REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

SUBIC WATER & SEWERAGE CO. INC., Petitioner,	**CTA CASE NO. 10465**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 2 ... ___ 4:08 pm.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on February 10, 2021, seeking the cancellation of the respondent's Final Decision on Disputed Assessment ("FDDA"), dated January 11, 2021, assessing petitioner for alleged deficiency income tax ("IT"), value-added tax ("VAT"), expanded withholding tax ("EWT"), final withholding tax ("FWT"), and final withholding value-added tax ("FWVAT"), inclusive of penalties, for the calendar year ending on 2014 ("CY 2014").

The Parties

Petitioner is a corporation duly organized and existing under Philippine laws and registered with the Subic Bay Freeport ("SBF"), with principal office at Subic Water Complex, Rizal Highway, SUBCOM Area, Subic Freeport Zone, 2200, Philippines.[1]

Respondent is the Commissioner of Internal Revenue ("CIR"), with office address at the Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City, Philippines.[2]

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1 Petition for Review, p. 2, *Rollo* Vol. 1, p. 7.

2 Pre-Trial Order, dated October 5, 2022, p. 2, *Rollo* Vol. 12, p. 5083.

The Facts

On January 17, 2017, respondent issued Letter of Authority ("LOA") No. eLA201500034320 for the examination of petitioner's books of accounts and accounting records for CY 2014.[3]

Then, respondent issued a Preliminary Assessment Notice ("PAN") on November 27, 2017, which petitioner received on November 28, 2017.[4] Petitioner disputed the assessment via a Reply, filed on December 13, 2017.[5]

Respondent then issued a Formal Letter of Demand ("FLD") days later on December 28, 2017. Petitioner replied via a Protest to the FLD on January 28, 2018.[6]

Unconvinced, respondent issued the assailed FDDA on January 11, 2021. Petitioner filed the instant Petition exactly 30 days later, on February 10, 2021. The Court issued Summons soon after, on February 11, 2021.[7]

Before respondent could file an Answer, petitioner filed an *Urgent Verified Motion for the Suspension of the Collection of Tax Liability* ("Motion to Suspend") on March 5, 2021,[8] praying for the suspension of the Warrant of Distraint and/or Levy that respondent had issued on March 2, 2021.[9]

The Court ordered respondent to comment on the Motion,[10] and a hearing was held on said Motion on April 20, 2021.[11] Petitioner filed its *Formal Offer of Documentary Evidence* ("Suspension FOE") on May 20, 2021.[12]

With no comment from respondent on either the Motion to Suspend[13] or the Suspension FOE,[14] the Court denied the Motion to Suspend for lack of merit through a Resolution, promulgated on July 23, 2021.[15]

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3 *Id.* The LOA is consistently presented by both parties as being dated *July* 17, 2017, but as the Court notes in its October 2, 2024 Resolution, the LOA is actually dated *January* 17, 2017. See Resolution, dated October 2, 2024, p. 1, *Rollo* Vol. 13, p. 5796.

4 Memorandum, p. 5, *Rollo* Vol. 13, p. 5809.

5 Memorandum, p. 6, *id.* at 5810.

6 *Id.*

7 *Rollo* Vol. 4, p. 1446.

8 *Id.* at 1447-1472.

9 Urgent Verified Motion for the Suspension of the Collection of Tax Liability, p. 2, *id.* at 1448.

10 Resolution, dated March 10, 2021, *id.* at 1329-1330.

11 Minutes of the Hearing, held on April 20, 2021, *id.* at 1832.

12 *Rollo* Vol. 5, pp. 1943-1957.

13 Records Verification, dated July 5, 2021, *id.* at 2425.

14 Records Verification, dated June 22, 2021, *id.* at 2424.

15 *Id.* at 2427-2436.

Aggrieved, petitioner filed its *Urgent Motion for Reconsideration with Motion for Leave to Admit Originals and Certified True Copies of Exhibits and/or Conduct of a Marking Conference and/or Tender of Excluded Evidence* ("Motion for Reconsideration") on December 21, 2021.[16] The Court allowed petitioner to present some of its evidence anew and set a hearing for the Motion for Reconsideration.[17]

After a hearing held on September 15, 2022[18] and petitioner's submission of its *Formal Offer of Documentary Evidence (in Support of the Urgent Motion for Reconsideration dated 21 December 2021)*[19] ("Reconsideration FOE"), the Court resolved the Reconsideration FOE on November 28, 2022[20] and ultimately granted the Motion for Reconsideration on January 27, 2023, suspending the collection of the subject taxes until the final disposition of the case and foregoing the cash deposit or bond requirement.[21]

Concurrently with the resolution of the Motion to Suspend and Motion for Reconsideration, the main case proceeded. Respondent filed his Answer on April 8, 2022,[22] and the Pre-Trial Conference was held on July 26, 2022.[23]

After a failure to timely reach a compromise agreement,[24] petitioner presented witness Ms. Marilyn B. Baluyot on October 5, 2023[25] and Independent Certified Public Accountant Charlene A. Monje on February 8, 2024.[26] It then filed its *Formal Offer of Documentary Evidence* on February 28, 2024.[27] The Court admitted all of petitioner's offered evidence.[28]

Meanwhile, respondent presented witness Revenue Officer Jennifer A. Potot on May 22, 2024[29] and filed *Respondent's Formal Offer of Evidence* on June 6, 2024.[30] The Court also admitted all of respondent's evidence.[31]

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16 *Rollo* Vol. 6, pp. 2439-2469.
17 Resolution, dated August 4, 2022, pp. 3-4, *id.* at 2683-2684.
18 Minutes of the Hearing, held on September 15, 2022, *Rollo* Vol. 12, p. 4856.
19 *Id.* at 4866-4890.
20 Resolution, dated November 28, 2022, *id.* at 5102-5104.
21 Resolution, dated January 27, 2023, *id* at 5107-5118.
22 *Rollo* Vol. 6, pp. 2568-2578.
23 Minutes of the Hearing, held on July 26, 2022, *id.* at 2673.
24 Resolution, dated August 4, 2023, pp. 2-3, *Rollo* Vol. 12, pp. 5140-5141; Mediator's Report, dated August 17, 2023, *id.* at 5142.
25 Minutes of the Hearing, held on October 5, 2023, *id.* at 5170.
26 Minutes of the Hearing, held on February 8, 2025, *Rollo* Vol. 13, p. 5464.
27 *Id.* at 5466-5491.
28 Resolution, dated April 18, 2024, *id.* at 5753-5755.
29 Minutes of the Hearing, held on May 22, 2024, *id.* at 5772.
30 *Id.* at 5774-5782.
31 Resolution, dated October 2, 2024, *id.* at 5796-5797.

On November 8, 2024, respondent manifested that he would simply adopt the arguments raised in his Answer in lieu of filing a Memorandum.[32] Petitioner, meanwhile, filed its Memorandum on November 11, 2024.[33]

The Court then issued a Minute Resolution submitting the case for decision on November 26, 2024.[34] Hence, this Decision.

The Issues[35]

(1) Whether petitioner is liable for the payment of deficiency IT, VAT, EWT, FWT, FWVAT, and penalties, interests, and surcharges for CY 2014; and

(2) Whether petitioner's sales are subject to the 5% Preferential Tax Rate ("PTR") or the 30% Regular Corporate Income Tax ("RCIT").

Arguments of the Parties

Petitioner's Arguments

Petitioner raises the following arguments:

(1) By law, petitioner is entitled to the 5% PTR rather than the 30% RCIT:

(a) Olongapo City is included in the Subic Special Economic and Freeport Zone ("SSEFZ") by *Republic Act* ("*RA*") *No. 7227* ("*BCDA*") and its *Implementing Rules and Regulations* ("*IRR*"), *Presidential Proclamation No. 532*, as amended by *Presidential Proclamation No. 1475*, *RA No. 9400* and its *IRR*, and various documents and agreements;[36]

(b) *Executive Orders* ("*EO*") *Nos. 675 & 97-A*, which respondent invokes, apply to import duties and taxes and are thus irrelevant here;[37]

(c) This Court has already ruled, in an August 14, 2019 Decision, that petitioner's income generated in Olongapo City is subject to the 5% PTR;[38]

[32] Manifestation, *id.* at 5799.
[33] *Id.* at 5805-5863.
[34] *Id.*, unpaginated.
[35] Pre-Trial Order, pp. 2-3, *Rollo* Vol. 12, pp. 5083-5084.
[36] Memorandum, pp. 17-25, *Rollo* Vol. 13, pp. 5821-5829.
[37] Memorandum, pp. 25-26, *id.* at 5829-5830.
[38] Memorandum, pp. 27-32, *id.* at 5830-5838.

(2) The assessments lack factual and legal bases:

(a) The income respondent claims was generated from activities not among petitioner's registered activities was actually generated from activities consistent with and related to petitioner's registered activities, and the 5% PTR on gross income earned, so the distinction should not be made in the first place;[39]

(b) *Revenue Regulations* ("*RR*") *No. 1-1995 & 13-2005* allow petitioner's depreciation expenses for machineries and equipment used in production and/or in the rendition of registered services, contra respondent's disallowance of the same;[40]

(c) Respondent's disallowance of expenses due to non-withholding of EWT is erroneous as the relevant items (a) are not subject to EWT; (b) result from errors in respondent's audit; (c) correspond to EWT that has already been paid; or (d) were not claimed as deductions;[41]

(d) Respondent's imputation of unreported income is based on mere presumptions and should thus be rejected;[42]

(e) As Olongapo City is within the SSEFZ, petitioner's income from services rendered to said city is not subject to VAT;[43]

(f) Petitioner's income from services and sales to individuals in Olongapo City is also not subject to VAT;[44]

(g) Again, the activities respondent claims are not among petitioner's registered activities are actually consistent with petitioner's registered activities and are thus not subject to VAT;[45]

(h) The 5% PTR is paid in lieu of all national and local taxes, so the alleged income from disallowed expenses is still not subject to VAT;[46]

(i) The imputation of unreported income is based on mere presumptions, as claimed, so such is also not subject to VAT;[47]

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39 Memorandum, pp. 32-34, *id.* at 5836-5838.
40 Memorandum, pp. 34-35, *id.* at 5838-5839.
41 Memorandum, pp. 35-36, *id.* at 5839-5840.
42 Memorandum, pp. 36-37, *id.* at 5840-5841.
43 Memorandum, pp. 37-38, *id.* at 5841-5842.
44 Memorandum, pp. 38-39, *id.* at 5842-5843.
45 Memorandum, p. 39, *id.* at 5843.
46 *Id.*
47 Memorandum, pp. 39-40, *id.* at 5843-5844.

(j) The items in the EWT assessment are not actually subject to EWT, and one of respondent's major bases for such was only raised in the FDDA;[48]

(k) The fees paid to SEMBCORP are not subject to FWT, following the Philippines-United Kingdom Tax Treaty ("RP-UK");[49]

(l) Petitioner timely paid the FWT on its cash dividend declarations with SEMBCORP, so the imposition of interest and surcharges for late payment is erroneous;[50]

(3) The assessment is void for violating petitioner's right to due process;

(a) The government's right to assess petitioner for deficiency EWT had already prescribed when respondent issued the FLD;[51]

(b) Except for the running of interest, the issues raised in the PAN, FLD, and FDDA are identical, meaning respondent failed to address petitioner's protests;[52]

(c) Respondent did not conduct a full audit, and the assessment is based on mere presumptions;[53]

(d) Respondent changed the legal bases of some items as late as in the FDDA, depriving petitioner of the opportunity to defend its case;[54] and

(4) Petitioner acted in good faith, so the surcharges and interest should not be imposed.[55]

Respondent's Arguments

Respondent counters the above with the following:

(1) As more than 30% of petitioner's total income was generated from sources within the Philippines and outside the SSEFZ, its income is no longer subject to the 5% PTR in lieu of all national and local taxes;[56]

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[48] Memorandum, pp. 40-42, *id.* at 5844-5846.
[49] Memorandum, pp. 43-44, *id.* at 5847-5848.
[50] Memorandum, pp. 44-45, *id.* at 5848-5849.
[51] Memorandum, pp. 45-47, *id.* at 5849-5851.
[52] Memorandum, pp. 47-49, *id.* at 5851-5853.
[53] Memorandum, pp. 49-51, *id.* at 5853-5855.
[54] Memorandum, pp. 51-55, *id.* at 5855-5859.
[55] Memorandum, pp. 55-56, *id.* at 5859-5860.
[56] Answer, pp. 2-3, *Rollo* Vol. 6, pp. 2569-2570.

(2) Petitioner's arguments indirectly attack *RR No. 2-2005*, which enjoys a presumption of regularity;[57]

(3) The assessment has factual and legal bases:

(a) Income gained by petitioner was not reported in its Income Tax Return ("ITR") and was not part of its registered activities;[58]

(b) Petitioner claimed non-deductible expenses;[59]

(c) Some of petitioner's expenses were not properly subjected to withholding tax;[60]

(d) Discrepancies in income payments represent undeclared revenue which must be subjected to deficiency IT;[61]

(e) Petitioner's meeting costs paid to Fairclough, Graham should be subjected to FWVAT;[62]

(f) Petitioner's income generated from the Philippines should be subjected to VAT, following *Revenue Memorandum Circular* ("*RMC*") *Nos. 50-2007 & 61-2005* and the relevant jurisprudence;[63]

(g) Petitioner failed to pay the corresponding EWT on its income payments;[64]

(h) Petitioner failed to declare and pay the FWT on dividends paid to SEMBCORP;[65] and

(4) The imposition of 50% surcharge is proper and based on *Section 248(b) of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), and *RR No. 12-1999*.[66]

The Ruling of the Court

Petitioner argues that respondent violated its right to due process by failing to consider the points it raised against the assessment, an argument based on the *NIRC* and the landmark case of *Commissioner of Internal*

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57 Answer, pp. 3-5, *id.* at 2570-2572.
58 Answer, p. 5, *id.* at 2572.
59 Answer, pp. 5-6, *id.* at 2572-2573.
60 Answer, p. 6, *id.* at 2573.
61 *Id.*
62 *Id.*
63 Answer, pp. 7-8, *id.* at 2574-2575.
64 Answer, pp. 8, *id.* at 2575.
65 *Id.*
66 Answer, pp. 9-10, *id.* at 2576-2577.

Revenue v. Avon Products Manufacturing, Inc.[67] ("*Avon*"). Tellingly, respondent raises no explicit counterargument to this claim.

A review of the relevant law and jurisprudence is in order. *Section 228 of the NIRC* requires that an assessed taxpayer be informed of the factual and legal basis for the assessment, on pain of said assessment's nullification:

> 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.

This is made more specific by *Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-13*:

> 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 [their] duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void. . . .*
> (Italics in original.)

Avon discussed this requirement in depth. There, the Supreme Court explained that informing a taxpayer of an assessment's factual and legal basis necessarily involves addressing any protests raised against it:

> The Court of Tax Appeals ruled that the difference in the appreciation by the Commissioner of Avon's supporting documents, which led to the deficiency tax assessments, was not violative of due process. While the Commissioner has the duty to receive the taxpayer's clarifications and explanations, she does not have the duty to accept them on face value.
>
> This Court disagrees.
>
> 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 the 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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> . . . .
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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*

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

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

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

In Edwards v. McCoy:

> The object of a hearing is as much to have evidence considered as it is to present it. *The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.*

In Ang Tibay, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but *the tribunal must consider the evidence presented.*"

Furthermore, in Mendoza v. Commission on Elections, this Court explained:

> [T]he last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

In Villa v. Lazaro, this Court held that Anita Villa (Villa) was denied due process when the then Human Settlement Regulatory Commission ignored her submission, not once but thrice, of the official documents certifying to her compliance with the pertinent locational, zoning, and land use requirements, and plans for the construction of her funeral parlor. It imposed on Villa a fine of P10,000.00 and required her to cease operations on the spurious premise that she had failed to submit the required documents. This Court found the Commissioner's failure or refusal to even acknowledge the documents submitted by Villa indefensible. It further held that the defects in the administrative proceedings "translate to a denial of due process against which the defense of failure to take timely appeal will not avail."

Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, *the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment,*

> *Notices, and Collection Letter*, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."
> (Citations omitted; italics supplied.)

From the above, when a taxpayer protests an assessment, the CIR is *required* to address the arguments raised. Simply ignoring such arguments renders the assessment void, as that would be a violation of the taxpayer's right to due process.

To be clear, the CIR need not accept the taxpayer's arguments. If the arguments are incorrect, then the CIR must obviously reject these. What *Avon* requires is that the CIR also *explain why* said arguments are rejected. Inasmuch as these rejections are part and parcel of the assessment, failing to state the factual and legal bases for such rejections is the same as failing to state the factual and legal bases for the assessment. Protests against an assessment put the factual and legal bases of an assessment into question, after all. Therefore, if an assessment notice does not clearly defend against such protests in writing, then it fails to actually state valid factual and legal bases. And, as already discussed, an assessment that fails to state its factual and legal basis is null and void.

Furthermore, failing to consider the taxpayer's arguments effectively nullifies its right to intelligently defend its case. As observed in *Avon*, allowing a taxpayer to adduce evidence and argue against an assessment is a *pro forma* farce if the CIR were to then completely ignore said evidence and assessment. At that point, the taxpayer would be unable to intelligently defend its case, as it would not know *why* its evidence and arguments are unacceptable.

Finally, by focusing on the Details of Discrepancies attached to PANs and FLDs/FANs, *Avon* emphasized that the CIR must consider a taxpayer's arguments *in writing*. The *NIRC* requires that the taxpayer be *informed* of the assessment's factual and legal bases: they must be communicated to the taxpayer. Unless the CIR verbally communicates the reasons for rejecting a taxpayer's argument, then, such reasons must be included in the FLD/FAN.

The following table shows the differences, if any, between the PAN's and FLD's respective Details of Discrepancies, pertaining to the various items of the assessment, excluding the running of interest and the occasional correction of typographic errors:

Item	**Difference between PAN and FLD**
Net service revenues subject to 30% RCIT	Quote from *RR No. 02-05* dropped; quote from *RR No. 1-95* extended; quote from *Executive Order* ("*EO*") *No. 675* added
Other Income subject to 30% RCIT	Verbatim copy
Disallowed depreciation expenses	Reference to *RR No. 11-2005* replaced with *RR No. 1-1995*
Disallowed expenses for non-withholding of tax- expanded	No significant changes
Unrecorded income payments/unrecorded source of funds	No significant changes
Disallowed expenses for non-withholding of tax- compensation	No significant changes
Disallowed expenses for non-withholding of final tax	No significant changes
Disallowed claim of 2307 certificates	No significant changes
Service revenues- City subject to 12% VAT	Added emphasis on phrase "outside the Secured Area" and addition of phrase "not registered enterprises or residents with the SBMA"; quote from *RR No. 02-05* dropped; quote from *RR No. 1-95* extended; quote from *EO No. 675* added
Service revenues- Domestic SBMA subject to 12% VAT	No significant changes
Other income subject to 12% VAT	No significant changes
Expenses offsetted against Connection Water Revenue	No significant changes
Inventory issuances offsetted against Connection Water Revenue	No significant changes
Expenses offsetted against Other Income	No significant changes
Unrecorded income payments/unrecorded source of fund	No significant changes
EWT due on income payments no subjected to withholding tax	No significant changes
Compensation not subjected to withholding tax	No significant changes
Final tax due on engineering, technology and transfer fee paid to SEMBCORP	No significant changes
Understatement of final tax on meeting costs paid to Fairclough, Graham	No significant changes
Interest and surcharge for late payment of dividends	No significant changes
Final VAT due on engineering, technology and transfer fee paid to SEMBCORP	No significant changes
Final VAT due on meeting costs paid to Fairclough, Graham	No significant changes
MV of Fringe Benefits no subjected to FBT	No significant changes
DST due on rentals	No significant changes

Compromise Penalty	Completely excluded from the FLD's Details of Discrepancies

As for the PAN and FLD themselves, the two have the following differences:

(1) The phrase "the investigation of which has been authorized under Letter of Authority No. AUDR01/010105/2017 dated January 17, 2017" was added to the first paragraph;

(2) The amount of interest computed was increased;

(3) The discussion on protesting the PAN was removed and replaced with a demand for payment; and

(4) The discussion on the compromise penalty, included as Part II of the PAN, was excluded from the FLD, although the FLD still includes a paragraph summarizing the basis for the compromise penalty.

Below is a table listing the arguments raised by petitioner in its Reply to the PAN, arranged by tax covered, and whether these were acknowledged by respondent in the FLD:

Assessment	**Argument Number**	**Acknowledged in FAN**
Whole Assessment		
	II.1. The BIR failed to inspect petitioner's books of accounts and other accounting records, deviating from the relevant provisions of the *NIRC* and *Revenue Audit Memorandum Order ("RAMO") No. 01-00*;[68]	Not acknowledged
	II.2. The assessment is based on mere presumptions;[69]	Not acknowledged
IT		
	III.A.1.1. *Section 3 of RR No. 2-2005*, which served as one legal basis for the imposition of RCIT, was suspended by *Section 2 of RR No. 13-05*;[70]	Yes, by removing the passage quoted from *RR No. 02-05*
	III.A.1.2. Olongapo City is included in the Subic Special Economic Zone, following *Section 12 of RA No. 7227*, *Presidential Proclamation No. 532*, *Department of Finance*	Partially: not all laws raised by petitioner are mentioned in the FAN

[68] Letter, dated December 13, 2017, pp. 4-5, *id.* at 372-373.
[69] Letter, dated December 13, 2017, pp. 5-6, *id.* at 373-374.
[70] Letter, dated December 13, 2017, pp. 6-7, *id.* at 374-375.

	Department Order No. 003-08, and the *IRR of RA No. 9400*, and the changes made by *Presidential Proclamation No. 1475* and *RA No. 9400* do not affect this;[71]	
	III.A.1.3. The relevant Bid Documents, Joint Venture Agreement, Franchise Agreement, and Certificate of Registration and Tax Exemption expressly include the City as an area to be serviced by the successful bidder;[72]	Not acknowledged.
	III.A.2. Other income comes from deposits from the use of water meters by petitioner's customers, which is consistent with and indispensable to petitioner's registered activities;[73]	Not acknowledged.
	III.A.3. Respondent's use of *RR No. 11-05* here is inappropriate, as said regulation implements *RA No. 7916*, while petitioner's tax incentives emanate from *RA No. 7227*;[74]	Not acknowledged.
	III.A.4. The identified items are (a) not subject to EWT; (b) covered by EWT already paid; (c) included as a result of errors in the audit; or (d) not claimed as deductions for income tax purposes;[75]	Not acknowledged.
	III.A.5. The imputation of unrecorded income payments is based on a mere presumption that a discrepancy between the amount of income as per petitioner's Annual Financial Statement and its Alphalist/MAP/1601E pertains to undeclared revenue;[76]	Not acknowledged.
	III.A.6. The law does not disallow a deduction of expenses for belated payment of withheld taxes;[77]	Not acknowledged.

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71 Letter, dated December 13, 2017, pp. 7-13, *id.* at 375-381.
72 Letter, dated December 13, 2017, pp. 13-15, *id.* at 381-383.
73 Letter, dated December 13, 2017, p. 15, *id.* at 383.
74 Letter, dated December 13, 2017, pp. 15-16, *id.* at 383-384.
75 Letter, dated December 13, 2017, p. 16, *id.* at 384.
76 Letter, dated December 13, 2017, pp. 16-17, *id.* at 384-385.
77 Letter, dated December 13, 2017, p. 17, *id.* at 385.

	III.A.7. SEMBCORP, to which petitioner allegedly paid engineering services, is exempt from tax under the *RP-UK*, and is thus also exempt from FWT.[78]	Not acknowledged.
VAT		
	III.B.1. VAT is imposed on the "destination principle," and Olongapo City is not part of the Philippines, so no VAT is due on petitioner's service revenues from the City.[79]	Partially, by emphasizing the phrase "outside the Secured Area"
	III.B.2. *RA No. 7227* does not distinguish between sales to corporate entities and to individuals, while *RMC No. 61-05* pertains to sales of electricity.[80]	Not acknowledged.
	III.B.3. Petitioner reiterated Argument III.A.2.[81]	Not acknowledged.
	III.B.4. As petitioner is entitled to 5% PTR, even if the supposed expenses are disallowed, the resulting income is still not subject to VAT.[82]	Not acknowledged.
	III.B.5. Petitioner reiterated Argument III.A.5.[83]	Not acknowledged.
EWT		
	I. The BIR's right to assess the subject EWT has already prescribed;[84]	Not acknowledged.
	III.C. The income payments allegedly not subjected to withholding taxes were made to income tax-exempt service providers, and petitioner has no personal liability to pay any EWY for these even if they were subject to withholding taxes.[85]	Not acknowledged.
FWT		

[78] Letter, dated December 13, 2017, pp. 17-18, *id.* at 385-386.
[79] Letter, dated December 13, 2017, pp. 18-19, *id.* at 386-387.
[80] Letter, dated December 13, 2017, p. 19, *id.* at 387.
[81] *Id.* Note that petitioner says that it reiterates its argument from "part II, B.1," but no such argument exists. Rather, the argument that the "other activities" identified by respondent are consistent with its registered activities matches Argument III.A.2.
[82] Letter, dated December 13, 2017, pp. 19-20, *id.* at 387-388.
[83] Letter, dated December 13, 2017, p. 20, *id.* at 388. Note that petitioner says that it reiterates its argument from "part II, A.5," but no such argument exists. Rather, the coverage of unrecorded income payments and/or sources of fund matches Argument *III*.A.5.
[84] Letter, dated December 13, 2017, pp. 3-4, *Rollo* Vol. 1, pp. 371-372.
[85] *Id.*

	III.D.1. Petitioner reiterated Argument III.A.7.[86]	Not acknowledged.
	III.D.2. There is no *Section 249(a)(1) of the NIRC*, while the two requirements under *Section 248(a)(1) of the NIRC* are absent here.[87]	Not acknowledged.
FWVAT		
	III.E. The income payments made to SEMBCORP were for services performed outside the Philippines and are thus not subject to FWVAT.[88]	Not acknowledged.
Surcharges and interest		
	IV. Surcharges and interest should not be imposed as petitioner was acting in good faith, following jurisprudence, *Section 204 of the NIRC*, and *Section 2.4 of RR No. 13-2001*.[89]	Not acknowledged.

The above clearly shows that respondent failed to consider petitioner's arguments against the assessment.

First and foremost, respondent did not acknowledge petitioner's allegation that the assessment is based on a so-called "table" audit, lacking any actual examination of petitioner's accounting records. Such an argument covers *all* of the assessments in the PAN. In effect, then, respondent failed to inform petitioner of the factual and legal basis underpinning *all* of the assessments against it.

However, respondent failed to consider petitioner's arguments regarding individual tax assessments as well. On the VAT assessment, for example, respondent is silent on petitioner's claim that *RA No. 7227* does not distinguish between sales to corporate entities and sales to individuals. Neither does respondent explain why his assessment of EWT had not yet prescribed. Respondent is also silent on SEMBCORP's tax status under *RP-UK*. Indeed, despite petitioner observing that the *NIRC* does not contain any *Section 249(a)(1)*, respondent still cited said non-existent provision in the FLD.

Even when respondent acknowledges one of petitioner's arguments, said acknowledgement is partial. We see this in the difference between the PAN's discussion of IT and that of the FLD. For the latter, respondent

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86 Letter, dated December 13, 2017, pp. 21-22, *id.* at 388-389. Note that petitioner says that it reiterates its argument from "part II, A.7," but no such argument exists. Rather, the argument on SEMBCORP matches Argument *III*.A.7.

87 Letter, dated December 13, 2017, p. 22, *id.* at 389.

88 *Id.*

89 Letter, dated December 13, 2017, pp. 21-23, *id.* at 289-291.

changed some of the passages cited, seemingly in response to petitioner's counter points against the assessment. Yet respondent fails to consider all of petitioner's contentions. He does not, for example, explain why the laws and regulations cited in the FLD should prevail over those cited by petitioner. He also does not even mention the bidding documents and agreements brought up by petitioner. Either way, respondent still completely ignores petitioner's other arguments against the IT assessment, such as the claim that some items in said assessment were based on mere presumptions on respondent's part.

In brief, respondent failed to inform petitioner of the reasons for the rejection of its arguments against the PAN. Respondent consequently failed to consider, *in writing*, petitioner's arguments and failed to inform petitioner of the assessment's factual and legal bases. The assessment, like the one in *Avon*, "did not even comment or address the defenses and documents" raised by petitioner in its protest to the PAN. And like the taxpayer in *Avon*, petitioner "was left unaware on how [respondent] appreciated the explanations or defenses raised in connection with the assessments," depriving it of its right to intelligently defend its case. So, as in *Avon*, the assessment is consequently void.

Considering the above, there is no need for this Court to cover the parties' other arguments. Whatever ruling We come to on those contentions, the assessment will remain void.

ACCORDINGLY, the instant *Petition for Review*, filed on February 10, 2021, is hereby **GRANTED**. The assessment against petitioner for alleged deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and final withholding value-added tax, inclusive of penalties, for the calendar year ending on 2014 is **CANCELLED** and declared **NULL** and **VOID**.

Respondent and any of his agents and officers are **ENJOINED AND PROHIBITED** from collecting any amount in relation to the void assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

On leave
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision was reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice