Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

APO INTERNATIONAL MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 9071**
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 07 2020 4:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review assailing and seeking to nullify the following:

a) Letter-Decision dated 16 April 2015 signed by Respondent CIR denying petitioner's Motion for Reconsideration on the Final Decision on Disputed Assessment (FDDA);

b) FDDA issued and signed by OIC Assistant Commissioner, Large Taxpayers Service, Alfredo V. Misajon; and

c) Formal Letter of Demand issued and signed by OIC Assistant Commissioner, Large Taxpayers Service, Alfredo V. Misajon.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines, registered with the Securities and Exchange Commission on 06 September 1978 with SEC Registration No. 81787 and with registered office address at

415 Arayat Street, Mandaluyong City. Petitioner is engaged in the business of paper converting.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue, an agency of the Republic of the Philippines under the Department of Finance, and with office address at BIR Building, Agham Road, Diliman, Quezon City. The BIR is tasked to assess and collect national internal revenue taxes, among other things.

THE ANTECEDENTS

On September 21, 2011, petitioner received a copy of a Letter of Authority (LOA) No. 116-2011-00000021 dated September 20 2011 for the audit and examination of petitioner's book of accounts for taxable year 2010.[1]

On August 27, 2013, petitioner received a Notice of Informal Conference finding petitioner liable for deficiency Income Tax, Value Added Tax (VAT), Improperly Accumulated Earnings Tax and Expanded Withholding Tax, in the aggregate amount of ₱121,731,325.16.[2]

Thereafter, on October 4, 2013, petitioner received the Preliminary Assessment Notice (PAN).[3]

On September, 9, 2013, petitioner executed a waiver of the Defense of Prescription under the Statutes of Limitation and accepted by respondent CIR through Assistant Commissioner Misajon September 13, 2013.[4]

On November 15, 2013, petitioner received the Formal Letter of Demand (FLD) finding petitioner liable for deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax in the amounts of ₱78,384,643.51, ₱35,891,738.32 and ₱346,364.26, respectively.[5]

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[1] Division Docket, Joint Stipulation of Facts and Issue (JFSI), Vol. II, pp. 1034-1045.
[2] Ibid.
[3] Ibid.
[4] Division Docket, Petition for Review, pp. 10-284.
[5] Division Docket, Joint Stipulation of Facts and Issue (JFSI) pp. 1034-1045.

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Petitioner did not contest but paid the assessment on the Expanded Withholding Tax in the amount ₱346,364.26.[6] However, on December 9, 2013, petitioner filed a protest contesting the assessment for deficiency Income Tax and Value-Added Tax.

On May 19, 2014, petitioner received the Final Decision on Disputed Assessment (FDDA) denying for lack of merit its protest on the FLD.[7]

On June 18, 2014, petitioner filed a Motion for Reconsideration on the FDDA to respondent Commissioner of Internal Revenue (CIR).[8]

On May 19, 2015, petitioner received from respondent CIR the Letter-Decision dated April 16, 2015 denying with finality its Motion for Reconsideration.[9]

Hence, the instant petition was filed.

In the Answer filed on September 8, 2015, respondent CIR raised the following special and affirmative defenses, *viz*:

> ***"Petitioner has failed to comply with the mandatory and jurisdictional thirty (30) day period provided by the Tax Code to appeal the disputed assessment.***
>
> *5. As admitted by petitioner, it received the Formal Letter of Demand (FLD) on 15 November 2013. It filed its formal protest on said FLD on 9 December 2013.*
>
> *6. Pursuant to Section 228 of the National Internal Revenue Code (Tax Code), the* ***Commissioner of Internal Revenue or any of its representatives has 180 days to decide the protest filed by the taxpayer****. It states:*
>
> > *'**SECTION 228. Protesting of Assessment**. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:*

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[6] Division Docket, Petition for Review, pp. 10-284.
[7] Ibid.
[8] Ibid.
[9] Ibid.

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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.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable

7. Applying the above-quoted provision, the Commissioner of Internal Revenue or her duly authorized representative only has 180 days form 9 December or until 7 June 2014 within which to act on petitioner's disputed assessment.

8. Petitioner, on the other hand, has two (2) options; that is (a) file a petition for review with the Court of Tax Appeals (CTA) within thirty (30) days after the expiration of the 180 days or until 7 July 2014 or (b) await the final decision of the Commissioner or her duly authorized representative and appeal such final decision to the CTA within 30 days after the receipt of the copy of such decision.

9. A clear import of the foregoing is that a decision of the Commissioner of Internal Revenue or her duly authorized representative is considered as the final decision and the taxpayer only has thirty (30) days from the receipt

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of such within which to file its appeal with the CTA. A motion for reconsideration filed with the Commissioner of Internal Revenue does not toll this mandatory period nor provide for a fresh period of 180 days.

10. The Honorable CTA has explained this in the case of CIR vs. Sarangani, xxx.

xxx xxx xxx.

11. In this case at hand, as explained above the 180-day period will end on 7 June 2014. Thus, petitioner only has 7 July 2014 within which to file its appeal with the CTA.

12. Records show that the instant Petition for Review was filed only on 18 June 2015 – way beyond the mandatory period provided by law.

13. Thus, for failure to comply with the mandatory and jurisdictional reglementary period provided by the Tax Code, the instant Petition for Review should be dismissed for lack of jurisdiction.

Assuming but not conceding that petitioner has complied with the mandatory and jurisdiction reglementary period provided by the Tax Code, the assessment must still stand since:

A. Assessment made by the Bureau of Internal Revenue are presumed correct and made in good faith and taxpayer have the duty to prove otherwise.

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B. Petitioner failed to support with competent evidence the payables it recorded in favour of Kawsek, Inc.

xxx xxx xxx.

C. Petitioner is liable for Income Tax and Value Added Tax due on its unreported assets.

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> ***D. The tax credits being claimed by petitioner was properly disallowed.***
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> *xxx xxx xxx.*
>
> ***E. Respondent properly subjected petitioner for fifty percent (50%) surcharge for the willful filing of a false, misleading and inaccurate returns, statements and schedules.***
>
> *xxx xxx xxx."*

During trial, petitioner presented documentary and testimonial evidence to support its petition. Petitioner presented seven (7) witnesses, namely: Mr. Peter L. Kawsek, Ms. Marizel Tapang Cuenca, Engr. John C. Par, Engr. Allan L. Quing, Mr. Rolando L. Mercado, Atty Cesare Napolione Sta. Romana, and Ms. Ana U. Laureano Thereafter, petitioner formally offered its documentary evidence which were admitted and some partly denied by the Court in the Resolution dated January 18, 2018[10].

On May 10, 2018, the scheduled initial presentation of evidence for the respondent CIR, the lone witness Revenue Officer Aurelio Agustin T. Zamora was presented and he identified several documents. Thereafter, respondent CIR formally offered its documentary evidence which were admitted by the Court in the Resolution dated January 15, 2019[11]. Likewise, parties were given a period of thirty (30) days within which to file their Memoranda[12].

On April 22, 2019, the case was submitted for decision, taking into consideration respondent CIR's Memorandum[13] filed on February 19, 2019 and petitioner's Memorandum[14] filed March 25, 2019.

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[10] CTA Divison Docket pp. 2219-2223.
[11] CTA Division Docket pp. 2279-2280.
[12] Ibid.
[13] CTA Docket pp. 2281-2297.
[14] CTA Docket pp. 2357-2405.

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The main issue is whether petitioner is liable for the Assessment No. IT-116-LOA-00021-10-14-446 for deficiency Income Tax in the amount of ₱76,590,235.40 and the Assessment No. VT-116-LOA-00021-10-14-447 for deficiency Value Added Tax in the amount of ₱37,467,697.00.

The Court shall first determine the timeliness of the filing of the present Petition for Review and its compliance with Section 228 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

> *"SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:*
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> *xxx xxx xxx*
>
> *The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.*
>
> *Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.*
>
> *Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.*
>
> *If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."*

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In relation thereto, Revenue Regulation 12-99[15] which provides the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, provides as follows:

> *SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
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> *3.1 Mode of procedures in the issuance of a deficiency tax assessment:*
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> *3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.*
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> *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 within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the*

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[15] 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.

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taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. *If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.*

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and

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demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: ***Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.***

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

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

3.1.7 Constructive Service. — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof

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> *shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof)*

In this case, petitioner received on November 15, 2013, the Formal Letter of Demand (FLD)[16], Final Assessment Notices (FAN)[17] and Details of Discrepancy[18], all undated, for the alleged deficiency income tax and value added tax, for calendar year (CY) 2010.

On December 9, 2013 or within thirty (30) days from receipt of the undated FLD, FAN and Details of Discrepancy, petitioner filed a protest refuting the assessment for deficiency Income Tax and Value-Added Tax[19].

Thereafter, on May 19, 2014, petitioner received the Final Decision on Disputed Assessment (FDDA) denying for lack of merit its protest on the FLD.[20]

Pursuant to Section 228 of the NIRC of 1997, as amended, if the protest is denied in whole or in part or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period. Likewise, pursuant to Revenue Regulation 12-99, if the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.

Furthermore, in the case *of Lascona Land Co. Inc. v. CIR*[21] citing *RCBC vs CIR*[22], the Supreme Court ruled that "in case the Commissioner failed to act on the disputed assessment

[16] Exhibit "P-44".
[17] Exhibit "P-44-a".
[18] Exhibit "P-44-b" and Exhibit "P-44-c".
[19] Exhibit "P-4".
[20] Exhibit "P-46", Exhibit "P-46-b" and Exhibit "P-46-c".
[21] G.R. No. 171251, March 5, 2012.
[22] G.R. No. 168498, April 24, 2007.

within the 180-day period xxx, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision."

Thus, petitioner has the option to file a petition for review with this Court within 30 days after the expiration of the 180 days from December 9, 2013 or await the final decision of the Commissioner on the disputed assessments and appeal such final decision to this Court within 30 days after receipt of a copy of such decision.

Petitioner chose to await respondent CIR's FDDA.

Pursuant to Revenue Regulation 12-99[23], which provides the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**

In this case, petitioner was able to elevate his protest with the Commissioner within the 30-day period by filing a Motion for Reconsideration on June 18, 2014.[24] Thereafter, On May 19, 2015, petitioner received a Letter-Decision dated April 16, 2015 from respondent CIR, finding the motion for reconsideration as without merit, reiterating the deficiency assessment and demanding payment thereof , and that it is the Final Decision.

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[23] 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
[24] Exhibit "P-6".

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Concomitantly, petitioner has a period of 30 days from May 19, 2015 or until June 18, 2015 within which to file its Petition for Review before this Court. Petitioner filed the present Petition for Review on June 18, 2015. Clearly, petitioner timely filed its petition and the Court has acquired jurisdiction over the instant case.

Having discussed the timeliness of the filing of the present Petition for Review, the next question is whether petitioner is liable for the deficiency assessments?

We rule in the negative.

To be liable for deficiency assessment, there must be a valid assessment. In this case there were invalid assessments based on the absence of due date and demand for payment within a prescribed period. The FLD and FAN in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of ₱78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of ₱35,891,738.32 was undated and does not contain a demand for payment within a prescribed period.

The significance of due date and demand for payment within a prescribed period in the Formal Letter of demand (FLD) and FAN cannot be overemphasized. The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes.[25] A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."[26] This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."[27].

The absence of due dates in the Final Assessment Notice negates demand for payment, the Supreme Court in the case

[25] Commissioner of Internal Revenue v. Menguito, 581 Phil. 234, 256 (2008)
[26] Ibid.
[27] Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999, 368 Phil. 714.

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of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[28], instructively ruled as follows:

> *An assessment "refers to the determination of amounts due from a person obligated to make payments." "In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."*
>
> *The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.*
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> *After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.*
>
> *The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.*
>
> *Section 3 of Revenue Regulations No. 12-99, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment, requires a notice for informal conference. The revenue officer who audited the taxpayer's records shall state in his or her report whether the taxpayer concurs with his or her findings of liability for deficiency taxes. If the taxpayer does not agree, based on the revenue officer's report, the taxpayer shall be informed in writing of the discrepancies in his or her payment of internal revenue taxes for "Informal Conference." The informal conference gives the taxpayer an opportunity to present his or her side of the case.*

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[28] G.R. No. 215957, November 9, 2016.

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The taxpayer is given 15 days from receipt of the notice of informal conference to respond. If the taxpayer fails to respond, he or she will be considered in default. The revenue officer endorses the case with the least possible delay to the Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative. The Assessment Division of the Revenue Regional Office or the Commissioner or his or her authorized representative is responsible for the "appropriate review and issuance of a deficiency tax assessment, if warranted."

If, after the review conducted, there exists sufficient basis to assess the taxpayer with deficiency taxes, the officer shall issue a preliminary assessment notice showing in detail the facts, jurisprudence, and law on which the assessment is based. The taxpayer is given 15 days from receipt of the pre-assessment notice to respond. If the taxpayer fails to respond, he or she will be considered in default, and a formal letter of demand and assessment notice will be issued.

The formal letter of demand and assessment notice shall state the facts, jurisprudence, and law on which the assessment was based; otherwise, these shall be void. *The taxpayer or the authorized representative may administratively protest the formal letter of demand and assessment notice within 30 days from receipt of the notice.*

II

The word "shall" in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.

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The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.

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Any deficiency to the mandated content of the assessment or its process will not be tolerated. In Commissioner of Internal Revenue v. Enron, an advice of tax deficiency from the Commissioner of Internal Revenue to an employee of Enron, including the preliminary five (5)-day letter, were not considered valid substitutes for the mandatory written notice of the legal and factual basis of the assessment. The required issuance of deficiency tax assessment notice to the taxpayer is different from the required contents of the notice. xxx:

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IV

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. *Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects.* ***An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.***

A pre-assessment notice "do[es] not bear the gravity of a formal assessment notice." A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]"] Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

The disputed Final Assessment Notice is not a valid assessment.

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First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. xxx:

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Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. *Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:*

> *In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled* ***within the time shown in the enclosed assessment notice.*** *(Emphasis in the original)*

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay." (Emphases supplied)

In the case at hand, an examination of the of the FLD[29] and FAN[30] issued against petitioner reveals the absence of due date and demand for payment within a prescribed period in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of ₱78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of ₱35,891,738.32.

[29] Exhibit "P-44".
[30] Exhibit "P-44-b" and Exhibit "P-44-c".

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Exhibits "P-44-b"[31] and "P-44-c"[32], BIR Form No. 0401 "Audit Results/ Assessment Notice" or the Final Assessment Notice (FAN) reveals that the due date remains blank or unfilled. Likewise, there is no demand for payment within a prescribed period.

In Exhibit "P-44"[33], the Formal Letter of Demand (FLD), provides as follows:

FORMAL LETTER OF DEMAND

THE PRESIDENT
APO INTERNATIONAL MARKETING CORP.
415 Arayat St., Mandaluyong City
TIN:000-050-784

Sir:

This has reference to the Preliminary Assessment Notice (PAN) served on October 4, 2013 covering your deficiency Income Tax, Improperly Accumulated Earnings Tax, Value-Added Tax and Expanded Withholding Tax in the amounts of P81,519,690.93, P587,330.35, P37,408,557.71 and P340,836.93, respectively, inclusive of increments for the taxable year 2010.

As of record, no formal protest was filed within the period accorded after the service of the PAN as provided for under Revenue Regulation No. 12-99. However, during discussion and review of the documents submitted, subsequent adjustments were made.

Please be informed that after investigation, there has been found deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax for the year 2010 as shown hereunder:

xxx xxx xxx.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex A of this letter.

The fifty percent (50%) surcharge has been imposed pursuant to Section 249(B) of the same Tax Code due to

[31] Division Docket, p. 568.
[32] Division Docket, p. 569.
[33] Division Docket, p. 558.

> *your failure to pay the tax within the time prescribed by law for its payment.*
>
> *Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof. However, if you are amenable, you may pay the above assessment thru the EFPS facility. Afterwards, submit the proof of payment thereof to the Regular Large Taxpayer Audit Division I at Rm 216 BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records.*
>
> *We hope that you will give this matter your preferential action.*

Clearly, the FLD neither contain a due date nor there is a demand for payment within a prescribed period. Evidently, the FLD and FAN are not a valid assessment.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the Formal Letter of Demand and Final Assessment Notices issued against petitioner in Assessment No. IT-116-LOA-00021-10-13-191 for deficiency Income Tax in the amount of ₱78,384,643.51 and the Assessment No. VT-116-LOA-00021-10-13-192 for deficiency Value Added Tax in the amount of ₱35,891,738.32, are **CANCELLED** and **SET ASIDE** for being void.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I Attest that 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice