REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

MAJOR SHOPPING MANAGEMENT CORPORATION, *Petitioner,*	**CTA CASE NO. 9300**
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 25 2024 4:20 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review[1] ("Petition"), dated March 16, 2016 and filed on March 18, 2016, praying that this Court render judgment cancelling and setting aside the Letter[2] ("Assailed Decision"), dated February 5, 2016, denying petitioner's Motion for Reconsideration and finding Petitioner liable to pay the alleged deficiency taxes, penalties, and interests for the taxable year 2010 in the total amount of Seven Billion Five Hundred Ninety Six Million Five Hundred Ninety Seven Thousand Eight Hundred Seventy Eight and 01/100 Pesos (₱7,596,597,878.01), broken down as follows:

Tax Type	Amount
1. Income Tax	₱ 5,767,947,396.00
2. Value-Added Tax ("VAT")	1,642,434,645.27
3. Expanding Withholding Tax ("EWT")	118,366,060.18
4. Withholding Tax on Compensation ("WTC")	29,096,486.38
5. Documentary Stamp Tax ("DST")	318,342.90
6. Improperly Accumulated Earnings Tax ("IAET")	38,434,947.18
TOTAL	₱ 7,596,597,877.91[3]

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[1] Docket Vol. 1, pp. 10-281, with annexes.
[2] Exhibit "P-9", *id.*, p. 475.
[3] Petition for Review, *id.*, pp. 72-73; Exhibit "P-7" Final Decision on Disputed Assessment ("FDDA"), *id.*, pp. 391-394; Pre-Trial Order, Docket Vol. 2, pp. 979-980; Difference of ₱0.10 between total amount per Assailed Decision vs. sum of assessed amounts per FDDA.

The Parties

Petitioner Major Shopping Management Corporation ("Petitioner") is a domestic corporation duly organized and existing under Philippines laws, with address at SM Megamall Building, EDSA cor. Wack Wack, Mandaluyong City, engaged in the business of conducting, maintaining and operating a commercial shopping center, including the operation of department stores, supermarkets, hardware, amusement centers, movie houses, within the premises of the shopping center.[4]

On the other hand, respondent is the Commissioner of Internal Revenue ("CIR" or "Respondent") duly appointed and empowered to perform the duties of his office, as the chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties, and charges therewith. He may be served with summons, notices, and other court processes at his office at the BIR National Office Building, Diliman, Quezon City.[5]

The Facts

On September 20, 2011, Assistant Commissioner Alfredo Misajon of the BIR Large Taxpayer Services, issued Letter of Authority ("LOA") (SN: eLA201100002965 LOA 116-2011-00000048)[6] authorizing Revenue Officers (RO) Guilquin Tolentino, Ruby Anne Oradia, Amelia Molinos, Aurelio Zamora, Jan Andrea Abellera, and Johnrio Galicia under the supervision of Group Supervisor Edgar Espiritu, of the Large Taxpayers Regular Audit Division 1, to examine the books of account and other accounting records of petitioner, for all internal revenue taxes for the period of January 1 to December 31, 2010.

On August 15, 2014,[7] petitioner received a Preliminary Assessment Notice ("PAN")[8] issued by respondent on August 4, 2014, through Mr. Alfredo V. Misajon, then Officer in Charge-Assistant Commissioner for Large Taxpayers Service, assessing petitioner for alleged deficiency taxes, penalties, and interests for the year 2010.

Thereafter, on February 10, 2015, respondent, through Nestor S. Valeroso, Officer in Charge-Assistant Commissioner for Large Taxpayers Service, issued a Formal Letter of Demand ("FLD")[9] and Final Assessment Notice ("FAN")[10] which was received by petitioner on February 13, 2015.[11]

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[4] Pre-Trial Order, Docket Vol. 2, p. 980; Articles of Incorporation, Docket Vol. 4, p. 1520.
[5] Pre-Trial Order, *id.*, p. 980.
[6] Exhibit "R-1", BIR Records, p. 1.
[7] Exhibit "P-4-1", Docket Vol. 1 492.
[8] Exhibit "P-4", Docket Vols. 1-2, p. 492-502.
[9] Exhibit "P-5", Docket Vol. 1, p. 375-384.
[10] Exhibits "P-5-2" to "P-5-7", *id.*, pp. 385-390.
[11] Exhibit "P-5-1", *id.*, p. 375.

On March 16, 2015,[12] petitioner filed its written protest[13] questioning the validity of the assessment.

On November 3, 2015,[14] petitioner received the Final Decision on Disputed Assessment ("FDDA"), with attached Details of Discrepancies and Assessment Notices[15] signed by Assistant Commissioner Nestor S. Valeroso, denying its protest in part and finding it liable for alleged deficiency taxes, penalties and interests in relation to taxable year 2010, for a total amount of ₱7,596,597,877.91.

Petitioner then filed a Motion for Reconsideration[16] with the office of the CIR on December 3, 2015.[17]

On February 17, 2016,[18] petitioner received the Assailed Decision,[19] dated February 5, 2016, denying the Motion for Reconsideration and reiterating the assessment in the FDDA.

Aggrieved, petitioner filed the instant Petition[20] on March 18, 2016, pursuant *to Section 228 of the National Internal Revenue Code of 1997, as amended* ("*Tax Code*"), in relation to *Section 7 of Republic Act (RA) No. 1125*,[21] as amended by *RA No. 9282*.[22]

After having been granted an extended time within which to respond,[23] respondent filed his Answer dated June 21, 2016, on June 22, 2016.[24] Petitioner filed its Reply (to Answer dated June 21, 2016) on July 7, 2016.[25]

Respondent then filed her pre-trial brief on August 17, 2016,[26] while petitioner's pre-trial brief was submitted on March 10, 2017.[27]

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[12] Exhibit "P-6-1", *id.*, p. 300.
[13] Exhibit "P-6", *id.*, pp. 300—374.
[14] Exhibit "P-7-1", *id.*, p. 391.
[15] Exhibit "P-7", *id.*, pp. 391-496.
[16] Exhibit "P-8", *id.*, p. 407-474.
[17] Exhibit "P-8-1", *id.*, p. 407.
[18] Exhibit "P-9-1", *id.*, p. 475.
[19] Exhibit "P-9", *id.*
[20] *Supra* note 1.
[21] An Act Creating the Court of Tax Appeals, June 16, 1954.
[22] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; March 30, 2004.
[23] Resolution, dated June 9, 2016, Docket, Vol. 2, p. 579.
[24] Answer, *id.*, pp. 580-604.
[25] Reply (To Answer dated 21 June 2016), *id.*, pp. 608-660.
[26] Respondent's Pre-Trial Brief, *id.*, pp. 670-677.
[27] Petitioner's Pre-Trial Brief, *id.*, pp. 693-706.

The pre-trial conference was held on March 14, 2017,[28] and the parties submitted a Joint Stipulation of Facts and Issues ("JSFI")[29] on April 4, 2017. On April 27, 2017, the Court issued a Pre-Trial Order[30] which adopted the parties' JSFI.

To support its claim, petitioner presented the testimony of its witness, Annalyn E. Cayetano who testified on direct examination by way of Judicial Affidavit[31] dated March 9, 2017, submitted to the Court on even date. Ms. Cayetano testified, among others, on her duties and responsibilities as petitioner's Regional Controller, and that petitioner is not liable for the alleged deficiency income tax, VAT, EWT, WTC, IAET, and DST, plus interest and penalties in the total amount ₱7,596,597,877.01 for the taxable year 2010.

Further, petitioner also offered the testimony of Elizabeth Ann D. Yu, who testified on direct examination by way of Judicial Affidavit[32] dated March 9, 2017, submitted to the Court on March 13, 2017. Ms. Yu testified, among others, on her duties and responsibilities as petitioner's VP-Controllership; on the facts and circumstances leading to the filing of the case; that the FLD/FAN does not contain a demand to pay within a specified time; and that petitioner should not be held liable for alleged deficiency taxes for the taxable year 2010.

On August 7, 2017, the Court commissioned Atty. Rosario S. Bernaldo as the Independent Certified Public Accountant ("ICPA") for this Petition.[33] However, on August 29, 2017, Petitioner filed an Urgent Motion to Defer Submission of ICPA Report (with Urgent Motion to Produce Documents)[34] dated August 29, 2017, praying, among others, that the Court order respondent to produce petitioner's documents, including audited financial statements, tax returns, and books of accounts, used by the BIR in its audit/investigation. Respondent then filed his Compliance[35] on September 15, 2017, stating that the documents requested by petitioner are contained in the BIR Records, which respondent transmitted to the Court on the even date.

On September 22, 2017, petitioner filed a Manifestation (with Motion for Order Compelling Discovery)[36] praying that the Court order respondent to submit the AFS and books of accounts used by the BIR examiners in the assessment, or, if there are none, to confirm that there are no such documents. The Motion was granted by the Court on September 29, 2017.[37]

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[28] Minutes of the Hearing dated March 14, 2017, *id.*, p. 948.
[29] Joint Stipulation of Facts and Issues, *id.*, p. 952-961.
[30] Pre-Trial Order, id., pp. 979-988.
[31] Exhibit "P-15", *id.*, pp. 713-722.
[32] Exhibit "P-10", id., pp. 729-741.
[33] Minutes of the Hearing dated August 7, 2017, Docket Vol. 3, p. 1081.
[34] Urgent Motion to Defer Submission of ICPA Report (with Urgent Motion to Produce Documents), *id.*, pp. 1090-1097.
[35] Compliance filed by Respondent, *id.*, pp. 1104-1105, 1107-1108.
[36] Petitioner's Manifestation (with Motion for Order Compelling Discovery), *id.*, pp. 1111-1115.
[37] Resolution dated September 29, 2017, *id.*, pp. 1117-1120.

In response to the Court's order, respondent filed another Compliance[38] on October 10, 2017 wherein he stated that the AFS used by the BIR examiners as reference for the assessment are found on pages 1806 to 1846 and 1860 to 1901 of the BIR Records; while the books of accounts from which the BIR examiners derived the balances used in the assessment came from petitioner and sent to respondent through electronic mail on November 20, 2013.

However, in petitioner's Manifestation (with Motion for Order Compelling Discovery)[39] filed on October 27, 2017, it averred that respondent's compliance in so far as the books of accounts are concerned is an evasive and incomplete response to petitioner's document requests. Further, it raises that ICPA Bernaldo could not derive the same balances used by the BIR from petitioner's books of account. Hence, it is imperative that petitioner and ICPA have access to the books of accounts allegedly used by the BIR for the assessment instead of merely referring to the electronic mail allegedly sent by petitioner to respondent.

In another Compliance dated December 7, 2017,[40] respondent submitted a Memorandum dated December 4, 2017,[41] stating that the BIR cannot submit the copy of the trial balance and other attached document to petitioner's November 20 and 21, 2013 email as it will no longer be in its original form. Instead, the BIR manifested that the original copy can be generated or electronically saved by the sender of the file who represented petitioner in the audit.

Still not satisfied, petitioner filed a Motion to Avail of the Provisions of Rule 29 of the Revised Rules of Court[42] on January 18, 2018, to which respondent filed his opposition on February 15, 2018.[43]

In a Resolution dated March 21, 2018,[44] the Court denied the said Motion of petitioner for lack of merit, ruling that respondent cannot comply with the request for production of the books of account considering that only the trial balance and proper grouping of accounts were submitted by petitioner during the course of the investigation.

Meanwhile, on October 6, 2017, petitioner had earlier filed with the Court the ICPA Report of Atty. Bernaldo.[45] The scanned and photocopied exhibits, contained in two compact discs, were later submitted on October 18, 2017.[46]

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[38] Compliance dated October 10, 2017, *id.*, p. 1286.
[39] Manifestation (With Motion for Order Compelling Discovery), *id.*, pp. 1295-1300.
[40] Compliance, *id.*, pp. 1316-1317.
[41] Memorandum, *id.*, p. 1319.
[42] Motion to Avail of the Provisions of Rule 29 of the Revised Rules of Court, *id.*, pp. 1345-1350.
[43] Opposition (Re: Motion to Avail of the Provisions of Rule 29 of the Revised Rules of Court), *id.*, pp. 1369-1372.
[44] Resolution dated March 21, 2018, *id.*, pp. 1391-1402.
[45] Exhibit "P-50", Docket, Vol. 4, pp. 1755-1806.
[46] Submission, Docket, Vol. 3, pp. 1291-1294.

On May 16, 2018, Petitioner filed a Motion to Admit the Supplemental ICPA Report,[47] which was granted by the Court on June 28, 2018.[48]

Thereafter, on August 28, 2018, petitioner presented ICPA Bernaldo before the Court.[49] She testified on direct examination by way of Judicial Affidavit dated May 24, 2018[50] wherein she stated that based on her examination, out of the total deficiency tax assessment of ₱7,596,597,878.01, only ₱25,775,094.77 should be retained.

After the termination of petitioner's witnesses' testimony, petitioner filed its Formal Offer of Evidence ("FOE"), on November 16, 2018.[51] On February 26, 2019, the Court promulgated a Resolution[52] denying, among others, several exhibits of petitioner, and directing ICPA Bernaldo, to submit a soft copy of her ICPA Report and the corresponding annexes.

Petitioner then filed an Omnibus Motion for Reconsideration (with Motion to Reopen Proceedings)[53] on March 15, 2019, which was granted by the Court on June 13, 2019.[54] Following this, petitioner submitted on August 20, 2019, the Supplemental Judicial Affidavit of Ms. Yu dated August 19, 2019[55], and on September 3, 2019, the Supplemental Judicial Affidavit of ICPA Bernaldo dated September 2, 2019.[56] Both witnesses were again presented before the Court on September 10, 2019.[57]

Petitioner filed its Supplemental FOE[58] on September 19, 2019, and an Addendum to the Supplemental FOE on September 20, 2019.[59] On November 28, 2019, however, the Court promulgated a Resolution[60] denying, among others, several exhibits of petitioner due to these not being found in the records of the case.

On December 20, 2019, petitioner filed its Motion for Reconsideration[61] praying for the admission of the previously denied exhibits. This was granted by the Court in a Resolution,[62] promulgated on February 18, 2020.

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[47] Motion to Admit the Supplemental ICPA Report, Docket Vol. 3, pp. 1403-1407; Exhibit "P-51", Docket Vol. 4, pp. 1807-1811.
[48] Resolution dated June 28, 2018, Docket Vol. 3, p. 1449.
[49] Minutes of Hearing dated August 28, 2018, *id.*, p. 1450.
[50] Exhibit "P-55", Docket Vol. 4, pp. 1812-1830.
[51] Formal Offer of Evidence ("FOE"), *id.*, pp. 1494-1516.
[52] Resolution dated February 26, 2019, *id.*, pp. 1845-1849.
[53] Omnibus Motion for Reconsideration (with Motion to Reopen Proceedings), *id.*, pp. 1855-1866.
[54] Resolution on June 13, 2019, *id.*, pp. 1903-1905.
[55] Exhibit "P-12", *id.*, pp. 1917-1923.
[56] Exhibit "P-56", *id.*, pp. 1938-1946.
[57] Minutes of Hearing dated September 10, 2019, *id.*, p. 1947.
[58] Supplemental FOE, *id.*, pp. 1950-1958.
[59] Addendum to the Supplemental FOE, *id.*, pp. 1962-1965.
[60] Resolution dated November 28, 2019, *id.*, pp. 1973-1975.
[61] Motion for Reconsideration dated December 19, 2019, *id.*, p. 1976-1981.
[62] Resolution dated February 18, 2020, Docket, Vol. 5, pp. 2000-2003.

On October 13[63] and November 11, 2021,[64] respondent presented his sole witness, Revenue Officer ("RO") Ruby Ann B. Oradia, who testified by way of Judicial Affidavit dated May 8, 2019.[65]

Respondent then filed his FOE dated November 23, 2021,[66] on November 24, 2021.

Also, petitioner filed its Supplemental FOE on December 1, 2021.[67]

In a Resolution promulgated on March 23, 2022,[68] the Court admitted respondent's exhibits pursuant to the said FOE and petitioner's additional exhibits in the abovementioned Supplemental FOE.

On February 18, 2022, petitioner filed a Motion for Presentation of Rebuttal Evidence,[69] which was granted by the Court on June 10, 2022.[70] Hence, on August 30, 2022, petitioner presented the testimony of Ms. Yu, who testified on direct examination by way of Supplemental Judicial Affidavit dated August 25, 2022.[71]

Ms. Yu testified, among others, that the amounts extracted or used by the BIR examiners in their tax audit/investigation as reflected in the BIR notices such as the PAN, FLD/FAN, and FDDA are incomplete and inaccurate as compared to the amounts in petitioner's books of accounts; and that even though the inconsistencies were explained in the protest letter, no explanation was provided by the BIR, who allegedly did not consider petitioner's justifications, explanations, and supporting documents at all.

On September 8, 2022, petitioner filed a Supplemental FOE with Motion to Set Additional Commissioner's Hearing.[72] In a Resolution promulgated on February 6, 2023,[73] the Court admitted the exhibits and ordered both parties to file their respective memoranda within thirty (30) days from receipt.

On March 17, 2023, respondent submitted his Memorandum,[74] while petitioner's Memorandum[75] was filed on April 3, 2023.

The instant Petition was then submitted for decision on April 26, 2023.[76]

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[63] Minutes of Hearing dated October 13, 2021, *id.*, p. 2038.
[64] Minutes of Hearing dated November 11, 2021, *id.*, p. 2043.
[65] Exhibit "R-21", *id.*, pp. 1885-1898.
[66] Respondent's FOE dated November 23, 2021, Docket, Vol. 5, pp. 2134-2142.
[67] Petitioner's Supplemental FOE dated December 1, 2021, *id.*, pp. 2145-2151.
[68] Resolution dated on March 23, 2022, *id.*, pp. 2169-2170.
[69] Motion for Presentation of Rebuttal Evidence dated February 18, 2022, *id.*, pp. 2158-2163.
[70] Resolution promulgated on June 10, 2022, *id.*, p. 2175.
[71] Exhibit "P-67", *id.*, pp. 2183-2196.
[72] Petitioner's Supplemental FOE with Motion to Set Additional Commissioner's Hearing, *id.*, pp. 2200-2210.
[73] Resolution dated February 6, 2023, *id.*, p. 2224.
[74] Respondent's Memorandum. *id.*, pp. 2241-2274.
[75] Petitioner's Memorandum, *id.*, pp. 2276-2377.
[76] Minute Resolution dated April 26. 2023, *id.*, p. 2378.

Hence, this Decision.

<u>The Issues</u>[77]

The parties submitted the following issues for this Court's resolution:

I.

WHETHER THE COURT HAS JURISDICTION TO ACT ON THE INSTANT PETITION;

II.

WHETHER THE BIR'S ASSESSMENT IS VOID FOR LACK OF AUTHORITY TO CONDUCT THE SAME;

III.

WHETHER THE BIR'S ASSESSMENT IS VOID SINCE THERE WAS NO DEMAND FOR PAYMENT WITHIN A SPECIFIED PERIOD OF TIME;

IV.

WHETHER RESPONDENT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS THROUGH ITS FAILURE TO INFORM PETITIONER OF THE LEGAL AND FACTUAL BASES OF THE ASSESSMENT AND BY DEPRIVING PETITIONER OF THE OPPORTUNITY TO REFUTE THE FINDING AND EXPLAIN ITS SIDE;

V.

WHETHER THE RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR THE TAXABLE YEAR 2010 HAS ALREADY PRESCRIBED;

VI.

WHETHER THE WAIVERS DID NOT VALIDLY EXTEND THE ORIGINAL THREE-YEAR PRESCRIPTIVE PERIOD TO ASSESS PETITIONER'S INTERNAL REVENUE TAXES FOR THE TAXABLE YEAR 2010;

VII.

WHETHER THE DEFICIENCY TAX ASSESSMENTS LACK FACTUAL AND LEGAL BASES;

VIII.

WHETHER DEFICIENCY INTEREST SHOULD BE IMPOSED ON THE DEFICIENCY VAT, EWT, FWT, WTC, IAET AND DST;

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[77] See Stipulated Issues in the Pre-Trial Order, Docket, Vol. 3, pp. 1379-1380.

IX.
WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY TAXES AMOUNTING TO ₱7,596,597,878.01 FOR THE TAXABLE YEAR 2010.

Petitioner's Arguments[78]

Petitioner maintains that the Court must cancel and set aside the subject assessment for the taxable year 2010 due to the following:

a. The CTA has jurisdiction to take cognizance of the instant Petition;
b. The assessment is void due to the lack of authority to conduct the same as the ROs who performed the actual examination are not authorized by a LOA;
c. The assessment is void since there was no demand for payment within a specified period of time in violation of the mandatory requirements of *Section 3 of Revenue Regulations (RR) No. 12-99*,[79] as amended by *RR No. 18-2013*;[80]
d. Respondent violated petitioner's right to due process, as prescribed under *Section 228 of the Tax Code*, through the former's failure to inform petitioner of the legal and factual bases of the assessment and by depriving petitioner of the opportunity to refute the finding and explain its side;
e. The period to assess petitioner's internal revenue taxes for the year 2010 had already prescribed;
f. The waivers did not validly extend the three-year prescriptive period to assess petitioner's internal revenue taxes for the taxable year 2010;
g. The deficiency tax assessments lack factual and legal bases;
h. Assuming, solely for the sake of argument, that the assessment is valid, no deficiency interest should be imposed on the deficiency VAT, EWT, FWT, WTC, IAET, and DST; and
i. Petitioner is not liable for the alleged deficiency taxes for the taxable year 2010 in the total amount ₱7,596,597,878.01.

Respondent's Counter-Arguments[81]

On the part of the respondent, he insists that the assessment is valid. Specifically, he raises the following points:

a. The Court has no jurisdiction over the instant Petition as it was filed out of time;

[78] Memorandum; Docket, Vol. 5, pp. 2300-2374
[79] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.
[80] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.
[81] Memorandum, Docket, Vol. 5, pp. 2243-2272.

b. Assuming that the Court has jurisdiction over the instant Petition, the assessment is valid and issued pursuant to a valid authority; thus, should not be deemed null and void;
c. Respondent's right to assess petitioner for taxable year 2010 has not prescribed due to proper issuance of waivers of the defense of prescription under the statutes of limitations;
d. Petitioner is estopped from assailing the validity of the waivers it executes;
e. The assessments have bases both in fact and in law; and
f. The LOA, PAN, FLD, FAN, FDDA and Assailed Decision were issued in accordance with law, rules and jurisprudence.

The Ruling of the Court

The Court has jurisdiction over the instant Petition for Review.

At the outset, the Court must first rule on the jurisdictional issue raised by the parties as the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction.[82]

For this purpose, We refer to *Section 7 of RA No. 1125, as amended by RA No. 9282*, which specifies the matters within the Court's jurisdiction:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
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> (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;
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> . . . .
>
> (Emphasis and italics supplied.)

The above provision is implemented by *Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*")[83] which provides:

> SEC. 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
> (1) ***Decisions of the Commissioner of Internal Revenue*** in cases involving ***disputed assessments***, refunds of internal revenue taxes, fees or other

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[82] Procter & Gamble Asia, Pte. Ltd., vs. Commissioner of Internal Revenue, G.R. No. 207587 (Notice), April 28, 2021.

[83] A.M. No. 05-11-07-CTA, 22 November 2005.

> 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;
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> . . . .

(Emphasis and italics supplied.)

In relation to the foregoing, *Section 228 of the Tax Code, as amended*, prescribes the remedies available to taxpayers for tax assessments issued against them and the corresponding periods within which a decision of the CIR may be appealed to the CTA. *Section 228* thus states:

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

To implement the foregoing remedies afforded by the law, the BIR promulgated *RR No. 12-99, as amended by RR No. 18-2013. Section 3.1.4* thereof provides:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> . . . .
>
> If the ***protest is denied,*** *in whole or in part, by the* ***Commissioner's duly authorized representative***, the taxpayer may either: (i) ***appeal to the Court of Tax***

> ***Appeals (CTA)*** *within thirty (30) days from date of receipt of the said decision;* or (ii) ***elevate his protest through request for reconsideration to the Commissioner*** *within thirty (30) days from date of receipt of the said decision.* No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
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> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other."
> (Emphasis and italics supplied.)

Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. Thus, in the case of *Philippine Amusement and Gaming Corporation vs. Commissioner of Internal Revenue*[84] and later in the case of *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*,[85] the Supreme Court summarized the three options available to a protesting taxpayer as follows:

1. If the ***protest is wholly or partially denied*** *by the CIR or* ***his authorized representative***, then the taxpayer may ***appeal to the CTA*** *within 30 days from receipt of the whole or partial denial of the protest;*

[84] G.R. No. 208731, January 27, 2016.
[85] G.R. No. 221780, March 25, 2019

2. If the ***protest is wholly or partially denied by the CIR's authorized representative***, then the taxpayer ***may appeal to the CIR*** *within 30 days from receipt of the whole or partial denial of the protest*;
3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

Here, petitioner's protest was denied by CIR's authorized representative. Thus, based on the abovecited rules, petitioner had the option (1) to file an appeal to the CIR or (2) to elevate the case to the CTA within 30 days from the receipt of the FDDA.

These options are consistent with the holding of the Supreme Court in the case of *Nueva Ecija II Electric Cooperative, Inc. Area II vs. Commissioner of Internal Revenue*,[86] where it was ruled that:

> . . . Notably, Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, which implements Section 228 of the Tax Code, provides for *alternative courses of action to the taxpayer upon its receipt of the Final Decision on Disputed Assessment issued by the* ***authorized representative of respondent*** *Commissioner on Internal Revenue (respondent),* including the option of ***elevating the protest to the respondent himself*** through a request for reconsideration. . . .
> (Emphasis and italics supplied.)

Accordingly, petitioner has rightfully filed, before the CIR himself, the motion for reconsideration[87] on the FDDA, on December 3, 2015. It is the receipt of respondent's decision on such motion, or herein Assailed Decision, that should be the reckoning point of the 30-day period to appeal the case to the CTA.

Based on the foregoing, petitioner had until March 18, 2016[88] within which to file its Petition for Review before the Court. Thus, We hereby find the instant Petition timely filed on March 18, 2016, affording the Court the exclusive appellate jurisdiction to take cognizance hereof.

Petitioner failed to prove its claim that the actual examination was conducted by ROs not duly authorized by a LOA

Petitioner posits that the assessment should be deemed void due to the lack of authority of the ROs who actually conducted the examination on petitioner's tax audit case, pursuant to *Section 13 of the Tax Code* which states:

[86] G.R. No. 258101 (Notice), April 19, 2022.
[87] *Supra* note 16.
[88] February 17, 2016 (Date of receipt of Assailed Decision; see Exhibit "P-9", *id.*, p. 475).plus 30 days.

> **SECTION 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.
> (Emphasis and italics supplied.)

Petitioner then directs the Court's attention to the FLD/FAN which, according to it, appears to be signed by nine (9) individuals whose initials appear in the documents. It espouses the view that all signatories therein are revenue officers who actually conducted the audit examination and that based on comparison of the initials versus the revenue officers authorized to conduct the investigation on petitioner for the year 2010, as per LOA issued by the BIR, four (4) of the signatories are not duly authorized.

The Court disagrees.

First, the initials and signatures in FLD/FAN do not necessarily equate to the signatories' actual conduct of examination on the petitioner. The presence of these marks in the same documents appear to be too ambiguous as to draw a conclusion that all of them signifies concurrence thereof based on their *actual performance* of audit investigation.

Also, upon perusal of the Memorandum[89] dated January 5, 2015, recommending for the issuance of the FLD, the Court was able to trace therein the same signatories in the FLD/FAN, and their respective capacities in the process of issuance thereof.

Names in the LOA	**Initials and signatures in the FLD**	**Per Memorandum dated January 5, 2015**	
		Name	**Role / Position**
Guilquin Tolentino	GBT	Guilquin B. Tolentino	"Received by" / Group Supervisor
Ruby Anne Oradia	RBO	R.B. Oradia	"Submitted by" / Revenue Officer
Amelia Molinos			
Aurelio Zamora	ATZ	A.T. Zamora	"Submitted by" / Revenue Officer
Jan Andrea Abellera	JCA	J.C. Abellera	"Submitted by" / Revenue Officer
Johnrio Galicia	JCG	J.C. Galicia	"Submitted by" / Revenue Officer

[89] Exhibit "R-11", BIR Records, pp. 363-374.

Edgar Espiritu			
	OOL	OOL	"Approved by"
	CDE	Cesar D. Escalada	"Recommending Approval"/ Chief, RLTAD-1
	GGS	GGS	"Recommending Approval"
	JSD	JSD	"Recommending Approval"

Based on the summary above, the named signatories were all authorized by the LOA. On the other hand, the signatories not named in the LOA did not sign the FLD/FAN as ROs but as approvers thereof, thus not needing a LOA for proper authorization.

Accordingly, We find that the ROs who conducted the audit investigation are duly authorized by a LOA and that petitioner's claim to the contrary was not satisfactorily proven.

The FLD/FAN and assessment notices attached to the FDDA failed to indicate the due date for payment and are thus invalid.

An assessment is defined as "a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof."[90] As used under the Tax Code, it is a demand made by the BIR on the taxpayer for the settlement of a due tax liability that is ***definitely set and fixed***.[91]

Section 3.1.3[92] *of RR No. 12-99, as amended by RR No. 18-2013*, implementing *Section 228 of the Tax Code*, prescribes that a taxpayer shall be issued with a FLD/FAN duly calling for payment of the alleged deficiency taxes, and stating the factual and legal bases of such assessments.

With the foregoing due process requirements, the Supreme Court, in the case of *Commissioner of Internal Revenue (CIR) v. Pascor Realty and Development Corp.*,[93] stated that "(a)n assessment contains not only a computation of tax liabilities, but also a *demand for payment within a prescribed period*." It was further discussed therein that: ɣ

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90 Republic of the Philippines v. Yu, G.R. No. L-17438, April 30, 1964.
91 Adamson, et al. vs. Court of Appeals, et al., G.R. No. 120935 and 124557, May 21, 2009.
92 Section 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.
93 G.R. No. 128315 June 29, 1999.

> . . . [A]n assessment ***informs the taxpayer that he or she has tax liabilities***. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.
>
> To start with, an assessment must be sent to and received by a taxpayer, and must ***demand payment of the taxes*** *described therein* ***within a specific period.*** Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to *pay deficiency tax within the time prescribed for its payment* in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rates as may be prescribed by rules and regulations, is to be collected *from the* ***date prescribed for its payment*** *until the full payment.*
>
> . . . .
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment.
> (Emphasis and italics supplied.)

Anchored on such pronouncement, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Fitness by Design Inc.*,[94] opined that the BIR's FAN can be rendered void if it fails to indicate a due date therein. The court discussed that the FAN issued to Fitness by Design states that the taxpayer is requested to pay the deficiency internal revenue tax liabilities *within the time shown in the enclosed assessment notice*. However, the attached assessment therein remained unaccomplished.

We found the same defect with the assessment notices in this case. The FLD dated February 10, 2015 states that:

> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities using the BIR Payment Form (BIR Form 0605) through eFPS ***within the time shown in the enclosed assessment notice***. Afterwards, submit a copy thereof to our Office located at Room 216, Regular Large Taxpayers Audit Division 1, BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein FAN, if warranted.
> (Emphasis and italics supplied.)

Upon checking of the FAN[95] as well as the assessment notices attached to the FDDA,[96] however, the spaces which should contain the due dates in each notice were left bank. Respondent did not controvert the same averment in its Answer. Furthermore, RO Oradia confirmed during the cross-examination held on October 13, 2021[97] that there are indeed no due dates in the FAN.

Considering the foregoing, no proper demand for payment within a specific period of time was validly made by the BIR.

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[94] G.R. No. 215957, 9 November 2016.
[95] *Supra* note 10.
[96] *Supra* note 15.
[97] Transcripts of Stenographic Notes (TSN) for the Hearing held on October 13, 2021,

At this juncture, We emphasize that as clearly held by the Supreme Court in the *Fitness by Design case*, the requirement to indicate a fixed and definite period or a specific date within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a specific date or period for its demand for payment is deemed void.

We accordingly conclude that the subject FLD/FAN and FDDA are void. Correspondingly, the Assailed Decision issued by respondent denying petitioner's Motion for Reconsideration should also be held invalid.

The FDDA failed to provide reasons for the rejection of the explanations and defenses of the taxpayer, rendering itself void.

As cited in the discussions above, *Section 228 of the Tax Code* mandates that assessment notices must indicate the law and the facts on which the assessment is made; otherwise, the same shall be void.

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon case)*,[98] the Supreme Court clarified that the obligation to provide factual and legal bases in assessments also include the *duty to state the reasons for the rejection* of a taxpayer's defenses and explanations against issues raised during tax investigation.

Citing the landmark case of *Ang Tibay vs. Court of Industrial Relations and National Labor Union Inc.*,[99] it was highlighted there that a taxpayer must not only be given an opportunity to present his case, but the tribunal must consider the evidence presented, thus:

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

[98] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[99] G.R. No. 46496, February 27, 1940.

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.

In *Edwards v. McCoy*:

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.

In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."

Furthermore, in *Mendoza v. Commission on Elections*, this Court explained:

> [T]he last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

In *Villa v. Lazaro*, this Court held that Anita Villa (Villa) was denied due process when the then Human Settlement Regulatory Commission ignored her submission, not once but thrice, of the official documents certifying to her compliance with the pertinent locational, zoning, and land use requirements, and plans for the construction of her funeral parlor. It imposed on Villa a fine of P10,000.00 and required her to cease operations on the spurious premise that she had failed to submit the required documents. This Court found the Commissioner's failure or refusal to even acknowledge the documents submitted by Villa indefensible. It further held that the defects in the administrative proceedings "translate to a denial of due process against which the defense of failure to take timely appeal will not avail."

In the case at hand, petitioner submitted a protest[100] to assail the assessments per FLD/FAN.[101] However, upon perusal of the FDDA,[102] We noted that aside from a reduced finding for the alleged "Underdeclared Income from EWT", there is nothing in the FDDA which would indicate that the explanations, contentions and evidence submitted by petitioner were considered or even acknowledged by respondent. It clearly lacks the reasons for the rejection of the defenses raised by the petitioner in its protest in so far as all other assessment items are concerned.

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[100] *Supra* note 13.
[101] *Supra* note 10.
[102] *Supra* note 15.

This runs contrary to the clear mandate of the Supreme Court in the *Avon case.* While the CIR is not obliged to accept the taxpayer's explanations, he, however, has the duty to, at the very least, consider them, and *must communicate to the latter the reason for a rejection of such explanations.* A failure to provide such reasons would leave the taxpayer unaware of how the CIR or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments.

Thus, the Court hereby finds that the CIR has transgressed petitioner's right to due process in the issuance of the FDDA, in violation of the requirements set forth in *Section 228 of the Tax Code.*

Consequently, in addition to previously discussed issues, the Assailed Decision is also rendered void due to the foregoing reasons.

All told, having ruled on the invalidity of the assessment, the Court finds no reason to discuss the other issues raised in the present Petition.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the undated Final Decision on Disputed Assessment, received by petitioner on November 3, 2015, and the Assailed Decision, dated February 5, 2016, assessing petitioner for deficiency income tax VAT, EWT, WTC, IAET and DST in the aggregate amount of ₱7,596,597,878.01, for the taxable year 2010 is **CANCELLED** and **SET ASIDE.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
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