REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

COMMISSION ON ELECTIONS, *Petitioner,*

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CTA Case No. 10245

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 02 2023 2:33PM

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DECISION

MANAHAN, *J.:*

This resolves petitioner's appeal to this Court by way of a *Petition for Review*[1] filed on January 16, 2020, pursuant to Section 3(a)(1) of Rule 4, in relation to Section 2, Rule 8, of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), seeking to reverse and set aside the *Decision* dated December 16, 2019 issued by respondent against petitioner sustaining the alleged deficiency assessment of withholding tax on compensation (WTC), expanded withholding tax (EWT) and withholding on government money payments [value added tax (VAT) and other percentage taxes (OPT)], inclusive of interest for taxable year 2015 in the aggregate amount of ₱1,088,333,203.20.[2]

THE PARTIES

Petitioner Commission on Elections (COMELEC) is one of the three (3) Constitutional Commissions of the Philippines. It is the principal agency tasked by the Constitution to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda and recall elections in the Philippines, with address at c/o Law

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[1] Docket, CTA Case No. 10245, Vol. I, pp. 5 to 36.
[2] *Id.*, Vol. II, Par. III (3), Pre-Trial Order dated June 22, 2021, p. 979.

Department, 8th Floor, Palacio del Gobernador Bldg., Gen. Luna St. corner Andres Soriano, Jr. Ave., Intramuros, Manila.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 33 with Tax Identification Number (TIN) 000-751-960.[4] It is a withholding agent for purposes of WTC, EWT and withholding tax on government money payments (VAT and OPT withheld).[5]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

THE FACTS

On September 19, 2016, respondent issued *Letter of Authority* (LOA) No. LOA-033-2016-00000406,[7] authorizing Revenue Officer (RO) Virginia Duran under Group Supervisor (GS) Lani Gameng of RDO No. 33 – Intramuros – Ermita – Malate, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax (DST) and other taxes, for the period January 1, 2015 to December 31, 2015.

On March 26, 2018, September 25, 2018, and November 26, 2018, respondent issued to petitioner the *Notice of Informal Conference,*[8] *Preliminary Assessment Notice* (PAN),[9] and *Amended PAN,*[10] respectively.[11]

On December 21, 2018, then Revenue Region No. 6, Regional Director (RD) Romulo L. Aguila, Jr., issued the supposed *Final Assessment Notice* (FAN), *Formal Letter of*

[3] Docket, Vol. II, Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 907.
[4] *Id.*, Vol. II, Pars. 1 and 8, Admitted Facts, JSFI, p. 907 and 909.
[5] *Id.*, Vol. II, Par. 9, Admitted Facts, JSFI, p. 909.
[6] *Id.*, Vol. II, Par. 2, Admitted Facts, JSFI, pp. 907 to 908.
[7] *Id.*, Vol. II, Par. 10, Admitted Facts, JSFI, p. 909; Exhibit "R-1", BIR Records, Folder 3, p. 1785.
[8] BIR Records, Folder 3, Exhibit "R-5", pp. 2233 to 2235.
[9] BIR Records, Folder 3, Exhibit "R-7", pp. 2483 to 2486.
[10] BIR Records, Folder 3, Exhibit "R-8", pp. 2538 to 2541.
[11] Docket, Vol. II, Par. 11, Admitted Facts, JSFI, p. 909.

Demand (FLD), and *Details of Discrepancies.*[12] The said supposed FAN assessed petitioner for deficiency withholding tax amounting to ₱1,103,061,926.14.[13] The said documents were received by a certain "*Jai Conde*" on December 27, 2018.[14]

Petitioner protested the supposed FAN,[15] through the letter dated February 18, 2019 filed on February 19, 2019, and the letter dated February 28, 2019 filed on even date.[16]

On March 25, 2019, petitioner received the *Final Decision on Disputed Assessment* (FDDA) issued by RD Marina C. De Guzman.[17] According to the said FDDA, petitioner is still liable to pay the amount of ₱1,088,333,203.20,[18] representing deficiency withholding taxes, inclusive of interests, for taxable year 2015. The FDDA states that the assessment has become final because petitioner was not able to file its protest against the supposed FAN within thirty (30) days from receipt thereof by a certain "*Jai Conde*".[19] On April 24, 2019, petitioner posted its *Request for Reconsideration to and/or Reinvestigation on the Final Decision on Disputed Assessment dated March 22, 2019* with the office of the respondent.[20]

On December 18, 2019, petitioner received the assailed *Decision* of respondent, denying the *Request for Reconsideration and/or Reinvestigation* of petitioner.[21]

Petitioner filed the present *Petition for Review* on January 16, 2020.[22]

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[12] Docket – Vol. II, Par. 12, Admitted Facts, JSFI, p. 909.
[13] *Id.*, Vol. II, Par. 13, Admitted Facts, JSFI, p. 909; Docket, Vol. II, Exhibits "P-1", "P-2" and "P-3", pp. 1021 to 1025; BIR Records, Folder 3, Exhibit "R-9", pp. 2563 to 2566.
[14] *Id.*, Vol. II, Par. 14, Admitted Facts, JSFI, p. 909.
[15] *Id.*, Vol. II, Par. 15, Admitted Facts, JSFI, p. 909.
[16] *Id.*, Vol. II, Exhibit "P-5", pp. 1027 to 1033; BIR Records, Folder 3, Exhibit "R-11", pp. 2579 to 2580; Docket, Vol. II, Exhibit "P-5-A", pp. 1034 to 1044; Docket, Vol. I, Par. 4.12, *Petition for Review*, vis-à-vis Par. 5, *Answer*, pp. 9 and 345, respectively.
[17] *Id.*, Vol. II, Par. 16, Admitted Facts, JSFI, p. 909; Docket, Vol. II, Exhibits "P-6" and "P-6-A", p. 1045 to 1048; BIR Records, Folder 3, Exhibit "R-12", pp. 2623 to 2626.
[18] *Id.*, Vol. I, Par. 4.15, *Petition for Review*, vis-à-vis Par. 5, *Answer*, pp. 9 and 345, respectively.
[19] *Id.*, Vol. II, Par. 17, Admitted Facts, JSFI, pp. 909 to 910.
[20] *Id.*, Vol. II, Exhibits "P-7" and "P-7-A", pp. 1049 to 1059; BIR Records, Folder 2, Exhibit "R-13", pp. 1772 to 1782.
[21] *Id.*, Vol. II, Pars. 4 and 18, Admitted Facts, JSFI, pp. 908 and 910, respectively;
[22] *Supra*, Note 1. *cmn*

Respondent filed his *Answer* on March 2, 2020,[23] interposing the following special and affirmative defenses, to wit:

1. The Honorable Court has no jurisdiction to entertain the instant petition for review. The FAN/FLD dated December 21, 2018 was received by the petitioner on December 27, 2018. Assessment Notice No. 33-15-45762-18-240 (WG) for deficiency withholding tax on compensation and expanded withholding tax in the total amount of ₱1,103,061,926.14 has attained finality after the lapse of thirty (30) days from receipt of the FAN, without the same having been protested by the petitioner pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

2. The right of the respondent to assess has not yet prescribed considering that petitioner filed false returns. Based on Commission on Audit's report, the account due to BIR amounting to ₱329,196,954.32 for taxable year 2015 represents taxes withheld and deducted from salaries and other benefits of the officials and employees of COMELEC, as well as those withheld from suppliers. However, upon audit and investigation of its internal revenue taxes, it revealed that the petitioner had under remittance of withholding tax on compensation and expanded withholding tax. Hence, the three (3)-year period of limitation for the assessment of internal revenue tax liabilities reckoned from the last day prescribed by law for filing of the return shall not apply in the case at hand for the simple reason that petitioner filed false returns for taxable year 2015. Such being the case, the applicable provision shall be Section 222 (a) of the NIRC of 1997, as amended.

In the Resolution dated March 11, 2020,[24] the case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals,* approved by the Supreme Court on January 18, 2011.

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[23] Docket, Vol. I, pp. 345 to 352.
[24] *Id.*, Vol. I, p. 356. *gm*

On March 13, 2020, petitioner filed an *Omnibus Motion 1. To Suspend Collection of Tax and To Dispense Tender Deposit or Surety Bond and 2. To Admit Registry Receipts as Proof of Timely Service of Pleadings.*[25] Respondent posted his *Opposition (To Petitioner's Omnibus Motion dated March 10, 2020)* on July 24, 2020.[26]

In the meantime, on June 5, 2020, petitioner filed its *Reply (To Respondent's Answer).*[27]

Respondent forwarded the *BIR Records* of the case on August 20, 2020.[28]

On October 12, 2020, the PMC-CTA filed the *No Agreement to Mediate* dated October 8, 2020.[29]

Petitioner filed its *Formal Offer of Evidence for the Petitioner's Motion to Suspend Collection of Tax and Dispense of Deposit or Surety Bond* on October 15, 2020.[30] Respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Evidence)* on October 19, 2020.[31] In the Resolution dated November 6, 2020,[32] the Court acted on the said *Formal Offer of Evidence*, and denied petitioner's *Omnibus Motion 1. To Suspend Collection of Tax and To Dispense Tender Deposit or Surety Bond and 2. To Admit Registry Receipts as Proof of Timely Service of Pleadings.*

The case was then set and held for pre-trial conference on February 11, 2021.[33] Prior thereto, the *Pre-Trial Brief (For Petitioner Commission on Elections)* and *Respondent's Pre-Trial Brief* were respectively filed on February 5, 2021[34] and February 9, 2021.[35]

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[25] Docket, Vol. I, pp. 357 to 364.
[26] *Id.*, Vol. I, pp. 475 to 482.
[27] *Id.*, Vol. I, pp. 432 to 452.
[28] *Id.*, Vol. I, *Compliance* dated August 20, 2020, pp. 472 to 474.
[29] *Id.*, Vol. I, p. 562.
[30] *Id.*, Vol. I, pp. 574 to 578.
[31] *Id.*, Vol. I, pp. 652 to 653.
[32] *Id.*, Vol. I, pp. 660 to 669.
[33] *Id.*, Vol. I, *Notice of Pre-Trial Conference* dated November 23, 2020, pp. 670 to 672; Docket, Vol. II, Minutes of the hearing held on, and Order dated, February 11, 2021, pp. 875 to 877, and 879 to 882.
[34] *Id.*, Vol. II, pp. 685 to 702.
[35] *Id.*, Vol. II, pp. 868 to 874. Om

In the meantime, respondent filed his *Motion to Dismiss* on February 9, 2021.[36] Petitioner filed its *Comment to Respondent's Motion to Dismiss* on February 22, 2021.[37] In the Resolution dated June 8, 2021,[38] the Court denied respondent's *Motion to Dismiss* for lack of merit.

On February 22, 2021, the parties presented their *Joint Stipulation of Facts and Issues*,[39] which was approved by the Court in its Resolution dated May 21, 2021,[40] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated June 22, 2021 was then subsequently issued.[41]

During trial, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimony of Atty. Maria Lea R. Alarkon,[42] Director III of its Finance Services Department.

On June 25, 2021, petitioner filed its *Formal Offer of Evidence*.[43] Respondent filed, through electronic mail, his *Comment/Opposition (To Petitioner's Formal Offer of Evidence)* on July 2, 2021.[44] In the Resolution dated October 20, 2021,[45] the Court admitted petitioner's offered exhibits.

For his part, respondent proffered the testimony of RO Virginia P. Duran.[46]

Respondent filed his *Formal Offer of Evidence* on November 26, 2021.[47] Petitioner filed its *Comment/Objection Re: Respondent's Formal Offer of Evidence* on December 10, 2021.[48]

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[36] Docket, Vol. II, pp. 849 to 856.
[37] *Id.*, Vol. II, pp. 891 to 906.
[38] *Id.*, Vol. II, pp. 942 to 944.
[39] *Id.*, Vol. II, pp. 907 to 917.
[40] *Id.*, Vol. II, pp. 931 to 932.
[41] *Id.*, Vol. II, pp. 970 to 987.
[42] *Id.*, Vol. II, Exhibit "P-45", pp. 706 to 724; Docket, Vol. II, Minutes of the hearing held on, and Order dated, June 10, 2021, pp. 948 to 953.
[43] *Id.*, Vol. II, pp. 988 to 1020.
[44] *Id.*, Vol. II, pp. 1156 to 1159.
[45] *Id.*, Vol. II, pp. 1172 to 1173.
[46] *Id.*, Vol. II, Exhibit "R-14", pp. 1187 to 1194; Docket, Vol. II, Minutes of the hearing held on, and Order dated, November 16, 2021, pp. 1305 to 1307.
[47] *Id.*, Vol. II, pp. 1312 to 1318.
[48] Docket, Vol. II, pp. 1319 to 1324. cm

In the Resolution dated March 30, 2022,[49] the Court admitted respondent's offered exhibits.

Respondent's Memorandum was filed on May 5, 2022,[50] while petitioner's Memorandum was submitted on May 20, 2022.[51]

On June 3, 2022, this case was submitted for decision.[52]

ISSUES

The parties raised the following issues, to wit:[53]

1. Whether the Honorable Court has jurisdiction over the instant petition.

2. Whether or not the petitioner is liable to pay deficiency withholding tax for taxable year 2015 in the amount of ₱1,088,333,203.20, inclusive of interest.

Motu proprio, the Court resolves to rule on the following related issue, which it deems as necessary to achieve a just and orderly disposition of the present case, to wit:

> "Whether petitioner was denied due process in the issuance of the subject FDDA."

Petitioner's Arguments

Petitioner argues that this Court has jurisdiction over the instant petition; that contrary to the claim of the respondent, the supposed FAN did not become final as it was not properly served on the petitioner; that the FAN was served to an unauthorized person (Job Order Casual), and sent to the wrong addressee; that the FAN is void because it lacks the definite amount of tax liability for which petitioner is allegedly accountable; that petitioner is not barred from challenging the

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[49] *Id.*, Vol. II, pp. 1332 to 1333.
[50] *Id.*, Vol. II, pp. 1334 to 1346.
[51] *Id.*, Vol. II, pp. 1347 to 1377.
[52] *Id.*, Vol. II, Resolution dated June 3, 2022, p. 1379.
[53] *Id.*, Vol. II, JSFI, p. 910.

void FAN and in fact, its invalidity can be raised at any time; and that respondent's right to assess the withholding tax liability of petitioner for January to November 2015 has already prescribed.

Respondent's Counter-arguments

Respondent, on the other hand, argues that the Court has no jurisdiction over the instant petition; that the assessment has already become final, executory and demandable; and that the right of the respondent to assess petitioner has not yet prescribed.

RULING OF THE COURT

This Court shall determine first whether the appeal was timely filed, thus, acquiring jurisdiction on the instant petition. Sections 7(a) and 11 of Republic Act (RA) No. 1125[54], as amended by RA No. 9282[55], provides as follows:

> "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 relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx
>
> "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 xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of

[54] AN ACT CREATING THE COURT OF TAX APPEALS.

[55] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. am

> the period fixed by law for actions as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia*, to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In the instant case, petitioner grounded its appeal on the Decision dated December 16, 2019 issued by respondent which it received on December 18, 2019.

Applying the abovementioned provision, petitioner had thirty (30) days or until January 17, 2020 to file an appeal before this Court. Thus, the filing of the instant petition for review on January 16, 2020 was on time.

This Court may resolve related issues necessary to achieve a just and orderly disposition of the case.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **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**." *(Emphasis added)*

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule am upon related issues necessary to achieve an orderly disposition of the case.[56] Such authority of this Court is confirmed and recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[57] *viz*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> **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.*** **– xxx**
>>
>> **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.** xxx." *(Emphases added)*

The Supreme Court has applied the foregoing provision in *Commissioner of Internal Revenue vs. Yumex Philippines Corporation,*[58] wherein it held the following:

> "As the CTA *En Banc* held, **the CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>.** xxx." *(Emphasis and underscoring added)*

Furthermore, in *Comilang vs. Burcena, et al.,*[59] the Supreme Court held:

> "Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law. Indeed, the Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned.

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[56] G.R. No. 183408, July 12, 2017.
[57] *Id.*
[58] G.R. No. 222476, May 5, 2021.
[59] G.R. No. 146853, February 13, 2006. *am*

> xxx xxx xxx
>
> **Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances:** (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; **(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;** (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; **(e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.**"[60] *(Emphases added)*

On the basis of the foregoing jurisprudence, it is clear that this Court, as an appellate court, is undoubtedly clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in certain instances. To be sure, although the issue of whether petitioner was denied due process in the issuance of the subject FDDA was not specifically raised or assigned as an error in the present case, the consideration thereof is necessary in arriving at a just and complete resolution of the case.

There was a delay in the filing of protest, hence, the FAN/FLD attained its finality.

In arguing that this Court has no jurisdiction over the present petition, respondent points out that petitioner filed a protest to the FAN/FLD only on February 19, 2019 which was beyond the thirty (30)-day period prescribed by Section 228 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 18-2013. Respondent reckoned the date of receipt of the FAN and FLD on December 27, 2018—the date of receipt by a certain "*Jai Conde*". Considering that petitioner's protest letters dated February 18, 2019 and February 28, 2019 were only filed with the BIR on February 19, 2019, and

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[60] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. vs. Hon. Secretary of Finance, et al.* (G.R. No. 160206, July 15, 2015), wherein the Supreme Court recognizes this Court's jurisdiction to determine an issue not raised by the parties.

February 28, 2019, respectively, respondent concluded that the same were filed out of time, and as a consequence, the assessment has become final, executory, and demandable.

To counter the foregoing, petitioner avers that the FAN was served to an unauthorized person (Job Order Casual), and was sent to the wrong addressee.

The Court disagrees with petitioner.

A perusal of the records reveals that the FLD/FAN attached to the Petition for Review bear the rubber stamp of COMELEC Finance Service Department. Jai Conde, who received the FLD/FAN, was stationed in the said Department.

Aside from the bare allegation that Jai Conde was working for petitioner on a Job Order basis or Jai Conde was a mere casual employee, no evidence was adduced to prove that the job description of Jai Conde does not include the authority to receive documents for petitioner. Truth to tell, Jai Conde's status as a mere casual employee or an employee on a Job Order basis has nothing to do with Jai Conde's authority to receive the FLD/FAN.

What is glaring is that Jai Conde was stationed in petitioner's Finance Service Department, yet there is nothing on record which would show that the authority of said Department to receive the FLD/FAN was raised or questioned by petitioner.

Further, petitioner **did not raise as an issue the propriety of the service of FLD/FAN** in its Protest Letters dated February 19, 2019 and February 28, 2019.[61] Petitioner even expressed its sincerest apologies for its admitted delay in responding to the FLD/FAN.

Thus, petitioner's failure to file its protest letters on time renders the FLD/FAN final, executory, and demandable.

The invalidity of the FDDA does not affect the validity of FLD or the FAN.

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[61] CTA Docket, pp. 131 and 138.

Section 228 of the NIRC of 1997 provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx." *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[62] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[63] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[64] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[65]

To implement the above-quoted Section 228, Section 3.1.5 of Revenue Regulations (RR) No. 12-99,[66] as amended by RR No. 18-2013,[67] provide, in part, as follows:

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

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

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

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

[66] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – **The decision of** the Commissioner or **his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision.*" *(Emphases and underscoring added)*

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the FDDA must state the facts, the applicable law, rules and regulations, and jurisprudence, on which the assessment is based; otherwise, the FDDA shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[68] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> xxx xxx xxx
>
> In *Ang Tibay v. The Court of Industrial Relations*,[69] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

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[68] *Supra*, Note 62.
[69] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*]. *dm*

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.

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The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

xxx xxx xxx

<u>Administrative due process is anchored on fairness and equity in procedure</u>. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, <u>Avon</u>** ém

> **<u>was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.</u>** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> xxx xxx xxx
>
> 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. <u>He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record</u>.**"

Following the *Avon* ruling, the concerned taxpayer must ***not*** be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

In this case, as stated in the subject FLD, with *Details of Discrepancies,* and *Assessment Notice*, both dated December 21, 2018,[70] the BIR found the following as due from petitioner, to wit:

<u>WITHHOLDING TAXES</u>		
Per COA Audit Report (Notes to FS No. 10) Due to BIR as of December 31, 2015		₱ 329,196,954.32
Add: Under remittance of:		
WTC (Schedule 1)	₱ 292,113,895.04	
EWT (Schedule 2)	176,866,742.45	468,980,637.49
Total Due to BIR per Investigation		₱ 798,177,591.81
Less: Tax Remittances for month of December 2015 paid on January 2016:		
EWT	₱ 144,341.06	
WTC	71,230,048.22	
Withholding on government money payments	318,895.35	71,693,284.63
Still Due to BIR per Investigation		₱ 726,484,307.18
Add: 20% Interest (01/16/2016 to 12/31/2017)	₱ 284,622,618.98	
12% Interest (01/01/2016 to 01/21/2019)	91,954,999.98	376,577,618.96
TOTAL AMOUNT DUE		**₱1,103,061,926.14**

[70] Docket, Vol. II, Exhibits "P-1", "P-2" and "P-3", pp. 1021 to 1025; BIR Records, Folder 3, Exhibit "R-9", pp. 2563 to 2566.

Relative thereto, the said *Details of Discrepancies* read as follows:

"**I. WITHHOLDING TAX ON COMPENSATION**

- Basic Tax Due, ₱292,113,895.04 – Since you have failed to withhold/remit the corresponding withholding tax due on Salaries, Wages and Benefits Expense based on the comparison of Salaries, Wages and Benefits Expense per Audited Financial Statements as against the submitted Alphabetical List of Employees. You are still liable to pay the deficiency Withholding Tax on Compensation thereon in pursuant to Sec. 79 (A) of the NIRC, as amended, and implemented under Sec. 2.78 of the RR No. 2-98, as amended.

Schedule 1:

Salaries, Wages and Benefits Expense per AFS			
	Other Personnel Benefits	₱ 2,553,987,011.65	
	Salaries and Wages	1,388,909,257.10	
	Other Compensation	1,158,650,033.17	₱ 5,101,546,301.92
Less:	Salaries, Wages and Benefits Expense per Alphabetical List of Employees		
	Taxable Salaries & other compensation	₱ 1,804,909,280.29	
	Taxable 13th month pay	1,351,621,986.98	
	Non-taxable 13th month pay	395,486,000.00	
	GSIS, PHILHEALTH & other employees contr	128,582,649.41	3,680,599,916.68
Salaries, Wages and Benefits Expense not subjected to Withholding Tax on Compensation			1,420,946,385.24
Multiplied By Withholding Tax Rate (Figure 1.1)			20.5577%
Basic Tax Due			₱ 292,113,895.04

Figure 1.1

Total Tax due per Alphalist	₱ 756,648,016.81
Divided by: Taxable Income	3,680,599,916.68
Withholding Tax Rate	20.5577%

II. EXPANDED WITHHOLDING TAX

- Basic Tax Due, ₱176,866,742.45 – Verification disclosed that some expenses were not subjected to expanded withholding tax in full, hence you are assessed of deficiency expanded withholding tax pursuant to Sec. 34 (K), of the NIRC, as amended and RR 12-2013, to wit:

Schedule 2:

	Amount	Rate	EWT Due
Purchase of goods			
TOTAL	₱ 327,221,286.30	1%	₱ 3,272,212.86

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Utility Expenses	35,259,808.93	1%	352,598.09
Purchase of services			
Other maintenance provided by SMARTMAT	169,584,146.18	2%	3,391,682.92
Utility Expenses	35,570,946.42	2%	711,418.93
Communication Expenses	21,725,868.29	2%	434,517.37
Repairs and Maintenance	12,955,691.20	2%	259,113.82
Travelling Expenses	11,710,760.66	2%	234,215.21
Training and Scholarship Expenses	6,596,471.66	2%	131,929.43
General Service	1,203,409.68	2%	24,068.19
Lease of property			
Other maintenance	3,576,381,866.50	5%	178,819,093.33
Purchase of Professional Services			
General Service	4,178,055.95	15%	626,708.39
Total			₱ 188,257,558.55
Less: Tax Remittances			11,390,816.10
Basic Tax Due			₱ 176,866,742.45

SUMMARY OF DEFICIENCY TAXES

I. WITHHOLDING TAXES	₱ 1,103,061,926.14 "

In its protest letter dated February 18, 2019,[71] petitioner made the following refutations or explanations, to wit:

> "xxx. Based on our preliminary analysis of the withholding taxes on compensation, it was noted that there were non-taxable compensation like Personal Economic Relief Allowance (PERA), Representation Allowance and Transportation Allowance (RATA), Clothing/Uniform Allowance and others as shown in Schedule 2 of Annex 'A' that were included in the computation of the discrepancies found between the total compensation per Audited Financial Statements and Alphabetical List of Employees. The total tax due for CY 2015 was recomputed resulting to a possible over remittance amounting to P44,833,340.62 which is still subject for further verification and analysis.
>
> In addition, the assessment on the expanded withholding taxes was also analyzed as shown in Annex 'B' and it was found out that the services and consumables provided by Smartmatic – TIM in connection with the lease of the Optical Mark Reader used in the May 2016 National and Local Elections were assessed based on the withholding tax rate for rental which is five percent (5%) but should only be based on the withholding tax rate for the purchase of goods and services at one percent (1%) and two percent (2%), respectively.

[71] Exhibit "P-5", Docket – Vol. II, pp. 1027 to 1033, at p. 1028; Exhibit "R-11", BIR Records, Folder 3, at p. 2580; Par. 4.12, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 9 and 345, respectively.

> Further, the withholding tax rate used in the assessment for professional fee was fifteen percent (15%) which should only be ten percent (10%) since the annual gross amount paid per professional did not exceed the threshold of P720,000.00 for CY 2015."

In its supplemental protest letter dated February 28, 2019,[72] petitioner made the following additional refutations or explanations, to wit:

1) A significant part of the ₱329,196,954.32 alleged under remittance as of 2015 were already paid;

2) A significant component of the ₱329,196,954.32 which amounts to ₱211,392,925.47 may no longer be assessed by the BIR as the authority to assess such has already prescribed;

3) The basis of withholding tax due on compensation amounting to ₱292,113,895.04 was an erroneous Alphabetical List of Employees submitted to the BIR;

4) The EWT amounting ₱176,866,742.45 was wrongfully assessed; and

5) Petitioner may not be deemed to have received the assessment.

However, in the FDDA dated March 22, 2019,[73] petitioner was still assessed of the following deficiency tax liabilities, to wit:

WITHHOLDING TAX

Per COA Audit Report (Notes to FS No. 10) Due to BIR as of December 31, 2015		₱ 329,196,954.32
Add: Under remittance of:		
WTC (Schedule 1)	₱ 292,113,895.04	
EWT (Schedule 2)	176,866,742.45	468,980,637.49
Total Due to BIR per Investigation		₱ 798,177,591.81
Less: Tax Remittances for the month of December 2015 paid on January 2016:		
EWT	₱ 144,341.06	

[72] Exhibit "P-5-A", Docket – Vol. II, pp. 1034 to 1044; Par. 4.12, *Petition for Review*, vis-à-vis Par. 5, *Answer*, Docket – Vol. I, pp. 9 and 345, respectively.
[73] Docket, Vol. II, Exhibits "P-6" and "P-6-A", p. 1045 to 1048; Exhibit "R-12", BIR Records, Folder 3, pp. 2623 to 2626.

WTC	71,230,048.22	
Withholding on government money payment	318,895.35	71,693,284.63
Basic Tax Due		₱ 726,484,307.18
Add: 20% Interest (01/16/2016 to 12/31/2017)	₱ 248,397,922.02	
12% Interest (01/01/2018 to 01/21/2019)	113,450,974.00	361,848,896.02
TOTAL AMOUNT DUE		**₱1,088,333,203.20**

A comparison of the figures stated in the subject FLD and the foregoing figures would reveal that the amount of *"Still Due to BIR per Investigation"* remains unchanged. It is noted that the said amount in the FDDA was computed at exactly the same amount as appearing in the said FLD. If at all, the BIR merely recomputed the interests imposed.

More importantly, it is noteworthy that in the said FDDA, the BIR did not address any of the refutations or explanations made by petitioner in its protest letter dated February 18, 2019 and supplemental protest letter dated February 28, 2019—an indication that the BIR did not consider the same when it issued the same FDDA. In fact, the *Details of Discrepancies* attached to the said FDDA merely reiterated or copied *verbatim* what are indicated in the *Details of Discrepancies* attached to the subject FLD.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or his authorized representative appreciated the refutations, explanations or defenses raised by petitioner in connection with the assessments. Thus, the FDDA is invalid.

However, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[74] the Supreme Court categorically ruled that the invalidity of the FDDA does not affect the validity of the final assessment, to wit:

> "The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that

[74] G.R. Nos. 215534 and 215557, April 18, 2016.

> what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> Clearly, **a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other**—unless the law or regulations otherwise provide." (*Emphasis supplied*)

Hence, the assessment in the FLD stands and its validity is not affected by the invalidity of the FDDA.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED**. Accordingly, the FLD, with Details of Discrepancies, and Assessment Notice, both dated December 21, 2018 are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice