REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BIO-RESOURE POWER GENERATION CORPORATION, Petitioner,	**CTA CASE NO. 10372**
	Members:
- versus -	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 3 0 2024 2:10 p.m.

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DECISION

***MODESTO-SAN PEDRO, J.*:**

The Case

The Petition for Review prays that the Court render judgment cancelling respondent's assessment for deficiency income tax, value-added tax ("VAT"), and expanded withholding tax ("EWT") for fiscal year ("FY") ending September 30, 2016 in the aggregate amount of PhP33,468,709.51, inclusive of compromise penalties, surcharge, and interest.[1]

The Parties

Petitioner Bio-Resource Power Generation Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with a registered address at URC-Sonedco Sugar Mill Compound, Camugao,

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[1] Statement of the Case, Amended Pre-Trial Order, Docket – Vol. 2, p. 840.

Negros Occidental, Philippines.[2] It is a registered taxpayer of the Bureau of Internal Revenue ("BIR") Large Taxpayers Service, with Taxpayer Identification No. 000-285-515-00000.[3]

Respondent Commissioner of Internal Revenue ("CIR") is the chief of the BIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of her office including, among others, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the *National Internal Revenue Code of 1997, as amended* (the "*Tax Code*"), and other laws, rules and regulations.[4]

The Facts

A Letter of Authority ("LOA") with SN: eLA201600026888, dated May 18, 2018, was issued for the examination and investigation of petitioner's books of accounts and other accounting records, and received by petitioner on June 5, 2018.[5]

A Notice of Informal Conference ("NIC"), dated December 18, 2018, was issued to and received by Petitioner. The informal conference was held on January 11, 2019.[6]

A Preliminary Assessment Notice ("PAN"), dated March 4, 2019, with Details of Discrepancies was issued to and received by Petitioner on March 5, 2019,[7] assessing petitioner with deficiency income tax, value-added tax, and expanded withholding tax, and compromise penalties, aggregating ₱30,442,299.39, inclusive of interest and surcharges, computed as follows:

Tax Type	Basic	Interest	Surcharge	Compromise	Total
Income tax	₱12,562,123.28	₱4,160,854.39	₱3,140,530.82	₱-	₱19,863,508.49
VAT	5,036,070.27	1,891,883.73	1,259,017.57	-	8,186,971.57
EWT	1,163,904.12	446,939.18	290,976.03	-	1,901,819.33
Administrative penalties	-	-	-	490,000.00	490,000.00
TOTAL	**₱18,762,097.67**	**₱6,499,677.30**	**₱4,690,524.42**	**₱490,000.00**	**₱30,442,299.39**

Petitioner filed its Reply to the PAN on March 20, 2019.[8]

[2] Exhibit "P-1", Docket – Vol. 2, p. 625.
[3] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 1, p. 333; Exhibit "P-2", *id.* at pp. 633 to 635.
[4] Par. 2, *id.* at pp. 333 to 334.
[5] Par. 3, *id.* at p. 334; Exhibit "P-3", *id.* at p. 636; Exhibit "R-1", BIR Records, p. 3.
[6] Par. 4, *id.*; Exhibit "P-4", *id.* at pp. 637 to 642.
[7] Par. 5, *id.*; Exhibit "P-5", *id.* at pp. 643 to 647; Exhibit "R-5", BIR Records, pp. 184 to 189.
[8] Exhibit "P-6", *id.* at pp. 648 to 680.

A Formal Letter of Demand/Final Assessment Notice ("FLD/FAN") with Details of Discrepancies and Assessment Notices, dated April 4, 2019, was issued to and received by Petitioner on April 29, 2019,[9] reiterating the assessments in the PAN, except for the adjusted interest. The total amount thus assessed aggregated to ₱30,830,049.40, inclusive of interest and surcharges.

Petitioner filed a Protest against the FLD/FAN, through a request for reconsideration, on May 29, 2019.[10]

An undated Final Decision on Disputed Assessment ("FDDA") with Assessment Notices was issued to and received by Petitioner on September 9, 2020,[11] denying petitioner's Protest and upholding and reiterating the assessments in the FLD/FAN, except for the adjusted interest. The total amount thus assessed aggregated to ₱33,468,709.51, inclusive of interest and surcharges.

Petitioner thus filed a Petition for Review ("Petition") before this Court on October 8, 2020,[12] praying for the cancellation of respondent's assessment for deficiency income tax, VAT, and EWT for FY ending September 30, 2016 in the aggregate amount of ₱33,468,709.5l, inclusive of compromise penalties, surcharge, and interest. On the other hand, respondent's Answer,[13] belatedly filed on January 4, 2021, was admitted.[14]

The case was set and held for mediation before the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA") on March 18, 2021, but the parties did not agree to mediate.[15]

After a series of resettings, the Pre-Trial Conference was set and held on April 28, 2022.[16] Prior thereto, the petitioner's and respondent's respective Pre-Trial Briefs were filed on October 25, 2021 and April 21, 2022, respectively.[17]

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[9] Par. 6, *id.* at p. 334; Exhibit "P-7", *id.* at pp. 681 to 689; Exhibit "R-7", including sub-markings, BIR Records, pp. 262 to 270.
[10] Exhibit "P-8", *id.* at pp. 690 to 695.
[11] Par. 7, *id.* at p. 334; Exhibit "P-9", *id.* at pp. 681 to 689; Exhibit "R-12" and "R-13", including sub-markings, BIR Records, pp. 345 to 351.
[12] Docket – Vol. 1, pp. 6 to 39.
[13] *Id.* at pp. 242 to 256.
[14] Motion to Admit Attached Answer and Resolution dated January 25, 2021, *id.* at pp. 237 to 240 and 259 to 260, respectively.
[15] Resolution dated February 2, 2021 and No Agreement to Mediate dated March 18, 2021, *id.* at pp. 262 to 263 and 265, respectively.
[16] Minutes of the hearing held on, and Order dated, April 28, 2022, *id.* at 330 to 332.
[17] *Id.* at pp. 271 to 284 and 309 to 314, respectively.

Meanwhile, respondent transmitted the BIR Records on March 10, 2022.[18]

On May 26, 2022, the parties submitted their Joint Stipulation of Facts,[19] which was approved, admitted[20] and adopted in the Pre-Trial Order issued and dated July 12, 2022.[21] Upon motion of petitioner,[22] an Amended Pre-Trial Order was issued on October 24, 2022.[23]

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

Petitioner offered the testimony of Mr. Danilo M. Timbang[24] and thereafter filed its Formal Offer of Exhibits on August 18, 2022,[25] with respondent's Comment/Opposition (on Petitioner's Formal Offer of Evidence) filed on September 2, 2022.[26] In the Resolution dated September 20, 2022,[27] the Court admitted all of petitioner's offered exhibits, except for Exhibits "P-15-1" and "P-15-3", for failure to present the originals for comparison.

For his part, respondent offered the testimonies of Revenue Officers Ana Veronica A. Asis and Mary Ann R. Balubal.[28] Respondent then submitted his Formal Offer of Evidence on March 29, 2023,[29] with petitioner's Comment (Re: Respondent's Formal Offer of Evidence dated March 29, 2023) filed on April 11, 2023.[30] In the Resolution dated June 13, 2023,[31] the Court admitted all of respondent's offered exhibits.

Petitioner filed its Memorandum on July 17, 2023,[32] while respondent's Memorandum was submitted on July, 20, 2023.[33] Thus, in the Resolution dated August 4, 2023,[34] the case was deemed submitted for decision.

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[18] Compliance dated January 31, 2022, *id.* at p. 290 to 291.
[19] *Id.* at pp. 333 to 340.
[20] Resolution dated June 1, 2022, *id.* at p. 342.
[21] *Id.* at pp. 351 to 359.
[22] Motion to Amend Pre-Trial Order filed on August 8, 2022, Comment (Re: Motion to Amend Pre-Trial Order) filed on September 12, 2022, and Resolution dated October 5, 2022 Docket – Vol. 2, pp. 605 to 608, 830 to 832, and 838, respectively.
[23] *Id.* at pp. 840 to 847.
[24] Exhibit "P-17", Docket – Vol. 1, pp. 365 to 385; Minutes of the hearing held on, and Order dated, August 4, 2022, Docket – Vol. 2, pp. 599 to 601.
[25] Docket – Vol. 2, pp. 611 to 619.
[26] *Id.* at pp. 825 to 828.
[27] *Id.* at pp. 835 to 836.
[28] Exhibits "R-15" and "R-16, Docket – Vol. 1, pp. 299 to 308 and 322 to 327, respectively; Minutes of the hearing held on, and Order dated, March 14, 2023, Docket – Vol. 2 pp. 850 and 853, respectively.
[29] Docket – Vol. 2, pp. 854 to 861.
[30] *Id.* at pp. 864 to 871.
[31] *Id.* at pp. 875 to 876.
[32] *Id.* at pp. 877 to 914.
[33] *Id.* at pp. 915 to 933.
[34] *Id.* at p. 936.

Hence, this Decision.

The Issue

The parties stipulated on the following issue to be resolved in this case:

> "Whether or not petitioner is liable for deficiency income tax, value-added tax, expanded withholding tax and compromise penalties in the amount of Thirty-Three Million Four Hundred Sixty-Eight Thousand Seven Hundred Nine Pesos and 51/100 (PhP33,468,709.51), plus additional interest for fiscal year 2016 ending September 30, 2016."[35]

Arguments of the Parties

Petitioner's Arguments:

Petitioner argues that the deficiency income tax, VAT, and EWT assessments for the FY 2016 are null and void as the FLD/FAN and the FDDA failed to make a definite and final demand for petitioner to pay alleged deficiency taxes and that it lacks legal and factual basis, respondent's right to assess deficiency VAT and EWT for FY 2016 has already prescribed, and that its right to due process was violated when respondent completely disregarded the pieces of evidence submitted in its Reply to the PAN.

Respondent's Counter-arguments:

Respondent counter-argues that the petition must be denied since the FLD/FAN indicates a demand for payment; the FLD/FAN and FDDA categorically state and definitely fix the tax liabilities of petitioner, only the interest is indefinite; the assessments clearly state the factual and legal bases and were made in accordance with prevailing laws and rules; the assessments were issued within the prescriptive period provided by law as the applicable period to assess is 10 years after the discovery of the falsity, fraud or omission

The Ruling of the Court

The Petition must be **GRANTED**.

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[35] Statement of the Issue, JSFI, Docket – Vol. 1, p. 334.

The FLD/FAN and FDDA indicate a definite tax liability and final demand for payment

Petitioner argues that the FLD/FAN failed to indicate a definite and final demand for payment due to the presence of the statement of "Please note that the interest and the total amount due will have to be adjusted if paid beyond April 30, 2019." The same statement is found in the FDDA, except that the date indicated is May 31, 2020.

In addition, petitioner asserts that both FLD/FAN and FDDA merely requested for payment, not a demand, thus negates the obligation to pay as it gives the taxpayer the option not to pay if it is not amenable to the assessment.

Petitioner invokes *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[36] ("*Fitness by Design*"), where it was ruled that an assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

On the other hand, respondent counters that the FLD/FAN indicate a demand for payment and that both the FLD/FAN and FDDA categorically state and definitely fix the tax liabilities of petitioner. However, as provided by law, if petitioner still fails to pay the definitely stated tax liability, the deficiency interest will have to be adjusted. Respondent emphasizes that the tax liability is already definite, while the interest is running hence the total amount due will definitely be adjusted. But this does not mean that the taxpayer is incognizant of the amount to be paid on its tax liabilities.

We find for respondent.

Indeed, petitioner's deficiency tax liabilities were set forth and clearly fixed in both the FLD/FAN and FDDA. As can be gleaned from the FLD/FAN and FDDA, the *deficiency tax due* and the *total amount due* are different line items in the computation of the assessment. The deficiency tax due is constant and fixed, while the total amount due remains variable in view of the interest imposed on the deficiency tax due when left unpaid.

The statement "Please note that the interest and the total amount due will have to be adjusted if paid beyond x x x." is merely a reminder that the interest will continue to run and accrue *if* the assessment is paid beyond the date indicated pursuant to *Section 249 of the Tax Code* where interest shall be

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[36] G.R. No. 215957, November 9, 2016.

assessed and collected on any unpaid amount of tax "from the date prescribed for payment *until the amount is fully paid*".

Logically, the *total amount due* will have to be adjusted in view of any adjustment in the interest if paid beyond the indicated date. This, however, does not affect the definiteness of the amount of tax so assessed. Petitioner is still able to determine the amount that it is liable to pay since the base amount, which is the deficiency tax due, is already fixed, and interest accruing thereon can be computed by multiplying the base amount by the interest rate[37] and the number of days that elapsed from the date prescribed for payment until it is duly paid.

To construe that the *total amount due* must likewise be fixed will tantamount to rewarding late payment on the part of the taxpayer who does not agree with the assessment, even in cases where there is no valid ground to disagree, and defer the payment for as long as possible to the detriment of the government, by depriving it of the appropriate amount of tax due from the taxpayer.

Fitness by Design defines a final assessment as a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

The mere usage of the term "request" does not loosen the effect of a demand for payment. As set forth in *Fitness by Design*, the primary purpose of a demand is to signal the time when penalties and interest begin to accrue. This is why there must be a period prescribed for payment.

We find the FLD/FAN and the FDDA compliant with the concept of a demand for payment as elaborated in *Fitness by Design*. The assessment notices attached to both the FLD/FAN and the FDDA clearly indicate a due date. Contrary to petitioner's assertion, it is already obligated to pay the assessment, otherwise penalties and interest shall run against it from the due date indicated therein.

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[37] SEC. 249. *Interest.* –
(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest *at the rate of double the legal interest for loans or forbearance of any money in the absence of an express stipulation as set by the Banko Sentral ng Pilipinas* from date prescribed for payment until the amount is fully paid: Provided, That in no case shall the deficiency and delinquency interest prescribed under Sections (B) and (C) hereof, be imposed simultaneously. (Italics, Ours.)

Nevertheless, even if the FLD/FAN and the FDDA indicate a definite tax liability and final demand for payment, the same failed to satisfy another critical requirement in affording petitioner its right to due process thereby rendering the assessment void.

Failure to give due consideration to the arguments and evidence submitted in petitioner's Reply and Protest is violative of its right to due process, thereby rendering the assessments void

In both its Reply to the PAN and Protest to the FLD/FAN, petitioner explained that it has been non-operational for the FY ending September 30, 2016. Thus, it had no sale and purchase transactions which can be subjected to assessment, and its remaining activity is limited to the collection of its remaining receivables. Petitioner attached to both Reply and Protest the necessary documents supporting its explanations.

However, petitioner laments that despite the evidence provided during the audit to establish its non-operation, respondent completely disregarded these, in violation of its right to due process.

We find these contentions meritorious.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[38] ("*Avon*") the High Court ruled that it is true that [respondent] is not obliged to accept the taxpayer's explanations. 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.

A perusal of the FLD/FAN, FDDA, and their respective Details of Discrepancies shows that these state identical computations of the deficiency tax assessments. Nowhere in said notices can We find any explanation as to why respondent did not give consideration to petitioner's explanations and evidence submitted in the Reply to PAN and Protest to FLD/FAN.

It is notable, however, in both notices that there can be found a one-liner statement that "The records of the case disclosed that you have not introduced sufficient evidence to throw the validity of our findings." However, said statement is far from compliance with respondent's duty to give reason in rejecting petitioner's explanation and evidence submitted in the

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

Reply and Protest. As an overly-general statement, it fails to give specific reasons for the rejection of petitioner's specific arguments.

Indeed, as ruled in *Avon*, [respondent's] inaction and omission to give due consideration to the arguments and evidence submitted before her by [the taxpayer] are deplorable transgressions of [the taxpayer's] right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the [respondent] can simply ignore the evidence without reason.

Respondent exercises an administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the *Tax Code*, especially in terms of tax investigation. 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 investigations and assessments necessarily demand the observance of due process because they affect the proprietary rights of specific persons.[39]

Administrative due process 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.[40] This was not complied with by respondent in this case. Merely stating that petitioner failed to introduce sufficient evidence is not a reason. Respondent did not even bother to communicate to petitioner which documents it would require to come up with a fair investigation or assessment of petitioner's explanations in its Reply and Protest. All this suggests is that respondent is fixated on a predetermined assessment and does not intend to consider the latter's explanation and evidence.

Consequently, respondent's total disregard of petitioner's explanations and evidence submitted with the Reply to PAN and Protest to the FLD/FAN is in violation of the latter's right to administrative due process and renders the resulting FLD/FAN and FDDA null, void, and of no force and effect.

Considering that the deficiency tax assessments against petitioner is rendered void in its entirety, the Court deems it no longer necessary to further discuss the merits of the tax assessments and the issue on prescription.

FOR THESE REASONS, the *Petition for Review* is **GRANTED**. Accordingly, the assessment for deficiency income tax, VAT, EWT, and compromise penalties in the aggregate amount of ₱33,468,709.51 for the FY

39 *Id.*
40 *Id.*

ending September 30, 2016 is hereby declared **NULL** and **VOID** and is thus **CANCELLED** and **SET ASIDE**. Further, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(on leave)
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

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