REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

NCR CORPORATION PHILIPPINES,
Respondent.

CTA EB NO. 2967
(CTA CASE NO. 10498)

Members:

Present:
Ringpis-Liban, *P.J.,*
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, ***and***
Angeles, *JJ.*

Promulgated:
MAR 23 2026 3:46 pm

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DECISION

RINGPIS-LIBAN, P.J.:

Before this Court is the Petition for Review filed by petitioner within the extended period on August 29, 2024[1] assailing the Decision dated May 10, 2024[2] and June 26, 2024,[3] promulgated by First Division of this Court in CTA Case No. 10498 entitled *NCR Corporation Philippines vs. Commissioner of Internal Revenue.*

The dispositive portion of the Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed on May 17, 2021 by NCR Corporation Philippines is **GRANTED.**

[1] Rollo, CTA EB No. 2967, pp. 7-49, with Annexes.
[2] Ibid., pp. 55-72.
[3] Ibid., pp. 74-79.

Accordingly, the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, the Final Decision on Disputed Assessment with Details of Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021 assessing petitioner in the adjusted amount of ₱425,585,430.45 representing the alleged income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty, inclusive of interest and surcharges for taxable year 2014, are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed alleged deficiency tax assessments subject of the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, and the Final Decision on Disputed Assessment with Details of Discrepancies and Audit Results/Assessment Notices, all dated February 8, 2021, assessing petitioner[4] of income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final withholding tax, final withholding VAT, documentary stamp tax, and compromise penalty in the aggregate amount of ₱425,585,430.45, for taxable year 2014. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED."

The dispositive portion of the Resolution dated July 26, 2024 reads:

"**WHEREFORE**, premises considered, respondent's[5] **Motion for Reconsideration (of the Decision dated May 10, 2024)** is hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner 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, grant tax refunds and issue tax credit certificates, pursuant

[4] Respondent herein.
[5] Petitioner herein.

to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, other tax laws, rules and regulations. Court processes and pleadings may be served to petitioner's counsel at Litigation Division, Room 703 BIR National Office Building, BIR Road [now Sen, Miriam P. Defensor-Santiago Avenue], Diliman, Quezon City.[6]

Respondent NCR Corporation Philippines is a corporation duly registered with the Securities and Exchange Commission (SEC) with office address located at 17^{th} Floor, 6788 Building, Ayala Avenue, Makati City. Respondent is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 000-166-605-00000.[7]

THE FACTS

The facts of the case as found by the Court in Division are as follows:

"On December 9, 2015, [respondent] received Letter of Authority (LOA) No. AUDM50/005027/2015 SN: eLA201200042171 dated November 10, 2015, issued by the BIR Large Taxpayers Service (LTS), authorizing Revenue Officers (ROs) Rosario Arriola and Shella Samaniego and Group Supervisor (GS) Rolando Balbido to examine [respondent's] books of accounts and other accounting records covering all internal revenue taxes for the period January 1, 2014 to December 31, 2014, signed by LTS Assistant Commissioner Nestor S. Valeroso.

On February 13, 2017, [petitioner] issued a Memorandum of Assignment (MOA) No. LOA-116-2017-0097, signed by Ms. Shirley A. Capalatia, the Chief of the Regular LT Audit Division I, assigning RO Abigail N. Cayabyab to continue the audit of [respondent] due to the designation of RO Arriola as GS.

On March 22, 2017, [respondent], through its Treasurer, Ms. Emerita Zornosa, executed a Waiver of the Defenses of Prescription under the Statute of Limitations of the NIRC extending the period to assess until September 30, 2017. This was accepted by the CIR through its representative, OIC-ACIR of the LTS, Ms. Teresita M. Angeles, on March 29, 2017.

On August 24, 2017, [respondent] received a Preliminary Assessment Notice (PAN) with Details of Discrepancy dated August 23, 2017 from the BIR LTS assessing petitioner for alleged deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST AND

[6] Decision, p. 2.
[7] Decision, pp. 1-2.

Compromise Penalty, inclusive of interest and surcharge for TY 2014, in the following amounts:

Kind of Tax	Amount (₱)
IT	257,753,691.95
VAT	76,444,793.70
WTC	2,305,347.59
EWT	1,046,261.86
FWT	78,417,212.71
FWVAT	31,366,885.08
DST	2,360,721.82
Compromise Penalty	270,000.00
TOTAL	**₱449,964,914.71**

On September 7, 2017, [respondent] filed a Protest to the PAN of even date.

On September 25, 2017, [respondent] received the Formal Letter of Demand (FLD) with Details of Discrepancy and Assessment Notices, all dated September 13, 2017, covering the alleged deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and Compromise Penalty, inclusive of interest and surcharges in the aggregate amount of ₱449,964,914.71 for TY 2014 broken down as follows:

Kind of Tax	Amount (₱)
IT	257,753,691.95
VAT	76,444,793.70
WTC	2,305,347.59
EWT	1,046,261.86
FWT	78,417,212.71
FWVAT	31,366,885.08
DST	2,360,721.82
Compromise Penalty	270,000.00
TOTAL	**₱449,964,914.71**

On October 25, 2017, [respondent] filed a Protest Letter dated October 25, 2017 against the FLD and Assessment Notices. On December 22, 2017, [respondent] filed a Letter of even date submitting the relevant documents in support of its protest.

On February 26, 2021, [respondent] received the Final Decision on Disputed Assessment (FDDA) signed by CIR Caesar R. Dulay with Details of Discrepancies and Audit Results/Assessments Notices, all dated February 8, 2021, assessing [respondent] in the adjusted amount of P425,585,430.45 representing the alleged deficiency IT, VAT, WTC, EWT, FWT, RWVAT, DST and Compromise Penalty, inclusive of interest and surcharges for TY 2014 broken down as follows:

Kind of Tax	Amount (₱)
IT	229,758,128.56
VAT	53,582,204.44
WTC	2,816,401.91
EWT	1,324,843.50
FWT	96,382,951.74
FWVAT	38,553,180.69
DST	2,917,719.62
Compromise Penalty	270,000.00
TOTAL	**₱425,585,430.46**

Thus, on May 17, 2021, [respondent] filed the present Petition for Review assailing the aforesaid FDDA.

On July 29, 2021, within the extended period, [petitioner] filed his Answer, raising Special and Affirmative Defenses which in a nutshell, state that the assessments issued against [respondent] are valid for having been issued in accordance with laws and regulations; and that [respondent] failed to overcome the presumption of validity and correctness of said assessments."[8]

In the Minute Resolution[9] dated August 22, 2023, the case was deemed submitted for Decision.

On May 10, 2024, the Court in Division promulgated the assailed Decision.

On May 29, 2024, petitioner filed a "Motion for Reconsideration (of the Decision dated May 10, 2024),"[10] seeking the reversal and setting aside of the Decision dated May 10, 2024 and praying that a new one be rendered ordering respondent to pay the alleged deficiency taxes inclusive of surcharges and interests for taxable year 2014.

On July 26, 2024, the Court in Division issued the assailed Resolution denying for lack of merit the petitioner's "Motion for Reconsideration (of the Decision dated May 10, 2024)."

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[8] Decision, pp. 2-4.
[9] Docket, CTA Casse No. 10498, p. 1559.
[10] Ibid., pp. 1580-1614.

On August 14, 2024, petitioner filed by registered mail a "Motion for Extension of Time to File Petition for Review,"[11] stating that petitioner has until August 16, 2024 within which to file the Petition for Review. Petitioner prays for an extension of fifteen (15) days from August 16, 2024, or until August 31, 2024, within which to file the Petition for Review. On August 15, 2024, the Court issued a Minute Resolution[12] granting petitioner's "Motion for Extension of Time to File Petition for Review."

On August 29, 2024, petitioner filed the instant Petition for Review.[13]

On November 19, 2024, the Court *En Banc* issued a Minute Resolution[14] ordering respondent to file Comment on the Petition for Review within ten (10) days from notice.

On December 5, 2024, respondent filed a "Comment."[15]

On January 6, 2025, the Court *En Banc* issued a Minute Resolution[16] which noted respondent's "Comment" and referred the case to the Philippine Mediation Center- Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

On February 26, 2025, the Court *En Banc* received "PMC-CTA Form 6-No Agreement to Mediate"[17] stating that the parties decided not to have their case mediated by Philippine Mediation Center Unit-CTA.

On March 24, 2025, the Court *En Banc* issued a Minute Resolution[18] which noted the "PMC-CTA Form 6-No Agreement to Mediate" and ordered the instant case submitted for decision.

THE ISSUE

"Whether or not the Court in Division erred in cancelling the Assessment Notices for being void ab initio."

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[11] Rollo, pp. 1-4.
[12] Ibid., p. 6.
[13] Ibid., pp. 7-49, with Annexes.
[14] Ibid., p. 81.
[15] Ibid., pp. 83-92.
[16] Ibid., p. 93.
[17] Ibid., p. 94.
[18] Ibid., p. 95.

THE ARGUMENTS

Petitioner claims that the issue on the authority of Revenue Officer (RO) Abigail Cayabyab to continue the audit, as well as the issue on lack of definite amount of deficiency tax liability was never raised by respondent in the administrative level. Thus, respondent can no longer raise such issues on the ground of laches.

Petitioner states that the conduct of the audit investigation and the resulting assessments are valid as the same were in accordance with law and rules. A LOA is not a requirement when the audit investigation is conducted by the Office of the Commissioner of Internal Revenue (OCIR). The LOA in this case was issued by the OIC-Assistant Commissioner for Large Taxpayers Service (LTS). In the organizational chart for the BIR, the LTS is under Office of the Commissioner of Internal Revenue. Considering the audit investigation was conducted by LTS under the OCIR, the issuance of the LOA is not a statutory requirement. The LOA is merely for administrative purposes to allow keeping track of ongoing assessments.

Petitioner maintains that assuming the LOA is required, the examination of respondent's books of account and other accounting records was conducted pursuant to a valid LOA. The issuance of a Memorandum of Assignment (MOA) was issued assigning RO Abigail Cayabyab to continue the investigation of all internal revenue tax liabilities for taxable year January 1, 2014 to December 31, 2014 of respondent pursuant to the earlier LOA issued. Thus, the reassignment of the LOA does not result in lack of authority of the RO and invalidity of the assessment.

Petitioner insists that there was no violation of respondent's right to due process. The mere reiteration of the contents of the Preliminary Assessment Notice (PAN) to the Formal Letter of Demand (FLD) does not indicate that petitioner did not consider respondent's replies and relevant documents it submitted. Respondent was apprised of and was able to avail of the remedies provided by law to refute the tax assessment against it when it filed the protest to PAN and FLD. The remedies given to respondent is a clear opportunity to be heard and to refute the findings of respondent's deficiency taxes. Since procedural due process was satisfied, the assessments subject of this case was validly issued.

Lastly, the Court in Division erred in enjoining the collection of taxes since the instant case has not yet attained finality. Furthermore, there was no Motion to Suspend Collection of Taxes that was filed by respondent, and that was granted by the Court in this case.

Conversely, respondent submits that Court in Division can resolve an issue not raised at the administrative level. The Court in Division is not precluded from deciding issues on matters whose consideration are necessary in arriving at a just decision and complete resolution of the case.

Respondent states that the Supreme Court cases cited by petitioner to substantiate its claims are inapplicable to the present case.

Respondent claims that only the ROs named in the LOA has the authority to audit and assess a taxpayer. The absence of a valid LOA naming RO Abigail Cayabyab conferring authority upon her to conduct the audit examination of respondent's books of accounts for taxable year 2014, renders the present assessment void.

Moreover, the Court in Division did not err in holding that the present assessment was issued in violation of the taxpayer's right to due process in light of the Supreme Court decision in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing Inc. (CIR vs. Avon).* [19]

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition for Review

On May 14, 2024, the petitioner received the Decision of the Court in Division. On May 29, 2024, petitioner filed a Motion for Reconsideration of the said Decision. On July 26, 2024, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner through its counsel on August 1, 2024.

From receipt of the said Resolution on August 1, 2024, petitioner had until August 16, 2024 within which to file the Petition for Review before the Court *En Banc.*

On August 14, 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review," praying that petitioner be given an additional period of fifteen (15) days from August 16, 2024, or until August 31, 2024 within which to file his Petition for Review. The Motion was granted in the Minute Resolution dated August 15, 2024.

The "Petition for Review" was filed on August 29, 2024. Hence, this Petition for Review was timely filed.

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[19] GR Nos. 201398-99 dated October 3, 2018, and GR Nos. 201418019, October 3, 2018.

The assessments issued to respondent are void for lack of authority of the ROs who conducted the audit, and for violation of respondent's right to due process of law.

After due consideration of the facts, issues and arguments raised by the parties, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division. The Court *En Banc* notes that the arguments presented herein are a mere rehash of the arguments offered by petitioner in his Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall pass upon petitioners' arguments.

This Court *En Banc* agrees with the findings of the Court in Division that it can consider the issues and arguments raised by the parties in the Petition for Review and Answer, even if they were not raised before the administrative level since the said issues delve into the intrinsic validity of the assessment itself. Hence, the Court in Division correctly discussed the validity of the LOA in this case.

The RO who actually conducted the audit/investigation has no authority due to absence of the valid LOA.

A review of the records of the case discloses that LOA No. AUDM50/005027/2015 SN:eLA201200042171 dated November 10, 2015[20] specifically authorized ROs Rosario Arriola and Shella Samaniego, and Group Supervisor (GS) Rolando Balbido to examine respondent's books of accounts and other accounting records covering all internal revenue taxes for the period January 1, 2014 to December 31, 2014.

However, in a *Memorandum of Assignment*[21] dated February 13, 2017 the continuation of the investigation/audit of respondent was transferred to RO Abigail N. Cayabyab to continue the audit of respondent due to the designation of RO Arriola as GS. Thus, it appears that ROs Rosario Arriola and Shella Samaniego were not the revenue examiners who actually conducted the audit but RO Cayabyab, by virtue of this *Memorandum of Assignment*.

The reassignment of respondent's examination to a new RO necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No.

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[20] Exhibit "R-2".
[21] Exhibit "R-1".

37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit," which provides that:

> "C. Other policies for issuance of L/As.
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> xxx xxx xxx
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> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (*Underscoring supplied*)

In this case, no new LOA was issued by the BIR naming RO Cayabyab as the new examiner. Their authority was anchored only on the *Memorandum of Assignment* signed by Ms. Shirley A. Calapatia, Chief of the Regular LT Audit Division I.

Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:

> "**Sec. 13.** *Authority of a Revenue Officer.* -- Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Underscoring supplied*)

In addition, under RMO No. 43-90, only the following officers may validly issue a LOA:

> "D. Preparation and issuance of L/As.
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> xxx xxx xxx
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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself." (*Underscoring supplied*)

Clearly, the new RO was not authorized by a new LOA to conduct an audit of respondent's books of accounts for taxable year 2014.

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,[22] the Supreme Court invalidated a CY 2009 BIR assessment for lack of an LOA authorizing the RO, thus:

> "***The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.***
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> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.
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> In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or using the fiscal year which ended in March 31, 1998 when the LOA covered only 'the period 1997 and unverified prior years.' According to the Court:
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> > Clearly, there must be a **grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the **absence of such an authority, the assessment or examination is a nullity**. (*Emphasis supplied*)
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> In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA. According to the Court in *Medicard Philippines*:
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> > What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment**

[22] G.R. No. 241848, May 14, 2021.

issued by the CIR is inescapably void. (*Emphasis supplied*)

Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagauisan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.

Lastly, as stated in Presiding Justice Del Rosario's dissenting opinion on the CTA *En Banc*'s decision, the failure of petitioner to raise at the earliest opportunity, the lack of the revenue officer's authority, does not precluded the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

WHEREFORE, the Petition for Review on Certiorari is hereby **GRANTED**. The Decision dated February 12, 2018 and the Resolution dated July 24, 2018 rendered by the Court of Tax Appeals En Banc in EB Case No. 1513 are **SET ASIDE**. The Formal Letter of Demand with Details of Discrepancies and Assessment Notices issued against petitioner Himlayang Pilipino Plans, Inc. are hereby **DECLARED UNAUTHORIZED** for having been issued without a Letter of Authority by the Commissioner of Internal Revenue or his duly authorized representative." (*Underscoring supplied and citations omitted*)

In *Commissioner of Internal Revenue v. McDonald's Realty Philippines Corp.* (McDonald's),[23] the Supreme Court held that the "practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts." Thus, the Supreme Court in *McDonald's* affirmed the CTA in *invalidating* the CY 2006 assessment.

[23] G.R. No. 242670, May 10, 2021.

The figures and wordings in the PAN are exactly the same as that of the FLD.

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

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

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."[24]

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.[25] 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.[26] 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.[27] 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.[28]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations ("RR") No. 12-99[29], as amended by RR No. 18-2013[30] and renumbered by RR No. 7-2018[31], provides, in part, as follows:

"SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

[24] *Emphasis supplied.*
[25] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.
[26] *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 03, 2021.
[27] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021.
[28] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[29] 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.
[30] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[31] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 *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

3.1.4 *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).

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3.1.6 *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."[32]

The foregoing provision prescribes, as part of due process in the issuance of tax assessments, that the PAN, FLD and Final Decision on a Disputed Assessment ("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 *CIR v. Avon*, the Supreme Court declared as void the tax assessment because of the **total disregard by the CIR of the taxpayer's due process rights as mandated by Section 228 of the NIRC of 1997, as amended and**

[32] *Emphasis and underscoring supplied.*

RR No. 12-99, as amended. The Supreme Court held that the CIR failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it.

The relevant portions of the said decision are quoted below:

> "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>.
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> xxx xxx xxx
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> **<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 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, **<u>Section 3.1.4 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</u>.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
>
> **'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.' <u>This is an essential requirement of due process and applies to the</u>** Preliminary Assessment Notice, **<u>Final Letter of Demand with the Final Assessment Notices</u>**, and the Final Decision on Disputed Assessment.
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> The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>.** 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, <u>Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments</u>.** There was clear inaction of the Commissioner at every stage of the proceedings.
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> 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."[33]

Based on the foregoing, petitioner 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. And due process requires petitioner and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

Moreover, in case petitioner 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. 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. Notably, **when petitioner 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. Thus, the concerned taxpayer must not be left unaware on how the petitioner or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.**

In the case at bar, as stated in the PAN with attached *Details of Discrepancies* dated August 23, 2017,[34] the BIR found due from respondent deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and compromise penalties for calendar year 2014, in the amount of P449,964,914.71.

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[33] *Emphasis and underscoring supplied.*
[34] Exhibit "P-7".

Records show that respondent filed its Protest to the PAN dated September 7, 2017.[35]

Petitioner issued the FAN/FLD with attached *Details of Discrepancies* on September 13, 2017,[36] respondent was still assessed the same exact basic deficiency IT, VAT, WTC, EWT, FWT, FWVAT, DST and compromise penalties, in the total amount of ₱449,964,914.71, In fact, the *Details of Discrepancies* attached to the FLD merely reiterated or copied *verbatim* what are indicated in the *Details of Discrepancies* attached to the PAN.

In other words, the petitioner merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the explanations made by respondent in its Reply to the PAN - an indication that petitioner did not consider the same when he issued the subject FLD. Consequently, respondent was left unaware on how petitioner or the BIR appreciated the explanations or defenses respondent raised against the subject PAN, in clear violation of respondent's right to administrative due process.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[37] Therefore, the subject tax assessment cannot be enforced against respondent, and petitioner has no right to collect the same.

In view of the foregoing, the Court *En Banc* finds that petitioner has not sufficiently established his case.

ACCORDINGLY, the Petition for Review is **DENIED for lack of merit.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[35] Exhibit "P-8".
[36] *Exhibit "P-9"*.
[37] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice