REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

MARINA SQUARE PROPERTIES, INC., Petitioner	**CTA CASE NO. 10349**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 1 1 2024 4:24 p.m.

x - x

DECISION

***FERRER-FLORES, J.*:**

STATEMENT OF THE CASE

The *Petition for Review* prays for the Court to render judgment ordering the cancellation and withdrawal of the assessments against petitioner **Marina Square Properties, Inc.** for alleged deficiency income tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), value-added tax (VAT), and documentary stamp tax (DST), and compromise penalties, for taxable year (TY) 2014, in the total amount of **₱801,308,250.45**, inclusive of surcharges and interest.[1]

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines, with principal office at 17/F New Coast Hotel Manila, 1588

---

[1] Statement of the Case, Amended Pre-Trial Order dated September 22, 2022, Docket – Vol. 4, p. 1543.

M.H. del Pilar Street cor. Pedro Gil, Malate, Manila.[2] It is registered with the Bureau of Internal Revenue (BIR).[3]

Respondent is the duly appointed **Commissioner of Internal Revenue (CIR)** vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended,[4] and other tax laws, and rules and regulations.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent issued the *Letter of Authority* (LOA) No. LOA-201200042292, dated March 3, 2016, authorizing Revenue Officers (ROs) Christina Lati and Ryan Loon, and Group Supervisor (GS) Merly Santiago of Revenue District Office (RDO) No. 126-Regular LT Division III, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2014 to December 31, 2014.[6] The said LOA was received by petitioner on March 14, 2016.[7]

Thereafter, respondent issued the *Preliminary Assessment Notice* (PAN), dated July 11, 2017, against petitioner proposing for deficiency income tax, EWT, WTC, VAT, and DST for TY 2014 in the aggregate amount of ₱660,004,224.90, inclusive of surcharge and interest.[8] The said PAN was received by petitioner on July 11, 2017.[9]

On July 26, 2017, petitioner filed a written reply to the PAN (letter of even date) in which it prayed for the cancellation and withdrawal of the proposed assessments on the ground that they are devoid of any legal and factual bases.[10]

Respondent then issued the *Formal Letter of Demand* (FLD) dated October 26, 2017, in which respondent requested petitioner to pay

---

[2] Exhibits "P-1" and "P-1-a", Docket – Vol. 3, p. 1160 to 1191.
[3] Exhibit "P-2", *Id.* at 1192 to 1193.
[4] Republic Act (RA) 8424, as amended.
[5] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 3, p. 942.
[6] Par. 2, Stipulation of Facts, JSFI, *Id.* at 943.
[7] Par. 4, *Petition for Review*, vis-à-vis par. 3, *Answer*, Docket – Vol. 1, pp. 7 and 435, respectively.
[8] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 3, p. 943.
[9] Par. 4, *Petition for Review*, vis-à-vis par. 5, *Answer*, Docket – Vol. 1, pp. 7 and 435, respectively.
[10] Exhibit "P-5", Docket – Vol. 3, p. 1202 to 1217.

deficiency income tax, EWT, WTC, VAT, and DST for TY 2014 in the aggregate amount of ₱686,961,529.88, inclusive of surcharge and interest. In addition, respondent imposed a compromise penalty in the amount of ₱160,700.00, for petitioner's alleged failure to pay the correct amount of income tax, EWT, WTC, VAT, and DST for the same TY.[11] The said FLD was received by petitioner on October 26, 2017.[12]

On November 23, 2017, petitioner filed with the BIR its *Request for Reinvestigation* (protest letter of even date), praying for the cancellation of respondent's assessments.[13] Petitioner submitted to the BIR certain documents in support of its administrative protest on January 22, 2018.[14]

Subsequently, respondent issued a *Final Decision on Disputed Assessment* (FDDA), denying petitioner's administrative protest. In this FDDA, respondent requested petitioner to pay the assessments for alleged deficiency income tax, EWT, WTC, VAT, and DST for taxable year 2014, in the aggregate amount of ₱801,308,250.45, inclusive of surcharge, interest and compromise penalties.[15] The said FDDA was received by petitioner on August 13, 2020.[16]

PROCEEDINGS BEFORE THIS COURT

On September 11, 2020, petitioner filed its *Petition for Review*.[17]

Thereafter, on January 29, 2021, respondent filed his *Answer*,[18]

In the Resolution dated February 3, 2021,[19] the Court referred the case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) and the parties were ordered to immediately proceed and to

[11] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 3, p. 943.
[12] Par. 4, *Petition for Review*, vis-à-vis par. 7, *Answer*, Docket – Vol. 1, pp. 7 and 435, respectively.
[13] Exhibit "P-7", Docket – Vol. 3, pp. 1233 to 1251.
[14] Exhibit "P-8", *Id.* at 1252 to 1254.
[15] Par. 5, Stipulation of Facts, JSFI, *Id.* at 943.
[16] Par. 4, *Petition for Review*, vis-à-vis par. 10, *Answer*, Docket – Vol. 1, pp. 7 and 435, respectively.
[17] Docket – Vol. 1, pp. 6 to 42; Resolution dated September 24, 2020, Docket – Vol. 1, p. 410 to 411; Petitioner's *Compliance* dated October 26, 2020 with attached (a) *Amended Verification and Certification of Non-Forum Shopping*; (b) *Final Decision on Disputed Assessment* dated July 30, 2020, Docket – Vol. 1, pp. 412 to 424; Resolution dated November 24, 2020, Docket – Vol. 1, p. 426.
[18] Docket – Vol. 1, pp. 435 to 454.
[19] *Id.* at 469 to 470.

personally appear or through their authorized representative. The parties, however, decided not to have their case mediated by the PMC-CTA.[20]

Thereafter, in its Resolution dated June 23, 2021,[21] in view of the failure of the parties to enter into mediation, the Court set the Pre-Trial Conference on October 7, 2021, which proceeded as scheduled.[22] Prior thereto, the *Petitioner's Pre-Trial Brief* was sent to the Court via electronic mail on October 4, 2021,[23] while the *Respondent's Pre-Trial Brief* was submitted on October 5, 2021.[24]

Respondent transmitted the *BIR Records* of the present case on October 26, 2021.[25]

On November 15, 2021, the parties filed their *Joint Statement of Facts and Issues*,[26] which was admitted and approved in the Resolution dated November 23, 2021,[27] deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 5, 2022 was subsequently issued.[28]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Violeta R. Gallardo,[29] petitioner's Chief Accountant; and (2) Ms. Anselma P. Maliwat,[30] the Court-commissioned Independent Certified Public Accountant (ICPA).[31]

The *Report* of the ICPA was submitted on February 3, 2022.[32]

---

[20] *No Agreement to Mediate* dated June 8, 2021 issued by the PMC-CTA, Docket – Vol. 3, p. 896.

[21] Docket – Vol. 3, pp. 899 to 900.

[22] Minutes of the hearing held on, and Order dated, October 7, 2021, *Id.* at 925 and 926 to 928, respectively.

[23] *Petitioner's Pre-trial Brief* attached to printout of email of petitioner's counsel to the Court dated October 4, 2021, *Id.* at 905 to 917.

[24] Docket – Vol. 3, pp. 918 to 922.

[25] Respondent's *Compliance* dated October 1, 2021, Docket – Vol. 3, pp. 935 to 937.

[26] Docket – Vol. 3, pp. 942 to 953.

[27] *Id.* at 968.

[28] *Id.* at 1004 to 1011.

[29] Exhibit "P-17", Docket – Vol. 2, pp. 513 to 533; Minutes of hearing held on, and Order dated, March 2, 2022, Docket – Vol. 3, pp. 1125 to 1127.

[30] Exhibit "P-18", Docket – Vol. 2, pp. 477 to 506; Minutes of hearing held on, and Order dated, March 2, 2022, Docket – Vol. 3, pp. 1125 to 1127.

[31] *Oath of Commission* dated November 23, 2021, Docket – Vol. 3, p. 940; Minutes of hearing held on, and Order dated, November 23, 2021, Docket – Vol. 3, pp. 994 and 995 to 996, respectively.

[32] Exhibit "P-19", Docket – Vol. 3, pp. 1027 to 1121.

On February 16, 2022, petitioner filed a *Motion to Amend Pre-Trial Order*,[33] to which respondent failed to file his comment.[34]

Petitioner filed its *Formal Offer of Evidence with Motion for Leave of Court to Present Additional Evidence* on March 17, 2022.[35] Respondent filed his *Comment (on Petitioner's Formal Offer of Evidence with Motion to Recall Witness)* on March 21, 2022.[36] In the Resolution dated April 22, 2022,[37] the Court admitted petitioner's offered exhibits and granted petitioner's *Motion for Leave of Court to Present Additional Evidence*. Accordingly, petitioner was allowed to recall Ms. Gallardo as its witness for the presentation of additional evidence. Petitioner then recalled to the witness stand Ms. Gallardo.[38]

Thereafter, petitioner filed on August 16, 2022 its *Supplemental Formal Offer of Evidence*.[39] Respondent filed his *Comment (on Petitioner's Supplemental Formal Offer of Evidence)* on August 17, 2022.[40] In the Resolution dated September 14, 2022,[41] the Court partially granted petitioner's *Motion to Amend Pre-Trial Order*, and admitted petitioner's offered exhibits. Consequently, the Amended Pre-trial Order, incorporating the changes requested in paragraphs (2) and (4) of petitioner's motion, was issued on September 22, 2022.[42]

For his part, respondent offered the testimony of RO Christina Lati.[43]

Respondent's Formal Offer of Evidence was filed on December 1, 2022,[44] to which petitioner filed its *Comment (Re: Respondent's Formal*

---

[33] Docket – Vol. 3, pp. 1014 to 1017.
[34] Records Verification Report dated August 9, 2022 issued by the Judicial Records of this Court, Vol. 4, p. 1516.
[35] Docket – Vol. 3, pp. 1128 to 1158.
[36] Docket – Vol. 4, pp. 1475 to 1478.
[37] *Id.* at 1484 to 1485.
[38] Exhibit "P-133", Docket – Vol. 4, pp. 1489 to 1492; Minutes of the hearing held on, and Order dated, July 19, 2022, Docket – Vol. 4, pp. 1509 and 1510 to 1511, respectively.
[39] Docket – Vol. 4, pp. 1517 to 1521.
[40] *Id.* at 1534 to 1536.
[41] *Id.* at 1540 to 1541.
[42] *Id.* at 1543 to 1550.
[43] Exhibit "R-9", Docket – Vol. 1, pp. 455 to 461; Minutes of the hearing held on, and Order dated, November 23, 2022, Docket – Vol. 4, pp. 1551 and 1554 to 1555, respectively.
[44] Docket – Vol. 4, pp. 1558 to 1563.

Offer of Evidence) on December 12, 2022.[45] In the Resolution dated February 2, 2023,[46] the Court admitted respondent's offered exhibits.

On March 9, 2023, petitioner filed its *Memorandum*,[47] while respondent submitted his *Memorandum* on March 16, 2023.[48]

The present case was submitted for decision on April 11, 2023.[49]

THE STIPULATED ISSUES

The parties have stipulated the following issues for this Court's resolution, to wit:

A. Whether or not respondent's assessments against petitioner for deficiency income tax, EWT, WTC, VAT, and DST for TY 2014 in the aggregate amount of ₱801,308,250.45, inclusive of surcharge, interest, and compromise penalties, is valid; and,

B. Whether or not respondent's right to assess petitioner's deficiency EWT, WTC, VAT and DST for TY 2014 had already prescribed.[50]

Petitioner's arguments:

Petitioner argues that the deficiency tax assessments against it for TY 2014 are null and void for having been issued in violation of its right to due process. It claims respondent's right to assess its alleged deficiency VAT, EWT, WTC, and DST, for TY 2014 had already prescribed. Finally, it contends that respondent's deficiency tax assessments against it for TY 2014 are devoid of legal and factual bases.

Respondent's arguments:

Respondent, on the other hand, counters that the FLD issued by the BIR is valid. He maintains that the assessment was issued within the prescriptive period. Lastly, he asserts that the deficiency assessment has legal and factual basis.

---

[45] Docket – Vol. 4, pp. 1566 to 1571.
[46] *Id.* at 1576.
[47] *Id.* at 1577 to 1634.
[48] *Id.* at 1636 to 1654.
[49] Minute Resolution dated April 11, 2023, Docket – Vol. 4, p. 1635.
[50] Issues, JSFI, Docket – Vol. 3, pp. 943 to 944.

THE COURT'S RULING

The *Petition for Review* has merit.

For an orderly disposition of this case, the Court shall first discuss the second issue followed by the first issue in this case.

The Court has jurisdiction over the instant case.

Section 7(a)(1) of RA No. 1125, as amended, 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

Pursuant to the last paragraph of Section 228 of the NIRC of 1997, as amended, petitioner had thirty (30) days from the receipt within which to appeal the decision of the CIR to the Court of Tax Appeals (CTA). Considering that petitioner received the FDDA on August 13, 2020, the filing of the instant Petition for Review on September 11, 2020 was timely made.

The period to assess and collect deficiency taxes had prescribed in part.

Petitioner further contends that the assessments issued by respondent had prescribed in part as it was issued more than three (3) years from the day the specific return was filed. Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

> SEC. 203. *Period of Limitation upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period

> prescribed by law, the three (3)-year period shall be counted from the day the return was filed. **For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**. *(Emphasis supplied)*

Accordingly, considering that the reckoning points of the three (3)-year prescriptive period vary depending on the tax type, the Court will delve into the same below *in seriatim*.

Value-Added Tax

Respondent's right to assess deficiency VAT for the first three (3) quarters of TY 2014 had prescribed. Section 114(A) of the NIRC of 1997, as amended, mandates the time of filing of quarterly VAT returns:

> SEC. 114. *Return and Payment of Value-Added Tax.*—
>
> (A) *In General.*—**Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis. *(Emphasis supplied)*

Petitioner filed its Quarterly VAT Returns for TY 2014 as shown below, *vis-à-vis* the date when the FAN was received:

Quarter	Quarterly Return Due	Quarterly Return Filed	End of 3 years	Receipt of FLD[51]
1st	25 Apr 2014	24 Apr 2014[52]	25 Apr 2017	27 Oct 2017
2nd	25 Jul 2014	24 Jul 2014[53]	25 Jul 2017	27 Oct 2017
3rd	25 Oct 2014	23 Oct 2014[54]	25 Oct 2017	27 Oct 2017
4th	25 Jan 2015	25 Jan 2015[55]	25 Jan 2018	27 Oct 2017

[51] Exhibit "R-5", Docket – Vol. 3, pp. 1218 to 1232
[52] Exhibit "P-12-a", Docket – Vol. 4, pp. 1328 to 1329.
[53] Exhibit "P-12-b", *Id.* at 1330 to 1331.
[54] Exhibit "P-12-c", *Id.* at 1332 to 1333.
[55] Exhibit "P-12-d", *Id.* at 1334 to 1335.

Expanded Withholding Tax and Withholding Tax on Compensation

Similarly, respondent's right to assess petitioner's EWT from January to September of TY 2014 had prescribed. Section 58(A) of the 1997 NIRC of 1997, as amended, provides:

> SEC. 58. *Returns and Payment of Taxes Withheld at Source.—*
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* — Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.
>
> **The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided,* That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.** *(Emphasis supplied)*

Corollary thereto, Section 5 of Revenue Regulations (RR) No. 17-2003, which amended Section 2.58 of RR 02-98, provides:

> SECTION 5. *Returns And Payments Of Taxes Withheld at Source.—* Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:
>
>> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHLED AT SOURCE.
>>
>> (A) *Monthly return and payment of taxes withheld at source.*
>>
>> xxx xxx xxx
>>
>> (2) WHEN TO FILE —
>>
>> (a) For both large and non-large taxpayers, **the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit

> and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; *and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.*
>
> *Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.*
>
> (b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above,** *unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." (Emphasis supplied)*

Pursuant to the foregoing, petitioner filed its Monthly Remittance Returns for TY 2014[56] as shown below, *vis-à-vis* the date when the FAN was received:

Month	Monthly Return Due	BIR Form No. 1601-E Filed/Paid	End of 3 years	FLD Received[57]
Jan 2014	15 Feb 2014	11 Feb 2014[58]	15 Feb 2017	27 Oct 2017
Feb 2014	15 Mar 2014	13 Mar 2014[59]	15 Mar 2017	27 Oct 2017
Mar 2014	15 Apr 2014	10 Apr 2014[60]	15 Apr 2017	27 Oct 2017

[56] Monthly Remittances for the taxable year 2014 were filed and paid through Electronic Filing and Payment System (eFPS).
[57] Exhibit "R-5", Docket – Vol. 3, pp. 1218 to 1232
[58] Exhibit "P-10-a", *Id.* at 1255 to 1257.
[59] Exhibit "P-10-b", *Id.* at 1258 to 1260.
[60] Exhibit "P-10-c", *Id.* at 1261 to 1263.

Apr 2014	15 May 2014	10 May 2014[61]	15 May 2017	27 Oct 2017
May 2014	15 Jun 2014	11 Jun 2014[62]	15 Jun 2017	27 Oct 2017
Jun 2014	15 Jul 2014	11 Jul 2014[63]	15 Jul 2017	27 Oct 2017
Jul 2014	15 Aug 2014	12 Aug 2014[64]	15 Aug 2017	27 Oct 2017
Aug 2014	15 Sep 2014	10 Sep 2014[65]	15 Sep 2017	27 Oct 2017
Sep 2014	15 Oct 2014	11 Oct 2014[66]	15 Oct 2017	27 Oct 2017
Oct 2014	15 Nov 2014	11 Nov 2014[67]	15 Nov 2017	27 Oct 2017
Nov 2014	15 Dec 204	11 Dec 2014[68]	15 Dec 2017	27 Oct 2017
Dec 2014	20 Jan 2015	12 Jan 2015[69]	20 Jan 2018	27 Oct 2017

In the same manner, respondent's right to assess petitioner of deficiency WTC for the months of January to September 2014 had prescribed as shown below:

Month	**Monthly Return Due**	**BIR Form No. 1601-C Filed/Paid**	**End of 3 years**	**FLD Received**[70]
Jan 2014	15 Feb 2014	8 Feb 2014[71]	15 Feb 2017	27 Oct 2017
Feb 2014	15 Mar 2014	10 Mar 2014[72]	15 Mar 2017	27 Oct 2017
Mar 2014	15 Apr 2014	9 April 2014[73]	15 April 2017	27 Oct 2017
Apr 2014	15 May 2014	7 May 2014[74]	15 May 2017	27 Oct 2017
May 2014	15 Jun 2014	5 Jun 2014[75]	15 Jun 2017	27 Oct 2017
Jun 2014	15 Jul 2014	9 Jul 2014[76]	15 Jul 2017	27 Oct 2017
Jul 2014	15 Aug 2014	8 Aug 2014[77]	15 Aug 2017	27 Oct 2017
Aug 2014	15 Sep 2014	6 Sep 2014[78]	15 Sep 2017	27 Oct 2017
Sep 2014	15 Oct 2014	9 Oct 2014[79]	15 Oct 2017	27 Oct 2017
Oct 2014	15 Nov 2014	10 Nov 2014[80]	16 Nov 2017	27 Oct 2017
Nov 2014	15 Dec 2014	9 Dec 2014[81]	15 Dec 2017	27 Oct 2017
Dec 2014	20 Jan 2015	9 Jan 2015[82]	20 Jan 2018	27 Oct 2017

[61] Exhibit "P-10-d", *Id.* at 1264 to 1266.
[62] Exhibit "P-10-e", *Id.* at 1267 to 1269.
[63] Exhibit "P-10-f", *Id.* at 1270 to 1274.
[64] Exhibit "P-10-g", *Id.* at 1275 to 1277.
[65] Exhibit "P-10-h", *Id.* at 1278 to 1280.
[66] Exhibit "P-10-i", *Id.* at 1281 to 1283.
[67] Exhibit "P-10-j", *Id.* at 1284 to 1286.
[68] Exhibit "P-10-k", *Id.* at 1287 to 1289.
[69] Exhibit "P-10-l", *Id.* at 1290 to 1292.
[70] Exhibit "R-5", Docket – Vol. 3, pp. 1218 to 1232
[71] Exhibit "P-11-a", *Id.* at 1293 to 1295.
[72] Exhibit "P-11-b", *Id.* at 1296 to 1298.
[73] Exhibit "P-11-c", *Id.* at 1299 to 1301.
[74] Exhibit "P-11-d", *Id.* at 1302 to 1304.
[75] Exhibit "P-11-e", Docket – Vol. 4, pp. 1305 to 1307.
[76] Exhibit "P-11-f", *Id.* at 1308 to 1310.
[77] Exhibit "P-11-g", *Id.* at 1311 to 1313.
[78] Exhibit "P-11-h", *Id.* at 1314 to 1315.
[79] Exhibit "P-11-i", *Id.* at 1317 to 1318.
[80] Exhibit "P-11-j", *Id.* at 1319 to 1321.
[81] Exhibit "P-11-k", *Id.* at 1322 to 1324.
[82] Exhibit "P-11-l", *Id.* at 1325 to 1327.

In sum, respondent's assessment for TY 2014 relative to the following taxes is void on the ground of prescription:

1) First three quarters for VAT;
2) January to September 2014 for EWT; and,
3) January to September 2014 for WTC.

The FLD is void for violation of petitioner's right to due process.

The Court shall now determine whether petitioner is liable for deficiency taxes for the items that are not time-barred.

The Court finds for petitioner.

The subject assessments are void for having been issued in violation of petitioner's right to administrative due process.

Section 228 of the NIRC of 1997, as amended, provides, 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
>
> 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.**
>
> xxx xxx xxx. *(Emphasis added)*

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.[83] 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.[84] 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.

---

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

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

The law imposes a substantive, not merely a formal, requirement.[85] 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 Tax Code.[86]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[87] as amended by RR No. 18-2013,[88] provides, in part, as follows:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 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).
>
> xxx xxx xxx
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative **shall state the (i) facts, the applicable law**, rules and regulations, or jurisprudence on which such decision is based, ***otherwise, the decision***

---

[85] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[86] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, G.R. No. 159694, January 27, 2006.

[87] 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

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

> ***shall be void*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. *(Emphases and underscoring added)*

The foregoing provision prescribes, 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.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[89] the Supreme Court said:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> xxx xxx xxx
>
> 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.**
>
> xxx xxx xxx
>
> 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.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

[89] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

xxx xxx xxx

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.

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>.

xxx xxx xxx

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 <u>to ensure that the decision will be thought through by the decision-maker</u>.

xxx xxx xxx

Administrative due process is anchored on fairness and equity in procedure. <u>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</u>. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

xxx xxx xxx

<u>The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable.</u> 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[90] 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[91] 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[92] 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.**

'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.**

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 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.

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 conclusion are based, and those facts must appear in the record.**

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.**

[90] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[91] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[92] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

> 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.
>
> xxx xxx xxx
>
> 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.**
>
> xxx xxx xxx
>
> **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.
>>
>> xxx xxx xxx
>>
>> **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. *(Citations omitted; emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. Due process requires respondent and/or BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect. Moreover, a significant part of the 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 doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, 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

To stress, 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.

In this case, as stated in the PAN dated July 11, 2017,[93] the BIR ascertained that petitioner has a deficiency income tax, EWT, WTC, VAT, and DST, including interests, surcharge, and compromise penalties, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱ 284,653,891.61	-	₱ 125,715,636.52	₱ 50,000.00	₱ 410,419,528.13
EWT	322,944.44	-	158,552.45	20,000.00	501,496.89
WTC	1,615.08	-	792.94	700.00	3,108.02
VAT	166,096,339.58	-	80,636,359.93	50,000.00	246,782,699.51
DST	1,384,585.00	346,146.25	687,361.10	40,000.00	2,458,092.35
Total	**₱452,459,375.71**	**₱346,146.25**	**₱207,198,702.94**	**₱160,700.00**	**₱660,164,924.90**

The *Details of Discrepancies* for the said PAN read, in part, as follows:

I. INCOME TAX

xxx xxx xxx

1. Income classified as exempt

xxx xxx xxx

Verification of the sources of your income, disclosed that it came from the rental of your commercial units and parking areas which you converted into a casino complex, office space and car park. The

[93] Exhibit "P-4", Docket – Vol. 3, pp. 1195 to 1201.

gaming premises and certain areas in the office premises are being leased out to the Philippine Amusement and Gaming Corporation. It is also a fact that you are responsible for the payment of electric bills for all the tenants, after which you billed them according to their consumption/usage.

Since your Income from rental of your premises is considered as other related services, then it is subject to corporate income tax pursuant to the Supreme Court decision, G.R. No. 215427 dated December 10, 2014, stating that 'PAGCOR is subject to corporate income tax for 'Other related services', then it is logical that contractees and licensees of PAGCOR shall likewise pay corporate income tax derived from such 'related services'. '

2. Expenses not subjected to Withholding Tax

Investigation disclosed that various income payments were not subjected to the expanded withholding tax in accordance with the provisions of Sections 2.57.2 of Revenue Regulation 2-98. Further investigation also disclosed that the salaries received by employees were not entirely subjected to withholding on compensation. The said payments are disallowed in accordance with the provisions of Section 34(K) of the National Internal Revenue Code. The disallowance of the said amount is also in pursuant to Section 2.58.5 of Revenue Regulations 12-2013 dated July 12, 2013 which states 'No deduction will also be allowed notwithstanding the payments of withholding tax at the time of the audit investigation or reinvestigation/reconsideration in cases where no withholding of tax was made in accordance with Sections 57 and 58 of the Code.'

II. <u>EXPANDED WITHHOLDING TAX</u>

Investigation disclosed that various income payments amounting to P 9,527,311.38 were not subjected to the requisite expanded withholding tax in accordance with the provisions of Sections 2.57.2 of Revenue Regulation 2-98 which states that 'Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates specified for each class of payee.' See attached computation, **Schedule A.**

III. <u>WITHHOLDING TAX ON COMPENSATION</u>

Total salaries subject to withholding tax on compensation per audit amounted to P 31,648,169.00 while the amount of compensation per alphabetical lists submitted amounted only to P 31,642,756.00 a discrepancy of P 5,413.00. Said discrepancy was subjected to withholding tax on compensation using the composite tax rate pursuant to the decision embodied in CTA Case No. 6195 dated April 12, 2004.

xxx xxx xxx

IV. <u>VALUE ADDED TAX</u>

xxx xxx xxx

Verification disclosed that only the gross receipts from rental of parking was subjected to value added tax. Further verification showed that you failed to pay the corresponding value added tax of the proceeds derived from the sale of equipment in the amount of P 2,217,780.00 and from the receipts from PAGCOR in the amount of P 1,381,981,383.20.

V. <u>DOCUMENTARY STAMP TAX</u>

On each lease, agreement, contract for hire, use or rent of land is subject to Documentary stamp tax in pursuant to Section 194 of the Code. Computation of DST is as follows:

xxx xxx xxx

It is requested that your aforesaid deficiency taxes be paid immediately upon receipt hereof, inclusive of penalties, otherwise the Formal Letter of Demand and Assessment Notice shall be issued.

As already established, in response to the PAN on July 26, 2017, petitioner sent the protest letter evenly dated to the BIR.[94] In the said letter, petitioner laid out its arguments against the deficiency taxes imposed by the BIR. Specifically, the following are the summary of arguments raised by petitioner in the said protest letter, to wit:

1. Considering that the leased premises are connected with and essential to the gaming operations of PAGCOR, the rental payments to petitioner for the use of such leased premises fall squarely within the operation of Section 13(2)(b), PAGCOR Charter. As such, it is subject to the five percent (5%) franchise tax under Section 13(2)(b), PAGCOR Charter and is, therefore, exempt from the thirty percent (30%) regular corporate income tax.

2. There is a mathematical error in the computation of the alleged deficiency EWT for calendar year 2014. An addition of all the income payments shown in Schedule A of the PAN would show that the sum of all the income payments provided therein should only be ₱261,871,505.02, instead of ₱269,139,893.75. Hence, the total amount of income payments that was allegedly not subjected to EWT is only ₱2,258,922.65, and not ₱9,527,311.38 as stated in the PAN. Consequently, the deficiency EWT assessment of ₱9,527,311.38 is likewise erroneous.

3. The deficiency EWT assessment has no basis because the following income payments are not subject to EWT: (1) payments to PAGCOR; (2) insurance premium; (3) reimbursements payments to New World Manila Bay

[94] Exhibit "P-5", Docket – Vol. 3, pp. 1202 to 1217.

Hotel (NCHI); (4) disbursements from petty cash funds; and (5) fringe benefit travelling expenses.

4. The discrepancy in the amount of ₱5,413.00 that was allegedly not subjected to WTC actually pertains to tax-exempt compensation income.

5. Petitioner's export sales of PPE to Cosmic Computer Enterprise and RGB Ltd., both nonresident foreign corporations, are subject to zero percent (0%) VAT pursuant to Section 106(A)(2), NIRC.

6. Petitioner's rental income is covered by the 5% franchise tax under Section 13(2)(b), PAGCOR Charter, which shall be in lieu of any other taxes, fees, charges or levies of whatever nature, including VAT. Petitioner's rental income is exempt from VAT pursuant to Section 13(2)(b), PAGCOR Charter.

7. Insurance proceeds are not subject to VAT because they were not received in the course of trade or business pursuant to Section 105, NIRC.

8. As a PAGCOR-Contractor, petitioner is exempt from the payment of DST pursuant to Section 13(2) of the PAGCOR Charter.

9. The deficiency DST on the Lease Agreement with PAGOR had already prescribed pursuant to Section 203, NIRC because the Lease Agreement was executed on March 14, 2003.

10. The BIR cannot assess deficiency DST on the Lease Agreements with NCHI and Harbor View Properties and Holdings, Inc. executed in 2003.

11. There is no legal basis for the unilateral imposition of compromise penalty against petitioner.

In the FLD dated October 26, 2017,[95] however, petitioner was still assessed for deficiency income tax, EWT, WTC, VAT and DST, with surcharge, interests and compromise penalties, summarized as follows:

[95] Exhibits "P-6" and "R-5", Docket – Vol. 3, pp. 1218 to 1221.

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱ 282,473,375.00	-	₱ 143,635,776.44	₱ 50,000.00	₱ 426,159,151.44
EWT	322,944.44	-	180,141.06	20,000.00	523,085.50
WTC	1,615.08	-	900.90	700.00	3,215.98
VAT	166,096,339.58	-	91,739,786.47	50,000.00	257,886,126.05
DST	1,384,585.00	346,146.25	779,919.66	40,000.00	2,550,650.91
Total	**₱450,278,859.10**	**₱346,146.25**	**₱236,336,524.53**	**₱160,700.00**	**₱687,122,229.88**

It can be clearly observed from the above assessments that they are exactly based on the findings as stated in the PAN dated July 11, 2017.[96] If at all, in terms of the amounts indicated, the difference between the said PAN and the subject FLD is that the amounts of interest were merely adjusted, and the mathematical error in the computation of the deficiency income tax was corrected. The basic tax dues, save for the said deficiency income tax assessment, practically remained the same.

Relative thereto, it is noteworthy that in the said FLD, the BIR did not address any of the explanations made by petitioner in its protest letter to the PAN—a glaring indication that the BIR did not consider the same when it issued the subject FLD. Furthermore, as mentioned earlier, the adjustment in the deficiency income tax assessment was not due to the substantive arguments raised by petitioner, but rather a mere correction of a mathematical error in the PAN. In fact, it is noteworthy that the *Details of Discrepancies* for the said FLD were merely copied verbatim from the *Details of Discrepancies* for the same PAN. The only difference is that respondent added this sentence in the VAT portion: "Further verification disclosed that you failed to comply with the provisions of the invoicing requirement pursuant to Sections 113(A)(1) which states that 'A VAT-registered person shall issue a VAT invoice for every sale or exchange of goods or properties' and 113(B)(2)(c) which states that 'If the sale is subject to zero percent (0%) value added tax, the term zero-rated sale' shall be written or printed prominently on the invoice or receipt.'"

In other words, the BIR merely reiterated the same findings as stated in the PAN, without giving any reason for rejecting the above-stated refutations and explanations made by petitioner in its protest letter dated July 26, 2017. Consequently, petitioner was left unaware on how respondent or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of petitioner's right to administrative due process.

Then, as already noted above, petitioner filed on November 23, 2017 its protest letter of even date by way of a *Request for Reinvestigation*,[97] and

[96] Exhibit "P-4", *Id.* at 1195 to 1201.
[97] Exhibit "P-7", Docket – Vol. 3, pp. 1233 to 1251.

submitted to the BIR, on January 22, 2018, certain documents in support of its administrative protest.[98]

Thereafter, respondent issued the FDDA dated July 30, 2020, which was received by petitioner on August 13, 2020, denying its protest to the FLD.[99] The FDDA assessed petitioner for deficiency income tax, EWT, WTC, VAT, and DST, for TY 2014 in the aggregate amount of ₱801,308,250.45, inclusive of surcharge, interests and compromise penalties, as follows:

Tax Type	**Basic**	**Surcharge**	**Interest**	**Compromise Penalty**	**Total**
Income Tax	₱ 282,473,375.00	-	₱ 215,267,928.74	₱ 50,000.00	₱ 497,791,303.74
EWT	322,944.44	-	262,036.23	20,000.00	604,980.67
WTC	1,615.08	-	1,546.93	700.00	3,862.01
VAT	166,096,339.58	-	133,859,997.95	50,000.00	300,006,337.53
DST	1,384,585.00	346,146.25	1,131,035.25	40,000.00	2,901,766.50
Total	**₱450,278,859.10**	**₱346,146.25**	**₱350,522,545.10**	**₱160,700.00**	**₱801,308,250.45**

As can be gleaned from the foregoing table, the *total* amount of taxes being assessed against petitioner still increased. A comparison of the figures stated in the subject FLD and the foregoing figures found in the assailed FDDA would reveal that the respective remaining amounts of basic taxes, and surcharge due remain unchanged. The BIR merely adjusted the interests being imposed.

More importantly, it is noteworthy that in the said FDDA, the BIR did not address any of the refutations or explanations made by petitioner in its protest letter dated November 23, 2017, and merely reiterated and/or copied *verbatim* what was in the assailed FLD and the *Details of Discrepancies* attached thereto, indicating that the BIR did not consider petitioner's refutation, explanations or defenses when it issued the subject FDDA.

To emphasize by way reiteration, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or his authorized representative appreciated the refutations, explanations or defenses raised by petitioner in connection with the assessments.

Correspondingly, as part of the due process requirement in the issuance of tax assessments, the BIR or respondent must give reason(s) for

[98] Exhibit "P-8", *Id.* at 1252 to 1254.

[99] Par. 10, *Petition for Review*, vis-à-vis Par. 3, *Answer*, Docket – Vol. 1, pp. 8 and 435, respectively; Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 3, p. 943; Exhibit "P-9", Docket – Vol. 1, pp. 415 to 424; Exhibit "R-7", BIR Records, pp. 379 to 377.

rejecting petitioner's explanations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. The BIR or respondent had obviously not observed such requirement in the issuance of the FLD and FDDA.

Thus, the inevitable conclusion then is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, vis-à-vis Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-13, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

To stress, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[100] Furthermore, a void assessment bears no valid fruit.[101] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

In fine, in view of the finding that the subject tax assessments are void for having been issued in violation of petitioner's right to administrative due process, it is no longer necessary to address the other matters raised by the parties herein.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax, expanded withholding tax, withholding tax on compensation, value-added tax and documentary stamp tax assessments, including the imposed surcharge, interests, and compromise penalties, in the aggregate amount of **₱801,308,250.45**, for taxable year 2014, are **CANCELLED and WITHDRAWN**.

Moreover, the Formal Letter of Demand dated October 26, 2017 and the Final Decision on Disputed Assessment dated July 30, 2020 issued by the Bureau of Internal Revenue against petitioner are **REVERSED** and **SET ASIDE**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

[100] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, supra.
[101] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice