REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

DEL MONTE PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9766**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **FABON-VICTORINO,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 15 2019 11:14 am

x - x

DECISION

DEL ROSARIO, P.J.:

This Petition for Review, filed by petitioner Del Monte Philippines, Inc.[1] against respondent Commissioner of Internal Revenue, seeks to nullify, reverse and set aside respondent's assessment against petitioner for surcharge, interest and compromise penalty in the amount of Six Million Seven Hundred Ninety Six Thousand Four Hundred Seventy Eight Pesos and Sixty Four Centavos (₱6,796,478.64) for alleged late payment of petitioner's Withholding Tax on Compensation for the month of December 2013; and the corresponding Notice of Denial dated October 10, 2016, which denied petitioner's application for abatement of above-stated surcharge, interest and compromise penalty.

[1] The Petition for Review was filed pursuant to Section 3(a), Rule 8, Revised Rules of the Court of Tax Appeals.

THE PARTIES

Petitioner Del Monte Philippines, Inc. ("DMPI") is a corporation duly organized and existing under Philippine laws to engage in the business of processing, manufacturing, and packing of food products, with office address at 10th Floor, JY Campos Centre, 9th Avenue corner 30th Street, Bonifacio Global City, Taguig, Metro Manila.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue ("BIR"). The BIR is the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes. He may be served with orders and processes of this Honorable Court at the BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

On December 12, 2013, petitioner filed with the BIR, through the Electronic Filing and Payment System ("EFPS"), an electronic copy of its **original November 2013 Monthly Remittance Return of Income Taxes Withheld on Compensation** [referred to herein as Withholding Tax on Compensation ("WTC") Return] for a total amount of ₱26,739,317.66, with Filing Reference No. 011300008205342.[4] On December 16, 2013, petitioner paid the WTC due for the month of November 2013 in the amount of ₱26,739,317.66, using Filing Reference No. 011300008205342.[5]

On January 14, 2014, petitioner filed with the BIR, through the EFPS, an electronic copy of its **original December 2013 WTC Return** for a total amount of ₱27,090,147.14, with Filing Reference No. 011400008350720 issued by the BIR.[6]

Petitioner subsequently filed, through the EFPS, an **amended December 2013 WTC Return** on January 20, 2014, reflecting a total amount due of **₱26,926,896.72**, with **Filing Reference No.**

[2] The Parties, Petition for Review, CTA Docket, p. 11.
[3] Stipulation of Facts, Joint Stipulation of Facts and Issues ("JSFI"), CTA Docket, p. 212.
[4] Exhibit "P-5", CTA Docket, p. 245.
[5] Exhibit "P-6-2", CTA Docket, pp. 246.
[6] Exhibit "P-2", CTA Docket, pp. 238-239.

011400008378200.[7] On the same date, petitioner paid the WTC in the amount of **₱26,739,317.66,**[8] by erroneously using **Filing Reference No. 011300008205342**, which filing reference number pertains to the November 2013 WTC Return.[9]

Considering that the WTC for November 2013 was already paid, the EFPS Payment Details for November 2013 reflected two (2) payments -- the first payment on December 16, 2013 (in the amount of ₱26,739,317.66) and the second payment on January 20, 2014 (in the amount of ₱26,739,317.66).[10] Consequently, there was no payment reflected for December 2013.

Upon inquiry with the BIR Large Taxpayers Division - Makati, petitioner was informed that since it filed its Amended December 2013 WTC return and paid through the EFPS, **it had to pay the amount due for December 2013 using the correct Filing Reference Number as it was the only way to reflect payment for the December 2013 WTC Return**.[11]

On January 21, 2014, petitioner paid the entire amount due of ₱26,926,896.72 on its December 2013 WTC Return under the correct Filing Reference No. 011400008378200.[12]

On March 6, 2014, petitioner received an Audit Results/Assessment Notice (RPS[13]) dated February 20, 2014 from the BIR Large Taxpayer's Division - Makati.[14] The Audit Results/Assessment Notice (RPS) assessed petitioner for surcharge, interest and compromise penalty, in the total amount of ₱6,796,478.64, based on the WTC due (₱26,926,896.72) for its December 2013 WTC Return, as follows:

Particulars		**Payable**
Surcharge	₱	6,731,724.18
Interest (1/21/14) (1 day)	₱	14,754.46
Compromise	₱	50,000.00
Deficiency Tax Due	**₱**	**6,796,478.64**

---

[7] Exhibit "P-3", CTA Docket, pp. 240-241.
[8] Exhibit "P-6-1", CTA Docket, p. 246.
[9] Exhibit "P-13", Judicial Affidavit of Carmela S. Vilar, CTA Docket, p. 181.
[10] Exhibits "P-6", "P-6-1" and "P-6-2", CTA Docket, p. 246.
[11] Petitioner's "Memorandum", CTA Docket, pp, 275-276.
[12] Exhibit "P-8", CTA Docket, p. 249.
[13] Returns Processing System.
[14] Stipulation of Facts, JSFI, CTA Docket, p. 212; Exhibit "P-9", BIR Records, p. 4.

On March 11, 2014, petitioner filed an Appeal Letter to Mr. Alfredo V. Misajon, then OIC-ACIR Large Taxpayers Service – Makati, asking that only the difference between the December and November 2013 WTC due, in the amount of ₱187,579.06, be subjected to interest.[15]

On the same date, petitioner filed an Application for Abatement or Cancellation of Tax, Penalties and/or Interest Under Rev. Reg. No. 19-2007 (BIR Form No. 2110) with the BIR Large Taxpayers Service – Makati, citing the reason as "Late payment of tax under meritorious circumstance."[16]

On October 10, 2016, respondent issued the Notice of Denial,[17] which was received by petitioner on January 11, 2018.[18]

On February 12, 2018, petitioner filed the subject Petition for Review before this Court.[19]

On April 12, 2018, respondent posted his "Answer",[20] interposing the following special and affirmative defenses:

1. The Court of Tax Appeals ("CTA") is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction;

2. The CTA has no jurisdiction over the instant petition. The Decision appealable to the CTA is a decision on disputed assessment and not a decision denying the application for abatement. Hence, petitioner does not have any cause of action against respondent;

3. To exercise the power of abatement is to enter into a contract, hence, consent is essential. The mutuality of contracts hinders the courts from contracting for the parties;

---

[15] Exhibit "P-10", CTA Docket, pp. 150-151.
[16] Exhibit "P-11", CTA Docket, p. 152.
[17] Stipulation of Facts, JSFI, CTA Docket, p. 212; Exhibit "P-1" and "P-1-1", CTA Docket, p. 27.
[18] Stipulation of Facts, JSFI, CTA Docket, p. 211; Exhibit "P-1-2", CTA Docket, p. 27.
[19] CTA Docket, pp. 10-23.
[20] CTA Docket, pp. 54-66.

4. The exercise of the power of abatement is a waiver on the part of the government of its right to receive the contribution from its inhabitants, hence, the waiver must be voluntary;

5. Assuming the CTA has jurisdiction, petitioner failed to properly support its request for abatement under the law; and,

6. The collection of the surcharge and penalties accompanying the tax liabilities is justified.

On May 21, 2018, petitioner filed its Pre-Trial Brief,[21] while respondent filed his Pre-Trial Brief on May 22, 2018.[22]

On June 18, 2018, the parties filed their Joint Stipulation of Facts and Issues.[23] The Court terminated the Pre-Trial and issued a Pre-Trial Order on June 22, 2018.[24]

During trial, petitioner presented its evidence. Respondent's counsels, however, manifested during the hearing on July 9, 2018 that they will no longer be presenting any evidence since the case involves legal issues.[25]

On July 16, 2018, petitioner filed its "Formal Offer of Evidence",[26] with respondent's "Comment (Re: Formal Offer of Evidence)" filed on July 20, 2018.[27]

On August 7, 2018, the Court issued a Resolution admitting all of the exhibits offered by petitioner.[28]

With the filing of respondent's "Memorandum" on September 7, 2018,[29] and petitioner's "Memorandum" on September 17, 2018,[30] the case was submitted for decision on October 8, 2018.[31]

---

[21] CTA Docket, pp. 98-111.
[22] CTA Docket, pp. 165-169.
[23] CTA Docket, pp. 211-216.
[24] CTA Docket, pp. 218-222.
[25] CTA Docket, pp. 224-225.
[26] CTA Docket, pp. 227-237.
[27] CTA Docket, pp. 250-252.
[28] CTA Docket, pp. 254-255.
[29] CTA Docket, pp. 257-270.
[30] CTA Docket, pp. 271-300.
[31] CTA Docket, p. 305.

THE ISSUES

In their Joint Stipulation of Facts and Issues,[32] the parties submitted for resolution the following issues:

1. Whether the Notice of Denial is proper, given that (a) petitioner timely paid its December 2013 WTC, and/or (b) any overpayment for the November 2013 WTC can be offset against the December 2013 WTC.

2. Whether the Court has jurisdiction over the Petition for Review.

3. Assuming the Court has jurisdiction, whether petitioner is entitled to abatement under Section 204 of the 1997 National Internal Revenue Code ("NIRC"), as amended.

PARTIES' ARGUMENTS

In its Memorandum filed on September 17, 2018,[33] petitioner argues that: (i) the CTA has jurisdiction over the Petition as it falls under the "Other Matters" jurisdiction of the CTA; (ii) it is entitled to an abatement under Section 204(B)(1) of the NIRC of 1997, as amended as its case qualifies as a "Late Payment of Tax under meritorious circumstance" under Revenue Regulation ("RR") No. 13-2001, as amended by RR. No. 04-12 ("RR 13-2001"); (iii) the abatement should at least be partially granted as petitioner partially paid the amount due under the December WTC Return on 20 January 2014, thus, it should only be held liable for surcharge and interest on the unpaid portion; (iv) the manner by which the Notice of Denial was issued is a glaring picture of unfairness, gross injustice, and violation of due process; (v) the length of time it took respondent to decide on the abatement application and communicate this decision to petitioner did not comply with the period mandated under RR 13-01 to decide on abatement applications and violated petitioner's right to speedy disposition of cases; and, (vi) the Notice of Denial provided no factual and legal bases for the denial of petitioner's abatement application, in violation of petitioner's constitutional right to due process.

---

[32] CTA Docket, p. 212.
[33] CTA Docket, pp. 280-299.

On the other hand, respondent reiterated in his Memorandum filed September 7, 2018[34] all the Special and Affirmative Defenses raised in his Answer.

THE COURT'S RULING

CTA has jurisdiction over the case pursuant to Section 7(a)(1) of RA 1125, as amended

Respondent claims that the CTA has no jurisdiction to rule on its Notice of Denial of petitioner's application for abatement since it is not a decision on a disputed assessment. Petitioner, on the other hand, contends that CTA has jurisdiction over the case as it falls under the "Other Matters" jurisdiction of the CTA.

The Court rules in favor of petitioner.

The jurisdiction of the CTA is conferred by Republic Act ("RA") No. 1125, as amended by RA No. 9282. Specifically, Section 7 (a)(1) of RA No. 1125 provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
>
> xxx xxx xxx" (Emphasis supplied)

The Supreme Court has long established that the jurisdiction of the CTA is not limited to decisions on disputed assessments by the Commissioner of Internal Revenue (CIR), but also includes other matters involving the interpretation and implementation of the NIRC of 1997, as amended. In *Philippine Journalists, Inc. vs. Commissioner of*

[34] CTA Docket, pp. 259-268.

Internal Revenue,[35] the Supreme Court made the following clarification:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue**. xxx" (Emphasis supplied)

The Supreme Court explained further what falls under the phrase "other matters arising under this Code" in *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*,[36] to wit:

> "As the CIR aptly pointed out, **the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase "disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto" and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, <u>the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA</u>, <u>i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto</u>, not to those that involved the CIR's exercise of quasi-legislative powers**.
>
> In *Enrile v. Court of Appeals*, the Court, applying the statutory construction principle of *ejusdem generis*, explained the import of using the general clause "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs" in the enumeration of cases subject to the exclusive appellate jurisdiction of the CTA, saying that:
>
> "[T]he 'other matters' that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as *ejusdem generis*. (Emphasis and underscoring supplied)" (Emphases supplied)

---

[35] G.R. No. 162852, December 16, 2004.
[36] G.R. No. 207843, July 15, 2015.

ɱ

In *Qatar Airways Company With Limited Liability vs. Commissioner of Internal Revenue*,[37] the Court *En Banc*, citing *Philippine Journalists, Inc.*, upheld the jurisdiction of the CTA to review the CIR's denial of Qatar Airways Company With Limited Liability's application for abatement of surcharge, *viz.*:

> "Thus, under the law, respondent CIR has the sole authority to abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, under the following circumstances, namely, (1) its assessment is excessive or erroneous, or (2) if the administration costs involved do not justify the collection of the amount due.
>
> With that in mind, we shall now determine whether the CTA has jurisdiction over the subject of the present case.
>
> As succinctly pointed out by the Court in Division, the CTA has jurisdiction over the present case as it falls within the purview of Section 7 (a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282 and RA No. 9503 under other matters arising under the NIRC or other laws administered by the BIR. Xxx
>
> The Supreme Court, in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, clarified that:
>
>> 'The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. . .'
>
> **Unarguably, respondent's letter dated April 3, 2014 is the final determination of the petitioner's application for abatement of surcharge.**
>
> Thus, considering that the **denial of petitioner's application for abatement of surcharge** involves the interpretation and application of Section 204 (B) of the NIRC of 1997, as amended, **it clearly falls under the phrase 'other matters arising under the NIRC**,' pursuant to Section 7 (a) (1) of R.A. No. 1125, as amended." (Boldfacing supplied)

Indubitably, the phrase "other matters arising under this Code" pertains to cases that are to begin with, subject to the exclusive appellate jurisdiction of the CTA.

---

[37] CTA EB Case No. 1468, September 5, 2017.

ᴍ

In this case, the Notice of Denial in question arose from the disputed Audit Results/Assessment Notice (RPS) assessing petitioner for surcharge, interest and compromise penalty, a controversy clearly within the jurisdiction of the CTA. The denial of petitioner's application for abatement is properly subsumed under the phrase "other matters arising under the National Internal Revenue Code."

Anent the timeliness of the subject Petition for Review, records show that petitioner received the Notice of Denial on January 11, 2018.[38] Since the subject Petition for Review was filed on February 12, 2018 (February 10 and 11 being a Saturday and a Sunday, respectively),[39] the Petition for Review was timely filed within the thirty-day reglementary period provided under Section 11 of RA 1125, as amended by RA 9282.

The Audit Results / Assessment Notice (RPS) is void for having been issued in violation of petitioner's right to due process

After a thorough examination of the records of the case, the Court finds a number of glaring deficiencies in the manner the Audit Results / Assessment Notice (RPS) dated February 20, 2014 was issued that violated petitioner's right to due process and consequently, rendered the Audit Results / Assessment Notice (RPS) null and void.

Petitioner received the Audit Results/Assessment Notice (RPS), which assessed petitioner for surcharge, interest and compromise penalty, in the total amount of ₱6,796,478.64, from the BIR Large Taxpayer's Division - Makati.[40]

The NIRC and prevailing jurisprudence prescribe the due process requirement to be observed in issuing deficiency tax assessments. Strict compliance with these requirements is necessary to make an assessment valid.

---

[38] Stipulation of Facts, JSFI, CTA Docket, p. 211; Exhibit "P-1-2", CTA Docket, p. 27.
[39] CTA Docket, pp. 10-23.
[40] Stipulation of Facts, JSFI, CTA Docket, p. 212; Exhibit "P-9", BIR Records, p. 4.

Record shows, however, that there was no Letter of Authority ("LOA"), or any other document for that matter, that preceded the issuance of the aforesaid Audit Results/Assessment Notice (RPS), bestowing the revenue officers ("RO") with any authority to examine petitioner's pertinent tax records. Moreover, no Preliminary Assessment Notice (PAN) was issued prior to the issuance of the aforesaid Audit Results/Assessment Notice (RPS).

Absence of an LOA

The NIRC of 1997, as amended, is clear and categorical in requiring an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.[41] Section 6 thereof provides:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" (Emphasis supplied)

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphases supplied)

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[42] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals,

---

[41] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[42] G.R. No. 183408, July 12, 2017.

declared that the CTA can resolve the issue on the authority of the revenue officers to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda. For want of valid LOA, the Supreme Court ultimately resolved to declare the assessment void.

Moreover, in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue,***[43] the Supreme Court emphasized the importance of an LOA and the authority of revenue officers who conducted the audit and examination of the taxpayer. It elucidated that "apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the **rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records**: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers."** It went on further to declare as **void the subject disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records.**

In the present case, it is undisputed that no LOA was issued by respondent to examine the records of petitioner prior to the issuance of the Audit Results/Assessment Notice (RPS). Since the Audit Results/Assessment Notice (RPS) was issued, **without an audit being conducted pursuant to a valid LOA**, the same is patently void. Being a void assessment, the Audit Results/Assessment Notice (RPS) bears no fruit[44] and must be slain at sight.

Absence of PAN

As aforestated, Audit Results/Assessment Notice (RPS) dated February 20, 2014 was issued outright, *sans* any PAN.

Perusal of the subject Audit Results/Assessment Notice (RPS) reveals that the same was categorized as a Return Processing System ("RPS") assessment notice which was issued following the procedure laid down in Revenue Memorandum Order (RMO) No. 17-2006 dated August 10, 2006. RMO No. 17-2006 was issued by the BIR to expedite the processing and issuance of a valid RPS/manual assessment

---

[43] G.R. No. 222743, April 5, 2017.
[44] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

notices and to ensure collection of additional revenues for the government.

Under RMO No. 17-2006, the issuance of RPS assessment notice is not preceded by the issuance of an LOA and PAN. Section II (C) thereof distinguishes RPS assessment notices from **assessment notices issued arising from regular audit/investigation of returns** by stating that RPS assessment notices are issued pursuant to Section 228 of the NIRC of 1997, as amended, **in instances when no prior notice (e.g., preliminary assessment notice) is required before final assessment is issued**.

Indeed, Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, enumerate the instances when no pre-assessment notice is required, *viz.*:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, **That a pre-assessment notice shall not be required in the following cases**:
>
> **(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or**
>
> **(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or**
>
> **(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or**
>
> **(d) When the excise tax due on excisable articles has not been paid; or**
>
> **(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.**
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx" (Boldfacing supplied)

M

> "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 xxx.
>
> xxx
>
> 3.1.2 **Exceptions to Prior Notice of the Assessment. — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases**:
>
> (i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
>
> (ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (iv) When the excise tax due on excisable articles has not been paid; or
>
> (v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> **In the above-cited cases, a FLD/FAN shall be issued outright**." (Boldfacing supplied)

The Court, however, finds that the facts of the case at bar do not fall on any of the above-stated instances that would validly allow BIR to dispense with the issuance of a PAN.

M

Undoubtedly, there is no mathematical error in the computation of the tax due under Section 228 (a) and no discrepancy was determined between the tax withheld and the amount actually remitted by the withholding agent under Section 228 (b). Moreover, the enumerations under Section 228 (c), (d) and (e) are beyond doubt inapplicable in this case.

Truth to tell, the present case involves a late remittance of withholding tax which apparently arose from an error in the encoding of the Filing Reference Number. Considering that none of the conditions under Section 228 of the NIRC of 1997, as amended, anent the exemption from pre-assessment notice exists, respondent is not justified in outrightly issuing the Audit Results/Assessment Notice (RPS), *sans* any PAN.

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[45] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[46] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.*:

> "**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.
>
> x x x
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process**

---

[45] G.R. Nos. 201398-99, October 3, 2018.
[46] G.R. Nos. 201418-19, October 3, 2018.

> **requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.**
>
> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:
>
>> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)
>
> In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice** as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.
>
> Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:
>
>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>>
>> x x x x
>>
>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and

M

> operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed.** (Emphasis supplied)

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

To reiterate, respondent failed to observe the due process requirements when it issued the Audit Results/Assessment Notice (RPS), *sans* any LOA and PAN. This wanton disregard of petitioner's right to due process rendered the Audit Results/Assessment Notice (RPS) void, fruitless and without any legal significance.

In light of the foregoing, the Court will no longer belabor the issues raised in the present Petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the Audit Results/Assessment Notice dated February 20, 2014 assessing petitioner for payment of surcharge, interest and compromise penalty in the amount of ₱6,796,478.64 for the late payment of petitioner's Withholding Tax on Compensation Return for the month of December 2013 and the subsequent Notice of Denial dated October 10, 2016 are **CANCELLED** and **SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
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