CTA Form No. 8

22-000219-0053

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10857

FOLARES PHARMACEUTICALS INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. PHILIP A. MAYO
ATTY. CARL FITRI A. HUSSIN
ATTY. DYRENE MARA S. ROSARIO
Bureau of Internal Revenue
Legal Division, Revenue Region No. 8A-Makati City
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Ave. cor. Don Chino Roces Ave., Makati City

ATTY. PAULO T. VILLAREAL
ATTY. CARLOS V. JAURIGUE
Unit 1908 Paragon Plaza
EDSA corner Reliance Street
Mandaluyong City

GREETINGS:

You are hereby notified by these presents that on **March 12, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

FOLARES PHARMACEUTICALS INC., Petitioner,	**CTA Case No. 10857**
	Members:
- versus -	**DEL ROSARIO,** *P.J. & Chairperson,* **BACORRO-VILLENA,** and **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 12 2025; 3:30PM

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on May 12, 2022 by petitioner Folares Pharmaceuticals Inc. praying that the deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), and compromise penalty assessments for taxable year (TY) 2017 in the amounts of ₱5,217,824.29, ₱773,893.85, ₱354,786.42, ₱6,804,116.58, and ₱50,000.00, respectively, inclusive of interest and surcharges, issued by respondent be declared null, void and cancelled.[1]

THE PARTIES

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

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to conduct

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[1] Prayer, *Petition for Review*, CTA Docket, Vol. I, p. 14.
[2] Par. 1, *Petition for Review*, CTA Docket, Vol. I, p. 8; Par. 1, *Answer*, CTA Docket, Vol. I, p. 88.

investigations on the internal revenue taxes paid by taxpayers, issue deficiency tax assessments, and decide on disputed tax assessments.[3] He may be served with summons and other court processes at the Legal Division, Revenue Region 8A-Makati City, 36th Floor, Export Bank Plaza Building, Sen. Gil Puyat Avenue corner Don Chino Roces Avenue, Makati City.[4]

THE FACTS

On September 25, 2020, petitioner received a Preliminary Assessment Notice (PAN) with Details of Discrepancy[5] dated September 22, 2020, issued by respondent, finding petitioner liable for deficiency income tax, VAT, EWT, and IAET, inclusive of penalties, surcharge, and compromise penalties for TY 2017 in the following amounts:

KIND OF TAX	AMOUNT (₱)
Income Tax	
Basic Tax Due	3,550,213.98
Interest 12% (04.16.18 to 10.30.20)	1,084,322.89
VAT	
Basic Tax Due	8,800,877.74
Interest 12% (01.26.18 to 10.30.20)	2,919,480.21
EWT	
Basic Tax Due	252,439.35
Interest 12% (01.16.18 to 10.30.20)	84,570.64
IAET	
Basic Tax Due	3,856,071.04
Surcharge 25%	964,017.76
Interest 12% (01.16.19 to 10.30.20)	829,108.10
Compromise Penalty	50,000.00
TOTAL	22,391,101.71

Said PAN was issued pursuant to Letter of Authority (LOA) No. LOA-047-2019-00001024 (eLA201600071113) dated November 8, 2019.[6]

Subsequently, Petitioner filed its Reply to the PAN dated October 5, 2020 on October 9, 2020.[7]

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[3] Par. 2, *Petition for Review*, CTA Docket, Vol. I, p. 8; Par. 1, *Answer*, CTA Docket, Vol. I. p. 88.
[4] Par. 1, *Answer*, CTA Docket, Vol. I, p. 88.
[5] Exhibit "P-1", CTA Docket, Vol. II, pp. 815-820; Exhibits "R-9", "R-10", and 'R-11", BIR Records, pp. 522-527.
[6] BIR Records, p. 351.
[7] Exhibit "P-2", CTA Docket, Vol. II, pp. 822-825.

On November 6, 2020, petitioner received the Formal Letter of Demand and Final Assessment Notices (FLD/FAN) all dated October 23, 2020.[8] The FLD/FAN found petitioner liable for deficiency income tax, VAT, EWT, and IAET, inclusive of penalties and surcharge for TY 2017 in the following amounts:

KIND OF TAX	AMOUNT (₱)
Income Tax	
Basic Tax Due	3,550,213.98
Interest 12% (04.16.18 to 12.01.20)	1,121,673.08
VAT	
Basic Tax Due	8,800,877.74
Interest 12% (01.26.18 to 12.01.20)	3,012,070.27
EWT	
Basic Tax Due	252,439.35
Interest 12% (01.16.18 to 12.01.20)	87,226.44
IAET	
Basic Tax Due	3,856,071.04
Surcharge 25%	964,017.76
Interest 12% (01.16.19 to 12.01.20)	869,676.08
Compromise Penalty	50,000.00
TOTAL	22,564,265.74

Petitioner then filed its Protest to the FAN/FLD (Protest) dated November 27, 2020[9] on December 3, 2020.

In a Letter dated December 11, 2020, Regional Director Maridur V. Rosario informed petitioner that the latter's request for reinvestigation contained in its Protest had been granted. Said Letter was received by petitioner on January 20, 2021.[10] In the same Letter, petitioner was directed to submit to the BIR the necessary documents to support its claims and/or defenses within sixty (60) days from filing of protest.

On April 13, 2022, respondent issued the Final Decision on Disputed Assessment (FDDA) which was received by petitioner on April 20, 2022.[11] In the FDDA, petitioner is assessed in the adjusted amount of ₱13,200,621.14 representing alleged deficiency income tax,

[8] Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", and "P-8", CTA Docket, Vol. II, pp. 826-833; Exhibits "R-18" and "R-19", BIR Recods, pp. 561-567.
[9] Exhibit "P-9", CTA Docket, Vol. II, pp. 834-841.
[10] Exhibit "P-10", CTA Docket, Vol. II, pp. 842-843; Exhibit "R-23", BIR Records, p. 599; Par. 8, *Petition for Review*, CTA Docket, Vol. I, p. 9; Par. 2, *Answer*, CTA Docket, Vol. I, p. 88.
[11] Exhibit "P-12", CTA Docket, Vol. II, pp. 847-850; Exhibit "R-25", BIR Records, pp. 651-653.

VAT, EWT, and IAET, inclusive of penalties and surcharge for TY 2017, broken down as follows:

KIND OF TAX	AMOUNT (₱)
Income Tax	
Basic Tax Due	3,513,848.46
Interest 12% (04.16.18 to 04.29.22)	1,703,975.83
VAT	
Basic Tax Due	512,094.37
Interest 12% (01.26.18 to 04.29.22)	261,799.48
EWT	
Basic Tax Due	234,256.59
Interest 12% (01.16.18 to 04.29.22)	120,529.83
IAET	
Basic Tax Due	3,856,071.04
Surcharge 25%	964,017.76
Interest 12% (01.16.18 to 04.29.22)	1,984,027.78
Compromise Penalty	50,000.00
TOTAL	13,200,621.14

On May 12, 2022, petitioner filed the present Petition for Review[12] assailing the aforementioned FDDA.

On May 16, 2022, the Court's Second Division issued Summons[13] upon respondent, requiring him to file with the Court, and to serve on petitioner, his Answer.

A Motion for Extension of Time to File Answer[14] was filed by respondent on June 17, 2022. The same was granted by the Court's Second Division in a Resolution[15] dated July 7, 2022. Respondent was given until July 18, 2022 to file his Answer.

In his Answer[16] posted within the extended period, or on July 10, 2022, respondent interposed his special and affirmative defenses which, in a nutshell, allege that the deficiency tax assessment against petitioner is valid and issued in accordance with law.

Thereafter, the Pre-Trial Conference was set on October 12, 2022.[17]

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[12] CTA Docket, Vol. I, pp. 8-15.
[13] CTA Docket, Vol. I, p. 77.
[14] CTA Docket, Vol. I, pp. 80-83.
[15] CTA Docket, Vol. I, pp. 86-87.
[16] CTA Docket, Vol. I, pp. 88-105.
[17] *Notice of Pre-Trial Conference* dated July 26, 2022, CTA Docket, Vol. I, pp. 175 to 176.

In compliance with Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA), respondent forwarded to the Court the entire BIR Records of the present case.[18]

Respondent's Pre-Trial Brief[19] was filed on October 6, 2022 while petitioner's Pre-Trial Brief[20] was filed on October 10, 2022.

The Pre-Trial Conference proceeded on October 12, 2022.[21]

On January 20, 2023, the Pre-Trial Order[22] was issued.

On February 8, 2023, the Court's Second Division granted petitioner's Motion to Commission an Independent Certified Public Accountant filed on December 7, 2022,[23] and Mr. Glenn M. Abanador took his Oath in open court as the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

During trial, petitioner presented its witnesses, namely: (1) Ms. Flordeliza A. Leviste, Assistant Vice President - Finance;[25] (2) Atty. Jeremy Z. Parulan, Corporate Secretary;[26] and, (3) Mr. Glenn M. Abanador.[27]

Meanwhile, in the *Resolution* issued on May 29, 2023, the present case was transferred to the Court's First Division pursuant to *Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court)* dated May 23, 2023.[28]

Petitioner filed its Formal Offer of Evidence on October 13, 2023.[29] Respondent filed his Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated 12 October 2023)[30] on October 26, 2023.

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[18] *Compliance* dated July 28, 2022, CTA Docket, Vol. I, pp. 177-179.
[19] CTA Docket, Vol. I, pp. 181-193.
[20] CTA Docket, Vol. I, pp. 195-205.
[21] *Order* dated October 12, 2022, CTA Docket, Vol. I, pp. 207-208.
[22] CTA Docket, Vol. I, pp. 231-240.
[23] CTA Docket, Vol. I, pp. 219-222.
[24] *Oath of Commission*, CTA Docket, Vol. I, p. 246.
[25] *Order* dated February 8, 2023, CTA Docket, Vol. I, pp. 244-245.
[26] *Order* dated March 8, 2023, CTA Docket, Vol. I, p. 300.
[27] *Order* dated October 3, 2023, CTA Docket, Vol. II, pp. 805-806.
[28] CTA Docket, Vol. II, p. 789.
[29] CTA Docket, Vol. II, pp. 808-814.
[30] CTA Docket, Vol. II, pp. 869-872.

On January 16, 2024, the Court issued a Resolution admitting petitioner's formally offered exhibits, except Exhibit "P-11" for failure to identify the same.[31]

On the other hand, respondent presented the testimony of Revenue Officer (RO) Ana Clarizza L. Labajoy.[32] Thereafter, respondent filed his Formal Offer of Evidence on January 29, 2024.[33] Petitioner's Comment on Formal Offer of Evidence of Respondent[34] was filed on February 7, 2024.

In the Resolution dated April 12, 2024, the Court admitted all of respondent's formally offered exhibits and directed the parties to file their respective Memoranda within thirty (30) days from notice.[35]

Respondent filed his Memorandum[36] on May 22, 2024 while petitioner failed to file its Memorandum as per Records Verification[37] dated May 24, 2024.

The present case was submitted for decision on May 31, 2024.[38]

ISSUE

The parties stipulated the following issue to be tried and resolved:

> Whether petitioner is liable to pay the assessed deficiency income tax, VAT, EWT, IAET and compromise penalty in the amounts of ₱5,217,824.29, ₱773,893.85, ₱354,786.42, ₱6,804,116.58, and 50,000.00, inclusive of interests and surcharge, respectively for TY 2017.[39]

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[31] CTA Docket, Vol. II, pp. 880-882.
[32] *Order* dated January 23, 2023, CTA Docket, Vol. II, pp. 884-885.
[33] CTA Docket, Vol. II, pp. 888-897.
[34] CTA Docket, Vol. II, pp. 899-900.
[35] CTA Docket, Vol. II, pp. 907-908.
[36] CTA Docket, Vol. II, pp. 909-924.
[37] CTA Docket, Vol. II, p. 927.
[38] *Minute Resolution*, CTA Docket, Vol. II, p. 928.
[39] Stipulation of Issue, *Pre-Trial Order,* CTA Docket, Vol. I, pp. 232-233.

PETITIONER'S ARGUMENTS

Petitioner argues that:

(i) The deficiency income tax assessment for TY 2017 is null and void;

(ii) Petitioner was not remiss in its obligation to withhold the tax on payments made and remit the same to the BIR;

(iii) The audit/examination of its financial accounting records was conducted haphazardly and the findings were arbitrary and whimsical;

(iv) The deficiency EWT assessment is without basis;

(v) It had submitted the supporting documents with regard to the disallowed input taxes claimed against its output tax liability for TY 2017;

(vi) It is not liable to pay the IAET assessment; and,

(vii) The compromise penalty is without basis.[40]

RESPONDENT'S ARGUMENTS

Respondent counter-argues that:

(i) The due process requirements under the NIRC of 1997, as amended, and its implementing rules and regulations, were all complied with in the assessment of deficiency taxes of petitioner;

(ii) The assessment of petitioner's deficiency taxes has factual and legal bases;

(iii) Petitioner is liable for deficiency income tax arising from disallowed expenses due to non-withholding;

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[40] *Petition for Review*, CTA Docket, Vol. I, pp. 10-13.

(iv) Considering the findings of income payments not subjected to withholding tax, petitioner is liable to pay the corresponding EWT;

(v) Petitioner is liable for deficiency VAT for its failure to substantiate in full its input taxes for TY 2017;

(vi) Petitioner's retained earnings for TY 2017 exceeded 100% of its paid-up capital; hence, the IAET assessment is proper;

(vii) The imposition of the interest, surcharge, and compromise penalty is in accordance with the provisions of the NIRC of 1997, as amended; and,

(viii) Tax assessments issued by the BIR are *prima facie* correct and made in good faith.[41]

THE COURT'S RULING

The present Petition for Review is meritorious.

The Court has jurisdiction over the present case

Before delving into the merits of the Petition for Review, the Court shall first determine whether it has jurisdiction over the case.

The CTA is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction.[42] Section 7 of Republic Act (RA) No. 1125,[43] as amended, defines the jurisdiction of the CTA, *viz.*:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[41] *Respondent's Memorandum*, CTA Docket, Vol. II, pp. 911-922.
[42] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[43] An Act Creating the Court of Tax Appeals.

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 or part of law administered by the Bureau of Internal Revenue; xxx" (*Boldfacing supplied*)

Relatedly, under Section 11 of RA No. 1125, as amended,[44] in relation to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[45] a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

Based on the foregoing, this Court has exclusive appellate jurisdiction to take cognizance of decisions involving disputed assessments upon appeal of the concerned taxpayer or party adversely affected by said decision within thirty (30) days after receipt thereof.

Considering that petitioner received the FDDA dated April 13, 2022 on April 20, 2022, it had thirty (30) days therefrom or until May 20, 2022 within which to appeal the FDDA to the CTA. Thus, the Petition for Review was timely filed on May 12, 2022 and the Court has jurisdiction over the same.

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[44] Sec. 11 of RA No. 1125, as amended, reads:

> Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein. xxx

[45] Rule 8, Sec. 3 of RRCTA reads:

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

The FLD/FAN was issued in violation of petitioner's right to due process

The requirement of informing the taxpayer of the assessment is mandatory in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99,[46] as amended by RR No. 07-18,[47] to wit:

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

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[46] 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

[47] SUBJECT: Amends certain sections of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, relative to the due process requirement in the issuance of a deficiency tax assessment.

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state **the facts, the law, rules and regulations, or jurisprudence** on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (Boldfacing supplied)

From the foregoing, it is clear that respondent or his duly authorized representative must state the facts, the law, rules and regulations or jurisprudence on which the assessment contained in the FLD/FAN is based.

The principle was discussed in detail in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.;*[48] *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue,*[49] (Avon), where the Supreme Court stressed the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, **to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and to give reason for rejecting the taxpayer's explanations or defenses**, lest the assessment be deemed void:

> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise,

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[48] G.R. Nos. 201398-99, October 3, 2018.

[49] G.R. Nos. 201418-19, October 3, 2018.

the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based, otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 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.

xxx xxx xxx

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **<u>did not even comment or address the defenses and documents submitted by Avon</u>. 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.**

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. <u>The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00,</u>

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without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations**.

xxx xxx xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

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 Regulations No. 12-99.**
>
> xxx xxx xxx
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void**. *(Boldfacing and underscoring supplied)*

In the present case, an examination of the FLD/FAN reveals that it is a **replica of the PAN**, differing only in the indicated amounts of interests due.

The following table shows the comparison between the pertinent portions of the PAN and the FLD/FAN:

PAN	FLD/FAN
Income Tax	***Income Tax***
Basic Tax Due- ₱3,550,213.98	Basic Tax Due- ₱3,550,213.98
VAT	***VAT***
Basic Tax Due- ₱8,800,877.74	Basic Tax Due- ₱8,800,877.74
EWT	***EWT***
Basic Tax Due- ₱252,439.35	Basic Tax Due- ₱252,439.35
IAET	***IAET***
Basic Tax Due- ₱3,856,071.04	Basic Tax Due- ₱3,856,071.04

It is worth noting that respondent makes mention of petitioner's Reply to the PAN in the Details of Discrepancies attached to the FLD/FAN dated October 23, 2020.[50] For easy reference, the pertinent portion of the aforementioned Details of Discrepancies is shown below:

[50] BIR Records, p. 562.

VII. PROTEST FILED AGAINST THE PRELIMINARY ASSESSMENT NOTICE

In relation to the ***Protest Letter*** dated October 5, 2020 which we received on **October 9, 2020**, filed by your company, in reply to our **Preliminary Assessment Notice (PAN)** dated **September 22, 2020** and **received by your authorized representative on September 25, 2020** covering the deficiency taxes set forth in the said PAN, please be informed that we hereby acknowledge your contentions stated in the said letter and shall form part of the tax docket of your case.

However, evaluation of aforesaid letter disclosed that the same argument and evidence adduced during the Notice of Informal Conference (NIC) were submitted. Accordingly, since the same were already considered in the said Conference which is not sufficient to warrant the cancellation of the findings noted during the conduct of investigation. Meaning, subject taxpayer failed to provide the relevant documents which may support its contentions. Hence, reiteration of the herein assessment is justified. Perhaps, the very purpose of the NIC was already served and your right to be heard has been observed. Thus, the reiteration of the findings set forth in the abovementioned PAN has become final.

Nowhere in the FLD/FAN or the attached Details of Discrepancies does respondent discuss his appreciation of petitioner's arguments contained in its Reply to PAN. Moreover, respondent did not give any reason for rejecting petitioner's defenses, contrary to the specific mandate of the Supreme Court in *Avon* which requires respondent to give the particular facts upon which his or her conclusions are based, and to make such facts appear on the BIR records.

To be clear, respondent merely stated that petitioner's contentions contained in said Reply to PAN are acknowledged and shall "form part of the tax docket" of petitioner's case and that petitioner's "argument and evidence" were already considered during the Notice of Informal Conference and the same are "not sufficient to warrant the cancellation of the findings noted during the conduct of investigation." This does not satisfy the statutory requirement of stating the facts and the law on which the assessment is based.

Respondent's exercise of his power to decide tax cases involving disputed assessments is an exercise of his administrative adjudicatory power or quasi-judicial functions.[51] Although the BIR, a quasi-judicial agency, "may be said to be free from the rigidity of certain procedural requirements, it does not mean that it can, in justiciable cases, entirely

[51] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.

ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character."[52]

The proceedings before the BIR, therefore, must be conducted in accordance with the tenets of administrative due process, viz.:

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; and,

7. **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

Consequently, in deciding protests on deficiency tax assessments, the BIR must not only make a sweeping and perfunctory declaration that the taxpayers' submissions are considered in making its decision on their protests but must also sufficiently inform them of the reasons - factual and legal - for such decision by communicating in writing the reasons or grounds especially in instances where the taxpayers' arguments in their protests are rejected or deemed

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[52] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* and *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.

unmeritorious. Failure of the BIR to apprise the taxpayers of the bases of the decision transgresses their right to due process.

It bears emphasis that the presumption of regularity in the performance of the BIR or respondent's official duties is a disputable presumption. It cannot stand in the face of positive evidence of irregularity or failure to perform a duty.[53] Here, the FLD/FAN **failed to inform petitioner of the reasons for respondent's apparent rejection of its arguments in the Reply to PAN.** This clearly demonstrates respondent's failure to render a decision in a manner that the parties may know the reasons for the decision by communicating in writing the factual and legal bases of the rejection of petitioner's arguments against the assessment contained in its Reply to PAN.

To reiterate, respondent is required **to evaluate and consider petitioner's explanations or arguments in its Reply to PAN and to provide reasons for rejecting the same.** On this point, *Avon* is categorical that a violation of taxpayer's right to due process in the issuance of an assessment renders the assessment **void.**

Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue[54] further instructs that "[a]ny short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced". For as between the power of the State to tax and a taxpayer's right to due process, the scale favors the right of the taxpayer to due process.[55]

Considering the foregoing, issuing the FLD/FAN which is an exact replica of the PAN, *sans* any indication in the FLD/FAN that due consideration was accorded on petitioner's explanations or arguments as stated in its Reply to PAN, renders the FLD/FAN void.

In sum, the Court finds the FLD/FAN dated October 23, 2020 void for respondent's wanton disregard of the due process requirements as laid down in Section 228 of the NIRC of 1997, as amended, RR No. 12-99, as amended, and *Avon*. Consequently, the assessment against petitioner for deficiency income tax, VAT, EWT, IAET, and compromise penalty for TY 2017 in the amounts of

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[53] Id.
[54] G.R. No. 215534 and 215557, April 18, 2016.
[55] *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.

₱4,671,887.06, ₱11,812,948.01, ₱339,665.79, ₱5,689,764.88, and ₱50,000.00, respectively, inclusive of interest and surcharges, has no legal mooring to stand on.

WHEREFORE, premises considered, the Petition for Review filed on May 12, 2022 is hereby **GRANTED**. The Formal Letter of Demand and Assessment Notice Nos. IT-eLA71113-17-20-217, VT-eLA71113-17-20-217, WE-eLA71113-17-20-217, IE-eLA71113-17-20-217, and MC-eLA71113-17-20-217 all dated October 23, 2020 are **CANCELLED** and **WITHDRAWN** and the Final Decision on Disputed Assessment dated April 13, 2022 issued against petitioner for deficiency income tax, VAT, EWT, IAET, and compromise penalty for TY 2017 in the amounts of ₱5,217,824.29, ₱773,893.85, ₱354,786.42, ₱6,804,116.58, and ₱50,000.00, respectively, is **SET ASIDE**.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency income tax, value-added tax, expanded withholding tax, improperly accumulated earnings tax, and compromise penalty assessments against Folares Pharmaceuticals Inc. as contained in the Formal Letter of Demand and Assessment Notice Nos. IT-eLA71113-17-20-217, VT-eLA71113-17-20-217, WE-eLA71113-17-20-217, IE-eLA71113-17-20-217, and MC-eLA71113-17-20-217 all dated October 23, 2020 and the Final Decision on Disputed Assessment dated April 13, 2022. This decree of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
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