REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MORNING STAR MILLING CORPORATION, Petitioner,	**CTA CASE NO. 9294**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson,* **and** **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 26 2020 1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This *Petition for Review* filed on March 15, 2016, prays that the *Decision* dated January 7, 2016 of the Commissioner of Internal Revenue on petitioner's alleged deficiency on compensation withholding tax (WTC), expanded withholding tax (EWT), final withholding tax (FWT), and fringe benefit withholding tax (FBT), in the aggregate amount of ₱25,076,377.60, inclusive of surcharge and legal interest, for the period January 1, 2003 to December 31, 2003, be reversed and set aside.[1]

THE PARTIES

Petitioner Morning Star Milling Corporation is a corporation duly organized and existing under the laws of the Philippines, with

[1] Summary of the Case, Pre-Trial Order dated September 26, 2016, Docket – Vol. II, p. 893.

current address at LP Fort Legend Tower, 3rd Ave., corner 31st Street, BGC, Taguig.[2]

On the other hand, respondent Commissioner of Internal Revenue is the officer duly appointed and empowered by law to act on national internal revenue tax assessments, with office address at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

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.[4]

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 records for all internal revenue taxes for taxable years 2002 and 2003.[5]

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[6]	November 14, 2006	Until January 31, 2007	November 22, 2006
Second Waiver[7]	January 12, 2007	Until June 30, 2007	January 18, 2007

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[2] Exhibit "P-4", Docket – Vol. III, pp. 1222 to 1233.
[3] Par. 9, *Petition for Review* vis-à-vis Par. 1, *Amended Answer*, Docket – Vol. I, p. 13, and Docket – Vol. II, p. 784, respectively.
[4] Par. cc, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 832; Exhibit "P-30", Docket – Vol. III, p. 1363; Exhibit "R-1", BIR Records, p. 2.
[5] Par. ee, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "P-32", Docket – Vol. III, p. 1365.
[6] Exhibit "R-4", BIR Records, p. 580; A16, Exhibit "R-21", Docket – Vol. II, p. 804.
[7] Par. dd, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-6", BIR Records, p. 723; Exhibit "P-31", Docket – Vol. III, 1364.

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.[8]

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.[9] Thus, on May 25, 2007, petitioner filed its *Reply* to the PAN.[10]

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:[11]

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.[12]

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

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[8] Par. ff, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibits "P-33" and "R-8", BIR Records, pp. 715 to 718.

[9] Par. ii, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-9", BIR Records, p. 719.

[10] Par. jj, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-10", BIR Records, pp. 724 to 728.

[11] Par. gg, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibits "P-36", and "R-12", BIR Records, pp. 790 to 806.

[12] Par. kk, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-15", BIR Records, pp. 828 to 830.

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.[13]

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.[14]

In the meantime, petitioner filed its *Notice of Availment of Tax Amnesty* dated December 27, 2007[15] and, thereafter, paid the amnesty tax of ₱600,000.00.[16]

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.[17]

Petitioner filed its letter dated July 3, 2012 with the Office of respondent,[18] 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.[19]

PROCEEDINGS BEFORE THIS COURT

On March 15, 2016, petitioner filed the instant *Petition for Review [With Application to Restrain the Collection of Taxes]*.[20] 𝓰~

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[13] Par. hh, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-16", BIR Records, p. 832.
[14] Par. ll, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-18", BIR Records, pp. 835 to 836.
[15] Exhibit "P-40", Docket – Vol. III, p. 1059.
[16] Exhibits "P-41" to "P-43", Docket – Vol. III, pp. 1061 to 1063.
[17] Par. a, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 828; Exhibit "P-1", Docket – Vol. I, pp. 60 to 62.
[18] Exhibit "P-2", Docket – Vol. III, pp. 1192 to 1207.
[19] Par. c, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 828; Exhibit R-19", BIR Records, pp. 1185 to 1198.
[20] Docket – Vol. I, pp. 10 to 59.

The hearing on petitioner's *Motion to Suspend the Collection of Taxes* was set and held on March 28, 2016.[21] In the Resolution dated April 1, 2016,[22] the Court granted petitioner's *Motion to Suspend the Collection of Taxes*, subject to the posting with this Court of an acceptable surety bond in the amount of ₱37,614,566.40.

On May 26, 2016, respondent filed his *Answer*.[23] Petitioner filed its *Reply [to the Answer dated 26 March 2016]* on June 27, 2016.[24]

On June 30, 2016, petitioner filed the following pleadings, to wit:

1. *Motion for Production of Documents*;[25]
2. *Request for Admission*;[26] and
3. *Interrogatories to Parties*.[27]

The pre-trial conference was set and held on July 7, 2016.[28] In the meantime, the *Pre-Trial Brief [for Petitioner Morning Star Milling Corporation]* was filed on July 4, 2016,[29] while *Respondent's Pre-Trial Brief* was submitted on July 5, 2016.[30]

On July 28, 2016, respondent submitted the *BIR Records* for the instant case.[31]

Respondent subsequently filed, on July 29, 2016, the following:

1. *Comment/Opposition (Re: Petitioner's Motion for Production of Documents)*;[32] gr

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[21] *Notice of Hearing* dated March 21, 2016, Docket – Vol. I, p. 284; Minutes of the hearing held on March 28, 2016, and Resolution daed April 1, 2016, Docket – Vol. I, pp. 306 to 307, and 309 to 310.
[22] Docket – Vol. I, pp. 309 to 310.
[23] Docket – Vol. I, pp. 397 to 409.
[24] Docket – Vol. II, pp. 715 to 726.
[25] Docket – Vol. I, pp. 435 to 440.
[26] Docket – Vol. I, pp. 443 to 452;
[27] Docket – Vol. I, pp. 455 to 462.
[28] *Notice of Pre-Trial Conference* dated June 6, 2016, Docket – Vol. I, pp. 1, pp. 412 to 413; Minutes of the hearing held on, and Order dated, July 7, 2016, Docket – Vol. II, p. 582 and 748, respectively.
[29] Docket – Vol. II, pp. 556 to 571.
[30] Docket – Vol. II, pp. 572 to 575.
[31] *Manifestation (Re: Submission of BIR Records)* dated July 27, 2016, Docket – Vol. II, pp. 728 to 730.
[32] Docket – Vol. II, pp. 731 to 734;

2. *Comment (Re: Request for Admission)*;[33] and
3. *Comment/Opposition (Re: Petitioner's Interrogatories to Parties)*.[34]

On July 27, 2016, respondent filed a *Motion for Leave to File and Admit Attached Amended Answer*,[35] with the attached *Amended Answer*,[36] praying for the admission of the latter, and the striking off the same. On September 16, 2016, petitioner filed a *Manifestation* stating, among others, that it has no objection to respondent's *Motion for Leave to File and Admit Attached Amended Answer* dated August 3, 2016 and to the admission of the *Amended Answer*, and that it adopts the allegations stated in its *Reply* dated June 27, 2016 to refute the allegations in the said *Amended Answer*.[37]

In the Resolution dated September 20, 2016,[38] the Court granted the said *Motion to Admit Attached Amended Answer*, and admitted respondent's *Amended Answer*. Pertinently, in the said *Amended Answer*, respondent interposed the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

The Preliminary Assessment Notice, Formal Letter of Demand and Final Assessment Notices are compliant with Section 228 of the National Internal Revenue Code.

5. Petitioner posits that the Decision issued by the Commissioner of Internal Revenue is void since the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notices (FANs)

[33] Docket – Vol. II, pp. 736 to 741.
[34] Docket – Vol. II, pp. 743 to 746.
[35] Docket – Vol. II, pp. 754 to 758.
[36] Docket – Vol. II, pp. 784 to 796.
[37] Docket – Vol. II, pp. 885 to 889.
[38] Docket – Vol. II, p. 891.

upon which the said Decision was based failed to provide the facts and law upon which they are based.

6. Petitioner is clearly mistaken.

7. Section 228 of the National Internal Revenue Code (Tax Code) provides:

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

8. This Honorable Court has explained in the case of CIR v. Liquigas that Section 228 does not require a full explanation of every legal and factual basis as posited by petitioner, specifically:

> Liquigaz Philippines' witness, Juliet A. Abano cannot feign ignorance of the factual and legal bases of the BIR's assessments. Nor can her observation that 'there was no explanation whatsoever on every item of the assessment' be given decisive weight, for all that Section 228 of the NIRC requires is that 'the taxpayer shall be informed in writing of the law and the facts on which the assessment is made.'

> **It is sufficient to identify the law and recite the facts; Section 228, which is applicable to assessments, does not demand a full explanation of every legal and factual basis. Nor is a full explanation required by Section 3.1.6 of RR No. 12-99; it is sufficient for the FDDA, as the decision of the CIR or his duly authorized representative, to state the facts, applicable laws, rules and regulations, or jurisprudence on which such decision is based.**
>
> **(Emphasis supplied).**

9. In the instant case, the PAN, FLD and FANs have sufficiently complied with the requirements of the law. It has stated with certainty and clarity the basis of the assessment.

10. Petitioner even went on and quoted the PAN. However, a cursory reading of the same would clearly show the basis of the assessment, to wit

Deficiency Income Tax

1. Undeclared sales — wheat unaccounted — P36,424,680.90

Investigation and analysis of importation and sales disclosed the existence of unaccounted wheat purchases totaling to 38,025,195.96 kgs. The corresponding mark up was determined and included in the computation of taxable income pursuant to **Section 32 (A)(2) of the National Internal Revenue Code (NIRC) of 1997**.

2. Disallowed Expenses – no supporting documents – P6,930,393.20

Per our investigation of **expenses claimed** proved that you **failed to support expenses** totaling to P6,930,393.20 which is **in violation of Section 34 (A)(b) or the substantiation requirements of** ~~

deductions from gross income.

3. Disallowed Expenses – non withholding of proper taxes P3,755,8979.90

Per Section 34 (K) of the NIRC – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be disallowed only if it is shown that the tax required to be deducted and withhold therefrom has been paid to the Bureau of Internal Revenue.

4. Disallowed Expenses – non withholding

Salaries and Wages
Purchases
Manufacturing Overhead
Freight and Handling
Promotion and Advertising
Computerized Progresss and Services
Other cost of wheat
Brokerage
Audit and Legal Fees
Interest Expense not subjected to the FT

5. Disallowed NOLCO – P13,723,113.09

Per Section 6.5 of Revenue Regulations No. 14-2001, the NOLCO is not allowed whenever the amount of MCIT is greater than the normal income tax due computerized with the benefit of NOLCO, because the taxpayer is subject to MCIT.

Deficiency Withholding Tax Compensation – P3,932,486.57

Per evaluation of the expenses subjected to withholding tax compensation resulted to a **discrepancy of P14,997,755.97** which has the tax effect of P2,377,054.33. This is **in violation with the pertinent provisions of Revenue Regulations No. 2-1998.**

Deficiency Expanded Withholding Tax – P1,853,868.79 ✓

Various income payments were not subjected to withholding tax per Revenue Regulations Nos. 2-1998, 6-2001, 14-2002, 17-2003 and 30-2003, described as follows:

Nature of Income Payments	Tax Due
Income Payments no. EWT @1%	116,939.47
Income Payments no. EWT @ 2%	16,078.51
Income Payments no. EWT @ 5%	1,474.19
Prof. Fees no EWT @10%	149,783.11
Purchases	55,621.86
Fumigants & Repellants	
Oil & Gasoline	62,894.88
Freight and Handling	139,500.31
Promotion and Advertising	12,529.70
Computer Progress Services	500.00
Other Cost of Wheat	427,061.78
Brokerage	1,420.15
Audit and Legal Fees	22,664.27
Increase in PPE	106,093.61
Total	**1,112,561.85**

Deficiency Final Tax – P18,277,471.47

Interest expense payable to Offshore Banking Units are subject to Final Tax as per **Revenue Regulations No. 2-1998, Section 2.57-a (H)(1)**.

Deficiency Fringe Benefit Tax – P271,603.92

Verification of various expenses such as personal expenses, membership fees and other benefits are found to be subject to Fringe Benefit Tax in accordance with Revenue Regulations No. 3-1998, Section 2.33 (A)(c), (B)(3) and (6).

Deficiency Value-Added Tax – P11,016,501.73

1. **Freight Income/Receipts – P2,414,102.35**

   Verification of sales invoices issued to customers included freight charges which are not included in the output tax declared per Value Added Tax Return. **Per Section 108 (B) NIRC**, the tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh.

2. **Undeclared Sale of Wheat – P36,424,680.90**

   Investigation and verification of purchases records disclosed the existence of undeclared sales in the amount of ₱36,424,680.90 which is subject to value added tax pursuant to **Section 105 and 106 of the NIRC**.

3. **Disallowed Input Tax on Goods and Services – P1,444,178.46**

   Verification of documents in support to the input tax credits claimed per VAT return are found to be non-accordance with Section 113 of the NIRC –x x x –

4. **Allocable Input Tax on Exempt Sales – P1,380,802.97**

   Per Section 4.104-3 of Revenue Regulations No. 7-1995 and Section 110 (C) of the NIRC, which refers to the determination of input tax deductible during the taxable month or quarter, all input taxes creditable to VAT registered persons during the taxable month or quarter plus any input carried over from preceding month or quarter shall be reduced by the amount of the claim for refund or tax credit for VAT and other adjustment such as such as, purchases returns or allowances and input tax attributable to exempt sales.

   (Emphasis supplied).

11. Clearly, there was neither facts nor law that were not disclosed to petitioner so as to warrant the avoidance of the assessment pursuant to Section 228 of the Tax Code.

12. <u>Moreover, petitioner was able to intelligently protest the same. (which in fact resulted to the reduction of the assessment.)</u>

13. Hence, it cannot feign ignorance now and assert that ✍

it did not understand fully the assessment just because it was not satisfied with the decision which did not result to a full elimination of the assessment

The waivers voluntarily executed by petitioner's President, Alexander S. Lim, validly extended the period of assessment.

14. Petitioner claimed that respondent's right to assess has prescribed since the Formal Letter of Demand (FLD) was issued beyond the three year period of assessment anchoring its claim on Section 203 of the Tax Code, to wit:

> **SEC. 203. Period of Limitation upon Assessment and Collection.** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.
>
> For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

15. Respondent disagrees.

16. The case at hand falls squarely as an exception to Section 203 of the Tax Code – that is when both the taxpayer and the Commissioner have agreed in writing to extend the time for assessment. Section 222 of the Tax Code states:

> **Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —**
>
> -xxx-
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.**
>
> The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> -xxx-
>
> **(Emphasis supplied).**

17. In the instant case, petitioner executed, not one (1), but two (2) Waivers of the Defense of Prescription for it to be able to submit and/or present the required books of accounts and other accounting records to facilitate the examination in connection with audit and/or investigation of all its internal revenue taxes for taxable year 2003.

18. Such actions on part of petitioner validly extended the period to assess petitioner.

19. Petitioner however contended that the waivers it executed were invalid because the waivers were not accepted by the Commissioner of Internal Revenue herself.

20. Respondent begs to differ.

21. All waivers were signed by the duly designated revenue official authorized to sign and/or accept waivers for tax cases pending investigation. Revenue

Delegation Authority Order No. 5-2001 is clear, to wit:

> **REVENUE DELEGATION AUTHORITY ORDER NO. 05-01**
>
> **SUBJECT : Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations**
>
> **TO : All Internal Revenue Officers and Employees and Others Concerned**
>
> **I. Revenue Officials Authorized to Sign the Waiver**
>
> The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:
>
> -xxx-
>
> B. For cases in the Large Taxpayers District Office (LTDO)
>
> The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession.
>
> -xxx-

22. In addition, the execution of the waivers proved to be beneficial to petitioner considering that aforesaid waivers constituted as tools for petitioner by providing it enough time to gather its voluminous documents/records for the conduct of audit by respondent. The waiver eventually led to the issuance of the PAN, FLD and FAN. Petitioner failed

to provide complete supporting documents to refute the findings despite ample time was given by respondent, thus, assessment for deficiency taxes still resulted after evaluation and consideration of the documents and explanation submitted by petitioner.

23. Thus, it is quite absurd and unfair that when the PAN, FLD and FAN proved to be adverse to petitioner, the very same waiver utilized by petitioner for its own advantage will now be used by the very same petitioner to defeat the validity of the waiver it voluntarily executed. Ergo, petitioner's defeaning silence and failure to challenge the legality of the waivers within the administrative level operates as an estoppel on its part to question the same before the Honorable Court.

24. Therefore, the period to assess petitioner has not prescribed since there were valid agreements between petitioner and respondent, as evidenced by the duly executed Waivers of the Defense of Prescription, to extend the period of assessment.

The period to assess and collect from petitioner has not prescribed.

25. Petitioner further claimed that the period to collect the assessment has prescribed since the Final Decision on Disputed Assessment was issued beyond the five (5) year period.

26. Again, petitioner is mistaken.

27. Section 223 of the National Internal Revenue Code clearly provides for the suspension on the period of collection. It states:

> **Sec. 223. Suspension of Running of Statute of Limitations. — The running of the Statute of Limitations provided in Sections 203 and 222** on the making of assessment and the beginning of distraint or levy a proceeding in court

> for collection, in respect of any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter**; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

28. In the instant case, respondent has been prevented from making the collection since petitioner has filed a protest to the Final Assessment Notice.

29. Therefore, clearly, the period to collect was suspended pursuant to Section 223; and thus has not prescribed.

Respondent correctly imposed withholding taxes from petitioner as they are excluded from the coverage of Republic Act No. 9480.

30. Petitioner posits its withholding taxes should have been covered by Republic Act NO. 9480 since respondent failed to show that it withheld said taxes.

31. Petitioner is mistaken.

32. The law is clear. Republic Act No. 9480 excepts from its coverage withholding agents with respect to their withholding tax liabilities. It states:

> SECTION 8.Exceptions. — **The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:**
>
> **1. Withholding agents with respect to their withholding tax liabilities;**
>
> 2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> 3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> 4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> 5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> 6. Tax cases subject of final and executory judgment by the courts.
>
> **(Emphasis supplied).** ge

33. Time and again, the Honorable Supreme Court has held that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice.

34. In the case at hand, there was no distinction made by law. To be clear, all withholding agents with respect to their withholding tax liabilities are excepted from the coverage of Republic Act No. 9480.

35. To explain, a withholding agent is considered as an agent of the government for the collection of taxes. Thus, its duty includes the duty to withhold taxes and corollary remit the same to the Bureau of Internal Revenue.

36. These duties are concurrent in nature and thus, failure to religiously comply with one or both makes a withholding agent liable for withholding tax liabilities. Thereby exempting them from the coverage of Republic Act No. 9480.

37. Thus, petitioner's position that since respondent failed to prove that it withheld taxes' which should have been withheld makes its liabilities covered by Republic Act No. 9480 is absurd.

38. If we follow petitioner's position, it will directly, or at the least indirectly, circumvent what Republic Act No. 9480 explicitly exempted from its coverage."

In the meantime, on August 16, 2016, the parties submitted their *Joint Stipulations of Facts and Issues* (JSFI).[39]

In the Resolution dated September 1, 2016,[40] the Court: (1) granted petitioner's *Interrogatories to Parties* and *Request for Admission*; (2) gave respondent a period of fifteen (15) days from

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[39] Docket – Vol. II, pp. 828 to 835.
[40] Docket – Vol. II, pp. 843 to 847.

notice within which to serve upon petitioner the answers on the written interrogatories; (3) ordered the parties to include in the JSFI any stipulation material or relevant facts and the genuiness of the documents sought to be admitted; (4) denied petitioner's *Motion for Production of Documents*; and (5) gave petitioner a period of ten (10) days from receipt to file its comment/opposition to respondent's *Motion for Leave to File and Admit Attached Amended Answer*.

On September 9, 2016, petitioner filed a *Motion for Leave to File and Admit Replies*,[41] with the following attached documents, *viz* : (1) *Reply [To the Comment/Opposition (Re: Petitioner's Motion for Production of Documents) dated 29 July 2016]*;[42] (2) *Reply [To the Comment (Re: Request for Admission) dated 29 July 2016]*;[43] and (3) *Reply [To the Comment/Opposition (Re: Petitioner's Interrogatories to Parties) dated 29 July 2016]*.[44] In view of the promulgation of the Resolution dated September 1, 2016, however, the Court rendered moot and academic the filing of petitioner's *Motion for Leave to File and Admit Replies*, per its Resolution dated September 15, 2016.[45]

Thereafter, the Court issued the Pre-Trial Order dated September 26, 2016, approving and adopting the parties' JSFI, and deeming the termination of the Pre-Trial Conference. [46]

Petitioner filed a *Motion for Judgment by Default* on January 27, 2017.[47] Respondent filed his *Comment/Opposition (Re: Petitioner's Motion for Judgment by Default)* on February 6, 2017.[48] Petitioner filed its *Motion for Leave to File and Admit Reply,*[49] with attached *Reply [To the Respondent's Comment/Opposition (Re: Petitioner's Motion for Judgment by Default) dated 06 February 2017]* on March 9, 2017.[50]

In the Resolution dated September 14, 2017,[51] the Court: (1) granted petitioner's *Motion for Leave to File and Admit Reply* filed on

[41] Docket – Vol. II, pp. 848 to 853.
[42] Docket – Vol. II, pp. 854 to 859.
[43] Docket – Vol. II, pp. 860 to 868.
[44] Docket – Vol. II, pp. 869 to 882.
[45] Docket – Vol. II, p. 883.
[46] Docket – Vol. II, pp. 893 to 900.
[47] Docket – Vol. III, pp. 911 to 917.
[48] Docket – Vol. III, pp. 1073 to 1081.
[49] Docket – Vol. III, pp. 1082 to 1085.
[50] Docket – Vol. III, pp. 1086 to 1096.
[51] Docket – Vol. III, pp. 1097 to 1102.

March 9, 2017; (2) admitted the attached *Reply [To the Respondent's Comment/Opposition (Re: Petitioner's Motion for Judgment by Default)* dated 06 February 2017; (3) denied petitioner's *Motion for Judgment by Default*; and (4) gave respondent a final and non-extendible period of fifteen (15) days from receipt thereof within which to serve upon petitioner the answer on the written interrogatories.

On October 9, 2017, respondent submitted his *Answer to Written Interrogatories* propounded by petitioner.[52]

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Mr. Wellington S. Lim,[53] Vice–President for Operations of petitioner; and (2) Ms. Felicidad Rosal Tanguilig,[54] petitioner's Assistant Chief Accountant.

On January 29, 2018, petitioner filed its *Formal Offer of Evidence*.[55] On February 19, 2018, respondent filed a *Manifestation with Motion to Admit Comment (on Petitioner's Formal Offer of Evidence)*,[56] with attached *Comment (on Petitioner's Formal Offer of Evidence)*.[57]

In the Resolution dated April 6, 2018,[58] the Court: (1) granted *Motion to Admit Comment* of respondent, and admitted the latter's *Comment (on Petitioner's Formal Offer of Evidence)*; and (2) admitted petitioner's Exhibits, *except*:

1. Exhibits "P-2", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "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-32", "P-35", "P-37", and "P-39", for failure to submit the duly marked exhibits;

2. Exhibits "P-4", and "P-46", for failure to submit the duly marked exhibits and for failure to identify the exhibits; and

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[52] Compliance dated , Docket – Vol. III, pp. 1105 to 1115.
[53] Exhibit "P-48", Docket – Vol. II, pp. 593 to 609; Minutes of the hearing, and Order dated, November 21, 2016, Docket – Vol. III, pp. 909 to 910.
[54] Exhibit "P-49", Docket – Vol. III, pp. 920 to 932; Minutes of the hearing, and Order dated, January 22, 2018, Docket – Vol. III, pp. 1120 to 1121.
[55] Docket – Vol. III, pp. 1122 to 1141.
[56] Docket – Vol. III, pp. 1145 to 1147.
[57] Docket – Vol. III, pp. 1150 to 1151.
[58] Docket – Vol. III, pp. 1158 to 1160.

3. Exhibits "P-30", "P-31", "P-33", "P-34", "P-36", "P-38", "P-40", "P-41", "P-42", "P-43", "P-44", and "P-45", for failure to present the originals for comparison.

On April 26, 2018, petitioner filed a *Motion for Reconsideration (To the Resolution dated 06 April 2018)*,[59] praying for the following:

> "1. Allow petitioner to submit copies of the duly marked exhibits.
>
> 2. Allow petitioner to compare Exhibits 'P-30', 'P-31', 'P-33', 'P-34', 'P-36', 'P-38', 'P-40', 'P-41', 'P-42', 'P-43', 'P-44', and 'P-45', with the original duplicates.
>
> 3. That Exhibits 'P-2', 'P-4', 'P-5', 'P-6', 'P-7', 'P-8', 'P-9', 'P-10', 'P-11', 'P-12', 'P-13', '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', and 'P-46', be admitted and duly considered by this Honorable Court; xxx."

Respondent failed to file his comment on the above-stated petitioner's *Motion for Reconsideration*.[60]

In the Resolution dated December 17, 2018,[61] the Court granted petitioner's *Motion for Reconsideration (To the Resolution dated 06 April 2018)*; and admitted the Exhibits subject of the said *Motion*.

Respondent likewise presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent offered the testimony of Mr. Romualdo I. Plocios,[62] Revenue Officer III of the BIR. *Jr*

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[59] Docket – Vol. III, pp. 1175 to 1185.

[60] Records Verification dated May 23, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1411.

[61] Docket – Vol. III, pp. 1428 to 1430.

[62] Exhibit "R-21", Docket – Vol. II, pp. 802 to 812; Minutes of the hearing held on, and Order dated, February 4, 2019, Docket – Vol. III, pp. 1434 to 1435; Minutes of the hearing held on, and Order dated, March 11, 2019, Docket – Vol. IV, pp. 1436 to 1437.

On May 6, 2019, respondent filed his *Formal Offer of Evidence*.[63] Petitioner filed its *Comment/Opposition (To the Formal Offer of Evidence dated 6 May 2019)* on May 27, 2019.[64] Thereafter, in the Resolution dated June 28, 2019,[65] the Court admitted respondent's Exhibits, and gave parties a period of thirty (30) days from receipt thereof within which to file their respective memorandum.

Petitioner filed its *Memorandum* on August 5, 2019,[66] while the *Memorandum for Respondent* was filed on September 3, 2019.[67]

In the Resolution dated September 10, 2019,[68] the instant case was considered submitted for decision.

THE ISSUES

The parties submitted the following issues for the Court's resolution,[69] to wit:

"Issues for Petitioner:

Factual Issues:

a. Whether the *PAN* and *FAN* contain the facts and the law as required under the NIRC.

b. Whether or not the BIR has begun levy or distraint or instituted court proceedings to collect the taxes for the period of 2003.

Legal Issues:

a. Whether or not the *Waiver* tolled the prescriptive period to assess petitioner MSMC.

b. Whether or not the *PAN* issued by the BIR is void.

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[63] Docket – Vol. IV, pp. 1449 to 1457.
[64] Docket – Vol. IV, pp. 1468 to 1477.
[65] Docket – Vol. IV, pp. 1479 to 1480.
[66] Docket – Vol. IV, pp. 1481 to 1541.
[67] Docket – Vol. IV, pp. 1547 to 1564.
[68] Docket – Vol. II, p. 1567.
[69] Issues to be Resolved, JSFI, Docket – Vol. II, pp. 832 to 834.

c. Whether or not the *FAN* issued by the BIR is void.

d. Whether or not the *Waiver* executed by petitioner MSMC and the BIR is invalid.

e. Whether or not the period to assess petitioner MSMC for the taxable year ending 31 December 2003 has already prescribed.

f. Whether or not the period to collect taxes for the taxable year ending 31 December 2003 has already prescribed.

g. Whether or not petitioner MSMC is liable for compensation, expanded, final and fringe withholding taxes.

h. Whether or not the compensation, expanded, final and fringe benefit withholding taxes, which were not actually withheld by petitioner MSMC, are covered by the Tax Amnesty Program under R.A. No. 9480.

i. Whether or not petitioner MSMC is liable for final withholding taxes which includes interests that accrued prior to the taxable year 2003.

j. Whether or not the respondent CIR committed grave and reversible error in issuing the *Decision* dated 07 January 2016.

Issue/s for Respondent:

a. Whether petitioner is liable to pay the aggregate amount of Twenty Five Million Seventy Six Thousand Three Hundred Seventy Seven Pesos and 60/100 (P25,076,377.60) as deficiency Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Fringe Benefit Tax for taxable year 2003 plus 25% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Sections 248 and 249 of the Tax Code, as amended."

Petitioner's arguments:

Petitioner argues that the *Decision* dated January 7, 2016, finding petitioner liable for withholding taxes, is null and void and should be set aside; that the PAN and FAN, which form the basis of the said *Decision,* are likewise void, because these are devoid of the facts on which the assessment were based; that respondent committed grave and reversible error in issuing the same *Decision,* considering that: (A) the Waiver executed by petitioner and the BIR was invalid, and consequently, did not toll the prescriptive period to assess; and (B) the period to assess petitioner has prescribed; that the assessment is void, considering that the FAN was not served in accordance with Revenue Regulations (RR) No. 12-1999; and that respondent committed grave and reversible error in issuing the same *Decision,* considering that: (A) the right of the BIR to collect the taxes assessed under the FAN has already prescribed; (B) these are covered by the Tax Amnesty Program under RA No. 9480; and (C) the same includes interests that accrued prior to taxable year 2003.

Respondent's counter-arguments:

Respondent counter-argues that the PAN, FLD and FAN are compliant with Section 228 of the NIRC of 1997; that the waivers voluntarily executed by petitioner's President, Alexander S. Lim, validly and effectively extended the period of assessment; that the period to assess and collect from petitioner has not prescribed; that respondent correctly imposed the withholding taxes as they are excluded from the coverage of RA No. 9480; and that assessments are presumed correct and made in good faith and that the taxpayer has the duty of proving otherwise.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

RA No. 9480 does not extend to withholding agents with respect to their withholding tax liabilities.

Petitioner contends that only creditable withholding taxes which are collected but not remitted to the BIR are **not covered** by the Tax Amnesty Program under RA No. 9480[70], and thus, a mere failure to withhold by the withholding agent shall not disqualify it from availing thereof. Relative thereto, petitioner avers that in this case, it has not withheld the EWT, FWT, FBT, and WTC.

We disagree with petitioner's contention.

Section 8(a) of RA No. 9480 provides as follows:

> "SEC. 8. *Exceptions.* – **The tax amnesty provided in Section 5 hereof shall not extend to the following persons** or cases existing as of the effectivity of this Act:
>
> (a) **<u>Withholding agents with respect to their withholding tax liabilities</u>**;
>
> xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that the tax amnesty under RA No. 9480 does not extend, *inter alia,* to withholding agents with respect to their withholding tax liabilities.

A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty is akin to a tax exemption; thus, it must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[71]

It must be emphasized that the withholding agent is liable only insofar as he failed to perform his duty to withhold the tax **and** remit the same to the government.[72] In other words, the withholding of income tax **and** the remittance thereof to the BIR is the responsibility

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[70] AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL RVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS.

[71] *Commissioner of Internal Revenue vs. Transfield Philippines, Inc.*, G.R. No. 211449, January 16, 2019.

[72] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011.

of the payor, *i.e.*, the withholding agent, and not the payee.[73] Simply put, the liabilities of a withholding agent involve both the withholding of the tax and the remittance thereof. Thus, if the payor of the income simply fails to withhold the corresponding tax, such payor is already liable as a withholding agent.

Since Section 8(a) of RA No. 9480 is plainly worded and did not distinguish as to cover only the failure to remit the withheld tax, the same must perforce includes the failure to withhold tax in the first place. Where the law does not distinguish, We ought not to distinguish. [74]

Correspondingly, the subject tax assessments are not covered by the immunities and privileges granted under RA No. 9480. In any event, the same are void.

The subject PAN and FAN, as well as the FANs, are void, as a consequence of the violation of petitioner's right to due process.

Petitioner avers that a perusal of the undated PAN and the FAN would show that both notices only contain arbitrary figures and did not even contain the facts on which the assessment were made; and that the same PAN and FAN contain no explanation as to where the figures came from and how they were determined.

We rule in favor of petitioner.

Section 228 of the NIRC of 1997 provides, 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

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[73] Refer to *Commissioner of Internal Revenue vs. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011.

[74] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.

> **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)*

Based on the foregoing provision, it is clear that the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

To implement the above-quoted Section 228, Sections 3.1.2 and 3.1.4 of Revenue Regulations (RR) No. 12-99[75] 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:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or 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, at least by registered mail, **a Preliminary Assessment Notice (PAN) for the proposed assessment, <u>showing in detail the facts</u> and the law, rules and regulations, or jurisprudence <u>on which the proposed assessment is based</u>** (see illustration in ANNEX A hereof). xxx.
>
> xxx xxx xxx

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[75] 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

> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts</u>, the law, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*</u>** (see illustration in ANNEX B hereof). xxx." *(Emphases and underscoring added)*

The foregoing provisions prescribe, **<u>as part of due process in the issuance of tax assessments</u>, that the PAN must show, *inter alia*, <u>in detail</u> the facts on which the proposed assessment is based.** In the same vein, **the FLD must state, among others, the facts on which the assessment is based; <u>otherwise the FLD and FAN shall be void</u>.**

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[76] the Supreme Court said:

> "**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, <u>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</u>.**
>
> 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 gc

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

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.**

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

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In *Ang Tibay v. The Court of Industrial Relations*,[77] 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 <u>submit evidence in support of it</u>.
(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.'

[77] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

(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.

(7) The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.

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The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> 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.

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<u>Administrative due process is anchored on fairness and equity in procedure</u>. 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 **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

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<u>The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable.</u> Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. <u>Section 3.1.2 of Revenue Regulation</u>

No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. xxx.

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

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The facts demonstrates 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 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 proceeings.

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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 conclusion** 𝓎𝓁

<u>are based, and those facts must appear in the record</u>.

xxx xxx xxx

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[78] this Court held that **failure to send a Preliminary Assessment Notice <u>stating the facts</u> and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*,[79] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.** ɤ

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[78] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division]
[79] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[80]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform its assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. 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 not only in the PAN, but also in the FLD and FAN.

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[80] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

Specifically, respondent must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must ***not*** be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

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 undated PAN,[81] the BIR found the following as due from petitioner, to wit:

	Basic	**Surcharge**	**Interest**	**Compromise**	**Total**
Income tax	₱46,393,636.62	-	₱27,429,443.24	₱25,000.00	₱73,848,079.86
WTC	2,377,054.33	-	1,530,432.24	25,000.00	3,932,486.57
EWT	1,112,561.85	-	716,306.94	25,000.00	1,853,868.79
FWT	11,103,586.81	-	7,148,884.66	25,000.00	18,277,471.47
FBT	161,643.52	-	97,960.40	12,000.00	271,603.92
VAT	6,708,859.75	-	4,282,641.98	25,000.00	11,016,501.73
Total	**₱67,857,342.88**	**-**	**₱41,205,669.46**	**₱137,000.00**	**₱109,200,012.34**

Anent the deficiency withholding taxes, the accompanying *Details of Discrepancies* to the said undated PAN read, in part, as follows:

> "Assessment No.________________
>
> Deficiency Withholding tax compensation –P3,932,486.57
>
> Per evaluation of expenses subjected to withholding tax compensation resulted to a discrepancy of P14,997,755.97 which has a tax effect of P2,377,054.33. This is in violation with the pertinent provisions of Revenue Regulations 2-98.
>
> Assessment No.________________
>
> Deficiency Expanded Withholding Tax (EWT) – P1,853,868.79 ge

[81] Par. ff, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibits "P-33" and "R-8", BIR Records, pp. 715 to 718.

Various income payments were not subjected to withholding tax as per Revenue Regulations 2-98, 6-2001, 12-2001, 14-2002, 17,2003 and 30-2003, described as follows:

Nature of income Payments	*Tax Due*
Income payments no EWT at 1%	116,939.47
Income payments no EWT at 2%	16,078.51
Income payments no EWT at 5%	1,474.19
Professional fees no EWT at 10%	149,783.11
Purchases	55,621.86
Fumigants & repellants	
/oils & gasoline	62,894.88
Freight & handling	139,500.31
Promotion & advertising	12,529.70
Computer progress services	500
Other cost of wheat	427,061.78
Brokerage	1,420.15
Audit & legal fees	22,664.27
Increase in PPE	106,093.62
Total	1,112,561.85

Assessment No.________________

Deficiency Final Tax–P18,277,471.47

Interest expense payable to Offshore Banking Units are subject to final tax as per Revenue Regulation 2-98, Section 2.57-1 (H)(1).

Assessment No.________________

Deficiency Fringe Beneits tax–P 271,603.92

Verification of various expenses, such as personal expenses, membership fees and other benefits are found to be subject Fringe Benefits tax in accordance with Revenue Regulation 3-98 Section 2.33 (A)(c), (B)(3) and (6)."[82]

[82] Exhibits "P-33" and "R-8", BIR Records, at pp. 716 to 717.

In its *Reply* to the PAN filed on May 25, 2007,[83] petitioner avers the following, relative to supposed deficiency withholding taxes, to wit:

> "2. Deficiency Withholding on Compensation – Php3,932,486.57
>
> Our total compensation expenses (those that are not subject to withholding tax and those that are subject to withholding tax) amounted to Php11,498,199.16 and Php10,885,444.73 or a total of Php22,383,643.89 for administrative and manufacturing respectively. Again, **who of our employees, whose total compensation as above stated, was not subjected to withholding tax? May we be favored with a list of these employees.**
>
> 3. Deficiency withholding tax (EWT) – Php1,853,869.79
>
> Again, we reiterate that our expenses subject to expanded withholding tax runs to millions of pesos. **Which of these expenses were not subjected to EWT?** On top of these, not all incurred compensation expenses are subject subject to EWT. **Which of these expenses should have been subject to EWT but were not? No identification of the recipient was supplied by your examiner. May we request for a schedule of the same so that we can properly respond.**
>
> 4. Deficiency Final Tax – Php18,277,471.47
>
> Again, **the particular interest payment made and to whom was not given. We cannot therefore properly respond to this.** However, we would like to assure you that all our remittances of interest to offshore recipients were subjected to the final withholding tax. **We are ourselves curious to know if we have made any remittance and failed to withhold. Please furnish us a schedule of these remittances that were supposedly not subjected to withholding tax.**
>
> 5. Fringe benefits

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[83] Par. jj, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-10", BIR Records, pp. 724 to 728.

To our knowledge, a fringe benefit is subject to tax only if it is assigned toa particular officer and that particular officer enjoyed the benefit.

xxx xxx xxx

In our view, your aforesaid PAN do not contain facts on which the Pre-Assessment are based. What your PAN contains are arbitrary figures from where they came from and how they were determined is not explained. It is very obvious therefore that your PAN do not satisfy the criteria of a valid assessment as required by [Section 228] of the NIRC." *(Emphases added)*

In the FLD and FANs dated May 31, 2007, petitioner was still assessed of the following deficiency tax liabilities, to wit:[84]

	Basic	**Surcharge**	**Interest**	**Compromise**	**Total**
Income tax	₱51,004,976.66	-	₱32,699,080.93	₱25,000.00	₱83,729,057.58
WTC	2,377,054.33	-	1,648,959.33	25,000.00	4,051,013.66
EWT	1,112,561.85	-	771,782.63	25,000.00	1,909,344.48
FWT	11,103,586.81	-	7,702,542.96	25,000.00	18,831,129.77
FBT	161,643.52	-	111,246.17	12,000.00	284,889.69
VAT	6,708,859.75	-	4,617,165.95	25,000.00	11,351,025.70
Total	**₱72,468,682.92**	**-**	**₱47,550,777.97**	**₱137,000.00**	**₱120,156,460.88**

It is noteworthy that anent the deficiency withholding taxes, the accompanying *Details of Discrepancies* to the said FLD and FANs dated May 31, 2007 substantially reiterated the the above-quoted *Details of Discrepancies* in the undated PAN, without any explanation on how the conclusions therein were arrived at, and without due consideration of petitioner's requests for more information as embodied in its *Reply*, to wit:

"Assessment No. LTDO 122-WC-2003-0002

<u>Deficiency Withholding tax Compensation – P4,051,013.66</u>

Per evaluation of expenses subjected to withholding tax compensation resulted to a discrepancy of

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[84] Par. gg, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibits "P-36", and "R-12", BIR Records, pp. 790 to 806.

P14,997,755.97 which has a tax effect of P2,377,054.33. This is in violation violation against Sec. 80(A) of the NIRC in relation with Secs. 2.78 & 2.80 of Revenue Regulations Nos.2-98.

Assessment No. LTDO 122-WE-2003-00004

Deficiency Expanded Withholding Tax (EWT) – P1,909,344.48

Various income payments were not subjected to withholding tax as per Revenue Regulations Nos. 2-98; 6-2001; 12-2001; 14-2002; 17,2003 and 30-2003, described as follows:

Nature of income Payments	***Tax Due***
Income payments no EWT at 1%	116,939.47
Income payments no EWT at 2%	16,078.51
Income payments no EWT at 5%	1,474.19
Professional fees no EWT at 10%	149,783.11
Purchases	55,621.86
Fumigants & repellants/oils & gasoline	62,894.88
Freight & handling	139,500.31
Promotion & advertising	12,529.70
Computer progress services	500
Other cost of wheat	427,061.78
Brokerage	1,420.15
Audit & legal fees	22,664.27
Increase in PPE	106,093.62
Total	**1,112,561.85**

Assessment No. LTDO 122-WF-2003-00002

Deficiency Final Tax–P18,831,129.77

Interest expense payable to Offshore Banking Units (OBU) are subject to final tax as per Section 2.57-1 (H)(1) of RR Nos. 2-98.

Assessment No. LTDO 122-WR-2003-00002

Deficiency Fringe Beneits tax – P 284,889.99

Verification of various expenses, such as personal expenses, membership fees and other benefits are found to be subject Fringe Benefits tax in accordance with Sec. 33 of NIRC, in relation with Sec. 2.33(A)(c), (B)(3) and (6) of RR 3-98 and 2.57.1(J) of RR 3-98."[85]

If at all, the only differences from the *Details of Discrepancies* in the undated PAN vis-à-vis the foregoing are: (1) there are now assessment numbers; and (b) the amounts were adjusted, but were brought about only by reason of the imposition of additional interests. It must be emphasized that the respective basic tax due remains the same.

In any case, in its letter dated July 10, 2007,[86] petitioner pointed out, *inter alia*, the following:

> "...in order to protect the integrity of [petitioner] Morning Star Milling Corporation in as far as it concern its faithful compliance to all tax laws and regulations, we would like to reserve our right to answer the Formal Assessment Notice, on its merit **after we received the same and <u>after the schedule of the expenses have been presented and explained</u>, which were made the basis of the proposed Assessment in the Pre-Assessment Notice <u>as requested in our reply</u> have been furnished us.**" [87] *(Emphases and underscoring added)*

However, in the FDDA dated May 10, 2012,[88] OIC-ACIR Alfredo V. Misajon still did not give any attention to the request of petitioner for information or explanation of the subject figures which form the basis of the withholding tax assessments, but simply dismiss the same in this manner:

> "**Please be informed that, except to withholding taxes we shall no longer pass upon the issues raised therein, <u>including those raised in your letter of May 25, 2007 against the PAN</u> since it was merely mentioned by reference and not restated therein for our consideration.** This we say

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[85] Exhibits "P-33" and "R-8", BIR Records, at pp. 716 to 717.
[86] Par. kk, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 832; Exhibit "R-15", BIR Records, pp. 828 to 830.
[87] Exhibit "R-15", BIR Records, at p. 829.
[88] Par. a, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 828; Exhibit "P-1", Docket – Vol. I, pp. 60 to 62.

considering that, as you have informed us in your letter dated December 6, 2007 filed with us December 18, 2007 and in the Notice of Availment of Tax Amnesty dated December 27, 2007 filed by your Mr. VICENTE T. LIM on December 28, 2007, you have already availed of the said amnesty under Republic Act 9480. As such, all the herein assessments are considered cancelled, except withholding taxes, xxx."

In the same vein, in the *Decision* dated January 7, 2016,[89] respondent, in effect, maintained what has been done by his subordinates, and anent the violation of the due process rights of petitioner, merely opined as follows:

"It is the contention of [petitioner] MSMC that its right to due process had been violated for failure to issue a Notice of Informal Conference prior to the service of the PAN and that the PAN did not show in detail the facts referring to how the assessment was made.

Records clearly show, however, that a Notice of Informal Conference was served on [petitioner] MSMC. The letter dated December 18, 2006, which was received by MSMC through a Ms. Rhea P. Bernales on December 22, 2006, though not strictly captioned as 'Notice of Informal Conference', already included therein a request for informal conference with [petitioner] MSMC in order for the company to go over the findings of the tax examiner, present any objections thereto, and submit whatever evidence it had in its favor.

Records further show that the PAN received by [petitioner] MSMC on April 12, 2007 clearly satisfied the requirements set forth by Section 3.1.2 of Revenue Regulation (RR) No. 12-99, xxx

A perusal of the Details of Discrepancies attached to the PAN reveals that while the details given were mere summaries of the facts, it was nevertheless consistent in following the required form and substance as shown in the sample illustration appearing in Annex A-1 of RR No. 12-

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[89] Par. c, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 828; Exhibit R-19", BIR Records, pp. 931 to 935.

> **99. The said PAN and Details of Discrepancies, although brief and concise, were able to provide the facts, the laws, rules and regulations, or jurisprudence on which the proposed assessment was based. Thus, the PAN had sufficiently provided the details necessary for a valid preliminary assessment.**
>
> Considering that there was a Notice of Informal Conference served to MSMC on December 22, 2006 and that the PAN was valid in all respects, [petitioner] MSMC's right to due process was not violated."

A careful examination of foregoing disquisitions of respondent would readily reveal that for him, "mere summaries of the facts" will suffice to fulfill the due process requirements in the issuance of the PAN and FLD/FAN. However, as can be gleaned from the jurisprudential pronouncements made in the *Avon* case, **the concerned taxpayer must be fully apprised of the factual bases of the assessments, and must not be left unaware on how respondent or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments.**

To be sure, the BIR totally ignored the request of petitioner to be informed of the factual bases of the subject withholding tax assessments, even up to the issuance of the assailed Decision dated January 7, 2016. Apparently, the BIR never, at any point, explained or showed how the figures reflected in the said undated PAN, as well as in the FLD and FANs dated May 31, 2007, as the bases for the withholding tax assessments, were determined, thereby violating petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, and Sections 3.1.2 and 3.1.4 of RR No. 12-99. As a consequence of such violation, the said PAN, FLD, and FANs dated May 31, 2007 are rendered void.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[90] Furthermore, a void assessment bears no valid fruit.[91] Such being the case, the subject withholding tax assessments cannot be enforced against petitioner. Jc

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

[91] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

In view thereof, it then becomes unnecessary to address the other issues or arguments raised by the parties.

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 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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