22-000016-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10726

HAWAIIAN-PHILIPPINE COMPANY,

Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legaspi Village, Makati City

ATTY. FELIX PAUL R. VELASCO III
ATTY. MICHAEL KEVIN P. BAYONA
Bureau of Intenral Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **November 13, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 14, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10726

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

NOV 13 2024 10:45 AM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] seeking the withdrawal and cancellation of the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN) issued against petitioner, assessing it for deficiency income tax (IT), value-added tax (VAT), final withholding VAT (FWV), and expanded withholding tax (EWT) for the fiscal year (FY) ending September 30, 2017.

THE PARTIES

Petitioner Hawaiian-Philippine Company is a corporation organized and existing under the laws of the Philippines with office address at Brgy. Hawaiian, Silay City, Negros Occidental.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman Quezon City.[3]

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1 Docket – Vol. I, pp. 6–63.
2 *Id.* at 6, par. 1.
3 Docket – Vol. I, p. 6, par. 2, vis-à-vis Docket – Vol. II, p. 825, *Joint Stipulation of Facts and Issues* (JSFI), par. 1.

THE FACTS

Petitioner received Letter of Authority (LOA) No. 121-2018-00000040, dated October 25, 2018, with attached Checklist of Requirements and First Request for Presentation of Records (the "first LOA") from the BIR Excise Large Taxpayers Tax Audit Division I (ELTAD I). The LOA authorized the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax (DST) and other miscellaneous taxes for FY ending September 30, 2017.[4]

Petitioner received LOA No. 121-2019-00000241, dated July 18, 2019 (the "second LOA"), replacing the first LOA with the attached First Request for Presentation of Records/Documents from ELTAD I.[5]

On October 1, 2019, petitioner received a First Notice for the presentation of documents and records.[6]

On March 11, 2020, petitioner received a Second and Final Notice for the Presentation of Books of Accounts and Other Accounting Records, reiterating the request to present documents and accounting records.[7]

On November 24, 2020, petitioner received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies from OIC-Assistant Commissioner (OIC-ACIR) Manuel V. Mapoy (Mapoy) of the BIR Large Taxpayers Service.[8] The PAN informed petitioner of its alleged deficiency income tax, VAT, FWV, EWT, final withholding tax (FWT), withholding tax on compensation (WTC), and DST, amounting to ₱262,781,388.79, inclusive of interest, surcharge and penalties,[9] broken down as follows:

Tax Type	Basic Def. Tax	Surcharge	Interest	Administrative Penalty	Total
Income Tax	₱73,919,657.82	₱ -	₱25,493,145.48	₱50,000.00	₱99,462,803.30
VAT	90,466,605.02		51,474,267.91	50,000.00	141,990,872.93
FWV	70,779.52	17,694.88	40,272.58	15,000.00	143,746.98
EWT	5,677,169.51		2,141,464.67	25,000.00	7,843,634.18
FWT	2,019,909.72		761,922.88	25,000.00	2,806,832.60
WTC	955,390.30		360,379.33	25,000.00	1,340,769.63

4 Exhibit "P-9", BIR Records, p. 2.
5 Exhibit "P-10", Docket – Vol. II, p. 1089.
6 Exhibit "P-11", Docket – Vol. II, p. 1092.
7 Exhibit "P-11-1", Docket – Vol. II, p. 1093.
8 Exhibit "P-17", Docket – Vol. II, pp. 1134–1143.
9 Docket – Vol. II, p. 826, JSFI, I. Stipulation of Facts, par. 6.

Tax Type	Basic Def. Tax	Surcharge	Interest	Administrative Penalty	Total
DST	6,625,433.00		2,517,296.17	50,000.00	9,192,729.17
TOTAL	**₱179,734,944.89**	**₱17,694.88**	**₱82,788,749.02**	**₱240,000.00**	**₱262,781,388.79**

Petitioner filed a reply to the PAN on December 9, 2020.[10]

On December 22, 2020, petitioner received an undated FLD[11] with attached Details of Discrepancies and FAN[12] from Deputy Commissioner (DCIR) of the Operations Group, Arnel SD. Guballa (Guballa). The FLD/FAN reiterated the alleged deficiency IT, VAT, FWV, EWT, WTC, and DST, in the amount of ₱271,013,199.52, inclusive of increments, as follows:[13]

Tax Type	Basic Def. Tax	Surcharge	Interest	Compromise	Total
Income Tax	₱73,885,778.02	₱ -	₱26,234,475.43	₱ -	₱100,120,253.45
VAT	99,222,714.83		57,467,613.53		156,690,328.36
FWV	70,779.52	17,694.88	40,993.94		129,468.34
EWT	5,677,169.51		2,199,324.11		7,876,493.62
WTC	955,390.30		370,116.28		1,325,506.58
DST	3,349,419.89		1,306,729.28		4,656,149.17
Administrative Penalties				215,000.00	215,000.00
TOTAL	**₱183,161,252.07**	**₱17,694.88**	**₱87,619,252.57**	**₱215,000.00**	**₱271,013,199.52**

On January 21, 2021, petitioner filed a protest to the FLD/FAN and a Request for Reinvestigation[14] addressed to DCIR Guballa, OIC-ACIR Mapoy and Chief of ELTAD I, Christine M. Cardona.[15]

On March 19, 2021, or within 60 days from the filing of the protest, petitioner submitted relevant supporting documents through a Letter dated March 18, 2021.[16]

On December 23, 2021, petitioner received the Final Decision on Disputed Assessment (FDDA),[17] dated September 10, 2021, issued by respondent, cancelling the WTC and DST assessments and reconsidering several other assessment items, but ultimately assessing petitioner for deficiency income tax, VAT, FWV, EWT, and administrative penalty for FY ending September 30, 2017, in the aggregate amount of

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10 Exhibit "P-18", Docket – Vol. II, pp. 1144–1166.
11 Exhibit "P-20", Docket – Vol. II, pp. 1176–1183.
12 Exhibit "P-19", Docket – Vol. II, pp. 1168–1175.
13 *Supra* note 9, at par. 7.
14 Exhibit "P-21", Docket – Vol. II, pp. 1184–1213.
15 *Id.*
16 Exhibit "P-22", Docket – Vol. II, pp. 1214–1216.
17 Exhibit "P-23", Docket – Vol. II, pp. 1217–1220; Exhibit "R-10", BIR Records – Folder 1 of 4, pp. 447–450.

₱258,923,924.61, inclusive of increments,[18] summarized as follows:

Tax Type	Basic Deficiency	Surcharge	Interest	Compromise	Total
IT	₱73,010,980.30	₱ -	₱32,476,890.28	₱ -	₱105,487,870.58
VAT	99,151,704.78		46,495,407.22		145,647,112.00
FWV	70,779.52	17,694.88	47,346.68		135,821.08
EWT	5,086,220.61		2,426,900.34		7,513,120.95
Administrative Penalties				140,000.00	140,000.00
TOTAL	**₱177,319,685.21**	**₱17,694.88**	**₱81,446,544.52**	**₱140,000.00**	**₱258,923,924.61**

On February 2, 2022, petitioner filed the present *Petition for Review*,[19] which was raffled to the Court's Second Division.

On March 2, 2022, *Summons*[20] was issued to respondent.

On March 18, 2022, respondent filed a *Motion for Extension of Time to File Answer*,[21] which was granted on March 21, 2022.[22] Within the extended period, respondent filed his *Answer*[23] through registered mail on April 19, 2022.

On April 21, 2022, respondent filed a *Motion to Defer Transmittal of BIR Records*,[24] which was granted in an Order dated April 26, 2022.[25]

On May 2, 2022, a *Notice of Pre-Trial Conference*[26] was issued, setting the pre-trial conference on June 29, 2022, but it was later reset to August 1, 2022.[27]

Respondent's *Pre-Trial Brief*[28] and Petitioner's *Pre-Trial Brief*[29] were filed on July 28, 2022, and July 29, 2022, respectively.

On August 16, 2022, respondent transmitted the BIR Records for this case.[30]

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18 *Supra* note 9, at par. 10.
19 *Supra* note 1.
20 Docket – Vol. I, p. 719.
21 *Id.* at 720–723.
22 *Id.* at 725, Order.
23 Docket – Vol. II, pp. 732–747.
24 Docket – Vol. I, pp. 726–729.
25 Docket – Vol. II, p. 731.
26 *Id.* at 750–751.
27 *Id.* at 752, Notice of Resetting.
28 *Id.* at 753–757.
29 *Id.* at 759–795.
30 *Id.* at 820–823, Compliance.

Following the Pre-Trial Conference on August 1, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*[31] on August 31, 2022. Subsequently, a Pre-Trial Order[32] was issued on October 6, 2022.

Trial ensued, with petitioner presenting its witnesses: Ms. Mayen U. Jambonganan[33] and Independent Certified Public Accountant (ICPA) Ms. Krista V. Bambao.[34]

Petitioner then filed its *Formal Offer of Evidence*,[35] to which respondent filed a *Comment (Re: Petitioner's Formal Offer of Evidence)*[36] on February 27, 2023. In a Resolution dated March 14, 2023, the Second Division partially admitted and denied some of petitioner's exhibits.[37] As a result, petitioner filed a *Motion for Reconsideration (of the Resolution dated March 14, 2023)*[38] on March 28, 2023, which was granted in a Resolution dated May 18, 2023.[39]

Due to the reorganization of the Court's Divisions under Administrative Circular No. 01-2023 dated May 23, 2023, the case was transferred to this Court on May 29, 2023.[40]

At the hearing on November 28, 2023, respondent's lone witness, Revenue Officer Chad G. Fameronag, completed his testimony.[41] Thereafter, respondent filed his *Formal Offer of Evidence*[42] on December 13, 2023, to which petitioner filed a *Comment (on Respondent's Formal Offer of Evidence dated February 2, 2021)*[43] [*sic*] on December 19, 2023. Respondent's exhibits were admitted in a Resolution dated February 7, 2024.[44]

The *Memorandum for Petitioner*[45] was filed on March 18, 2024. However, respondent did not file a memorandum.[46]

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31 *Id.* at 825–841.
32 *Id.* at 852–867.
33 *Id.* at 912 & 913–914, Minutes of the Hearing & Order dated January 18, 2023, respectively.
34 *Id.* at 915, Minutes of the Hearing dated January 19, 2023
35 *Id.* at 918–966.
36 Docket – Vol. III, pp. 1412–1414.
37 *Id.* at 1417–1422, Resolution.
38 *Id.* at 1425–1430.
39 *Id.* at 1441–1443.
40 *Id.* at 1444, Resolution.
41 *Id.* at 1455–1457 & 1458–1459, Minutes of the Hearing & Order, respectively.
42 *Id.* at 1461–1466.
43 *Id.* at 1468–1471.
44 *Id.* at 1476–1477.
45 *Id.* at 1478–1543.
46 *Id.* at 1546, Records Verification dated March 19, 2024.

On April 16, 2024, this Court submitted the case for decision.[47]

THE ISSUES

The issues stipulated by the parties are as follows:[48]

A. WHETHER OR NOT THE RIGHT OF THE GOVERNMENT TO ASSESS PETITIONER FOR DEFICIENCY VAT, EWT, AND FWV FOR FISCAL YEAR ENDING SEPTEMBER 30, 2017 HAS PRESCRIBED; and

B. WHETHER OR NOT PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX, VALUE-ADDED TAX, FINAL WITHHOLDING VAT, AND EXPANDED WITHHOLDING TAX IN THE AMOUNT OF ₱258,923,924.61, INCLUDING INTEREST.

Petitioner's arguments:

Petitioner argues that respondent's right to assess VAT for the first to fourth quarters, EWT from October 2016 to September 2017, and FWV for the same period has already prescribed. Petitioner adds that the assessments are void because petitioner's tax liability in the FLD/FAN remains indefinite.

Petitioner also points out that the FLD/FAN did not constitute a valid demand for payment of taxes, as it merely requested petitioner to pay its deficiency tax liabilities. Lastly, petitioner claims that the assessments are void for failure to state the facts and law on which they are based, asserting that the assessments lack factual and legal basis.

Respondent's arguments:

Respondent contends that the wording of the FLD/FAN indicates a demand for payment and a definite amount of tax liability. Respondent avers that the FLD/FAN has fixed petitioner's deficiency tax liabilities, with only the interest subject to change depending on whether petitioner pays the deficiency assessment beyond the due date indicated.

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47 *Id.* at 1547, Resolution.
48 Docket – Vol. II, p. 827, JSFI, II. Stipulation of Issues; Docket – Vol. II, p. 854, Pre-Trial Order dated October 6, 2022, II.B. Stipulation of Issues.

Respondent further claims that the assessments were made in accordance with prevailing laws and rules, as they present the factual and legal basis for the assessments. As such, respondent posits that petitioner is liable for deficiency income tax, VAT, FWT, and EWT, along with a compromise penalty.

THE COURT'S RULING

The Court has jurisdiction over this Petition for Review.

Before delving into the merits, the Court must first ascertain whether it has jurisdiction over this case.

Section 7(a)(1) of Republic Act (RA) No. 1125,[49] as amended by RA No. 9282,[50] confers jurisdiction on this Court relative to the decisions of respondent, to wit:

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

Relatedly, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> 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 ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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49 AN ACT CREATING THE COURT OF TAX APPEALS.

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

The above provisions are likewise provided under Section 3(a)(1), Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments ... 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. ...

Based on the foregoing, this Court has exclusive jurisdiction to review, by appeal, a decision or ruling of respondent. The appeal must be filed by the party adversely affected within thirty (30) days from receipt of such decision or ruling or after the period fixed by law for action expires.

In this case, the FDDA issued by respondent on September 10, 2021,[51] was received by petitioner on December 23, 2021.[52] Counting thirty (30) days from that date, petitioner had until January 22, 2022, to file a *Petition for Review* before this Court.

On January 12, 2022, the Supreme Court issued Memorandum Order No. 10-2022,[53] physically closing the courts in the National Capital Region from January 13, 2022 to January 31, 2022, due to the rise in COVID-19 cases. As provided under Administrative Circular No. 01-2022, the filing

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[51] Exhibit "P-23", Docket – Vol. II, pp. 1217–1220.
[52] *Supra* note 9, at par. 10.
[53] RE: RISING CASES OF COVID 19 INFECTION/PHYSICAL CLOSURE OF COURTS IN SELECT AREAS.

periods for any pleadings due in January 2022 were extended until February 1, 2022.[54]

Since February 1, 2022 was declared a special non-working holiday,[55] petitioner had until the next working day, February 2, 2022, to file the appeal with the CTA.

This *Petition for Review* was timely filed on February 2, 2022; thus, the Court assumes jurisdiction over the case.

The FLD/FAN contains a definite amount of petitioner's tax liabilities and a demand for payment of deficiency taxes.

Petitioner relies on the case of *Commissioner of Internal Revenue v. Fitness By Design, Inc.* (*Fitness By Design*),[56] among others, to argue that the assessments are void because the FLD/FAN, aside from being undated, does not specify a definite amount of liability, as it bears the phrase: "*Note: Interest – subject to adjustment if payment is made beyond December 31, 2020.*"

This argument is misplaced.

The Supreme Court, in *Fitness By* Design, held that the FAN lacked a definite amount of tax liability due to this notation: "*Please note, however, that the interest and the total amount due will have to be adjusted if paid prior or beyond April 15, 2004.*" This means that the tax due remained subject to modification, depending on whether the payment was made before or after the specified due date.

In contrast, in this case, the FLD/FAN statement that "*[i]nterest – subject to adjustment if payment is made beyond December 31, 2020*"[57] does not render petitioner's deficiency tax liabilities indefinite as to render it void. The note merely serves as a reminder that interest would need to be adjusted if the assessed deficiency taxes were paid after December 31, 2020,

[54] RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS FALLING DUE IN THE MONTH OF JANUARY 2022 IN ALL COURTS, January 10, 2022.

[55] Proclamation No. 1236 s. 2021, DECLARING THE REGULAR HOLIDAYS AND SPECIAL (WORKING/NON-WORKING) DAYS FOR THE YEAR 2022, October 29, 2021.

[56] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

[57] Exhibit "P-19", Docket – Vol. II, p. 1171.

in accordance with Section 249 of the 1997 National Internal Revenue Code (NIRC), as amended, which states:

> SEC. 249. *Interest.* –
>
> (A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of **twenty percent (20%)**[58] **per annum**, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**
>
> (B) *Deficiency Interest.* - ...
>
> (C) *Delinquency Interest.* - ... [*Emphasis supplied*]

Under Section 249 of the 1997 NIRC, as amended, only the amount of interest will be adjusted and computed if payment is made beyond the due date indicated in the FLD/FAN. The basic tax deficiencies, however, remain unchanged. Therefore, the FLD/FAN is valid because it contains a due date and a definite tax liability.

Similarly, petitioner's contention that the FLD/FAN is void because it did not demand payment of taxes but merely "requested to pay [the] aforesaid deficiency tax"[59] is untenable.

A demand is defined as:

> "[t]he assertion of a legal right; a legal obligation asserted in the courts. An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act. *Request* for payment of debt or amount due. An asking with authority, claiming or challenging as due."[60]

Based on the foregoing, a demand may take the form of a *request* for payment. Thus, using phrases such as "*requested* to pay" or "*requested* to settle" does not negate an unequivocal demand for payment of deficiency taxes.

In *Fitness By Design*, the last paragraph of the FAN stated that the taxpayer was "*requested to pay*" its deficiency internal revenue tax liabilities. There, the taxpayer also argued that the

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58 The rate has been changed to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas" under Republic Act No. 10963, Tax Reform for Acceleration and Inclusion (TRAIN), effective January 1, 2018.

59 Exhibit "P-19", Docket – Vol. II, p. 1171.

60 Black's Law Dictionary 429 (6th ed., 1990). (Italics supplied)

FAN issued was merely a request for payment and not a formal demand. Interestingly, however, the Supreme Court did not find issue with the use of the word "request" and instead held that the absence of the due dates in the FAN negated the demand for payment.

In this case, the FLD/FAN indicates the due date, which confirms respondent's intent to demand payment before the indicated date.

Given the validity of the FLD/FAN, the Court now proceeds to rule on the substantive merits of petitioner's appeal.

Respondent's assessments have partially prescribed.

The assessment of tax is deemed made, and the three (3)-year period for the collection of the assessed tax begins to run on the date the assessment notice is released, mailed, or sent to the taxpayer.[61] Furthermore, Sections 203 and 222 of the 1997 NIRC, as amended, clarify that the assessment refers specifically to the service of the FAN upon the taxpayer.[62]

Considering that the undated FLD/FAN appears to have been personally served by respondent[63] and received by petitioner on December 22, 2020, said date shall be deemed the date of assessment.

Also, in the recent case of *Commissioner of Internal Revenue v. Villanueva, Jr.*,[64] the Supreme Court affirmed that the date of sending the FLD/FAN to the taxpayer is when the assessment is made:

> ... [T]he CIR's right to assess and collect from respondent deficiency taxes for 2006 is subject to the ordinary three-year prescriptive period under Section 203 of the 1997 NIRC. The three-year period is reckoned from the last day prescribed by law for the filing of the return, or in a case where a return is filed beyond such period, from the day the return was actually filed.

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[61] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division]; *Commissioner of Internal Revenue v. Pascor Realty & Development Corporation*, G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division].

[62] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

[63] Exhibit "R-8", BIR Records, pp. 370–384.

[64] G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

> Here, the CTA found that for taxable year 2006, the CIR had until June 12, 2010 within which to assess respondent for deficiency income taxes. For VAT, the CIR had the following dates within which to assess respondent for the same taxable year: (a) 1st Quarter — April 26, 2009; (b) 2nd Quarter — July 26, 2009; (c) 3rd Quarter — October 26, 2009; and (d) 4th Quarter — January 26, 2010. However, as the CIR admitted, **the FAN/FLD** assessing respondent of deficiency income tax and VAT for taxable year 2006 **was only sent to respondent, *via* registered mail, on January 24, 2011**, which is clearly beyond the allowable period for assessment and collection of taxes. Verily, **the subject assessments are void for being barred by prescription.** [*Emphasis supplied*]

Thus, following established jurisprudence, the assessments are considered made on December 22, 2020, when the FAN/FLD was served to and received by petitioner.[65]

However, during the surge of COVID-19, the BIR issued Revenue Memorandum Circular (RMC) No. 136-2020,[66] which extended the three-year prescriptive period to assess in areas placed under ECQ or MECQ. RMC No. 136-2020 provides that the period to assess shall exclude 137 days from March 16, 2020.

The periods to assess have partly prescribed, as tabulated below:

Tax Type	Last Day Prescribed for filing of tax return	Actual filing date of tax return	End of 3-year period to assess	Extended period to assess[67] (RMC No. 136-2020)	Prescribed when FAN/FLD was deemed made on 12/22/2020
Income Tax	01/15/2018	01/12/2018	01/15/2021	N/A[68]	No
VAT					
1st quarter	01/25/2017	01/23/2017	01/25/2020	N/A[69]	Yes
2nd quarter	04/25/2017	04/24/2017	04/25/2020	11/23/2020[70]	Yes

[65] Docket – Vol. II, pp. 812–813, Q30, Judicial Affidavit of Revenue Officer Chad G. Fameronag; BIR Records, p. 442.

[66] SUBJECT: Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020, December 7, 2020.

[67] The original prescriptive date is extended in view of RR No. 11-2020 and RMC No. 136-2020 issued on Dec. 7, 2020, which states that "the counting of the three (3)-year prescriptive period for the period to assess … shall exclude the number of days covered by the period of suspension, which is a total of one hundred thirty-seven (137) days." NCR was placed under ECQ/MECQ from March 16, 2020 to May 31, 2020 (77 days) plus 60 days per RR No. 11-2020 = 137 days.

[68] Considering that the FLD/FAN was issued within the original prescriptive period, there is no need to count the extended period to assess.

[69] The suspension of the 3-year period started from March 16, 2020, when the state of emergency was declared due to COVID-19.

[70] The extended period to assess (counting 137 days) is until Sept. 9, 2020. However, since NCR+ was placed again under MECQ between Aug. 4, 2020 and Aug. 18, 2020 (a period of 15 days), counting these 15 days plus the 60-day extension under RR No. 11-2020, there are additional 75 days for the BIR to assess. Total of 212 days (137 + 75).

Tax Type	Last Day Prescribed for filing of tax return	Actual filing date of tax return	End of 3-year period to assess	Extended period to assess[67] (RMC No. 136-2020)	Prescribed when FAN/FLD was deemed made on 12/22/2020
3rd quarter	07/25/2017	07/20/2017	07/25/2020	2/22/2021[71]	No
4th quarter	10/25/2017	10/24/2017	10/25/2020	5/25/2021[72]	No
EWT					
Oct. 2016	11/14/2016	11/12/2016	11/14/2019	N/A	Yes
Nov. 2016	12/14/2016	12/13/2016	12/13/2019	N/A	Yes
Dec. 2016	01/14/2017	01/18/2017	01/18/2020	N/A	Yes
Jan. 2017	02/14/2017	02/13/2017	02/14/2020	N/A	Yes
Feb. 2017	03/14/2017	03/13/2017	03/14/2020	N/A	Yes
Mar. 2017	04/14/2017	04/11/2017	04/14/2020	11/12/2020[73]	Yes
Apr. 2017	05/14/2017	05/12/2017	05/14/2020	12/12/2020[74]	Yes
May 2017	06/14/2017	06/10/2017	06/14/2020	01/12/2021[75]	No
June 2017	07/14/2017	07/11/2017	07/14/2020	02/11/2021[76]	No
July 2017	08/14/2017	08/14/2017	08/14/2020	03/14/2021[77]	No
Aug. 2017	09/14/2017	09/11/2017	09/14/2020	04/14/2021[78]	No
Sep. 2017	10/14/2017	10/12/2017	10/14/2020	05/14/2021[79]	No
FWV[80]					
Oct. 2016	11/10/2016	None	11/10/2019	N/A	Yes
Nov. 2016	12/10/2016	None	12/10/2019	N/A	Yes
Dec. 2016	01/10/2017	None	01/10/2020	N/A	Yes
Jan. 2017	02/10/2017	None	02/10/2020	N/A	Yes
Feb. 2017	03/10/2017	None	03/10/2020	N/A	Yes
Mar. 2017	04/10/2017	None	04/10/2020	11/08/2020[81]	Yes
Apr. 2017	05/10/2017	None	05/10/2020	12/08/2020[82]	Yes
May 2017	06/10/2017	None	06/10/2020	01/08/2021[83]	No
June 2017	07/10/2017	None	07/10/2020	02/07/2021[84]	No
July 2017	08/10/2017	None	08/10/2020	03/10/2021[85]	No
Aug. 2017	09/10/2017	None	09/10/2020	04/10/2021[86]	No
Sep. 2017	10/10/2017	None	10/10/2020	05/10/2021[87]	No

The PAN and FLD/FAN did not state that the CIR was applying the 10-year prescriptive period for assessment, which would warrant such application.[88] Therefore, only the deficiency income tax (for FY ending September 2017), VAT (for the 3rd and 4th quarters), EWT (for the periods from May to September 2017), and FWV (for the periods from May to September 2017)

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71 The extended period to assess (counting 137 days) is until Dec. 9, 2020, plus additional 75 days therefrom.
72 The extended period to assess (counting 137 days) is until March 11, 2021, plus additional 75 days therefrom.
73 The extended period to assess (counting 137 days) is until Aug. 29, 2020, plus additional 75 days therefrom.
74 The extended period to assess (counting 137 days) is until Sept. 28, 2020, plus additional 75 days therefrom.
75 The extended period to assess (counting 137 days) is until Oct. 29, 2020, plus additional 75 days therefrom.
76 The extended period to assess (counting 137 days) is until Nov. 28, 2020, plus additional 75 days therefrom.
77 The extended period to assess (counting 137 days) is until Dec. 29, 2020, plus additional 75 days therefrom.
78 The extended period to assess (counting 137 days) is until Jan. 29, 2021, plus additional 75 days therefrom.
79 The extended period to assess (counting 137 days) is until Feb. 28, 2021, plus additional 75 days therefrom.
80 The assessment for alleged deficiency FWV emanated from payments to NRFCs that were not subjected to FWV pursuant to Sec. 114 (C) of the Tax Code.
81 The extended period to assess (counting 137 days) is until Aug. 24, 2020, plus additional 75 days therefrom.
82 The extended period to assess (counting 137 days) is until Sept. 24, 2020, plus additional 75 days therefrom.
83 The extended period to assess (counting 137 days) is until Oct. 25, 2020, plus additional 75 days therefrom.
84 The extended period to assess (counting 137 days) is until Nov. 24, 2020, plus additional 75 days therefrom.
85 The extended period to assess (counting 137 days) is until Dec. 25, 2020, plus additional 75 days therefrom.
86 The extended period to assess (counting 137 days) is until Jan. 25, 2021, plus additional 75 days therefrom.
87 The extended period to assess (counting 137 days) is until Feb. 24, 2021, plus additional 75 days therefrom.
88 *Supra* note 64.

shall be considered by the Court in determining petitioner's tax liabilities.

Petitioner is not liable for deficiency income tax for FY ending September 30, 2017.

Respondent assessed petitioner for deficiency income tax amounting to ₱105,487,870.58, including increments, for the FY ending September 30, 2017, to wit:[89]

Taxable Income per Return		₱271,323,848.00
Audit Adjustments:		
I. Undeclared Income from Reconciliation of Sales per Book vs. per ITR	₱209,719,260.07	
II. Undeclared FIT differential from NTC	33,650,674.27	243,369,934.34
Total Taxable Income per Audit		₱514,693,782.34
Income Tax Due		₱154,408,134.70
Less: Payments/Tax Credits		
Income Tax Payments	₱ 60,223,913.40	
Creditable Withholding Tax per BIR Form 2307	21,173,241.00	81,397,154.40
Basic Deficiency Income Tax Due		₱73,010,980.30
Add: Interest		32,476,890.28
Total Deficiency Income Tax Due		**₱105,487,870.58**

The following items, which are discussed in detail hereafter, comprise the foregoing assessment:

(a) Undeclared income from reconciliation of sales per book vis-à-vis Income Tax Return (ITR)	₱209,719,260.07
(b) Undeclared Feed-In-Tariff (FIT) differential from National Transmission Corporation (NTC)	₱ 33,650,674.27

(a) Undeclared income from reconciliation of sales per book vs. per ITR – ₱209,719,260.07

Respondent identified an alleged undeclared income from the reconciliation of petitioner's sales per book vis-à-vis the ITR and computed it as follows:[90]

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89 Exhibit "P-23", Docket – Vol. II, pp. 1217–1218. *See also* Table 4, Page 10 of Exhibit "P-40", Docket – Vol. II (not paginated between pp. 898 & 899).

90 Exhibit "P-23", Docket – Vol. II, pp. 1217–1218.

Sale of Goods from Reconciliation of AR Per Book	₱2,329,027,840.23
Sale of Electricity	17,264,053.84
Total Sales Per Book	₱2,346,291,894.07
Sales Declared Per ITR	2,136,572,634.00
Undeclared Income	**₱209,719,260.07**

Petitioner countered that "in arriving at the amount of ₱2,329,027,840.23 allegedly representing 'Sales of Goods from Reconciliation of AR per book,' [the] FLD/FAN did not provide any breakdown or schedule showing how the amount was arrived at." Allegedly, "respondent merely provided a separate audit working paper, which simply summed up the amounts in the debit portion of petitioner's accounts receivable allegedly taken from the general ledger," and failed "to consider the credits to accounts receivable representing various adjustments, such as returns, corrections of errors, and other adjustments that resulted to reduction of sales."[91]

Petitioner also surmises that respondent failed to exclude from the total debits the amount of output VAT included in the receivables when the sales on account were recorded.[92]

Further, petitioner asserts that it was not formally informed of the facts and law on which the assessment is based.[93] In its reply to the PAN, petitioner submitted individual customer's ledgers for the detailed transactions to account for the discrepancies found by respondent.[94] Petitioner also stated in its protest letter to the FLD/FAN that it was unable to determine how respondent's examiners computed the total debits of its accounts receivable. Thus, regarding this particular item of assessment, the FLD/FAN failed to comply with the due process requirement that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made.[95]

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

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

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[91] Docket – Vol. III, pp. 1509–1511, Memorandum for Petitioner, pars. 83–86. *See also* Exhibit "P-13-1", Docket – Vol. II, pp. 1108–1120.
[92] Docket – Vol. III, p. 1512, Memorandum for Petitioner, par. 88.
[93] *Id.* at 1512–1514, Memorandum for Petitioner, pars. 92–99.
[94] Exhibit "P-18", Docket – Vol. II, pp. 1148–1149.
[95] Exhibit "P-21", Docket – Vol. II, pp. 1187–1188.

....

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. [*Emphasis supplied*]

In relation thereto, Section 3.1.3 of Revenue Regulations (RR) No. 18-2013,[96] states:

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules, and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void*** (see illustration in ANNEX "B" hereof). [*Emphasis supplied*]

The FDDA states that respondent's examiners investigated petitioner's Accounts Receivable from Sales per General Ledger – Detail Listing.[97] However, this information was not found upon scrutiny of the BIR Records. Thus, the Court cannot verify respondent's Schedule of Trade Receivable Per Book, from which the total debits of ₱2,329,027,840.23 arose.[98]

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96 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

97 Exhibit "P-23", Docket – Vol. II, p. 1217.

98 Exhibit "R-11", BIR Investigation Records, p. 235.

The Court-commissioned ICPA also reports deviations in the amounts of debit transactions used by respondent versus the debit amounts reflected in the subsidiary ledgers, to wit:[99]

Customer	**Per BIR Schedule**[100]	**Per Detailed Subsidiary Ledgers**[101]	**Difference**
Nestle	₱555,552,438.10	₱580,377,332.13	₱(24,824,894.03)
Fresh N Famous	27,486,558.54	29,880,166.72	(2,393,608.18)
Aspenn Enterprises	16,132,687.75	8,396,240.00	7,736,447.75
All Asian Countertrade	60,607,240.80	68,954,356.73	(8,347,115.93)
ES Marketing	340,170,176.71	343,187,817.40	(3,017,640.69)
First PGMC Enterprises	77,951,588.30	78,465,940.96	(514,352.66)
Sucden Phils., Inc.	35,162,891.92	36,296,905.06	(1,134,013.14)
Luckietyrrific Marketing	68,194,527.00	78,198,300.00	(10,003,773.00)
Negros del Norte	280,222,701.65	283,281,092.30	(3,058,390.65)
Various-trade debtors	175,908,623.37	133,050,440.41	42,858,182.96
FT Zucherro	112,031,000.00	112,031,000.00	0.00
ED & F Man Phils.	99,299,873.04	98,890,083.65	409,789.39
Molasses	50,571,468.77	25,830,000.00	24,741,468.77
Bacolod Goodrise	6,515,090.00	6,555,000.00	(39,910.00)
Roxol Bioenergy	137,472,112.26	136,800,620.65	671,491.61
SVG	3,168,000.00	3,200,000.00	(32,000.00)
Islas Commodity Traders	82,408,876.50	82,957,376.50	(548,500.00)
CADPI/CACI	126,599,146.90	136,856,050.21	(10,256,903.31)
Central Azucarera de La Carlota	808,000.00	808,000.00	0.00
A/R Muscovado	6,448,971.00	8,376,141.00	(1,927,170.00)
A/R Traders	21,726,318.02	21,726,318.02	0.00
A/R Bagasse	44,589,549.60	48,664,354.00	(4,074,804.40)
TOTAL	**₱2,329,027,840.23**	**₱2,322,783,535.74**	**₱6,244,304.49**

The ICPA likewise verified petitioner's credit portion of accounts receivable per subsidiary ledgers and found the following:[102]

Collections	₱2,153,472,854.88
Past Year Collections	237,352,505.84
Other Adjustments	105,945,421.55
TOTAL	**₱2,496,770,782.27**

[99] Exhibit "P-40", Table 7, pp. 13–14, Docket – Vol. II (not paginated between pp. 898 & 899); Exhibit "P-24", Docket – Vol. II, p. 1221.
[100] Exhibit "R-11", BIR Investigation Records, p. 235.
[101] Exhibits "P-24-1" to "P-24-22", Docket – Vol. II, pp. 1222–1278.
[102] Table 6 of Exhibit "P-40", pp. 12-13, Docket – Vol. II (not paginated between pp. 898 & 899).

The foregoing collections are supported by collection receipts, sales invoices, official receipts, or journal vouchers.[103] The adjustments to accounts receivable pertain to (a) adjustment to account for errors in the summation of journal voucher/s; (b) reversal of sales returns; (c) adjustments to account for returned goods; (d) reversal of sales; (e) re-classification; and (e) miscellaneous charges.[104]

However, this portion of the assessment must be canceled on the ground that it violated petitioner's right to due process, as it was not informed of the facts, laws, rules, regulations, or jurisprudence on which the assessment is based, pursuant to Section 3.1.3 of RR No. 18-2013.

The presumption of correctness of assessments does not apply when the assessment is without foundation or rational basis.[105] Here, respondent failed to show the rational basis and foundation of its computation of petitioner's alleged undeclared income. Without any foundation, any determination made by respondent in a deficiency notice is rendered void.[106] Thus, the finding of deficiency income tax arising from the supposed undeclared income must be

(b) Undeclared Feed-In-Tariff (FIT) differential from NTC – ₱33,650,674.27

Respondent allegedly found undeclared sales in the amount of ₱33,650,674.27 related to petitioner's sale of power, thus:[107]

> Data from NTC shows that there were undeclared estimated FD Under-Recovery related to sale of power amounting to Php33,650,674.27. This was assessed the 30% regular income tax pursuant to Sec. 27(A) of the Tax Code, as amended in relation to Sec. 32 and 34 of the same Code.

Petitioner avers that, aside from the foregoing, no other details were provided to show how the amount of ₱33,650,674.27 was calculated, where the said amount was sourced, or what amounts were compared that resulted to the said amount.[108]

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[103] Exhibits "P-41" to "P-1392", and USB marked as "P-40-2".
[104] Exhibit "P-40", p. 13, Docket – Vol. II (not paginated between pp. 898 & 899).
[105] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division], citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005 [Per J. Callejo, Sr., Second Division].
[106] *Id.*
[107] Exhibit "P-23", Docket – Vol. II, p. 1218.
[108] Docket – Vol. III, p. 1517, Memorandum for Petitioner, par. 115.

Upon scrutiny of the BIR Records, there is a document bearing the logo of the NTC or TransCo entitled "Estimated FD Under-Recovery corresponding to RE Generators that have not started to bill as of May 2017 Billing, In Php," with the subheading "In compliance with ERC directive during the Davao leg expository hearing on November 21, 2017."[109] This document includes petitioner's name along with the amount ₱33,650,674.27.[110]

As a background, the Energy Regulatory Commission (ERC) formulated and promulgated the FIT system rules in 2010. FIT refers to a renewable energy policy that offers guaranteed payments at a fixed rate per kilowatt-hour for emerging renewable energy sources, excluding any generation for their own use.[111] The FIT differential (FD) represents the difference between (1) the forecast applicable FIT Rate for the year that each eligible RE Plant is expected to receive for each kWh delivered, and (2) the forecast applicable cost recovery rate as determined under the Guidelines, multiplied by the projected annual energy generation from the eligible RE Plant for the year.[112]

Further, Section 2 (viii), Article I of the 2014 Revised Rules for the Issuance of Certificates of Compliance (COCs) for Generation Companies, Qualified End-Users and Entities with Self-Generation Facilities[113] provides:

> Renewable Energy (RE)
>
> viii. **A Generation Company operating an RE Plant** eligible to avail of the FIT System shall indicate in its COC application its intention to operate under the FIT System. The said Generation Company **shall be allowed to operate and be entitled to payment of FIT <u>only upon the issuance of a COC explicitly indicating FIT Eligibility</u> of the said RE Plant.** No COC which grants FIT Eligibility (FIT-Eligible COC) shall be issued in favor of a Generation Company operating an RE plant unless it has been issued the appropriate Certificate of Endorsement (COE) for FIT Eligibility by the Department of Energy (DOE). The FIT-Eligible COC shall indicate the period of entitlement to the FIT which commences on the Commercial Operations date indicated in the COE issued

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109 Exhibit "R-11", BIR Investigation Records, p. 276.
110 *Id.*
111 ERC Resolution No. 16 (2010), sec. 1.3, Feed-In Tariff (FIT) Rules.
112 Order, ERC Case No. 2016-192 RC dated April 27, 2017.
113 ERC Resolution No. 16 (2014), A Resolution Adopting The 2014 Revised Rules for the Issuance of Certificates of Compliance (COCs) for Generation Companies, Qualified End-Users and Entities With Self-Generation Facilities; Docket – Vol. III, p. 1515, Memorandum for Petitioner, par. 104.

> by the DOE, unless another date is indicated therein, subject to Section 2(xi), Article I hereof." [*Emphasis supplied*]

Petitioner is registered with the Department of Energy (DOE) as a Renewable Energy (RE) Developer of Renewable Biomass Energy Resources on March 12, 2013,[114] and on January 22, 2014, its Bagasse-Fired Biomass Power Generation Project was issued a Confirmation of Commerciality.[115] But petitioner asserts that it should not be assessed for deficiency income tax regarding the FIT differential, as it has never been issued a certificate of compliance (COC) by the ERC certifying its eligibility for the FIT system.[116] In fact, the ERC issued a Certification dated September 16, 2021[117] stating that petitioner's application for the issuance of a COC for its 8.00 MW (Unit 1) Biomass Co-Generation Power Plant with a FIT eligible capacity of 2.0 MW located at Silay Hawaiian Central, Silay City, Negros Occidental is currently being processed and evaluated.[118]

Based on the foregoing, petitioner is not entitled to the payment of FIT since its application for the issuance of a COC for its power plant with FIT-eligible capacity is still under evaluation by the ERC. Hence, the assessment for the FIT differential has no basis.

In sum, the total deficiency income tax assessment for FY ending September 30, 2017, in the amount of ₱105,487,870.58, must be cancelled.

Petitioner is not liable for deficiency VAT for FY ending September 30, 2017.

Respondent assessed petitioner for deficiency VAT amounting to ₱145,647,112.00, including increments, for FY ending September 30, 2017, as follows:[119]

hr

[114] Exhibit "P-26", Docket – Vol. II, p. 1318.
[115] Exhibit "P-27", Docket – Vol. II, p. 1319.
[116] Docket – Vol. III, p. 1514, Memorandum for Petitioner, par. 101.
[117] Exhibit "P-28", Docket – Vol. II, p. 1320.
[118] Docket – Vol. III, p. 1515, Memorandum for Petitioner, par. 103.
[119] Exhibit "P-23", Docket – Vol. II, pp. 1218-1219, and Table 8 of Exhibit "P-40", p. 15, Docket – Vol. II (not paginated between pp. 898 & 899).

VATable Sales/Revenue per VAT Returns		₱652,346,962.94
Audit Adjustments:		
I. Undeclared Income from Reconciliation of Output Tax per Return vs. per Book	₱279,078,416.81	
II. Undeclared Income from Reconciliation of Sales Collected per Return vs. per Book	373,029,683.82	
III. Undeclared Income from Reconciliation of Trade Receivable and Sales Collected	174,156,784.30	826,264,884.93
Total Sales/Revenue per Audit		₱1,478,611,847.87
Output Tax		₱177,433,421.74
Less: Allowable Input Tax		
Deferred Input Tax, Beginning	₱60,816,651.54	
Presumptive Input Tax	-	
Input Tax from Current Purchases	73,848,267.69	
Total Available Input Tax	₱134,664,919.23	
Less: Deferred Input Tax, Ending	64,118,720.09[120]	
Others	43,274,656.10	
VAT Refund/TCC Claimed	-	
Total Allowable Input Tax	₱27,271,543.04	
Less: Tax Credits/Payments		
Monthly/Quarterly VAT Remittance	56,792,259.53	84,063,802.57
		₱ 93,369,619.17
Overpayment per Return		5,782,085.61
Basic Deficiency VAT		₱99,151,704.78
Add: Interest		46,495,407.22
Total Deficiency Value-Added Tax Due		**₱145,647,112.00**

The foregoing assessment is comprised of the following items:

(a) Undeclared income from reconciliation of output tax per VAT returns vs. per book	₱279,078,416.81
(b) Undeclared income from reconciliation of sales collected per return vs. per book	₱373,029,683.82
(c) Undeclared income from reconciliation of trade receivable and sales collected	₱174,156,784.30

At the outset, respondent's right to assess petitioner for deficiency VAT for the first two quarters of FY ending September 30, 2017, has prescribed. However, neither petitioner nor respondent provided a breakdown of the amounts so that the prescribed portion could be determined. Thus, the assessment shall be taken as a whole.

(a) Undeclared income from reconciliation of output tax per VAT returns vs. per book – ₱279,078,416.81

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[120] *See* Exhibit "P-19", Docket – Vol. II, p. 1169.

Respondent's FDDA upheld the following assessment item from the FLD/FAN:[121]

> Investigation of the gross-up value of output tax per General Ledger – Detail Listing submitted by the above taxpayer as compared to the sales declared in VAT Returns revealed that there were undeclared income amounting to Php279,078,416.81.

Petitioner contends that it is not informed of the facts and the law of the subject assessment, as the FLD/FAN does not provide a detailed schedule or breakdown of the assessed amount.[122]

According to respondent's Schedule of Initial Findings (audit working paper), the said amount was computed as follows:[123]

Sales	₱752,154,303.83
Other Income	179,271,075.92
Total	**₱931,425,379.75**
Per VAT Returns	652,346,962.94
Discrepancy	**₱279,078,416.81**

The amounts for sales and other income are grossed-up values of the credit entries in petitioner's output tax account. However, petitioner avers that this computation is erroneous and has accounted for the discrepancy as follows:[124]

Nature of Reconciliation Item/Adjustment	Per BIR	Per Petitioner	Difference	Grossed-up Value
A. Erroneous Amount of Other Income in BIR's computation (December 2016)	₱20,448,728.10	₱4,466.02	₱20,444,262.08	₱170,368,850.67
B. Non-inclusion of Sales Adjustment in BIR's computation (June 2017)	-	13,041,112.89	13,041,112.89	108,675,940.75
C. Non-inclusion of Other Income Adjustment in BIR's computation (June 2017)	14,117.10	10,082.04	4,035.06	33,625.50
Total			**₱33,489,410.03**	**₱279,078,416.92**[125]

Mr

[121] Exhibit "P-23", Docket – Vol. II, p. 1218.
[122] Docket – Vol. III, p. 1522, Memorandum for Petitioner, par. 137.
[123] Exhibit "P-13-1", Docket – Vol. II, p. 1118.
[124] Exhibit "P-21", Docket – Vol. II, p. 1194.
[125] Sum, as adjusted.

As previously discussed, the law and related rules and regulations clearly state that the FLD/FAN should contain the facts on which the assessment is based. The taxpayer's ability to file a protest based on the Schedule of Initial Findings has no bearing. The law mandates that the legal and factual bases of the assessment must be stated in writing in the FLD accompanying the assessment notice.[126]

The Court finds that respondent's failure to provide the details of the foregoing assessment item did not comply with the due process requirements of the law in issuing a deficiency tax assessment. Thus, the Court is compelled to cancel this item of assessment.

(b) Undeclared income from reconciliation of sales collected per return vs. per book – ₱373,029,683.82

Respondent alleges that an investigation of petitioner's collections from the schedule of Accounts Receivable per General Ledger – Detail Listing, submitted by the taxpayer, compared to the collections declared per VAT Returns, revealed undeclared income amounting to ₱373,029,683.82, as shown below:[127]

Account	Amount
AR Collection from Sale of Goods Per Book	₱2,503,184,622.62
Collection from Sale of Electricity	17,264,053.84
Total Collection per Book	**₱2,520,448,676.46**
Collection Per VAT Returns	2,147,418,992.64
Discrepancy	**₱373,029,683.82**

The schedule of Accounts Receivable per book was compared based on the summary of beginning, debit, credit, and ending balances pertaining to the sales movements per customer.[128]

Petitioner counters that respondent merely summed up the amounts in the credit portion of petitioner's accounts receivable[129] and compared this total to the collections per VAT return.[130]

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[126] *Commissioner of Internal Revenue v. Enron Subic Power Corporation*, G.R. No. 166387 (Resolution), January 19, 2009 [Per J. Corona, *En Banc*].
[127] Exhibit "P-23", Docket – Vol. II, p. 1218.
[128] *Id.*
[129] Docket – Vol. III, p. 1524, Memorandum for Petitioner, par. 150. *See also* Exhibit "P-16", Docket – Vol. II, p. 1132.
[130] Docket – Vol. III, p. 1524, Memorandum for Petitioner, par. 149.

It should be noted that, according to the ICPA examination, the credits in petitioner's accounts receivable consist of the prior year's collections, the current year's collections, and other adjustments.[131] On the other hand, the amount ₱2,147,418,992.64 picked up by respondent from petitioner's VAT returns represents petitioner's total sales for the subject fiscal year:

Exhibit	FY 2017	Taxable	Zero-rated	Exempt	Total
"P-7-2"[132]	1st Qtr	₱206,505,935.30	₱5,374,572.96	₱454,662,136.42	₱666,542,644.68
"P-7-5"[133]	2nd Qtr	277,265,094.01	4,038,991.43	469,110,324.15	750,414,409.59
"P-7-8"[134]	3rd Qtr	52,031,993.12	7,236,120.28	475,967,161.21	535,235,274.61
"P-7-11"[135]	4th Qtr	116,543,940.51	614,369.17	78,068,354.08	195,226,663.76
TOTAL		**₱652,346,962.94**	**₱17,264,053.84**	**₱1,477,807,975.86**	**₱2,147,418,992.64**

Thus, taking the total credits of petitioner's accounts receivable as total collections compared to the total sales is erroneous.

Further, an examination of petitioner's audited financial statements (AFS) for FY ending September 30, 2017, shows that most of petitioner's revenues come from sales of goods — especially sales of sugar, molasses, and loose bagasse:[136]

Revenues from the sale of:	
Sugar	₱1,831,094,086.00
Molasses	242,423,774.00
Loose Bagasse	45,790,720.00
Power	17,264,054.00
Total	**₱2,136,572,634.00**

Based on the foregoing, the sale of power accounts for only 0.808% (₱17,264,054.00 divided by ₱2,136,572,634.00), while sales of goods make up 99.192% of the total revenues for FY ending September 30, 2017.

Under Sections 106(A)(1) and 113(A)(1) of the 1997 NIRC, as amended, sales of goods must be supported by invoices and reported in VAT returns when the invoice is issued, not when the receivables are collected. For easy reference, the relevant provisions of law are quoted hereafter:

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131 Exhibit "P-40", pp. 12-13, Docket – Vol. II (not paginated between pp. 898 & 899).
132 Docket – Vol. II, p. 1023.
133 *Id.* at 1031.
134 *Id.* 1040.
135 *Id.* 1046.
136 Exhibit "R-11", BIR Investigation Records, p. 207.

SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

(1) The term *'goods or properties'* shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

(b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment;

(d) The right or the privilege to use motion picture films, films, tapes and discs; and

(e) Radio, television, satellite transmission and cable television time.

The term *'gross selling price'* means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) Invoicing Requirements. — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and every sale, barter or exchange of services.

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Thus, computing the undeclared income of ₱373,029,683.82 based on petitioner's collections lacks legal and factual basis, and this assessment item must be cancelled.

a. Undeclared income from reconciliation of trade receivable and sales collected – ₱174,156,784.30

A similar computation by respondent reflects undeclared collections of ₱174,156,784.30. This time, the beginning and ending balances of petitioner's trade receivable account were considered rather than just the total credits:[137]

Trade Receivable, Beg.		₱241,948,523.00
Sales of Service – Power (Per ITR/FS)		17,264,054.00
Sales of Goods (Per ITR/FS)		
Sugar (VATable)	₱643,478,356.40	
Sugar (Non-VAT)	1,187,615,729.60	
Molasses	242,423,774.00	
Loose Bagasse (plus year-end adj.)	47,768,472.10	2,121,286,332.10
Total		₱2,380,498,909.10
Trade Receivable, End.		67,791,740.00
Collection		₱2,312,707,169.10
Add: Other Income (Per VATR)		
Sale of Scrap and Salvage Materials	₱ 6,397,060.00	
Rental, Agency Fees, and Others	634,443.00	
Handling and Storage Fees	1,837,105.00	8,868,608.00
Total Collection		₱2,321,575,777.10
Sales per VAT Returns		2,147,418,992.80
Undeclared Collections		**₱174,156,784.30**

However, respondent failed to consider petitioner's prior period collections and other adjustments to the receivable account.

As discussed earlier, it is erroneous for respondent to assess petitioner for undeclared income arising from the undeclared collection in the VAT Returns simply because petitioner is required by law to declare in the VAT Returns its sales of goods upon the issuance of sales invoices and sales of services upon the issuance of official receipts. Since petitioner's total sales are made up of more than 99% sales of goods, respondent's computation failed to capture any undeclared income.

[137] Exhibit "P-23", Docket – Vol. II, p. 1219.

Thus, petitioner's total deficiency VAT for FY ending September 30, 2017, amounting to ₱145,647,112.00, must be cancelled for lack of basis.

Petitioner is not liable for deficiency FWV and deficiency EWT for FY ending September 30, 2017.

Respondent found that "there were payments to non-resident foreign corporations (NRFC) that based on the returns filed that were not subjected to final withholding VAT." Thus, respondent assessed a deficiency FWV in the amount of ₱135,821.08, including increments, pursuant to Sec. 114(C) of the 1997 NIRC, as amended:[138]

Income payments not subjected to FWV	₱589,829.32[139]
Basic FWV Due	₱70,779.52
Surcharge (25%)	17,694.88
Interest	47,346.68
Total amount due	**₱135,821.08**

Petitioner counters that it is, at most, subject only to a 3% withholding percentage tax for income payments to NRFCs, provided these payments do not exceed the threshold of ₱1,919,500.00.[140]

We find for respondent.

Section 4.114-2(b) of RR No. 16-2005,[141] as amended by RR No. 4-2007,[142] provides:

> SEC. 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. –
>
> ...
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies including GOCCs, as well as **private corporation, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold**

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138 Exhibit "P-23", Docket – Vol. II, pp. 1217, 1219.
139 *See* Exhibit "P-19", Docket – Vol. II, p. 1169.
140 Docket – Vol. III, pp. 1534–1535, Memorandum for Petitioner, pars. 201-203.
141 SUBJECT: Consolidated Value-Added Tax Regulations of 2005.
142 SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents; and

(2) **Other services rendered in the Philippines by non-residents.** [*Emphasis supplied*]

However, an examination of petitioner's quarterly VAT returns for FY ending September 30, 2017, shows that petitioner did not report any purchase of services from non-residents.[143]

The Details of Discrepancies attached to the PAN reflect the breakdown of the assessed amount as follows:[144]

NRFCs	Income Payment	Tax Due
Actom PTY Ltd	₱184,193.32	₱22,103.20
David Hale Consulting	202,984.00	24,358.08
Kimberly HK Trading and Consultancy Co Ltd	202,652.00	24,318.24
Total	**₱589,829.32**	**₱70,779.52**

This item was retained in the FLD/FAN, but the foregoing breakdown[145] is neither shown in the Details of Discrepancies nor in the FDDA.[146]

On the other hand, respondent assessed petitioner for a deficiency EWT amounting to ₱7,513,120.95, including increments, thus:[147]

> During audit, it was uncovered that income payments amounting to Php254,311,030.50 were not subjected to the corresponding EWT rates pursuant to Sections 57 and 58 of the [NIRC], as amended... These resulted to a basic deficiency on EWT amounting to Php5,086,220.61. ...

Petitioner contends that the PAN, FLD/FAN and FDDA provided no specific details, computations, or breakdowns showing how the amount was derived. In a separate audit working paper received by petitioner before the issuance of the PAN, respondent's revenue officers listed petitioner's expenses

[143] Line 21K/L, Exhibits "P-7-2", "P-7-5" "P-7-8" and "P-7-11", Docket – Vol. II, pp. 1023, 1031, 1040 & 1046, respectively.
[144] Exhibit "P-17", Docket – Vol. II, p. 1141.
[145] Exhibit "P-19", Docket – Vol. II, p. 1174.
[146] Exhibit "P-23", Docket – Vol. II, p. 1219.
[147] Exhibit "P-23", Docket – Vol. II, p. 1219.

as per the AFS for FY ending September 30, 2017,[148] and compared them with the total income payments reported in the returns.[149]

Indeed, an examination of the subject PAN, FLD/FAN, and FDDA shows that there are no specific details or computations explaining the assessed amount. This omission violates petitioner's right to due process. In *Commissioner of Internal Revenue v. Enron Subic Power Corporation*,[150] the Supreme Court has ruled that:

> ... The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. **The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain.** Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.
>
> **The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed.** Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. **The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.** [*Emphasis supplied*]

Thus, the deficiency FWV and EWT assessments, amounting to ₱135,821.08 and ₱7,513,120.95, respectively, are cancelled due to lack of factual basis in the Details of Discrepancies attached to the FLD/FAN.

[148] Exhibit "R-11", BIR Investigation Records, pp. 191–192.
[149] Docket –Vol. III, pp. 1536–1537, Memorandum for Petitioner, pars. 212-213.
[150] *Supra* note 126.

Petitioner is not liable for administrative penalties for FY ending September 30, 2017.

Respondent also imposed administrative penalties of ₱140,000.00[151] in accordance with Sections 249 and 255 of the NIRC of 1997, as amended, and as implemented by Revenue Memorandum Order (RMO) No. 19-2007,[152] as amended by RMO No. 7-2015.[153]

This imposition cannot be sustained. Under RMO No. 7-2015, "compromise penalties are only amounts suggested in settlement of criminal liability and may not, therefore, be imposed or exacted on the taxpayer" if the taxpayer refuses to pay them. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay a compromise penalty, as it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[154]

Absent a showing that petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[155]

In summary, petitioner is not liable for any deficiency taxes for FY ending September 30, 2017.

As a final note, the BIR's right to collect deficiency taxes must stem from a valid assessment.[156] While respondent's findings enjoy a presumption of correctness, it is an established doctrine that the same must still be based on actual and verifiable facts, not mere presumptions.[157]

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151 Exhibit "P-23", Docket – Vol. II, p. 1220.
152 SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
153 SUBJECT: The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
154 *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 & L-12932, March 31, 1962 [Per J. Dizon, *En Banc*].
155 *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1991 [Per J. Narvasa, First Division].
156 *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].
157 *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation*, G.R. No. L-46644, September 11, 1987, [Per J. Padilla, Second Division], quoting *Collector of Internal Revenue v. Benipayo*, G.R. L-13656, January 31, 1962 [Per J. Dizon, *En Banc*].

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, the Formal Letter of Demand and Final Assessment Notice Nos. IT-2017-00047, VT-2017-00014, WG-2017-00011, WE-2017-00049, and administrative penalties are **CANCELLED** and **SET ASIDE**. Furthermore, the Final Decision on Disputed Assessment issued on September 10, 2021, assessing petitioner of deficiency income tax, value-added tax, final withholding VAT, and expanded withholding tax for the fiscal year ending September 30, 2017, are **REVERSED** and **SET ASIDE**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice