REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AJANTA PHARMA PHILIPPINES, INC. (APPI),
Respondent.

CTA EB No. 2761
(CTA Case No. 10057)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 3 1 2025 11:55am

x - x

DECISION

BACORRO-VILLENA, J.:

In its bid to reverse the Special Third Division's Decision[1] promulgated on 23 January 2023 (**assailed Decision**) and its Resolution[2] (**assailed Resolution**) issued on 04 May 2023, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present

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[1] *Rollo*, pp. 23-42. Penned by Associate Justice Erlinda P. Uy (Ret.) and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

[2] Id., pp. 45-50.

Petition for Review[3] pursuant to Section 2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

In the assailed Decision and Resolution, the Special Third Division granted respondent Ajanta Pharma Philippines, Inc.'s, (**respondent**'s/ **APPI**'s) prior Petition for Review and, thereby, declared void petitioner's deficiency value-added tax (**VAT**) assessment, in the total amount of ₱7,476,507.48, including interest, for the period from 01 January 2017 to 30 June 2017 (**1st half of CY 2017**). It also cancelled and set aside petitioner's Final Decision on Disputed Assessment (**FDDA**) dated 28 February 2019.[5]

PARTIES OF THE CASE

Petitioner is the duly appointed CIR tasked to decide disputed assessment, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto, as provided by law. He or she may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the Legal Division, Revenue Region No. 8-A, 36th Floor, Export Bank Plaza Building, Sen. Gil Puyat Avenue corner Chino Roces Ave., Makati City. [6]

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Phil AXA Life Bldg., 1286 Gil Puyat Ave. cor. Tindalo Street, San Antonio Makati City. It is engaged in the business of: (1) manufacturing, importing, selling or otherwise distributing on wholesale, drugs, medicines, and pharmaceutical products of all kinds and descriptions; (2) establishing and maintaining facilities for manufacture, importation, sale, distribution and promotion on a commercial basis of such drugs and pharmaceutical products; and,

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3 Filed on 29 June 2023, id., pp. 7-19. The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 19 June 2023, id., p. 6.

4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

5 Exhibit "R-12", BIR Records, pp. 422-425.

6 *Rollo*, pp. 8-9.

(3) providing technical know-how and consultancy in relation to the manufacture of drugs, medicines and pharmaceutical products.[7]

FACTS OF THE CASE

On 29 January 2018, petitioner, through Regional Director Glen A. Geraldino (**RD Geraldino**) issued an electronic Letter of Authority (**eLOA**) No. eLA201500085255[8], informing respondent that Revenue Officer Rainalyn Bacani (**RO Bacani**) and Group Supervisor Annabeth Gutierrez (**GS Gutierrez**) will examine its books of accounts and other accounting records for VAT for the 1st half of CY 2017.

Later, on 28 June 2018, petitioner, through its VAT Audit Section Chief Edwin Montealegre (**Montealegre**) issued a Notice for Informal Conference[9] (**NIC**) against respondent, requesting the latter to appear before the Bureau of Internal Revenue (**BIR**) Regional Office No. 8, for an informal conference regarding its deficiency VAT for the 1st half of CY 2017.

On 15 August 2018, petitioner issued a Preliminary Assessment Notice[10] (**PAN**) against respondent, assessing the latter deficiency VAT, including interest in the aggregate amount of ₱10,754,710.16. Respondent's deficiency VAT assessment arose out of the following: (1) disallowed zero-rated sales; (2) disallowed sales discount; and, (3) disallowed input tax.

Still later, on 31 August 2018, petitioner paid ₱7,446.98 and ₱108,767.75 for settlement of its disallowed zero-rated sales and disallowed input tax, respectively.[11]

Within the fifteen (15)-day period from receipt of its PAN, respondent filed its "Reply to Preliminary Assessment Notice"[12] (**Reply to PAN**) on 03 September 2018. In its Reply to PAN, it explained that the

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7 See paragraph 1.1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 851.
8 Exhibit "P-4", id., Volume I, p. 297; Exhibit "R-1", BIR Records, p. 1.
9 Exhibit "P-11", id., Volume III, pp. 994-997; Exhibit "R-2", id., pp. 194-200.
10 Exhibit "P-12", id., Volume I, pp. 313-317; "Exhibits "R-4" and "R-5", id., pp. 228-232.
11 BIR Records, pp. 243-247.
12 Exhibit "P-17", Division Docket, Volume I, pp. 324-331; BIR Records, pp. 254-261.

disallowed sales discount pertains to trade discounts given to Mercury Drug Corporation (**MDC**) and that this is fully within its business discretion. It further averred that it does not grant senior citizens' discount because it does not directly sell goods to them.

Subsequently, on 28 September 2018, petitioner issued a [Final] Assessment Notice/Formal Letter of Demand[13] (**FAN/FLD**) with Details of Discrepancies against respondent. The Office of the Regional Director, Region No. 8 sent the FAN/FLD, signed by, then RD Geraldino. The BIR retained its disallowed sales discount assessment and reiterated its allegations in the PAN. Moreover, the BIR also stated that the payment for the assessment on the disallowed zero-rated sales and disallowed input tax in the amount of ₱7,446.98 and ₱108,767.75, respectively, inclusive of increments, was considered or deducted. Nevertheless, petitioner was still assessed for the 1st half of CY 2017 for deficiency VAT, including interests, in the aggregate amount of ₱10,355,741.93.

Within the thirty (30)-day period from receipt of its FAN/FLD, respondent filed its "Protest to the [FAN/FLD]"[14] (**Protest to FAN**) on 30 October 2018 and requested for a reinvestigation to clarify the basis of the alleged tax deficiencies. There, respondent intimated that, within sixty (60) days from the date of the filing, it will be submitting additional documents in support of the request for reinvestigation. Petitioner granted the request for reinvestigation in a Letter dated 21 November 2018.[15]

Later, on 27 December 2018, respondent submitted the additional documents to support its request for reinvestigation.[16] On 05 March 2019, respondent received the FDDA dated 28 February 2019[17], stating that the disallowance of the sales discount is proper because it pertains to senior citizen discount (**SCD**) granted by respondent's client MDC to its senior citizen customers. In the said FDDA, the sole assessment item left was the disallowed sales discount wherein the BIR assessed respondent of deficiency VAT in the aggregate amount of ₱7,476,507.48.

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13 Exhibit "P-18", id., Volume I, pp. 354-372; Exhibits "R-6", "R-7" and "R-8", BIR Records, pp. 279-283.
14 Exhibit "P-19", Division Docket, Volume I, pp. 373-444.
15 Exhibit "P-20", id., p. 445.
16 Exhibit "P-21", id., pp. 446-454.
17 Exhibit "R-12", supra at note 5.

The FDDA indicated that the due date of payment was on or before 28 March 2019. Then RD Geraldino issued and signed the FDDA.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Disagreeing with the FDDA, respondent filed a Petition for Review[18] with this Court on 04 April 2019. The case was docketed as CTA Case No. 10057 and was initially raffled to the Third Division.

In its petition, respondent argued that: (1) it was deprived of due process because it was never fully apprised of the legal basis of the assessment; (2) the BIR failed to consider its Reply to PAN and Protest to FAN; and, (3) the disallowed sales discount is in accordance with Section 106 (D)(2)[19] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Revenue Regulations (**RR**) No. 16-2005[20], hence the deficiency VAT assessment is without basis.

Later, the Third Division granted an extension of time to file an Answer[21] and within the said period, petitioner filed his or her Answer.[22] There, petitioner raised the following arguments in his or her bid to have respondent's case dismissed: (1) respondent was afforded due process; (2) respondent's argument that it was never fully apprised of the legal basis of the assessment is unwarranted; (3) the assessment issued to it clearly provided the factual and legal bases on why the sales discount was disallowed; (4) its argument that the BIR failed to consider its Reply to PAN and Protest to FAN is likewise unwarranted; (5) the disallowance of the sales discount is proper; and, (6) the assessment is *prima facie* presumed correct and made in good faith.

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18 Id., pp. 10-26.

19 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.*
(D) *Determination of the Tax.* –
...
(2) *Sales Returns, Allowances and Sales Discounts.* - The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.

20 Consolidated Value-Added Tax Regulations of 2005.

21 See Resolution dated 27 May 2019, Division Docket, Volume I, p. 213.

22 Filed on 26 June 2019, id., pp. 220-224.

Still later, the Third Division ordered both parties to undergo conciliation proceedings before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[23] Unfortunately, the mediation bogged down and the case was referred back to the court for the resumption of proceedings.[24] The Pre-Trial Conference was set on 04 February 2020.[25] In the meantime, on 12 July 2019, respondent filed its Reply.[26]

Prior to the conclusion of the Pre-Trial Conference, on 31 October 2019, petitioner transmitted to the Third Division the BIR Records, consisting of one (1) folder, with 428 pages.[27] On 21 February 2020, the parties filed their "Joint Stipulation of Facts and Simplification of Issues"[28] (**JSFI**), which the Third Division subsequently approved.[29] The Third Division then issued the Pre-Trial Order dated 22 June 2020.[30]

Trial ensued thereafter.

During the hearing on 16 July 2020, respondent presented its Accounting Manager, Jasmin D. De Belen (**De Belen**), as its first witness.[31] In her Judicial Affidavit dated 30 January 2020[32], which was adopted as her direct testimony, she declared essentially that: (1) she is responsible for respondent's financial statement preparation and filing of tax returns; (2) respondent is a VAT-registered entity; (3) on 01 February 2018, an LOA was served at its office; (4) on 28 June 2018, an NIC was served at its office; (5) on 17 August 2018, it received a copy of the PAN; (6) it paid the deficiency VAT assessment on disallowed zero-rated sales and portion of the disallowed input tax as *per* PAN; (7) on 03 September 2018, it filed its Reply to PAN; (8) on 01 October 2018, it received a copy of the FAN; (9) the findings in the FAN/FLD are the same as those reflected in the PAN, particularly disallowed sales discounts, with deductions on the partial payments it made; (10) on 30 October 2018, it filed the Protest against the FAN/FLD, in the nature of a request for reinvestigation; (11) on 29 November 2018, respondent

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23 See Order dated 08 July 2019, id., pp. 226-227.
24 Mediator's Report dated 19 September 2019, id., p. 243.
25 See Resolution dated 02 October 2019, id., pp. 248-249.
26 Id., pp. 228-237.
27 Undated Compliance, id., pp. 250-251.
28 Id., Volume II, pp. 851-863.
29 See Resolution dated 27 February 2020, id., p. 865.
30 Id., pp. 942-950.
31 See Minutes of the Hearing and Order, both dated 16 July 2020, id., Volume II, pp. 951 and 955-956, respectively.
32 Exhibit "P-64", id., Volume I, pp. 257-282.

received a letter from the BIR informing it that its request for reinvestigation has been granted; (12) on 27 December 2018, it submitted additional supporting documents in support of its request for reinvestigation; (13) on 05 March 2019, it received the FDDA which retained the disallowance of sales discount amounting to ₱50,405,717.70; (14) 61% of its sales of pharmaceutical products were generated from MDC, hence, in order to maintain good trade relations, it offered and granted sales discounts to MDC; (15) in its Reply to PAN, it argued that these sales discounts do not pertain to SCD, as such there was no basis in its disallowance; (16) its pharmaceutical products are mainly for senior citizen consumption; and, (17) from the filing of Reply to PAN, Protest to FAN/FLD and reinvestigation stage, it repeatedly argued and explained that these sales discount do not pertain to SCD.

During her cross-examination, De Belen testified on the following: (1) though, Exhibits "P-29" to "P-35"[33] expressly indicated the word "SC Discount", this was as a mere reference; (2) one of the factors that respondent considered in giving discount to MDC is the latter's grant of SCD to its customers; (3) it wanted to share that burden with MDC; (4) the SCD is reflected as a sales discount and deducted from gross sales in the financial statements; (5) the General Manager authorizes the grant of the discount; and, (6) there is no written policy about its grant of SCD.[34]

On redirect examination, De Belen declared that the medicines sold primarily to MDC are for senior citizens.[35] On re-cross examination, De Belen confirmed that these are treated as sales discount in the financial statements.[36]

On 10 November 2020, respondent also presented Marina Liza B. Faylona (**Faylona**), its National Sales Manager.[37] In her Judicial Affidavit dated 30 January 2020[38], she declared that: (1) she is in charge of respondent's sales, promotion, and implementation of its marketing programs; (2) she has been working in the pharmaceutical industry for twenty-nine (29) years; (3) MDC is the number one (1) retailer customer

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33 Id., pp. 472-478.
34 TSN dated 16 July 2020, pp. 7-15.
35 Id., p. 15.
36 Id., p. 16.
37 See Minutes of the Hearing and Order, both dated 10 November 2020, id., Volume III, pp. 968 and 969-970, respectively.
38 Exhibit "P-65", id., Volumes I and II, pp. 491-510.

of respondent comprising 61% of its total sales[39]; (4) the largest pharmaceutical industry in the Philippines is MDC[40]; (5) respondent and MDC are not related parties[41]; (6) in order to maintain good business relations with MDC, it granted the latter significant sales discount; (7) the sales discount granted to MDC are more substantial (compared to other clients) considering the volume of sales made to the latter; (8) majority of the ultimate consumers of the pharmaceutical products sold to MDC are senior citizens; (9) the grant of the sales discount is consistent with paragraph 2.2 of Part VI of Administrative Order No. 2010-0032[42], which provides that if a manufacturer/ distributor grants a sales discount of 16% or more of a specific product to a retailer, no rebates will be due to the latter. This discount is deemed as the manufacturer's/distributor's share; and, (10) sales to MDC are crucial in its business performance, hence the grant of sales discount to MDC must be aggressive and competitive than other wholesalers/ distributors in the pharmaceutical industry.

In her cross-examination that followed, Faylona testified further that: (1) substantial discounts were given to MDC as decided by petitioner's Finance Department; and, (2) as Sales Manager, she recommended that respondent's products should be available in MDC in order to meet its target sales.[43] No redirect and re-cross examination followed.[44]

On 25 November 2020, respondent filed its Formal Offer of Documentary Evidence[45] (**FOE**), to which petitioner filed his or her comment on 10 December 2020.[46] In the Resolution dated 15 January 2021[47], the Third Division admitted respondent's offered exhibits, except for Exhibit "P-36"[48], for failure to present the original for comparison.

39 See Exhibit "P-39", id., Volume II, p. 557.
40 See Exhibit "P-40", "P-41" and "P-42", "P-43" id., pp. 513-555 and 562-747, respectively.
41 See Exhibit "P-46", id., pp. 750-767.
42 See Exhibit "P-36", id., Volume I, pp. 479-487.
43 TSN dated 10 November 2020, pp. 7-11.
44 Id., p. 11.
45 Division Docket, Volume III, pp. 973-991.
46 Id., pp. 1048-1050.
47 Id., pp. 1057-1058.
48 Administrative Order No. 2010-0032, supra at note 42.

For his or her part, petitioner presented RO Rainalyn Bacani **(RO Bacani)** as his or her sole witness.[49] In her Judicial Affidavit dated 26 February 2020, RO Bacani declared that: (1) she is the RO assigned to audit respondent's books of accounts and other accounting records for first half of CY 2017; (2) after receiving the LOA, she prepared the Notice for Presentation/Submission of documents; (3) she recommended the issuance of NIC dated 27 June 2018; (4) based from her audit, respondent has a VAT deficiency of ₱10,754,710.16, thus, she recommended the issuance of PAN; (5) on 17 August 2018, respondent received a copy of the PAN; (6) on 01 October 2018, respondent received a copy of the FAN/FLD assessing respondent deficiency VAT of ₱10,355,741.93; and, (7) she recommended the issuance of the FDDA finding respondent liable for VAT deficiency in the total amount of ₱7,476,507.48, inclusive of interest, accordingly, FDDA was issued on 28 February 2019.

During her cross-examination, RO Bacani elaborated that: (1) respondent is engaged in the manufacture and import of pharmaceutical drugs and medicines; (2) MDC is the customer in the seven (7) invoices subject of the disallowance; (3) she did not encounter any senior citizen customer in the course of her audit; and, (4) the amount of the disallowed sales discount were properly reflected in the sales invoice.[50] No redirect and re-cross examination followed.[51]

Subsequently, on 18 May 2021, petitioner's FOE was filed.[52] Respondent filed its comment thereto on 26 May 2021.[53] On 22 July 2021, the Third Division issued a Resolution[54] that admitted all of petitioner's exhibits.

On 06 December 2021, petitioner filed his or her Memorandum[55], while respondent filed its Memorandum[56] on 17 December 2021. The case was then deemed submitted for decision on 23 February 2022.[57]

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[49] Exhibit "R-14", id., Volume II, pp. 877-885; Minutes of the hearing held on and Order, both dated 27 April 2021, id., Volume III, pp. 1061 and 1062-1063, respectively.

[50] TSN dated 27 April 2021, pp. 7-10.

[51] Id., p. 11.

[52] See FOE, Division Docket, Volume III, pp. 1064-1069.

[53] Id., pp. 1074-1077.

[54] See Resolution dated 22 July 2021, id., pp. 1081-1082.

[55] Id., pp. 1108-1112.

[56] Id., pp. 1083-1105.

[57] See Resolution dated 23 February 2022, id., p. 1116.

In the *interim*, pursuant to Administrative Circular No. 01-2022 dated 21 June 2022[58], which was issued following the retirement of Associate Justice Juanito C. Castañeda, Jr., the Court underwent another reorganization. The instant case stayed with the Special Third Division, which was composed of the same members of the prior Third Division.

In the now assailed Decision of 23 January 2023[59], the Special Third Division granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
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> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The FDDA dated February 28, 2019, and the subject VAT assessment issued against [respondent] for the period from January 1, 2017 to June 30, 2017, in the amount of ₱7,476,507.48, are **CANCELLED** and **SET ASIDE**.
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> [Petitioner] is further **ORDERED TO ISSUE** the corresponding *Authority to Cancel Assessment* for the subject VAT assessment.
>
> Lastly, unless reversed by higher courts, [petitioner] is hereby **ENJOINED** from enforcing the collection of the subject VAT assessment against [respondent] during the pendency of the instant case.
>
> **SO ORDERED.**
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> ...

In granting respondent's Petition for Review, the Special Third Division mainly held that: (1) respondent's right to due process was violated; (2) petitioner rejected respondent's explanations, without discussing the reasons for doing so; and, (3) petitioner also failed to provide the facts and the law upon which his or her conclusions have been based.[60]

Meanwhile, on 28 February 2023, petitioner filed a "Motion for Reconsideration (to the Decision dated 23 January 2023)"[61] (**MR**). On

58 Reorganizing the Second and Third Divisions of the Court.
59 Supra at note 1.
60 Supra at note 1.
61 Division Docket, Volume III, pp. 1142-1146.

24 April 2023, respondent filed its Comment thereto.[62] On 04 May 2023, the Special Third Division issued the assailed Resolution denying petitioner's MR.[63] In the assailed Resolution, the Special Third Division held that petitioner's arguments were mere reiterations of what has already been passed upon and considered in the assailed Decision. It also held that the contents of the FAN merely reiterated the findings in the PAN, without consideration of respondent's arguments in its Reply to PAN. Similarly, the FDDA likewise did not address the arguments repeatedly raised by respondent in both its Reply to PAN and Protest to FAN.[64]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special Third Division's actions, petitioner filed the present petition on 29 June 2023 (following the extension of time granted to petitioner[65]). On 29 August 2023, respondent filed its "Comment/Opposition (To the Petition for Review dated 27 June 2023)".[66] On 01 February 2024, the Court *En Banc* resolved to give due course to the instant case and submitted it for decision. The Court *En Banc* also noted that the PMC-CTA failed to persuade the parties to enter into an amicable settlement.[67]

ISSUE

Before Us, petitioner puts forward the following issue for the Court *En Banc*'s resolution:

> WHETHER THE SPECIAL THIRD DIVISION ERRED IN CANCELLING THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DATED 28 FEBRUARY 2019 AND RULING THAT THE DEFICIENCY VALUE-ADDED TAX (VAT) ASSESSMENT IN THE TOTAL AMOUNT OF ₱7,476,507.48, INCLUDING INTEREST FOR THE PERIOD 01 JANUARY 2017 TO 30 JUNE 2017 YEAR IS VOID.

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62 Id., pp. 1152-1160.
63 Supra at note 2.
64 Division Docket, Volume III, p. 1171.
65 *Rollo*, p. 6.
66 Id., pp. 57-70.
67 Id., p. 75.

ARGUMENTS

In calling for the reversal of the Special Third Division's actions, petitioner insists that the assessment against respondent is valid and that there is no violation of respondent's right to due process.[68] Petitioner argues that the PAN and FAN contained detailed supporting facts mentioning the dates, customer's name, invoices and amounts.[69] Petitioner further argues that the issuance of tax assessments, particularly PAN, FAN/FLD and FDDA contained the factual and legal basis and compliant with due process requirement with Section 228[70] of the NIRC of 1997, as amended.[71] Petitioner asserts that the findings of disallowed sales discount to senior citizen have factual and legal bases.[72]

As for respondent, it argued that the present petition should be denied for the following reasons: (1) it is merely *pro forma* since it contains a mere reiteration of the same arguments raised by petitioner which the Court has extensively passed upon; (2) petitioner violated respondent's right to due process because the former failed to consider the latter's defenses together with the pieces of evidence it submitted; and, (3) since respondent's right to due process was violated, the deficiency VAT assessment issued against it is void.[73]

RULING OF THE COURT *EN BANC*

At the outset, it is noted that the present petition before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed Resolution on 29 May 2023.[74] Petitioner had 15 days from receipt of the assailed Resolution, pursuant to Section 3(b)[75], Rule 8 of the RRCTA, or until

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68 See Petition for Review, supra at note 3.
69 Par. 11, id., p. 14.
70 **Sec. 228.** *Protesting of Assessment.*
71 Par. 16, id., p. 16.
72 Par. 18, id.
73 See Comment, supra at note 66, p. 49.
74 See Notice of Resolution dated 05 May 2023, Division Docket, Volume III, pp. 1166A-1166B.
75 **SEC. 3.** *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion

13 June 2023, to file a Petition for Review before the Court *En Banc*. On 06 June 2023, petitioner filed a "Motion for Extension of Time to File Petition for Review".[76] The Court *En Banc* granted the said motion and allowed petitioner until 28 June 2023.[77] Considering that 28 June 2023 was declared a national holiday, petitioner timely filed the present Petition for Review on 29 June 2023.[78]

We proceed to the merits of the case.

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds the petition bereft of merit.

It is worthwhile to note that the allegations and arguments in the instant petition are but reiterations of petitioner's pleadings before the Special Third Division, which have already been exhaustively discussed and passed upon in the assailed Decision and Resolution. However, for emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

PETITIONER VIOLATED RESPONDENT'S RIGHT TO DUE PROCESS.

Here, petitioner insists that respondent was afforded due process, because it was able to file both a Reply to PAN and a Protest to FAN.[79] Petitioner further argues that the PAN, FAN/FLD and FDDA which were issued to respondent clearly provides the factual and legal basis on why the sales discount was disallowed.[80]

Petitioner's arguments fail to convince Us.

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and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

76 *Rollo*, pp. 1-3.
77 Id., p. 6.
78 Supra at note 3.
79 Par. 15, *rollo*, p. 15.
80 Par. 18, id., p. 16.

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

> ...
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> 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:
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> ...
>
> **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.**[81]
>
> ...

Based on 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.[82] 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.[83]

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. 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.[84]

To implement the above-quoted Section 228, Section 3 of RR No. 12-99[85], as amended by RR No. 18-2013[86], provides, in part, as follows:

81 Emphasis supplied and italics in the original text.

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

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

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

85 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.

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

> ...
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> SEC. 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:
>
> 3.1.1 *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 sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to 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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> ...
>
> 3.1.3 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 shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void** (see illustration in ANNEX 'B' hereof).
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> ...
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> 3.1.5 Final Decision on a Disputed Assessment (FDDA). — **The decision of the Commissioner or his duly authorized representative shall state the** (i) **facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision.[87]
>
> ...

As part of due process requirements in the issuance of tax assessments, the PAN, FAN/FLD and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FAN/FLD and/or FDDA shall be void.

Relative thereto, the pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[88], is informative, to wit:

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[87] Emphasis supplied and italics in the original text.

[88] Supra at note 82; Citations omitted and emphasis supplied.

...

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.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the 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.**

...

The importance of providing the 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 3.1.1] of Revenue Regulations 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 3.1.3] 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 3.1.5] 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.**

"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.

...

> 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.
>
> ...
>
> **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.**
>
> 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 Regulations No. 12-99.
>
> ...

Based on the foregoing jurisprudential pronouncements, petitioner or his or her duly authorized representative must perform assessment functions in strict adherence to law, with their own rules of procedure, and always with regard to the basic tenets of due process.

Due process does not only require that a taxpayer is given the right to submit evidence, but also calls for the evaluation and consideration of the evidence presented. Not only must the party be given an opportunity to present its case and to adduce evidence tending to establish the rights which it asserts but the tribunal must consider the evidence presented.[89]

Additionally, if petitioner or his or her duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void and ineffective. Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FAN/FLD, and FDDA, Specifically, if petitioner rejects the taxpayer's explanations, he or she must give some reason for doing so and the particular facts and law upon which his or her conclusions are based. Such basis must appear on

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89 *Ang Tibay, represented by Toribio Teodoro, manager and proprietor, et al. v. The Court of Industrial Relations, et al.*, G.R No. L-46496, 27 February 1940.

the PAN, FAN/FLD, or FDDA. As a corollary, the concerned taxpayer must not be left unaware on how the petitioner or his or her duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.[90]

Presented below is a tabular comparison of petitioner's findings in the PAN[91] and FAN/FLD[92] in relation to respondent's disallowed sales discount:

Findings in the PAN	Findings in the FAN/FLD
Disallowed Sales Discount to Senior Citizen, ₱50,405,717.70 — Investigation disclosed that you granted sales discount[s] to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by ₱50,405,717.70 for the covered period as shown below. Said discounts were computed based on your previous sales to MDC and subsequently sold by MDC to their SC customers. Pursuant to Revenue Regulations No. 7-2010 Section 7 in relation to the Expanded Senior Citizen Act of 2010, discount can only be allowed as a deduction from gross income for the same taxable year that the discount is granted. Further, the seller must record its sales inclusive of the discount granted. The Income Statement of the seller must reflect the discount not as a reduction of sales to arrive at net sales but as a deduction from its gross income. Any additional expenses or losses from the 20% discount and VAT expenses on the purchase of the SC shall be shouldered by the State. Any input tax attributable to the VAT[-]exempt sales is included as cost or expense account by the business establishment. Hence, the above discount was disallowed.	**Disallowed Sales Discount to Senior Citizen, ₱50,405,717.70** — Investigation disclosed that you granted sales discount[s] to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by ₱50,405,717.70 for the covered period as shown below. Said discounts were computed based on your previous sales to MDC and subsequently sold by MDC to their SC customers. Pursuant to Revenue Regulations No. 7-2010 Section 7 in relation to the Expanded Senior Citizen Act of 2010, discount can only be allowed as a deduction from gross income for the same taxable year that the discount is granted. Further, the seller must record its sales inclusive of the discount granted. The Income Statement of the seller must reflect the discount not as a reduction of sales to arrive at net sales but as a deduction from its gross income. Any additional expenses or losses from the 20% discount and VAT expenses on the purchase of the SC shall be shouldered by the State. Any input tax attributable to the VAT[-]exempt sales is included as cost or expense account by the business establishment. Hence, the above discount was disallowed.

In respondent's Reply to PAN, it raised the following arguments against petitioner's findings on disallowed sales discount to senior citizen to wit: (1) the PAN failed to specify the factual and legal basis;

90 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra at note 82.
91 Supra at note 10.
92 Supra at note 13.

(2) the BIR is mistaken in assuming that the amount of ₱50,405,717.70 is in the nature of SCD, as contemplated under Republic Act (**RA**) No. 9994[93]; (3) the discounts pertain to "trade discounts", this was referred as "SC Discount" in the invoices[94] because it pertains to medicine intended for use by senior citizens; (4) the grant of discounts to customers is a right recognized by Section 106(D)[95] of the NIRC of 1997, as amended; and, (5) RR No. 7-2010[96], as amended, is not applicable as it pertains to income tax treatment of sales discount provided to senior citizens.

Remarkably in its Protest to FAN filed on 30 October 2018[97], respondent reiterated the above-stated arguments raised in its Reply to PAN, and added that:

> ...
>
> B. The Examining Officer failed to consider AJANTA's Reply to the Preliminary Assessment Notice ('PAN'), which is in **violation of the due process requirement.**[98]
>
> ...

Also, respondent expounded on its argument that the amount of discount which it can grant to MDC is not regulated by any law and as such is left to its sole business judgment.

Notwithstanding the foregoing arguments, as can be readily seen in the tabulation, petitioner's findings clearly failed to address or discuss respondent's arguments in both its Reply to PAN and Protest to FAN.

Additionally, it is noted that in the Details of Discrepancies attached to the FDDA dated 28 February 2019[99], the BIR again did not address the arguments raised by respondent in its Reply to PAN and Protest to FAN, particularly that RR No. 7-2010[100], the main basis of petitioner's assessment, is not applicable. We quote below the

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93 Expanded Senior Citizens Act of 2010.
94 Supra at note 33.
95 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.*
(D) *Determination of the Tax.* –
96 Implementing the Tax Privileges Provisions of Republic Act No. 9994, Otherwise Known as the "Expanded Senior Citizens Act of 2010", and Prescribing the Guidelines for the Availment Thereof.
97 Supra at note 14.
98 Emphasis supplied.
99 Exhibit "R-12", supra at note 5.
100 Supra at note 96.

discussion of the BIR in its FDDA, in relation to the disallowed sales discount to senior citizens:

> ...
>
> **Disallowed Sales Discount to Senior Citizen, P50,405,717.70** — Original investigation disclosed that you granted sales discount[s] to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by P50,405,717.70 for the covered period. Upon reinvestigation, you claimed that said discounts are trade discounts and the word "SC Discount" in sales invoice were meant to describe that the discount pertains to medicines intended for use by senior citizens. Upon scrutinizing the sales invoices submitted in support of your claim, it is clear that not all sales invoices issued to MDC with medicines intended for use by senior citizens have SC discount. Only 1 or 2 invoices with SC discount were issued per month as shown [in the table] below. It is also noticeable that that the SC discount granted is the same amount for two consecutive months. This is because the SC Discount is computed based on [the] Total Summary of Senior Citizen/PWD Discount granted by MDC to their senior citizen/PWD customers in prior months. Accordingly, assessment on disallowed sales discount to senior citizen in the amount of P50,405,717.70 is hereby **reiterated pursuant to RR No. 7-2010**, Section 7.[101]
>
> ...

During her direct examination[102], De Belen also confirmed that respondent repeatedly argued and explained its position, as follows:

> ...
>
> 87.
>
> Q: **During the filing of the Reply to PAN, Protest to FAN and reinvestigation stage, you mentioned that APPI repeatedly argued and explained its position, what is APPI's argument in relation to the disallowed sales discount?**
>
> A: APPI explained that these **sales discounts do not pertain to sales discounts to any senior citizen**. As such, there was **no basis for the BIR** to disallow the sales discounts for these were granted in compliance with the requirements under the Tax Code and the relevant regulations, administrative order and in accordance with APPI's sound business judgement.[103]
>
> ...

[101] Underscoring and emphasis in the original text and supplied.
[102] Supra at note 32.
[103] Emphasis in the original text and supplied.

It is settled that the taxpayer must be fully apprised of the factual and legal bases of the assessment, and must not be left unaware on how petitioner or his or her authorized representatives appreciated the explanations or defenses raised by respondent in connection with the assessment.[104] Correspondingly, as part of the due process requirement in the issuance of tax assessments, the BIR or petitioner must provide the reasons for rejecting respondent's explanations. It must also state the specific facts upon which the conclusions for assessing respondent are based. Likewise, these facts must appear on record. In the case at bar, it is clear that petitioner did not observe the requirement in the issuance of the subject FAN/FLD, and the subject FDDA.

It is also noted that respondent has repeatedly argued in its Reply to PAN and its Protest to FAN that: (1) the sales discount disallowed by petitioner pertained to trade discounts it had given to MDC to boost business performance; (2) the disallowed sales discount does not pertain to senior citizen discount; and, (3) RR No. 7-2010, as amended[105], is not applicable as it pertains to income tax treatment of sales discount provided to senior citizens. Respondent also mentioned in its Protest to FAN that petitioner has violated its right to due process, since he or she has failed to consider its arguments in its Reply to PAN. However, petitioner failed to give the reason or explanation why these arguments are being rejected.

In fact, petitioner or his or her duly authorized representative is aware that there were no sales made to senior citizens. Despite this, the findings in the FAN/FLD[106] still referred to these discounts as "senior citizen discount" regulated by RR No. 7-2010, as amended.[107] During her cross examination, RO Bacani testified:[108]

...
JUSTICE SAN PEDRO
...

Q: Ms. Witness, **the sales of the petitioner were not into individuals but to MDC, correct?**

8

[104] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra at note 82.
[105] Supra at note 96.
[106] Supra at note 13.
[107] Supra at note 96.
[108] Supra at note 50, pp. 9-10.

MS. BACANI

A: Yes, Your Honor.

JUSTICE SAN PEDRO

And there were no direct sales to senior citizens, it was MDC as retailer which will be selling to senior citizens?

MS. BACANI

A: Yes, You Honor.[109]

...

Thus, the lapses committed by petitioner's authorized ROs in the instant case indubitably violated respondent's right to due process, as recognized under Section 228[110] of the NIRC of 1997, as amended, *vis-à-vis* Sections 3.1.3 and 3.1.5 of RR No. 12-99, as amended. Consequently, the subject deficiency VAT assessment is rendered void.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[111] Relative thereto, a void assessment bears no valid fruit.[112] Such being the case, the subject VAT assessment cannot be enforced against respondent, and the BIR has no right to collect the same.

With the foregoing disquisitions, the Court *En Banc* sees no cogent or compelling reason to deviate from the Special Third Division's findings and conclusions. Equally, with the questioned assessment against respondent having been found void and ineffective, We see no need to proceed with an exhaustive discussion or resolution of the other issues raised.

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 29 June 2023 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 23 January 2023 and assailed Resolution dated

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109 Emphasis supplied.
110 Supra at note 70.
111 Supra at note 82.
112 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014.

04 May 2023, of the Special Third Division in CTA Case No. 10057, entitled *Ajanta Pharma Philippines Inc. ("APPI") v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice