REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MERIDIEN BUSINESS LEADER, INC., Petitioner,	CTA Case No. 9316
	Members:
-versus-	DEL ROSARIO, PJ, Chairperson, FABON-VICTORINO, and MANAHAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 2 9 2020 1:29 pm

x- -x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1], petitioner Meridien Business Leader, Inc. prays for the cancellation and withdrawal of the Final Decision on Disputed Assessment (FDDA) dated September 18, 2015 issued by respondent against petitioner for alleged deficiency Income Tax (IT), Value-added Tax (VAT), Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), and Fringe Benefits Tax (FBT), compromise penalty in the aggregate amount of ₱2,361,261,053.16 for taxable year (TY) 2010.

THE PARTIES

Petitioner Meridien Business Leader, Inc. is a domestic corporation, primarily engaged in the business of trading such as, but not limited to garments, accessories, shoes, and toys

[1] Vol. I Docket, pp. 11-64.

on wholesale and retail, with office at the SM City Lipa, Ayala Highway, Marauoy, Lipa City.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), an administrative agency of the government with the primary function to administer and implement national internal revenue laws and regulations, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS AND THE PROCEEDINGS

On October 6, 2011, respondent issued Letter of Authority (LOA) No. LOA-116-2011-00000148 (SN: eLA201100003038),[4] authorizing Revenue Officers (ROs) Riza Budano, Aurora Pelayo, Olivia Aviles, Olivia Sison, Rogelio Gonzales and Group Supervisor Marivic Bautista, all of the Large Taxpayer (LT) Regular Audit Division 1 of the BIR, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2010 to December 31, 2010. Petitioner received the said LOA on October 10, 2011.

In the course of the audit, petitioner executed three (3) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC)[5] which responded accepted extending his period to assess the alleged deficiency taxes until September 30, 2014.

On March 27, 2014, petitioner received a Preliminary Assessment Notice (PAN) with Details of Discrepancies,[6] for alleged deficiency taxes in the total amount of ₱2,597,101,998.46.

On May 21, 2014, petitioner received a Formal Letter of Demand (FLD) with Details of Discrepancies and Audit

---

2 Par. 1.1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Vol. III Docket, p. 1675.
3 Par. 1.2, Joint Stipulation of Facts, JSFI, Vol. III Docket, p. 1675.
4 Exhibit "P-1" and "R-1".
5 Exhibits "R-5", "R-6" and "R-7".
6 Exhibit "R-9".

Result/Assessment Notices (FAN) dated May 19, 2014,[7] for deficiency IT - ₱1,702,075,492.13; deficiency VAT - ₱911,682,441.74; deficiency WTC - ₱8,439,347.66; deficiency EWT - ₱20,631,946.63; deficiency FBT - ₱5,364,834.44; and compromise penalty - ₱200,000.00; or in the aggregate amount of ₱2,648,394,062.62.

On June 20, 2014, petitioner filed a Letter-Protest,[8] against the FLD and FAN and requested for a reinvestigation of the assessment for lack of legal and/or factual bases.

On September 23, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) dated September 18, 2015 with Details of Discrepancies,[9] denying petitioner's protest and finding it liable for alleged deficiency taxes, including penalties and interests in the total amount of ₱2,361,261,053.16 for TY 2010.

On October 23, 2015, petitioner assailed the FDDA[10] which respondent denied in a letter dated February 9, 2016 which petitioner received on February 17, 2016.

On March 18, 2016, petitioner filed the instant Petition for Review before the Court in Division.

On July 25, 2016, respondent filed his Answer,[11] basically justifying the assessment he issued against petitioner for deficiency IT, VAT, WTVC, EWT, FBT and compromise penalty plus surcharge as follows:

Income Tax

> Petitioner was assessed deficiency IT on alleged undeclared sales. Certain sales transactions in the General Ledger (GL) were not reflected in the Trial

---

7 Exhibit "P-2", "R-11", "R-12", "R-12-a", "R-12-b", "R-12-c", "R-12-d", and "R-12-e".
8 Exhibit "P-3".
9 Exhibit "R-14".
10 Exhibit "P-4".
11 Vol. III Docket, pp. 1593 to 1604.

✓

Balance (TB), leading to understating petitioner's sales declaration in the Financial Statements (FS). Also, the sales transactions in petitioner's Terminal Accountability Report did not match those stated in the FS. Considering that the GL is the document capturing all sales transactions of petitioner, it is the document which was the basis for the assessment for IT regarding the discrepancies noted.

Further, petitioner accounted for its sales under separate modules or documents, like the Hyperion module which contains budgeted sales. However, the budgeted amounts were not properly substantiated or disclosed in petitioner's Computerized Accounting System (CAS). Per verification with the General Journal (GJ), the Hyperion module contains multiple/batch entries of Income Statement accounts which were entered in the CAS every month end, with a corresponding reversal entries on almost half of the budgeted amounts on the same date as well. How these multiple/batch entries were generated in the system was not established with certainty, hence the assessment for income tax.

Petitioner was likewise assessed for deficiency IT on account of Additional Taxable Income on Undeclared Purchases. There was a discrepancy noted between the purchase transactions in petitioner's Purchase Books (PB) and its FS with the discrepancy considered as unreflected sources of funds not accounted in the return, hence the IT assessment thereon.

Next, all transactions pertaining to Other Income entered in the GJ were summarized and compared to petitioner's declarations in the FS which revealed discrepancies, hence the assessment on Undeclared Other Operating Income for income tax.

Further, a discrepancy on petitioner's purchases was noted after the line-by-line matching of its Summary List of Purchases (SLP), Alphabetical List of Payees and third-party information from BIR AITIED (Relief Date), deemed as undeclared revenue, hence the corresponding IT due thereon was assessed.

Also, comparison of petitioner's income payments subject to withholding tax per TB as against the Alphalist disclosed that petitioner has not subjected to withholding tax the hereunder expenses, hence the Disallowed expenses for non-withholding of tax.

VAT

Petitioner was likewise assessed for deficiency VAT on account of the findings for Undeclared Sales per Audit, Additional taxable income on undeclared purchases, Undeclared other Operating Income, and Additional Taxable Income in the amounts of ₱1,844,097,778.86, ₱224,050,566.58, ₱20,841,052.46 and ₱7,762,459.05, respectively.

Deficiency VAT was likewise assessed on petitioner's Unrecorded Sale of Prepaid Cards, as the sale of the same were not subjected to VAT, as per analysis of entries in petitioner's books of accounts. Pursuant to Section 106 of the NIRC of 1997, as amended and Revenue Regulation (RR) 16-2005, petitioner's sale of prepaid cards should be subjected to the 12% VAT on the gross selling price and not just on mark-up portion or commission income.

Further, based on investigation, it was disclosed that petitioner had reimbursable charges which are Common Usage Area Charges (CUSA) which petitioner regularly charged/billed to suppliers for their share of utilities expense. The billing generally is based on the sales performance of the product and other perimeters but not on actual consumption thereby being income for petitioner which should be subjected to VAT.

Next, reconciliation of income subjected to VAT per FS revealed discrepancy, which is an indication that not all sales/income had been subjected to VAT, hence the assessment on the same.

Violation of invoicing requirements also gave rise to disallowed creditable VAT, resulting in VAT assessment thereon. So did contracts and confirmation certificates issued by the supplier, which are not valid support for petitioner's claim of input tax.

Petitioner's input tax allocated to exempt sales/sales not qualified for zero-rating also resulted in assessment for VAT pursuant to Section 4.110-4 of RR 16-2005, which provide that input tax attributable to VAT-exempt sales shall not be allowed as credit against the output tax and should be treated as part of cost or expense. In particular, petitioner mistakenly reflected sales to PEZA-registered company and diplomat of foreign countries as exempt sales instead of zero-rated sales. However, zero-rated sales was subjected to 12% output VAT since this transaction was not properly supported with valid documents such as PEZA registration and ID's of diplomat buyers.

Withholding Tax on Compensation

Comparison of petitioner's Salaries and Wages in its Alphalist and in the FS revealed discrepancies, deemed as compensation subject to withholding tax.

Expanded Withholding Tax

The audit of petitioner's book of accounts revealed discrepancies on purchases and income payments for the year as between its TB, FS, GJ, and Alphalist of Payees. Such discrepancies was deemed as income payments not subjected to EWT.

Fringe Benefits Tax

The item of hotel accommodation was held liable for FBT for petitioner's failure to substantiate its justification that the same are not employee benefits but reimbursements/advances for travelling and entertainment expenses used in furtherance of the company's regular business.

Compromise Penalty and Surcharge

Compromise penalty is being imposed pursuant to the Revenue Memorandum Order (RMO) 19-2007 for

> non-submission of Summary List of Sales, Non-submission of E-Sales, 2 POS machines which had resettable accumulating grand total, and non-compliance on the required format of books of accounts.
>
> Fifty percent (50%) surcharge is imposed pursuant to Section 248(B) of the NIRC of 1997, as amended, as implemented under Section (4)(4.2)(4.2.1) of RR 12-1999.
>
> On a final note, respondent invokes the principle that tax assessments are presumed correct and it is incumbent on petitioner to prove otherwise.

The parties filed their JSFI on April 24, 2017,[12] on the basis of which a Pre-Trial Order was issued on August 31, 2017,[13] thereby terminating the pre-trial proceeding.

Trial ensued during which, petitioner presented as witnesses: 1) its Senior Accounting Manager, Russel M. Elemia; 2) its Controller, Marilyn C. Abalayan; and 3) the Court-commissioned Independent Certified Public Accountant (ICPA) Ma. Criselda S. Oplas.

Witness **Russel M. Elemia** testified[14] that he has been working with petitioner since 2010 and is currently its Senior Accounting Manager. As such, he is in charge with the validation of petitioner's sales and purchases. During the tax audit in 2010, he made sure that petitioner had all the necessary financial information and documents relevant to the said audit. The said documents were sourced principally from petitioner's computerized accounting system (CAS), *i.e.*, the Oracle Financials, as authorized by the BIR.[15]

He explained that all transactions entered in the Oracle Financials could only be accessed by the authorized users based on the matrix defined and approved by petitioner's Vice

---

12 Vol. III Docket, pp. 1675 to 1681.
13 *Ibid.*, pp. 1958 to 1973.
14 See Judicial Affidavit of Russel M. Elemia, Exhibits "P-28" and "P-28-a".
15 Exhibit "P-19".

✓

President-Controllership or the Senior Vice-President-Controllership. Transactions entered in the said CAS are accessible and viewable as reports forming part of petitioner's books. Oracle GL shows the beginning balances, movements during the year and the ending balances of accounts. Oracle Accounts Payable (AP) provides the details of validated and recorded invoices made during the year while Oracle Accounts Receivable (AR) shows the details of invoices recorded and the receipts obtained during the year.

The witness further testified that the present case is for the cancellation and withdrawal of the FDDA issued by the BIR against petitioner for alleged deficiency IT, VAT, WTC and EWT, plus penalties and interest in the total amount of ₱2,361,261,053.16 for TY 2010 for having been issued without factual and legal basis.

In the questioned FFDA, respondent found petitioner to have Undeclared Sales of ₱1,844,097,778.86. Per Details of Discrepancy, the ROs seemed to have compared petitioner's sales as reflected in its GJ or GL against petitioner's net sales reported in its Income Tax Return (ITR), FS or TB as produced in the Oracle Financials. The ROs combined petitioner's forecast sales or the budget figures with the sales from petitioner's actual transactions as generated from petitioner's CAS.

During the tax audit, he provided the ROs with financial information in CD-format coming from petitioner's Hyperion module and CAS. Despite explanation from his team that some of the provided financial information were only for budget or planning purposes, the ROs proceeded to separately treat the three accounts, as follows: Sale of Goods – Store Consignor, Sale of Goods – Store Consignor VAT and Sale of Goods – Store Consignor VAT-exempt, resulting in a double take-up of the said accounts. The ROs also erroneously added the mother and children accounts which were not separate or distinct accounts. The entries in the mother accounts were the totals of the children accounts. The system itself would not allow a direct entry in the mother account. A transaction has to be entered in the children account and the system would automatically compute the total balance and reflect it in the mother account.

Anent the IT assessment from alleged unrecorded sales arising from prepaid cards in the amount of ₱60,352,008.03, the same, according to witness Elemia, was reached after comparing the total credits of the Account AP Prepaid Cards per TB against the commission income reported in petitioner's FS. But while the said amount was posted in the Special Purpose Machine (SPM) and passed through petitioner's POS system, the said amount could not be deemed as income for petitioner for it shall be remitted to the telecommunication companies. Petitioner only received commission on the prepaid card transaction as reflected as part of other income in petitioner's FS and ITR. In the said transactions, petitioner was neither selling goods nor services but was only acting as intermediary for which service it received commission income.

Finally, with respect to the alleged Discrepancy on Income Subjected to VAT per ITR versus VAT Return in the total amount of ₱1,382,286.78, allegedly, respondent assessed petitioner's zero-rated sales as subject to 12% VAT due to lack of valid documents to support the said sales. Petitioner's record would however show that the alleged "sales not qualified for zero-rating" actually pertained to sales of books, magazines and bulletins, which were not subject to VAT being vat-exempt transactions in the total amount of ₱2,327,940.00.

Petitioner's witness, **Marilyn C. Ablayan** identified herself[16] as petitioner's Controller and concurrently the Accounting Manager of Mainstream Business, Inc. - Naga. As a Controller, she reviews and oversees petitioner's accounting operations which include the review of periodic financial reports and set of controls and budgets designed to mitigate risks, reviews related operational processes such as sales, collection and purchases and payments, maintenance of the accuracy and integrity of petitioner's reported financial results ensuring that the reports comply with the Philippine Financial Reporting Standards. She likewise ascertains petitioner's

[16] See Judicial Affidavit of Marilyn C. Abalayan, Exhibits "P-29" to "P-29-a".

compliance with financial, tax and other regulatory requirements.

She confirmed that petitioner used Oracle Financials as its CAS which can only be access by authorized persons. She elaborated on the preparation, approval and filing of petitioner's ITRs, EWT Returns, Alphalists, Summary List of Sales (SLS) and Summary List of Purchases (SLP). For her, the findings in the FDDA were void since respondent relied on incorrect assumptions, speculations and guesswork.

Witness Ablayan cited the infirmities in each of the item in the assessments issued by respondent against petitioner.

As to the alleged undeclared purchases subject to deficiency IT, she testified the discrepancy of ₱672,050,911.77 was due to respondent's failure to consider the reversals in petitioner's monthly accruals, which action was explained to the ROs but was ignored.

On the assessment for Undeclared Other Operating Income in the amount of ₱20,841,052.46, the same was erroneously computed because respondent failed to consider that some of the figures gathered from the GJ were the budget or forecast figures.

Anent the additional taxable income of ₱34,738,353.88 as undeclared purchases indicated in the Details of Discrepancy, the same allegedly originated from reports/data provided by petitioner's suppliers alphalists and third party. Respondent, however did not provide petitioner with any document from third party suppliers in support of his findings thereby depriving it of basis to intelligently challenge the assessment.

The witness also surmised that respondent disallowed the amount of ₱46,428,677.25 as deductible expenses for IT purposes upon observation that some of petitioner's income payments that were usually subjected to EWT per TB, were not subjected to the same imposition, or subjected but to a lower rate in the Alphalist of suppliers, thus the erroneous conclusion that petitioner did not subject them to EWT.

With respect to the purchase of services in the amount of ₱46,101,309.83, the witness explained that some of the items therein were the account Prepaid Insurance and Prepaid – Others in the amounts of ₱1,109,666.12 and ₱20,531,533.60. She believed that respondent only considered the total debits in the TB for the said accounts. However, when a prepaid expense was set up by petitioner, it was already subjected to withholding tax. But since the ROs already considered all the expenses in petitioner's TB as income payments subject to 2% CWT, the total debits of the said prepaid accounts should no longer be considered as they were already closed to expense during the year. To get all the amount of expense accounts and at the same time consider the total debits of prepaid expenses would result to a discrepancy due to double take-up of the amount of expenses. Hence, only the ending balance of ₱19,139.78 should be considered in the assessment since it was not yet closed to expense account during the year.

The same is true with regard the disallowed rental expense of ₱320,716.69, since the ROs considered both the total rent expense and the total debits of prepaid rent per TB which resulted to a discrepancy due to double take-up of the amount of rent expense. The ROs should have considered only the ending balance of ₱40,884.11 in the assessment since the same was not yet closed to rent expense account during the year.

Respondent also erroneously subjected to 12% VAT the amount of ₱58,150,362.00 from reimbursable charges considering that the element of profit was not present in the said transaction. Reimbursable charges were recorded as contra-account of Utilities expenses. The money received from the said reimbursable charges could not be deemed as a compensation for services rendered by petitioner but a reimbursement at cost on the utility expenses which it initially shouldered and paid on behalf of the concerned supplier.

Further, the assessment for deficiency WTC arising from salaries and wages in the amount of ₱119,905,554.95 was also flawed as it was the result of the comparison made by the ROs between the salaries and wages reflected in petitioner's GJ and the amount reported in petitioner's annual alphalist of compensation. Again, the ROs included the budgeted/forecasted salaries and wages as actual payments to employees without considering the entries reversing such budgeted/forecasted figures. Moreover, the mandatory contributions and other taxable employee benefits were not considered in the equation.

Respondent also erred when he indicated in the Details of Discrepancy that petitioner failed to subject to FBT expenses for transportation, travel and hotel accommodation the amount of ₱1,307,861.14 since the said items were not benefits given to employees but expenses during the business travels of employees incurred in the pursuit of petitioner's business.

Lastly, for failure of respondent to establish that petitioner filed a false or fraudulent return, the imposition of 50% surcharge is also improper, concluded the witness.

The court-commissioned ICPA, **Ma. Criselda S. Oplas** testified[17] that as reflected in her ICPA Report dated October 13, 2017,[18] out of the total of ₱64,330,669.58 input VAT claimed by petitioner, the amount of ₱18,960,320.01 should be disallowed for lack of substantiation. Hence, only the amount of ₱40,460,240.08 should be allowed as deduction from petitioner's output VAT for the year ended December 31, 2010.

On January 8, 2018, petitioner filed its Formal Offer of Exhibits,[19] which were admitted in the Resolutions dated March 5, 2018[20] and December 18, 2018.[21]

---

17 See Judicial Affidavit of Ma. Criselda S. Oplas, Exhibits "P-30" to "P-30-1".
18 Exhibits "P-30-3" to "P-30-3-a".
19 Vol IV Docket, pp. 2067 to 2079.
20 Vol.VI Docket, pp. 4081 to 4082.
21 *Ibid.*, pp. 4177 to 4181.

To prove his defense, respondent presented his lone witness, Revenue Officer (RO) II, **Riza F. Budaño**, who declared[22] that she was among the ROs tasked to conduct tax audit against petitioner for the period January 1, 2010 to December 31, 2010 by virtue of LOA No. LOA-116-2011-0000148/SN:eLA201100003038 dated October 6, 2011.[23] It was served upon petitioner on October 10, 2011 together with the First Notice of Requirements[24] containing the list of required accounting records/documents. Despite receipt of such Notice, petitioner failed to submit the requested documents.

On November 16, 2011, a Second Notice of Requirements[25] was issued reiterating the request for submission of the documents listed in the First Notice. Again, petitioner failed to comply.

On November 9, 2012, the Final Notice for Presentation of Books of Account & Other Accounting Records[26] was issued informing petitioner about the two previous requests for submission of documents.

On February 14, 2013, petitioner executed a Waiver of the Defense of Prescription of the Statute of Limitations under the NIRC[27], extending respondent's period to assess until December 31, 2013. This was followed by another Waiver executed on September 23, 2013[28] extending the period to assess until June 30, 2014. On March 3, 2014, petitioner executed the third Waiver[29] extending the period to assess until September 30, 2014.

On February 3, 2014, the investigating ROs, finding petitioner liable for deficiency taxes, recommended in their Memorandum Report[30] the issuance of a PAN against petitioner.

22 See Judicial Affidavit of Riza F. Budaño, Exhibits "R-17" to "R-17-a".
23 Exhibit "R-1".
24 Exhibit "R-2".
25 Exhibit "R-3".
26 Exhibit "R-4".
27 Exhibits "R-5" to "R-5-a".
28 Exhibit "R-6".
29 Exhibit "R-7".
30 Exhibit "R-8".

On March 27, 2014, a PAN with Details of Discrepancies[31] was issued assessing petitioner of deficiency IT, VAT, WTC, EWT and FBT for TY 2010, which petitioner received on even date. For failure to refute the findings stated in the said PAN, the ROs recommended the issuance of a FAN in their Memorandum Report dated April 22, 2014.[32]

On May 21, 2014, the FLD with Details of Discrepancies and the FAN/Audit Result/Assessment Notice (BIR Forms 0401)[33] dated May 19, 2014 were served upon petitioner who filed a protest thereto. But since petitioner failed to refute respondent's findings, the ROs recommended in their Memorandum[34] dated September 2, 2015, the issuance of the FDDA. It was issued to petitioner together with the Details of Discrepancies and BIR Form 0401/Audit Result/Assessment Notice on September 18, 2015.[35]

RO Budaño further testified that during the analysis of petitioner's sales transactions, they discovered that 51% thereof were adjusted/reclassified in the mother account reflected in the GL but were not forwarded/reflected in the TB, a procedure that practically understated petitioner's sales declaration in the FS. Likewise, a scrutiny of petitioner's purchase transaction entered in the PB revealed a discrepancy in the declaration of petitioner's purchases for the year, which should be subjected to IT. Petitioner was also found liable for deficiency IT due to its undeclared other operating income, additional taxable income (matching of SLP, EWT & AITEID) and disallowed expenses for non-withholding of taxes.

On the other hand, the discovered deficiency VAT was due to disallowed expenses for non-withholding of taxes pursuant to Section 34(K) of the NIRC of 1997, as amended. Petitioner was also found liable for deficiency IT due to undeclared sales per audit, additional taxable income on undeclared purchases, undeclared other operating income and additional taxable income, which also render petitioner liable for deficiency VAT in accordance with Section 106, 107

---

31 Exhibit "R-9".
32 Exhibit "R-10".
33 Exhibits "R-12-a" to "R-12-e".
34 Exhibit "R-13".
35 Exhibits "R-14" to "R-15-e".

and 108 of the NIRC of 1997, as amended. In addition, petitioner was also assessed for deficiency VAT due to unrecorded sale of prepaid cards, collections for reimbursable charges and discrepancy on income subjected to VAT per its ITR vs. VAT Return, in violation of Sections 106, 107 and 108 of the NIRC of 1997, as amended.

Petitioner is also liable for deficiency VAT due to violation of invoicing requirements, input tax allocated to exempt sales/sales not qualified for zero-rating and disallowed input tax from vouching of source documents.

Assessment for deficiency EWT was also recommended since per their tax audit, petitioner had purchases that were not subjected to EWT, as required under Section 57 of the NIRC of 1997, as amended and Section 2.57.2 of Revenue Regulation No. 2-1998, as amended by RR No. 17-2003 and RR No. 30-2003.

The tax audit also revealed a discrepancy in the amount reported as salaries and wages in the Alphalist and FS, thus, the assessment for deficiency WTC. Moreover, petitioner also had deductions which were not subjected to FBT.

To cap her testimony, the witness cited RMO 19-2007 as authority for imposing compromise penalty against petitioner due to its non-submission of SLS, E-Sales, 2 POS Machines and Section 248(B) of the NIRC of 1997, as amended, as implemented under Section (4)(4.2)(4.2.1) of RR No. 12-1999 for the 50% surcharge.

In the Resolutions dated July 9, 2018[36] and December 18, 2018,[37] respondent was deemed to have rested his case.

On July 9, 2019, the case was submitted for decision taking into consideration respondent's Memorandum filed on May 24, 2019, and petitioner's Memorandum filed on June 13, 2019.[38]

---

36 Vol. VI Docket, pp. 4131 to 4133.
37 *Ibid.*, pp. 4174 to 4175.
38 Id. at p. 4286.

THE ISSUE

The parties submitted the following lone issue[39] for the Court's determination:

> "xxx [W]hether petitioner is liable for income tax in the amount of P1,549,255,298.49, VAT in the amount of ₱798,901,481.31, Expanded Withholding Tax In the amount of ₱1,863,362.01, Tax on Compensation in the amount of ₱9,685,412.78, Fringe Benefits Tax in the amount of ₱1,355,498.41, and compromise penalty in the amount of ₱200,000.00 for taxable year 2010, plus 25% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the Tax Code of 1997, as amended."

Petitioner's arguments:

Petitioner claims that the assailed Decision and the FDDA should be reversed as the subject deficiency tax assessments lack factual and legal bases.

Respondent's counter-arguments:

Respondent, on the other hand, prays that the subject tax assessments should be sustained by the Court. He argues that tax assessments are entitled to the presumption of correctness and made in good faith. Further, the burden of proof is on the taxpayer who must show that the assessment is infirm and lacks factual and legal bases.

THE RULING OF THE COURT

---

39 Issue for Resolution, JSFI, Vol. III Docket, p. 1676.

Section 228 of the NIRC of 1997, as amended, relevantly provides, thus:

> 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> 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.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the

decision shall become final, executory and demandable." (*Emphasis supplied*)

Per the foregoing provision, the taxpayer must be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void.[40] The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.[41]

As provided above and pursuant to the provision on due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[42]

The requirement of informing the taxpayer of the law and the facts upon which the assessment is based, is in compliance with the Constitutional right of the taxpayer to due process for this will enable the taxpayer to intelligently prepare and file his/her protest. This will also afford the taxpayer to fully prepare for his/her defense and collate countervailing evidence.

It is on this account that an assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. x x x an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period.[43]

---

40 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 02, 2014.

41 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

42 *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, January 27, 2006.

43 *Commissioner of Internal Revenue v. Pascor Realty*, G.R. No. 128315, June 29, 1999.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signalling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[44]

The ruling that a tax assessment must not only contain a computation of tax liabilities, but must also include a demand upon the taxpayer for the settlement of a tax liability was declared by the Supreme Court in the case of *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[45], thus:

> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. <u>Its main purpose is to determine the amount that a taxpayer is liable to pay</u>.**
>
> xxx xxx xxx
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> **...it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of**

---

44 *Commissioner of Internal Revenue v. Dominador Menguito*, G.R. No. 167560, September 17, 2008.

45 G.R. No. 215957, November 9, 2016.

> **Internal Revenue] on the taxpayer for the settlement of a tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, <u>the amount remains indefinite</u>. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:
>
> > The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)
>
> xxx xxx xxx
>
> xxx. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation. *(Emphases and underscoring ours)*

A careful scrutiny of the FLD dated May 19, 2014[46] in this case reveals that while the same provides for the computation of petitioner's tax liabilities, the amounts thereof remain indefinite, since the amount due is still subject to modification. Specifically, the FLD states:

✓

---

[46] Exhibits "P-2" and "R-11".

> "***Please take note that the interest and total amount due will have to be adjusted if paid beyond June 30, 2014.***"[47]

Note that statements of the same tenor are found in the undated FDDA issued by respondent against petitioner [48] differing only on the date, i.e., "October 31, 2015."

Clearly, the said undated FDDA, and the FLD dated May 19, 2014, cannot be deemed a valid tax assessment as described under pertinent law and prevailing jurisprudence, which requires *"a due tax liability that is there definitely set and fixed."* Both the FDDA and FLD failed to contain a definite and fixed amount of tax liability which must be paid by petitioner within a date certain.

In the absence of these requisites, the subject tax assessments are void, and thus, bear no valid fruit.[49]

Lastly, the Final Decision of respondent on petitioner's protest failed to comply with the regulations which respondent himself promulgated.

Section 3.1.5 of RR No. 12-99,[50] as amended by RR No. 18-2013,[51] reads as follows:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

---

47 Exhibits "P-2" and "R-11".

48 Exhibit "R-14".

49 *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.

50 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

51 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the 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

3.1.5 *Final Decision on a Disputed Assessment.* – **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*." *(Emphasis and underscoring ours)*

Thus, as part of the due process requirement in the issuance of a deficiency tax assessment, the decision of respondent must state the facts, the applicable law, rules and regulations, or jurisprudence, on which such decision is based; otherwise, the said decision shall be deemed void.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., etseq.*,[52] 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 is 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.**

xxx xxx xxx

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

---

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

shall be void. xxx. Finally, **<u>Section 3.1.6[53] 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</u>.**

'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.' <u>This is an essential requirement of due process and applies to</u> the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and **<u>the Final Decision on Disputed Assessment.</u>**

xxx xxx xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[54]

> 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.

---

53 Now the aforequoted Section 3.1.5 of RR No. 12-99, as amended by RR 18-2013.

54 241 Phil. 829 (1988) [Per J. Cruz, First Division].

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.

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 ours)*

Evident from the foregoing doctrinal pronouncements that the Decision of respondent on the taxpayer's protest must contain the facts and the law upon which the decision is based. Non-compliance with the said requirements will render the deficiency tax assessment void, and without any legal consequence.

In the present case, the assailed Final Decision dated February 9, 2016[55] reads as follows:

"February 9, 2016

The President
MERIDIEN BUSINESS LEADER, INC.
SM City Lipa, Ayala Highway
Marauoy, Lipa City, Batangas
TIN: 006-324-896-000

[55] *Supra,* Note no. 11.

RE: All Internal Revenue Taxes for taxable year 2010 Pursuant to LOA No. 116-2011-00000148 dated October 6, 2011

Sir/Madam:

This refers to the Motion for Reconsideration filed with this Office on October 23, 2015 against deficiency income, value added, withholding tax on compensation, expanded withholding, fringe benefit tax and miscellaneous tax assessments for the taxable year 2010, which is the subject matter of our Final Decision on Disputed Assessment (FDDA) dated September 18, 2015.

Please be informed that after a thorough and diligent review of the case, we find the arguments presented in your Motion for Reconsideration to be without merit, thus your request for reconsideration is Denied and the aforesaid deficiency assessments are hereby reiterated.

In view thereof, it is requested that the total deficiency tax assessment amounting to P2,361,261,053.16, inclusive of interest and penalties, be paid immediately upon receipt hereof.

This is our FINAL decision. If you disagree, you may appeal the same with the Court of Tax Appeals within thirty (30) days from the receipt hereof, otherwise, the said deficiency tax assessments shall become final, executory and demandable.

Truly yours,

(signed)

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue"

Verily, the assailed Final Decision is not compliant with Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013. In fine, it is void and should be cancelled and set aside.

WHEREFORE, the Petition for Review filed by Meridien Business Leader, Inc. on March 18, 2016, through registered mail, is hereby **GRANTED.** Accordingly, the assailed Final Decision, the undated FDDA, including the subject tax assessments issued by respondent Commissioner of Internal Revenue, holding petitioner liable for deficiency taxes and compromise penalties in the aggregate amount of ₱2,361,261,053.16, for taxable year 2010, are **CANCELLED and SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MERIDIEN BUSINESS LEADER, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9316

Members:

DEL ROSARIO, *PJ, Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 2 9 2020 1:24pm

x- x

DISSENTING OPINION

MANAHAN, *J.:*

The *ponencia* cancelled the subject assessments, amounting to Php2,361,261,053.16 for taxable year 2010. The *ponencia* reasons that the assessments are void for failing to contain a definite and fixed amount of tax liability which must be paid within a date certain. Further, it is stated that the Final Decision rendered by the Commissioner of Internal Revenue (CIR) failed to state its factual and legal bases, thereby rendering the same void, for failing to comply with Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.

Respectfully, I register my dissent to the said conclusions.

The amount demanded is already definite.

An examination of the assessment notices attached to both the Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) shows that these contain a definite due date.

I humbly believe that the statement in the FLD, to wit:

> "Please take note that the interest and total amount due will have to be adjusted if paid beyond June 30, 2014."

does not render the assessment invalid because there is no definite and fixed amount of tax liability.

The basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. This amount of basic deficiency tax is therefore a definite liability. The statement contained in the FLD and the FDDA merely means that the interest will be adjusted if the taxpayer fails to pay on the due date specified in the assessment notices. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. The basic deficiency tax liability remains the same. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

Again, I believe that the statement that the interests are subject to adjustment depending on the date paid by the taxpayer does not detract from the definite nature of the basic deficiency tax liabilities already contained in the FLD and FDDA.

Taxpayers are given a period to pay the deficiency tax liabilities, i.e. on or before due date, instead of an exact date, i.e. only on a date certain, in recognition of the fact that taxpayers may need to consider their options whether to contest the assessments further and/or to prepare money to pay what are usually substantial amounts. The taxpayer may pay before the due date, and decrease the deficiency interest imposed; pay on the due date and pay the exact amount as computed in the assessment notices; or, pay after the due date and be subject to additional delinquency interest. All these are at the option of the taxpayer.

That these options are given to the taxpayer does not negate the demand for payment made in the FLD or FDDA and assessment notices, neither does it render the assessment one containing an indefinite amount.

Thus, I reiterate that the statement regarding adjustment of interest depending on when the taxpayer will pay the deficiency tax liability will not render the assessment void, provided that there is a due date indicated in the notices.

The FLD and FDDA contain the factual and legal bases of the assessment.

Under Section 228 of the NIRC, as amended, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void.

Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013, specifically dealing with a Final Decision on Disputed Assessment (FDDA), requires that the FDDA shall state "the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* x x x." Said FDDA could be issued by the CIR himself or his authorized representative.

In the instant case, the FDDA was issued by the CIR's authorized representative, Nestor S. Valeroso, OIC-ACIR, Large Taxpayers Service. Petitioner then appealed the FDDA to the CIR on Motion for Reconsideration. The CIR denied said motion for reconsideration in the letter dated February 9, 2016.

It is this February 9, 2016 letter from the CIR which the *ponencia* cites as failing to comply with the requirements of Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

I disagree.

The FDDA in the instant case also contain the computation of the basic deficiency taxes, the applicable surcharge and interests, and are further supported by details of discrepancies showing the basis of the assessments, thus, it is already compliant with RR No. 12-99, as amended by RR No. 18-2013.

Even assuming that the CIR's letter dated February 9, 2016 may be rendered void for failing to state the facts and the law upon which such decision was based, it would not invalidate the previously issued assessment or FDDA. This is in consonance with *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,*[1] *(Liquigaz case)* which discussed:

> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the decision of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other** – unless the law or regulations otherwise provide.
>
> Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and the law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment. (*Emphasis supplied*)

---

[1] G.R. Nos. 215534 and 215557, April 18, 2016.

In the instant case, the FLD and the FDDA, issued by the CIR's authorized representative both contained the facts and the law on which it is based. It is only the CIR's letter dated February 9, 2016 which did not state the facts and the law upon which it is based. Following the *Liquigaz case,* it is only the said February 9, 2016 letter which is rendered void.

Based on the foregoing, I vote that the assessment notices are valid, and that a determination of validity of the actual assessments need to be made.

CATHERINE T. MANAHAN
Associate Justice