REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

THE PHILIPPINE STOCK EXCHANGE, INC., *Petitioner,*	**CTA CASE NO. 10781** Members:
-*versus*-	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 04 2025 11:00 a.m.

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DECISION

MANAHAN, *J.*:

Before this Court is the *Petition for Review* and *Supplemental Petition for Review*, praying that after due hearing, the Court render judgment:

1. Declaring the subject assessments as null and void and, therefore, without any force and effect since the respondent failed to timely assess the alleged liabilities of petitioner for deficiency internal revenue taxes for the year 2016;

2. Reversing and setting aside respondent's *Final Decision on Disputed Assessment* (FDDA) holding petitioner liable for alleged deficiency internal revenue taxes for the period January 1, 2016 to December 31, 2016 in the total amount of ₱51,166,891.65 due to the denial of petitioner's right to due process and/or for lack of any legal and factual basis;

3. Declaring petitioner as not liable for any deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), and miscellaneous charges for the period

January 1, 2016 to December 31, 2016 for the above reasons; and

4. Ordering the refund to the petitioner of the garnished amount of ₱51,026,891.65.[1]

THE PARTIES

Petitioner The Philippine Stock Exchange, Inc. is a domestic corporation duly organized under and by virtue of the laws of the Philippines with principal business address at 6th to 10th Floors, The PSE Tower, 5th Avenue cor. 28th Street, Bonifacio Global City, Taguig City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number 002-333-130-000.[3]

Respondent Commissioner of Internal Revenue is the head of the BIR, the government agency tasked to, among others, assess and collect all national internal revenue taxes. He has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising from the Tax Code.[4]

THE FACTS

On April 26, 2018, the BIR through OIC – Assistant Commissioner Teresita M. Dizon issued the *Letter of Authority* (LOA) No. AUDM35/018695/2018 / SN: eLA201500089637,[5] authorizing Revenue Officers (ROs) Robert Reyteran, Melody Mendiola, Catherine Obias, Hannah Thea Tulio-Binangon, and Group Supervisor (GS) Bryan Francis Lim of Revenue District Office (RDO) 125 – Regular LT Division II, to examine the books of accounts and other accounting records for all internal revenue taxes of the petitioner for the period covering January 1, 2016 to December 31, 2016.[6]

Thereafter, on January 29, 2019, Mr. Ramon S. Monzon, President and CEO of petitioner, executed the *Waiver of the Defense of Prescription under the Statute of Limitations of the*

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[1] Docket, CTA Case No. 10781, Vol. I, Prayer, *Petition for Review* and p. 59; Docket, Vol. II, *Supplemental Petition for Review*, pp. 713 to 714.
[2] *Id.*, Vol. II, Exhibits "P-1" and "P-2", pp. 1070 to 1095.
[3] *Id.*, Vol. II, Exhibit "P-3", p. 1096.
[4] *Id.*, Vol. II, Par. A.1, *Joint Stipulation of Facts and Issues* (JSFI), p. 819.
[5] *Id.*, Vol. III, Exhibit "P-44", pp. 1321 to 1324; BIR Records (Exhibit "R-15"), Exhibit "R-1", p. 4.
[6] *Id.*, Vol. II, Par. A.2, JSFI, p. 819.

National Internal Revenue Code until December 31, 2019.[7] On November 6, 2019, petitioner executed another *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* until April 30, 2020.[8]

On May 19, 2020, Mr. Ramon S. Monzon, President and CEO of petitioner, executed another *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* until October 31, 2020.[9]

Subsequently, on June 17, 2020, the BIR issued a *Notice for Informal Conference*, stating that the result of investigation of all internal revenue taxes for taxable year (TY) 2016, conducted pursuant to LOA No. AUDM35/018695/2018 dated April 26, 2018, has been submitted by ROs Robert M. Reyteran, Melody G. Mendiola, and Hannah Thea Tulio-Binangon, under GS Bryan Francis G. Lim. The BIR requested petitioner to go to Room 216, Large Taxpayers Regular Audit Division II, BIR, National Office Bldg., BIR Road, Diliman Quezon City, within fifteen (15) days from receipt hereof for an informal conference.[10]

The BIR then issued the *Preliminary Assessment Notice* (PAN) dated October 2, 2020 against petitioner, finding petitioner liable for deficiency income tax, VAT, EWT, FWT, documentary stamp tax (DST) and miscellaneous charges (compromise penalties), in the aggregate amount of ₱67,687,897.27, broken down as follows.[11]

Tax Type	Basic	Interest	Penalties	Total
Income tax	₱ 22,412,439.06	₱ 10,799,725.43		₱ 33,212,164.49
VAT	8,176,967.93	4,298,620.84		12,475,588.77
EWT	589,403.35	313,078.14	₱33,507.39	935,988.88
FWT	596,872.67	317,045.68		913,918.35
DST	12,080,550.00	7,899,686.78		19,980,236.78
Miscellaneous Charges (Compromise Penalties)				170,000.00
Total	**₱43,856,233.01**	**₱23,628,156.87**	**₱33,507.39**	**₱67,687,897.27**

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[7] Docket, Vol. II, Par. A.3, JSFI, pp. 819 to 820; Docket, Vol. III, Exhibit "P-45", p. 1325; BIR Records (Exhibit "R-15"), Exhibit "R-5", p. 1076.

[8] *Id.*, Vol. II, Par. A.3, JSFI, pp. 819 to 820; BIR Records (Exhibit "R-15"), Exhibits "P-45-1" and "R-6", p. 1075.

[9] *Id.*, Vol. II, Par. A.4, JSFI, p. 820; Docket, Vol. III, Exhibit "P-46", p. 1326; BIR Records (Exhibit "R-15"), Exhibit "R-7", p. 406.

[10] *Id.*, Vol. II, Par. A.5, JSFI, p. 820; Docket, Vol. III, Exhibit "P-47", pp. 1327 to 1334; BIR Records (Exhibit "R-15"), Exhibit "R-8", pp. 418 to 424.

[11] *Id.*, Vol. III, Exhibit "P-48", pp. 1335 to 1341; BIR Records (Exhibit "R-15"), Exhibit "R-10", pp. 1046 to 1050.

In reply thereto, petitioner filed the letter dated October 16, 2020 on October 19, 2020.[12]

On November 20, 2020, the BIR issued the *Formal Letter of Demand* (FLD), including the *Assessment Notices*, assessing petitioner for alleged deficiency income tax, VAT, EWT, FWT, documentary stamp tax, and miscellaneous charges, for the TY 2016, which was received by petitioner on November 26, 2020,[13] broken down as follows:

Tax Type	Basic	Interest	Penalties	Total
Income tax	₱ 22,412,439.06	₱ 11,249,202.29		₱ 33,661,641.35
VAT	8,176,967.93	4,462,608.25		12,639,576.18
EWT	589,403.35	324,898.51	₱33,507.39	947,809.24[14]
FWT	596,872.67	329,015.84		925,888.51
DST	12,080,550.00	8,141,959.73		20,222,509.73
Miscellaneous Charges (Compromise Penalties)				170,000.00
Total	**₱43,856,233.01**	**₱24,507,684.62**	**₱33,507.39**	**₱68,567,425.00**[15]

Thereafter, on December 22, 2020, petitioner filed with the BIR its protest letter dated December 21, 2020 against the said FLD,[16] requesting for the reconsideration thereof.[17] Subsequently, on May 10, 2021, petitioner filed its supplemental protest letter of even date, and submitted relevant documents therewith in support of its protest against the assessments.[18]

On January 24, 2022, petitioner received the FDDA dated January 19, 2022, involving deficiency income tax, VAT, EWT, FWT and miscellaneous charges, in the total amount of ₱51,166,891.65, inclusive of increments, for the period covering January 1, 2016 to December 31, 2016,[19] with attached *Assessment Notices*,[20] broken down as follows:

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[12] Docket, Vol. III, Exhibit "P-49", pp. 1342 to 1550.
[13] *Id.*, Vol. II, Par. A.6, JSFI, p. 820; BIR Records (Exhibit "R-15"), Exhibits "P-50" and "R-12", "R-12-1" to "R-12-6", pp. 1063 to 1074.
[14] The total is actually ₱947,809.2**5**.
[15] The total is actually ₱68,567,425.0**1**.
[16] Docket, Vol. II, Par. A.7, JSFI, p. 820; Docket, Vol. III, Exhibit "P-51", pp. 1551 to 1563.
[17] *Id.*, Vol. III, Exhibit "P-51", pp. 1551 to 1563, at p. 1563.
[18] *Id.*, Vol. II, Par. A.7, JSFI, p. 820; BIR Records (Exhibit "R-15"), Exhibit "P-52", p. 1365.
[19] Docket, Vol. II, Par. A.8, JSFI, p. 820; Docket, Vol. III, Exhibit "P-53", pp. 1564 to 1574; BIR Records (Exhibit "R-15"), Exhibit "R-14", pp. 1392 to 1397.
[20] *Id.*, Vol. III, Exhibit "P-53", at pp. 1570 to 1574; BIR Records (Exhibit "R-15"), Exhibits "R-14-1" to "R-14-5", pp. 1387 to 1391.

Tax Type	Basic	Interest	Penalties	Total
Income tax	₱ 22,412,439.06	₱ 13,260,795.45		₱ 35,673,234.51
VAT	8,176,967.93	5,196,519.12		13,373,487.05
EWT	589,403.35	377,799.47	₱33,507.39	1,000,710.21
FWT	596,872.67	382,587.21		979,459.88
Miscellaneous Charges (Compromise Penalties)				140,000.00
Total	**₱31,775,683.01**	**₱19,217,701.25**	**₱33,507.39**	**₱51,166,891.65**

A *Warrant of Distraint and/or Levy* (WDL) was issued on April 18, 2022[21] against petitioner by OIC-Assistant Commissioner for Large Taxpayer Service Manuel V. Mapoy, for the collection of the sum of ₱51,026,891.65, inclusive of increments incident to delinquency and compromise penalties, amounting to ₱140,000.00 for a total amount of ₱51,166,891.65. The said WDL was received by petitioner on April 18, 2022.[22] The WDL served is in relation to the deficiency tax assessments against petitioner for TY 2016 in the amount of ₱51,026,891.65.[23]

On April 29, 2022,[24] petitioner received a copy of the *Warrant of Garnishment* dated April 29, 2022 addressed to the President, Treasurer and/or Cashier of Rizal Commercial Banking Corporation (RCBC) and signed by OIC-Assistant Commissioner for Large Taxpayer Service Manuel V. Mapoy, stating that there is due from petitioner the sum of ₱51,026,891.65, as internal revenue taxes plus increments incident to delinquency, and ordering RCBC to transfer, surrender, transmit and/or remit to the BIR immediately any property/cash in its possession owned by petitioner.[25]

In the letter dated May 19, 2022, RCBC advised petitioner that on May 13, 2022, it received an order of release/payment directing it to release the amount previously garnished against petitioner to BIR, Quezon City, and in compliance to said order, RCBC was constrained to release and/or pay the amount of ₱51,026,891.65, which was previously placed on hold as directed in the order of release/payment.[26]

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[21] *Id.*, Vol. III, Exhibit "P-54", p. 1575.
[22] *Id.*, Vol. II, Par. A.9, JSFI, p. 820.
[23] *Id.*, Vol. II, Par. A.10 [erroneously numbered as Par. A.9], JSFI, p. 821.
[24] *Id.*, Vol. II, Exhibit "P-58" (Q&A No. 2), pp. 689 to 691.
[25] *Id.*, Vol. III, Exhibit "P-56", p. 1576.
[26] Docket, Vol. III, Exhibit "P-57", p. 1577.

Petitioner filed the present *Petition for Review* on February 22, 2022.[27] The case was initially raffled to this Court's First Division.

On May 17, 2022, respondent posted his *Answer*,[28] interposing the following main special and affirmative defenses, to wit:

1. Petitioner should not be allowed for the first time on appeal to attack the validity of the waivers;

2. Assuming the Honorable Court may rule on issues raised for the first time on appeal, the waivers executed are valid, petitioner was accorded due process of law, and the assessment has not yet prescribed; and

3. Petitioner is liable for the assessed deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and miscellaneous tax plus interest in the aggregate amount of ₱51,166,891.65.

In the meantime, petitioner filed a *Motion for Suspension of Collection of Taxes and Dispensation of the Requirement to Post a Bond* on April 25, 2022,[29] which was set for hearing on May 26, 2022.[30] Petitioner likewise filed a *Manifestation* on May 6, 2022,[31] stating that it received copies of the *Warrant of Garnishment* dated April 29, 2022 addressed to the President, Treasurer and/or Cashier of China Banking Corporation (CBC), RCBC and Banco De Oro (BDO).

Thereafter, on May 25, 2022, petitioner filed a *Motion for Leave to File Supplemental Petition for Review*,[32] stating, among others, that on May 13, 2022, RCBC has received an order of release/payment directing it to release the amount previously garnished against petitioner's account to the BIR, Quezon City; that in compliance to said order, RCBC was constrained to release and/or pay the amount of ₱51,026,891.65 which it previously placed on hold.

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[27] *Id.*, Vol. I, pp. 7 to 64.
[28] *Id.*, Vol. II, pp. 644 to 666.
[29] *Id.*, Vol. II, pp. 621 to 628.
[30] *Id.*, Vol. II, Notice of Hearing (Motion for Suspension of Collection of Taxes and Dispensation of the Requirement to Post a Bond) dated April 28, 2022, p. 632.
[31] *Id.*, Vol. II, pp. 633 to 635.
[32] *Id.*, Vol. II, pp. 674 to 676.

During the hearing for petitioner's *Motion for Suspension of Collection of Taxes and Dispensation of the Requirement to Post a Bond* held on May 26, 2022,[33] petitioner's counsel manifested that the said *Motion* has already been mooted following the service and enforcement of the *Writ of Garnishment* undertaken by respondent on May 13, 2022, hence, petitioner filed a *Motion for Leave to File Supplemental Petition for Review* to include the prayer for the refund of taxes that have been collected by way of garnishment. Finding merit in the *Motion*, the Court granted petitioner a period of fifteen (15) days to file the *Supplemental Petition for Review* and likewise granted respondent the same period of time from receipt thereof within which to file an *Answer*.

On June 7, 2022, petitioner filed a *Supplemental Petition for Review*,[34] stating, among others, that: (1) after the filing of the present *Petition for Review* on February 22, 2022, a WDL was issued on April 18, 2022 against petitioner; (2) petitioner likewise received copies of the *Warrant of Garnishment* dated April 29, 2022 addressed to the President, Treasurer and/or Cashier of CBC, RCBC and BDO; (3) respondent, by way of garnishment, collected from petitioner the amount of ₱51,026,891.65 on May 13, 2022; and (4) hence, petitioner additionally prays that the Court render judgment ordering the refund to the petitioner of the garnished amount of ₱51,026,891.65.

On June 22, 2022, respondent filed his *Answer (to Petitioner's Supplemental Petition for Review)*,[35] interposing the following main special and affirmative defenses, to wit:

1. The Honorable Court has no jurisdiction over petitioner's refund of the amount garnished; and

2. The waivers executed by petitioner are valid and the assessments were issued within the time prescribed by law.

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[33] Docket, Vol. II, Minutes of the hearing held on, and Order dated, May 26, 2022, pp. 681 to 684.
[34] *Id.*, Vol. II, pp. 704 to 720.
[35] *Id.*, Vol. II, pp. 723 to 736.

Respondent then transmitted the *BIR Records* of the present case on June 23, 2022, consisting of 1406 pages in one (1) folder.[36]

Petitioner's *Supplemental Petition for Review* and respondent's *Answer (to Petitioner's Supplemental Petition for Review)* were both noted by the Court in the Resolution dated July 6, 2022.[37]

In the Resolution dated July 14, 2022,[38] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative/s, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on August 10, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated August 10, 2022,[39] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference was set and held on October 13, 2022.[40] Prior thereto, petitioner's *Pre-Trial Brief* was filed on September 16, 2022,[41] while *Respondent's Pre-Trial Brief* was submitted on October 11, 2022.[42]

On November 2, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[43] which was approved in the Resolution dated November 21, 2022,[44] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 12, 2023 was then issued.[45]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Eliza S. Rodriguez,[46] Head of the

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[36] Docket, Vol. II, *Compliance* dated June 23, 2022, pp. 755 to 757.
[37] *Id.*, Vol. II, p. 763.
[38] *Id.*, Vol. II, p. 765.
[39] *Id.*, Vol. II, p. 766.
[40] *Id.*, Vol. II, Resolution dated September 7, 2022, p. 768; Docket, Vol. II, Notice of Pre-Trial Conference dated September 8, 2022, pp. 769 to 771; Docket, Vol. II, Minutes of the hearing held on, and Order dated, October 13, 2022, pp. 810 to 812 and 815 to 817, respectively.
[41] *Id.*, Vol. II, pp. 775 to 797.
[42] *Id.*, Vol. II, pp. 801 to 807.
[43] *Id.*, Vol. II, pp. 819 to 839.
[44] *Id.*, Vol. II, pp. 852 to 853.
[45] *Id.*, Vol. II, pp. 905 to 926.
[46] Docket, Vol. I, Exhibit "P-55", pp. 80 to 106; Docket, Vol. II, Exhibit "P-58", pp. 689 to 692; Docket, Vol. II, Minutes of the hearing held on, and Order dated, January 25, 2023, pp. 935 to 938 and 940 to 941, respectively.

Accounting Department; and (2) Ms. Madonna Mia S. Dayego,[47] the Court-commissioned Independent Certified Public Accountant (ICPA).[48]

The *Report* of the ICPA was submitted on February 27, 2023.[49]

On May 11, 2023, petitioner filed its *Formal Offer of Evidence*,[50] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on May 22, 2023.[51] In the Resolution dated July 14, 2023,[52] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-68-2 to P-68-12", "P-83", "P-84-182", "P-84-297", "P-84-312", "P-85 to P-88", and "P-90", for not being found in the records of the case.

In the meantime, the case was transferred to this Court's Third Division pursuant to the Notice of Resolution dated May 29, 2023.[53]

Petitioner then filed its *Motion for Partial Reconsideration to the Resolution dated July 14, 2023* on August 3, 2023,[54] while respondent filed his *Manifestation (in lieu of Comment)* on October 2, 2023,[55] stating that he is submitting the resolution of petitioner's *Motion* to the sound discretion of the Court. In the Resolution dated December 20, 2023,[56] the Court granted petitioner's *Motion*, and admitted Exhibit "P-84-297".

For his part, respondent presented the testimony of Revenue Officer Hannah Thea M. Tulio-Binangon.[57]

Respondent's Formal Offer of Evidence was filed on March 15, 2024,[58] to which petitioner filed its *Comment to*

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[47] *Id.*, Vol. II, Exhibit "P-94", pp. 1013 to 1029; Docket, Vol. II, Minutes of the hearing held on, and Order dated, April 25, 2023, pp. 1040 to 1044.
[48] *Id.*, Vol. II, *Oath of Commission* dated January 25, 2023, p. 939; Docket, Vol. II, Minutes of the hearing held on, and Order dated, January 25, 2023, pp. 935 to 938 and 940 to 941, respectively.
[49] *Id.*, Vol. II, Exhibit "P-93", pp. 949 to 1004.
[50] *Id.*, Vol. II, pp. 1049 to 1068.
[51] *Id.*, Vol. III, pp. 1578 to 1580.
[52] *Id.*, Vol. III, pp. 1589 to 1591.
[53] *Id.*, Vol. III, p. 1585.
[54] *Id.*, Vol. III, pp. 1593 to 1596.
[55] *Id.*, Vol. III, pp. 1602 to 1604.
[56] *Id.*, Vol. III, pp. 1609 to 1611.
[57] Docket, Vol. II, `Exhibit "R-16", pp. 742 to 753; Docket, Vol. III, Minutes of the hearing held on, and Order dated, February 29, 2024, pp. 1612 and 1615 to 1616, respectively.
[58] *Id.*, Vol. III, pp. 1618 to 1624.

Respondent's Formal Offer of Evidence on March 26, 2024.[59] In the Resolution dated June 27, 2024,[60] the Court admitted all of respondent's offered exhibits.

The *Memorandum for the Petitioner* was filed on July 26, 2024,[61] while respondent submitted a *Manifestation* on August 7, 2024,[62] stating that he is adopting the arguments raised in his *Answer* as his *Memorandum.*

The present case was submitted for decision on September 13, 2024.[63]

ISSUES

The parties submit the following issues for this Court's resolution:

> "A.
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> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), FINAL WITHHOLDING TAX (FWT) AND MISCELLANEOUS CHARGES IN THE TOTAL AMOUNT OF FIFTY-ONE MILLION ONE HUNDRED SIXTY-SIX THOUSAND EIGHT HUNDRED NINETY-ONE AND 65/100 PESOS (PHP51,166,891.65), INCLUSIVE OF INCREMENTS, FOR THE PERIOD COVERING JANUARY 1, 2016 TO DECEMBER 31, 2016.
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> B.
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> WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF PHP51,026,891.65 WHICH WAS APPLIED AGAINST THE PETITIONER BY VIRTUE OF THE WARRANT OF GARNISHMENT DATED APRIL 29, 2022."[64]

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[59] *Id.*, Vol. III, pp. 1626 to 1627.
[60] *Id.*, Vol. III, pp. 1633 to 1635.
[61] *Id.*, Vol. III, pp. 1636 to 1730.
[62] *Id.*, Vol. III, pp. 1732 to 1734.
[63] *Id.*, Vol. III, Minute Resolution dated September 13, 2024, p. 1736.
[64] Docket, Vol. II, Par. B, JSFI, p. 821.

Petitioner's Arguments

Petitioner argues that the deficiency tax assessments issued by respondent are intrinsically void on account of lack of authority on the part of the ROs to continue the audit/investigation of petitioner's possible tax liabilities for TY 2016; that the *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* executed by petitioner were formally flawed, therefore, the running of the prescriptive period for assessing petitioner was never stalled; that the assessment for deficiency income tax pertaining to TY 2016 is barred by prescription; that respondent failed to timely assess the alleged deficiency VAT for the year 2016, hence, the right to do the same has prescribed; that the assessment for deficiency EWT and FWT for TY 2016 is already barred by prescription; that assuming, *arguendo*, that the *Waivers* executed by petitioner are considered valid, the deficiency assessments are still barred by prescription and thus, are null and void; that petitioner's right to due process was violated as the FLD and FDDA were issued without regard to the objections raised in the protest letters; that the deficiency assessments for the period covering January 1, 2016 to December 31, 2016 are void for lack of factual and legal merit; and that the amount of ₱51,166,891.65 should be refunded to petitioner.

Respondent's Arguments

In his *Answer*, respondent contends that petitioner should not be allowed for the first time on appeal to attack the validity of the waivers; that assuming the Court may rule on issues raised for the first time on appeal, the *Waivers* executed are valid, petitioner was accorded due process of law, and the assessment has not yet prescribed; and that petitioner is liable for the assessed deficiency income tax, VAT, EWT, FWT and miscellaneous tax, plus interests, in the aggregate amount of ₱51,166,891.65.

Moreover, in his *Answer (to Petitioner's Supplemental Petition for Review)*, respondent likewise contends that the Court has no jurisdiction over petitioner's refund of the amount garnished; and that the waivers executed by petitioner are valid and the assessments were issued within the time prescribed by law.

RULING OF THE COURT

The present *Petition for Review* is meritorious.

The Waivers of the Defense of Prescription under the Statute of Limitations executed by petitioner are valid, extending the period to assess taxes.

Petitioner avers that the three (3)-year prescriptive period provided for by Section 203 of the NIRC of 1997, as amended, within which to assess taxpayers may be waived upon entering into an agreement in writing with respondent. However, petitioner contends that a perusal of the *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* it executed suggests the existence of patent defects in their execution. Petitioner stresses that the *Waiver* dated January 29, 2019 does not show the date when respondent accepted such waiver since the same was not signed by respondent, while the *Waiver* dated May 19, 2020 extended the period of limitations until October 31, 2020, but the FLD was issued by the BIR only on November 20, 2020 and served to petitioner on November 26, 2020. Consequently, the said *Waivers* are allegedly defective and void.

From the foregoing, petitioner argues that this Court must nullify the FDDA for being barred by prescription as respondent's right to assess deficiency taxes against it for TY 2016 had not been extended because the purported *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* executed by it and respondent were formally flawed. Therefore, petitioner asserts that respondent's right to assess the former with deficiency internal revenue taxes for TY 2016 have already prescribed.

On the other hand, respondent submits that the *Waivers* were validly executed. According to respondent, contrary to petitioner's allegation that the *Waivers* do not contain any date of acceptance, respondent points out that upon perusal of the BIR Records, all the *Waivers* contained dates of acceptance. Respondent stresses that petitioner executed three (3) *Waivers*. By virtue of these *Waivers*, petitioner was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. After enjoying the benefits of the alleged defective *Waivers*, petitioner now assails the validity of the same when the consequences of the same are not in its favor. Clearly, if the consequences of the alleged defective *Waivers* are in its favor, petitioner would not assail it. Moreover, according to respondent, this act of assailing the validity of the *Waivers* after benefiting therefrom clearly is bad faith on the part of petitioner.

Moreover, respondent submits that the execution of the *Waivers* in this case was made after the advent of Revenue Memorandum Order (RMO) No. 14-2016, hence, is governed by this RMO instead of RMO No. 20-90. Respondent claims that RMO No. 14-2016 relaxes the strict requirements provided under the previous RMO No. 20-90 and expressly states that the waiver need not be in the form provided in RMO No. 20-90. In fact, the said RMO merely requires that the *Waiver* should be executed before the expiration of the period to assess, and it should contain the date of execution, the signature of the taxpayer, and the expiry date of the extended period.

Respondent also avers that on March 2020, Proclamations 929 and 922 declared a state of calamity and National Emergency throughout the Philippines due to the COVID-19 pandemic. With this, respondent has issued several issuances with respect to the suspension of the running of the statute of limitations in the assessment and collection of taxes under Section 223 of the NIRC of 1997, as amended. The BIR issued Revenue Memorandum Circular (RMC) No. 34-2020 dated March 27, 2020 which suspended the running of the statute of limitations in the assessment and collection of taxes. Thereafter, Revenue Regulations (RR) No. 11-2020 dated April 29, 2020 was issued clarifying the suspension of the prescriptive period. On December 7, 2020, RMC No. 136-2020 was issued to clarify the suspension of the statute of limitations to a total of 137 days.

Respondent further claims that before the expiration of the period for assessment as provided by the *Waivers*, the BIR issued the aforementioned issuances which suspended the running of the statute of limitations with regard to making an assessment to petitioner's tax liabilities. The *Waivers* executed were valid until October 31, 2020. Pursuant to RMC No. 136-2020, the statute of limitations was suspended for a total of one hundred thirty-seven (137) days. Thus, this resulted to the extension of the validity of the *Waivers* by said number of days or until March 17, 2021. Hence, when respondent issued and served the FAN/FLD to petitioner, the assessment has not yet prescribed under the NIRC.

We partly agree with respondent.

The period of limitation in the assessment of taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads as follows:

> 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-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**. *(Emphases and underscoring added)*

Under the foregoing provision, internal revenue taxes must be assessed within three (3) 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. Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective,[65] as it is already time-barred.[66]

However, an exception to the three (3)-year prescriptive period on the assessment of taxes is Section 222(b) of the NIRC of 1997, as amended, which provides as follows:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to**

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[65] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),* G.R. No. 212825, December 7, 2015.

[66] *Universal Weavers Corporation vs. Commissioner of Internal Revenue*, G.R. No. 233990, May 12, 2021.

> **its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.**
>
> xxx xxx xxx. *(Emphasis added)*

The above provision authorizes the extension of the original three (3)-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collection of taxes due is extended to an agreed upon date.[67] To be sure, it must be emphasized that a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[68]

Records show that petitioner executed three (3) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code*, with the following details:

Waiver	Exhibit No.	Date Executed	Extended Date of Prescription	Petitioner Signatory	BIR Signatory	Date Accepted
First Waiver	"P-45"[69]	January 29, 2019	December 31, 2019	Mr. Ramon S. Monzon, President & CEO	No signature	No date
	"R-5"[70]				Atty. Bryan Francis G. Lim GS, Regular LT Audit Division II	January 31, 2019
Second Waiver	"P-45-1", "R-6"[71]	November 6, 2019	April 30, 2020	Mr. Ramon S. Monzon, President and CEO	Atty. Bryan Francis G. Lim GS, Regular LT Audit Division II	November 29, 2019
Third Waiver	"P-46"[72]	May 19, 2020	October 31, 2020	Mr. Ramon S. Monzon, President and CEO	Atty. Bryan Francis G. Lim GS, Regular LT Audit Division II	June 8, 2020
	"R-7"[73]					No date

At the time of the execution of the said *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* on January 29, 2019, November 6, 2019, and May 19, 2020, RMO No. 14-2016[74] is the relevant issuance of the BIR setting forth the guidelines in the execution

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[67] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[68] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[69] Docket, Vol. III, p. 1325.
[70] BIR Records (Exhibit "R-15"), p. 1076.
[71] BIR Records (Exhibit "R-15"), p. 1075.
[72] Docket, Vol. III, p. 1326.
[73] BIR Records (Exhibit "R-15"), p. 406.
[74] SUBJECT: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, As Amended.

of waivers of the defense of prescription under Section 222 of the NIRC of 1997, as amended, amending RMO No. 20-90[75] and Revenue Delegation Authority Order (RDAO) No. 05-01,[76] to wit:

III. Guidelines

1. The waiver **may be, but not necessarily**, in the form prescribed by RMO No. 20-90 or RDAO No. 05-01. **The taxpayer's failure to follow the aforesaid forms does not invalidate the executed waiver, for as long as the following are complied with:**

    a) **The Waiver** of the Statute of Limitations under Section 222 (b) and (d) shall be **executed before the expiration of the period to assess** or to collect taxes. **The date of execution shall be specifically indicated in the waiver**;

    b) **The waiver shall be signed by the taxpayer** himself or his duly authorized representative. **In the case of a corporation, the waiver must be signed by any of its responsible officials**;

    c) **The expiry date of the period agreed upon to assess**/collect **the tax after the regular three-year period of prescription should be indicated**.

2. Except for waiver of collection of taxes which shall indicate the particular taxes assessed, the waiver need not specify the particular taxes to be assessed nor the amount thereof, and it may simply state "all internal revenue taxes" considering that during the assessment stage, the Commissioner of Internal Revenue or her duly authorized representative is still in the process of examining and determining the tax liability of the taxpayer.

3. Since the taxpayer is the applicant and the executor of the extension of the period of limitation for its benefit in order to submit the required documents and accounting records, the taxpayer is charged with the burden of ensuring that the waivers of statute of limitations are validly executed by its authorized representative. The authority of the taxpayer's representative who participated in the conduct of audit or investigation shall not be thereafter contested to invalidate the waiver.

4. The waiver may be notarized. However, it is sufficient that the waiver is in writing as specifically provided by the NIRC, as amended.

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[75] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

[76] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

5. Considering that the waiver is a voluntary act of the taxpayer, the waiver shall take legal effect and be binding on the taxpayer upon its execution thereof.

6. It shall be the **duty of the taxpayer to submit** **its** **duly executed waiver** **to the Commissioner of Internal Revenue or official/s previously designated in existing issuances or the concerned revenue district officer or group supervisor as designated in the Letter of Authority**/Memorandum of Assignment **who shall then indicate acceptance by signing the same. Such waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect. The taxpayer shall have the duty to retain a copy of the accepted waiver.**

7. Note that there shall only be two (2) material dates that need to be present on the waiver:

   a) The date of execution of the waiver by the taxpayer or its authorized representative; and

   b) The expiry date of the period the taxpayer waives the statute of limitations.

8. Before the expiration of the period set on the previously executed waiver, the period earlier set may be extended by subsequent written waiver made in accordance with this Order. *(Emphases and underscoring added)*

Based on the foregoing provisions, RMO No. 14-2016 does not require the waiver be in the form prescribed by RMO No. 20-90 or RDAO No. 05-01, and merely requires that the waiver shall be executed before the expiration of the period to assess, that the waiver indicates/contains the date of execution, the signature of the taxpayer, the expiry date of the agreed upon extended period, signature of the respondent, and accepted prior to the expiration of the period to assess.

It must be emphasized that although RMO No. 14-2016 provides that there are only two (2) material dates that need to be present on the waiver, *i.e.*, (a) the date of execution of the waiver by the taxpayer or its authorized representative; and (b) the expiry date of the period the taxpayer waives the statute of limitations, the date of acceptance of respondent or his authorized revenue officials is likewise material. The Supreme Court has explained, in *Commissioner of Internal Revenue vs. FMF Development Corporation*,[77] that the date of acceptance of respondent must reflect in the waiver to determine whether it

[77] G.R. No. 167765, June 30, 2008.

was validly accepted before the expiration of the original period or the period agreed upon in a subsequent waiver.[78]

Moreover, pursuant to RMO No. 14-2016, it is the duty of the taxpayer to submit its duly executed waiver to respondent or official/s previously designated in existing issuances or the concerned revenue district officer or concerned group supervisor as designated in the LOA/Memorandum of Assignment who shall then indicate acceptance by signing the same and that the taxpayer shall have the duty to retain a copy of the accepted waiver.

Here, petitioner's copy of the first *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* executed on January 29, 2019,[79] does not show the acceptance of the *Waiver* by respondent as the "ACCEPTED BY:" portion of the said *Waiver* was not signed and dated by respondent. However, this copy differs from respondent's copy of the first *Waiver of the Defense of Prescription* were the same was signed by Atty. Bryan Francis G. Lim, the group supervisor as designated in the LOA, and was accepted on January 31, 2019.[80]

Considering that RMO No. 14-2016 provides that the taxpayer shall have the duty to retain a copy of the accepted waiver, petitioner should have followed up on whether the waiver was accepted or not and requested for a copy of the accepted waiver. But petitioner failed to do so, and even executed two (2) more *Waivers of the Defense of Prescription.* Hence, the Court finds that the first *Waiver* is valid, as the same contains the date of acceptance and signature of the group supervisor as designated in the LOA.

In this case, the earliest expiration of the three (3)-year prescriptive period for assessing taxes for TY 2016 pertains to the assessment of deficiency EWT and FWT for the month of January 2016, as the filing of the withholding tax returns must be made within ten (10) days after the end of each month,[81] to wit:

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[78] *Universal Weavers Corporation vs. Commissioner of Internal Revenue, supra.*
[79] Docket, Vol. III, Exhibit "P-45", p. 1325.
[80] BIR Records (Exhibit "R-15"), Exhibit "R-5", p. 1076.
[81] Section 2.58(A)(2)(a) of Revenue Regulations No. 2-98, as amended, states:
"Sec. 2.58. *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.* —

(A) *Monthly return and payment of taxes withheld at source.* –

Kind of Tax & Period	Actual date of filing of the pertinent tax return	Reckoning date of the three-year prescriptive period[82]	End of the three-year prescriptive period
EWT – January 2016	February 10, 2016[83]	February 10, 2016	February 10, 2019
FWT – January 2016	February 4, 2016[84]	February 10, 2016	February 10, 2019

Considering that the first *Waiver of the Defense of Prescription* was executed on January 29, 2019[85] and accepted on January 31, 2019,[86] extending the period to assess until December 31, 2019, then, the first *Waiver* was executed and accepted before the expiration of the original three (3)-year period, and thus, is valid.

Subsequently, petitioner executed another *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* on November 6, 2019, and accepted on November 29, 2019, or before the expiration of the period previously agreed upon–December 31, 2019, further extending the period to assess until April 30, 2020.[87]

Thereafter, petitioner executed another *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* further extending the period to assess until October 31, 2020.[88] The same was executed on May 19, 2020, and accepted by respondent on June 8, 2020,[89] which is beyond the expiration of the period previously agreed upon–April 30, 2020.

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xxx xxx xxx

(2) WHEN TO FILE —

(a) **For both large and non-large taxpayers, the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements)[,] **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." *(Emphases added)*

[82] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[83] Docket, Vol. II, Exhibits "P-20" and "P-20-1" to "P-20-2", pp. 1174 to 1178.
[84] *Id.*, Vol. II, Exhibit "P-32", p. 1225.
[85] *Id.*, Vol. III, Exhibit "P-45", p. 1325; BIR Records (Exhibit "R-15"), Exhibit "R-5", p. 1076.
[86] BIR Records (Exhibit "R-15"), Exhibit "R-5", p. 1076.
[87] BIR Records (Exhibit "R-15"), Exhibits "P-45-1" and "R-6", p. 1075.
[88] Docket, Vol. III, Exhibit "P-46", p. 1326; Exhibit "R-7", BIR Records (Exhibit "R-15"), p. 406.
[89] *Id.*, Vol. III, Exhibit "P-46", p. 1326.

However, pursuant to Section 4(z) of Republic Act No. 11469 dated March 24, 2020,[90] the statutory deadlines and timeliness for the filling and submission of any document were extended, to wit:

> SEC. 4. *Authorized Powers.* – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:
>
> xxx xxx xxx
>
> (z) **Move statutory deadlines and timelines for the filing and submission of any document**, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine. *(Emphasis added)*

To implement the above law, several RR/RMCs were issued by the BIR, with respect to the suspension of the running of the statute of limitations in the assessment of taxes under Sections 203 and 222, pursuant to Section 223, of the NIRC of 1997, as amended, to wit:

Issuance	Date	Subject
RR No. 7-2020	March 27, 2020	Implementing Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act", particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes
RMC No. 34-2020	March 27, 2020	SUSPENDING THE RUNNING OF THE STATUTE OF LIMITATIONS IN THE ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF A NATIONAL EMERGENCY FROM THE CORONA VIRUS DISEASE 2019 (COVID-19) SITUATION
RMC No. 39-2020	April 7, 2020	Further Extension of the Due Dates for the Submission and/or Filing of Certain Documents and/or Returns as well as Payment of Certain Taxes under Revenue Regulations No. 7-2020

[90] AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES, otherwise known as *"Bayanihan to Heal As One Act"*.

RR No. 10-2020	April 9, 2020	Amends Section 2 of Revenue Regulations No. 7-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RR No. 11-2020	April 29, 2020	Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RR No. 12-2020	May 14, 2020	Amends Revenue Regulations No. 10-2020, as amended by Revenue Regulations No. 11-2020, relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act"
RMC No. 74-2020	July 15, 2020	Amending and/or Clarifying Certain Provisions of RMC 34-2020
RMC No. 77-2020	July 30, 2020	Clarifying ECQ as Referred to under RMC No. 74-2020

On the basis of the foregoing issuances, the running of the statute of limitations under Sections 203 and 222, pursuant to Section 223[91] of the NIRC of 1997, as amended, was suspended from March 16, 2020 and for sixty (60) days after the lifting of the quarantine.

From May 1, 2020 to May 15, 2020, the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases continued to place the National Capital Region (NCR) under Enhanced Community Quarantine (ECQ).[92] On May 15, 2020, IATF Resolution No. 37 was issued placing all Highly Urbanized Cities (HUCs) of the NCR and the Municipality of Pateros under Modified Enhanced Community Quarantine (MECQ) until May 31, 2020, without prejudice to the declaration of localized Enhanced Community Quarantine in critical areas. All HUCs of the NCR and the municipality of

[91] "SEC. 223. *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; xxx".

[92] IATF Resolution Nos. 28 and 29 dated April 23, 2020 and April 27, 2020, respectively.

Pateros was then placed under General Community Quarantine beginning June 1, 2020.[93]

Hence, the running of the statute of limitations was suspended from March 16, 2020 to May 31, 2020 [seventy-seven (77) days] and for sixty (60) days thereafter, or for a total of one hundred thirty-seven (137) days.

The computation of the period of suspension was clarified in RMC No. 136-2020,[94] issued on December 7, 2020, which provides as follows:

> Item 32 in the matrix provided under RR No. 11-2020 pertains to the suspension of the statute of limitation provided under Sections 203 and 222 of the Tax Code. The said matrix provided that the suspension shall start from March 16, 2020, when the state of emergency was declared due to COVID-19 virus until sixty (60) days after the lifting of the quarantine. With such suspension, the counting of the three (3)-year prescriptive period to assess and the five (5)-year period to collect, shall exclude the number of days covered by the period of suspension, which is a total of one hundred thirty-seven (137) days.
>
> To illustrate:

	Original Prescriptive Date	**New Prescriptive Date**
Case 1	March 15, 2020	March 15, 2020
Case 2	March 16, 2020	July 31, 2020
Case 3	April 15, 2020	August 30, 2020
Case 4	June 15, 2020	October 30, 2020
Case 5	July 15, 2020	November 29, 2020
Case 6	April 15, 2021	August 30, 2021

Applying the said RMC, if the original prescriptive date is April 30, 2020, which, in this case, was the agreed upon extended period to assess under the Second *Waiver*, then, the new prescriptive date is September 14, 2020. Thus, respondent has until September 14, 2020 to make an assessment or for the parties to execute another waiver extending the said period to assess before the expiration thereof. Considering that the parties executed the Third *Waiver* on May 19, 2020, and accepted by respondent on June 8, 2020,[95] which is before

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[93] IATF Resolution No. 41 dated May 29, 2020.
[94] SUBJECT: Clarification on the Suspension of the Statute of Limitations Provided Under Revenue Regulations (RR) No. 11-2020.
[95] Docket, Vol. III, Exhibit "P-46", p. 1326.

September 14, 2020, then, the said Third *Waiver* validly extended the period to assess until October 31, 2020.

However, as pointed out by petitioner, respondent issued the FLD only on November 20, 2020 and served to petitioner on November 26, 2020,[96] which is beyond October 31, 2020, or the extended period agreed upon to assess.

In the FDDA dated January 19, 2022, respondent explained that the FLD received on November 26, 2020 was well within the validity of the *Waivers* as extended by the suspension of the statute of limitations, to wit:[97]

> On November 6, 2019, you further extended the waiver up to April 30, 2020. While the said second waiver is still valid, Enhanced Community Quarantine brought by the pandemic was imposed which prohibited BIR from making and serving Assessment Notices and Warrants to enforce and collect deficiency taxes. This lead the BIR to issue RMC No. 34-2020 dated March 27, 2020 suspending the running of the statute of limitations in the assessment and collection of taxes pursuant to Section 223 of the NIRC. This was further strengthened by the RR 11-2020 dated April 29, 2020 stating therein that the suspension shall start from March 16, 2020 until 60 days after lifting of the quarantine. RMC 136-2020 dated December 7, 2020 was issued to clarify the suspension of the Statute of Limitations to a total of 137 days. In effect the waiver until April 30, 2020 was extended to September 14, 2020. On May 19, 2020, in the middle of ECQ, you executed another waiver to extend the period of prescription up to October 31, 2020. While the Waivers were valid until October 31, 2020, the statute of limitations were suspended for a total of 137 days pursuant to RMC 136-2020, resulting to the extension of the validity of the waivers by said number of days or until March 17, 2021. The Formal Letter of Demand was received on November 26, 2020, well within the validity of the waivers as extended by the suspension of the statute of limitations.

However, it was erroneous for respondent to apply the one hundred thirty-seven (137) days suspension *twice*, as this period pertains to the number of days when the NCR was placed under ECQ and MECQ from March 16, 2020 to May 31, 2020, plus sixty (60) days. Notably the one hundred thirty-seven (137) days suspension was already added to April 30, 2020, the expiration of the period to assess under the Second *Waiver*,

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[96] *Id.*, Vol. II, Par. A.6, JSFI, p. 820; BIR Records (Exhibit "R-15"), Exhibits "P-50" and "R-12", "R-12-1" to "R-12-6", pp. 1063 to 1074.

[97] *Id.*, Vol. III, Exhibit "P-53", pp. 1564 to 1574, at p. 1569; BIR Records (Exhibit "R-15"), Exhibit "R-14", pp. 1392 to 1397, at p. 1392.

thus, extending the period to assess until September 14, 2020. By virtue of this extended prescriptive period, it made effective the execution of the Third *Waiver* on May 19, 2020 and accepted on June 8, 2020,[98] further extending the period to assess until October 31, 2020. Hence, it was absurd for respondent to add another one hundred thirty-seven (137) days from October 31, 2020, as the said one hundred thirty-seven (137)-day suspension made possible the extension of the period to assess until October 31, 2020.

Nevertheless, respondent failed to consider that during the effectivity of the Third *Waiver*, which was executed on May 19, 2020, and accepted by respondent on June 8, 2020, extending the period to assess until October 31, 2020, NCR was placed under MECQ again from August 4, 2020 to August 18, 2020,[99] or a total of fifteen (15) days. Pursuant to RR No. 11-2020, as amended by RR No. 12-2020, and as clarified in RMC No. 93-2021,[100] the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while ECQ and/or MECQ is in effect, including any extension/s thereof, and for sixty (60) days thereafter. Hence, the running of the statute of limitations was again suspended for fifteen (15) days plus sixty (60) days, or for a total of seventy-five (75) days.

Under the Third *Waiver*, the extended agreed upon prescriptive period to assess ends on October 31, 2020, adding seventy-five (75) days thereto, then, the new prescriptive date is January 14, 2021. Thus, respondent had until January 14, 2021 to make an assessment.

Considering that respondent issued the FLD on November 20, 2020 and served to petitioner on November 26, 2020,[101] within the prescriptive period as provided in Sections 203 and 222(b), in relation to Section 223, of the NIRC of 1997, as amended, and Section 4(z) of RA No. 11469, as implemented by

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[98] Docket, Vol. III, Exhibit "P-46", p. 1326.
[99] Memorandum from the Executive Secretary dated August 3, 2020.
[100] SUBJECT: SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE (ECQ) AND MODIFIED ECQ (MECQ) IN THE NATIONAL CAPITAL REGION (NCR) AND OTHER AREAS OF THE COUNTRY.
[101] Docket, Vol. II, Par. A.6, JSFI, p. 820; BIR Records (Exhibit "R-15"), Exhibits "P-50" and "R-12", "R-12-1" to "R-12-6", pp. 1063 to 1074.

various RRs and RMCs above-mentioned, then respondent's right to assess has not yet prescribed.

Nevertheless, despite the validity of the *Waivers*, the same is of no moment, since all the subject tax assessments are void.

However, the subject deficiency tax assessments are void, for violation of petitioner's right to administrative due process as respondent failed to give reason(s) in the FLD for rejecting petitioner's defenses raised in its reply to the PAN.

Petitioner also contends that the deficiency assessments of the respondent against it are likewise null and void for being issued in violation of its right to due process as the FLD and FDDA were issued without due regard to its objections against the merit of the proposed deficiency assessments, considering that the issues raised in the PAN, FLD and FDDA are basically the same, except only as to the updating of the deficiency interest imposed thereon and the cancellation of the DST assessment in the FLD.

On the other hand, respondent argues that a perusal of the protest to the FLD would clearly show that these are mere rehash of all the arguments raised in the reply to the PAN which respondent had already passed upon, thus leading to the issuance of the FDDA. Respondent avers that petitioner, in its protest to the FLD offered no new documents which would merit an explanation from respondent. Thus, as the arguments raised in the protest are mere rehash of arguments that respondent had already considered, the assessments were reiterated except for the DST assessment which was removed since it was already paid by petitioner. Also, respondent contends that it cannot be said that petitioner was denied of its right to due process because it was given full opportunity to be heard, and in fact, it was able to file a protest to the assessments. Respondent claims that petitioner was apprised of and was able to avail of the remedies provided by law to refute the tax assessment against it when it filed the protest to PAN and FLD. The remedies afforded to petitioner is a clear opportunity to be heard and to refute the findings of its deficiency tax assessments. As such, procedural due process was satisfied. Therefore, the assessments are valid and not contrary to law.

On this score, We agree with respondent.

Section 228 of the NIRC of 1997, as amended, of 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 taxpayer 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.[102] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[103] 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.[104] 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.[105]

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

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

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

[105] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).

To implement the above-quoted Section 228, Section 3 of RR No. 12-99,[106] as amended by RR Nos. 18-2013[107] and 7-2018,[108] 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:
>
> xxx xxx xxx
>
> 3.1.2[109] *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> xxx xxx xxx
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> 3.1.4[110] *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx
>
> 3.1.6[111] *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*

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[106] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

[108] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[109] As renumbered pursuant to Section 2 of RR No. 7-2018.

[110] *Id.*

[111] *Id.*

> *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., et seq.* ("*Avon* case"),[112] 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.**
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> 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 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.**
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> xxx xxx xxx

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

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**.

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In *Ang Tibay v. The Court of Industrial Relations*,[113] 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.
(7) **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**.

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The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* 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 to ensure that the decision will be thought through by the decision-maker.

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113 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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Administrative due process is anchored on fairness and equity in procedure. 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. Moreover, it demands that the **party's defenses be considered** by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions**.

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The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. **Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void**. Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void**. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

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

There was clear inaction of the Commissioner at every stage of the proceedings.

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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**.

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The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter **null and void, and of no force and effect**.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

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In *Commissioner of Internal Revenue v. Reyes*,[114] **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.**

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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.*:[115]

> 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 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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> **But even as we concede the inevitability and indispensability of taxation, it is a**

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[114] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[115] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

> **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)*
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> 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 jurisprudential pronouncements, 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 respondent 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 the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

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 October 2, 2020,[116] the BIR found due from petitioner deficiency income tax, VAT, EWT, FWT, DST and miscellaneous charges (compromise penalties) in the aggregate amount of ₱67,687,897.27, computed as follows:

I. INCOME TAX		
Taxable income per ITR		389,993,774.00
Add: Adjustments/disallowances per investigation		
Undeclared Sales		68,141,399.40
Disallowed expenses due to non-withholding of tax		6,566,730.79
Adjusted taxable income per investigation		**464,701,904.19**
Basic income tax due - 30%		139,410,571.26
Less: Allowable tax credits/payments		
Income Tax payments under regular rate	102,997,723.20	
Creditable tax withheld pe return	14,000,409.00	
Total		116,998,132.20
Deficiency income tax		22,412,439.06
Add: Interest (April 16, 2017 to October 31, 2020)		10,799,725.43
TOTAL AMOUNT DUE		**33,212,164.49**
II. VALUE ADDED TAX		
Taxable receipts per return		844,928,308.33
Add: Adjustments per investigation		
Undeclared Sales		68,141,399.40
Taxable receipts per investigation		913,069,708.23
Output tax		109,568,364.99
Less: Creditable Input Tax per Audit		
Input tax carried over from previous period	5,985,967.10	
Deferred Input Tax on Capital Goods	95,875,727.11	
Input tax on current purchases	30,144,405.82	
Total Available Input Tax	132,006,100.03	
Deferred Input Tax on Capital Goods	75,917,675.25	
Others	464,146.84	55,624,277.94
VAT Due		53,944,087.05
Tax Credits and payments		45,767,119.12
Deficiency Value Added Tax		8,176,967.93
Add: Interest (January 26, 2017 to October 31, 2020)		4,298,620.84
TOTAL AMOUNT DUE		**12,475,588.77**
III. EXPANDED WITHHOLDING TAX		
Basic Deficiency Tax		589,403.35
Add: Interest (January 16, 2017 to October 31, 2020)		313,078.14
Penalties on late withholding on rental		33,507.39
TOTAL AMOUNT DUE		**935,988.88**
IV. FINAL WITHHOLDING TAX		
Basic deficiency tax		596,872.67
Add: Interest (January 16, 2017 to October 31, 2020)		317,045.68
TOTAL AMOUNT DUE		**913,918.35**
V. DOCUMENTARY STAMP TAX		
Basic deficiency tax		12,080,550.00
Add: Interest (June 6, 2016 to October 31, 2020)		7,899,686.78
TOTAL AMOUNT DUE		**19,980,236.78**

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[116] Docket, Vol. III, Exhibit "P-48", pp. 1335 to 1341; BIR Records (Exhibit "R-15"), Exhibit "R-10", pp. 1046 to 1050.

VI. MISCELLANEOUS TAX		
Total Compromise Penalties		**170,000.00**
GRAND TOTAL		**67,687,897.26**[117]

The foregoing is summarized as follows:

Tax Type	Basic	Interest	Penalties	Total
Income tax	₱ 22,412,439.06	₱ 10,799,725.43		₱ 33,212,164.49
VAT	8,176,967.93	4,298,620.84		12,475,588.77
EWT	589,403.35	313,078.14	₱33,507.39	935,988.88
FWT	596,872.67	317,045.68		913,918.35
DST	12,080,550.00	7,899,686.78		19,980,236.78
Miscellaneous Charges (Compromise Penalties)				170,000.00
Total	**₱43,856,233.01**	**₱23,628,156.87**	**₱33,507.39**	**₱67,687,897.27**

Records show that on October 19, 2020, petitioner filed its reply to the PAN dated October 16, 2020,[118] wherein it laid out its arguments and defenses against the deficiency taxes imposed by the BIR, likewise attaching thereto various supporting documents. Specifically, the following are the summary of arguments raised by petitioner therein, to wit:

I. Income Tax

A. Undeclared Sales (₱68,141,399.40) – petitioner's explanation on the amounts tagged by BIR as undeclared sales was attached as Schedule 1 of the reply;

B. Disallowed expenses due to non-withholding of tax (₱6,566,730.79) – petitioner was unable to respond to this assessment as the PAN does not state the facts on which the assessment is based; services and professional fees which were allegedly not subjected to withholding tax were not discussed in the *Details of Discrepancies* in such a way that would sufficiently inform petitioner of the legal and factual bases for the assessment and afford it an adequate opportunity to effectively respond to the assessment and adduce supporting evidence in its behalf;

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[117] Total is actually ₱67,687,897.27.
[118] Docket, Vol. III, Exhibit "P-49", pp. 1342 to 1550.

II. Value-Added Tax

Undeclared Sales (₱68,141,399.40) – refer to Schedule 1 of the reply;

III. Expanded Withholding Tax

A. Basic deficiency EWT (₱589,403.35) – petitioner was unable to respond to this assessment as the PAN does not state the facts on which the assessment is based;

B. Penalty interest on late withholding on rental (₱33,507.39) – both expense accrual and income payment took place in 2016; corresponding withholding taxes were remitted on the 11th day of the succeeding month after the rental expenses were accrued or recorded, following accrual method of accounting, which method was explained in the attached Audited Financial Statements as of December 31, 2016; petitioner likewise prepared Schedule 2 showing date of rental or use of leased goods/services and date of reporting;

IV. Final Withholding Tax (₱596,872.67) – petitioner provided its response to the income payments made to Columbia Cp Limited, Steven Song Design Lab Llc, and N2N Global Solutions Sdn Bhd; and

V. Documentary Stamp Tax (₱12,080,550.00) – there is no taxable document yet because the Deed of Absolute Sale has not yet been signed and the parties are still negotiating certain provision thereof.

However, in the FLD dated November 20, 2020,[119] petitioner was still assessed of the same exact basic deficiency tax of ₱43,856,233.01, and notably, only the total interest was adjusted or updated to ₱24,507,684.62, bringing the total amount due to ₱68,567,425.00, to wit:

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[119] BIR Records (Exhibit "R-15"), Exhibits "P-50" and "R-12", "R-12-1" to "R-12-6", pp. 1063 to 1074.

Tax Type	Basic	Interest	Penalties	Total
Income tax	₱ 22,412,439.06	₱ 11,249,202.29		₱ 33,661,641.35
VAT	8,176,967.93	4,462,608.25		12,639,576.18
EWT	589,403.35	324,898.51	₱33,507.39	947,809.24[120]
FWT	596,872.67	329,015.84		925,888.51
DST	12,080,550.00	8,141,959.73		20,222,509.73
Miscellaneous Charges (Compromise Penalties)				170,000.00
Total	**₱43,856,233.01**	**₱24,507,684.62**	**₱33,507.39**	**₱68,567,425.00**[121]

In fact, the *Details of Discrepancies* attached to the FLD merely reiterated or copied *verbatim* what are indicated in the *Details of Discrepancies* attached to the PAN.

In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the above-stated refutations and explanations made by petitioner in its reply to the PAN dated October 16, 2020—an indication that respondent or the BIR did not consider the same when it issued the subject FLD. Consequently, petitioner was left unaware on how respondent or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of petitioner's right to administrative due process.

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.

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

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, vis-à-vis Section 3.1.4 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, was violated by

[120] Total is actually ₱947,809.**25**.
[121] Total is actually ₱68,567,425.0**1**.

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.[122] Furthermore, a void assessment bears no valid fruit.[123] 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 view of the finding that the subject tax assessments are invalid, it becomes unnecessary to address the other arguments raised by the parties relative to the merit of the said tax assessments.

The refund of the garnished amount of ₱51,026,891.65, which was released/paid to the BIR, is in order.

Considering the nullity of the subject deficiency tax assessments, petitioner is entitled to the refund of the amount of ₱51,026,891.65, which was previously garnished against its RCBC account, and subsequently released/paid by RCBC to the BIR in compliance with the latter's order.[124]

However, respondent claims that the Court has no jurisdiction over petitioner's refund of the amount garnished as the latter failed to file the appropriate administrative and judicial action for the refund. Respondent contends that petitioner cannot resort to the filing of a *Supplemental Petition* for the refund of taxes it already paid. According to respondent, it should have first filed its administrative claim for refund. Respondent argues that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.

The Court disagrees.

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[122] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq., supra.*
[123] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[124] Docket, Vol. III, Exhibit "P-57", p. 1577.

In *Vda. de San Agustin vs. Commissioner of Internal Revenue*,[125] the Supreme Court allowed the refund case to prosper even without a prior administrative claim, where the taxpayer paid under protest the deficiency assessment for surcharge, interests, and other penalties and then filed a petition for review with this Court praying for the reversal of respondent's decision and refund of the amount paid under protest, citing its ruling in *Roman Catholic Archbishop of Cebu vs. The Collector of Internal Revenue*,[126] to wit:

> We agree with petitioner that Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, in providing for appeals from —
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> '(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue —
>
> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x x'; that the present action involves a disputed assessment'; because from the time petitioner received assessment nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court *a quo*, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under Section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law should not be interpreted as to result in absurdities**.'

The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax

[125] G.R. No. 138485, September 10, 2001.
[126] G.R. No. L-16683, January 31, 1962.

> court has aptly acted in taking cognizance of the taxpayer's appeal to it. *(Emphasis added)*

Although the foregoing jurisprudence involves payment under protest of the deficiency assessment, the same can be applied by analogy to the present case wherein the garnished amount was paid/released to the BIR. Under the circumstances of this case, the Court finds that filing a prior administrative claim for refund is unnecessary, and that this Court aptly took cognizance of the *Supplemental Petition for Review* praying for the refund of the garnished amount.

Moreover, it is erroneous for respondent to insist on the doctrine of exhaustion of administrative remedies. To be sure, the doctrine of exhaustion of administrative remedies is not absolute as it admits of exceptions, including, among others, when to require exhaustion of administrative remedies would be unreasonable.[127] The filing of an administrative claim in this case would be an exercise in futility, as it would in effect require petitioner to go through a useless and needless ceremony that would only delay the disposition of the case, for respondent would certainly disallow the claim for refund, as allowing the refund would contradict his very action of denying the protest against the assessment and ordering the payment/release of the garnished amount.

Furthermore, to avoid multiplicity of suits and unnecessary difficulties or expenses, the Supreme Court, in *Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals*,[128] held that it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable, to wit:

> Thus, **to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable**.

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[127] *Maglalang vs. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 190566, December 11, 2013.
[128] G.R. No. 106611, July 21, 1994.

> In fact, as the Court of Tax Appeals itself has heretofore conceded, it would be only just and fair that the taxpayer and the Government alike be given equal opportunities to avail of remedies under the law to defeat each other's claim and to determine all matters of dispute between them in one single case. It is important to note that in determining whether or not petitioner is entitled to the refund of the amount paid, it would be necessary to determine how much the Government is entitled to collect as taxes. This would necessarily include the determination of the correct liability of the taxpayer and, certainly, a determination of this case would constitute *res judicata* on both parties as to all the matters subject thereof or necessarily involved therein.

In sum, considering that respondent has erroneously/illegally collected the garnished amount, the Court finds that the refund of the same, in the amount of ₱51,026,891.65, is in order.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* and *Supplemental Petition for Review* are **GRANTED**.

Accordingly, the FLD, including the *Assessment Notices*, all dated November 20, 2020, assessing petitioner for deficiency taxes for the period January 1, 2016 to December 31, 2016 is **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA, including the *Assessment Notices*, all dated January 19, 2022, assessing petitioner for deficiency income tax, VAT, EWT, FWT, and miscellaneous charges for the period January 1, 2016 to December 31, 2016, in the total amount of **₱51,166,891.65**, inclusive of interests, is **REVERSED** and **SET ASIDE**.

Moreover, respondent is **ORDERED TO REFUND** petitioner the amount of **₱51,026,891.65**, which represents the garnished amount paid/released by RCBC to respondent or the BIR during the pendency of this case.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice