CTA Form No. 8

19-000283-0086

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10095

PLASTIC CONTAINER PACKAGING CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. LIEZL G. BOHOL
Legal Division, Bureau of Internal Revenue
Revenue Region No. 7B- East NCR
25th Floor, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

JL MARTINEZ LAW OFFICES
Penthouse 5 VGP Center
6772 Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 23, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 24, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PLASTIC CONTAINER PACKAGING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10095

Members:

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

Promulgated:

MAY 23 2024; 2:15PM

x---x

DECISION

REYES-FAJARDO, *J.*:

We are called upon to rule on the Petition for Review dated June 25, 2019,[1] which seeks to abolish the Assessment Notices issued against Plastic Container Packaging Corporation, finding the latter liable for deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT), for Calendar Year (CY) 2010, in the total amount of ₱69,508,589.91, inclusive of interests.[2]

FACTS

Petitioner Plastic Container Packaging Corporation is a corporation duly organized and existing under Philippine laws, with business address located at PCPC Building, No. 25 Madison Street, Barangka Ilaya, Mandaluyong City.[3] It is registered with the Securities and Exchange Commission (SEC) per SEC Registration No.

1 Docket (Vol. I), pp. 10-70.
2 See Statement of the Case, Pre-Trial Order dated January 19, 2021. Docket (Vol. II), p. 897.
3 See Par. 1, Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI). *Id.* at p. 844.

28738,[4] and with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 41 - Mandaluyong City, under Tax Identification Number 000-060-001-000.[5]

Respondent is the duly appointed Commissioner of Internal Revenue empowered under the National Internal Revenue Code (NIRC) to authorize the examination of any taxpayer and the assessment of the correct amount of tax as well as to decide disputed assessments arising under said law and other laws administered by the BIR. He holds office at the 5th Floor, BIR National Office Bldg., Agham Road, Diliman, Q.C., where he may be served with summons, notices and other court processes.[6]

On September 6, 2011, petitioner received the Letter of Authority (LOA) No. 041-2011-00000915 (eLA201000083537) dated September 2, 2011, issued by Regional Director Nestor S. Valeroso, authorizing Revenue Officer (RO) Dalisay Co and Group Supervisor (GS) Flora Abtahi to examine its books of accounts and other accounting records for all internal revenue taxes for the periods January 1, 2010 to December 31, 2010.[7]

On June 18, 2013, petitioner received a Notice of Informal Conference dated June 14, 2013,[8] issued by Revenue District Officer Isabel A. Paulino, of RDO No. 41 – Mandaluyong City.

On June 21, 2013, the parties executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code.[9]

On December 4, 2014, petitioner received the Preliminary Assessment Notice (PAN) dated December 3, 2014,[10] together with the Details of Discrepancies,[11] issued by Regional Director Alfredo V. Misajon (RD Misajon), containing the proposed deficiency IT, VAT,

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4 Par. 3, Stipulation of Facts, JSFI. *Id.* at p. 845.
5 See Par. 4, Stipulation of Facts, JSFI. *Ibid.*
6 Par. 2, Stipulation of Facts, JSFI. *Id.* at p. 844.
7 Exhibit "P-4." *Id.* at p. 482.
8 Exhibits "P-11," "P-11-1," and "P-11-2." *Id.* at pp. 492-494.
9 Exhibit "P-12," *Id.* at pp. 495-496; and Exhibits "R-5" and "R-5-A," *Id.* at pp. 753-754.
10 Exhibits "P-13" and "P-13-2." *Id.* at pp. 536-537.
11 Exhibit "P-13-1." *Id.* at pp. 538-539.

and EWT assessments for CY 2010, in the total amount of ₱51,434,818.07, including interests.

On December 12, 2014, petitioner filed its Reply to the PAN.[12]

On December 19, 2014, petitioner received RD Misajon's Formal Letter of Demand,[13] with Details of Discrepancies,[14] and Final Assessment Notices[15] (FLD/FAN), all of even date, assessing it for deficiency IT, VAT and EWT for CY 2010, in the total amount of ₱52,229,401.69, inclusive of interests.

On December 22, 2014, petitioner filed its Administrative Protest of even date, by way of a Request for Reinvestigation.[16]

By Letter dated January 29, 2015,[17] RD Misajon granted petitioner's request for reinvestigation.

On February 11, 2015, petitioner received the letter dated February 10, 2015 from Revenue District Officer Corazon M. Montes,[18] of RDO 41-Mandaluyong City, requiring it to submit documents in support of the protest to RO Rolando Fernandez (RO Fernandez), under GS Flora B. Abtahi.

On May 27, 2019, petitioner received RD Romulo L. Aguila, Jr.'s Final Decision on Disputed Assessment (FDDA) dated April 5, 2019,[19] with Details of Discrepancies,[20] informing it that it still failed to refute the validity of some of the BIR's findings. In view thereof, petitioner was requested to pay deficiency IT, VAT, and EWT for CY 2010, in the aggregate amount of ₱69,508,589.91, plus interests.

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12 Par. 3.14, Petition for Review, vis-à-vis par. 4, Answer, Docket (Vol. I), pp. 13 and 404, respectively. Exhibits "P-14," "P-14-1," "P-14-2," and "P-14-3," Docket (Vol. II), pp. 540-543.

13 Exhibit "P-15." Docket (Vol. II), pp. 554-555.

14 Exhibit "P-16." *Id.* at pp. 556-557.

15 Exhibit "P-17" to "P-19," *id.* at pp. 558-560; and Exhibits "R-13" to "R-16," *Iid.* at pp. 766-769.

16 Par. 3.16, Petition for Review, vis-à-vis par. 4, Answer, Docket (Vol. I), pp. 13 and 404, respectively. Exhibits "P-20," "P-20-1," "P-20-2," and "P-20-3," Docket (Vol. II), pp. 561-565.

17 Exhibits "P-21" and "P-22," Docket (Vol. II), p. 573.

18 Exhibits "P-23" and "P-23"-1, Docket (Vol. II), p. 574.

19 Exhibits "P-56" and "P-56-1." *Id.* at pp. 504-505.

20 Exhibit "P-57." *Id.* at pp. 506-509.

On June 25, 2019, petitioner filed a Petition for Review,[21] docketed as CTA Case No. 10095, to which respondent submitted his Answer[22] on October 15, 2019.

On October 1, 2020, a pre-trial conference was held, whereby the Court: (1) directed the parties to submit a Joint Stipulation of Facts and Issues, and to embody therein the issue of whether petitioner is liable to pay deficiency IT, VAT, and EWT assessments for Taxable Year 2010, in the total amount of ₱69,508,589.91; and (2) set the schedule for commissioner's hearings for the marking of the parties' evidence, along with the schedule for the presentation of their respective evidence, among others.[23]

On October 19, 2020, the parties submitted their Joint Stipulations of Facts and Issues,[24] which was approved, through Resolution[25] dated October 28, 2020.

On January 19, 2021, a Pre-Trial Order[26] was issued.

Trial followed.

Petitioner presented: (1) Mr. Richard S. Chua, Jr.;[27] (2) Mr. Roy T. Galo;[28] (3) Ms. Rose Faith A. Asuncion;[29] and (4) Independent Certified Public Accountant[30] (ICPA) Maria Cristina Josefina Berces-Ocampo (ICPA Berces-Ocampo),[31] as witnesses.

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21 *Supra* note 1.
22 Docket (Vol. I), pp. 404-418.
23 Order dated October 1, 2020. Docket (Vol. II), pp. 817-818.
24 *Id.* at pp. 844-855.
25 *Id.* at p. 860.
26 *Id.* at pp. 884-900.
27 Exhibits "P-59" and "P-59-1," *Id.* at pp. 918-929; and Order dated February 23, 2021, pp. 964-965.
28 Exhibits "P-60" and "P-60-1," *Id.* at pp. 930-954; and Order dated February 23, 2021, *Id.* at pp. 964-965.
29 Exhibits "P-61" and "P-61-1," *Id.* at pp. 955-960; and Order dated September 30, 2021, Docket (Vol. III), pp. 1100-1101.
30 Oath of Commission dated January 26, 2021, Docket (Vol. II), p. 901-D; and Order dated January 26, 2021, *Id.* at pp. 902-904, respectively.
31 Exhibits "P-62" and "P-62-1," Docket (Vol. III), pp. 1028-1092; and Order dated September 30, 2021, *Id.* at pp. 1100-1101.

On October 21, 2021, petitioner filed its Formal Offer of Evidence,[32] *sans* respondent's comment.[33]

Under Resolution[34] dated April 22, 2023, the pieces of evidence offered by petitioner were admitted *except* for the following exhibits, which were denied admission as evidence for being totally unreadable, *viz.*:

> Exhibits "P-75-652," "P-75-1053," "P-75-1095," "P-75-1183," "P-78-15," "P-78-25," "P-78-42," "P-78-71" to "P-78-72," "P-78-99," "P-78-101" to "P-78-102," "P-78-106," "P-78-114," "P-78-192," "P-78-247" to "P-78-248," "P-78-349," "P-78-377," "P-78-525," "P-80-25," "P-83-577," "P-83-1078," "P-83-1314," "P-84-19," "P-84-321," "P-84-367," "P-84-607," "P-84-783," "P-84-808," "P-84-865," "P-84-893," "P-86-228," "P-86-270," "P-86-290," "P-86-292" to "P-86-293," "P-86-337," "P-86-340," "P-86-346," "P-86-348," "P-86-358," "P-86-370," "P-86-375," "P-88-1," "P-88-3," "P-88-5," "P-88-19," "P-88-21," "P-88-59," "P-89-140," "P-89-191" to "P-89-199," "P-89-953," "P-89-986," "P-89-989," "P-89-991," "P-94-240," "P-94-270," "P-95-22," " "P-95-64" to "P-95-65," "P-95-75," "P-95-103," "P-95-114" to "P-95-117," "P-95-134," "P-95-142" to "P-95-143," "P-95-146" to "P-95-147," "P-95-288," "P-96-93," "P-96-107," "P-96-110," "P-96-113," "P-96-116," "P-100-270," "P-101-1256," "P-103-44," "P-103-1177," "P-104-178," "P-104-190," "P-104-295," "P-104-307" to "P-104-309," "P-104-421," "P-104-423," "P-104-508," "P-104-711," and "P-104-850."

On June 6, 2022, petitioner filed the following:

a. Motion for Reconsideration Re: Resolution dated April 22, 2022,[35] praying that it to be allowed to amend the Formal Offer of Evidence: (1) to reflect the markings Exhibit "P-65-1," "P-66-1," "P-67-1," and "P-68-1" to "P-68-3"; (2) to adopt "P-78-544" and "P-83-1646" as actual markings for exhibits "544" and "1646," respectively; and (3) to replace the totally unreadable and partially blurred/unreadable documents or not completely scanned with clear and readable certified true copies, *sans*[36] respondent's comment; and

[32] *Id.* at pp. 1103-1129.
[33] Records Verifications dated December 3, 2021 issued by the Court of Tax Appeals Judicial Records Division (CTA-JRD). *Id.* at p. 1197.
[34] *Id.* at pp. 1202-1211.
[35] *Id.* at pp. 1212-1219.
[36] Records Verification dated July 13, 2022 issued by the CTA-JRD. *Id.* at p. 1506.

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b. Motion for Extension Re: Resolution dated April 22, 2022, regarding the submission of the soft copy of the ICPA Report and supporting documents.[37]

Via Resolution[38] dated June 16, 2022, petitioner's Motion for Extension Re: Resolution dated April 22, 2022, regarding the submission of the soft copy of the ICPA Report and supporting documents, was granted.

Through Resolution dated August 4, 2022, petitioner was permitted to replace the totally unreadable and partially blurred/unreadable documents or not completely scanned documents, with clear and readable certified true copies thereof. Additionally, ICPA Berces-Ocampo was directed to submit the revised/amended summaries or schedules of official receipts, sales/purchase invoices and other supporting documents she examined and verified, and to indicate therein, the corresponding specific exhibit number reference (sub-marking) in hard copy and in Microsoft Excel format.[39]

On August 15, 22, and 30, 2022, petitioner filed separate Motions for Extension Re: Resolution dated August 4, 2022, seeking for additional time to: (1) submit the clear certified true copies of documents to replace the totally unreadable and partially blurred/unreadable documents;[40] and (2) submit the soft copies of the ICPA Report and summaries or schedules.[41]

By its Compliance filed on several dates, petitioner made the following submissions, detailed as follows:

Date Filed	Submission
August 16, 2022[42]	*Hard* copies of certified true copies of documents
August 22, 2022[43]	*Soft* copies of said documents

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37 *Id.* at pp. 1222-1225.
38 *Id.* at pp. 1501-1502.
39 *Id.* at pp. 1513-1516.
40 Motion for Extension Re: Resolution dated August 4, 2022, filed on August 15, 2022. *Id.* at pp. 1517-1519.
41 Motion for Extension Re: Resolution dated August 4, 2022, filed on August 22 and 30, 2022. Docket (Vol. IV), pp. 2161-2164, and 2168-2171, respectively.
42 Compliance dated August 15, 2022. *Id.* at pp. 1523-1524.
43 Compliance dated August 18, 2022. *Id.* at pp. 2154-2155.

	contained in a Universal Serial Bus Drive
September 2, 2022[44]	Amended/revised summaries of receipts, invoices, and other supporting documents in hard copies and Microsoft Excel format

Through Resolution dated October 13, 2022,[45] we: (1) granted petitioner's Motions for Extension Re: Resolution dated August 4, 2022; and (2) noted petitioner's Compliance dated August 15, August 18, and September 1, 2022. Moreover, petitioner's *Motion for Reconsideration* was partially granted. Accordingly, the following actions were taken thereon:

> *First.* Exhibits "P-96-93," "P-96-107," "P-96-110," "P-96-113," "P-96-116," "P-104-178," "P-104-190," "P-104-295," "P-104-307," "P-104-309," "P-104-421," "P-104-423," "P-104-508," "P-104-711," and "P-104-850" were admitted as petitioner's evidence; and
>
> *Second.* Exhibits "P-75-652," "P-75-1053," "P-75-1095," "P-75-1183," "P-78-15," "P-78-25," "P-78-42," "P-78-71 to P-78-72," "P-78-99," "P-78-101 to P-78-102," "P-78-106," "P-78-114," "P-78-192," "P-78-247 to P-78-248," "P-78-349," "P-78-377," "P-78-525," "P-80-25," "P-83-577," "P-83-1078," "P-83-1314," "P-84-19," "P-84-321," "P-84-367," "P-84-607," "P-84-783," "P-84-808," "P-84-865," "P-84-893," "P-86-228," "P-86-270," "P-86-290," "P-86-292 to P-86-293," "P-86-337," "P-86-340," "P-86-346," "P-86-348," "P-86-358," "P-86-370," "P-86-375," "P-88-1," "P-88-3," "P-88-5," "P-88-19," "P-88-21," "P-88-59," "P-89-140," "P-89-191 to P-89-199," "P-89-953," "P-89-986," "P-89-989," "P-89-991," "P-94-240," "P-94-270," "P-95-22," "P-95-64 to P-95-65," "P-95-75," "P-95-103," "P-95-114 to P-95-117," "P-95-134," "P-95-142 to P-95-143," "P-95-146 to P-95-147," "P-95-288," "P-100-270," "P-101-1256," "P-103-44," "P-103-1177," and "P-104-308," were still denied admission as petitioner's evidence.

For his part, respondent presented ROs Maria Dalisay S. Co[46] and Juvel Cyrene Bea[47] as witnesses.

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44 Compliance dated September 1, 2022. Docket (Vol. V) at pp. 2176-2177.

45 *Id.* at pp. 2403-2413.

46 Exhibits "R-26" and "R-26-A," Docket (Vol. II), pp. 739-747; and Order dated January 24, 2023, Docket (Vol. V), pp. 2418 to 2419.

47 Exhibits "R-27" and "R-27-A," Docket (Vol. II), pp. 775-781; and Order dated January 24, 2023, Docket (Vol. V), pp. 2418-2419.

On February 2, 2023, respondent filed his Formal Offer of Evidence,[48] to which petitioner filed its comment[49] thereto *via* accredited courier on February 9, 2023.

Through Resolution dated March 29, 2023,[50] the exhibits offered by respondent were admitted as evidence.

On May 26, 2023, CTA Case No. 10095 was submitted[51] for decision, taking into consideration: (1) petitioner's Memorandum[52] filed through accredited courier on May 11, 2023; and (2) respondent's failure[53] to file his memorandum, despite notice.

ISSUE

Is petitioner liable for deficiency IT, VAT, and EWT assessments covering CY 2010, in the total amount of ₱69,508,589.91, inclusive of interests?[54]

ARGUMENTS

Petitioner maintains that it is not liable for deficiency IT, VAT, and EWT assessments for CY 2010, the main reasons for which are:

> *First.* The BIR's right to assess said taxes is barred by prescription under Section 203 of the NIRC, as amended;
>
> *Second.* The individual, *i.e.,* RO Fernandez, who evaluated its request for reinvestigation, through examination of the documents in support thereof, was not armed by a Letter of Authority from respondent, or his duly authorized representatives;

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48 Docket (Vol. V), pp. 2421-2427.
49 *Id.* at pp. 2428-2429.
50 *Id.* at pp. 2437-2438.
51 Notice dated May 26, 2023. *Id.*, unpaginated.
52 *Id.* at pp. 2439-2479.
53 Records Verification dated May 25, 2023 issued by the CTA-JRD. *Id.* at p. 2483.
54 See Issues to be Tried and Resolved, JSFI. Docket (Vol. II), p. 845.

Third. Respondent's tax agents violated its right to due process since the FLD/FAN was issued without considering the defenses it ventilated on its reply to the PAN; and

Fourth. The BIR findings for deficiency IT, VAT, and EWT for CY 2010 is wanting in legal and factual anchorage, based on the ICPA Berces-Ocampo's Report.

On the other hand, respondent retorts petitioner should be held liable for the deficiency tax assessments covering CY 2010, advancing the following premises:

First. By virtue of the waiver compliant with Section 222(b) of the NIRC, as amended, the BIR's right to assess petitioner for CY 2010 was extended until December 31, 2014; hence, the FLD/FAN was timely issued to the latter on December 19, 2014;

Second. The findings unraveled by the RO, *i.e.*, RO Fernandez, assigned to evaluate petitioner's request for reinvestigation is valid, because the MOA from which his authority was derived is permitted by BIR rules and regulations; and

Third. The findings of deficiency IT, VAT, and EWT against petitioner for CY 2010 is proper considering: (1) it was reflected on the Details of Discrepancies appended to the FLD/FAN; (2) the deficiency IT and EWT was slapped against it by reason of disallowance of costs and expenses, for failure to withhold taxes thereon; (3) petitioner failed to support its claimed expenses; and (4) the discrepancies the BIR found, by matching the information provided by withholding agents, payors, payees, income recipients, against petitioner's sales/revenues/receipts is sanctioned by Revenue Audit Memorandum Order (RAMO) No. 1-2000.

RULING

We grant the Petition.

First, do we have jurisdiction over CTA Case No. 10095?

of

Yes.

Section 7(a)(1) of Republic Act (RA) No. 1125,[55] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> ...[56]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[57] clarified that the CTA in Division has jurisdiction over respondent or his authorized representative's decision involving disputed assessments, among others.[58] For the decision of respondent or his duly authorized representatives to be elevated on appeal before the CTA in Division, there must first be a disputed assessment.[59] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
>
> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his

55 An Act Creating the Court of Tax Appeals.

56 Boldfacing supplied.

57 A.M. No. 05-11-07-CTA.

58 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws, administered by the Bureau of Internal Revenue; (Boldfacing supplied)

59 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[60]

In turn, the validity of the administrative protest rests upon the meeting of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[61] Section 3.1.4 of Revenue Regulations (RR) No. 18-2013, prescribes the form and manner of an administrative protest:

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

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60 Boldfacing supplied.

61 See *Commissioner of Internal Revenue v. Court of Tax Appeals - Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest, either by way of request for reconsideration or request for reinvestigation. If a request for reinvestigation was filed, the taxpayer has sixty (60) days from the filing of its request for reinvestigation to submit documents in support thereof. Upon the taxpayer's receipt of the FDDA, it has another thirty (30) days to appeal to the CTA in Division.

Petitioner received the FLD/FAN on December 19, 2014.[62] Counting thirty (30) days therefrom, petitioner had until January 18, 2015 to file an administrative protest thereto; thus, it timely protested the FLD/FAN, by way of request for reinvestigation on December 22, 2014.[63] Said protest, too, contained: (1) date of the FAN; (2) statement that it is a request for reinvestigation; (3) the factual and legal basis of said protest; and (4) statement of supporting documents in support thereof, *i.e.*, schedules 1 to 4 mentioned therein.[64] Thus, petitioner filed a valid request for reinvestigation against the FLD/FAN.

On May 27, 2019, petitioner received the FDDA dated April 5, 2019.[65] Counting thirty (30) days therefrom, petitioner had until June 26, 2019 to seek judicial recourse. Therefore, petitioner's timely filing of the Petition for Review on June 25, 2019,[66] conferred us with jurisdiction over CTA Case No. 10095.

Next, can respondent hold petitioner liable for deficiency IT, VAT, and EWT assessments for CY 2010?

No. Consider the ensuing reasons:

First. The right of the BIR to assess petitioner for deficiency IT, VAT, and EWT for CY 2010 is barred by prescription.

Section 203[67] of the NIRC, as amended, ordains that assessment of internal revenue taxes must be made within three (3) years,

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62 *Supra* notes 13-15.
63 *Supra* note 16.
64 *Ibid.*
65 *Supra* note 19.
66 *Supra* note 21.
67 **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

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counted from the actual date of filing of a tax return, or the last day prescribed by law for filing of a tax return, whichever is later.[68] For this purpose, an assessment is deemed made on the date the assessment notice was released, mailed, or sent to the taxpayer.[69]

Pertinently, Sections 77(B) and 114 of the NIRC, as amended, along with Section 2.58 of RR No. 2-98,[70] as amended by RR No. 17-2003,[71] respectively encapsulate the last day prescribed by law for the filing of Annual Income Tax Return (AITR), Quarterly VAT Returns, and EWT Returns:

> **SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** -
>
> ...
>
> ***(B) Time of Filing the Income Tax Return.*** - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
>
> ...
>
> **SEC. 114.** ***Return and Payment of Value-Added Tax.*** -
>
> ***(A) In General.*** - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the

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assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

68 See *AFP General Insurance Corporation v. Commissioner of Internal Revenue,* G.R. No. 222133, November 4, 2020; and *Commissioner of Internal Revenue v. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

69 *Bank of the Philippine Islands v. Commissioner of Internal Revenue,* G.R. No. 174942, March 7, 2008.

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

71 SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: ...

...

Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. -

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

...

(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 finds and similar arrangements) shall be filed and payment 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; ....

Parsed from the above observations, the FLD/FAN, [72] containing the deficiency IT, VAT, and EWT assessments for CY 2010, served upon petitioner on December 19, 2014, is barred by prescription. Ponder on the following presentation:

2010 IT Assessment					
Actual Date of Filing of AITR	Last Day Prescribed by law for filing an AITR	Start of Prescriptive Period	**Last Day to Assess**	Date when Assessment was Made	Remarks
April 15, 2011[73]	April 15, 2011	April 15, 2011	**April 15, 2014**	December 19, 2014	Prescribed

2010 VAT Assessment						
Quarter	Actual Date of Filing of VAT Return	Last Day Prescribed by Law for filing of VAT Return	Start of Prescriptive Period	**Last Day to Assess**	Date when Assessment was Made	Remarks
1st	April 20, 2010[74]	April 25, 2010	April 25, 2010	**April 25, 2013**	December 19, 2014	Prescribed

72 *Supra* notes 13-15.
73 Exhibit "P-28." Docket (Vol. II), pp. 612-613.

2nd	July 22, 2010[75]	July 25, 2010	July 25, 2010	**July 25, 2013**	December 19, 2014	Prescribed
3rd	October 19, 2010[76]	October 25, 2010	October 25, 2010	**October 25, 2013**	December 19, 2014	Prescribed
4th	January 25, 2011[77]	January 25, 2011	January 25, 2011	**January 25, 2014**	December 19, 2014	Prescribed

2010 EWT Assessment						
Month	Actual Date of Filing of EWT Return	Last Day Prescribed by Law for filing of EWT Return	Start of Prescriptive Period	**Last Day to Assess**	Date when Assessment was Made	Remarks
January	February 8, 2010[78]	February 10, 2010	February 10, 2010	**February 10, 2013**	December 19, 2014	Prescribed
February	March 5, 2010[79]	March 10, 2010	March 10, 2010	**March 10, 2013**	December 19, 2014	Prescribed
March	April 8, 2010[80]	April 10, 2010	April 10, 2010	**April 10, 2013**	December 19, 2014	Prescribed
April	May 7, 2010[81]	May 10, 2010	May 10, 2010	**May 10, 2013**	December 19, 2014	Prescribed
May	June 5, 2010[82]	June 10, 2010	June 10, 2010	**June 10, 2013**	December 19, 2014	Prescribed
June	July 7, 2010[83]	July 10, 2010	July 10, 2010	**July 10, 2013**	December 19, 2014	Prescribed
July	August 9, 2010[84]	August 10, 2010	August 10, 2010	**August 10, 2013**	December 19, 2014	Prescribed
August	September 8, 2010[85]	September 10, 2010	September 10, 2010	**September 10, 2013**	December 19, 2014	Prescribed
September	October 7, 2010[86]	October 10, 2010	October 10, 2010	**October 10, 2013**	December 19, 2014	Prescribed
October	November 9, 2010[87]	November 10, 2010	November 10, 2010	**November 10, 2013**	December 19, 2014	Prescribed
November	December 7, 2010[88]	December 10, 2010	December 10, 2010	**December 10, 2013**	December 19, 2014	Prescribed
December	January 15, 2011[89]	January 15, 2011	January 15, 2011	**January 15, 2014**	December 19, 2014	Prescribed

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74 ICPA Exhibit "P-65," ICPA USB.
75 ICPA Exhibit "P-66," ICPA USB.
76 Exhibit "P-14-5." Docket (Vol. II), pp. 545-546.
77 Exhibit "P-14-7." *Id.* at pp. 550-551.
78 Exhibit "P-30." *Id.* at p. 1145.
79 Exhibit "P-31." *Id.* at p. 1147.
80 Exhibit "P-32." *Id.* at p. 1151.
81 Exhibit "P-33." *Id.* at p. 1152.
82 Exhibit "P-34." *Id.* at p. 1153.
83 Exhibit "P-35." *Id.* at p. 1157.
84 Exhibit "P-36." *Id.* at p. 1160.
85 Exhibit "P-37." *Id.* at p. 1162.
86 Exhibit "P-38." *Id.* at p. 1163.
87 Exhibit "P-39." *Id.* at p. 1164.
88 Exhibit "P-40." *Id.* at p. 1165.
89 Exhibit "P-41." *Id.* at p. 1166.

Respondent disagrees with the immediately above conclusion, claiming that the waiver dated June 21, 2013 stretched the BIR's prescriptive period to assess petitioner for CY 2010 until December 31, 2014.

Respondent is grasping at straws.

One of the exceptions to the three (3)-year prescriptive period to assess internal revenue taxes under Section 203 of the NIRC, as amended, is found in Section 222(b) of the same Code, which states:

> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> ...
>
> (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 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.

Commissioner of Internal Revenue v. First Philippine Industrial Corporation (FPIC)[90] summarized the requirements for a waiver to produce a valid extension of prescriptive period to assess internal revenue taxes in the following manner:

> The foregoing procedures, taken together with RMO 20-90, RDAO 05-01, and relevant jurisprudence, indicate that a waiver of the defense of prescription, in order to be valid, must contain the following requirements: **(1)** the period agreed upon or the date within which the BIR may assess and collect revenue taxes to prevent the waiver from becoming unlimited in time; **(2)** the kind and amount of tax due to prevent the waiver from becoming applicable to multiple tax audits for the same taxable period; **(3)** the date of execution and acceptance of the waiver by the CIR to determine whether the waiver was validly executed and accepted before the expiration of the original three-year period; **(4)** the conformity/signature of the CIR or his/her authorized representative; **(5)** the conformity/signature of the taxpayer or their authorized representative; **(6)** the fact of receipt by the taxpayer of its copy/copies of the waiver; and **(7)** notarization.

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90 G.R. No. 266409, August 23, 2023. Citations omitted.

Indeed, *FPIC* commands, *inter alia,* that the kind and amount of tax due be indicated in the waiver/s. Conversely, the lack thereof would render the waiver void, and would *not* stretch the prescriptive period to assess and collect internal revenue taxes. Slew of cases supports this position.

In *Commissioner of Internal Revenue v. Standard Chartered Bank (SCB),*[91] *Commissioner of Internal Revenue v. Systems Technology Institute, Inc. (STI),*[92] and of late, in *FPIC,*[93] the respective waiver therein failed to specify the particular kind and amount of taxes to be assessed. *SCB, STI,* and *FPIC* found the waivers to be faulty; hence, they did not extend the prescriptive period to assess internal revenue taxes. This requirement is not without reasons.

For one, "... there can be no agreement [between the taxpayer and the BIR,] if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity."[94] *For another,* it is "... to prevent the waiver from becoming applicable to multiple tax audits for the same taxable period[.]"[95] *Moreover,* statement of the specific kind and amount of tax/es in the waiver is explicitly required by Section 222(b) of the NIRC, as amended. *Commissioner of Internal Revenue v. GMA Network Films, Inc. (GMA)* elaborated:[96]

> Section 222 (b) of the NIRC, as amended, provides that "*[i]f 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 its assessment after such time,* ***the tax*** *may be assessed within the period agreed upon.*" It may be observed that 'tax' was preceded by the definite article 'the' in Section 222 (b) of the NIRC, as amended. The definite article 'the' particularizes the subject spoken of and refers to a certain object as opposed to the article 'a' which refers to the indefinite. Following the concept of *verba legis* as discussed by the Supreme Court, that the "*legislature is presumed to know the meaning of the words, to have used words advisely, and to have expressed its intent by the use of such words as are found in the statute,*" from the plain meaning of Section 222 (b), the term 'tax' when referred to must be particularized and referred to in the definite sense.

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91 G.R. No. 192173, July 29, 2015.
92 G.R. No. 220835, July 26, 2017.
93 *Commissioner of Internal Revenue v. First Philippine Industrial Corporation, supra* note 90.
94 See *Commissioner of Internal Revenue v. Systems Technology Institute, Inc., supra* note 92.
95 *Commissioner of Internal Revenue v. First Philippine Industrial Corporation, supra* note 90.
96 CTA EB No. 2441, October 17, 2022. Emphasis in the original. Citations omitted.

Here, the pertinent portion of the waiver dated June 21, 2013[97] states that the subject thereof pertains to the investigation of **all** internal revenue tax liabilities for taxable year 2010, *sans* any express mention of: (1) the *particular* taxes covered by such waiver; and (2) respective amounts thereof:

> WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE
>
> I, **RICHARD S. CHUA, JR[.]**, Vice-President for Finance of **PLASTIC CONTAINER PACKAGING COROPROATION**, request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the **investigation**/ reinvestigation/re-evaluation/ collection/ enforcement of my/its *all internal revenue tax liabilities* for the taxable year 2010. I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after **investigation**/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than December 31, 2014.

It means that the defect found in the respective waiver in *SCB, STI, FPIC,* and *GMA, i.e.*, failure to indicate the specific taxes involved and the amount of taxes to be assessed, is likewise extant in the waiver dated June 21, 2013. Following these cases, the waiver dated June 21, 2013 is null, and *failed* to extend the BIR's right to assess petitioner for internal revenue taxes covering CY 2010, until December 31, 2014. For this reason, the FLD/FAN made by the BIR, and received by petitioner on December 19, 2014 is indeed void and ineffectual against the latter due to prescription.

Second. The BIR violated petitioner's right to due process.

Section 228 of the NIRC, as amended, provides in part:

> SEC. 228. *Protesting of Assessment.* — ...

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[97] *Supra* note 9. Boldfacing and underscoring in the original. Italics supplied.

> ...
>
> **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.**
>
> ...[98]

Ang Tibay v. Court of Industrial Relations (Ang Tibay)[99] explained that among the components for administrative due process are: *one,* the administrative tribunal or body must consider the evidence presented; and *two,* 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.

These two (2) components of administrative due process culled from *Ang Tibay* were applied in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon).*[100] There, Avon Products Manufacturing, Inc. (APMI) advanced before the BIR, its defenses on the initial findings of the examining revenue officers, informal conference, PAN, and FAN. However, the BIR failed to give explanation or discussion on APMI's defenses in various segments of the assessment process. *Avon* decreed that the BIR flouted APMI's right to due process:

> 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.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from

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98 Boldfacing supplied.
99 G.R. No. L-46496, February 27, 1940.
100 G.R. Nos. 201398-99, October 3, 2018.

P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. **Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

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

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.

> **It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**[101]

More recently, *Commissioner of Internal Revenue v. Unioil Corporation (Unioil)*[102] abridged the decree in *Avon* as follows:

> What we can refract from our ruling in Avon Products is that the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party.

Here, the BIR's PAN dated December 3, 2014[103] contained the projected deficiency IT, VAT, and EWT assessments against petitioner in the total amount of ₱51,434,818.07 for CY 2010, with the following breakdown:

Tax Type	Basic Tax	Interest	Tax Due
IT	₱21,671,212.63	₱15,733,894.10	₱ 37,405,106.73
VAT	7,285,837.02	5,613,088.68	12,898,925.70
EWT	637,136.09	493,649.55	1,130,785.64
TOTAL			**₱51,434,818.07**

Petitioner then sent the letter[104] dated December 10, 2014 to the BIR, contesting the PAN dated December 3, 2014. The former posed the following explanations, and provided the latter with several schedules in support thereof:

101 Boldfacing supplied.
102 G.R. No. 204405, August 4, 2021.
103 *Supra* note 10.
104 *Supra* note 12.

Accordingly, detailed analysis of the accounts assessed was made and the following facts were noted[:]

1) Purchases of Goods, Purchases of [S]ervices, Professional [F]ee and Rental [E]xpense per FS/ITR are reconciled with Expanded Withholding Tax [a]lpha list 1604E/1601E - (See Schedule 1) - Note that Purchases Imported are not subject to Withholding Tax[;] hence[,] was excluded from Expanded Withholding Tax.
2) Direct Labor, Indirect Labor and Employees Cost per FS/ITR are reconciled with Withholding Tax on Compensation alpha list 1604CF/1601C -(See Schedule 2)- Note that Sub-contract Labor and portion of Direct Labor are subjected to 2% Expanded Withholding [T]ax that represents sub contracts and agency fees.
3) The following are not unaccounted Importations[:]
3.1) Marlex high density polyethylene [₱]4,844,080.00 - Included in Importation transaction VAT relief filed per Quarterly VAT 2550Q for the 3rd Quarter 2010 - (See Schedule 3)

3.2) 2 Units SMC high speed blow [molding] machine [₱]6,622,799.00- Included in the Importation of Capital goods filed per Quarterly VAT 2550Q for the 4th Quarter 2010 - (See Schedule 4)

Yet, without batting an eye, the BIR issued the FLD/FAN[105] dated December 19, 2014, reiterating the findings in the PAN, save for adjustment in the amount of interest on the deficiency taxes:

Tax Type	Basic Tax	Interest	Tax Due
IT	₱21,671,212.63	₱16,315,751.31	₱ 37,986,963.94
VAT	7,285,837.02	5,808,708.42	13,094,545.44
EWT	637,136.09	510,756.22	1,147,892.31
TOTAL			**₱52,229,401.69**

Like the BIR's repetition of the PAN's results in the FLD/FAN dated December 19, 2014, the Details of Discrepancies[106] in the FLD/FAN, too, emulated the Details of Discrepancies[107] in the PAN. Tellingly, the FLD/FAN dated December 19, 2014 failed to echo the reasons why petitioner's defenses ventilated in its letter dated December 10, 2014, contesting the PAN, were without merit. In fact,

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[105] *Supra* notes 13-15.
[106] *Supra* note 14.
[107] *Supra* note 11.

qd

said letter was not even mentioned therein. Indeed, "... [respondent], in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party."[108]

Simply put, the BIR fell short in its responsibility to give reason for rejecting petitioner's defenses in the PAN, as commanded by Section 228 of the NIRC, as amended, as interpreted in *Avon* and *Unioil*, thereby transgressing the latter's right to due process.

To punctuate our discussion, the deficiency IT, VAT, and EWT assessments for CY 2010 issued by the BIR against petitioner are null. Being so, collection of assessed taxes on petitioner for said year is no longer possible. To stress, a void assessment bears no valid fruit.[109]

WHEREFORE, the Petition for Review dated June 25, 2019, filed by Plastic Container Packaging Corporation is **GRANTED**. Accordingly, the Formal Letter of Demand and Final Assessment Notices dated December 19, 2014 and the Final Decision on Disputed Assessment dated April 5, 2019, all issued against Plastic Container Packaging Corporation, for deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax, with interests, covering Calendar Year 2010, are **CANCELLED** and **SET ASIDE**.

Respondent, his representatives, agents, or other persons acting in his behalf, are **PROHIBITED** from collecting on Plastic Container Packaging Corporation, the subject deficiency tax assessments covering Calendar Year 2010.

SO ORDERED.

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

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108 See *Commissioner of Internal Revenue v. Unioil Corporation, supra* note 102.
109 *Ibid.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice