REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CPW PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10665

Members:
REYES-FAJARDO, *Acting Chairperson, and*
ANGELES, *JJ.*

Promulgated:

FEB 13 2026
11:52 a.m.

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DECISION

REYES-FAJARDO, ***J.*:**

This Petition for Review filed on November 3, 2021, by CPW Philippines, Inc. seeks to nullify and cancel the deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and final withholding tax (FWT) assessments, and miscellaneous charge (MC), for the calendar year (CY) 2016, in the aggregate amount of ₱666,575,540.12.

FACTS

Petitioner CPW Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines,[1] and is engaged in manufacturing, selling, exporting, and distributing food and food products.[2] It is registered with Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 005-031-842-000.[3]

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1 Exhibit "P-1," Docket – Vol. II, pp. 952 - 967.
2 Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 761.
3 Exhibit "P-27," USB (Exhibit "P-74-b"); refer to par. 2, Stipulated Facts, JSFI, Docket –

Respondent is the incumbent Commissioner of Internal Revenue who holds office at the BIR National Office Building, Diliman, Quezon City.[4]

On October 5, 2020, petitioner received the Preliminary Assessment Notice (PAN) dated September 30, 2020,[5] containing the proposed deficiency tax assessments in the total amount of ₱646,240,787.85, broken down as follows:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱215,139,265.09	₱103,856,269.88	-	-	₱318,995,534.97
VAT	76,927,652.66	40,508,205.05	-	-	117,435,857.71
EWT	29,964,165.71	15,942,578.03	-	-	45,906,743.74
FWT	106,851,694.87	56,850,956.56	-	-	163,702,651.43
MC				₱200,000.00	
					₱646,240,787.85

On October 20, 2020, petitioner filed its Reply Letter to the PAN, with attached supporting documents.[6]

On March 19, 2021, petitioner received the Formal Letter of Demand and several Assessment Notices (FLD/FAN), all dated March 10, 2021,[7] containing deficiency tax assessments in the total amount of ₱680,363,406.72, detailed below:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱215,139,265.09	₱120,973,103.47	-	-	₱336,112,368.56
VAT	76,927,652.66	46,628,695.56	-	-	123,556,348.22
EWT	29,964,165.71	18,326,576.31	-	-	48,290,742.02
FWT	106,851,694.87	65,352,253.05	-	-	172,203,947.92
				₱200,000.00	
					₱680,363,406.72

Vol. II, p. 761.
4 Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 760.
5 See par. 5, Stipulated Facts, JSFI, Docket – Vol. II, p. 761; par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 761; Exhibit "P-14," Docket – Vol. I, pp. 244 to 249; Exhibits "R-8" to "R-8-A," BIR Records (Exhibit "R-14"), pp. 522 - 535.
6 See par. 6, Stipulated Facts, JSFI, Docket – Vol. II, p. 761; Exhibit "P-15," Docket – Vol. I, pp. 250 - 284.
7 Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 761; par. 6, Stipulated Facts, JSFI, Docket – Vol. II, p. 761; Exhibit "P-16," Docket – Vol. II, pp. 979 to 981; Exhibits "P-16-a" to "P-16-e" and "R-10" to "R-10-B," BIR Records (Exhibit "R-14"), pp. 911 - 933.

[initials]

On April 16, 2021, petitioner duly protested the FLD/FAN through a Request for Reinvestigation of even date,[8] with attached supporting documents.

On June 15, 2021, petitioner submitted to respondent additional documents supporting its Request for Reinvestigation.[9]

On October 4, 2021, petitioner received the Final Decision on Disputed Assessment (FDDA) and Assessment Notices, all dated September 28, 2021.[10]

On November 10, 2021, BIR issued Warrant of Distraint and/or Levy (WDL) No. 116-2021-134.[11]

On November 3, 2021, petitioner filed its Petition for Review.[12]

On December 10, 2021, petitioner filed an Urgent Motion (To declare Warrant of Distraint and/or Levy Null and Void and Suspend its Enforcement or Collection),[13] which was granted by the Court in a Resolution dated June 9, 2022, dispensing the required cash deposit or bond.[14]

On February 11, 2022, respondent filed his Answer.[15]

On May 17, 2022, the Pre-Trial Conference was set and held.[16]

On June 6, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[17] which was approved by the Court by Resolution

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8 Par. 8, Stipulated Facts, JSFI, Docket - Vol. II, p. 761; Exhibit "P-17," Docket - Vol. I, pp. 329 - 385.
9 Par. 9, Stipulated Facts, JSFI, Docket - Vol. II, pp. 761 to 762; Exhibit "P-18," Docket - Vol. I, pp. 386 - 410.
10 Par. 10, Stipulated Facts, JSFI, Docket - Vol. II, p. 762; Exhibits "P-19" to "P-19-e," Docket - Vol. I, pp. 411 to 430; Exhibits "R-12" to "R-12-A," BIR Records (Exhibit "R-14"), pp. 1805 to 1819.
11 Exhibit "P-1-Motion," Docket - Vol. I, pp. 519 - 520.
12 Docket - Vol. I, pp. 6 - 38.
13 Docket - Vol. I, pp. 473 - 503.
14 Docket - Vol. II, pp. 805 - 816.
15 Docket - Vol. II, pp. 654 - 676.
16 Resolution dated March 29, 2022, Docket - Vol. II, p. 717; Notice of Pre-Trial Conference dated February 21, 2022, Docket - Vol. II, pp. 678- 690; Minutes of the hearing held on, and Order, dated May 17, 2022, Docket - Vol. II, pp. 756.
17 Docket - Vol. II, pp. 760 -766.

dated June 13, 2022.[18] The Pre-Trial Order dated June 24, 2022 was then issued.[19]

Trial ensued.

Petitioner presented: (1) Atty. Arni A. Perlas,[20] Tax Head of Nestle Philippines, Inc., but also in charge of tax of petitioner; (2) Ms. Mary Jane Panit,[21] petitioner's Controller; and (3) Ms. Katherine O. Constantino,[22] the Court-commissioned Independent Certified Public Accountant (ICPA), as its witnesses.[23]

On August 3, 2023, Petitioner's Formal Offer of Evidence was filed,[24] with respondent's Comment filed on August 7, 2023.[25]

By Resolution dated October 13, 2023,[26] the Court admitted petitioner's offered exhibits, *except* for:

> (1) Exhibits "P-6," "P-7," "P-7-a," "P-54-25 to P-54-26," "P-62-129," "P-62-130," "P-62-138," "P-62-1025," "P-75-2-1" to "P-75-2-8," and "P-76-2-1," for failure to present the originals for comparison; and
>
> (2) Exhibits "P-48-828," "P-54-15," "P-71," "P-75-4-21-3," "P-76-1-134," "P-76-1-236," "P-76-3-19," "P-76-3-96," "P-76-3-99," "P-76-3-100," and "P-76-3-125," for not being found in the records.

On November 3, 2023 petitioner filed a Motion for Partial Reconsideration (of the Resolution dated 13 October 2023 on Petitioner's Formal Offer of Evidence),[27] with respondent's Comment submitted on November 22, 2023.[28]

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18 Docket - Vol. II, p. 818.
19 Docket - Vol. II, pp. 820 - 829.
20 Exhibit "P-22," Docket - Vol. I, pp. 54 to 68; Exhibit "P-80," Docket - Vol. II, pp. 900 - 904; Minutes of the hearing held on, and Order dated, August 31, 2022, Docket - Vol. II, pp. 842, and 844- 845, respectively; Minutes of the hearing held on, and Order dated, July 4, 2023, Docket - Vol. I, pp. 932- 934.
21 Exhibit "P-23," Docket - Vol. I, pp. 431-443; Minutes of the hearing held on, and Order dated, August 31, 2022, Docket - Vol. II, pp. 842, and 844 - 845, respectively.
22 Exhibit "P-79," Docket - Vol. II, pp. 863-880; Minutes of the hearing held on, and Order dated, July 4, 2023, Docket - Vol. II, pp. 932 - 934.
23 Oath of Commission dated August 31, 2022, Docket - Vol. II, p. 843; Minutes of the hearing held on, and Order dated, August 31, 2022, Docket - Vol. II, pp. 842, and 844 - 845, respectively.
24 Docket - Vol. II, pp. in between of pp. 926 and 927, and 938 - 951, and respectively.
25 Docket - Vol. II, pp. 1033 - 1036.
26 Docket - Vol. II, pp. 1042 - 1045.
27 Docket - Vol. II, pp. 1069 -1084.
28 Docket - Vol. II, pp. 1115 -1119.

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By Resolution dated February 23, 2024,[29] the Court admitted Exhibits "P-48-828," "P-54-15," "P-71," "P-75-2-1" to "P-75-2-8," "P-75-4-21-3," "P-76-1-134," "P-76-1-236," "P-76-3-19," "P-76-3-96," "P-76-3-99," "P-76-3-100," and "P-76-3-125," while Exhibits "P-6," "P-7," "P-7-A," "P-54-25 to P-54-26," "P-62-129," "P-62-130," "P-62-138," "P-62-1025," and "P-76-2-1," were still denied admission in evidence.

On March 4, 2025, petitioner filed its Proffer of Evidence with Manifestation,[30] which was noted by the Court in its Minute Resolution dated March 13, 2024.[31]

Respondent presented RO Manuel T. Tasarra as his witness.[32]

On May 15, 2024, respondent filed his Formal Offer of Evidence,[33] to which petitioner filed its Comment with Formal Offer of Rebuttal Evidence for Petitioner on May 27, 2024.[34]

On August 1, 2024, respondent filed his Comment (Re: Formal Offer of Rebuttal Evidence dated 27 May 2024).[35]

By Resolution dated October 9, 2024,[36] the Court admitted all of respondent's offered exhibits, and petitioner's Exhibits "P-81," "P-82," "P-81-A" and "P-82-A."

On July 12, 2024, respondent filed a Manifestation,[37] stating that he is adopting the arguments he raised in his Answer dated February 10, 2022 as his Memorandum, while the Memorandum for Petitioner was posted on November 11, 2024.[38]

On February 19, 2025, the case was submitted for decision.[39]

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[29] Docket - Vol. II, pp. 1123 -1132.
[30] Docket - Vol. II, pp. 1133 -1144.
[31] Docket - Vol. II, p. 1148.
[32] Exhibit "R-15," Docket - Vol. II, pp. 722-732; Minutes of the hearing held on, and Order dated, May 14, 2024, Docket - Vol. II, pp. 1149, and 1151-1152, respectively.
[33] Docket - Vol. II, pp. 1153 - 1160.
[34] Docket - Vol. II, pp. 1171 -1178.
[35] Docket - Vol. II, pp. 1188 -1190.
[36] Docket - Vol. III, pp. 1195 - 1197.
[37] Docket - Vol. II, pp. 1184 - 1186.
[38] Docket - Vol. III, pp. 1199 - 1250.
[39] Minute Resolution dated February 19, 2025, Docket - Vol. III, p. 1260.

ISSUES

1. Is petitioner liable for deficiency IT, VAT, EWT, FWT, and MC, inclusive of increments, in the aggregate amount of ₱666,575,540.12 for calendar year 2016?

2. Is the Warrant of Distraint and/or Levy valid?[40]

ARGUMENTS

Petitioner maintains that the subject assessments are void for offending his right to due process, arguing that despite its defenses and supporting documents in response to the PAN, the BIR merely reiterated its findings in the NIC and PAN in the FLD/FAN without addressing or explaining the factual and legal bases for rejecting them.

Respondent counters that there was no denial of due process. He asserts that the PAN findings were based on petitioner's own submissions, which were found insufficient to overturn the assessments, hence their reiteration. He further maintains that petitioner was afforded ample opportunity to be heard at every stage of the assessment process, as evidenced by its filing of a reply to the PAN and a Request for Reinvestigation of the FLD/FAN.

RULING

The Petition is granted.

Foremost. We are vested with jurisdiction over the instant case.

Section 7, in relation to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282,[41] pertinently provides:

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40 Stipulated Issues, JSFI, Docket – Vol. II, p. 762.

41 An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, . . . may file an appeal with the CTA within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[42]

Indeed, a party aggrieved by the decision of respondent or his duly authorized representative on a disputed assessment may seek recourse before the CTA in Division, within thirty (30) days from receipt thereof. This matches with the period to appeal endowed to the taxpayer, in impugning respondent or his duly authorized representative's decision on disputed assessment, under Section 228 of the NIRC of 1997, as amended:

> Section 228. Protesting of Assessment. —
>
> ...
>
> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[43]

Here, petitioner received respondent's FFDA on October 4, 2021.[44] Counting thirty (30) days from said date, petitioner had until November 3, 2021 to appeal before the Court. Timely enough, on

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42 Emphasis ours.
43 Emphasis ours.
44 *Supra* at note 9.

November 3, 2021, petitioner filed the Petition for Review, thus clothing the Court with jurisdiction over CTA Case No. 10665.

Next. Respondent offended petitioner's right to due process for deficiency income tax, value-added tax, and expanded withholding tax assessments.

Section 228 of the NIRC, as amended, ordains:

> 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.**
>
> ...[45]

Ang Tibay v. Court of Industrial Relations (Ang Tibay)[46] decreed that among the components of administrative due process are: *one,* the administrative tribunal or body must consider the evidence presented; and *two,* the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon)[47] explains that the taxpayer's right to be heard necessarily includes the right to present evidence and the concomitant **"duty to give reason"** on the part of BIR, demonstrating that such evidence was duly considered, *viz.*:

> 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.

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45 Emphasis ours.
46 G.R. No. L-46496, February 27, 1940.
47 G.R. Nos. 201398-99, October 3, 2018.

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> 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.**

The case of *Avon* is illustrative. There, Avon Products Manufacturing, Inc. (APMI) submitted a Reply, together with supporting documents, to the revenue officers' initial audit findings during the informal conference. Despite this, the BIR issued a PAN that merely reiterated the audit findings without addressing APMI's explanations. When APMI submitted its protest letter to the PAN, the BIR, within just two (2) weeks from receipt of AMPI's protest letter, issued an FLD/FAN which simply restated the PAN and likewise failed to discuss the matters raised in the protest letter. Thereafter, the BIR issued a Collection Letter still without confronting AMPI's arguments and submissions. *Avon* decreed that the BIR flouted taxpayer's right to due process:

> 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.
>
> 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.

...

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.[48]

Commissioner of Internal Revenue v. Unioil Corporation (Unioil)[49] then abridged the dictum in *Avon* as follows:

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48 Boldfacing ours.
49 G.R. No. 204405, August 4, 2021.

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What we can refract from our ruling in Avon Products is that the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party.

Here, the BIR's PAN dated September 30, 2020[50] found the following deficiency tax assessments for CY 2016:

Tax Type	**Basic Tax**	**Increments**			TOTAL
		Interest	**Surcharge**	**Compromise Penalty**	
IT	₱215,139,265.09	₱103,856,269.88	-	-	₱318,995,534.97
VAT	76,927,652.66	40,508,205.05	-	-	117,435,857.71
EWT	29,964,165.71	15,942,578.03	-	-	45,906,743.74
FWT	106,851,694.87	56,850,956.56	-	-	163,702,651.43
MC				₱200,000.00	
					₱646,240,787.85

In its Reply Letter to the PAN, petitioner made certain refutations against the findings of the BIR relative to the foregoing assessments, condensed as follows:[51]

1. The alleged discrepancy in sales not subjected to tax amounting to ₱167,364,429.64 pertains to VAT-nondeductible sales discounts, sundry income offset against various expenses, and sales returns offset against cost of goods sold, which were not considered by the BIR in its reconciliation.

2. The alleged realized FOREX gain of ₱6,670,150.31 arose from the BIR's reliance on unaudited general ledger balances, despite petitioner's explanation that the accounts were properly classified in the ITR as part of cost of goods sold and other taxable income, with correct treatment of realized and unrealized gains and losses.

3. The disallowed advertising and promotions expense of ₱543,096,303.00 was incurred in the ordinary course of petitioner's business as a manufacturer and distributor, supported by corporate, regulatory, contractual, and accounting documents, and not indicative of a toll manufacturing arrangement.

4. The disallowed tax credits carried over amounting to ₱96,647,508.00 pertain to excess credits properly attributable

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50 Exhibit "P-14," Docket - Vol. I, pp. 244 to 249; Exhibits "R-8" to "R-8-A," BIR Records (Exhibit "R-14"), pp. 522 to 535.

51 Exhibit "P-15," Docket - Vol. I, at pp. 254 to 283.

to the succeeding taxable year and, thus, should not result in a deficiency for the year under audit.

5. The disallowed input tax of ₱76,936,916.29 pertains to shared and operational expenses for which input VAT was actually paid, as evidenced by official receipts, billing invoices, and accounting records.

6. The excess input tax carried over to the succeeding period amounting to ₱592,906,657.56 properly redounds to subsequent periods, and petitioner maintains that it still has substantial unutilized input VAT.

7. The alleged deficiency EWT arising from the uniform application of 15% on ₱173,436,744.29 failed to consider the proper varying withholding rates based on the nature of the income payments and the timing differences in recording and withholding.

8. The proposed EWT on capital goods acquisitions results in double imposition, as the same transactions were already captured in the BIR's supplier-level comparison.

9. The assessed Final Withholding Tax of ₱163,702,651.43 is improper, as the Administration Services and Distribution Fees represent service fees for actual services rendered based service contracts submitted, not royalties subject to 20% final tax.

Yet, without batting an eye, the BIR issued the FLD/FAN with Details of Discrepancies dated March 10, 2021, reiterating findings in the PAN, save for modification in the amount of interests on deficiency taxes and explanation in FWT:

Tax Type	Basic Tax	Increments			TOTAL
		Interest	Surcharge	Compromise Penalty	
IT	₱215,139,265.09	₱120,973,103.47	-	-	₱336,112,368.56
VAT	76,927,652.66	46,628,695.56	-	-	123,556,348.22
EWT	29,964,165.71	18,326,576.31	-	-	48,290,742.02
FWT	106,851,694.87	65,352,253.05	-	-	172,203,947.92
				₱200,000.00	
					₱680,363,406.72

Respondent ignored the teachings parted by *Ang Tibay*, *Avon*, and *Unioil*. Specifically, respondent received petitioner's Reply Letter to the PAN containing supporting documents and substantive arguments that go into the validity of the assessments. Instead of explaining why petitioner's postulations in said Reply Letter are unacceptable, respondent issued the FLD/FAN merely replicating the PAN, save for updated interest amount, and a discussion in FWT in the attached Details of Discrepancy.

All told, consistent with *Ang Tibay* and *Avon*, the deficiency tax assessments for income tax, VAT, and EWT, issued by respondent against petitioner for CY 2016 must be struck down for violation of its right to due process on assessment.

Penultimately. Respondent nonetheless duly observed petitioner's right to due process with respect to FWT.

We find that respondent provided additional explanations in the attached Details of Discrepancies, setting forth the factual and legal bases for the imposition of FWT under Section 42(A)(4)(f) of the NIRC, as amended. The pertinent explanation is reproduced below:

PAN's *Details of Discrepancies*	FLD/FAN's *Details of Discrepancies*
"<u>FINAL WITHHOLDING TAX</u> **<u>Basic Tax Due</u>, <u>P106,851,694.87</u>** - Verification disclosed that you have classified royalties paid to related parties as income payment subject to expanded withholding tax as provided by Section 2.57.2 of RR 2-98 as amended. Under Section 2.57.1 of RR 2-98 as amended, in relation to Section 42(A)(4)(f) of the Tax Code, the said royalties is subject to a rate [of] 20% final tax. In addition, a General License fee was paid to CPW S.A. amounting to 94,175,570.00. Thus, said royalties were assessed on deficiency final withholding tax. The term royalties is expounded under Section 42(A)(4) of the NIRC which reads: *'(4) Rentals and Royalties. - Rentals and royalties from property located in the Philippines or from any interest in such property, including rentals or royalties for –* **(f)** Technical advice,	"<u>FINAL WITHHOLDING TAX</u> **<u>Basic Tax Due</u>, <u>P106,851,694.87</u>** - Verification and reconciliation of all related documents and information gathered, it was disclosed that you have an income payment to Nestle Phils Inc. (NPI), a related party, amounting to P336,268,538.00 and P197,989,936.00 as payment of Administration service fees and Distribution fees, respectively. Such fees pertains to services rendered by NPI under Services Agreement and Distribution Agreement. Under the agreement the following services to be rendered by NPI are: Service Agreement: 1. To provide necessary services to deal or handle administrative, logistics and ancillary requirements of the business operations of CPWPI. 2. To make available of CPWI the services of its employees appropriate in number and qualification to carry out the

assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme: and'

Schedule 3

General license fees	₱94,175,570.00	15%	₱14,126,336.00
Administration Services	336,268,538.00	20%	67,253,707.60
Distribution Fees	197,989,936.00	20%	39,597,987.20
Tax due			₱120,978,030.30
Less: Tax paid			14,126,335.43
Tax still due			₱106,851,694.87"

activities of set out in clause I hereof.

Distribution Agreement:

1. Sales & distribution
2. Marketing
3. Storage of products
4. Administrative and other services

Section 27(D)(1) of the Tax Code states that:

Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties. - A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and ***royalties****, derived from sources within the Philippines: Provided, however, that interest income derived by ~~the~~ a domestic corporation from a depository bank under the expanded foreign currency deposit system shall be subject to final income tax at the rate of fifteen percent (15%) of such interest income.*

The term royalties is expounded under Section 42(A)(4)(F) of the NIRC which reads:

> *'(4) Rentals and Royalties. - Rentals and royalties from property located in the Philippines or from any interest in such property, including rentals or royalties for –*
>
> > **(f) Technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme: and'**

	'In our jurisprudence, the test of taxability is the 'source', and the source of an income is 'that activity... which produce the income Howden & Co., Ltd. vs. Collector of Internal Revenue, 13 SCRA 601, reiterated in Commissioner of Internal Revenue vs. Japan Air Lines, Inc., 202 SCRA 450). It is not the presence of any property from which one derives rentals and royalties that is controlling, but rather as expressed under the expanded meaning of 'royalties', it includes 'royalties for the supply of scientific, technical, industrial, or commercial knowledge or informations; and the technical advice, assistance or services rendered in connection with the technical and administration of any scientific, industrial or commercial undertaking, venture, project or scheme, and others (Section 37 (a)(4) as amended by P.D. 1457).' (*Philippine American Life Insurance Company. Inc. et al v. CTA and CIR, CA-G.R. SP No. 31283, April 25. 1993.*) (Section 37 (a)(4) of the National Internal Revenue Code (NIRC) of 1997 as amended by P.D. 1457 is now Section 42 (A)(4) of the 1997 NIRC.) In Visayas Geothermal Power Co. v. CIR (CTA EB No. 1291, 9/21/2016), the court states that: 'A plain reading of the said provisions above that the services rendered by MEHC such as the corporate management, financial planning support, technical and administrative support services (the 'Service') for the operation of the Malitbog Geothermal Power Plant in the Philippines are covered by the expanded meaning of royalties. (Visayas Geothermal Power Co. vs CIR, CTA EB No. 1291) Premises considered, administrative services and distribution fees amounting to P336,268,538.00 and

P197.989.936.00 are subject to final withholding of income tax pursuant to Section 27(D) as implemented by RR 2-98 as amended, in relation to Section 42(A)(4)(f) of the Tax Code as amended.

Schedule 3

General license fees	P94,175,570.00	15%	P14,126,336.0
Administration Services	336,268,538.00	20%	67,253,707.6
Distribution Fees	197,989,936.00	20%	39,597,987.2
Tax due			P120,978,030.3
Less: Tax paid			14,126,335.4
Tax still due			P106,851,694.87

Unlike the IT, VAT, and EWT assessments which merely reiterated the PAN, the FLD/FAN provided a fuller discussion on FWT by identifying the specific payments to the related party, describing the services rendered under the Service and Distribution Agreements, citing Section 27(D)(1) and Section 42(A)(4)(f) of the NIRC, as amended, and invoking jurisprudence to justify the classification of such fees as royalties subject to 20% final tax. This level of explanation substantially satisfies Section 228 of the NIRC, as amended.

What *Avon* proscribes is total replication and inaction; here, respondent articulated the factual and legal bases of the FWT assessment, thereby sufficiently apprising petitioner of the reasons for its imposition. There was no such blanket replication. *Ergo*, the FWT deficiency assessment passes constitutional and statutory scrutiny on due process.

Lastly. While the deficiency FWT assessment is valid, having been issued in accordance with due process, petitioner nonetheless bears no liability therefor.

To recount, respondent subjected petitioner's administrative fees in the amount of ₱336,268,538.00 and distribution fees amounting to ₱197,989,936.00 paid by petitioner to Nestle Philippines, Inc. (NPI) to final withholding of income tax, treating the same as royalties for alleged "technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme," pursuant to Section

27(D)(1) of the NIRC, as amended, which imposes a final tax on certain passive incomes, including royalties, *viz.*:

> Section 27. Rates of Income Tax on Domestic Corporations.
>
> ...
>
> (D) *Rates of Tax on Certain* ***Passive Incomes.*** —
>
> (1) Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and **Royalties.** — A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: Provided, however, That interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7 1/2%) of such interest income.[52]

Passive income is defined in the negative in *Chamber of Real Estate and Builders Associations, Inc. v. The Honorable Executive Secretary Alberto Romulo, et al.*, (*CREBA*):[53]

> **...if the income is generated in the active pursuit and performance of the corporation's primary purposes, the same is not passive income...**[54]

Following *CREBA*, in order for the alleged royalties to be subject to the 20% final withholding tax, it must be of the nature of passive income, or one that is not generated in the active pursuit and performance of the corporation's primary purpose.

The pieces of evidence show otherwise.

Ms. Arni Perlas (Ms. Perlas), NPI's Tax Head and in charge of tax of petitioner, testified that petitioner engaged its affiliate, NPI, for the distribution of its products,[55] pursuant to its Distribution Agreement in 1998,[56] which contains the following agreement:

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52 Emphasis ours.
53 G.R. No. 160756 dated March 9, 2010.
54 Emphasis ours.
55 Q&A Nos. 17 to 18, Docket - Vol. I, pp. 59.
56 Exhibit "P-82, BIR Records (Exhibit "R-14"), pp. 778 to 781.

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1. Petitioner will supply NPI with price lists, terms of sale and other sales conditions to be used by NPI, while NPI shall sell and distribute petitioner's products throughout the Philippines, and collect payments;

2. NPI shall offer and support promotional operations with customers as specified by petitioner;

3. NPI or through third parties shall store and distribute petitioner's products, transport products to warehouse or to customers, and insure against the risk of low and protect against deterioration of the products; provided, however, that petitioner shall be responsible for any cost resulting from the returns of products which are outdated or nearly outdated;

4. NPI shall undertake such administration and professional services which shall include but not limited to purchasing, accounting, legal and secretarial, tax, personnel and pension services, among others; (5) NPI agrees not to engage in the sale, distribution, or marketing of breakfast cereals in the Philippines or on behalf of any other manufacturer, seller or licensor, and for both petitioner and NPI to keep confidential and not to use except for the purposes set forth herein all information revealed to them in connection with the other's respective businesses; and

5. that except for damages caused by a breach by NPI of one of the provisions of this agreement, NPI shall not be responsible for the success or failure of petitioner's business, and title to the products and all risks not covered by petitioner as provided in the said Agreement shall remain with petitioner.

Ms. Perlas presented petitioner's Service[s] Agreement[57] with NPI. It shows that petitioner did not maintain its own employees since its products will be distributed by NPI, and that it is more cost efficient to share employees with NPI, considering that petitioner is 50% owned by Nestle S.A., the parent company of NPI.[58] Further, said Agreement provides that petitioner shall have the primary responsibility for managing and supervising its business, and engages NPI to provide necessary services to deal or handle administrative, logistics and ancillary requirements of the business operations of petitioner (at the direction of the latter); and to make available to petitioner the services of its employees appropriate in number and qualification, among others.

In fine, the administrative services and distribution fees paid by petitioner to NPI, pursuant to the above-stated Distribution

[57] Exhibit "P-81," BIR Records (Exhibit "R-14"), pp. 593 to 594.
[58] Q&A Nos. 22 and 23, Docket - Vol. I, pp. 59 to 60.

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Agreement and Services Agreement were paid in the active pursuit and performance of petitioner's primary purpose – to manufacture, buy or otherwise, sell, export, import, distribute and deal in all kinds of foods, food products, natural products, dietetic products, beverages and articles of human consumption, among others. These obviously are *not* in the nature of passive income, particularly, royalties, to be subject to a FWT. Thus, petitioner cannot be held liable to pay the assessed FWT in the amount ₱163,702,651.43.

WHEREFORE, the Petition for Review filed on November 3, 2021 by CPW Philippines, Inc., is **GRANTED.** Accordingly:

1. The Formal Letter of Demand and Assessment Notices dated March 10, 2021 issued against petitioner for deficiency income tax, value-added tax, expanded withholding tax, and final withholding tax, in the total amount of ₱680,363,406.72, inclusive of interests and miscellaneous charges, for calendar year 2016, are **CANCELLED** and **SET ASIDE**;

2. The Final Decision on Disputed Assessment dated September 28, 2021 issued against petitioner for deficiency income tax, value-added tax, expanded withholding tax, and final withholding tax, in the total amount of ₱666,575,540.12, inclusive of interests and miscellaneous charges, for the same calendar year 2016, are **WITHDRAWN** and **SET ASIDE**; and

3. Consequently, the Warrant of Distraint and/or Levy No. 116-2021-134 dated November 10, 2021 issued against petitioner in relation to its alleged deficiency tax assessments for calendar year 2016 are likewise **CANCELLED** and **SET ASIDE**.

Respondent, his representatives, agents, or other persons acting in his behalf are **ENJOINED** from implementing the collection of deficiency income tax, value-added tax, expanded withholding tax, and final withholding tax, in the total amount of ₱680,363,406.72, inclusive of interests and miscellaneous charges, for calendar year 2016.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

I CONCUR:

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice
Acting Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice