REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

DIGOS MARKET VENDORS MULTI-PURPOSE COOPERATIVE (DIMAVEMC), represented by its CHAIRMAN OF THE BOARD OF DIRECTORS, CONSTANCIO L. RABAYA, *Petitioner,*	**CTA Case No. 9131** Members: **DEL ROSARIO, *P.J.***, *Chairperson, and* **MANAHAN**, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 16 2020 3:11pm

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DECISION

MANAHAN, *J.*:

This *Petition for Review* prays for the cancellation of the respondent's assessment of tax deficiencies against petitioner for calendar year 2006 and enjoining of respondent from issuing any warrant of distraint and/or levy on petitioner's properties and making the injunction permanent, if one was issued.[1]

THE PARTIES

Petitioner Digos Market Vendors Multi-Purpose Cooperative alleges that it is a cooperative duly organized and existing in accordance with Republic Act (RA) No. 6938 (Cooperative Code of 2008), with principal place of business and office address at Magsaysay corner Luna Street, Barangay Zone 3, City of Digos, Province of Davao Del Sur, represented

[1] Docket, CTA Case No. 9131, Summary of the Case, Pre-Trial Order dated March 14, 2017, p. 295.

by Mr. Constancio L. Rabaya, per authorization by petitioner's Board of Directors.[2]

Respondent Commissioner of the Bureau of Internal Revenue (BIR) is the official of the Republic of the Philippines, charged with the duties of assessing and collecting internal revenue taxes, with the power, *inter alia,* to decide disputed assessments, and such other matters vested in him in the National Internal Revenue Code (NIRC) and other special laws. He holds office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[3]

THE FACTS

On August 29, 2007, the *Letter of Authority* (LOA) No. 200700003875 signed by Regional Director Marcelinda Omila-Yap of Revenue Region No. 19, Davao City, was issued, authorizing Revenue Officer (RO) Vilma M. Arendain, with the supervision of Group Supervisor Juliet R. Dayupay, to examine petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for January 1, 2006 to December 31, 2006. The said LOA was revalidated on February 19, 2008.[4]

On April 21, 2010, petitioner received the *Preliminary Assessment Notice* (PAN) dated April 7, 2010, with attached *Details of Discrepancies*, finding due from petitioner deficiency income, value-added tax (VAT), final withholding tax (FWT), expanded withholding tax (EWT), and documentary stamp tax (DST), including increments, for calendar year 2006, in the total amount of ₱4,108,625.83.[5]

On the *same* date, petitioner also received a copy of the *Formal Letter of Demand* (FLD) dated April 8, 2010 from the BIR, with attached *Details of Discrepancy,* and *Audit Results/Assessment Notices* (FAN) for deficiency income tax, VAT, EWT, FWT, and DST, including increments, for calendar

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[2] Docket, Par. 1, The Parties, *Amended Petition for Review*, p. 95.
[3] *Id.*, Par. 6, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 261.
[4] *Id.*, Par. 10, Joint Stipulation of Facts, JSFI, p. 262; Exhibits "R-1" and "R-6", BIR Records, pp. 32 and 39.
[5] *Id.*, Pars. 7 and 10(f), Joint Stipulation of Facts, JSFI, pp. 261 to 262; Docket, Exhibits "P-6" and "P-7"/Annexes "F" and "G" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 30 to 31, and 63, respectively.

year 2006, finding petitioner liable therefor in the *same* total amount of ₱4,108,625.83.[6]

Respondent then issued to petitioner the *Final Notice* dated August 26, 2011,[7] requesting the payment of the said amount, within ten (10) days from receipt thereof; otherwise, the BIR will collect the same through warrant of distraint and/or levy or court action, without further delay.

Thereafter, petitioner received a *Final Notice Before Seizure* (FNBS) dated September 29, 2011.[8]

Consequently, petitioner, through its General Manager, sent to Ms. Herma G. Escudero, Revenue District Officer of Revenue District Office (RDO) No. 115, Digos City, Davao Del Sur, the letter dated October 14, 2011, stating that petitioner being a cooperative, enjoys tax-exempt status.[9]

A *Warrant of Distraint and/or Levy* (WDL) dated October 27, 2011 was then issued by respondent to petitioner.[10]

On June 10, 2013, petitioner filed with the Revenue District Officer of the BIR in Digos City a letter on even date, requesting reconsideration of the tax assessments for taxable year 2006.[11]

Subsequently, petitioner received on August 13, 2015 a copy of the *Notice of Denial* dated June 15, 2015 with attached *Evaluation Sheet* signed by the National Evaluation Board, signifying the denial of petitioner's application/offer for compromise settlement.[12]

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[6] Docket, Pars. 7 and 10(g) to (l), Joint Stipulation of Facts, JSFI, pp. 261 to 262; Docket, Exhibits "P-8" and "P-14"/Annexes "H" to "N" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 32 to 38, and 63, respectively.
[7] BIR Records, Exhibit "R-10", p. 174.
[8] Docket, Par. 8, Joint Stipulation of Facts, JSFI, p. 262; Docket, Exhibits "P-8" and "P-14"/Annex "O" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 39 and 63, respectively.
[9] *Id.*, Exhibit "P-16"/Annex "P" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 40 to 42, and 63, respectively.
[10] BIR Records, Exhibit "R-12", p. 186.
[11] Docket, Exhibit "P-17"/Annex "Q" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 43 to 44, and 63, respectively.
[12] *Id.*, Par. 1 to 3, Joint Stipulation of Facts, JSFI, pp. 260 to 261; Docket, Exhibits "P-1" to "P-5"/Annexes "A" to "E" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 25 to 29, and 63, respectively.

On August 28, 2015, petitioner filed the instant *Petition for Review.*[13] The case was initially raffled to this Court's Third Division.

Thereafter, petitioner filed on November 10, 2015 a *Motion to Admit Herein Attached Amended Petition,*[14] stating that the amendment consists merely of the name of the person who will represent petitioner, inasmuch as petitioner's representative by the name of General Manager Jocelyn S. Labajo had passed away, and that petitioner's deceased representative is substituted by petitioner's Chairman of the Board by the name of Constancio L. Rabaya.

Respondent then filed on November 13, 2015 a *Motion for Leave to Admit Attached Answer with Opposition to the Application for TRO and/or Preliminary Injunction.*[15] The *Answer with Opposition to the Application for TRO and/or Preliminary Injunction,*[16] interposed the following special and affirmative defenses, to wit:

1. The Honorable Court Has No Jurisdiction Over the Instant Petition;

2. The Petition States No Cause of Action;

3. The Right of Respondent to Assess and Collect from Petitioner the Subject Deficiency Taxes has not yet Prescribed; and

4. The Assessments issued against petitioner are valid and lawful.

In the Resolution dated December 17, 2015,[17] the Court granted petitioner's *Motion to Admit Herein Attached Amended Petition,* and admitted petitioner's *Amended Petition for Review* as part of the records of the case.

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[13] Docket, pp. 10 to 24.
[14] *Id.*, pp. 89 to 91.
[15] *Id.*, pp. 58 to 61.
[16] *Id.*, pp. 63 to 74.
[17] Docket, pp. 155 to 157.

On February 1, 2016, the hearing on petitioner's application for Temporary Restraining Order and/or Writ of Preliminary Injunction was held.[18]

Petitioner presented documentary and testimonial evidence. For its testimonial evidence, petitioner presented Mr. Constancio L. Rabaya,[19] petitioner's chairman of the board and attorney-in-fact in this case.

On February 5, 2016, respondent transmitted the *BIR Records* for the instant case.[20]

Subsequently, the *Memorandum of Petitioner* was filed on February 19, 2016.[21]

Thereafter, petitioner filed a *Motion to Admit Belated Offer of Exhibits.*[22] In the Resolution dated March 23, 2016,[23] the Court admitted petitioner's *Motion,* in the interest of substantial justice, and admitted petitioner's *Submission of Documentary Exhibits.*[24] In the same Resolution, the Court gave respondent five (5) days from notice to file his comment/opposition to petitioner's *Submission of Documentary Exhibits.* The Court also held in abeyance the parties' filing of their respective Memorandum until after the resolution of the pending incident.

On April 1, 2016, respondent filed his *Comment to Petitioner's Formal Offer of Evidence.*[25] In the Resolution dated April 7, 2016,[26] the Court admitted petitioner's exhibits, and gave the parties fifteen (15) days from notice, within which to file their respective memoranda.

Respondent failed to file his memorandum,[27] while the *Memorandum for the Petitioner* was filed on May 5, 2016.[28]

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[18] Docket, Minutes of the hearing held on February 1, 2016, p. 158.
[19] *Id., Direct Testimony by Way of Judicial Affidavit of Constancio L Rabaya,* pp. 144 to 152.
[20] *Id.*, Transmittal letter dated February 3, 2016, p. 170.
[21] *Id.*, pp. 175 to 184.
[22] *Id.*, pp. 187 to 188.
[23] *Id.*, pp. 194 to 195.
[24] *Id.*, pp. 189 to 190.
[25] *Id.*, pp. 196 to 197.
[26] *Id.*, pp. 201 to 202.
[27] *Id.*, Records of Verification dated April 27, 2016 issued by the Judicial Records Division of this Court, p. 203.

In the Resolution dated June 1, 2016,[29] the Court denied, for lack of merit, petitioner's *Application for TRO and/or Preliminary Injunction*, which was deemed as a *Motion for Suspension of Collection of Taxes*. The Court, in the Resolution dated June 7, 2016,[30] also considered moot petitioner's *Memorandum* filed on May 5, 2016, in view of the said Resolution dated June 1, 2016, denying petitioner's *Application for TRO and/or Preliminary Injunction.*

On September 20, 2016, petitioner filed its *Pre-trial Brief*;[31] while *Respondent's Pre-trial Brief* was submitted on November 24, 2016.[32]

Subsequently, the parties filed their *Joint Stipulation of Facts and Issues* on December 12, 2016.[33] The Pre-Trial Order dated March 14, 2017 was issued,[34] deeming the termination of the Pre-Trial Conference.

During trial, petitioner presented documentary and testimonial evidence. For its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Ms. Juliet Borja,[35] petitioner's administrative officer; and (2) Mr. Constancio L. Rabaya,[36] petitioner's chairman of the Board of Directors and attorney-in-fact in this case.

On May 11, 2017, petitioner filed its *Formal Offer of Evidence* (FOE).[37] However, petitioner failed to attach to it any proof that the adverse party was furnished with its FOE.[38] Thus, in the Resolution dated June 15, 2017,[39] the Court directed petitioner to submit to the Court within ten (10) days from notice, any proof of service showing that it furnished respondent a copy of its FOE, and granted respondent ten (10) days from notice to file his comment/opposition to petitioner's FOE.

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[28] Docket, pp. 204 to 211.
[29] *Id.*, pp. 215 to 224.
[30] *Id.*, pp. 227.
[31] *Id.*, pp. 229 to 231.
[32] *Id.*, pp. 234 to 241.
[33] *Id.*, pp. 260 to 268.
[34] *Id.*, pp. 295 to 303.
[35] *Id.*, Exhibit "P-21" (actually marked as Exhibit "P-25"), pp. 304 to 308; Docket, Minutes of the hearing held on, and Order dated, March 27, 2017, pp. 311 to 312.
[36] *Id.*, Exhibit "P-22" (actually marked as Exhibit "P-23"), pp. 314 to 321; Docket, Minutes of the hearing held on, and Order dated, April 25, 2017, pp. 327 to 329.
[37] *Id.*, pp. 334 to 338.
[38] *Id.*, Records of Verification issued by the Judicial Records Division of this Court dated June 2, 2017, p. 349.
[39] *Id.*, pp. 351 to 352.

Subsequently, respondent filed on July 13, 2017 his *Omnibus Motion I. To Admit Attached Comment to Petitioner's Formal Offer of Evidence II To Cancel the Initial Presentation of Evidence for Respondent Scheduled on July 18, 2017,*[40] praying, *inter alia,* that respondent's *Comment, Re: Formal Offer of Evidence* be admitted.

Petitioner then filed on July 14, 2017 its *Manifestation* with attached affidavit of proof of service and documents showing that respondent was furnished (and received) a copy of its *Formal Offer of Exhibits.*[41]

In the Resolution dated July 18, 2017,[42] the Court granted respondent's *Omnibus Motion,* and admitted respondent's *Comment Re: Petitioner's Formal Offer of Evidence.* The Court also noted petitioner's *Manifestation* in the Resolution dated July 21, 2017.[43]

Thereafter, in the Resolution dated August 1, 2017,[44] the Court admitted petitioner's exhibits.

In the Order dated September 27, 2018,[45] this case was transferred to this Court's First Division.

Respondent likewise presented documentary and testimonial evidence. For his testimonial evidence, respondent presented the following BIR employees: (1) Ms. Vilma Arendain,[46] a Revenue Officer III (Assessment); and (2) Mr. Rodrigo M. Rellon,[47] a Chief of the Collection Section.

On June 4, 2019, *Respondent's Formal Offer of Evidence* was filed.[48] Petitioner failed to file its comment to respondent's FOE.[49]

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[40] Docket, pp. 357 to 360.
[41] *Id.*, pp. 365 to 366.
[42] *Id.*, pp. 374 to 375.
[43] *Id.*, p. 377.
[44] *Id.*, pp. 380 to 381.
[45] *Id.*, p. 445.
[46] *Id.*, Exhibit "R-8", Docket, pp. 392 to 396; Minutes of the hearing held on, and Order dated, September 19, 2017, pp. 397 to 398.
[47] *Id.*, Exhibit "R-14", Docket, pp. 427 to 430; Minutes of the hearing held on, and Order dated, March 12, 2019, pp. 449 to 452.
[48] *Id.*, pp. 472 to 477.
[49] *Id.*, Records Verification issued by the Judicial Records Division of the Court dated July 1, 2019, p. 479.

In the Resolution dated August 1, 2019,[50] the Court admitted respondent's exhibits, and gave the parties a period of thirty (30) days from notice, within which to file their simultaneous memoranda.

On September 20, 2019, respondent filed his *Memorandum,*[51] while petitioner belatedly filed its *Memorandum* on November 6, 2019.[52]

The Court deemed the case submitted for decision on November 27, 2019.[53]

ISSUES

The issues for resolution are as follows:[54]

"1. Whether petitioner is liable to pay for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Final Withholding Tax and Documentary Stamp Tax for taxable year 2006 in the amount of P 4,108,625.83 as well as deficiency and delinquency interests as provided in Sections 248 and 249 of the NIRC.

2. Whether or not the right of respondent CIR to assess petitioner of its tax deficiencies for calendar year 2006 has allegedly prescribed.

3. Whether or not the right of respondent CIR to collect petitioner's tax deficiencies for calendar year 2006 is allegedly barred by the statute of limitation.

4. Whether or not, petitioner as an allegedly duly registered cooperative enjoys a tax exempt status."

Petitioner's Arguments

Petitioner argues that the right of respondent to assess it of alleged deficiency taxes for calendar year 2006 had already

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[50] Docket, pp. 485 to 486.
[51] *Id.*, pp. 497 to 510.
[52] *Id.*, pp. 521 to 529.
[53] *Id.*, Resolution dated November 27, 2019, p. 533.
[54] *Id.*, Pars. 1 to 4, Joint Stipulation of Issues, JSFI, p. 263.

prescribed; and that the right to collect from petitioner's alleged tax deficiencies is time-barred.

Respondent's Arguments

Respondent, on the other hand, contends that the Court has no jurisdiction to try and hear the instant case, considering that the deficiency tax assessments against petitioner have already become final, executory and unappealable, for its failure to file its protest to the PAN and FLD, within the period provided under Section 228 of the NIRC of 1997 and its implementing regulations, Revenue Regulations (RR) No. 12-99; and that the power to compromise tax liabilities is a purely executive function delegated by the legislature and cannot in any way be appealed to the Court.

Furthermore, respondent claims that his right to assess and collect from petitioner the deficiency taxes has not yet prescribed; that respondent's assessment for deficiency withholding tax under the NIRC of 1997 is imprescriptible; and that the assessment issued against petitioner is imbued with factual and legal bases.

RULING OF THE COURT

The instant *Petition for Review* has merit.

This Court has jurisdiction to entertain the present appeal.

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[55] as amended by RA No. 9282,[56] provides as follows, to wit:

> "SECTION 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[55] AN ACT CREATING THE COURT OF TAX APPEALS.

[56] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (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 **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*
>
> "SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> xxx xxx xxx." *(Emphases ours)*

Based on the foregoing Section 7(a)(1), the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent 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 BIR.[57] The wording of the provision is clear and simple.[58]

Relative thereto, one of the many cases that may arise out of the NIRC of 1997 is a decision of respondent pertaining to the exercise of his power to compromise the payment of any internal revenue tax, pursuant to Section 204(A) thereof, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –
>
> The Commissioner may –
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:

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[57] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[58] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (P1,000.000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners."

Moreover, We do not subscribe to respondent's contention that the power to compromise tax liabilities is a purely executive function delegated by the legislature and cannot in any way be appealed to this Court.

In *Philippine National Oil Company vs. Court of Appeals, et al., etseq.*,[59] the Supreme Court held as follows:

"It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; **but when the exercise of such authority of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.

The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of grave abuse of discretion and/or whimsical exercise of jurisdiction. **The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.**

<u>The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246[60] of the NIRC of 1977, as amended, <u>can only be exercised under certain circumstances specifically identified in said statutes</u>. The BIR Commissioner would have to exercise his discretion <u>within the parameters set by the law</u>, and

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[59] G.R. Nos. 109976 and 112800, April 26, 2005.
[60] Now Section 204(A) of the NIRC of 1997. *an*

> **in case he abuses his discretion, <u>the CTA may correct such abuse if the matter is appealed to them</u>.**" *(Emphases and underscoring ours)*

Such being the case, since what is being appealed to this Court is the denial of petitioner's application for compromise settlement, as embodied in the *Notice of Denial* dated June 15, 2015,[61] this Court is undoubtedly vested with jurisdiction to entertain the present *Petition for Review.*

And considering that the said *Petition for Review* was filed before this Court on August 28, 2015,[62] or within thirty (30) days from receipt of the said *Notice of Denial* on August 13, 2015,[63] the present appeal was timely made, pursuant to the aforequoted Section 11 of RA No. 1125, as amended by RA No. 9282.

This Court is likewise empowered to rule on related issues necessary to achieve an orderly disposition of the case.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[64] this matter was already settled by the Supreme Court, *viz*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* —
> >
> > xxx xxx xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule upon related**

[61] Refer to Par. 1 to 3, Joint Stipulation of Facts, JSFI, pp. 260 to 261; Docket, Exhibits "P-1" to "P-5"/Annexes "A" to "E" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 25 to 29, and 63, respectively.
[62] Docket, pp. 10 to 24.
[63] Par. 1, Joint Stipulation of Facts, JSFI, p. 260.
[64] G.R. No. 183408, July 12, 2017.

issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied)*

Thus, the Supreme Court clearly affirmed this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case. Such being the case, this Court is authorized to resolve the following related issue necessary to achieve such disposition of the instant case, to wit:

"Whether the BIR violated petitioner's right to due process in the issuance of the subject tax assessments."

This Court resolves this issue in favor of petitioner.

The BIR failed to comply with due process requirements in the issuance of the subject assessment.

Section 228 of the 1997 NIRC, as amended, provides:

"SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: . . .

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx." *(Emphases added)*

Based on the foregoing provision, it is clear that the law mandates that the taxpayer shall be required to respond to the PAN, "[w]*ithin a period to be prescribed by implementing rules and regulations,"* and that in case such taxpayer fails to respond, respondent or his duly authorized representative shall issue an assessment based on his findings.

Implementing Section 228 of the NIRC of 1997 is Section 3.1.2 of RR No. 12-99,[65] which reads:

> "SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 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 (see illustration in ANNEX A hereof). **If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, 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." *(Emphasis and underscoring supplied)*

On the basis thereof, it is clear that part of the due process in the issuance of deficiency tax assessment is that the taxpayer shall have fifteen (15) days from receipt of the PAN to respond thereto, and only after it fails to do so within such period, will it be considered in default and an assessment notice will be issued. In other words, respondent or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. To stress, such a

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[65] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In this case, it is undisputed that petitioner received the PAN dated April 7, 2010 on April 21, 2010.[66] Counting fifteen (15) days from April 21, 2010, petitioner had until May 6, 2010, within which to respond to the PAN. However, without giving opportunity to petitioner to respond to the PAN, respondent already issued the FLD and FAN on April 8, 2010 or a day after its issuance of the PAN. What is worse is that the said FLD and FAN were received by petitioner also on April 21, 2010, or the same day it received the said PAN.[67] Such being the case, there is a clear violation of petitioner's right to due process in the issuance of the subject tax assessments.

Consequently, **in view of the violation of petitioner's right to due process** provided under Section 228 of the NIRC of 1997, and RR No. 12-99, **the FLD** and **the FAN as well as the subsequent issuances of respondent** to petitioner, including the WDL dated October 27, 2011, **are all considered void**.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[68] , the Supreme Court ruled that

> "It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude."

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[66] Docket, Transcript of Stenographic Notes of the hearing held on March 27, 2017, pp. 24 to 26. Refer also to Pars. 7 and 10(f), Joint Stipulation of Facts, JSFI, pp. 261 to 262; Docket, Exhibits "P-6" and "P-7"/Annexes "F" and "G" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 30 to 31, and 63, respectively.

[67] Docket, Refer to Pars. 7 and 10(g) to (l), Joint Stipulation of Facts, JSFI, pp. 261 to 262; Docket, Exhibits "P-8" and "P-14"/Annexes "H" to "N" of the *Petition for Review* vis-à-vis Par. 2, *Answer*, pp. 32 to 38, and 63, respectively.

[68] G.R. No. 185371, December 8, 2010.

In *Commissioner of Internal Revenue v. Missouri Square Inc.*[69], this Court, citing the disquisitions of the Court in Division, reiterates that:

> "It is settled doctrine that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored.
>
> In this case, fairness was ignored by respondent when no opportunity to contest the issued PAN was granted to petitioner. For lack of said opportunity, there was a violation of petitioner's right to due process."

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.**[70]

In other words, the comprehensiveness of the right to due process encompasses both substantial and procedural rights and **the failure of the respondent to <u>strictly comply</u> with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.**[71]

In view of the nullity of the subject tax assessments, it is no longer necessary to address or discuss the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.** Accordingly, the deficiency income, VAT, EWT, FWT, and DST assessments against petitioner for calendar year 2006 in the total amount of ₱4,108,625.83 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. The FLD/FAN dated April 8, 2010, the FNBS dated September 29, 2011, the WDL dated October 27, 2011, and the *Notice of Denial* dated

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[69] CTA EB No. 1521, January 24, 2018.
[70] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829, 836 (1988).
[71] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra*, citing *Tupas vs. Court of Appeals*, G.R. No. 89571, February 6, 1991.

June 15, 2015, insofar as petitioner is requested to pay the amount of ₱3,535,897.87 including all the increments incident to delinquency, are **REVERSED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice