REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2610** (CTA Case No. 9779)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
ATENEO DE DAVAO UNIVERSITY, *Respondent.*	Promulgated: MAY 24 2024 1:26 pm

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RESOLUTION

CUI-DAVID, J.:

This resolves petitioner's *Motion for Reconsideration Re: Decision dated 20 December 2023*[1] filed on January 12, 2024, with respondent's *Comment (Re: Motion for Reconsideration dated January 12, 2024)*.[2]

Petitioner prays for the reversal and setting aside of the Decision promulgated on December 20, 2023 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated September 23, 2021, and the Resolution dated April 12,

[1] *En Banc* (*EB*) Docket, pp. 127-143.
[2] *Id.*, pp. 152-160; Division Docket – Vol. II, pp. 1070-1094.

2022 of this Court's First Division in CTA Case No. 9779 are **AFFIRMED**.

SO ORDERED.

Petitioner argues that the EWT deficiency assessment is valid because the Formal Letter of Demand and Assessment Notices (FLD/FAN) are compliant with the basic requirements under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as implemented by Revenue Regulations (RR) No. 12-99, specifically Section 3.1.4 thereof, as they state the facts, law, rules, and regulations on which the assessment was based. In fact, respondent was able to formulate an intelligent protest, appeal to the CIR, and explain its position based on the FLD/FAN.

Petitioner submits that the cases of *Commissioner of Internal Revenue v. Spouses Magaan* (*Magaan*) [3] and *Commissioner of Internal Revenue v. Yumex Philippines Corporation* (*Yumex*)[4] are inapplicable. *Magaan* could not be retroactively applied because the FLD/FAN was served to respondent on July 29, 2009, while *Magaan* was rendered only on May 3, 2021. Meanwhile, the factual circumstances in *Yumex* reveal that no Notice of Informal Conference (NIC) and Preliminary Assessment Notice (PAN) were issued to the taxpayer before the issuance of FAN as opposed to this case where a NIC and PAN were issued to respondent.

Petitioner further argues that the period to assess the EWT has not yet prescribed pursuant to Section 222 (a) of the NIRC of 1997. Since there was a substantial underpayment of 73% of respondent's supposed VATable income, the 10-year extraordinary period of prescription to assess respondent applies. Pursuant to the case of *Aznar v. Commissioner of Internal Revenue*,[5] the 10-year prescriptive period to assess would apply to all false returns, whether done intentionally or not.

Respondent's arguments

Respondent contends that the law clearly provides that an assessment must sufficiently state in writing the facts and the law on which it is based; otherwise, the assessment shall be

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[3] G.R. No. 232663, May 3, 2021.
[4] G.R. No. 222476, May 5, 2021.
[5] G.R. No. L-20569, August 23, 1974.

void. This requirement assures the taxpayer that it is informed of the legal and factual basis of the assessment and ensures that its right to due process is protected.

Respondent submits that *Magaan* was not the first time the Supreme Court invalidated a deficiency tax assessment because of the failure to state the factual and legal basis of the assessment. The Supreme Court had previously ruled in *Commissioner of Internal Revenue v. Enron Subic Power Corporation*[6] and *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* [7] that deficiency tax assessments without any bases of the law and facts on which they are based are void.

The Supreme Court also held in *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*[8] that even if the taxpayer was able to protest the formal assessment, such does not denigrate the fact that there was a violation of due process.

Respondent avers that prescription is reckoned on a per tax type basis; and so, petitioner cannot apply the extraordinary prescriptive period on its right to assess respondent of the deficiency EWT on the alleged substantial under-declaration of respondent's income in its income tax and VAT returns. [9] Respondent adds that no allegation of fraud was shown to justify the application of the extraordinary 10-year prescriptive period.[10]

The motion lacks merit.

As discussed by the Court, it is imperative under Section 228 of the NIRC of 1997, as amended, that the taxpayers are informed in writing of the law and the facts on which the assessment is made. Further, Section 3.1.4 of RR No. 12-99,[11] which implements the statute, provides that the FLD/FAN must be accompanied by details of discrepancy stating the basis of the assessment. Unfortunately, apart from the breakdown of deficiency taxes, no legal and factual basis can be seen at all in the subject FLD/FAN.

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[6] G.R. No. 166387 (Resolution), January 19, 2009.
[7] G.R. No. 197515, July 2, 2014.
[8] G.R. No. 172598, December 21, 2007.
[9] Par. 17, Comment, *id.*, p. 86.
[10] Par. 18, Comment, *id.*, pp. 86-87.
[11] 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, September 6, 1999.

While *Yumex* has different factual circumstances, it may still be applied analogously to this case since there can be no substantial compliance with the due process requirement when the BIR completely ignored Section 228 of the Tax Code and RR No. 12-99 by issuing the FLD/FAN without any basis.

It is irrelevant that respondent was able to submit an "intelligent protest." It is still undeniable that petitioner violated respondent's right to due process by issuing the FLD/FAN without any explanation. A taxpayer, upon receipt of the FLD/FAN lacking any basis, would be at a loss as to how to respond specifically to the nonexistent BIR's findings. It is settled that an assessment that fails to *strictly* comply with the due process requirements set forth in Section 228 of the Tax Code and RR No. 12-99 is void and produces no effect.[12]

As regards the prescription, the Court already settled the matter in its assailed Decision, to wit:

> ...[A]s aptly found by the Court in Division, a scrutiny of the PAN and FLD/FAN reveals that there was no allegation of fraud nor any of the exceptions under Section 222 above to justify the application of the extraordinary ten (10)-year prescriptive period to assess deficiency taxes. Besides, only a 25% surcharge and not the 50% "fraud" surcharge was imposed on both the Deficiency Income Tax and Deficiency Withholding Tax, and no surcharge was imposed on the Deficiency VAT.
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> Neither did petitioner submit any proof before the Court in Division that the returns filed by respondent were false or fraudulent with intent to evade correct payment of taxes.
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> We cannot conclude as true petitioner's allegation that there is substantial under-declaration of sales in respondent's VAT and Income Tax Returns without anything to support such an allegation. The mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. The fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.[13]
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> Thus, finding no reason to apply the exception, the instant case falls under the general rule and should, therefore, be assessed within three (3) years from the date of actual filing

[12] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

[13] *Commissioner of Internal Revenue v. Javier*, G.R. No. 78953, July 31, 1991, cited in *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021.

> of the tax returns or from the last day prescribed by law for the filing of such return, whichever comes later.

With the foregoing conclusion, the Court *En Banc* finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration Re: Decision dated 20 December 2023* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I reiterate my Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice