REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

WILL TEAM PH, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10154

Members:

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

Promulgated:

OCT 0 5 2023 1:30PM

x- x

DECISION

MANAHAN, *J.:*

This resolves petitioner's *Petition for Review (with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax)* filed on August 23, 2019,[1] praying for the following judgment:

1. granting the *Temporary Restraining Order and/or Writ of Preliminary Injunction* against the collection by respondent of the following alleged deficiency taxes, including their interest and surcharges, for calendar year 2016:

Basic Deficiency Taxes	₱	3,962,380.35
Surcharges (50%)		1,981,190.17
20% Interest		736,025.72
12% Interest		750,355.42
Total Amount Payable	**₱**	**7,429,951.66**

2. cancelling and withdrawing the subject *Final Decision on Disputed Assessment* (FDDA), inclusive of interest

[1] Docket, CTA Case No. 10245, Vol. I, pp. 10 to 37. cm

and surcharge, in the total amount of ₱7,429,951.66 for the taxable year (TY) 2016, against petitioner.

THE PARTIES

Petitioner Will Team PH Inc. is a domestic corporation, duly organized and existing under Philippine law, with office address at Building U-3 Lot 22-B Phase 1B, FPIP-SEX, Tanauan City, Batangas. It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number 008-834-254-000. It is also registered with the Philippine Economic Zone Authority (PEZA) engaged primarily in the manufacturing of wire harness for construction machinery.[2]

On the other hand, respondent is the Commissioner of Internal Revenue, duly appointed and empowered to perform the duties and responsibilities of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act" (TRA) of 1997, and as further amended by RA No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Act, and RA No. 11534, otherwise known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, with office address at the BIR National Office Building, Diliman, Quezon City.[3]

THE FACTS

The BIR issued *Letter of Authority* (LOA) No. 059-2017-00000184 (SN: eLA201500065167) dated October 9, 2017,[4] informing petitioner that Revenue Officer (RO) Mitzi Lisette Belen and Group Supervisor (GS) Marlon Cabance are authorized to examine petitioner's books of accounts and other accounting records for all taxes for the period January 1, 2016 to December 31, 2016.

In the *Memorandum of Assignment* (MOA) dated January 19, 2018 (No. MOA0592017LOA32288) issued by Mr. Salvador Victorio R. Lasala, Head, Investigation Office of Revenue

---

[2] Docket, Vol. II, Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), pp. 760 to 761.
[3] *Id.*, Vol. II, Par. 2, Facts Admitted, JSFI, p. 761.
[4] BIR Records (Exhibit "R-10"), Folder 2 of 3, Exhibit "R-1", p. 233.

District Office No. 059 – East Batangas,[5] regarding the audit/verification of petitioner's internal revenue taxes liabilities for the same TY, and referring the subject case/docket to RO Mari Joy T. Corcuera and GS Mitzi Lisette O. Belen, for continuation of the said audit/verification.

Per the *Notice of Informal Conference* dated April 12, 2018 issued to petitioner by the BIR, RO Mari Joy T. Corcuera *"has recommended a deficiency tax assessment as shown in the attached computation sheet"* therein.[6]

In the Memorandum dated May 28, 2018 prepared by RO Mari Joy T. Corcuera,[7] the latter recommended the issuance of *Assessment Notice* against petitioner. Thus, the BIR issued the *Preliminary Assessment Notice* (PAN) dated July 12, 2018,[8] informing petitioner that after investigation conducted by the said RO, there have been found due from petitioner deficiency taxes for TY 2016, pursuant to LOA No. 059-2017-00000184 (SN: eLA201500065167) dated October 9, 2017.

Petitioner then filed with the BIR its letter dated August 28, 2018,[9] wherein the former requested for a reinvestigation.

On September 20, 2018, petitioner received the BIR's *Formal Letter of Demand* (FLD) dated September 11, 2018 for alleged deficiency value-added tax (VAT), expanded withholding tax (EWT), and compromise penalties, in the total amount of ₱9,088,180.22.[10]

Petitioner then filed its *Protest Letter* with the BIR on September 26, 2018.[11]

On December 11, 2018, petitioner received LOA No. 059-2018-00000413 (SN: eLA201500067649) dated December 3, 2018, informing petitioner that RO Mari Joy Corcuera and GS Mitzi Lisette Belen are authorized to audit its books of accounts for all taxes for the period January 1, 2016 to

---

[5] BIR Records (Exhibit "R-10"), Folder 2 of 3, p. 241.
[6] *Id.*, Folder 2 of 3, p. 252.
[7] *Id.*, Exhibit "R-5", Folder 2 of 3, pp. 310 to 313.
[8] *Id.*, Exhibit "R-6", Folder 2 of 3, pp. 324 to 327.
[9] *Id.*, Folder 2 of 3, pp. 330 to 337.
[10] Docket, Vol. II, Par. 4, Facts Admitted, JSFI, p. 762; BIR Records (Exhibit "R-10"), Exhibit "R-7", Folder 2 of 3, in between of pp. 332 to 341.
[11] *Id.*, Vol. II, Par. 5, Facts Admitted, JSFI, p. 762; BIR Records (Exhibit "R-10"), Folder 2 of 3, pp. 347 to 354. cem

December 31, 2016.[12] The said LOA served as a replacement of LOA No. 059-2017-00000184 dated October 9, 2017 for the continuation of audit of petitioner's tax liabilities for the same period, because of the reassignment of the case due to protested cases/cases for reinvestigation.

On July 25, 2019, petitioner received the BIR's FDDA dated July 11, 2019,[13] assessing petitioner of VAT and compromise penalties in the aggregate amount of ₱7,504,951.66, inclusive of surcharge and interest.

Hence, petitioner filed its *Petition for Review (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax)* on August 23, 2019.[14]

At the hearing held for the *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax*, petitioner presented the testimony of its Accounting Officer, Ms. Evangeline Pasion, and likewise presented and orally offered its Exhibits "P-1" to "P-3".[15] In the same hearing, respondent was given a period of five (5) days from October 10, 2019, or until October 15, 2019, within which to file his comment/opposition to petitioner's *Formal Offer of Evidence.*

In compliance, respondent then submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on October 14, 2019.[16]

On October 11, 2019, petitioner filed a *Very Urgent Motion to Withdraw Oral Formal Offer of Evidence and to Set Commissioner's Hearing,*[17] which was partially granted by the Court in its Resolution dated November 5, 2019.[18]

---

[12] Docket, Vol. II, Par. 3, Facts Admitted, JSFI, p. 761; BIR Records (Exhibit "R-10"), Folder 1 of 3, Exhibit "R-2", p. 579.
[13] *Id.*, Vol. II, Par. 6, Facts Admitted, JSFI, p. 762; BIR Records (Exhibit "R-10"), Folder 1 of 3, Exhibit "R-9", pp. 594 to 595; Docket, Vol. I, Exhibit "P-2", pp. 123 to 124.
[14] *Id.*, Vol. I, pp. 10 to 37.
[15] *Id.*, Vol. I, Exhibit "P-1", pp. 115 to 122; Docket, Vol. I, Minutes of the hearing held on, and Order dated, October 10, 2019, pp. 166 to 170.
[16] *Id.*, Vol. I, pp. 177 to 178.
[17] *Id.*, Vol. I, pp. 173 to 176.
[18] *Id.*, Vol. I, pp. 189 to 190. *crm*

On December 2, 2019, petitioner filed its *Manifestation*,[19] stating, among others, that it received on November 19, 2019, a copy of the BIR's *Warrant of Distraint and/or Levy* (WDL) dated November 18, 2019,[20] which ordered petitioner to pay the sum of ₱7,504,951.66. The same was duly noted by the Court in its Resolution dated January 3, 2020.[21]

In the meantime, respondent filed his *Answer* on December 11, 2019,[22] interposing the following special and affirmative defenses, to wit:

1. Petitioner is liable to pay deficiency tax in the amount of ₱7,504,951.66 for deficiency VAT and compromise penalties for taxable year 2016;

2. Respondent is correct in his interpretation of the contract based on its tenor and its terms; and

3. Tax assessments are presumed valid and petitioner has the duty to prove the impropriety of the assessment, if any.

On January 31, 2020, petitioner filed its *Formal Offer of Evidence* in support of its *Motion for Suspension*.[23] Respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on February 19, 2020.[24]

Thereafter, on February 20, 2020, respondent transmitted the *BIR Records* for this case.[25]

In the Resolution dated June 25, 2020,[26] the Court admitted petitioner's exhibits, *except* for Exhibit "P-4", for failure to identify the exhibit.

Petitioner then filed a *Partial Motion for Reconsideration (On the Resolution dated 25 June 2020)* on July 29, 2020,[27] praying for the Court to: (1) partially set aside its Resolution

---

[19] Docket, Vol. I, pp. 195 to 198.
[20] *Id.*, Vol. I, Exhibit "P-4", p. 199.
[21] *Id.*, Vol. I, pp. 214 to 215.
[22] *Id.*, Vol. I, pp. 203 to 210.
[23] *Id.*, Vol. I, pp. 220 to 223.
[24] *Id.*, Vol. I, pp. 262 to 263.
[25] *Id.*, Vol. I, *Compliance* dated February 19, 2020, pp. 265 to 266.
[26] *Id.*, Vol. I, pp. 275 to 276.
[27] *Id.*, Vol. I, pp. 277 to 287.

dated June 25, 2020, specifically, the denial of the admission of Exhibit "P-4" as evidence; (2) issue an Order allowing petitioner to submit *Supplemental Judicial Affidavit* of its witness; (3) set a hearing on such date as the Court's calendar allows, for the sole purpose of identifying Exhibit "P-4" or the WDL issued against petitioner on November 19, 2019; and (4) issue an Order allowing petitioner to formally submit the WDL as additional evidence after the same has been identified. Notably, no comment was filed by respondent on the said *Partial Motion for Reconsideration.*[28]

In the Resolution dated December 2, 2020,[29] the Court: (1) granted petitioner's prayer that it be allowed to submit the *Supplemental Judicial Affidavit* of its witness, and to set a hearing for the sole purpose of identifying Exhibit "P-4"; (2) set the case for hearing for the purpose of identifying Exhibit "P-4" on February 9, 2021; (3) directed petitioner to submit the *Supplemental Judicial Affidavit* of its witness, identifying Exhibit "P-4" not later than five (5) days before the scheduled hearing; (4) noted that the formal submission of the WDL as additional evidence after the identification is no longer necessary, as it was previously submitted and incorporated in the records of the case; and (5) held in abeyance the resolution of petitioner's *Partial Motion for Reconsideration (On the Resolution dated 25 June 2020).*

On January 28, 2021, petitioner submitted the *Supplemental Judicial Affidavit of Evangeline Pasion (in Question and Answer Form in Lieu of Direct Testimony),*[30] which was noted by the Court in the Minute Resolution dated February 3, 2021.[31]

At the hearing held for the continuation of the testimony of Ms. Evangeline M. Pasion, the latter identified her *Supplemental Judicial Affidavit* executed on January 27, 2021, and the WDL dated November 18, 2019.[32]

In the Resolution dated May 24, 2021,[33] the Court: (1) deemed granted petitioner's *Partial Motion for Reconsideration*

---

[28] Docket, Vol. I, Records Verification dated November 6, 2020 issued by the Judicial Records Division of this Court, p. 303.
[29] *Id.*, Vol. I, pp. 306 to 307.
[30] *Id.*, Vol. I, Exhibit "P-4", pp. 308 to 312.
[31] *Id.*, Vol. I, p. 314.
[32] *Id.*, Vol. I, Exhibit "P-5", p. 313; Docket, Vol. I, Minutes of the hearing held on, and Order dated, February 9, 2021, pp. 316 to 323.
[33] *Id.*, Vol. I, pp. 329 to 337. *am*

(On the Resolution dated 25 June 2020), by virtue of the Court's admission of the evidence offered during the hearing on February 9, 2021; (2) granted petitioner's *Application for Temporary Restraining Order and/or Writ of Preliminary Injunction and Motion for Suspension of Collection of Tax*, subject to petitioner's filing of a cash bond or a surety bond from a reputable surety company duly accredited by the Supreme Court, in the amount of ₱3,962,380.35; (3) ordered petitioner to submit certain documents required under A.M. No. 04-7-02-SC dated July 20, 2004; (4) set the pre-trial conference of the instant case on August 12, 2021; and (5) ordered the parties to be present at the said pre-trial conference, and to file with the Court and serve on the adverse party, at least three (3) days before the date of the pre-trial conference, their respective pre-trial briefs.

On July 15, 2021, petitioner filed its *Manifestation and Compliance*,[34] submitting therein the required documents under A.M. No. 04-7-02-SC dated July 20, 2004. However, in the Resolution dated September 23, 2021,[35] the Court noted that the documents attached to petitioner's *Manifestation and Compliance* are mere photocopies, and thus, required petitioner on September 23, 2021 to submit the original or certified true copies thereof within five (5) days from notice.

Meanwhile, on September 21, 2021, the Pre-Trial Conference was reset from August 12, 2021 to December 9, 2021.[36]

Petitioner filed its *Pre-Trial Brief* on December 2, 2021,[37] while *Respondent's Pre-Trial Brief* was submitted on December 3, 2021.[38]

As scheduled, the Pre-trial Conference was held on December 9, 2021,[39] wherein Mr. Glenn M. Abanador was commissioned as independent certified public accountant (ICPA).[40]

---

[34] Docket, Vol. I, pp. 339 to 343.
[35] *Id.*, Vol. I, pp. 399 to 400.
[36] *Id.*, Vol. I, *Notice of Resetting* dated September 21, 2021, p. 395.
[37] *Id.*, Vol. I, pp. 583 to 594.
[38] *Id.*, Vol. II, pp. 601 to 603.
[39] *Id.*, Vol. II, Minutes of the hearing held on, and Order dated, December 9, 2021, pp. 618 to 621, and 623 to 626, respectively.
[40] *Id.*, Vol. II, *Oath of Commission* dated December 9, 2021, p. 622. *cm*

In the Resolution dated December 16, 2021,[41] the Court noted petitioner's *Compliance (To Resolution Dated 29 September 2021)*, and deemed the same as sufficient compliance with the Resolutions dated May 24, 2021 and September 23, 2021. Such being the case, the collection of deficiency VAT assessment for TY 2016 was suspended by this Court.

On January 10, 2022, the parties posted their *Joint Stipulation of Facts and Issues*,[42] which was approved by this Court in the Resolution dated March 15, 2022,[43] thereby deeming the termination of the Pre-Trial.

The ICPA electronically submitted and posted his *Report* on January 24, 2022.[44]

The Pre-Trial Order dated March 17, 2022 was then subsequently issued by the Court.[45]

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

Petitioner offered the testimony of the following individuals, namely: (1) Ms. Evangeline Pasion,[46] petitioner's Accounting Officer; and (2) Mr. Glenn M. Abanador,[47] the Court-commissioned ICPA.

Petitioner's Formal Offer of Evidence was filed on March 4, 2022.[48] Respondent submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on March 17, 2022.[49] In the Resolution dated May 6, 2022,[50] the Court admitted all of petitioner's offered evidence.

---

[41] Docket, Vol. II, pp. 648 to 649.
[42] *Id.*, Vol. II, pp. 760 to 770.
[43] *Id.*, Vol. III, pp. 1293 to 1294.
[44] *Id.*, Vol. II, Exhibit "P-22", pp. 666 to 675.
[45] *Id.*, Vol. III, pp. 1298 to 1315.
[46] *Id.*, Vol. I, Exhibit "P-27", pp. 482 to 500; Docket, Vol. II, Minutes of the hearing held on, and Order dated, February 22, 2022, pp. 890 to 897.
[47] *Id.*, Vol. II, Exhibit "P-28", pp. 787 to 798; Docket, Vol. II, Minutes of the hearing held on, and Order dated, February 22, 2022, pp. 890 to 897.
[48] *Id.*, Vol. III, pp. 1033 to 1045.
[49] *Id.*, Vol. III, pp. 1316 to 1317.
[50] *Id.*, Vol. III, pp. 1324 to 1325.

For his part, respondent offered the testimony of RO Mitzi Lisette Belen.[51]

Respondent's *Formal Offer of Evidence* was filed on May 19, 2022.[52] Petitioner then filed its *Comment (To Respondent's Formal Offer of Evidence dated May 18, 2022)* on June 8, 2022.[53] In the Resolution dated August 5, 2022,[54] the Court admitted all of respondent's exhibits.

Respondent filed his *Memorandum* on August 23, 2022,[55] while the *Memorandum (For the Petitioner)* was submitted on September 21, 2022.[56]

On October 11, 2022, the case was submitted for decision.[57]

ISSUES

The parties stipulated this sole issue for the Court's resolution, to wit:

> "... Whether or not Petitioner is liable to pay deficiency tax in the amount of ₱7,504,951.66 for deficiency VAT and Compromise Penalties for Taxable Year 2016."[58]

Petitioner's Arguments

Petitioner argues that respondent erred in alleging that there was an actual sale of petitioner's Properties and Equipment; that the Sale and Leaseback Agreement should be read on the basis of the parties' intention; that VAT applies only to actual sales; that the "Other Income" is likewise not subject to VAT since it was not derived from a sale; and that respondent violated petitioner's right to due process, when it improperly served the LOA to petitioner, and on the FLD it issued to petitioner which was bereft of factual basis.

---

[51] Docket, Vol. II, Exhibit "R-11", pp. 604 to 613; Docket, Vol. III, Minutes of the hearing held on, and Order dated, May 10, 2022, pp. 1326 to 1328.
[52] *Id.*, Vol. III, pp. 1329 to 1334.
[53] *Id.*, Vol. III, pp. 1339 to 1341.
[54] *Id.*, Vol. III, pp. 1344 to 1345.
[55] *Id.*, Vol. III, pp. 1346 to 1353.
[56] *Id.*, Vol. III, pp. 1355 to 1380.
[57] *Id.*, Vol. III, Minute Resolution dated October 11, 2022, p. 1382.
[58] *Id.*, Vol. II, Issues, JSFI, *Id.*, Vol. II, p. 765.

Respondent's Counter-arguments

Respondent, on the other hand, argues that petitioner is liable to pay the amount of ₱7,504,951.66 for deficiency VAT and compromise penalties for TY 2016; that respondent is correct in his interpretation of the contract based on its tenor and its terms; and that tax assessments are presumed valid, and petitioner has the duty to prove the impropriety of the assessment, if any.

RULING OF THE COURT

This Court shall determine first whether the appeal was timely filed, thus, acquiring jurisdiction on the instant petition. Sections 7(a) and 11 of RA No. 1125,[59] as amended by RA No. 9282,[60] provides as follows:

> "SEC. 7. ***Jurisdiction.* – The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> > **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for actions as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or

---

59 AN ACT CREATING THE COURT OF TAX APPEALS.

60 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. *cen*

> in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction, *inter alia*, to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In the instant case, petitioner grounded its appeal on the FDDA dated July 11, 2019 issued by respondent, which it received on July 25, 2019.

Applying the abovementioned provision, petitioner had thirty (30) days therefrom, or until August 24, 2019, to file an appeal before this Court. Thus, the filing of the instant petition for review on August 23, 2019 was on time.

The subject tax assessments are void for violation of petitioner's right to administrative due process.

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

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx." *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[61] The requirement that the taxpayer must be informed of the factual and legal bases of the

---

[61] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018. *om*

assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[62] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[63] 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.[64]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[65] as amended by RR No. 18-2013,[66] 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 3.1.3 *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 shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).

---

[62] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[63] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[64] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

[65] 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 Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

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

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[67] the Supreme Court said:

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

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

revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.

xxx xxx xxx

In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

xxx xxx xxx

In *Ang Tibay v. The Court of Industrial Relations*,[68] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

---

[68] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*]. am

xxx xxx xxx

The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

xxx xxx xxx

Administrative due process is anchored on fairness and equity in procedure. <u>It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself</u>. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

xxx xxx xxx

<u>The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable.</u> 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[69] 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, **<u>Section 3.1.4[70] 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</u>.** Finally, Section 3.1.6[71] 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.' <u>This is an essential requirement of due process and applies to the</u> Preliminary Assessment Notice, **<u>Final Letter of Demand with the Final Assessment Notices</u>**, and the Final Decision on Disputed Assessment.

xxx xxx xxx

---

[69] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[70] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[71] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013. *an*

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

xxx xxx xxx

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

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 Regulation No. 12-99.

xxx xxx xxx

In *Commissioner of Internal Revenue v. Reyes*,[72] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

xxx xxx xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[73]

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

---

[72] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[73] 241 Phil. 829 (1988) [Per J. Cruz, First Division]. *am*

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

Based on the foregoing jurisprudence, respondent or his 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. And due process requires respondents and/or 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 his 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, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment. *cm*

To stress, in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the PAN dated July 12, 2018,[74] the BIR found the following as due from petitioner for taxable year 2016, to wit:

I. VALUE-ADDED TAX		
Taxable Sales Per VAT Return		₱ 274,069.72
Add: Undeclared Sales	₱ 493,325.28	
Disposal of Property Plant and Equipment	32,526,511.00	
Undeclared Income/Unaccounted source of cash	4,585,876.00	37,605,712.28
Total Taxable Sales		₱ 37,879,782.00
Multiply by: rate		12%
Less: Input tax	₱ 116,492.37	
Excess Credits to be carried over next period	(332,044.92)	
Input tax carried over from previous period	248,440.91	
Payments	-	32,888.37
Deficiency Tax		₱ 4,512,685.47
Add: Interest (January 26, 2017 to December 31, 2018)		1,740,783.88
Surcharge		2,256,342.74
TOTAL AMOUNT PAYABLE		**₱8,509,812.09**
II. EXPANDED WITHHOLDING TAX		
Expenses subject to withholding		₱23,234,216.60
Total tax Due		712,944.54
Less: Tax Paid		518,001.54
Deficiency tax		194,943.00
Add: Interest (January 16, 2017 to December 31, 2018)		76,268.11
TOTAL AMOUNT PAYABLE		**₱ 217,211.11**
III. COMPROMISE PENALTY		
Non submission of SLS		₱ 25,000.00
Failure to supply correct information in VAT Returns		25,000.00
No permit to Use Computerized Accounting System		25,000.00
TOTAL AMOUNT PAYABLE		**₱ 75,000.00**

In its letter-reply to the PAN,[75] petitioner made certain counter-arguments or refutations against the above-stated findings of the BIR relative to the foregoing deficiency taxes. Particularly, anent the amount of ₱32,526,511.00, which represents the supposed *"Disposal of Property Plant and Equipment"*, petitioner argued that the transaction is a finance lease not subject to withholding VAT. As for the amount of ₱493,325.28, which represents the supposed *"Undeclared sales"*, petitioner pointed out that since the deferred gain is a product of the sales-leaseback transaction where no actual

[74] BIR Records (Exhibit "R-10"), Folder 2 of 3, Exhibit "R-6", pp. 324 to 327.
[75] *Id.*, pp. 330 to 337.

sale has materialized, said amount was not subjected to VAT. And with regard to the supposed *"Undeclared Income/Unaccounted source of cash"* amounting to ₱4,585,876.00, petitioner explained that the difference arose when a listing was obtained from the Bureau of Customs on petitioner's purchases, and that all purchases and importation costs have been paid and properly reported based on actual documents. As for the surcharges, petitioner claims that the same should not be imposed, since there is no willful neglect, nor willful attempt to file a fraudulent return. Lastly, petitioner presented itemized arguments anent the EWT totaling ₱194,943.00, either because the income recipients are exempt from withholding tax, or the pertinent expense should no longer be subject to withholding taxes.

However, in the FLD dated September 11, 2018,[76] petitioner was still assessed of the same deficiency taxes. While the *aggregate* amount of taxes being assessed increased, a comparison of the figures stated in the PAN dated July 12, 2018, and the foregoing figures would reveal that the respective amounts of basic taxes, surcharge and compromise penalties remain unchanged. In fact, respondent BIR merely adjusted the interests being imposed. Moreover, the *Details of Discrepancies* for the said PAN dated July 12, 2018 and the said FLD dated September 11, 2018 are mostly identical. It is clearly shown that except for the last paragraph of the said *Details of Discrepancies* for the same FLD, the latter was merely copied in verbatim from the *Details of Discrepancies* for the same PAN.

To be sure, it is noteworthy that in the said FLD, respondent or the BIR did not address any of the refutations made by petitioner in its letter-reply to the PAN - an indication that respondent or the BIR did not consider the same when it issued the subject FLD.

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

---

[76] BIR Records (Exhibit "R-10"), Folder 2 of 3, Exhibit "R-7", in between of pp. 332 to 341. *cm*

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

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the 1997 NIRC, as amended, vis-à-vis Section 3.1.3 of RR No. 12-99, as amended, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[77] Furthermore, a void assessment bears no valid fruit.[78] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent or the BIR has no right to collect the same.

In fine, in view of the finding that the subject tax assessments are void, for violation of petitioner's right to administrative due process, it is no longer necessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD dated September 11, 2018, FDDA dated July 11, 2019, and the WDL dated November 18, 2019, all issued against petitioner, for taxable year 2016, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

---

[77] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, supra.
[78] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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