REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MONTALBAN METHANE POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10334

Members:

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

Promulgated:

AUG 13 2024 4:15 p.m.

x- -x

DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** prays that the Court reverse and set aside, for being contrary to law and the evidence, respondent's *Final Decision on Disputed Assessment* (FDDA) dated July 1, 2020, specifically:

1. Cancel the supposed deficiency income tax amounting to **₱17,803,063.27**, inclusive of interest;

2. Cancel the supposed deficiency withholding tax on compensation (WTC) amounting to **₱464,956.71**, inclusive of interest;

3. Cancel the supposed deficiency expanded withholding tax (EWT) amounting to **₱1,340,045.04**, inclusive of interest;

4. Cancel the supposed deficiency fringe benefit tax (FBT) amounting to **₱2,447,141.34**, inclusive of interest;

5. Cancel the supposed deficiency final tax amounting to **₱28,768,286.60**, inclusive of interest and surcharge;

6. Cancel the supposed deficiency final value-added tax (VAT) amounting to **₱4,084,306.24**, inclusive of interest and surcharge; and,

7. Cancel the supposed deficiency documentary stamp tax (DST) amounting to **₱3,693,104.21**, inclusive of interest.[1]

THE PARTIES

Petitioner Montalban Methane Power Corporation is a corporation organized and existing under Philippine laws, with office address at 5th Floor BMMC Building (formerly Solid Mills Building), Dela Rosa corner Adelantado Streets, Legaspi Village, Makati City.[2]

Respondent is the **Commissioner of Internal Revenue (CIR)** of the Bureau of Internal Revenue (BIR), which is the government agency with power and duty to assess and collect national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 21, 2017, respondent issued the evenly dated *Letter of Authority* (LOA) No. AUDM35/011329/2017 (SN: eLA201500034732),[4] authorizing the examination of petitioner's books of account and other accounting records for deficiency internal revenue taxes for the period from January 1, 2015 to December 31, 2015.

On September 7, 2018, respondent then issued the *Preliminary Assessment Notice* (PAN), together with *Details of Discrepancies*, against petitioner, demanding payment of ₱50,822,341.54, allegedly representing deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST, inclusive of interests and compromise penalty, for taxable year (TY) 2015.[5] The alleged tax liabilities of petitioner under the PAN were as follows:[6]

---

1 Statement of the Case, Pre-Trial Order dated July 20, 2022, Docket – Vol. 2, pp. 832 to 833.
2 Exhibit "P-3", Docket – Vol. 2, pp. 625 to 645.
3 Par. 2, The Parties, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 16 and 343, respectively.
4 Exhibit "R-1", BIR Records – Folder 1 (Exhibit "R-13-B"), p. 3.
5 Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket – Vol. 1, p. 523.
6 Par. 8, *Petition for Review, vis-à-vis* par. 1, *Answer*, Docket – Vol. I, pp. 20 and 343, respectively; Exhibit "R-6", BIR Records – Folder 1 (Exhibit "R-13-2"), pp. 552 to 559.

Tax Type	Basic	20% / 12% Interest	Compromise Penalty	TOTAL
Income tax	₱11,475,907.91	₱ 4,950,046.41		₱16,425,954.32
WTC	350,643.48	168,731.56		519,375.04
EWT	836,915.20	236,810.78		1,073,725.98
FBT	1,849,457.13	889,968.91		2,739,426.04
Final tax	15,540,298.97	7,478,077.01		23,018,375.98
Final VAT	2,307,721.91	1,110,488.43		3,418,210.34
DST	2,298,586.45	1,118,687.39		3,417,273.84
Compromise penalty			₱210,000.00	210,000.00
TOTAL	**₱34,659,531.05**	**₱15,952,810.49**	**₱210,000.00**	**₱50,822,341.54**

In its letter dated September 21, 2018, petitioner contested respondent's assessment for alleged deficiency taxes for TY 2015.[7] The said letter was filed with the BIR on September 25, 2018.[8]

Thereafter, on September 27, 2018, respondent issued the *Formal Letter of Demand* (FLD), together with the *Details of Discrepancies* and *Final Assessment Notice* (FAN), against petitioner, demanding payment of ₱50,822,341.54, allegedly representing deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST, inclusive of interests and compromise penalty, for TY 2015.[9] The alleged tax liabilities of petitioner under the FLD were as follows:[10]

Tax Type	Basic	20% / 12% Interest	Compromise Penalty	TOTAL
Income tax	₱11,475,907.91	₱ 4,950,046.41		₱16,425,954.32
WTC	350,643.48	168,731.56		519,375.04
EWT	836,915.20	236,810.78		1,073,725.98
FBT	1,849,457.13	889,968.91		2,739,426.04
Final tax	15,540,298.97	7,478,077.01		23,018,375.98
Final VAT	2,307,721.91	1,110,488.43		3,418,210.34
DST	2,298,586.45	1,118,687.39		3,417,273.84
Compromise penalty			₱210,000.00	210,000.00
TOTAL	**₱34,659,531.05**	**₱15,952,810.49**	**₱210,000.00**	**₱50,822,341.54**

On October 26, 2018, petitioner filed with respondent its protest letter of even date, requesting for a reinvestigation of the alleged deficiency taxes for TY 2015.[11]

7 Par. 2, JSFI, Docket – Vol. I, p. 523.
8 Refer to BIR Records – Folder 1 (Exhibit "R-13-2"), pp. 568 to 575.
9 Par. 3, JSFI, Docket – Vol. I, p. 523.
10 Par. 10, *Petition for Review, vis-à-vis* par. 1, *Answer*, Docket – Vol. I, pp. 20 to 21, and 343, respectively; Exhibits "R-8", "R-8-1", "R-8-2", "R-8-3", "R-8-4", "R-8-5", "R-8-6", "R-8-7", "R-8-8", BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 614 to 627.
11 Par. 4, Joint Stipulation of Facts, JSFI, Docket – Vol. I, p. 524. Refer also to BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 777 to 786.

Subsequently, on July 28, 2020, petitioner received the FDDA dated July 1, 2020, holding petitioner liable for ₱58,600,903.41, allegedly representing deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST, including interests and surcharges, for TY 2015.[12] The alleged tax liabilities of petitioner under the FDDA were as follows:[13]

Tax Type	Basic	25% Surcharge	20% / 12% Interest up to September 30, 2019	TOTAL
Income tax	₱11,475,907.91		₱ 6,327,155.36	₱17,803,063.27
WTC	290,379.16		174,577.55	464,956.71
EWT	836,897.61		503,147.43	1,340,045.04
FBT	1,694,117.65		753,023.69	2,447,141.34
Final tax	15,540,298.97	₱3,885,074.74	9,342,912.89	28,768,286.60
Final VAT	2,307,721.91	382,846.75	1,393,737.58	4,084,306.24
DST	2,298,586.45		1,394,517.76	3,693,104.21
Compromise penalty				
TOTAL	**₱34,443,909.65**	**₱ 4,267,921.49**	**₱19,889,072.26**	**₱58,600,903.41**

PROCEEDINGS BEFORE THIS COURT

On August 27, 2020, petitioner filed a *Motion for Additional Time to File Petition for Review and to Assign Docket Number*,[14] which the Court granted in the Resolution dated September 15, 2020,[15] giving petitioner fifteen (15) days from August 27, 2020, or until September 11, 2020, within which to file its *Petition for Review*.

Petitioner posted the present *Petition for Review* on September 11, 2020.[16]

On December 3, 2020, respondent filed a *Motion for Extension of Time to File Answer*,[17] which the Court granted in the Resolution dated January 5, 2021,[18] giving respondent another period of thirty (30) days from December 5, 2020, or until January 4, 2021, within which to file his *Answer*.

Respondent filed an *Urgent Motion for Extension of Time to File Answer* on January 4, 2021,[19] which the Court denied in the Resolution dated January 25, 2021.[20]

---

12 Par. 5, *Id.* at 524.
13 Par. 12, *Petition for Review, vis-à-vis* par. 1, *Answer*, Docket – Vol. I, pp. 21 and 343, respectively.
14 Docket – Vol. I, pp. 6 to 8.
15 *Id.* at 14.
16 *Id.* at 15 to 57.
17 *Id.* at 327 to 330.
18 *Id.* at p. 338.
19 Docket – Vol. I, pp. 332 to 335.
20 *Id.* at 341 to 358.

Respondent subsequently filed his *Answer* on January 25, 2021,[21] which was denied admission by the Court in the Resolution dated February 11, 2021.[22]

On February 5, 2021, respondent filed his *Omnibus Motion (Motion for Reconsideration Re: Resolution dated 25 January 2021) and Motion to Admit Answer),*[23] which the Court denied in the Resolution dated February 18, 2021.[24]

On March 4, 2021, respondent filed a *Motion for Reconsideration (Re: Resolution dated 11 February 2021 and Resolution dated 18 February 2021).*[25] Petitioner then filed on March 8, 2021 its *Opposition [Re: Respondent's Omnibus Motion (Motion for Reconsideration Re: Resolution dated 25 January 2021 and Motion to Admit Answer) dated 4 February 2021] with Motion to Declare Respondent in Default.*[26] In the Resolution dated June 10, 2021,[27] the Court granted respondent's *Motion for Reconsideration (Re: Resolution dated 11 February 2021 and Resolution dated 18 February 2021)*, and denied petitioner's *Opposition [Re: Respondent's Motion for Reconsideration (Re: Resolution dated 11 February 2021 and Resolution dated 18 February 2021) dated 4 March 2021]* with *Motion to Declare Respondent in Default.* Accordingly, the Resolutions dated February 11, 2021 and February 18, 2021 were reversed and set aside. Furthermore, respondent's *Answer* filed on January 25, 2021 was admitted as part of the records of the case, in the interest of justice.

On July 1, 2021, petitioner filed its *Motion for Reconsideration (Re: Resolution dated 10 June 2021).*[28] Respondent submitted his *Comment (On Petitioner's Motion for Reconsideration)* on October 25, 2021.[29] In the Resolution dated December 16, 2021,[30] the Court denied petitioner's *Motion for Reconsideration (Re: Resolution dated 10 June 2021).*

Respondent transmitted the *BIR Records* for the present case consisting of 1,294 pages in three (3) folders on February 11, 2022.[31]

---

[21] *Id.* at 343 to 358.
[22] *Id.* at 368 to 369.
[23] *Id.* at 360 to 365.
[24] *Id.* at 371 to 372.
[25] *Id.* at 373 to 383.
[26] *Id.* at 385 to 393.
[27] *Id.* at 414 to 419.
[28] *Id.* at 428 to 436.
[29] *Id.* at 441 to 447.
[30] *Id.* at 451 to 454.
[31] *Compliance* dated January 3, 2022, Docket – Vol. I, pp. 455 to 457.

The Pre-Trial Conference was initially set on September 14, 2021,[32] but was reset to, and eventually held, on April 26, 2022.[33] Prior thereto, *Respondent's Pre-Trial Brief* was posted on January 5, 2022,[34] and petitioner's *Pre-Trial Brief* was filed on April 22, 2022.[35]

During the Pre-Trial Conference held on April 26, 2022, the case was referred to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*. However, on June 20, 2022, the PMC-CTA filed the *No Agreement to Mediate* dated June 15, 2022.[36]

On May 26, 2022, the parties filed their *Joint Stipulation of Facts and Issue*.[37] The Pre-Trial Order dated July 20, 2022 was then issued by the Court.[38]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of Isabela Power Corporation's Finance Manager, Ms. Pryma Cabbigat-Nabejet,[39] who handles petitioner as an investee-project company and helped to prepare and file the present petition.

On December 5, 2022, petitioner filed its *Formal Offer of Exhibits*.[40] Respondent, however, failed to file his comment thereon.[41] In the Resolution dated February 8, 2023,[42] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of Revenue Officer (RO) Ma. Theresa V. Carillo.[43]

---

32 Notice of Pre-Trial Conference dated June 17, 2021, Docket – Vol. I, pp. 420 to 421.
33 Resolution dated December 16, 2021, Docket – Vol. I, pp. 451 to 454; Minutes of the hearing held on, and Order dated, April 26, 2022, Docket – Vol. I, pp. 517, and 519, 521 to 522, respectively.
34 Docket – Vol. I, pp. 460 to 465.
35 *Id.* at 490 to 515.
36 *Id.* at p. 538.
37 *Id.* at 523 to 529.
38 Docket – Vol. 2, pp. 832 to 840.
39 *Judicial Affidavit of Pryma Cabbigat-Nabejet*, Docket – Vol. 2, pp. 558 to 620; Minutes of hearing held on, and Order dated, October 13, 2022, Docket – Vol. II, pp. 848, and 850 to 851, respectively.
40 Docket – Vol. 2, pp. 854 to 873.
41 Records Verification Report dated January 4, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 876.
42 Docket – Vol. 2, pp. 878 to 879.
43 Exhibit "R-14", Docket – Vol. I, pp. 473 to 484; Minutes of hearing held on, and Order dated, February 21, 2023, Docket – Vol. 2, pp. 880, and 883 to 884, respectively.

On March 8, 2023, *Respondent's Formal Offer of Evidence* was filed,[44] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated 6 March 2023)* on March 29, 2023.[45] In the Resolution dated June 13, 2023,[46] the Court admitted respondent's offered exhibits.

In the meantime, the present case was transferred to this Court's Second Division, per the Resolution dated June 9, 2023.[47]

On July 14, 2023, petitioner filed its *Memorandum*.[48] Respondent, however, failed to file his memorandum.[49]

The present case was considered submitted for decision on August 15, 2023.[50]

THE ISSUE

The issue stipulated by the parties for this Court's resolution is as follows:

> Whether or not petitioner is liable for the payment of ₱58,600,903.41, representing deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST, inclusive of interests and surcharges, for TY 2015.

For an orderly disposition of this case, however, this Court raises the following issue:

> Whether or not the subject tax assessments are void for violation of petitioner's right to due process.

ARGUMENTS OF THE PARTIES

Petitioner argues that respondent seriously erred in holding it liable for deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST.

---

44 Docket – Vol. 2, pp. 886 to 893.
45 *Id.* at 896 to 902.
46 *Id.* at 912 to 914.
47 Notice, Docket – Vol. 2, p. 909.
48 Docket – Vol. 2, pp. 915 to 957.
49 Records Verification dated July 26, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 958.
50 Minute Resolution dated August 15, 2023, Docket – Vol. 2, p. 959.

In his *Answer*, respondent contends that petitioner is liable for deficiency income tax, WTC, EWT, FBT, final tax, final VAT, and DST for TY 2015, plus interests, in the aggregate amount of ₱58,600,903.41.

THE COURT'S RULING

The present *Petition for Review* has merit.

Legal bases to resolve the issue raised by this Court

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> 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 added)*

Based on the foregoing provision, this Court 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.[51] Such authority of this Court is confirmed and recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[52] *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**

---

[51] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[52] G.R. No. 183408, July 12, 2017.

> **rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** xxx. *(Emphases added)*

The Supreme Court has applied the foregoing provision in *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,*[53] wherein it held the following:

> As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>.** xxx. *(Emphasis and underscoring added)*

Furthermore, in *Comilang vs. Burcena, et al.,*[54] the Supreme Court held:

> 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 <u>an appellate court</u> to consider errors not assigned.**
>
> xxx xxx xxx
>
> **Thus, an appellate court is clothed with ample opportunity 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.**[55] *(Emphases added)*

On the basis of the foregoing jurisprudential pronouncements, it is clear that this Court, as an appellate court, is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in certain instances. To be sure, although the issue of whether petitioner was denied

---

[53] G.R. No. 222476, May 5, 2021.
[54] G.R. No. 146853, February 13, 2006.
[55] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. vs. 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.

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 in arriving at a just decision and complete resolution of the case.

Furthermore, it must be emphasized that the issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. **It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment.** This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.[56]

Thus, the Court sees no legal obstacle to resolve the above-stated issue raised by this Court.

The subject tax assessments are void, for violation of petitioner's right to administrative due process.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, reads, in part, as follows:

> 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 added)*

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.[57] 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

[56] *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.

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

effective protest.[58] Clearly, 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.[59] 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 NIRC of 1997, as amended.[60]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[61] as amended by RR No. 18-2013[62] and renumbered by RR No. 7-2018,[63] provides, in part, 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:
>
> xxx xxx xxx
>
> 3.1.2 *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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 3.1.4 *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 <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx

[58] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[59] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[60] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[61] 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.
[62] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[63] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.6 *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 added)*

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[64] the Supreme Court ruled:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> 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
>
> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**
>
> xxx xxx xxx
>
> In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for

---

64 G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

xxx xxx xxx

In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

xxx xxx xxx

The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

xxx xxx xxx

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.** (Emphasis ours)

In the said Avon case, the Supreme Court emphasized the importance of providing taxpayer with adequate written notice of his or her tax liability. Section 228 of the NIRC of 1997, as amended, explicitly requires 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. More importantly, the BIR itself, in issuing RR No. 12-99 requires that the PAN shows in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based.[65] Further, Section 3.1.4 of RR No. 12-99 requires the FLD must state the facts and law on which it is based; otherwise, the FLD and FAN themselves shall be void. Finally, Section 3.1.6 of RR No. 12-99 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 FDDA.[66]

It must be emphasized that the use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and in RR 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 the taxpayer is mandatory.[67]

In the Avon case, the Supreme Court categorically held that Avon was deprived of due process as it was not fully apprised of the legal and factual bases of the assessments issued against it, *viz*:

> The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, <u>Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments</u>.** 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. <u>He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record</u>.**
>
> xxx xxx xxx

[65] Section 3.1.2 of RR No. 12-99.
[66] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[67] *Id.*

> **The Commissioner's total disregard of due process rendered the <u>identical</u>** Preliminary Assessment Notice, **Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.** (Boldfacing ours)

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and in strict adherence to, the law, with their own rules of procedure, and always with regard to the basic tenets of due process. **Due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.**

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect. Moreover, **a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made.** Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. <u>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 is based, and those facts must appear in the record</u>. 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.

To stress, in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the *PAN* dated September 7, 2018,[68] the BIR found the petitioner liable for the following taxes and increments for TY 2015:

Tax Type	Basic	Interests	Compromise Penalties	Total
Income tax	₱ 11,475,907.91	₱ 4,950,046.41	₱ 50,000.00	₱ 16,475,954.32
WTC	350,643.48	168,731.56	20,000.00	539,375.04
EWT	836,915.20	236,810.78	25,000.00	1,098,725.98
FBT	1,849,457.13	889,968.91	15,000.00	2,754,426.04
FWT	15,540,298.97	7,478,077.01	25,000.00	23,043,375.98
FVAT	2,307,721.91	1,110,488.43	25,000.00	3,443,210.34

68 Exhibit "R-6", BIR Records – Folder 1 (Exhibit "R-13-B"), pp. 559 to 552.

DST	2,298,586.45	1,118,687.39	50,000.00	3,467,273.84
Total	**₱34,659,531.05**	**₱15,952,810.49**	**₱ 210,000.00**	**₱ 50,822,341.54**

In its letter-reply to the said PAN,[69] petitioner made certain refutations against the findings of the BIR relative to each of foregoing deficiency taxes.

However, in the FLD dated September 27, 2018,[70] petitioner was still assessed exactly the same deficiency tax liabilities, to wit:

Tax Type	Basic	Interest	Compromise Penalties	Total
Income tax	₱ 11,475,907.91	₱ 4,950,046.41	₱ 50,000.00	₱ 16,475,954.32
WTC	350,643.48	168,731.56	20,000.00	539,375.04
EWT	836,915.20	236,810.78	25,000.00	1,098,725.98
FBT	1,849,457.13	889,968.91	15,000.00	2,754,426.04
FWT	15,540,298.97	7,478,077.01	25,000.00	23,043,375.98
FVAT	2,307,721.91	1,110,488.43	25,000.00	3,443,210.34
DST	2,298,586.45	1,118,687.39	50,000.00	3,467,273.84
Total	**₱34,659,531.05**	**₱15,952,810.49**	**₱ 210,000.00**	**₱50,822,341.54**

A comparison of the figures stated in the PAN dated September 7, 2018, and the foregoing figures would reveal that the respective amounts of basic taxes, interests and compromise penalties remained unchanged. More importantly, it is noteworthy that, in the said FLD, the BIR did not address any of the refutations made by petitioner in its letter-reply to the PAN — an indication that the BIR did not consider the same when it issued the subject FLD. In fact, the *Details of Discrepancies* attached to the said FLD merely reiterated or copied *verbatim* the items indicated in the *Details of Discrepancies* attached to the PAN.

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 representative appreciated the explanations or defenses raised by petitioner in connection with the assessments.

As already pointed out, as part of the due process requirement in the issuance of tax assessments, respondent or the BIR must give reason(s) for rejecting petitioner's arguments, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. Respondent had obviously not observed such requirement in the issuance of the subject FLD/FAN.

---

[69] Refer to BIR Records – Folder 1 (Exhibit "R-13-2"), pp. 568 to 575.

[70] Refer to Exhibits "R-8", "R-8-1", "R-8-2", "R-8-3", "R-8-4", "R-8-5", "R-8-6", "R-8-7", "R-8-8", BIR Records – Folder 2 (Exhibit "R-13-1"), pp. 614 to 627.

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, vis-à-vis Section 3.1.4 of RR No. 12-99, as amended, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[71] Furthermore, a void assessment bears no valid fruit.[72] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent has no right to collect the same.

In view of the foregoing findings, it is no longer necessary to address the other respective arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the *Final Decision on Disputed Assessment* dated July 1, 2020 of respondent is **REVERSED** and **SET ASIDE**. Moreover, the *Formal Letter of Demand* and *Final Assessment Notices* dated September 27, 2018, issued against petitioner, for taxable year 2015, are **CANCELLED** and **SET ASIDE**. Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[71] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.
[72] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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's Division.

MA. BELEN M. RINGPIS-LIBAN
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