REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ZILOG ELECTRONICS PHILIPPINES, INC., *Petitioner,*	**CTA CASE Nos.** ***9403 & 9492***
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	NOV 23 2022 ; 11:20 A.M.

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DECISION

REYES-FAJARDO, *J.*:

Before this Court are the consolidated *Petitions for Review* filed by Zilog Electronics Philippines, Inc. against the Commissioner of Internal Revenue, seeking the following:

1. CTA Case No. 9403 - Cancellation of deficiency income tax assessment amounting to ₱121,325,525.10, inclusive of interests and penalty and declaration of nullity of respondent's *Final Decision on Disputed Assessment* (FDDA) dated May 13, 2016 and *Final Decision* dated June 20, 2016, denying petitioner's *Request for Reconsideration* on the FDDA.

2. CTA Case No. 9492 - Cancellation of deficiency income tax assessment amounting to ₱7,526,365.84,

inclusive of interests and the declaration of nullity of respondent's FDDA dated October 11, 2016.[1]

THE FACTS

Petitioner Zilog Electronics Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines with principal office at 2/F Team Pacific Building, Electronics Avenue, FTI Special Economic Zone, Taguig City 1630 Philippines.[2]

Respondent is the Commissioner of Internal Revenue, duly appointed and empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate tax liabilities as provided by law, and holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

CTA Case No. 9403:

On January 11, 2013, petitioner received the *Letter of Authority* (LOA) dated January 7, 2013 (SN: eLA201100006962/LOA-116-2013-00000002),[4] wherein Revenue Officers (ROs) Rogelio Gonzales, Aurora Pelayo, and Olivia Sison and Group Supervisor (GS) Olivia Aviles, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for the period from April 1, 2009 to March 31, 2010.

On February 18, 2013, Cesar D. Escalada, Chief of the BIR's Regular LT Audit Division 1, issued the *Memorandum of Assignment* (MOA) (No. LOA-116-2013-0340),[5] naming RO Josa C. Gomez and GS

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1 Summary of the Case, Pre-Trial Order dated September 13, 2017, Docket (CTA Case No. 9403) - Vol. 2, pp. 677 to 678.

2 Par. 1, Joint Stipulation of Facts, *Consolidated Joint Stipulation of Facts and Issue* (CJSFI), Docket (CTA Case No. 9403) - Vol. 2, p. 668.

3 Par. 2, Joint Stipulation of Facts, CJSFI, Docket (CTA Case No. 9403) - Vol. 2, p. 668.

4 Exhibit "R-20", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], p. 1; and Exhibit "P-9".

5 Exhibit "R-22", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], p. 242.

Olivia F. Aviles for the audit/verification of petitioner's internal revenue tax liabilities for taxable year (TY) 2010. On February 16, 2015, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service of the BIR,[6] presenting their audit findings and recommending the issuance of a *Preliminary Assessment Notice* (PAN) against petitioner.

During its examination, petitioner executed several *Waivers of The Defense of Prescription Under the National Internal Revenue Code.*[7]

On March 24, 2015, petitioner received the PAN, signed by OIC-Assistant Commissioner Nestor S. Valeroso,[8] finding petitioner liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WC), and documentary stamp tax (DST), including interests and compromise penalty, for fiscal year ending March 31, 2010. On April 8, 2015, petitioner filed its *Reply to the PAN.*[9]

On April 15, 2015, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to OIC-Assistant Commissioner Nestor S. Valeroso[10] reiterating the assessment per PAN with interest adjusted up to May 31, 2015.

On April 28, 2015, petitioner received the *Formal Letter of Demand* (FLD),[11] accompanied by the corresponding *Audit Result / Assessment Notices*,[12] demanding payment of alleged deficiency income tax, VAT, WC, EWT and DST, including interests and compromise penalty, in the total amount of ₱158,816,360.17.

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6 Exhibit "R-28", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 578 to 582.

7 Exhibits "R-23", "R-24", "R-25", and "R-26", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 351, 353, 356, and 358, respectively; and Exhibits "P-10", "P-11", "P-12", and "P-13".

8 Exhibit "R-29", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 583 to 590; and Exhibits "P-14".

9 Exhibit "P-35".

10 Exhibit "R-30", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 603 to 605.

11 Exhibit "R-31", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 655 to 662; and Exhibit "P-15".

12 Exhibits "R-32", "R-32-a", "R-32-b", "R-32-c", and "R-32-d", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 650 to 654.

On May 28, 2015, petitioner filed with the BIR its *Request for Reinvestigation.*[13] On July 27, 2015,[14] and November 5, 2015,[15] respectively, petitioner filed its *Supplemental Protest Letters.*

On June 9, 2015, Chief Cesar D. Escalada issued the MOA (No. LOA-116-2015-664),[16] naming RO Josa C. Gomez and GS Olivia F. Aviles to act on petitioner's protest letter on the FLD dated May 28, 2015. On March 31, 2016, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to Assistant Commissioner Nestor S. Valeroso,[17] presenting the result of their evaluation, and recommending the approval of the FDDA.

On March 22, 2016, petitioner paid portions of the deficiency taxes assessed in the FLD, in the total amount of ₱4,703,988.71, composed of the following:

Tax	Amount
Income tax[18]	₱2,168,626.97
VAT[19]	339,711.06
WC[20]	200,464.86
EWT[21]	464,277.25
DST[22]	1,530,908.58
TOTAL	**₱4,703,988.72**

On April 13, 2016, petitioner received the FDDA dated April 13, 2016,[23] accompanied by the *Audit Result / Assessment Notice*,[24] wherein the BIR requested the payment of deficiency income tax amounting to ₱121,325,525.10, inclusive of interest and compromise penalty.

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13 Exhibit "P-36".
14 Exhibit "P-37".
15 Exhibit "P-38".
16 Exhibit "R-33", BIR Records (CTA Case No. 9403) – Folder II [Exhibit "R-39"], p. 794.
17 Exhibit "R-34", BIR Records (CTA Case No. 9403) – Folder II [Exhibit "R-39"], pp. 838 to 851.
18 Exhibit "P-16".
19 Exhibit "P-17".
20 Exhibit "P-18".
21 Exhibit "P-19".
22 Exhibit "P-20".
23 Exhibit "R-35", BIR Records (CTA Case No. 9403) – Folder II [Exhibit "R-39"], pp. 838 to 927; and Exhibit "P-21".
24 Exhibit "R-36", BIR Records (CTA Case No. 9403) – Folder II [Exhibit "R-39"], p. 920.

On May 13, 2016, petitioner filed with the office of respondent a *Request for Reconsideration to FDDA.*[25]

On May 19, 2016, Chief Cesar D. Escalada again issued a MOA (No. LOA-116-2016-1330),[26] naming RO Josa C. Gomez and GS Olivia F. Aviles to act on petitioner's request for reconsideration to FDDA.

On June 20, 2016, ROs Josa C. Gomez and Felina B. Guimbao, and GS Olivia F. Aviles, submitted the Memorandum addressed to then Commissioner Kim S. Jacinto-Henares,[27] recommending that said request for reconsideration be denied. Thus, on June 20, 2016, respondent issued the assailed *Final Decision* denying petitioner's request for reconsideration.

CTA Case No. 9492:

On January 11, 2013, petitioner received the LOA dated January 7, 2013 (SN: eLA201100006961/LOA-116-2013-00000001),[28] wherein ROs Vivien Guillermo, and Shella Samaniego and GS Marivic Bautista, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2010 to March 31, 2011.

During its examination, petitioner executed several *Waivers of the Defense of Prescription Under the National Internal Revenue Code.*[29]

On December 9, 2015, petitioner received the PAN.[30] On February 12, 2016, petitioner submitted its *Reply to the PAN*[31] and its supplemental reply.[32]

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25 BIR Records (CTA Case No. 9403) - Folder I [Exhibit "R-39"], pp. 41 to 55; and Exhibit "P-39".
26 BIR Records (CTA Case No. 9403) - Folder I [Exhibit "R-39"], p. 58.
27 Exhibit "R-37", BIR Records (CTA Case No. 9403) - Folder I [Exhibit "R-39"], pp. 59 to 62.
28 Exhibit "R-1", BIR Records (CTA Case No. 9492), p. 1.
29 Exhibits "R-4", "R-6", "R-7", "R-8", "R-9", and "R-11", BIR Records (CTA Case No. 9492), pp. 247, 248, 249, 250, 251, and 390, respectively.
30 Exhibit "R-12", BIR Records (CTA Case No. 9492), pp. 391 to 401; and Exhibit "P-48".
31 Exhibit "P-49".
32 Exhibit "P-50".

On March 2, 2016, petitioner received the FLD dated March 1, 2016,[33] accompanied by the corresponding *Audit Result / Assessment Notices*,[34] demanding payment of alleged deficiency income tax, EWT, and WC, including interests and compromise penalty, amounting to ₱24,108,812.72. On April 1, 2016, petitioner then filed with the BIR its *Reply to the FLD* dated March 31, 2016,[35] requesting for the cancellation and/or withdrawal of the alleged deficiency taxes for lack of factual and legal basis.

On September 16, 2016, petitioner paid portions of the deficiency taxes assessed in the FLD, amounting to ₱3,343,667.27, broken down as follows:

Tax	Amount
Income tax[36]	₱3,113,829.17
EWT[37]	95,440.20
WC[38]	84,397.90
Compromise penalty[39]	50,000.00
TOTAL	**₱3,343,667.27**

Thereafter, petitioner further paid the amount of ₱352,211.76, consisting of the following:

Tax	Amount
Income tax[40]	₱334,934.73
EWT[41]	9,252.72
WC[42]	1,975.69
WC[43]	6,048.62
TOTAL	**₱352,211.76**

In view of its partial tax payments, petitioner, on September 20, 2016, filed its letter,[44] requesting the BIR to reconsider its position on

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33 Exhibit "R-14", BIR Records (CTA Case No. 9492), pp. 502 to 509; and Exhibit "P-51".
34 Exhibits "R-15", "R-15-A", "R-15-B", and "R-15-C", BIR Records (CTA Case No. 9492), pp. 498 to 501; and Exhibits "P-51".
35 Exhibit "P-52".
36 Exhibit "P-53".
37 Exhibit "P-54".
38 Exhibit "P-55".
39 Exhibit "P-56".
40 Exhibit "P-58".
41 Exhibit "P-59".
42 Exhibit "P-60".
43 Exhibit "P-61".
44 Exhibit "P-62".

the matter and thereafter, resolve and conclude the remaining tax issue as terminated without any further tax liability on the part of petitioner.

On October 11, 2016, petitioner received the FDDA,[45] accompanied by an *Audit Result / Assessment Notice*,[46] requesting the payment for deficiency income tax amounting to ₱7,526,365.84, inclusive of interest.

PROCEEDINGS BEFORE THIS COURT

CTA Case No. 9403:

On July 29, 2016, petitioner filed the present *Petition for Review*.[47] The case was docketed as CTA Case No. 9403 and was initially raffled to this Court's Third Division.

On January 3, 2017, the CIR filed her *Answer*.[48]

On February 6, 2017, respondent transmitted to the Court the *BIR Records* for this case, consisting of two (2) folders.[49]

On February 7, 2017, petitioner posted a *Motion to Declare Respondent in Default*.[50] On March 1, 2017, respondent filed her *Comment/Opposition (Re: Petitioner's Motion to Declare Respondent in Default)*.[51] In the Resolution dated March 27, 2017,[52] the Court denied petitioner's *Motion to Declare Respondent in Default*.

On March 1, 2017, respondent transmitted to the Court additional *BIR Records* for this case, consisting of one (1) folder.[53]

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45 Exhibit "R-17", BIR Records (CTA Case No. 9492), pp. 820 to 821; and Exhibit "P-63".

46 Exhibit "R-18", BIR Records (CTA Case No. 9492), p. 819; and Exhibit "P-63".

47 Docket (CTA Case No. 9403) - Vol. 1, pp. 10 to 34.

48 Docket (CTA Case No. 9403) - Vol. 1, pp. 380 to 385.

49 Respondent's *Manifestation (Re: Submission of BIR Records)* dated February 6, 2017, Docket (CTA Case No. 9403) - Vol. 1, pp. 392 to 393.

50 Docket (CTA Case No. 9403) - Vol. 1, pp. 396 to 398.

51 Docket (CTA Case No. 9403) - Vol. 1, pp. 405 to 409.

52 Docket (CTA Case No. 9403) - Vol. 1, pp. 422 to 424.

53 Respondent's *Manifestation (Re: Submission of BIR Records)* dated March 1, 2017, Docket (CTA Case No. 9403) - Vol. 1, pp. 402 to 403.

On March 20, 2017, respondent's *Pre-Trial Brief* was submitted,[54] and on March 21, 2017, the *Pre-Trial Brief for Petitioner* was posted.[55]

On May 9, 2017, the Pre-Trial Conference proceeded as scheduled.[56]

In the Resolution dated May 25, 2017,[57] the Third Division of this Court consolidated CTA Case No. 9492 with CTA Case No. 9403 and set the Pre-Trial Conference for the cases on August 15, 2017.

On June 5, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* for CTA Case No. 9403.[58]

CTA Case No. 9492:

On November 9, 2016, petitioner filed a *Petition for Review*.[59] The case was docketed as CTA Case No. 9492 and was initially raffled to this Court's First Division.

On February 20, 2017, respondent submitted her *Answer*.[60]

On April 12, 2017, petitioner posted a *Motion for Consolidation of Cases* for the consolidation of CTA Case No. 9492 with CTA Case No. 9403.[61]

On May 3, 2017, the *Pre-Trial Brief for Petitioner* was posted,[62] while on May 9, 2017, respondent submitted her *Pre-Trial Brief*[63] and transmitted to the Court the *BIR Records* of this case.[64]

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54 Docket (CTA Case No. 9403) - Vol. 1, pp. 416 to 419.
55 Docket (CTA Case No. 9403) - Vol. 1, pp. 429 to 438.
56 Minutes of the hearing held on, and Order dated, May 9, 2017, Docket (CTA Case No. 9403) - Vol. 1, pp. 465, and 469 to 470, respectively.
57 Docket (CTA Case No. 9403) - Vol. 1, pp. 475 to 476; Refer also to the Notice of Pre-Trial Conference dated May 26, 2017, Docket (CTA Case No. 9403) - Vol. 1, pp. 477 to 478.
58 Docket (CTA Case No. 9403) - Vol. 1, pp. 482 to 485.
59 Docket (CTA Case No. 9492), pp. 12 to 31.
60 Docket (CTA Case No. 9492), pp. 280 to 285.
61 Docket (CTA Case No. 9492), pp. 298 to 300.
62 Docket (CTA Case No. 9492), pp. 321 to 330.
63 Docket (CTA Case No. 9492), pp. 306 to 311.
64 Respondent's *Compliance* dated May 8, 2017, Docket (CTA Case No. 9492), pp. 302 to 304.

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In the Resolution dated May 9, 2017,[65] the First Division of this Court granted petitioner's *Motion for Consolidation of Cases* and directed the consolidation of CTA Case No. 9492 with CTA Case No. 9403, bearing the lower number, subject to the conformity of the Third Division of this Court.

CTA Case Nos. 9403 and 9492:

On August 10, 2017, the *Consolidated Pre-Trial Brief for Petitioner*,[66] and *Respondent's Consolidated Pre-Trial Brief*,[67] were submitted to the Court.

On August 15, 2017, the Pre-Trial Conference for the consolidated cases proceeded.[68]

On September 4, 2017, the parties filed their *Consolidated Joint Stipulation of Facts and Issue*.[69] On September 13, 2017, the Court issued a Pre-Trial Order.[70]

As trial ensued, petitioner offered the testimonies of the following: (1) Lorina C. Imperial,[71] petitioner's Acting Finance Manager and Treasurer; (2) Eduardo Billo,[72] petitioner's Logistics Section Manager; (3) Harry A. Salas,[73] petitioner's former Finance

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65 Docket (CTA Case No. 9492), p. 316.
66 Docket (CTA Case No. 9403), pp. 583 to 594.
67 Docket (CTA Case No. 9403), pp. 637 to 643.
68 Minutes of the hearing held on, and Order dated, August 15, 2017, Docket (CTA Case No. 9403) - Vol. 2, pp. 645 and 650 to 651, respectively.
69 Docket (CTA Case No. 9403) - Vol. 2, pp. 668 to 675.
70 Docket (CTA Case No. 9403) - Vol. 2, pp. 677 to 687.
71 Exhibit "P-71", Docket (CTA Case No. 9403) - Vols. 1 and 2, pp. 488 to 530; Exhibit "P-72", Docket (CTA Case No. 9403) - Vol. 2, pp. 597 to 619; Minutes of the hearing held on, and Order dated, September 19, 2017, Docket (CTA Case No. 9403) - Vol. 2, pp. 688 to 690; Minutes of the hearing held on, and Order dated, January 16, 2018, Docket (CTA Case No. 9403) - Vol. 2, pp. 715 to 716.
72 Exhibit "P-73", Docket - Vol. 2, pp. 531 to 537; Minutes of the hearing held on, and Order dated, January 16, 2018, Docket - Vol. 2, pp. 715 to 716.
73 Exhibit "P-74", Docket (CTA Case No. 9403) - Vol. 2, pp. 544 to 551; Minutes of the hearing held on, and Order dated, March 20, 2018, Docket (CTA Case No. 9403) - Vol. 2, pp. 717 to 718.

Manager and Treasurer; and (4) Rumer Bersamina,[74] petitioner's Director of Information Technology Department.

On June 7, 2018, petitioner filed its *Formal Offer of Evidence.*[75] On June 18, 2018, respondent submitted her *Comment (on Petitioner's Formal Offer of Evidence).*[76]

On August 8, 2018, petitioner filed its *Formal Offer of Evidence (As amended).*[77] Respondent failed to file his comment thereon.[78] In the Resolution dated November 12, 2018,[79] the Court admitted petitioner's offered exhibits, except for the following:

1. Exhibits "P-7", "P-7-2" to "P-7-15", "P-7-14A" and "P-31-3", for failure to present the originals thereof for comparison;

2. Exhibits "P-39" and "P-39A", for petitioner's failure to submit the duly marked exhibits; and

3. Exhibit "P-42-23", as it is not found in the records of the case.

On September 25, 2018, the present consolidated cases were transferred to the First Division of this Court, pursuant to Administrative Circular No. 02-2018.[80]

On April 12, 2019, petitioner filed a *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on Petitioner's Formal Offer of Evidence),*[81] praying for the partial reconsideration of this Court's Resolution dated November 12, 2018, and for the admission of Exhibits "P-7," "P-7-2" to "P-7-15," "P-7-14A," "P-31-3,"

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74 Exhibit "P-75", Docket (CTA Case No. 9403) - Vol. 2, pp. 538 to 543; Minutes of the hearing held on, and Order dated, March 20, 2018, Docket (CTA Case No. 9403) - Vol. 2, pp. 717 to 718.
75 Docket (CTA Case No. 9403) - Vol. 2, pp. 733 to 764.
76 Docket (CTA Case No. 9403) - Vol. 2, pp. 765 to 766.
77 Docket (CTA Case No. 9403) - Vol. 2, pp. 790 to 820.
78 Records Verification Report dated August 24, 2018 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 9403) - Vol. 2, p. 786.
79 Docket (CTA Case No. 9403) - Vol. 2, pp. 826 to 829.
80 Order dated September 25, 2018, Docket (CTA Case No. 9403) - Vol. 2, p. 823.
81 Docket (CTA Case No. 9403) - Vol. 2, pp. 868 to 877.

"P-39," and "P-39A," as part of petitioner's evidence. Respondent failed to file his comment thereon.[82]

In the Resolution dated August 30, 2019,[83] the Court allowed the recall of petitioner's witness, Ms. Lorina C. Imperial.[84]

On October 14, 2019, petitioner filed a *Motion for Leave to Present Additional Evidence and to Commission Independent Certified Public Accountant*.[85] On November 29, 2019, petitioner posted its *Supplemental Formal Offer of Evidence*.[86] Respondent failed to file his comment on said motion and pleading.[87]

On January 10, 2020, respondent filed a *Motion to Admit Comment (on Petitioner's Supplemental Formal Offer of Evidence)*.[88]

In the Resolution dated July 1, 2020,[89] the Court granted petitioner's *Motion for Leave to Present Additional Evidence and to Commission ICPA*, but its *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on Petitioner's Formal Offer of Evidence)* and *Supplemental Formal Offer of Evidence* were held in abeyance.

Thus, Michael L. Aguirre was commissioned by this Court as Independent Certified Public Accountant (ICPA),[90] and was presented by petitioner as its witness.[91]

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82 Records Verification dated May 24, 2019 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 9403) - Vol. 2, p. 918.
83 Docket (CTA Case No. 9403) - Vol. 2, pp. 924 to 926.
84 Exhibit "P-79", Docket (CTA Case No. 9403) - Vol. 2, pp. 935 to 940; Minutes of the hearing held on, and Order dated, October 15, 2019, Docket (CTA Case No. 9403) - Vol. 2, pp. 1004 to 1009.
85 Docket (CTA Case No. 9403) - Vol. 2, pp. 962 to 966.
86 Docket (CTA Case No. 9403) - Vol. 2, pp. 1019 to 1022.
87 Records Verification dated December 19, 2019 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 9403) - Vol. 2, p. 1048.
88 Docket (CTA Case No. 9403) - Vol. 2, pp. 1052 to 1058.
89 Docket (CTA Case No. 9403) - Vol. 2, pp. 1063 to 1067.
90 *Oath of Commission* dated October 13, 2020, Docket (CTA Case No. 9403) - Vol. 2, p. 1073; Minutes of the hearing held on, and Order dated, October 13, 2020, Docket (CTA Case No. 9403) - Vol. 2, pp. 1070 to 1072, and 1074 to 1075, respectively.
91 Exhibit "P-80", Docket (CTA Case No. 9403) - Vol. 3, pp. 1407 to 1413; Order dated November 26, 2020, Docket (CTA Case No. 9403) - Vol. 3, pp. 1420 to 1421.

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On November 16, 2020, petitioner submitted the ICPA's *Report*.[92]

On December 1, 2020, petitioner filed a *Second Supplemental Formal Offer of Evidence for Petitioner*.[93] Respondent failed to file her comment thereon.[94]

In the Resolution dated January 27, 2021,[95] the Court: (1) granted petitioner's *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on Petitioner's Formal Offer of Evidence)*; (2) granted respondent's *Motion to Admit Comment (on Petitioner's Supplemental Formal Offer of Evidence)*, and admitted respondent's *Comment (on Petitioner's Supplemental Formal Offer of Evidence)*; and (3) admitted Exhibits "P-7," "P-7-2" to "P-7-15," "P-7-14A," "P-31-3," "P-39," "P-39-A," "P-79," "P-79-A," "P-31-3," "P-77," "P-78," "P-80," "P-80-A," "P-81," "P-81-A," and "P-1-A-ICPA" to "P-42-E-ICPA," thereby resolving *Petitioner's Supplemental Formal Offer of Evidence* and *Second Supplemental Offer of Evidence*.

Respondent offered the testimonies of the following BIR personnel, namely: (1) RO Vivien C. Guillermo;[96] and (2) GS Olivia F. Aviles.[97]

On June 10, 2021, respondent filed her *Formal Offer of Evidence*.[98] On June 28, 2021, petitioner sent through electronic mail, its *Comment (to Respondent's Formal Offer of Evidence)*.[99] In the Resolution dated September 29, 2021,[100] the Court admitted respondent's offered exhibits.

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92 Exhibit "P-81", Docket (CTA Case No. 9403) – Vol. 3, pp. 1173 to 1199.
93 Docket (CTA Case No. 9403) – Vol. 3, pp. 1422 to 1425.
94 Records Verification dated December 23, 2020 issued by the Judicial Records Division of this Court, Docket (CTA Case No. 9403) – Vol. 3, p. 1429.
95 Docket (CTA Case No. 9403) – Vol. 3, pp. 1435 to 1445.
96 Exhibit "R-41", Docket (CTA Case No. 9492), pp. 332 to 351; Minutes of the hearing held on, and Order dated, April 29, 2021, Docket – Vol. 3, pp. 1448 to 1449.
97 Exhibit "R-40", Docket (CTA Case No. 9403) – Vol. 3, pp. 1470 to 1481; Minutes of the hearing held on, and Order dated, May 25, 2021, Docket – Vol. 3, pp. 1491 to 1497.
98 Docket (CTA Case No. 9403) – Vol. 3, pp. 1501 to 1511
99 Docket (CTA Case No. 9403) – Vol. 3, pp. 1514 to 1516.
100 Docket (CTA Case No. 9403) – Vol. 3, pp. 1529 to 1530.

On November 19, 2021, respondent sent through electronic mail, her *Memorandum*,[101] while on November 24, 2021, petitioner filed its *Memorandum for the Petitioner*.[102]

On December 16, 2021, the present consolidated cases were submitted for decision.[103]

THE ISSUES

The parties submitted the following issues for resolution of this Court:

1. For petitioner:

   1.1. Whether the amounts of US$3,938,422.31 and US $279,901.77 as reflected in the commercial invoices audited by the BIR for the fiscal year ending March 2010 and March 2011, respectively, constitute undeclared income of petitioner in the form of export sales for those years, as bases for assessment of deficiency income taxes by the BIR against the petitioner.

   1.2. Whether the inventories of finished electronic products that were shipped during the fiscal years ending March 2010 and March 2011, as reflected in the commercial invoices subject of the BIR audit for the said years, belonged to and owned by petitioner.

   1.3. Whether there were financial considerations received by petitioner during the fiscal years ending March 2010 and March 2011, on account of the shipments of the inventories of finished electronic products made during those respective years, as reflected in the commercial invoices subject of the BIR audit.

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101 Docket (CTA Case No. 9403) - Vol. 3, pp. 1531 to 1540.
102 Docket (CTA Case No. 9403) - Vol. 3, pp. 1552 to 1577.
103 Resolution dated December 16, 2021, Docket - Vol. 3, p. 1582.

2. For respondent:

   2.1. Whether petitioner is liable to pay the deficiency income tax in the aggregate amount of ₱121,325,525.10 for fiscal year ending March 31, 2010, plus 20% deficiency and delinquency interest for late payment until fully paid pursuant to Section 249 of the NIRC of 1997, as amended.

   2.2. Whether petitioner is liable to pay the deficiency income tax in the aggregate amount of ₱7,526,365.84 as deficiency income tax for the fiscal year ending 31 March 31, 2011, plus 20% deficiency and delinquency interest for late payment until fully paid pursuant to Section 249 of the NIRC of 1997, as amended.[104]

Relative to CTA Case No. 9403, the main issue for the Court's resolution is:

> Whether the ROs who conducted the investigation of petitioner for fiscal year ending March 31, 2010 were duly authorized to do so.

Anent CTA Case No. 9492, this main issue is:

> Whether the tax assessments for fiscal year ending March 31, 2011 are valid.

Petitioner's arguments:

Petitioner argues that: *one*, the 2010 Assessment is void for being issued in violation of its right to due process; *two*, petitioner has no undeclared export sales for fiscal years 2010 and 2011; and *three*, the assessments for the alleged deficiency income tax for the fiscal years 2010 and 2011 are void for lack of factual and legal bases.

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104 Issues, CJSFI, Docket (CTA Case No. 9403) - Vol. 2, p. 669.

Respondent's counter-arguments:

Respondent counters that petitioner is liable for deficiency income tax arising from undeclared export sales since petitioner's primary purpose, as reflected in its Articles of Incorporation, was to manufacture, process, assemble, test, and sell electronic products. Respondent maintains that petitioner is the owner of the electronic goods manufactured in Indonesia. According to respondent, petitioner while claiming that it had no export sales, had reported to the Board of Investments export sales for taxable years ending March 31, 2010 and 2011.

THE COURT'S RULING

After due consideration of the arguments and evidence presented by the parties, this Court finds merit in the present Petitions for Review.

This Court may resolve the issues in this case, even if not raised in the parties' pleadings.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. - *Rendition of judgment* - ...
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**[105]

This Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[106] Such authority of this Court is

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105 Boldfacing supplied.
106 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[107]:

> **On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - ...
> >
> > **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
>
> **The above section is clearly worded.** On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.[108]

Notwithstanding the parties' failure to raise the specific matter involving the propriety of the audit and examination conducted by petitioner's tax agents against petitioner for fiscal year (FY) ending March 31, 2010, the Court in Division may rule on the same, because it is determinative of the validity of petitioner's tax assessment issued against respondent for FY ending March 31, 2010.

CTA Case No. 9403:

The tax assessment for FY ending March 31, 2010 is void, since the ROs who conducted the investigation of petitioner were not duly authorized to do so.

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107 G.R. No. 183408, July 12, 2017.
108 Boldfacing supplied.

Section 6(A) of the NIRC of 1997, as amended, confines the authority to examine any taxpayer for correct determination of tax liabilities to respondent, or his or her duly authorized representatives. By way of exception, respondent, or his or her duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability:

> SEC. 6. ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.***
>
> (A) Examination of Returns and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his [or her] duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: ...
>
> ...

Sections 10(c) and 13 of the NIRC of 1997, as amended allows the Revenue Regional Directors (RDs) to issue LOAs in favor of ROs performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

> SEC. 10. ***Revenue Regional Director.*** - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;
>
> ...
>
> SEC. 13. ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of

> any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself [or herself].

Section D (4) of Revenue Memorandum Order (RMO) No. 43-90[109] also provides that deputy commissioners of internal revenue (DCIRs), and other BIR officials authorized by respondent are permitted to issue an LOA.[110] Among the BIR officials expressly authorized[111] by respondent to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistants (HREAs).

Indeed, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his [or her] authorized representatives to the revenue officers pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.[112] It gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[113] In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[114]

In this case, the LOA dated January 7, 2013 (SN: eLA201100006962/LOA-116-2013-00000002),[115] issued by OIC-

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109 SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revise Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit*

110 For proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

111 No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistants to issue LOAs.

112 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

113 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

114 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.

115 Exhibit "R-20", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], p. 1.

Assistant Commissioner Alfredo V. Misajon, authorized ROs Rogelio Gonzales, Aurora Pelayo, Olivia Sison, and GS Marivic Olivia Aviles to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for FY ending March 31, 2010.

On the other hand, RO Josa C. Gomez and Felina B. Guimbao recommended the issuance of the PAN,[116] FLD,[117] and FDDA[118] against respondent for FY ending March 31, 2010. RO Josa C. Gomez and Felina B. Guimbao were not named in the LOA dated January 7, 2013. Despite the conduct of audit and examination of petitioner by ROs Josa C. Gomez and Felina B. Guimbao for FY ending March 31, 2010, no new LOA was issued in their names. Moreover, there is no indication that the LOA dated January 7, 2013 (SN: eLA201100006962/LOA-116-2013-00000002) was ever amended or modified to include said ROs.

The tax investigation which resulted in the 2010 Assessment was based merely on a MOA which was not issued by respondent or her duly authorized representative. The authority of RO Josa C. Gomez, and even RO Felina B. Guimbao, to audit or investigate petitioner's internal revenue tax liabilities for FY ending March 31, 2010 emanated from the MOAs issued by Chief Cesar D. Escalada of Regular LT Audit Division I.[119] Chief Cesar D. Escalada is not authorized by respondent, or by law to issue authority to examine taxpayers. Only respondent, the RDs, DCIRs, ACIRs, and HREAs may issue an authority to examine a taxpayer. When Chief Cesar D. Escalanda issued the subject MOAs, he, in effect, usurped the statutory power of respondent and her duly authorized representative. To be sure, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[120]

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116 Exhibit "R-28", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 578 to 582.

117 Exhibit "R-30", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 603 to 605.

118 Exhibit "R-34", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], pp. 838 to 851.

119 Exhibit "R-22", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], p. 242.; Exhibit "R-33", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], p. 794.; and BIR Records (CTA Case No. 9403) - Folder I [Exhibit "R-39"], p. 58.

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

For another, even if the findings of ROs Josa C. Gomez and Felina B. Guimbao were reviewed by GS Olivia Aviles, the GS named in the LOA dated January 7, 2013 is of no moment. ROs Josa C. Gomez and Felina B. Guimbao conducted an illegal examination on petitioner for FY ending March 31, 2010, violative of Sections 6(A), 10, and 13 of the NIRC of 1997, as amended. Being so, ROs Josa C. Gomez and Felina B. Guimbao findings are void and may not be cured through a subsequent review by GS Olivia Aviles, despite the latter being named in the LOA dated January 7, 2013. Indeed, there was nothing for GS Olivia Aviles to review or check, since the matter submitted for review or validation by ROs Josa C. Gomez and Felina B. Guimbao is a patent nullity. The recommendations made by ROs Josa C. Gomez and Felina B. Guimbao for petitioner's tax assessments were merely "[n]oted by"[121] GS Olivia Aviles which are indications that said GS did not actually conduct the examination and/or investigation of petitioner for FY ending March 31, 2010.

Therefore, the tax assessments issued against petitioner, including the FDDA dated April 13, 2016 and the assailed *Final Decision* dated June 20, 2016, for FY ending March 31, 2010, are void, for lack of authority of the ROs Josa C. Gomez and Felina B. Guimbao to examine petitioner's books.

Being void assessments, the subject income tax assessment cannot be legally enforced against petitioner. As such, it is already unnecessary for this Court to address the other issues raised by the parties in CTA Case No. 9403.

CTA Case No. 9492:

Petitioner is not liable to pay deficiency income tax of ₱7,526,365.84 for FY ending March 2011, inclusive of interest.

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[121] Refer to Exhibit "R-28", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], at p. 578; Exhibit "R-30", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], at p. 603; and Exhibit "R-34", BIR Records (CTA Case No. 9403) - Folder II [Exhibit "R-39"], at p. 838.

On October 11, 2016, petitioner received the FDDA[122] with the accompanying Details of Discrepancies from respondent, requesting the payment for deficiency income tax in the total amount of ₱7,526,365.84, inclusive of interest, for FY ending March 31, 2011.

Shown below are the contents of the FDDA:

Taxable Income (Loss) per Return					₱	(11,749,226.45)
Add:	Audit Adjustments					
	Undeclared Sales (Invoices)					12,180,205.42
Total					₱	430,978.97
Add:	NOLCO					11,749,226.45
Taxable Income as Adjusted						12,180,205.42
Tax Due (30%)					₱	3,654,061.63
Less:	Tax Credits/Payments per Return					
	Prior Year's Excess Income Tax Credit		₱	3,004,245.00		
	Creditable Withholding Taxes			658,606.00		
				3,662,851.00		
	Less:	Excess credit carried-over to succeeding period		2,942,350.00		
		MCIT during the year carried over to the next year		720,501.00		0.00
Basic Income Tax Deficiency					₱	3,654,061.63
Add:	20% Interest (7/16/2011 to 10/31/2016)					3,872,304.21
TOTAL INCOME TAX DUE					**₱**	**7,526,365.84**

The deficiency income tax assessment of respondent is hinged on the following:

A. Undeclared sales	₱ 12,180,205.42
B. NOLCO	11,749,226.45
C. Excess credit carried-over to succeeding period	2,942,350.00
D. MCIT during the year carried-over to the next year	720,501.00

A. Undeclared Sales - ₱12,180,205.42

122 Exhibit "R-17", BIR Records (CTA Case No. 9492), pp. 820 to 821; and Exhibit "P-63".

Petitioner is being assessed of deficiency Income Tax for FY ending March 31, 2011 due to alleged undeclared sales from unregistered invoices in the amount of ₱12,180,205.42.

In its Reply to the PAN[123], petitioner explained that although it was originally engaged in the manufacturing, processing, assembly, testing and sale for export of electronic products, it had downsized its manufacturing operations sometime in April 2009 due to declining sales. Petitioner entered into a Service Agreement[124] with Zilog, Inc. (US) covering the period April 1, 2009 to March 31, 2014, whereby petitioner will provide logistic and support services in connection with the sale of Zilog US products to Zilog, Inc. (US) worldwide customers.

Witness, Lorina C. Imperial, who is petitioner's Acting Finance Manager and Treasurer testified by way of Judicial Affidavit,[125] that petitioner provided the following services to Zilog, Inc. (US):

1. Manage the manufacturing activities which includes, but not limited to, probe, assembly, and testing with third party subcontractors designated by Zilog;

2. Provide storage and logistics service in connection with finished Zilog products consigned by Zilog;

3. Provide certain scheduling and oversight services in connection with third party subcontractors engaged by Zilog to process and assemble Zilog products;

4. Provide certain order entry services for Zilog in connection with the sale of Zilog products to worldwide customers of Zilog and its affiliated companies; and

5. Provide such other support services for Zilog in connection with the production and/or sale of Zilog products as may be agreed by the parties from time to time.

Also, as part of its other support services for Zilog, Inc. (US) in connection with the production and/or sale of Zilog US products, petitioner was also responsible for the processing of payments to be

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123 Exhibit "P-35".
124 Exhibits "P-6"; "P-26-A-ICPA" to "P-26-M-ICPA".
125 Exhibit "P-71", Docket (CTA Case No. 9403) - Vol. 1, pp. 493 to 494.

made by Zilog, Inc. (US) to its subcontractors and various suppliers. As a consideration for its support services, petitioner received service fee equivalent to the actual and reasonable direct and indirect costs incurred plus three percent (3%) mark-up thereon.

According to petitioner's witness, Eduardo Billo, who is petitioner's Logistic Section Manager, petitioner is responsible for managing and handling the shipments of the finished electronic products owned by Zilog Inc. (US) to Zilog, Inc.'s (US) customers pursuant to the Service Agreements between petitioner and Zilog Inc. (US). The invoices issued under the name of petitioner are merely for compliance with the documentation requirements imposed by the Philippine Bureau of Customs as part of the shipping documents and not as evidences of sales transactions.[126]

The ICPA, Michael Aguirre explained the process flow of petitioner's global support services according to its Service Agreement with Zilog Inc. (US).[127] The same is summarized as follows:

> *First:* Zilog US receives orders from customers.
>
> > Any orders coming from the customer would directly be received by Zilog Inc. (US), which will instruct Unisem, the toll manufacturer in Batam, Indonesia, to manufacture the product.
>
> *Second:* Unisem manufactures and assembles the orders (electronic goods/Zilog Products).
>
> > Zilog Inc. (US) contracted the services of Unisem, a company engaged in manufacturing and testing assembly of semiconductors and integrated circuits.
> >
> > In pursuant thereto, any orders coming from Zilog Inc.'s (US) customers are directly received by Zilog Inc. (US) which, in turn, instructed Unisem to manufacture the products. Subsequently, the finished manufactured products are directly transmitted/shipped by the latter to the customers of Zilog Inc. (US). Finished electronic goods are ship as follows:
> >
> > a.) From Unisem (exporter of record) directly to Zilog Inc.'s (US) customers;

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126 Part of the Judicial Affidavit of Eduardo Billo, Exhibit "P-73", Par. 10, 11, and 20.

127 Annex A, ICPA Report, p. 1202.

b.) To Zilog Electronic Philippines, Inc. (ZEPI), petitioner herein, for initial storage on its warehouse and later deliver to Zilog Inc.'s (US) customers outside PH upon the instruction of Zilog US; and

c.) Electronic goods owned by Zilog Inc. (US) that are returned by some customers and will receive by ZEPI (exporter of record) for rework and re-packaging and, upon completion, send it back to the customers.

The service rendered by Unisem was billed to and paid by Zilog Inc. (US). These were recorded and reflected in its books and bank statements.

Third: Shipment of orders from Unisem/ZEPI to Zilog customers.

ZEPI, under the terms of agreement with Zilog Inc. (US), facilitates the shipments of finished electronic goods directly to Zilog Inc.'s (US) customers.

In connection with the shipment and delivery of finished electronic products to Zilog Inc.'s (US) customers, ZEPI issues commercial invoices, indicating among others, the names of these customers to whom the shipments of electronic products would be delivered and the description of the items to be delivered, as per instruction of Zilog Inc. (US).[128]

After confirming the receipt of the shipments by the customer, a billing invoice was electronically generated under the name of Zilog Inc. (US), indicating among others, the name of the customer to whom the delivery was made, the amount to be paid by the said customer, the name of the bank of Zilog Inc. (US) where payment would be directly remitted and the commercial invoice then issued for such shipment.[129]

However, if there were any complaints or issues in the quality of the shipped products, the customer may forward the defective products to ZEPI for quality inspection and to undergo further testing. With respect to these items, Zilog Inc. (US) will order Unisem to ship the product to ZEPI and issue billing invoice to Zilog Inc. (US). Thereafter, ZEPI would send the tested products back to the customers.

To support the purchase and billing process in connection with the Service Agreement between petitioner and Zilog Inc. (US),

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128 Part of the Judicial Affidavit of Eduardo Billo, Exhibit "P-73", Par. 10.
129 Part of the Judicial Affidavit of Eduardo Billo, Exhibit "P-73", Par. 20.

petitioner submitted in evidence the customers' Purchase Orders, petitioner's Commercial Invoices, Zilog Inc.'s (US) Invoices, and snippet of Zilog Inc.'s (US) Accounting System and Bank Statements.[130]

Upon examination of the ICPA report and the supporting documents submitted by petitioner, the Court found that the sale referred to in the commercial invoices belongs to Zilog Inc. (US), except for the amount of ₱1,175,136.53,[131] by tracing the transactions from purchase orders, commercial invoices, and bank statements of Zilog Inc. (US) showing fund transfers made by the customers to Zilog Inc. (US) to pay the shipments of the Zilog products/ electronic goods.

In this case, the sales referred to commercial invoices are supported by pertinent documents showing that it belongs to Zilog Inc. (US), except for the amount of ₱1,175,136.53,[132] which is not supported by necessary documents and cannot be properly traced to bank statements of Zilog Inc. (US), summarized as follows:

INVOICE/ REF NO.	INVOICE DATE	DESCRIPTION	Amount
72261	24-May-10	WAFER	US$ 1,854.54
72313	9-Jun-10	INTEGRATED CIRCUITS	454.55
72363	23-Jun-10	WAFER	519.12
72442	12-Jul-10	INTEGRATED CIRCUITS	62.37
72987	10-Feb-11	INTEGRATED CIRCUITS	297.85
72227	12-May-10	WAFER	1,442.52
72135-O	15-Apr-10	IC's; DICE	67.49
72166-IP	22-Apr-10	KITS/ACCESSORIES	159.92
72188-O	28-Apr-10	INTEGRATED CIRCUITS	12.83
0130S	10-May-10	PLASTIC ADAPTIOR, ETC.	394.05
0129s	10-May-10	MIXED SCRAP ICS, WAFERS, ETC.	21,739.46
Total in USD			US$ 27,004.70
FOREX Rate			43.52
TOTAL in PHP			**₱ 1,175,136.53**

130 Exhibits "P-34-A.1-ICPA" to "P-34-AU.23-ICPA".
131 ICPA Report, p. 1221.
132 ICPA Report, p. 1221.

As for the existence of petitioner's commercial invoices printed on its letterhead amounting to ₱1,175,136.53, petitioner failed to adduce evidence to establish its claim that the sale belongs to Zilog Inc. (Us). Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[133]

The Supreme Court in *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*[134] explained that a "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. Such being the case, petitioner's sale of goods as evidenced by a sale invoice established the fact that a taxable transaction was made.

Thus, the Court finds as warranted the deficiency income tax assessment amounting ₱1,175,136.53 arising from the undeclared sales that cannot be traced to the account of Zilog Inc. (US).

B. Net Operating Loss Carry Over (NOLCO) - ₱11,749,226.45;
C. Excess credit carried-over to succeeding period - ₱2,942,350.00; and
D. Minimum Corporate Income Tax (MCIT) during the year carried-over to the next year - ₱720,501.00

The assessment for deficiency income tax must be cancelled.

133 *LNS International Manpower Services v. Armando C. Padua, Jr.*, G.R. No. 179792, March 05, 2010.

134 *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 185115 February 18, 2015, citing *Commissioner of Internal Revenue v. Manila Mining Corporation.*

Records of the case show that respondent in computing the deficiency income tax due: *One,* disallowed the NOLCO amounting to ₱11,749,226.45 and subjected said amount to income tax at the rate of 30%; *Two,* disallowed excess credits carried over to succeeding periods amounting to ₱2,942,350.00; and *Three,* disallowed MCIT amounting to ₱720,501.00.

However, these findings cannot be sustained. Respondent failed to provide the legal and factual bases in disallowing the same in the FLD and FDDA and are therefore, improper.

Section 228[135] of the NIRC of 1997, as amended, as implemented by RR No. 12-99, mandate *inter alia,* that a taxpayer shall be informed in writing of facts, law, rules and regulations upon which the assessment is based, otherwise it is a patent nullity.[136] The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary.[137] Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory.[138] The rationale behind the requirement that taxpayers should be informed of the facts and law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.[139]

In sum, only the amount of ₱1,175,136.53 corresponding to the undeclared sales shall be sustained. Taking to account such item, the Court finds that petitioner is in a net loss position; thus, would not be subject to regular corporate income tax, to wit:

Sales (per ITR)	₱ 149,144,106.87
Add: Undeclared Sales (per Court's	1,175,136.53

135 SEC. 228. Protesting of Assessment. - .. 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.

136 See *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.,* G.R. Nos. 201398-99, October 3, 2018.

137 *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.,* G.R. Nos. 215534 & 215557, April 18, 2016.

138 *Commissioner of Internal Revenue v. Enron Subic Power Corporation,* G.R. No. 166387, January 19, 2009.

139 *Commissioner of Internal Revenue v. Fitness by Design, Inc.,* G.R. No. 215957, November 9, 2016.

verification)	
Total Sales	**₱150,319,243.40**
Less: Cost of Sales (per ITR)	115,443,795.32
Gross Income from Operation	**₱34,875,448.08**
Add: Non-Operating & Taxable Other Income (per ITR)	-
Total Gross Income	₱34,875,448.08
Less: Itemized Deductions (per ITR)	45,449,538.00
Taxable Income (Loss)	**₱(10,574,089.92)**

Nonetheless, petitioner's income shall be imposed with 2% MCIT pursuant to Section 27(E)(1) and (2) of the NIRC of 1997, as amended:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> (E) *Minimum Corporate Income Tax on Domestic Corporations.* –
>
> (1) *Imposition of Tax.* – A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.
>
> (2) *Carry Forward of Excess Minimum Tax.* – Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.

Implementing the above provision is Section 2.27 (E) of RR No. 09-98, as amended by RR No. 12-07, which states:

> Sec. 2.27(E) MINIMUM CORPORATE INCOME TAX (MCIT) ON DOMESTIC CORPORATIONS. –
>
> (1) Imposition of the Tax. – A minimum corporate income tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is hereby imposed upon any domestic corporation beginning on the fourth (4th) taxable year immediately following the taxable year in which such

> corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater than the normal income tax due from such corporation.
> ...
>
> The taxpayer shall pay the MCIT whenever it is greater than the regular or normal corporate income tax which is imposed under Sec. 27 (A) and Sec. 28 (A) (1) of the Code. The final comparison between the normal income tax payable by the corporation and the MCIT shall be made at the end of the taxable year and the payable or excess payment in the Annual Income Tax Return shall be computed taking into consideration corporate income tax payment made at the time of filing of quarterly corporate income tax returns whether this be MCIT or normal income tax.

Indeed, the two percent (2%) MCIT on gross income shall be imposed whenever the taxpayer-corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the normal or regular income tax due from such taxpayer-corporation.

In any event, petitioner would still not be held liable for any deficiency income tax as it has sufficient tax credits to cover its MCIT liability, as shown below:

MCIT per ITR		₱ 720,500.92
Add: MCIT on the undeclared sales (₱1,175,136.53 x 2%)		23,502.73
Total MCIT due		**₱ 744,003.65**
Less: Tax Credits/Payments		
Prior Year's Excess Credits other than MCIT	₱3,004,245.00	
Creditable Tax Withheld for the First Three Quarters	658,606.00	3,662,851.00
Excess Tax Credits/ Overpayment		**₱ (2,918,847.35)**

WHEREFORE, premises considered, the consolidated *Petitions for Review* are **GRANTED**. Accordingly, in CTA Case No. 9403, the FDDA dated May 13, 2016 and Final Decision dated June 20, 2016 issued by respondent, as well as the deficiency income tax assessments embodied therein, in the amount of ₱121,325,525.10, inclusive of interests and penalty, for fiscal year ending March 31,2010, are **CANCELLED** and **SET ASIDE**. In CTA Case No. 9492, the assessment issued by respondent against petitioner for the fiscal year ending March 31, 2011 covering deficiency Income Tax amounting to ₱7,526,365.84, inclusive of interest, is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(See Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ZILOG ELECTRONICS PHILIPPINES, INC., Petitioner,	**CTA CASE NOS. 9403 & 9492**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson* **MANAHAN**, and **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 23 2022 11:27 AM.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in granting the Petitions for Review in CTA Case Nos. 9403 and 9492 which both prayed for the cancellation of the assessments against petitioner. I wish to express, however, the following points which show that the subject assessments are intrinsically void.

CTA Case No. 9403

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*,[1] the Supreme Court ruled that the Commissioner of Internal Revenue's failure to consider the taxpayer's reply to the Preliminary Assessment Notice (PAN), and to provide explanation why the arguments raised therein were rejected, are violative of the taxpayer's due process rights that renders the assessment void, *viz.*:

> "The facts demonstrate that **Avon was deprived of due process. It was not fully apprised of the legal and factual bases**

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

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.

First, **despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued**. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

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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 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.**
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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.**" (*Boldfacing supplied*)

In this case, petitioner received the PAN with Details of Discrepancies on March 24, 2015. Within the prescribed fifteen (15)-day period, petitioner filed a Reply on April 8, 2015.[2] Despite the filing of the Reply, respondent issued on April 28, 2015 a Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (ANs), ordering petitioner to pay the deficiency taxes, including increments. Petitioner protested the FLD by filing a written request for reinvestigation on May 28, 2015.

Review of the records shows that the PAN and FLD, including their Details of Discrepancies, are identical. Except for certain minor adjustments in the computation of interest, no substantial difference exists between the two notices. Respondent failed to consider any of the arguments raised by petitioner in its Reply as the Details of Discrepancies attached to the FLD is a mere reproduction of the Details of Discrepancies attached to the PAN. Respondent likewise failed to provide any justification as to why petitioner's arguments in the Reply were rejected upon the issuance of the FLD. **Thus, respondent failed to observe the due process rights of petitioner that rendered the assessment in this case void**.

<u>CTA Case No. 9492</u>

In addition to the disquisition in the *ponencia*'s finding that petitioner is not liable for any deficiency income tax as it has sufficient tax credits to cover its Minimum Corporate Income Tax (MCIT) liability, I wish to add that the FLD with Details of Discrepancies and ANs issued against respondent are defective, thereby rendering the assessment void.

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[2] BIR Records, Folder No. 2, pp. 664-727.

Section 3.1.3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which implements Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

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

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[3] the Supreme Court elucidated on the importance of the due date appearing on the FLD and its attached ANs, *viz.*:

> "**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:
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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**." (*Boldfacing supplied*)

The rationale in stating the due date in the FLD and/or the ANs is described by the Supreme Court in *Commissioner of Internal Revenue vs. Transitions Philippines Optical, Inc.*,[4] to wit:

> "On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. **It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal**

[3] G.R. No. 215957, November 9, 2016.
[4] G.R. No. 227544, November 22, 2017.

> **Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.** Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid. Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable." (*Boldfacing supplied*)

Verily, an assessment must contain a demand for payment of the deficiency taxes that the taxpayer must settle within the prescribed period. Failure of the taxpayer to pay on the due date would make the taxpayer liable for 25% surcharge in accordance with Section 248(A)(3) of the NIRC of 1997, as amended. As held by the Supreme Court in *Thunderbird Pilipinas Hotels and Resorts, Inc. vs. Commissioner of Internal Revenue*:[5]

> "Petitioner contends that Section 5.4 of Revenue Regulations No. 12-99126 provides that "as a rule, no surcharge is imposed on deficiency tax." Petitioner, however, left out the rest of the provision, which states that "if the amount due ... is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed." Section 5.4 of Revenue Regulations No. 12-99
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>> SECTION 5. Mode of Procedures in Computing for the Tax and/or Applicable Surcharge. - Shown hereunder are illustrative cases for the computation and assessment of the tax, inclusive of surcharge (if applicable) and interest:
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>> 5.4 Penalty or penalties for deficiency tax. - **As a rule, no surcharge is imposed on deficiency tax and on the basic tax. However, if the amount due inclusive of penalties is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed.**
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> **It is clear that there is no 25% surcharge imposed in computing the deficiency tax assessment if paid on or before the date specified in the assessment notice. However, if the deficiency tax is not paid within the required period of time, the surcharge becomes automatically due.**" (*Boldfacing supplied*)

Upon the issuance of an FLD, the taxpayer is first granted the opportunity to settle the deficiency taxes within the due date specified in the FLD and, thereafter, surcharge shall be imposed. **This**

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[5] G.R. No. 211327, November 11, 2020.

presupposes that an FLD contains a due date which is later than the date of issuance of the FLD, so that the taxpayer may pay the assessed deficiency tax without incurring the surcharge. To do otherwise would automatically make the taxpayer liable for surcharge.

Here, the ANs were issued on **March 1, 2016** and specified that the due date for payment of the assessments was **February 29, 2016**. Clearly, petitioner was not given the opportunity to settle the deficiency taxes without incurring the surcharge, as the latter was automatically imposed thereon upon the issuance of the FLD. **This pernicious practice prejudiced the taxpayer and violated its right to due process, thereby rendering the assessment void**.

ALL TOLD, I *CONCUR* in granting the Petitions for Review and cancelling the subject assessments in accordance with the discussion above.

ROMAN G. DEL ROSARIO
Presiding Justice