REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FORT BONIFACIO DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NO. 10344**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 06 2026 3:15 p.m.

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DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** filed on September 9, 2020, prays for the cancellation and withdrawal of the assessments issued by respondent against petitioner for its alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), for taxable year (TY) 2013, in the aggregate amount of **₱1,068,376,549.23**, inclusive of interest and penalties.[1]

THE PARTIES

Petitioner **Fort Bonifacio Development Corporation** is a domestic corporation, duly registered with the Securities and Exchange Commission with Company Registration No. AS95001149. It is established primarily to engage in the development of a 440-hectare area in Fort Bonifacio, for residential, commercial, business, mixed development, institutional, recreational, tourism, sports, amusement, people movers, security systems and other purposes; and, to develop, construct, manage, own, lease, sub-lease, and operate establishments and facilities of all kinds in the 214-

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[1] Summary of the Case, Pre-Trial Order dated May 31, 2022, Docket – Vol. I, p. 445.

hectare portion of the 440-hectare area, for residential, commercial, business, mixed development, institutional, recreational, tourism, sports, amusement, people movers, security systems and other purposes.[2] It is duly registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 004-707-554-00000, with registered address at 2F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, 1635.[3]

Respondent is the duly appointed **Commissioner of Internal Revenue** vested under the appropriate laws the authority to carry out the functions, duties and responsibilities of his Office, including, *inter alia*, the power to decide the disputed assessments and to cancel and abate tax liabilities pursuant to the provisions of National Internal Revenue Code (NIRC) of 1997, as amended, other tax laws and rules and regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 27, 2015, respondent issued the Letter of Authority (LOA) No. LOA-126-2015-00000076 (eLA201200004458) against petitioner, through Nestor S. Valeroso (OIC-Assistant Commissioner, Large Taxpayers Service), authorizing Revenue Officers (ROs) Zenaida Paz, Edna Cau, Cristina Lati, Ma. Salud Maddela and Group Supervisor (GS) Merly Santiago of BIR Large Taxpayer Regular Audit Division 3 (BIR-LTRAD 3) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other miscellaneous tax, for January 1 to December 31, 2013.[5]

Petitioner received on December 13, 2016the Preliminary Assessment Notice (PAN) (Parts I and II) with Details of Discrepancies dated December 12, 2016, proposing deficiency taxes for TY 2013 in the amount of ₱1,001,026,290.07, inclusive of interest and penalties.[6]

On December 28, 2016, petitioner filed the Preliminary Protest Letter against Preliminary Assessment Notice dated December 12, 2016 under LOA No. 126-2015-00000076 (Preliminary Protest to PAN) dated December 27, 2016.[7]

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2 Exhibit "P-1", Docket – Vol. 2, pp. 870 to 936.
3 Exhibit "P-2", *Id.* at 937 to 940.
4 Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 412.
5 Par. 2, Stipulation of Facts, JSFI, Docket Vol. I, pp. 412 to 413; Exhibit "P-4", Docket – Vol. 2, p. 603; and Exhibit "R-1", BIR Records (Exhibit "R-11"), p. 1.
6 Par. 3, Stipulation of Facts, JSFI, Docket Vol. I, p. 413; Exhibit "P-6", Docket – Vol. 2, pp. 605 to 614, and Exhibit "R-4", BIR Records (Exhibit "R-11"), pp. 334 to 343.
7 Exhibit "P-7", Docket – Vol. 2, pp. 615 to 616.

Subsequently, on December 29, 2016, petitioner received a Formal Letter of Demand (Parts I and II) with Details of Discrepancies and Assessment Notices (FLD), for alleged deficiency taxes in the amount of ₱1,017,622,337.21, inclusive of interest and penalties, broken down as follows:[8]

	Basic Tax Due	Interest	Total
Income tax	545,761,733.40	305,026,232.80	850,787,966.20
VAT	47,105,154.86	28,420,424.13	75,525,578.99
EWT	56,301,486.06	34,439,056.00	90,740,542.06
WTC[9]	245,859.91	150,390.05	396,249.96
Penalties	-	-	172,000.00
Total	**649,414,234.23**	**368,036,102.98**	**1,017,622,337.21**

Within 30 days from receipt of the FLD, or on January 27, 2017, petitioner filed a Protest Letter/Request for Reinvestigation.[10] Thereafter, in the transmittal letter dated March 27, 2017, petitioner submitted additional documents in support of its Protest Letter to the FLD.[11]

On July 27, 2020, petitioner received the Final Decision on Disputed Assessment (FDDA) with Assessment Notices, signed by respondent, informing petitioner that it is liable to pay deficiency taxes for TY 2013 in the total amount of ₱1,068,376,549.23, inclusive of interest and penalties, broken down as follows:[12]

	Basic Tax Due	Interest	Total
Income tax	474,424,148.47	409,428,040.14	883,852,188.61
VAT	46,903,330.29	42,531,939.90	89,435,270.19
EWT	49,570,826.81	45,362,263.62	94,933,090.43
Penalties	-	-	156,000.00
Total	**570,898,305.57**	**497,322,243.66**	**1,068,376,549.23**

PROCEEDINGS BEFORE THIS COURT

As earlier stated, the present *Petition for Review* was filed on September 9, 2020.[13]

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8 Par. 4, Stipulation of Facts, JSFI, Docket Vol. I, p. 413; and Exhibit "P-8", Docket – Vol. 2, pp. 617 to 631; Exhibits "R-5", "R-6", "R-6-A" to "R-6-D", BIR Records (Exhibit "R-11"), pp. 350 to 364.

9 That is, withholding tax on compensation.

10 Par. 5, Stipulation of Facts, JSFI, Docket Vol. I, p. 413; and Exhibit "P-9", Docket – Vol. 2, pp. 632 to 640.

11 Par. 6, Stipulation of Facts, JSFI, Docket Vol. I, p. 413; and Exhibit "P-10", Docket – Vol. 2, p. 646.

12 Par. 7, JSFI, Docket Vol. I, pp. 413 to 414; and Exhibit "P-11", Docket – Vol. 2, pp. 648 to 658; Exhibits "R-9" to "R-10 to R-10-C", BIR Records (Exhibit "R-11"), pp. 499 to 511.

13 Docket – Vol. I, pp. 6 to 35.

Within the extended period,[14] on December 16, 2021, respondent posted his *Answer*,[15] interposing his special and affirmative defenses.

The Pre-Trial Conference was initially set on February 24, 2021,[16] but the same was later cancelled and reset to March 24, 2021.[17] This was further reset to July 5, 2021.[18] During the said hearing, this case was referred to mediation in the Philippine Mediation Center - Court of Tax Appeals on August 9, 2021.[19] The mediation was, however, refused by petitioner.[20] Consequently, the Pre-Trial Conference was set anew and eventually held on April 27, 2022.[21] Prior thereto, *Respondent's Pre-Trial Brief* was filed on March 19, 2021,[22] while petitioner filed a *Manifestation* with attached *Petitioner's Pre-Trial Brief* on May 28, 2021.[23]

In the meantime, on March 22, 2021, respondent transmitted the *BIR Records* of this case, consisting of one folder.[24]

On May 16, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[25] which was approved and adopted by the Court in the Pre-Trial Order dated May 31, 2022,[26] thereby deeming the termination of the Pre-Trial.

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

Petitioner presented and offered the testimonies of the following individuals, namely: (1) Atty. Bryan S. Marin,[27] petitioner's Regulatory Compliance & Legal Manager/Assistant Corporate Secretary; and, (2) Mr.

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[14] Respondent's *Motion for Extension of Time to File Answer* dated October 16, 2020, Docket – Vol. I, pp. 293 to 296; Order dated October 27, 2020, Docket - Vol. I, p. 299; respondent's *Urgent Motion for Extension of Time to File Answer* dated November 16, 2020, Docket – Vol. I, pp. 300 to 303; Order dated November 27, 2020, Docket – Vol. I, p. 305.

[15] Docket – Vol. I, pp. 312 to 343.

[16] Notice of Pre-Trial Conference dated January 7, 2021, *Id.* at 346 to 347.

[17] Notice of Resetting dated February 10, 2021, *Id.* at 349.

[18] Notice of Resetting dated May 17, 2021, *Id.* at 377.

[19] Minutes of hearing held on, and Order dated, July 5, 2021, *Id.* at 401 to 402.

[20] *Back to Court* Report dated March 21, 2022 issued by the Philippine Mediation Center - Court of Tax Appeals, *Id.* at 404; Resolution dated March 25, 2022, *Id.* at 409.

[21] Resolution dated March 25, 2022, *Id.* at 409; Minutes of hearing held on, and Order dated, April 27, 2022, *Id.* at 410 to 411.

[22] *Id.* at 366 to 370.

[23] *Id.* at 379 to 395.

[24] Respondent's *Compliance* dated March 19, 2021, *Id.* at 373 to 375.

[25] *Id.* at 412 to 419.

[26] *Id.* at 445 to 449.

[27] Offered as Exhibit "P-16" but self-marked as Exhibit "P-18" (Refer to Resolution dated June 23, 2023, Docket – Vol. 2, at p. 779), *Id.* at 36 to 52; Minutes of hearing held on, and Order dated, October 26, 2022, *Id.* at 457, and 460 to 461, respectively.

Lee Celso R. Vivas,[28] the Court-commissioned Independent Certified Public Accountant (ICPA).[29]

The *Report* of the ICPA was filed on December 14, 2022.[30]

Thereafter, on March 23, 2023, petitioner filed its *Formal Offer of Evidence*,[31] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on March 27, 2023.[32] In the Resolution dated June 23, 2023,[33] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-1" and "P-2", for failure to submit the duly marked exhibits.

Relative thereto, on July 17, 2023, petitioner filed an *Omnibus Motion I. For Partial Reconsideration (Re: Resolution dated June 23, 2023); II. With Leave of Court to Set a Commissioner's Hearing; III. To Amend the Descriptions in the FOE for Exhibits "P-16", "P-17-1", "P-18" and "P-18-1" to Conform to Evidence IV. With Leave of Court to Recall Independent Certified Public Accountant V. To Defer the Presentation of Respondent's Witness until this Motion is Resolved*,[34] while respondent failed to file his comment thereon.[35] In the Resolution dated January 4, 2024,[36] the Court granted petitioner's *Motions II. With Leave of Court to Set a Commissioner's Hearing; III. To Amend the Descriptions in the FOE for Exhibits "P-16", "P-17-1", "P-18" and "P-18-1" to Conform to Evidence IV. With Leave of Court to Recall Independent Certified Public Accountant.*

Petitioner then presented its recalled witness, the ICPA, Vivas, on May 22, 2024.[37]

Subsequently, on June 6, 2024, petitioner filed its *Supplemental Formal Offer of Evidence (With Manifestation)*,[38] to which respondent filed his *Comment (to Petitioner's Supplemental Formal Offer of Evidence)* on June 18, 2024.[39] In the Resolution dated July 15, 2024,[40] the Court admitted

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[28] Offered as Exhibit "P-18" but not marked (Refer to Resolution dated June 23, 2023, Docket – Vol. 2, at p. 779), Docket – Vol. 2, pp. 554 to 581; Minutes of hearing held on, and Order dated, March 8, 2023, Docket – Vol. 2, pp. 586 to 587.
[29] *Oath of Commission* dated October 26, 2022, Docket – Vol. I, p. 459; Minutes of hearing held on, and Order dated, October 26, 2022, Docket – Vol. I, pp. 457, and 460 to 461, respectively.
[30] Exhibit "P-17", Docket – Vol. I, pp. 463 to 503.
[31] Docket – Vol. 2, pp. 589 to 599.
[32] *Id.* at 771 to 773.
[33] *Id.* at 779 to 781.
[34] *Id.* at 786 to 793.
[35] Records Verification dated September 4, 2023 issued by the Judicial Records Division of this Court, *Id.* at 796.
[36] *Id.* at 798 to 801.
[37] Exhibit "P-19", *Id.* at 825 to 830; Minutes of hearing held on, and Order dated, May 22, 2024, *Id.* at 832 to 834.
[38] *Id.* at 836 to 842.
[39] *Id.* at 843 to 845.

all the exhibits offered in petitioner's *Supplemental Formal Offer of Evidence*. However, petitioner's *Omnibus Motion I. For Partial Reconsideration (Re: Resolution dated June 23, 2023)* was denied, as Exhibits "P-1" and "P-2" were still denied admission, for failure to submit the duly marked exhibits. Upon petitioner's *Motion for Partial for Reconsideration* filed on July 31, 2024,[41] and respondent having failed to file his comment thereon,[42] the Court eventually admitted Exhibits "P-1" and "P-2" in the Resolution dated November 18, 2024.[43]

For his part, respondent presented the testimony of RO Paz.[44]

On July 31, 2024, *Respondent's Formal Offer of Evidence* was filed,[45] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated July 29, 2024)* on August 16, 2024.[46] In the Resolution dated November 18, 2024,[47] the Court admitted all of respondent's offered exhibits.

Petitioner's *Memorandum* was filed on December 26, 2024.[48] Respondent, however, failed to file his memorandum.[49]

The case was considered submitted for decision on February 6, 2025.[50]

THE STIPULATED ISSUE

The parties have agreed that the issue to be resolved in this case is:

> Whether or not petitioner is liable for the payment of deficiency Income Tax, VAT, EWT plus compromise penalties, interest and surcharges, in the aggregate amount of ₱1,068,376,549.23 for TY 2013.[51]

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40 Docket – Vol. 2, pp. 848 to 850.
41 *Id.* at 865 to 869.
42 Records Verification dated October 8, 2024 issued by the Judicial Records Division of this Court, *Id.* at 952.
43 *Id.* at 954 to 956.
44 Docket – Vol. I, pp. 356 to 365; Minutes of the hearing held on, and Order dated, July 16, 2024, *Id.* at 851, and 853 to 854, respectively.
45 *Id.* at 855 to 863.
46 *Id.* at 945 to 950.
47 *Id.* at 954 to 956.
48 *Id.* at 963 to 1023.
49 Records Verification dated February 4, 2025, issued by the Judicial Records Division of this Court, *Id.* at 1024.
50 Minute Resolution dated February 6, 2024, *Id.* at 1025.
51 Issues, *JSFI*, Docket – Vol. I, p. 414.

Petitioner's arguments:

Petitioner argues that the deficiency tax assessments are null and void as the FLD and the FDDA are not final demands for payment, in violation of petitioner's right to due process. Petitioner contends that respondent failed to consider petitioner's reply to the PAN and merely reiterated its findings in the FLD, thus, violating petitioner's right to due process. Petitioner submits that the deficiency tax assessments are null and void as they were issued beyond the three-year prescriptive period provided by law. Finally, petitioner asserts that the assessments have no factual and legal bases.

Respondent's counter-arguments:

In his *Answer*, respondent opposes the argument that the FLD failed to make a definite and final demand as it was never raised by petitioner in the administrative level, thus, can no longer be raised as an issue on the ground of laches. He maintains that the assessments made by the respondent indicate a demand for payment and definite amount of tax liability. Assuming *arguendo* that respondent failed to indicate definite total amount of deficiency tax in the FDDA, he claims that the assessment must not be nullified in its entirety, as these were made in accordance with prevailing laws and rules. Further, the recent decisions of the Court retain technicalities on respondent's letters and notices should not be applied retroactively. Respondent posits that he has 10 years from the discovery of the falsity, fraud or omission within which to assess petitioner, thus, Section 203 of the NIRC of 1997, as amended, finds no application in the present case. Lastly, respondent strongly avers that petitioner is liable for deficiency income tax, VAT, and EWT for TY 2013, plus penalties, surcharges, and interests, in the aggregate amount of ₱1,068,376,549.23.

THE COURT'S RULING

The present *Petition for Review* is bereft of merit.

The instant Petition for Review was timely filed.

Section 7 (a) (1) of Republic Act (R.A.) No. 1125,[52] as amended, provides:

SEC. 7. Jurisdiction. — The CTA shall exercise:

[52] An Act Creating the Court of Tax Appeals.

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (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; (Emphasis added)
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> xxx xxx xxx

Moreover, Section 11 of R.A. No. 1125, as amended, provides the period for filing an appeal with the CTA, viz.:

> 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. (Emphasis added)

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent, and such appeal must be filed within 30 days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Records show that petitioner received the FDDA on July 27, 2020. Thus, it had 30 days therefrom, or until August 26, 2020, within which to file its Petition for Review.

Note, however, that, in view of the implementation of the Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) in affected areas, the Supreme Court issued various administrative circulars ordering the physical closure of courts in certain areas, including the National Capital Region. Specifically, on August 3, 2020, the Supreme Court ordered the physical closure of courts in Metro Manila from August 3 to 14, 2020.[53] As such, the filing and service of motions, pleadings, and other court submissions were suspended from **August 4 to 18, 2020** and resumed on August 19, 2020.[54]

[53] Administrative Circular No. 43-2020 dated August 2, 2020.
[54] Administrative Circular No. 43A-2020 dated August 3, 2020.

Considering that petitioner had until August 26, 2020 within which to file its Petition for Review before the CTA and that the period for filing and service of motions, pleadings, and other court submissions was suspended beginning **August 4, 2020** and resumed on **August 19, 2020**, petitioner had 23 days left from August 19, 2020, or until **September 11, 2020** within which to file its petition. As such, the instant *Petition* was timely filed on **September 9, 2020.**

We now proceed to the merits of the case.

The FLD/Assessment Notices contain a definite amount of alleged tax liabilities with a definite due date for payment.

Petitioner claims that the deficiency tax assessments are null and void as the FLD and the FDDA are not final demands for payment, in violation of petitioner's right to due process.

On the other hand, respondent contends that the issue that the FLD failed to make a definite and final demand was never raised by petitioner in the administrative level. Thus, petitioner can no longer raise said issue on the ground of laches; and that the assessments made by the respondent indicate that there is demand for payment and definite amount of tax liability.

The Court agrees with the respondent that the FLD contain a definite due date for payment of the alleged tax liabilities.

Apropos, an assessment "refers to the determination of amounts due from a person obligated to make payments."[55] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a **due tax liability that is there definitely set and fixed**.[56]

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* (*Fitness by Design* case),[57] the Supreme Court ruled as follows:

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[55] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[56] *Adamson, et al. vs. Court of Appeals, et al.*, *et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[57] G.R. No. 215957, November 9, 2016.

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xxx. Furthermore, **the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**

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The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. **Its main purpose is to determine the amount that a taxpayer is liable to pay**.

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The disputed Final Assessment Notice is not a valid assessment.

First, **it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.'** Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.* (Emphasis Supplied)

Second, there are **no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**
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> xxx xxx xxx
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> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation. *(Emphases and underscoring added)*

Here, a perusal of the FLD and Assessment Notices[58] would show that respondent did not state a specific deadline for petitioner's payment of the alleged deficiency taxes. Specifically, the said FLD states:

> ***Please take note that the interest will have to be adjusted if paid beyond the date specified therein.*** [59] *(Emphasis and underscoring added)*

In the Assessment Notices, however, the due date reflected is "**30 days from receipt hereof**".[60]

A careful scrutiny of the statement in the FLD that the "interest will have to be adjusted if paid beyond the date specified therein", *vis-à-vis* the due date in the Assessment Notices, does not make the assessments indefinite, considering that the "date of receipt" of the Assessment Notices by the petitioner is reflected therein, *i.e.*, December 29, 2016. Hence, the phrase "30 days from receipt hereof" is determinable and definite, *i.e.*, 30 days from December 29, 2016, which is January 28, 2017.

Further, the statement in the FLD merely served as a reminder to the taxpayer that the interest will have to be adjusted if the assessed tax liability remains unpaid on the stated date in the FLD. This is pursuant to Section 249 of the NIRC of 1997, as amended, which requires the imposition of interest on unpaid taxes from the time such tax is required to be paid until it is fully paid. Reasonably, the interest in the assessment would be subject to changes, considering that the BIR would not have the foresight to determine when petitioner would pay the deficiency taxes. The Court, thus, finds that the FLD and Assessment Notices, contain a definite due date for payment of the alleged tax liabilities.

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58 Exhibits "R-5", "R-6", "R-6-A" to "R-6-D", BIR Records (Exhibit "R-11"), pp. 350 to 364.
59 Exhibit "R-5", *Id.* at 363.
60 Exhibits "R-6", "R-6-A" to "R-6-D", *Id.* at 350 to 354.

Respondent failed to give reasons for rejecting petitioner's reply to the PAN.

Petitioner's averment that respondent failed to consider its reply to the PAN and merely reiterated its findings in the FLD is meritorious.

Section 228 of the NIRC of 1997, as amended, reads, in part, 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
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> 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.
>
> xxx xxx xxx.

The foregoing provision explicitly requires 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.[61] 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.[62] 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.[63] 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.[64]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[65] as amended by RR No. 18-2013,[66] provides, in part, as follows:

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

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

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

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

[65] 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.

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

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 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 finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

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

3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative **<u>shall state the (i) facts, the applicable law</u>**, rules and regulations, or jurisprudence on which such decision is based, ***<u>otherwise, the decision shall be void</u>*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. *(Emphases and underscoring added).*

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

Moreover, based on the foregoing provisions, as part of due process in the issuance of tax assessments, a taxpayer is given 15 days from receipt of the PAN to file a response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, without such response being filed by the taxpayer within such period, that respondent may issue the corresponding FLD/FAN.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[67] the Supreme Court held as follows:

> **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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> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**
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> In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

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

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

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

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The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> 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 <u>to ensure that the decision will be thought through by the decision-maker</u>.

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Administrative due process is anchored on fairness and equity in procedure. <u>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</u>. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

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<u>The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable.</u> 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[68] 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[69] 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[70] specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

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

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

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**

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

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68 Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
69 Now Section 3.1.3, *Id.*
70 Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

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

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In *Commissioner of Internal Revenue v. Reyes*, **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.*:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]*** **disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx. *(Emphases and underscoring added)*

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. 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.

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent, or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

To stress, in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the PAN dated December 12, 2016 and received on December 13, 2016, the deficiency taxes for TY 2013 amounted to ₱1,001,026,290.07, inclusive of interest and penalties, to wit:[71]

	Basic Tax Due	**Interest** (until Dec. 15, 2016)	**Total**
Income tax	₱545,761,733.40	₱291,054,732.42	₱ 836,816,465.82
VAT	47,105,154.86	27,217,358.48	74,322,513.34
EWT	56,301,486.06	32,998,863.99	89,300,350.05
WTC	245,859.91	144,100.95	389,960.86
Penalties	-		197,000.00
Total	₱649,414,234.23	₱351,415,055.84	**₱1,001,026,290.07**

In petitioner's Preliminary Protest to PAN,[72] petitioner made specific justifications against BIR's findings relative to the alleged deficiency: A. income tax (*i.e.*, 1. Disallowed expense, 2. Disallowed interest expense, 3. Difference in input tax, 4. Disallowed expenses for non-withholding tax); B. VAT (*i.e.*, 1. Difference on exempt sales per SL[S] vs. returns, 2. Disallowed input tax attributable to exempt sales, 3. Disallowed input tax on

[71] Exhibit "P-6", Docket – Vol. 2, pp. 605 to 614, and Exhibit "R-4", BIR Records (Exhibit "R-11"), pp. 333 to 341.

[72] Exhibit "P-7", Docket – Vol. 2, pp. 615 to 616 (page 2 of the *Preliminary Protest Letter against Preliminary Assessment Notice* is not attached); see BIR Records (Exhibit "R-11"), pp. 346 to 348.

retention payable); C. WTC (*i.e.*, the audit findings allegedly failed to consider the gross taxable income for employees who were separated or resigned during the taxable year as reported in the alphalist); and, D. EWT (*i.e.*, same argument regarding disallowed expenses due to non-withholding of tax).

Notwithstanding the arguments of the petitioner, however, an examination of the FLD would show the alleged deficiency taxes in the amount of ₱1,017,622,337.21, inclusive of interest and penalties, broken down as follows:[73]

	Basic Tax Due	**Interest** (until Jan. 31, 2017)	**Total**
Income tax	545,761,733.40	305,026,232.80	850,787,966.20
VAT	47,105,154.86	28,420,424.13	75,525,578.99
EWT	56,301,486.06	34,439,056.00	90,740,542.06
WTC	245,859.91	150,390.05	396,249.96
Penalties	-	-	172,000.00
Total	**649,414,234.23**	**368,036,102.98**	**1,017,622,337.21**

A comparison of the PAN and the FLD/FAN shows that the basic tax amounts remain unchanged, except for the adjusted interests (computed until January 31, 2017) and penalty imposed.

The Court further notes that the BIR's receiving stamp on petitioner's Preliminary Protest to PAN indicates that it was filed with the BIR Large Taxpayers Service on December 28, 2016 at 10:35 a.m.[74] On the other hand, a careful perusal of petitioner's receiving stamp on the FLD would show that it was received by petitioner on December 29, 2016 at 1:55 p.m.

Ostensibly, the FLD was received by petitioner a day after it filed its Preliminary Protest to PAN. This was highlighted during the cross-examination of RO Paz, viz.:[75]

ATTY. OCAMPO:
Q: When did the BIR issue the Final Assessment Notice?

RO PAZ:
A: The Final Assessment Notice was issued on December 29, 2016.

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[73] Par. 4, Stipulation of Facts, JSFI, Docket Vol. I, p. 413; and Exhibit "P-8", Docket – Vol. 2, pp. 617 to 631; Exhibits "R-5", "R-6", "R-6-A" to "R-6-D", BIR Records (Exhibit "R-11"), pp. 350 to 364.
[74] BIR Records (Exhibit "R-11"), pp. 346 to 348.
[75] Transcript Stenographic Notes (TSN) dated July 16, 2024, p. 9.

ATTY. OCAMPO:
Q: Is it correct to say the BIR issued the Final Assessment one day after the receipt of the reply of the petitioner from the Preliminary Assessment Notice?

RO PAZ:
A: Yes.

ATTY. OCAMPO:
No further questions, Your Honor.

In the foregoing testimony of respondent's witness, it was admitted that the FLD was issued only on December 29, 2016. A scrutiny of the BIR Records, however, reveals that the FLD was already prepared as early as December 16, 2016, three days after the service of PAN to petitioner.

In the Memorandum dated December 16, 2016,[76] ROs Paz, Cau, Lati and Maddela recommended the issuance of FLD reiterating the assessments in PAN, except for the corrected penalties which reflects the removal of penalty for documentary stamp tax (DST), to wit:

> Submitted herewith is the entire docket of the above named taxpayer on the investigation conducted on all internal revenue taxes for the calendar year ending December 31, 2013 pursuant to Letter of Authority No. 126-2015-00000076 dated March 27, 2015.
>
> A Preliminary Assessment Notice was duly served to the taxpayer on December 13, 2016. The issues raised under the Preliminary Assessment Notice were reiterated to the Formal Letter of Demand. The total amount of penalties was corrected to P 172,000.00. The taxpayer is not liable to any deficiency documentary stamp tax but a penalty was imposed for DST, hence the correction.
>
> In view thereof, it is hereby **recommended that the <u>accompanying Formal Letter of Demand</u>** be issued to facilitate collection of deficiency taxes (interest adjusted until January 31, 2017) still due as follows:

Tax Type	Amount
Income Tax	P 850,787,966.20
Value-Added Tax	75,525,578.99
Withholding Tax – Compensation	396,249.96
Withholding Tax – Expanded	90,740,542.06
Penalties	172,000.00
Total	P 1,017,622,337.21

This clearly shows that the FLD was attached thereto and was already prepared even before petitioner filed its Preliminary Protest to PAN on

[76] BIR Records (Exhibit "R-11"), p. 362.

December 28, 2016 at 10:35 a.m. Obviously, petitioner's reply to PAN was not considered.

Clearly, the explanations of the petitioner in its letter Preliminary Protest to the PAN were not addressed nor considered in the FLD. It is apparent that respondent failed to include explanations why these assessments were retained despite the defenses raised by petitioner.

Notably, in the *Avon* case, the Supreme Cout ruled that there was violation of Avon's right to due process as it was not fully apprised of the legal and factual bases of the assessments issued against it. The *Details of Discrepancies* attached to the PAN, as well as the FLD, did not even comment or address the defenses and documents submitted by Avon, which is similarly the case herein.

Here, respondent failed to consider the defenses and explanation submitted by petitioner in its reply to the PAN. Petitioner was left unaware on how the respondent, or his duly authorized representatives appreciated the explanations or defenses raised therein. Again, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. In this case, respondent failed to observe this requirement in issuing the FLD. Thus, the inevitable conclusion is that respondent violated petitioner's right to due process, recognized under Section 228 of the NIRC of 1997, as amended. As a consequence, the deficiency tax assessments are rendered void and unenforceable.

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the respondent to <u>strictly comply</u> with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.**[77]

The Supreme Court has consistently held that, between the power of the State to tax and the individual's right to due process, the scale favors the right of the taxpayer to due process.[78]

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[79] Furthermore, a void assessment

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[77] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 20210, citing *Tupas vs. Court of Appeals*, G.R. No. 89571, February 6, 1991.

[78] *Commissioner of Internal Revenue vs. Fitness by Design. Inc.*, G.R. No. 215957, November 9, 2016.

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

bears no valid fruit.[80] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

ACCORDINGLY, premises considered, the present **Petition for Review** is **GRANTED**.

The Formal Letter of Demand and Assessment Notices, all dated December 29, 2016, and the Final Decision on Disputed Assessment dated July 27, 2020, assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation, and compromise penalty, in the total amount of ₱1,017,622,337.21 and ₱1,068,376,549.23, respectively, for taxable year 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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