REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

SERBIZ MULTI-PURPOSE COOPERATIVE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10369

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUL 15 2024
1:35 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that judgment be rendered ordering respondent to cancel the assessment against petitioner for deficiency income tax in the amount of Php9,617,720.91, and value-added tax ("VAT") in the amount of Php4,102,491.56, both inclusive of surcharge and interest covering taxable year 2009.[1]

The Facts

Petitioner Serbiz Multi-Purpose Cooperative is a multi-purpose cooperative duly registered with the Cooperative Development Authority, pursuant to the provisions of Republic Act ("RA") No. 9520 with Certificate of Registration No. 9520-16000670 dated October 15, 2009.[2]

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1 Docket, Pre-Trial Order dated April 5, 2022, Statement of the Case, p. 409.
2 *Id., Joint Stipulation of Facts and Issues* (JSFI), Par. 1.02, p. 371.

Respondent is the Commissioner of Internal Revenue, who is the officer duly appointed and empowered by law to examine returns filed by any taxpayer and make assessments of national internal revenue taxes, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[3]

On November 18, 2019, petitioner received the *Preliminary Assessment Notice* ("PAN") dated November 12, 2019 issued by respondent.[4] Petitioner then filed with the BIR its *Reply to Preliminary Assessment Notice* on December 02, 2019.[5]

On December 11, 2019, petitioner received the evenly dated *Formal Letter of Demand* ("FLD"), with *Assessment Notices*, issued on the same day by respondent.[6] In the said FLD and *Assessment Notice* for income tax deficiency, the BIR assessed petitioner with deficiency income tax in the aggregate amount of Php9,617,720.91, inclusive of interest and surcharge, as of January 13, 2020, broken down as follows:[7]

Taxable Income per Income Tax Return (ITR)		Php -
Add: Adjustments per investigation		
Taxable Income not subjected to Income Tax	Php 2,004,284.68	
Additional Taxable Income	Php 6,507,800.59	
Disallowed Representation and Entertainment Expense	Php 126,262.55	
Disallowed Expenses	Php1,112,465.00	Php9,750,812.82
Adjusted Taxable Income		Php9,750,812.82
Income Tax Due (30%)		Php2,925,243.85
Less: Tax Credits/Payments		-
Deficiency Income Tax		Php2,925,243.85
Add: 50% Surcharge	Php 1,462,621.92	
Interest (April 16, 2010 to December 31, 2017)	Php4,515,294.20	
Interest (January 1, 2018 to December 13, 2019)	Php714,560.94	Php6,692,477.06
TOTAL AMOUNT DUE		Php9,617,720.91

3 *Id.*, JSFI, Par. 1.01, p. 370.

4 Docket, JSFI, Par. 3, and Exhibit "P-12", pp. 371 and 91-95; BIR Records, Exhibit "R-15", pp. 182-186.

5 Docket, Exhibit "P-13", pp. 96-113.

6 Docket, JSFI, Par. 4, and Exhibits "P-1", "P-2", "P-3", and "P-4", pp. 371 and 40-46; BIR Records, Exhibits "R-17", "17-a" (marked as Exhibit "R-17-1"), and "17-b" (marked as Exhibit "R-17-2"), pp. 175-181.

7 Docket, JSFI, Par. 5, pp. 371-372.

Moreover, in the same FLD and *Assessment Notice* for VAT, the BIR assessed petitioner with deficiency VAT in the aggregate amount of Php4,102,491.56, inclusive of interest and surcharge, as of January 13, 2020, computed as follows:[8]

Vatable Receipts per Returns		Php -
Add: Adjustments per investigation		
Taxable Income not subject to VAT	Php3,753,544.91	
Additional Taxable Sales	Php6,507,800.59	
Adjusted Taxable Receipts		Php10,261,345.50
Output Tax Due (12%)		Php1,231,361.46
Less: Allowed Tax Credits/Payments		Php -
Deficiency Value-Added Tax		Php1,231,361.46
Add: 50% Surcharge	Php 615,680.73	
Interest (January 26, 2010 to December 31, 2017)	Php1,954,659.81	
Interest (January 1, 2018 to December 31, 2019)	Php300,789.56	Php2,871,130.10
TOTAL AMOUNT DUE		Php4,102,491.56

On January 10, 2020, petitioner filed its protest against the FLD by way of a *Request for Reinvestigation.*[9] Subsequently, on March 10, 2020, petitioner submitted supporting documents to its *Request for Reinvestigation* through the letter of even date.[10]

Petitioner filed the present *Petition for Review* on October 06, 2020.[11] The case was initially raffled to the Third Division of this Court.

Respondent posted his *Answer* on December 18, 2020,[12] interposing the certain special and affirmative defenses, to wit: (1) tax assessments by tax examiners are presumed correct and made in good faith; (2) for taxable year 2009, petitioner is not eligible for any tax exemption; (3) it is axiomatic that the doctrine of strict interpretation has always been applied in construing tax exemptions because taxes are the lifeblood of the nation; and (4) the ten (10)-year prescriptive period should apply in assessing the tax liabilities of petitioner.

In the Resolution dated January 20, 2021,[13] the case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals ("PMC-

8 *Id.*, JSFI, Par. 6, p. 372.
9 *Id.*, Exhibit, "P-5", pp. 47-64.
10 *Id.*, Exhibit, "P-6", pp. 65-79.
11 *Id.*, pp. 6-37.
12 *Id.*, pp. 286-291.
13 *Id.*, pp. 295-296.

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. However, on March 16, 2021, the PMC-CTA filed the *No Agreement to Mediate* dated March 10, 2021.[14]

The case was then set for pre-trial conference on August 17, 2021,[15] but was reset to, and held on, February 02, 2022.[16] Prior thereto, petitioner's *Pre-Trial Brief* was posted on August 13, 2021;[17] and *Respondent's Pre-Trial Brief* was filed on February 23, 2022.[18]

On March 01, 2022, respondent transmitted the *BIR Records* for the present case [consisting of 905 pages, in one (1) folder].[19]

On March 02, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[20] which was admitted and approved by the Court in the Resolution dated March 15, 2022,[21] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated April 05, 2022 was then subsequently issued.[22]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of its lone witness, Mr. Alex M. Mendoza,[23] petitioner's Cooperative Treasurer.

Petitioner then filed its *Formal Offer of Documentary Exhibits* on May 17, 2022,[24] *sans* respondent's comment thereto.[25] In the Resolution dated July 22, 2022,[26] the Court admitted petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-9", "P-17", and "P-18", for failure to present their originals for comparison;

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14 *Id.*, p. 297.
15 *Id.*, Resolution dated May 27, 2021, pp. 299-300.
16 *Id.*, Resolution dated October 21, 2021 and Minutes of the hearing held on, and Order dated, February 02, 2022, pp. 318 and 321-324.
17 *Id.*, pp. 301-313.
18 *Id.*, pp. 356-359.
19 *Id.*, *Transmittal letter* dated March 01, 2022, p. 369.
20 *Id.*, pp. 370-377.
21 *Id.*, pp. 406-407.
22 *Id.*, pp. 409-416.
23 *Id.*, Exhibit "P-14", Minutes of the hearing held on, and Order dated, May 05, 2022, pp. 140-159 and 417-419.
24 *Id.*, pp. 420-426.
25 *Id.*, Records Verification Report dated June 14, 2022 issued by the Judicial Records Division of this Court, p. 438.
26 *Id.*, pp. 436-437.

2. Exhibit "P-16", for failure to submit the duly marked exhibit and to identify the same; and

3. Exhibit "P-19", for failure to present the original for comparison and to identify the said exhibit.

Thereafter, petitioner filed on July 29, 2022 its *Motion for Partial Reconsideration (of the Order dated 22 July 2022) with Tender of Excluded Evidence.*[27] Respondent failed to file his comment thereon.[28] In the Resolution dated October 12, 2022,[29] the Court: (1) partially granted the *Motion for Partial Reconsideration (of the Order dated 22 July 2022)*, admitting Exhibit "P-18", but still denying the admission of Exhibit "P-16", for failure to identify the same; and (2) noted petitioner's *Tender of Excluded Evidence* on Exhibits "P-9" and "P-17".

For his part, respondent offered the testimonies of the following BIR personnel, namely: (1) Revenue Officer ("RO") Rogelio Delos Reyes;[30] and (2) RO Ella D. Solon.[31]

On May 03, 2023, *Respondent's Formal Offer of Evidence* was filed,[32] to which petitioner filed its *Comment (to Respondent's Formal Offer of Evidence)* on May 26, 2023.[33] In the Resolution dated July 10, 2023,[34] the Court admitted respondent's exhibits, except for the following, *viz.*:

1. Exhibit "R-19", "R-19-a", "R-20", and "R-20-a", for failure to comply with Section 3(f) of the Judicial Affidavit Rule; and

2. Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-12-a", "R-12-b", "R-13", "R-14", R-14-a and R-14-b", "R-16", and "R-18", for failure to identify the same.

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27 *Id.*, pp. 439-443.
28 *Id.*, Records Verification Report dated September 08, 2022 issued by the Judicial Records Division of this Court, p. 484.
29 *Id.*, pp. 486-488.
30 *Id.*, Exhibit "R-19" and Minutes of hearing held on, and Order dated, February 23, 2023, pp. 381-385 and 489- 490.
31 *Id.*, *Judicial Affidavit* and Minutes of hearing held on, and Order dated, April 18, 2023, pp. 330-333 and 492-494.
32 *Id.*, pp. 495-499.
33 *Id.*, pp. 500-502.
34 *Id.*, pp. 506-507.

In the meantime, the present case was transferred to this Court's Second Division, per Resolution dated June 01, 2023.[35]

Petitioner's Memorandum was submitted on August 16, 2023,[36] while respondent failed to file his memorandum.[37]

The case was considered submitted for decision on August 30, 2023.[38]

The Issue

The parties have agreed that the issues to be resolved by this Court shall be the following:

> "I. Whether or not Petitioner is liable for Income Tax Deficiency in the amount of [Php]9,617,720.91 and VAT deficiency in the amount of [Php]4,102,491.56, inclusive of penalties and increments, for taxable year 2009; and
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> II. Whether or not the deficiency assessment notices were issued beyond the period of limitation under the Tax Code."[39]

Petitioner's arguments:

Petitioner argues that it is not liable for deficiency income tax in the amount of Php9,617,720.91, and VAT in the amount of Php4,203,491.56, inclusive of penalties and increments, for taxable year 2009; and that the assessment notices are void for having been issued after the period of limitation of assessment under the Tax Code had lapsed.

Respondent's counter-arguments:

Respondent, in his *Answer*, contends that tax assessments by tax examiners are presumed correct and made in good faith; that for taxable year 2009, petitioner is not eligible for any tax exemption; that it is axiomatic that the doctrine of strict interpretation has always been applied in construing tax

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[35] *Id.*, Notice, p. 504.
[36] *Id.*, pp. 508-542.
[37] *Id.*, Records Verification dated August 22, 2023 issued by the Judicial Records Division of this Court, p. 545.
[38] *Id.*, Minute Resolution dated August 30, 2023, p. 546.
[39] *Id.*, JSFI, Statement of Issues, p. 372.

exemptions because taxes are the lifeblood of the nation; and that the ten (10)-year prescriptive period should apply in assessing the tax liabilities of petitioner.

Discussion/Ruling

The present *Petition for Review* is meritorious.

The Court has jurisdiction over the instant case.

Under Section 11 of RA No. 1125[40], as amended by RA No. 9282[41], a taxpayer aggrieved by a decision or inaction of the Commissioner of Internal Revenue may file an appeal with the Court of Tax Appeals within thirty (30) days from the receipt thereof:

> "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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[42]

On the other hand, Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides the period within which to dispute the assessment, to prevent it from being final, unappealable, and demandable:

> "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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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[40] An Act Creating The Court Of Tax Appeals, June 16, 1954.

[41] 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, March 30 2004.

[42] *Emphasis and underscoring supplied.*

> 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."[43]

Pursuant to the provision above, Petitioner has thirty (30) days from receipt of the FLD within which to file its administrative protest and another thirty (30) days from receipt of Respondent's decision or from the lapse of the 180-day period within which to file its Petition for Review with this Court.

Petitioner received the *FLD* with *Assessment Notices* on December 11, 2019. Petitioner therefore had thirty (30) days from December 11, 2019 or until January 10, 2020 within which to file its administrative protest. Petitioner timely filed its *Request for Reinvestigation* against the said FLD on January 10, 2020.

Within sixty (60) days from filing of the *Request for Reinvestigation*, Petitioner timely submitted its supporting documents on March 10, 2020. Counting one hundred eighty (180) days therefrom, Respondent had until September 06, 2020 within which to act upon the protest of Petitioner. Since Respondent failed to do so, Petitioner opted to file a *Petition for Review* with this court on October 06,

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[43] *Emphasis supplied.*

2020, which was well within thirty (30) days after the expiration of the 180-day period.

The Court shall now proceed to discuss the merits of the case.

The CTA is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

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

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
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> SECTION 1. – *Rendition of judgment* – xxx
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> **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.**"[44]

Based on the foregoing provision, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case. Such authority of this Court is confirmed and recognized by the Supreme Court in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[45] *viz:*

> "**On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
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> 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:
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> SECTION 1. *Rendition of judgment.* – xxx

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[44] *Emphasis supplied.*
[45] G.R. No. 183408, July 12, 2017.

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."[46]

The Supreme Court has applied the foregoing provision in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[47] 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."[48]

Furthermore, in *Comilang vs. Burcena, et al.*,[49] 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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Thus, an appellate court is clothed with ample opportunity 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**

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46 *Emphasis and underscoring supplied.*
47 G.R. No. 222476, May 05, 2021.
48 *Emphasis and underscoring supplied.*
49 G.R. No. 146853, February 13, 2006.

> **appeal but upon which the determination of a question properly assigned, is dependent.**"[50]

On the basis of the foregoing jurisprudential pronouncements, it is clear that this Court, as an appellate court, is clothed with ample opportunity 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 tax assessments was not specifically raised or assigned as an error in the present case, the consideration thereof is necessary in arriving at a just decision and complete resolution of the case.

Furthermore, it must be emphasized that the issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.[51]

Thus, We go now to the issue of whether or not there was violation of petitioner's right to due process.

The subject tax assessments are void, for violation of petitioner's right to administrative due process.

Section 228 of the NIRC of 1997 reads, 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

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[50] Cited also in *M/V "Don Martin Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. v. 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; *Emphasis supplied.*

[51] *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue,* G.R. No. 249153, September 12, 2022.

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."[52]

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.[53] 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.[54] 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.[55] 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.[56]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations ("RR") No. 12-99[57], as amended by RR No. 18-2013[58] and renumbered by RR No. 7-2018[59], provides, in part, as follows:

"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:

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3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists

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52 *Emphasis supplied.*

53 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

54 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 03, 2021.

55 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021.

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

57 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.

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

59 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

sufficient basis to assess the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).

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

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3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative <u>shall state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence on which such decision is based, <u>*otherwise, the decision shall be void*</u> (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision."[60]

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the PAN, FLD and Final Decision on a Disputed Assessment ("FDDA") must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In fact, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[61] ("*CIR v. Avon*"), the Supreme Court declared as void the tax assessment because of the total disregard by the Comissioner of Internal Revenue (CIR) of the taxpayer's due process rights as mandated by Section 228 of the NIRC of 1997, as amended and RR No. 12-99, as amended. Specifically, the Supreme Court held that the Commissioner of Internal Revenue failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it. <u>Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are</u>

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60 *Emphasis and underscoring supplied.*
61 G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

based, and those facts must appear in the record. Moreover, the taxpayer was left unaware on how the Commissioner of Internal Revenue or his or her duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

The relevant portions of the said decision are quoted below:

> "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.
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> xxx xxx xxx
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> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, 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.** Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> **'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the** Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

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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 Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

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In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code."[62]

In this case, as stated in the PAN dated November 12, 2019,[63] the BIR found the following as due from petitioner for taxable year 2009, to wit:

	Basic	Interest	Surcharge	Total
Income tax	Php 2,925,243.85	Php5,200,041.69	Php1,462,621.92	Php 9,587,907.46
VAT	1,231,361.46	2,242,899.60	615,680.73	4,089,941.79
Total	**Php4,156,605.31**	**Php7,442,941.29**	**Php2,078,302.65**	**Php13,677,849.25**

In its *Reply to Preliminary Assessment Notice* dated December 02, 2019,[64] petitioner made the certain refutations against the following findings of the BIR relative to the foregoing deficiency taxes, *viz.*:

1. Taxable income not subjected to income tax amounting to Php2,004,284.69;
2. Undeclared income per Letter Notice amounting to Php6,507,800.59;

[62] *Emphasis and underscoring supplied.*
[63] Docket, JSFI, Par. 3 and Exhibit "P-12", p. 371 and 91-95; and BIR Records, Exhibit "R-15", pp. 182-186.
[64] *Id.*, Exhibit "P-13", pp. 96-113.

3. Disallowed representation/entertainment expense amounting to Php126,262.55;
4. Disallowed expenses amounting to Php1,112,465.00;
5. Sales subject to VAT amounting to Php3,753,544.91 and Php6,507,800.59;
6. Imposition of surcharge and deficiency surcharge and interests for deficiency income tax and VAT.

However, in the FLD dated December 11, 2019,[65] petitioner was still assessed of the same deficiency tax liabilities:

	Basic	Interest	Surcharge	Total
Income tax	Php 2,925,243.85	Php5,229,855.14	Php1,462,621.92	Php 9,617,720.91
VAT	1,231,361.46	2,255,449.37	615,680.73	4,102,491.56
Total	**Php4,156,605.31**	**Php7,485,304.51**	**Php2,078,302.65**	**Php13,720,212.47**

A comparison of the figures stated in the PAN dated November 12, 2019, and the above figures would reveal that the respective amounts of basic taxes and surcharges remained unchanged. Notably, the BIR merely adjusted the interests being imposed. Moreover, it is noteworthy that in the said FLD, respondent did not address any of the refutations made by petitioner in its letter-reply to the PAN — an indication that respondent did not consider the same when it issued the subject FLD. **In fact, save for the closing paragraphs, the *Details of Discrepancies* attached to the said FLD merely copied *verbatim* the *Details of Discrepancies* attached to the PAN.**

Simply put, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the refutations and explanations made by petitioner in its *Reply to Preliminary Assessment Notice* dated December 02, 2019.

To stress, failure to address the said refutations and explanations is tantamount to failure to provide the particular facts and/or law upon which the FLD is based pursuant to *CIR v. Avon*. Consequently, petitioner was left unaware on how respondent appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of petitioner's right to administrative due process.

65 *Id.*, JSFI, Par. 4 and Exhibits "P-1", "P-2", "P-3", and "P-4", pp. 371 and 40-46; BIR Records, Exhibits "R-17", "17-a" (marked as Exhibit "R-17-1"), and "17-b" (marked as Exhibit "R-17-2"), pp. 175-181.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[66] Furthermore, a void assessment bears no valid fruit.[67] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent has no right to collect the same.

In sum, for the failure of respondents or the BIR to act in accordance with the prescribed procedures before issuing the subject notices, respondents have violated the due process right of petitioner. Correspondingly, the said notices are void, and thus, cannot be given effect.

In view of the finding that the subject tax assessments are void, it becomes unnecessary to address or resolve the other issues and arguments raised by the parties herein.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax in the amount of **Php9,617,720.91** and VAT in the amount of **Php4,102,491.56**, both inclusive of surcharges and interests, covering taxable year 2009, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[66] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

[67] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice