REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GETZ PHARMA (PHILS.), INC., Petitioner,	**CTA CASE NO. 8922** Members:
– versus –	**DEL ROSARIO**, *P.J.*, Chairperson, **FABON-VICTORINO**, and **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 17 2020 ; 9:35 am

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DECISION

DEL ROSARIO, *P.J.*:

Before the Court is the Petition for Review[1] filed by Getz Pharma (Phils.), Inc. (petitioner) on November 7, 2014, praying that the Court render judgment ordering the cancellation and withdrawal of the assessment issued by the Commissioner of Internal Revenue (respondent) for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC) for calendar year (CY) 2010 in the total amount of ₱45,810,646.64.

PARTIES

Petitioner is a domestic corporation with principal office at 2/F Tower I, Rockwell Business Center, Ortigas Avenue, Pasig City, and duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 007-184-839.[2]

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[1] Docket Vol. 1, pp. 6-186.

[2] Paragraph II.A.2, Pre-Trial Order (PTO), Docket Vol. 2, p. 915.

Respondent is the duly appointed Commissioner of Internal Revenue[3] (CIR) vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[4]

FACTS

On January 17, 2012, petitioner received Letter of Authority (LOA) No. LOA-43A-2012-00000079 dated January 13, 2012 from the BIR Revenue District Office No. 43-A East Pasig, authorizing Revenue Officer (RO) Reymel Jacinto and Group Supervisor (GS) Jefferson Tabboga to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2010.[5]

On January 13, 2014, petitioner received the Preliminary Assessment Notice (PAN) dated December 27, 2013.[6]

On January 14, 2014, petitioner received the Formal Letter of Demand (FLD) with enclosed four (4) Assessment Notices[7], all dated January 14, 2014, assessing petitioner deficiency taxes in the total amount of ₱45,810,646.04, broken down as follows:[8]

Kind of Tax	Total Amount Due
I. Deficiency Income Tax	₱ 41,211,680.60
II. Deficiency VAT	588,846.03
III. Deficiency EWT	2,350,011.38
IV. Deficiency WTC	1,660,108.03
TOTAL	**₱ 45,810,646.04**

On February 13, 2014 or within thirty (30) days from its receipt of the FLD, petitioner filed its protest[9] against the FLD and requested that the alleged deficiency tax assessments for CY 2010 be cancelled and set aside.[10]

[3] The incumber CIR is Hon. Caesar R. Dulay.
[4] Paragraph II.A.3, PTO, Docket Vol. 2, p. 915.
[5] Paragraph II.A.4, PTO, Docket Vol. 2, p. 915.
[6] Paragraph II.A.5, PTO, Docket Vol. 2, p. 915.
[7] Exhibits "P-6-a to P-6-d", Docket Vol. 1, pp. 429-432; Exhibit "R-11", BIR Records, pp. 726-729; Referred to as the Final Assessment Notices (FAN) in Paragraph II.A.6 of the PTO, Docket Vol. 2, p. 915.
[8] Paragraph II.A.6, PTO, Docket Vol. 2, p. 915.
[9] Exhibit "P-8" (Letter dated February 13, 2014), Docket Vol. 3, pp. 1144-1166.
[10] Paragraph II.A.7, PTO, Docket Vol. 2, p. 917.

On April 14, 2014 or within sixty (60) days from the filing of its protest, petitioner submitted its supporting documents to the BIR Revenue District Office No. 43A-East Pasig. [11]

Petitioner's protest was unacted by respondent or by his duly authorized representative. Thus, petitioner filed the present Petition for Review on November 7, 2014 which was initially raffled to the Third Division of the Court.

On January 11, 2015, within the extended period, respondent filed his Answer.[12]

On March 3, 2015, petitioner filed a Motion to Set Case for Preliminary Hearing to Resolve Issue on Prescription (With Motion to Set Commissioner's Hearing)[13] which was granted *sans* respondent's objection thereto[14] in the Resolution dated April 15, 2015.[15]

In the Preliminary Hearing on the issue of prescription, petitioner presented Mr. Isagani B. Bobis[16] as its witness.[17] On August 10, 2015, within the extended period,[18] petitioner filed its Formal Offer of Evidence (Re: Preliminary Hearing to Resolve Issue on Prescription).[19] In the Resolution dated September 2, 2015,[20] the Court admitted in evidence all of petitioner's offered exhibits without respondent's comment thereon despite due notice.[21]

Respondent, on the other hand, presented RO Jacinto[22] as its witness in the Preliminary Hearing on the issue of prescription. In the May 17, 2016 Hearing,[23] respondent's right to present further evidence on the issue of prescription was deemed waived in view of the non-appearance of respondent's counsel. On June 1, 2016, respondent

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[11] Paragraph III. 8, Petition for Review, Docket Vol. 1, p. 9; Exhibit "P-9", Docket Vol. 3, pp. 1167-1178.
[12] Docket Vol. 1, pp. 193-196; Answer is unsigned.
[13] Docket Vol. 1, pp. 205-253.
[14] Records Verification dated April 6, 2015, Docket Vol. 1, p. 275.
[15] Docket Vol. 1, pp. 277-278.
[16] Exhibit "P-60" (Sworn Statement of Bobis), Docket Vol. 1, pp. 514-520.
[17] Minutes of the May 5, 2015 Hearing, Docket Vol. 1, p. 387; Resolution dated May 19, 2015, Docket Vol. 1, pp. 392-393.
[18] Order dated June 10, 2015, Docket Vol. 1, p. 408; Resolution dated June 22, 2015, Docket Vol. 1, pp. 411-412.
[19] Docket Vol. 1, pp. 417-422.
[20] Docket Vol. 2, pp. 523-524.
[21] Records Verification dated August 27, 2015, Docket Vol. 2, p. 521.
[22] Exhibit "R-13" (Judicial Affidavit of RO Jacinto), Docket Vol. 2, pp. 534-540; Minutes of the February 29, 2016 Hearing, Docket Vol. 2, p. 582; Resolution dated March 14, 2016, Docket Vol. 2, pp. 585-586.
[23] Minutes of the May 17, 2016 Hearing, Docket Vol. 2, p. 587; Resolution dated May 30, 2016, Docket Vol. 2, pp. 590-591.

filed a Manifestation/Compliance/Motion to Admit Formal Offer of Evidence (on the Issue of Prescription)[24] which was granted in the Resolution dated June 7, 2016,[25] admitting to form part of the record of the instant case the Formal Offer of Evidence attached to the said Motion.

In the Resolutions dated June 27, 2016[26] and September 15, 2016[27] the Court admitted respondent's offered exhibits except Exhibit "R-1" for failure to present its original for comparison, after considering petitioner's objections thereto.[28]

On November 9, 2016, petitioner filed a Motion for Leave of Court to Admit Memorandum (Re: Preliminary Issue on Prescription)[29] which was granted in the Resolution dated December 14, 2016[30] without respondent's objection thereby admitting to form part of the record, the Memorandum (Re: Preliminary Issue on Prescription) attached to the Motion.

In the Resolution dated February 13, 2017,[31] the Third Division cancelled the assessments for CY 2010 for deficiency VAT for the first three (3) quarters, for deficiency EWT for the months of January to November, and for WTC for the months of January to November due to prescription and stated that the assessments for VAT for the fourth (4th) quarter, EWT for the month of December, and WTC for the month of December of CY 2010 subsist, the validity and legality of which shall be determined during the trial on the merits.

On March 3, 2017, respondent filed a Motion for Reconsideration[32] of the Resolution dated February 13, 2017, which was denied for lack of merit in the Resolution dated May 26, 2017.[33]

The Pre-Trial Conference proceeded on May 30, 2017[34] and on June 8, 2017, the parties filed their Joint Stipulation of Facts and

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[24] Docket Vol. 2, pp. 592-594.
[25] Docket Vol. 2, p. 640.
[26] Docket Vol. 2, pp. 648-649.
[27] Docket Vol. 2, pp. 685-686.
[28] Comment (to Respondent's Formal Offer of Evidence), Docket Vol. 2, pp. 641-646; Opposition (Re: Respondent's Motion for Reconsideration dated July 11, 2016), Docket Vol. 2, pp. 665-669.
[29] Docket Vol.2, pp. 687-691.
[30] Docket Vol. 2, p. 712.
[31] Docket Vol. 2, pp. 714-721.
[32] Docket Vol. 2, pp. 724-728.
[33] Docket Vol. 2, pp. 889-892.
[34] Minutes of the May 30, 2017 Hearing, Docket Vol. 2, p. 893; Order dated May 30, 2017, Docket Vol. 2, pp. 897-897-a.

Issues.[35] On June 23, 2017, the Court issued the Pre-Trial Order[36] thereby terminating the pre-trial.

During trial, petitioner presented Corazon R. Alcantara,[37] Head of Finance of petitioner, and Madonna Mia S. Dayego,[38] Court-commissioned Independent Certified Public Accountant, as witnesses.

On March 26, 2018, within the extended period,[39] petitioner filed its Formal Offer of Evidence.[40] In the Resolution dated May 10, 2018,[41] *sans* respondent's comment/opposition, the Court admitted in evidence petitioner's offered exhibits, except Exhibits "P-68-67", "P-68-604", "P-68-1141", "P-72-70","P-72-155" to "P-72-158", "P-72-295" to "P-72-296", "P-72-299" to "P-72-305", "P-72-316" to "P-72-318", "P-72-324", "P-72-329", "P-72-344", "P-72-346", "P-72-348", "P-72-476", "P-42-492" to "72-505", "P-74-551", "P-74-628", "P-74-1456", "P-74-2609", "P-74-2833", "P-74-2924" to "P-74-2925", "P-74-4300", "P-74-4348", "P-74-4498", "P-74-4655", "P-74-6483", "P-96-1" to "P-96-4", "P-102-22", and "P-102-23" as they are not in the record of the case, and Exhibits "P-74-4959", "P-74-5256, "P-74-6200 and "P-74-6201" as they are also not in the record of the case and their originals were not presented for comparison.

On June 1, 2018, petitioner filed an Omnibus Motion: (I) for Partial Reconsideration (Re: Resolution dated 10 May 2018); and (II) to Set Commissioner's Hearing.[42]

In the Resolution dated July 19, 2018,[43] the Court granted petitioner's motion to set a Commissioner's Hearing and set a Commissioner's Hearing on the same date at 1:30 p.m. Petitioner's counsel was, however, unable to appear at the said Commissioner's Hearing. Thus, the Court denied the admission in evidence of Exhibits "P-74-4959", "P-74-5256, "P-74-6200 and "P-74-6201" in the July 23, 2018 Hearing for failure to present their originals.[44] Petitioner orally

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[35] Docket Vol. 2, pp. 898-912.
[36] Docket Vol. 2, pp. 914-924.
[37] Exhibit "P-61" (Sworn Statement of Alcantara), Docket Vol. 2, pp. 766-781; Minutes of the August 29, 2017 Hearing, Docket Vol. 2, p. 935; Order dated August 29, 2017, Docket Vol. 2, p. 936.
[38] Exhibit "P-62" (Sworn Statement of Dayego), Docket Vol. 3, pp. 1076-1090; Minutes of the February 19, 2018 Hearing, Docket Vol. 3, p. 1096; Order dated February 19, 2018, Docket Vol. 3, pp. 1096-a - 1096-b.
[39] Resolution dated March 21, 2018, Docket Vol. 3, pp. 1103-1104.
[40] Docket Vol. 3, pp. 1105-1130.
[41] Docket Vol. 3, pp. 1236-1238.
[42] Docket Vol. 3, pp. 1239-1245.
[43] Docket Vol. 3, pp. 1406-1407.
[44] Minutes of the July 23, 2018 Hearing, Docket Vol. 3, p. 1409; Order dated July 23, 2018, Docket Vol. 3, pp. 1410-1411.

moved for the reconsideration of such denial which was similarly denied.[45]

On August 7, 2018, petitioner filed a Motion for Leave to Admit Evidence[46] praying for the setting of Commissioner's Hearing for the presentation and comparison of its denied Exhibits "P-74-4959", "P-74-5256, "P-74-6200 and "P-74-6201", among others. In the August 28, 2018 Hearing,[47] petitioner's Motion for Leave to Admit Evidence was denied for being a third (3rd) motion for reconsideration of the Resolution dated May 10, 2018, which is prohibited under the rules.

In the Order dated September 27, 2018,[48] the case was transferred to the First Division of the Court.

Thereafter, respondent presented RO Jacinto,[49] who conducted the audit/examination of petitioner for CY 2010.[50] On April 10, 2019, respondent belatedly filed his Formal Offer of Evidence[51] which was admitted to form part of the record of the case in the Resolution dated May 20, 2019.[52] In the Resolution dated July 3, 2019,[53] the Court admitted in evidence all of respondent's offered exhibits after considering petitioner's objection[54] thereto.

In the Resolution dated September 23, 2019,[55] the case was submitted for decision in view of petitioner's submission of its Memorandum[56] on September 5, 2019 and respondent's failure to file his Memorandum despite notice.[57]

Hence, this Decision.

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[45] *Id.*
[46] Docket Vol. 3, pp. 1412-1417.
[47] Minutes of the August 28, 2018 Hearing, Docket Vol. 3, p. 1445; Order dated August 28, 2018, Docket Vol. 3, p. 1446.
[48] Docket Vol. 3, p. 1448.
[49] Exhibit "R-13" (Judicial Affidavit RO Jacinto), Docket Vol. 3, pp. 1457-1463.
[50] Minutes of the March 14, 2019 Hearing, Docket Vol. 3, pp. 1502-1502A; Order dated March 14, 2019, Docket Vol. 3, p. 1503.
[51] Docket Vol. 3, pp. 1506-1511.
[52] Docket Vol. 3, pp. 1520-1521.
[53] Docket Vol. 3, p. 1524.
[54] Opposition and Comment (Re: Respondent's Formal Offer of Evidence dated April 10, 2019), Docket Vol. 3, pp. 1512-1517.
[55] Docket Vol. 3, p. 1569.
[56] Docket Vol. 3, pp. 1533-1566.
[57] Records Verification dated September 10, 2019, Docket Vol. 3, p. 1567.

ISSUES

The parties stipulated the following issues:

1. Whether petitioner timely filed its Petition for Review;

2. Whether respondent's issuance of the Assessment Notices for alleged deficiency taxes for CY 2010 violated petitioner's right to due process;

3. Whether respondent's assessments against petitioner for alleged deficiency income tax for CY 2010, VAT for the fourth (4th) quarter of CY 2010, EWT and WTC for the month of December 2010 lack legal and factual bases; and,

4. Whether the Court's Resolution dated February 13, 2017 cancels the alleged deficiency income tax for CY 2010 arising from disallowed salary and wages and income payments allegedly not subject to withholding tax.[58]

PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner claims that the Court has jurisdiction over its Petition for Review as its administrative and judicial protests against the assessments were timely filed.

Petitioner submits that the subject assessment for deficiency taxes is null and void as respondent failed to comply with the fifteen (15)-day requirement under Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13 and prevailing jurisprudence, when he issued the FLD merely a day from petitioner's receipt of the PAN.

Moreover, petitioner argues that perusal of the FLD and the attached Details of Discrepancies shows that respondent failed to inform petitioner of the law and the facts on which the assessment was made.

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[58] Paragraph II.B, PTO, Docket Vol. 2, pp. 918-919.

Petitioner, thus, insists that the deficiency assessments for income tax, VAT, EWT and WTC against it should be cancelled and withdrawn for lack of legal and factual bases.

Respondent's Arguments

In his Answer, respondent raises as special affirmative defenses the following arguments: (i) all presumptions are in favor of the correctness of the assessment; (ii) the PAN and FLD against petitioner were issued in compliance with the provisions of Section 228 of the NIRC of 1997, as amended, and with existing revenue rules and regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was made; and (iii) the assailed assessment has already become final, executory and demandable due to petitioner's failure to timely file the Petition for Review.

RULING OF THE COURT

The Court finds the Petition for Review meritorious.

The Petition for Review was timely filed.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner on which tax deficiency assessments should be issued and protested, *viz.*:

> "SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> **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.

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."**

Revenue Regulations (RR) No. 12-99, as amended, on the other hand, implements Section 228 of the NIRC of 1997, as amended. It provides:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of
additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

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If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

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If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed

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assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other. (Boldfacing supplied)

Section 11 of RA No. 1125,[59] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals,[60] provides that a party adversely affected by the inaction of the CIR may appeal to the CTA by a petition for review within thirty (30) days after the expiration of the period fixed by law for the CIR to act on the disputed assessment.

As stipulated by the parties, petitioner filed its protest to the FLD on February 13, 2014.[61] In its protest, petitioner indicated that it reserves the right to present additional arguments and pieces of evidence to further its defenses.[62] On April 14, 2014 or within sixty (60) days from the filing of its protest, petitioner submitted additional documents in support of its protest, pursuant to RR No. 12-99, as amended.[63]

Thus, from April 14, 2014, the CIR or his authorized representative had 180 days or until October 13, 2014[64] within which to act on petitioner's protest. Petitioner, in turn had, thirty (30) days thereafter or until November 12, 2014 within which to file its Petition for

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

[60] SEC. 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or 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 the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on 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 taxes.

[61] Paragraph II.A.7, PTO, Docket Vol. 2, p. 917.

[62] Exhibit "P-8" (Letter dated February 13, 2014), Docket Vol. 3, pp. 1155-1156, 1159 and 1161.

[63] Exhibit "P-9", Docket Vol. 3, pp. 1167-1178.

[64] October 11, 2014 was a Saturday.

Review with the Court. Hence, the filing of its Petition for Review on November 7, 2014 was timely.

Respondent failed to comply with the fifteen (15) day-period under RR No. 12-99, as amended by RR No. 18-13.

Pursuant to the afore-quoted Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of RR No. 12-99, as amended, the taxpayer shall be required to respond to the PAN within fifteen (15) days from receipt thereof. Upon the lapse of the fifteen (15)-day period, the taxpayer is considered in default and the BIR shall issue a formal letter of demand and assessment notice.

In the case at bar, petitioner received a copy of the PAN dated December 27, 2013 on **<u>January 13, 2014</u>**, as stipulated by the parties and shown in the records. Petitioner, therefore, had fifteen (15) days or until **<u>January 28, 2014</u>** within which to file a reply or protest against the PAN.

Interestingly, **the BIR prepared the FLD with enclosed assessment notices on January 14, 2014 and served the same to petitioner on the same day (<u>barely a day after petitioner's receipt of the PAN</u>).** Evidently, the BIR did not wait for petitioner to reply to the PAN or within the fifteen (15)-day period provided in RR No. 12-99, as amended.

The PAN is an important part of due process.[65] In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, without any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Associate Justice Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[66] and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[67] relative to the utmost

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[65] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[66] G.R. No. 201398-99, October 3, 2018.
[67] G.R. No. 201418-19, October 3, 2018.

importance of observing due process in issuing deficiency tax assessments is edifying, *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.

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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.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[145] this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void.** xxx:

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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.*:

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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It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

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.

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" (Citations omitted; additional boldfacing supplied)

In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[68] the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

"In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **<u>While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued</u>**. Xxx." (Boldfacing and underscoring supplied)

It is worthy to note that, in the past, the CTA has declared void any assessment that fails to comply with the due process requirement.[69] In the case of *Roca Security and Investigation Agency, Inc. vs. Commissioner of Internal Revenue*,[70] the Court *En Banc*, through the Honorable Associate Justice Esperanza R. Fabon-

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

[69] *A Brown Co., Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6357, June 7, 2004; *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 6980, October 4, 2010; *Yumex Philippines Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8331, 28 November 2013; Commissioner of Internal Revenue vs. Linde Philippines, Inc., CTA EB No. 1515, March 7, 2018.

[70] CTA EB No. 1523, March 7, 2018, penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr. Lovell R. Bautista, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; Associate Justice Erlinda P. Uy was on leave.

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Victorino, elucidated on the importance of observing the fifteen (15)-day period within which a taxpayer may respond to the PAN before the BIR may issue the FAN and the consequence of the latter's failure to comply therewith, *viz.*:

> "Thus, a taxpayer has fifteen (15) days from receipt of the PAN to respond or file a protest thereto. It is only upon the lapse of this 15-day period, with or without a response/protest from the taxpayer, that the CIR or his legally authorized representative may issue the FLD or final assessment notice.
>
> xxx
>
> **Record however reveals that respondent issued the FLD with assessment notices 6 days before the 15-day period to file protest expired,** or on April 12, 2013. Evidently, the FLD was prematurely issued in violation of petitioner's right to due process.
>
> xxx
>
> It cannot also be denied that with the premature issuance of the FLD on April 12, 2013, **any argument or evidence adduced by petitioner in support of its protest against the PAN was pointless, if not moot, for at that time, respondent was already dead-set or bent on upholding the assessment as contained in the PAN. This indubitably constitutes denial of due process as petitioner was not given the opportunity to dispute and present evidence against the PAN, before the final assessment was issued.** (Boldfacing supplied)

The fatal infirmity that attended the issuance of the FLD prior to the lapse of the period to respond to the PAN is not cured by the fact that petitioner was nonetheless able to protest the FLD. In light of the palpable violation of petitioner's right to procedural due process, the FLD—being fatally infirm—should be considered void.

With the Court's conclusion that the assessment is void, there is no need for the Court to discuss the other issues raised by the parties.

WHEREFORE, in view of the foregoing discussions, the Petition for Review filed by Getz Pharma (Phils.), Inc. is hereby **GRANTED**. The Formal Letter of Demand with enclosed Assessment Notices, all dated January 14, 2014 assessing petitioner deficiency taxes in the total amount of ₱45,810,646.64 is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice