REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION
****

AJANTA PHARMA PHILIPPINES INC. ("APPI'), Petitioner,	**CTA Case No. 10057**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 23 2023 2:02 p.m.

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DECISION

UY, *J*.:

Before this Court is a *Petition for Review* filed on April 4, 2019 by petitioner, Ajanta Pharma Philippines Inc., against respondent, the Commissioner of Internal Revenue, praying for the following: (1) that Final Decision on Disputed Assessment (FDDA) dated February 28, 2019 be annulled, reversed and set aside; (2) that the deficiency assessment against taxpayer in the aggregate amount of ₱7,476,507.48 be cancelled; and (3) that an order be issued directing the Bureau of Internal Revenue (BIR) to issue the corresponding authority to cancel assessment.

THE PARTIES

Petitioner Ajanta Pharma Philippines, Inc. is a corporation duly organized and existing under Philippine laws to engage in the business of manufacturing, importing, selling or otherwise distributing on wholesale, drugs, medicines, and pharmaceutical products of all kinds and descriptions, and to establish and maintain facilities for manufacture, importation, sale, distribution and promotion on a commercial basis of such drugs and pharmaceutical products and to provide technical know-how and consultancy in relation to the manufacture of drugs, medicines and pharmaceutical products with registered office address at Phil AXA Life Bldg., 1286 Gil Puyat Ave. cor. Tindalo Street, San Antonio, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 007-011-901-00000.[2]

Respondent is Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes, with office address at 2/F BIR Building, No. 313 Sen. Gil Puyat Avenue, Makati City.[3]

THE FACTS

On January 29, 2018, the BIR issued *Letter of Authority* (LOA) No. eLA201500085255, which authorized Group Supervisor Annabeth Gutierrez and Revenue Officer (RO) Rainalyn Bacani, to examine petitioner's books of accounts and other accounting records for Value-Added Tax (VAT), covering the period from January 1, 2017 to June 30, 2017.[4]

Thereafter, on June 28, 2018, petitioner received the *Notice of Informal Conference* (NIC) dated June 27, 2018. One of the assessment items in the NIC is the disallowance of sales discount amounting to ₱50,405,717.70, with accompanying schedule 2 which listed the date, customer name, reference number and Senior Citizen (SC) discount per sales invoice.[5]

The BIR then issued *Preliminary Assessment Notice* (PAN), *with Details of Discrepancy* dated August 15, 2018, assessing petitioner deficiency VAT, including interest, for the period covering

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[1] Paragraph 1.1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 851.
[2] Exhibit "P-3", Docket – Vol. 3, pp. 992 to 993.
[3] Paragraph 1.2, JSFI, Docket – Vol. 2, p. 852.
[4] Exhibit "P-4", Docket – Vol. 1, pp. 297 to 298; Exhibit "R-1", BIR Records, p. 1.
[5] Exhibit "P-11", Docket – Vol. 3, pp. 994 to 997; Exhibit "R-2", BIR Records, pp. 194 to 200.

January 1, 2017 to June 30, 2017, in the aggregate amount of ₱10,754,710.16,[6] the details of which are as follows:

VALUE-ADDED TAX

Taxable Sales per VAT Return			₱472,028,313.68
Add: Disallowed Zero-rated Sales (Schedule 1)		₱53,176.95	
Disallowed Sales Discount (Schedule 2)		50,405,717.70	50,458,894.65
Taxable Sales per Investigation			₱522,487,208.33
Output Tax Due			₱62,698,465.00
Less: Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter		₱846,440.96	
Claimed Input Tax		47,346,562.16	
Total Available Input Tax		₱48,193,003.12	
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	₱1,383,671.32		
Disallowed Input Tax (Annex B)	2,758,289.64	4,141,960.96	44,051,042.16
VAT Due			₱18,647,422.84
Less: Payments per Return			9,834,065.84
Deficiency Value-Added Tax			₱8,813,357.00
Add: Interest (07.26.17 to 08.31.18)			1,941,353.16
TOTAL AMOUNT DUE			₱10,754,710.16

Within the fifteen (15) day period to file a reply, petitioner filed its *Reply to Preliminary Assessment Notice* (Reply) on September 3, 2018.[7] In its *Reply,* petitioner explained the nature of the disallowed sales discount, and that it does not grant senior discount because it does not directly sell goods to senior citizens. Furthermore, petitioner also stated that the deficiency VAT assessment for the disallowed zero-rated sales amounting to ₱53,176.95 was already paid.

On October 1, 2018, petitioner received the *Formal Assessment Notice* (FAN) with *Details of Discrepancies* and Assessment Notice dated September 28, 2018.[8] The BIR retained its disallowed sales discount assessment and reiterated its allegations in the PAN. Moreover, the BIR also stated that the payment for the assessment on the disallowed zero-rated sales and disallowed input tax in the amount of ₱7,446.98 and ₱108,767.75, respectively, inclusive of increments, has been considered/deducted. Correspondingly, petitioner was still assessed for deficiency VAT, including interests,

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[6] Exhibit "P-12", Docket – Vol. 1, pp. 313 to 317; "Exhibits "R-4" and "R-5", BIR Records, pp. 228 to 232.
[7] Exhibit "P-17", Docket – Vol. 1, pp. 324 to 331.
[8] Exhibit "P-18", Docket – Vol. 1, pp. 354 to 356; Exhibits "R-6","R-7" and "R-8", BIR Records, pp. 279 to 283.

for the period covering January 1, 2017 to June 30, 2017, in the aggregate amount of ₱10,355,741.93, the detailed as follows:

VALUE-ADDED TAX

Taxable Sales per VAT Return			₱472,028,313.68
Add: Disallowed Zero-rated Sales (Schedule 1)		₱ -	
Disallowed Sales Discount (Schedule 2)		50,405,717.70	50,458,894.65
Taxable Sales per Investigation			₱522,434,031.38
Output Tax Due			₱62,698,465.00
Less: Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter		₱846,440.96	
Claimed Input Tax		47,346,562.16	
Total Available Input Tax		₱48,193,003.12	
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	₱1,383,671.32		
Disallowed Input Tax (Annex B)	2,675,108.67	4,058,779.99	44,134,223.13
VAT Due			₱18,557,860.63
Less: Payments per Return			9,834,065.84
Deficiency Value-Added Tax			₱8,723,794.79
Add: Interest (07.26.17 to 08.31.18)		₱760,045.68	
Interest (01.01.18 to 10.31.18)		871,901.46	1,631,947.14
TOTAL AMOUNT DUE			₱10,355,741.93

Within the thirty (30)-day period to file the Protest to FAN, petitioner filed its *Protest* on October 30, 2018, requesting the reinvestigation of the findings in the FAN.[9]

Thereafter, on November 29, 2018, petitioner received the *Letter* dated November 21, 2018[10] from the BIR granting its request for reinvestigation. Petitioner was also directed to submit the necessary documents to support its claims/disagreements within sixty (60) days from the date of the filing of the protest pursuant to Section 3.1.4 of Revenue Regulations No. 18-2013.

On December 27, 2018, or within the sixty (60)-day period to submit supporting documents, petitioner filed with the BIR the *Letter dated December 21, 2018,* [11] submitting relevant documents in support of petitioner's protest.

On March 5, 2019, petitioner received the FDDA[12] partially denying its protest. In the said FDDA, the sole assessment item left

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[9] Exhibits "P-19", Docket – Vol. 1, pp. 373 to 444.
[10] Exhibit "P-20", Docket – Vol. 1, p. 998.
[11] Exhibits "P-21", Docket – Vol. 1, pp. 446 to 454.
[12] Exhibit "P-24", Docket – Vol. 1, pp. 458 to 462.

was the disallowed sales discount wherein the BIR assessed petitioner of deficiency VAT against, details as shown below:

VALUE-ADDED TAX

Taxable Sales per VAT Return		₱472,028,313.68
Add: Disallowed Sales Discount (Schedule 1)		50,405,717.70
Taxable Sales per Investigation		₱522,434,031.38
Output Tax Due		₱ 62,692,083.77
Less: Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	₱ 846,440.96	
Claimed Input Tax	47,346,562.16	
Total Available Input Tax	₱ 48,193,003.12	
Less: Input Tax Purchases of Capital Goods Exceeding P1Million deferred for the succeeding period	1,383,671.32	46,809,331.80
VAT Due		₱ 15,882,751.96
Less: Payments per Return		9,834,065.84
Deficiency VAT		₱ 6,048,686.12
Add: Interest (07.26.17 to 12.31.17) 20%	₱ 526,981.42	
Interest (01.01.18 to 3.29.19) 12%	900,839.94	1,427,821.36
TOTAL AMOUNT DUE		**₱ 7,476,507.48**

On April 4, 2019, petitioner filed the instant *Petition for Review* assailing the said FDDA.[13]

Respondent filed her *Answer* on June 26, 2019,[14] interposing, among others, the following special and affirmative defenses: to wit: (1) petitioner was afforded due process; (2) petitioner's argument that it was never fully apprised of the legal basis of the assessment is unwarranted; (3) the assessment issued to petitioner clearly provides for the factual and legal bases on why the sales discount was disallowed; (4) the argument of petitioner that the BIR failed to consider its reply and protest is likewise unwarranted; (5) the disallowances of the sales discount is proper; and (6) assessments are *prima facie* presumed correct and made in good faith.

In the Order dated July 8, 2019,[15] the Court referred this case for mediation at the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), and the parties were ordered to immediately proceed and to personally appear or through their authorize representative before Ms. Avigail B. Sanches, Mediation Staff Assistant at the PMC-CTA. However, while the parties agreed to

[13] Docket– Vol. 1, pp. 10 to 26.
[14] Docket - Vol. 1, pp. 320 to 335.
[15] Docket – Vol. 1, pp. 226 to 227.

mediate and selected a mediator,[16] the mediation was unsuccessful.[17] Thus, in the Resolution dated October 2, 2019,[18] the Pre-Trial Conference was set on February 4, 2020. In the meantime, petitioner filed its *Reply* on July 12, 2019.[19]

On October 31, 2019, respondent, through counsel, transmitted the BIR Records of this case, consisting of one (1) folder, with four hundred twenty-eight (428) pages.[20]

After the Pre-Trial Conference held on February 4, 2020[21], the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on February 21, 2020.[22] In the Resolution dated February 27, 2020,[23] the Court admitted and approved the said JSFI, and issued the Pre-Trial Order on June 22, 2020.[24]

During trial, petitioner presented the following witnesses, namely: (1) Jasmin D. de Belen,[25] petitioner's Accounting Manager; and (2) Marina Liza B. Faylona,[26] petitioner's National Sales Manager.

On November 25, 2020, petitioner filed its *Formal Offer of Documentary Evidence.*[27] Respondent's *Comment (To Petitioner's Formal Offer of Evidence)* was then posted on December 10, 2020.[28]

In the Resolution dated January 15, 2021,[29] the Court admitted

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[16] Agreement To Mediate and Selection of Mediator dated August 22, 2019, Docket – Vol. 1, pp. 241 to 242.
[17] Mediator's Report dated September 19, 2019, Docket – Vol. 1, p. 243.
[18] Docket – Vol. 1, pp. 248 to 249.
[19] Docket – Vol. 1, pp. 228 to 237.
[20] Undated Compliance, Docket – Vol. 1, pp. 250 to 251.
[21] Minutes of the hearing held on, and Order dated, February 4, 2020, Docket – Vol. 2, pp. 821, and 826 to 827, respectively.
[22] Docket – Vol. 2, pp. 851 to 863.
[23] Docket – Vol. 2, p. 865.
[24] Docket – Vol. 2, pp. 942 to 950.
[25] Exhibit "P-64", Docket – Vol. 1, pp. 257 to 283; Minutes of the hearing held on, and Order dated, July 16, 2020, Docket – Vol. 2, pp. 951 and 955 to 956.
[26] Exhibit "P-65", Docket – Vol. 1, pp. 491 to 500, and Docket – Vol. 2, pp. 501 to 511; Minutes of the hearing held on, and Order dated, November 10, 2020, Docket – Vol. 3, pp. 968 to 970.
[27] Docket – Vol. 3, pp. 973 to 991.
[28] Docket – Vol. 3, pp. 1048 to 1051.
[29] Docket – Vol. 3, pp. 1057 to 1058.

petitioner's offered documentary evidence, except for Exhibit "P-36", for failure to present the original for comparison.

For her part, respondent presented Revenue Officer Rainalyn Bacani[30] as sole witness.

On May 18, 2021, the *Formal Offer of Evidence /Exhibits (For Respondent)* was filed.[31] Petitioner filed its *Comment/Opposition (To Respondent's Formal Offer of Documentary Evidence)* on May 26, 2021.[32] In the Resolution dated July 22, 2021,[33] the Court admitted respondent's offered exhibits.

After the posting of the *Memorandum For Respondent* on December 6, 2021[34] and the filing of petitioner's *Memorandum* on December 17, 2021[35], the present case was deemed submitted for decision on February 23, 2022.[36]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the issue for the Court's resolution is as follows:[37]

> "2.1 Whether [petitioner] APPI is liable for the alleged deficiency VAT Assessment in the amount of Php 7,476,507.48, inclusive of interest."

Petitioner's arguments:

Petitioner argues that the deficiency VAT assessment is void for having been issued in violation of its right to due process based on the following grounds, to wit: (1) petitioner was never fully apprised of the legal basis of the assessment, thus, depriving it the opportunity to completely explain itself in its reply and/or protest; (2) the BIR failed

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[30] Exhibit "R-14", Docket – Vol. 2, pp. 877 to 885; Minutes of the hearing held on, and Order dated, April 21, 2021, Docket – Vol. 3, pp. 1061 to 1063.
[31] Docket – Vol. 3, pp. 1064 to 1069.
[32] Docket – Vol. 3, pp. 1074 to 1077.
[33] Docket – Vol. 3, pp. 1081 to 1082.
[34] Docket – Vol. 3, pp. 1107 to 1111.
[35] Docket – Vol. 3, pp. 1083 to 1105.
[36] Resolution, Docket – Vol. 3, p. 1115.
[37] Stipulation of the Issues, JSFI, Docket – Vol. 2, p. 852.

to consider petitioner's reply and protest, depriving petitioner of its right to due process; (3) the presumption that assessments are prima facie correct and made in good faith does not apply in this case; (4) that the disallowed sales discount as reflected in the subject sales invoices issued by petitioner is in accordance with Section 106(D) of the Tax Code, jurisprudence, and RR No. 16-2005, hence, the deficiency VAT assessment is without basis; (5) that respondent wrongfully disallowed the sales discount of petitioner; and (6) that the BIR, in disallowing the sales discount, acted outside of its jurisdiction by questioning and supplanting the business judgment of the taxpayer.

Respondent's counter-arguments:

Respondent contends that the deficiency assessment must be held valid for it was issued in compliance with due process requirement and that the findings of disallowed sales discount to senior citizen have factual and legal bases.

According to respondent, petitioner's argument that it was never fully appraised of the legal basis of the assessment is unwarranted. Allegedly, the Preliminary Assessment Notice (PAN) with Details of Discrepancies dated August 15, 2018, Formal Assessment Notice (FAN) with Details of Discrepancies dated September 28, 2018, and Final Decision on Disputed Assessment (FDDA) dated February 28, 2019 which were issued to petitioner clearly provide for the factual and legal basis on why the sales discount was disallowed. Contrary to the allegation of the petitioner, those assessments specifically mentioned in the Sales Invoice Number, the date of its issuance, the customer name and Senior Citizen discount per Sales Invoice. Further, assessments notices also indicate that the sales discount to senior citizens were disallowed pursuant to BIR Revenue Regulations No. 7-2010.

Moreover, respondent contends that the argument of petitioner that the BIR failed to consider its reply and protest is likewise unwarranted. During the re-investigation, petitioner submitted additional documents such as VAT invoices and receipts. These additional documents were allegedly considered to support its creditable input tax claimed per return amounting to Php2,675,108.67.

THE COURT'S RULING

The instant *Petition for Review* has merit.

Petitioner's right to due process was violated by respondent.

We find merit in petitioner's argument that the subject deficiency VAT assessment is void for having been issued in violation of its right to due process.

Section 228 of the National Internal Revenue Code (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
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> xxx xxx xxx
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[38] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[39]

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,

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[38] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[39] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

requirement.[40] 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.[41]

To implement the above-quoted Section 228, Section 3 of RR No. 12-99,[42] as amended by RR No. 18-2013,[43] 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:
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer 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).
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> xxx xxx xxx
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the*</u>**

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[40] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[41] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[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
[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.

> ***assessment shall be void*** (see illustration in ANNEX 'B' hereof).
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> xxx xxx xxx
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> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – **The decision of** the Commissioner or **his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision." *(Emphases and underscoring added)*

The foregoing provision prescribes that, as part of due process in the issuance of tax assessments, 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.

Relative thereto, the pronouncement of the Supreme Court in the case *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case")[44] is instructive, to wit:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, 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.**
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> 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**

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

due process and taints the administrative proceedings with invalidity.

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The importance of providing 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[45] 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[46] 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[47] 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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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the

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[45] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[46] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[47] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

> 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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> xxx xxx xxx
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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." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, respondent or her duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to law, with their own rules of procedure, and always with regard to the basic tenets of due process. Due process requires the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

Furthermore, in case respondent or her duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void and of no force and effect. Moreover, 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 respondent rejects the taxpayer's explanations, she must give some reason for doing so and the particular facts and law upon which her conclusions are based, and those facts must appear on the PAN, FLD/FAN, or FDDA. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or her duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

In this case, it appears that in the *Details of Discrepancies* of the PAN dated August 15, 2018[48], there is a finding on the *"Disallowed Sales Discount to Senior Citizen, P50,405,717.70"*, to wit:

> "**<u>Disallowed Sales Discount to Senior Citizen, P50,405,717.70</u>** – Investigation disclosed that you granted sales discount to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by P50,405,717.70 for the covered period as shown below. Said discounts were computed based on your previous sales for MDC and subsequently sold by MDC to their SC customers. Pursuant to Revenue Regulation No. 7-2010 Section 7 in relation to the Expanded Senior Citizen Act of 2010, discount can only be allowed as a deduction from gross income for the same taxable year that the discount is granted. Further, the seller must record its sales inclusive of the discount granted. The Income Statement of the seller must reflect the discount not as a reduction of sales arrive at net sales but as a deduction from gross income. Any additional expenses or losses from the 20% discount and VAT expenses on the purchase of the SC shall be shouldered by the State. Any input tax attributable to the VAT exempt sales is included as cost or expense account by the business establishment. Hence the above discount was disallowed."

In its *Reply,*[49] petitioner, through counsel, assailed the foregoing findings, summarized as follows:

1) The PAN failed to specify the factual and legal basis;

2) The BIR is mistaken in assuming that the amount of ₱50,405,717.70 is in the nature of senior citizen discounts, as contemplated under Republic Act (RA) No. 9994;

3) The amount of discount which petitioner can grant to MDC is not regulated by any law and as such is left to the sole business judgment of our client;

4) Any concession granted by petitioner to MDC should be considered arm's length and a *bona fide* transaction;

[48] Exhibit "P-12", Docket – Vol. 1, pp. 313 to 317, at p. 315.
[49] Exhibit "P-17", Docket – Vol. 1, pp. 324 to 352.

5) To grant discounts to customers is a right recognized by Section 106(D) of the Tax Code;

6) The trade discount is an allowable deduction for purposes of computing VATable sales; and

7) RR No. 7-2010, as amended, is not applicable.

Notwithstanding the foregoing arguments relative to the disallowed sales discounts, the FAN dated September 28, 2018 did not address any of the said arguments. We quote the pertinent contents of the FAN dated September 28, 2018, in parts, to wit:

> "This has reference to your letter dated September 3, 2018 and received September 3, 2018 and received by this Office on even date, relative to our Preliminary Assessment Notice dated August 15, 2018 covering deficiency Value-Added Tax in the amount of P10,754,710.16 inclusive of increments for the period covering January 1, 2017 to June 30, 2017 pursuant to Letter of Authority No. SN: eLA201500085255 dated January 29, 2018.
>
> In reply, we hereby acknowledge your letter and it shall form part of the tax docket. However, we cannot delay the due process requirement in the issuance of a deficiency tax assessment pursuant to Section 3.1.1 of Revenue Regulation (RR) No. 18-2013, which states that "If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued with within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of applicable penalties." Hence, this Formal Assessment Notice is being issued to protect the interest of the government. Nevertheless, you may still file a valid protest against this FAN within thirty (30) days from receipt hereof in accordance with the provisions of Revenue Regulations (RR) 12-99, as amended by RR No. 18-2013 and clarified under RMC 11-2014, in relation to Revenue Memorandum Circular (RMC) No. 39-2013."

Moreover, upon taking a comparative look at the discussions stated in the *Details of Discrepancies* of the said FAN dated September 28, 2018 (or DOD-FAN), with the discussions in the *Details of Discrepancies* of the PAN (or DOD-PAN) dated August 15, 2018 (*supra*),[50] it appears that the contents of the DOD-PAN were reiterated *verbatim* in the DOD-FAN, except for the added phrase in the DOD-FAN, to wit: "*it was disclosed that you conceded and paid for the above assessment amounting to P7,446.98 including increments, hence was cancelled to reflect the aforesaid partial payment*", as shown below:

Details of Discrepancies of the PAN dated August 15, 2018

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No. 8 Makati

"ANNEX-A"

THE PRESIDENT
AJANTA PHARMA PHILIPPINES, INC.
Phil Axa Life Bldg. 1286 Sen. Gil Puyat Ave. cor. Tindalo
San Antonio, Makati City
TIN: 007-011-901-00000

AUG 15 2018

DETAILS OF DISCREPANCIES

VALUE-ADDED TAX

Disallowed Zero Rated Sales, P53,176.95 – Investigation disclosed that you failed to provide supporting documents and/or valid certification from the appropriate regulatory agency for your zero-rated sales/receipts in the amount of P53,176.95 as shown below, hence was assessed pursuant to Section 106(B) of NIRC.

Schedule 1

TIN	Customer Name		Amount
206-416-136	RBC MDC CORPORATION	P	53,176.95

Disallowed Sales Discount to Senior Citizen, P50,405,717.70 – Investigation disclosed that you granted sales discount to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by P50,405,717.70 for the covered period as shown below. Said discounts were computed based on your sales to MDC and subsequently sold by MDC to their SC customers. Pursuant to Revenue Regulation No. 7-2010 Section 7 in relation to the Expanded Senior Citizen Act of 2010, discount can only be allowed as a deduction from gross income for the same taxable year that the discount is granted. Further, the seller must record its sales inclusive of the discount granted. The Income Statement of the seller must reflect the discount not as a reduction of sales to arrive at net sales but as a deduction from its gross income. Any additional expenses or losses from the 20% discount and VAT expenses on the purchase of the SC shall be shouldered by the State. Any input tax attributable to the VAT exempt sales is included as cost or expense account by the business establishment. Hence, the above discount was disallowed.

Schedule 2

Date	Customer Name	Ref. No.		SC Discount per SI
27/01/17	MERCURY DRUG CORPORATION	¶3131	P	
14/02/17	MERCURY DRUG CORPORATION	¶3200		8,077,855.84
10/04/17	MERCURY DRUG CORPORATION	¶3404		8,077,855.84
25/04/17	MERCURY DRUG CORPORATION	¶3443		8,347,445.13
22/05/17	MERCURY DRUG CORPORATION	¶3543		8,347,445.13
22/05/17	MERCURY DRUG CORPORATION	¶3544		6,583,168.41
16/06/17	MERCURY DRUG CORPORATION	¶3636		2,194,369.47
TOTAL				8,777,557.68
			P	50,405,717.70

Disallowed Input Tax, P2,758,289.64 – The creditable input tax claimed per return amounting to P2,758,289.64 as shown in Annex B were disallowed for failure to present valid VAT invoices or official receipts to support input tax claimed pursuant to Section 110(A) and 113B of NIRC.

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[50] Refer to Exhibit "P-18", Docket – Vol. 1, at p. 356.

Details of Discrepancies of the FAN dated September, 2018

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No. 8 Makati

"ANNEX-A"

SEP 2 8 2018

THE PRESIDENT
AJANTA PHARMA PHILIPPINES, INC.
Phil Axa Life Bldg. 1286 Sen. Gil Puyat Ave. cor. Tindalo
San Antonio, Makati City
TIN: 007-011-901-00000

DETAILS OF DISCREPANCIES

VALUE-ADDED TAX

Disallowed Zero Rated Sales, P0 – Investigation disclosed that you failed to provide supporting documents and/or valid certification from the appropriate regulatory agency for your zero-rated sales/receipts in the amount of P53,176.95 as shown below, hence was assessed pursuant to Section 106(B) of NIRC.

Schedule 1

TIN	Customer Name		Amount
206-416-136	RBC MDC CORPORATION	P	53,176.95

It was disclosed that you conceded and paid for the above assessment amounting to P7,446.98 including increments, hence was cancelled to reflect the aforesaid partial payment.

Disallowed Sales Discount to Senior Citizen, P50,405,717.70 -- Investigation disclosed that you granted sales discount to your customer, Mercury Drug Corporation (MDC), representing senior citizen (SC) discounts which reduced your sales invoice by P50,405,717.70 for the covered period as shown below. Said discounts were computed based on your previous sales to MDC and subsequently sold by MDC to their SC customers. Pursuant to Revenue Regulation No. 7-2010 Section 7 in relation to the Expanded Senior Citizen Act of 2010, discount can only be allowed as a deduction from gross income for the same taxable year that the discount is granted. Further, the seller must record its sales inclusive of the discount granted. The Income Statement of the seller must reflect the discount not as a reduction of sales to arrive at net sales but as a deduction from its gross income. Any additional expenses or losses from the 20% discount and VAT expenses on the purchase of the SC shall be shouldered by the State. Any input tax attributable to the VAT exempt sales is included as cost or expense account by the business establishment. Hence, the above discount was disallowed.

Schedule 2

Date	Customer Name	Ref. No.		SC Discount per SI
27/01/17	MERCURY DRUG CORPORATION	¶13131	P	8,077,855.84
14/02/17	MERCURY DRUG CORPORATION	¶13200		8,077,855.84
10/04/17	MERCURY DRUG CORPORATION	¶13404		8,347,445.13
25/04/17	MERCURY DRUG CORPORATION	¶13443		8,347,445.13
22/05/17	MERCURY DRUG CORPORATION	¶13543		6,583,168.41
22/05/17	MERCURY DRUG CORPORATION	¶13544		2,194,389.47
16/06/17	MERCURY DRUG CORPORATION	¶13636		8,777,557.88
TOTAL			P	50,405,717.70

Disallowed Input Tax, P2,675,108.67 – The creditable input tax claimed per return amounting to P2,675,108.67 as shown in Annex B were disallowed for failure to present valid VAT invoices or official receipts to support input tax claimed pursuant to Section 110(A) and 113B of NIRC.

Notably in its *Protest* filed on October 30, 2018,[51] petitioner reiterated the above-stated arguments raised in its *Reply*, and added that "(t)*he Examining Officer failed to consider AJANTA's Reply to the Preliminary Assessment Notice ('PAN'), which is in violation of the due process requirement*". Petitioner also expounded on its argument that the amount of discount which petitioner can grant to MDC is not regulated by any law and as such is left to the sole business judgment of petitioner.

However, it is further noted that in the FDDA dated February 28, 2019,[52] the BIR again did not address the other arguments raised by petitioner in its *Reply* and *Protest*.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer, petitioner in the instant case, must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or her 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, the BIR or respondent must give reason(s) for rejecting petitioner's explanations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. The BIR or respondent has obviously not observed such requirement in the issuance of the subject FAN, and the subject FDDA.

Thus, the lapses committed by respondent's authorized revenue officers in the instant case clearly violated petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, vis-à-vis Sections 3.1.3 and 3.1.5 of RR No. 12-99, as amended. Consequently, the subject deficiency VAT assessment is rendered void.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[53] Relative thereto, a void assessment bears no valid fruit.[54] Such being the case, the

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[51] Par. 4.7, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. 1, pp. 13 and 220, respectively; Exhibits "P-19", Docket – Vol. 1, pp. 373 to 444.
[52] Exhibit "P-24", Docket – Vol. 1, at pp. 458 to 462.
[53] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, supra.
[54] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

subject VAT assessment cannot be enforced against petitioner, and the BIR has no right to collect the same.

In fine, considering the finding that the subject VAT assessment is void for having been issued in violation of petitioner's right to administrative due process, the Court shall no longer address the other matters raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The FDDA dated February 28, 2019, and the subject VAT assessment issued against petitioner for the period from January 1, 2017 to June 30, 2017, in the amount of ₱7,476,507.48, are **CANCELLED and SET ASIDE**.

Respondent is further **ORDERED TO ISSUE** the corresponding *Authority to Cancel Assessment* for the subject VAT assessment.

Lastly, unless reversed by higher courts, respondent is hereby **ENJOINED** from enforcing the collection of the subject VAT assessment against petitioner during the pendency of the instant case.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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