REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

DIZON FARMS PRODUCE, INC., Petitioner,	**CTA CASE NO. 9711**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 05 2021 11:48 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a *Petition for Review* filed by Dizon Farms Produce, Inc. against the Commissioner of Internal Revenue on November 06, 2017, praying that judgment be rendered cancelling and withdrawing *Assessment Notice* Nos.: IT – ELA36515-13-17-097, for income tax; VT – ELA36515-13-17-097, for value-added tax ("VAT"); WE – ELA36515-13-17-097, for expanded withholding tax ("EWT"); DS – ELA36515-13-17-097, for documentary stamp tax ("DST"); IE-ELA36515-13-17-097, for improperly accumulated earnings tax ("IAET"); and MC-ELA36515-13-17-097, for compromise penalty; all for taxable year 2013, in the aggregate amount of Php56,829,954.37.[1]

The Facts

[1] Docket, Pre-Trial Order dated June 04, 2018, Statement of the Case, p. 235

Petitioner Dizon Farms Produce, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office at 91-A, Bagsakan Rd., FTI Complex, Western Bicutan, Taguig City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws, rules and regulations.[3]

On December 19, 2016, Petitioner received the *Preliminary Assessment Notice* ("PAN") dated December 16, 2016,[4] representing alleged deficiency income tax, VAT, EWT, DST, and IAET for taxable year 2013.[5] Petitioner filed the *Protest Letter* dated January 03, 2017 against the PAN, on January 03, 2017.[6]

Subsequently, on January 13, 2017, Petitioner received the *Formal Assessment Notice* ("FAN") and *Assessment Notices*, all dated January 05, 2017,[7] representing alleged deficiency income tax, VAT, EWT, DST, IAET, and compromise penalty in the amounts of Php31,210,573.94, Php8,154,771.41, Php284,763.36, Php717,878.89, Php16,411,966.77, and Php50,000.00, respectively, for taxable year 2013.[8] Petitioner then filed the *Protest Letter* dated February 08, 2017 against the said FAN and *Assessment Notices*, on February 09, 2017.[9]

On April 10, 2017, Petitioner reiterated its protest and submitted all the necessary and relevant documents in support of its protest against the FAN, in compliance with the sixty (60)-day period within which to submit supporting documents provided under Section 228 of the NIRC of 1997, as amended.[10]

Petitioner filed the instant *Petition for Review* on November 06, 2017.[11] This case was originally raffled to this Court's First Division.

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2 *Id., Joint Stipulation of Facts and Issues* (JSFI), Facts Admitted, Par. 1, p. 198.
3 *Id.,* JSFI, Facts Admitted, Par. 2, p. 198.
4 *Id.,* Exhibit "P-20", pp. 415 to 419; BIR Records, Exhibits "R-11" to "R-12", pp. 670 to 678.
5 *Id.,* JSFI, Facts Admitted, Par. 3, p. 199.
6 *Id.,* JSFI, Facts Admitted, Par. 4, p. 199; Exhibit "P-21", pp. 421 to 432.
7 *Id.,* Exhibits "P-22" to "28", pp. 433 to 445; BIR Records, Exhibits "R-13" to "R-14", pp. 677 to 685.
8 *Id.,* JSFI, Facts Admitted, Par. 5, p. 199.
9 *Id.,* JSFI, Facts Admitted, Par. 6, p. 199; Exhibit "29", pp. 446 to 457.
10 *Id.,* JSFI, Facts Admitted, Par. 7, p. 199; Exhibit "30", pp. 458 to 460.
11 *Id.,* pp. 10 to 28.

In the *Answer* filed on January 19, 2018,[12] Respondent interposed the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of the Special and Affirmative Defenses.

NO VIOLATION OF DUE PROCESS

7) The Petitioner alleged that on January 3, 2017, Petitioner filed its protest and barely 2 days after the Respondent issued the Final Assessment Notices dated January 5, 2017, thus, Petitioner alleged that the assessments are void considering that its protest to the PAN was injudiciously ignored.

8) It must be noted that the Revenue Officer in issuing the Final Assessment Notices dated January 5, 2017 is guided by the pertinent provisions of Revenue Memorandum Order No. 26-2016, issued in line with Section 228 of the NIRC, as amended, and pursuant to Revenue Regulations No. 18-2013 amending certain Sections of Revenue Regulations to prescribe policies, uniform guidelines and procedures in handling disputed assessments and in issuing the Final Decision of Disputed Assessment (FDDA) and revision thereof by the Commissioner of Internal Revenue, which reads:

> '2. **Protest against Preliminary Assessment Notice (PAN) is optional/not mandatory.**
>
> '3. **Formal Letter of Demand and Final Assessment Notice (FLD)/(FAN) shall be issued fifteen (15) days from the date of receipt by the taxpayer of the PAN, whether the same was protested or not.**' (Emphasis provided)

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12 *Id.*, pp. 87 to 97.

9) The RMO No. 26-2016, being administrative in nature have the force and effect of law, presumed valid and constitutional until or unless otherwise ruled by court.

10) Moreover, it must be noted that the Final Assessment Notices dated January 5, 2017 were **issued Two (2) days after the Petitioner filed its protest,** thus, it is erroneous for the Petitioner to claim that its protest was outright ignored by the Respondent. There is a presumption that the Respondent's official duty has been regularly performed, hence, Petitioner's protest was considered and evaluated prior to the issuance of the Final Assessment Notices dated January 5, 2017.

UNDECLARED SALES

11) **Comparison of collection per audit as against the data reported per Creditable Tax Withheld at Source (BIR Form 2307) disclosed an undeclared sales amounting to PHP 55,770,474.56**, hence, assessed pursuant to Section 32 of the National Internal Revenue Code of 1997 (hereinafter 'NIRC'), as amended.

12) Petitioner claims that the schedule of undeclared sales is erroneous and misleading considering that the Names of Customers were listed twice and the column captioned 'Gross Sales' is incorrect, it should be written 'Net Sales'. Those listed items referred to by the Petitioner shows Petitioner's inconsistency in the report of its sales and its corresponding client's Withholding Taxes Returns. It must be noted that the report was prepared per transaction or per BIR Form 2307 return basis, thus, there were taxpayers that were listed twice. These are the undeclared sales that the Petitioner failed to reconcile.

DISALLOWED EXPENSES DUE TO NON-WITHHOLDING OF PHP10,546,089.17

13) Verification disclosed that Petitioner have not withheld the appropriate withholding tax due on its income payment. Section 24 (K) of the NIRC, expressly provides that '... any amount paid or payable which is otherwise deductible from, or take into account in computing the gross income or for which

depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code...' Hence, Petitioner's expenses amounting to PHP 10,546,089.17 have been disallowed. **Revenue Officers generally disallow the expenses claimed as deductions from gross income, if no withholding of tax as required by law or the regulations was withheld and remitted to the BIR within the prescribed dates.**

VALUE ADDED TAX

14) **The undeclared sales amounting to PHP55,770,474.56 is subject to VAT pursuant to Title IV, Section 105 and 106 of the NIRC in relation to Revenue Regulations No. 16-2005.**

15) Verification disclosed that the Petitioner have not presented evidence or document to support its claim for Input Taxes amounting to P111,059.41 in order to determine whether or not the said Input Taxes were in fact issued by a VAT-Registered Entities, hence, the same have been disallowed in accordance with the provision of Section 110 of the NIRC, in relation to Sections 113 and 237 of the NIRC.

EXPANDED WITHHOLDING TAX

16) Petitioner failed to withhold or remit the correct Withholding Tax due to previously disallowed deductions from gross income, hence, Petitioner is liable to pay the deficiency Withholding Tax thereon pursuant to Section 2.57.2 of Revenue Regulations No. 2-98 as amended.

EXCESS CREDIT CARRIED FORWARD TO SUCCEEDING PERIOD

17) Excess Tax Credit carried over to succeeding period in the amount of PHP 10,064,984.00 was deducted from the total allowable tax credit considering that the said amount has been

credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year pursuant to Section 76 of the NIRC.

IMPROPERLY ACCUMULATED EARNINGS TAX

18) Verification disclosed that the Petitioner has accumulated retained earnings exceeded one hundred percent (100%) of the paid up capital, thus, Petitioner is liable for improperly accumulated earnings tax pursuant to Section 29 of the NIRC, as implemented by Revenue Memorandum Circular No. 35-11.

19) As a rule, the corporate taxpayer has within one (1) year or twelve months from the end of the taxable year within which to dispose of or remedy the excess retained earnings. **The taxpayer must come up with a concrete plan as to the disposition of such excess.** It is failure to dispose of such excess upon the lapse of one (1) year that it is being penalized and subjected to improperly accumulated earnings tax.

It must be noted that the Petitioner should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated need to such accumulation of profits.

It must be noted that mere **board resolutions adopting plans are not sufficient. The mere recognition of a future problem or the discussion of possible alternative solutions is not sufficient. Definiteness of plan/coupled with actions/s taken towards its consummation are essential.**

DOCUMENTARY STAMP TAX

20) Verification disclosed that Petitioner failed to pay its documentary stamp tax on the reported Due from Related Parties considered to be loans, hence, assessed pursuant to Section 179 of the NIRC, as amended.

21) It must be noted that Par. 31 of the Petition for Review is inconsistent with Petitioner's Protest dated February 8, 2017.[13] Perusal of Petitioner's Protest dated February 8, 2017 shows the following:

> 'B. DOCUMENTARY STAMP TAX
> Basic Tax Due – P 442,163.00 – We are amenable to this computation.'

3 YEAR PERIOD PRESCRIPTION NOT APPLICABLE

22) The running of the three-year statute of limitation as provided under Section 203 of the NIRC is not applicable in this case but rather the 10 year prescriptive period pursuant to Section 222(a) of the NIRC which states that:

> 'SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten **(10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executor, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.' (Emphasis Provided)

23) The 1997 Tax Code provides that under declaration of sales, receipts or income in an amount exceeding 30 percent of that declared per return, and overstatement of the deductions claimed per return, and overstatement of the deductions claimed by an amount exceeding 30 percent shall be construed as substantial, thus, creating a prima facie case of a false or fraudulent return.

[13] Annex "I" of Petitioner's Petition for Review.

24) Petitioner's payments per VAT returns show PHP 8,915,516.90, on the other hand, Petitioner is being assessed for deficiency VAT amounting to PHP 8,154,771.41. In this case there is an under declaration tantamount to prima facie case of a false or fraudulent return. Thus, the Petitioner can still be assessed within 10 years from the time of filing of Petitioner's VAT returns.

ASSESSMENTS ARE PRESUMED CORRECT AND VALID

25) The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])

26) Assessments are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the Petitioner. All presumptions are in favor of the correctness of tax assessments. (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."

On January 29, 2018, Respondent transmitted the *Bureau of Internal Revenue ("BIR") Records* for the instant case.[14]

The Pre-Trial Conference was set and held on March 22, 2018.[15] Prior to said date, *Respondent's Pre-Trial Brief* was filed on March 15, 2018,[16] while *Petitioner's Pre-Trial Brief* was submitted on March 19, 2018.[17]

On April 11, 2018, the parties submitted their *Joint Stipulation of Facts and Issues*.[18] In the Resolution dated April 18, 2018,[19] the Court approved the same,

[14] *Id.,* Respondent's letter dated January 26, 2018, p. 99.
[15] *Id., Notice of Pre-Trial Conference* dated January 30, 2018, pp. 101 to 102; Minutes of the hearing held on, and Order dated, March 22, 2018, pp. 157 to 162.
[16] *Id.,* pp. 164 to 177.
[17] *Id.,* pp. 120 to 128.
[18] *Id.,* pp. 198 to 207.
[19] *Id.,* pp. 215 to 216.

and deeming the termination of the pre-trial. Subsequently, the Court issued the Pre-Trial Order dated June 04, 2018.[20]

Trial ensued.

During trial, Petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rosalie S. Tanguanco,[21] Petitioner's authorized representative for tax and financial matters; and (2) Mr. Gil C. Bermudez,[22] the Court-commissioned Independent Certified Public Accountant ("ICPA").[23]

On July 30, 2018, the *Report* of the ICPA was submitted.[24]

The instant case was transferred to this Court's Third Division on September 27, 2018.[25]

On November 05, 2018, Petitioner filed a *Motion to Admit Formal Offer of Evidence* ("FOE"),[26] and the Court granted the same,[27] and admitted the *Formal Offer of Evidence* with one (1) CD attached thereto.[28] Respondent submitted his *Comment (To Petitioner's Formal Offer of Evidence)* on November 29, 2018.[29] In the Resolution dated January 29, 2019,[30] the Court admitted Petitioner's Exhibits.

Respondent also presented his documentary and testimonial evidence. With respect to testimonial evidence, Respondent proffered the testimony of Mr. Melvin Raymund A. Villanueva,[31] a Revenue Officer of the BIR.

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20 *Id.,* pp. 235 to 247.
21 *Id.,* Exhibit "P-32", pp. 110 to 119; Minutes of the hearing held on, and Order dated, July 31, 2018, pp. 272 to 275.
22 *Id.,* Exhibit "P-81", pp. 279 to 285; Minutes of the hearing held on, and Order dated, August 28, 2018, pp. 286 to 289.
23 *Id., Oath of Commission* dated June 28, 2018, p. 262-d; Exhibit "P-31", pp. 255 to 257; Minutes of the hearing held on, and Order dated, June 28, 2018, pp. 262 to 262-c, and 263 to 264, respectively.
24 *Id.,* Letter dated July 30, 2018, pp. 267 to 270.
25 *Id.,* Order dated September 27, 2018, p. 290.
26 *Id.,* pp. 291 to 295.
27 *Id.,* Resolution dated November 13, 2018, p. 479.
28 *Id.,* pp. 296 to 309.
29 *Id.,* pp. 481 to 482.
30 *Id.,* pp. 486 to 488.
31 *Id.,* Exhibit "R-15", pp. 182 to 196; Minutes of the hearing held on, and Order dated, June 18, 2019, pp. 493 to 495.

On June 24, 2019, *Respondent's Formal Offer of Evidence with Leave of Court for Manifestation/Motion to Correct of Clerical Error* was submitted.[32] Petitioner filed its *Comment* on June 26, 2019.[33] Thus, in the Order dated July 05, 2019,[34] the Court submitted for resolution *Respondent's Formal Offer of Evidence with Leave of Court for Manifestation/Motion to Correct of Clerical Error.* In the Resolution dated August 20, 2019,[35] the Court set Respondent's *Motion to Correct* for hearing on October 02, 2019, held in abeyance the resolution of *Respondent's Formal Offer of Evidence,* and recalled and set aside the Order dated July 05, 2019.

Respondent then filed on September 27, 2019 his *Compliance/Manifestation with Submission,*[36] praying that the Court admit the Amended Judicial Affidavit of Mr. Melvin A. Valenzuela, as part of the records of this case or that his *Compliance/Manifestation with Submission* be declared as substantial compliance with the Notice of Resolution dated August 22, 2019.

At the hearing held on October 02, 2019, the Court admitted Respondent's *Compliance/Manifestation* with attached Amended Judicial Affidavit of Mr. Valenzuela.[37] Respondent's counsel then recalled to the witness stand Mr. Valenzuela, who testified on direct examination by way of his Amended Judicial Affidavit.[38] Upon motion of Respondent's counsel, the Court ordered expunged from the records of this case the original Affidavit executed on March 15, 2018 of a certain Melvin Raymund A. Villanueva. The Court also granted the motion of Respondent's counsel to change the surname of "Villanueva" to "Valenzuela" as appearing in Respondent's FOE and submitted for resolution Respondent's FOE and Petitioner's comment thereto.[39]

Subsequently, in the Resolution dated November 07, 2019,[40] the Court admitted Respondent's Exhibits, *except* for Exhibit "R-10", for failure to identify; and gave the parties thirty (30) days from notice within which to file their memoranda.

On December 13, 2019, the *Memorandum for Respondent* was filed;[41] and on December 19, 2019, the *Memorandum (For the Petition)* was submitted.[42]

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32 *Id.,* pp. 500 to 510.
33 *Id.,* pp. 496 to 498.
34 *Id.,* p. 513.
35 *Id.,* pp. 515 to 517.
36 *Id.,* pp. 518 to 520.
37 *Id.,* Minutes of the hearing held on, and Order dated, October 2, 2019, pp. 538 to 540.
38 *Id.,* Exhibit "R-15", pp. 521 to 535; Minutes of the hearing held on, and Order dated, October 2, 2019, pp. 538 to 540.
39 *Id.,* Minutes of the hearing held on, and Order dated, October 2, 2019, pp. 538 to 540.
40 *Id.,* pp. 542 to 543.
41 *Id.,* pp. 544 to 554.
42 *Id.,* pp. 557 to 593.

On January 09, 2020, this case was deemed submitted for decision.[43]

Subsequently, on July 30, 2020, Petitioner filed a *Motion To Admit Supplemental Memorandum (with leave of Court),*[44] attaching therewith a *Supplemental Memorandum for Petitioner.*[45] In the Resolution dated September 15, 2020, the Court ordered Respondent to comment on the said *Motion to Admit.*

Thereafter, Respondent filed a *Motion for Additional of Time to File Comment (To Petitioner's Motion to Admit Supplemental Memorandum)* on November 06, 2020, praying that he be granted an extension of fifteen (15) days from October 27, 2020, or until November 11, 2020, within which to file his comment. Thus, on November 11, 2020, Respondent filed his *Comment (To Petitioner's Motion to Admit Supplemental Memorandum.*

In the Resolution dated November 26, 2020, the Court granted Petitioner's *Motion to Admit Supplemental Memorandum* and Respondent's *Motion for Additional of Time to File Comment*; and admitted the *Supplemental Memorandum for Petitioner.*

The Issues

The parties set forth the following issues for this Court's resolution, to wit:

> "1. Whether the present assessment is null and void for violating Petitioner's right to be heard with regard to its position or arguments against the Preliminary Assessment Notice (PAN) dated December 16, 2016, in violation of the due process requirements mandated under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99, as amended by R.R. No. 18-2013.
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> 2. Whether Petitioner is liable to pay the aggregate amount of **[Php]56,829,954.37** representing alleged income tax (IT) – IT-ELA36515-13-17-097; value added tax (VAT) – VT- ELA36515-13-17-097; expanded withholding tax (EWT) - WE-ELA36515-13-17-097; Documentary Stamp Taxes (DST) – DS-ELA36515-13-17-097; Improperly Accumulated Earnings Tax (IAET) – IE-

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[43] *Id.,* Resolution dated January 9, 2020, p. 595.
[44] *Id.,* pp. 596 to 598.
[45] *Id.,* pp. 600 to 610.

ELA36515-13-17-097; and Compromise Penalty – MC-ELA36515-13-17-097, for the taxable year 2013.

3. Whether the FAN dated January 5, 2017 issued against Petitioner representing alleged tax deficiencies for taxable year 2013 and the right of the Government through the Bureau of Internal Revenue to collect such alleged deficiency taxes had prescribed pursuant to Section 203 and 222 of the 1997 Tax Code, as amended."[46]

Petitioner's Arguments

Petitioner contends that the assessment is null and void for failure to indicate the basis thereof; that the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious; that the FAN relative to the alleged VAT and EWT are already barred by prescription; that the FAN did not set and fix the tax liability, which is still subject to modification or adjustment; and that the imposition of the compromise penalty cannot be justified.

Moreover, Petitioner points out that the FAN dated January 05, 2017 did not include any comment whatsoever on the matters raised by Petitioner in its *Protest* to the PAN dated January 03, 2017 or even a discussion of the Respondent's findings in a manner that Petitioner may know the various issues involved and the reasons for the assessments; that the same FAN merely reiterated the assessments contained in the PAN dated December 16, 2016; and that the BIR failed to meet the due process standards raised in certain jurisprudence, and of the Respondent's own rules of procedures, renders the FAN dated January 05, 2017 null and void.

Respondent's Counter-arguments

Respondent counter-argues that there was no violation of due process; that the three (3)-year period of prescription is not applicable; that Petitioner can be assessed for tax deficiency within ten (10) years for failure to present corresponding returns; and that the assessments are presumed correct and valid.

Furthermore, Respondent contends that perusal of Petitioner's protest against the PAN revealed that the protest failed to dispute the findings in the PAN to warrant modification or cancellation of the same; that the protest against

[46] *Id.*, JSFI, Issues, Pars. 1 to 3, p. 202.

the deficiency income tax was just a mere denial of the findings of the concerned revenue officers; that no document/evidence was offered to prove otherwise; that the essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of; that in the instant case, Petitioner was given an opportunity to seek reconsideration of the PAN; and that the issuance of the FAN two (2) days after the receipt of the protest to the PAN, simply means that the said protest failed to dispute the findings therein.

Discussion/Ruling

The Court has jurisdiction over the present case.

The Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended, which provides 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within

sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)** days from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable."[47]

Pursuant to Section 228 of the NIRC of 1997, as amended, Petitioner has thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of Respondent's decision or from the lapse of the 180-day period within which to file its Petition for Review with the Court.

Petitioner received the FAN and *Assessment Notices*, all dated January 05, 2017 on January 13, 2017.[48] Petitioner had thirty (30) days from January 13, 2017 or until February 12, 2017 within which to file its administrative protest. Petitioner timely filed its *Protest Letter* against the said FAN and *Assessment Notices* on February 09, 2017.[49]

Within sixty (60) days from filing of the *Protest Letter*, Petitioner submitted its supporting documents on April 10, 2017.[50] Counting one hundred eighty (180) days therefrom, Respondent had until October 10, 2017 within which to act upon the protest of Petitioner. Since Respondent failed to do so, Petitioner opted to file a *Petition for Review*[51] with this court on November 06, 2017, which was well within thirty (30) days after the expiration of the 180-day period.

The Court shall now proceed to discuss the merits of the case.

Portions of Respondent's assessment for taxable year 2013 have already prescribed.

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47 *Emphasis supplied.*
48 Docket, JSFI, Facts Admitted, Par. 5, p. 199.
49 *Id.*, JSFI, Facts Admitted, Par. 6, p. 199; Exhibit "29", pp. 446 to 457.
50 *Id.*, JSFI, Facts Admitted, Par. 7, p. 199; Exhibit "30", pp. 458 to 460.
51 *Id.*, pp. 10 to 28.

Section 203 of the NIRC of 1997, as amended, provides:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

In the case of *Commissioner of Internal Revenue v. FMF Development Corporation,*[52] the Supreme Court held that the government must assess internal revenue taxes within the prescribed period of time so as not to deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of the said period, in this wise:

> "Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time."

Apparently, the BIR only has three (3) years counted from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax. Accordingly, an assessment notice issued after the said 3-year prescriptive period is no longer valid and effective.[53] It must be observed that none of the exceptions to the 3-year prescriptive period are present.

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[52] G.R. No. 167765, June 30, 2008.
[53] Commissioner of Internal Revenue v. Kudos Metal Corporation, G.R. No. 178087, May 05, 2010.

Since the case at bar involves deficiency income tax, VAT, EWT, DST and IAET, the last day fixed by law for the filing of the corresponding tax returns differs. Thus, the basis of the three-year prescriptive period varies accordingly.

As to income tax and IAET, Section 77(B)[54] of the NIRC of 1997, as amended, provides that the final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

In the case of VAT, the filing of quarterly VAT returns must be made within twenty-five (25) days after the close of each taxable quarter for each taxpayer in accordance with Section 114(A)[55] of the NIRC of 1997, as amended, and its implementing rules, Revenue Regulations ("RR") No. 16-2005[56].

With respect to EWT, Section 58(A)[57] of the NIRC of 1997, as amended, implemented by Sections 2.58(A)(2) and 2.81 of RR No. 02-1998[58], as amended, in relation to RR No. 26-2002[59], provides that the filing of EWT returns of taxpayers engaged in wholesale and retail trade such as Petitioner shall be on a monthly basis and made within thirteen (13) days following the end of the month.

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54 SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.–

x x x

(B) Time of Filing the Income Tax Return. – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

55 SEC. 114. Return and Payment of Value-Added Tax. –
(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis xxx.

56 SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

57 SEC. 58. Returns and Payment of Taxes Withheld at Source. -

(A) Quarterly Returns and Payments of Taxes Withheld. - xxx

The return for final and creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

58 SUBJECT : Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

59 SUBJECT : Amending Further Revenue Regulations (RR) No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

As regards DST, Section 5 of RR No. 6-2001[60] provides that the filing of the DST returns shall be within five (5) days after the close of the month when the taxable document was made, signed, accepted or transferred.

Applying the foregoing provisions of law and regulations, a table is provided for the following pertinent dates to the subject deficiency tax assessments, *viz*:

Exhibit No.	Period Covered	Date Return was filed	Last Day to file Return	Last day to Assess	Date of Receipt of FAN	Status
Income Tax						
"P-3"[61]	Taxable year 2013	April 12, 2014	April 15, 2014	April 15, 2017	January 13, 2017	Not Prescribed
Value-added Tax						
"P-4"[62]	1st quarter of 2013	April 25, 2013	April 25, 2013	April 25, 2016	January 13, 2017	Prescribed
"P-5"[63]	2nd quarter of 2013	July 25, 2013	July 25, 2013	July 25, 2016		Prescribed
"P-6"[64]	3rd quarter of 2013	October 24, 2013	October 25, 2013	October 25, 2016		Prescribed
"P-7"[65]	4th quarter of 2013	January 25, 2014	January 25, 2014	January 25, 2017		Not Prescribed
Expanded Withholding Tax						
"P-8"[66]	January 2013	February 12, 2013	February 13, 2013	February 13, 2016	January 13, 2017	Prescribed
"P-9"[67]	February 2013	March 13, 2013	March 13, 2013	March 13, 2016		Prescribed
"P-10"[68]	March 2013	April 13, 2013	April 13, 2013	April 13, 2016		Prescribed
"P-11"[69]	April 2013	May 13, 2013	May 13, 2013	May 13, 2016		Prescribed
"P-12"[70]	May 2013	June 13, 2013	June 13, 2013	June 13, 2016		Prescribed

60 SUBJECT: Amending Pertinent Provisions of Revenue Regulations nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others.
61 Docket, pp. 319 to 329.
62 *Id.*, pp. 355 to 356.
63 *Id.*, pp. 358 to 359.
64 *Id.*, pp. 362 to 363.
65 *Id.*, pp. 366 to 367.
66 *Id.*, p. 370.
67 *Id.*, pp. 373 to 374.
68 *Id.*, pp. 378 to 379.
69 *Id.*, pp. 382 to 383.
70 *Id.*, pp. 386 to 387.

Exhibit No.	Period Covered	Date Return was filed	Last Day to file Return	Last day to Assess	Date of Receipt of FAN	Status
"P-13"[71]	June 2013	July 12, 2013	July 13, 2013	July 13, 2016		Prescribed
"P-14"[72]	July 2013	August 13, 2013	August 13, 2013	August 13, 2016		Prescribed
"P-15"[73]	August 2013	September 12, 2013	September 13, 2013	September 13, 2016		Prescribed
"P-16"[74]	September 2013	October 11, 2013	October 13, 2013	October 13, 2016		Prescribed
"P-17"[75]	October 2013	November 13, 2013	November 13, 2013	November 13, 2016		Prescribed
"P-18"[76]	November 2013	December 13, 2013	December 13, 2013	December 13, 2016		Prescribed
"P-19"[77]	December 2013	January 14, 2014	January 13, 2014	January 14, 2017		Not Prescribed

A quick look at the above table would readily show that portions of the deficiency assessment for taxable year 2013 under the FAN (*i.e.,* for the 1st to 3rd quarters of VAT and for January to December EWT) were issued beyond the 3-year prescriptive period mandated under Section 203 of the NIRC of 1997, as amended.

Accordingly, only the remaining unexpired portions of Respondent's deficiency assessments shall be discussed by this Court.

The subject assessment, except that pertaining to DST, are void, as a consequence of the violation of Petitioner's right to administrative due process for Respondent's failure to consider the explanations of Petitioner as embodied in its reply to the PAN.

To reiterate, Petitioner points out that that the FAN dated January 05, 2017 did not include any comment whatsoever on the matters raised by Petitioner in its *Protest* to the PAN dated January 03, 2017 or even a discussion of the Respondent's findings in a manner that Petitioner may know the various

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71 *Id.*, pp. 390 to 391.
72 *Id.*, pp. 394 to 395.
73 *Id.*, pp. 398 to 399.
74 *Id.*, pp. 402 to 403.
75 *Id.*, p. 406.
76 *Id.*, p. 409.
77 *Id.*, pp. 411 to 412.

issues involved and the reasons for the assessments; that the same FAN merely reiterated the assessments contained in the PAN dated December 16, 2016; and that the BIR failed to meet the due process standards, rendering the FAN dated January 05, 2017 null and void.

We agree with Petitioner.

The issuance of the FAN, without consideration and evaluation of the defenses contained in the *Protest* to the PAN, violated Petitioner's right to due process.

To recall, Petitioner received the PAN dated December 16, 2016 on December 19, 2016 assessing it for deficiency income tax, VAT, EWT, DST, and IAET for taxable year 2013[78], in the aggregate amount of Php55,965,065.88, inclusive of interests and penalties, summarized as follows:

	Basic	Surcharge	Interest	Total
Income tax	Php19,894,969.42	-	Php10,857,747.69	Php30,752,717.11
VAT	5,056,900.38	-	2,981,493.05	8,038,393.43
EWT	175,988.19	-	104,725.03	280,713.22
DST	442,163.00	-	265,540.08	707,703.08
IAET	9,838,823.80	Php2,459,705.95	3,887,009.29	16,185,539.04
Total	**Php35,408,844.79**	**Php2,459,705.95**	**Php18,096,515.14**	**Php55,965,065.88**

Based on the *Details of Discrepancies*[79] of the PAN, the following items comprise the various tax assessments: (1) the basic income tax due was primarily brought about by the BIR's finding of *Undeclared Sales* amounting to Php55,770,474.56, *Disallowed Due to Non-Withholding* in the amount of Php10,546,089.17, and *Excess Credits Carried Forward to Suceeding Period* in the amount of Php10,064,984.00; (2) the deficiency VAT was assessed by reason of the same *Undeclared Sales*, and *Disallowed Input Tax* and *Input Tax Allocable to Exempt Sales* totaling Php4,100,698.71; (3) the deficiency EWT was imposed because of the failure *"to withhold/remit the correct withholding tax due previously disallowed as deductions from gross income"*; (4) the deficiency DST was assessed because of the failure *"to pay the documentary stamp tax on the reported Due from Related Parties purported to be loans"*; and (5) the deficiency IAET was assessed because of *Accumulated Earnings as of 2013*, less certain items, amounting to Php98,388,238.00.

On January 03, 2017, Petitioner filed its *Protest Letter* against the PAN, Petitioner addressing the findings in the PAN, *except* for the assessed basic DST

[78] *Id.,* JSFI, Facts Admitted, Par. 3, p. 199.
[79] *Id.,* Exhibits "P-20-A", pp. 415 to 419.

amounting to Php442,163.00 to which Petitioner was amenable.[80] Petitioner provided an explanation for every line item/finding of the BIR, and endeavoured to refute the alleged deficiency assessments as being devoid of any legal or factual bases.

On January 05, 2017 however, just two (2) days from the filing of Petitioner's *Protest Letter*, Respondent issued the subject FAN and *Assessment Notices*[81]. As it happens, Petitioner was assessed of the following deficiency tax liabilities, to wit:

	Basic	Surcharge	Interest	Total
Income tax	Php19,894,969.42	-	Php11,315,604.52	Php31,210,573.94
VAT	5,056,900.38	-	3,097,871.03	8,154,771.41
EWT	175,988.19	-	108,775.17	284,763.36
DST	442,163.00	-	275,715.89	717,878.89
IAET	9,838,823.80	Php2,459,705.95	4,113,437.02	16,461,966.77
Compromise Penalty	-	-	-	50,000.00
Total	**Php35,408,844.79**	**Php2,459,705.95**	**Php18,911,403.63**	**Php56,779,954.37**

Unsurprisingly, the FAN contained the very same issues and the same amount of deficiency taxes stated in the PAN, *apart from* the computation of interests and the addition of compromise penalty. Indeed, the *Details of Discrepancies*[82] of the FAN listed the exact line items found in the *Details of Discrepancies* of the PAN: (1) the basic income tax due was primarily brought about by the BIR's finding of *Undeclared Sales* amounting to Php55,770,474.56, *Disallowed Due to Non-Withholding* in the amount of Php10,546,089.17, and *Excess Credits Carried Forward to Suceeding Period* in the amount of Php10,064,984.00; (2) the deficiency VAT was assessed by reason of the same *Undeclared Sales*, and *Disallowed Input Tax* and *Input Tax Allocable to Exempt Sales* totaling Php4,100,698.71; (3) the deficiency EWT was imposed because of the failure *"to withhold/remit the correct withholding tax due previously disallowed as deductions from gross income"*; (4) the deficiency DST was assessed because of the failure *"to pay the documentary stamp tax on the reported Due from Related Parties purported to be loans"*; and (5) the deficiency IAET was assessed because of *Accumulated Earnings as of 2013*, less certain items, amounting to Php98,388,238.00. Moreover, in issuing the FAN and *Assessment Notices* dated January 05, 2017, the BIR never addressed or even cited the arguments raised by Petitioner in its *Protest Letter* dated January 03, 2017 against the PAN.

80 *Id.,* JSFI, Facts Admitted, Par. 4, p. 199; Exhibit "P-21", pp. 421 to 432.
81 *Id.,* Exhibit "P-28-B", pp. 439 to 440.
82 *Id.,* Exhibit "P-28-A", pp. 441 to 444.

Section 3 of RR No. 12-99, as amended by RR No. 18-2013[83] expressly provides that "[i]f 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 within fifteen (15) days from filing/submission of the taxpayer's response."

Based on the foregoing provision, part of the due process requirement in the issuance of a deficiency tax assessment is the issuance and service of a PAN. Moreover, Petitioner is given fifteen (15) days from receipt of the PAN within which to respond thereto, before the issuance of the FAN by the BIR.

Relative thereto, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., Et. Al.* ("*Avon* case"),[84] the Supreme Court pronounced:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise 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.**
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> xxx xxx xxx
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to

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

[84] G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, <u>this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.</u>

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

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.</u>**

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

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for**

/v

> **government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)
>
> xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx."[85]

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and Respondent opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case Respondent or the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure by Respondent or the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by respondent or the BIR of the standards and rules renders the deficiency tax assessments null and void.

In this respect, the Court finds that in issuing the FAN and *Assessment Notices* dated January 05, 2017, the BIR never addressed or delved into the arguments raised by Petitioner in its *Protest Letter* dated January 03, 2017 against the PAN. This is clear when Respondent issued a FAN which as a complete replica of the PAN, without even stating and explaining the demerits of Petitioner's contentions.

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[85] *Emphasis and underscoring supplied.*

The right of taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not taken into consideration. It is an empty and meaningless exercise if the same is not even considered by the BIR.

As part of the due process requirement in the issuance of tax assessments, Respondent must give the reason/s for rejecting Petitioner's explanations, and must give the particular facts upon which his conclusions are based, and those facts must appear on record. Respondent has obviously not observed such requirement in the issuance of the subject FAN and *Assessment Notices*, insofar as the assessments for the deficiency income tax, VAT, EWT, and IAET, are concerned. Thus, the inevitable conclusion is that Petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated by Respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void and cannot be enforced against Petitioner, *except* for the assessed basic DST amounting to Php442,163.00, which will be explained below.

For the DST assessment, Petitioner is already estopped from questioning its validity. Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that *"an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."* A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.[86]

In its *Protest Letter* dated January 03, 2017 against the PAN filed on January 03, 2017,[87] Petitioner indicated its concurrence of the assessed basic DST amounting to Php442,163.00. Thereafter, in its *Protest Letter* dated February 08, 2017 against the FAN filed on February 9, 2017,[88] Petitioner reiterated its acquiescence to the DST assessment.

Correspondingly, when Petitioner expressed its amenability to the DST assessment (not only once, but twice), the same constitutes as an admission or representation conclusive upon Petitioner, and cannot be denied by the latter as against Respondent or the BIR.

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86 Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 170257, September 07, 2011.
87 Docket, JSFI, Facts Admitted, Par. 4, p. 199; Exhibit "P-21", pp. 421 to 432.
88 *Id.,* JSFI, Facts Admitted, Par. 6, p. 199; Exhibit "29", pp. 446 to 457.

In fine, in view of the finding that the subject tax assessments are void for violation of Petitioner's right to due process, save in the case of the subject DST assessment on the basis of estoppel, it is no longer necessary to address the other stipulated issues and other respective arguments raised by the parties.

Petitioner is not liable to pay the subject compromise penalty.

Lastly, notwithstanding the foregoing disquisitions, it is well to point out that Respondent erred in imposing the subject compromise penalty. Revenue Memorandum Order No. 19-2007[89] provides that the penalties therein are only amounts suggested in the settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It means that it is imposed only to avoid prosecution for violation of the provisions of the Tax Code.[90] Thus, the imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[91] Considering that Respondent had not shown that Petitioner conformed to the imposition of the compromise penalty, with more reason that the compromise penalty must not be imposed.

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

Accordingly, the FAN and *Assessment Notice* Nos. IT – ELA36515-13-17-097, for income tax; VT – ELA36515-13-17-097, for VAT; WE – ELA36515-13-17-097, for EWT; IE-ELA36515-13-17-097, for IAET; and MC-ELA36515-13-17-097, for compromise penalty, all dated January 05, 2017, assessed against Petitioner for taxable year 2013, in the aggregate amount of Php56,112,075.48, are **CANCELLED and SET ASIDE**, for being void.

As regards *Assessment Notice* No. DS – ELA36515-13-17-097, for DST, the same is hereby **AFFIRMED**. Accordingly, Petitioner is **ORDERED TO PAY** Respondent the deficiency DST amounting to **Php1,053,918.16**, inclusive of the twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest and twenty percent (20%) delinquency interest imposed thereon under Sections

89 SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

90 The Philippine International Fair, Inc. v. Collector of Internal Revenue, G.R. Nos. L-12928 and L-12932, March 31, 1962.

91 *Refer to* Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., Et Al., G.R. No. 35266, January 21, 1991.

248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, to wit:

Basic DST	Php 442,163.00
Add: 25% Surcharge	110,540.75
20% Deficiency Interest from January 06, 2014 until February 06, 2017[92] (Php442,163.00 x 20% x 1,128 days/365 days)	273,293.08
Total Amount Due, February 06, 2017	**Php 825,996.83**
Add: 20% Deficiency Interest from February 07, 2017 to December 31, 2017 (Php442,163.00 x 20% x 328 days/365 days)	79,468.20
20% Delinquency Interest from February 07, 2017 to December 31, 2017 (Php825,996.83 x 20% x 328 days/365 days	148,453.13
Total Amount Due, December 31, 2017	**Php 1,053,918.16**

In addition, Petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of February 06, 2017 in the amount Php825,996.83, as determined above, computed from January 01, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), and as implemented by RR No. 21-2018[93].

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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[92] Due date per *Assessment Notice* No. DS – ELA36515-13-17-097 (Exhibit "P-25"), Docket, p. 436.

[93] SUBJECT: Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice