REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IMASEN PHILIPPINE MANUFACTURING CORPORATION, Petitioner,	**CTA CASE NO. 10402**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:

x - x

1:35 p.m.

DECISION

FERRER-FLORES, J.:

The **Amended Petition for Review** prays for the Court to approve petitioner's *Application for Preliminary Mandatory Injunction and Suspension of Collection of Tax*, and to cancel and set aside the (i) Warrant of Distraint and Levy (WDL) dated October 15, 2020, (ii) Final Decision on Disputed Assessment (FDDA) dated July 11, 2019, and, (iii) Formal Letter of Demand (FLD) dated August 9, 2018, for being void, and in the alternative, for lack of factual and legal bases.[1]

THE PARTIES

Petitioner **Imasen Philippine Manufacturing Corporation** is a corporation duly organized and existing under Philippine laws, with address at 101 East Main Avenue, Laguna Technopark, Biñan Laguna.[2] It is engaged in the design, development, production, manufacture assembly, fabrication, importation, exportation, marketing, distribution, promotion,

---

1 Statement of the Case, Pre-Trial Order dated November 22, 2022, Docket – Vol. 5, p. 2488.
2 Par. A.1, Admitted Facts, *Judicial Stipulation of Facts and Issues* (JSFI), Docket – Vol. IV, p. 1910.

trading and sale on wholesale basis only of car components and accessories and generally to perform any and all acts connected with the business aforementioned or arising therefrom or incidental thereto.[3] It is also registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. (TIN) 004-781-033-000.[4]

Respondent is the duly appointed **Commissioner of Internal Revenue (CIR)**, vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On July 28, 2017, respondent's Revenue Region No. 9B (LaQueMar) issued Letter of Authority (LOA) No. LOA-T9B-2017-00000012/SN:eLA201100062757, authorizing Revenue Officer (RO) May Gimeno, and Group Supervisor Danilo Lino, to examine petitioner's books of accounts and other financial records for deficiency internal revenue taxes for taxable year ending December 31, 2016.[6] Petitioner received the said LOA on July 31, 2017.[7]

Subsequently, respondent issued the First Request for Presentation of Records dated August 14, 2017,[8] which was received by petitioner on the same date.[9]

Respondent then issued the Second and Final Request for Presentation of Records dated September 18, 2017,[10] which petitioner received on even date.[11]

Thereafter, respondent issued the Notice of Informal Conference (NIC),[12] which was received by petitioner on February 14, 2018.[13]

Respondent then issued the Preliminary Assessment Notice (PAN) dated May 30, 2018,[14] to which petitioner filed its Reply to Preliminary Assessment Notice on June 21, 2018.[15]

---

3 Exhibit "P-2", Docket – Vol. 5, p. 2032.
4 Exhibit "P-9", *Id.* at 2078.
5 Par. A.2, JSFI, Docket – Vol. IV, p. 1910.
6 Par. A.5, JSFI, *Id.* at 1911.
7 Exhibit "P-19-1", Docket – Vol. 5, p. 2231.
8 Par. A.6, JSFI, Docket – Vol. IV, p. 1911.
9 Exhibit "P-21", Docket – Vol. 5, p. 2237.
10 Par. A.7, JSFI, Docket – Vol. IV, p. 1911.
11 Exhibit "P-23", Docket – Vol. 5, pp. 2241 to 2243.
12 Par. A.8, JSFI, Docket – Vol. IV, p. 1911.
13 Exhibit "P-26", Docket – Vol. 5, p. 2247 to 2258.

Respondent then issued an FLD with attached Details of Discrepancies and Assessment Notices dated August 9, 2018.[16] Petitioner received the same on August 15, 2018,[17] and filed its Protest Letter to the Formal Assessment Notice (FAN) on September 13, 2018.[18] Subsequently, on November 12, 2018, petitioner filed a letter submitting documents in support of its Protest Letter.[19]

Respondent issued the FDDA dated July 11, 2019, which partially denied petitioner's Protest. The FDDA was signed by BIR Revenue Region No. 9B (LaQueMar) Regional Director Jethro M. Sabriaga.[20] Petitioner received the said FDDA on August 6, 2019.[21] Thereafter, petitioner filed with respondent a Request for Reconsideration to the FDDA on August 30, 2019.[22]

On October 16, 2020, respondent attempted to serve a WDL on petitioner, but the latter refused to receive the same.[23]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed its *Petition for Review (With Application for a Temporary Restraining Order and/or Preliminary Injunction and Suspension of Collection of Tax)* on November 16, 2020.[24]

During the hearing of petitioner's *Application for a Temporary Restraining Order and/or Preliminary Injunction and Suspension of Collection of Tax* on February 2, 2021, petitioner's counsel manifested that there is a need to amend the *Petition for Review* in view of respondent's issuance and implementation of *Warrants of Garnishment* on three (3) of petitioner's bank accounts, respectively garnishing an amount of more or less equivalent to ₱32,000,000.00. Upon petitioner's motion, the Court gave petitioner a period of 20 days or until February 22, 2021 to file an Amended Petition for Review.[25]

Subsequently, on February 22, 2021, petitioner filed a *Motion to Admit Amended Petition for Review (With Application for a Writ of*

---

[14] Par. A.9, JSFI, Docket – Vol. IV, p. 1911.
[15] Exhibit "P-30", Docket – Vol. 5, pp. 2277 to 2303.
[16] Par. A.10, JSFI, Docket – Vol. IV, p. 1911.
[17] Exhibit "P-33", Docket – Vol. 5, pp. 2304 to 2311.
[18] Exhibit "P-34", *Id.* at 2312 to 2357.
[19] Exhibit "P-35", *Id.* at 2358 to 2361.
[20] Par. A.4., JSFI, Docket – Vol. IV, p. 1911.
[21] Exhibit "P-37", Docket – Vol. 5, pp. 2362 to 2368.
[22] Exhibit "P-38-2", *Id.* at 2370 to 2389.
[23] Exhibit "P-39", *Id.* at p. 2390.
[24] Docket – Vol. I, pp. 8 to 81.
[25] Minutes of the hearing held on, and Order dated, February 2, 2021, Docket – Vol. II, pp. 733 to 735.

Preliminary Mandatory Injunction and Suspension of Collection of Tax),[26] with attached *Amended Petition for Review (With Application for a Writ of Preliminary Mandatory Injunction and Suspension of Collection of Tax)*.[27]

In the Resolution dated March 3, 2021,[28] the Court granted petitioner's *Motion,* and admitted the attached *Amended Petition for Review* as part of the records of the case. Moreover, petitioner's *Application for a Writ of Preliminary Mandatory Injunction and Suspension of Collection of Tax* was set for hearing on March 17, 2021.[29]

During the said hearing, the Court held that petitioner's *Application for a Writ of Preliminary Mandatory Injunction* shall be treated as a *Motion for Suspension of Collection of Taxes* pursuant to Rule 10 of the Revised Rules of the Court of Tax Appeals, as amended.[30] Petitioner presented various documentary evidence, which its witness, Ms. Ma. Sheila O. Dela Cerna, identified,[31] and filed its *Formal Offer of Evidence (In support of Application for a Temporary Restraining Order and/or Preliminary Injunction and Suspension of Collection of Tax)* on May 18, 2021.[32] Respondent failed to file his comment thereon.[33] In the Resolution dated July 8, 2021,[34] the Court admitted all of petitioner's exhibits, *except* Exhibit "P-16-TRO", for failure of the exhibit offered and identified to correspond with the document marked.

On October 25, 2021, petitioner filed an *Omnibus Motion*,[35] moving that respondent be directed to comply with the Order dated March 17, 2021[36] to submit the BIR Records of the case, and to declare the respondent in default for failing to file his *Answer* within the period allowed.

Respondent filed his *Motion to Admit Attached Answer* on March 2, 2022,[37] with attached *Answer (Re: Amended Petition for Review dated 18 February 2021)*.[38]

---

[26] Docket – Vol. II, pp. 736 to 739.
[27] *Id.* at 740 to 817.
[28] Docket – Vol. III, pp. 1305 to 1306.
[29] *Ibid.*
[30] Order dated March 17, 2021, Docket – Vol. III, pp. 1506 to 1507. (cf: Minutes of the hearing held on March 17, 2021, Docket – Vol. III, p. 1505.)
[31] Exhibit "P-24-TRO", Docket – Vol. III, pp. 1282 to 1298.
[32] Docket – Vol. IV, pp. 1513 to 1525.
[33] Records Verification Report dated June 14, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1735.
[34] *Id.* at 1737 to 1739.
[35] *Id.* at 1740 to 1744.
[36] Order dated March 17, 2021, Docket – Vol. III, pp. 1506 to 1507.
[37] Docket – Vol. IV, pp. 1748 to 1753.
[38] *Id.* at 1755 to 1774.

In the Resolution dated March 14, 2022,[39] the Court ordered petitioner to comment on respondent's *Motion to Admit Attached Answer.* Petitioner, in turn, filed its *Comment with Motion* on April 19, 2022.[40]

The Court then issued the Resolution dated May 20, 2022,[41] granting petitioner's *Motion for Suspension of Collection of Tax* and respondent's *Motion to Admit Attached Answer* and admitting the attached *Answer* as part of the records of the case.

On June 17, 2022, petitioner filed a *Motion for Partial Reconsideration (To the Resolution dated May 20, 2022)*,[42] requesting that the Court direct that the *Warrants of Garnishment* issued by respondent be lifted, and that the garnished funds be released to petitioner, and that the period to deposit the cash or surety bond be counted from receipt of the resolution of its *Motion.* Respondent filed his *Comment and Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 17 June 2022)* on July 11, 2022,[43] praying that petitioner's motion be denied for lack of merit. In the Resolution dated August 17, 2022,[44] the Court denied petitioner's *Motion for Partial Reconsideration.*

In the meantime, in the Resolution dated July 20, 2022,[45] the Court granted petitioner's *Manifestation and Motion* and ordered respondent to certify and elevate the *BIR Records* within 10 days from notice.

Respondent later transmitted the *BIR Records* of the present case, consisting of 1,545 pages in one folder, on August 5, 2022.[46]

The Pre-Trial Conference was set and held on August 11, 2022.[47] Prior thereto, *Respondent's Pre-trial Brief* was filed on August 5, 2022,[48] while petitioner's *Pre-Trial Brief* was submitted on August 8, 2022.[49]

On September 12, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[50] which was admitted and approved by the Court in its

---

[39] Docket – Vol. IV, p. 1776.
[40] *Id.* at 1777 to 1782.
[41] *Id.* at 1784 to 1793.
[42] *Id.* at 1796 to 1804.
[43] *Id.* at 1812 to 1818.
[44] *Id.* at 1908 to 1909.
[45] *Id.* at 1821 to 1822.
[46] *Manifestation and Compliance* dated August 5, 2022, Docket – Vol. IV, pp. 1847 to 1849.
[47] Notice of Pre-Trial Conference dated May 27, 2022, Docket – Vol. IV, pp. 1794 to 1795; Minutes of the hearing held on, and Order dated, August 11, 2023, Docket – Vol. IV, p. 1901 and 1904 to 1905.
[48] Docket – Vol. IV, pp. 1823 to 1827.
[49] *Id.* at 1851 to 1859.
[50] *Id.* at 1910 to 1926.

Resolution dated September 15, 2022,[51] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on November 22, 2022.[52]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Ma. Sheila O. Dela Cerna,[53] its Accounting Manager; (2) Ms. Rachelle Maulanin,[54] its Accounting Senior Supervisor; (3) Ms. Joselyn J. Danao, the Barangay Secretary of the Office of the Barangay,[55] Barangay Malamig, Biñan, Laguna; (4) Mr. Christopher M. Lipata,[56] the Barangay Administrator of the Barangay Office of Barangay Malamig, Biñan, Laguna; and, (5) Mr. Michael L. Aguirre,[57] the Court-commissioned Independent Certified Public Accountant (ICPA).[58]

The *Report* of the ICPA was submitted on January 10, 2023.[59]

On March 30, 2023, petitioner filed its *Formal Offer of Evidence*,[60] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 28 March 2023)* on April 11, 2023.[61] In the Resolution dated October 24, 2023,[62] the Court admitted petitioner's offered exhibits, *except* the following:

1. Exhibit "P-4", for failure to submit the duly marked exhibit;

2. Exhibits "P-44-1" and "P-44-4", for failure to submit the original for comparison;

3. Exhibit "P-54", for failure to submit the original for comparison and for failure to identify the same;

---

51 Docket – Vol. IV, p. 1963.
52 Docket – Vol. 5, pp. 2488 to 2506.
53 Exhibit "P-62" (but marked as Exhibit "P-62-1"), Docket – Vol. 5, pp. 2463 to 2482; Minutes of the hearing held on November 24, 2022, Docket – Vol. 5, p. 2507.
54 Exhibit "P-63" (but marked as Exhibit "P-63-1"), Docket – Vol. 5, pp. 2441 to 2462; Minutes of the hearing held on November 24, 2022, Docket – Vol. 5, p. 2507.
55 Exhibit "P-65", Docket – Vol. IV, pp. 1970 to 1976; Minutes of the hearing held on, and Order dated, February 28, 2023, Docket – Vol. 6, pp. 2855 and 2858, respectively.
56 Exhibit "P-66", Docket – Vol. 5, pp. 2009 to 2013; Minutes of the hearing held on, and Order dated, February 28, 2023, Docket – Vol. 6, pp. 2855 and 2858, respectively.
57 Exhibit "P-57", Docket – Vol. 6, pp. 2802 to 2824; Minutes of the hearing held on, and Order dated, February 28, 2023, Docket – Vol. 6, pp. 2855 and 2858, respectively.
58 *Oath of Commission* dated November 24, 2022, Docket – Vol. 5, p. 2509; Minutes of the hearing held on November 24, 2022, Docket – Vol. 5, p. 2507.
59 Exhibit "P-64", Docket – Vol. 5, pp. 2653 to 2788.
60 Docket – Vol. 6, p. 2860 to Docket – Vol. 7, p. 3710.
61 Docket – Vol. 7, pp. 3717 to 3720.
62 *Id.* at 3728 to 3770.

4. Exhibits "P-17-A-40.16-ICPA", "P-17-A-40.17-ICPA", "P-17-A-42.22-ICPA", "P-17-A-90.10-ICPA", and "P-17-A-90.11-ICPA", for being completely blurred;

5. Exhibits "P-17-F-149.8-ICPA", "P-17-F-149.9-ICPA" and "P-17-F-149.10- ICPA", for not being found in the records of the case; and,

6. Several other exhibits, for failure to identify.

For his part, respondent offered the testimony of Chief RO May C. Gimeno.[63]

On February 13, 2024, respondent filed his *Formal Offer of Evidence*,[64] to which petitioner filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence dated February 13, 2024)* on February 26, 2024.[65] In the Resolution dated April 29, 2024,[66] the Court admitted all of respondent's offered evidence.

Respondent submitted his *Manifestation* on June 3, 2024,[67] stating that he is adopting the arguments raised in his *Answer* as his *Memorandum*; while petitioner's *Memorandum* was posted on June 18, 2024.[68]

The case was considered submitted for decision on June 27, 2024.[69]

THE STIPULATED ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX, VALUE ADDED TAX, FINAL WITHHOLDING TAX, EXPANDED WITHOLDING TAX, AND COMPROMISE PENALTY TAX IN THE TOTAL AMOUNT OF ₱32,557,113.33 FOR THE TAXABLE YEAR 2016.[70]

---

[63] Exhibit "R-13", Docket – Vol. IV, pp. 1837 to 1846; Minutes of the hearing held on, and Order dated, February 8, 2024, Docket – Vol. 7, pp. 3774 to 3775.
[64] Docket – Vol. 7, pp. 3776 to 3783.
[65] *Id.* at 3785 to 3791.
[66] *Id.* at 3793 to 3794.
[67] *Id.* at 3795 to 3797.
[68] *Id.* at 3803 to 3863.
[69] Minute Resolution dated June 27, 2024, Docket – Vol. 7, p. 3864.
[70] Issues to be Resolved, JSFI, Docket – Vol. IV, p. 1912.

Petitioner's arguments

Petitioner argues that the WDL is void. It contends that the NIC, PAN, FLD and the FDDA, are void for having been issued pursuant to a tax audit investigation conducted by the ROs under an expired LOA. Moreover, petitioner posits that the FLD and FDDA are void for failure to contain a categorical demand for payment of the computed tax liabilities within a specific period, and that the assessments for deficiency income tax under the FLD is void for having been assessed without a good faith evaluation of the arguments and documents presented by petitioner during the PAN stage. According to petitioner, the assessment for deficiency income tax on "Disallowed Cost of Sales – Technical Fee – unsupported/non-withholding" in the FDDA is void as it was not included in the NIC, PAN or FLD. Petitioner claims that it is not liable for the deficiency income tax, deficiency value-added tax (VAT), deficiency final withholding tax, deficiency expanded withholding tax (EWT) and compromise penalty imposed under the subject assessments.

Respondent's counter-arguments

In his *Answer*, respondent contends that there was no denial of petitioner's right to due process. For respondent, the non-revalidation of the LOA does not invalidate the assessments and the wordings of the FLD and FDDA indicates that there is a demand for payment and definite amount of tax liability. Finally, respondent maintains that petitioner is liable for deficiency income tax, VAT, final withholding tax, EWT, and compromise penalty.

THE COURT'S RULING

The present *Amended Petition for Review* is impressed with merit.

The Petition for Review was timely filed.

Before delving into the merits, the Court shall first determine its jurisdiction over this case.

> Section 7(a)(1) of Republic Act (R.A.) No. 1125,[71] as amended, provides:
>
> > SEC. 7. Jurisdiction. — The CTA shall exercise:

---

[71] An Act Creating the Court of Tax Appeals.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial; (*Emphasis added*)

xxx xxx xxx

Moreover, Section 11 of R.A. No. 1125, as amended, provides the period for filing an appeal with the CTA, *viz.*:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** (*Emphasis added*)

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent, and such appeal must be filed within 30 days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Further, the Court's jurisdiction is not limited to the CIR's decisions and inactions involving disputed assessments but also include "other matters" arising from the NIRC of 1997, as amended, or other laws administered by the BIR.

In the case at bar, petitioner received the FDDA signed by BIR Revenue Region No. 9B (LaQueMar) Regional Director Jethro M. Sabriaga on August 6, 2019.[72] Thereafter, on August 30, 2019, petitioner filed with respondent a *Request for Reconsideration.*

[72] Exhibit "P-37", Docket – Vol. 5, pp. 2362 to 2368.

However, while the *Request for Reconsideration* was still pending, respondent, on October 20, 2020, served upon petitioner a WDL, through substituted service.

In *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*,[73] the Supreme Court held that the WDL issued by the CIR constitutes constructive and final denial of a protest, from which the 30-day period to appeal to the CTA should be reckoned.

Thus, petitioner had until November 19, 2020, or 30 days from receipt of the WDL on October 20, 2020, to file its Petition for Review before this Court. As the original *Petition* was filed on November 16, 2020, it was filed within the reglementary period.

There was a violation of petitioner's right to due process; thus, the subject tax assessments are void.

Petitioner argues that the assessments for deficiency income tax under the FLD is void for having been assessed without a good faith evaluation of the arguments and documents presented by petitioner during the PAN stage.

The Court agrees with petitioner.

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

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx. *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[74] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a

[73] G.R. No. 225809, March 17, 2021.

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

requirement of due process, this rule allows the taxpayer to make an effective protest.[75] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[76] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[77]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[78] as amended by RR No. 18-2013,[79] and renumbered by RR No. 7-2018,[80] provides, in part, as follows:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based</u>, *<u>otherwise, the assessment shall be void</u>*** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx

---

75 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

76 *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

77 *Ibid.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

78 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

80 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision. (Emphases and underscoring added)*

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

In the landmark case of *Ang Tibay vs. The Court of Industrial Relations*,[81] the Supreme Court laid down the fundamental tenets of due process in administrative proceedings. The second and seventh requirement of due process in administrative proceedings provides that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts **but the tribunal must consider the evidence presented**" and that "the [administrative tribunal] should, in all controversial questions, render its decision **in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.**"

The Supreme Court reiterated these principles in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[82] where the Court ruled that the CIR's total disregard of due process rendered the **identical** PAN, FAN, and Collection Letter null and void, and of no force and effect:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> xxx xxx xxx

[81] G.R. No. 46496, February 27, 1940.
[82] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> 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.**
>
> xxx xxx xxx
>
> **The importance of providing the 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 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.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
>
> **'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. *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform 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. And due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect. Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion 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, the BIR found the following as due from petitioner for taxable year ending December 31, 2016 in the PAN issued on May 30, 2018,[83] to wit:

I. INCOME TAX

	Special Rate	Regular Rate	Total
Gross Income per Income Tax Return	₱279,794,183.00	₱11,494,076.00	₱291,288,259.00
Add: Adjustments (Annex A)			
Additional Gross Income	1,032,801.24		1,032,801.24
Foreign Currency Gain	57,284,284.32		57,284,284.32
Disallowed Miscellaneous Factory Expense	11,775,595.43		11,775,595.43
Disallowed Cost of Sales - Purchases/Service	517,580,896.07		517,580,896.07
Gross Income per Investigation	867,467,760.06	11,494,076.00	₱878,961,836.06
Tax Due per Investigation	₱43,373,388.00	₱3,448,222.80	₱46,821,610.80
Less: Tax Paid	13,989,709.15	3,448,222.80	17,437,931.95
Deficiency Income Tax	29,383,678.85		29,383,678.85
Add: Interest (Apr. 16, 2017 to May 23, 2018)			6,472,459.67
TOTAL AMOUNT PAYABLE			**₱35,856,138.52**

II. VALUE ADDED TAX

Sales per VAT Returns	₱ -
Add: Taxable Sales (Annex A)	33,251,142.02
Total Taxable Sales	33,251,142.02
Multiply by: VAT Rate	12%
Output Tax	3,990,137.04

83 Exhibit "P-28", Docket – Vol. 5, pp. 2268 to 2275.

Less: Input Tax per Audit - Annex A		
Value Added Tax Due		3,990,137.04
Less: Tax Paid		
Tax Credits		-
Deficiency Value Added Tax		3,990,137.04
Add: 50% Surcharge	₱1,995,068.52	
Interest (Jan. 21, 2017 to May 23, 2018)	1,064,765.34	3,059,833.86
TOTAL AMOUNT PAYABLE		**₱7,049,970.90**

III. FINAL WITHHOLDING TAX

Royalty Costs	₱11,852,857.70
Technical Assistance Charges	8,416,735.64
Total	20,269,593.35
Multiply by: Tax Rate	10%
Total Tax Due	2,026,959.33
Less: Tax Paid	1,373,465.53
Deficiency Final Withholding Tax	653,493.80
Add: Interest (Jan. 26, 2017 to May 23, 2018)	172,593.98
TOTAL AMOUNT PAYABLE	**₱ 826,087.78**

IV. FINAL VAT WITHHOLDING

Royalty Costs		₱11,852,857.70
Technical Assistance Charges		8,416,735.64
Total		20,269,593.35
Multiply by: Tax Rate		12%
Total Tax Due		2,432,351.20
Less: Tax Paid		-
Deficiency Final VAT Withholding Tax		2,432,351.20
Add: 25% Surcharge	₱608,087.80	
Interest (Jan. 26, 2017 to May 23, 2018)	642,407.28	1,250,495.08
TOTAL AMOUNT PAYABLE		**₱3,682,846.28**

V. EXPANDED WITHHOLDING TAX

Taxable Basis per Audit - Annex A	₱757,989,652.37
Tax Due	₱12,237,454.42
Less: Tax Paid	6,497,191.27
Deficiency Expanded Withholding Tax	5,740,263.15
Add: Interest (Jan. 11, 2017 to May 23, 2018)	1,563,238.79
TOTAL AMOUNT PAYABLE	**₱7,303,501.94**

m

VI. COMPROMISE PENALTY	
Late Payment of Income Tax	₱ 50,000.00
Late Payment of Final Withholding Tax	30,000.00
Late Payment of Expanded Withholding Tax	50,000.00
TOTAL AMOUNT PAYABLE	**₱130,000.00**
TOTAL AMOUNT DUE	**₱54,848,545.43**

In summary, the PAN issued against petitioner stated the following, to wit:

Tax Type	Basic	Surcharges	Interests	Compromise penalties	Total
Income tax	₱29,383,678.85	-	₱ 6,472,459.67	₱ 50,000.00	₱35,906,138.52
VAT	3,990,137.04	₱1,995,068.52	1,064,765.34	-	7,049,970.90
FWT	653,493.80	-	172,593.98	30,000.00	856,087.78
FVAT	2,432,351.20	608,087.80	642,407.28	-	3,682,846.28
EWT	5,740,263.15	-	1,563,238.79	50,000.00	7,353,501.94
Total	**₱42,199,924.04**	**₱2,603,156.32**	**₱9,915,465.06**	**₱ 130,000.00**	**₱54,848,545.42**

In petitioner's Reply to the PAN filed on June 21, 2018,[84] petitioner refuted the respondent's findings relative to each of the foregoing deficiency taxes.

However, in the FLD dated August 9, 2018,[85] petitioner was still assessed the same deficiency tax liabilities, with an adjusted interest rate, to wit:

I. INCOME TAX

	Special Rate	Regular Rate	Total
Gross Income per Income Tax Return	₱279,794,183.00	₱11,494,076.00	₱291,288,259.00
Add: Adjustments (Annex A)			
Additional Gross Income	1,032,801.24		1,032,801.24
Foreign Currency Gain	57,284,284.32		57,284,284.32
Disallowed Miscellaneous Factory Expense	11,775,595.43		11,775,595.43
Disallowed Cost of Sales - Purchases/Service	517,580,896.07		517,580,896.07
Gross Income per Investigation	867,467,760.06	11,494,076.00	₱878,961,836.06
Tax Due per Investigation	₱ 43,373,388.00	₱ 3,448,222.80	₱ 46,821,610.80
Less: Tax Paid	13,989,709.15	3,448,222.80	17,437,931.95
Deficiency Income Tax	29,383,678.85		29,383,678.85
Add: 12% Interest (Apr. 16,			4,405,136.73

[84] Exhibit "P-30", Docket – Vol. 5, pp. 2277 to 2303.
[85] Exhibit "P-33", *Id.* at 2304 to 2311.

2017 to July 16, 2018)		
TOTAL AMOUNT PAYABLE		**₱33,788,815.58**
II. VALUE ADDED TAX		
Sales per VAT Returns		₱ -
Add: Taxable Sales (Annex A)		33,251,142.02
Total Taxable Sales		33,251,142.02
Multiply by: VAT Rate		12%
Output Tax		3,990,137.04
Less: Input Tax per Audit - Annex A		
Value Added Tax Due		3,990,137.04
Less: Tax Paid		
Tax Credits		-
Deficiency Value Added Tax		3,990,137.04
Add: 50% Surcharge	₱ 1,995,068.52	
12% Interest (Jan. 21, 2017 to July 16, 2018)	709,697.80	2,704,766.32
TOTAL AMOUNT PAYABLE		**₱ 6,694,903.36**
FINAL WITHHOLDING TAX		
Royalty Costs		₱ 11,852,857.70
Technical Assistance Charges		8,416,735.64
Total		20,269,593.35
Multiply by: Tax Rate		10%
Total Tax Due		2,026,959.33
Less: Tax Paid		1,373,465.53
Deficiency Final Withholding Tax		653,493.80
Add: 12% Interest (Jan. 21, 2017 to July 16, 2018)		115,158.14
TOTAL AMOUNT PAYABLE		**₱ 768,651.94**
FINAL VAT WITHHOLDING		
Royalty Costs		₱ 11,852,857.70
Technical Assistance Charges		8,416,735.64
Total		20,269,593.35
Multiply by: Tax Rate		12%
Total Tax Due		2,432,351.20
Less: Tax Paid		-
Deficiency Final VAT Withholding Tax		2,432,351.20
Add: 25% Surcharge	₱ 608,087.80	
12% Interest (Jan. 26, 2017 to July 16, 2018)	428,626.93	1,036,714.73
TOTAL AMOUNT PAYABLE		**3,469,065.93**
EXPANDED WITHHOLDING TAX		
Taxable Basis per Audit - Annex A		₱757,989,652.37
Tax Due		₱ 12,237,454.42
Less: Tax Paid		6,497,191.27

Deficiency Expanded Withholding Tax	5,740,263.15
Add: 12% Interest (Jan. 11, 2017 to July 16, 2018)	1,039,852.60
TOTAL AMOUNT PAYABLE	**₱ 6,780,115.75**
COMPROMISE PENALTY	
Late Payment of Income Tax	₱ 50,000.00
Late Payment of Final Withholding Tax	30,000.00
Late Payment of Expanded Withholding Tax	50,000.00
TOTAL AMOUNT PAYABLE	**₱ 130,000.00**
TOTAL AMOUNT DUE	**₱51,631,552.57**

To summarize the said FLD states the following:

Tax Type	Basic	Surcharges	Interests	Compromise penalties	Total
Income tax	₱ 29,383,678.85	-	₱ 4,405,136.73	₱ 50,000.00	₱ 33,838,815.58
VAT	3,990,137.04	₱ 1,995,068.52	709,697.80	-	6,694,903.36
FWT	653,493.80	-	115,158.14	30,000.00	798,651.94
FVAT	2,432,351.20	608,087.80	428,626.93	-	3,469,065.93
EWT	5,740,263.15	-	1,039,852.60	50,000.00	6,830,115.75
Total	**₱42,199,924.04**	**₱2,603,156.32**	**₱6,698,472.20**	**₱ 130,000.00**	**₱51,631,552.56**

Notably, the only adjustment stemmed from the imposition of the 12% interest (from the 20% interest), pursuant to Section 249(B) of the NIRC of 1997, as amended by Section 75 of Republic Act No. 10963,[86] or the Tax Reform for Acceleration and Inclusion (TRAIN) Law.

More importantly, it is noteworthy that the BIR did not address any of the refutations made by the petitioner in its Reply to the PAN in the FLD, which supports the conclusion that the BIR did not consider the same when it issued the subject FLD. In fact, the *Details of Discrepancies* attached to the said FLD merely reiterated what were indicated in the *Details of Discrepancies* attached to the PAN.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or his authorized representative appreciated the explanations or defenses raised by petitioner in connection with the assessments. M

---

[86] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

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

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[87] Furthermore, a void assessment bears no valid fruit.[88] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent has no right to collect the same.

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

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

The assessment of respondent Commissioner of Internal Revenue (CIR) of deficiency income tax, value-added tax, final withholding tax, expanded withholding tax, and compromise penalty, for taxable year 2016 are **CANCELLED** and **SET ASIDE**.

Consequently, respondent CIR or any person acting on his behalf is **ENJOINED** from enforcing the collection of deficiency taxes assessed against petitioner for calendar year 2016.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

---

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

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice