REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

E.E. BLACK, LTD. (PHILIPPINES BRANCH),	**CTA CASE NO. 11074**
Petitioner,	Members:
	RINGPIS-LIBAN, *Chairperson, and*
-versus-	**MODESTO-SAN PEDRO,** *and*
	FERRER-FLORES, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	

x -- x

4:20 p.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a *Petition for Review*, filed on January 23, 2023, praying that this Court declare null, void, and invalid, then ultimately cancel the assessment against it for alleged deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Withholding Tax on Compensation ("WTC"), Final Withholding Tax ("FWT"), Documentary Stamp Tax ("DST"), and Compromise Penalties for taxable year ("TY") 2018.

The Parties

Petitioner is a foreign corporation duly organized and existing under the laws of the State of Hawaii, United States of America, and is duly licensed to do business in the Philippines as a branch office.[1]

Respondent is the duly appointed and incumbent Commissioner of Internal Revenue ("CIR").[2]

---

1 Petition for Review, p. 1, *Rollo* Vol. 1, p. 1.
2 Pre-Trial Order, dated January 25, 2024, p. 1, *Rollo* Vol. 2, p. 754.

The Facts

Respondent issued a Notice of Discrepancy to Petitioner, with attached Details of Discrepancies, on November 4, 2021.[3]

Respondent then issued a Preliminary Assessment Notice ("PAN") on January 26, 2022. Petitioner received this on February 21, 2022,[4] then protested it via a letter ("protest to PAN") filed on March 8, 2022.[5]

On March 8, 2022, the day on which petitioner filed its protest to the PAN, respondent issued a Final Assessment Notice ("FAN"). Petitioner received this on April 1, 2022.[6] Aggrieved, petitioner then assailed the FAN via a letter ("protest to FAN") filed on April 29, 2022,[7] followed by a transmittal letter, filed on June 27, 2022, with attached supporting documents.[8]

With no action from respondent on the protest to the FAN, petitioner filed the instant Petition on January 23, 2023. Respondent filed his Answer on April 4, 2023.[9]

After a full-blown trial, the Court ordered the parties to file their respective memoranda.[10] Petitioner filed its Memorandum via registered mail on April 4, 2025,[11] while respondent failed to file any.[12] As a result, the Court submitted this case for Decision via a Minute Resolution, dated May 6, 2025.[13]

Hence, this Decision.

The Issues

The sole issue brought before this Court is whether petitioner is liable for the assessed deficiency taxes for TY 2018.

---

3 *Id.*
4 Pre-Trial Order, dated January 25, 2024, p. 2, *Rollo* Vol. 2, p. 755. The Pre-Trial Order states that the PAN was "dated 26 January 2020," but the actual date printed on the PAN is January 26, 202*2*. *See* Preliminary Assessment Notice, dated January 26, 2022, p. 1, BIR Records, p. 900.
5 Letter, dated March 8, 2022, BIR Records, pp. 876AAL-876A.
6 Pre-Trial Order, dated January 25, 2024, p. 2, *Rollo* Vol. 2, p. 755.
7 Letter, dated April 29, 2022, *Rollo* Vol. 1, pp. 205-349.
8 Transmittal Letter, dated June 27, 2022, *id.* at 350-384.
9 Answer, filed on April 4, 2023, *Rollo* Vol. 2, pp. 560-570.
10 Resolution, dated February 27, 2025, *Rollo* Vol. 3, pp. 1378-1379.
11 Memorandum, filed via registered mail on April 4, 2025, *id.* at 1381-1429.
12 Records Verification, dated April 25, 2025, *id.* at 1435.
13 *Id.*, unpaginated.

Arguments of the Parties

Petitioner's Arguments

In its Memorandum, petitioner assails the validity of the assessment by arguing that (1) respondent failed to address the arguments raised by petitioner in its protest to the PAN;[14] and (2) it lacks factual and legal bases.[15]

Respondent's Arguments

In his Answer, respondent counters the above by claiming that (1) he complied with the "minimum" due process requirements;[16] and (2) petitioner is liable for the deficiency taxes assessed, which have factual and legal bases.[17]

The Ruling of the Court

The Petition must be granted.

This Court has jurisdiction over the instant Petition

Under *Section 7(a)(2) of Republic Act No. 1125, as amended*, this Court has jurisdiction over the CIR's inaction in cases involving disputed assessments:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> . . . .
>
> (2) *Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
> (Italics supplied.)

---

14 Memorandum, filed via registered mail on April 4, 2025, pp. 6-13, *id.* at 1386-1393.
15 Memorandum, filed via registered mail on April 4, 2025, pp. 14-47, *id.* at 1394-1427.
16 Answer, filed on April 11, 2023, pp. 2-3, *Rollo* Vol. 2, pp. 561-562.
17 Answer, filed on April 11, 2023, pp. 3-9, *id.* at 562-568.

The prescriptive period for appealing such inaction to this Court is laid down in *Section 228 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), the last two paragraphs of which read as follows:

> Such assessment may be protested administratively by filing a request of 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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.
> (Italics supplied.)

The above is also implemented by *Section 3.1.4 of Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR No. 18-13*, which clarifies that the administrative protest mentioned in *Section 228 of the NIRC* refers to a protest against a FAN.

To summarize, a taxpayer must protest a FAN within 30 days from receipt of the same. It must also submit all relevant supporting documents within 60 days from the filing of the protest. Then, if the CIR does not act on the protest within 180 days from either the filing of the protest or the submission of the supporting documents, the taxpayer has 30 days within which to file a Petition for Review before this Court.

In the case at bar, petitioner received the FAN on April 1, 2022, giving it until May 1, 2022 within which to administratively protest the assessment. It filed its protest on April 29, 2022, within the 30-day period, and submitted its supporting documents on June 27, 2022, within the 60-day period for submitting such. This gave respondent until December 24, 2022 within which to decide on the protest. As respondent had still not acted on the protest upon the lapse of this period, petitioner had until January 23, 2023 within which to file a Petition.

Petitioner filed the instant Petition exactly on January 23, 2023. The Petition was thus filed on time, and this Court properly assumed jurisdiction over this case.

Respondent failed to address petitioner's protest to the PAN

Petitioner argues that its right to due process was violated as the FAN ignored its arguments against the PAN. This, it contends, is sufficient basis to declare the assessment void. Respondent maintains, however, that he complied with the minimum requirements for the issuance of an assessment, meaning it is valid.

We find for petitioner.

Section 228 of the NIRC requires that an assessed taxpayer be informed of the factual and legal basis for the assessment, on pain of said assessment's nullification:

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

This is made more specific by *Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-13*:

> 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 [their] duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void. . . .*
> (Italics in original.)

In the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[18] ("*Avon*"), the Supreme Court explained that informing a taxpayer of an assessment's factual and legal basis necessarily involves addressing any protests raised against it:

> The Court of Tax Appeals ruled that the difference in the appreciation by the Commissioner of Avon's supporting documents, which led to the deficiency tax assessments, was not violative of due process. While the Commissioner has the duty to receive the taxpayer's clarifications and explanations, she does not have the duty to accept them on face value.
>
> This Court disagrees.
>
> 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*

[18] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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.

. . . .

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.

In Edwards v. McCoy:

> The object of a hearing is as much to have evidence considered as it is to present it. *The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.*

In Ang Tibay, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but *the tribunal must consider the evidence presented.*"

Furthermore, in Mendoza v. Commission on Elections, this Court explained:

> [T]he last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

In Villa v. Lazaro, this Court held that Anita Villa (Villa) was denied due process when the then Human Settlement Regulatory Commission ignored her submission, not once but thrice, of the official documents certifying to her compliance with the pertinent locational, zoning, and land use requirements, and plans for the construction of her funeral parlor. It

> imposed on Villa a fine of P10,000.00 and required her to cease operations on the spurious premise that she had failed to submit the required documents. This Court found the Commissioner's failure or refusal to even acknowledge the documents submitted by Villa indefensible. It further held that the defects in the administrative proceedings "translate to a denial of due process against which the defense of failure to take timely appeal will not avail."
>
> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, *the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter*, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."
> (Citations omitted; italics supplied.)

From the above, when a taxpayer protests an assessment, the CIR is *required* to address the arguments raised. Simply ignoring such arguments renders the assessment void, as that would be a violation of the taxpayer's right to due process.

To be clear, the CIR need not accept the taxpayer's arguments. If the arguments are incorrect, then the CIR must obviously reject these. What *Avon* requires is that the CIR also *explain why* said arguments are rejected. Inasmuch as these rejections are part and parcel of the assessment, failing to state the factual and legal bases for such rejections is the same as failing to state the factual and legal bases for the assessment. Protests against an assessment put the factual and legal bases of an assessment into question, after all. Therefore, if an assessment notice does not clearly defend against such protests in writing, then it fails to actually state valid factual and legal bases. And, as already discussed, an assessment that fails to state its factual and legal basis is null and void.

Furthermore, failing to consider the taxpayer's arguments effectively nullifies its right to intelligently defend its case. As observed in *Avon*, allowing a taxpayer to adduce evidence and argue against an assessment is a *pro forma* farce if the CIR were to then completely ignore said evidence and assessment. At that point, the taxpayer would be unable to intelligently defend its case, as it would not know *why* its evidence and arguments are unacceptable.

In its March 8, 2022 protest against the PAN, herein petitioner raised a number of arguments against the assessment. Against the imposition of 50% surcharge on the deficiency taxes, to give one example of many, petitioner complained that the PAN failed to specifically allege the facts supporting the claim that it filed false or fraudulent returns.

These protests are completely unaddressed in the FAN, however. To return to the example, the section of the FAN's Details of Discrepancies entitled "SURCHARGE" does not identify any specific returns filed by petitioner, whether each of these are false or fraudulent, what specific details made in said returns render them false or fraudulent, or why such details render the returns false or fraudulent. The section does not even acknowledge that petitioner alleged a lack of stated basis for the CIR's claim of false or fraudulent returns. It completely ignores petitioner's argument.

Tellingly, said section of the FAN is word-for-word identical to the section also entitled "SURCHARGE" in the PAN's Details of Discrepancies. Indeed, a few formalities aside, the two Details of Discrepancies are mostly identical. It is as if petitioner had not filed any protest at all. Considering that the FAN was issued on the very same day that petitioner filed its protest, petitioner may as well have not filed such.

To reiterate, *Avon* does not require the CIR to change every detail of an assessment as soon as a taxpayer protests. The assessed amounts can be the same if the original assessment was found correct, even in light of the protest. What *Avon* requires, however, is that the CIR *acknowledge* and *address* said protest *in writing* through the FAN. The original assessment could be correct; the taxpayer's contentions could all be wrong; the CIR could systematically consider every argument and find them wanting. The assessment would still be void if the *reasons* for rejecting the protest are not put down *in writing* in the FAN.

In light of the absence in the FAN of any acknowledgment, much less proper addressing, of petitioner's protests to the PAN, the assessment here is void for violating petitioner's right to due process.

Respondent's claim to have complied with the "minimum" due process requirements for an assessment is unacceptable. There is no "minimum" set of such requirements as this implies that other requirements can be ignored. Due process requirements are *requirements*, so *all* must be complied with. Otherwise, they would not be requirements in the first place.

The important requirement laid down by *Avon* is a *requirement*. It is jurisprudential and thus mandatory. Nothing clarifies that it is an "extra" requirement that can thus be ignored; otherwise, it would not be a requirement in the first place, and the Supreme Court would not have voided the assessment in *Avon*. As such, it is false to claim that respondent complied with the "minimum" due process requirements—he simply failed to comply with all due process requirements.

Indeed, as already discussed, the factual and legal bases for rejecting a taxpayer's protest simply *are* factual and legal bases for an assessment. A failure to state the former is thus a failure to completely state the latter. As such, respondent did not even fully comply with the so-called "minimum" requirements. At best, the FAN *incompletely* and *insufficiently* states that assessment's factual and legal bases, akin to citing laws and jurisprudence but not identifying the specific facts relevant to the case to which such legal bases would apply.

Respondent's invocation of the "essence" of due process is of no help either. As early as in the 1912 case of *Edwards v. McCoy*,[19] cited by *Avon*, the opportunity to be heard, explain one's side, and seek reconsideration is absent if one's explanations are left unconsidered. And as the FAN did not address the explanations offered in petitioner's protest to the PAN, petitioner was *not* given the opportunity to substantially and intelligently explain its side. Respondent thus failed to comply even with just the "essence" of due process, and the assessment is void.

Finally, respondent cannot merely claim to have considered petitioner's protests when no proof of such consideration appears in the FAN. The factual and legal bases for an assessment must be *in writing*, after all. Simply claiming to have considered a protest without including it in the FAN is thus akin to simply claiming that the assessment has factual and legal bases without including these in any assessment notice. The end result is the same: a void assessment.

Considering the invalidity of the assessment, the Court need not cover the parties' other arguments. Whatever Our findings would be there, the assessment would still be void.

ACCORDINGLY, the instant *Petition for Review*, filed on January 23, 2023, is hereby **GRANTED**. The assessment against petitioner for alleged deficiency Income Tax ("IT"), Value-Added Tax ("VAT"), Expanded Withholding Tax ("EWT"), Withholding Tax on Compensation ("WTC"), Final Withholding Tax ("FWT"), Documentary Stamp Tax ("DST"), and Compromise Penalties for taxable year ("TY") 2018 is **CANCELLED** and declared **NULL** and **VOID.**

[19] G.R. No. 7474, March 25, 1912.

Respondent and any of his agents and officers are **ENJOINED AND PROHIBITED** from collecting any amount in relation to the void assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice