REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KUEHNE + NAGEL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10216

Members:

BACORRO-VILLENA, *Acting Chairperson,*
MODESTO-SAN PEDRO*, *and*
CUI-DAVID, *JJ.*

Promulgated: MAR 07 2024

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Kuehne + Nagel, Inc. (**petitioner**) pursuant to Section 3(a)(1)[2], Rule 4[3] and Section 4(a)[4], Rule 8[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It

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* Designated as Special Member.

1 Filed on 22 November 2019, Division Docket, Volume I, pp. 6-146, with annexes.

2 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — ...
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

3 JURISDICTION OF THE COURT.

4 **SEC. 4.** *Where to appeal; mode of appeal.* —
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

5 PROCEDURE IN CIVIL CASES.

seeks the cancellation and withdrawal of the deficiency tax assessments made by respondent Commissioner of Internal Revenue (**respondent/CIR**) against petitioner for the taxable year (**TY**) 2009 in the total amount of ₱231,845,147.94, inclusive of interest and surcharges.[6]

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under Philippine laws[7], with business address at 5/F Unit 501-H, 507-H, and 508-H 5 E-com Center Bldg. Harbor Drive corner Pacific Drive, Mall of Asia Complex, Brgy. 76, NCR, Fourth District, Pasay City 1300. It is duly registered with the Bureau of Internal Revenue (**BIR**) bearing Taxpayer Identification Number (**TIN**) 000-514-133-000, as evidenced by Certificate of Registration (**COR**) No. OCN 9RC0000556793.[8]

Respondent, on the other hand, is the CIR vested with authority to act as such, including among others, the power to authorize the examination of a taxpayer's books of accounts, and to issue and decide deficiency assessments of internal revenue taxes. He or she may be served with summons and other legal processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[9]

FACTS OF THE CASE

Petitioner is engaged in the business of freight and cargo consolidation and forwarding.[10] To facilitate the conduct of an investigation of petitioner's books accounts, the BIR, through Revenue District Office No. 052 - Paranaque City (**RDO No. 052**), issued Letter of Authority (**LOA**) No. 2009-00018655 dated 24 May 2010[11] authorizing Group Supervisor Bernard U. Urbano (**GS Urbano**) and Revenue Officer Mariano M. Flores (**RO Flores**) to examine petitioner's books of accounts and other accounting records. The LOA covered all types of internal revenue taxes for TY 2009.

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6 Prayer, Petition for Review, Division Docket, Volume I, p. 32.
7 Exhibit "P-16", id., Volume II, pp. 795-802.
8 Exhibit "P-2", id., p. 535.
9 Paragraph 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), id., p. 461.
10 Exhibit "P-17", id., Volume I, p. 415.
11 Exhibit "R-1", BIR Records, p. 388.

Pursuant to the above LOA, respondent issued a Preliminary Assessment Notice (**PAN**) dated 28 December 2012[12] against petitioner, informing the latter of its alleged liabilities for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), final withholding tax (**FWT**), fringe benefits tax (**FBT**), improperly accumulated earnings tax (**IAET**), and documentary stamp tax (**DST**).

GS Urbano allegedly served the said PAN personally on petitioner on 28 December 2012, or on the day of its issuance.[13] Petitioner, however, claimed to have received the PAN only on 04 January 2013.[14] According to petitioner, it failed to file a Reply to the PAN.

On 16 January 2013, petitioner received a Formal Assessment Notice (**FAN**), with attached Details of Discrepancies and Assessment Notices[15], all dated 14 January 2013, reiterating the assessments in the PAN with the same basic tax due and surcharge, but with updated amounts for the corresponding interest.[16]

On 13 February 2013, or within 30 days from its receipt of the FAN, petitioner filed a Letter-Protest[17] with Regional Director Nestor S. Valeroso (**RD Valeroso**) of Revenue Region No. 8, Makati City. In its Letter-Protest, petitioner, through its counsel, argued against each item of the deficiency tax assessments. As to supporting documentation, it undertook to deliver specific pieces of documentation for the purpose of refuting several of the items addressed in the protest.

While awaiting the result of the BIR's investigation in connection with the above Letter-Protest, petitioner continued to negotiate with the BIR. Discussions and preparations of reconciliation schedules allegedly resulted in the issuance by RO Emerito G. Rivera[18] (**Rivera**) of a revised computation of its deficiency assessments for IT, VAT, EWT,

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12 Exhibit "P-3", Division Docket, Volume II, pp. 536-542; Exhibit "R-6", BIR Records, pp. 833-839.
13 TSN dated 29 September 2022, p.6.
14 Q12, Exhibit "P-18", Sworn Statement of Ronnie M. Lopez, Division Docket, Volume I, p. 201.
15 Exhibit "P-4", id., Volume II, pp. 543-556.
16 Q14 and Q16, Exhibit "P-18", id., Volume I, p. 202.
17 Exhibit "P-5", id., Volume II, pp. 557-568.
18 TSN dated 02 December 2020, pp. 14-15.

and FBT.[19] RO Rivera was assigned to handle petitioner's case in connection with the investigation of its Letter-Protest.[20]

According to petitioner, with the revision, it made payments on 06 June 2014, facilitated by draft BIR Form No. 0605 Payment Forms, which were also signed by RO Rivera, as well Officer-in-charge Revenue District Officer (**OIC-RDO**) Rosita U. Meniano (**Meniano**).[21] The payments were evidenced by online payment summary screenshots and online payment acknowledgments from the BIR's e-Filing and Payment System (**eFPS**)[22]:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱202,167.84	₱168,466.46	-	₱370,634.30
VAT	435,992.30	382,496.05	-	818,488.35
EWT	357,597.97	314,982.99	-	671,580.96
FBT	84,994.53	75,262.66	-	160,257.19
Total	**₱1,080,752.64**	**₱941,208.16**	-	**₱2,020,960.80**

Meanwhile, respondent refused to acknowledge the revised computations contending that it was not attended by a valid amended assessment nor a properly issued amended FAN.[23]

On 24 March 2017, petitioner received a Final Decision on Disputed Assessment (**FDDA**) dated 17 March 2017[24], signed by then RD Glen A. Geraldino (**RD Geraldino**). It informed petitioner of its liability to pay deficiency taxes for TY 2009 aggregating ₱232,919,241.84, inclusive of interest and surcharges, summarized as follows:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱27,571,790.54	₱39,144,388.66	-	₱66,716,179.20
VAT	435,992.30	638,101.60	-	1,074,093.90
EWT	14,799,548.23	21,741,144.55	-	36,540,692.78
FWT	15,270,184.00	22,424,160.61	-	37,694,344.61

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19 Par. 7, Petitioner's Memorandum, Division Docket, Volume III, p. 1120.
20 Notice to Taxpayer (re: Letter of Authority No. 18655 dated May 24, 2010) dated 28 February 2013, BIR Records, p. 862.
21 Exhibits "P-6-a" to "P-6-d", Division Docket, Volume II, pp. 569-592.
22 Id.
23 Par. 41, Respondent's Answer, id., Volume I, p. 167.
24 Exhibit "R-17", BIR Records, pp. 919-921.

FBT	910,217.97	1,337,147.60	-	2,247,365.57
IAET	11,760,324.80	14,924,335.47	₱5,880,162.40	32,564,822.67
DST	18,854,044.61	27,800,676.19	9,427,022.31	56,081,743.11
Total	**₱89,602,102.45**	**₱128,009,954.68**	**₱15,307,184.71**	**₱232,919,241.84**

On 21 April 2017, petitioner filed with respondent a Request for Reconsideration/Administrative Appeal[25] of the FDDA.[26]

On 24 October 2019, petitioner received a Decision from respondent dated 10 October 2019[27] (**Final Decision**) which the parties mutually recognized as the latter's final decision.[28] This Final Decision modified the FDDA, informing petitioner that it is still liable for the total amount of ₱231,845,147.94. The Final Decision contained a reiteration of a majority of the assessed deficiency taxes in the FDDA *but without* the assessment for VAT. Respondent affirmed the assessments for deficiency IT, EWT, FWT, FBT, IAET, and DST.[29]

As to the VAT, respondent considered petitioner's payment on 06 June 2014 (on the revised computation with draft BIR payment forms it had allegedly received) and cancelled the corresponding deficiency finding amounting to ₱1,074,093.90. According to respondent, the basic tax due of the VAT component of petitioner's aforementioned payment matched that which appeared in the previously-issued FAN. Furthermore, the interest paid *per* the payment form accurately corresponded to the period covered, *i.e.*, from the date of the assessment until the date of payment. As such, respondent acknowledged the same as valid and full payment of petitioner's deficiency VAT.[30]

PROCEEDINGS BEFORE THIS COURT

On 22 November 2019, within thirty (30) days from petitioner's receipt of respondent's Final Decision on 24 October 2019, petitioner filed the instant Petition for Review.[31] Herein, petitioner questioned the Final Decision, wherein the deficiency assessments in the FDDA (except

25 Exhibit "R-18", id., pp. 1071-1089.
26 Par. 3, JSFI, Division Docket, Volume II, p. 462.
27 Exhibit "R-19", BIR Records, pp. 1112-1123.
28 Par. 4, JSFI, Division Docket., Volume II, p. 462.
29 Exhibit "R-19", BIR Records, p. 1112.
30 Id., pp. 1112-1113.
31 Supra at note 1.

for VAT) were maintained. Petitioner insisted that the assessments against it for TY 2009 were invalid for violating its right to procedural due process and that respondent's right to assess had already prescribed. Thus, it prayed for the following reliefs: (1) cancellation and withdrawal of respondent's assessments for deficiency IT, EWT, FBT, IAET, and DST for TY 2009 in the aggregate amount of ₱231,845,147.94 (inclusive of interest and surcharges); (2) suspension of the collection of its alleged tax liabilities; and, (3) other just and equitable reliefs.

The case was raffled to the Second Division and docketed as CTA Case No. 10216.[32]

On 02 December 2019, the Court issued Summons[33] to respondent directing him or her to submit an Answer within fifteen (15) days from notice. Respondent received the said Summons on 17 December 2019.[34]

After the Second Division twice granted respondent with extensions of time[35] to file the Answer, respondent filed his or her Answer[36] on 02 March 2020. There, respondent cited the following special and affirmative defenses, to wit: (1) there was no violation of petitioner's right to due process; (2) the assessments of deficiency taxes against petitioner had already become final as it failed to submit all of the supporting documents within 60 days from the filing of its protest (or within the given deadline); (3) respondent's right to assess had not prescribed at the time the PAN and FAN were served on petitioner; (4) absent an amended assessment and a properly issued amended FAN, respondent cannot validly consider the claim that the deficiency taxes were recomputed, as petitioner contended; (5) petitioner is estopped from assailing the validity of the issued assessments; and, (6) respondent's assessments of petitioner has legal and factual bases.

Subsequently, the Second Division initially set the case for a Pre-Trial Conference on 23 April 2020 (which was later reset to 08 July

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32 The Second Division was composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David as Members.

33 Division Docket, Volume I, p. 147.

34 Id.

35 See Order dated 15 January 2020 and 10 February 2020, id., pp. 152 and 158, respectively.

36 Id., pp. 159-171.

2020).[37] In line with this, petitioner filed its Pre-Trial Brief[38] on 03 July 2020, while respondent filed his or her Pre-Trial Brief[39] on 09 July 2020.

Meanwhile, on 30 June 2020, respondent transmitted to the Court the entire BIR Records of the case consisting of 1,152 pages.[40] The Second Division noted the same in a Minute Resolution dated 03 July 2020.[41]

During the 08 July 2020 Pre-Trial Conference, the Second Division ordered the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 27 July 2020.[42] On 28 July 2020, the Second Division received the PMC-CTA's report indicating "No Agreement to Mediate".[43] The said report also stated that the parties have decided not to have their case mediated by the PMC-CTA. In the Resolution dated 05 August 2020[44], the Court noted the same and set the case anew for a Pre-Trial Conference on 05 October 2020.

At the 05 October 2020 Pre-Trial Conference, both parties were given twenty (20) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**). A Commissioner's Hearing (to present the originals of the petitioner's exhibits for comparison) also proceeded on 26 October 2020.[45] Subsequently, the JSFI was also submitted to the Court.[46]

On 06 November 2020, the Second Division issued a Pre-Trial Order[47] that approved and adopted the parties' JSFI. Thereafter, the Pre-Trial was deemed terminated and the proceedings continued with the presentation of petitioner's sole witness.

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37 Notice of Pre-Trial Conference dated 11 March 2020 and Notice of Hearing dated 08 June 2020, id., pp. 173-174 and 175, respectively.
38 Id., pp. 181-194.
39 Id., Volume II, pp. 433-445.
40 See Respondent's Compliance dated 23 June 2020, id., Volume I, pp. 176-179.
41 Id., p. 180.
42 See Minutes of the Hearing, Order and Resolution, all dated 08 July 2020, id., Volume II, pp. 429, 430 and 432, respectively.
43 Id., p. 448.
44 See Resolution dated 05 August 2020, id., Volume I, p. 228.
45 See Order dated 05 October 2020, id., Volume II, p. 454.
46 Id., pp. 461-468.
47 Id., pp. 470-474.

In the trial that ensued on 02 December 2020, petitioner presented its only witness, Ronnie M. Lopez (**Lopez**), its Tax Compliance Manager.[48]

On the witness stand, Lopez identified his Judicial Affidavit dated 02 July 2020[49], where he declared that as petitioner's Tax Compliance Manager, he is charged, among others, with ensuring petitioner's tax compliance, coordinating with external counsel regarding tax matters such as the present assessment case, and safekeeping petitioner's tax records. He described and detailed petitioner's tax practices (including its manner of filing returns), its positions in the alleged deficiency assessments, as well as its defenses and the nature of its supporting documents. He also testified as to the events surrounding the BIR's investigation of petitioner's books, including the revised computation for IT, VAT, EWT, and FBT (that, in turn, led to the partial payment on the assessed deficiency taxes made after the investigation of its protest to the FAN). Lopez also attested to the eventual receipt of the FDDA on 24 March 2017[50] and petitioner's filing of a request for reconsideration of the FDDA on 21 April 2017.[51]

On cross-examination[52], Lopez confirmed that his predecessor received the PAN in the present case, indicated the date of its receipt, and maintained custody thereof until the same was eventually turned over to him. Meanwhile, while petitioner received the FAN, the recipient thereof was not definitively discussed nor established. He further clarified that discussions with the BIR's representatives allegedly concerning the revised assessment computations were not attended by a valid, signed amended FAN.

During the cross-examination of Lopez, he referred to a Cost Allocation Contract and electronic mail exchanges with supporting schedules. In line with this, petitioner's counsel requested, in the interest of justice, to reset Lopez's redirect examination to a later date to afford petitioner the opportunity to prepare and present the said documents. The Court granted the same, initially resetting the redirect

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48 Q1, Exhibit "P-18", id., Volume I, p. 198.
49 Exhibit "P-18", id., pp. 198-220.
50 Q28 and Q29, id., p. 205.
51 Exhibit "P-8", Request for Reconsideration/Administrative Appeal: Deficiency Tax Assessments for TY 2009 dated 21 April 2017, id., pp. 294-313, supra at note 25.
52 TSN dated 02 December 2020, pp. 8-31.

examination to 25 January 2021.[53] However, a lack of quorum in the Second Division necessitated that the redirect examination be reset once again to 01 February 2021.[54]

During the 01 February 2021 hearing, Lopez was recalled for a redirect examination.[55] At the time, Lopez discussed further documentary evidence supporting petitioner's position, which were presented, identified, and eventually marked.[56] No re-cross examination was conducted.

In the same hearing[57], a Commissioner's Hearing was set on 07 April 2021. Petitioner was also ordered to file its Formal Offer of Evidence (**FOE**) within ten (10) days after the Commissioner's Hearing, while respondent was given the same period from notice to file his or her Comment thereto. Finally, a latter hearing for the initial presentation of respondent's evidence was also set on 21 June 2021.

Still later, due to the physical closure of all courts[58] by reason of community quarantine periods declared (in consideration of the impacts of the COVID-19 pandemic), petitioner was constrained to move for the resetting of the Commissioner's Hearing.[59] For similar reasons, respondent moved to reset the said hearing for the further presentation of its evidence and requested for additional time to file the Judicial Affidavit of its witness.[60] On 21 June 2021, the Court granted both motions, setting the Commissioner's Hearing on 07 July 2021 and the hearing for the initial presentation of respondent's evidence on 28 July 2021.[61]

In the *interim*, petitioner also filed a Manifestation with Motion for Reconsideration[62] on the Court's Resolution issued on 14 June 2021. The said Resolution noted petitioner's failure to comply with a previous

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53 See Order dated 02 December 2020, Division Docket, Volume II, p. 476.
54 See Notice of Resetting dated 20 January 2021, id., p. 477.
55 See Minutes of the Hearing and Order, both dated 01 February 2021, id., pp. 478 and 479, respectively.
56 TSN dated 01 February 2021.
57 Id.
58 Supreme Court Administrative Circulars (AC) Nos. 15-2021, 21-2021, and 22-2021.
59 Petitioner's Motion to Set Commissioner's Hearing, Division Docket, Volume II, pp. 483-485.
60 Respondent's Motion to Reset Hearing, id., pp. 486-489.
61 See Minutes of the Hearing and Order, both dated 21 June 2021, id., pp. 491 and 492, respectively.
62 Id., pp. 493-498.

directive (deeming petitioner to have waived its right to formally offer its exhibits and resultantly deemed to have rested its case).[63] The Court also pointed out that in consideration of its Order dated 21 June 2021, petitioner's aforementioned motion was already considered granted.[64] Similarly, the Court reiterated the period for petitioner to file its FOE and for respondent to file his or her Comment thereto[65], subsequent to the Commissioner's Hearing which was held as scheduled.[66]

On 19 July 2021, petitioner filed its Formal Offer of Evidence[67] (**FOE**) consisting of Exhibits "P-1" to "P-19-a", inclusive of sub-markings. In its FOE, petitioner also raised arguments relative to Exhibit "P-12"[68], which was provisionally marked for petitioner's failure to submit the original for comparison.[69] Respondent failed to comment.[70] The Second Division, on 27 October 2021, acted upon petitioner's FOE, admitting all of its exhibits, with the exception of the aforementioned Exhibit "P-12".[71]

Unsatisfied, petitioner moved for its reconsideration.[72] According to petitioner, its copies of the Cost Allocation Contract marked as Exhibit "P-12" should be admitted in place of the originals which have been lost and could no longer be found nor produced despite petitioner's diligent efforts.[73] Respondent did not comment.[74] In a Resolution dated 29 March 2022[75], the Court denied petitioner's bid for reconsideration for lack of merit.

Meanwhile, the Court set anew the hearing for the initial presentation of respondent's evidence on 24 January 2022.[76] However, further court closures (also by reason of the declared community quarantine periods) prompted the Court to cancel the same and reset it to 06 April 2022.[77]

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63 See Resolution dated 14 June 2021, id., p. 482.
64 See Resolution dated 29 June 2021, id., p. 501.
65 Id.
66 See Commissioner's Report, id., p. 507.
67 Id., pp. 511-521.
68 Cost Allocation Contract between Kuehne & Nagel Ltd. And Kuehne + Nagel, Inc.
69 Supra at note 66.
70 See Records Verification dated 26 July 2021 and 29 September 2021, Division Docket, Volume II, pp. 832 and 835, respectively.
71 See Resolution dated 27 October 2021, id, pp. 837-842.
72 Petitioner's Motion for Reconsideration (Re: Resolution dated October 27, 2021), id., pp 843-851.
73 Supra at note 67, p. 518.
74 See Records Verification dated 28 February 2022, Division Docket, Volume II, p. 856.
75 Id., pp. 858-863.
76 Supra at note 71.
77 See Notice of Resetting dated 28 February 2022, Division Docket, Volume II, p. 855.

On 01 April 2022, respondent filed a Motion to Reset Hearing.[78] Respondent stated that the handling counsel had already been committed to appear as counsel in another case before another court (ahead of respondent's receipt of the pertinent Notice of Resetting[79] for herein case). The Second Division granted respondent's motion and reset the hearing on 01 June 2022.[80] The Court also ordered respondent to submit the Judicial Affidavits of his or her witnesses at least five (5) days before the scheduled hearing.[81] On 31 May 2022, respondent submitted the Judicial Affidavit dated 27 May 2022 of his or her lone witness, GS Urbano.[82]

In the 01 June 2022 hearing, respondent's witness failed to appear.[83] Respondent's counsel manifested that the intended witness was on leave (until 06 June 2022) as the latter's mother had died. On account of the foregoing, respondent's counsel moved to reset the hearing. Thus, there being no objection from petitioner, the Court granted the same and the Court reset the initial presentation of respondent's evidence to 27 July 2022.[84] The Court also set a Commissioner's Hearing for comparison of respondent's exhibits on 29 June 2022, which proceeded as scheduled.[85]

On 21 July 2022, respondent submitted the Amended Judicial Affidavit of GS Urbano.[86]

On 27 July 2022, the hearing was again cancelled and reset of the scheduled hearing for the initial presentation of respondent's evidence to 26 September 2022[87], which was subsequently rescheduled to 29 September 2022.[88]

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78 Id., pp. 864-865.
79 Supra at note 77.
80 See Minutes of the Hearing and Order, both dated 06 April 2022, Division Docket, Volume III, pp. 869 and 870, respectively.
81 Id.
82 Id., pp. 873-890.
83 See Minutes of the Hearing and Order, both dated 01 June 2022, id., pp. 972 and 973, respectively.
84 Id.
85 See Commissioner's Report, id., pp. 974-978.
86 Respondent's Compliance (Re: Submission of the Amended Judicial Affidavit of Revenue Officer Bernard U. Urbano) dated 15 July 2022, id., Volume III, pp. 979-1091, with exhibits.
87 See Notice of Resetting dated 27 July 2022, id., p. 1092.
88 See Notice of Hearing dated 31 August 2022, id., p. 1093.

On 29 April 2022, respondent finally presented GS Urbano (Revenue Officer IV), who testified by way of his Amended Judicial Affidavit dated 15 July 2022[89] that: (1) he was duly authorized by an LOA to conduct an investigation of petitioner's records for TY 2009 as GS during his assignment at RDO No. 052 from 2009 to 2016; (2) pursuant to such investigation, he served the LOA, the First Request for Presentation of Records, the Second and Final Notice, and the Notice of Informal Conference; (3) as a result of his investigation, he prepared a Memorandum Report summarizing his findings; and, (4) the relevant PAN and FAN were issued, both of which he served upon petitioner.

GS Urbano further testified that petitioner's protest letter was treated as a request for reinvestigation. He confirmed that the BIR issued a letter dated 22 February 2013 and the same was served on petitioner, reminding the latter to submit the necessary supporting documents within sixty (60) days from filing its protest.[90] He further set forth that petitioner's failure to submit the same led to the issuance of the FDDA, which was served to petitioner on 24 March 2017.[91] He also recalled that on 21 April 2017, petitioner filed a Request for Reconsideration/Administrative Appeal thereon.[92]

On cross-examination[93], GS Urbano was unable to pinpoint proof or indication of the PAN's service on petitioner. He, however, insisted that he immediately served the PAN on petitioner upon its issuance on 28 December 2012, in consideration of the holidays.

Respondent did not conduct any redirect examination.[94] Concluding the presentation of respondent's testimonial evidence, the Second Division ordered respondent to file his or her FOE by 10 October 2022. Petitioner was given 10 days from receipt thereof to file a Comment thereto. The Court also granted the parties a period of 30 days from their respective receipt of its resolution on respondent's FOE to file their respective memoranda.[95]

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89 Exhibit "R-20", id., pp. 979-998.
90 Q47, Exhibit "R-20", id., p. 992.
91 Q50 and Q51, Exhibit "R-20", id., p. 993.
92 Q54, Exhibit "R-20", id., p. 994.
93 TSN dated 29 September 2022, p. 6.
94 See Minutes of the Hearing and Order, both dated 29 September 2022, Division Docket, Volume III, pp. 1094 and 1096, respectively.
95 Id.

On 10 October 2022, respondent filed his or her FOE[96] consisting of Exhibits "R-1" to "R-20-1", inclusive of sub-markings. On 18 October 2022, petitioner filed his Comment[97] thereto. In its Resolution dated 27 October 2022[98], over petitioner's objections in its Comment, the Second Division admitted all of respondent's exhibits. In the same Resolution, the Court likewise reiterated the period of 30 days within which to file their respective memoranda.

Thereafter, on 09 December 2022, petitioner filed its Memorandum.[99] On the other hand, respondent was unable to file his or her Memorandum until 13 January 2023.[100] Accordingly, on 25 January 2023, the Second Division considered the case submitted for decision.[101]

ISSUES

As the parties so stipulated during the Pre-Trial, the following issues were submitted for this Court's determination —

I.

WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW;

II.

WHETHER THE DEFICIENCY TAX ASSESSMENTS AGAINST PETITIONER KUEHNE + NAGEL, INC. ARE NULL AND VOID AS THEY WERE ISSUED IN VIOLATION OF ITS RIGHT TO DUE PROCESS; AND,

III.

WHETHER PETITIONER KUEHNE + NAGEL, INC. IS LIABLE TO PAY THE ASSESSED DEFICIENCY TAXES FOR THE TAXABLE YEAR (TY) 2009.

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96 Id., pp. 1098-1108.
97 Id., pp. 1111-1115.
98 Id., pp. 1117-1118.
99 Id., pp. 1119-1158.
100 See Records Verification dated 13 January 2023, id., p. 1160.
101 See Resolution dated 25 January 2023, id., p. 1161.

ARGUMENTS OF THE PARTIES

Petitioner states that the deficiency assessments for TY 2009 are void for violating its right to procedural due process. It points out that it received the PAN on 04 January 2013 and had until 19 January 2013 to file a reply thereto. However, as the FAN was issued by the BIR on 14 January 2013, prior to the expiration of the 15-day period for petitioner to reply, petitioner claimed to have been unduly deprived of its opportunity to refute the PAN.

In connection with the investigation, petitioner also points out a recomputation of the deficiency taxes arising from negotiations with the BIR, that led to its partial repayment.

Finally, petitioner maintains that it had paid the appropriate taxes during the subject TY, and that the BIR's findings lacked proper factual and legal bases. Petitioner also claims that the assessments for EWT, FWT, FBT, IAET, and DST had already prescribed.

Respondent, on the other hand, denies that the PAN was received by petitioner on 04 January 2013, which he or she claimed was actually issued to and served on petitioner on 28 December 2012. Respondent also highlights petitioner's erroneous reliance on the FAN's date of issue (to raise the issue of an alleged due process violation) and not the date it actually received the FAN. Respondent further alleges that the requirement of due process of law was already satisfied as petitioner was afforded the opportunity to explain its side.

Respondent also claims that, after petitioner's filing of its request for reinvestigation and after failing to submit the necessary supporting documentation to accompany its protest, the subject assessments had already become final after the expiration of the 60-day period. Contrary to petitioner's claim, respondent argues that the present claim is barred by prescription.

Additionally, respondent contends that petitioner's issue on prescription is a mere afterthought as this was not raised until the present petition was filed.

In relation to petitioner's narration of an alleged recomputation of the deficiency taxes, respondent denies the validity of the same in the absence of a valid and signed amended FAN.

Respondent also maintains that the BIR's findings should stand as they were duly supported with legal and factual bases. Similarly, respondent insists that the assessments for EWT, FWT, FBT, IAET, and DST had prescribed (as pointed out by petitioner).

RULING OF THE COURT

THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE TIMELY-FILED PRESENT PETITION FOR REVIEW.

As clearly set forth in the records and undisputed by the parties, petitioner filed a Request for Reconsideration/Administrative Appeal[102] on 21 April 2017 or after the FDDA was served upon it on 24 March 2017.[103] On 24 October 2019, petitioner received respondent's Final Decision dated 10 October 2019.

Section 11 of the Republic Act (**RA**) No. 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the time period when petitioner may invoke the CTA's jurisdiction in order to question respondent's decision, to wit:

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

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102 Supra at note 25.
103 Supra at p. 4.

SEC. 3. *Who may appeal; period to file petition.* —

(a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[104]

...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received the CIR's Final Decision on 24 October 2019[105], which is the adverse decision appealable to this Court. Thus, it had 30 days from the said date, or until 23 November 2019, to file a petition for review with the CTA. Clearly, petitioner timely filed the instant Petition for Review on 22 November 2019.

THE ASSESSMENTS SHOULD BE CANCELLED AS THEY WERE ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, lays down the due process requirements involved in the issuance of a deficiency tax assessment, to wit:

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104 Emphasis and underscoring supplied.

105 Respondent admitted the allegations in Par. 10 of the Petition for Review; See Par. 4 of respondent's Answer, Division Docket Volume I, p. 159.

...

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...

...

The taxpayers shall be informed in writing of the law and 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.

...

Meanwhile, BIR Revenue Regulations (**RR**) No. 12-99[106], implementing the aforecited provision, details the prescribed procedures for the valid issuance of a PAN:

...

Sec. 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*:

3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office **shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based... **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 assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[107]

...

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106 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.

107 Emphasis supplied.

Following the above-stated rules, respondent or his or her duly authorized representative is required to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer is given 15 days, counted from receipt thereof, to respond. The taxpayer's failure to respond within the period prescribed results in the taxpayer being considered in default, leading to the issuance of the Formal Letter of Demand (**FLD**)/FAN.

The Supreme Court had long since settled the mandatory nature of the issuance of the PAN and compliance with the due process requirements in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[108]:

> ...
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. ...
>
> ...

In the present case, BIR Revenue Region No. 8, Makati City issued the PAN[109] on 28 December 2012. Respondent claims that the PAN was served on petitioner on the same date after it was issued. The transcript of stenographic notes (TSN) tells:

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108 G.R. No. 185371, 08 December 2010; Citations omitted and italics in the original text.

109 Supra at note 12.

...

ATTY. CHUNG:

Mr. Witness, can you refer to your Answer to Question No. 37 of your Amended Judicial Affidavit, you mentioned there that you served the Preliminary Assessment Notice with the Details of Discrepancy to the petitioner's company. Mr. Witness, when did you serve the Preliminary Assessment Notice?

A:

Based on the record the date is December 28.

Q:

Mr. Witness, can you refer again to the said exhibit I believe that is Exhibit "R-6". "R-6" is the Preliminary Assessment Notice, you answered that this was served December 28?

A:

Yes.

Q:

Mr. Witness, isn't it [that] December 28 is the date of issuance?

A:

Upon receipt of the Preliminary Assessment Notice, I immediately served the Preliminary Assessment Notice.

Q:

Mr. Witness, can you refer to [...] any proof that it was served on the same date?

A:

Based on the document that I am looking at I cannot see.

JUSTICE UY:

There is no showing when it was received.

A:

Yes, your Honors, but to my recollection we immediately served this because it will be holiday, as far as I remember. We left a copy to the premises of the taxpayer.[110]

...

On the other hand, petitioner asserts that it had only received the PAN on 04 January 2013. A scrutiny of the copy of the PAN that petitioner presented shows an informal indication of receipt wherein

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110 TSN dated 29 September 2022, pp. 5-6.

one Perla Basaen[111], witness Lopez's (petitioner's Tax Compliance Manager) predecessor allegedly indicated receipt on 04 January 2013 by writing "Received Jan 04, 2013" near the bottom of the first page of the PAN.

Meanwhile, respondent did not offer any explanation or evidence to refute petitioner's denial beyond insisting that his or her representative had served the PAN on the same date as its issuance, or on 28 December 2012. Furthermore, an examination of respondent's copies (and original) of the PAN[112] does *not* really indicate any proof of service nor receipt. Neither were there any supplemental documents supporting such fact.

As it is, what has been established in the records is that the FAN[113] was issued on (and dated) 14 January 2013. At the time of its issuance, the 15-day period to file a reply thereto had yet to lapse. In the case of *Alliance for the Family Foundation, Philippines, Inc. (ALFI), et al. v. Hon. Janette L. Garin, et al.*[114], the Supreme Court declared emphatically:

> ...
>
> Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, **there must be compliance with both the substantive and the procedural requirements** thereof.
>
> Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. **Procedural due process**, on the other hand, **means compliance with the procedures or steps, even periods, prescribed by the statute**, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.
>
> **Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations** and hearings.
>
> ...

---

111 TSN dated 02 December 2020, pp. 10-11.
112 Exhibit "R-6", supra at note 12.
113 Supra at note 15.
114 G.R. No. 217872, 24 August 2016; Citations omitted and emphasis supplied.

Relevantly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[115], the Supreme Court discussed the paramount importance of observing the period and the consequences of their non-observance and, thus, held:

> ...
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ...
>
> ... Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. ...
>
> ...
>
> However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. ...
>
> ...
>
> **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.**
>
> ...

The principles enunciated above as regards the observance of due process in the issuance of assessments to taxpayers was reiterated in the more recent case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[116] where the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN.

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115 G.R. Nos. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

116 G.R. No. 227616 (Resolution), 19 June 2019.

Therein, the Supreme Court held -

> ...
>
> Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond "opportunity to be heard" as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented.***"
>
> ...
>
> **... By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**[117]
>
> ...

Additionally, jurisprudence is replete with cases holding that if the taxpayer denies having received an assessment from the BIR, it is incumbent upon the sender to prove by competent evidence that the notice was indeed received by the addressee.[118] Thus, in such instances, the burden of proof that such notice of assessment was actually received by the concerned taxpayer, in the manner and on the date asserted by the BIR, is shifted to the latter.

In the case at bar, it is glaringly evident that respondent was unable to disprove the fact of petitioner's belated receipt of the PAN. In consideration of respondent's myriad of opportunities to proffer arguments and documentation in support of his or her own claim, the latter has consistently failed to do so.

Considering the state of the BIR's records made available to this Court, the BIR's omission of its obligation to keep track of matters material to the observance of the due process requirements must be

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117 Citation omitted, emphasis, italics and underscoring in the original text and supplied.

118 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, supra at note 108; *Barcelon, Roxas Securities, Inc. (now known as Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, 07 August 2006; See *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R. No. 155541, 27 January 2004.

underscored. Upon a closer review, the BIR was able to meticulously keep track of key events surrounding the conduct of the investigation relating to the present assessment case but, unfortunately, neglected to retain information considered essential for the protection of the taxpayer, *i.e.*, the circumstances of the latter's receipt of the PAN and FAN.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[119], the Supreme Court has consistently emphasized the importance of observing procedural due process:

> ...
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon case*), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, *i.e.*, from tax investigation until tax assessment. ...
>
> ...

Based on the disquisitions above, the FAN issued on 14 January 2013, or only <u>10 days</u> from petitioner's receipt of the PAN (and still within petitioner's 15-day period to respond) could not be sanctioned. The 15-day period granted to a taxpayer to reply to the PAN before a FAN is issued is mandatory.

For failure to afford petitioner due process, respondent's assessments of the latter is inescapably void.

THE PARTIAL PAYMENTS MADE BY PETITIONER PURSUANT TO THE VOID ASSESSMENT SHOULD BE REFUNDED AS A VOID ASSESSMENT BEARS NO FRUIT.

Incidentally, as the records show, petitioner made payments on 06 June 2014, allegedly serving as full settlement of the deficiency

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[119] G.R. No. 222476, 05 May 2021 citing G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

assessments for IT, VAT, EWT, and FBT. We revisit petitioner's payments *via* the eFPS:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT[120]	₱202,167.84	₱168,466.46	-	₱370,634.30
VAT[121]	435,992.30	382,496.05	-	818,488.35
EWT[122]	357,597.97	314,982.99	-	671,580.96
FBT[123]	84,994.53	75,262.66	-	160,257.19
Total	**₱1,080,752.64**	**₱941,208.16**	-	**₱2,020,960.80**

It is noted that respondent did not dispute the existence and relevance of petitioner's payments in his or her Final Decision, where he or she recognized a portion of the payments pertaining to VAT as full settlement of the corresponding deficiency[124]:

> ...
>
> ... Thus, in view of the consistency in the FAN and the payment details for deficiency VAT, this Office acknowledges such payment as valid and full payment of the Kuehne's deficiency VAT. Consequently, the deficiency VAT assessment in the FDDA amounting to P1,074,093.90, consisting of the basic deficiency tax amounting to P435,992.30 and interest amounting to P638,101.60 should be cancelled.
>
> ...

As to the respondent's Final Decision disregarding the remainder of petitioner's payments (for deficiency IT, EWT, and FBT), We could not share respondent's stance thereon.

Therein, respondent declined the validity of an alleged recomputation clung on to by petitioner, denying the recognition of the same in the absence of a valid, signed amended assessment notice or its equivalent. Respondent refused to acknowledge the product of petitioner's alleged negotiations with his or her officers (which were dismissed as unofficial) notwithstanding the eventual acceptance of the VAT component of the resulting payment.

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120 Exhibit "P-6-b", Division Docket, Volume II, pp. 575-580.
121 Exhibit "P-6-a", id., pp. 569-574.
122 Exhibit "P-6-c", id., pp. 581-586.
123 Exhibit "P-6-d", id., pp. 587-592.
124 Supra at note 27, p. 1112.

We recognize that the abovementioned payments were transacted in accord with the draft manual BIR Form No. 0605 Payment Forms[125] bearing matching amounts and reflecting the same details needed by petitioner to accomplish the online equivalent of the form in the eFPS platform. We likewise acknowledge that the payments were intended for the TY 2009 as "initial payments on undisputed deficiency tax assessments" and the forms filed accordingly specified the type of tax being paid therein.

In fact, upon close inspection, it is observed that the draft manual payment forms were signed by OIC-RDO Meniano and RO Rivera. The latter has been the handling the investigation of petitioner's assessment case since 28 February 2013.[126] Hence, it is apparent from the records that the aforementioned payments were made in connection with the administrative proceedings and accompanying investigation of petitioner's 2009 deficiency tax assessments.

Considering Our earlier disquisition, finding respondent's assessments void for a clear violation of the due process requirements, We deem it just and proper that the amounts erroneously paid be returned to petitioner. In relation thereto, this Court notes that the parties did not specifically raise the issue of whether there is a need to return the aforementioned payments to petitioner.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[127], the Supreme Court had the occasion to rule on whether the CTA did not err in imposing a deficiency tax assessment premised on the lack of authority of the revenue examiners, an issue not raised therein at any stage of the proceedings before the CTA:

> ...
>
> **On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by

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125 BIR Records, pp. 377 and 383 (IT); 367 and 375 (VAT); 363 and 376 (EWT); and, 371 and 378 (FBT).

126 Supra at note 20.

127 G.R. No. 183408, 12 July 2017; Citation omitted, emphasis and underscoring supplied and italics in the original text.

the issues specifically raised by the parties but may also **rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:

> SECTION 1. *Rendition of judgment.* — x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

...

Neither did petitioner specifically pray (in its Petition for Review)[128] for the return of the said payments. The Supreme Court's insights in *City of Manila and Office of the City Treasurer of Manila v. Cosmos Bottling Corporation*[129] lend further guiding wisdom on this matter:

> ...
>
> **... In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.**
>
> ...

The declaration of the present assessments' nullity gave rise to the unresolved subsidiary matter of determining what must be done with payments advanced by petitioner. While the proceedings have thus been voided, respondent has retained the said payments (from petitioner).

It is a well-settled rule that a void assessment bears no valid fruit.[130] Notwithstanding respondent's denial of the validity of petitioner's payments, the fact remains that these were made over the course of the single assessment process or administrative proceedings before the BIR, as part of petitioner's response in its participation therein. **If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the**

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128 Supra at note 6.

129 G.R. No. 196681, 27 June 2018; Emphasis and underscoring supplied.

130 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

first place.[131] **With the entirety of the assessment thus declared void, all proceedings in pursuit thereof should likewise be struck down as plain nullity and ineffectual.**

In collective consideration of all the foregoing, this Court concludes that the 06 June 2014 payments were paid pursuant to the void assessment of petitioner's books of accounts for TY 2009 and shall thereby be reverted to petitioner accordingly.

Additionally, We clearly observe from the records of this case that the subject payments have indeed been made by petitioner and received by the BIR. Equally established is the fact that the payments were specifically tendered pursuant to the present assessment.[132] **Upon this Court's determination that the subject assessment is void, to reiterate, it only logically follows perforce that the amounts remitted by petitioner pursuant to the assessment (and the proceedings that attended it) cannot be validly retained by the BIR. These should not have been paid by petitioner.**

Even if we are to deem that the payment of respondent was voluntary, the basis of such payment (*i.e.*, void assessment) could not make such payment legal (to the effect that the BIR can continuously hold on to it). Such would be anathema or completely antithetical to all sense of logic and fairness.

With reference to the deficiency assessment items for IT, EWT, and FBT in the FLD/FAN, it has previously been established that these were not honored (as full or partial payments) in respondent's Final Decision. Petitioner tendered its tax payments, addressing these tax types (along with VAT), during the reinvestigation period following its protest to the FLD/FAN leading to the issuance of the FDDA.

To recap, neither the FDDA nor the Final Decision had stricken down the findings for deficiency IT, EWT, and FBT.[133] At their respective full amounts, they formed part of the total amount due of ₱231,845,147.94 demanded by the CIR in the Final Decision. Incidentally,

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131 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.

132 Supra at note 125.

133 Supra at notes 24 and 27.

the Final Decision judicially protested by petitioner to this Court included the deficiency IT, EWT, and FBT, but noteworthily excluded the deficiency VAT.

As to the VAT component, the events transpired divergently. Respondent's course of action taken in the Final Decision resulted in the exclusion of the VAT deficiency. Subsequent to petitioner's payments, while the issued FDDA restated the FLD/FAN with all tax types intact, the Final Decision cancelled the finding for VAT. We reiterate the sequence of pertinent facts:

1. Petitioner, after filing its request for reinvestigation, remitted amounts representing deficiency VAT totaling ₱818,488.35 (comprised of ₱435,992.30 basic tax due and ₱382,496.05 in accrued interest).

2. The FDDA was issued with the VAT deficiency intact. Petitioner appealed the FDDA administratively to the CIR.

3. The CIR's Final Decision cancelled the VAT deficiency, having acknowledged petitioner's prior payment as valid and full payment of petitioner's deficiency VAT. According to respondent, the basic VAT due of ₱435,992.30 matched that in the FDDA. As to the interest worth ₱382,496.05, respondent found this accurately corresponded to the period covered from the date of the assessment until the date of payment (as opposed to the accrued interest amounting to ₱638,101.60 in the later issued FDDA that continued running).

4. Petitioner elevated its case to the CTA based on the CIR's Final Decision amounting to ₱231,845,147.94, which no longer includes any deficiency VAT:

Tax Type	Total Amount Due
IT	₱66,716,179.20
VAT	-
EWT	36,540,692.78
FWT	37,694,344.61
FBT	2,247,365.57
IAET	32,564,822.67
DST	56,081,743.11
Total	**₱231,845,147.94**

Considering the foregoing, there arises a need to reconcile this Court's acquisition of jurisdiction over the matter.

PAYMENT OF DOCKET FEE AS
LIEN ON JUDGMENT

Petitioner paid its docket fees on the basis of the Final Decision (that demanded payment totaling ₱231,845,147.94, inclusive of penalties).[134] Pursuant to Section 4(b)[135], Rule 141[136] of the Rules of Court, as amended, the basis for the legal fees to be paid, as a precursor to filing a case before this Court, shall be the total amount of the disputed tax assessment, inclusive of penalties. We note that the amount used by petitioner as basis excluded the deficiency VAT from this Court's jurisdiction.

It is established that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees.[137] In line with Section 4(b) of Rule 141 above, We are precluded from granting a relief outside the matter that this Court has acquired jurisdiction over.

Therefore, while We favor the outright return of petitioner's payments from 06 June 2014 intended for its allegedly recomputed deficiency IT, EWT, and FBT, the same cannot be as easily said for the deficiency VAT.

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134 See Computation Sheet and Summary of Fees Paid, Division Docket, Volume I, pp. 2-3.

135 **SEC. 4.** *Clerks of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeals.*

...

(b) FOR FILING AN ACTION OR PROCEEDING WITH THE COURT OF TAX APPEALS

1. **FOR FILING AN ACTION OR PROCEEDING**, INCLUDING PETITION FOR INTERVENTION, AND FOR ALL SERVICES IN THE SAME, IF THE SUM CLAIMED OR **THE AMOUNT OF DISPUTED TAX** OR CUSTOMS **ASSESSMENT, INCLUSIVE OF INTEREST, PENALTIES AND SURCHARGES, DAMAGES OF WHATEVER KIND AND ATTORNEY'S FEES** OR VALUE OF THE ARTICLE OF PROPERTY IN SEIZURE CASES, IS:

...

H) ₱7,500,000.00 OR MORE ON THE FIRST ₱7,500,000.00, THE FEE SHALL BE ₱50,500.00 AND FOR EACH ₱1,000.00 IN EXCESS OF ₱7,500,000.00 — 10.00

PROVIDED THAT FOR ASSESSMENTS BEYOND ₱50 MILLION, THE FILING FEE FOR THE EXCESS SHALL BE THE EQUIVALENT OF ONE-HALF (1/2) OF ONE (1%) PER CENTUM. (Emphasis supplied)

136 Rule 141 — Legal Fees

137 *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*, G.R. No. 222837, 23 July 2018.

Consequently, Section 2 of the same Rule[138] comes to the fore and is particularly instructive:

> ...
>
> SEC. 2. *Fees in lien.* — **Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien.** The clerk of court shall assess and collect the corresponding fees.
>
> ...

Alongside the above rule, the principles underlying the Supreme Court's pronouncements in *Woodrow B. Camaso v. TSM Shipping (Phils), Inc., et al.*[139], merit analogous application to the matter at bar:

> ...
>
> **Verily, the failure to pay the required docket fees *per se* should not necessarily lead to the dismissal of a case.** It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of filing of the initiatory pleading does not automatically cause its dismissal provided that: *(a)* the fees are paid within a reasonable period; and *(b)* there was no intention on the part of the claimant to defraud the government.
>
> ...

As an obstacle to the complete and final resolution of the case at bar, the necessary docket fees corresponding to petitioner's deficiency VAT assessment is lacking. Such absence precludes this Court from granting a complete relief leading to a full and orderly disposition of the case. However, for reasons discussed, We are positioned to have petitioner settle the increment in docket fees, which the latter should meet within a reasonable time.

This course of action is in line with how the Supreme Court ruled in the case of *Sun Insurance Office, Ltd., et al. v. Hon. Maximiano C. Asuncion, et al.*[140]:

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138 Supra at note 136; Emphasis supplied.

139 G.R. No. 223290, 07 November 2016; Citation omitted, emphasis supplied and italics in the original text.

140 G.R. Nos. 79937-38, 13 February 1989; Emphasis supplied.

...

3. **Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment.** It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

...

We revisit petitioner's payments *vis-à-vis* the full assessment:

Tax Type Paid	Basic Tax Due	Interest	Total Amount Paid
IT	₱202,167.84	₱168,466.46	₱370,634.30
EWT	357,597.97	314,982.99	671,580.96
FBT	84,994.53	75,262.66	160,257.19
Total payments not considered in the Final Decision	**₱644,760.34**	**₱558,712.11**	**₱1,202,472.45**
Add: VAT	435,992.30	382,496.05	818,488.35
Total payment	**₱1,080,752.64**	**₱941,208.16**	**₱2,020,960.80**

Assessed Tax	Basic Tax Due	Penalties	Total Amount Due
IT	₱27,571,790.54	39,144,388.66	₱66,716,179.20
EWT	14,799,548.23	21,741,144.55	36,540,692.78
FWT	15,270,184.00	22,424,160.61	37,694,344.61
FBT	910,217.97	1,337,147.60	2,247,365.57
IAET	11,760,324.80	20,804,497.87	32,564,822.67
DST	18,854,044.61	37,227,698.50	56,081,743.11
Total *per* CIR's Final Decision	**₱89,166,110.15**	**₱142,679,037.79**	**₱231,845,147.94**
Add back: VAT	435,992.30	638,101.60	1,074,093.90
Total *per* FDDA	**₱89,602,102.45**	**₱143,317,139.39**	**₱232,919,241.84**

Thus, the Second Division Clerk of Court shall assess and collect the incremental docket fees corresponding to the deficiency VAT amounting to ₱1,074,093.90. Such resolves the shortage of this Court's jurisdiction in its final judgment. This likewise entitles petitioner to the return of its payment for recomputed deficiency VAT amounting to ₱818,488.35, provided that petitioner has paid the said additional fees, which upon order of this Court, shall constitute a lien on the judgment in satisfaction of said lien.

Conversely, petitioner is entitled to the remainder of its payments amounting to ₱1,202,472.45, without need of further action.

Such grant is within the authority of the Court, in accord with how the Supreme Court ruled in *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin v. Commissioner of Internal Revenue*[141] citing *Roman Catholic Archbishop of Cebu v. The Collector of Internal Revenue.*[142] Therein, the Supreme Court allowed the refund of overpaid penalties despite the taxpayer not having filed an administrative claim for refund, as required under then Section 306 of the NIRC of 1939 (now, Section 229[143] of the NIRC of 1997, as amended), before filing an appeal before the CTA. **The High Court found no cogent reason to require the taxpayer to undergo the procedure for claiming refunds as it would be a useless formality that serves the interest of neither the government nor the taxpayer:**

> ...
>
> The case has a striking resemblance to the controversy in Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.
>
> The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:
>
> > "We agree with petitioner that Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, in providing for appeals from —
> >
> > > '(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties

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141 G.R. No. 138485, 10 September 2001; Citations omitted, emphasis supplied and italics in the original text.

142 G.R. No. L-16683, 31 January 1962.

143 SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*

> imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue —
>
> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x x'; that the present action involves a disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo*, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities.**"

The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.

...

Indeed, petitioner's payments of 06 June 2014 partake in the nature of erroneously paid and collected taxes. The premise of the erroneous payments is clear (having originated from void assessment proceedings) and have been duly established from the records. The existence of petitioner's payments and BIR's receipt thereof are likewise uncontroverted. This Court has already rendered an exhaustive examination of the facts pertinent thereto.

All told, the sole matter remaining for Our disposition is to order the return of the payments. To resort to a resolution that allows the BIR to retain respondent's payment (from a void assessment) would result in ramifications that militate against justice and fairness. Apart from the filing of administrative and judicial claims being needlessly burdensome exercises, the periods provided in Section 229[144] of the NIRC of 1997, as amended, are unduly constrictive in consideration of petitioner's unique position.

To further contextualize, petitioner made the subject payments during the reinvestigation following its Letter-Protest to the FLD/FAN. As a result of such reinvestigation, the BIR issued the FDDA on 17 March 2017, with the finding of deficiency VAT still intact.[145] After petitioner's administrative appeal, respondent's Final Decision, which cancelled the deficiency VAT, was only issued on 10 October 2019.[146]

Nearly <u>three (3) years</u> had lapsed from the time of petitioner's payments until the FDDA was issued. As for respondent's Final Decision, this was issued more than <u>five (5) years</u> from when petitioner paid. If the date of payment (or 06 June 2014) marks the start of the two (2)-year period to file a claim under Section 229 of the NIRC of 1997, as amended, petitioner would have had to file its claim, both administratively and judicially, by 06 June 2016, at the latest.

At this time, petitioner was still awaiting the results of its request for reinvestigation, which would still fully restate the amounts in the assessment. It is only after its administrative appeal that the Final Decision (that petitioner will appeal to this Court) would be issued, though the latter only cancelled the finding on VAT.

Notwithstanding opposition from respondent in affording validity to petitioner's payments and recognizing the officiality of the alleged revisions of the assessment's computations, it is apparent that petitioner participated in the administrative proceedings with an expectation that the corresponding items of the deficiency tax assessment (as covered by its payments) would eventually be cancelled. Needless to say, petitioner was by no means well-positioned to make an educated judgment

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144 Supra at note 143.
145 Supra at note 24.
146 Supra at note 27.

(concerning the outcome of the assessment in consideration of its payments) by the time the two (2)-year period had lapsed.

Even so, Section 229 of the NIRC of 1997, as amended, before its most recent amendment (as introduced by the Ease of Paying Taxes Law or RA No. 11976) precludes any supervening causes from interfering with the period set therein.[147] By its letter, petitioner should have filed a refund claim by 06 June 2016. Such is without prejudice to how such a claim will impact its assessment which is being evaluated the same agency, and eventually to be decided upon by the same party, the CIR. Moreso, this contemplates a refund case before the CTA while the BIR's investigation petitioner's assessment is still ongoing.

Nonetheless, the Supreme Court has elucidated, in *Commissioner of Internal Revenue v. Philippine National Bank*[148] citing *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*[149] (**Philamlife**), that even if the two (2)-year period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances.

We vehemently put forward that the nuances of petitioner's peculiar situation warrants the relaxation of the period.

Further, while less in keeping with the prior tenor of Section 229 of the NIRC of 1997, as amended, the aforementioned *Philamlife* case proclaims that the prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained. Though only relevant in arguments grounded on equity, it is well worth noting that

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147 SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

148 G.R. No. 161997, 25 October 2005.

149 G.R. No. 105208, 29 May 1995.

petitioner could have only ascertained the refundability of its previous payments after this Court's declaration of the assessment's nullity.

Delving a step further, even if the two (2)-year period were to be set aside, the alternative concocts an equally absurd position to burden and corner the taxpayer. With respondent disputing the payments' validity, and in line with the strict application of Section 229 of the NIRC of 1997, as amended, a denial upon an administrative claim for refund may eventually find its way back to this Court. In such an instance, petitioner's fresh judicial claim suffers exposures to procedural defects from forum shopping.[150]

We echo the Supreme Court's views in *State Land Investment Corporation v. Commissioner of Internal Revenue*[151], finding that the same resonates harmoniously with the present case:

> ...
>
> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti*, provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.**
>
> ...

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150 Jurisprudence has recognized that forum shopping can be committed in several ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) **filing multiple cases based on the same cause of action but with different prayers** (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (*Bernardo S. Zamora v. Emmanuel Z. Quinan, et al.*, G.R. No. 216139, 29 November 2017; Citation omitted, emphasis supplied and italics in the original text)

151 G.R. No. 171956, 18 January 2008; Citations omitted, emphasis, italics and underscoring supplied.

It is only proper to relax procedural rules when a rigid application of these rules only hinders substantial justice.[152]

Thus, in close, for the complete and orderly disposition of the case at bar, and in the higher interest of substantial justice, basic fairness, and judicial economy, We are constrained to order the return of the amounts paid by petitioner.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated 14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 – all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.

Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION TWENTY THOUSAND NINE HUNDRED SIXTY PESOS AND EIGHTY CENTAVOS (₱2,020,960.80)**, representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.

The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (₱1,074,093.90), inclusive of penalties.

Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35)** representing petitioner's erroneously paid value-added tax.

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[152] See *City of Dagupan v. Ester F. Maramba*, G.R. No. 174411, 02 July 2014; Emphasis supplied.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KUEHNE + NAGEL, INC., *Petitioner,*	**CTA CASE NO. 10216**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson,* **MODESTO-SAN PEDRO,** *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 07 2024 1:45 p.m.

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CONCURRING AND DISSENTING OPINION

CUI-DAVID, J.:

I concur with my esteemed colleague, Associate Justice Jean Marie A. Bacorro-Villena, that the Petition for Review must be granted and that the assessments against petitioner for deficiency income tax (IT), expanded withholding tax (EWT), final withholding tax (FWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST) for taxable year (TY) 2009 be rendered void due to violation of petitioner's right to due process.

It is my humble position, however, that the Court cannot order the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate in the amount of ₱2,020,960.80 due to the Court's ***lack of jurisdiction*** over the subject matter. Petitioner voluntarily paid the said amount on June 6, 2014, after petitioner accepted the revised computation of its deficiency assessments for IT, VAT, EWT, and FBT for TY 2009[1] that was arrived at after petitioner filed its protest to the Final Assessment Notice (FAN).

[1] Petition for Review, par. 7, Docket, Vol. I, p. 8.

Notably, in his Decision dated October 10, 2019,[2] the CIR applied the said amount as *full payment* of petitioner's deficiency VAT for 2009 as it corresponds with the basic VAT deficiency in the FAN and the interest computed from January 26, 2010, up to the date of payment on June 6, 2014.[3] Accordingly, the CIR cancelled petitioner's VAT assessment and affirmed the deficiency IT, EWT, FWT, FBT, IAET, and DST assessments amounting to ₱231,845,147.94 for TY 2009,[4] broken down as follows:

Tax Type	Basic Tax Due	Interest	Surcharge	Total
IT	27,571,790.54	39,144,388.66		66,716,179.20
EWT	14,799,548.23	21,741,144.55		36,540,692.78
FWT	15,270,184.00	22,424,160.61		37,694,344.61
FBT	910,217.97	1,337,147.60		2,247,365.57
IAET	11,760,324.80	14,924,335.47	5,880,162.40	32,564,822.67
DST	18,854,044.61	27,800,676.19	9,427,022.31	56,081,743.11
Total	89,166,110.15	127,371,853.08	15,307,184.71	**231,845,147.94**

Only the deficiency IT, EWT, FWT, FBT, IAET, and DST assessments for TY 2009 in the total amount of **₱231,845,147.94** were the ones judicially protested by petitioner in the present *Petition for Review* and prayed for by petitioner to be cancelled and withdrawn. It must be stressed that the *VAT assessment* was excluded, to quote:

> **NATURE OF THE PETITION**
>
> This case involves Petitioner's judicial protest against Respondent's assessment for alleged deficiency income tax, expanded withholding tax (EWT), final withholding tax (FWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST) for taxable year (TY) 2009 in the aggregate amount of **Two Hundred and Thirty-One Million Eight Hundred Forty-Five Thousand One Hundred and Forty-Seven Pesos and 94/100** (PhP231,845,147.94), inclusive of surcharges and interest.[5] [*Boldfacing on the original; underscoring supplied*]
>
> **PRAYER**
>
> **WHEREFORE**, Petitioner **KUEHNE + NAGEL, INC.** respectfully prays that this Court render judgment ordering the cancellation and withdrawal of Respondent's assessments

[2] Exhibit "P-9", Decision dated October 10, 2019, Docket - Vol. II, pp. 659-670.
[3] *Id.*, pp. 669-670.
[4] *Id.*, p. 670.
[5] Nature of the Petition, Petition for Review, Docket - Vol. I, p. 6.

> against Petitioner for deficiency income tax, expanded withholding tax, final withholding tax, fringe benefits tax, improperly accumulated earnings tax, and documentary stamp tax for taxable year 2009 in the aggregate amount of **Php231,845,147.94**, inclusive of increments, with a view to preventing Respondent from enforcing collection of the alleged tax liabilities, within the period allowed by law.[6] [*Boldfacing on the original; underscoring supplied*]

In *Petitioner's Pre-Trial Brief,*[7] petitioner reiterated the nature of its case and its relief prayed for:

> **I**
> **STATEMENT OF THE CASE**
>
> This case involves Petitioner's judicial protest against Respondent's assessment for alleged deficiency income tax, expanded withholding tax (EWT), final withholding tax (FWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST) for taxable year (TY) 2009 in the aggregate amount of **Two Hundred and Thirty-One Million Eight Hundred Forty-Five Thousand One Hundred and Forty-Seven Pesos and 94/100** (PhP231,845,147.94), inclusive of surcharges and interest.[8] [*Boldfacing on the original; underscoring supplied*]
>
> **II**
> **RELIEF**
>
> Petitioner respectfully prays that this Court render judgment ordering the cancellation and withdrawal of Respondent's assessments against Petitioner for deficiency income tax, expanded withholding tax, final withholding tax, fringe benefits tax, improperly accumulated earnings tax, and documentary stamp tax for taxable year 2009 in the aggregate amount of Php231,845,147.94, inclusive of increments, with a view to preventing Respondent from enforcing collection of the alleged tax liabilities, within the period allowed by law.[9] [*Underscoring supplied*]

In the parties' *Joint Stipulation of Facts and Issues* (*JSFI*),[10] they agreed to the resolution of the following issues:

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[6] Prayer, Petition for Review, Docket - Vol. 1, p. 32.
[7] Docket – Vol. I, pp. 181-194.
[8] *Id.*, Docket - Vol. I, p. 181.
[9] *Id.*, Docket - Vol. I, pp. 181-182.
[10] Docket – Vol. II, pp. 461-468.

II
ISSUES

The parties have agreed that the issues to be resolved in this case are:

1. ...

2. ...

3. WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE FOLLOWING ASSESSED DEFICIENCY TAXES IN THE TOTAL AMOUNT OF TWO HUNDRED THIRTY ONE MILLION EIGHT HUNDRED FORTY FIVE THOUSAND ONE HUNDRED FORTY SEVEN AND 94/100 (PHP 231,845,147.94) PESOS FOR THE TAXABLE YEAR 2009:

TAX TYPE	AMOUNT (PHP)
Income Tax (IT)	66,716,179.19
Expanded Withholding Tax (EWT)	36,540,692.78
Final Withholding Tax	37,694,344.61
Fringe Benefits Tax (FBT)	2,247,365.57
Improperly Accumulated Earning Tax (IAET)	32,564,822.67
Documentary Stamp Tax (DST)	56,081,743.12
TOTAL	**231,845,147.94**

Petitioner further manifested in the *JSFI* that it will only present documents "to support its judicial protest against [respondent's] assessments for alleged deficiency [IT], EWT, FBT, IAET, and DST for TY 2009."[11]

In its *Memorandum*,[12] petitioner modified the stipulated issues yet sought the same relief, to wit:

IV
ISSUE

26. The parties agreed that the following issues shall be submitted for the resolution of this Court:

1. ...

2. ...

3. **WHETHER OR NOT THE DEFICIENCY EWT, FWT, FBT, IAET, AND DST ASSESSMENTS ARE NULL AND VOID AS THEY WERE ISSUED**

[11] Docket – Vol. II, p. 464.
[12] Docket – Vol. III, pp. 1119-1158.

> **BEYOND THE PRESCRIPTIVE PERIODS PROVIDED BY LAW; AND** [*Emphasis on the original*][13]
>
> **PRAYER**
>
> **WHEREFORE**, Petitioner respectfully prays that this Court render judgment ordering the **CANCELLATION AND WITHDRAWAL** of Respondent's assessment of deficiency income tax (IT), expanded withholding tax (EWT), final withholding tax (FWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST) for taxable year (TY) 2009 in the aggregate amount of Php231,845,147.94, inclusive of increments[.]
>
> Other just and equitable reliefs are likewise prayed for. [*Boldfacing on the original; underscoring supplied*][14]

Clearly, in the present petition, petitioner only seeks the cancellation and withdrawal of its deficiency IT, EWT, FWT, FWT, FBT, IAET and DST assessments. Glaringly absent from the present appeal is petitioner's dispute on the VAT deficiency assessment amounting to ₱2,020,960.80, which the CIR already cancelled in his Decision.

It is settled that what determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint and the character of the relief sought.[15] The courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party.[16] A party is entitled only to such relief consistent with and limited to that sought by the pleadings or incidental thereto; otherwise, a trial court would be acting beyond its jurisdiction if it grants relief to a party beyond the scope of the pleadings.[17] They cannot also grant relief without first ascertaining the evidence presented in support thereof. Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court.[18]

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[13] *Id.*, p. 1124.
[14] *Id.*, p. 1157.
[15] *International Container Terminal Services, Inc. v. City of Manila*, G.R. No. 185622, October 17, 2018, citing *Sunny Motors Sales, Inc. v. Court of Appeals*, G.R. No. 119900, August 16, 2001; *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013.
[16] *Diona v. Balangue, et al.*, G.R. No. 173559, January 7, 2013.
[17] *Central Visayas Finance Corporation v. Spouses Adlawan*, G.R. No. 212674, March 25, 2019.
[18] *Diona v. Balangue, et al.*, G.R. No. 173559, January 7, 2013.

Further, under Section 4(b), Rule 141 of the Rules of Court,[19] the basis of the legal fees for an action or proceeding filed before the Court is the amount of the **disputed tax assessment**, inclusive of interest, penalties, and surcharges, among others.

To reiterate, petitioner never alleged in the nature of its petition, much less in the prayer portion thereof, its dispute on the VAT deficiency assessment to serve as basis for the Court in computing and arriving at the proper amount of filing fee due thereon, as required under Section 4(b), Rule 141 of the Rules of Court.

Suppose petitioner intended to protest its deficiency VAT assessment and to seek a refund of its payment of ₱2,020,960.80, petitioner should have included the said amount in its petition so that it may pay proper filing fees. Instead, only the amount of ₱231,845,147.94 (excluding ₱2,020,960.80) was used as the basis of the Court in computing petitioner's filing fees, considering that it only appealed its deficiency IT, EWT, FWT, FBT, IAET and DST assessments for TY 2009. The Court has no jurisdiction over the VAT assessment for non-payment of the correct docket fees.[20] Consequently, the Court could only take cognizance of the **disputed assessments** amounting to ₱231,845,147.94 and nothing more.

The Supreme Court ruling in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[21] affirming the Court's authority to rule upon an issue not raised by the parties is inapplicable in this case since the requirements for a refund of the deficiency VAT assessment is not a related issue necessary to fully dispose of the disputed IT, EWT, FWT, FBT, IAET, and DST assessments. More importantly, the Court could not acquire jurisdiction over the deficiency VAT assessment for its

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[19] SEC. 4. *Clerks of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeals.*

...

(b) FOR FILING AN ACTION OR PROCEEDING WITH THE COURT OF TAX APPEALS
1. FOR FILING AN ACTION OR PROCEEDING, INCLUDING PETITION FOR INTERVENTION, AND FOR ALL SERVICES IN THE SAME, IF THE SUM CLAIMED OR **THE AMOUNT OF DISPUTED TAX** OR CUSTOMS **ASSESSMENT, INCLUSIVE OF INTEREST, PENALTIES AND SURCHARGES, DAMAGES OF WHATEVER KIND AND ATTORNEY'S FEES** OR VALUE OF THE ARTICLE OF PROPERTY IN SEIZURE CASES, IS:

...

H) P7,500,000.00 OR MORE ON THE FIRST P7,500,000.00, THE FEE SHALL BE P50,500.00 AND FOR EACH P1,000.00 IN EXCESS OF P7,500,000.00 — 10.00
PROVIDED THAT **FOR ASSESSMENTS BEYOND P50 MILLION, THE FILING FEE FOR THE EXCESS SHALL BE THE EQUIVALENT OF ONE-HALF (1/2) OF ONE (1%) PER CENTUM.** [*Emphasis supplied*]

[20] *Gaw, Jr. v. Commissioner of Internal Revenue*. G.R. No. 222837, July 23, 2018, citing *Gipa, et al. v. Southern Luzon Institute*. G.R. No. 177425, June 18, 2014.

[21] G.R. No. 183408, July 12, 2017.

non-appeal to this Court. Stated differently, there is no deficiency VAT assessment to decide on because not only was it cancelled by the CIR at the administrative level, but it also was not appealed by petitioner to this Court, thereby rendering it final and executory.[22]

In ruling that the partial payments (applied by the CIR to the deficiency VAT assessment) should be refunded pursuant to the void assessment, the *ponencia* cites the case of the *City of Manila v. Cosmos Bottling Corp.* (*Cosmos*):[23]

> (b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes. In truth, **it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.**

I humbly submit that *Cosmos* is inapplicable in this case as *Cosmos* speaks of the remedy under Section 195[24] of the Local Government Code (LGC), where a refund of local taxes paid under protest is possible in an assessment case.

The availability of the remedy of refund in both assessment and refund of local taxes under Sections 195 and 196 of the LGC, respectively, was affirmed in *International Container Terminal Services, Inc. v. City of Manila*,[25] citing *Cosmos*:

> Following [*Cosmos*], **refund is available under both Sections 195 and 196 of the Local Government Code**: for Section 196, because it is the express remedy sought, and **for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid**. Whether the remedy availed of was under Section 195 or Section 196 is not

[22] See *Republic v. Albert*, G.R. No. L-12996, December 28, 1961.
[23] G.R. No. 196681, June 27, 2018.
[24] SEC. 195. *Protest of Assessment*. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
[25] G.R. No. 185622, October 17, 2018.

> determined by the taxpayer paying the tax and then claiming a refund.
>
> What determines the appropriate remedy is the local government's basis for the collection of the tax. [*Emphasis supplied*]

However, since the present case involves the assessments of internal revenue taxes and not local taxes, the Court must decide within the confines of the Tax Code, where refund of tax payment under protest is strictly governed by Section 229 thereof:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - **no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, **whether or not such tax, penalty, or sum has been <u>paid under protest or duress</u>**.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. [*Emphasis supplied*]

Under the law, even if the Court could take cognizance of the deficiency VAT assessment and order its refund, petitioner must observe the *mandatory and jurisdictional* two (2)-year period for filing both administrative and judicial claims for refund of erroneously collected tax under Section 229 of the Tax Code.

To recall, petitioner paid the amount of ₱2,020,960.80 on June 6, 2014, which petitioner alleges had settled its IT, EWT, VAT, and FBT assessments for TY 2009.[26] To claim for refund,

[26] Petition for Review, pars. 33-39, Docket – Vol. I, pp. 16-18; Memorandum, pars. 57-65, Docket – Vol. III, pp. 1134-1135.

petitioner should have filed the required administrative and judicial claims within two (2) years from payment of ₱2,020,960.80 or on or before June 6, 2016.

Even if the Court were to dispense with the requirement of filing an administrative claim for refund within two (2) years from payment on June 6, 2014, as it becomes a useless formality in view of the CIR's denial of petitioner's protest,[27] the judicial claim is still filed out of time considering that the present Petition for Review was filed only on November 22, 2019, which is beyond two (2) years from the date of payment.

From the foregoing, I vote to **GRANT** petitioner Kuehne + Nagel, Inc.'s Petition for Review. As prayed for by petitioner, the assessments against petitioner for deficiency income tax, expanded withholding tax, final withholding tax, fringe benefits tax, improperly accumulated earnings tax, and documentary stamp tax for taxable year 2009 are **CANCELLED** and **SET ASIDE.** Respondent is **ENJOINED** from proceeding with the collection of the said taxes in this case.

However, I respectfully **DISAGREE** with the order to refund or issue a tax credit certificate for ₱2,020,960.80, representing full payment of petitioner's deficiency VAT assessment, on the ground of the Court's ***lack of jurisdiction*** to make such an order.

LANEE S. CUI-DAVID
Associate Justice

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[27] See *Vda. de San Agustin v. CIR*, G.R. No. 138485, September 10, 2001.