REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FOLARES PHARMACEUTICALS INC., *Petitioner,*	**CTA CASE NO. 10331**
	Members:
- *versus* -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 27 2025 3:46 pm

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DECISION

ANGELES, J.:

Before this Court is the *Petition for Review*,[1] together with its amendments,[2] filed by petitioner Folares Pharmaceuticals Inc. (FPI) electronically and *via* registered mail on August 04, 2020 and October 26, 2020, respectively, seeking the nullification of the Final Decision on Disputed Assessment (FDDA) dated June 24, 2020,[3] which assessed the petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), improperly accumulated earnings tax (IAET), and compromise penalty for the taxable year January 01 to December 31, 2015 (TY 2015), in the aggregate amount of ₱15,662,329.89.

THE PARTIES

Petitioner is a domestic corporation established and existing under the laws of the Republic of the Philippines with business address at 2F SEDCCO I Building, 120 Rada Street, Legaspi Village, Makati City.[4]

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[1] Division Docket – Vol. I, pp. 7-17.
[2] *Id.* at 117-120.
[3] Exhibit "P-11;" Exhibit "R-21."
[4] Division Docket – Vol. I, Joint Stipulation of Facts and Issues (JSFI), p. 259, par. 1.

Respondent is the duly appointed Commissioner of Internal Revenue [CIR], vested with authority and powers under his office including *inter alia* the power to conduct investigation of the internal revenue taxes paid by taxpayers, issue deficiency income tax assessments and decide on any disputed internal revenue tax assessments. He must be served with summons, notices, and other processes at the Bureau of Internal Revenue (BIR), Revenue Region No. 8A, Legal Division, 36th Floor Exportbank Plaza, Chino Roces Avenue corner Sen. Gil Puyat Avenue, Makati City.[5]

THE FACTS

On February 26, 2018, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated February 22, 2018,[6] alleging deficiencies in income tax, VAT, EWT, WTC, IAET, and compromise penalty for the TY 2015, in the aggregate amount of ₱13,167,279.53.

On March 09, 2018, petitioner submitted its Reply to PAN[7] to respondent,[8] setting forth its arguments in opposition to the assessments reflected in the PAN.

Thereafter, on March 14, 2018, respondent issued Formal Assessment Notices (FANs)[9] and their corresponding Details of Discrepancies,[10] assessing petitioner for the same purported deficiency taxes totaling ₱13,372,693.16.

On March 27, 2018, petitioner filed a protest against the FAN,[11] stating the grounds upon which the cancellation of the alleged deficiency tax assessments was sought.

On July 06, 2020, petitioner received a copy of the FDDA dated June 24, 2020,[12] whereby it was assessed for alleged deficiency taxes in the total amount of ₱15,662,329.89, detailed as follows:

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[5] *Id.* at par. 2.
[6] *Id.*, JSFI, p. 260, par. 3; Exhibit "P-1;" Exhibits "R-5" to "R-6."
[7] Exhibit "P-2;" Exhibit "R-7."
[8] Division Docket – Vol. I, JSFI, p. 260, par. 4.
[9] *Id.* at par. 5; Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."
[10] Exhibit "P-9;" Exhibits "R-14" to "R-15."
[11] Division Docket – Vol. I, JSFI, p. 260, par. 6; Exhibit "P-10;" Exhibit "R-16."
[12] *Id.* at par. 7; Exhibit "P-11;" Exhibit "R-21."

Tax Type	Amount
Income Tax	₱13,071,353.57
VAT	225,619.65
EWT	586,008.00
WTC	365,049.75
IAET	1,384,298.92
Compromise Penalty	30,000.00
Total	**₱15,662,329.89**

The FDDA provides that it constitutes the final decision of the respondent's duly authorized representative on the matter.

PROCEEDINGS BEFORE THIS COURT

On August 04, 2020, petitioner instituted that instant *Petition for Review*[13] before this Court, assailing the FDDA dated June 24, 2020,[14] which it received on July 06, 2020, assessing it for deficiency taxes in the aggregate amount of ₱15,662,329.89. Petitioner prays that the said FDDA be declared null and void and accordingly cancelled.

On September 11, 2022, the Court issued summons,[15] directing respondent to file an Answer within thirty (30) days from receipt thereof. Petitioner was thereafter notified, on October 12, 2020, that the summons had been duly served upon respondent.[16]

On October 14, 2020, respondent filed by registered mail a *Motion for Extension of Time to File Answer*,[17] which the Court granted in its Resolution dated October 30, 2020,[18] thereby giving respondent until November 13, 2020 within which to file his Answer. In the same Resolution, respondent was likewise directed to certify and elevate to the Court, within ten (10) days from filing of his Answer, the complete BIR records pertaining to this case.

Meanwhile, petitioner posted a *Motion to Admit Amendments to Petition for Review*,[19] specifically seeking leave of Court to amend the "prayer" portion thereof. The Court, in its Resolution dated November 18, 2020,[20] required respondent to file a comment thereon.

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[13] Division Docket – Vol. I, pp. 7-17.
[14] Exhibit "P-11;" Exhibit "R-21."
[15] Division Docket – Vol. I, p. 108.
[16] *Id.* at 109.
[17] *Id.* at 110-112.
[18] *Id.* at 116.
[19] *Id.* at 117-120.
[20] *Id.* at 123.

Considering that government work in Metro Manila was suspended on Friday, November 13, 2020, due to the onslaught of typhoon Ulysses, respondent timely filed his *Answer via* registered mail on the next working day, November 16, 2020.[21]

On December 01, 2020, the Court issued a *Notice of Pre-Trial Conference*,[22] setting the same on April 13, 2021, and directing the parties to file their respective pre-trial briefs.

Subsequently, on December 15, 2020, respondent filed a Transmittal Letter,[23] submitting the BIR Records of the case, which the Court duly noted in its Minute Resolution dated December 16, 2020.[24]

On even date, respondent posted his *Manifestation (Change of Address)*,[25] informing the Court that, henceforth, all orders, notices, pleadings, and other communications intended for him be furnished at BIR Region 8A-Makati, Legal Division, 36th Floor Export Bank Plaza, Chino Roces Avenue corner Sen. Gil Puyat Avenue, Makati City. The Court, in its Minute Resolution dated January 06, 2020,[26] noted said manifestation and granted the relief prayed for therein.

On June 10, 2021, respondent filed, *via* registered mail, his pre-trial brief.[27] However, by *Notice of Resetting* dated June 28, 2021,[28] the Court rescheduled the pre-trial conference to August 16, 2021, to be conducted *via* videoconference. Petitioner, for its part, submitted its pre-trial brief[29] on July 27, 2021. Thereafter, respondent, through an accredited courier service provider, filed his *Submission of Special Power of Attorney (SPA) for the Respondent*.[30]

By *Notice of Resetting* dated November 18, 2021,[31] the pre-trial was again moved to March 09, 2022, and subsequently reset to May 26, 2022,[32] pursuant to Office Order No. 11-2022, which authorized the attendance of the Associate Justices of the Third Division in the 27th Annual Convention-Seminar of the Philippine Women Judges Association held from March 07 to 09, 2022.

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21 *Id.* at 124-131.
22 *Id.* at 134-135.
23 *Id.* at 136.
24 *Id.* at 137.
25 *Id.* at 138-139.
26 *Id.* at 141.
27 *Id.* at 142-153.
28 *Id.* at 156.
29 *Id.* at 157-161.
30 *Id.* at 163-165.
31 *Id.* at 169.
32 *Id.* at 170.

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Thereafter, on March 24, 2022, respondent filed, *via* registered mail, his *Compliance/Submission (with Attached Judicial Affidavit of Revenue Officer IB Romel B. Isturis).*[33]

The pre-trial conference was conducted on May 26, 2022.[34]

On June 10, 2022, petitioner filed a *Motion to Commission an Independent Certified Public Accountant*,[35] which the Court granted during the hearing held on August 15, 2022.[36]

Both parties filed their *Joint Stipulation of Facts and Issues*[37] on June 27, 2022, which the Court, through its Resolution dated July 08, 2022,[38] duly admitted and approved.

By Order dated June 28, 2022,[39] the Court informed the parties that, pursuant to Court of Tax Appeals (CTA) Administrative Circular No. 01-2022 dated June 21, 2022, which reorganized the Second and Third Divisions of the Court, the present case was transferred to the Second Division.

Subsequently, on July 13, 2022, the Court issued the *Pre-Trial Order*.[40]

Trial then ensued.

During the course thereof, petitioner presented as its witnesses: *(1)* Ms. Flordeliza A. Leviste,[41] its Assistant Vice-President, *(2)* Atty. Jeremy Z. Parulan,[42] its Corporate Secretary; and *(3)* Independent Certified Public Accountant (ICPA) Glenn Abanador.[43]

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[33] *Id.* at 171-194.
[34] *Id.* at 247; 248-249.
[35] *Id.* at 250-253.
[36] *Id.* at 287; 288-289.
[37] *Id.* at 259-266.
[38] *Id.* at 269.
[39] *Id.* at 267.
[40] *Id.* at 271-279.
[41] *Id.* at 524-527; Exhibit "P-12;" Division Docket – Vol. I, Minutes of the Hearing held on September 12, 2022, p. 291; Division Docket – Vol. I, Order dated September 12, 2022, p. 292.
[42] *Id.* at 528-530; Exhibit "P-13;" Division Docket – Vol. I, Minutes of the Hearing held on October 13, 2022; Division Docket – Vol. I, Order dated October 13, 2022, p. 299.
[43] Division Docket – Vol. II, pp. 469-481; Exhibit "P-15," Minutes of the Hearing held on March 23, 2023, p. 484; Order dated March 23, 2023, pp. 485-486.

After the petitioner had rested its case, it filed its *Formal Offer of Evidence*[44] on April 11, 2023. In due course, respondent submitted its comment[45] thereto on April 25, 2023.

Nevertheless, petitioner filed a *Motion to Defer Resolution on Formal Offer of Evidence and for Leave of Court to Submit Substitute Documentary Evidence and Recall ICPA for Further Testimony*[46] *via* accredited courier service provider on April 26, 2023. In a Minute Resolution dated May 11, 2023,[47] the Court directed the respondent to file a comment thereon. The Records Verification Report dated June 29, 2023,[48] however, revealed that respondent did not file any comment. Ultimately, the Court granted the petitioner's *Motion* in its Order dated July 27, 2023.[49]

Meanwhile, by Resolution dated May 29, 2023,[50] the Court notified the parties that, pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of Court), the instant case was transferred to the Third Division.

Following the recall and further testimony of ICPA Abanador,[51] petitioner filed its *Supplemental Formal Offer of Evidence*[52] on October 09, 2023, to which respondent submitted a comment[53] on October 13, 2023.

In its Resolution dated January 23, 2024,[54] the Court ruled to admit into evidence the documentary exhibits proffered by the petitioner.

On the other hand, respondent presented and offered[55] the testimony of his lone witness, Revenue Officer IB Romel B. Isturis,[56] who was duly authorized to examine the petitioner's books of accounts and other accounting records for the TY 2015. After petitioner filed its

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[44] *Id.* at 487-492.
[45] *Id.* at 534.
[46] *Id.* at 570-572.
[47] *Id.* at 574.
[48] *Id.* at 516.
[49] *Id.* at 520.
[50] *Id.* at 515.
[51] *Id.* at 527-530; Exhibit "P-16;" Division Docket – Vol. II, Minutes of the Hearing held on September 28, 2023, p. 532; Division Docket – Vol. II, Order dated September 28, 2023, pp. 535-536.
[52] *Id.* at 540-542.
[53] *Id.* at 543-544.
[54] *Id.* at 548-550.
[55] *Id.* at 559-566.
[56] Division Docket – Vol. I, pp. 174-194; Exhibit "R-22;" Division Docket – Vol. II, Minutes of the Hearing held on February 15, 2024, p. 551; Division Docket – Vol. II, Order dated February 15, 2024, pp. 552-553.

comment[57] on respondent's *Formal Offer of Evidence*,[58] the Court, by Resolution,[59] admitted respondent's documentary exhibits.

Respondent's *Memorandum*[60] was posted on August 09, 2024. Petitioner, however, failed to file its Memorandum as reflected in the Records Verification Report dated September 04, 2024,[61] which the Court duly noted in its Minute Resolution dated September 13, 2024.[62] Accordingly, the case was deemed submitted for decision.

Hence, this Decision.

ISSUE BEFORE THE COURT

The sole issue submitted for the Court's resolution is stated as follows:

> Whether petitioner is liable for the amounts of Php 13,071,353.57, Php 225,619.65, Php 586,008.00, Php 365,049.75, Php 1,384,298.92, and Php 30,000.00, representing deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax on Compensation, Improperly Accumulated Earnings Tax and Compromise Penalty, inclusive of interest and surcharges, respectively, for the taxable year 2015, as contained in the FDDA dated June 24, 2020.[63]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

First. Petitioner asserts that, after the filing of its Reply to PAN, no response was ever received from the BIR. The subsequent action taken by the respondent was the immediate issuance of the FANs.

Second. Petitioner contends that the deficiency income tax assessment for TY 2015 is null and void. It argues that the disallowance of certain expenses on the ground of alleged non-withholding of taxes is unwarranted and devoid of factual and legal basis. Petitioner insists that it duly complied with the withholding tax requirements prescribed under the pertinent laws and rules, as evidenced by the corresponding

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[57] *Id.* at 573-574.
[58] *Id.* at 559-566.
[59] *Id.* at 579-580.
[60] *Id.* at 581-587.
[61] *Id.* at 590.
[62] *Id.* at 591.
[63] *Id.*, JSFI, p. 260.

BIR Form No. 1601-E, duly filed with the BIR. Moreover, petitioner underscores that the Details of Discrepancies of the FANs fail to provide sufficient factual information to enable it to identify, verify, and evaluate each disallowed transaction, or to determine whether such items were indeed subject to withholding tax.

Third. With respect to the disallowance of salaries and wages expense, petitioner clarifies that the amount in question pertains to the employer's share of mandatory contributions to government institutions such as PhilHealth, the PAG-IBIG fund, and similar agencies. Petitioner asserts that these contributions do not form part of the employees' or officials' compensation, and, therefore, are not subject to withholding tax. Consequently, the imposition of a deficiency withholding tax on said amounts is also devoid of basis in fact and in law.

Fourth. As regards the alleged deficiency VAT, petitioner attributes the same to a mere timing difference. It explains that, while the pertinent invoices were dated December 2014, the goods covered thereby were actually delivered in January 2015, at which time the corresponding invoices were likewise received. Petitioner maintains that the recognition and recording of the input tax only upon actual receipt of the goods and the related invoices in January 2015 is proper, as it was made in accordance with law. To hold otherwise, petitioner contends, would result in an unintended situation where the input taxes would be considered as a "loss."

Fifth. For the IAET assessment, petitioner argues that the imposition thereof is unwarranted, considering that its accumulated earnings or profits had been duly appropriated for the reasonable needs of its business. Petitioner presented certification evidencing that such appropriations for TY 2015 were made for legitimate and *bona fide* business purposes, undertaken to sustain and advance its operational requirements. Despite this, respondent failed to recognize these appropriations as valid deductions from petitioner's accumulated retained earnings for the said year, thereby resulting in the erroneous imposition of the deficiency IAET.

Sixth. Finally, petitioner submits that it cannot be held liable for the imposition of the compromise penalty, considering that it was not subject to the payment of IAET in the first place. Corollarily, petitioner asserts that it had no legal obligation to file the corresponding return, the same being contingent upon the existence of a valid tax liability.

Respondent's counter-arguments

Respondent, for his part, prays for the dismissal of the instant *Petition* on the grounds of lack of jurisdiction and/or lack of merit, anchored on the following arguments:

First. Respondent contends that petitioner failed to discharge the burden of proving that its *Petition for Review* was filed within the period prescribed under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing Revenue Regulations (RR) No. 18-13. As the party invoking the jurisdiction of this Court, it is incumbent upon the petitioner to affirmatively establish that jurisdiction was properly and seasonably acquired in accordance with law and rules.

Second. Respondent asserts that petitioner failed to *(1)* withhold the appropriate taxes on its income payments, resulting in the disallowance of related expenses amounting to ₱25,882,615.44; and *(2)* withhold the required taxes on salaries and wages amounting to ₱313,723.78, thereby warranting the disallowance of additional expenses in the amount of ₱1,337,829.28. Consequently, as a result of these disallowances, petitioner allegedly incurred a deficiency income tax liability of ₱11,141,337.70.

Third. Respondent maintains that petitioner's input tax in the amount of ₱131,812.54 was properly disallowed for lack of supporting official receipts or sales invoices.

Fourth. In relation to the *second* argument, respondent avers that petitioner is likewise liable for: *(1)* deficiency EWT on professional fees in the aggregate amount of ₱343,459.63, arising from its failure to withhold and remit the corresponding taxes thereon as required under existing laws and regulations; and *(2)* deficiency WTC amounting to ₱213,955.87, for petitioner's failure to subject the salaries and wages paid to its employees to withholding tax.

Fifth. Respondent insists that petitioner is also liable for IAET in the amount of ₱784,810.90, on the ground that its retained earnings exceeded one hundred percent (100%) of its paid-up capital, and that it allowed such earnings to accumulate beyond the reasonable needs of its business for the purpose of avoiding the imposition of tax upon its shareholders. Respondent further points out that petitioner failed to present competent evidence showing a definite and concrete plan for the disposition of its accumulated earnings within one (1) year from the close of the taxable year.

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Sixth. Respondent further argues that the assessments issued against petitioner are supported by both factual and legal bases. He emphasizes that tax assessments enjoy the presumption of correctness and regularity in the performance of official functions. Consequently, the burden of overcoming such presumption and establishing the alleged invalidity of the assessments squarely rests upon the petitioner. In this regard, all presumptions must be made in favor of the validity and correctness of the disputed tax assessments.

RULING OF THE COURT

The *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant Petition

Section 7 (a)(1) of Republic Act (R.A.) No. 1125,[64] as amended by R.A. No. 9282,[65] vests in the CTA exclusive appellate jurisdiction to review decisions of the CIR in cases involving disputed assessments, among others, to wit:

> SEC. 7. Jurisdiction. – The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. **<u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments</u>**, 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; (Emphasis and underscoring supplied)

As aptly raised by the petitioner in its *Petition*, and as confirmed upon careful scrutiny of the FDDA,[66] the said document categorically declares itself as the **final decision** of the respondent, issued through his duly authorized representative. It further provides that, should the petitioner find cause to contest the same, it may seek recourse either before the CIR or before this Court within thirty (30) days from receipt;

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[64] An Act Creating the Court of Tax Appeals.
[65] 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 of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.
[66] Exhibit "P-11;" Exhibit "R-21."

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otherwise, the assessment shall become final, executory, and demandable.

Anent the timeliness of the filing of the *Petition for Review*, petitioner avers that it received a copy of the FDDA on **July 06, 2020**. Consequently, it electronically filed the instant *Petition* before this Court on **August 04, 2020**, or within the thirty (30)-day reglementary period from receipt of the FDDA.

The Court agrees with the petitioner.

Section 11 of R.A. No. 1125,[67] as amended by R.A. No. 9282,[68] explicitly provides that:

> SEC. 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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> 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. (Emphasis and underscoring supplied)

This provision is echoed in Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals,[69] which likewise provides that a party adversely affected by a ruling or decision of the CIR may appeal to this Court within thirty (30) days from receipt of a copy of such decision or ruling.

In this case, We find that the petitioner timely appealed the FDDA before this Court for review.

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[67] *Supra* note 64.
[68] *Supra* note 65.
[69] Revised Rules of the Court of Tax Appeals, Rule 8, Section 3(a) provides:

> SEC. 3. *Who may appeal; period to file petition.* —
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> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

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First, it is undisputed that the petitioner received the FDDA on **July 06, 2020**. While the respondent, in his *Answer*, initially disputed this fact on the ground that the petitioner's copy of the FDDA bears no indication of the date of receipt,[70] both parties, in their *Joint Stipulation of Facts and Issues*, expressly agreed that the FDDA was received by the petitioner on said date.[71] This admission constitutes a judicial admission that is conclusive upon the parties and requires no further proof, *viz.*:

> **As the aforesaid Joint Stipulation of Facts was reduced into writing and signed by the parties and their counsels, thus, <u>they are bound by it and the same becomes judicial admissions of the facts stipulated</u>.** Section 4, Rule 129 of the Rules of Court states:
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>> **Section 4.** *Judicial Admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
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> A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations **or stipulations**, or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, as in this case, no amount of rationalization can offset it. Also, in *Republic of the Philippines v. De Guzman* citing *Alfelor v. Halasan*, this Court held that "a party who judicially admits a fact cannot later challenge that fact as **judicial admissions are a waiver of proof;** production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy.**"[72] (Emphasis and underscoring supplied; citations omitted)

Second, the records show that the *Petition* was electronically filed on **August 04, 2020**, or exactly twenty-nine (29) days from the petitioner's receipt of the FDDA. Such electronic filing is sanctioned by Supreme Court Administrative Circular No. 43-2020,[73] which provides that, during the period of enhanced and modified enhanced community quarantine, the CTA shall continue to receive petitions and pleadings electronically, to wit:

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[70] Division Docket – Vol. 1, Answer, p. 125, par. 8.
[71] *Id.*, JSFI, p. 260, par. 7.
[72] *Tan v. People*, G.R. No. 218902, October 17, 2016 [Per J. Perez, Third Division].
[73] Court Operations from 3 to 14 August 2020, Supreme Court Administrative Circular No. 43-2020, August 02, 2020.

Due to the reported surge in COVID-19 cases, the Court *en banc* has provided the following guidelines in the operation of the courts from **3-14 August 2020**:

1. Unless herein provided, ALL the courts in the National Capital Judicial Region, and those in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine, SHALL BE PHYSICALLY CLOSED to all court users, and shall only be reached through their respective hotline numbers, email addresses and/or Facebook accounts as posted on the website of the Supreme Court. All inquiries on cases or transactions, including requests for documents and services, shall be coursed and acted upon through the said numbers, addresses, and accounts of the concerned court, or through the Judiciary Public Assistance Section of the Supreme Court in accordance with A.C. 28-2020.

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COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS

5. The Court of Appeals, Sandiganbayan, and **Court of Tax Appeals shall continue to receive petitions and pleadings <u>electronically</u>**, and in accordance with Paragraph 1 herein, and process the same pursuant to their respective internal rules. (Emphasis and underscoring supplied)

Considering the undisputed receipt of the FDDA and the petitioner's timely resort to electronic filing in compliance with the then-effective Supreme Court circular, the Court holds that the instant *Petition* was seasonably filed within the thirty (30)-day reglementary period.

Thus, the Court validly acquired jurisdiction over the case.

Petitioner cannot be held liable under void assessments issued in violation of due process

Section 228 of the NIRC of 1997, as amended, unequivocally mandates that a taxpayer must be duly informed in writing of the law and the facts upon which an assessment is based; otherwise, the assessment shall be void. Corollary thereto, RR No. 12-99,[74] as

[74] 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, Revenue Regulations No. 12-99, September 06, 1999.

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amended by RR No. 18-13,[75] prescribes the due process requirements governing the issuance of a PAN and a FAN, as follows:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 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.
>
> 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **<u>within fifteen (15) days from date of receipt of the PAN</u>, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued <u>within fifteen (15) days from filing/submission of the taxpayer's response</u>**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> x x x
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall</u> state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; <u>*otherwise, the assessment shall be void*</u>** x x x. (Emphasis and underscoring supplied)

As may be gathered from the foregoing, a taxpayer is afforded a period of fifteen (15) days from receipt of the PAN within which to submit a written response thereto. Thereafter, the FLD/FAN must be issued within fifteen (15) days from the filing of such response. This prescribed period necessarily presupposes that, in issuing the FLD/FAN, the BIR has duly considered the taxpayer's response, including the arguments and evidence presented in reply to the PAN. Moreover, it is crucial that the FLD/FAN must clearly state the factual and legal bases of the assessment, citing the pertinent laws, rules,

[75] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, November 28, 2013.

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regulations, or jurisprudence upon which it rests. The omission to do so constitutes a fatal infirmity that renders the assessment void in violation of the taxpayer's fundamental right to due process.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[76] the Supreme Court underscored that the BIR's failure to duly consider and evaluate the taxpayer's arguments, as evidenced by the **issuance of identical assessment notices that merely reiterated prior findings without addressing the taxpayer's defenses**, constitutes a clear violation of the taxpayer's right to due process. Thus:

> **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.**
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> x x x
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** x x x
>
> "The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**
>
> x x x
>
> **The facts demonstrate that Avon was deprived of due process.** It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon.** x x x

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[76] G.R. Nos. 201398-99, 201418-19, October 03, 2018 [Per J. Leonen, Third Division].

> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the **Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice**. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. **Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.**
>
> x x x
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the **Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process**. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.
>
> x x x
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.** (Emphasis and underscoring supplied)

In this case, the records show—and both parties stipulate—that petitioner received a copy of the PAN[77] on February 26, 2018,[78] and duly filed its Reply to PAN[79] on March 09, 2018,[80] clearly within the prescribed fifteen (15)-day period. However, the FANs[81] were issued on

[77] Exhibit "P-1;" Exhibits "R-5" to "R-6."
[78] Division Docket – Vol. I, JSFI, p. 260, par. 3.
[79] Exhibit "P-2;" Exhibit "R-7."
[80] Division Docket – Vol. I, JSFI, p. 260, par. 4.
[81] Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."

March 14, 2018,[82] merely five (5) calendar days or three (3) working days[83] thereafter, and without any indication that petitioner's Reply to PAN was ever considered.

Verily, a careful perusal of the FANs[84] and their corresponding Details of Discrepancies[85] reveals that, except for the computation of interests, the findings and conclusions therein are mere verbatim reiterations of those contained in the PAN, devoid of any acknowledgment, discussion, or evaluation of the factual and legal defenses raised by the petitioner in its Reply to PAN.

This conclusion is made all the more evident by a side-by-side comparison of the assessments, which demonstrates that the amounts of **basic deficiency taxes** reflected in the FANs[86] and their Details of Discrepancies[87] are identical to those stated in the PAN,[88] as shown below.

PAN/Details of Discrepancies		**FANs/Details of Discrepancies**	
Income Tax	₱7,865,741.32	Income Tax	₱7,865,741.32
VAT	131,812.49	VAT	131,812.49
EWT	86,941.00	EWT	86,941.00
WTC	213,955.87	WTC	213,955.87
IAET	784,810.90	IAET	784,810.90

While not expressly delineated as an issue in the parties' *Joint Stipulation of Facts and Issues*,[89] petitioner nonetheless squarely raised this matter as one of its principal arguments in the *Petition*, to wit:

> 3. That on February 26, 2018, Petitioner received from Respondent a Preliminary Assessment Notice for alleged proposed deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax and compromise penalty for the taxable year 2015. x x x
>
> 4. That on March 9, 2018, Petitioner filed with the Respondent's Bureau of Internal Revenue its position paper to the Preliminary Assessment Notice issued by the Respondent. Petitioner incorporated therein its arguments against the imposition of the preliminary deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly

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[82] Division Docket – Vol. I, JSFI, p. 260, par. 5.
[83] March 10 and 11, 2018 fell on Saturday and Sunday.
[84] Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."
[85] Exhibit "P-9;" Exhibits "R-14" to "R-15."
[86] Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."
[87] Exhibit "P-9;" Exhibits "R-14" to "R-15."
[88] Exhibit "P-1;" Exhibits "R-5" to "R-6."
[89] Division Docket – Vol. I, pp. 259-266.

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> accumulated earnings tax and compromise penalty assessments for the year 2015. x x x
>
> 5. **That Petitioner received no reply from the Respondent's Bureau of Internal Revenue with regard the arguments against the proposed deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax and compromise penalty assessment issued against Petitioner for the year 2015** until after the Formal Assessment Notice on said assessments were issued by the Respondent;[90] (Emphasis supplied)

The Court notes, however, that respondent presented a Letter-Reply dated April 03, 2018,[91] addressed to petitioner, FPI, with the subject, "Action on Reply to Preliminary Assessment Notice Dated February 22, 2018." No evidence was submitted to show that the petitioner actually received this communication. Moreover, the Letter-Reply was issued only after the respondent had already issued the FANs and their corresponding Details of Discrepancies. Also, a careful perusal of the Letter-Reply readily reveals that it merely acknowledged the petitioner's Reply to PAN, and stated that it would form part of the tax docket, without providing any substantive discussion of the arguments contained therein. True enough, the petitioner's arguments in the PAN were not considered in the issuance of the FANs.

Time and again, this Court has been called upon to reaffirm the enduring and time-honored doctrine of **administrative due process**, as eloquently laid down in the seminal case of *Ang Tibay v. Court of Industrial Relations*,[92] which mandates, among others, that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal ***must consider*** the evidence presented."

Indeed, due process is not satisfied by the mere ceremonial or mechanical grant of an opportunity to be heard. It imposes on the administrative authority, such as the BIR, the duty to **actually and conscientiously** consider the evidence and arguments submitted before it. The right to be heard necessarily includes the correlative obligation of the adjudicator to give due consideration to what has been submitted, for due process is not an empty ritual nor a mere formality, but a living guarantee of fairness and reason, fulfilled only through a faithful, deliberate, and thorough engagement with the taxpayer's claims and defenses.

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[90] *Id.*, Petition for Review, pp. 1-2, pars. 3-5.
[91] Exhibit "R-17."
[92] G.R. No. 46496, February 27, 1940 [Per J. Laurel, *En Banc*].

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It bears emphasizing that the decisive consideration in this case is not merely the brevity of time between petitioner's filing of its Reply to PAN and the issuance of the FANs, but the palpable absence of any indication that the BIR gave due regard, must less thoughtful consideration, to the petitioner's arguments and supporting documents. This omission is fatal, for it effectively reduces the filing of the Reply to PAN into a hollow formality and an exercise of futility. The sequence of events and the verbatim reiteration of findings in the FANs[93] and Details of Discrepancies[94] unmistakably reveal that the BIR had predetermined the assessments without awaiting or evaluating the petitioner's explanations and evidence. Such a procedural shortcut strikes at the very heart of administrative due process and runs counter to the clear spirit of the law and rules, that the taxpayer must not only be given the opportunity to be heard, but that the taxing authority must actually and in good faith consider the defenses presented before rendering its assessment.

To sustain the validity of the FANs in this case as compliant with Section 228 of NIRC of 1997, as amended, and RR No. 12-99,[95] as amended by RR No. 18-13,[96] would be to reduce the PAN process into a mere procedural charade—a hollow ritual devoid of substantive value and stripped of legal consequence. Such an interpretation would undermine the very rationale of the PAN stage, which is not only to uphold the taxpayer's constitutional right to due process, but also to afford the BIR the opportunity to reexamine, and, if warranted, correct any errors in its preliminary findings before proceeding with the issuance of a FAN/FLD.

Verily, had the petitioner's arguments and supporting documents in its Reply to PAN[97] been given due consideration, the dispute could have been resolved at the earliest stage—either through the withdrawal or modification of the assessments, or through an amicable settlement—thereby sparing both the government and the taxpayer the needless expenditure of time, effort, and resources occasioned by protracted administrative and judicial proceedings.

In fact, the Supreme Court, in emphasizing the significance of the PAN in the audit process conducted by the BIR, pronounced as follows:

> A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for

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93 Exhibits "P-3" to P-8;" Exhibits "R-8" to "R-13."
94 Exhibit "P-9;" Exhibits "R-14" to "R-15."
95 *Supra* note 74.
96 *Supra* note 75.
97 Exhibit "P-2;" Exhibit R-7."

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> payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.
>
> **The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.**[98] (Emphasis supplied; citations omitted)

It is worth noting further that the only distinct variation between the findings stated in the PAN[99] and those reflected in the FANs[100] and Details of Discrepancies,[101] apart from the computation of interests, pertains to the change in the applicable prescriptive period for the assessment of IAET. Specifically, the period was changed from the general three (3)-year period under Section 203 of the NIRC of 1997, as amended, to the ten (10)-year period prescribed under Section 222(a) of the same Code, as explicitly stated in the Details of Discrepancies[102] of the FANs, to wit:

> **<u>PERIOD OF PRESCRIPTION</u>**
>
> Running of the three-year statute of limitation as provided under Section 203 of the 1997 NIRC is not applicable with respect to you Improperly Accumulated Earnings Tax liability but rather to the ten (10) year prescriptive period pursuant to Section 222(a) of the tax code which states that: *"In the case of a false of fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time <u>within ten (10) years after the discovery of the falsity, fraud or omission</u>. . ."*

This circumstance once again demonstrates a clear violation of the petitioner's right to due process. It warrants emphasis that it was only through the Details of Discrepancies[103] of the FANs that the petitioner was first apprised of the purported application of the extraordinary ten (10)-year prescriptive period for the assessment of the alleged deficiency IAET. Even then, the respondent, through his duly authorized representative, merely invoked Section 222(a) of NIRC of 1997, as amended, without specifying which of the three (3) exceptional instances under said provision—whether falsity, fraud, or failure to file a return—was being relied upon to justify the extended period.

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[98] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].
[99] Exhibit "P-1;" Exhibits "R-5" to "R-6."
[100] Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."
[101] Exhibit "P-9;" Exhibits "R-14" to "R-15."
[102] *Ibid.*
[103] *Ibid.*

As elucidated by the Supreme Court *En Banc* in *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[104] the BIR's invocation of the extraordinary ten (10)-year prescriptive period carries with it the correlative duty to clearly and explicitly inform the taxpayer of the basis justifying such invocation. This requirement is in faithful observance of the strict procedural safeguards mandated by due process, *viz.*:

> *E. Due Process Requirements When Invoking the 10-Year Period*
>
> *i. In General*
>
> It must be stressed that while the law accords the tax authorities an extended period within which they may investigate the taxpayer and issue a corresponding tax assessment, the law does so **by exception**. Furthermore, it is recognized that the *law on prescription should be liberally construed in favor of the taxpayer*, to afford them protection against unreasonable examination, investigation, or assessment.
>
> Thus, when invoking the benefit of the extraordinary 10-year assessment period, as well as the presumption of falsity or fraud, the tax authorities are duty-bound to respect a taxpayer's *fundamental right to due process of the law*. There is due process when the taxpayer is provided with information necessary to mount an *intelligent and timely protest/defense to the assessment*.
>
> Consequently, *first*, **the tax authorities are required to *communicate* to the taxpayer, in a clear and adequate manner, the basis for extending the assessment period**. Guided by the pronouncements in *Asalus, Fitness by Design*, and *Spouses Magaan*, the tax authorities are obligated to indicate in the *assessment notice* that the extraordinary prescriptive period is being applied and the bases of allegations of falsity or fraud (First Due Process Requirement).
>
> *Second*, they are likewise *proscribed from adopting a position inconsistent with the invocation of the extended period* or that which will mislead the taxpayer and prejudice its defense (Second Due Process Requirement). (Emphasis and underscoring supplied; citations omitted)

In fine, the Court finds that the respondent blatantly disregarded the petitioner's right to administrative due process, as evidenced by the issuance of the FANs[105] and their Details of Discrepancies,[106] which are identical in substance and contents to the previously issued PAN.[107]

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[104] G.R. No. 247737, August 08, 2023 [Per J. Inting, *En Banc*].
[105] Exhibits "P-3" to "P-8;" Exhibits "R-8" to "R-13."
[106] Exhibit "P-9;" Exhibits "R-14" to "R-15."
[107] Exhibit "P-1;" Exhibits "R-5" to "R-6."

This unmistakably demonstrates that the respondent failed to consider the arguments and evidence presented by the petitioner in its Reply to PAN.[108] Consequently, the assessments so issued are void *ab initio*, having been tainted by a fundamental procedural infirmity. Corollarily, the FDDA,[109] being a mere offshoot of a void assessment, cannot stand on its own and is likewise null and void, without force or effect in law.

Having established that the subject assessments are void, the Court need not belabor the issue of petitioner's alleged tax liability, as it is axiomatic that a void assessment bears no valid fruit.[110]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* filed by petitioner Folares Pharmaceuticals Inc. on August 04, 2020, is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated June 24, 2020, and the deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, improperly accumulated earnings tax, and compromise penalty stated therein, in the aggregate amount of Php 15,662,329.89, inclusive of increments, issued against petitioner for taxable year 2015, are hereby **CANCELLED** and **SET ASIDE** for being **NULL** and **VOID**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[108] Exhibit "P-2;" Exhibit "R-7."
[109] Exhibit "P-11;" Exhibit "R-21."
[110] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010 [Per J. Mendoza, Second Division].

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice