REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

ALTIMAX BROADCASTING CO., INC. *Petitioner,*	**CTA CASE NO. 10285**
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 27 2024 4:05 p.m.

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<u>DECISION</u>

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition") filed by petitioner, **ALTIMAX BROADCASTING CO., INC.,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to *Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125")*, seeks to reverse and set aside the Final Decision on Disputed Assessment ("FDDA"), dated February 26, 2020, issued by the Bureau of Internal Revenue ("BIR") which assessed petitioner with deficiency income tax and value added tax ("VAT") in the total amount of Php69,785,169.96, inclusive of interest.[1]

The Parties

Petitioner is a domestic corporation existing under and by virtue of the laws of the Philippines, with principal office located at 3F, Globe Telecom Tower 1, Pioneer Highlands corner Madison Streets, Mandaluyong City. It is registered with the BIR under Tax Identification Number ("TIN") 272-993-967-000. It is registered with the Securities and Exchange Commission ("SEC"), and is primarily engaged in the following: "[t]o own, acquire, carry on, lease, maintain and operate the business of television and radio network

[1] See Statement of the Case in the Pre-Trial Order, *Rollo*, Vol. 1, p. 445.

of all kinds and types (such as but not limited to VHF-TV, UHF-TV, AM radio, FM radio, direct to user broadcast via satellite, HDTV, CATV, LMDS, MMDS) using microwave, satellite, or whatever means including the use of any and all new technologies in television and broadcast systems, religious, educational and commercial."[2]

Respondent is the head of the BIR, the government agency tasked to perform among others, collect all national internal revenue taxes. As CIR, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the *National Internal Revenue Code of 1997, as amended ("NIRC")*, other tax laws, and rules and regulations.[3]

The Facts

BIR – Revenue District Office No. 43A issued a Letter of Authority ("LOA"), with LOA No. 43A-2012-00001050, dated October 23, 2012, which authorized Group Supervisor ("GS") Roummel A. Bernos and Revenue Officer ("RO") Teresita A. Florendo to conduct the audit and investigation of petitioner's books of accounts for calendar year ("CY") 2011.[4]

The ROs then proceeded with the audit of petitioner. On February 4, 2013, respondent issued a Notice of Informal Conference against petitioner informing the latter of discrepancies noted in the audit that may result in the assessment of deficiency income tax.[5] After petitioner presented additional documents to the BIR, the latter, on June 11, 2013, issued an Amended Notice of Informal Conference, for the assessment of petitioner's deficiency income tax and VAT.[6]

On June 28, 2013, petitioner filed a Reply to the Amended Notice of Informal Conference alleging that the proposed assessment lacks basis considering that the management fees they claimed as a deduction from taxable income, and from which input taxes have been incurred, is an ordinary and necessary expense, arose in the course of petitioner's trade or business and unquestionably a regular activity conducted in pursuit of petitioner's commercial or economic activity, and as such, should be properly allowed as an ordinary and necessary expense to be used as a deduction to taxable income, and from which input taxes incurred must be allowed as a deduction to output taxes.[7]

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[2] See Statement of Facts and Issue in the Pre-Trial Order, *Id.*, p. 446.
[3] *Ibid.*
[4] *Ibid;* Exhibit "R-1", BIR Records, p. 1.
[5] Exhibit "R-4", BIR Records, pp. 240-242.
[6] Statement of the Case in the Pre-Trial Order, Records, Vol. 1, p. 447; Exhibit "R-6", BIR Records, pp. 268-271.
[7] BIR Records, pp. 291-301.

Afterwards, respondent issued a Preliminary Assessment Notice ("PAN"), dated 8 January 2015, with Assessment Notice No. 43A-B224-11, according to which, petitioner is allegedly liable for deficiency income tax and VAT, inclusive of interest, in the amount of Php39,000,251.78 and Php12,486,843.33, respectively.[8] Particularly, the PAN contained the following details:

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7
Quezon City
OFFICE OF THE REGIONAL DIRECTOR

I PAY MY TAXES RIGHT
REGISTER PAY
JAN 08 2015

PRELIMINARY ASSESSMENT NOTICE

EXHIBIT "R-12"
JUN 09 2022
RESPONDENT

ULTIMAX BROADCASTING CO., INC.
[illegible]

ORIGINAL

[illegible]

Assessment No. 043A-B224-11

I. DEFICIENCY INCOME TAX

Taxable income per ITR			P 18,132,956.00
Add: Adjustments per investigation			
Disallowed Management fee expense			68,630,523.00
Taxable income per investigation			**P 86,763,479.00**
Income tax due thereon			P 26,029,043.70
Less: Allowed tax credits/payments per audit			
Payment		P	
Creditable withholding tax		4,500,000.00	
Total		P 4,500,000.00	
Less: Disallowed prior years excess tax credits		3,881,688.00	618,312.00
Deficiency Income Tax			P 25,410,731.70
Add: 20% Interest p.a. (04.17.2012 to 12.19.14)			13,589,520.08 *
TOTAL AMOUNT DUE			**P 39,000,251.78 ***

II. DEFICIENCY VALUE-ADDED TAX

Taxable sales/receipts per VAT returns			P 90,000,000.00
Add: Adjustment per investigation			
Taxable sales/receipts per investigation			**P 90,000,000.00**
Output tax due thereon			P 10,800,000.00
Less: Input taxes/payments			
Input VAT		P 8,645,979.85	
Payments		2,519,211.14	
Total		P 11,165,190.99	
Less: Disallowed input tax	P 8,235,662.76		
Excess tax credits carried over	33,964.26	8,269,627.02	2,895,563.97
Deficiency Value-added Tax			P 7,904,436.03
Add: 20% Interest p.a. (05.26.2012 to 12.19.14)			4,582,407.30 *
TOTAL AMOUNT DUE			**P 12,486,843.33 ***

* *Please note that the interest and the total amount due will have to be adjusted if paid beyond December 19, 2014.*

The complete details covering the factual and legal bases of the aforementioned discrepancies established during the investigation of this case are shown in the accompanying **ANNEX "A"** of this letter.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249(B) of the Tax Code of 1997, as amended.

Pursuant to the provisions of Sec. 228 of the Tax Code of 1997, as amended and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing, your side of the case within 15 days from receipt hereof. If we fail to hear from you within the said period, you shall be considered in default, in which case, a formal letter of demand and assessment notice shall be issued by this Office calling for payment of your aforesaid deficiency taxes, inclusive of the aforementioned interest.

We hope that you will give this matter your preferential attention.

Very truly yours,

KIM JACINTO-HENARES
Commissioner of Internal Revenue

By:

ALFREDO V. MISAJON
Regional Director

Printed Name & Signature
Admin
Designation
1/8/15 5:30pm
Date

RR 7-1
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[8] Statement of the Case in the Pre-Trial Order, Records, Vol. 1, p. 447; Exhibit "R-12", BIR Records, pp. 322-323.

ANNEX "A"

BUREAU OF INTERNAL REVENUE
RECEIVED
DEC 22 2014
DIRECTOR'S OFFICE
BY: CHERRY DIAZ
RR7, Q.C.

ALTIMAX BROADCASTING CO., INC.
Unit 507, The Taipan place F. Ortigas Jr. Road, San Antonio
Ortigas Center, Pasig City
TIN 272-493-967-000

DETAILS OF DISCREPANCIES
Assessment No. 043A-B224-11

I. DEFICIENCY INCOME TAX

a. ***Disallowed Management fees expense (P68,630,523.00)*** Verification disclosed that management fees amounting to P68,630,523.00 is not necessary expense and not related to the nature of your business transaction, thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended.

Management fees	P	68,630,523.00
Disallowed Mangement fees expense	**P**	**68,630,523.00**

b. ***Disallowed prior year's excess tax credits (P 3,881,688.00)*** Verification disclosed that you failed to substantiate your claimed prior year's excess tax credits, hence, disallowed pursuant to RR No. 4-2002, as amended.

II. DEFICIENCY VALUE-ADDED TAX

Disallowed Input tax (P 8,235,662.76) - Verification disclosed that input VAT in connection to the disallowed Management fees expense, as discussed in Item I.a above, was disallowed pursuant to Section 110 (A) of the Tax Code of 1997, as amended.

Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory and demandable.

Very truly yours,

KIM S. JACINTO- HENARES
Commissioner of Internal Revenue

By:

ALFREDO V. MISAJON
Regional Director

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RR 18 [illegible]
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mbp
[illegible] 43 [illegible] 2012 00050
10/23/2012
T. Florendo

Mylyn O. Tubiao
Printed Name & Signature
Admin
Designation
1/8/15 5:30pm
Date

On 22 January 2015, petitioner filed before the BIR its Reply to the PAN contesting the income tax and VAT assessments contained therein. This Reply was only referred to the BIR Revenue Region No. 7's Assessment Division on 23 January 2015.[9]

Further, the Reply stated that management fees paid by petitioner to Bethlehem Holdings, Inc. constitute an ordinary and necessary expense. Thus, the same must be allowed as a deduction to taxable income for purposes of determining the income tax due to petitioner.[10]

Moreover, the Reply noted that the management fees were incurred in the course of petitioner's trade or business. As such, any input tax due from the management fees must be allowed as a credit to petitioner's output tax.[11]

To support these contentions, petitioner cited various jurisprudence and presented documentary evidence in the Reply.[12]

On January 23, 2015, respondent issued a Formal Letter of Demand ("FLD") with corresponding Final Assessment Notices ("FAN") assessing petitioner once more of deficiency income tax and VAT, inclusive of interest, in the amounts of Php39,919,215.22 and Php12,772,702.38, respectively, and thereby retaining his assessments contained in the PAN, which were only increased by additional interest.[13]

The FLD specifically provided, as follows:

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[9] BIR Records, pp. 325-366.
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 1, p. 447; Exhibits "R-15", "R-16" and "R-14", BIR Records, pp. 373-376.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7
Quezon City
OFFICE OF THE REGIONAL DIRECTOR

I PAY MY TAXES RIGHT
R P
REGISTER PAY

Demand No.	013A-B224-11
Date Issued	January 23, 2015
Due Date	February 23, 2015

EXHIBIT "R-14"
JUN 09 2022
RESPONDENT
ORIGINAL

FORMAL LETTER OF DEMAND

ALTIMAX BROADCASTING CO., INC.
Unit 507, The Taipan place F. Ortigas Jr. Road, San Antonio
Ortigas Center, Pasig City
TIN 272-993-967-000

Gentlemen

Please be informed that after investigation there has been found due from you deficiency income tax and value added tax for the calendar year ending December 31, 2011 as shown hereunder.

I. DEFICIENCY INCOME TAX

Taxable income per ITR			P 18,132,956.00
Add: Adjustments per investigation			
Disallowed Mangement fees expense			68,630,523.00
Taxable income per investigation			**P 86,763,479.00**
Income tax due thereon			P 26,029,043.70
Less: Allowed tax credits/payments per audit			
Payment	P -		
Creditable withholding tax	4,500,000.00		
Total	P 4,500,000.00		
Less: Disallowed prior year's excess tax credits	3,881,688.00		618,312.00
Deficiency Income Tax			P 25,410,731.70
Add: 20% Interest p.a. (04.17.2012 to 2.23.15)			14,508,483.52 *
TOTAL AMOUNT DUE			**P 39,919,215.22 ***

II. DEFICIENCY VALUE-ADDED TAX

Taxable sales/receipts per VAT returns			P 90,000,000.00
Add: Adjustment per investigation			
Taxable sales/receipts per investigation			**P 90,000,000.00**
Output tax due thereon			P 10,800,000.00
Less: Input taxes/payments			
Input VAT		P 8,645,979.85	
Payments		2,519,211.14	
Total		P 11,165,190.99	
Less: Disallowed input tax	P 8,235,662.76		
Excess tax credits carried over	33,964.26	8,269,627.02	2,895,563.97
Deficiency Value added Tax			P 7,904,436.03
Add: 20% Interest p.a. (04.26.2012 to 2.23.15)			4,868,266.35 *
TOTAL AMOUNT DUE			**P 12,772,702.38 ***

* *Please note that the interest and the total amount due will have to be adjusted if paid before/beyond February 23, 2015.*

The complete details covering the factual and legal basis of the aforementioned discrepancies established during the investigation of this case are shown in the accompanying **SCHEDULE I** of this letter.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249(b) of the Tax Code of 1997, as amended.

In view thereof, you are hereby requested to pay the aforesaid deficiency tax/taxes through the duly authorized agent bank of which you are enrolled within the time shown in the enclosed assessment notice.

We hope that you will give this matter your preferential attention.

Printed Name & Signature
Designation
Date

RECEIVED
2 [illegible] 2015
ADMIN

Very truly yours,

KIM JACINTO-HENARES
Commissioner of Internal Revenue

By:

ALFREDO V. MISAJON
Regional Director

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SCHEDULE 1

ALTIMAX BROADCASTING CO., INC.
Unit 907, The Taipan place F. Ortigas Jr. Road, San Antonio
Ortigas Center, Pasig City
TIN 272-993-967-000

DETAILS OF DISCREPANCIES

I. DEFICIENCY INCOME TAX

a. Disallowed Management fees expense (P68,630,523.00) - Verification disclosed that management fees amounting to P68,630,523.00 is not necessary expense and not related in the nature of your business transaction , thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended.

Management fees	P 68,630,523.00
Disallowed Mangement fees expense	**P 68,630,523.00**

b. Disallowed prior year's excess tax credits (P 3,881,688.00) - Verification disclosed that you failed to substantiate your claimed prior year's excess tax credits, hence, disallowed pursuant to RR No. 4-2002, as amended.

II. DEFICIENCY VALUE-ADDED TAX

Disallowed Input tax (P 8,235,662.76) - Verification disclosed that input VAT in connection to the disallowed Management fees expense, as discussed in Item I a above, was disallowed pursuant to Section 110 (A) of the Tax Code of 1997, as amended.

Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory and demandable.

Very truly yours,

KIM S. JACINTO- HENARES
Commissioner of Internal Revenue

By:

ALFREDO V. MISAJON
Regional Director

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RECEIVED
23 JAN 2015
[illegible]
Admin

Printed Name & Signature

Designation

On February 25, 2015, petitioner filed its Protest to the FLD/FAN seeking the reinvestigation of the assessments contained therein. Petitioner likewise submitted relevant supporting documents within 60 days from submission of the Protest.[14]

A Memorandum of Assignment was then issued transferring the dockets of the instant case to RO Verjun Solomon Catapia to perform the reinvestigation requested in the Protest.[15]

On February 27, 2020, petitioner received a copy of the FDDA, dated February 26, 2020, assessing petitioner with deficiency income tax and VAT in the total amount of Php69,785,169.96, inclusive of interest.[16]

Accordingly, petitioner filed the instant Petition on June 25, 2020, with the Judicial Affidavit of its witness, Mr. James Kenneth Venta.[17]

On September 16, 2020, this Court issued Summons to respondent to file an Answer to the Petition.[18]

On December 2, 2020, respondent filed through registered mail his Answer,[19] before elevating the entire BIR Records appurtenant to the case on December 11, 2020.[20]

In a Resolution, dated January 4, 2021, the case was referred to mediation.[21] On March 4, 2021, the Philippine Mediation Center reported that the case was unsuccessfully mediated.[22]

In a Resolution, dated March 10, 2021, this Court issued a Notice of Pre-Trial Conference setting the Pre-Trial on July 8, 2021.[23]

On July 1, 2021, respondent filed his Pre-Trial Brief.[24] Respondent also submitted the Judicial Affidavit of his witness, GS Roummel A. Bernos, on same date.[25]

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[14] *Ibid;* BIR Records, pp. 379-438 and pp. 446-525.
[15] Exhibit "R-18", BIR Records, p. 444.
[16] See Statement of Facts and Issue in the Pre-Trial Order, Records, Vol. 1, p. 447; Exhibits "R-22", BIR Records, pp. 552-555.
[17] Records, Vol. 1, pp. 7-266; Exhibit "P-14", *Id.*, pp. 145-266.
[18] *Id.*, pp. 278-281.
[19] *Id.*, pp. 286-296.
[20] *Id.*, p. 284.
[21] *Id.*, pp. 298-300.
[22] *Id.*, p. 301.
[23] *Id.*, pp. 302-304.
[24] *Id.*, pp. 305-308.
[25] *Id.*, pp. 309-357.

Meanwhile, petitioner filed its Pre-Trial Brief on July 2, 2021.[26]

Pre-Trial ensued on July 8, 2021.[27]

On July 28, 2021, petitioner filed a Motion to Commission an Independent Certified Public Accountant ("ICPA"), attaching thereto the Judicial Affidavit of its proposed ICPA, Glenn Ian D. Villanueva, attesting to his competence as an ICPA and submitting documents in support thereof.[28] Mr. Villanueva was commissioned as the ICPA for the instant case on October 5, 2021.[29]

On November 9, 2021, the parties submitted their Joint Stipulation of Facts and Issue[30] which then terminated the Pre-Trial.[31] Thereafter, a Pre-Trial Order was issued by the Court on November 24, 2021.[32] An Amended Pre-Trial Order was subsequently issued on March 14, 2022, after petitioner requested that certain corrections be made on the original Pre-Trial Order.[33]

On November 22, 2021, an ICPA Report was submitted before this Court.[34] The Judicial Affidavit of Mr. Villanueva in relation to the ICPA Report was submitted by petitioner on December 1, 2021.[35] Mr. Villanueva was cross-examined in relation to the ICPA Report on December 9, 2021.[36]

On the other hand, petitioner's witness, James Kenneth Venta, was placed on the witness stand on November 25, 2021.[37]

On December 20, 2021, petitioner filed its Formal Offer of Evidence.[38] Petitioner, then, on March 14, 2022, filed an Amended Formal Offer of Evidence.[39] Respondent interposed no objections on such Formal Offer of Evidence.[40]

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[26] *Id.*, pp. 358-370.
[27] *Id.*, pp. 381-384.
[28] *Id.*, pp. 388-400.
[29] *Id.*, pp. 405-410.
[30] *Id.*, pp. 411-419.
[31] See Resolution, dated 18 November 2021, *Id.*, pp. 420-423.
[32] *Id.*, pp. 445-453.
[33] *Id.*, pp. 647-656.
[34] *Id.*, pp. 424-442.
[35] *Id.*, pp. 457-478.
[36] *Id.*, pp. 587-589.
[37] *Id.*, pp. 454-456.
[38] *Id.*, pp. 488-586.
[39] *Id.*, pp. 602-645.
[40] *Id.*, pp. 663-664.

In a Resolution, dated June 30, 2022, this Court admitted all of petitioner's Exhibits subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in the present case.[41]

On October 4, 2022, respondent placed its witness, GS Bernos, on the witness stand.[42]

Subsequently, on October 18, 2022, respondent filed its Formal Offer of Evidence,[43] to which petitioner filed a Comment.[44] The Court, in a Resolution, dated December 6, 2022, admitted all of respondent's offered Exhibits.[45]

On February 3, 2023, petitioner filed its Memorandum.[46] On the other hand, respondent did not file a Memorandum.[47]

Thus, on February 27, 2023, this Court issued a Resolution submitting the instant case for Decision.[48]

Hence, this Decision.

The Issues[49]

> "WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS DEFICIENCY VAT FOR CY 2011 HAS ALREADY PRESCRIBED IN VIEW OF THE LAPSE OF THE THREE-YEAR PRESCRIPTIVE PERIOD UNDER *SECTION 20 OF THE NIRC*;"
>
> "WHETHER OR NOT RESPONDENT'S ISSUANCE OF THE ASSESSMENTS FOR DEFICIENCY INCOME TAX AND VAT AGAINST PETITIONER FOR CY 2011 IS NOT IN ACCORDANCE WITH LAW AND REGULATIONS, IN VIOLATION OF PETITIONER'S DUE PROCESS;" AND
>
> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY TAXES FOR CY 2011."

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41 *Id.*, pp. 670-671.
42 Records, Vol. 2, pp. 670-672.
43 *Id.*, pp. 673-680.
44 *Id.*, pp. 682-687.
45 *Id.*, pp. 689-692.
46 *Id.*, pp. 693-723.
47 *Id.*, p. 724.
48 *Id.*, p. 726.
49 See Issue in the Pre-Trial Order, Records, Vol. 1, p. 448.

Arguments of the Parties

Petitioner's Arguments[50]

Petitioner avers the following in its Memorandum:

a) Respondent's right to assess petitioner's alleged deficiency VAT for the 1st, 2nd and 3rd quarters of CY 2011 has already prescribed.

b) Respondent's assessments for deficiency income tax and VAT against petitioner for CY 2011 are not in accordance with law and regulation which is in violation of petitioner's due process;

   i. The ROs had no valid authority to conduct and continue the audit without a properly revalidated LOA;

   ii. The assessment notices did not properly state the law and the facts on which the assessment is based;

   iii. Respondent hastily issued the FLD without even considering petitioner's Reply to the PAN;

   iv. The FDDA is based on presumption;

c) The alleged deficiency income tax and VAT assessments lack legal and factual basis; and

   i. Management fees are ordinary and necessary in petitioner's trade or business.

Respondent's Counter-Arguments[51]

Respondent counter argues the following in his Answer:

a) Respondent's right to assess petitioner for deficiency VAT for the first three quarters of 2011 has not yet prescribed;

b) Respondent's issuance of the deficiency income tax and VAT assessments does not violate petitioner's right to due process;

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[50] Records, Vol. 2, pp. 701-721.
[51] See Answer, Records, Vol. 1, pp. 287-294.

c) The management fees are not ordinary and necessary expense of petitioner; and

d) The assessments issued against petitioner have factual and legal bases.

The Ruling of the Court

The instant Petition is impressed with merit.

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (1) of RA 1125*, to wit:

> "*SEC. 7. Jurisdiction.* - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"
> (Emphasis, Ours)

Here, petitioner is appealing the assessment contained in the FDDA. In totality, the FDDA is a decision of the CIR pertaining to deficiency tax assessments referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

In the present case, it is unquestioned that petitioner received the FDDA on February 27, 2020. Under *Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*, "[a] party adversely affected by a decision… of the Commissioner of Internal Revenue… may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had thirty (30) days from receipt of the FDDA, or until March 28, 2020, within which to file a judicial appeal before this Court. However, due to the COVID-19 pandemic, the Supreme Court issued *Administrative Circular Nos. 31-2020 to 41-2020* extending the deadline to file pleadings which fell due from March 15, 2020 to May 31, 2020 before the Courts which were placed under community quarantine for 30 days counting from June 1, 2020, or until June 30, 2020. As petitioner filed the instant Petition on June 25, 2020, this Court properly assumed jurisdiction over the present case.

The VAT assessment for the first three (3) taxable quarters of CY 2011 has already prescribed.

Petitioner asserts that the deficiency VAT assessment for the first three taxable quarters of CY 2011 has already prescribed. On the other hand, respondent is arguing that its right to assess petitioner for deficiency VAT for the aforementioned taxable quarters has not yet prescribed.

We agree with the petitioner.

Section 203 of the NIRC provides a three-year prescriptive period to assess deficiency taxes, *viz.*:

> "SEC. 203. Period of Limitation Upon Assessment and Collection. - *Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,* and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.*" (Emphasis, Ours)

Accordingly, the prescriptive period to assess taxes is three years from the deadline to file a tax return, or if the same has been belatedly filed, on the actual date of filing.

Applying the said provision, petitioner's Income Tax and VAT Returns had the following deadlines for assessment, *viz.*:

VAT Returns:[52]

Taxable Quarter of CY 2011	Due Date for Filing VAT Return	Actual Date of Filing	Last day to Assess
1st Quarter	25 April 2011	20 April 2011	25 April 2014
2nd Quarter	25 July 2011	22 July 2011	25 July 2014
3rd Quarter	25 October 2011	24 October 2011	25 October 2014
4th Quarter[53]	25 January 2012	24 January 2012	25 January 2015

Income Tax Return:[54]

[52] Exhibits "P-11-1", "P-11-2" and "P-11-3".
[53] See Petitioner's Memorandum, Records, Vol. 2, p. 703; Exhibit "P-20".
[54] Exhibit "P-17".

Taxable Year	Due Date for Filing Income Tax Return	Last day to Assess
CY 2011	15 April 2012	15 April 2015

The date of issuance of the FLD/FAN determines whether or not respondent was able to issue an assessment within the prescriptive period. In the present case, it is undenied that respondent issued the FLD/FAN on 23 January 2015.

Accordingly, the VAT assessment for the first three taxable quarters of CY 2011 is void because the same were issued beyond the three year period to assess counted from the deadline to file a VAT return, or if the same has been belatedly filed, on the actual date of filing of a VAT return.

The FLD violated petitioner's right to due process as it failed to consider the arguments set forth in the Reply to PAN.

It cannot be stressed enough that an assessment must state the facts and the law upon which it is based. From this basic tenet of taxation springs the requirement that, in issuing final deficiency tax assessments, the BIR is duty bound to take into account and address the explanations, arguments and evidence posited and adduced by a taxpayer against such assessment during pre-assessment proceedings to ensure that a taxpayer has the ability to rebut such conclusions made by the BIR should it further choose to question the assessment.

In *Commissioner of Internal Revenue v. Unioil Corporation*[55] ("*Unioil*") the Supreme Court had the occasion to rule that, to comply with due process in assessment proceedings, due consideration must be given to the explanations and evidence proffered by a taxpayer, and that it is not enough that the CIR will simply go through the motions of computing the taxes he wants to assess against a taxpayer without taking into account the arguments provided by the taxpayer, *viz.*:

> "The Formal Letter of Demand and F43-128 are void; they did not state the factual and legal bases for the assessment.
>
> The CIR's ample powers under the tax code should be exercised with due regard to the taxpayer's constitutional rights.

[55] G.R. No. 204405, 4 August 2021.

In Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon Products) the Court expounded on the contemplation of administrative due process as exemplified in jurisprudence:

Administrative due process is anchored on fairness and equity in procedure. 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 that the party be sufficiently informed of the reasons for its conclusions.

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

In the case before us, the CIR only perfunctorily assessed Unioil for deficiency withholding tax on compensation and expanded withholding tax and went through just the motions without due consideration. This is apparent from the haste in which the Formal Letter of Demand and the FAN were issued on January 14, 2009 in order to ostensibly beat the three-year prescriptive period which set after January 15, 2009.

Moreover, Section 228 of the NIRC and its implementing rule and regulation, Section 3 of RR No. 12-99, mandate the contents for an assessment: '[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.'

Section 3 of RR No. 12-99, on the other hand, prescribes the due process requirement for the four (4) stages of the assessment process:

> 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:
>
> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of

the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based . . . If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void...

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. ...

x x x x

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

x x x x

> 3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void ... in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.

Once again, Avon Products is illuminating. Petitioner therein (Avon) stacked indicators of the CIR's feigned compliance to the mandatory provisions of the law and regulation, *i.e.* Section 228 of the NIRC and Section 3 of RR No. 12-99 which the CIR could not rebut. The Court agreed with Avon and categorically pronounced that the latter was demonstrably deprived of due process by the CIR:

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

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

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

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

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

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that '[Avon] failed to submit supporting documents within 60-day period.' This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulations No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

. . . .

Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, 'The [Commissioner could not] feign simple mistake or misappreciation of the evidence ...because [the issue was] plain and simple.'

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.

> Commissioner of Internal Revenue v. Reyes (Reyes) is instructive. In Reyes, the Court 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:'"
> (Emphasis, Ours)

In the case at bar, the BIR issued identical assessments for income tax and VAT against petitioner in both the PAN and the FLD/FAN. As shown above, the contents of the PAN and the FLD/FAN are the same except for interest. This only proves that respondent failed to consider the arguments and evidence adduced and presented by petitioner against such assessments for income tax and VAT in the Reply to PAN.

As in *Unioil*, both the PAN and the FLD/FAN simply provided a computation of the deficiency income tax and VAT assessment. These documents did not address the valid contentions of petitioner, and the evidence presented in support thereof, that the management fees paid by petitioner to Bethlehem Holdings, Inc. constitute an ordinary and necessary expense, thus, the same must be allowed as a deduction to taxable income for purposes of determining the income tax due to petitioner; and that the said management fees were incurred in the course of petitioner's trade or business, as such, any input tax due from the management fees must be allowed as a credit to petitioner's output tax.[56]

Respondent simply went through the motions of issuing assessment notices without even giving due consideration to petitioner's explanations and evidence to show feigned compliance to the mandatory provisions of the *NIRC*. Further proof of this matter is the fact that when the Reply to PAN was filed on January 22, 2015 and subsequently forwarded to the BIR Revenue Region No. 7's Assessment Division on January 23, 2015, the issuance and service of the FLD/FAN immediately followed on January 23, 2015, hinting that the issuance of the FLD/FAN was merely perfunctory. The BIR seemingly wanted to issue an immediate assessment to beat the prescriptive period, but, as shown above, failed to even comply with such periods in relation to the VAT assessment for the first three taxable quarters of CY 2011.

This is a clear violation of petitioner's right to due process in tax assessment proceedings as its arguments and evidence were not even considered by respondent before the issuance of the final assessment. Indeed, while respondent is not duty bound to accept petitioner's explanations and evidence, he should still endeavor to explain to petitioner why such explanations and evidence have not been accepted as sufficient basis to cancel an assessment. The right to be heard includes the right to receive an explanation for a denial of the prayed recourse.

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[56] BIR Records, pp. 325-366.

As petitioner's right to due process was violated, the instant assessments are undoubtedly null and void. Thus, no collection can proceed from such income tax and VAT assessments.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

FOR THESE REASONS, the instant Petition for Review is **GRANTED.** The PAN, FLD/FAN and FDDA issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for CY 2011, in the aggregate amount of Php69,785,169.96, inclusive of interest, are hereby **CANCELLED** and **SET ASIDE**, and respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice