REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DIAGEO PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 9522**
-versus-	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 04 2021 11:04 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner **DIAGEO PHILIPPINES, INC.** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282,*** appealing the assessment for deficiency Excise Tax and Value-Added Tax ("VAT") for the taxable years 2013 to 2014, in the aggregate amount of Four Hundred Sixty-Two Million Two Hundred Seventeen Thousand One Hundred Sixty-Two and 76/100 Pesos (Php462,217,162.76) issued against petitioner.[1]

The Parties

Petitioner is a duly organized corporation existing in accordance with and by virtue of the laws of the Republic of the Philippines with principal office at 15th Floor, The W-Fifth Building, 5th Avenue, Bonifacio Global City, Taguig City. It is engaged in the business of importing, exporting, manufacturing, marketing, distribution, buying, and selling by wholesale of all kinds of beverages and liquor.

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[1] See Summary of the Case in the Amended Pre-Trial Order, Records, Vol. 2, p. 643.

Respondent is the head of the Bureau of Internal Revenue ("BIR"), the government agency in charge over matters arising under the National Internal Revenue Code, as amended ("NIRC"). He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

On 1 June 2015, respondent issued a Request for Presentation of Records requiring petitioner to submit the following documents in relation to respondent's validiation/verification of petitioner's Importer's Sworn Statements ("ISS") pertaining to all of its imported brands of distilled spirits and champagne: a) ISS of all imported brands of distilled spirits and champagne; b) Authority to Release Imported Goods ("ATRIGs") issued including attached computation of excise tax payments; and c) other documents that may be required in the course of the evaluation.[2] This request was served by revenue officer ("RO") Claress Marie S. Notario ("RO Notario") to petitioner on 3 June 2015.[3]

On 18 June 2015, petitioner filed a letter with respondent requesting for an extension of the deadline to file the requested documents.[4] On 10 July 2015, petitioner submitted the requested documents.[5]

On 7 July 2015, Mission Order No. 00110082 ("MO") was issued by Officer-In-Charge Assistant Commissioner Nestor S. Valeroso directing RO Notario and group supervisor ("GS") Emmanuel G. Viardo ("GS Viardo") to validate the Net Retail Price declared in petitioner's submitted Manufacturers/Importers Sworn Statement pursuant to ***Sections 6, 7 and 8 of Revenue Regulations No. ("RR") 17-2012***.[6] The MO was received by a certain Karen Ann I. Peralta on 23 July 2015.[7]

Upon receipt of the requested documents, RO Notario allegedly proceeded to validate and verify the ISS and ATRIGs submitted by petitioner for taxable years 2013 and 2014. These documents were then compared to the Actual Net Retail Price ("ANRP") which was allegedly acquired through market survey. By performing these procedures, RO Notario determined that deficiency Excise Tax and VAT are due from petitioner.[8] Thus, RO Notario

[2] Exhibit "R-2", BIR Records, p. 1; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, p. 748.
[3] Exhibit "R-2-A", *id.*
[4] Exhibit "R-3", BIR Records, p. 2; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 748-749.
[5] Exhibit "R-4", BIR Records, p. 3; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 748-750; Exhibit "R-5", BIR Records, pp. 5-61; Exhibit "R-6", *id.*, pp. 62-156; Exhibit "R-7", *id.*, pp. 157-169; Exhibit "R-8", *id.*, pp. 170-193.
[6] Exhibit "R-1", *id.*, p. 4; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 745-747.
[7] Exhibit "R-1-A", BIR Records, p. 4; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 746-747.
[8] See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", *id.*, pp. 749-751; See Worksheet of Computation for Taxable Years 2013 to 2014, Exhibit "R-10", BIR Records, pp. 202A-202C.

prepared a Memorandum, dated 30 October 2015, recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner.[9]

On 30 October 2015, the PAN was issued against petitioner. This was received by petitioner on 5 November 2015. In the PAN, respondent assessed petitioner for deficiency Excise Tax and VAT in the total amount of Four Hundred Thirty One Million Three Hundred Sixty One Thousand Two Hundred Eighteen and 74/100 Pesos (Php431,361,218.74).[10]

Allegedly, petitioner did not respond to the PAN.[11] Thus, RO Notario prepared a Memorandum, dated 20 April 2016, recommending the issuance of a Formal Letter of Demand ("FLD").[12] On 20 April 2016, respondent issued the FLD and, purportedly, Audit Results/Assessment Notices ("ARANs") for the assessed deficiency taxes. The FLD was received by petitioner on 26 May 2016. The FLD assessed petitioner for deficiency Excise Tax and VAT for the taxable years 2013 to 2014, in the aggregate amount of Four Hundred Sixty Two Million Two Hundred Seventeen Thousand One Hundred Sixty Two and 76/100 Pesos (Php462,217,162.76). Petitioner, however, denies receipt of the ARANs or any type of assessment notice from respondent. In fact, petitioner is alleging that for failure to attach an assessment notice with the FLD, the FLD failed to provide for a due date for payment of the assessed deficiency taxes. Notably, while each of the ARANs provided an issuance date of 20 April 2016, the due date indicated was 29 February 2016.[13]

On 23 June 2016, petitioner filed with respondent a Request for Reconsideration of the FLD and the ARANs.[14]

Meanwhile, on 19 January 2017, petitioner filed the original Petition before this Court.[15]

On 17 February 2017, RO Notario prepared a Memorandum recommending the denial of the Request for Reconsideration filed by petitioner.[16] On same date, respondent issued the Final Decision on Disputed Assessment ("FDDA") denying petitioner's Request for Reconsideration.[17]

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[9] Exhibit "R-9", *id.*, pp. 202-204 and 205-207; See Worksheet of Computation for Taxable Years 2013 to 2014, Exhibit "R-10", *id.*, pp. 202A-202C.

[10] Exhibits "R-11" and "P-1", *id.*, pp. 208-211; See Memorandum, Records, Vol. 3, p. 1091; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 751-752; See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", *id.*, pp. 891-892.

[11] See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", *id.*, p. 752.

[12] *Ibid.*; Exhibit "R-12", BIR Records, pp. 239-240 and 244-245; Exhibit "R-13", *id.*, pp. 236-238 and 241-243.

[13] Exhibits "R-14" and "P-2", *id.*, pp. 246-249; See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 752-753; Exhibit "R-15", pp. 212-227; See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", Records, Vol. 2, pp. 892-897.

[14] Exhibit "P-3", BIR Records, pp. 250-258; See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", Records, Vol. 2, pp. 897-899.

[15] Exhibit "P-4", Records, Vol. 1, pp. 10-48.

[16] Exhibit "R-16", BIR Records, pp. 259-264.

[17] Exhibits "R-17" and "P-5", *id.*, pp. 265-266.

The FDDA was received by petitioner on 7 March 2017.[18] On 5 April 2017, petitioner wrote a letter to respondent informing him that a Petition had already been filed with this Court appealing the deficiency tax assessments issued against it, and that petitioner no longer had any intention to file an appeal by way of a request for reconsideration before the CIR.[19]

On 21 February 2017, this Court issued Summons, which ordered respondent to file an Answer to the original Petition within fifteen (15) days from receipt.[20]

On 9 March 2017, respondent filed a Motion for Extension of Time to File Answer,[21] which was granted by this Court in a Resolution, dated 14 March 2017.[22] Respondent filed another Motion for Additional Time to File Answer on 7 April 2017,[23] which was opposed to by petitioner through an Opposition (to Respondent's Motion for Additional Time to File Answer dated 7 April 2017) with Motion to Declare in Default filed on 21 April 2017.[24] In a Resolution, dated 24 April 2017, this Court granted respondent's Motion for Additional Time to File Answer.[25] Respondent finally filed his Answer on 24 April 2017.[26]

On 16 April 2017, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference for 25 July 2017, at 9:00 a.m.[27]

On 8 May 2017, petitioner filed a Manifestation/Motion for Leave to File Attached Amended Petition for Review. The amendments to the original Petition tackled the various reasons posited by respondent in the FDDA on why the Request for Reconsideration was denied.[28] On 10 May 2017, this Court issued a Resolution ordering respondent to comment on said Motion within ten (10) days from notice.[29] Respondent, however, failed to comment on petitioner's Manifestation/Motion for Leave to File Attached Amended Petition for Review.[30] Thus, this Court issued a Resolution, dated 12 July 2017, granting the Manifestation/Motion for Leave to File Attached Amended Petition for Review, admitting the Amended Petition and ordering respondent to file an Answer to the same.[31]

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[18] *Ibid*; See Amended Petition, Exhibit "P-7", Records, Vol. 1, p. 89.
[19] Exhibit "P-6", *id.*, pp. 83-84.
[20] *Id.*, pp. 49-50.
[21] *Id.*, pp. 51-54.
[22] *Id.*, pp. 55-56.
[23] *Id.*, pp. 57-60.
[24] *Id.*, pp. 61-65.
[25] *Id.*, pp. 66-68.
[26] *Id.*, pp. 69-73.
[27] *Id.*, pp. 74-75.
[28] *Id.*, pp. 76-82; See Amended Petition, Exhibit "P-7", *id.*, pp. 85-129.
[29] *Id.*, pp. 130-131.
[30] *Id.*, p. 132.
[31] *Id.*, pp. 137-139.

On 14 June 2017, respondent filed a Manifestation (Re: Submission of BIR Records) elevating the BIR Records before this Court.[32] This was noted by this Court in a Resolution, dated 15 June 2017.[33]

On 20 July 2017, petitioner filed a Manifestation of Compliance[34] submitting the Judicial Affidavit of Iris Victoria U. Merin,[35] its witness to the present Petition.

On 21 July 2017, petitioner filed its Pre-Trial Brief.[36] Respondent then filed his own Pre-Trial Brief through registered mail on 24 July 2017.[37] On 25 July 2017, respondent filed a Manifestation and Submission,[38] informing this Court that he had filed his Pre-Trial Brief on 24 July 2017 through registered mail. This was noted by this Court in a Resolution, dated 2 August 2017.[39]

In a Resolution, dated 25 July 2017, this Court cancelled the Pre-Trial Conference originally set on said date in view of the Resolution, dated 12 July 2017 requiring respondent to file an Answer to the Amended Petition.[40]

On 29 September 2017, respondent filed a Motion to Admit Attached Answer,[41] praying that this Court admit the attached Answer.[42] On 10 October 2017, this Court issued a Resolution ordering petitioner to comment on the said Motion.[43] Petitioner, however, failed to comment on the aforesaid Motion.[44] Hence, on 20 November 2017, this Court issued a Resolution granting respondent's Motion to Admit Attached Answer and admitted the said Answer as part of the Court's records.[45]

On 27 November 2017, this Court issued a Resolution setting the Pre-Trial Conference for 3 April 2018, 9:00 a.m.[46] On 3 April 2018, the Pre-Trial Conference ensued.[47]

On 5 April 2018, respondent filed a Compliance submitting his counsel's Special Power of Attorney as required during the Pre-Trial

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[32] *Id.*, pp. 133-135.
[33] *Id.*, p. 136.
[34] *Id.*, pp. 140-142.
[35] *Id.*, pp. 143-230.
[36] *Id.*, pp. 231-240.
[37] *Id.*, pp. 250-255.
[38] *Id.*, pp. 241-247.
[39] *Id.*, p. 256.
[40] *Id.*, pp. 248-249.
[41] *Id.*, pp. 258-265.
[42] *Id.*, pp. 266-270.
[43] *Id.*, pp. 271-272.
[44] *Id.*, p. 273.
[45] *Id.*, pp. 274-276
[46] *Id.*, pp. 277-278.
[47] *Id.*, pp. 279-281.

Conference.[48] This was noted by this Court in a Resolution, dated 6 April 2018.[49]

On 23 April 2018, this Court issued a Pre-Trial Order providing for the manner by which this case would proceed.[50]

On 2 May 2018, petitioner filed a Motion for Extension of Time to File Motion for Correction of Pre-Trial Order,[51] which was granted by this Court in a Resolution, dated 9 May 2018.[52] On 7 May 2018, petitioner filed its Motion for Correction of Pre-Trial Order. The said Motion primarily sought the presentation of Augustus Cayetano as replacement for its witnesses, Iris Victoria U. Merin and Yann Cameli.[53] In a Resolution, dated 18 May 2018, this Court ordered respondent to comment on petitioner's Motion for Correction of Pre-Trial Order.[54] Respondent, however, failed to comment on said Motion.[55] As such, this Court, in a Resolution, dated 2 July 2018, granted this Motion.[56] On 6 July 2018, an Amended Pre-Trial Order was issued by this Court.[57]

On 29 June 2018, petitioner filed a Motion for Summary Judgment arguing that the instant case does not provide a genuine issue of fact requiring the presentation of evidence and that to proceed with the trial would only be a practice in futility.[58] In support thereof, petitioner submitted the Judicial Affidavit of Augustus Caesar Cayetano, dated 29 June 2018.[59]

On 3 July 2018, petitioner filed a Manifestation re-attaching the correct page 14 of the Judicial Affidavit of August Cayetano.[60]

During the Hearing held on 9 July 2018, respondent was granted a period of ten (10) days to comment on petitioner's Motion for Summary Judgment while petitioner was granted a period of five (5) days from receipt of such comment to reply thereto.[61]

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[48] *Id.*, pp. 282-285
[49] *Id.*, p. 286.
[50] *Id.*, pp. 287-294.
[51] *Id.*, pp. 295-298.
[52] *Id.*, pp. 303-304.
[53] *Id.*, pp. 299-302.
[54] *Id.*, pp. 305-306.
[55] *Id.*, p. 308.
[56] Records, Vol. 2, pp. 639-641.
[57] *Id.*, pp. 642-649.
[58] Records, Vol. 1, pp. 314-342.
[59] Exhibit "P-11", Records, Vols. 1-2, pp. 343-634.
[60] Records, Vol. 2, pp. 635-638.
[61] *Id.*, pp. 650-651.

On 11 July 2018, respondent filed a Motion to Set One (1) Commissioner Hearing for the marking of the documents he previously failed to bring in the pre-scheduled Commissioner's Hearing on 10 July 2018,[62] which was granted in this Court's Resolution, dated 19 July 2018.[63]

On 19 July 2018, respondent filed his Comment Re: Petitioner's Motion for Summary Judgment.[64]

Afterwards, petitioner filed a Motion (For Additional Time to File Reply).[65] This Motion was granted by this Court in a Resolution, dated 2 August 2018.[66] On 2 August 2018, petitioner filed its Reply (to the BIR's Comment dated 19 July 2018).[67]

During the Hearing held on 6 August 2018, petitioner presented its witness, Augustus Cayetano, to support its Motion for Summary Judgment. The Court noted that petitioner tried to introduce documents which were not included in the Amended Pre-Trial Order such as petitioner's 2013 and 2014 ISS. The Court directed petitioner to file the appropriate Motion to properly introduce such documents as evidence.[68]

On 13 August 2018, petitioner filed through registered mail an Omnibus Motion (1) To Allow the Introduction of Documentary Evidence; and (2) To Reset the Presentation of Augustus Cayetano.[69] Petitioner, thereafter, on 14 August 2018, filed a Manifestation to inform this Court of such filing through registered mail.[70] This Motion was then granted by this Court in a Resolution, dated 11 October 2018.[71]

On 25 October 2018, petitioner once more presented its witness, August Caesar Cayetano, in support of its Motion for Summary Judgment. He underwent cross-examination.[72]

On 9 November 2018, petitioner filed a Manifestation (Re: Respondent's Presentation of Evidence against the Motion for Summary Judgment). In said submission, petitioner registered its objection in writing to this Court's Order, made in open court on 25 October 2018, allowing respondent to present a witness as part of his evidence against petitioner's Motion for Summary Judgment. According to petitioner, such is not allowed

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[62] *Id.*, pp. 653-656.
[63] *Id.*, pp. 663-664.
[64] *Id.*, pp. 657-662.
[65] *Id.*, pp. 665-668.
[66] *Id.*, pp. 679-680.
[67] *Id.*, pp. 669-678.
[68] *Id.*, pp. 681-683.
[69] *Id.*, pp. 694-701.
[70] *Id.*, pp. 684-693.
[71] *Id.*, pp. 707-709.
[72] *Id.*, pp. 710-712.

under ***Section 3, Rule 35 of the Rules of Court*** which requires that the affidavits of the witnesses should already be served to the opposing party at least three (3) days prior to the Hearing of a Motion for Summary Judgment. In this case, such affidavit should have already been appended by respondent in the Comment he filed against petitioner's Motion for Summary Judgment. Failing to do so showed that respondent's defense was not offered in good faith. Thus, petitioner's Motion for Summary Judgment should have already been submitted for resolution.[73]

On 13 November 2018, petitioner filed its Formal Offer of Documentary Evidence (in support of the Motion for Summary Judgment),[74] to which respondent interposed no objection.[75]

On same date, this Court issued an Order cancelling the Hearing for the presentation of respondent's counterevidence on petitioner's Motion for Summary Judgment previously scheduled for 5 December 2018 in light of the pendency of the above stated Formal Offer of Documentary Evidence.[76]

On 27 November 2018, respondent filed before this Court the Offer of Testimony Judicial Affidavit of Revenue Officer Claress Marie S. Notario,[77] submitting the Judicial Affidavit of Revenue Officer Claress Marie S. Notario as counter evidence to petitioner's Motion for Summary Judgment.[78]

On 2 April 2019, this Court issued a Resolution admitting all of petitioner's Exhibits provided in the Formal Offer of Documentary Evidence (in support of the Motion for Summary Judgment) except for Exhibit "P-8", due to failure to have the said exhibit identified. The Court similarly ordered the setting for the presentation of respondent's counterevidence to the Motion for Summary Judgment for 2 July 2019, 9:00 a.m.[79]

On 2 July 2019, respondent presented his witness, RO Notario, who underwent cross-examination.[80]

On 5 August 2019, respondent filed his Formal Offer of Evidence in relation to the Motion for Summary Judgment,[81] which was noted in a Resolution, dated 7 August 2019.[82] On 13 August 2019, petitioner filed its Comment (On Respondent's Formal Offer of Evidence dated 2 August

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[73] *Id.*, pp. 722-725.
[74] *Id.*, pp. 726-736.
[75] See Comment Re: Formal Offer of Documentary Evidence, filed on 27 November 2018, *id.*, pp. 756-759.
[76] *Id.*, p. 739.
[77] *Id.*, pp. 740-744.
[78] *Id.*, pp. 745-755.
[79] *Id.*, pp. 760-762.
[80] *Id.*, pp. 763-765.
[81] *Id.*, pp. 772-789.
[82] *Id.*, p. 790.

2019).[83] On 5 September 2019, this Court issued a Resolution admitting all of respondent's exhibits offered in relation to the Motion for Summary Judgment.[84]

On 14 October 2019, this Court issued a Resolution denying petitioner's Motion for Summary Judgment.[85]

On 12 November 2019, this Court issued a Resolution setting the initial presentation of evidence for petitioner for 3 March 2020, 9:00 a.m.[86] This setting was cancelled and reset to 28 May 2020, 9:00 a.m., pursuant to a Resolution, dated 14 February 2020.[87] However, due to the restrictions implemented by the COVID-19 pandemic, this setting did not push through. This Court instead issued a Notice of Hearing via Video Conferencing to be conducted on 3 June 2020, 1:30 p.m.[88]

On 22 May 2020, petitioner filed through e-mail a Manifestation of Compliance,[89] submitting the Judicial Affidavit of Anne Christine Carlos.[90]

On 3 June 2020, the Hearing via Video Conferencing occurred. Petitioner presented its witness, Anne Christine Carlos, who underwent cross-examination.[91]

On 11 June 2020, petitioner filed its Formal Offer of Evidence for the main case.[92] This was noted by this Court in a Resolution, dated 15 June 2020.[93] Respondent then filed a Comment (to Petitioner's Formal Offer of Evidence), via both e-mail and registered mail on 19 June 2020, interposing no objections to petitioner's Formal Offer of Evidence for the main case.[94]

On 30 July 2020, this Court issued a Resolution admitting petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9-1", "P-9-2", "P-9-3", "P-9-4", "P-9-5", "P-9-6", "P-9-7", "P-9-8", "P-9-9", "P-9-10", "P-9-11", "P-9-12", "P-10-1", "P-11" , "P-11-1" , "P-12" , "P-13" , "P-14" and "P-14-1".[95]

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[83] *Id.*, pp. 791-799.
[84] *Id.*, pp. 800-802.
[85] *Id.*, pp. 810-820.
[86] *Id.*, pp. 821-822.
[87] *Id.*, pp. 823-824.
[88] *Id.*, pp. 878-878-a.
[89] *Id.*, pp. 881-885.
[90] *Id.*, pp. 825-877 and 886-936.
[91] *Id.*, pp. 879-880-A.
[92] *Id.*, pp. 937-1018.
[93] Records, Vol. 3, p. 1019.
[94] *Id.*, pp. 1020-1029.
[95] *Id.*, pp. 1030-1032.

On 26 August 2020, respondent filed a Manifestation informing this Court that he was adopting the testimony of RO Notario, who was presented on 2 July 2019, as testimony for the main case.[96]

On 2 September 2020, this Court issued a Resolution ordering the parties to file their respective Memoranda within thirty (30) days from notice.[97] Petitioner filed its Memorandum through personal filing and e-mail on 21 October 2020,[98] while respondent filed a Manifestation informing this Court that he was adopting the arguments raised in his Answer, dated 29 September 2017, as his Memorandum.[99]

Thus, on 11 September 2020, this Court issued a Resolution submitting the instant case for Decision.[100]

Hence, this Decision.

The Issue[101]

"WHETHER THE TAX DEFICIENCY ASSESSMENT FOR THE PERIOD 1 JANUARY 2013 TO 31 DECEMBER 2014 WAS VALIDLY ISSUED."

Arguments of the Parties

Petitioner's Arguments[102]

Petitioner avers the following in its Memorandum:

a) The examination and resulting assessment are null and void as they were done without a Letter of Authority ("LOA"). Any deficiency tax assessment issued without a LOA is void. An LOA cannot be replaced by an ordinary letter, Memorandum of Assignment, or a Mission Order. A Mission Order is meant only to authorize a surveillance, not an audit. Even assuming that a Mission Order is equivalent to a LOA, the proceedings are still void because the Mission Order covers two (2) taxable years;

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[96] *Id.*, pp. 1033-1036.
[97] *Id.*, pp. 1037-1039.
[98] *Id.*, pp. 1040-1131; See Manifestation, dated 22 October 2020, *id.*, pp. 1132-1136; See Resolution, dated 28 October 2020, *id.*, pp.1140-1141.
[99] *Id.*, pp. 1137-1139.
[100] *Id.*, pp. 1142-1143.
[101] See Issue in the Amended Pre-Trial Order, Records, Vol. 2, p. 644.
[102] See Memorandum, Records, Vol. 3, pp. 1093-1127.

b) The assessment is void for not containing the factual basis. In the case at bar, respondent admits that the factual basis of the assessment were not written on any assessment notices. The statement – "all the legal and factual basis were laid down on the assessment notices" is a legal conclusion, not a specific denial. The statement saying that the examiners "showed and explained" the details of the market survey is a negative pregnant. An examination of both the PAN and FLD shows that there is no sufficient explanation on how the assessments were computed. The factual basis of the assessment must be contained in the assessment notices. Both the PAN and FLD contain merely a tabulation of the taxes, not the factual basis or detailed computation. The Supreme Court has already ruled that merely "showing" the details of the audit does not substitute for the requirement that the taxpayer be informed in writing of the legal and factual basis of the assessment;

c) Respondent's methodology in conducting the market survey is illogical. Respondent admits that it did not conduct a market survey in 2013 and 2014. Comparing the ANRP in 2015 to those prevailing in years 2013 and 2014 as basis to determine an understatement of the Suggested Net Retail Prices ("SNRP") is wrong and logically unsound. The SNRP declared in petitioner's ISS and the ANRP gathered by respondent have different price components. Respondent failed to notify petitioner of the results of the market survey; and

d) The tax deficiency assessment for the period 1 January 2013 to 31 December 2014 is void for failure of the FLD to state a due date for payment. The Final Assessment Notice, which supposedly contained the due date for payment, was not served on petitioner.

Respondent's Counter-Arguments[103]

Respondent counter argued as follows in his Answer:

a) Petitioner argues that the assessment is null and void for being issued without a LOA. This is bereft of merit. The assessment issued against petitioner has basis both in fact and in law. It is noteworthy that the assessment was the result of the verification and validation of the ISS of alcohol products in accordance with the provisions of ***RR 3-2006 and RR 17-2012***. Hence, the deficiency tax due shall be payable upon demand, even without the issuance of an LOA;

b) Petitioner posits that the assessment is void for failure of the FLD and the FDDA to state the facts on which the assessment is based. This is incorrect. Respondent informed petitioner of the facts and the law on

[103] See Answer to the Amended Petition, Records, Vol. 1, pp. 267-269.

which the assessment was made. All the legal and factual basis were laid down on the assessment notices issued to petitioner, citing the rulings, regulations and legal provisions of the ***NIRC*** pertaining to the result of the validation and verification of its submitted ISS. Moreover, a narrative description of the basis and procedure on how the tax deficiencies were arrived at were included;

c) Petitioner's argument that respondent's method of arriving at the subject assessment is flawed is misplaced. Under ***RR 17-2012***, the ISS submitted by the taxpayer are subject to verification to validate its contents with respect to its accuracy and completeness. Verification of petitioner's 2013, 2014 and 2015 ISS would show that no changes were made on the details contained therein, particularly on the Net Retail Price which were the basis of the computation of the deficiency Excise Tax and VAT. Therefore, petitioner's argument that it is irrational to compare the market price conducted in 2015 to 2013 and 2014 is baseless. With reference to the argument that the store price was used as the basis on the computation of the Excise Tax and VAT due, respondent posits that the procedures and illustrations provided in ***RR 17-2012*** wherein the net price (*i.e.*, selling price exclusive of taxes) was used in computing the understatement of the SNRP were carefully followed to arrive at the correct deficiency;

d) The assessment issued against petitioner is valid and lawful. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that respondent is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessments stands.

The Ruling of the Court

The instant Petition is impressed with merit.

The revenue officers who conducted the audit of petitioner were not properly authorized.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

Sections 6 (A) and 13 of the NIRC is clear that revenue officers conducting examinations of taxpayers must first be authorized to do so:

> **"SEC. 6.** ***Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.*** –
> (A) *Examination of Returns and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** *Provided, however;* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx
>
> **"SEC. 13.** ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> examine taxpayers within the jurisdiction of the district** in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due **in the same manner that the said acts could have been performed by the Revenue Regional Director himself.**"
> (Emphasis and Underscoring, Ours)

It is clear, therefore, that before an assessment can be made, the revenue officer conducting the examination of a taxpayer's books of accounts and other accounting records must first be duly authorized to do so. The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case"),***[104] to wit:

> **"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due.**- After a return has been filed as required under the

[104] G.R. No. 222743, 5 April 2017, *citing Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

> provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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

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

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

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

The need for an LOA before revenue officers can pursue an audit of a taxpayer to assess and collect deficiency taxes therefore cannot be over-emphasized. For without such, deficiency tax assessments are instantly nullified.

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the ***Medicard Case*** when he issued ***Revenue Memorandum Circular No. 75-2018,***[105] which provides as follows:

> "The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
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> xxx xxx xxx
>
> **To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions."**
> (Emphasis and Underscoring, Ours)

The reason an LOA is placed on a pedestal in deficiency tax assessment proceedings is because it ensures that due process will be observed in favor of a taxpayer who is subjected to an audit/investigation for the purpose of determining the correct amount of taxes due. An LOA commences the audit process and informs the taxpayer that it is being subjected to an audit for possible assessment of deficiency taxes.[106]

In the case at bar, RO Notario and GS Viardo performed an examination and audit of petitioner which lead to the issuance of a deficiency Excise Tax and VAT assessment against it. This is shown by the following Memoranda prepared by RO Notario and GS Viardo: a) Memorandum, dated 30 October 2015, which paved the way to the issuance of a PAN;[107] b) Memorandum, dated 20 April 2016, which resulted into the issuance of an FLD;[108] and Memorandum, dated 17 February 2017, which lead to the issuance of the FDDA.[109] Despite this, respondent admitted that no LOA was issued in the case at bar authorizing RO Notario and GS Viardo to audit and investigate petitioner for the purpose of issuing a deficiency tax assessment. Respondent

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[105] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[106] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, 13 December 2016.
[107] Exhibits "R-9", "R-10" and "P-12", BIR Records, pp. 202-204 and 205-207.
[108] Exhibit "R-12", *id.*, pp. 236-245.
[109] Exhibit "R-16", *id.*, pp. 259-264.

posited that he issued the subject assessment lawfully without the need of an LOA. He argued that the deficiency Excise Tax and VAT assessments he issued against petitioner were the result of verification and validation of petitioner's ISS of its alcohol products in accordance with the provisions of ***RR 3-2006 and RR 17-2012***; and that the computed deficiency taxes were thus payable upon demand, even without the issuance of an LOA.[110]

As explained in the discussions above, this argument is misplaced. Clearly, there must be a prior grant of authority before any revenue officer can conduct an examination or investigation for the purpose of determining. Absent such, the resulting assessment is undoubtedly null and void.

The closest document that may be said to have granted authority to RO Notario and GS Viardo to audit and investigate petitioner to assess the correct amount of taxes is the MO. Yet, despite the MO being its best chance to validate the subject assessment, respondent, through the testimony of RO Notario, argued that the MO is not the source of his authority to issue the appealed deficiency Excise Tax and VAT assessments:[111]

> "15 Q Why was there a need to issue a Mission Order?
>
> 15 A To formalize the validation process of petitioner's ISS and ATRIGs. Actually, the Mission Order is for formality purposes.
>
> 16 Q Why do you say that the Mission Order for formality purposes?
>
> 16A The Mission Order is for formality only because our functions in ELTFOD as stated in Revenue Administrative Order No. 2-2014, include reconciliation and validation of figures reflected in the ATRIGs issued and filed by taxpayers, preparation of Notice of Discrepancy on the result of the reconciliation, and preparation of PAN or FAN for approval and signature of authorized official.
>
> Thus, a Mission Order is not the main source of our validation, verification, and reconciliation of a taxpayer's submitted ATRIGs and ISS. We validate, verify and reconcile petitioner's submitted ATRIGs and ISS pursuant to our function as mandated by RAO No. 2-2014."

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[110] See Answer to the Amended Petition, Records, Vol. 1, p. 267.
[111] See Judicial Affidavit of Revenue Officer Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, p. 747.

Notably, respondent is relying upon ***RR 3-2006***,[112] ***RR 17-2012***,[113] and ***Revenue Administrative Order No. ("RAO") 2-2014***[114] as the basis for his argument that the subject assessments are valid even without an LOA (authorizing the revenue officers who conducted the investigation of petitioner), considering that these revenue issuances already authorized the issuance of such an assessment through the validation, verification, and reconciliation of petitioner's ISS and ATRIGs. A perusal of such revenue issuances, however, would show that they merely allowed respondent to conduct validation, verification, and reconciliation of a taxpayer's ISS and ATRIGs for their completeness and accuracy. While these revenue issuances permitted the computation of deficiency taxes due from a taxpayer (through the validation, verification, and reconciliation of the information contained in such documents) and, under ***RAO 2-2014***, the recommendation for the issuance of an assessment, these issuances did not do away with the requirement that revenue officers (who conducted an audit and investigation of a taxpayer's books of accounts and other accounting records for the purpose of assessing the correct amount of taxes) must be properly authorized with an LOA. Hence, an LOA is still necessary before respondent can issue a deficiency tax assessment arrived at through the performance of revenue officers of the procedures laid down in ***RR 3-2006***, ***RR 17-2012***, and ***RAO 2-2014***.

Following these findings, the deficiency Excise Tax and VAT assessments issued against petitioner must be deemed null and void, considering that RO Notario and GS Viardo, the revenue officers who conducted an examination, audit and investigation of petitioner which lead to the issuance of such assessments, were not authorized to do so. Basic is the rule that a void assessment bears no valid fruit.[115] As such, no tax collection can be pursued in relation to the subject assessment.

Assuming *arguendo* that respondent did not make the above arguments and relied upon the MO to authorize the audit conducted by RO Notario and GS Viardo which resulted in the deficiency Excise Tax and VAT assessments issued against petitioner, this will still fail, considering that the MO is not equivalent to an LOA.

Nomenclature aside, an LOA pertains to any document which properly authorizes or empowers revenue officers to examine, verify, and scrutinize a taxpayer's books of accounts and other accounting records for the purpose of

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[112] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations, 3 January 2006.

[113] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations, 21 December 2012.

[114] Organization and Functions of Offices under the National Office per EO 366, 7 August 2014.

[115] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 9 July 2018.

issuing an assessment for the correct internal revenue taxes due for a particular period.

A perusal of the contents of the MO would reveal that it merely directed RO Notario and GS Viardo to perform the following activity in relation to petitioner: "validate the Net Retail Prices declared in the submitted Manufacturers/Importers Sworn Statement pursuant to Sec. 6, 7 & 8 of Revenue Regulations No. 17-2012," keeping in mind that this activity "must be carried out with utmost courtesy in recognition of the taxpayer's rights and within the tenets of good public office."[116]

Clearly, RO Notario and GS Viardo were authorized to perform one activity only: to validate the SNRPs declared in petitioner's ISS. <u>They were not given authority to audit and examine petitioner for the purpose of issuing a deficiency tax assessment.</u> Had they determined through the verification procedures they employed that deficiency Excise Tax and VAT may be due from petitioner, RO Notario and GS Viardo should have requested for the issuance of an LOA to proceed further with the audit and examination of petitioner to determine whether deficiency taxes are indeed due. If such LOA had been obtained, then there would be no question that the subject assessments, which were issued based on RO Notario and GS Viardo's audit findings, would be valid and effectual.

Moreover, by providing in the MO that the activity "must be carried out with utmost courtesy in recognition of the taxpayer's rights and within the tenets of good public office," respondent understands the need to respect the taxpayer's right to due process. Respondent is thus duty bound to follow the procedures instituted in deficiency tax assessment proceedings designed to protect a taxpayer's right to due process without any short-cuts. As such, respondent should have issued an LOA in favor of RO Notario and GS Viardo before they conducted the audit and examination of petitioner that lead to the present deficiency Excise Tax and VAT assessment.

Furthermore, assuming *arguendo* that the MO conferred authority to RO Notario and GS Viardo to audit and investigate petitioner's books of accounts and other accounting records, the same is still intrinsically void as an LOA, considering that it did not provide for the particular kind of tax to be audited and the taxable periods covered by the audit.

Revenue Memorandum Order No. ("RMO") 43-90 [117] mandates that:

[116] Exhibit "R-1", BIR Records, p. 4.

[117] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

"xxx xxx xxx

C. Other policies for issuance of L/As.

2. All audits/ investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

xxx xxx xxx

3. **A Letter of Authority should cover a taxable period not exceeding one (1) taxable year.** The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. **If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.**

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D. Preparation and issuance of L/As.

1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).

2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the Ros, **indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax;** after which he shall forward the same to the RDO or Chief, Assessment Branch, who in tum shall indicate the date of issue of the L/A prior to its issuance."
(Emphasis, Ours)

Under ***RMO 43-90***, both the taxable period and the kind of tax to be audited must be specifically stated in the LOA. The revenue officer so authorized must not go beyond the authority given; otherwise, the assessment or examination is a nullity.[118] Correspondingly, the extent to which the authority must be exercised by the revenue officer must be clearly specified. To limit the authority to be exercised by the examining revenue officer, there is a need to state in the LOA the kind of tax to be audited and the taxable periods covered by the audit.

In the case at bar, the MO, assuming it validly conferred authority to RO Notario and GS Viardo to audit petitioner for the assessment of the correct taxes due, neither stated what taxes were to be audited nor what taxable periods were to be covered by the audit. In fact, the assessment issued against petitioner involved two (2) taxable years (*i.e.*, 2013 and 2014). These taxable periods should have been specifically set out in the MO in order to be

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[118] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 530 (2010) [Per J. Mendoza, Second Division].

considered as a valid LOA. This is in direct contravention of the policy clearly and explicitly provided under ***RMO 43-90.***

The prescribed procedures under ***RMO 43-90***, including the requirement of definitely specifying the taxes to be audited and the taxable years under investigation, were meant to achieve a proper enforcement of tax laws and to minimize, if not eradicate, taxpayers' concerns on arbitrary assessment, undue harassment from the BIR, and unreasonable delay in the investigation and processing of tax cases.[119] Inasmuch as tax investigations entail an intrusion into a taxpayer's private affairs, which are protected and guaranteed by the Constitution, the provisions of ***RMO 43-90*** must be strictly followed. As the instant MO failed to comply with the provisions of ***RMO 43-90***, the same cannot be considered a valid LOA.

All told, it is clear that no valid LOA was issued in the case at bar. Hence, no authority was conferred to RO Notario and GS Viardo to perform an audit and investigation of petitioner's books of accounts and other accounting records for the purpose of assessing the correct taxes due. Any resulting assessment from the examination and investigation conducted by said revenue officers of petitioner's records is thus unquestionably null and void. As such, the FLD is null and void and cannot be used as basis for tax collection.

The FLD failed to provide a due date for payment.

Even assuming *arguendo* that RO Notario and GS Viardo were properly authorized to conduct the audit and examination of petitioner, the assessment issued against petitioner is still void as the FLD failed to provide a definite due date for payment.

In ***Commissioner of Internal Revenue v. Fitness By Design, Inc. ("Fitness By Design Case")***,[120] the Supreme Court had the occasion to rule that assessments notices without a specific date for payment are null and void:

> "The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations

[119] Revenue Memorandum Circular No. 04-81, Guidelines in the Proper Enforcement of Tax Laws, 8 July 1980.
[120] G.R. No. 215957, 9 November 2016.

of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay."
("Emphasis, Ours")

Moreover, in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc. ("T Shuttle Services Case")***,[121] the Supreme Court had the occasion to repeat the ruling in ***Fitness By Design Case***, to wit:

"Besides, even granting that the PAN and the FAN were properly and duly served upon and received by respondent the Court affirms the CTA En Banc's ruling that **the FAN and the assessment notices attached to it are still void for failure to demand payment of the taxes due within a specific period.**

As held in Commissioner of Internal Revenue v. Fitness by Design, Inc.:

[121] Resolution, G.R. No. 240729, 24 August 2020, *citing Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, 9 November 2016.

> **A final assessment is 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 <u>must demand payment of the taxes described therein within a specific period.'</u>**
>
> In this case, the CTA En Banc observed that the last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should respondent fail to respond to the FAN within the 15-day period given to it to present in writing its side of the case. However, the CTA En Banc found nothing in the record that reveals that the CIR had issued a final demand containing a specific or definite period of payment following the expiration of the 15-day period given to respondent to respond to the FAN. Further, the CTA En Banc observed that the assessment notices attached to the FAN also did not prescribe a definite period for respondent to pay the alleged deficiency taxes.
>
> Again, the matter of whether the subject assessments contained a definite period within which to pay the assessed taxes is a question of fact which this Court will not entertain in the present appeal under Rule 45. There being no showing of gross error or abuse on the part of the CTA En Banc in its findings of fact, the Court accords respect to the latter's finding that the FAN dated July 20, 2010 and the assessment notices attached to it did not contain a definite period within which to pay the assessed taxes. As such, even assuming that the assessments were duly served on and received by respondent, they are still void and without any legal consequence." (Emphasis and Underscoring, Ours)

Indeed, the requirement to indicate a fixed and definite period or a certain date within which a taxpayer must pay the assessed deficiency taxes is indispensable to the validity of an assessment. Without it, respondent cannot be said to have demanded the payment of such assessment. An assessment without a specific date or period within which the assessed tax liabilities should be paid is thus null and void. It bears no fruit and may be slain at sight.

A perusal of the FLD in the case at bar shows the following statement as a demand to petitioner to pay the assessed deficiency Excise Tax and VAT in the amount of Four Hundred Sixty Two Million Two Hundred Seventeen Thousand One Hundred Sixty Two and 76/100 Pesos (Php462,217,162.76):

> "In view of the established discrepancies, you are found liable to pay the excise and value added tax inclusive of penalties amounting to P462,217,162.76. You are requested to pay your aforesaid deficiency taxes through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed Final Assessment Notice."[122]

[122] Exhibits "P-2" and "R-14", BIR Records, pp. 248

Petitioner, while admitting that it received the FLD on 26 May 2016, denied receipt of a "Final Assessment Notice" as referred to in the FLD. This matter was testified upon by petitioner's witness, Anne Christine Carlos, as follows:

> "(13) Q: You mentioned that Diageo received an FLD. When did Diageo receive it?
>
> A: We received the FLD on 26 May 2016.
>
> xxx xxx xxx
>
> (17) Q: In the FLD, when was Diageo supposed to pay the deficiency taxes?
>
> A: The FLD does not state a due date for payment. It merely requested payment of the alleged deficiency taxes within the time shown in the Final Assessment Notice ('FAN')
>
> (18) Q: You mentioned that the FLD requested payment of the alleged deficiency taxes within the time shown in the FAN. When is the due date?
>
> A: We do not know. While the FLD refers to a due date in the FAN, no FAN was attached to the FLD when the latter was served upon Diageo. A thorough search of Diageo's records reveal that Diageo did not receive any FAN on a separate occasion either. Thus, Diageo does not know when it should have paid the alleged deficiency taxes."[123]

This testimony was unrebutted by respondent. In fact, he did not adduce any proof that petitioner indeed received a "Final Assessment Notice" or any type of assessment notice which provided the due date for payment of the assessed deficiency taxes. The non-receipt by petitioner of an assessment notice is bolstered by the fact that the ARANs, which were offered in evidence by respondent and which he insists to be the assessment notices that had been issued along with the FLD, did not have a receiving signature signifying receipt thereof by petitioner, similar to the one found in the FLD.[124]

In ***Commissioner of Internal Revenue v. Metro Star Superama, Inc.***,[125] and as recently pronounced in the ***T Shuttle Services Case***, the Supreme Court ruled that once a taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the CIR to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* is shifted to the CIR to prove by contrary evidence that the taxpayer received the assessment in the due course.

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[123] See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", Records, Vol. 2, pp. 891 and 893.
[124] See Judicial Affidavit of RO Claress Marie S. Notario, Exhibit "R-20", Records, Vol. 2, pp. 752-753; Exhibit "R-15", pp. 212-227.
[125] G.R. No. 185371, 8 December 2010.

Considering that respondent failed to provide any evidence showing that petitioner received the alleged "Final Assessment Notice" or any type of assessment notice providing for the due date for the payment of the assessed deficiency Excise Tax and VAT, petitioner is deemed not to have received the same. The FLD thus contains no definite date for the payment of the assessed taxes provided therein. Consequently, the FLD is null and void for failure to demand the payment of the assessed deficiency taxes.

Even assuming that the ARANs had been properly served by respondent and duly received by petitioner, the same conclusion will still be arrived at. A perusal of the ARANs shows that they had an issuance date of 20 April 2016, similar to the FLD, but the due date indicated therein for the payment of the assessed deficiency taxes was 29 February 2016.[126] This would have caused an absurd situation on the part of petitioner wherein it is expected to pay the assessed deficiency taxes even before the FLD and the ARANs had been issued by respondent and received by petitioner (*i.e.*, that petitioner is demanded to pay a tax on a date prior to the making of the demand). Due to this illogical scenario, the ARANs are deemed to not have provided a definite due date for the payment of the assessed deficiency Excise Tax and VAT similar to the conclusion made above. As such, even under this scenario, the FLD is still null and void for failure to demand the payment of the deficiency taxes assessed therein.

The FLD did not provide the legal and factual bases for the deficiency tax assessments contained therein.

A further infraction committed by respondent that will result in the nullification of the deficiency Excise Tax and VAT issued against petitioner is the PAN and FLD's failure to provide in writing the legal and factual bases for the assessment.

In the ***Fitness By Design Case***,[127] the Supreme Court had an occasion to summarize all of its rulings before the said case which nullified an assessment for its failure to provide in writing the factual and legal bases thereof, as follows:

> "The word 'shall' in Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99 means the act of informing the taxpayer of both the legal and factual bases of the assessment is mandatory. The law requires that the bases be reflected in the formal letter of demand and assessment notice. This cannot be presumed. Otherwise, the express mandate of Section 228 and Revenue Regulations No. 12-99 would

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[126] Exhibit "R-15", pp. 212-227.

[127] *Citing Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 2 July 2014; *Commissioner of Internal Revenue v. Enron*, G.R. No. 166387, 19 January 2009; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014.

be nugatory. The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.

Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc. held that a final assessment notice that only contained a table of taxes with no other details was insufficient:

> In the present case, a mere perusal of the [Final Assessment Notice] for the deficiency EWT for taxable year 1994 *will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis.* Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of P48,461.76 is collectible against respondent and how the same was arrived at.

Any deficiency to the mandated content of the assessment or its process will not be tolerated. In *Commissioner of Internal Revenue v. Enron*, an advice of tax deficiency from the Commissioner of Internal Revenue to an employee of Enron, including the preliminary five (5)-day letter, were not considered valid substitutes for the mandatory written notice of the legal and factual basis of the assessment. The required issuance of deficiency tax assessment notice to the taxpayer is different from the required contents of the notice. Thus:

> *The law requires that the legal and factual bases of the assessment be stated in the forma letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the [National Internal Revenue Code] and [Revenue Regulations] No. 12-99 would be rendered nugatory.* The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied. To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest.

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, substantial compliance with Section 228 of the National Internal Revenue Code is allowed, provided that the taxpayer would be later apprised in writing of the factual and legal bases of the assessment to enable him or her to prepare for an effective protest. Thus:

> Although the [Final Assessment Notice] and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an 'effective' protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated.

A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.'

Respondent filed its income tax return in 1995. Almost eight (8) years passed before the disputed final assessment notice was issued. Respondent pleaded prescription as its defense when it filed a protest to the Final Assessment Notice. Petitioner claimed fraud assessment to justify the belated assessment made on respondent. If fraud was indeed present, the period of assessment should be within 10 years. It is incumbent upon petitioner to clearly state the allegations of fraud committed by respondent to serve the purpose of an assessment notice to aid respondent in filing an effective protest."

The requirement that an assessment should provide in writing its factual and legal bases is a due process consideration which allows a taxpayer to intelligently prepare his protest against such assessment. Hence, generally speaking, the main test in determining whether an assessment notice complies with this requirement is whether a taxpayer can prepare an intelligent defense or protest against the deficiency tax assessment using simply the details provided in the notice.

A perusal of the PAN[128] and FLD[129] indicates that the deficiency Excise Tax and VAT assessments were arrived at when respondent found that there was an understatement on the declared SNRPs in petitioner's ISS, which was used as basis for the computation of the Excise Taxes and VAT paid on various brands of imported distilled spirits, by as much as fifteen percent (15%) as compared to the ANRPs, which were obtained through market surveys conducted by means of direct purchase of such items (*i.e.,* alcoholic beverages) from major supermarkets and outlets, and through photographs showing the item on the shelf and corresponding prices by which it is sold, as prescribed under ***RR 2-97***. The PAN and FLD also indicated that, under ***RR 17-2012***, the understatement of the SNRP by as much as fifteen percent (15%) of the ANRP shall render the manufacturer or importer liable for additional excise tax equivalent to the tax due and difference between the understated SNRP and ANRP. Furthermore, in the FLD, it was indicated that the deficiency Excise Tax and VAT assessments were also increased by the number of bottles of imported distilled spirits gathered from the ATRIGs processed and issued were multiplied with the deficiency Excise Tax and VAT rates per bottle.

Aside from these statements, however, respondent did not provide any details or computation on how the conclusion that petitioner's SNRPs were understated by fifteen percent (15%) was arrived at. Furthermore, petitioner's witness, Anne Christine Carlos, had positively identified that aside from the documents marked as PAN[130] and FLD[131] in this Court's records, there were no other documents attached thereto or sent to petitioner to further explain the deficiency tax assessments issued against it.[132] The PAN and FLD simply provided a tabular computation of the total deficiency taxes due by adding the basic deficiency taxes with interests, surcharges and penalties.

These assessment notices did not provide any explanation on how the basic deficiency Excise Taxes and VAT were arrived at. No details were provided as to the SNRPs, which can simply be obtained through petitioner's ISS. Similarly, no information was adduced in these assessment notices with respect to the ANRPs. While the procedures employed for obtaining such ANRPs (*i.e.,* through market surveys conducted by means of direct purchase of such items (*i.e.,* alcoholic beverages) from major supermarkets and outlets, and through photographs showing the item on the shelf and corresponding prices by which it is sold) were briefly passed upon in the PAN and the FLD, no details were provided as to when, where, and how such market survey was conducted, which may include among others: a) the locations of the supermarkets where the prices of the alcoholic beverages were obtained; b) the number of supermarkets used in the market survey; c) the alcoholic beverages used in the market survey; and d) the time when such market survey was conducted. Moreover, the results of the market survey were not indicated

[128] Exhibits "R-11" and "P-1", BIR Records, pp. 208-211.
[129] Exhibits "R-14" and "P-2", *id.*, pp. 246-249.
[130] Exhibits "R-11" and "P-1", *id.*, pp. 208-211.
[131] Exhibits "R-14" and "P-2", *id.*, pp. 246-249.
[132] See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", Records, Vol. 2, p. 896.

in the PAN and FLD. Without these details pertaining to the ANRPs and the SNRPs, there is no way for petitioner to determine whether its SNRPs are indeed understated by fifteen percent (15%).[133]

The PAN and FLD's lack of legal and factual bases for the deficiency tax assessments was in fact elicited through the cross examination conducted by this Court on petitioner's witness, Anne Christine Carlos, *to wit.:*[134]

> "**Justice San Pedro:** Okay, the BIR claims to have matched your suggested retail price to that found in market surveys and this appears in the details of discrepancy sent to you by the BIR which is Annex "A" in your Exhibit "P-2", at least you admit the details of discrepancies were received by your company?
>
> **Witness Carlos: Details as to the deficiency and then the interest and the penalty, but as to the breakdown of the basis in detail there is no breakdown.**
>
> **Justice San Pedro:** So you do not consider these details of discrepancy sufficient explanation?
>
> **Witness Carlos:** Correct Your Honor I consider them as insufficient details of the discrepancy.
>
> **Justice San Pedro:** Last question, were you furnished copies of the items with price tags mentioned in the details of discrepancies?
>
> **Witness Carlos:** Can you say that again, Your Honor.
>
> **Justice San Pedro:** Were you furnished a copy of the photographs identified to in the details of discrepancies?
>
> **Witness Carlos:** No Your Honor.
>
> **Justice San Pedro:** Chair, I have no more further questions.
>
> **Justice Uy:** Follow up to Justice San Pedro's question. So in the details of discrepancies it was stated that the ANRP was obtained thru market surveys conducted by means of direct purchase from major supermarkets and outlets. What kind of evidence do this petitioner expect from the BIR in order to prove that this was the manner by which they conducted the market survey? Beyond the statement in the details of discrepancy, what is the evidence that would satisfy petitioner as proof on the manner by which the survey was conducted?

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[133] See Judicial Affidavit of Augustus Caesar Cayetano dated 29 June 2018, Exhibit "P-11", Records, Vol. 1, pp. 348-352; See Judicial Affidavit of Anne Christine Carlos, Exhibit "P-14", Records, Vol. 2, pp. 892-899; See Exhibits "R-11" and "P-1", BIR Records, pp. 208-211; See Exhibits "R-14" and "P-2", *id.*, pp. 246-249.

[134] TSN, Hearing, dated 3 June 2020, pp. 11-15.

> **Witness Carlos: Ideally the details, of course there is a statement that they base it on the survey but we need factual basis on the basis of that statement. For example they need to specify the supermarket the conducted the survey, where they conducted the survey. And then the date when the surveys were conducted because it should be relevant to the prices that we have declared in the ISS for 2013 and 2014. And then what price should depends to consideration, is it the average, is the receipt, is it the highest price on the survey conducted.**
>
> **Justice Uy:** Alright, no further questions. Witness is discharged. Do you have other witnesses to present Atty. De Guzman?"
> (Emphasis, Ours)

Following these, therefore, petitioner was in no position to validly form an intelligent defense on the deficiency Excise Tax and VAT assessments issued against it. This is because petitioner is left in the dark on what it is trying to defend itself from. Without details on the ANRPs and SNRPs, petitioner cannot verify the accuracy and completeness of the data and information used to determine the alleged fifteen percent (15%) understatement of its SNRPs; hence, it cannot intelligently contest the same. Furthermore, the tax rates used in determining the basic deficiency Excise Tax and VAT assessments were not provided. There was thus no way for petitioner to ascertain whether the tax rates used to arrive at the basic deficiency taxes were proper and to determine whether the amounts stated in the PAN and FLD as basic deficiency taxes were correct.

As the PAN and FLD merely contained a tabular computation of the total tax due, the PAN and FLD failed to comply with ***Section 228 of the NIRC*** which expressly provides that taxpayers shall be informed in writing of the law and the facts on which the assessment is made. Consequently, the PAN and FLD are null and void for failure to comply with this requirement.

Considering the foregoing discussions, the deficiency tax assessment issued against petitioner is undoubtedly null and void. Correspondingly, no tax collection can be pursued in relation to such assessment.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The PAN, FLD and FDDA issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency Excise Tax and VAT assessments issued against petitioner for the taxable years 1 January 2013 to 31 December 2014, in the aggregate amount of Four Hundred Sixty Two Million Two Hundred Seventeen Thousand One Hundred Sixty Two and 76/100 Pesos (Php462,217,162.76), are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice