REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

TITANIUM CORPORATION, *Petitioner,*	**CTA CASE NO. 9644**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated:
	NOV 1 1 2020 10:40 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review prays that after due proceedings, judgment be rendered ordering respondent Commissioner of Internal Revenue or his duly authorized representative to cancel and set aside the Formal Letter of Demand (FLD) dated December 17, 2014 and the Final Decision on Disputed Assessment (FDDA) dated June 29, 2017, for deficiency income tax, value-added tax (VAT), and withholding tax – expanded (EWT), for taxable year ended December 31, 2011, for lack of legal and factual bases.[1]

THE PARTIES

Petitioner Titanium Corporation is a domestic corporation duly organized under Philippine laws, with principal office address at 733 Wood Street Malibay, Pasay City.[2] It was registered with the Bureau of Internal Revenue (BIR) since June 8, 1996, and was issued Tax Identification No. 000-826-366-000.[3]

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[1] Summary of the Case, Pre-Trial Order dated April 17, 2018, Docket – Vol. 2, p. 730.
[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 251.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 251.

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue, vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws. He may be served with summons and other processes of this Court at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon City.[4]

THE FACTS

The Letter of Authority (LOA) dated November 16, 2012 with No. LOA-051-2012-00000369 / SH: eLA201100013570 was issued to Petitioner by the BIR-Revenue District No. 51 – Pasay City. Under the said LOA, Revenue Officer (RO) Marilyn D. Guerzon and Group Supervisor (GS) Arnold Rase were authorized to conduct a tax audit of Petitioner for possible deficiency internal revenue tax liabilities for taxable year ended December 31, 2011.[5]

On November 28, 2014, Petitioner received from the BIR the Preliminary Assessment Notice (PAN) dated November 24, 2014. Under the PAN, Petitioner was assessed deficiency internal revenue taxes for taxable year December 31, 2011.[6]

On December 12, 2014, Petitioner filed with the BIR its Reply dated December 12, 2014.[7]

Petitioner received a copy of the Formal Assessment Notice (FAN) dated December 17, 2014 on even date, which assessed Petitioner deficiency internal revenue taxes for taxable year ended December 31, 2011, in the total aggregate amount of ₱7,801,037.24, including deficiency interest.[8]

On January 7, 2015, Petitioner filed its Protest Letter dated January 9, 2014.[9]

On July 6, 2017, Petitioner received from the BIR the assailed FDDA dated June 29, 2017, signed by BIR Regional Director Glen A. Geraldino of Revenue Region No. 8 – Makati, assessing Petitioner deficiency income tax, VAT, and EWT, for tax year 2011, in the aggregate amount of ₱9,216,244.96,[10] broken down as follows:

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[4] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 11 and 214, respectively.
[5] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, pp. 251 to 252; Exhibit "P-35", Docket – Vol. 2, p. 893; Exhibit "R-2", BIR Records, p. 2.
[6] Par. 6, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibit "P-38", Docket – Vol. 2, pp. 897 to 902.
[7] Par. 7, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibits "P-39" and "R-7", BIR Records, pp. 463 to 467.
[8] Par. 8, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibits "P-40" and "R-8", BIR Records, pp. 428 to 431.
[9] Exhibits "P-41" and "R-9", BIR Records, pp. 468 to 472.
[10] Par. 9, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibit "P-43", Docket – Vol. 1, pp. 32 to 38; Exhibit "R-14", BIR Records, pp. 529 to 533.

Type	*Basic*	*Interest*	*Total*
Income tax	₱2,223,054.60	₱2,341,211.47	₱4,564,266.07
VAT	1,998,646.28	2,193,582.73	4,192,229.01
EWT	218,614.88	241,135.21	459,750.09
		Total	**₱9,216,245.17**

On August 7, 2017, Petitioner filed the instant Petition for Review.[11]

Respondent filed his Answer on October 13, 2017.[12] As part of his special and affirmative defenses, he alleged that:

a) the right of the BIR to issue the FAN with attached Details of Discrepancies has not yet prescribed, citing the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[13] where it was held that the period between the request for investigation and the revised assessment should be subtracted from the total prescriptive period, hence once the assessment had been reconsidered at the taxpayer's instance, the period for collection should begin to run from the date of the of the reconsidered or modified assessment;

b) the grant need not be express, but may be implied from the acts of the BIR Commissioner or authorized BIR official in response to the request for investigation;

c) Section 3.1.5, paragraph 4 of Revenue Regulations (RR) No. 12-99 authorizes the suspension of the prescriptive period for assessment or collections of taxes in the case of disputed assessments;

d) Petitioner's declarations in its tax returns were deficient and did not disclose the truth regarding the correct amount of income and sales subject to withholding and VAT, rendering it within the purview of "false returns" and meriting a ten (10) year prescriptive period from discovery of the falsity;

e) Due Process mandated under Section 228 of the NIRC, as implemented by RR No. 12-99 was implemented in the issuance of the PAN, FAN, and FDDA, and Petitioner was duly appraised of the factual and legal basis thereof through the issuance of the Details of Discrepancies attached to the PAN, FAN and FDDA which were issued in accordance with existing law and regulations;

[11] Docket – Vol. 1, pp. 10 to 31.
[12] Docket – Vol. 1, pp. 214 to 225.
[13] *Id.* citing G.R. No. 139736, October 17, 2005.

f) The imposition of deficiency interest on all taxes is authorized under the NIRC; and

g) Assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official dutes, an assessment will not be disturbed.

Respondent transmitted the BIR Records for the instant case on November 9, 2017.[14]

The pre-trial conference was scheduled and held on March 6, 2018.[15] Prior to such date, Respondent's Pre-Trial Brief and Petitioner's Pre-Trial Brief were separately filed on March 1, 2018.[16]

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on March 21, 2018.[17] In the Pre-Trial Order dated April 17, 2018,[18] the said JSFI was, in effect, approved and adopted by this Court, and Pre-Trial was deemed terminated.

During trial, Petitioner presented documentary and testimonial evidence. As for its testimonial evidence, Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Melvin G. Ribot,[19] Petitioner's Tax Specialist; and (2) Mr. Garry S. Pagaspas,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

Notably, the ICPA Report was submitted on April 11, 2018.[22]

On November 28, 2018, Petitioner filed its Formal Offer of Evidence.[23] However, no comment was filed thereon by Respondent.[24] In the Resolution

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[14] Docket – Vol. 1, p. 233.
[15] *Notice of Pre-Trial Conference* dated October 24, 2017, Docket – Vol. 1, pp. 227 to 228; Minutes of the hearing held on, and Order dated, March 6, 2018, Docket – Vol. 1, pp. 294 and 249 to 250.
[16] Docket – Vol. 1, pp. 246 to 248, and 266 to 275, respectively.
[17] Docket – Vol. 1, pp. 251 to 257.
[18] Docket – Vol. 2, pp. 730 to 736.
[19] Exhibit "P-50", Docket – Vol. 2, pp. 753 to 767; Minutes of the hearing held on, and Order dated, June 4, 2018, Docket – Vol. 3, pp. 944 to 945; Exhibit "P-53", Docket – Vol. 3, pp. 1033 to 1038; Minutes of the hearing held on, and Order dated, October 11, 2018, Docket – Vol. 3, pp. 1063 to 1065.
[20] Exhibit "P-52", Docket – Vol. 3, pp. 953 to 967; Minutes of the hearing held on, and Order dated, July 2, 2018, Docket – Vol. 3, pp. 1017 to 1018.
[21] Oath of Commission dated March 6, 2018, Docket – Vol. 1, p. 295; Minutes of the hearing held on, and Order dated, March 6, 2018, Docket – Vol. 1, pp. 294, and 249 to 250, respectively.
[22] Docket – Vol. 1, pp. 263 to 310.
[23] Docket – Vol. 3, pp. 1071 to 1444; Docket – Vol. 4, pp. 1445 to 1944; Docket – Vol. 5, pp. 1945 to 2346.
[24] Records Verification dated January 10, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 5, p. 2353.

dated February 19, 2019,[25] the Court admitted Petitioner's Exhibits, *except* for the following:

1) Exhibits "P-3" and "P-4-A", for failure to submit the originals for comparison;
2) Exhibit "P-4-C", for not being found in the records of the case and for failure to identify;
3) Exhibits "P-29", "P-41.6", "P-41.7", "P-41.8", "P-41.9", "P-41.10", "P-41.11", and "P-41.14"; and ICPA Exhibits "P-53.3204", "P-53.3205", "P-53.3207", "P-53.3252", "P-53.3535", "P-53.3536", "P-53.3537", "P-53.3581", "P-53.3582", "P-53.38.21", "P-53.3822", "P-53.3823", "P-53.3824", "P-53.3827", "P-53.3830", "P53.3834", "P-53.3835", "P-53.6116", "P-53.6117", "P-53.6118", "P-53.7250", "P-53.8250", "P-53.8805", "P-53.9293", "P-53.9915", "P-53.9916", "P-53.10100", "P-53.10249", "P-53.10754", "P-54.1", "P-54.2", "P-54.3", "P-54.4", and "P-54.5", for not being found in the records of the case."

In the same Resolution, the Court likewise directed the ICPA to submit a soft copy of the ICPA Report and the corresponding annexes/schedules in Microsoft Word and/or Excel format within five (5) days from receipt thereof. In compliance therewith, Petitioner submitted, on March 7, 2019, one (1) CD containing the following files: (1) ICPA Report in Microsoft Word; and (2) ICPA Excel Computations (containing Tables 1 to 23 mentioned in the ICPA Report).[26]

On February 26, 2019, Petitioner filed a Motion for Partial Reconsideration,[27] praying for the following:

"(1) ALLOW Petitioner one (1) commissioner's hearing for the comparison of the denied documentary exhibits;

(2) ALLOW Petitioner until March 8, 2019 to submit the copies of ICPA Exhibits 'P-53.3204', 'P-53.3205', 'P-53.3207', 'P-53.3252', 'P-53.3535', 'P-53.3536', 'P-53.3537', 'P-53.3581', 'P-53.3582', 'P-53.3821', 'P-53.3822', 'P-53.3823', 'P-53.3824', 'P-53.3827', 'P-53.3830', 'P-53.3834', 'P-53.3835', 'P-53.6116', 'P-53.6117', 'P-53.6118', 'P-53.7250', 'P-53.8250', 'P-53.8805', 'P-53.9293', 'P-53.9915', 'P-53.9916', 'P-53.10100', 'P-53.10249', 'P-53.107.54', 'P-54.1', 'P-54.2', 'P-54.3', 'P-54.4', and 'P-54.5', as certified and examined by the ICPA;

[25] Docket – Vol. 6, pp. 2409 to 2452.
[26] Transmittal Letter dated March 7, 2019, Docket – Vol. 6, p. 2471.
[27] Docket – Vol. 6, pp. 2457 to 2461.

(iii) ALLOW the ICPA, through undersigned counsel, until March 8, 2019 to submit a soft copy of the ICPA Report and the corresponding annexes/schedules in Microsoft Word and/or excel format; and thereafter,

(iv) Reconsider the denial of Exhibits 'P-3', 'P-4', Exhibits 'P-4-c', 'P-29', 'P-41.6', 'P-41.7', 'P-41.8', 'P-41.9', 'P-41.10', 'P-41.14', and ICPA Exhibits 'P-53.3204', 'P-53.3205', 'P-53.3207', 'P-53.3252', 'P-53.3535', 'P-53.3536', 'P-53.3537', 'P-53.3581', 'P-53.3582', 'P-53.3821', 'P-53.3822', 'P-53.3823', 'P-53.3824', 'P-53.3827', 'P-53.3830', 'P-53.3834', 'P-53.3835', 'P-53.6116', 'P-53.6117', 'P-53.6118', 'P-53.7250', 'P-53.8250', 'P-53.8805', 'P-53.9293', 'P-53.9915', 'P-53.9916', 'P-53.10100', 'P-53.10249', 'P-53.10754', 'P-54.1', 'P-54.2', 'P-54.3', 'P-54.4'."

In the Resolution dated June 13, 2019,[28] the Court, among others: (1) partially granted Petitioner's Motion for Partial Reconsideration; and (2) admitted the Exhibits subject of the said Motion, *except* for the following: (a) Exhibit "P-3", for failure to submit the originals for comparison; (b) Exhibit "P-4-C", for not being found in the records of the case; and (c) Exhibits "P-41.6" and "P-41.7", for not being found in the records.

On June 18, 2019, Petitioner filed a Tender of Excluded Evidence.[29] The Court granted Petitioner's Tender, in its Resolution dated September 13, 2019.[30]

Respondent likewise presented documentary and testimonial evidence. As for his testimonial evidence, Respondent offered the testimonies of the following individuals, namely: (1) Ms. Marilyn D. Guerzon,[31] an RO of the BIR; and (2) Ms. Milan S. Madarang,[32] also an RO of the BIR.

Meanwhile, Respondent filed his Formal Offer of Evidence on July 15, 2019.[33] Petitioner filed its Comment/Opposition (To Respondent's Formal Offer of Evidence dated July 12, 2019) on August 1, 2019.[34] Thus, in the Resolution dated October 24, 2019,[35] the Court admitted Respondent's exhibits; and ordered both parties to submit their respective memorandum within thirty (30) days from receipt of the said Resolution. N

[28] Docket – Vol. 6, pp. 2502 to 2506.
[29] Docket – Vol. 6, pp. 2510 to 2514.
[30] Docket – Vol. 4, pp. 2537 to 2538.
[31] Exhibit "R-17", Docket – Vol. 5, pp. 2357 to 2365; Minutes of the hearing held on, and Order dated, June 13, 2019, Docket – Vol. 6, pp. 2507 to 2509.
[32] Exhibit "R-18", Docket – Vol. 5, pp. 2375 to 2386; Minutes of the hearing held on, and Order dated, June 13, 2019, Docket – Vol. 6, pp. 2507 to 2509.
[33] Docket – Vol. 6, pp. 2520 to 2528.
[34] Docket – Vol. 6, pp. 2532 to 2535.
[35] Docket – Vol. 6, pp. 2540 and 2541.

Petitioner filed its Memorandum on December 6, 2019.[36] Respondent, however, failed to file his memorandum.[37]

The instant case was deemed submitted for decision on December 26, 2019.[38]

THE ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[39]

"I. WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE AND FINAL DECISION ON DISPUTED ASSESSMENT ISSUED BY THE RESPONDENT AGAINST PETITIONER FOR TAXABLE YEAR ENDED DECEMBER 31, 2011 ARE VOID FOR HAVING BEEN ISSUED BEYOND THE PRESCRIPTIVE PERIOD AND/OR FOR FAILURE TO COMPLY WITH THE RULES ON THE CONDUCT OF TAX AUDIT INVESTIGATIONS.

II. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHOLDING TAX – EXPANDED AND RELATED DEFICIENCY INTEREST FOR TAXABLE YEAR ENDED DECEMBER 31, 2011."

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the PAN, FAN and FDDA are void, for having been issued in violation of its due process right in the conduct of tax audit investigations, and since the LOA was not properly served on Petitioner; that Respondent failed to conduct the required Informal Conference before issuing the PAN; that Respondent resolved to issue the FAN/FLD without respecting the right of Petitioner to a valid preliminary assessment proceeding; that FAN/FLD is void for having been issued pursuant to audit examination conducted by persons other than the revenue officers identified under the LOA; and that the FAN and FDDA are void for having been issued beyond the prescriptive period allowed by law.

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[36] Docket – Vol. 6, pp. 2542 to 2581.
[37] Records Verification dated December 17, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 6, p. 2583.
[38] Resolution dated December 26, 2019, Docket – Vol. 6, p. 2585.
[39] Issues to be Resolved, JSFI, Docket – Vol. 1, p. 253.

Moreover, Petitioner contends that it is not liable for deficiency income tax and deficiency VAT on undeclared income from unaccounted expenses of ₱2,667,418.00; that it is not liable for deficiency VAT on receipts not subjected to VAT in the amount of ₱2,870,297.84; that it is not liable for deficiency VAT on disallowed input tax allocated to exempt sales of ₱1,334,120.37; and that it is not liable for deficiency income tax and EWT on the ₱4,742,764.00 expenses not subjected to EWT.

On the other hand, Respondent mainly argues that his right to assess Petitioner has not yet prescribed.

Respondent further claims that the declarations made by Petitioner in its tax returns were deficient and did not disclose the truth regarding the correct amount of income and sales subject to withholding and VAT, thereby rendering the subject tax returns (*i.e.,* EWT and VAT) as 'false' within the contemplation of Section 222 of the 1997 NIRC. As such, it is Respondent's position that he timely assessed Petitioner within ten (10) years from the discovery of falsity or fraud.

Moreover, Respondent claims that he fully complied with the due process requirement mandated under Section 228 of the NIRC of 1997, as implemented by Revenue Regulations (RR) No. 12-99, as amended, when he issued the subject PAN, FAN and FDDA to Petitioner.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

The subject PAN and FLD/ FAN are void, as a consequence of the violation of Petitioner's right to administrative due process.

Petitioner contends that Respondent resolved to issue the FAN/FLD without respecting the right of Petitioner to a valid preliminary assessment proceeding.

There is merit in Petitioner's contention.

Section 228 of the NIRC of 1997 provides, 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

x x x x x x x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

x x x x x x x x x." *(Emphasis added)*

Based on the foregoing provision, it is clear that the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[40] 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.**

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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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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**

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

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*,[41] 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 second to the sixth requirements refer to the party's 'inviolable rights *applicable at the* **deliberative stage**.' **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**

[41] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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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'[A] fair and reasonable opportunity to explain one's side' is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

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In *Alliance for the Family Foundation, Philippines, Inc. v. Garin,*[42] this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, rectification, and distribution of the questioned contraceptive drugs and devices. **It ruled that [P]etitioner was not afforded the *genuine opportunity to be heard.***

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

[42] G.R. Nos. 217872 & 221866, August 24, 2016.

x x x x x x x x x

> 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. <u>He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record</u>.**" *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is a long-established principle that part of administrative due process are that, *inter alia*, the administrative tribunal or body must consider the evidence presented, and the decision thereof is rendered in a manner that the parties may know the various issues involved and the reasons for the decision. Furthermore, it is clear that tax assessments issued in violation of the due process rights of a taxpayer are null and void.

In this case, it is clear that Respondent failed to consider Petitioner's evidence, and arguments, and to give the particular facts upon which his conclusions are based.

In the Memorandum dated July 28, 2014 issued by RO Marilyn D. Guerzon,[43] the latter recommended the issuance of both the PAN and FAN relative to her investigation of Petitioner's tax liabilities, to wit:

> "In view hereof, this docket is respectfully forwarded **with the recommendation for the issuance of the necessary assessment notices (<u>Preliminary and Formal Assessment Notices</u>)** for us to enforce collection of the taxes due." *(Emphasis and underscoring added)*

Thereafter, adopting the said recommendation, the PAN dated November 24, 2014 was issued finding deficiency internal revenue taxes due from Petitioner, for taxable year December 31, 2011.[44] As indicated in the said PAN, the following are the significant findings of the BIR, to wit:

1) <u>For the deficiency income tax</u>:
    a) Undeclared income from unaccounted expenses - ₱2,667,418.00;
    b) Disallowed expenses due to non-withholding - ₱5,034,931.00;
    c) Salaries and wages not subjected to withholding tax - ₱1,393,335.89;

2) <u>For the deficiency VAT</u>: N

[43] Exhibit "R-6", BIR Records, pp. 399 to 400.
[44] Exhibit "P-38", Docket – Vol. 2, pp. 897 to 902.

a) Receipts not subjected VAT - ₱2,870,297.84;
b) Undeclared income from unaccounted expenses - ₱2,667,418.00;

3) For the deficiency EWT: Basic Tax Due - ₱221,536.55;

4) For the deficiency withholding tax on compensation (WTC): Basic Tax Due - ₱ 176,256.99; and

5) For the deficiency documentary stamp tax (DST): Basic Tax Due - ₱189,006.00.

On December 12, 2014, Petitioner then filed with the BIR its Reply dated December 12, 2014 to the same PAN,[45] giving explanations against the above-stated findings and offering certain documents/schedules.

However, in the FAN dated December 17, 2014, which assessed Petitioner with deficiency internal revenue taxes for taxable year ended December 31, 2011, in the total aggregate amount of ₱7,801,037.24, including deficiency interest,[46] the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the explanations made by Petitioner in its Reply dated December 12, 2014. In other words, the BIR did not give the particular facts upon which his or her conclusion in the FAN are based. Consequently, Petitioner was left unaware on how Respondent or the BIR appreciated the explanations or defenses raised against the subject PAN, in clear violation of Petitioner's right to administrative due process, thereby rendering the subject tax assessments void.

In any event, this Court likewise finds the FDDA dated June 29, 2017 a nullity.

The RO, who conducted the reinvestigation of Petitioner's tax liabilities, was not duly authorized to examine the latter's books of accounts and other records. Thus, the assailed FDDA is void.

As previously stated, Petitioner posits that the subject assessments are void for having been issued pursuant to audit examination conducted by revenue officers other than those specifically named under the LOA.

The Court agrees with Petitioner.

[45] Par. 7, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibits "P-39" and "R-7", BIR Records, pp. 463 to 467.
[46] Par. 8, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibits "P-40" and "R-8", BIR Records, pp. 428 to 431.

Section 6(A) of the NIRC of 1997 reads:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring added)*

Based on the foregoing provision, an authority emanating from Respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Sections 10 and 13 of the NIRC of 1997 provide that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **<u>the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others</u>**: xxx
>
> xxx xxx xxx.
>
> (c) **Issue <u>Letters of Authority</u> for the examination of taxpayer within the region;**
>
> xxx xxx xxx."
>
> *(Emphases and underscoring added)*
>
> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the

> Revenue Regional Director himself." *(Emphasis and underscoring added)*

Thus, a grant of authority, through an LOA issued by the Revenue Regional Director, must be made assigning an RO, to perform tax assessment functions, in order that such RO may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[47] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > x x x x (Emphasis and underlining Ours)
>
> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply

[47] G.R. No. 222743, April 5, 2017.

methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[48] the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. <u>**In the absence of such an authority, the assessment or examination is a nullity**</u>. (Emphasis and underlining ours)

xxx xxx xxx

Contrary to the ruling of the CTA en banc, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives.** <u>**Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**</u>." *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, an RO must be authorized, through an LOA, in order that the said officer may validly examine

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[48] 649 Phil. 519 (2010).

the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

Records show that the authority to conduct an examination and assessment of Petitioner's books of accounts emanated from LOA No. LOA-051-2012-00000369/eLA201100013570 dated November 16, 2012,[49] issued by Regional Director Nestor S. Valeroso of Revenue Region 8 - Makati City. The said LOA authorized RO Marilyn D. Guerzon and GS Arnaldo Rase of Revenue District No. 51 – Pasay City, to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011. As already observed, RO Guerzon's Memorandum dated July 28, 2018[50] led to the issuance of the subject PAN dated November 24, 2014[51] and FAN dated December 17, 2014.[52] Petitioner protested the FAN and requested for a reinvestigation in its letter dated January 9, 2015.[53] Afterwhich, Petitioner received on July 24, 2015 an undated letter from the BIR informing it that the tax audit investigation was re-assigned to RO Milan S. Madarang and GS Nerissa B. Ty.[54]

The transfer of Petitioner's tax audit investigation was even confirmed by RO Milan S. Madarang herself, when she was presented to this Court to testify on direct examination by way of Judicial Affidavit, as to how she came to know of Petitioner's internal revenue tax case for taxable year 2011,[55] to wit:

> "7. Q: How did you come to know the internal revenue tax case of [P]etitioner for taxable year 2011?
>
> A.: **I came to know the internal revenue tax case of [P]etitioner for taxable year 2011, when I received a <u>Memorandum of Assignment No. MOA0512012LOA3422 dated March 2, 2015</u>, authorizing myself to conduct a reinvestigation/verification of certain records relative to the <u>Letter Protest dated 9 January 2014 of [P]etitioner against the BIR Formal Assessment Notice (Part I and II) dated 17 December 2014</u> with attached Details of Discrepancies, involving its deficiency income tax, value-added tax and expanded withholding tax assessments for taxable year 2011.**

[49] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, pp. 251 to 252; Exhibit "P-35", Docket – Vol. 2, p. 893; Exhibit "R-2", BIR Records, p. 2.
[50] Exhibit "R-6", BIR Records, pp. 399 to 400.
[51] Exhibit "P-38", Docket – Vol. 2, pp. 897 to 902.
[52] Par. 8, Admitted Facts, JSFI, Docket – Vol. 1, p. 252; Exhibit "P-46", Docket – Vol. 2, pp. 936 to 937; Exhibit "R-8", BIR Records, pp. 428 to 431.
[53] Q-21 to Q22, Exhibit "P-50", Docket – Vol. 2, p. 759; Exhibit "P-41", Docket – Vol. 2, pp. 925 to 928; Exhibit "R-9", BIR Records, pp. 469 to 470.
[54] Q-22, Exhibit "P-50", Docket – Vol. 2, p. 759; Docket – Vol. 2, p. 929; Exhibit "R-11", BIR Records, p. 488.
[55] Exhibit "R-18", Docket – Vol. 5, pp. 2376 to 2378.

8 Q: You mentioned about a Memorandum of Assignment No. MOA0512012LOA3422 dated March 2, 2015, if shown to you a copy thereof, will you be able to identify the same?
A: Yes, Atty.

9 Q.: I am showing to you a document captioned as Memorandum of Assignment, what relation, if any do this document have to your previous statement?
A: This is the same **Memorandum of Assignment No. MOA0512012LOA3422 dated March 2, 2015**, which I referred to, duly marked as Exhibit 'R-10' for the [R]espondent and found on page 487 of the BIR Records of this case.

10. Q: **Going over this document, I noticed a signature above the printed name, SHIRLEY O. CALAPATIA, Revenue District Officer, RDO 51-Pasay City, do you know whose signature this is?**
A: **Yes, Atty. This is the specimen signature of ma'am SHIRLEY O. CALAPATIA, the then Revenue District Officer, RDO 51-Pasay City, which was sub-marked as Exhibit 'R-10-a' for the [R]espondent.**

x x x x

12. Q: Likewise, you mentioned about a BIR Formal Assessment Notice (Part I and II) dated 17 December 2014 with Details of Discrepancies, if shown to you copies thereof, will you be able to identify the same?
A: Yes, Atty.

x x x x

16. Q: Further, you mentioned about a Letter Protest dated 9 January 2014 of [P]etitioner against the said BIR Formal Assessment Notice (Part I and II) dated 17 December 2004, if shown to you a copy thereof, will you be able to identify the same?
A: Yes, Atty.

x x x x

19. Q: Would you know what action the BIR do next, if any, after it received the said Letter Protest dated 9 January 2014 of [P]etitioner?
A: Yes, Atty. **Based on records, the BIR issued an Undated Letter addressed to [P]etitioner, informing**

> **the latter about my authority to conduct such a reinvestigation of its disputed deficiency taxes for taxable year 2011. Likewise, it requested [P]etitioner to submit relevant documents in support of its Letter Protest dated 9 January 2014 within 60 days from filing thereof, pursuant to Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013.**" *(Emphases and underscoring supplied)*

RO Milan S. Madarang further testified that she proceeded with the reinvestigation of Petitioner's tax case and, thereafter, prepared a Memorandum Report showing her factual findings on the disputed deficiency income tax, VAT and EWT for taxable year 2011.[56] Thereafter, Revenue Regional Director Glen A. Geraldino issued the assailed FDDA dated June 29, 2017,[57] assessing Petitioner of deficiency income tax, VAT and EWT, and cancelling the previously assessed deficiency WTC and DST.

Based on the foregoing testimony of RO Milan S. Madarang, her authority to examine or conduct a reinvestigation of Petitioner's tax liabilities for taxable year 2011 was based on the Memorandum of Assignment No. MOA0512012LOA3422 dated March 2, 2015,[58] issued by Revenue District Officer Shirley O. Calapatia, who has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued No. LOA-051-2012-00000369/ eLA201100013570 dated November 16, 2012, issued by Regional Director Nestor S. Valeroso, authorizing other revenue officers.

In the case of *Commissioner of Internal Revenue v. San Miguel Foods, Inc.,*[59] the Court *En Banc* recognized that a written document which signifies the intention of the CIR or his duly authorized representative to reassign a taxpayer's audit and assessment to a new revenue officer may be considered as an equivalent of an LOA, to wit:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila. and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña for continuance of audit.

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[56] Q26 to Q28, Exhibit "R-18", Docket – Vol. 5, p. 2379; Exhibit "R-12", BIR Records, pp. 525 to 526.
[57] Q44, Exhibit "R-18", Docket – Vol. 5, pp. 2382 to 2383; Exhibit "P-43", Docket – Vol. 1, pp. 32 to 38; Exhibit "R-14", BIR Records, pp. 529 to 536.
[58] Exhibit "R-10", BIR Records, p. 487; Exhibit "P-45", Docket – Vol. 2, p. 935.
[59] CTA EB No. 1880, 6 August 2019.

> **Said document where such authority is transferred may be equivalent to an LOA.** Several reasons support this. *First,* **the only** directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done in writing. In fact. an "[a]gency may be oral. unless the law requires a specific form."
>
> *Second,* **although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer.** The primary consideration in determining the true nature of a contract is the intention of the parries. **If the words of a contract appear to contravene the evident intention of the parries, the latter shall prevail.** Such intention is determined not only from the express terms of their agreement. but also from the contemporaneous and subsequent acts of the parries. The title of the contract does not necessarily determine its true nature. In fact, this Court has, rime and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.
>
> In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. Similarly. every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus,* which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code."[60]

Hence, based on the aforementioned case, a document such as a **MOA** may be construed as an equivalent of a new LOA, provided that it contains all the elements necessary to establish a Contract of Agency between the CIR or his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the MOA.

Section 10(C) of the Tax Code grants the Revenue Regional Director, as Petitioner's authorized representative, the authority to issue LOAs, to wit:

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[60] Emphasis supplied.

> "SEC. 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> x x x x x x x x x
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;"

To reiterate, in order for the MOA to be considered as an equivalent of an LOA, it must be signed by the CIR or his duly authorized representative. However, in this case, it is clear from the aforementioned facts that the MOA was only signed by Revenue District Officer Shirley O. Calapatia who is neither the CIR nor a Revenue Regional Director.

Therefore, on this account, both RO Milan S. Madarang and GS Nerissa B. Ty had no authority to continue Respondent's audit which is in all fours with the Court *En Banc 's* Decision in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.,***[61] to wit:

> **"In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña were without authority to continue the audit."**[62]

Not having a valid authority to examine or reinvestigate the latter, the subject deficiency tax assessments for taxable year 2011 issued by Respondent against Petitioner via the FDDA dated June 29, 2017 is likewise inescapably void.[63]

In view of the finding that the subject tax assessments and the FDDA dated June 29, 2017 are invalid, and thus, bear no valid fruit,[64] it becomes unnecessary to address the other issues or matters raised by the parties.

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[61] CTA EB No. 1880, 6 August 2019.
[62] Emphasis supplied.
[63] Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq., G.R. Nos. 215534 and 215557, April 18, 2016.
[64] Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. Nos. 197945 and 204119-20, July 9, 2018, G.R. No.197945 citing Commissioner of Internal Revenue vs. Reyes, G.R. Nos. 159694 and 163581, January 27, 2006.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated June 29, 2017 is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD/FAN dated December 17, 2014 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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