REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

AEON CREDIT SERVICE (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 10373**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 13 2024

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1:50 p.m.

DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on October 13, 2020, prays for the cancellation and withdrawal of the assessments issued by respondent against petitioner for its alleged deficiency income tax, percentage tax, expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), documentary stamp tax ("DST"), and compromise penalties, for the calendar year 2016, in the aggregate amount of Php38,157,633.01.[1]

The Facts

Petitioner Aeon Credit Service (Philippines), Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 5/F Hanston Square, 17 San Miguel Avenue, Ortigas Center, Pasig City,

1 Docket, Pre-Trial Order dated November 22, 2021, Summary of the Case, p. 1435.

and duly registered with the Bureau of Internal Revenue ("BIR") under Tax Identification Number 008-448-352.[2]

Respondent is the Commissioner of Internal Revenue, duly appointed to perform the duties of his office, including the power to decide disputed tax assessments, subject to the exclusive appellate jurisdiction of the Court, pursuant to Section 4 of the National Internal Revenue Code ("NIRC") of 1997, as amended.[3]

On December 11, 2017, petitioner received the *Letter of Authority* ("LOA") No. LOA-043-2017-00000904 dated December 06, 2017 from the BIR,[4] authorizing Revenue Officer ("RO") Wilfredo Pantino and Group Supervisor ("GS") Zaldy Dioscoro Dy of BIR Revenue District Office ("RDO") No. 43 – Pasig City, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for calendar year ending December 31, 2016.[5]

On December 19, 2017, petitioner sent the letter to the BIR dated December 19, 2017, acknowledging receipt of the LOA. Subsequently, petitioner received the *First Notice* from the BIR dated January 05, 2018,[6] reiterating its request for the submission of petitioner's documents.[7]

Thereafter, petitioner received the undated *Notice of Informal Conference*,[8] informing petitioner that the investigation by RO Pantino and GS Dy of petitioner's internal tax liabilities for calendar year 2016 resulted in alleged deficiency taxes in the aggregate amount of Php34,781,577.00.[9]

On October 24, 2018, petitioner, through its President, Mr. Takayuki Araki, executed the *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*,[10] suspending the running of the prescriptive period under Sections 203 and 222 of the NIRC of 1997, as amended, until December 31, 2019 relative to the audit and investigation of petitioner's books and other accounting records for calendar year 2016.[11]

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[2] *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, Par. 5, p. 1415.
[3] *Id.*, JSFI, Stipulation of Facts, Par. 6, p. 1415.
[4] *Id.*, Exhibit "P-7", p. 1586; Exhibit "R-1", p. 897.
[5] *Id.*, JSFI, Stipulation of Facts, Par. 8, p. 1415.
[6] *Id.*, Exhibit "P-44"; and Exhibit "R-3", p. 899.
[7] *Id.*, JSFI, Stipulation of Facts, Par. 9, pp. 1415-1416.
[8] *Id.*, Exhibit "P-45"; and Exhibit "R-5", Docket – Vol. II, pp. 901-902.
[9] *Id.*, JSFI, Stipulation of Facts, Par. 10, p. 1416.
[10] *Id.*, Exhibit "P-46".
[11] *Id.*, JSFI, Stipulation of Facts, Par. 11, p. 1416.

On November 29, 2019, petitioner received a copy of respondent's *Preliminary Assessment Notice* ("PAN") with attached *Details of Discrepancies* dated November 18, 2019,[12] assessing petitioner for alleged deficiency income tax of Php17,619,573.84, percentage tax of Php997,158.28, EWT of Php831,939.60, WTC of Php794,013.21, DST of Php17,628,197.68, and compromise penalties of Php12,000.00, or an aggregate deficiency tax assessment for calendar year 2016 amounting to Php37,882,882.61, inclusive of interest,[13] broken down as follows:

Tax Type	Basic	20% Interest	12% Interest	Total
Income tax	Php12,799,825.75	Php1,823,536.82	Php2,996,211.27	Php17,619,573.84
Percentage tax	702,034.51	130,789.99	164,333.78	997,158.28
EWT	583,463.90	111,897.19	136,578.51	831,939.60
WTC	556,865.00	106,796.03	130,352.18	794,013.21
DST	12,315,849.00	2,429,427.75	2,882,920.93	17,628,197.68
Compromise Penalty	12,000.00			12,000.00
Total	**Php26,970,038.16**	**Php4,602,447.78**	**Php6,310,396.67**	**Php37,882,882.61**

In protest, petitioner filed its *Reply to Preliminary Assessment Notice for Taxable Year 2016* ("Reply to the PAN") on December 13, 2019,[14] setting forth its arguments against the items of assessment in the PAN and its attached *Details of Discrepancies.*

On December 20, 2019, petitioner received respondent's *Assessment Notices*[15] and *Formal Letter of Demand* ("FAN/FLD") with attached *Details of Discrepancies* dated December 23, 2019,[16] assessing petitioner for alleged deficiency income tax, percentage tax, EWT, WTC, DST, and compromise penalties for calendar year 2016, in the aggregate amount of Php38,157,633.01, inclusive of interest,[17] broken down as follows:

Tax Type	Basic	20% Interest	12% Interest	Total
Income tax	Php12,799,825.75	Php1,823,536.82	Php3,126,664.28	Php17,750,026.85
Percentage tax	702,034.51	130,789.99	171,488.76	1,004,313.26
EWT	583,463.90	111,897.19	142,525.04	837,886.13
WTC	556,865.00	106,796.03	136,027.63	799,688.66
DST	12,315,849.00	2,429,427.75	3,008,441.36	17,753,718.11
Compromise penalty	12,000.00			12,000.00

12 *Id.*, Exhibit "P-8", pp. 1587-1594; Exhibit "R-13", pp. 910-917.
13 *Id.*, JSFI, Stipulation of Facts, Par. 12, p. 1416.
14 *Id.*, Exhibit "9", pp. 1595-1611.
15 *Id.*, Exhibit "P-10", pp. 1612-1617; Exhibits "R-16" to "R-16-E", pp. 928-933.
16 *Id.*, Exhibit "P-11", pp. 1618-1625; Exhibit "R-15", pp. 920-927.
17 *Id.*, JSFI, Stipulation of Facts, Par. 13, p. 1416.

Total	**Php26,970,038.16**	**Php4,602,447.78**	**Php6,585,147.07**	**Php38,157,633.01**

On January 17, 2020, petitioner filed with the BIR its administrative protest to respondent's FAN/FLD by way of a *Request for Reinvestigation* dated January 17, 2020 ("Protest")[18] with the BIR Office of the Regional Director Revenue Region No. 7B – East NCR.[19]

On March 04, 2020, petitioner received the letter from BIR RDO No. 43-Pasig City dated February 18, 2020,[20] stating that the entire docket of petitioner's case had been returned by the Assessment Division to RDO No. 43-Pasig City, and that petitioner should submit its supporting documents to said RDO within sixty (60) days from the date of filing of its Protest.[21] In compliance thereto, on March 17, 2020, petitioner submitted the transmittal letter of even date,[22] with attached supporting documents, to BIR RDO No. 43-Pasig City, for purposes of completing its Protest.

Alleging inaction by respondent on its administrative protest,[23] petitioner filed the present *Petition for Review* on October 13, 2020.[24] This case was initially raffled to the Second Division of this Court.

On January 13, 2021, respondent filed his *Answer*,[25] interposing the special and affirmative defenses, to wit: (1) there is no violation of petitioner's right to due process; and (2) the assessments issued against petitioner for deficiency taxes have factual and legal bases.

On February 23, 2021, respondent transmitted to the Court, the *BIR Records* of this case, consisting of two (2) folders, with 668 pages for Folder 1, and 607 pages for Folder 2.[26]

The Pre-Trial Conference was set on March 01, 2021.[27] During the said Conference, upon agreement of the parties, the case was referred to mediation.[28] However, during the mediation proceedings, parties decided not to have their

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18 *Id.*, Exhibit "P-12", pp. 1626-1651.
19 *Id.*, JSFI, Stipulation of Facts, Par. 14, p. 1416.
20 *Id.*, Exhibit "P-13", p. 1652.
21 *Id.*, JSFI, Stipulation of Facts, Par. 15, p. 1416.
22 *Id.*, Exhibit "P-14", pp. 1653-1661.
23 *Id.*, *Petition for Review*, Par. 8, p. 8.
24 *Id.*, pp. 6-63.
25 *Id.*, pp. 874-879.
26 *Id.*, Letter dated February 23, 2021 issued by the BIR's Legal Division, p. 935.
27 *Id.*, Notice of Pre-Trial Conference dated January 15, 2021, pp. 881-882.
28 *Id.*, Minutes of the hearing held on, and Order dated, March 01, 2021, pp. 967 to 968; Resolution dated March 01, 2021, p. 960.

case mediated by the Philippine Mediation Center Unit of this Court.[29] Thus, the Pre-Trial Conference was then set anew on August 04, 2021,[30] but was further reset to, and held on, October 11, 2021.[31] Prior thereto, *Respondent's Pre-Trial Brief* and *Petitioner's Pre-Trial Brief* were both filed on February 23, 2021.[32]

On November 03, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[33] which was approved and adopted by the Court in the Pre-Trial Order dated November 22, 2021,[34] thereby deeming the termination of the Pre-Trial.

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

Petitioner offered the testimonies of (1) Ms. Mhay M. Agana,[35] its Accounting Manager; and (2) Ms. Ma. Fedna B. Parallag,[36] the commissioned independent Certified Public Accountant ("ICPA").[37]

In the meantime, in the Order dated June 29, 2022,[38] the present case was transferred to the Third Division of this Court.

For his part, respondent offered the testimony of RO Wilfredo M. Pantino.[39]

The present case was considered submitted for decision on January 10, 2024.[40]

<u>The Issue</u>

As stipulated by the parties, the issues for this Court's resolution are as follows, *viz.*:

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29 *Id.*, *No Agreement to Mediate* dated June 9, 2021, p. 962.
30 *Id.*, Resolution dated June 14, 2021, p. 966.
31 *Id.*, Notice of Resetting dated September 29, 2021, p. 1392; Order dated October 11, 2021, p. 1394.
32 *Id.*, pp. 883-886, and 936-964, respectively.
33 *Id.*, pp. 1414-1426.
34 *Id.*, pp. 1435-1443.
35 *Id.*, Order dated November 22, 2021, pp. 967 to 1022; p. 1444.
36 *Id.*, Exhibit "P-37", pp. 1497-1522; Minutes of the hearing held on, and Order dated, May 30, 2022, p. 1524 and p. 1930.
37 *Id.*, Order dated November 22, 2021, p. 1444.
38 *Id.*, p. 2329.
39 *Id.*, Exhibit "R-18", pp. 889-896; Minutes of hearing held on, and Order, dated August 03, 2023, pp. 2347-2349.
40 *Id.*

> "...Whether or not Petitioner is liable for the assessments issued by Respondent for alleged deficiency income tax, percentage tax, EWT, WTC, DST, and compromise penalties for CY ended 31 December 2016, in the aggregate amount of Php38,157,633.01, inclusive of interest.
>
> ...Whether or not Respondent's alleged deficiency tax assessment against petitioner, in the total amount of Php38,157,633.01, inclusive of interest, is null and void due to Respondent's failure to observe Petitioner's right to administrative due process."[41]

Petitioner's arguments:

Petitioner argues that respondent's alleged deficiency tax assessment against petitioner for calendar year 2016, in the total amount of Php38,157,633.01, inclusive of interest, is null and void due to respondent's failure to observe petitioner's right to administrative due process, and accordingly, the entire deficiency tax assessment against petitioner should be cancelled outright; and that even assuming that for the sake of argument that respondent observed petitioner's right to administrative due process, the assessment issued against petitioner for alleged deficiency income tax, percentage tax, EWT, WTC, DST, and compromise penalties for calendar year ended December 31, 2016, in the aggregate amount of Php38,157,633.01, inclusive of interest, should nevertheless be cancelled for being bereft of any factual, and/or legal basis.

Respondent's counter-arguments:

Respondent argues that the petitioner is liable for deficiency income tax, percentage tax, EWT, WTC, DST, and compromise penalties for calendar year ended December 31, 2016; and that petitioner was accorded its right to administrative due process.

Discussion/Ruling

The present *Petition for Review* is meritorious.

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[41] Docket, JSFI, Statement of Issues to be Tried and Resolved, Pars. 18.1 and 18.2, p. 1417 in relation to Pre-Trial Order dated November 22, 2021, Statement of the Facts & Issues, p. 1435.

The Court has jurisdiction over the instant case.

Under Section 11 of Republic Act ("R.A.") No. 1125[42], as amended by RA No. 9282[43], a taxpayer aggrieved by a decision or inaction of the Commissioner of Internal Revenue may file an appeal with the Court of Tax Appeals within thirty (30) days from the receipt thereof:

> "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 **<u>may file an appeal with the CTA within thirty (30) days</u>** after the receipt of such decision or ruling or **<u>after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.</u>**"[44]

On the other hand, Section 228 of the NIRC of 1997, as amended, provides the period within which to dispute the assessment, to prevent it from being final, unappealable, and demandable:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
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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.

[42] An Act Creating The Court Of Tax Appeals, June 16, 1954.
[43] An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.
[44] *Emphasis and underscoring supplied.*

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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

If the protest is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)** days from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable."[45]

Pursuant to the provision above, Petitioner has thirty (30) days from receipt of the FAN/FLD within which to file its administrative protest and another thirty (30) days from receipt of Respondent's decision or from the lapse of the 180-day period within which to file its Petition for Review with this Court.

Petitioner received the FAN/FLD on December 20, 2019. Petitioner therefore had thirty (30) days from December 20, 2019 or until January 19, 2020 within which to file its administrative protest. Petitioner timely filed its Protest against the said FAN/FLD on January 17, 2020.

Within sixty (60) days from filing of the *Request for Reinvestigation*, Petitioner timely submitted its supporting documents on March 17, 2020. Counting one hundred eighty (180) days therefrom, Respondent had until September 13, 2020 within which to act upon the protest of Petitioner. Since Respondent failed to do so, Petitioner opted to file a *Petition for Review* with this court on October 13, 2020, which was well within thirty (30) days after the expiration of the 180-day period.

The Court shall now proceed to discuss the merits of the case.

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[45] *Emphasis supplied.*

The subject tax assessments are void, for violation of petitioner's right to administrative due process.

Petitioner argues that the fact that the FAN/FLD (i) was issued only a week after it filed its Reply to the PAN, and (ii) is a mere copy or reiteration of the findings and explanation in the PAN (with the only difference being the updated interest) shows that respondent did not even consider petitioner's explanations in its Reply to the PAN. Thus, according to petitioner, respondent's issuance of the FAN/FLD that is an exact replica of the PAN, absent any indication in the FAN/FLD that respondent has considered petitioner's explanation/arguments in the Reply to the PAN, is fatal to respondent's cause and renders the assessments therein void.

We find petitioner's argument 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
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**"[46]

Under the foregoing provision, 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.[47] 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.[48] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow

46 *Emphasis supplied.*
47 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.
48 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 03, 2021.

exhortation. The law imposes a substantive, not merely a formal, requirement.[49] 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.[50]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations ("RR") No. 12-99[51], as amended by RR No. 18-2013[52] and renumbered by RR No. 7-2018[53], provides, in part, 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:
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> xxx xxx xxx
>
> 3.1.2 *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 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).
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> xxx xxx xxx
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> 3.1.4 *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**

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49 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021.

50 *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

51 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

53 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.

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).

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3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision."[54]

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the PAN, FLD and Final Decision on a Disputed Assessment ("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.

In fact, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[55] ("*CIR v. Avon*"), the Supreme Court declared as void the tax assessment because of the total disregard by the Comissioner of Internal Revenue (CIR) of the taxpayer's due process rights as mandated by Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended. Specifically, the Supreme Court held that the Commissioner of Internal Revenue failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it. 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. Moreover, the taxpayer was left unaware on how the Commissioner of Internal Revenue or his or her duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

The relevant portions of the said decision are quoted below:

"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

[54] *Emphasis and underscoring supplied.*
[55] G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

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

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The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>.** 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, <u>Avon was left unaware on how the</u>**

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> **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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> xxx xxx xxx
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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."[56]

Based on the foregoing, 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.

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.

In this case, as stated in the PAN with attached *Details of Discrepancies* dated November 18, 2019,[57] the BIR found due from petitioner deficiency income tax, percentage tax, EWT, WTC, DST and compromise penalties for calendar year 2016, in the amount of Php37,882,882.61, inclusive of interest, determined/shown as follows:

I. INCOME TAX		
Taxable Income per Income Tax Return (ITR)	Php	-

[56] *Emphasis and underscoring supplied.*
[57] Docket, Exhibit "P-8", pp. 1587-1594; Exhibit "R-13", pp. 910-917.

Add: Adjustments per Investigation		
Disallowed Cost and Expenses due to Non-Withholding (Schedule 1)	Php26,191,123.00	
Unaccounted Rent Expense (Schedule 2)	3,037,398.00	
Salaries, Wages and Other Benefits not Subjected to WC (Schedule 3)	13,437,564.83	Php 42,666,085.83
Adjusted Taxable Income		Php 42,666,085.83
Income Tax Due (30%)		Php 12,799,825.75
Less: Allowed Tax Credits / Payments		-
Deficiency Income Tax		Php 12,799,825.75
Add: 20% Interest		
(April 16, 2017 to December 31, 2017)	Php 1,823,536.82	
12% Interest		
(January 1, 2018 to December 13, 2019)	2,996,211.27	4,819,748.09
TOTAL AMOUNT DUE		Php 17,619,573.84
II. PERCENTAGE TAX		
Revenue/Receipts per Percentage tax		Php429,550,797.85
Add: Adjustment per Investigation		
Revenue/Receipts not subjected to Percentage Tax (Schedule 4)		14,040,690.15
Adjusted Revenue/Receipts		Php443,591,488.00
OPT Due (5%)		Php 22,179,574.40
Less: Allowed Tax Credits / Payments		
OPT Payments		21,477,539.89
Deficiency Value-Added Tax		Php 702,034.51
Add: 20% Interest		
(January 26, 2017 to December 31, 2017)	Php 130,789.99	
12% Interest		
(January 1, 2018 to December 13, 2019)	164,333.78	295,123.77
TOTAL AMOUNT DUE		Php 997,158.28
III. EWT		
Basic Tax Due (Schedule 1)		Php 583,463.90
Add: 20% Interest		
(January 26, 2017 to December 31, 2017)	Php 111,897.19	
12% Interest		
(January 1, 2018 to December 13, 2019)	136,578.51	248,475.70
TOTAL AMOUNT DUE		Php 831,939.60
IV. WTC		
Basic Tax Due (Schedule 5)		Php 556,865.00
Add: 20% Interest		
(January 26, 2017 to December 31, 2017)	Php 106,796.03	
12% Interest		
(January 1, 2018 to December 13, 2019)	130,352.18	237,148.21
TOTAL AMOUNT DUE		Php 794,013.21

V. DST		
Basic Tax Due (Schedule 6)		Php 12,315,849.00
Add: 20% Interest		
(January 26, 2017 to December 31, 2017)	2,429,427.75	
12% Interest		
(January 1, 2018 to December 13, 2019)	2,882,920.93	5,312,348.68
TOTAL AMOUNT DUE		Php 17,628,197.68
VI. COMPROMISE PENALTY		Php 12,000.00

Records show that petitioner filed its Reply to the PAN dated December 13, 2019,[58] wherein petitioner laid out its arguments and defenses against the deficiency income tax, percentage tax, EWT, WTC, DST and compromise penalties for the calendar year 2016, imposed by the BIR, likewise attaching thereto various supporting documents. Specifically, the following are the summary of arguments raised by petitioner therein, to wit:

- Disallowed Cost and Expenses due to Non-withholding (Php26,191,123.00) – Contrary to the BIR's findings, and as further explained in Part C of the Reply to PAN, petitioner manifested that it properly withheld the appropriate incomes taxes on all its income payments for calendar year 2016;
- Unaccounted Rent Expense (Php3,037,398.00) – As may be gleaned from the reconciliation schedule provided to the BIR during their previous meeting, the foregoing discrepancy of Php3,037,398.00 was recorded as "Print Rent Expense" in petitioner's 2016 Audited Financial Statements (AFS);
- Salaries, Wages and Other Benefits not subjected to WTC (Php13,437,564.83) – The corresponding WTC on the income payments enumerated in Schedule 3 was properly withheld and remitted by petitioner as shown in the reconciliation schedule in the Reply to PAN;
- Percentage Tax (Php702,304.51) – Petitioner actually made an overpayment of percentage taxes amounting to Php3,982,780.58 for calendar year 2016, which is notably the subject of a pending judicial claim for refund/tax credit filed by petitioner with this Court;
- EWT (Php583,463.90) – Petitioner manifested that it correctly withheld the applicable EWT due on its income payments as may be gleaned from the schedule in the Reply to the PAN;
- WTC (Php556,865.00) – As gleaned from (i) the Alphalist Schedule submitted by petitioner for the year 2016 and (ii) the reconciliation provided in the Reply to the PAN, petitioner withheld WTC in the total amount of Php13,241,818.44 for calendar year 2016, out of which petitioner remitted only Php11,637,988.18 due to the adjustment from its prior year's filling amounting to Php1,603,830.26; there is an over remittance of Php1,046,965.46;
- DST (Php12,315,849.00) -

[58] *Id.,* Exhibit "P-9", pp. 1595-1611.

- For bank borrowings, petitioner's bank borrowings for 2016 are already net of the DST and other bank charges due thereon;
- For loan receivables, petitioner is not subject to DST under Sections 173 and 179 of the Tax Code considering that the loans which it extends to customers meet the requirements for DST exemption under Section 199 thereof;
- For due to/from Related Parties – the alleged deficiency DST assessed on the petitioner's payments due to/from related parties has no factual or legal basis;

- Compromise Penalties (Php12,000.00) – there is no legal or factual basis for the BIR's assessment for the compromise penalty; a compromise penalty is consensual in nature.

However, in the FAN/FLD with attached *Details of Discrepancies* dated December 23, 2019,[59] petitioner was still assessed the same exact basic deficiency income tax, percentage tax, EWT, WTC, documentary stamp tax and compromise penalties, in the total amount of Php26,970,038.16, and notably, only the total interests were respectively adjusted or updated to Php11,187,594.85, bringing the total amount due to Php38,157,633.01. In fact, the *Details of Discrepancies*[60] attached to the FLD merely reiterated or copied *verbatim* what are indicated in the *Details of Discrepancies* attached to the PAN.

In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the above-stated refutations and explanations made by petitioner in its Reply to the PAN dated December 13, 2019[61]—an indication that respondent or the BIR did not consider the same when it issued the subject FLD. Consequently, petitioner was left unaware on how respondent or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of petitioner's right to administrative due process.

To stress, failure to address the said refutations and explanations is tantamount to failure to provide the particular facts and/or law upon which the FLD is based pursuant to *CIR v. Avon.* Consequently, petitioner was left unaware on how respondent appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of petitioner's right to administrative due process.

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59 *Id.,* Exhibit "P-11", pp. 1618-1625; Exhibit "R-15", pp. 920-927.
60 *Id.,* Exhibit "P-11", at pp. 1620-1625; Exhibit "R-15", at pp. 922-927.
61 *Id.,* Exhibit "P-9", pp. 1595-1611.

Correspondingly, as part of the due process requirement in the issuance of tax assessments, respondents must give reason(s) for rejecting petitioner's refutations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. Respondent or the BIR has obviously not observed such requirement in the issuance of the subject FAN/FLD. Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, vis-à-vis Section 3.1.4 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, was violated by respondent. As a consequence of such violation, the subject deficiency tax assessments are rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[62] Furthermore, a void assessment bears no valid fruit.[63] Such being the case, the subject tax assessment cannot be enforced against petitioner, and respondent or the BIR has no right to collect the same.

In view of the finding that the subject tax assessment is invalid, it becomes unnecessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the Assessment Notices and Formal Letter of Demand dated December 23, 2019, assessing petitioner for deficiency income tax, percentage tax, EWT, WTC, DST and compromise penalties for calendar year 2016, in the aggregate amount of Php38,157,633.01, is **CANCELLED** and **SET ASIDE**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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62 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018..

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

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice