REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILSAGA MINING CORPORATION, Petitioner,	**CTA CASE NO. 9402**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 17 2019 3:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

The instant *Petition for Review* filed on July 28, 2016 by Philsaga Mining Corporation against the Commissioner of Internal Revenue, prays for the cancellation and withdrawal of the assessment issued by the latter against the former, for its alleged deficiency income tax, expanded withholding tax (EWT), and administrative penalties, for fiscal year (FY) ending June 30, 2013, in the total amount of ₱339,064,567.43, inclusive of surcharges and interest.[1]

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[1] Summary of the Case, Pre-Trial Order dated October 12, 2017, Docket, Vol. III, p. 1115; Resolution dated October 30, 2017, Docket, Vol. III, p. 1146.

THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws under Securities and Exchange Commission Registration No. D200100478, with principal office at C.P. Garcia Highway, Sasa, Buhangin District, Davao City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 005-883-632-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations.[4]

THE FACTS

Administrative Level

On June 5, 2014, petitioner received the *Letter of Authority* (LOA) No. LOA-121-2014-00000091 dated May 27, 2014,[5] authorizing Revenue Officers Lilian Yvette Marie Aspiras, Julius Rex Bungabong, Roque Gildo Ganaden, Ma. Cleofas Magat, and Group Supervisor Teresita Villamor of the Large Taxpayers (LT) Excise Audit Division 1, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, *except* for value-added tax, documentary stamp tax, and other taxes, for the period July 1, 2012 to June 30, 2013.

Subsequently, on January 23, 2016, petitioner received the *Preliminary Assessment Notice* (PAN) dated January 21, 2016 from the BIR Large Taxpayers Service,[6] assessing petitioner for deficiency income tax in the amount of ₱255,889,779.55, deficiency withholding tax on compensation in the amount of ₱856,079.96, deficiency EWT in the amount of ₱65,857,276.34, and deficiency final withholding tax

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[2] Exhibit "P-8", Docket, Vol. II, pp. 617 to 624.
[3] Exhibit "P-9", Docket, Vol. II, p. 625.
[4] Par. I, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, Vol. III, p. 1103.
[5] Exhibit "P-1", Docket, Vol. IV, p. 1852.
[6] Exhibit "P-2", Docket, Vol. IV, pp. 1853 to1860.

(FWT) in the amount of ₱3,268,242.84, and administrative penalties in the amount of ₱145,000.00, for the fiscal year ending June 30, 2013.

On February 9, 2016, petitioner filed its reply to the PAN, captioned as *Re: Protest Letter (To the Preliminary Assessment Notice).*[7]

Thereafter, on April 15, 2016, petitioner received a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies*, and *Final Assessment Notice* (FAN), both dated April 13, 2016.[8] The FLD assessed petitioner for alleged deficiency taxes for FY ending June 30, 2013 in the total amount of ₱330,688,687.49, inclusive of interest and penalties, broken down as follows:

Tax Type	Basic Amount	Interest	Total
Income tax	₱174,842,123.63	₱87,373,159.86	₱262,215,283.49
EWT	43,641,804.40	24,008,970.75	67,650,775.15
FWT	-	722,628.85	722,628.85
Compromise Penalty	100,000.00	-	100,000.00
Total Amount			₱330,688,687.49

On May 16, 2016, petitioner filed its protest to the said FLD and FAN, captioned as *Re: Request for Reinvestigation.*[9]

However, on June 28, 2016, petitioner received respondent's *Final Decision on Disputed Assessment* (FDDA).[10] The FDDA assessed petitioner for alleged deficiency taxes for FY ending June 30, 2013 in the total amount of ₱339,786,736.08, inclusive of interest and penalties, broken down as follows:

Tax Type	Basic	Interest	Compromise	Total
Income tax	₱174,842,123.63	₱94,654,256.52	-	₱269,496,380.15
EWT	43,641,804.40	25,826,382.88	-	69,468,187.28
FWT	-	722,628.85	-	722,628.85
Admin. Penalty	-	-	₱100,000.00	100,000.00
Total Amount	₱218,483,928.03	₱121,202,808.05	₱100,000.00	₱339,786,736.08

[7] Exhibit "P-3", Docket, Vol. IV, pp. 1861 to 1871.
[8] Exhibit "P-4", Docket, Vol. IV, pp. 1879 to 1889.
[9] Exhibit "P-5", Docket, Vol. IV, pp. 1890 to 1897.
[10] Exhibit "P-6", Docket, Vol. IV, pp. 1898 to 1905.

On July 25, 2016, petitioner paid its alleged liability for interest on late remittance of FWT amounting to ₱722,628.85, plus a compromise penalty in the amount of ₱30,000.00.[11]

Proceedings Before the Court

On July 28, 2016, petitioner filed the instant *Petition for Review.*[12]

On December 6, 2016, the Records Division of the Court reported that counsel for respondent failed to file his *Answer* to the *Petition for Review* in the instant case.[13]

Subsequently, on December 13, 2016, petitioner then filed a *Motion to Declare Respondent in Default.*[14] However, on December 20, 2016, respondent filed a *Motion to Admit Attached Answer.*[15] Nevertheless, on January 12, 2017, petitioner filed its *Comment/Opposition (Re: Motion to Admit Attached Answer dated 20 December 2016).*[16]

On April 4, 2017, respondent transmitted the *BIR Records* for the instant case.[17]

In the Resolution dated August 15, 2017,[18] the Court granted respondent's *Motion to Admit Attached Answer,* and denied petitioner's *Motion to Declare Respondent in Default.* Thus, the Court admitted respondent's *Answer,*[19] which interposed the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses:

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[11] Exhibits "P7", and "P-7-a", Docket, Vol. IV, pp. 1906 to 1907.
[12] Docket, Vol. I, pp. 10 to 55.
[13] Records Verification dated December 6, 2016 issued by the Judicial Records Division of this Court, Docket, Vol. I, p. 458.
[14] Docket, Vol. I, pp. 459 to 462.
[15] Docket, Vol. I, pp. 482 to 486.
[16] Docket, Vol. I, pp. 500 to 505.
[17] Respondent's *Compliance,* Docket, Vol. II, pp. 525 to 528.
[18] Docket, Vol. II, pp. 531 to 535.
[19] Docket, Vol. I, pp. 488 to 497.

Petitioner's right to due process was not and was never violated by respondent.

5. Petitioner contended that responded violated its right to due process.

6. Respondent differs.

7. Due process of law simply means giving the opportunity to be heard before judgment is rendered.

8. When a party has been given the opportunity to be heard and present its case, the due process requirement under our law has already been satisfied.

9. As applied in the instant case, petitioner's protest to the Final Assessment Notice is only a rehash of its protest to the Preliminary Assessment Notice.

10. Such being the case, there was nothing new to consider by respondent.

11. In fact, petitioner was given all the opportunity to refute the findings of the revenue officers at the earliest point of the assessment; that is the time the audit/investigation was conducted and petitioner was required to submit all relevant accounting records.

12. Notably, the audit findings in the Preliminary Assessment Notice are exactly the same as that in the Final Assessment Notice.

13. Thus, petitioner's belated contention that it was deprived of administrative due process due to respondent's issuance of the Final Decision on Disputed Assessment is clearly a mere afterthought.

14. Again, at the risk of being repetitive, petitioner, in its protest to the Final Assessment Notice, only rehashed arguments in its protest to the Preliminary Assessment Notice. It necessarily follows that the alleged 'relevant new documents' should have been submitted, at the least, together with its protest to the Preliminary Assessment Notice.

15. Accordingly, it cannot be denied that respondent had already considered such arguments in the issuance of the Final Assessment Notice and also in its issuance of the Final Decision on Disputed Assessment.

Petitioner is liable for deficiency Income Tax

A. Difference between Audited Financial Statements and Summary List of Sales – P63,947,696.53

16. Petitioner further claimed that it is not liable for deficiency Income Tax that arose from its Undeclared Sales.

17. Respondent differs.

18. Audit and investigation disclose that there exists a discrepancy as to petitioner's sales per its disclosure to its Summary List of Sales and Audited Financial Statements – which it failed to explain.

19. Moreover, petitioner's contention that the minimal difference of P3,525,712.99 can be explained by adjustments are mere contentions without proof.

20. It must be emphasized that regulations issued by the Bureau of Internal Revenue bears the presumption of validity.

21. Thus, having failed to present credible evidence to prove that there are no Undeclared Sales, petitioner should be held liable for deficiency Income Tax arising therefrom.

B. Unsupported Expenses Claimed per Income Tax Return P87,225,439.99

22. Petitioner further reasoned that respondent erred in disallowing its Community and Environmental Expenses since the same is allowed under the provisions of the Philippine Mining Act of 1995.

23. However, no proof was given by petitioner as to whether these Community and Environmental Expenses were really disbursed in accordance with the Philippine Mining Act.

24. On the other hand, petitioner's claims as regards its Insurance Expense and Unsupported Negative Adjustments deserve no consideration because it has not presented any proof to support the same.

25. It is elementary that tax deductions, being in the nature of tax exemptions, are to be construed in strictissimi juris against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to

some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deductions which the law allows.

26. Thus, for petitioner's failure to prove with competent evidence that the said expenses are really deductible pursuant to the Philippine Mining Act of 1995, the assessment for deficiency Income Tax arising from Unsupported Expenses must be held as valid.

C. Disallowed Depreciation Claimed in Recent Completed Milling Equipment Transferred to MMPRC (P43,604,314.00)

27. Petitioner contended that the disallowance of its depreciation was incorrect since it did not benefit from such depreciation expense.

28. However, records submitted to respondent revealed otherwise.

29. On 2 April 2012, a Mill Construction Agreement was executed between petitioner and MMPRC wherein the latter agreed to assist Arcon Mining Service to design and manage the construction of a new gold milling plant for the Co-O Mines Project.

30. Significantly, a management fee was recognized in the said Mill Construction Agreement.

31. However, depreciation pertaining to the new gold milling plant was claimed by petitioner – which MMPRC is the owner.

32. Clearly, petitioner cannot claim a depreciation expense pertaining to a property who is owned by another.

33. Hence, the depreciation expense was properly disallowed by respondent.

D. Imputed Gross Profit on Undeclared Purchases – SLS CAATTs Masterfile Extract v. SLP (P43,604,314.00) AND Difference Between Sales/Receipts per LN vs. VAT Returns (P33,263,450.85); Difference Between Local Purchases per LN vs. SLP

(P1,119,694.62); Difference Between Importation per LN vs. per VAT Returns (P850,699.27)

34. It is petitioner's contention that the assessment for deficiency Income Tax arising from the discrepancy in its records as compared to third party information should be invalidated since it was based on mere presumptions.

35. Respondent vehemently disagrees.

36. Petitioner, in the instant case, was given all the opportunity to prove that it has no Undeclared Purchases and to refute the third party information gathered by respondent.

37. However, it presented no credible proof.

38. Notably, relying on third party information is a long established practice and auditing procedure used by revenue officers to determine a taxpayer's liability.

39. Thus, petitioner having miserably failed to explain, at the administrative stage of the audit and investigation, as to why it has Undeclared Purchases and why there exist discrepancies in its records as compared to the data gathered by respondent, should be held as liable for deficiency Income Tax.

Petitioner is liable for deficiency Expanded Withholding Tax

40. Finally, petitioner contended that it is not liable for deficiency Expanded Withholding Tax for the following reasons:

    a. The income payments not subject to Expanded Withholding Tax pertains to payments to (a) General Professional Partnerships; and (b) casual purchases.
    b. That respondent failed to provide petitioner with the necessary factual details as to which income payment to suppliers it failed to subject to Expanded Withholding Tax.

41. First, not an iota of proof was presented by petitioner that said income payments were indeed exempted from the payment of Expanded Withholding Tax.

42. Second, the case of Hermano v. Commissioner of Internal Revenue explained: *Jr*

> In a long line of cases, the Supreme Court has ruled **that the requirement of law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based.** The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. **Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.**
>
> **(Emphasis supplied).**

43. The Final Decision on Disputed Assessment has sufficiency informed petitioner as to why it is being assessed for deficiency Expanded Withholding Tax.

44. Thus, there is no reason as to why the assessment for deficiency Expanded Withholding Tax should be held as invalid.

The compromise penalties were merely included as a suggestion for petitioner to avoid criminal prosecution.

45. Lastly, petitioner submitted that compromise penalties cannot be imposed without the consent of the taxpayer.

46. Respondent agrees with petitioner that the essence of compromise penalties is mutuality and it cannot be imposed without the agreement of [*sic*] conformity of the taxpayer.

47. The Honorable Supreme Court in the case of Philippines International v. CIR held that:

> However, with respect to the compromise penalty in the total sum of P13,200.00, we have repeatedly held **that this Court has no jurisdiction to compel a taxpayer to pay the same because by its very nature it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised and the choice of paying or not paying it distinctly belongs to the taxpayer.**
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> **(Emphasis supplied).** *gr*

48. In fact, respondent only included such portion as a suggestion to petitioner to pay it in lieu of criminal prosecution pursuant to Revenue Memorandum Circular No. 17-1990, specifically:

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III. Guidelines and Instructions:

1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex "A" to ensure uniformity of action.

2. In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule, except when duly approved by the Commissioner or, in a proper case, by the Regional Directors.

3. **Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter along with the other administrative penalties like surcharge and interest, the same should not form part of the total amount assessed/demanded but should appear separately as a suggestion to the taxpayer to pay lieu [*sic*] of criminal prosecution. If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue.**

4. Since compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred for criminal as heretofore mentioned.

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(Emphasis supplied). ge

49. Thus, it is well within the prerogative of petitioner to decide whether to heed respondent's suggestion to pay the compromise penalties to avoid criminal prosecution."

The pre-trial conference was initially set on August 31, 2017.[20] Upon the filing of petitioner's *Urgent Motion to Defer Pre-Trial Conference* on August 18, 2017,[21] however, the pre-trial conference was reset to, and was held on, September 14, 2017.[22]

On September 11, 2017, *Petitioner's Pre-trial Brief* was submitted;[23] and on September 14, 2017, *Respondent's Pre-trial Brief* was filed.[24]

On October 4, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[25] In the Pre-Trial Order dated October 12, 2017,[26] the Court approved and adopted the said JSFI, and deemed the Pre-Trial terminated. However, on October 23, 2017, petitioner filed a *Motion for Correction of Pre-Trial Order,*[27] which the Court granted.[28]

Trial of the case then ensued.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner presented as witnesses the following individuals, namely: (1) Ms. Geraldine Rivera,[29] petitioner's Finance Officer; (2) Abraham Pestaño,[30] petitioner's Taxation & Compliance Assistant Manager; (3) Mr. Alvin B. Castaños,[31] petitioner's Tenement, Licensing & Community

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[20] Notice of Pre-Trial Conference dated August 16, 2017, Docket, Vol. II, pp. 536 to 537.
[21] Docket, Vol. II, pp. 538 to 541.
[22] Order dated August 22, 2017, Docket, Vol. II, p. 544; Minutes of the hearing held on, and Order dated, September 14, 2017, Docket, Vol. II, pp. 1084 to 1086.
[23] Docket, Vol. II, pp. 1020 to 1042.
[24] Docket, Vol. II, pp. 1079 to 1083
[25] Docket, Vol. III, pp. 1103 to 1111.
[26] Docket, Vol. III, pp. 1115 to 1122.
[27] Docket, Vol. III, pp. 1140 to 1143.
[28] Resolution dated October 30, 2017, Docket, Vol. III, p. 1146.
[29] Exhibit "P-28", Docket, Vol. II, pp. 545 to 557; Minutes of the hearing held on, and Order dated, November 27, 2017, Docket, Vol. III, pp. 1166 to 1167.
[30] Exhibit "P-29", Docket, Vol. II, pp. 778 to 796; Minutes of the hearing held on, and Order dated, November 27, 2017, Docket, Vol. III, pp. 1166 to 1167.
[31] Exhibit "P-32", Docket, Vol. III, pp. 1301 to 1314; Minutes of the hearing held on, and Order dated, February 7, 2018, Docket, Vol. IV, pp. 1593 and 1595, respectively.

Relations Department Manager; (4) Mr. Armando B. Dy,[32] petitioner's Finance Controller; and (5) Ms. Maria Myla S. Maralit,[33] the Court-commissioned Independent Certified Public Accountant (ICPA).[34]

On February 15, 2018, the ICPA Report was submitted.[35]

On April 10, 2018, petitioner filed its *Formal Offer of Evidence*.[36] Respondent then filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on April 16, 2018.[37]

In the Resolution dated June 4, 2018,[38] the Court admitted petitioner's Exhibits, *except* for Exhibits "P-7-b" and "P-26" to "P-26-o", for failure to present their originals for comparison.

Respondent likewise presented documentary and testimonial evidence. He presented his lone witness, Mr. Roque Gildo M. Ganaden, a Revenue Officer II of the BIR.[39]

On July 31, 2018, respondent filed a *Motion for Leave of Court to Admit Attached Formal Offer of Evidence*.[40] In the Resolution dated August 7, 2018,[41] the Court granted the said *Motion for Leave* in the interest of substantial justice, and admitted respondent's *Formal Offer of Evidence*.[42] On August 13, 2018, petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 31 July 2018)*.[43]

In the Resolution dated October 3, 2018,[44] the Court admitted respondent's Exhibits. ge

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[32] Exhibit "P-30", Docket, Vol. II, pp. 630 to 639; Exhibit "P-31", Docket, Vol. IV, pp. 1785 to 1793; Minutes of the hearing held on, and Order dated, March 12, 2018, Docket, Vol. IV, pp. 1811 to 1812.
[33] Exhibit "P-44", Docket, Vol. IV, pp. 1726-1745; Minutes of the hearing held on, and Order dated, February 7, 2018, Docket, Vol. IV, pp. 1593 and 1595, respectively.
[34] *Oath of Commission (For a CPA Firm)* dated December 11, 2017, Docket, Vol. III, p. 1169.
[35] Exhibit "P-45", Docket, Vol. IV, pp.1596 to 1712.
[36] Docket, Vol. IV, pp. 1821 to 1850.
[37] Docket, Vol. V, pp. 2274 to 2276.
[38] Docket, Vol. V, pp. 2279 to 2280.
[39] Exhibit "R-11", Docket, Vol. V, pp. 2289 to 2301; Minutes of the hearing held on, and Order dated, July 16, 2018, Docket, Vol. V, pp. 2302 to 2304.
[40] Docket, Vol. V, pp. 2308 to 2312.
[41] Docket, Vol. V, p. 2320.
[42] Refer to Docket, Vol. V, pp. 2314 to 2318.
[43] Docket, Vol. V, pp. 2333 to 2340.
[44] Resolution dated October 3, 2018, Docket, Vol. V, pp. 2344 to 2345.

On December 4, 2018, respondent filed his *Memorandum*;[45] and on December 13, 2018, the *Memorandum (For Petitioner)* was filed.[46]

On January 18, 2019, the Court considered the case submitted for decision.[47]

THE ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[48]

"1. Whether or not Respondent's assessment for deficiency income tax, expanded withholding tax (`EWT'), and administrative penalties should be nullified for failing to comply with the relevant tax laws and regulations on the valid issuance of an assessment, in violation of petitioner's right to due process.

2. Whether or not Respondent's assessment for deficiency income tax, EWT, and administrative penalties for the fiscal year (`FY') ending 30 June 2013, in the aggregate amount of Three Hundred Thirty Nine Million Sixty Four Thousand Five Hundred Sixty Seven and 43/100 Philippine Pesos (Php339,064,567.43), inclusive of interest, should be cancelled and withdrawn for lack of factual and legal basis."

Petitioner's Arguments:

Petitioner argues that respondent's FDDA was not issued in accordance with law and regulations, in violation of petitioner's right to due process; that considering that respondent's FDDA was

[45] Docket, Vol. V, pp. 2356 to 2366.
[46] Docket, Vol. V, pp. 2373 to 2432.
[47] Resolution dated January 18, 2019, Docket, Vol. V, p. 2435.
[48] Issues, JSFI, Docket, Vol. III, pp. 1103 to 1104.

prematurely issued before the lapse of the 60-day period for the submission of supporting documents, the FDDA is null and void for want of any factual and legal basis; and that assuming *arguendo* that the FDDA was validly issued, respondent's assessment for income tax, EWT, and administrative penalties for FY ending June 30, 2013 should be cancelled and withdrawn for lack of legal and factual basis.

Respondent's Counter-arguments:

Respondent, on the other hand, argues that petitioner was not deprived of its constitutionally protected right to due process; that petitioner is liable for deficiency income tax and deficiency EWT; and argues that the compromise penalties were merely included as a suggestion for petitioner to avoid criminal prosecution.

THE COURT'S RULING

The instant *Petition for Review* has merit.

To reiterate, petitioner posits that considering that respondent's FDDA was prematurely issued before the lapse of the 60-day period for the submission of supporting documents, the said FDDA is null and void for want of any factual and legal basis.

The FDDA is indeed null and void.

Section 228 of the NIRC of 1997 prescribes certain procedures to be observed relative to the issuance of tax assessments, to wit:

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

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted**; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring ours)*

On the basis of the foregoing provision, it is clear that the tax assessment issued by the BIR may be administratively protested by the concerned taxpayer by filing a request for reconsideration or reinvestigation, within the thirty (30) days from receipt thereof. The said taxpayer is then given a period of sixty (60) days from the filing of the protest to submit *"all relevant supporting documents"*.

Section 3 of RR No. 12-99,[49] as amended by RR No. 18-2013, implements the above-quoted Section 228 of the NIRC of 1997, prescribing the due process requirement to be observed in the issuance of tax assessments. Said Section 3 reads, in part, as follows:

> "Section 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment: *jc*

[49] 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

3.1.1 *Preliminary Assessment Notice (PAN).* — xxx.

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3.1.3 *Formal Letter of Demand and Final Assessment Notice.* — 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...

3.1.5 *Disputed Assessment.* — **The taxpayer or its representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation** defined as follows:

(i) *Request for reconsideration* – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) ***Request for reinvestigation*** **– refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.** It may also involve a question of fact or of law or both.

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For requests for reinvestigation, <u>the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest</u>, otherwise, the assessment shall become final, executory and demandable. The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration.** xxx.

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If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; **or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request of reinvestigation**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

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3.1.5 *Final Decision on a Disputed Assessment.* — **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* ..., and (b) that the same is his *final decision*.**" *(Emphases supplied)*

It is clear from the foregoing provisions that part of the due process requirement to be observed in the issuance of a deficiency tax assessment is that the concerned taxpayer, after filing a protest embodying a request for reinvestigation, must be given a period of sixty (60) days within which to submit all relevant supporting documents.

The case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*[50] emphasizes the importance of observing due process in the issuance of tax assessments. Said the Supreme Court, *viz*:

"**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> 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.** ge

[50] G.R. Nos. 201398-99, and201418-19, October 3, 2018.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments <u>with supporting documents at each stage in the assessment process</u>. Due process requires the Bureau of Internal Revenue to consider defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

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The Bureau of Internal Revenue is the primary agency tasked to assessed and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. **<u>However, these powers must 'be exercised reasonably and [under] the prescribed procedure.'</u> The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

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xxx. **<u>Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.</u>**

This Court has stressed the importance of due process in administrative proceedings:

> **The principle of due process furnishes a standard to which governmental action should conform in order to impress it with stamp of validity. <u>Fidelity to such standard must of necessity be the overriding concern of government agencies exercising quasi-judicial functions.</u>** Although a speedy administration of action implies a speedy trial, speed is not the chief objective of a trial. **<u>Respect for the rights of all parties and the requirements of procedural due process equally apply in proceedings before administrative agencies</u> with quasi-judicial perspective in administrative decision** making and for maintaining the vision which led to the creation of the administrative office.

In *Ang Tibay v. The Court of Industrial Relations*,[51] 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:

(1) The party interested or affected must be able to present his or her own case and <u>submit evidence in support of it</u>.
(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 the parties may know the various issues involved and the reasons for the decision.

Mendoza v. Comelec[52] explained that the first requirement is the party's substantive right at the *hearing stage* of the proceedings, which, in essence, is the opportunity to explain one's side or to seek a reconsideration of the adverse action or ruling.

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The second to the sixth requirements refer to the party's 'inviolable rights *applicable at the* **deliberative stage**.' The decision-maker must consider the totality of the evidence presented as he or she decides the case.

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Administrative due process is anchored on fairness and equity in procedure. xxx, **<u>it demands that the party's defenses be considered by the administrative body in</u>** gr

[51] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].
[52] 618 Phil. 706 (2009) [Per *J.* Brion, *En Banc*].

<u>making its conclusions</u>, and that the party be sufficiently informed of the reasons for its conclusions.

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xxx. **The right to be heard, <u>which includes the right to present evidence</u>, is meaningless if the Commissioner can simply ignore the evidence without reason.**

In *Edwards v. McCoy*:[53]

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

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

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<u>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</u>.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[54]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the

[53] 22 Phil. 598 (1912) [Per *J.* Moreland, First Division].
[54] 241 Phil. 829 (1988) [Per *J.* Cruz, First Division].

> authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. xxx.

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While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules." *(Emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, respondent or the BIR is mandated to perform its tax assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Moreover, part of the administrative due process requirement is that the taxpayer be allowed to submit comments or arguments with supporting documents at each stage in the assessment process. In case respondent or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment as void, and of no force and effect.

In this case, within the period allowed by law, petitioner filed its protest letter (*Re: Request for Reinvestigation*) dated May 12, 2016 ℊ on May 16, 2016,[55] against the FLD and FAN dated April 13, 2016 issued by the BIR.

However, forty-three (43) days after the filing of the said protest letter, respondent already issued the subject FDDA (*i.e.*, on June 28, 2016),[56] requesting the immediate payment of petitioner's supposed deficiency tax liabilities, and stating that the same is their final decision. Thus, it is clear that respondent did not allow petitioner to submit all relevant supporting document within the sixty-day period from the filing of the request for reinvestigation, as required under Section 228 of the NIRC of 1997, and Section 3 of RR No. 12-99, as amended by RR No. 18-2013.

Undoubtedly, therefore, respondent violated petitioner's right to administrative due process. As a consequence, respondent's disregard of due process in this case renders the subject deficiency tax assessments null and void. Such being the case, the said deficiency tax assessments bear no valid fruit.[57]

In view of this Court's finding of the nullity of the said deficiency tax assessments, it becomes unnecessary to address or resolve the remaining issue raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated June 28, 2016 issued against petitioner is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD and FAN, both dated April 13, 2016 issued by the BIR, assessing petitioner for deficiency income tax, EWT, and compromise penalty, for FY ending June 30, 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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55 Exhibit "P-5", Docket, Vol. IV, pp. 1890 to 1897.
56 Exhibit "P-6", Docket, Vol. IV, pp. 1898 to 1905.
57 *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice