REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MONTALBAN METHANE POWER CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No.10038

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

SEP 21 2023; 1:30PM

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DECISION

MANAHAN, *J.:*

This is a Petition for Review filed by Montalban Methane Power Corporation praying that a judgment be rendered reversing and setting aside respondent's Decision dated January 18, 2019 in *"In the Matter of the Appeal of the Decision Denying the Protest of Montalban Methane Power Corporation and Demanding Payment of the Aggregate Amount of P14,927,597.90 Representing Deficiency Documentary Stamp Tax and Compromise Penalty for the Taxable Year 2008"* finding it liable for deficiency documentary stamp tax (DST) under Section 179 of the 1997 National Internal Revenue Code (NIRC), as amended, on advances from shareholders, inclusive of increments in the total amount of Php8,041,269.04.

THE PARTIES

Petitioner Montalban Methane Power Corporation is a corporation engaged in the Clean Development Mechanism Project defined under the Kyoto Protocol of the United Nations Framework Convention on Climate Change.[1] It is a corporation organized and existing under Philippine laws, with office

[1] Par. 2, *Joint Stipulation of Facts* (JSF), Docket – Vol. I, p. 451.

address at Unit 8A, Inoza Tower, 40th Street, Bonifacio Global City, 1634 Taguig City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed official to administer all internal revenue laws in the land. He is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising under the 1997 NIRC, as amended, and other laws administered by the Bureau of Internal Revenue (BIR). His office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

On October 27, 2009, the BIR issued a Letter of Authority (LOA) No. 00042563 (006-604-154-000), informing petitioner that Revenue Officers (ROs) Joel Andrew Evangelista and Josephine Elarmo of Revenue District Office (RDO) No. 47 – East Makati, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period January 1, 2008 to December 31, 2008.[3]

On December 3, 2013, BIR-Revenue Region No. 8 Makati (BIR-Makati) issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies against petitioner, demanding the payment of Php6,297,443.76, allegedly representing deficiency DST, inclusive of increments, for the taxable year (TY) 2008.[4]

Thereafter, petitioner sent respondent a letter dated December 13, 2013, contesting the BIR-Makati's assessment for deficiency DST for TY 2008.[5]

On December 23, 2013, BIR-Makati issued a Formal Assessment Notice (FAN) against petitioner, demanding the payment of Php11,478,911.24, representing alleged deficiency DST, inclusive of increments, for the same taxable year.[6]

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[2] Par. 1, The Parties, *Petition for Review*, vis-à-vis par. 1, JSF, Docket – Vol. I, pp. 11 and 451, respectively.
[3] BIR Records (Exhibit "R-1"), p. 3.
[4] Par. 3, JSF, Docket – Vol. I, p. 451.
[5] Par. 4, JSF, Docket – Vol. I, p. 451.
[6] Par. 5, JSF, Docket – Vol. I, pp. 451 to 452; Exhibits "R-2" and "R-3", BIR Records (Exhibit "R-1"), pp. 540 to 549.

Subsequently, petitioner filed with BIR-Makati a protest letter dated February 3, 2014, requesting for a reinvestigation and reconsideration of, among other things, the assessed deficiency DST for TY 2008.[7]

In an undated letter, BIR-Makati reiterated its findings that petitioner was liable for deficiency DST.[8] On June 27, 2016, petitioner responded to the undated letter, requesting BIR-Makati to reconsider its findings that petitioner was liable for deficiency DST.[9]

On April 25, 2017, BIR-Makati issued a Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies, holding petitioner liable for the total amount of Php14,877,597.90, inclusive of increments, representing alleged deficiency DST on debt instruments (due on advances from shareholder) for TY 2008 pursuant to Section 179 of the 1997 NIRC, as amended.[10]

Petitioner then filed with respondent an administrative appeal dated June 8, 2017, [11] and a supplemental administrative appeal dated June 22, 2017.[12]

On January 29, 2019, petitioner received a copy of the assailed Decision of the CIR dated January 18, 2019.[13]

Petitioner then filed the instant Petition for Review on February 28, 2019.[14]

On March 27, 2019, respondent posted a Motion for Extension of Time To File Answer,[15] which was granted by the

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[7] Par. 6, JSF, Docket – Vol. I, p. 452; Exhibit "R-4", BIR Records (Exhibit "R-1"), pp. 630 to 633.
[8] Par. 7, JSF, Docket – Vol. I, p. 452; Exhibit "R-7", BIR Records (Exhibit "R-1"), pp. 666 to 670.
[9] Par. 8, JSF, Docket – Vol. I, p. 452.
[10] Exhibit "R-8", BIR Records (Exhibit "R-1"), pp.678 to 681.
[11] Par. 9, JSF, Docket – Vol. I, p. 452.
[12] Par. 10, JSF, Docket – Vol. I, p. 452.
[13] Par. 11, JSF, Docket – Vol. I, p. 452; Exhibit "R-9", BIR Records (Exhibit "R-1"), pp. 1160 to 1167.
[14] Docket – Vol. I, pp. 10 to 31.
[15] Docket – Vol. I, pp. 318 to 319.

Court in its Order dated April 5, 2019,[16] thereby giving respondent until April 29, 2019 to file his Answer.

On April 26, 2019, respondent posted his Answer to the Petition for Review.[17]

In a Resolution dated May 17, 2019,[18] the Court referred this case for mediation to the Philippine Mediation Center - Court of Tax Appeals, pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals as approved by the Supreme Court on January 18, 2011. However, the parties failed to reach an agreement to mediate, hence, trial proceeded.[19]

The Pre-Trial Conference was set on January 30, 2020.

On December 4, 2019, respondent posted his Urgent Manifestation and Motion (For Additional Period to Comply with the Resolution dated 14 Nov. 2019).[20]

Subsequently, on January 14, 2020, respondent filed his Urgent *Ex Parte* Omnibus Motion (a. To Reset Pre-Trial Conference) (b. For Further Period to Comply with the Resolution dated 14 Nov. 2019).[21] Thereafter, petitioner's Comment [Re: Urgent *Ex Parte* Omnibus Motion (a. To Reset Pre-Trial Conference) (b. For Further Period to Comply with the Resolution dated 14 Nov. 2019) dated 14 January 2020] was filed on January 21, 2020.[22] In its Resolution dated January 22, 2020,[23] the Court noted and granted the above-mentioned Urgent Manifestation and Motion and Urgent *Ex Parte* Omnibus Motion of respondent, and reset the Pre-Trial Conference to March 12, 2020.

Respondent transmitted, on February 3, 2020, the entire BIR Records of this case, consisting of 1,180 pages, contained in one (1) folder.[24]

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[16] Docket – Vol. I, p. 321.
[17] Docket – Vol. I, pp. 323 to 326.
[18] Docket – Vol. I, pp. 329 to 330.
[19] *Mediator's Report* dated November 5, 2019, Docket – Vol. I, p. 336.
[20] Docket – Vol. I, pp. 348 to 350.
[21] Docket – Vol. I, pp. 352 to 354.
[22] Docket – Vol. I, pp. 355 to 357.
[23] Docket – Vol. I, p. 359.
[24] Docket – Vol. I, p. 363. cm

Thereafter, the parties filed their Joint Motion to Defer Pre-Trial on March 3, 2020.[25] In the Resolution dated March 10, 2020,[26] the Court denied the said Joint Motion, and retained the original schedule of the Pre-Trial Conference on March 12, 2020.

Respondent filed his Respondent's Pre-Trial Brief on March 5, 2020,[27] while the Pre-Trial Brief of petitioner was posted on March 11, 2020.[28]

On July 1, 2020, the parties filed their Joint Stipulation of Facts,[29] which was approved by the Court in its Resolution dated July 22, 2020,[30] deeming the termination of the Pre-Trial.

On October 23, 2020, a Pre-Trial Order was issued by the Court.[31]

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

Petitioner offered the testimony of its Financial Controller, Ms. Cirisa M. Manaig.[32]

Petitioner's Formal Offer of Evidence was filed on November 11, 2020.[33] Respondent's Comment/Opposition (To Petitioner's Formal Offer of Evidence) was posted on December 2, 2020.[34]

In the Resolution dated February 26, 2021,[35] the Court admitted petitioner's offered exhibits, *except* for Exhibits "P-1", "P-1-a", "P-1-b", "P-1-c", "P-1-d", "P-1-e", "P-2", "P-2-a", "P-2-b", "P-2-c", "P-5", "P-5-a", and "P-5-b", for failure to submit the duly marked exhibits.

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[25] Docket – Vol. I, pp. 367 to 369.
[26] Docket – Vol. I, pp. 416 to 417.
[27] Docket – Vol. I, pp. 370 to 374.
[28] Docket – Vol. I, pp. 436 to 445.
[29] Docket – Vol. I, pp. 451 to 453.
[30] Docket – Vol. I, p. 601.
[31] Docket – Vol. II, pp. 638 to 651.
[32] Exhibit "P-6", Docket – Vol. I, pp. 457 to 473; Minutes of the hearing held on, and Order dated, October 27, 2020, Docket – Vol. II, pp. 652 to 654.
[33] Docket – Vol. II, pp. 681 to 703.
[34] Docket – Vol. II, pp. 717 to 723.
[35] Docket – Vol. II, pp. 731 to 732.

Petitioner then filed, on June 23, 2021, its Motion for Partial Reconsideration (Re: Resolution dated 26 February 2021) -or- (Proffer of Excluded Evidence),[36] to which a Comment / Opposition [To Petitioner's Motion for Partial Reconsideration (Re: Resolution dated 26 February 2021) or Proffer of Excluded Evidence] was posted by respondent on August 4, 2021.[37]

In a Resolution dated February 11, 2022,[38] the Court resolved to grant petitioner's Motion for Partial Reconsideration, and admitted Exhibits "P-1", "P-1-a", "P-1-b", "P-1-c", "P-1-d", "P-1-e", "P-2", "P-2-a", "P-2-b", "P-2-c", "P-5", "P-5-a", and "P-5-b".

For his part, respondent presented the testimony of RO Pamela B. Tianco.[39]

On April 13, 2022, respondent's Formal Offer of Evidence was filed,[40] to which petitioner posted its Comment (Re: Formal Offer of Evidence dated 13 April 2022) on May 2, 2022.[41] In the Resolution dated June 3, 2022,[42] the Court admitted all of respondent's offered evidence.

Respondent's Memorandum was posted on July 14, 2022,[43] while petitioner's Memorandum was posted on August 17, 2022.[44]

The present case was deemed submitted for decision on September 22, 2022.[45]

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[36] Docket – Vol. II, pp. 734 to 750.
[37] Docket – Vol. II, pp. 856 to 861.
[38] Docket – Vol. II, pp. 867 to 871.
[39] Exhibit "R-10", Docket – Vol. I, pp. 375 to 383; Minutes of the hearing held on, and Order dated, March 24, 2022, Docket – Vol. II, pp. 872 to 873-A.
[40] Docket – Vol. II, pp. 874 to 880.
[41] Docket – Vol. II, pp. 887 to 891.
[42] Docket – Vol. II, pp. 894 to 896.
[43] Docket – Vol. II, pp. 899 to 908.
[44] Docket – Vol. II, pp. 912 to 936.
[45] Minute Resolution dated September 22, 2022, Docket – Vol. II, p. 939.

THE ISSUE

The sole issue for this Court's resolution is as follows, *viz.*:

> "Whether petitioner is liable for deficiency DST on the advances made from shareholders for TY 2008."[46]

Petitioner's arguments:

Petitioner primarily challenges the validity of the deficiency tax assessment as the reinvestigation conducted by RO Tianco was not preceded by the issuance of an LOA.

Petitioner further argues that respondent seriously erred in holding it liable for deficiency DST under Section 179 of the 1997 NIRC, as amended, for "advances from shareholder" indicated in its Audited Financial Statements (AFS) because not all so-called advances partake of borrowings nor reflect lending transactions subject to DST. It contends that such "advances" refer to deposits for future stock subscriptions, hence, partake of the nature of capital contributions and not indebtedness.

Respondent's counter-arguments:

Respondent maintains that his office fully complied with the due process requirements mandated under Section 228 of the 1997 NIRC, as amended, and as implemented by Revenue Regulations No. 12-99 when it issued the PAN, the FAN as well as the FDDA. Respondent makes mention that petitioner was duly afforded ample opportunity to controvert the findings embodied in the PAN and the FAN for TY 2008 and was in fact able to file letter protests against said issuances.

Respondent also contends that petitioner is liable for the deficiency DST due on the advances from its shareholders for TY 2008 based on Section 179 of the 1997 NIRC, as amended, relative to its borrowings made from the company's shareholders during the said period.

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[46] Issues to be Tried or Resolved, Pre-Trial Order dated October 23, 2020, Docket – Vol. II, p. 645.

Lastly, respondent asserts that tax assessments are presumed correct and that the necessity of proving that they are invalid lies with the party assailing their validity.

THE RULING OF THE COURT

The present *Petition for Review* has merit.

Records show that RO Pamela B. Tianco was not authorized via an LOA to conduct a reinvestigation of petitioner, hence, rendering the tax deficiency assessments void.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[47] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[48]

It is well-settled that there must be a grant of authority before any RO can conduct an examination or assessment.[49] Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[50]

The importance of an RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of an LOA itself which results to a void assessment. Being a void assessment, the same bears no valid fruit.[51]

In the case of *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[52] the Supreme Court held, thus:

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[47] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
[48] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[49] Ibid.
[50] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[51] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.
[52] G.R. No. 222133, November 4, 2020.

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, **certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may authorize the examination of any taxpayer' and issue an assessment against him**.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and <u>ineffectual</u>**. xxx." (emphases supplied)

Further, in the recently decided case of *Republic of the Philippines vs. Robigie Corporation,* [53] the Supreme Court emphasized that the "**investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR revenue officers**."

A reinvestigation, once granted by respondent, involves the re-evaluation of an assessment on the basis of newly discovered or additional evidence of the concerned taxpayer.[54] Thus, it is, in effect, a continuation of the examination and audit of the latter which necessitates the issuance of a new LOA, in case the RO, who would conduct such reinvestigation, is different from the one(s) named in the previously-issued LOA. In other words, the new RO would be acting as a substitute or replacement of those named in the said LOA.

In the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, [55] the Supreme Court emphasized on the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, to wit:

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[53] G.R. No. 260261, October 3, 2022.
[54] Refer to Section 3.1.4(ii) of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.
[55] G.R. No. 242670, May 10, 2021.

> "The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (*CIR*) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts."

In the instant case, LOA No. 00042563 dated October 27, 2009 issued by Regional Director Alfredo V. Misajo[56] authorized ROs Joel Andrew Evangelista and Josephine Elarmo of RDO No. 47 – East Makati, to examine petitioner's books of accounts and other accounting records covering the period January 1, 2008 to December 31, 2008.

Records show that RO Pamela B. Tianco issued an undated Memorandum addressed to the Regional Director.[57] On the basis of said Memorandum, the FDDA dated April 25, 2017, with Details of Discrepancies, was then issued by respondent, through Regional Director Glen A. Geraldino.[58]

It is noteworthy that no new LOA was issued in the name of RO Pamela B. Tianco to conduct the reinvestigation of petitioner for TY 2008. Moreover, there is no indication that LOA No. 00042563 dated October 27, 2009 was ever amended or modified to include RO Pamela B. Tianco. Hence, the authority under which RO Pamela B. Tianco continued the reinvestigation of petitioner was not made pursuant to the statutory power of respondent or his duly authorized representative to grant the authority to examine the said taxpayer's books of accounts.

To be sure, the authority of RO Pamela B. Tianco is not sufficient to continue the examination of petitioner's books of accounts and other accounting records, there being no new nor revised LOA issued in her favor.

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[56] BIR Records (Exhibit "R-1"), p. 3.
[57] Exhibit "R-6", BIR Records (Exhibit "R-1"), pp. 659 to 663.
[58] Refer to Exhibit "R-8", BIR Record (Exhibit "R-1"), pp. 680 to 681. *am*

Such being the case, the subject tax assessments issued against petitioner for TY 2008 are void, for lack of authority.

Being a void assessment, the same bears no fruit.[59] Hence, the subject DST assessment cannot be legally enforced against petitioner nor can it be a valid basis for tax collection to proceed. Having ruled on the invalidity of the subject deficiency DST assessment for TY 2008, this Court finds it unnecessary to rule on the other remaining issues raised.

WHEREFORE, in light of the foregoing considerations, the present Petition for Review is **GRANTED**.

Accordingly, the assailed Decision of the CIR dated January 18, 2019, requesting petitioner to pay deficiency DST, including increments, in the aggregate amount of Php8,041,269.04; the FDDA dated April 25, 2017 and, the FAN dated December 13, 2013, issued against petitioner, for TY 2008, are all **CANCELLED and SET ASIDE**.

Unless reversed by higher courts, respondent is **ENJOINED** and **PROHIBITED** from collecting against petitioner the deficiency assessment for TY 2008.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
(I join Presiding Justice Del Rosario's Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[59] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SPECIAL FIRST DIVISION

MONTALBAN METHANE POWER CORPORATION, Petitioner,	**CTA CASE NO. 10038**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 21 2023; 1:30PM

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur to grant the Petition for Review albeit on a different ground. I submit that the Formal Assessment Notice (FAN) dated December 23, 2013[1] issued against petitioner is void for having been issued in violation of petitioner's right to due process of law under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, Revenue Regulations (RR) No. 12-99, as amended, and jurisprudence.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., and Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[2] *(Avon)*, the Supreme Court stresses the significance of the CIR's duty to apprise the taxpayer of the legal and factual bases of the assessments issued against it, to consider the explanations or defenses raised by the taxpayer in connection with the assessments, and further instructs that the reason for the rejection of such explanations or defenses be communicated to taxpayers, lest the assessment be deemed **void**:

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[1] Exhibit "R-2", BIR Records, pp. 540-543.
[2] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

"**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 Regulations 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 that 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.**

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On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. xxx

xxx xxx xxx

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

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or

discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

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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. <u>However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record</u>.

<u>Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.</u> The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

xxx xxx xxx

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 Regulations No. 12-99." *(Boldfacing and underscoring supplied)*

A careful perusal of the Preliminary Assessment Notice (PAN) dated December 3, 2013[3] and Formal Letter of Demand (FLD) issued against petitioner disclosed that the FLD is a verbatim reproduction of the wordings of the PAN, differing only in the computation of the interest. Likewise, the Details of Discrepancies[4] attached to the FLD is a verbatim reproduction of the Details of Discrepancies[5] attached to the PAN.

Moreover, the FLD also neither referred to petitioner's Reply[6] to the PAN dated December 13, 2013 nor addressed its arguments therein. In fact, respondent only addressed petitioner's Reply to the PAN in his Letter[7] to petitioner dated January 24, 2014 stating that the Office already issued the FAN dated December 23, 2013, to wit:

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[3] Exhibit "R-1", BIR Records, pp. 532-535.
[4] Exhibit "R-2-b", BIR Records, pp. 541-542.
[5] Exhibit "R-1", BIR Records, pp. 533-534.
[6] Exhibit "R-1", BIR Records, p. 607.
[7] Exhibit "R-1", BIR Records, p. 608.

> "This has reference to the **Letter dated December 13, 2013, which we received on December 20, 2013** requesting for a reinvestigation of our Preliminary Assessment Notice (PAN) dated December 3, 2013 covering the deficiency Expanded Withholding Tax and Documentary Stamp Tax in the amounts of P894,816.86 and P11,373,223.76, respectively, inclusive of increments, for the taxable year 2010.
>
> **In reply, please be informed that this Office has already issued Formal Assessment Notice (FAN) dated December 23, 2013 representing the above deficiency taxes**, due to your failure to submit a duly executed waiver of the defense of prescription provided under Section 203 and 202 of the NIRC as requested in our PAN dated December 3, 2013. Nevertheless, you may still file/reiterate your protest against this FAN within thirty (30) days from receipt hereof in accordance with the provision of Revenue Regulation No. 12-99." (*Boldfacing supplied*)

Since the FLD failed to inform petitioner of the reasons for respondent's apparent rejection of its arguments in the reply to the PAN, petitioner failed to observe the standards of due process in issuing the FLD and FAN.

Indeed, issuing the FLD which is an exact replica of the PAN, *sans* any indication in the FLD that due consideration was accorded on petitioner's explanations or arguments as stated in its Reply to the PAN, is fatal to respondent's cause. The issuance of a PAN is an important part of due process. It gives both the taxpayer and CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a final assessment notice.[8] Procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's reply thereon.

To be sure, by just perusing the PAN and its Details of Discrepancies and the FLD and its Details of Discrepancies, it could readily be ascertained that they are identical, except for the interest. These documents speak for themselves.

In fine, I submit that the FLD, with Details of Discrepancies, and the FAN are void for having been issued in violation of the due process requirements under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, as amended, and *Avon*.

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[8] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice