REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEVI STRAUSS (PHIL.) INC. II,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 10324

Members:

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

Promulgated:
JAN 1_ 2_25

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2:00 p.m.

DECISION

RINGPIS-LIBAN, *J.*:

The *Petition for Review* filed on August 20, 2020, prays that the *Final Decision on Disputed Assessment* (FDDA) dated May 20, 2020 issued by the respondent Commissioner of Internal Revenue against petitioner, for its allege deficiency income tax, final withholding value-added tax (FWVAT), expanded withholding tax (EWT), value-added tax (VAT), and improperly accumulated earnings tax (IAET), in the aggregate amount of ₱138,776,697.88, inclusive of penalties and interests, for taxable year 2012, be declared null and void.[1]

THE PARTIES

Petitioner Levi Strauss (Phil.) Inc. II is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines,[2] with office address at 20F Tower II, The Enterprise Center, Ayala Avenue, Makati City.[3] It is registered with the Securities and Exchange Commission

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[1] Summary of the Case, Pre-Trial Order dated December 11, 2021, Docket – Vol. III, p. 852.
[2] Exhibit "P-2", Docket – Vol. III, pp. 1030 to 1045.
[3] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 803.

primarily to engage in, operate, conduct and maintain the business of manufacturing textile, fabrics, garments, wearing apparel, accessories and other articles of clothing, as well as buying, selling or otherwise dealing, at wholesale, in such goods, and any equipment, materials, supplies used or employed in or related to the manufacture of such finished products.[4]

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On May 23, 2014, petitioner received the *Letter of Authority* (LOA) SN: eLA201100077676 (LOA-116-2014-00000044) dated May 9, 2014,[6] authorizing Revenue Officers Aurora Pelayo, Josa Gomez, Felina Guimbao, Olivia Sison and Group Supervisor Olivia Aviles of Large Taxpayer Regular Audit Division 1, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes (miscellaneous tax), for the period from December 1, 2011 to November 30, 2012.

Petitioner executed three (3) *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (Waiver)*, notarized on December 16, 2015,[7] November 8, 2016,[8] and May 3, 2017.[9]

Thereafter, on December 7, 2017, petitioner received a *Preliminary Assessment Notice* (PAN) *(Parts 1 and II)* of even date,[10] with attached *Details of Discrepancies*, signed by OIC – Asst. Commissioner Large Taxpayer Service Teresita M. Angeles, finding due from petitioner deficiency income tax, EWT, FWVAT, withholding tax on compensation (WTC), VAT, IAET, documentary stamp tax (DST), and compromise penalties, for fiscal year ending November 30, 2012,[11] in the aggregate amount of ₱198,738,467.86, detailed as follows:

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[4] Annex A of Exhibit P-6, Note 1, Audited Financial Statements for the years ended November 30, 2012 and 2011, Docket – Vol. III, p. 1086; Exhibit P-6 was admitted per Resolution dated November 18, 2022, Docket – Vol. IV, p. 1537.

[5] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803.

[6] Par. 4(a), Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803; Exhibit "P-3", Docket – Vol. III, p. 1046; Exhibit "R-1", BIR Records (Exhibit "R-8"), p. 89

[7] Exhibit "P-4", Docket – Vol. III, p. 1047; Exhibit "R-2", BIR Records (Exhibit "R-8"), p. 565.

[8] Exhibit "P-4-A", Docket – Vol. III, p. 1048; Exhibit "R-2-1", BIR Records (Exhibit "R-8"), p. 566.

[9] Exhibit "P-4-B", Docket – Vol. III, p. 1049; Exhibit "R-2-2", BIR Records (Exhibit "R-8"), p. 567.

[10] Par. 4(b), Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803.

[11] Exhibit "P-5", Docket – Vol. III, pp. 1050 to 1067; Exhibit "R-4", BIR Records (Exhibit "R-8"), pp. 594 to 602.

Tax Type	Basic	25% Surcharge	Interest	Total
Income tax	₱72,502,237.75		₱68,272,940.54	₱140,775,178.29
EWT	803,891.35		810,587.77	1,614,479.12
FWVAT	331.85		331.85	663.71
WTC	3,400,278.44		3,400,278.44	6,800,556.88
VAT	13,297,232.30		13,297,232.30	26,594,464.60
IAET	10,564,708.84		12,149,415.17	22,714,124.01
DST	12,445.00	₱3,111.25	12,445.00	28,001.25
Total	₱100,581,125.53	₱3,111.25	₱97,943,231.07	**₱198,527,467.86**
Compromise Penalties				211,000.00
Grand Total				**₱198,738,467.86**

On December 22, 2017, petitioner filed its Reply to the PAN of even date, with corresponding supporting documents, which opposed the assessments contained in the PAN.[12]

On December 27, 2017, petitioner received the *Formal Letter of Demand* (FLD) *(Part 1 and II)* with *Details of Discrepancies* of even date,[13] with *Audit Result/Assessment Notice* (FAN) Nos. IT-116-LOA-00000044-12-17-786, WE-116-LOA-00000044-12-17-787, FWVT-116-LOA-00000044-12-17-788, WC-116-LOA-00000044-12-17-789, VT-116-LOA-00000044-12-17-790, IAET-116-LOA-00000044-12-17-791, DST-116-LOA-00000044-12-17-792, and MC-116-LOA-00000044-12-17-793, signed by OIC – Assistant Commissioner Large Taxpayer Service Teresita M. Angeles, finding petitioner liable for the same deficiency income tax, EWT, FWVAT, WTC, VAT, IAET, DST and compromise penalties in the aggregate amount of ₱198,738,467.87,[14] for fiscal year ending November 30, 2012, details as follows:[15]

Tax Type	Basic	25% Surcharge	Interest	Total
Income tax	₱72,502,237.75		₱68,272,940.54	₱140,775,178.29
EWT	803,891.35		810,587.77	1,614,479.12
FWVAT	331.86		331.86	663.72
WTC	3,400,278.44		3,400,278.44	6,800,556.88
VAT	13,297,232.30		13,297,232.30	26,594,464.60
IAET	10,564,708.84		12,149,415.17	22,714,124.01
DST	12,445.00	₱3,111.25	12,445.00	28,001.25
Total	₱100,581,125.54	₱3,111.25	₱97,943,231.08	**₱198,527,467.87**
Compromise Penalties				211,000.00
Grand Total				**₱198,738,467.87**

On January 26, 2018, petitioner filed its *Protest Letter* and *Request for Reinvestigation* of even date to the FLD/FAN.[16] Thereafter, on March 26, 2018,

[12] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803; Exhibit "P-6", Docket – Vol. III, pp. 1068 to 1143.
[13] Par. 4(c), Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803.
[14] Difference of ₱0.01 with the PAN.
[15] Exhibit "P-7", Docket – Vol. III, pp. 1144 to 1160; Exhibits "R-5" to "R-5-2", BIR Records (Exhibit "R-8"), pp. 689 to 705.
[16] Exhibit "P-8", Docket – Vol. III, pp. 1161 to 1178.

petitioner filed the letter of even date, submitting its additional supporting documents in relation to its *Protest.*[17] The next day, on March 27, 2018, petitioner filed another letter of even date, submitting additional supporting documents in relation to its *Protest.*[18]

On July 9, 2020, petitioner received through registered mail,[19] the FDDA dated May 20, 2020,[20] with *Details of Discrepancies* and *Audit Result/Assessment Notice* Nos. IT-116-LOA-0000044-12-19-0143, FWVT-116-LOA-0000044-12-19-0144, WE-116-LOA-0000044-12-19-0145, VT-116-LOA-0000044-12-19-0146, and IAET-116-LOA-0000044-12-19-0147, signed by respondent, stating that after considering petitioner's *Protest*, it has been found that petitioner is still liable for deficiency income tax, FWVAT, EWT, VAT and IAET, in the aggregate amount of ₱138,776,697.88, for fiscal year ending November 30, 2012, details as follows:[21]

Tax Type	Basic	20% Interest	12% Interest	Compromise Penalty	Total
Income tax	₱43,654,916.89	₱41,472,171.04	₱9,604,081.72	₱50,000.00	₱94,781,169.65
FWVAT	331.86	339.42	73.89	1,000.00	1,745.17
EWT	1,089,072.04	1,089,072.04	261,377.29	20,000.00	2,459,521.37
VAT	7,385,541.32	7,385,541.32	1,624,819.09	50,000.00	16,445,901.73
IAET	10,564,708.84	12,149,415.17	2,324,235.95	50,000.00	25,088,359.96
Total	₱62,694,570.95	₱62,096,538.99	₱13,814,587.94	₱171,000.00	**₱138,776,697.88**

PROCEEDINGS BEFORE THIS COURT

Petitioner filed its *Petition for Review* on August 20, 2020.[22] The case was initially raffled to this Court's former Second Division.

On November 3, 2020, respondent filed his *Answer*,[23] interposing the following special and affirmative defenses, to wit: (1) the Court's power of judicial review over decisions of respondent on disputed assessment is by nature exclusive and appellate, and this Court should *not* rule on matters that were never substantiated in the administrative level and petitioner may not be allowed to raise new issues on appeal; (2) petitioner should not be allowed to attack the validity of the *Waivers* for the first time on appeal; (3) assuming the Court may rule on issues raised for the first time on appeal, respondent's right to assess has not prescribed; (4) the ten (10)-year period for assessment under Section 222 of the National Internal Revenue Code (NIRC) of 1997, as

[17] Exhibit "P-9", Docket – Vol. III, pp. 1179 to 1181.
[18] Exhibit "P-10", Docket – Vol. III, pp. 1182 to 1183.
[19] Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. II, pp. 802 to 803.
[20] Par. 4(d), Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803.
[21] Exhibit "P-1", Docket – Vol. I, pp. 94 to 106; Exhibits "R-7" to "R-7-2", BIR Records (Exhibit "R-8"), pp. 754 to 792.
[22] Docket – Vol. I, pp. 6 to 45.
[23] Docket – Vol. II, pp. 741 to 769.

amended, is applicable; (5) *Waivers* executed by petitioner are valid and binding; (6) petitioner was accorded due process of law; and (7) petitioner is liable for the assessed deficiency income tax, EWT, WTC, IAET, and compromise penalty.

The Pre-Trial Conference was initially set on February 8, 2021,[24] but during the said conference, upon agreement of both parties, the case was referred to Mediation.[25] Accordingly, the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on February 22, 2021. However, the PMC-CTA issued a *No Agreement To Mediate* dated March 19, 2021,[26] stating that the parties decided not to have their case mediated.

Thus, the Pre-Trial Conference was held on June 23, 2021,[27] where the Court approved the parties' *Joint Stipulation of Facts and Issue* previously submitted on June 21, 2021,[28] thereby terminating the Pre-Trial. Prior thereto, the *Pre-Trial Brief for Petitioner* was filed on February 3, 2021,[29] while *Respondent's Pre-Trial Brief* was submitted on February 4, 2021.[30] The Pre-Trial Order dated December 11, 2021 was then issued.[31]

Respondent transmitted the *BIR Records* of the present case on February 24, 2022, consisting of 809 pages in one (1) folder.[32]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Atty. Gilbert Raymund T. Reyes,[33] its Corporate Secretary; (2) Ms. Maria Esperanza R. Cortero,[34] its Finance Manager; and (3) Ms. Ma. Criselda S. Oplas,[35] the Court-commissioned Independent Certified Public Accountant (ICPA).[36]

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[24] Notice of Pre-Trial Conference dated November 9, 2020, Docket – Vol. II, pp. 771 to 772.
[25] Minutes of hearing held on, and Order dated, February 8, 2021, Docket – Vol. II, pp. 792 to 793; Resolution dated February 8, 2021, Docket – Vol. II, p. 795
[26] Docket – Vol. II, p. 796.
[27] Resolution dated May 26, 2021, Docket – Vol. II, p. 798; Minutes of hearing held on, and Order dated, June 23, 2021, Docket – Vol. II, pp. 813 to 814.
[28] Docket – Vol. II, pp. 802 to 812.
[29] Docket – Vol. II, pp. 774 to 786.
[30] Docket – Vol. II, pp. 787 to 790.
[31] Docket – Vol. III, pp. 852 to 856.
[32] *Compliance* dated February 18, 2022, Docket – Vol. III, pp. 970 to 972.
[33] Exhibit "P-23", Docket – Vol. I, pp. 77 to 84; Order dated December 13, 2021, Docket – Vol. III, pp. 857 to 858.
[34] Exhibit "P-22", Docket – Vol. I, pp. 46 to 76; Order dated December 13, 2021, Docket – Vol. III, pp. 857 to 858.
[35] Offered as Exhibit "P-52" (but marked as Exhibit "P-51", Refer to petitioner's *Formal Offer of Evidence*, Docket – Vol. III, p. 1026), Docket – Vol. III, pp. 986 to 996; Minutes of the hearing held on, and Order dated, April 25, 2022, Docket – Vol. III, pp. 997 to 998.
[36] Order dated December 13, 2021, Docket – Vol. III, pp. 857 to 858.

The *Report* of the said ICPA was submitted to the Court on March 28, 2022.[37]

Petitioner's *Formal Offer of Evidence* was posted on May 30, 2022,[38] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on June 10, 2022.[39] In the Resolution dated November 18, 2022,[40] the Court admitted petitioner's offered exhibits *except* Exhibits "P-44-u-6418", "P-44-u-6572 to P-44-u-6573", "P-44-u-7368", "P-44-u-7741", and "P-45-b-5", for not being found in the records.

Upon petitioner's *Motion for Partial Reconsideration (Re: Resolution dated November 18, 2022)* filed on December 7, 2022,[41] and respondent having failed to file comment,[42] the Court, in the Resolution dated April 4, 2023,[43] granted petitioner's *Motion*, and accordingly admitted Exhibits "P-44-u-6418", "P-44-u-6572 to P-44-u-6573", "P-44-u-7368", and "P-44-u-7741".

In the Order dated June 29, 2022,[44] the present case was transferred to the Third Division of this Court.

For his part, respondent offered the testimony of Revenue Officer (RO) Olivia Sison.[45]

In the Notice of Resolution dated June 14, 2023,[46] the present case was transferred to the Second Division of this Court.

Respondent's Formal Offer of Evidence was filed on July 26, 2023,[47] to which petitioner's *Comment and/or Opposition (To Respondent's Formal Offer of Evidence dated 26 July 2023)* was submitted on August 7, 2023.[48] In the Resolution dated December 20, 2023,[49] the Court admitted all of respondent's offered exhibits.

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[37] Offered as Exhibit "P-34" (but marked as Exhibit "P-34-A", Refer to Resolution dated November 18, 2022, Docket – Vol. IV, p. 1539), 3 Binders.
[38] Docket – Vol. III, pp. 1009 to 1029.
[39] Docket – Vol. III, pp. 1005 to 1007.
[40] Docket – Vol. IV, pp. 1536 to 1544.
[41] Docket – Vol. IV, pp. 1545 to 1549.
[42] Records Verification Report dated February 10, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1561.
[43] Docket – Vol. IV, pp. 1565 to 1567.
[44] Docket – Vol. IV, p. 1533.
[45] Exhibit "R-9", Docket – Vol. IV, pp. 1524 to 1532; Minutes of hearing held on, and Order, dated July 6, 2023, Docket – Vol. IV, pp. 1568 to 1569.
[46] Docket – Vol. IV, p. 1570.
[47] Docket – Vol. IV, pp. 1571 to 1577.
[48] Docket – Vol. IV, pp. 1581 to 1591.
[49] Docket – Vol. IV, pp. 1604 to 1605.

Petitioner's *Memorandum* was filed on February 13, 2024.[50] Respondent, however, failed to file a memorandum.[51]

The present case was considered submitted for decision on March 5, 2024.[52]

THE STIPULATED ISSUE

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

> "1. Whether or not Petitioner is liable for deficiency taxes for the taxable year 2012 (period 1 December 2011 to 30 November 2012)."[53]

Petitioner's arguments:

Petitioner argues that the period to assess it has already prescribed pursuant to Section 203 of the NIRC as the *Waivers* are invalid for failure to indicate the nature and amount of the tax due; that ultimately, the period to assess deficiency EWT and VAT has already prescribed even before the *First Waiver* has been completed; that there is no valid acceptance of the *Waivers* as they were not fully signed by the OIC-Assistant Commissioner; that there is no Board Resolution to prove the authority to execute the said *Waivers*; that the FLD-FAN and the FDDA are invalid and consequently, assessments for deficiency taxes therein are void; that the assessment is void due to respondent's violation of the procedural due process requirements in deficiency tax assessment; that the blatant disregard of the petitioner's arguments and substantiations in its Reply to PAN and Protest to Assessment is a clear violation of its right to due process; that the irregularity in dates indicated in the FDDA is a violation of petitioner's right to due process; and that petitioner is not liable for the alleged deficiency taxes.

Respondent's arguments:

Respondent contends that the Court's power of judicial review over his decisions on disputed assessment is by nature exclusive and appellate, hence, this Court should not rule on matters that were never substantiated in the administrative level, and petitioner may *not* be allowed to raise new issues on appeal; that petitioner should *not* be allowed to attack the validity of the *Waivers*

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[50] Docket – Vol. IV, pp. 1613 to 1675.
[51] Records Verification dated February 21, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1676.
[52] *Minute Resolution* dated March 5, 2024, Docket – Vol. IV, p. 1677.
[53] Issue Agreed as to both Petitioner and Respondent, JSFI, Docket – Vol. II, p. 804.

for the first time on appeal; that assuming the Court may rule on issues raised for the first time on appeal, respondent's right to assess has not prescribed; that the ten (10)-year period for assessment under Section 222 of the NIRC of 1997, as amended, is applicable; that the *Waivers* executed by petitioner are valid and binding; that petitioner was accorded due process of law; and that petitioner is liable for the assessed deficiency income tax, EWT, WTC, IAET, and compromise penalty.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

Petitioner points out that respondent's *blatant disregard* of its arguments and substantiations found in the *Reply to PAN* and *Protest to Assessment* is a clear violation of its right to due process.

When respondent issued the PAN on December 7, 2017 and petitioner timely filed its *Reply to PAN* on December 22, 2017, which was a Friday. However, petitioner was surprised when on, December 27, 2017, the following Wednesday, respondent was able to issue the FLD-FAN to it, notwithstanding that between December 22, 2017 and December 27, 2017, there were no working days within which the BIR could have possibly reviewed petitioner's assessment. Petitioner contends that considering the holidays and non-working days, it is baffling to think how the BIR could have possibly had the time to review, evaluate, and discuss the *Reply to PAN* issued by petitioner.

In addition, petitioner avers that upon perusal of the FLD-FAN issued by respondent, it is evident that it made neither rebuttals nor references to the arguments and evidence provided by the petitioner in its Reply to the PAN, defeating petitioner's statutory right to explain itself and introduce supporting evidence. Petitioner highlights the fact that the FLD-FAN issued by respondent merely *copied verbatim* the alleged tax deficiencies and their respective legal bases and explanations found in the PAN *and practically retained all disputed items in the assessment.* There was no acknowledgment at all of the arguments made by petitioner in the *Reply to PAN* on the FLD-FAN. A plain reading of the PAN and FLD-FAN readily reveals that the latter is a *convenient reiteration* of the former. Furthermore, petitioner notes that the lack of valid identification and reference to the *Memorandum* recommending the issuance of FLD-FAN was evident during the cross-examination of RO Olivia Sison.

A comparison of the items and amounts assessed in the PAN with those in the FLD-FAN strengthens the *veracity* petitioner's contentions:

PAN				
Tax Type	**Basic**	**25% Surcharge**	**Interest**	**Total**
Income tax	₱72,502,237.75		₱68,272,940.54	₱140,775,178.29
EWT	803,891.35		810,587.77	1,614,479.12
FWVAT	331.85		331.85	663.71
WTC	3,400,278.44		3,400,278.44	6,800,556.88
VAT	13,297,232.30		13,297,232.30	26,594,464.60
IAET	10,564,708.84		12,149,415.17	22,714,124.01
DST	12,445.00	₱3,111.25	12,445.00	28,001.25
Total	₱100,581,125.53	₱3,111.25	₱97,943,231.07	**₱198,527,467.86**
Compromise Penalties				211,000.00
Grand Total per PAN				**₱198,738,467.86**

FAN-FLD				
Tax Type	**Basic**	**25% Surcharge**	**Interest**	**Total**
Income tax	₱72,502,237.75		₱68,272,940.54	₱140,775,178.29
EWT	803,891.35		810,587.77	1,614,479.12
FWVAT	331.86		331.86	663.72
WTC	3,400,278.44		3,400,278.44	6,800,556.88
VAT	13,297,232.30		13,297,232.30	26,594,464.60
IAET	10,564,708.84		12,149,415.17	22,714,124.01
DST	12,445.00	₱3,111.25	12,445.00	28,001.25
Total	₱100,581,125.54	₱3,111.25	₱97,943,231.08	**₱198,527,467.87**
Compromise Penalties				211,000.00
Grand Total per FAN				**₱198,738,467.87**

As can be seen from the comparison of the two, the *nearly identical* amounts retained and tabulated in both assessments show that the opportunity *given by law* to the petitioner in order defend itself by refuting the items of assessment with the objective of reducing if not canceling the same was *rendered futile* contrary to the *letter and spirit of the law.*

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

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

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[54] as amended by RR No. 18-2013,[55] 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:
>
> 3.1.1 *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 for any deficiency tax or taxes, the said Office shall issue to 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).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> 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 shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx
>
> 3.1.5 *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)*

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[54] 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

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

The foregoing provisions prescribe, as *key components* of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based. Otherwise, the FLD/FAN and/or FDDA shall be *void.*

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon*),[56] the Supreme Court *voided* the income tax assessment of Avon because of due process violation. Specifically, the Supreme Court said that 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 BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Thus, *failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity*:

> "**<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 its 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>.**
>
> 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. **<u>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</u>. <u>Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity</u>.**
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> 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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> **<u>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</u>**

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

necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

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In *Ang Tibay v. The Court of Industrial Relations*,[57] 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 the parties may know the various issues involved and the reasons for the decision.**

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

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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 the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section

[57] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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[58] 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[59] 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[60] 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.

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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 proceedings.

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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.**

[58] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[59] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[60] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

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,*[61] **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.:*[62]

> 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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> **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)*

As worded, the law requires that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; if not, the assessment shall be void.[63] This requirement is *mandatory*. As a *due process* requirement, this rule allows the taxpayer to make an effective protest.[64] 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,

[61] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[62] 241 Phil. 829 (1988) [Per J. Cruz, First Division].
[63] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[64] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

not merely a formal, requirement."[65] Because the requirement is mandatory, 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.[66]

Based on the holding in *Avon*, the law commands the respondent in this case or his duly authorized representative to perform assessment functions with strict adherence to the law, and their own rules of procedure and always with due regard to the basic tenets of *due process*. Due process requires respondent to consider the taxpayer's defenses and evidence at *each stage* in the assessment process and to render a decision based on these submissions. The requirement must be embodied in the PAN, FLD/FAN, and FDDA. Thus, when respondent rejects the taxpayer's explanations, the reason for doing so and the particular facts and law upon which his conclusion were based must be stated. As a corollary to this requirement, the concerned taxpayer must *not* be left *uninformed* or *clueless* on how the respondent appreciated the explanations or defenses raised in connection with the assessment.

As shown in the facts earlier, the PAN dated December 7, 2017[67] found due from petitioner deficiency taxes in the aggregate amount of ₱198,738,467.86. Further details of the PAN are shown below:

I. INCOME TAX			
Net income per ITR			₱ 140,688,152.97
Add: Discrepancies/Disallowances			
1 Undeclared Sales per TPI	Schedule 1	₱105,484,597.38	
2 Overclaimed Importations per TPI	Schedule 2	34,424,581.38	
3 Unsupported sales returns and discounts		42,324,309.00	
4 Income payments not subjected to Expanded WT	Schedule 3	39,707,796.84	
5 Unaccounted payment subjected to 1%	Schedule 3	3,486,911.34	
6 Income payments not subjected to FWVT	Schedule 4	2,765.49	
7 Other Income	Schedule 5	1,478,622.93	
8 Disallowed Bad debts - unsupported		3,884,560.80	
9 Disallowed Miscellaneous expenses- (FS vs ITR)	Schedule 6	4,266,118.42	
10 Realized foreign exchange loss - unsupported		4,310,956.70	239,371,220.28
Net income per audit			₱ 380,059,373.25
Corporate Income Tax Due Thereon			₱ 114,017,811.98
Less Corporate Income tax paid		₱34,922,350.89	
Income tax credits	₱7,284,125.66		
Less: Disallowed tax credit - out of period	690,902.32	6,593,223.34	₱ 41,515,574.23
Deficiency Income Tax Due			₱ 72,502,237.75
Add Interest from March 16, 2013 to December 31, 2017			68,272,940.54
Total DEFICIENCY INCOME TAX DUE			**₱140,775,178.29**
II. EXPANDED WITHHOLDING TAX			
Def. WE			₱ 803,891.35
Add: Interest up to December 31, 2017			810,587.77
Total Def. WE			**₱ 1,614,479.12**
III. FINAL WITHHOLDING VAT			
Basic Tax FWVT			₱ 331.85
Add: Interest up to December 16, 2017			331.85

[65] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[66] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[67] Exhibit "P-5", Docket – Vol. III, pp. 1050 to 1067; Exhibit "R-4", BIR Records (Exhibit "R-8"), pp. 594 to 602.

Total Def. FWVT			**₱663.71**
IV. WITHHOLDING TAX ON COMPENSATION			
Def. WC Due			₱ 3,400,278.44
Add: Interest from December 16, 2012 to December 16, 2017			3,400,278.44
TOTAL DEF. WC			**₱6,800,556.88**
V. VALUE ADDED TAX			
Vatable sales per returns			
Local Taxable sales		₱1,004,348,789.83	
Zero rated sales		16,279,768.95	₱1,020,628,558.78
Vatable sales per audit:			
Sales of good per ITR	₱1,019,264,808.00		
Add: Other income subject to VAT (Schedule 10)	3,202,511.22		
Undeclared Sales per TPI (Schedule 1)	105,484,597.38		
Unaccounted income payment (Schedule 3)	3,486,911.34	₱1,131,438,827.94	
Less: Vatable sales per returns			
Taxable sales	₱1,004,348,789.83		
Zero rated sales	16,279,768.95	1,020,628,558.78	110,810,269.16
Total sales per audit:			₱1,131,438,827.94
Less Zero rated sales			16,279,768.95
Subject to 12% VAT per audit			₱1,115,159,058.99
Output tax due thereon			₱ 133,819,087.08
Less: Allowable input taxes:			
Input tax carried over from previous quarters	₱ 613,384.20		
Current purchases:			
Input tax on CG	78,214.29		
Input tax on GOTCG	1,298,012.41		
Input tax on Importation	49,753,154.81		
Input tax on services	12,119,353.09		
Input tax on services rendered by Non resident	14,216,935.61	₱78,079,054.40	
Less: Input tax deferred to succeeding period		411,751.44	77,667,302.96
VAT Payable			₱ 56,151,784.12
Less: VAT Paid			42,854,551.82
Deficiency VAT			₱ 13,297,232.30
Add Interest from December 26, 2012 to December 26, 2017			13,297,232.30
Total Deficiency VAT Due			**₱26,594,464.60**
VI. IMPROPERLY ACCUMULATED EARNINGS TAX			
IAET Due			₱ 10,564,708.84
Add: Interest from March 16, 2012 to December 16, 2012 to December 16, 2017			12,149,415.17
Total IAET Due			**₱22,714,124.01**
VII. DOCUMENTARY STAMP TAX			
DEFICIENCY DOCUMENTARY STAMP TAX			₱ 12,445.00
Add: 25% Surcharge			3,111.25
Interest from March 6, 2012 to December 16, 2012 to December 16, 2017			12,445.00
TOTAL DEF. DST DUE			**₱28,001.25**
Compromise Penalties for Late Payment			
Def. Income			₱ 50,000.00
Def. VAT			50,000.00
Def. WE			30,000.00
Def. WC			25,000.00
Def. FTVT			1,000.00
Def. IAET			50,000.00
Def. DST			5,000.00
Total			**₱211,000.00**

In petitioner's *Reply to the PAN* dated December 22, 2017,[68] it raised legal and factual arguments, citing pertinent provisions of the law and revenue regulations, and even submitted supporting documents.

However, in spite of the *Reply to the PAN*, petitioner was still assessed a *nearly identical* aggregate amount of ₱198,738,467.87, save for the ₱0.01 difference[69], in the FLD dated December 27, 2017.[70]

As reviewed by the Court, the FLD and attached *Details of Discrepancies* merely copied *verbatim* the discussion that was already written in the PAN and the attached *Details of Discrepancies*, without adding more by addressing any of petitioner's defenses in its *Reply to the PAN*. In other words, when respondent *perfunctorily* and *hastily* issued the subject FLD on December 27, 2017, even after receiving *Reply to the PAN* merely five (5) days before, on December 22, 2017,[71] respondent did so without considering the points raised by the petitioner. Finally, the FLD did not even acknowledge or mention petitioner's submission of the *Reply to the PAN*, which is another clear sign that the same was totally *ignored* by the BIR.

Accordingly, based on *Avon*, the Court finds the subject tax assessments *void for violation of petitioner's right to administrative due process.*

Again, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[72] A void assessment bears no valid fruit.[73] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent or the BIR has no right to collect the same.

In view of the finding that the subject tax assessments are invalid, it becomes unnecessary to address the other arguments raised by the parties.

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

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[68] Exhibit "P-6", Docket – Vol. III, pp. 1068 to 1143.

[69] The ₱0.01 difference can be traced to the deficiency FWVAT, to wit:

III. FINAL WITHHOLDING VAT	
Final Withholding VAT on Royalties	₱331.86
Add: Interest from 12-16-12 to 12-31-17	331.86
Def. Final WVT	**₱663.72**

[70] Exhibit "P-7", Docket – Vol. III, pp. 1144 to 1160; Exhibits "R-5" to "R-5-2", BIR Records (Exhibit "R-8"), pp. 689 to 705.

[71] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 803; Exhibit "P-6", Docket – Vol. III, pp. 1068 to 1143.

[72] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.

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

Accordingly, the FLD and *Assessment Notices*, all dated December 27, 2017, assessing petitioner for deficiency taxes for fiscal year ended November 30, 2012 is **CANCELLED** and **SET ASIDE**.

Finally, the FDDA dated May 20, 2020, and *Assessment Notices*, assessing petitioner for deficiency income tax, FWVAT, EWT, VAT and IAET, for fiscal year ended November 30, 2012, in the aggregate amount of **₱138,776,697.88**, inclusive of interests and compromise penalties, are **REVERSED** and **SET ASIDE**.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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
Division 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