REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BERONG NICKEL CORPORATION, *Petitioner,*	**CTA CASE NO. 10319**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 11 2024 4:20 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that the *Final Decision on Disputed Assessment* (FDDA) involving the alleged deficiency final withholding tax and interest, for taxable year 2015, in the total amount of ₱117,062,117.83 be cancelled and withdrawn.[1]

THE PARTIES

Petitioner Berong Nickel Corporation is a domestic corporation duly organized and existing under Philippine laws.[2] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number 233-903-690-0000, with office address at 3rd Floor, DMCI Homes Corporate Center, 1321 Apolinario Street, Barangay Bangkal, Makati City.[3]

Respondent Commissioner of Internal Revenue is the government official vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all

[1] Statement of the Case, Pre-Trial Order, Docket – Vol. I, p. 342.
[2] Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 360 to 386.
[3] Exhibit "P-3", Docket – Vol. I, pp. 387 to 388.

internal revenue taxes, fees, and charges. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On April 19, 2017, respondent issued the *Letter of Authority* (LOA) No. AUDM35/011282/2017 SN: eLA201500034706, authorizing revenue officers to examine petitioner's books of accounts and other accounting records covering taxable year 2015.[5]

On August 8, 2018, petitioner received a copy of *Preliminary Assessment Notice* (PAN) dated July 31, 2018, assessing petitioner for alleged deficiency taxes, penalties, and interests, for the taxable year 2015, in the total amount of ₱131,271,889.53, broken down as follows:

a. Income tax in the amount of ₱17,853,760.70;
b. Value-added tax in the amount of ₱2,711,828.10;
c. Expanded withholding tax in the amount of ₱1,889,394.86;
d. Final withholding tax in the amount of ₱104,309,319.86;[6]
e. Documentary stamp tax in the amount of ₱102,287.55;
f. Interest for Late Remittance – Excise tax in the amount of ₱2,100,420.34;
g. Interest for Late Remittance – Final tax (Royalty) in the amount of ₱2,119,878.74; and
h. Administrative penalties in the amount of ₱185,000.[7]

On August 23, 2018, petitioner filed its Reply to the PAN on even date.[8]

On January 17, 2019, petitioner received an undated *Formal Letter of Demand* (FLD), with attached *Details of Discrepancies* and *Assessment Notice*, assessing the petitioner for alleged deficiency final withholding taxes on dividends payments, including interests, for the taxable year 2015 in the total amount of ₱108,655,717.83,[9] computed as follows:

I. FINAL WITHHOLDING TAX

Dividends paid to Non-Resident Foreign Corporations (NRFCs)	236,800,000.00
x Tax Rate	30%

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[4] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 317.
[5] Par. 2, JSFI, Docket – Vol. I, p. 317; Exhibit "P-5", Docket – Vol. I, pp. 394 to 396; Exhibit "R-1", BIR Records, p. 600.
[6] Amount shown on the PAN is actually ₱104,309,319.**25**; Exhibit "P-6", Docket – Vol. I, p. 399; Exhibit "R-6", BIR Records, p. 753.
[7] Par. 3, JSFI, Docket – Vol. I, pp. 317 to 318; Exhibit "P-6", Docket – Vol. I, p. 397 to Docket – Vol. II, p. 407; Exhibit "R-6", BIR Records, pp. 745 to 754.
[8] Exhibit "P-7", Docket – Vol. II, pp. 667 to 713.
[9] Par. 4, JSFI, Docket – Vol. I, p. 318; Exhibit "P-8", Docket – Vol. II, pp. 455 to 458; Exhibit "R-9", BIR Records, pp. 765 to 768.

Basic Tax Due		71,040,000.00
ADD: Interest from January 16, 2016 to December 31, 2017	28,262,117.83	
Interest from January 1, 2018 to December 31,2019	9,353,600.00	37,615,717.83
DEFICIENCY FINAL TAX		**108,655,717.83**

On February 15, 2019, petitioner filed its Protest of even date, in the form of a *Request for Reconsideration.*[10]

On July 23, 2020,[11] petitioner received the FDDA dated July 1, 2020, which still found due from petitioner deficiency final withholding tax and interests, in the total amount of ₱117,062,117.83, for taxable year 2015,[12] computed as follows:

FINAL WITHHOLDING TAX

Dividends paid to NRFCs		236,800,000.00
x Tax Rate		30%
Basic Tax Due		71,040,000.00
ADD: Interest from January 16, 2016 to December 31, 2017	28,262,117.83	
Interest from January 1, 2018 to February 29, 2020	17,760,000.00	46,022,117.83
DEFICIENCY FINAL TAX		**117,062,117.83**

Petitioner filed the present *Petition for Review* on August 20, 2020.[13] The case was initially raffled to this Court's Third Division.

On November 6, 2020, respondent transmitted the *BIR Records* of this case, consisting of 832 pages in one (1) folder.[14]

Thereafter, on November 10, 2020, respondent filed his *Answer*,[15] interposing the following special and affirmative defenses, to wit: (1) the assessment clearly states the facts and the law on which it was based; (2) the assessment has not yet prescribed; and (3) petitioner is liable for deficiency final tax on dividend payments.

In the Resolution dated November 24, 2020,[16] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on December 21, 2020. However, the PMC-CTA issued the *No*

[10] Exhibit "P-9", Docket – Vol. II, pp. 459 to 465.
[11] Exhibit "P-23" (Q&A No. 13), Docket – Vol. I, p. 233.
[12] Exhibit "P-4", Docket – Vol. II, pp. 389 to 393; Exhibit "R-12", BIR Records, pp. 822 to 824.
[13] Docket – Vol. I, pp. 6 to 25.
[14] *Compliance* dated November 6, 2020, Docket – Vol. I, pp. 256 to 258.
[15] Docket – Vol. I, pp. 260 to 265.
[16] Docket – Vol. I, pp. 281 to 282.

Agreement To Mediate dated January 12, 2021,[17] stating that the parties decided not to have their case mediated.

Thus, the Pre-Trial Conference was set and held on May 25, 2021.[18] Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 3, 2021,[19] while petitioner's *Pre-Trial Brief* was submitted on May 20, 2021.[20]

On June 24, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[21] which was admitted and approved by the Court in the Resolution dated June 30, 2021,[22] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 8, 2021 was then issued.[23]

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

Petitioner offered the testimony of its lone witness, Ms. Marissa Nicdao,[24] its Accounting Officer.

Subsequently, petitioner filed its *Formal Offer of Evidence* on July 22, 2021,[25] to which respondent filed a *Comment (Re: Formal Offer of Evidence)* on July 28, 2021.[26] In the Resolution dated December 4, 2021,[27] the Court admitted petitioner's offered exhibits, *except* for Exhibits P-10", "P-10-1", "P-22", "P-22-1", and "P-22-2", for failure to submit the originals for comparison.

Petitioner then filed its *Motion for Reconsideration (with Motion to Set Additional Commissioner's Hearing)* on March 29, 2022,[28] while respondent failed to file a comment thereon.[29] The Court, in the Resolution dated September 28, 2022,[30] granted petitioner's *Motion for Reconsideration.*

Respondent presented the testimony of Revenue Officer (RO) Reynoso Bravo.[31]

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[17] Docket – Vol. I, p. 283.
[18] Resolution dated January 19, 2021, Docket – Vol. I, pp. 289 to 290; Minutes of hearing held on, and Order dated, May 25, 2021, Docket – Vol. I, pp. 311 to 313.
[19] Docket – Vol. I, pp. 291 to 294.
[20] Docket – Vol. I, pp. 297 to 306.
[21] Docket – Vol. I, pp. 317 to 324.
[22] Docket – Vol. I, pp. 331 to 331-A.
[23] Docket – Vol. I, pp. 342 to 349.
[24] Exhibit "P-23", Docket – Vol. I, pp. 230 to 246; Minutes of the hearing held on, and Order dated, July 7, 2021, Docket – Vol. I, pp. 338 to 340.
[25] Docket – Vol. I, pp. 350 to 358.
[26] Docket – Vol. II, pp. 579 to 581.
[27] Docket – Vol. II, pp. 586 to 587.
[28] Docket – Vol. II, pp. 588 to 593.
[29] Records Verification Report dated July 25, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 647.
[30] Docket – Vol. II, pp. 650 to 652; Refer to Resolution dated October 24, 2022, Docket – Vol. II, pp. 715 to 716, where the Court clarified that petitioner's *motion* was granted.
[31] Exhibit "R-14", Docket – Vol. I, pp. 270 to 277; Minutes of the hearing held on, and Order dated, February 22, 2023, Docket – Vol. II, pp. 722 to 723.

On March 10, 2023, respondent filed a *Formal Offer of Evidence*,[32] to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated March 2, 2023)* on March 22, 2023.[33]

In the meantime, petitioner filed a *Supplemental Formal Offer of Evidence* on March 13, 2023.[34]

In the Resolution dated May 26, 2023,[35] the Court admitted all of respondent's exhibits, and all of petitioner's offered exhibits in its *Supplemental Formal Offer of Evidence*, and scheduled the presentation of petitioner's rebuttal evidence on July 13, 2023.

Thereafter, in the Notice of Resolution dated June 5, 2023,[36] the present case was transferred to the Second Division of this Court.

Petitioner then presented its recalled witness, Ms. Marissa S. Nicdao on July 13, 2023.[37]

On July 25, 2023, respondent filed a *Memorandum*,[38] while petitioner's *Memorandum* was submitted on August 14, 2023.[39]

The case was considered submitted for decision on August 15, 2023.[40]

THE ISSUE

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "Whether or not Petitioner is liable for the alleged deficiency final withholding tax on dividend payments in the total amount of ₱117,062,117.83."[41]

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[32] Docket – Vol. II, pp. 726 to 732.
[33] Docket – Vol. II, pp. 742 to 745.
[34] Docket – Vol. II, pp. 734 to 739.
[35] Docket – Vol. II, pp. 751 to 753.
[36] Docket – Vol. II, p. 754.
[37] Exhibit "P-32", Docket – Vol. II, pp. 765 to 775; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. II, pp. 779 to 780.
[38] Docket – Vol. II, pp. 781 to 786.
[39] Docket – Vol. II, pp. 788 to 826.
[40] Minute Resolution dated August 15, 2023, Docket – Vol. II.
[41] Statement of the Issue, JSFI, Docket – Vol. I, p. 318.

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction to take cognizance of the instant *Petition for Review*; that the assessment had already prescribed; that the assessment is void because: (1) respondent violated petitioner's right to due process since a *Notice of Informal Conference* (NIC) was not issued; (2) for failure to give reasons for the denial of petitioner's defenses and arguments; (3) for failure to state the facts and the law on which the assessment is made; and (4) for failure of respondent to comply with its General Audit Procedures and Documentation; and that petitioner is not liable for the alleged deficiency final tax on dividend payments.

Respondent's counter-arguments:

Respondent contends that the assessment clearly states the facts and the law on which it was based; that the assessment has not yet prescribed; and that petitioner is liable for deficiency final tax on dividend payments.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The subject tax assessment is void, for violation of petitioner's right to administrative due process since respondent failed to issue an NIC as required by Revenue Regulation No. 12-99, as amended.

Petitioner argues that the assessment is void for respondent's violation of its right to due process because an NIC was not issued.

The Court agrees with petitioner.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 reads in part:

> "Section 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.

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." *(Emphases added)*

Implementing the above-quoted Section 228, Revenue Regulations (RR) No. 12-99[42] issued on September 6, 1999 required the issuance of a NIC as a due process requirement in the issuance of a deficiency tax assessment. Section 3.1.1 of RR No. 12-99 partly reads:

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

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

3.1.1. *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted."

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[42] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

However, the requirement to issue an NIC was *removed* in RR No. 18-2013[43] issued on November 28, 2013, by deleting Section 3.1.1 thereof. Section 2 of RR No. 18-2013 provides:

> "SECTION 2. *Amendment.* — **Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference,** thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:
>
> xxx xxx xxx"

Nevertheless, the issuance of the NIC was *reinstated* in RR No. 7-2018[44] issued on January 22, 2018, by adding Section 3.1.1 thereof. Hence, RR No. 7-2018 again requires the issuance of the NIC and conduct the informal conference prior to the issuance of a PAN to afford the taxpayer an opportunity to present his/her side, *viz.*:

> "SECTION 2. *Amendment.* — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows:
>
> > 'SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
> >
> > 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
> >
> > 3.1.1 **Notice for Informal Conference.** — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. **If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer <u>shall be informed, in writing</u>,** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to**

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

[44] 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.

> **afford the taxpayer with an opportunity to present his side of the case.**
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. **If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable**, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall **endorse the case** within seven (7) days **from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.**
>
> Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations.'" *(Emphases and underscoring added)*

RR No. 7-2018 took effect fifteen (15) days following its publication in any newspaper of general circulation.[45] It was published in the Manila Bulletin on February 1, 2018,[46] hence, the said RR took effect on February 16, 2018.

In this case, the LOA was issued on April 19, 2017, [47] while the PAN was issued on July 31, 2018.[48] Considering that RR No. 7-2018 took effect on February 16, 2018, then prior to the issuance of the PAN on July 31, 2018, the requirement to issue the NIC was already and effectively reinstated and should have been complied with by respondent prior to the issuance of the PAN.

However, there is no showing that an NIC was issued to petitioner. Neither did respondent dispute the non-issuance of the NIC, nor did it present evidence to prove its existence and service to petitioner. In fact, respondent's witness, RO Reynoso Bravo, confirmed, during his cross-examination, that no NIC was indeed issued in this case, to wit:

"ATTY. MANAIG

Q Now, Mr. Witness, let us move forward to the other procedural matters, in question no. 22 as mentioned earlier, you prepared a

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[45] Section 4, RR No. 7-2018.

[46] https://www.bir.gov.ph/index.php/archive/2018-revenue-regulations.html (last accessed on February 1, 2024)

[47] Par. 2, JSFI, Docket – Vol. I, p. 317; Exhibit "P-5", Docket – Vol. I, pp. 394 to 396; Exhibit "R-1", BIR Records, p. 600.

[48] Par. 3, JSFI, Docket – Vol. I, pp. 317 to 318; Exhibit "P-6", Docket – Vol. I, p. 397 to Docket – Vol. II, p. 407; Exhibit "R-6", BIR Records, pp. 745 to 754.

Memorandum Report for the issuance of a PAN on July 25, 2018. Then afterwards, you issued a preliminary assessment notice although the said preliminary assessment notice was undated. So, the memorandum report was issued on July 25, 2018. Now, Mr. Witness, based on revenue regulation 7-2018 which is an issuance by the respondent itself. It is required that in the course of the audit, a notice of informal conference must be issued. Mr. Witness, did you issue a notice of informal conference to petitioner?

MR. BRAVO

A I believe so, sir.

ATTY. MANAIG

Q Could you please point to the BIR records where that notice of informal conference is?

JUSTICE SAN PEDRO

Let the records show that the witness is perusing the documents of the BIR records. To counsels, there was no stipulation that no such document was sent to you?

ATTY. MANAIG

Yes, Your Honors, that the notice of informal conference is actually not included in the judicial affidavit of the witness.

JUSTICE SAN PEDRO

Yes, but I am asking did you enter into a stipulation?

ATTY. MANAIG

Not for that particular document, Your Honors.

JUSTICE SAN PEDRO

Atty. Manaig, to assist the witness you can tell him at this stage and between what points is the notice of informal conference usually given.

ATTY. MANAIG

Q Mr. witness, the notice of informal conference is usually given from the time, in between the LOA is issued and until the receipt of the PAN?

JUSTICE SAN PEDRO

Is that right? The Notice of Informal Conference is usually given between the LOA and the issuance of the PAN?

MR. BRAVO

A Yes, Your Honor.

ATTY. MANAIG

Q So, Mr. Witness, between the issuance of the LOA and the issuance of the PAN as provided in the documents in the BIR records. Is there any document such as the Notice of Informal Conference? So, the Letter of Authority under the BIR records is page 600 and then the PAN is 734. So from page 600 to page 734, is there any document denominated as the Notice of Informal Conference?

MR. BRAVO

A Can I scan it once more, sir?

JUSTICE SAN PEDRO

Yes, please just limit yourself to 600 to 700 page. The witness can state that he cannot find it.

MR. BRAVO

A: Your Honor, I cannot find it."[49]

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[50] the Supreme Court said:

> "The <u>**Notice of Informal Conference**</u> and the Preliminary Assessment Notice **are a <u>part of due process</u>. <u>They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice</u>. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
>
> xxx xxx xxx
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> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[51] this Court ruled, among others, that **the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference** and a Preliminary Assessment Notice **as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void."**

[49] Transcript of Stenographic Notes (TSN) at the hearing held on February 22, 2023, pp. 7 to 9.
[50] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[51] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].

Consequently, having failed to issue the required NIC prior to the issuance of the PAN, then the subject assessment should be invalidated for being violative of petitioner's right to due process. *Apropos*, a void assessment bears no valid fruit.[52]

Respondent failed to give reasons for rejecting petitioner's explanation.

Petitioner further argues that the assessment is void for failure to give reasons for the denial of its defenses and arguments. It claims that despite meticulously addressing the findings and issues raised in the PAN and FLD, as well as providing relevant supporting documents to support its defenses, the amounts being assessed barely changed. It also avers that the respondent merely stated in the FLD that "the records of this case disclosed that you have not introduced any evidence to overthrow the validity of the said findings," while respondent merely stated in the FDDA that "the office finds no compelling reason to justify or reverse its finding thus, for lack of merit, there was still found due from Petitioner's deficiency final tax," without stating the reason why respondent did not consider the defenses and arguments of petitioner.

Again, the Court agrees with petitioner.

Section 228 of the NIRC of 1997 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.**
>
> xxx xxx xxx." *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[53] 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

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[52] *Commissioner of Internal Revenue vs. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[53] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

allows the taxpayer to make an effective protest.[54] 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.[55] 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.[56]

To implement the above-quoted provision of Section 228, Section 3 of RR No. 12-99, as amended by RR No. 18-2013 and further amended by RR No. 7-2018, provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2[57] *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 for any deficiency tax or taxes, the said Office shall issue to 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[58] *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 <u>shall state the facts, the law,</u> rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx
>
> 3.1.6[59] *Final Decision on a Disputed Assessment (FDDA).* – The **decision of the Commissioner** or his duly authorized representative **<u>shall state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence <u>on which such decision is based, *otherwise, the*</u>**

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[54] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[55] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[56] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[57] As renumbered according to Section 2 of RR No. 7-2018.
[58] *Id.*
[59] *Id.*

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

The foregoing provision prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[60] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> xxx xxx xxx
>
> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**
>
> xxx xxx xxx
>
> In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax**

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

investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

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In *Ang Tibay v. The Court of Industrial Relations*,[61] 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.**

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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.

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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

[61] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

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The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, 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, 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. 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.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

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The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

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

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The Commissioner's total disregard of due process rendered the identical **Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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In *Commissioner of Internal Revenue v. Reyes*,[62] **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.**

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Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[63]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can**

[62] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[63] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

> **demonstrate...that the law has not been observed.** (Emphasis supplied)
>
> xxx. ***[The Commissioner of Internal Revenue's]*** **disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

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

A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when rejecting the taxpayer's explanations, respondent must give some reason for doing so and the particular facts and law upon which the conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or the duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

Failure by respondent to observe due process has the effect of rendering the deficiency tax assessment void and of no force and effect.

In this case, the *Details of Discrepancies* ("Annex A") attached to the PAN dated July 31, 2018[64] shows that the BIR found that "The Company declared and paid dividends during the period of audit. Further investigation revealed that the recipients are Non-resident Foreign Corporation (NRFCs) thus, subject to Final Withholding Tax. Verification, on the other hand, disclosed that the Company failed to withhold the corresponding tax hence, assessed pursuant to Section 28(B)(1) of the NIRC, as amended.

Schedule 6

Dividends paid to stockholders	**592,000,000.00**
to ENK limited (18.7%)	110,704,000.00
to Toledo Mining (21.30%)	126,096,000.00
	236,800,000.00
Final tax rate	30%
Basic tax on dividends	**71,040,000.00**."

[64] Exhibit "P-6", Docket – Vol. II, p. 404; Exhibit "R-6", BIR Records, p. 748.

In its Reply to the PAN dated August 23, 2018,[65] petitioner raised the defense that it did not pay the dividends to ENK Limited and Toledo Mining as the dividends were paid to DMCI Mining Corporation, which is a domestic corporation, hence, not subject to tax pursuant to Section 27(D)4 of the 1997 Tax Code. Petitioner attached to its Reply as Annex D, copies of the Acknowledgment Receipts issued by DMCI Mining Corporation for the dividends it received from petitioner for the year 2015.[66] Petitioner likewise attached to its Reply as Annexes E to H, various documents in support of its defense/argument.[67]

However, the same finding quoted above in the PAN was reiterated or copied *verbatim* in the *Details of Discrepancies* ("Annex A") attached to the undated FLD,[68] the basic tax and 20% interest remain unchanged and the CIR merely adjusted the 12% interest being imposed. The only reason stated in the FLD for retaining the assessment is that "[t]he records of this case disclosed that you have not introduced any evidence to overthrow the validity of our said findings."[69] Clearly, the CIR did not address any of the refutations made and evidence submitted by petitioner in its Reply to the PAN —an indication that the BIR did not consider the same when it issued the subject FLD.

In its Protest dated February 15, 2019, petitioner raised the same defense,[70] and attached to its Protest as Annexes B to B-2, copies of the Acknowledgment Receipts issued by DMCI Mining Corporation for the dividends it received from petitioner for the year 2015.[71] Petitioner likewise attached to its Protest as Annexes C to F, various documents in support of its defense/argument.[72]

Again, in the FDDA dated July 1, 2020,[73] petitioner was still assessed of the same deficiency final tax. Respondent reiterated or copied *verbatim* the finding in the PAN and FLD, the basic tax and 20% interest remain unchanged and merely adjusted the 12% interest being imposed. The only reason stated was that "xxx this Office finds no compelling reason to modify or reverse its findings thus, for lack of merit, there was still found due from your deficiency final tax, xxx"[74] without commenting on or addressing petitioner's defenses and documents submitted.

Although respondent is not obliged to accept petitioner's explanations, respondent must give some reason for rejecting the same. Respondent must give the particular facts upon which the conclusion is based, and those facts

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[65] Exhibit "P-7", Docket – Vol. II, pp. 667 to 713.
[66] Exhibits "P-25" to "P-27", BIR Records, pp. 684 to 686.
[67] Exhibit "P-7", Docket – Vol. II, pp. 675, 699 to 713.
[68] Exhibit "P-8", Docket – Vol. II, p. 456; Exhibit "R-9", BIR Records, p. 767.
[69] Exhibit "P-8", Docket – Vol. II, p. 457; Exhibit "R-9", BIR Records, p. 766.
[70] Exhibit "P-9", Docket – Vol. II, pp. 459 to 465.
[71] Exhibits "P-28" to "P-30", BIR Records, pp. 785 to 787.
[72] Exhibit "P-9", Docket – Vol. II, p. 465.
[73] Exhibit "P-4", Docket – Vol. II, pp. 389 to 393; Exhibit "R-12", BIR Records, pp. 822 to 824.
[74] Exhibit "P-4", Docket – Vol. II, p. 389; Exhibit "R-12", BIR Records, p. 824.

must appear in the record. The fact that respondent did not provide any explanation as to why the defenses and arguments raised by petitioner was rejected was confirmed by respondent's witness, RO Reynoso Bravo, to wit:

> "ATTY. MANAIG
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> Q Now, Mr. Witness, you also mentioned in your judicial affidavit that the petitioner filed his reply to PAN and the Protest to FLD, the said documents are contained in the BIR records. Upon perusing these documents, we can see that petitioner stated in the reply and the protest that if [*sic*] put forward as a defense that if [*sic*] not paid the dividends to the non-resident foreign corporation but rather it paid the dividends to the domestic corporation. So, that is what is stated in the document, now also in the BIR records attached to the said reply and protest that there are supporting documents submitted by petitioner. Now, Mr. Witness, with all of those, going to your formal letter of demand which we earlier mentioned under page 768. There is a particular phrase there, Mr. Witness, could you confirm that the phrase, that there is a phrase specifically on page 766 which is part of the formal offer of demand. There is a specific phrase there, Mr. Witness, that the records of this case disclosed that you have not introduced any evidence to overthrow the validity of the said rulings. Did I read it correctly?
>
> MR. BRAVO
>
> A: Yes, Sir.
>
> ATTY. MANAIG
>
> Q Now, was there any explanation given by respondent saying or giving an explanation as to why it did not specifically accept the defenses and arguments of petitioner which I earlier mentioned?
>
> MR. BRAVO
>
> A None at this document, sir.
>
> ATTY. MANAIG
>
> Q None in that document. Now, Mr. witness, let us also go to the final decision on disputed assessment. There is also a statement there that the office pertaining to the office of the respondent finds no compelling reason to justify or reverse its findings, thus for lack of merit there was still found due from petitioner deficiency final tax, did I read that correctly?
>
> MR. BRAVO

A Kindly repeat the question, sir?

ATTY. MANAIG

Q It says that the office pertaining to the respondent finds no compelling reason to justify or reverse its finding thus for lack of merit there was still found due from petitioner deficiency final tax?

MR. BRAVO

A Yes, sir.

ATTY. MANAIG

Q Again, in the final decision on disputed assessment, wasn't there any specific explanation as to why the defense and arguments of petitioner was not accepted?

MR. BRAVO

A None, Your Honor."[75]

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

Correspondingly, as part of the due process requirement in the issuance of tax assessments, respondent must give reason(s) for rejecting petitioner's refutations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. Respondent has obviously not observed such requirement in the issuance of the subject FLD and FDDA.

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, vis-à-vis Section 3.1.4 and 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013 and RR No. 7-2018, was violated by respondent.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[76] Furthermore, a void assessment bears no valid fruit.[77] Such being the case, the subject tax assessment cannot be enforced against petitioner, and respondent has no right to collect the same.

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[75] TSN at the hearing held on February 22, 2023, pp. 11 to 13.
[76] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, supra.
[77] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

In fine, the Court finds that the subject tax assessment is void for violation of petitioner's right to administrative due process.

In view of the finding that the subject tax assessment is invalid, it becomes unnecessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the undated FLD and the FDDA dated July 1, 2020 assessing petitioner for deficiency Final Withholding Tax in the aggregate amount of **₱117,062,117.83**, inclusive of interest, for taxable year 2015, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
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.

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