REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GETZ PHARMA (PHILS.), INC., Petitioner,	**CTA CASE NO. 9245**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. ALFREDO V. MISAJON, Regional Director, Revenue Region No. 7 and HON. JOSEPHINE S. VIRTUCIO, Regional District Officer, Revenue District No. 43-A, East Pasig, Respondents.	Promulgated: ________________________

x - x

4: np.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Getz Pharma (Phils.), Inc. (**petitioner**) against respondents Hon. Commissioner Kim S. Jacinto-Henares (**Comm. Jacinto-Henares**), Hon. Alfredo V. Misajon, Regional Director (**RD Misajon**), Revenue Region No. 7, and Hon. Josephine S. Virtucio, Regional District Officer (**RDOr Virtucio**), Revenue District No. 43-A East Pasig (**respondents**) pursuant to Section

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[1] Filed on 20 January 2016, Division Docket, Volume I, pp. 10-43, with annexes.

3(a)[2], Rule 8[3] in relation to Section 3(a)(1)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

The petition prays that judgment be rendered ordering the cancellation and withdrawal of the deficiency income tax (**IT**) and value-added tax (**VAT**) assessment aggregating ₱60,238,702.01 (inclusive of interest), as laid out in the Preliminary Assessment Notice (**PAN**) dated 08 January 2015[6] *vis-à-vis* the Formal Letter of Demand with Assessment Notices (**FLD/FAN**) dated 23 January 2015[7], all issued against petitioner. The foregoing stemmed from the examination of the latter's books of accounts and other accounting records for the taxable period from 01 January to 31 December 2011, or calendar year (**CY**) 2011, for brevity.

This case is before Us following the directive of the Court *En Banc* in its Decision in *CTA EB No. 2435*, **remanding it to the Court in Division** for proper determination of whether herein petitioner is liable under the assessment.

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2 **SEC. 3**. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 PROCEDURE IN CIVIL CASES.

4 **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case[.]

5 JURISDICTION OF THE COURT.

6 Exhibit "P-3", Division Docket, Volume VI, pp. 3972-3973.

7 Exhibits "P-4" and "P-5", id., pp. 3974-3975 and 3976, respectively.

PARTIES TO THE CASE

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 2/F, Tower I, The Rockwell Business Center, Ortigas Avenue, Pasig City.[8]

Respondent Comm. Jacinto-Henares was then the incumbent Commissioner of Internal Revenue (**CIR**), charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**).[9]

Respondent Misajon is the RD of the BIR's Revenue Region No. 7 – Quezon City[10], while respondent Virtucio is the RDOr of the BIR's Revenue District No. 43-A East Pasig.[11]

FACTS OF THE CASE

On 08 January 2015, through Revenue Region No. 7 – Quezon City, the BIR issued a PAN[12], stating that petitioner had deficiency IT and VAT for CY 2011, collectively amounting to ₱58,888,172.57, inclusive of interest, summarized as follows:

Tax Type	Basic Tax Due	Interest	Total Due
IT	₱22,545,487.06	₱12,057,202.94	₱34,602,690.00
VAT	15,373,224.31	8,912,258.26	24,285,482.57
Total	**₱37,918,711.37**	**₱20,969,461.20**	**₱58,888,172.57**

Petitioner received a copy of the said PAN on 14 January 2015.[13] Accordingly, on 29 January 2015, petitioner filed with the CIR a letter

8 See Paragraph 6, Joint Stipulation of Facts (JSF), id., p. 3801.
9 *En Banc* Decision dated 15 September 2023, *rollo*, Volume II, p. 991.
10 Id.
11 Id.
12 Exhibit "P-3", supra at note 6, *vis-à-vis* par. 8, JSF, supra at note 8.
13 Exhibit "P-6", Division Docket, Volume VII, pp. 4680-4698.

dated 27 January 2015 as its Reply to the PAN.[14] Therein, petitioner sought the PAN's cancellation. It presented its position and disputed each item of the assessment, as laid out in the PAN. Likewise, petitioner questioned the assessment's validity, stating that it failed to clearly lay down its factual and legal basis, and that the CIR's right to assess had already prescribed.

Thereafter, on 23 January 2015, the BIR issued the FLD/FAN.[15] It demanded anew the payment of the same basic tax deficiencies as stated in the PAN, this time aggregating ₱60,238,702.01 (as adjusted for incremental interest), broken down as follows:

Tax Type	Basic Tax Due	Interest	Total Due
IT	₱22,545,487.06	₱12,860,192.89	₱35,405,679.95
VAT	15,373,224.31	9,459,797.75	24,833,022.06
Total	**₱37,918,711.37**	**₱22,319,990.64**	**₱60,238,702.01**

On 26 January 2015, petitioner received a copy thereof.[16] Thus, on 25 February 2015, petitioner filed with the CIR a Letter-Protest of even date (**Letter-Protest**).[17] Therein, petitioner foremost underscored that the FLD/FAN was void for being issued in violation of its due process rights, for supposedly having been issued ahead of the end of the period given for petitioner to reply to the PAN. It likewise recapitulated its positions and arguments as earlier set forth in its Reply to the PAN.

On 18 March 2015[18], petitioner received a letter dated 11 March 2015[19] issued by the BIR through Revenue Region No. 7 – Quezon City. It informed petitioner that the *"protest letter / request for reinvestigation dated February 25, 2015 ... has been GRANTED pursuant to Section 228 of the NIRC"* and that its case would be forwarded to Revenue District No. 43A for further disposition.

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14 Id.
15 Exhibits "P-4" and "P-5", supra at note 7, *vis-à-vis* par. 9, JSF, supra at note 8.
16 Exhibits "P-7", Division Docket, Volume VII, pp. 4712-4733.
17 Id.
18 Exhibit "P-9", Division Docket, Volume VI, p. 4054, *vis-à-vis* par. 10, Division Docket, Volume VI, p. 3801.
19 Id.

Thereafter, on 28 May 2015[20], petitioner received another letter dated 11 May 2015[21], this time from RD No. 43A, which pertinently provided:

> ...
> Although your request is for reconsideration, however[,] upon partial evaluation, the issue on [the] Letter Notice discrepancy requires additional documents.
>
> In this regard, we shall provide you another ten (10) days period upon receipt hereof to submit [the] documents or you may come to our office to discuss issues on Letter Notice.
> ...

On 05 June 2015, to comply with Revenue District No. 43A's directive in the above letter, petitioner submitted a new batch of supporting documents.[22] On 24 June 2015, it further transmitted copies of its Sales Book for CY 2011, supposedly at the BIR's request.[23]

On 05 October 2015, respondent RDOr Virtucio issued a letter, requesting petitioner to provide the complete series of used Official Receipts (**ORs**) for CY 2011 within fifteen (15) days from notice.[24] In reply thereto, on 22 October 2015, petitioner resubmitted photocopies of the originals of its complete series of used ORs for CY 2011, accompanied with a transmittal letter dated 20 October 2015.[25]

On 13 November 2015, petitioner sent a letter dated 12 November 2015, resubmitting therewith its OR Booklet #4 (Series # 000251-000300) issued for CY 2011 and the Audited Financial Statements (**AFS**) for CY 2011, all upon the request of Group Supervisor (**GS**), then Revenue Officer (**RO**), Renato M. Atos (**Atos**).[26]

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20 Exhibit "P-10", Division Docket, Volume VI, p. 4055, *vis-à-vis* par. 11, Division Docket, Volume VI, p. 3801.
21 Id.
22 Exhibits "P-20" and "P-21", Division Docket, Volume VII, pp. 5113-5115 and 5116-5118, respectively.
23 Exhibit "P-23", id., pp. 5121-5122.
24 Exhibit "P-18", id., Volume VI, p. 4415, *vis-à-vis* par. 12, Division Docket, Volume VI, p. 3801.
25 Exhibit "P-24", Division Docket, Volume VII, pp. 5123-5127.
26 Exhibit "P-26", id., pp. 5138-5142.

Relying on Section 228[27] of the NIRC, as amended, *vis-à-vis* Revenue Regulations (**RR**) No. 12-99[28] and the pertinent provisions of the RRCTA[29], petitioner counted 180 days from the date of its submission of relevant additional documentary evidence in compliance with the directive in Revenue District No. 43A's earlier letter dated 11 May 2015.[30] On 21 December 2015, or after 180 days had lapsed, petitioner deemed the CIR to have failed to act on or decide on its Letter-Protest.[31]

As such, on 20 January 2016, or within the next thirty (30) days after the expiration of the 180-day period for the CIR to act on the protest, petitioner filed the instant Petition for Review[32], wherein petitioner prayed that the Court strike down the PAN and FLD/FAN issued in this case. The case was initially raffled to this Court's First Division.

PROCEEDINGS BEFORE THE FIRST DIVISION

On 27 January 2016, the First Division served Summons[33] on respondents, requiring them to submit an Answer within 15 days from service. Respondents received a copy thereof on 01 February 2016 and, thus, had until 16 February 2016, to file an Answer.[34]

On 14 April 2016, after the First Division granted extensions of time[35], respondents filed their Answer.[36] There, they cited the following special and affirmative defenses: (1) all presumptions are in favor of the correctness of the assessment; and (2) the subject assessment had already become final, executory and demandable due to petitioner's

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27 SEC. 228. *Protesting of Assessment.*

28 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.

29 Supra at notes 2-5.

30 Par. 8, Petition for Review, Division Docket, Volume I, pp. 13-14.

31 Par. 9, id., p. 15.

32 Supra at note 1.

33 Division Docket, Volume II, pp. 1070-1071.

34 Id., p. 1072.

35 See Order dated 16 February 2016 and Resolution dated 22 March 2016, id., pp. 1076 and 1083, respectively.

36 Id., pp. 1084-1088.

failure to timely file a Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended.

With the admission of respondents' Answer, the First Division initially set the Pre-Trial on 30 June 2016.[37] Ahead of the same, on 27 June 2016, petitioner filed its Pre-Trial Brief.[38] Meanwhile, respondents filed their Pre-Trial Brief[39] on 08 September 2016. On 10 November 2016, the Pre-Trial Conference proceeded[40] Therein, the First Division set the schedules for the presentation of the parties' witnesses (the first of which was set on 02 May 2017) and Commissioner's Hearings for the marking of their documentary exhibits. It likewise ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) within 15 days, or by 25 November 2016.[41] On 22 December 2016, after extensions[42] granted by the First Division, the parties filed their JSFI.[43]

On 17 February 2017, the First Division approved the parties' JSFI, terminated the pre-trial[44] and issued the Pre-Trial Order on 07 April 2017.[45]

Thereafter, the trial proper ensued.

Isagani B. Bobis (**Bobis**), petitioner's Senior Finance Manager, took the stand as petitioner's first witness. Through his Judicial Affidavit[46], Bobis declared that, after receiving the PAN (for its purported tax deficiencies for CY 2011) on 14 January 2015, the BIR issued the FLD/FAN dated 23 January 2015, then petitioner received a copy thereof on 26 January 2015. He declared that he consulted petitioner's counsel, who then told him that petitioner had a right to reply to the PAN within 15 days, and that the issuance of the FLD/FAN only nine (9) days after

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37 See Notice of Pre-Trial Conference, id., pp. 1089-1091.
38 Id., pp. 1148-1160.
39 Id., Volume VI, pp. 3678-3681.
40 The initial Pre-Trial Conference was rescheduled to 01 September 2016. However, it was pushed further back to 10 November 2016 during the hearing when respondents failed to appear.
41 See Minutes of the Hearing and Order, both dated 10 November 2016, Division Docket, Volume VI, pp. 3743-3745 and 3748-3749, respectively.
42 See Resolutions dated 02 December 2016 and 17 February 2017, id., pp. 3773 and 3838-3842, respectively.
43 See Joint Stipulation of Facts (JSF), id., pp. 3800-3803.
44 See Resolution dated 17 February 2017, id., pp. 3838-3842.
45 Id., pp. 3853-3864.
46 Exhibit "P-27", Judicial Affidavit (of Mr. Isagani B. Bobis), id., Volume III, pp. 1895-1916.

their receipt of the PAN rendered the FLD/FAN void. He continued that petitioner still proceeded to file its Reply to the PAN on 27 January 2015, and a Letter-Protest to the FLD/FAN on 25 February 2015. He confirmed that, in both, petitioner outlined its arguments against the BIR's findings (in support of its stand that it is not liable for any deficient IT nor VAT).

Bobis then outlined the series of correspondences petitioner received from the BIR, beginning from the first letter dated 11 March 2015 informing petitioner that its Request for Reinvestigation had been granted to another letter dated 11 May 2015 requiring petitioner to submit all relevant supporting documents. Bobis attested that, in response to the latter letter, petitioner transmitted the requested documents on 05 June 2015, though this was followed by a further request from GS Atos for petitioner's CY 2011 Sales Book (which petitioner transmitted on 24 June 2015). He continued that, in separate instances on 05 October 2015 and 29 October 2015, petitioner received further requests from the BIR for specific additional documentation. Bobis recalled that, after finding that petitioner already submitted the documents in question, the latter nonetheless re-submitted copies of the same. From here, Bobis represented that petitioner waited for the BIR's action on the Letter-Protest but opted to file a Petition for Review after 180 days had passed without receiving any resolution from the BIR.[47]

As respondent's counsel failed to appear in the said hearing, the First Division deemed respondents to have waived their right to cross-examine Bobis.[48] Aggrieved, on 30 May 2017, respondents filed a Motion for Reconsideration (**MR**), asking to be allowed to cross-examine petitioner previous witness.[49] The First Division ultimately denied the same, after finding that respondent's counsel failed to sufficiently justify failing to appear at the previous hearing.[50]

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[47] Id.
[48] See Minutes of the Hearing and Order, both dated 02 May 2017, id., Volume VI, pp. 3869-3871 and 3872-3873, respectively.
[49] See Respondents' Motion for Reconsideration dated 30 May 2017, id., pp. 3879-3880.
[50] See Resolution dated 17 November 2017, id., Volume VII, pp. 4593-4597.

In the next hearing[51], Atty. Mary Niña S. Paragas (**Paragas**), Associate Lawyer of petitioner's counsel, testified through her Judicial Affidavit as petitioner's second and final witness.[52]

On the witness stand, Paragas stated that, on 16 June 2015, GS Atos, as then RO of Revenue District No. 43A, called her to request hard and soft copies of petitioner's CY 2011 Sales Book, and that on 24 June 2015, she had an exchange *via* text message with RO Atos, confirming petitioner's submissions. She likewise declared that on 29 October 2015, RO Atos again reached out through calls and text messages, asking for petitioner's booklet of ORs and AFS.[53]

During her cross-examination[54], Paragas clarified that as petitioner's retained counsel under an engagement contract, her firm can represent petitioner in the administrative proceedings before the BIR, including entering into compromises or amicable settlements. No redirect examination followed.[55]

With the conclusion of both petitioner's witnesses' testimonies, its turn to present evidence had thus ended. The First Division then gave petitioner 15 days, or until 21 June 2017, to file its Formal Offer of Evidence (**FOE**). Correspondingly, respondents were given 10 days from receiving a copy of the FOE to file a Comment thereon.[56]

On 21 July 2017, in accord with extensions[57] granted by the First Division, petitioner filed its FOE.[58] Respondents failed to file a comment thereto.[59]

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51 See Minutes of the Hearing and Order, both dated 06 June 2017, id., Volume VI, pp. 3893-3894 and 3895-3896, respectively.
52 Exhibit "P-28", Judicial Affidavit (of Atty. Mary Niña S. Paragas), id., Volume II, pp. 1164-1180.
53 Id.
54 TSN dated 06 June 2017, pp. 13-14.
55 Id., p. 14.
56 See Minutes of the Hearing and Order, both dated 06 June 2017, supra at note 51.
57 See Resolutions dated 03 July 2017 and 17 November 2017, Division Docket, Volume VI, p. 3917, and Volume VII, pp. 4593-4597.
58 Id., Volume VI, pp. 3925-3994.
59 See Records Verification dated 03 October 2017, id., Volume VII, p. 4590.

In the Resolution dated 17 November 2017[60], the First Division acted upon petitioner's FOE, admitting most of its offered exhibits, save for some exceptions. In particular, the Court denied admission of (1) Exhibits "P-2", "P-6", "P-7", "P-8", "P-11", "P-11-1" to "P-11-21", "P-11-23", "P-11-25" to "P-11-29", "P-11-31" to "P-11-33", "P-11-37" to "P-11-38", "P-11-44" to "P-11-45", "P-11-47" to "P-11-49", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17","P-19", "P-20", "P-21", "P-22" to "P-22-1", "P-23", "P-24", "P-25", and "P-26", for petitioner's failure to submit the duly marked exhibits; and (2) Exhibits "P-8-1 series", "P-11-22", "P-11-24", "P-11-30", "P-11-34" to "P-11-36", "P-11-39" to "P-11-43", "P-11-46", "P-12-1 series", "P-13-1 series", "P-14-1 series", "P-15-1 series", and "P-16-1 series", for petitioner's failure to submit the originals for comparison.

In an effort to remedy the denials, petitioner filed a Motion for Partial Reconsideration[61] (**MPR**) on 08 December 2017. Respondents failed to file their comment thereto.[62] Thus, in the Resolution dated 11 September 2018[63], the First Division granted the MPR, admitting all of the previously denied Exhibits from petitioner's FOE. In the same Resolution, the First Division set the next hearing, for respondents' presentation of evidence, on 08 November 2018.

PROCEEDINGS BEFORE THE SECOND DIVISION

Pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018[64], the present case was transferred to this Court's Second Division, which continued to hear the same.[65]

On 29 November 2018, respondents filed an "Urgent Motion to Reset and Cancel Hearing"[66] (**Urgent Motion**), asking the Court to postpone the upcoming hearing. Respondents manifested that there had been a change with the handling counsel for the present case, and that

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60 Supra at note 50.
61 Division Docket, Volume VII, pp. 4601-4609.
62 See Records Verification dated 17 January 2018, id., p. 5236.
63 Id., pp. 5259-5261.
64 Reorganizing the Three (3) Divisions of the Court.
65 In an Order dated 26 September 2018, the First Division cancelled the hearing scheduled on 08 November 2018. It was then reset to 05 December 2018, by the Second Division, pursuant to an Order dated 12 November 2018; id., pp. 4586A and 4587A, respectively.
66 Id., pp. 4589A-4591A.

the old counsel of record still had custody over the case's records, while the new counsel had yet to interview their intended witnesses.

The scheduled hearing proceeded on 05 December 2018.[67] Noting petitioner's objection in open court, the Second Division denied respondents' Urgent Motion. The Second Division then granted petitioner's oral motion to deem as waived respondents' right to present evidence. It then gave the parties 30 days to file their respective memoranda.

On 18 January 2019, respondents filed an MR[68] praying that the Court reconsider its ruling on their Urgent Motion and that they be allowed to present evidence. On 04 February 2019, petitioner filed its Opposition[69] thereto. In the Resolution dated 15 February 2019[70], the Second Division denied the MR for being filed beyond the 15-day reglementary period (counted from the Second Division's Order made in open court on 05 December 2018), holding that respondents failed to demonstrate any excusable circumstances for their delay in filing their MR.

Meanwhile, on 21 January 2019, petitioner filed its Memorandum[71], after a 15-day extension[72] granted by the Second Division. On the other hand, respondents had not filed one by 10 April 2019.[73] Thus, in the Resolution dated 22 April 2019[74], the Second Division submitted the case for decision.

On 09 June 2020, the Second Division promulgated its Decision[75], dismissing the Petition for Review for lack of jurisdiction. The dispositive portion thereof reads:

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67 See Minutes of the Hearing and Order, both dated 05 December 2018, id., pp. 4592A and 4593A-4594A, respectively.
68 Respondents' "Motion for Reconsideration (Order dated December 5, 2018)" dated 18 January 2019, id., pp. 4602A-4605A.
69 Petitioner's "Opposition (To the Motion for Reconsideration of the Respondents dated 18 January 2019)" dated 01 February 2019, id., pp. 4638A-4644A.
70 Id., pp. 4648A-4650A.
71 Id., pp. 4606A-4633A.
72 See Order dated 07 January 2019, id., p. 4601A.
73 See Records Verification dated 10 April 2019, id., p. 4651A.
74 Id., p. 4652A.
75 Id., pp. 4654A-4670A.

...

> **WHEREFORE**, premises considered, the *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.
>
> **SO ORDERED.**

...

In dismissing the petition, the Second Division mainly held that petitioner's filing of a Letter-Protest in the form of a Request for Reconsideration meant that the applicable periods should be observed in determining the timeliness of the Petition for Review.

Accordingly, counting from petitioner's filing of its Letter-Protest on 25 February 2015, the Second Division declared that the prescribed 180-day period for respondents to act thereupon ended on 24 August 2015. It then concluded that a Petition for Review should have been filed within the trailing 30-day period, or until 23 September 2015; hence, the Court lacked jurisdiction to entertain the Petition for Review filed on 20 January 2016.

Dissatisfied with the Second Division's findings, petitioner filed an MR[76] on 06 July 2020. Petitioner insinuated that it was the BIR that treated its Letter-Protest as a Request for Reinvestigation when it asked petitioner to submit additional documents. For petitioner, it timely filed its Petition for Review, as the rules applicable to Request for Reinvestigation should have been applied (and not those applicable to Requests for Reconsideration). Respondents failed to comment.[77]

In a Resolution dated 18 December 2020[78], the Second Division denied petitioner's MR, finding no merit thereon. The dispositive portion reads as follows:

...

> **WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (of the Decision dated 09 June 2020) is **DENIED** for lack of merit.

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76 Petitioner's "Motion for Reconsideration (of the Decision dated 09 June 2020)" dated 04 July 2020, id., pp. 4671A-4691A.

77 See Records Verification dated 01 October 2020, id., p. 4870A.

78 Id., pp. 4873A-4880A.

SO ORDERED.

...

In denying the MR, the Second Division maintained its stance from its earlier Decision and held its ground in ruling that the Letter-Protest was a Request for Reconsideration. It further laid down that, even assuming that the same may be treated as a Request for Reinvestigation, there was no indication that petitioner submitted all relevant supporting documents within the prescribed 60-day period after filing its Letter-Protest ending on 26 April 2015 (while noting that petitioner made transmittals starting 05 June 2015, well beyond the said period).

PROCEEDINGS BEFORE THE COURT *EN BANC*

Still unsatisfied, petitioner elevated its case to the Court *En Banc* *via* a Petition for Review[79] on 09 February 2021.

Accordingly, on 24 May 2021, the Court *En Banc* ordered respondents to file their comment.[80] However, it later found that the Order and the copy of the petition were returned to the Court unserved, with notations "*moved out 9/30*".[81] Hence, on 01 March 2022, the Court *En Banc* ordered petitioner to submit respondents' current and updated address.[82] With petitioner's Manifestation and Compliance[83], on 12 April 2022[84], the Court *En Banc* ordered that a copy of the earlier Resolution dated 24 May 2021[85] (ordering respondents to file a comment within ten[10] days) be furnished to them at the updated address. On 28 April 2022, respondents filed an Entry of Appearance.[86]

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79 *Rollo*, Volume I, pp. 1-41, with annexes.
80 See Resolution dated 24 May 2021, id., Volume II, pp. 952-953.
81 See Resolution dated 01 March 2022, id., pp. 957-959.
82 Id.
83 Petitioner's "Manifestation and Compliance" filed on 07 March 2022, id., pp. 960-963.
84 See Resolution dated 12 April 2022, id., pp. 975-977.
85 Supra at note 80.
86 *Rollo*, pp. 978-979.

Notwithstanding the foregoing events, respondents still failed to file a comment on the petition before the Court *En Banc*.[87] Thus, on 13 September 2022, the Court *En Banc* submitted the case for decision.[88]

Thus, in the Decision of 15 September 2023[89], the Court *En Banc* granted petitioner's Petition for Review and remanded the case to the Court in Division for the determination of petitioner's liability under the assessment. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the case is hereby remanded to the Court in Division for proper determination whether petitioner is liable under the assessment.
>
> **SO ORDERED.**
>
> ...

In granting the Petition for Review, the Court *En Banc* essentially held that, contrary to the Second Division's findings, petitioner timely filed its original Petition for Review (before the Court in Division), vesting the Second Division with jurisdiction to hear the case. It declared that respondents cannot benefit from treating petitioner's Letter-Protest as a Request for Reinvestigation and carrying out the pertinent procedures then later on claiming that petitioner's right to appeal had already prescribed (based on the periods applicable for a Request for Reconsideration).

On 02 October 2023, respondents filed an MR, asking the Court *En Banc* to revisit its ruling and uphold the Second Division's Decision dismissing the original Petition for Review for lack of jurisdiction.[90] On 16 October 2023, petitioner filed its comment or opposition[91] thereto.

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[87] See Records Verification dated 25 August 2022, id., p. 985.

[88] See Resolution dated 13 September 2022, id., pp. 987-988.

[89] Id., pp. 990-1004.

[90] Respondent's "Motion for Reconsideration (*En Banc* Decision dated 15 September 2023)", id., pp. 1054-1059.

[91] Petitioner's "Comment/Opposition (To Respondent's Motion for Reconsideration, dated 02 October 2023)", id., pp. 1067-1074.

Thus, in the Resolution dated 17 January 2024[92], the Court *En Banc* denied respondents' MR, finding that the same contained mere reiterations of arguments already passed upon in the *En Banc* Decision. The Court *En Banc* held thusly:

> ...
>
> **WHEREFORE**, premises considered, respondents' *Motion for Reconsideration (En Banc Decision dated 15 September 2023)* is hereby **DENIED** for lack of merit. Accordingly, the Court's *Decision* dated September 15, 2023 is **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

By 26 April 2024, the Court *En Banc* noted that no appeal had been filed with the Supreme Court.[93] With this, the Court *En Banc* caused the recording of the Court *En Banc*'s Decision dated 15 September 2023 into the Book of Entries of Judgments.

Accordingly, on 29 April 2024, the *En Banc* Clerk of Court issued an Entry of Judgment, declaring that the Court *En Banc*'s Decision dated 15 September 2023 had become final and executory.[94]

PROCEEDINGS BEFORE THE SPECIAL SECOND DIVISION

With the case's remand, the Special Second Division issued a Resolution dated 27 June 2024[95], giving the parties 15 days to file a Manifestation alleging any supervening event that may have transpired during the case's pendency which they want to present to the Court for its consideration.

On 17 July 2024, petitioner filed its Compliance/Manifestation[96], stating that there has been no such supervening event. Respondents, on the other hand, failed to file one.[97]

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[92] Id., pp. 1098-1101; Emphasis and italics in the original text.
[93] See Records Verification dated 26 April 2024, id., p. 1102.
[94] Id., pp. 1103-1104.
[95] Division Docket, Volume XI, pp. 5959-5960.
[96] Petitioner's "Compliance/Manifestation" dated 16 July 2024, id., pp. 5961-5964.
[97] See Records Verification dated 12 September 2024, id., p. 5969.

Accordingly, in a Minute Resolution dated 15 October 2024[98], the Special Second Division submitted the case for decision anew.

ISSUE

As determined during the Pre-Trial[99], the following issue was laid out for this Court's determination —

> WHETHER PETITIONER GETZ PHARMA (PHILS.), INC. IS LIABLE FOR DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) IN THE AGGREGATE AMOUNT OF ₱60,238,702.01, INCLUSIVE OF INTEREST, FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2011.

ARGUMENTS OF THE PARTIES

In support of its petition, petitioner primarily argues that the FLD/FAN issued in this case is void for being issued in violation of its due process rights.

Additionally, petitioner contends that both the PAN and FLD/FAN are also void for failing to indicate the factual and legal bases of the assessment. Petitioner likewise highlights that the BIR's right to assess VAT for the first three (3) quarters of CY 2011 had already prescribed, and even assuming the FLD/FAN were valid and the right to assess had not prescribed, the assessment should nevertheless be set aside for lack of basis.

Finally, petitioner maintains that respondent failed to prove the validity and truthfulness of the PAN and FLD/FAN.

On the other hand, respondent counters that all presumptions are in favor of the correctness of the assessment.

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98 Id., p. 5970.
99 See Pre-Trial Order dated 07 April 2017, id., Volume VI, p. 3854.

RULING OF THE COURT

At the outset, We must highlight that the Court *En Banc* had affirmed the Court in Division's exercise of jurisdiction. In *CTA EB No. 2435* entitled *Getz Pharma (Phils.), Inc. v. Commissioner Kim S. Jacinto-Henares, et al.*, the Court *En Banc* explicitly declared —

> ...
>
> The 180-day period shall be reckoned from the submission of documents, which in this case happened on **June 24, 2015**.
>
> Notably, petitioner made further submission of documents after June 24, 2015 pursuant to the October 5, 2015 Letter of the RDO. However, these are mere re-submission of documents that are already in the possession of the revenue officers, *i.e.*, the October 22, 2015 Letter pointed out that the documents requested were already submitted in the Letter dated June 5, 2015, and the November 13, 2015 Letter stated that the requested AFS was already submitted at the start of the audit of petitioner.
>
> Indeed, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides that it is the taxpayer who determines which pieces of evidence may be treated as "relevant supporting documents" necessary to support the legal and factual bases of the protest. That determination was made by petitioner when it submitted all such documents on **June 24, 2015**.
>
> In fine, respondent had 180 days from June 24, 2015, or until **December 21, 2015**, within which to act on the protest. Considering that no FDDA was issued on said date, petitioner had the option of filing a petition for review within thirty (30) days therefrom, or until **January 20, 2016**. Thus, **the filing of the original Petition for Review on January 20, 2016 vested jurisdiction with the Court in Division.**[100]
>
> ...

We proceed to the merits of the instant case. Notably, this is a case remanded from the Court *En Banc*, for the Court in Division's to determine whether petitioner is liable under the subject assessment for CY 2011.

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100 *Rollo*, Volume II, p. 1002; Emphasis in the original text and supplied.

After an assiduous review of the case's records, the Court finds merit in the Petition for Review.

THE ASSESSMENT IS VOID FOR THE COMMISSIONER OF INTERNAL REVENUE'S (CIR'S) FAILURE TO COMPLY WITH THE DUE PROCESS REQUIREMENTS.

Section 228 of the NIRC of 1997, as amended, lays down the due process requirements involved in the issuance of a deficiency tax assessment, to wit:

> ...
>
> **Sec. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...
>
> ...
>
> The taxpayers shall be informed in writing of the law and 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.
>
> ...

Meanwhile, RR No. 12-99[101] implementing the aforecited provision, details the prescribed procedures for the valid issuance of a PAN:

> ...
>
> Sec. 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*:
>
> ...

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101 Supra at note 28.

> 3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based... **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[102]
>
> ...

Following the above-stated rules, the CIR or his or her duly authorized representative is required to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer is then given 15 days, counted from receipt thereof, to respond. The taxpayer's failure to respond within the period prescribed results in the taxpayer being considered in default, leading to the issuance of an FLD/FAN.

The Supreme Court had long since settled the mandatory nature of the issuance of the PAN and compliance with the due process requirements in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[103]:

> ...
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...

---

102 Emphasis supplied and italics in the original text.

103 G.R. No. 185371, 08 December 2010; Citations omitted and italics in the original text.

> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.
>
> ...

In the present case, respondents issued the PAN on 08 January 2015.[104] Petitioner received a copy of the same on **14 January 2015**.[105] Accordingly, counting 15 days therefrom, petitioner had until **29 January 2015** to file a Reply to the PAN.

However, evidence on record shows that respondents issued the FLD/FAN on **23 January 2015**, ahead of the lapse of the aforementioned 15-day period.[106] Petitioner was able to receive a copy of the FLD/FAN on 26 January 2015.[107]

It thus appears from the notices' respective issue dates that respondents decided to issue the FLD/FAN after 15 days from the PAN's issue without regard for the taxpayer's receipt thereof, painting the impression that they never intended to give due consideration to any response from petitioner.

Indeed, petitioner would still proceed to file its Reply to the PAN on 27 January 2015.[108] Notably, its filing still fell within the 15-day period given to petitioner to respond to the PAN, though the FLD/FAN had already been issued and served by then. Clearly, at the time of the FLD/FAN's issuance, the 15-day period to file a reply to the PAN had yet to lapse.

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104 Supra at notes 6 and 12.
105 Supra at note 13.
106 Supra at note 15.
107 Supra at note 16.
108 Supra at note 14.

In the case of *Alliance for the Family Foundation, Philippines, Inc. (ALFI), et al. v. Hon. Janette L. Garin, et al.*[109], the Supreme Court declared emphatically:

> ...
>
> Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, **there must be compliance with both the substantive and the procedural requirements** thereof.
>
> Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. **Procedural due process**, on the other hand, **means compliance with the procedures or steps, even periods, prescribed by the statute**, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.
>
> **Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations** and hearings.
>
> ...

Relevantly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[110], the Supreme Court discussed the paramount importance of observing the period and the consequences of their non-observance and, thus, held:

> ...
>
> 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.
>
> ...

---

109 G.R. Nos. 217872 & 221866, 24 August 2016; Citations omitted and emphasis supplied.

110 G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citations omitted and emphasis supplied.

> ... Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. ...
>
> ...
>
> However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. ...
>
> ...
>
> **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.**
>
> ...

The principles enunciated above as regards the observance of due process in the issuance of assessments to taxpayers were likewise reiterated in *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[111], where the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN:

> ...
>
> Clearly, due process demands that the taxpayer receives the PAN <u>**and**</u> that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond "opportunity to be heard" as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held 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 [CIR] must consider the evidence presented***."
>
> ...
>
> ... **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest**

111 G.R. No. 227616 (Resolution), 19 June 2019; Citations omitted, italics, underscoring and emphasis in the original text and supplied.

> **the PAN and present evidence in support thereto before an FLD/FAN was issued.**
>
> ...

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[112], the Supreme Court has consistently emphasized the importance of observing procedural due process:

> ...
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon case*), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, *i.e.*, from tax investigation until tax assessment.
>
> ...

Based on the disquisitions above, the FLD/FAN issued on 23 January 2015, or only nine <u>(9) days</u> from petitioner's receipt of the PAN (and still within petitioner's 15-day period to respond) could not be sanctioned. The 15-day period granted to a taxpayer to reply to the PAN before an FLD/FAN is issued is mandatory.

Failing to afford petitioner due process renders the CIR's assessments of the latter inescapably void. It is a well-settled rule that a void assessment bears no valid fruit.[113]

With the entirety of the assessment thus declared void, all proceedings in pursuit thereof should likewise be struck down as plain nullity and ineffectual. In this light, the Court shall no longer belabor itself in scrutinizing each item of the nullified assessment.

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112 G.R. No. 222476, 05 May 2021 citing G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citation omitted.

113 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed by petitioner Getz Pharma (Phils.), Inc. on 20 January 2016 is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 08 January 2015 and the Formal Letter of Demand with Assessment Notices dated 23 January 2015 – all issued against petitioner Getz Pharma (Phils.), Inc. for assessed deficiency internal revenue taxes in the taxable year 2011, are declared **VOID**.

Consequently, the Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** and **PROHIBITED** from collecting on the said deficiency taxes against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Ma. Belen 7

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice