CTA Form No. 8

22-000439-0085

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10974

HELIX MINING AND DEVELOPMENT CORPORATUION (formerly "HOLCIM MINING AND DEVELOPMENT CORPORATION"),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. SHERYLL P. CACAYURAN
ATTY. JARED MITCHELL V. ACUÑA
Bureau of Internal Revenue - Revenue Region No.8B
2nd Floor, Legal Division, BIR Regional Office Building
No. 313 Sen. Gil Puyat Avenue
Makati City

MATA-PEREZ, TAMAYO & FRANCISCO ATTORNEYS-AT-LAW
Unit 1002, One Corporate Plaza
845 A. Arnaiz Avenue, Legazpi Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **October 10, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **October 14, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HELIX MINING AND DEVELOPMENT CORPORATION (formerly "HOLCIM MINING AND DEVELOPMENT CORPORATION"), *Petitioner*,	**CTA CASE NO. 10974**
	Members:
	BACORRO-VILLENA, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated:
	OCT 10 2025; 9:25AM

x- -x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* [1] filed by petitioner Helix Mining and Development Corporation ("Petitioner") against respondent Commissioner of Internal Revenue ("Respondent" or "CIR"), praying that the Court render judgment ordering the cancellation of the assessment issued against petitioner for alleged deficiency Income Tax (IT) and Expanded Withholding Tax (EWT) for taxable year (TY) 2016, in the aggregate amount of ₱292,746,178.52, inclusive of interest and penalties.

THE PARTIES

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with principal office located at 7th Floor, Two World Square, McKinley Hill, Fort Bonifacio, Taguig City, 1634, Philippines. It may be served

[1] Docket – Vol. I, pp. 6–36.

with summons, notices, orders, and other processes of this Court through its counsel, Mata-Perez, Tamayo & Francisco, at Unit 1002, One Corporate Plaza, 845 A. Arnaiz Avenue, Legazpi Village, Makati City.[2]

Respondent is the duly appointed Chief of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office, including inter alia, the authority to collect all national internal revenue taxes. Respondent also has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code. Respondent may be served with summons, pleadings, and other processes at his office at the BIR National Office, Agham Road, Diliman, Quezon City.[3]

THE FACTS AND THE PROCEEDINGS

On June 30, 2017, petitioner received Letter of Authority (LOA) No. eLA201500050096 dated June 22, 2017, [4] authorizing Revenue Officer (RO) Jocelyn Quevedo (Quevedo) and Group Supervisor (GS) Raul Marie Aquino of Revenue District Office No. 44 – Taguig-Pateros, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1 to December 31, 2016.[5]

On March 6, 2019, petitioner received a *Notice of Informal Conference*[6] (NIC) dated February 26, 2019, requesting it to appear for an informal conference at Revenue District Office No. 44 – Taguig-Pateros, within fifteen (15) days from notice.

On September 4, 2019, petitioner received a *Preliminary Assessment Notice*[7] (PAN) dated August 28, 2019, assessing deficiency IT, EWT, Documentary Stamp Tax (DST), and compromise penalties in the aggregate amount of ₱230,883,519.30, inclusive of penalties and interest, to which it filed a *Reply*[8] on September 19, 2019.

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[2] Docket – Vol. III, pp. 1620–1632, Joint Stipulation of Facts and Issues (JSFI), *Summary of Admitted Facts*, par. 1.
[3] *Id.* at par. 2.
[4] Exhibit P-3, BIR Records, p. 73.
[5] Docket – Vol. III, pp. 1620–1632, JSFI, *Summary of Admitted Facts*, par. 3.
[6] Exhibit P-4, BIR Records, p. 371.
[7] Exhibit P-5, BIR Records, pp. 380–384.
[8] Exhibit P-6, BIR Records, pp. 482–486.

On October 4, 2019, petitioner received the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated September 30, 2019,[9] assessing deficiency IT, EWT, DST, and compromise penalties in the aggregate amount of ₱236,034,048.11, inclusive of penalties and interest.

Petitioner protested the FLD/FAN via a request for reinvestigation on October 31, 2019.[10]

On December 17, 2019, petitioner received a letter dated December 16, 2019,[11] signed by Revenue District Officer Ray Anthony O. Geli, stating that its request for reinvestigation was under evaluation.

On December 27, 2019, petitioner submitted supporting documents for its request for reinvestigation.[12]

On August 10, 2022, petitioner received the FDDA dated August 1, 2022,[13] finding it liable for deficiency IT and EWT in the aggregate amount of ₱292,746,178.52, inclusive of interest and penalties.

Aggrieved, petitioner filed the instant *Petition for Review with Motion to Defer Submission of Judicial Affidavit of Witnesses* on September 9, 2022.

On September 28, 2022, [14] the Court granted petitioner's *Motion to Defer Submission of Judicial Affidavit of Witnesses,* subject to payment of a ₱1,000.00 fine pursuant to Section 10(a) of the *Judicial Affidavit Rule.* The Court also ordered the issuance of *Summons,* requiring respondent to file an Answer within thirty (30) days from notice.

In its *Compliance with Manifestation* filed on October 14, 2022,[15] petitioner stated that on October 13, 2022, it paid the ₱1,000.00 fine as evidenced by Official Receipt No. 0235533. It also submitted the Judicial Affidavit of Mr. Renato A. Baja dated October 12, 2022, together with the supporting documents.

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[9] Exhibit P-7, BIR Records, pp. 487–495.
[10] Exhibit P-8, BIR Records, pp. 502–504.
[11] Exhibit P-9, BIR Records, p. 515.
[12] Exhibit P-10, BIR Records, pp. 603–604.
[13] Exhibit P-1, BIR Records, pp. 638–642.
[14] Docket – Vol. I, pp. 378–379.
[15] Docket – Vol. II, pp. 382–384.

On October 28, 2022, respondent filed through registered mail a *Motion for Extension of Time to File Answer*,[16] which the Court granted in an *Order*[17] issued on November 17, 2022. Accordingly, respondent had until December 2, 2022, to file his *Answer*.

On December 2, 2022, respondent filed his *Answer*[18] interposing, among others, that the burden of proof to establish the right to a deduction lies with the taxpayer, who must show compliance with the statutory requirements of the Tax Code and existing jurisprudence. Also, as a Top Withholding Agent, petitioner was required to withhold two percent (2%) from income payments to local/resident suppliers of services.

On December 12, 2022, in compliance with the Court's directive, respondent elevated the BIR Records, consisting of one (1) folder with 669 pages, consecutively numbered from pages 1 to 669.

The *Pre-Trial Conference* was held on April 26, 2023.[19] During the *Pre-Trial Conference,* the Court, among others, directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation on June 27, 2023, at 10:00 a.m., pursuant to A.M. No. 11-1-5-SC-PHILJA (*Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*). The parties agreed to proceed with *Pre-Trial* without prejudice to a possible compromise settlement they may enter during mediation.[20]

On May 26, 2023, the parties filed their *Joint Stipulation of Facts and Issues*[21] (JSFI). In a Resolution dated June 19, 2023,[22] the Court approved the JSFI, declared the pre-trial terminated, and ordered the issuance of the *Pre-Trial Order.*

On June 29, 2023, the PMC-CTA reported[23] that the parties opted not to have their case mediated.

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16 *Id.* at 738–740.
17 *Id.* at 742.
18 *Id.* at 743–755.
19 Docket – Vol. III, pp. 958–959, *Minutes of Hearing.*
20 *Id.* at 962–964, *Order* dated April 26, 2023.
21 *Id.* at 1620–1632.
22 *Id.* at 1652.
23 *Id.* at 1653, PMC-CTA Form 6 – No Agreement to Mediate dated June 27, 2023.

On July 28, 2023, the *Pre-Trial Order*[24] was issued, adopting the parties' JSFI and those they agreed upon during the *Pre-trial Conference* held on April 26, 2023.

On September 14, 2025, petitioner filed an *Omnibus Motion (1) To Allow Substitution of Witness; and (2) To Admit the Judicial Affidavit of New Witness.*[25] The Court granted the *Omnibus Motion* in the interest of justice, as confirmed by the *Order* issued on September 19, 2023.[26]

During the trial, petitioner presented the testimonies of **Mr. Renato A. Baja**,[27] its *President and General Manager*; **Mr. Dennis G. Segovia**,[28] its *Officer-in-Charge, Tax Manager*; and **Ms. Madonna Mia S. Dayego**,[29] the Court-commissioned Independent Certified Public Accountant (**ICPA**), all through their respective Judicial Affidavits.

Having no further witnesses, petitioner filed its *Formal Offer of Documentary Exhibits with Motion to Admit*[30] on June 24, 2024, to which respondent filed his *Comment/Objection (To Petitioner's Formal Offer of Evidence)*[31] on July 4, 2024.

On June 26, 2024, petitioner also filed a *Manifestation with Motion to Admit.*[32] The respondent failed to file a comment despite being given the opportunity.[33]

In a Resolution promulgated on October 8, 2024,[34] the Court, acting on petitioner's *Formal Offer of Documentary Exhibits with Motion to Admit* dated June 24, 2024, and *Motion to Admit* dated June 26, 2024, admitted all of petitioner's documentary exhibits, except *Exhibit P-13-c,* for failure to pre-mark the exhibit and for failure to correspond.

Respondent, in turn, presented **RO Quevedo** as his sole witness, who testified through a Judicial Affidavit.[35] On November 18, 2024, respondent filed his *Formal Offer of*

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[24] *Id.* at 1661–1680.
[25] Docket – Vol. IV, pp. 1737–1740.
[26] *Id.* at 2265–2265-A.
[27] Exhibit P-20, Docket – Vol. II, pp. 389–409.
[28] Exhibit P-19, Docket – Vol. IV, pp. 1741–1764.
[29] Exhibit P-58, Docket – IV, pp. 2273–2289.
[30] Docket – Vol. V, pp. 2487–2518.
[31] Docket – Vol. VI, pp. 3200–3201.
[32] *Id.* at 3092–3095.
[33] *Id.* at 3204, Records Verification Report dated August 9, 2024.
[34] *Id.* at 3209–3213.
[35] Exhibit R-14, Docket – Vol. II, pp. 806–818.

Evidence[36] via private courier, offering Exhibits R-1 to R-14, inclusive of sub-markings, which the Court all admitted in a Resolution dated March 5, 2025. [37] In the same Resolution, the parties were directed to submit their respective memoranda within 30 days from notice.

On July 9, 2025, the instant case was deemed submitted for decision, considering petitioner's *Memorandum*[38] filed via electronic mail (e-mail) on April 10, 2025, and personally on April 11, 2025, and respondent's *Memorandum*[39] posted on April 10, 2025, and *via* e-mail on June 3, 2025.[40]

Hence, this Decision.

THE ISSUE

The sole issue[41] for the Court's resolution is:

> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX (IT), AND EXPANDED WITHHOLDING TAX (EWT) FOR TAXABLE YEAR 2016 IN THE AMOUNT OF ₱292,746,178.52, INCLUSIVE OF PENALTIES AND INTERESTS.

Petitioner's arguments:

At the outset, petitioner submits that the assessment must be declared void for violation of its right to due process, as respondent did not take into consideration any of the arguments and supporting documents it submitted.

Petitioner avers that respondent never considered, addressed, or evaluated the arguments it raised in its Reply to the PAN, as the FLD/FAN contain the same language set out in the PAN and its Details of Discrepancies, differing only in the amounts of interest.

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36 Docket – Vol. VI, pp. 3218–3224.
37 *Id.* at 3252–3253.
38 *Id.* at 3253–3298
39 *Id.* at 3299–3303.
40 *Id.* at 3314, *Minute Resolution* dated July 9, 2025.
41 Docket – Vol. III, p. 1674, *Pre-Trial Order, IV. Issue/s to be Tried or Resolved.*

According to petitioner, in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[42] (*Avon* case), the Supreme Court ruled that the right to be heard, which includes the right to present evidence, is rendered meaningless if the CIR simply ignores the taxpayer's evidence without reason. Hence, petitioner maintains that respondent's act of merely reiterating and restating the assessment verbatim, without giving due consideration to its arguments and evidence, violates its right to due process and renders the assessment void.

Nevertheless, petitioner maintains that respondent's assessment for deficiency IT for TY 2016 is without basis. According to petitioner, in the assailed FDDA, respondent alleges that it has deficiency IT due to the following: (a) Unsupported expenses, ₱1,882,974.00; (b) Disallowed interest expenses, ₱160,077,449.00; (c) Disallowed expenses due to non-withholding, ₱374,590,474.04; (d) Excess minimum corporate income tax ("MCIT") over normal corporate income tax ("NCIT") carried forward to succeeding period, ₱5,197,133.00; and (e) Excess tax credits carried over to succeeding period, ₱14,043,042.00.

Petitioner rebuts these findings as follows:

(a) The penalties comprising the alleged unsupported expenses of ₱1,882,974.00 were properly treated as reconciliation items, and the interests on the said penalties were properly claimed as itemized deduction;

(b) The claimed interest expense in the amount of ₱160,077,449.00 was incurred as an ordinary and necessary expense in the course of business;

(c) Anent the disallowed expenses due to non-withholding, petitioner claims that all income payments during TY 2016 subject to withholding were duly accounted for and remitted to the BIR. It also claims that as of TY 2016, petitioner was not yet classified as a Top Withholding Agent. And finally, it claims that it is not required to withhold on income payments to Holcim Philippines, Inc. (HPI) under Revenue Regulations (RR) No. 2-98; and

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[42] G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

(d) The disallowance of excess MCIT over NCIT, as well as the excess tax credits, is improper since it is based on a mere presumption.

Finally, petitioner asserts that it is not liable for deficiency EWT for TY 2016, considering that all income payments subject to withholding tax during the relevant taxable period were duly accounted for and remitted to the BIR.

Respondent's counter-arguments:

Respondent counters that petitioner failed to provide supporting documents or evidence to support its taxes and licenses expenses amounting to ₱1,882,974.00, in violation of Section 34(A)(1)(b) of the NIRC of 1997, as amended. According to respondent, a mere reference to its Annual Income Tax Return for TY 2016 without the necessary supporting documents does not equate to the mandatory substantiation requirements for deduction under the said provision.

Respondent likewise counters that the interest expense of ₱160;077,449.00 was properly disallowed, as it is not a necessary and ordinary expense pursuant to Section 3 of Revenue Regulations (RR) No. 13-2000.[43]

Anent the disallowed expenses due to non-withholding, respondent, citing *FSM Cinemas, Inc. v. Commissioner of Internal Revenue*,[44] asserts that petitioner was already a Top Withholding Agent, as evidenced by its submission of BIR Form No. 1601-E. As a Top Withholding Agent, petitioner was required to withhold taxes from income payments made to its local/resident supplier of services.

Moreover, quoting the *Support Services Agreement*[45] executed between petitioner and HPI on November 25, 2016, respondent asserts that the services performed by HPI fall within the ambit of Section 2.57.2(E)(4)(e), (g), (h), and (m) of RR No. 2-98. Hence, for respondent, petitioner was required to withhold 2% EWT on income payments made to HPI under the said agreement.

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[43] SUBJECT: Implements the provisions of Section 34(B) of the Tax Code of 1997 relative to the requirements for the deductability of interest expense from the gross income of a corporation or an individual engaged in trade, business or in the practice of profession.

[44] CTA *EB* Nos. 1441 & 1445, November 16, 2017.

[45] Exhibit P-18, Docket – Vol. V, pp. 2744–2758.

Finally, respondent counters that petitioner failed to present proof that the income payments were made to General Professional Partnerships.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the present Petition.

The Court of Tax Appeals (CTA) is a court of special and limited jurisdiction and may only take cognizance of matters expressly conferred by law. Section 7(a)(1) of Republic Act (RA) No. 1125,[46] 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; (*Emphasis supplied*)

In the exercise of its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the NIRC of 1997, as amended, which prescribes the rules to be observed for the issuance and protest of deficiency tax assessments. It partly provides:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
>
> . . . .

[46] An Act Creating the Court of Tax Appeals.

> 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.**
>
> **<u>If the protest is denied in whole or in part</u>, or is not acted upon within one hundred eighty (180) days from submission of documents, <u>the taxpayer adversely affected by the decision</u> or inaction <u>may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision</u>, or from the lapse of the one hundred eighty (180)-day period; <u>otherwise, the decision shall become final, executory and demandable</u>.**" (*Emphasis and underscoring supplied*)

From the foregoing, a taxpayer has 30 days from receipt of the assessment to file an administrative protest, and another 30 days from receipt of the CIR's decision, or from the lapse of the one hundred eighty (180)-day period, to file a *Petition for Review* with this Court.

Records show that petitioner received the FLD/FAN with attached *Details of Discrepancies* on October 4, 2019. Counting 30 days therefrom, petitioner had until November 3, 2019, to file its administrative protest. Petitioner's administrative protest (by way of a *Request for Reinvestigation*) filed on October 31, 2019 was, therefore, timely.

Subsequently, on August 10, 2022, petitioner received the FDDA dated August 1, 2022, with attached *Details of Discrepancies*, finding it liable for deficiency IT and EWT for TY 2016 in the aggregate amount of ₱292,746,178.52, inclusive of interest and penalties. Counting 30 days from August 10, 2022, petitioner had until September 9, 2022, to file its *Petition for Review* with this Court.

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The filing of the present *Petition for Review* on September 9, 2022, was clearly within the 30-day prescriptive period. Accordingly, the Court has jurisdiction to take cognizance of this case.

Now, on the merits.

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

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

> 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: ...
>
> . . . .
>
> **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**. (*Emphasis supplied*)

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.[47] 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.[48] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[49] Furthermore, it must be emphasized that failure to comply with Section 228

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[47] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

[48] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

[49] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

not only renders the assessment void but also finds no validation in any provision in the Tax Code.[50]

To implement Section 228, Section 3.1 of RR No. 12-99,[51] as amended by RR No. 18-2013,[52] provides:

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

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50 *Id.*, citing *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189 (2006) [Per C.J. Panganiban, First Division].

51 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.

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

The above provision requires, as an essential component of due process in the issuance of a deficiency tax assessment, that the PAN, FLD/FAN, and FDDA must each state the factual and legal bases of the assessment. Failure to do so renders the assessment (PAN, FLD/FAN) or the decision (FDDA) null and void.

In the *Avon* case, the Supreme Court, through Associate Justice Marvic M.V.F. Leonen, eloquently emphasized the paramount importance of due process in tax assessments, to wit:

> **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, <u>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</u>**.
>
> 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**.
>
> . . .
>
> 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 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 taxpayers' constitutional rights**.
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> . . .

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

. . .

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

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) **The administrative tribunal or body must consider the evidence presented.**

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

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

. . .

<u>The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage</u>." **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**

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The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."

. . .

"[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

. . .

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, recertification, and distribution of the questioned contraceptive drugs and devices. It ruled that petitioner was not afforded the genuine opportunity to be heard.

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

. . .

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

. . .

> <u>It is true that the Commissioner is not obliged to accept the taxpayer's explanations</u>, 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**. (*Citations omitted; Emphasis supplied*)

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is an integral part of due process. It provides both the taxpayer and the BIR an opportunity to settle the case at the earliest possible time, either by settling without the need for a FAN, or by reducing the assessment. This purpose is not served when the BIR fails to consider the taxpayer's explanations or arguments before issuing the FAN. Such failure by respondent or the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process. The disregard by respondent or the BIR of the standards and rules renders the deficiency tax assessment null and void.

In the instant case, the Court finds that the BIR issued the FLD/FAN without addressing petitioner's arguments raised in its *Reply* to the PAN. This is evident from the fact that respondent issued the FLD/FAN, which was a complete replica of the PAN, with no explanation as to why petitioner's contentions lacked merit. Notably, respondent's own witness, Revenue Officer Quevedo, admitted during cross-examination that petitioner's arguments in its *Reply* to the PAN were not considered in the issuance of the FLD/FAN, to wit:

> ATTY. MANARIN
>
> Q Ms. Witness, can you confirm that in that Formal Letter of Demand, there is nothing which discussed the arguments and the documents submitted by the petitioner Helix Mining and Development Corporation in its reply to the PAN dated September 19, 2019?

hr

MS. QUEVEDO

A Can you repeat please?

ATTY. MANARIN

Q Can you confirm that in the FLD, it was not explained nor discussed the arguments and the documents submitted by the petitioner in the reply to the PAN?

MS. QUEVEDO

A It was discussed in the Details of Discrepancies.

ATTY. MANARIN

Q **But, you stated earlier that the FLD and the PAN, ah the FLD merely reiterated the discussion in the PAN**.

JUSTICE VILLENA

Explain the difference in the answer now.

MS. QUEVEDO

A **The PAN and the FLD are just same because the rebuttal were not considered**, it was just reiterate (*sic*), **everything was reiterated from PAN to FAN then FLD**.

JUSTICE VILLENA

Yes. But the next question was, **did you consider the arguments of petitioner in both considering that you said they are just the same**?

MS. QUEVEDO

A **It was not considered the rebuttal**.

JUSTICE VILLENA

Then later on you said they were discussed in the Details of Discrepancy.

MS. QUEVEDO

A Your Honors, I was just telling that in the Details of Discrepancy, it was detailed how we came up with the, how we came up with the findings. Just example, the unsupported expenses, what is our basis so it was stated in the (interrupted)

JUSTICE VILLENA

So, in both issuances, you did not consider you said the arguments of petitioner?

MS. QUEVEDO

A **No, it was not considered, the arguments were not considered.**[53] (*Emphasis supplied*)

The right of the taxpayer to respond to a PAN necessarily carries with it a correlative duty on the BIR to consider such response. Issuing a FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. The right to due process entails the opportunity to be heard. However, such opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not taken into consideration. It is an empty and meaningless exercise if the same is not even considered by the BIR.

As part of the due process requirement in tax assessments, the BIR must state the reason/s for rejecting petitioner's explanations and must give the particular facts upon which its conclusions are based, and those facts must appear on record. In this case, respondent clearly failed to comply with this requirement in issuing the FLD/FAN. Consequently, petitioner's right to due process, as guaranteed under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated. As a result, the deficiency tax assessment is void and cannot be enforced against petitioner.

In view of the nullity of the subject tax assessments and considering that a void assessment bears no valid fruit,[54] the Court finds it unnecessary to address the remaining issues raised by petitioner.

WHEREFORE, premises considered, the instant *Petition for Review* filed by petitioner Helix Mining and Development Corporation (formerly "Holcim Mining and Development Corporation") is **GRANTED**.

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[53] TSN, Ms. Jocelyn Quevedo, November 12, 2024, pp. 15–17.

[54] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division]; *Commissioner of Internal Revenue v. BASF Coating+Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014 [Per J. Peralta, Third Division]; *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per C.J. Panganiban, First Division].

Accordingly, the Formal Letter of Demand and Final Assessment Notice dated September 30, 2019, are **CANCELLED** and **SET ASIDE**. The Final Decision on Disputed Assessment dated August 1, 2022, assessing petitioner for deficiency Income Tax and Expanded Withholding Tax for taxable year 2016, is **REVERSED** and **SET ASIDE**.

Furthermore, respondent, his representatives, agents, or other persons acting on his behalf are **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

x-----x

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice