest, and ordering the payment thereof, is hereby **REVERSED and SET ASIDE**.

SO ORDERED.'

Assailed Resolution:

'**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 26 August 2020), is **DENIED** for lack of merit.

SO ORDERED.'

THE FACTS

The factual antecedents of the present case *at the administrative level* were narrated by the Court in Division in the Assailed Decision as follows:[6]

"The BIR's Large Taxpayers Service (LTS) issued the *Letter of Authority* (LOA) No. 95944 dated January 4, 2005, authorizing Revenue Officers R. Plocios, R. de Veyra, and E. Oliveros, of the LT District Office No. 122-Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2003 to December 31, 2003.

Thereafter, the BIR's Enforcement Service issued the LOA No. 2696 dated February 3, 2005, authorizing Revenue Officers Amelita A. Escober and Leonesto Bernal, under the supervision of Erlinda Victorino, of the National Investigation Division, to examine petitioner's books of accounts and other accounting

[6] Court *En Banc's* Docket, pp. 28-30 (Citations omitted).

records for all internal revenue taxes for taxable years 2002 and 2003.

Petitioner executed two (2) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code,* the details of which are as follows:

Waiver	**Date Executed by Petitioner**	**Agreed Period to Assess Petitioner**	**Date Accepted by the BIR**
First Waiver	November 14, 2006	Until January 31, 2007	November 22, 2006
Second Waiver	January 12, 2007	Until June 30, 2007	January 18, 2007

Subsequently, on April 11, 2007, petitioner received a copy of the BIR's undated *Preliminary Assessment Notice* (PAN), pursuant to LOA No. 95944, finding due from petitioner deficiency income tax, WTC, FWT, FBT, and value-added tax (VAT), in the aggregate amount of ₱109,200,012.34, inclusive of interests and penalties, for taxable year 2003.

Petitioner then filed the letter dated April 20, 2007, requesting for an extension of thirty (30) days from the expiry date of the 15-day period, which falls on April 27, 2007, to file its protest to the PAN. Thus, on May 25, 2007, petitioner filed its *Reply* to the PAN.

Petitioner then received the *Formal Letter of Demand and Final Assessment Notices* (FLD and FANs) dated May 31, 2007 issued by the LTS, assessing petitioner of the following deficiency tax liabilities, to wit:

Type of Tax	***Amount***
Income Tax	₱83,729,057.58
WTC	4,051,013.66
EWT	1,909,344.48
FWT	18,831,129.77
FBT	284,889.69
VAT	11,351,025.70
Total Deficiency Taxes	**₱120,156,460.88**

Petitioner sent the letter dated July 10, 2007 to the BIR, stating, among others, (1) that it has not received any reply regarding its letter dated May 25, 2007; (2) that it received an unreadable photocopy of FAN through LBC Express Inc. on July 3, 2007; and (3) that it reserves its right to answer the FAN, after receiving the copy thereof, as well as the schedule of expenses.

Thereafter, petitioner received the *Tax Verification Notice* No. 84150 dated October 10, 2007 issued by the (sic) Mr. Virgilio R.

Cembrano, Chief, LTDO-122 Makati, authorizing Revenue Officer Romualdo Plocios to verify the supporting documents and/or pertinent records supposedly relative to petitioner's request for reinvestigation.

Petitioner then filed the letter dated December 6, 2007 with the BIR stating, among others, that it never requested for a reinvestigation of the assessment; and that it intends to avail of the tax amnesty under Republic Act (RA) No. 9480.

In the meantime, petitioner filed its *Notice of Availment of Tax Amnesty* dated December 27, 2007 and, thereafter, paid the amnesty tax of ₱600,000.00.

In response to its letter dated July 10, 2007, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated May 10, 2012 issued by Mr. Alfredo V. Misajon, the OIC-ACIR, LTS, finding petitioner liable for deficiency WTC, EWT, FWT and FBT, in the aggregate amount of ₱25,076,377.60.

Petitioner filed its letter dated July 3, 2012 with the Office of respondent, requesting for the immediate cancellation of the FDDA dated May 10, 2012.

Petitioner received a copy of the *Decision* dated January 7, 2016, denying petitioner's request."

On March 15, 2016, the Petition for Review [With Application to Restrain the Collection of Taxes] was filed.

Trial then ensued.

On August 26, 2020, the Court in Division rendered the Assailed Decision granting the Petition for Review. The Court in Division cancelled and set aside the assessments issued by petitioner against respondent for the latter's alleged deficiency WTC, EWT, FWT, and FBT for the period January 1, 2003 to December 31, 2003.

Aggrieved, the CIR filed a Motion for Reconsideration (Re: Decision dated 26 August 2020) on September 18, 2020 which the Court in Division denied in the Assailed Resolution.

On February 15, 2021, petitioner filed the present Petition for Review.

In a Resolution dated March 18, 2021, this Court required respondent to file its Comment to the Petition for Review within ten (10) days from notice.[7]

On June 11, 2021, respondent filed a Motion for Extension to File Comment praying for an additional period of at least ten (10) days from June 11, 2021 until June 21, 2021 within which to file its Comment.[8]

On June 18, 2021, respondent filed its Comment/Opposition (To the Petition for Review dated 11 February 2021).[9]

In a Resolution dated July 1, 2021, this Court noted respondent's Comment/Opposition (To the Petition for Review dated 11 February 2021) and referred the present case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[10]

On November 16, 2021, the PMC-CTA submitted a Back to Court stating that mediation was refused by respondent.[11]

In a Resolution dated February 17, 2022,[12] this Court noted PMC-CTA's Back to Court dated November 16, 2021 and reinstated the Court's proceedings in the present case. In the same Resolution, the present case was submitted for decision.

THE ISSUE

Petitioner filed the present Petition for Review on the basis of the sole ground as stated below: [13]

> "THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENT ISSUED AGAINST RESPONDENT IS IN VIOLATION OF THE RIGHT TO DUE PROCESS RENDERING THE ASSESSMENT VOID."

THE COURT *EN BANC'S* RULING

The Petition for Review is denied.

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[7] *Id.*, pp. 77-78.
[8] *Id.*, pp. 79-81.
[9] *Id.*, pp. 82-109.
[10] *Id.*, pp. 240-241.
[11] *Id.*, p. 242.
[12] *Id.*, pp. 252-253.
[13] *Id.*, p. 10.

Petitioner insists that it did not violate respondent's due process rights.[14] Petitioner claims that respondent was given every opportunity to refute the assessment and, in fact, respondent was able to protest intelligently and there was even a reduction in the amount of the assessment.[15]

Petitioner also maintains that assessments are presumed correct and made in good faith.[16] In the absence of proof of any irregularities in the performance of duties (which proof the respondent is duty-bound to present), the assessment shall not be disturbed.[17]

Respondent, in its Comment/Opposition (To the Petition for Review dated 11 February 2021), contends that the present Petition for Review should be denied outright considering that the same did not comply with the requirements of Rule 43 of the Rules of Court.[18] Specifically, petitioner failed to attach the material portions of the records and the supporting documents submitted in the proceedings before the Court in Division.[19] Respondent likewise asserts that, contrary to petitioner's claim, the Court in Division correctly ruled that the Preliminary Assessment Notice and the Final Assessment Notice are null and void considering that they were devoid of the facts on which the assessment was based, in violation of respondent's constitutional right to due process.[20]

Petitioner's position is unmeritorious.

At the outset, it bears pointing out that petitioner merely recycled the arguments he raised in his Petition for Review before the Court *En Banc* as these matters had already been thoroughly discussed and resolved by the Court in Division in the Assailed Decision and Resolution. To put it bluntly, there is nothing in his Petition for Review that was not sufficiently passed upon by the Court in Division. Petitioner utterly failed to raise any compelling reason to warrant the modification much less reversal of the Court in Division's findings.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*,[21] the Supreme Court declared as void a tax assessment by reason of the CIR's total disregard of taxpayer's due process rights as mandated by Section 228 of the 1997 NIRC and RR No. 12-99, as amended. **Specifically, the Supreme Court held that the CIR failed to fully apprised the taxpayer of the legal and factual bases of the assessment issued against it. Moreover, the taxpayer**

[14] *Id.*, pp. 11-18.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*, pp. 91-95.
[19] *Id.*
[20] *Id.*, pp. 95-108.
[21] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

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 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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> x x x x x x x x x
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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.**
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> **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.**
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> 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.***'

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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)*

Upon review of the records and applying the aforecited case, the Court *En Banc* fully agrees with the Court in Division that there was violation of respondent's due process rights as the petitioner failed to strictly observe the clear mandate of Section 228 of the National Internal Revenue Code of 1997, as amended, in relation to Revenue Regulations 12-99, as amended.

The assessments contained in the FLD/FAN dated May 31, 2007 were exactly the same as those stated in the undated PAN. The only difference, as correctly pointed out by the Court in Division, are that: (1) assessment numbers were indicated; and (2) the amounts of interest were adjusted. The basic tax due remained the same. It is evident that petitioner merely reiterated the same findings as stated in the said undated PAN, without giving any reason for rejecting the refutations and explanations as well as consideration of respondent's request for clarification as indicated in the latter's Reply to PAN dated May 25, 2007.

Furthermore, the FDDA dated May 10, 2012 as well as the Decision dated January 7, 2016 are both bereft of any sufficient explanation or information as to how the figures reflected in the assessments were arrived at. Neither do they contain any reason for rejecting respondent's contention or request for clarification in its Reply to PAN dated May 25, 2007.

Respondent was thus left unaware on how the petitioner appreciated the explanations or defenses it raised against the undated PAN, in clear violation of its right to administrative due process, thereby rendering the subject assessments void.

Petitioner's contention that respondent was given every opportunity to refute the assessment and was able to protest intelligently and that there was even a reduction in the amount of the assessment is off the mark. The violation of due process is not about respondent's lack of knowledge on the investigation or the failure to provide the documents requested by respondent but based on the reason discussed above.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I Join PJ Del Rosario's Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2419** (CTA Case No. 9294)
	Present:
- versus -	DEL ROSARIO, P.J., CASTAÑEDA, Jr., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID, JJ.
MORNING STAR MILLING CORPORATION, Respondent.	Promulgated: JUN 21 2022 3:30 pm

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CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I concur in the denial of the Petition for Review which prays that (i) the assailed Decision and Resolution of the Court in Division be reversed; and, (ii) respondent be ordered to pays its deficiency expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT) and Fringe Benefit Tax (FBT), for taxable year 2003, in the total amount of ₱25,076,377.60, plus surcharge and deficiency and delinquency interests.

In addition to the *ponencia*'s findings anent the violation of respondent's right to due process, I wish to add that the period to assess respondent for deficiency EWT, WTC and FWT, for taxable year 2003 had already prescribed when the Formal Letter of Demand and Final Assessment Notices, dated May 31, 2007, were issued.

As borne by the records, respondent filed its 2003 EWT, WTC and FWT returns and paid the taxes due on the following dates:

Taxable Months of Year 2003	**Deadline to File EWT Returns**	**Actual Date of Filing of EWT Returns[1]**	**End of the Three (3)-Year Period to Assess EWT**
January	February 10, 2003	February 13, 2003	February 13, 2006
February	March 10, 2003	March 14, 2003	March 14, 2006
March	April 10, 2003	April 14, 2003	April 14, 2006
April	May 10, 2003	May 13, 2003	May 15, 2006
May	June 10, 2003	June 12, 2003	June 12, 2006
June	July 10, 2003	July 14, 2003	July 14, 2006
July	August 10, 2003	August 14, 2003	August 14, 2006
August	September 10, 2003	September 10, 2003	September 10, 2006
September	October 10, 2003	October 14, 2003	October 14, 2006
October	November 10, 2003	November 14, 2003	November 14, 2006
November	December 10, 2003	December 12, 2003	December 12, 2006
December	January 15, 2004	January 15, 2004	January 15, 2007
Taxable Months of Year 2003	**Deadline to File WTC Returns**	**Actual Date of Filing of WTC Returns[2]**	**End of the Three (3)-Year Period to Assess WTC**
January	February 10, 2003	February 13, 2003	February 13, 2006
February	March 10, 2003	March 14, 2003	March 14, 2006
March	April 10, 2003	April 14, 2003	April 14, 2006
April	May 10, 2003	May 13, 2003	May 15, 2006
May	June 10, 2003	June 12, 2003	June 12, 2006
June	July 10, 2003	July 14, 2003	July 14, 2006
July	August 10, 2003	August 14, 2003	August 14, 2006
August	September 10, 2003	September 10, 2003	September 10, 2006
September	October 10, 2003	October 14, 2003	October 14, 2006
October	November 10, 2003	November 14, 2003	November 14, 2006
November	December 10, 2003	December 12, 2003	December 12, 2006
December	January 15, 2004	January 15, 2004	January 15, 2007
Taxable Months of Year 2003	**Deadline to File FWT Return**	**Actual Date of Filing of FWT Return[3]**	**End of the Three (3)-Year Period to Assess WTC**
December	January 15, 2004	January 15, 2004	January 15, 2007

[1] Exhibits "P-5" to "P-16", Division Docket, Vol. III, pp. 1234 to 1296.
[2] Exhibits "P-17" to "P-28", Division Docket, Vol. III, pp. 1297 to 1356.
[3] Exhibit "P-29", Division Docket, Vol. III, pp. 1357 to 1362.

Respondent executed two (2) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, the details of which are as follows:

Waiver	Date Executed by Petitioner	Agreed Period to Assess Petitioner	Date Accepted by the BIR
First Waiver[4]	November 14, 2006	Until January 31, 2007	November 22, 2006
Second Waiver[5]	January 12, 2007	Until June 30, 2007	January 18, 2007

As shown above, the original three (3)-year period to assess petitioner for deficiency EWT and WTC for the months of January 2003 to September 2003 had already prescribed when the First Waiver was executed on November 14, 2006. Only the right of petitioner to assess respondent for deficiency EWT and WTC for the months of October 2006 to December 2006 and deficiency FWT for the month of December 2003 was validly extended until January 31, 2007 under the First Waiver.

Prior to the lapse of the extended period to assess under the First Waiver, petitioner and respondent executed the Second Waiver on January 12, 2007, further extending the period to assess until June 30, 2007.

On May 31, 2007, the Formal Letter of Demand and Final Assessment Notices, assessing respondent for, among others, deficiency EWT, WTC, FWT and FBT, for taxable year 2003, were issued.

The question is whether the Second Waiver extended the period to assess respondent for deficiency EWT and WTC for the months of October 2003 to December 2003 and deficiency FWT for the month of December 2003 until June 30, 2007.

A scrutiny of the Second Waiver shows that it does not indicate the date when respondent received its file copy of the same. This defect rendered the Second Waiver void, and as such, it did not operate to further extend the period to assess until June 30, 2007.

[4] Exhibit "R-4", BIR Records, p. 580; Exhibit "P-21", Docket, Vol. II, p. 804.
[5] Exhibit "R-6", BIR Records, p. 723; Exhibit "P-31", Docket, Vol. II, p. 1364.

As held by the Supreme Court in *La Flor Dela Isabela, Inc. vs. Commissioner of Internal Revenue*:[6]

> "This Court had invalidated waivers which did not strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01, such as, but not limited to: x x x (e) **failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy**;[7] x x x" (*Boldfacing supplied*)

In view of the void Second Waiver, the period to issue the subject assessment for deficiency EWT and WTC for the months of October 2003 to December 2003 and deficiency FWT for the month of December 2003 was not extended until June 30, 2007. The extended period to assess lapsed on January 31, 2007 under the First Waiver.

With regard to the FBT assessment, as clearly elucidated in the *ponencia*, petitioner failed to inform respondent of the reason for rejecting its explanation in its Reply to the Preliminary Assessment Notice when petitioner reiterated the exact basic deficiency FBT assessment in the Formal Letter of Demand and Final Assessment Notices, in violation of respondent's right to due process, thereby rendering the said deficiency FBT assessment void.

In fine, the Formal Letter of Demand and Final Assessment Notices, dated May 31, 2007, are void for having been issued beyond January 31, 2007; and, in violation of respondent's right to due process.

All told, I *CONCUR* in the denial of the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] G.R. No. 202105, April 28, 2021.
[7] Citing *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.