REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARINA SQUARE PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10601

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
DEC 13 2024
1:43 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that this Court render judgment ordering the cancellation and withdrawal of respondent's assessments against petitioner for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), final withholding tax (FWT), creditable withholding VAT (CWVAT), documentary stamp tax (DST), and compromise penalty, for taxable year 2015, in the total amount of ₱1,047,025,447.53, inclusive of surcharges and interest.[1]

THE PARTIES

Petitioner Marina Square Properties, Inc. is a corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at 17/F New Coast Hotel Manila, 1588 M.H. del Pilar Street cor. Pedro Gil, Malate, Manila.[2] It is registered with the Bureau of Internal Revenue (BIR).[3]

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[1] Statement of the Case, Pre-Trial Order dated January 6, 2023, Docket – Vol. 2, p. 715.
[2] Par. 2, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 695.
[3] Exhibit "P-2", Docket – Vol. 2, pp. 1001 to 1002.

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia,* the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[4]

THE FACTS OF THE CASE

The BIR issued the *Letter of Authority* (LOA) No. eLA201500090211 dated April 16, 2018,[5] authorizing Revenue Officers Ruel Custodio and Jose VI Garcia/Group Supervisor (GS) Cherryl Anne Adapon of Revenue District Office No. 126 – Regular Large Taxpayers (LT) Division III, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2015 to December 31, 2015. Petitioner received a copy of the said LOA on April 26, 2018.[6]

On February 14, 2019, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated January 10, 2019.[7] Thereafter, on February 28, 2019, petitioner filed its letter dated February 27, 2019 *(Reply to Preliminary Assessment Notice for CY 2015).*[8]

On April 3, 2019, petitioner received the *Formal Letter of Demand* (FLD) dated March 15, 2019, with *Details of Discrepancy* and *Assessment Notices,* in which respondent requested petitioner to pay deficiency income tax, VAT, EWT, withholding tax on compensation (WTC), DST, FBT, FWT, Final Withholding VAT (FWVAT), and compromise penalty, for taxable year 2015 in the aggregate amount of ₱965,035,048.14, inclusive of surcharge and interest.[9]

On May 3, 2019, petitioner filed its protest letter of even date *(Request for Reinvestigation Deficiency Tax Assessments for Taxable Year 2015).*[10] Thereafter, on July 2, 2019, petitioner filed the letter of even date *(Transmittal of Supporting Documents Deficiency Tax Assessments for Calendar Year 2015).*[11]

Subsequently, on June 29, 2021, petitioner received respondent's *Final Decision on Disputed Assessment* (FDDA), denying petitioner's administrative protest. In the FDDA, respondent concluded that petitioner is liable to pay deficiency income tax, VAT, EWT, WTC, DST, FBT, FWT, CWVAT, and

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[4] Par. 1, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695.
[5] Exhibit "P-3", Docket – Vol. I, p. 106; Exhibit "R-1", BIR Records – Folder 1 of 7 (Exhibit "R-12"), p. 585.
[6] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695.
[7] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695; Exhibit "P-6", Docket – Vol. I, p. 123 to 130; Exhibits 'R-7" to "R-7-1", BIR Records – Folder 6 of 7 (Exhibit "R-12-5"), pp. 45 to 52.
[8] Exhibit "P-7", Docket – Vol. I, pp. 131 to 145.
[9] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695; Exhibit "P-8", Docket – Vol. I, pp. 146 to 163; Exhibits "R-9" to "R-9-4", BIR Records – Folder 7 of 7 (Exhibit "R-12-6"), pp. 49 to 59, 19 to 43, 1 to 18, respectively.
[10] Exhibit "P-9", Docket – Vol. I, pp. 164 to 188.
[11] Exhibit "P-10", Docket – Vol. I, pp. 189 to 191.

compromise penalty, for taxable year 2015, in the aggregate amount of ₱1,047,025,447.53.[12]

Petitioner filed the present *Petition for Review* on July 29, 2021.[13] The case was initially raffled to this Court's Third Division.

Within the period granted by the Court,[14] respondent posted on January 31, 2022 his *Answer*,[15] interposing the following special and affirmative defenses: (1) the FLD and FDDA issued by the BIR are valid; (2) the period to assess deficiency taxes against petitioner has not yet prescribed; and (3) the deficiency assessment has legal and factual bases.

On March 31, 2022, respondent transmitted the *BIR Records* of this case, consisting of seven (7) folders.[16]

In the Resolution dated March 24, 2022,[17] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on May 19, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated May 19, 2022,[18] stating that the parties decided not to have their case mediated.

Petitioner then filed an *Urgent Motion to Quash Warrant of Distraint and/or Levy* on June 23, 2022,[19] to which respondent filed his *Comment and Opposition (Re: Petitioner's Urgent Motion to Quash Warrant of Distraint and Levy)* on July 13, 2022.[20]

The Pre-Trial Conference was initially set on August 11, 2022,[21] but was reset to October 11, 2022, pursuant to the Resolution dated June 30, 2022,[22] thereby setting the hearing for petitioner's *Urgent Motion to Quash Warrant of Distraint and/or Levy* on August 11, 2022.

At the hearing held for the said *Urgent Motion to Quash Warrant of Distraint and/or Levy* on August 11, 2022, petitioner presented the testimony of its Chief Accountant, Ms. Violeta R. Gallardo.[23]

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[12] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695; Exhibit "P-11", Docket – Vol. I, pp. 192 to 210; Exhibits "R-11" to "R-11-2", BIR Records Folder 7 of 7 (Exhibit "R-12-6"), pp. 317 to 328, 315 to 316, and 326 to 333, respectively.
[13] Docket – Vol. I, pp. 6 to 58.
[14] Respondent's *Motion for Extension of Time to File Answer* dated December 6, 2021, and Resolution dated December 14, 2021, Docket – Vol. I, pp. 347 to 350, and 353, respectively; Respondent's *Second Motion for Extension of Time to File Answer* dated January 5, 2022, and Resolution dated March 16, 2022, Docket – Vol. I, pp. 355 to 358, and 393, respectively;
[15] Docket – Vol. I, pp. 363 to 377.
[16] Respondent's *Compliance* dated March 10, 2022, Docket – Vol. I, pp. 397 to 399.
[17] Docket – Vol. I, pp. 395 to 396.
[18] Docket – Vol. I, p. 402.
[19] Docket – Vol. I, pp. 406 to 413.
[20] Docket – Vol. I, pp. 418 to 432.
[21] Resolution dated June 1, 2022, Docket – Vol. I, pp. 404 to 405.
[22] Docket – Vol. I, p. 417.
[23] Exhibit "P-27", Docket – Vol. I, pp. 438 to 445; Minutes of the hearing held on, and Order, dated August 11, 2022, Docket – Vol. I, pp. 570 to 572.

The *Formal Offer of Evidence (Re: Urgent Motion to Quash Warrant of Distraint and/ or Levy)* was filed on August 16, 2022,[24] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence Re: Urgent Motion to Quash Warrant of Distraint and/ or Levy)* on August 17, 2022.[25] Petitioner then filed on September 20, 2022, a *Manifestation and Motion to Resolve FOE & Urgent Motion to Quash Warrant of Distraint and/ or Levy.*[26]

In the Resolution dated September 28, 2022,[27] the Court admitted petitioner's offered exhibits. In the same Resolution, the Court directed respondent to file his comment on the *Motion to Resolve* within five (5) days from receipt thereof. Respondent then filed on October 10, 2022 his *Comment (on Petitioner's Motion to Resolve FOE and Urgent Motion to Quash Warrant of Distraint and/ or Levy).*[28] Eventually, in the Resolution dated December 19, 2022,[29] the Court denied petitioner's *[Urgent] Motion to Quash Warrant of Distraint and/ [or] Levy.*

In the meantime, the Pre-Trial Conference was held on October 11, 2022.[30] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on October 5, 2022,[31] while *Respondent's Pre-Trial Brief* was submitted on October 6, 2022.[32]

On November 10, 2022, the parties submitted their *Joint Stipulation of Facts and Issues,*[33] which was admitted and approved by the Court in its Resolution dated November 24, 2022,[34] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 6, 2023 was then issued.[35]

Petitioner then filed its *Motion for Reconsideration (Re: Resolution dated December 19, 2022)* on January 19, 2023,[36] to which respondent filed his *Comment and Opposition (Re: Petitioner's Motion for Reconsideration re: Resolution dated 19 December 2022).*[37] In the Resolution dated April 5, 2023,[38] the Court, *inter alia*: (1) granted the *Motion for Reconsideration*; (2) cancelled the *Warrant of Distraint and/ or Levy* seeking the collection of the disputed tax assessment against petitioner for taxable year 2015; (3) lifted the *Warrants of Garnishment* on petitioner's funds in the amount of ₱320,079,606.27; (4) suspended the further collection of alleged deficiency taxes pending the judicial resolution; (5) dispensed with the required posting of a bond; and (6) provisionally denied the refund of the collected funds

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[24] Docket – Vol. I, pp. 577 to 581.
[25] Docket – Vol. I, pp. 582 to 584.
[26] Docket – Vol. 2, pp. 587 to 591.
[27] Docket – Vol. 2, pp. 595 to 596.
[28] Docket – Vol. 2, pp. 653 to 655.
[29] Docket – Vol. 2, pp. 708 to 713.
[30] Minutes of hearing held on, and Order dated, October 11, 2022, Docket – Vol. 2, pp. 657 to 659.
[31] Docket – Vol. 2, pp. 597 to 612.
[32] Docket – Vol. 2, pp. 613 to 617.
[33] Docket – Vol. 2, pp. 694 to 703.
[34] Docket – Vol. 2, pp. 705 to 706.
[35] Docket – Vol. 2, pp. 715 to 723.
[36] Docket – Vol. 2, pp. 724 to 740.
[37] Docket – Vol. 2, pp. 816 to 829.
[38] Docket – Vol. 2, pp. 947 to 953.

in the amount of ₱102,980,055.33, pending the Court's adjudication of the present case.

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

Petitioner offered the testimony of its witness, Ms. Katherine O. Constantino,[39] the Court-commissioned Independent Certified Public Accountant (ICPA).[40]

The *Report* of the said ICPA was submitted on March 13, 2023.[41]

Petitioner filed its *Formal Offer of Evidence with Manifestation and Submission* on May 2, 2023,[42] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on May 10, 2023.[43]

In the meantime, petitioner filed on May 8, 2023 a *Manifestation (Re: Resolution dated April 5, 2023)*,[44] stating that subsequent to the filing of its *Motion for Reconsideration* on January 19, 2023, it has confirmed that respondent has already withdrawn the total amount of ₱426,252,961.16 from petitioner's bank accounts. In the Minute Resolution dated May 26, 2023,[45] the Court noted petitioner's *Manifestation.*

In the Resolution dated June 1, 2023,[46] the present case was transferred to the Second Division of this Court.

Thereafter, the Court admitted petitioner's offered exhibits, in the Resolution dated July 10, 2023.[47]

For his part, respondent presented the testimony of Revenue Officer Ruel D. Custodio.[48]

On July 25, 2023, *Respondent's Formal Offer of Evidence* was submitted,[49] to which petitioner filed its *Comment (re: Respondent's Formal Offer of Evidence)* on

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[39] Exhibit "P-23", Docket – Vol. 2, pp. 927 to 944; Minutes of the hearing held on, and Order dated, April 11, 2023, Docket – Vol. 2, pp. 954 to 956.
[40] *Oath of Commission* dated February 9, 2023, Docket – Vol. 2, p. 834; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket – Vol. I, pp. 834, and 837 to 838, respectively.
[41] Exhibits "P-22", Docket – Vol. 2, pp. 844 to 920.
[42] Docket – Vol. 2, pp. 959 to 983.
[43] Docket – Vol. 2, pp. 1097 to 1099.
[44] Docket – Vol. 2, pp. 1094 to 1096.
[45] Docket – Vol. 2, p. 1101.
[46] Notice, Docket – Vol. 2, p. 1103.
[47] Docket – Vol. 2, pp. 1105 to 1106.
[48] Exhibit "R-13", Docket – Vol. I, pp. 382 to 390; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. 2, pp. 1107 to 1108.
[49] Docket – Vol. 2, pp. 1109 to 1116.

August 7, 2023.[50] In the Resolution dated October 13, 2023,[51] the Court admitted respondent's offered exhibits.

The *Memorandum for Petitioner* was filed on November 23, 2023,[52] while respondent failed to file his memorandum.[53]

The case was considered submitted for decision on January 16, 2024.

THE STIPULATED ISSUE

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

> "WHETHER OR NOT RESPONDENT'S ASSESSMENTS AGAINST PETITIONER FOR DEFICIENCY INCOME TAX, VAT, EWT, FBT, FWT, CWVAT, AND DST FOR TY 2015 IN THE AGGREGATE AMOUNT OF PHP1,047,025,447.53, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTY, IS VALID."[54]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the deficiency tax assessments against it for taxable year 2015 are null and void for having been issued in violation of its right to due process; that respondent's right to assess petitioner's alleged deficiency VAT, EWT, FBT, and FWT for taxable year 2015 had already prescribed; that there is no basis for the application of the extraordinary ten (10)-year prescription in this case; and that respondent's deficiency tax assessments against petitioner for taxable year 2015 are devoid of legal and factual bases.

In his *Answer*, respondent contends that the FLD and FDDA issued by the BIR is valid; that the period to assess deficiency taxes against petitioner has not yet prescribed; and that the deficiency assessment has legal and factual bases.

THE COURT'S RULING

On the Timeliness of the Petition for Review

On June 29, 2021, petitioner received the FDDA denying its administrative protest.

[50] Docket – Vol. 2, pp. 1118 to 1123.
[51] Docket – Vol. 2, p. 1128.
[52] Docket – Vol. 2, pp. 1129 to 1195.
[53] Records Verification dated January 12, 2024 issued by this Court's Judicial Records Division, Docket – Vol. 2, p. 1196.
[54] Issue, JSFI, Docket – Vol. 2, p. 696.

Under Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party adversely affected by a decision, ruling, or inaction of the Commissioner of Internal Revenue (CIR) on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within **thirty days** after receipt of a copy of such decision or ruling, or the expiration of the period fixed by law for the CIR to act on the disputed assessment.

The Petition for Review was received by the Court on July 29, 2021. Hence, the instant Petition for Review was timely filed.

On the Violation of Petitioner's
Right to Administrative Due Process

Petitioner also contends that the FLD and FDDA did not consider the defenses raised in petitioner's reply to the PAN and protest to the FLD.

On the other hand, respondent counters that the FLD contains an acknowledgment that dispute has been raised by petitioner, but the findings on its liability to pay the deficiency taxes still stand. Thus, respondent submits that the FLD and FDDA as well as the assessment issued against petitioner are valid.

Section 228 of the NIRC of 1997 reads, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
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> **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.**
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> xxx xxx xxx." *(Emphasis added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made;

otherwise, the assessment shall be void.[55] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[56] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[57] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[58]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[59] as amended by RR No. 18-2013,[60] provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> xxx xxx xxx
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise,*</u>**

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[55] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[56] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[57] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[58] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).
[59] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty
[60] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

<u>the assessment shall be void</u> (see illustration in ANNEX 'B' hereof).

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3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative <u>shall state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence on which such decision is based, *<u>otherwise, the decision shall be void</u>* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision." *(Emphases and underscoring added)*

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

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[61] the Supreme Court said:

"**<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> 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, <u>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</u>.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **<u>Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions</u>. <u>Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity</u>.**

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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,

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

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 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*,[62] 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.

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

> (7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**
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> **The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.**
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> xxx xxx xxx
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> **Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands** that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**
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> xxx xxx xxx
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> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2[63] of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4[64] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6[65] specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> **'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue**

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[63] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[64] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[65] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

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

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

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

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

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

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In *Commissioner of Internal Revenue v. Reyes*,[66] **this Court ruled as void an assessment for deficiency estate tax issued by the**

[66] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].

> **Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**
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> **Compliance with strict procedural requirements must be followed in the collection of taxes** as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[67]
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>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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>> xxx xxx xxx
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>> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)
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> xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

To summarize, the above-quoted pronouncements require that respondent or his duly authorized representative to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. And due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

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[67] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect. Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment

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

In this case, as stated in the PAN dated January 10, 2019[68] the BIR ascertained that petitioner has a deficiency income tax, VAT, EWT, WTC, FBT, FWT, FWVAT, and DST, including interests, surcharge, and compromise penalties, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱ 343,356,095.29	₱ 171,678,047.65	₱ 163,983,108.31	₱ -	₱ 679,017,251.24
VAT	145,637,069.66	72,818,534.83	76,018,560.31	-	294,474,164.80
EWT	1,987,106.03	993,553.02	1,048,103.16	-	4,028,762.21
WTC	36,000.00	18,000.00	18,988.27	-	72,988.27
FBT	56,231,631.25	28,115,815.62	29,659,489.45		114,006,936.32
FWT	1,112,436.40	556,218.20	586,756.86		2,255,411.46
FWVAT	508,738.11	254,369.06	268,334.98		1,031,442.14
DST	19,526,060.00	4,881,515.00	4,580,332.21	50,000.00	29,037,907.21
Total	**₱568,395,136.74**	**₱279,316,053.38**	**₱276,163,673.53**	**₱50,000.00**	**₱1,123,924,863.65**

In its *Reply* dated February 27, 2019 to the PAN,[69] petitioner raised legal and factual arguments, citing pertinent provision of the law, jurisprudence, and even submitted supporting documents.[70]

Thereafter, the subject FLD was issued by then Deputy Commissioner – Operations Group Arnel SD. Guballa. However, **while the said FLD shows that the BIR made certain adjustments in the basic income tax and FBT due, it provided no explanation for the said adjustments, and failed to address the arguments raised by petitioner in its *Reply*.** In fact, save for

[68] Exhibit "P-6", Docket – Vol. I, p. 123 to 130; Exhibit "R-7", BIR Records – Folder 6 of 7 (Exhibit "R-12-5"), pp. 49 to 52.
[69] Exhibit "P-7", Docket – Vol. I, pp. 131 to 145.
[70] BIR Records – Folder 6 of 7 (Exhibit "R-12-5"), pp. 53 to 149.

the said adjustments in the basic income tax and FBT due, the FLD and attached *Details of Discrepancy* merely reiterated or copied *verbatim* the PAN and attached *Details of Discrepancy*, without addressing any of the refutations made by petitioner in its reply to the PAN. Notably, the BIR did add the following statements at the beginning of the FLD:

> "This has reference to your letter of protest dated February 27, 2019 which was received by this office on February 28, 2019 relative to the issued Preliminary Assessment Notice (PAN) dated January 10, 2019 xxx xxx xxx
>
> Please be informed that **after reevaluation and reconsideration of the documents you have submitted in your protest against the PAN**, there has been found deficiency income tax, value added tax, expanded withholding tax, withholding tax on compensation, docum[entary stamps tax, fringe benefit tax, final withholding tax, final withholding VAT, and compromise penalty for the period **January 1 to December 31, 2015,** as shown hereunder:
>
> xxx xxx xxx"[71]

However, the Court finds that the above generic or "one-size-fits-all" statement hardly complies with the due process requirement as laid down in the *Avon* case.

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

Furthermore, it is noted that petitioner filed on May 3, 2019 its protest letter against the FLD, again arguing against the findings stated therein and requesting for a reinvestigation of the said findings.[72] Thereafter, petitioner filed on July 2, 2019 a letter of even date submitting additional documents in support of its protest letter.[73]

In response to petitioner's protest, the subject FDDA was issued by respondent.[74] Again, while respondent cancelled the WTC assessment and made certain adjustments in the basic taxes due, it provided no explanation for the said

[71] Exhibit "P-8", Docket – Vol. I, at p. 146; Exhibit "R-9", BIR Records – Folder 7 of 7 (Exhibit "R-12-6"), at p. 59.
[72] Exhibit "P-9", Docket – Vol. I, pp. 164 to 188.
[73] Exhibit "P-10", Docket – Vol. 1, pp. 189 to 191.
[74] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 695; Exhibit "P-11", Docket – Vol. I, pp. 192 to 210; Exhibits "R-11" to "R-11-2", BIR Records Folder 7 of 7 (Exhibit "R-12-6"), pp. 317 to 328, 315 to 316, and 326 to 333, respectively.

adjustments, and still failed to address the arguments raised by petitioner in its protest to the FLD.

To stress, as part of the due process requirement in the issuance of tax assessments, respondent must give reason(s) for rejecting petitioner's explanations, and must give the particular facts upon which her conclusions are based, especially as regards the adjustments made, and those facts must appear on record. Respondent has obviously not observed such requirement in the issuance of the subject FLD, and the subject FDDA.

Thus, the inevitable conclusion again is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, and Sections 3.1.1, 3.1.3, and 3.1.5 of RR No. 12-99, as amended, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[75] Hence, a void assessment bears no valid fruit.[76] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

Since the subject tax assessments are void, petitioner is likewise not liable to pay the imposed compromise penalties in the total amount of ₱50,000.00. Nevertheless, it must be stressed that a compromise is, by its nature, mutual in essence.[77] It implies agreement. One party cannot impose it upon the other.[78] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[79] Considering that there is no indication that petitioner consented to the subject compromise penalties, the said total amount cannot likewise be sustained.

In view of the foregoing findings, it is no longer necessary to address the other respective arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the FLD and the attached *Assessment Notices*, all dated March 15, 2019, assessing petitioner for deficiency taxes for taxable year 2015, are **CANCELLED** and **WITHDRAWN**. Furthermore, the undated FDDA and

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

[76] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

[77] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

[78] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.

[79] Refer to Part III.5, Revenue Memorandum Order No. 7-2015.

the attached *Assessment Notices* dated October 9, 2020, assessing petitioner, for deficiency income tax, VAT, EWT, FBT, FWT, CWVAT, DST, and compromise penalty, for taxable year 2015, in the total amount of **₱1,047,025,447.53**, inclusive of surcharges and interest, are **REVERSED and SET ASIDE**. Respondent is then **ORDERED TO CEASE AND DESIST** from collecting the said amount.

Respondent is **FURTHER ORDERED TO REFUND** petitioner the amount of **₱426,252,961.16**,[80] which represents the amount withdrawn/collected by respondent or the BIR during the pendency of this case.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

[80] Based on petitioner's Manifestation filed on September 4, 2024.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice