REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHUN LANG CHAN, then operating under Business name TOKAI RUBBER PRODUCTS represented by LI CHUAN CHANG,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE & MYRNA S. LEONIDA, Regional Director, RR5, Caloocan City,
Respondents.

CTA CASE NO. 9758

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

DEC 03 2020

3:15 p.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on January 26, 2018, prays that the assessments issued by respondent against petitioner for its alleged deficiency income tax and value-added tax (VAT) for the taxable period January 1, 2014 to November 13, 2014, in the aggregate amount of ₱13,104,242.28, inclusive of interest, be set aside.[1]

[1] Statement of the Case, Pre-Trial Order dated August 1, 2019, Docket – Vol. II, p. 573.

Petitioner Chun Lang Chan is of legal age, a naturalized Filipino citizen, residing at No. 15 Isidro Francisco St., Malinta, Valenzuela City.[2] He was then operating under the business/trade name of Tokai Rubber Products, as a sole proprietorship, then duly registered with the Department of Trade and Industry (DTI), and with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. 3RC0000071098 as a VAT-registered entity on April 26, 2000, being represented by Li Chuan Chang, who is of legal age, a naturalized Filipino, single, with same address as that of the petitioner.[3]

Tokai Rubber Products was authorized to engage in the manufacturing of rubber products using rubber as its raw materials in the production of rubber conveyor, rubber tires and tubes.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under appropriate laws with authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to issue rulings, memorandum circulars and other tax laws, rules and regulations, pursuant to the provisions of the Tax Code, with office at the 5ht Floor, Bureau of Internal Revenue (BIR) National Office Building, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 17, 2014, petitioner received the *Letter of Authority* (LOA) No. LOA-024-2014-00000337 (SN: eLA201100073243) dated September 16, 2014,[6] authorizing Revenue Officer (RO) Rafael Lentejas II and Group Supervisor (GS) Henry Sarmiento, to examine his books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.

Subsequently, on November 13, 2014, petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905) Jr

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[2] Par. 1, II (The Parties), *Petition of Review*, Docket – Vol. I, p. 12, *vis-à-vis* Par. 2, *Answer*, Docket – Vol. I, p. 206.
[3] *Id.*
[4] Par. 1, III (Statement of Facts and Case), *Petition of Review*, Docket – Vol. I, p. 13, *vis-à-vis* Par. 3, *Answer*, Docket – Vol. I, p. 206.
[5] Par. 2, II (The Parties), *Petition of Review*, Docket – Vol. I, p. 12, *vis-à-vis* Par. 2, *Answer*, Docket – Vol. I, p. 206.
[6] Exhibit "P-5", Docket – Vol. II, p. 646.

with the BIR, for the cessation of his registration [specifically marking "Permanent closure of business (head office) of an individual"].[7]

Petitioner filed his *Annual Income Tax Return* for the calendar year 2014 on April 12, 2015.[8]

On May 11, 2015, pursuant to an agreement with Revenue District Officer Alfredo P. Santos,[9] petitioner paid the deficiency taxes for calendar year 2013, in the aggregate amount of ₱230,393.98.[10]

Thereafter, petitioner received the LOA No. LOA-024-2015-00000080 (SN: eLA201100097262) dated May 22, 2015 on June 4, 2015,[11] authorizing the same RO and GS, to examine his books of accounts and other accounting records for all revenue taxes for the period January 1, 2014 to November 13, 2014, pursuant to mandatory audit due to cessation of business.

On September 20, 2016, petitioner received the *Preliminary Assessment Notice* (PAN) dated September 5, 2016,[12] wherein the BIR ascertained that petitioner have deficiency income tax and value-added tax (VAT), in the aggregate amount of ₱10,744,598.29. In reply thereto, on October 4, 2016, petitioner filed the letter dated October 3, 2016 with the BIR.[13]

On June 28, 2017, petitioner received the *Formal Letter of Demand* (FLD),[14] and *Assessment Notices*,[15] all dated June 16, 2017, assessing him of deficiency income tax and VAT, in the total amount of ₱13,104,242.28.

Petitioner filed his *Formal Protest* dated July 5, 2017 with the BIR, on July 6, 2017, and requested for a reinvestigation.[16]

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[7] Exhibit "P-19", Docket – Vol. I, p. 281.
[8] Exhibit "P-33", Docket – Vol. II, pp. 669 to 679.
[9] Exhibit "P-8", Docket – Vol. I, p. 95.
[10] Exhibits "P-9", "P-9-b", "P-10", "P-10-b", "P-11", "P-11-b", "P-12", "P-12-b", Docket – Vol. I, pp. 96 to 103.
[11] Exhibit "R-2", BIR Records, p. 293.
[12] Exhibit "P-25", Docket – Vol. I, pp. 295 to 298; Exhibits "R-7", "R-7A", "R-7b", and "R-7c", BIR Records, pp. 688 to 691.
[13] Exhibit "P-26", Docket – Vol. I, p. 299 to 310.
[14] Exhibit "P-29", Docket – Vol. I, pp. 37 to 40; Exhibits "R-10", "R-10-A", and "R-10-B", "R-10-C", BIR Records, pp. 726 to 729.
[15] Exhibits "R-8", and "R-9", BIR Records, pp. 730 to 731.
[16] Exhibit "P-30", Docket – Vol. I, pp. 41 to 52.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on January 26, 2018.[17]

In his *Answer to the Petition for Review* filed on April 19, 2018,[18] respondent interposed his special and affirmative defense that the disallowance of petitioner's inventory written off/claim for deduction of alleged obsolete inventories is proper, for failure of petitioner to justify and/or substantiate the claimed expense in accordance with law, existing regulations and supporting jurisprudence.

Petitioner filed his *Reply (To Respondent's Answer)* on April 30, 2018.[19]

The pre-trial conference was set, and held, on May 24, 2018.[20] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on May 21, 2018;[21] while *Respondent's Pre-Trial Brief* was submitted on May 23, 2018.[22]

Petitioner filed a *Manifestation* on July 17, 2018, informing the Court that the parties failed to reach an agreement on stipulations other than those already admitted in their pleadings.[23] The Court then issued the Pre-Trial Order dated August 1, 2018,[24] deeming the termination of the pre-trial.

As trial ensued, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Li Chuan Chang,[25] petitioner's authorized representative; (2) Ms. Cristina Reyes Castro,[26] gr

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[17] Docket – Vol. I, pp. 10 to 34.
[18] Docket – Vol. I, pp. 206 to 210.
[19] Docket – Vol. I, pp. 219 to 221.
[20] *Notice of Pre-Trial Conference* dated April 26, 2018, Docket – Vol. I, pp. 217 to 218; Minutes of the hearing held on, and Order dated, May 24, 2018, Docket – Vol. I, pp. 352 and 353, respectively.
[21] Docket – Vol. I, pp. 330 to 338.
[22] Docket – Vol. I, pp. 345 to 348.
[23] Docket – Vol. II, p. 557.
[24] Docket – Vol. II, pp. 573 to 582.
[25] *Judicial Affidavit of Li Chuan Chang* and *Supplemental Judicial Affidavit of Li Chuan Chang*, Docket – Vol. I, pp. 223 to 234, and 357 to 366, respectively; Minutes of the hearing held on, and Order dated, August 6, 2018, Docket – Vol. II, pp. 583 to 585.
[26] *Judicial Affidavit of Cristina Reyes Castro*, Docket – Vol. I, pp. 448 to 465; Minutes of the hearing held on, and Order dated, August 6, 2018, Docket – Vol. II, pp. 583 to 585.

accountant of Tokai Rubber Products; (3) Mr. Joey D. Clemenia,[27] a dealer-supplier of natural rubber; (4) Ms. Chang Ming Hung,[28] former Plant Supervisor of Tokai Rubber Products; and (5) Ms. Marysol O. Go, a translator of Chinese characters.[29]

On October 11, 2018, petitioner filed his *Formal Offer of Evidence.*[30] Respondent failed to file his comment thereon.[31] In the Resolution dated December 17, 2018,[32] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-50", "P-50-a", "P-50-b", "P-50-c", "P-50-d", "P-50-e", "P-50-f", "P-50-g", "P-50-h", "P-50-i", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-64", "P-65", "P-70", "P-71", and "P-72", for failure to submit the duly marked exhibits; and
2. Exhibit "P-50-j", for failure to present the original for comparison and for failure to identify.

Petitioner then filed its *Motion for Reconsideration* on January 24, 2019.[33] Respondent likewise failed to file his comment thereon.[34] In the Resolution dated April 5, 2019,[35] the Court partially granted petitioner's *Motion for Reconsideration*, admitting Exhibits "P-50", "P-50-a", "P-50-b", "P-50-c", "P-50-d", "P-50-e", "P-50-f", "P-50-g", "P-50-h", "P-50-i", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", but *still* denying Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-64", "P-65", "P-70", "P-71", and "P-72", and Exhibit "P-50-j", upon the same grounds indicated in the Resolution dated December 17, 2018.

[27] Exhibit "P-76", Docket – Vol. II, pp. 586 to 592; Minutes of the hearing held on, and Order dated, August 29, 2018, Docket – Vol. II, pp. 602 to 605.
[28] Exhibit "P-79", Docket – Vol. II, pp. 593 to 597; Minutes of the hearing held on, and Order dated, August 29, 2018, Docket – Vol. II, pp. 602 to 605.
[29] *Judicial Affidavit of Marysol O. Go*, Docket – Vol. II, pp. 616 to 618; Minutes of the hearing held on, and Order dated, October 1, 2018, 2018, Docket – Vol. II, pp. 621 to 623.
[30] Docket – Vol. II, pp. 626 to 645.
[31] Records Verification dated November 14, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 736.
[32] Docket – Vol. II, pp. 738 to 739.
[33] Docket – Vol. II, pp. 743 to 744.
[34] Records Verification dated February 28, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 747.
[35] Docket – Vol. II, pp. 749 to 751.

Petitioner then filed a *Motion to Admit Denied Exhibits* on May 14, 2019. [36] Respondent again failed to file his comment thereon.[37] In the Resolution dated July 19, 2019,[38] the Court admitted Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-64", "P-65", "P-70", "P-71", and "P-72".

For his part, respondent also presented his documentary and testimonial evidence. He proffered the testimonies of the following Revenue Officers of the BIR, namely: (1) Mr. Rafael Lentejas III,[39] and (2) Ms. Cindy Charlotte D. Sinogbohan.[40]

On December 2, 2019, respondent filed his *Formal Offer of Evidence.*[41] Petitioner filed his *Comment (To Respondent's Formal Offer of Evidence) and Motion to Adopt and Formally Offer Certain Evidence of Respondents as Additional Evidence for Petitioner* on December 5, 2019.[42] The Court then admitted all of respondent's Exhibits, but denied petitioner's *Motion to Adopt and Formally*, in the Resolution dated January 16, 2020.[43]

On February 20, 2020, *Respondent's Memorandum* was filed;[44] while on March 13, 2020, petitioner filed its *Memorandum.*[45]

On June 15, 2020, this case was considered submitted for decision.[46]

THE ISSUES

As borne out by the records of this case, the parties failed to stipulate the issue or issues to be resolved by this Court.[47] However, the parties, in their memoranda, raised their respective issues, to wit:

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[36] Docket – Vol. II, pp. 758 to 759.
[37] Records Verification dated June 18, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 805.
[38] Docket – Vol. II, pp. 807 to 808.
[39] Exhibit "R-11", Docket – Vol. II, pp. 827 to 831; Minutes of the hearing held on, and Order dated, November 20, 2019, Docket – Vol. II, pp. 854 to 856.
[40] Exhibit "R-12", Docket – Vol. II, pp. 840 to 843; Minutes of the hearing held on, and Order dated, November 20, 2019, Docket – Vol. II, pp. 854 to 856.
[41] Docket – Vol. II, pp. 861 to 865.
[42] Docket – Vol. II, pp. 866 to 869.
[43] Docket – Vol. II, pp. 871 to 872.
[44] Docket – Vol. II, pp. 874 to 883.
[45] Docket – Vol. II, pp. 884 to 918.
[46] Resolution dated June 15, 2020, Docket – Vol. II, p. 919.

Petitioner's issues:

"A.

WHETHER THE REVENUE OFFICER ACTED WITHIN HIS AUTHORITY TO EXAMINE PETITIONER'S BOOKS OF ACCOUNTS AND SUBMIT FINAL REPORT OF HIS INVESTIGATION THAT LED TO THE ASSESSMENTS ON INCOME TAX AND VALUE ADDED TAX DEFICIENCIES

B

WHETHER PETITIONER IS LIABLE FOR INCOME TAX DEFICIENCY IN THE TOTAL AMOUNT OF P8,666,203.84.

C

WHETHER PETITIONER IS LIABLE FOR VALUE ADDED TAX DEFICIENCY IN THE TOTAL AMOUNT OF p4,438,038.44".[48]

Respondent's issues:

"1. Whether the disallowance of Petitioner's inventory write-off/claim for deduction of alleged obsolete inventories was proper in light of Petitioner's failure to justify and/or substantiate the claimed expense in accordance with the law and existing rules.

2. Whether the disallowance of Petitioner's alleged disbursements was PROPER in light of Petitioner's failure to justify and/or substantiate the claimed expense in accordance with the law and existing rules.

3. Whether Petitioner is liable for the 2014 deficiency Income and Value-Added Tax in the respective amounts of Eight Million Six Hundred Sixty-Six Thousand Two Hundred Three Pesos and 84/100 (PhP8,666,203.84) and Four Million Four Hundred Thirty-Eight Thousand Thirty-Eight Pesos and 44/100

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[47] Refer to petitioner's *Manifestation* dated July 16, 2018, Docket – Vol. II, p. 557.
[48] Petitioner's *Memorandum*, Docket – Vol. II, at p. 891.

> (PhP4,438,038.44), inclusive of surcharge and interest."[49]

Nevertheless, for an orderly disposition of the instant case, this Court raises the following issue, which it shall primarily resolved, to wit:

> "Whether or not the subject tax assessments are void, on account of respondent's violation of petitioner's right to due process."

Petitioner's arguments:

Petitioner argues that Revenue Officer (RO) Lentejas acted beyond his authority continuing with the audit beyond the prescribed 120-day period without submission of a progress report and without the surrender of the LOA for revalidation; that the non-compliance of the RO with the required procedure would render the LOA invalid; an that the examination he conducted and the assessment issued against petitioner is void *ab initio*.

Moreover, petitioner is of the position that the deficiency income tax and VAT assessments, in the total amount of ₱13,104,242.28, inclusive of interests, are null and void, for having been issued based on presumption and without valid LOA.

Respondent's counter-arguments:

Respondent claims to the effect that the disallowances of petitioner's inventory write-off/claim for deduction of alleged obsolete inventories, and of petitioner's alleged disbursements, were proper; and that tax assessments by tax examiners are presumed correct and made in good faith.

THE RULING

We rule in favor of petitioner.

[49] *Respondent's Memorandum*, Docket – Vol. II, at p. 875.

Legal basis of this Court to raise the issue of whether the subject tax assessments are void

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 said 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.[50] Thus, the issue raised by this Court may be resolved by the latter.

The subject tax assessments are void, for failure to state the facts and the law on which the same are based

Section 228 of the NIRC of 1997 provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — xxx
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> 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.** Ɋc

[50] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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, Section 3.1.3 of Revenue Regulations (RR) No. 12-99,[51] as amended by RR No. 18-2013,[52] 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
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts</u>, the law, 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." *(Emphases and underscoring added)*

The foregoing provision prescribe, **<u>as part of due process in the issuance of tax assessments</u>, that the FLD/FAN must state, among others, the facts on which the assessment is based; <u>otherwise the FLD/FAN shall be void</u>.** Jr

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[51] 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

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

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[53] the Supreme Court said:

> "**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.**
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> 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.**
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> xxx xxx xxx
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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.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**
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> xxx xxx xxx

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

In *Ang Tibay v. The Court of Industrial Relations,*[54] 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.
(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 <u>to</u>

[54] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

ensure that the decision will be thought through by the decision-maker.

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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.**

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The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulation 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[55] 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.

[55] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.

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The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with 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 are based, and those facts must appear in the record.**

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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.

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In *Commissioner of Internal Revenue v. Reyes,*[56] **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.**

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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.*:[57]

> 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.
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> 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. ***<u>[The Commissioner of Internal Revenue's]</u>*** **<u>disregard of the standards and rules renders the deficiency tax assessments null and void</u>.** 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

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[56] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[57] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

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 FLD/FAN. 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 PAN dated September 5, 2016,[58] the BIR ascertained that petitioner have deficiency taxes as follows, to wit:

	Basic	**Interest**	**Compromise Penalty**	**Total**
Income tax	₱5,943,490.74	₱1,039,591.89	-	₱6,983,082.63
VAT	3,086,675.40	674,840.27	-	3,761,515.66
Total	**₱9,030,166.14**	**₱1,714,432.16**	-	**₱10,744,598.83**

As indicated in the same PAN, the following are the significant findings of the BIR, to wit:

1) For the deficiency income tax:
   a) Disallowed Disbursements - ₱3,846,996.89;
   b) Undeclared Source of Fund for Failure to Declare Disbursement on Interest Payment - ₱1,576,134.00; and
   c) Disallowed Claims for Inventory Losses - ₱13,232,090.00;

2) For the deficiency VAT:
   a) Undeclared Source of Fund for Failure to Declare Disbursement on Interest Payment - ₱1,576,134.00;
   b) Disallowed Disbursements - ₱3,846,996.89;

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[58] Exhibit "P-25", Docket – Vol. I, pp. 295 to 298; Exhibits "R-7", "R-7A", "R-7b", and "R-7c", BIR Records, pp. 688 to 691.

c) Deemed Sale Transaction (Inventory) - ₱19,059,360.76; and
d) Deemed Sale Transaction (Non-Current Assets) - ₱1,239,802.79.

In reply to the same PAN, petitioner filed the letter dated October 3, 2016 with the BIR, on October 4, 2016,[59] refuting, or giving explanations against, the above-stated findings, and offering certain documents in support thereof.

In the FLD,[60] and *Assessment Notices*,[61] all dated June 16, 2017, petitioner was still assessed of the following deficiency tax liabilities, to wit:

	Basic	Interest	Compromise Penalty	Total
Income tax	₱5,943,490.74	₱2,722,713.10		₱8,666,203.84
VAT	3,086,675.39	1,351,363.05		4,438,038.44
Total	**₱9,030,166.13**	**₱4,074,076.15**	-	**₱13,104,242.28**

It is noteworthy that the foregoing assessments are exactly based on the above-stated significant findings as stated in the PAN dated September 5, 2016. If at all, in terms of the amounts indicated, the only difference between the said PAN and the subject FLD/*Assessment Notices* is that the amounts of interest were adjusted. It must be emphasized that the respective basic tax due substantially remained the same. In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the refutations and explanations made by petitioner in its letter dated October 3, 2016. To stress, without addressing the said refutations and explanations, the BIR did not give the particular facts upon which the FLD/*Assessment Notices* are based. Consequently, petitioner was left unaware on how respondent or the BIR appreciated the explanations or defenses he raised against the subject PAN, in clear violation of petitioner's right to administrative due process, thereby rendering the subject tax assessments void.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its

[59] Exhibit "P-26", Docket – Vol. I, p. 299 to 310.
[60] Exhibit "P-29", Docket – Vol. I, pp. 37 to 40; Exhibits "R-10", "R-10-A", and "R-10-B", "R-10-C", BIR Records, pp. 726 to 729.
[61] Exhibits "R-8", and "R-9", BIR Records, pp. 730 to 731.

inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill or Rights under the Constitution.[62]

In view of the finding that the subject tax assessments are invalid for violation of petitioner's right to due process, and thus, bear no valid fruit,[63] it becomes unnecessary to address the respective issues or matters raised by the parties.

WHEREFORE, the instant *Petition for Review* is **GRANTED**. Accordingly, the assailed FLD and *Assessment Notices*, all dated June 16, 2017, holding petitioner liable for deficiency income tax and VAT, for taxable period January 1, 2014 to November 13, 2014 (retirement), in the total amount of ₱13,104,242.28, inclusive of interests, are **CANCELLED** 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

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

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

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