REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

ABRAHAM HOLDINGS, INC. (FORMERLY ARMADILLO HOLDINGS, INC.) Petitioner,	**CTA Case No. 11088**
	Present:
	RINGPIS-LIBAN, *P.J., Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
vs.	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 08 2026

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DECISION

FERRER-FLORES, J.:

Before Us is a **Petition for Review** filed by petitioner **Abraham Holdings, Inc.** (formerly Armadillo Holdings, Inc.) on February 22, 2023 praying for the assessments issued by respondent against it for alleged deficiency income tax and value-added tax (VAT) in the aggregate amount of **₱25,562,513.13**, inclusive of penalty for taxable year (TY) 2011, to be cancelled and declared null and void.[1]

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 770 E. Rodriguez Extension, Malibay, Pasay City, Philippines.[2]

On the other hand, respondent **Commissioner of Internal Revenue (CIR)** is the chief of the Bureau of Internal Revenue (BIR), the government

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[1] Summary of the Case, Pre-Trial Order dated January 18, 2024, Docket – Vol. II, p. 690.
[2] Paragraph (Par.) 2, Parties, Petition for Review, Docket - Vol. I, p. 6.

agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 12, 2012, petitioner received a copy of the Letter of Authority (LOA) No. 051-2012-00000444 (eLA201100013648) dated December 7, 2012, authorizing Revenue Officer (RO) Odilon Albornoz and Group Supervisor Liza Dimaya of Revenue District Office (RDO) No. 051, Revenue Region (RR) No. 8, to examine petitioner's internal revenue taxes for the period from January 1, 2011 to December 31, 2011.[4]

Thereafter, on January 29, 2013, the petitioner received an undated Letter Notice (LN) No. 051-RLF-11-00-00010 issued by respondent.[5]

On December 1, 2014, respondent issued a Preliminary Assessment Notice (PAN), which was received by petitioner on December 3, 2014, assessing it for deficiency taxes, inclusive of interest and compromise penalties. Details of the said assessment are described below:[6]

Tax Type	Basic Tax Due	Penalty	Total Amount Due
Income tax	₱ 5,276,802.00	₱ 2,853,810.18	₱ 8,130,612.18
VAT	11,770,869.50	6,888,377.33	18,659,246.83
Expanded withholding tax (WE)	161,050.09	95,129.86	256,179.95
Withholding tax on compensation (WC)	188,398.47	111,284.13	299,682.60
Miscellaneous tax (MC)	-	25,000.00	25,000.00
Total	**₱ 17,397,120.06**	**₱ 9,973,601.50**	**₱ 27,370,721.56**

Petitioner filed a Protest Letter to the PAN dated December 16, 2014.

Petitioner received the Formal Assessment Notice (FAN) and Assessment Notices concerning the alleged deficiency taxes on December 22, 2014.[7]

On January 14, 2015, petitioner filed a Protest Letter to the FAN.[8]

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3 Par. 1, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 642.
4 Par. 2, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 642 to 643.
5 Par. 3, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
6 Par. 4, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
7 Par. 5, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
8 Par. 6, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.

Petitioner received the letter dated February 11, 2015, which contains a notice that the docket of the case and the Protest to FAN will be forwarded to RDO No. 051 – Pasay City for reinvestigation, and that petitioner is required to submit all relevant supporting documents to the latter office.[9]

On March 18, 2015, petitioner received another letter dated March 3, 2015 from Officer-in-Charge Revenue District Officer Shirley A. Calapatia, directing petitioner to submit all of its relevant supporting documents to be considered in the reinvestigation to be conducted by her office.[10]

On February 22, 2016, petitioner received a letter from BIR regarding the review and evaluation of Protest to FAN dated January 14, 2015.[11]

After conducting a reinvestigation, respondent, through Regional Director of RR No. 8 – Makati City, Glen A. Geraldino, issued the Final Decision on Disputed Assessment (FDDA) and Amended Assessment Notices (AANs) all dated July 21, 2017, assessing petitioner for alleged tax deficiencies covering the TY 2011, which was received by petitioner on July 27, 2017. Details of the said assessment are described below:[12]

Tax Type	Basic Tax Due	Penalty	Total Amount Due
IT	₱ 1,687,626.06	₱ 1,804,141.61	₱ 3,491,767.67
VAT	11,593,336.63	12,908,306.86	24,501,643.49
WE	17,731.43	19,839.77	37,571.20
WC	188,398.47	210,799.82	399,198.29
MC	-	-	25,000.00

Petitioner filed a Request for Reconsideration to the FDDA/AANs dated August 23, 2017, raising the defenses of prescription and lack of due process.[13]

On September 28, 2017, the petitioner received a letter from BIR dated September 15, 2017, informing petitioner that the Request for Reconsideration to the FDDA/AANs was referred to the BIR-Appellate Division.[14]

On January 24, 2023, the petitioner received a decision dated January 11, 2023 issued by the respondent modifying the alleged tax deficiencies, as follows:[15]

[9] Par. 7, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
[10] Par. 8, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
[11] Par. 9, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 643.
[12] Par. 10, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, pp. 643 to 644.
[13] Par. 11, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 644.
[14] Par. 12, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 644.
[15] Par. 13, Summary of Admitted Facts, *Joint Stipulation*, Docket – Vol. II, p. 644.

Tax Type	Basic Tax Due	Penalty	Total Amount Due
IT	₱ 500,784.66	₱ 535,084.98	₱ 1,035,869.64
VAT	11,593,336.63	12,908,306.86	24,501,643.49
MC	-	25,000.00	25,000.00
TOTAL	**₱ 12,094,121.29**	**₱ 13,468,391.84**	**₱ 25,562,513.13**

PROCEEDINGS BEFORE THIS COURT

As earlier stated, petitioner filed the present *Petition for Review* on February 22, 2023.[16]

On May 23, 2023, respondent filed his *Answer*,[17] interposing the following special and affirmative defenses, to wit: (1) respondent's right to assess petitioner of its deficiency taxes for TY 2011 has not prescribed; (2) respondent's right to collect deficiency taxes for TY 2011 from petitioner has not prescribed; (3) petitioner was accorded due process; and, (4) the assessments for TY 2011 have factual and legal bases. Thereafter, on June 5, 2023, respondent transmitted the *BIR Records* for this case, consisting of one folder.[18]

The Pre-Trial Conference was set and held on September 5, 2023.[19] Prior thereto, petitioner's *Pre-Trial Brief* was filed on August 30, 2023,[20] while respondent's *Pre-Trial Brief* was filed through accredited courier also on August 30, 2023.[21]

During the Pre-Trial Conference held on September 5, 2023, the Court, directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on October 16, 2023 for mediation.[22] The PMC-CTA, however, later issued the *No Agreement To Mediate* dated October 16, 2023,[23] stating that the parties decided not to have their case mediated.

On September 25, 2023, the parties submitted their *Joint Stipulation*,[24] which was admitted and approved by the Court in its Resolution dated

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16 Docket – Vol. I, pp. 6 to 26.
17 Docket – Vol. II, pp. 489 to 503.
18 *Compliance* dated June 5, 2023, Docket – Vol. II, pp. 569 to 570.
19 Notice of Pre-Trial Conference dated June 7, 2023, Docket – Vol. II, pp. 574 to 575; Minutes of the hearing held on, and Order dated, September 5, 2023, Docket – Vol. II, pp. 638 to 641.
20 Docket – Vol. II, pp. 612 to 623.
21 Docket – Vol. II, pp. 624 to 631.
22 Order dated September 5, 2023, Docket – Vol. II, pp. 639 to 641.
23 Docket – Vol. II, p. 665.
24 Docket – Vol. II, pp. 642 to 654.

October 12, 2023,[25] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 18, 2024 was then issued.[26]

Trial then ensued, with petitioner presenting and offering its testimonial evidence, and both parties presenting and offering their respective documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. John Angielo Magyawe,[27] petitioner's Accounting and Tax Manager; (2) Ms. Jocelyn Divina,[28] petitioner's Associate Accounting Manager; and, (3) Mr. Michael L. Aguirre,[29] the Court-commissioned Independent Certified Public Accountant (ICPA).[30]

The *Report* of the ICPA was submitted through accredited courier on October 20, 2023.[31]

On February 13, 2024, petitioner filed its *Formal Offer of Exhibits*,[32] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Exhibits dated 12 February 2024)* through accredited courier on February 21, 2024.[33] In the Resolution dated April 18, 2024,[34] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-18-1", "P-18-2", and "P-20-ICPA" for failure to identify.

Thereafter, upon petitioner's *Motion for Partial Reconsideration to the Resolution dated April 18, 2024 (With Request for Remarking of Documents)*, which was filed on May 3, 2024,[35] and respondent having failed to file a comment,[36] the Court, in its Resolution dated April 23, 2025,[37] granted petitioner's *Motion* and ordered the remarking of Exhibits "P-20-ICPA" to "P-20A-ICPA", and admitted the same into evidence.

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[25] Docket – Vol. II, p. 656.
[26] Docket – Vol. II, pp. 690 to 697.
[27] Exhibit "P-20", Docket – Vol. II, pp. 1150 to 1159; Minutes of the hearing held on, and Order dated, January 18, 2024, Docket – Vol. II, pp. 698 to 699.
[28] Exhibits "P-21", Docket – Vol. II, pp. 1160 to 1169; Minutes of the hearing held on, and Order dated, January 18, 2024, Docket – Vol. II, pp. 698 to 699.
[29] Exhibits "P-25", Docket – Vol. II, pp. 673 to 687; Minutes of the hearing held on, and Order dated, January 30, 2024, Docket – Vol. I, pp. 700 to 702.
[30] *Oath of Commission* dated September 4, 2023, Docket – Vol. II, p. 647; Minutes of the hearing held on, and Order dated, September 5, 2023, Docket – Vol. II, pp. 638 to 641.
[31] Exhibit "P-24" (Refer to separate binder).
[32] Docket – Vol. II, pp. 706 to 718.
[33] Docket – Vol. III, pp. 1170 to 1172.
[34] Docket – Vol. III, pp. 1176 to 1178.
[35] Docket – Vol. III, pp. 1188 to 1192.
[36] Records Verification dated July 31, 2024, issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1202.
[37] Docket – Vol. III, pp. 1205 to 1208.

Respondent's counsel manifested during the hearing held on April 18, 2024, that he will no longer present his witness in this case; instead, he filed in open court his *Formal Offer of Evidence* covering the documents common to both parties, and which have been offered by petitioner. Petitioner did not object to the admission of the common exhibits, and its oral motion to strike off the *Judicial Affidavit* of respondent's witness was granted by the Court.[38]

On May 27, 2025, both parties filed their respective *Memorandum*.[39]

The present case was considered submitted for decision on June 10, 2025.[40]

THE STIPULATED ISSUE

The lone issue for this Court's resolution, as stipulated by the parties, is whether petitioner is liable to pay deficiency income tax and VAT in the amount of ₱25,562,513.13, inclusive of penalty, for TY 2011.[41]

Petitioner's arguments:

Petitioner argues that respondent's right to assess it for deficiency in income tax and VAT for TY 2011 has already prescribed; that respondent's right to collect from petitioner for deficiency in income tax and VAT for TY 2011 has likewise prescribed; that petitioner was not accorded due process vis-à-vis the PAN; and, that the assessments covering TY 2011 have no factual and legal bases.

Respondent's counter-arguments:

In refutation, respondent contends that his right to assess petitioner of its deficiency taxes for TY 2011 has not yet prescribed; that his right to collect from petitioner its deficiency taxes for TY 2011 has likewise not yet prescribed; that petitioner was accorded due process; and, that the assessments for TY 2011 have factual and legal bases.

THE COURT'S RULING

The *Petition for Review* is meritorious.

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[38] Minutes of the hearing held on, and Order dated, April 18, 2024, Docket – Vol. III, pp. 1179 to 1181.
[39] Docket – Vol. III, pp. 1210 to 1227, and pp. 1230 to 1245.
[40] Minute Resolution dated June 10, 2025.
[41] Issue for Resolution, *Joint Stipulation*, Docket – Vol. II, p. 644.

The Court has jurisdiction

Sections 7(a)(1) and 11 of Republic Act (R.A.) No. 1125,[42] as amended by R.A. No. 9282,[43] provides:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx *(Emphasis added)*
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> 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.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx.
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> xxx xxx xxx. *(Emphases supplied)*

The parties stipulated that petitioner received, on June 24, 2023, the Decision dated June 11, 2023 issued by respondent. Counting 30 days from such date of receipt, petitioner had until February 23, 2023 within which to appeal the Decision before the Court. The filing of the present *Petition for Review* on February 22, 2023 was, therefore, filed within the reglementary period.

The Court will now delve into the merits of this case.

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42 AN ACT CREATING THE COURT OF TAX APPEALS.

43 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.

There was violation of petitioner's right to due process

Petitioner claims that it was not accorded due process as the assessments in the Assessment Notices dated December 22, 2014 are exactly the same as the assessments in the PAN, except for the adjustment in the computation of interest.

Citing Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner states that 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.

Moreover, relying on the Supreme Court's ruling in the case of *Ang Tibay, et al. vs. The Court of Industrial Relations, et al.*,[44] petitioner states that the Court enumerated the fundamental requirements that must be respected in administrative proceedings, that the administrative tribunal or body must consider the evidence presented, and the administrative tribunals' decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

In addition, petitioner cites the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[45] stating that it is a long-established principle that part of administrative due process is that, *inter alia*, the administrative tribunal or body must consider the evidence presented, and the decision thereof is rendered in a manner that the parties may know the various issues involved and the reasons for the decision. Petitioner further states that it is clear that the tax assessments issued in violation of due process rights of a taxpayer are null and void.

On the other hand, respondent contends that petitioner was accorded due process. According to respondent, petitioner filed a Request for Reinvestigation on January 20, 2015 which was granted, and that during the conduct of the reinvestigation, all of petitioner's arguments and supporting documents were considered. Respondent avers that the fact that petitioner's deficiency taxes were reduced after reconsideration proves that all of petitioner's arguments and supporting documents were considered.

We agree with petitioner.

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44 G.R. No. 46496, February 27, 1940.
45 G.R. No. 201398-99 & 201418-19, October 3, 2018.

Section 228 of the NIRC of 1997, as amended, reads, in part, as follows:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> xxx xxx xxx

Under the foregoing provision, 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.[46] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[47] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement. Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void but also finds no validation in any provision in the NIRC of 1997, as amended.[48]

To implement the above-quoted provision, Section 3 of Revenue Regulations (RR) No. 12-99,[49] as amended by RR No. 18-2013,[50] provides, in part, as follows:

> SECTION 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 a

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46 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.

47 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

48 Refer to *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

49 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

50 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 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** (see illustration in ANNEX 'A' hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and 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, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> xxx xxx xxx
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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 state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based,</u> <u>*otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
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> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative **<u>shall state the (i) facts, the applicable law</u>**, rules and regulations, or jurisprudence on which such decision is based, <u>***otherwise, the decision shall be void***</u> (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. *(Emphases and underscoring added).*

The foregoing provisions prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

Moreover, based on the foregoing provisions, as part of due process in the issuance of tax assessments, a taxpayer is given 15 days from receipt of the PAN to file a response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, without such response being filed by the taxpayer within such period, that respondent may issue the corresponding FLD/FAN.

In the *Avon* case, the Supreme Court painstakingly emphasized the importance of strict adherence to the requirements of the law and with due regard to taxpayer's constitutional rights, to wit:

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **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 taxpayer's constitutional rights.**

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In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' <u>**Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons**</u>**.**

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In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

> (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
> (2) The administrative tribunal or body must consider the evidence presented.
> (3) There must be evidence supporting the tribunal's decision.
> (4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
> (5) The administrative tribunal's decision must be rendered on the evidence presented or at least contained in the record and disclosed to the parties affected.
> (6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
> (7) **The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.**

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The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the

> **affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.**
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> xxx xxx xxx
>
> **Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands** that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**
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> xxx xxx xxx
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> **The importance of providing 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[51] of Revenue Regulation 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[52] requires 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.** Finally, Section 3.1.6[53] specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> **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.
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> xxx xxx xxx

A significant part of due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for

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51 Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
52 Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
53 Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

doing so and the particular facts and law upon which his conclusions are based, and those facts must appear in the record.

Indeed, the CIR or his authorized representative is not bound to adopt the taxpayer's explanations in the reply to the PAN, and may still issue an assessment based on the findings of its investigation. Due process, however, dictates that the CIR or his authorized representative must at least consider the taxpayer's submissions in its decision. The concerned taxpayer must *not* be left unaware on how the respondent, or his duly authorized representatives, appreciated the explanations or defenses raised in connection with the assessment.

Again, in *Avon* case, the Supreme Court declared that in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void, viz:

> 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 conclusion are based, and those facts must appear in the record.**
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> xxx xxx xxx
>
> **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.**
>
> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.
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> xxx xxx xxx
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> In *Commissioner of Internal Revenue v. Reyes*, **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**
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> xxx xxx xxx
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> **Compliance with strict procedural requirements must be followed in the collection of taxes** as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:
>
> > Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the

other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed. (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx." *(Emphases and underscoring added)*

In the present case, the PAN dated December 1, 2014 and received by the petitioner on December 3, 2014 showed the following deficiency tax assessment, inclusive of surcharge and interest, to wit:

I. INCOME TAX						
Taxable Income (Loss) per Return					P	42,373,555.60
Add: Adjustments			P			
Disallowed expenses due to non-withholding (Schedule 1)				2,109,676.71		
Disallowed salaries and wages due to non-withholding (Schedule 2)				782,710.70		
Undeclared Income from unaccounted expense (Schedule 3)				1,479,440.57		4,371,827.98
Adjusted taxable income					P	46,745,383.58
Income Tax Due (30%)					P	14,023,615.07
Less: Tax Credits/Payments						
Prior year's excess credits			P	37,132,782.00		
Creditable tax withheld per returns				3,965,253.61		
Total			P	41,098,035.61		
Less: Unsupported creditable withholding tax	P	3,965,253.61				
Excess amount carried over to succeeding period		28,385,968.93		32,351,222.54		8,746,813.07
Deficiency Income Tax					P	5,276,802.00
Add: Interest (4/16/12 to 12/29/14)						2,853,810.18
TOTAL AMOUNT STILL DUE					P	8,130,612.18
II. VALUE-ADDED TAX						
Gross sales/receipts subject to VAT per returns					P	100,093,298.19
Add: Adjustments						
Undeclared Income from unaccounted expense (Schedule 3)			P	1,479,440.57		
Gross sales/receipts not subjected to VAT (Schedule 4)				96,611,138.58		98,090,579.15
Gross sales/receipts subject to VAT					P	198,183,877.34
Output Tax Due					P	23,782,065.28
Less: Input Tax Credits						
Input tax - deferred on capital goods exceeding 1M from previous Quarter			P	137,945.90		
Input tax current period				1,247,306.65		
Total				1,385,252.55		
Less: Input tax - on purchases of cap. goods exceeding 1M deferred for succeeding quarter				105,488.05		1,279,764.50
VAT Due						22,502,300.78
Less: Payments per return						10,731,431.28

Deficiency VAT		11,770,869.50
Add: Interest (1/26/12 to 12/29/14)		6,888,377.33
TOTAL AMOUNT STILL DUE		18,659,246.83
III. EXPANDED WITHHOLDING TAX		
Basic Tax Due (Schedule I)	P	161,050.09
Add: Interest (1/16/12 to 12/29/14)		95,129.86
TOTAL AMOUNT STILL DUE		256,179.95
III. WITHHOLDING TAX ON COMPENSATION		
Basic Tax Due (Schedule I)	P	188,398.47
Add: Interest (1/16/12 to 12/29/14)		111,284.13
TOTAL AMOUNT STILL DUE		299,682.60

In petitioner's Protest Letter (To the Preliminary Assessment Notice) filed on December 17, 2014,[54] petitioner made specific justifications against the BIR's findings relative to the alleged deficiencies: I. Income Tax (*i.e.*, A. Disallowed Expenses due to non-withholding, B. Disallowed Salaries and Wages due to non-withholding, C. Alleged Undeclared Income from unaccounted expenses, D. Disallowed Creditable Withholding Tax); II. Value-Added Tax (*i.e.*, A. Alleged Undeclared Income from unaccounted expenses, B. Alleged Revenues not subjected to VAT); III. Expanded Withholding Tax (*i.e.* Alleged Failure to withhold/remit expanded withholding tax); and IV. Withholding Tax on Compensation (*i.e.* Alleged Failure to withhold/remit withholding tax on compensation).

Notwithstanding petitioner's arguments, an examination of the FLD/FAN would show that the items of assessment were retained, with only the Interest amount adjusted, as follows:[55]

I. INCOME TAX						
Taxable Income (Loss) per Return					P	42,373,555.60
Add: Adjustments			P			
Disallowed expenses due to non-withholding (Schedule 1)				2,109,676.71		
Disallowed salaries and wages due to non-withholding (Schedule 2)				782,710.70		
Undeclared Income from unaccounted expense (Schedule 3)				1,479,440.57		4,371,827.98
Adjusted taxable income					P	46,745,383.58
Income Tax Due (30%)					P	14,023,615.07
Less: Tax Credits/Payments						
Prior year's excess credits			P	37,132,782.00		
Creditable tax withheld per returns				3,965,253.61		
Total			P	41,098,035.61		
Less: Unsupported creditable withholding tax	P	3,965,253.61				
Excess amount carried over to succeeding period		28,385,968.93		32,351,222.54		8,746,813.07
Deficiency Income Tax					P	5,276,802.00
Add: Interest (4/16/12 to 2/6/15)						2,966,574.71
TOTAL AMOUNT STILL DUE					P	8,243,376.71
II. VALUE-ADDED TAX						
Gross sales/receipts subject to VAT per returns					P	100,093,298.19
Add: Adjustments						
Undeclared Income from unaccounted expense (Schedule 3)			P	1,479,440.57		
Gross sales/receipts not subjected to VAT (Schedule 4)				96,611,138.58		98,090,579.15
Gross sales/receipts subject to VAT					P	198,183,877.34
Output Tax Due					P	23,782,065.28
Less: Input Tax Credits						
Input tax - deferred on capital goods exceeding 1M from previous Quarter			P	137,945.90		

[54] Exhibit "P-5", Docket – Vol. II, pp. 743 to 748.
[55] Exhibit "P-11", Docket – Vol. II, pp. 812 to 818.

Input tax current period	1,247,306.65		
Total	1,385,252.55		
Less: Input tax - on purchases of cap. goods exceeding 1M deferred for succeeding quarter	105,488.05		1,279,764.50
VAT Due			22,502,300.78
Less: Payments per return			10,731,431.28
Deficiency VAT			11,770,869.50
Add: Interest (1/26/12 to 12/29/14)			7,139,919.20
TOTAL AMOUNT STILL DUE			18,910,788.70

III. EXPANDED WITHHOLDING TAX		
Basic Tax Due (Schedule I)	P	161,050.09
Add: Interest (1/16/12 to 2/6/15)		98,571.48
TOTAL AMOUNT STILL DUE		259,621.57

III. WITHHOLDING TAX ON COMPENSATION		
Basic Tax Due (Schedule I)	P	188,398.47
Add: Interest (1/16/12 to 2/6/15)		115,310.18
TOTAL AMOUNT STILL DUE		303,708.65

A comparison of the PAN and the FAN shows that the basic tax amounts remain unchanged, except for the adjusted interests (computed until February 6, 2015).

Moreover, a side-by-side comparison of the Details of Discrepancy of both the PAN and the FAN shows that respondent did not address petitioner's defenses:

PAN	*FAN*
DETAILS OF DISCREPANCIES	**DETAILS OF DISCREPANCIES**
INCOME TAX	**I. INCOME TAX**
➢ **Disallowed Expenses due to non-withholding, P2,109,676.71** – Verification disclosed that you have not withheld the appropriate withholding tax due on your income payments enumerated hereunder. Section 34 (K) of the NIRC as amended, expressly provides that "*...any amount paid or payable which is otherwise deductible from or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code..*" Hence, the aforementioned expenses have been disallowed pursuant to the above provision of the law.	➢ **Disallowed Expenses due to non-withholding, P2,109,676.71** – Verification disclosed that you have not withheld the appropriate withholding tax due on your income payments enumerated hereunder. Section 34 (K) of the NIRC as amended, expressly provides that "*...any amount paid or payable which is otherwise deductible from or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code..*" Hence, the aforementioned expenses have been disallowed pursuant to the above provision of the law.
Schedule 1: xxx xxx xxx	**Schedule 1:** xxx xxx xxx
➢ **Salaries and Wages not subjected to withholding tax, 782,710.70** – Reconciliation of Salaries and Wages per Financial Statements vs. amount subjected to withholding tax per returns filed disclosed that there were salaries not subjected to	➢ **Salaries and Wages not subjected to withholding tax, 782,710.70** – Reconciliation of Salaries and Wages per Financial Statements vs. amount subjected to withholding tax per returns filed disclosed that there were salaries not subjected to

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withholding tax amounting to P782,710.70. Hence, this amount was disallowed as deduction from gross income for income tax purposes pursuant to Sec. 34 (K) of the NIRC as amended.	withholding tax amounting to P782,710.70. Hence, this amount was disallowed as deduction from gross income for income tax purposes pursuant to Sec. 34 (K) of the NIRC as amended.
<u>Schedule 2:</u> xxx xxx xxx	**<u>Schedule 2:</u>** xxx xxx xxx
➢ **<u>Undeclared income from unaccounted expenses, 1,479,440.57</u>** – Verification disclosed that there are some income payments and receipts that were not accounted reflected in the Financial Statements. These differences were then treated as unaccounted source of cash which was considered as undeclared income pursuant to Section 32 of the 1997 Tax Code as what has been held in *the case of Perez vs. CTA and CIR L-9193 dated May 29, 1957 for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported.*	➢ **<u>Undeclared income from unaccounted expenses, 1,479,440.57</u>** – Verification disclosed that there are some income payments and receipts that were not accounted reflected in the Financial Statements. These differences were then treated as unaccounted source of cash which was considered as undeclared income pursuant to Section 32 of the 1997 Tax Code as what has been held in *the case of Perez vs. CTA and CIR L-9193 dated May 29, 1957 for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported.*
<u>Schedule 3:</u> xxx xxx xxx	**<u>Schedule 3:</u>** xxx xxx xxx
➢ **<u>Disallowed Creditable Withholding Tax, 3,965,253.61</u>** – Verification disclosed that your creditable withholding tax claimed per income tax return amounting to P3,965,253.61 were not supported with copies of the withholding tax certificates (BIR Form 2307) thus disallowed pursuant to Section 2.58.3 (E) of Revenue Regulations No. 2-98 as amended.	➢ **<u>Disallowed Creditable Withholding Tax, 3,965,253.61</u>** – Verification disclosed that your creditable withholding tax claimed per income tax return amounting to P3,965,253.61 were not supported with copies of the withholding tax certificates (BIR Form 2307) thus disallowed pursuant to Section 2.58.3 (E) of Revenue Regulations No. 2-98 as amended.
xxx xxx xx	xxx xxx xx
➢ **<u>Excess credits carried forward to succeeding year, 28,385,968.93</u>** – Excess tax credit carried over to succeeding period in the amount P28,385,968.93 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of 1997 NIRC.	➢ **<u>Excess credits carried forward to succeeding year, 28,385,968.93</u>** – Excess tax credit carried over to succeeding period in the amount P28,385,968.93 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of 1997 NIRC.
<u>VALUE ADDED TAX</u>	**II. <u>VALUE ADDED TAX</u>**
➢ **<u>Unaccounted expenses, P1,479,440.57</u>** – As discussed under Income Tax, the undeclared income from unaccounted expenses as shown in Schedule 3, is likewise subject to VAT pursuant to Section 108(A) of the Tax Code.	➢ **<u>Unaccounted expenses, P1,479,440.57</u>** – As discussed under Income Tax, the undeclared income from unaccounted expenses as shown in Schedule 3, is likewise subject to VAT pursuant to Section 108(A) of the Tax Code.
➢ **<u>Revenues not subjected to VAT, P96,611,138.58</u>** – Comparison of gross receipts computed based on the data reported per Financial Statements and information from third party sources as against the amount of Receipts subjected to VAT per returns showed that there are receipts not subjected to	➢ **<u>Revenues not subjected to VAT, P96,611,138.58</u>** – Comparison of gross receipts computed based on the data reported per Financial Statements and information from third party sources as against the amount of Receipts subjected to VAT per returns showed that there are receipts not subjected to

VAT amounting to P96,611,138.58 Section 105 of the NIRC states that "*Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and pay any person who imports goods is subject to the [value-added tax] (VAT) imposed in Sections 106 and 108 of this Code which is ten percent (10%)(now twelve percent (12%)pursuant to RA 9337) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.*" **<u>Schedule 4:</u>** xxx xxx xxx . **<u>EXPANDED WITHHOLDING TAX</u>** ➤ **<u>Basic expanded withholding tax due, 161,050.09</u>** – Since you have failed to withhold/remit the correct withholding tax due on income payments previously disallowed as deductions from gross income *(refer to Schedule 1)e 1)*, you are still liable to pay the deficiency withholding tax thereon pursuant to Section 2.57.2 of Revenue Regulations No. 2-98 as amended. . **<u>WITHHOLDING TAX ON COMPENSATION</u>** ➤ **<u>Basic Withholding Tax on Compensation due, P188,398.47</u>** – Since you have failed to withhold/remit the corresponding withholding tax on the Salaries and Wages previously disallowed from gross income *(refer to Schedule 2)*, you are still liable to pay the withholding tax on compensation, pursuant to Sec. 79 (A) of the Tax Code and implemented under Sec. 2.78 of the Revenue Regulation 2-98. **<u>Schedule 5:</u>** xxx xxx xxx	VAT amounting to P96,611,138.58 Section 105 of the NIRC states that "*Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and pay any person who imports goods is subject to the [value-added tax] (VAT) imposed in Sections 106 and 108 of this Code which is ten percent (10%)(now twelve percent (12%)pursuant to RA 9337) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.*" **<u>Schedule 4:</u>** xxx xxx xxx **III. <u>EXPANDED WITHHOLDING TAX</u>** ➤ **<u>Basic expanded withholding tax due, 161,050.09</u>** – Since you have failed to withhold/remit the correct withholding tax due on income payments previously disallowed as deductions from gross income *(refer to Schedule 1)e 1)*, you are still liable to pay the deficiency withholding tax thereon pursuant to Section 2.57.2 of Revenue Regulations No. 2-98 as amended. **IV. <u>WITHHOLDING TAX ON COMPENSATION</u>** ➤ **<u>Basic Withholding Tax on Compensation due, P188,398.47</u>** – Since you have failed to withhold/remit the corresponding withholding tax on the Salaries and Wages previously disallowed from gross income *(refer to Schedule 2)*, you are still liable to pay the withholding tax on compensation, pursuant to Sec. 79 (A) of the Tax Code and implemented under Sec. 2.78 of the Revenue Regulation 2-98. **<u>Schedule 5:</u>** xxx xxx xxx

Clearly, the explanations of the petitioner in its letter reply to the PAN were not addressed nor considered in the FAN. It is apparent that respondent failed to include explanations as to why these assessments were retained without taking into consideration the defenses raised by petitioner.

Notably, in the *Avon* case, the Supreme Court ruled that there was violation of Avon's right to due process as it was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancies attached to the PAN, as well as the FLD/FAN, did not even comment or address the defenses and documents submitted by Avon, to wit:

> The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments</u>**

> **issued against it.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
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> xxx xxx xxx

The factual milieu in *Avon* case is on all fours with the present petition. Here, respondent failed to consider the defenses and explanation submitted by petitioner in its Protest Letter to the PAN. Petitioner was left unaware of how respondent, or his duly authorized representatives appreciated the explanations or defenses raised therein. To stress, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusions are based, and those facts must appear in the record. Respondent failed to observe this requirement in issuing the FAN. Thus, the inevitable conclusion is that respondent violated petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended. As a consequence, the deficiency tax assessments are rendered void and unenforceable.

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of respondent to strictly comply with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.**[56]

The Supreme Court has consistently held that, between the power of the State to tax and the individual's right to due process, the scale favors the right of the taxpayer to due process.[57]

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[58] Furthermore, a void assessment bears no valid fruit.[59] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

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[56] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 20210, citing *Tupas vs. Court of Appeals*, G.R. No. 89571, February 6, 1991.

[57] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

[58] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.

[59] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

In view of the nullity of the subject tax assessments, as above discussed, this Court finds it unnecessary to address the remaining issues or matters raised in the present case.

ACCORDINGLY, the present **Petition for Review** is **GRANTED**. The assessments issued by respondent Commissioner of Internal Revenue against petitioner Abraham Holdings, Inc. for deficiency income tax and value-added tax in the aggregate amount of **₱25,562,513.13**, inclusive of penalty for taxable year 2011, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice