REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10181

Members:

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

Promulgated:

FEB 13 2026

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DECISION

RINGPIS-LIBAN, *J.*:

The present *Petition for Review* prays that the Court issue an order granting the instant petition and reversing respondent's *Final Decision on Disputed Assessment* (FDDA) dated September 4, 2019.[1]

THE PARTIES

Petitioner Lepanto Consolidated Mining Company is a duly organized and existing domestic corporation engaged in mining gold and other precious metals with principal place of business at BA Lepanto Bldg., Paseo de Roxas, Makati City.[2]

[1] Summary of the Case, Pre-Trial Order dated February 14, 2022, Docket – Vol. 2, p. 533.
[2] Exhibits "P-1" to "P-2" and "4", USB filed on March 5, 2024.

On the other hand, Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who has authority under Section 4 of the National Internal Revenue Code (NIRC), as amended, to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.[3]

THE FACTS

On November 24, 2014, petitioner received the *Letter of Authority* (LOA) No. LOA-121-2014-00000165/SN eLA201100087160,[4] authorizing Revenue Officers (ROs) Ana Veronica Asis, Rogelio Gonzales, Ma Daisy Loyola, Cletofel Parungao, and Group Supervisor (GS) Edgar Espiritu of LT Excise Audit Division, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2013 to December 31, 2013.

Respondent then sent petitioner a copy of the *Preliminary Assessment Notice* (PAN) dated September 29, 2016 on September 30, 2016,[5] assessing petitioner of deficiency income tax, value-added tax (VAT), excise tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), fringe benefit tax (FBT), final tax, withholding of VAT (FWVAT), documentary stamp tax (DST), and increments, for the taxable year January 1, 2013 to December 31, 2013, in the total amount of ₱519,904,765.97.

Thereafter, the *Memorandum* dated October 21, 2016[6] was issued addressed to Ms. Teresita M. Angeles, OIC-Assistant Commissioner Large Taxpayers Service, by the assigned ROs, stating, among others, that the Office of the ACIR received petitioner's letter-protest to the PAN, with attached schedules and/or reconciliations, on October 17, 2016, but they deemed it unwarranted to further deliberate on the submitted schedules and reconciliations due to petitioner's failure to respond to the PAN, and file the said protest within fifteen (15) days from receipt of the PAN.

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[3] Par. 3, *Amended Petition for Review*, Docket – Vol. 2, pp. 866 to 867 vis-à-vis pars. 1 and 4, *Amended Answer*, Docket – Vol. 3, p. 916.

[4] Par. 4, *Amended Petition for Review*, Docket – Vol. 2, p. 866 vis-à-vis pars. 2 and 4, *Amended Answer*, Docket – Vol. 3, pp. 916 to 917; Exhibit "R-1", BIR Records (Exhibit "R-9") – Folder 1-C, p. 21.

[5] Par. 5, *Amended Petition for Review*, Docket – Vol. 2, p. 866 vis-à-vis pars. 3 and 14, *Amended Answer*, Docket – Vol. 3, pp. 916 to 917; Exhibits "R-4" to "R-4-A", BIR Records (Exhibit "R-9") – Folder 1-C, pp. 520 to 530.

[6] Exhibit "R-5", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 609 to 610.

On October 17, 2016, respondent issued *Assessment Notices.*[7]

Subsequently, on November 2, 2016, petitioner received the *Final Assessment Notice/Formal Letter of Demand* (FAN/FLD) dated October 25, 2016,[8] for its alleged deficiency income tax, VAT, excise tax, WTC, EWT, FBT, final tax, FWVAT, DST, and increments, for the taxable year 2013 in the aggregate amount of ₱528,528,129.82.

Respondent then issued the *Final Decision on Disputed Assessment* (FDDA) dated September 4, 2019,[9] showing petitioner's deficiency tax liabilities including increments in the total amount of ₱440,349,830.85.

On October 4, 2019, petitioner filed the present *Petition for Review.*[10]

Thereafter, on January 14, 2020, respondent filed his *Answer.*[11]

In the Resolution dated January 20, 2020,[12] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on February 5, 2020. However, the PMC-CTA issued the *No Agreement To Mediate* dated November 24, 2020,[13] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference was initially set on April 13, 2021,[14] but was later reset to, and held on November 10, 2021.[15] Prior thereto, petitioner's *Pre-Trial Brief* was posted on April 14, 2021,[16] while respondent's *Pre-Trial Brief* was submitted on July 28, 2021.[17]

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[7] Exhibit "R-6-B", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 597 to 607.

[8] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI) Docket – Vol. 2, p. 518; Exhibit "R-6", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 611 to 621.

[9] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 518; Exhibit "R-8", BIR Records (Exhibit "R-9") – Folder 4, pp. 251 to 269.

[10] Docket – Vol. I, pp. 6 to 38.

[11] Docket – Vol. I, pp. 411 to 427.

[12] Docket – Vol. I, pp. 430 to 431.

[13] Docket – Vol. I, p. 443.

[14] Resolution dated December 3, 2020, Docket – Vol. I, pp. 445 to 446.

[15] Resolution dated June 3, 2021, Docket – Vol. I, pp. 462 to 463; Notice of Resetting dated October 4, 2021, Docket – Vol. 2, p. 484; Minutes of hearing held on, and Order dated, November 10, 2021, Docket – Vol. 2, pp. 492 to 495.

[16] Docket – Vol. I, pp. 447 to 453.

[17] Docket – Vol. I, pp. 477 to 481.

On October 26, 2021, respondent transmitted the *BIR Records* for this case, consisting of five (5) folders.[18]

On December 15, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[19] which was admitted and approved by the Court in its Resolution dated January 3, 2022,[20] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 14, 2022, was then issued.[21]

Thereafter, petitioner filed an *Omnibus Motion to Cancel Assessment with Prayer to Suspend Collection of Taxes and Defer Proceedings in the Main Case* on September 13, 2022,[22] praying for the Court to: (a) issue an Order enjoining the respondent to suspend collection of taxes during the pendency of this case; (b) issue an Order to defer further proceedings in the main case pending resolution of the said *Motion*; (c) declare the FAN/FLD of the respondent for taxable year 2013 deficiency assessment as void or invalid and without force and effect, thus, cancelled; (d) declare respondents right to assess and collect the alleged deficiency assessment to have been barred by prescription; and (e) other reliefs just and equitable under the foregoing premises are likewise prayed for by petitioner. Respondent then submitted his *Comment (on Omnibus Motion to Cancel Assessment with Prayer to Suspend Collection of Taxes and Defer Proceedings in the Main Case)* on October 10, 2022,[23] while *Petitioner's Reply (To respondent's Comment dated 10 October 2022)* was filed on October 18, 2022.[24]

In the meantime, the *Report* of the Independent Certified Public Accountant (ICPA) was submitted on September 30, 2022.[25]

In the Resolution dated January 6, 2023,[26] the Court: (1) denied petitioner's *Motion to Cancel Assessment* and *Motion to Suspend Collection of Taxes*; and (2) considered petitioner's *Motion to Defer* the proceedings in the main case moot and academic in view of the promulgation of the said Resolution.

On January 31, 2023, petitioner filed a *Motion for Leave to File Amended Petition for Review and Admit the Attached Amended Petition for Review*,[27] attaching

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[18] *Compliance* dated October 25, 2021, Docket – Vol. 2, pp. 485 to 487.

[19] Docket – Vol. 2, pp. 518 to 521.

[20] Docket – Vol. 2, p. 525.

[21] Docket – Vol. 2, pp. 533 to 538.

[22] Docket – Vol. 2, pp. 592 to 602.

[23] Docket – Vol. 2, pp. 730 to 739.

[24] Docket – Vol. 2, pp. 759 to 764.

[25] Docket – Vol. 2, pp. 627 to 728.

[26] Docket – Vol. 2, pp. 846 to 859.

[27] Docket – Vol. 2, pp. 860 to 862.

therewith its *Amended Petition for Review.*[28] In the said *Motion*, petitioner claimed that there were meritorious and crucial grounds available for petitioner that were not raised in the original *Petition for Review*, which related to the intrinsic validity of the FLD and the corresponding *Assessment Notices* as these were arrived at without affording the petitioner its right to due process of law. Respondent submitted his *Comment/Opposition (on Motion to Amend Petition for Review)* on February 21, 2023.[29]

In the Resolution dated June 23, 2024,[30] the Court: (1) granted petitioner's *Motion for Leave to File Amended Petition for Review and Admit the Attached Amended Petition for Review;* (2) admitted the attached *Amended Petition for Review;* and (3) ordered respondent to submit his *Answer* to the *Amended Petition for Review* within ten (10) days from notice. Respondent, however, failed to file his comment thereon.[31] Thus, in the Resolution dated September 8, 2023,[32] the Court, *inter alia*, considered respondent's *Answer*, filed on January 14, 2020, as his *Answer* to petitioner's *Amended Petition for Review.*

On September 22, 2023, respondent filed a *Motion to Admit Attached Amended Answer*,[33] attaching therewith his *Amended Answer*,[34] interposing the following special and affirmative defenses, to wit: (1) petitioner was not denied due process; and that (2) petitioner is liable for the following deficiency taxes: (a) income tax; (b) VAT; (c) excise tax; (d) WTC; (e) EWT; (f) FWT; (g) withholding VAT; and (h) DST. Petitioner then submitted its *Comment/Opposition (Against respondent's Motion to Admit Amended Answer)* on October 2, 2023.[35] Finding merit in respondent's *Motion*, the Court, in its Resolution dated October 26, 2023,[36] granted the same, and withdrew and set aside the previous Resolution dated September 8, 2023.

Trial ensued and both parties presented and offered their respective testimonial and documentary evidence.

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[28] Docket – Vol. 2, pp. 865 to 891, and 863 to 864 (for the *Verification and Certification of Non-Forum Shopping* and *Secretary's Certificate*).

[29] Docket – Vol. 3, pp. 895 to 899.

[30] Docket – Vol. 3, pp. 904 to 907.

[31] Records Verification dated August 10, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 908.

[32] Docket – Vol. 3, pp. 910 to 911.

[33] Docket – Vol. 3, pp. 912 to 915.

[34] Docket – Vol. 3, pp. 916 to 934.

[35] Docket – Vol. 3, pp. 937 to 939.

[36] Docket – Vol. 3, pp. 942 to 943.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rose Marie S. Nacpil, [37] the Court-commissioned ICPA; [38] and (2) Mr. Ramon T. Diokno,[39] petitioner's Chief Finance Officer.

The *Petitioner's Formal Offer of Evidence* was filed on March 5, 2024,[40] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on March 13, 2024.[41] In the Resolution dated May 24, 2024,[42] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimony of Revenue Officer (RO) Ana Veronica Asis.[43]

On June 13, 2024, *Respondent's Formal Offer of Evidence* was filed,[44] while *Petitioner's Comment/ Opposition on Respondent's Formal Offer of Evidence* was submitted on June 18, 2024.[45] In the Resolution dated November 29, 2024,[46] the Court admitted all of respondent's offered exhibits.

Petitioner then filed a *Motion for Leave to Amend Formal Offer of Evidence and Admit the Attached Amended Formal Offer of Evidence* on January 2, 2025,[47] attaching therewith its *Amended Formal Offer of Evidence.*[48] In the said *Motion*, petitioner claims that the Judicial Affidavit of Mr. Ramon T. Diokno should have been marked as Exhibit "P-15", and his signature therein as Exhibit "P-115-a", and not as Exhibit "P-114" and "P-114-a" as mentioned in the *Formal Offer of Evidence*; and praying, among others, that the filing of memorandum be suspended pending the resolution of its *Motion.* In the Resolution dated February 5, 2025,[49] the Court, *inter alia*: (1) partially granted petitioner's *Motion for Leave to Amend*

[37] Exhibits "P-113", Docket – Vol. 2, pp. 742 to 756; Minutes of the hearing held on, and Order dated, November 9, 2023, Docket – Vol. 3, pp. 944 to 945.

[38] *Oath of Commission* dated March 3, 2022, Docket – Vol. 2, p. 554; Minutes of the hearing held on, and Order dated, March 3, 2022, Docket – Vol. 2, pp. 553, and 556 to 557, respectively.

[39] Exhibit "P-115", Docket – Vol. 3, pp. 949 to 959; Minutes of the hearing held on, and Order dated, February 15, 2024, Docket – Vol. 3, pp. 1058 to 1059.

[40] Docket – Vol. 3, pp. 1061 to 1071.

[41] Docket – Vol. 3, pp. 1073 to 1076.

[42] Docket – Vol. 3, pp. 1080 to 1081.

[43] Docket – Vol. I, pp. 468 to 476; Minutes of the hearing held on, and Order dated, May 28, 2024, Docket – Vol. 3, pp. 1084, and 1086 to 1087, respectively; Minutes of the hearing held on, and Order dated, September 10, 2024, Docket – Vol. 3, pp. 1131 to 1133.

[44] Docket – Vol. 3, pp. 1102 to 1108.

[45] Docket – Vol. 3, pp. 1110 to 1112.

[46] Docket – Vol. 3, pp. 1135 to 1136.

[47] Docket – Vol. 3, pp. 1138 to 1140.

[48] Docket – Vol. 3, pp. 1141 to 1151.

[49] Docket – Vol. 3, pp. 1221 to 1222.

Formal Offer of Evidence and Admit the Attached Amended Formal Offer of Evidence; (2) admitted the *Attached Amended Formal Offer of Evidence;* (3) admitted Exhibits "P-114", "P-115", and "P-115-a"; and (4) rendered moot and academic petitioner's prayer to suspend the period to file a memorandum.

Petitioner's Memorandum was filed on January 15, 2025,[50] while respondent filed a *Manifestation* on February 19, 2025,[51] stating that he will adopt the arguments he raised in his *Amended Answer* dated September 21, 2023, as his *Memorandum.*

The case was submitted for decision on February 27, 2025.[52]

THE ISSUES

The parties submit the following issue for this Court's resolution, to wit:

> "Whether petitioner is liable to pay ₱440,349,830.85 representing alleged deficiency income tax, VAT, WTC, EWT, FWT, FBT, excise tax, final withholding VAT, documentary stamp tax and increments for the taxable year 2013."[53]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the LOA was improperly served upon petitioner by respondent; that petitioner was deprived of due process of law; that respondent's right to collect has already prescribed; that respondent's right to assess VAT and withholding taxes has likewise prescribed; and that the assessments lack factual and legal bases.

Respondent contends that petitioner was not denied due process; and that petitioner is liable for deficiency income tax, VAT, excise tax, WTC; EWT, final withholding tax, withholding VAT, and DST assessments.

THE RULING OF THE COURT

The present *Petition for Review* is meritorious.

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[50] Docket – Vol. 3, pp. 1154 to 1217.

[51] Docket – Vol. 3, pp. 1221 to 1226.

[52] Minute Resolution dated February 27, 2025, Docket – Vol. 3, p. 1299.

[53] Issue, JSFI, Docket – Vol. 2, p. 519.

The LOA No. LOA-121-2014-0000165 was properly served on petitioner.

Petitioner, after alleging that respondent was required to serve the LOA on the taxpayer or his authorized representatives only, stated in paragraph 10 of its *Memorandum* that a scanned and cropped copy of the lower portion of the LOA showed that the same was received by a certain "Rommel" on "12/15/2014". For petitioner, the lack of details thereon showed the respondent failed to properly serve the LOA.[54]

The Court is not convinced.

Upon comparison of the above-stated scanned and cropped copy of the LOA with that of the original copy[55] thereof attached in the *BIR Records*, the Court notes that, unlike the scanned copy, the "RECEIVED BY" portion of the original copy of the LOA contains a signature over the printed name "Rommel M. Songcuan" with a date of receipt on "12/15/2014".

The Court likewise notes that, although Mr. Rommel M. Songcuan's position or authority to receive the LOA on behalf of petitioner was not indicated in the original LOA, his name and position as petitioner's "Accounting Supervisor" nonetheless appear in other part of the BIR Records, particularly, in his very own letter dated April 6, 2015,[56] addressed to GS Espiritu and RO Ana Veronica Asis, where not only did he acknowledge the receipt of the LOA on "December 15, 2014", but also submitted documents pursuant to the LOA.

Considering that the scanned and cropped lower portion of the LOA does not appear to have accurately reproduced the original copy as required under Section 4, Rule 130 of the Revised Rules on Evidence,[57] the Court cannot give

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[54] Pars. 10 to 11, *Petitioner's Memorandum*, Docket – Vol. 3, pp. 1157 to 1158.

[55] Exhibit "R-1", BIR Records (Exhibit "R-9") – Folder 1-C, p. 21.

[56] BIR Records (Exhibit "R-9") – Folder 1-C, p. 23.

[57] "SECTION 4. *Original of Document.* —

(a) An 'original' of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An 'original' of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an 'original.'

(b) A 'duplicate' is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

credence to the same. Thus, the Court is not convinced that the subject LOA was improperly served upon petitioner by respondent.

The need for the issuance of the Notice of Informal Conference (NIC) is not required in the present case.

Petitioner, relying on the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[58] and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[59] alleged that its right to due process was violated when no NIC was issued by respondent, and that no such conference was conducted with petitioner.[60]

Respondent, on the other hand, argues that during the date of audit, no NIC was required by Revenue Regulations (RR) No. 18-2013, and such requirement was only reinstated by virtue of RR No. 7-2018. [61]

The Court agrees with respondent.

Section 228 of the NIRC of 1997, as amended, provides as follows:

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

(c) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original. (4a)"

[58] G.R. No. 215957, November 9, 2016.

[59] G.R. No. 172598, December 21, 2007.

[60] Pars. 12 to 13, *Petitioner's Memorandum*, Docket – Vol. 3, p. 1158.

[61] Pars. 14 to 15, Special and Affirmative Defenses, *Amended Answer*, Docket – Vol. 3, pp. 918 to 919.

> **or his duly authorized representative shall issue an assessment based on his findings.**" *(Emphases added)*

The implementation of the above-quoted Section 228, RR No. 12-99[62] issued on September 6, 1999, required the issuance of a NIC as part of the due process requirement in the issuance of a deficiency tax assessment. Section 3.1.1 of RR No. 12-99, as originally worded, partly reads:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1. *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted."

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[62] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

However, the requirement to issue an NIC was subsequently *removed* in RR No. 18-2013,[63] which was issued on November 28, 2013, by deleting Section 3.1.1 thereof. Section 2 of RR No. 18-2013 provides:

> "SECTION 2. *Amendment.* — **Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference**, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:
>
> xxx xxx xxx" *(Emphasis added)*

Further, it was only when the Secretary of Finance promulgated RR No. 7-2018[64] on January 22, 2018, that the NIC and the conduct of informal conference were reinstated, to wit:

> "SECTION 2. *Amendment.* — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows:
>
>> 'SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>>
>> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>>
>> 3.1.1 **Notice for Informal Conference.** — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. **If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer <u>shall be informed, in writing</u>**, by the

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

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

> Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.**
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. **If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable**, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall **endorse the case** within seven (7) days **from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.**
>
> Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations." *(Emphases and underscoring added)*

In this case, considering that both the LOA dated November 24, 2014[65] and the PAN dated September 29, 2016[66] were both issued at the time RR No. 18-2013 was still effective, the requirement therefore for the issuance of the NIC was not mandatory. Thus, the absence thereof in the present case does not constitute a violation of petitioner's right to due process.

The Assessment Notices dated October 17, 2016, and the FAN/FLD dated October 26, 2016 were not issued in accordance with law.

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[65] Exhibit "R-1", BIR Records (Exhibit "R-9") – Folder 1-C, p. 21.

[66] Exhibits "R-4" to "R-4-A", BIR Records (Exhibit "R-9") – Folder 1-C, pp. 520 to 530.

To recall, the aforequoted provision of Section 228 of the NIRC of 1997 provides that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[67] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[68] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[69] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void but also finds no validation in any provision in the Tax Code.[70]

In relation thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, provides, in part, as follows:

> "3.1.1 *Preliminary Assessment Notice* (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response,** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

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

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

[70] Ibid., citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).

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3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX 'B' hereof). *(Emphases added)*

Based on the foregoing provisions, it is evident that if it was determined that there exists sufficient basis to assess the taxpayer for deficiency taxes, respondent or his duly authorized representative shall issue to the taxpayer a PAN, containing the proposed assessments, and the facts, law, rules and regulations or jurisprudence on which the proposed assessment is based.[71] Upon receipt of the PAN, the taxpayer is granted fifteen (15) days, within which to file a reply. Moreover, it is only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN, as categorically ruled in *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue,* [72] citing *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,*[73] to wit:

"In the very recent case *of Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.**'

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As the Court also held in *Yumex*, '[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.' 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response." *(Emphasis added)*

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[71] Refer to *Commissioner of Internal Revenue vs. Unioil Corp.*, supra, citing *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, 821 Phil. 664 (2017).
[72] G.R. No. 249153, September 12, 2022.
[73] G.R. No. 222476, May 5, 2021.

Records show that the PAN was received by petitioner on September 30, 2016.[74] Pursuant to Section 3 of RR No. 12-99, as amended, petitioner had fifteen (15) days or until October 15, 2016, within which to respond or to reply to the said PAN. But since October 15, 2016, fell on a Saturday, petitioner had until the next working day, October 17, 2016, Monday, to file its reply to the PAN.

However, the *Memorandum* dated October 21, 2016 issued by ROs Ana Veronica Asis, Ma Daisy Loyola, Cletofel Parungao, and Rogelio Gonzales,[75] attached to the *BIR Records*, shows that while petitioner's letter-protest to the PAN was acknowledged to have been received by the Office of the ACIR, Large Taxpayers Service, on October 17, 2016, the same was nonetheless considered to have been belatedly filed and, thus, the attached schedules and/or reconciliations to petitioner's letter-protest were not considered in the issuance of the subject FAN/FLD with *Details of Discrepancies*.[76] Pertinent portions of the said *Memorandum* are herein quoted for easy reference, *viz*.:

> "The results of said investigation were communicated to Lepanto Consolidated Mining Co. (LCMC) through a Preliminary Assessment Notice (PAN) dated September 29, 2016. The PAN was duly received by their authorized representative at their registered address on September 30, 2016. xxx
>
> xxx xxx xxx
>
> **Attached to the letter-protest to the PAN are schedules and/or reconciliations for consideration but lacking in source documents to support the schedules.** These were marked as Annexes A-0 to A-17; Annex B to Annex J. *(please refer to pp. 1-546)*
>
> **Nevertheless, the undersigned deemed it unwarranted to further deliberate the schedules and reconciliations attached to the letter-protest due to the taxpayer's failure to respond to the PAN and file the aforesaid protest within 15 days from receipt of the Preliminary Assessment Notice *(date of receipt of PAN by the taxpayer was on September 30, 2016 at the taxpayer's registered address, approximately 11:00 A.M.)* pursuant to Section 3.1.1 of Revenue Regulation No. 18-2013, in relation to Section 228 of the NIRC.**

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[74] Exhibits "R-4" to "R-4-A", BIR Records (Exhibit "R-9") – Folder 1-C, pp. 520 to 530.

[75] Exhibit "R-5", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 609 to 610.

[76] Exhibit "R-6", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 611 to 621.

> As explicitly provided for under Revenue Regulation No. 18-2013 which states, '[I]*f the* taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, *he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.'*
>
> In view of the above, the undersigned restated all of the discrepancies noted in the Preliminary Assessment Notice, recommending an aggregate amount of P 528,528,129.82 in the Final Assessment Notice xxx." *(Emphases added)*

Correspondingly, respondent clearly erred in considering petitioner's letter-protest to the PAN as belatedly filed on October 17, 2016[77]. Thus, the premature issuance by respondent of the subject *Assessment Notices* on October 17, 2016,[78] prior to the lapse of the fifteen (15)-day period given to petitioner, within which to respond to the PAN, as mandated under Section 228 of the NIRC of 1997, and RR No. 12-99, as amended by RR No. 18-2013, deprives petitioner of the opportunity to dispute the PAN and to present evidence against it.

It equally bears noting that even if respondent issued the subject FAN/FLD with *Details of Discrepancies* on October 25, 2016,[79] or beyond fifteen (15) days from petitioner's receipt of the subject PAN on September 30, 2016, the issuance thereof is still not in accordance with law, as the same was issued without considering petitioner's defenses and explanation in its protest-letter, as well as the schedules and/or reconciliations attached thereon, as can be stated in the above-stated *Memorandum* dated October 27, 2016, and based on the following testimony of RO Ana Venorica Asis during the hearing held on September 10, 2024, to wit:[80]

> "ATTY. DADULA :
>
> Q. Thank you, Your Honor. And you also said, I would like to emphasize on the reply, you said that you received the reply from the petitioner. Correct?
>
> RO ASIS:
>
> A. I received the reply from our division.

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[77] BIR Records (Exhibit "R-9") – Folder 3-C, pp. 547 to 558.

[78] Exhibit "R-6-B", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 598 to 607.

[79] Exhibit "R-6" to "R-6-A", BIR Records (Exhibit "R-9") – Folder 3-C, pp. 611 to 621.

[80] Transcript of Stenographic Notes during the hearing held on September 10, 2024, pp. 11 to 13.

ATTY. DADULA:
Q. No, no. Your office received a reply from the petitioner.

RO ASIS:
A. **On October 17, 2016, Attorney**.

ATTY. DADULA :
Q. And precisely, there were explanations and arguments protesting the assessments. Correct?

RO ASIS:
A. Correct.

ATTY. DADULA :
Q. **And those explanations and arguments, do you agree with me, should have been addressed in the FLD or the FAN? Should it have been addressed and discussed in the FLD?**

JUSTICE RINGPIS-LIBAN :
The arguments in the protest should have been addressed or should have been answered in the Final Assessment Notice.

ATTY. DADULA :
Q. My question is, do you know that particular rule?

RO ASIS:
A. We have here...*(interrupted)*

ATTY. DADULA:
Q. No. Do you know that the arguments of the petitioner should have been addressed in the FLD?

RO ASIS:
A. On the Details of Discrepancies, sir.

ATTY. DADULA :
Q. Do you know the rule : yes or no?

JUSTICE RINGPIS-LIBAN :
Do you know that rule that you should answer the...

RO ASIS:
A. I know, Your Honor.

JUSTICE RINGPIS-LIBAN :

Okay, okay. Yes, she knows that rule. Now, what is the question? Was that addressed? Was that the argument they stated in their protest? Was this addressed in any of the documents, documents in the FAN, FLD, or Details of Discrepancy?

RO ASIS:

A. **Their reply was not incorporated in our Details of Discrepancies, Your Honor.**" *(Emphases added)*

Based on the foregoing testimony, it is clear that both the subject *Assessment Notices* dated October 17, 2016 and FAN/FLD dated October 25, 2016 were issued without addressing any of the defenses and arguments made by petitioner in its letter-protest to the PAN.

Pertinently, the Court reiterates that the PAN, FAN/FLD and FDDA, must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FAN/FLD and/or FDDA shall be void. The case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[81] is instructive on this matter, *viz.*:

"**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

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

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The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. **<u>However, these powers must 'be exercised reasonably and [under] the prescribed procedure.'</u> The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

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In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **<u>Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons</u>.**

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In *Ang Tibay v. The Court of Industrial Relations*,[82] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

[82] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

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

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Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

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

shall be void. Section 3.1.2[83] of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.**

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

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The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancies attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she**

[83] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.

must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter **null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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In *Commissioner of Internal Revenue v. Reyes*,[84] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[85]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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[84] 516 Phil. 176 (2006) [Per *C.J.* Panganiban, First Division].

[85] 241 Phil. 829 (1988) [Per *J.* Cruz, First Division].

> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)
>
> xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. And due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

But as pointed out earlier, respondent erroneously considered petitioner's letter-protest to the PAN as belated filed and, thus, petitioner's defenses and arguments raised in the said letter-protest were no longer discussed or incorporated in the *Assessment Notices* dated October 17, 2016 and in the *Details of Discrepancies* attached to the FAN/FLD dated October 25, 2016. Consequently, the subject tax assessments are void for violation of petitioner's right to due process.

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the respondent to strictly comply with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.**[86]

In view of the nullity of the subject tax assessments, as above discussed, this Court finds it unnecessary to address the remaining issues or matters raised in the present case.

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[86] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, citing *Tupas vs. Court of Appeals*, G.R. No. 89571, February 6, 1991.

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

Accordingly, the subject tax assessments embodied in both the *Assessment Notices* dated October 17, 2016 and FAN/FLD dated October 25, 2016, issued against petitioner for deficiency income tax, VAT, excise tax, WTC, FBT, EWT, final tax, withholding of VAT, DST, and increments, for the taxable year 2013, are **CANCELLED** and **SET ASIDE**.

Moreover, the FDDA dated September 4, 2019, issued against petitioner for deficiency income tax, VAT, excise tax, WTC, EWT, FBT, final tax, withholding of VAT, and DST, for the same taxable year, in the total amount of ₱440,349,830.85, inclusive of increments, is **REVERSED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA A. MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice