REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DMCI MASBATE POWER CORPORATION, *Petitioner,*	**CTA Case No. 10424**
	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 13 2025 3:20 p.m.

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DECISION

REYES-FAJARDO, J.:

Before the Court is a *Petition for Review*[1] filed by DMCI Masbate Power Corporation (DMCI Power or petitioner) appealing respondent CIR's *Formal Letter of Demand* and *Final Decision on Disputed Assessment*, finding petitioner liable for deficiency value-added tax (VAT) and expanded withholding tax (EWT) in the aggregate amount of ₱65,991,897.22, inclusive of surcharge, interest and compromise penalty, relative to taxable year 2015.

FACTS

Petitioner DMCI Power is a corporation duly organized and existing under and by virtue of the laws of the Philippines.[2] Its primary purpose[3] is to acquire, design, develop, construct, invest in, and operate power generating plants in the Province of Masbate and engage in the business of a Generation Company in accordance with Republic Act No. 9136, otherwise known as the Electric Power

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1 Docket - Vol. 1, pp. 7-50.
2 Exhibit "P-1," Docket - Vol. 3, p. 1332.
3 As stated in its Amended Articles of Incorporation, Exhibit "P-1," Docket - Vol. 3, p. 1335.

Industry Reform Act of 2001 (EPIRA), and to design, develop, assemble, and operate other power related facilities, appliances, and devices.[4] Its registered address is Barangay Tugbo, Mobo, Masbate. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 006-917-178-000.[5] It is classified as a Large Taxpayer under the BIR Large Taxpayer Service,[6] pursuant to Revenue Regulations No. 17-10.[7]

Administrative proceedings.

By virtue of *Letter of Authority* (LOA) No. SN: eLA201500034722 (AUDM35/011306/2017) dated April 21, 2017[8] the BIR commenced the examination of DMCI Power's books of accounts and other accounting records for **all internal revenue taxes** relative to the taxable period from January 1, 2015 to December 31, 2015.

During the course of the audit investigation, the parties executed three *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* (Waivers), extending the audit deadline as follows:

	Exh.	Date of Execution	Extended Until
First Waiver	P-6	December 12, 2017	March 31, 2018
Second Waiver	P-6-1	March 7, 2018	September 30, 2018
Third Waiver	P-6-2	September 6, 2018	December 31, 2018

The BIR later issued *Notice of Informal Conference* dated May 25, 2018,[9] finding deficiency VAT, withholding tax on compensation (WC), and EWT due from DMCI Power in an aggregate amount of ₱58,498,209.93, inclusive of interest and compromise penalty, relative to the taxable period January 1, 2015 to December 31, 2015, *viz.*:

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[4] Also see Exhibit "P-20," Docket - Vol. 2, p. 1177.

[5] Exhibit "P-2," Docket - Vol. 3, p. 1397.

[6] Exhibit "P-2-3," Docket - Vol. 3, p. 1409

[7] SUBJECT: Consolidated Regulations Implementing Republic Act No. 7646, An Act Authorizing the Commissioner of Internal Revenue to Prescribe the Place for Payment of Internal Revenue Taxes by Large Taxpayers and Prescribing the Coverage and Criteria for Determining Large Taxpayers, November 26, 2010.

[8] Exhibit "P-5," Docket - Vol. 3, pp. 1413 to 1415; and Exhibit "R-1," Folder 1 of BIR Records (Exhibit "R-12"), pp. 1-3.

[9] Exhibit "P-7," Docket - Vol. 3, p. 1422; and Exhibit "R-2," Folder 1 of BIR Records (Exhibit "R-12"), p. 647.

	VAT	WC	EWT	Total
Basic	₱35,667,407.26	₱1,147,357.13	₱2,891,645.65	₱39,706,410.04
Interest (20%)	16,729,479.79	544,444.53	1,392,875.57	18,666,799.89
Compromise Penalty				125,000.00
Total	₱52,396,887.05	₱1,691,801.66	₱4,284,521.22	**₱58,498,209.93**

On September 24, 2018, the BIR OIC-Assistant Commissioner issued a *Preliminary Assessment Notice* with attached Details of Discrepancies (hereinafter collectively referred to as "PAN")[10] finding DMCI Power liable for deficiency VAT, WC, and EWT amounting to **₱66,232,965.20**, inclusive of interest and compromise penalty, computed as follows:

	VAT	WC	EWT	Total
Basic	₱42,838,437.41	₱629,100.74	₱1,324,453.52	**₱44,791,991.67**
Interest (20%)	20,379,359.64	299,279.60	637,334.29	21,315,973.53
Compromise Penalty				125,000.00
Total	₱63,217,797.05	₱928,380.34	₱1,961,787.81	**₱66,232,965.20**

The BIR's adjustments leading to the total deficiency VAT of ₱63,217,797.05 are highlighted in the computation[11] below.

VAT		
Vatable Sales/Receipts-Private		₱891,686,761.99
Add: Adjustments		
1. Per FS of MASELCO - Difference Remitted to DMCI Masbate		**65,202,454.00**
Vatable Sales/Receipts per Audit		₱956,889,215.99
Tax Rate		12%
Tax Due		₱114,826,705.92
Less: Allowed Input Tax		
Input tax carried over from previous period	₱108,201,577.90	
Input tax deferred on capital goods-beginning	598,967.78	
Current input tax	91,287,912.85	
Subtotal	₱200,088,458.53	
Less: Input tax on capital goods deferred for the succeeding period	3,559,824.15	
Input tax carried over to succeeding period	115,770,987.07	
Total Allowable Input Tax per Return	₱80,757,647.31	
[Balance Forwarded]		

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10 Exhibit "P-8," Docket - Vol. 3, pp. 1430 to 1454; and Exhibit "R-6," "R-6-1," and "R-6-2," Folder 2 of BIR Records (Exhibit "R-12"), pp. 986-991.

11 Exhibit "P-8," Docket - Vol. 3, p. 1430.

[Balance Forwarded]			
Total Allowable Input Tax per Return	₱80,757,647.31		
Less: Disallowed input tax			
Not found in SLS of Suppliers per reconciliation of SLP of DMCI as against SLS of Suppliers	**₱472,538.43**		
Excess input tax carried over to succeeding year for failure to recognize input tax on sales to gov't. closed to expense	**15,734,585.81**	16,207,124.24	64,550,523.07
Basic Tax			₱50,276,182.85
Add: Output tax due on full collection of generation charge		**₱18,420,456.47**	
Partial collection of unremitted GRAM/ICERA which deemed to include 12% VAT		**214,285.71**	
VAT still due on NPC		**172,276.50**	18,807,018.68
Total Basic Tax Due			₱69,083,201.53
Less: Tax credits/payments			
VAT Payments			
Creditable VAT			26,244,764.12
Basic Deficiency VAT			**₱42,838,437.41**
Add: Penalty			
20% Interest (01/26/2016 to 12/31/2017)		₱16,548,547.05	
12% Interest (01/01/2017 to 09/30/2018)		3,830,812.59	20,379,359.64
Total Deficiency VAT			**₱63,217,797.05**

DMCI Power received the PAN on September 25, 2018;[12] it filed its *Reply to the PAN* on October 10, 2018.[13] In disputing the item "1. Per FS of MASELCO - Difference Remitted to DMCI Masbate" amounting to ₱65,202,454.00, DMCI Power expressed the difficulty in verifying the BIR's findings, to wit:

> A. GRAM/ICERA
>
> 1. x x x
>
> 2. **At the outset, DMPC notes the difficulty in confirming the accuracy of the amounts involved considering that the assessment was made only on the basis of Masbate Electric Cooperative's ("MASELCO") Audited Financial Statements.**
>
> 3. x x x
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> (Boldfacing supplied.)

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[12] Par. 14, *Memorandum for the Petitioner*, Docket - Vol. 5, p. 3080.
[13] Exhibit "P-8-1," Docket - Vol. 3, pp. 1455-1463.

DMCI Power pointed out that MASELCO was a third party whose records and books of account were not in petitioner's custody.

Subsequently, on October 29, 2018, the BIR Deputy Commissioner, Operations Group, issued a *Formal Letter of Demand* and *Final Assessment Notices*[14] with attached Details of Discrepancies (hereinafter collectively referred to as "FLD/FAN"), requesting for the payment of deficiency VAT, WC, and EWT amounting to **₱66,689,475.37**, consisting of the same amounts of basic taxes and compromise penalty as those reflected in the PAN, adjusted only to update accrued interest, *viz.*:

	VAT	WC	EWT	Total
Basic	₱42,838,437.41	₱629,100.74	₱1,324,453.52	**₱44,791,991.67**
Interest (20%)	20,815,959.61	305,691.26	650,832.83	21,772,483.70
Compromise Penalty				125,000.00
Total	₱63,654,397.02	₱934,792.00	₱1,975,286.35	**₱66,689,475.37**

The payment due date was set on **October 31, 2018**. However, the FAN/FLD was served upon petitioner on **November 5, 2018**.[15]

Further, the explanations in the Details of Discrepancies attached to the PAN were reproduced verbatim in the Details of Discrepancies attached to the FAN/FLD. The BIR no longer discussed or resolved the arguments and issues raised in DMCI Power's Reply to the PAN; it did not provide reasons for denying the same.

This prompted DMCI Power to file an *Administrative Protest*[16] on December 3, 2018, requesting for a reinvestigation of its case. It submitted the supporting documents on January 31, 2019.[17]

On August 5, 2020, the CIR issued the assailed *Final Decision on Disputed Assessment* (FDDA)[18] with a total assessed amount of **₱67,991,897.22**, computed as follows:

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[14] Exhibit "P-9," Docket - Vol. 1, pp. 272-280; and Exhibit "R-8," "R-8-1," and "R-8-2" Folder 3 of BIR Records (Exhibit "R-12"), pp. 1897, 1905.

[15] The date of receipt is November 5, 2018, as stamped by DMCI Power on the FAN/FLD (See Exhibits "R-8," "R-8-1," and "R-8-2," Folder 3 of BIR Records (Exhibit "R-12"), pp. 1897-1905.)

[16] Exhibit "P-9-1," Docket - Vol. 3, pp. 1464-1481.

[17] Exhibit "P-9-1," Docket - Vol. 3, pp. 1482-1483.

[18] Exhibit "P-10," Docket - Vol. 1, pp. 310-314.

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	VAT	WC	EWT	Total
Basic	₱42,373,429.76	-	₱60.00	**₱42,373,489.76**
Interest (20%)	25,543,374.12	-	33.34	25,543,407.46
Compromise Penalty				75,000.00
Total	₱67,916,803.88	-	₱93.34	**₱67,991,897.22**

The CIR removed/adjusted certain items in the assessment, which led to the decrease of the total basic tax and compromise penalty amounts; however, it did not discuss DMCI Power's arguments. The CIR repeated the explanations as those provided previously in the PAN and FLD/FAN.

Alleging to have received a copy of the FDDA on November 18, 2020,[19] DMCI Power filed the present petition on December 18, 2020 to appeal the CIR's ruling (judicial protest).

Proceedings before the Court.

The CIR filed an Answer[20] and submitted the BIR Records[21] of the case on March 26, 2021 and June 9, 2021, respectively.

Meanwhile, on April 27, 2021, DMCI Power moved for the suspension of collection of taxes;[22] the Court granted this motion in a Resolution dated December 3, 2021.[23] Relative thereto, DMCI Power posted the required bond on March 7, 2022.[24]

After the parties' submission of their respective pre-trial briefs,[25] the pre-trial conference was held on March 3, 2022.[26] Per agreement, the parties executed and filed a Joint Stipulation of Facts and Issues

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[19] Par. 24, Petition for Review, Docket - Vol. 1, p. 12.

[20] Docket - Vol. 2, pp. 651-670.

[21] *Compliance* dated May 31, 2021, Docket - Vol. 2, pp. 811-813.

[22] Denominated as *Urgent Omnibus Motion A. To Suspend Collection of Taxes; B. To Dispense with the Surety Bond Requirement as a Condition to Suspend Collection of Deficiency Taxes; and C. To Declare the Warrant of Distraint and/or Levy dated February 16, 2021 Null and Void and Order its Cancellation (With Extremely Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction),* Docket - Vol. 1, pp. 360-395, and Docket - Vol. 2, pp. 684-718.

[23] Docket - Vol. 2, pp. 868-881.

[24] As per *Manifestation with Compliance,* Docket - Vol. 2, pp. 969-971.

[25] For petitioner, Docket - Vol. 2, pp. 911-927; for respondent, Docket - Vol. 2, pp. 892-896.

[26] Notice of Pre-Trial Conference dated December 13, 2021, Docket - Vol. 2, pp. 882-884; and Minutes of the hearing held on, and Order, dated March 3, 2022, Docket - Vol. 2, pp. 931-933, and pp. 938-940, respectively.

(JSFI).[27] Upon the Court's approval thereof, pre-trial was deemed terminated.[28] The Court promulgated a pre-trial order[29] on April 28, 2022.

During trial, DMCI Power offered the testimonies of the following witnesses: (1) Melannie D. Ubalde,[30] Accounting Manager, DMCI Power, and (2) George V. Villaruz,[31] Court-commissioned Independent Certified Public Accountant (ICPA).[32]

The ICPA Report was submitted to the Court on October 17, 2022.[33]

In resolving DMCI Power's Formal Offer of Evidence,[34] the Court[35] admitted petitioner's offered exhibits, except Exhibit "P-20-3," for failure of the exhibit formally offered to correspond with the document actually marked.

For its part, the CIR presented the testimony of Ma. Theresa Carillo, BIR Revenue Officer.[36] Subsequently, after due consideration of DMCI Power's Comment[37] thereto, the Court admitted[38] respondents' exhibits as enumerated in its Formal Offer of Evidence.[39]

After the filing of the parties' respective Memoranda,[40] the case was submitted for decision on March 13, 2024.[41]

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[27] Docket - Vol. 2, pp. 997-1009.

[28] Resolution dated April 12, 2022, Docket - Vol. 2, pp. 1098-1101.

[29] Docket - Vol. 2, pp. 1116-1128.

[30] Exhibit "P-17," Docket - Vol. 1, pp. 57-81; Exhibit "P-18," Docket - Vol. 2, pp. 1148-1154; and Minutes of the hearing held on, and Order dated, September 15, 2022, Docket - Vol. 2, p. 1163-1166.

[31] Exhibit "P-272," Docket - Vol. 2, pp. 1233-1239; and Minutes of the hearing held on, and Order dated, December 7, 2022, Docket - Vol. 2, pp. 1241-1242-A.

[32] *Oath of Commission* dated September 15, 2022; and Minutes of the hearing held on, and Order dated, September 15, 2022, Docket - Vol. 2, pp. 1163-1166.

[33] Exhibit "P-20," Docket - Vol. 2, pp. 1174-1227.

[34] Docket - Vol. 5, pp. 2995-3003.

[35] In a Resolution dated June 6, 2023, Docket - Vol. 5, pp. 2964-2969.

[36] Exhibit "R-13," Docket - Vol. 2, pp. 902-910; and Minutes of the hearing held on, and Order dated, September 6, 2023, Docket - Vol. 5, pp. 2986-2988.

[37] Docket - Vol. 5, pp. 3014-3024.

[38] In a Resolution dated January 29, 2024, Docket - Vol. 5, pp. 3046-3047.

[39] Docket - Vol. 5, pp. 2995-3003.

[40] For petitioner, Docket - Vol. 5, pp. 3072-3120. For respondent, Docket - Vol. 5, pp. 3048-3070.

[41] Minute Resolution dated March 13, 2024, Docket - Vol. 5, p. 3168.

ARGUMENTS

DMCI Power's Arguments.

Petitioner seeks to invalidate the assessments on the following grounds: (1) the FLD and FDDA set out an *indefinite* amount of deficiency tax due; (2) the government's right to assess relative to VAT and EWT has prescribed; (3) the Waivers are not valid and did not extend the three-year prescriptive period to assess; (4) the assessments do not have factual or legal bases.

The CIR's Arguments.

Respondent counters as follows: (1) the FLD and FDDA contained a definite due date for payment of the deficiency tax liabilities; (2) prescription has not set in; the period to assess was extended effectively in view of the Waivers; and (3) the assessments have legal and factual bases.

ISSUES

The parties stipulated the following issue for the Court's resolution:

> Whether the Petitioner is liable for the assessed deficiency value-added tax and expanded withholding tax, inclusive of interest and compromise penalties, for taxable year 2015 in the aggregate amount of Sixty-Five Million Nine Hundred Ninety-One Thousand Eight Hundred Ninety-Seven and Twenty-Two Centavos (PhP65,991,897.22).[42]

Whether or not DMCI Power is liable for deficiency taxes relies foremost on the assessments' **validity**. In ascertaining this, We pass upon the following questions:

1. Was the service of the FAN/FLD *after* the due date indicated therein proper?

2. Were the Waivers executed by the parties valid?

[42] Issue, JSFI, Docket - Vol. 2, pp. 997-998.

3. Did the tax authorities comply with due process requirements in the issuance of the assessments against DMCI Power, in particular consideration of the Supreme Court's pronouncements in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (Avon)[43] and *Commissioner of Internal Revenue v. Spouses Magaan*:[44]

OUR RULING

The Petition for Review is meritorious.

While We find that the CIR's right to assess DMCI Power was not barred by prescription, the tax authorities in this case failed to uphold the taxpayer's due process rights; this renders the subject assessments invalid.

The subject Waivers are valid; the CIR's right to assess petitioner did not prescribe.

The **general rule** under National Internal Revenue Code,[45] as amended (Tax Code), allows the CIR and his authorized representative three years counted from the statutory deadline for filing the return or date of actual filing, whichever is later, to conclude their audit investigation and issue a formal assessment based on the audit findings.[46]

In this regard, VAT returns (BIR Form No. 2550Q) are required to be filed within 25 days following the close of each taxable quarter;[47] EWT returns (BIR Form No. 1601E) of Large Taxpayers shall be filed within 25 days after the end of each month during which withholding was made.[48]

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

[44] G.R. No. 232663, May 3, 2021.

[45] Section 203 of the Tax Code provides, "Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return x x x Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

[46] See *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.

[47] Section 114(A), Tax Code.

[48] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded

Counting three years from the deadline set by law/regulations or the actual filing of the return, whichever is later, DMCI Power's receipt of the FLD/FAN on **November 5, 2018** was past the *general* three-year period to assess VAT relative to the first and second quarters of 2015, and EWT relative to the months of January, February, March, April, May, June, July, August, and September of 2015, *viz.*:

		Filing of Return		
Taxable Period	**Exh.**	**Prescribed Deadline**	**Actual Date**	**Last Day to Assess**
VAT (BIR Form No. 2550Q)				
First Quarter	P-3	April 25, 2015	April 25, 2015	**April 25, 2018**
Second Quarter	P-3-1	July 25, 2015	July 24, 2015	**July 25, 2018**
Third Quarter	P-3-2	December 25, 2015	December 21, 2015	December 21, 2018
Fourth Quarter	P-3-3	January 25, 2015	April 22, 2016	April 22, 2019
EWT (BIR Form No. 1601E)				
January	P-4	February 25, 2015	February 12, 2015	**February 25, 2018**
February	P-4-1	March 25, 2015	March 12, 2015	**March 25, 2018**
March	P-4-2	April 25, 2015	April 10, 2015	**April 25, 2018**
April	P-4-3	May 25, 2015	May 12, 2015	**May 25, 2018**
May	P-4-4	June 25, 2015	June 11, 2015	**June 25, 2018**
June	P-4-5	July 25, 2015	July 10, 2015	**July 25, 2018**
July	P-4-6	August 25, 2015	August 12, 2015	**August 25, 2018**
August	P-4-7	September 25, 2015	September 11, 2015	**September 25, 2015**
September	P-4-8	October 25, 2015	October 12, 2015	**October 25, 2015**
October	P-4-9	November 25, 2015	November 12, 2015	November 25, 2015
November	P-4-10	December 25, 2015	December 11, 2015	December 25, 2015
December	P-4-11	January 25, 2016	January 28, 2016	January 28, 2016

However, as an **exception** under Section 222 of the Tax Code, the taxpayer may *waive* the general three-year limitation and agree with the CIR, in writing, to allow the tax authorities to extend its audit investigation and issue an assessment beyond the statutory deadline, *viz.*:

> SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
> (a) x x x
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer

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Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes (Implementing Republic Act No. 8424, Revenue Regulations No. 02-98, April 17, 1998.

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> have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

It is not disputed[49] that the parties executed *three* Waivers in the present case, the last of which provided for an extension of the assessment period until **December 31, 2018.**[50]

For reference, the Waivers were worded *proforma* as follows:

> I, NESTOR D. DADIVAS, President of DMCI Masbate Power Corporation request for approval by the Commissioner of Internal Revenue for more time to submit the documents req2uried in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of my/its **all internal revenue tax liabilities for the year 2015.** I/We hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of above tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than [date].
>
> The intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities. It is understood, however, that the undersigned taxpayer/taxpayer represented below, by the execution of this waiver, neither admits in advance the correctness of the assessment/assessments which may be made for the year above-mentioned nor waives the right to use any legal remedies accorded by law to secure a credit or refund on such tax that may have been paid for the same year pursuant to the provisions of Sections 204 and 229 of the National Internal Revenue Code.
>
> The period so stated herein may be extended by subsequent waiver in accordance with existing rules and regulations of the Bureau of Internal Revenue.
>
> Executed this ____ day of _____ in ______________, Philippines.
>
> ACCEPTED:
> Commissioner of Internal Revenue

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[49] Par. 65, Petitioner's *Memorandum*, Docket - Vol. 5, pp. 3121-3164.

[50] Exhibit "P-6-2," Docket - Vol. 1, p. 238.

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[signed]
NESTOR D. DADIVAS
President

BY:

[signed]
TERESITA M. ANGELES
OIC - Assistant Commissioner
Large Taxpayers Service

[signed]
ANTONINO E. GATDULA, JR.

____
Date

(Boldfacing supplied)

While the *First Waiver* was executed before the lapse of the general three-year assessment period for 2015 VAT and EWT (i.e., December 12, 2017), and the *Second* and *Third Waivers* were executed before the lapse of the extension set in the *First* and *Second Waivers* (March 7, 2018 and September 6, 2018), respectively, DMCI Power insists that these Waivers are void and ineffective, as these did not specify the type and amount of taxes due.

At this point, We cannot allow DMCI Power to avoid deficiency tax liability based solely on the technical issue of the Waivers' invalidity.

The alleged flaws here were **patent on the face of <u>all three</u> <u>waivers</u>**. If DMCI Power earnestly took exception to the general scope of the waivers (i.e., all internal revenue liabilities for the year 2015), it should have refused to sign these documents from the very beginning, or, at the very least, taken steps to revise the waivers' *proforma* wording and not accepted them lock, stock, and barrel.

It raised the argument relative to the Waivers' validity for the first time on appeal before this Court; Assuming that the First Waiver was in fact defective in form, DMCI Power did not question it. Instead, it proceeded to execute two more Waivers without protest.

In *Asian Transmission Corp. v. Commissioner of Internal Revenue* (*Asian Transmission*),[51] the Supreme Court petitioner "issued eight successive Waivers over the course of four years (2004-2008). The Waivers had always been marred by defects and, yet, ATC continued to correspond with the tax authorities and allowed them to proceed with their investigation, as extended by the Waivers in question."

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[51] G.R. No. 230861 (Resolution), February 14, 2022.

Hence, in *Asian Transmission*, the Supreme Court admonished the practice of liberally executing successive waivers, only to dispute its validity later on when the circumstances have obviously become unfavorable to the taxpayer, *viz.*:

> **That ATC acquiesced to the BIR's extended investigation and failed to assail the Waivers' validity at the earliest opportunity gives rise to estoppel.** Moreover, ATC's belated attempt to cast doubt over the Waivers' validity could only be interpreted as a mere afterthought to resist possible tax liability.
>
> Verily, it has been held that the doctrine of estoppel, as a bar to the statute of limitations protecting a taxpayer from prolonged investigations, must be applied sparingly.
>
> **However, the number of successive Waivers executed by ATC is telling. <u>Certainly, no taxpayer may be allowed to execute haphazard waivers deliberately, go through the motions that the waivers are effective, and lead the tax authorities to believe that the assessment period has been extended, only to deny the validity thereof when it becomes unfavorable to him</u>. Otherwise, it would create a dangerous situation — "open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities."** (Emphasis supplied)

Even if We accept DMCI Power's belated opposition to the Waivers, the statement "all internal revenue liabilities for the year 2015" is allowed by **Revenue Memorandum Order No. 14-16.**[52] This issuance amended the old rules set out in Revenue Memorandum Order No. 20-90[53] and Revenue Delegation Authority Order No. 05-01,[54] is the prevailing rule applicable to the present case. It lists the formal guidelines in the execution of waivers under Section 222(b) and explicitly provides that a waiver, to be valid, **need not specify the particular taxes or amounts subject of the assessment**. A brief statement of "all internal revenues" to describe the waiver's scope, without a precise computation of deficiency tax liability, is acceptable and reasonable because the audit is still in progress.

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[52] SUBJECT: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.

[53] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

[54] SUBJECT: Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations.

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Revenue Memorandum Order No. 14-16 pertinently provides:

III. Guidelines

1. The waiver may be, but not necessarily, in the form prescribed by RMO No. 20-90 or RDAO No. 05-01. The taxpayer's failure to follow the aforesaid forms does not invalidate the executed waiver, for as long as the following are complied with:

    a) The Waiver of the Statute of Limitations under Section 222 (b) and (d) shall be executed before the expiration of the period to assess or to collect taxes. The date of execution shall be specifically indicated in the waiver;

    b) The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials;

    c) The expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be indicated.

2. **Except for waiver of collection of taxes which shall indicate the particular taxes assessed, the waiver need not specify the particular taxes to be assessed nor the amount thereof, and it may simply state 'all internal revenue taxes' considering that during the assessment stage, the Commissioner of Internal Revenue or her duly authorized representative is still in the process of examining and determining the tax liability of the taxpayer.**

3. **Since the taxpayer is the applicant and the executor of the extension of the period of limitation for its benefit in order to submit the required documents and accounting records, the taxpayer is charged with the burden of ensuring that the waivers of statute of limitation are validly executed by its authorized representative. The authority of the taxpayer's representative who participated in the conduct of audit or investigation shall not be thereafter contested to invalidate the waiver.**

4. The waiver may be notarized. However, it is sufficient that the waiver is in writing as specifically provided by the NIRC, as amended.

5. Considering that the waiver is a voluntary act of the taxpayer, the waiver shall take legal effect and be binding on the taxpayer upon its execution thereof.

6. It shall be the duty of the taxpayer to submit its duly executed waiver to the Commissioner of Internal Revenue or official/s previously designated in existing issuances or the concerned revenue district officer or group supervisor as designated in the Letter of Authority/Memorandum of Assignment who shall then indicate acceptance by signing the same. Such waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect. The taxpayer shall have the duty to retain a copy of the accepted waiver.

7. Note that there shall only be two (2) material dates that need to be present on the waiver:

    a) The date of execution of the waiver by the taxpayer or its authorized representative; and

    b) The expiry date of the period the taxpayer waives the statute of limitations.

8. Before the expiration of the period set on the previously executed waiver, the period earlier set may be extended by subsequent written waiver made in accordance with this Order. (Boldfacing supplied)

In these lights, We uphold the Waivers' validity. The parties are regarded to have agreed to extend the assessment period to December 31, 2018. Thus, the CIR's deficiency VAT and EWT assessments relative to the taxable year 2015, contained in the FLD/FAN, received by DMCI Power on November 5, 2018, were not barred by prescription.

DMCI Power was not accorded administrative due process.

DMCI Power did not settle its alleged deficiency tax liability because the FLD/FAN was served past the deadline for payment.

Tax authorities are duty-bound to inform the taxpayer of the facts, jurisprudence, and law upon which the assessment is based, including a **definite disclosure** of the amount due and **due date**.[55]

This **written notice requirement** in tax assessment cases follows the fundamental rule that "no person shall be deprived of his or her

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[55] Id.

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."[56]

Also, the subject FLD/FAN was dated **October 29, 2018**; it did state the total amount payable, as well as an instruction to petitioner to pay on or before **October 31, 2018**. However, it was served upon DMCI Power on **November 5, 2018**,[57] past the deadline for payment indicated therein.

It is clear that respondent intended to give petitioner some time, however brief, within which to settle the tax liability. **The benefit of this period cannot be withdrawn unilaterally, without affecting petitioner's due process rights**. This **irregularity** unduly deprived petitioner of a reasonable period within which to pay the tax liability.

The CIR did not give due consideration to DMCI Power's arguments.

The cardinal rules in upholding a litigant's right to due process in administrative proceedings are laid out in *Ang Tibay v. Court of Industrial Relations* (Ang Tibay).[58] According to the second and seventh rules in *Ang Tibay*, "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal **must *consider* the evidence presented**...[Further, the administrative tribunal or body] should, in all controversial questions, render its decision **in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered**." (Emphasis supplied)

The Supreme Court reiterated these principles in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*).[59] In *Avon*, the taxpayer responded to the PAN. However, the CIR simply reproduced the PAN's contents in the subsequent FLD/FAN. That the FAN/FLD had no mention of the taxpayer's arguments (raised in its reply) or any discussion on the merits thereof was, according to the

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[56] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, 799 Phil 391-420.

[57] The date of receipt is November 5, 2018, as stamped by DMCI Power on the FAN/FLD (See Exhibits "R-8," "R-8-1," and "R-8-2," Folder 3 of BIR Records (Exhibit "R-12"), pp. 1897-1905.)

[58] G.R. No. 46496, February 27, 1940, 69 PHIL 635-645.

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

Supreme Court, an indication that the tax authorities did not comply with their own procedures. It explained further:

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

Ang Tibay and *Avon* teaches that the requirement of administrative due process is not met sufficiently by the mere formal act of receiving a taxpayer's defenses submitted in writing.

Administrative due process requires **judicious consideration of the matters raised therein, independent evaluation of the case, and due notification to parties of the reasons for judgment; "otherwise the right to be heard is rendered meaningless."**[60]

In the present case, the FLD/FAN contained the **exact basic tax amount (₱44,791,991.67) as that already indicated in the PAN,** adjusted only for accrued interest. The **explanations** in the PAN and FLD/FAN are even **identical**. There was no mention of the arguments raised by DMCI Power in its Reply to the PAN, *viz*.:

PAN	FLD/FAN
ANNEX A-1 **DMCI MASBATE POWER CORPORATION** **Brgy. Tugbo, Masbate** **TIN 006-917-178-00000** DETAILS OF DISCREPANCIES Gentlemen:	SCHEDULE-1 **DMCI MASBATE POWER CORPORATION** **Brgy. Tugbo, Masbate** **TIN 006-917-178-00000** DETAILS OF DISCREPANCIES Gentlemen:

[60] *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024.

PAN	FLD/FAN
Please find below the complete details of the discrepancies established during the investigation of this case. DETAILS OF DISCREPANCIES VALUE-ADDED TAX 1. GRAM/ICERA per FS of MASELCO - Difference remitted to DMPC P 65,202,454.00 - Per Access of FS of Masbate Electric Cooperative (MASELCO)[,] it has shown a beginning balance of GRAM/ICERA payable to DMPC of P 72,296,045.00 while the ending balance for TY 2015 was P 7,093,591.00 with the difference amounting to P 65,202,454.00. The decrease in GRAM/ICERA of P 65,202,454.00 as shown in the FS of MASELCO is considered unremitted collection of DMPC subject to VAT thus assessed pursuant to Section 108 of the Tax Code, as amended. 2. Disallowed input tax P 472,538.43 - Reconciliation of Summary List of Purchases as against the "PreProcessed" [RELIEF] SLS of DMCI Masbate Suppliers" from Audit Information Tax Exemption and Incentive Division (AITEID) disclosed that there were various purchases of DMCI Masbate for a total amount of P 3,937,820.29 not reported as sales by its suppliers thus, the corresponding input tax of P 472,538.43 was disallowed pursuant to Section 110 of the Tax Code, as amended. 3. Input tax on sales to gov't. closed to expense P 15,734,585.81 - Pursuant to Section 114(C) of the Tax Code, as amended, the Government or any of its political subdivision[s], instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall before making payment on account of each purchase of goods and services which are subject to VAT, deduct and withhold a final VAT at the rate of five percent (5% of the gross payment thereof. In the case of DMCI[,] the 5% VAT amounting to P 26,244,764.12 was deducted by National Power Corporation (NPC) on its	Please find below the complete details of the discrepancies established during the investigation of this case. DETAILS OF DISCREPANCIES VALUE-ADDED TAX 1. GRAM/ICERA per FS of MASELCO - Difference remitted to DMPC P 65,202,454.00 - Per Access of FS of Masbate Electric Cooperative (MASELCO)[,] it has shown a beginning balance of GRAM/ICERA payable to DMPC of P 72,296,045.00 while the ending balance for TY 2015 was P 7,093,591.00 with the difference amounting to P 65,202,454.00. The decrease in GRAM/ICERA of P 65,202,454.00 as shown in the FS of MASELCO is considered unremitted collection of DMPC subject to VAT thus assessed pursuant to Section 108 of the Tax Code, as amended. 2. Disallowed input tax P 472,538.43 - Reconciliation of Summary List of Purchases as against the "PreProcessed" [RELIEF] SLS of DMCI Masbate Suppliers" from Audit Information Tax Exemption and Incentive Division (AITEID) disclosed that there were various purchases of DMCI Masbate for a total amount of P 3,937,820.29 not reported as sales by its suppliers thus, the corresponding input tax of P 472,538.43 was disallowed pursuant to Section 110 of the Tax Code, as amended. 3. Input tax on sales to gov't. closed to expense P 15,734,585.81 - Pursuant to Section 114(C) of the Tax Code, as amended, the Government or any of its political subdivision[s], instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall before making payment on account of each purchase of goods and services which are subject to VAT, deduct and withhold a final VAT at the rate of five percent (5% of the gross payment thereof. In the case of DMCI[,] the 5% VAT amounting to P 26,244,764.12 was deducted by National Power Corporation (NPC) on its

PAN	FLD/FAN
payment of subsidy fees and issued the corresponding BIR Form 2306 which DMCI applied as deduction against the VAT payable. However, DMCI failed to recognize in the VAT return the standard input tax. In computing the standard input VAT, DMCI should have the standard input VAT amounting to P 36,742,599.76 when compared to actual input tax resulted [in] input VAT amounting to P 15,734,585.81 which exceeds 7% of gross payments that should have been form part of its expense or cost. In this case there will be no benefit by doing so since DMCI is still enjoying its ITH incentive from BOI. DMC[I] failed to recognize the standard input VAT in its VAT returns, the excess input tax carried over to succeeding quarters should have been P 100,036,483.30 instead of P 115,770,987.07 thus the difference of P 15-734,585.81 was assessed pursuant to Section 114 of the Tax Code, as amended and Section 4.114-2(a) of Revenue Regulations No. 16-[2005].	payment of subsidy fees and issued the corresponding BIR Form 2306 which DMCI applied as deduction against the VAT payable. However, DMCI failed to recognize in the VAT return the standard input tax. In computing the standard input VAT, DMCI should have the standard input VAT amounting to P 36,742,599.76 when compared to actual input tax resulted [in] input VAT amounting to P 15,734,585.81 which exceeds 7% of gross payments that should have been form part of its expense or cost. In this case there will be no benefit by doing so since DMCI is still enjoying its ITH incentive from BOI. DMC[I] failed to recognize the standard input VAT in its VAT returns, the excess input tax carried over to succeeding quarters should have been P 100,036,483.30 instead of P 115,770,987.07 thus the difference of P 15-734,585.81 was assessed pursuant to Section 114 of the Tax Code, as amended and Section 4.114-2(a) of Revenue Regulations No. 16-[2005].
4. Output tax due on full collection of generation charge - P 18,420,456.47- Verification disclosed that total revenue (generation charges) for the year 2015 was settled by MASELCO except for the period October 26 to December 25, 2015 amounting to P 387,001,588.04. The VAT due for the total revenue amounted to P 48,552,717.91 while the VAT reported per VAT returns amounted to P30,132,261.44 only. The difference of P 18,420,456.47 corresponds to the VAT on the gross receipts from collection of generation charges, assessed pursuant to Section 108 of the Tax Code, as amended. 5. Collection of GRAM/ICERA which deemed to include 12% VAT-P214,285.71 - Verification disclosed that there was 1st and 2nd partial collection of unremitted GRAM/ICERA for April to September 2012 amounting to P 2,000,000.00 wherein the VAT was deemed to include amounting to P 214,285371 thus, assessed pursuant to Section[ ]108 of the Tax Code, as amended.	4. Output tax due on full collection of generation charge - P 18,420,456.47- Verification disclosed that total revenue (generation charges) for the year 2015 was settled by MASELCO except for the period October 26 to December 25, 2015 amounting to P 387,001,588.04. The VAT due for the total revenue amounted to P 48,552,717.91 while the VAT reported per VAT returns amounted to P30,132,261.44 only. The difference of P 18,420,456.47 corresponds to the VAT on the gross receipts from collection of generation charges, assessed pursuant to Section 108 of the Tax Code, as amended. 5. Collection of GRAM/ICERA which deemed to include 12% VAT-P214,285.71 - Verification disclosed that there was 1st and 2nd partial collection of unremitted GRAM/ICERA for April to September 2012 amounting to P 2,000,000.00 wherein the VAT was deemed to include amounting to P 214,285371 thus, assessed pursuant to Section[ ]108 of the Tax Code, as amended.

<table>
<tr><th>PAN</th><th>FLD/FAN</th></tr>
<tr><td>6. VAT still due on NPC P 172,276.50 - Verification disclosed that the amount of subsidy fees from NPC per power bill amounted to P 527,170,919.02 with corresponding deferred VAT of P 63,159,710.38[,] while the amount of VAT collected/remitted per VAT returns amounted only to P 92,987,433.88. The difference of P 172,276.50 was considered as unremitted VAT pursuant to Section 108 of the Tax Code, as amended.

WITHHOLDING TAX ON COMPENSATION

Reconciliation of the Salaries, Wages and Benefits account reported per ITR amounting to P 29,129,348.78 as against salaries and benefits both non-taxable and taxable per alphalist of employees of P 27,163,408.97 disclosed a difference of P 1,965,939.81 not subjected to withholding tax thus assessed pursuant to Section 79(A) of the Tax Code, as amended.

EXPANDED WITHHOLDING TAX

Reconciliation of income payments subject to expanded withholding tax per SLP as against EW and SLP as against SLS of Suppliers for the period under audit disclosed that there were income payments amounting to P 47,856,522.63 not subjected to EWT thus, assessed pursuant to Section 57(B) of the Tax Code, as amended.

ADMINSTRATIVE PENALTIES

Compromise penalties were imposed on the following for a total of P 125,000.00:

• For failure to file and/or pay internal revenue tax the time or times required by law or regulation and for failure to withhold or remit withheld taxes at the time or times required by law or regulation pursuant to Section 255 of the Tax Code, as amended.

Income — P 50,000.00
WC — 25,000.00
WE — 25,000.00
Total — P 100,00.00

• Failure to make, file or submit the complete, quarterly Summary Lists of</td>
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PAN	FLD/FAN
Sales and Purchases-Local & Imported (SLSP), the Annual Alpha List of Payees and/or Employees subjected to withholding taxes, or supply correct and accurate information therein at the time or times required by the Tax Code, as amended or other existing rules and regulations. - Incomplete Monthly Alphalist of Payees (MAP) (Incomplete data for months of March and December) - P 25,000.00.	Sales and Purchases-Local & Imported (SLSP), the Annual Alpha List of Payees and/or Employees subjected to withholding taxes, or supply correct and accurate information therein at the time or times required by the Tax Code, as amended or other existing rules and regulations. - Incomplete Monthly Alphalist of Payees (MAP) (Incomplete data for months of March and December) - P 25,000.00.

The identity in substance between the PAN and FLD/FAN as in *Avon*, shows that the CIR completely ignored petitioner's Reply to the PAN.

The filing of a response to the PAN prior to the issuance of the FLD/FAN cannot be a useless exercise. While the CIR remains to have the sole discretion whether or not to act favorably on the response/protest, it is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion.

That the CIR ignored DMCI Power's position completely is also evident in the FDDA. While the total basic tax and compromise penalty decreased in the FDDA, **the explanations of the remaining disputed items were copied in substance from the PAN and FLD/FAN**. The CIR did not add any independent justification or refer, much less address, DMCI Power's arguments in the Administrative Protest.

The CIR did not furnish DMCI Power with sufficient factual basis in support of its finding.

Due process in protesting a tax assessment[61] includes providing the taxpayer with the factual and legal bases of the deficiency tax liability assessed; otherwise, the assessment shall be void.[62] In *Commissioner of Internal Revenue v. Spouses Magaan*, the Supreme Court elucidates:[63]

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[61] Section 228, Tax Code.
[62] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021.
[63] G.R. No. 232663, May 3, 2021.

> The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, **this rule allows the taxpayer to make an effective protest**: x x x
>
> **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 computing DMCI Power's deficiency VAT liability, the CIR provided identical explanations in the **PAN** and **FLD/FAN** for the item "1. Per FS of MASELCO - Difference Remitted to DMCI Masbate," amounting to ₱65,202,454.00, *viz.*:

> GRAM/ICERA per FS of MASELCO –Difference remitted to DMPC P 65,202,454.00 - Per Access of FS of Masbate Electric Cooperative (MASELCO)[,] it has shown a beginning balance of GRAM/ICERA payable to DMPC of P 72,296,045.00 while the ending balance for TY 2015 was P 7,093,591.00 with the difference amounting to P 65,202,454.00. The decrease in GRAM/ICERA of P 65,202,454.00 as shown in the FS of MASELCO is considered unremitted collection of DMPC subject to VAT thus assessed pursuant to Section 108 of the Tax Code, as amended.

The CIR decided to reword its explanation in the **FDDA**, *viz.*:

> Decrease in GRAM/ICERA of MASELCO as payments to DMPC P 65,202,454.00 – An Access to the Records was made to secure a copy of the FS of Masbate Electric Cooperative (MASELCO). Verification has shown that there was a beginning balance of Generation Rate Adjustment Mechanism (GRAM)/Incremental Currency Exchange Rate Adjustment (ICERA) payable to payable to DMPC of P 72,296,045.00 while the ending balance for TY 2015 was P 7,093,591.00 with the difference amounting to P 65,202,454.00. The decrease in GRAM/ICERA of P 65,202,454.00 as shown in the FS of MASELCO is considered unremitted collection of DMPC subject to VAT thus assessed pursuant to Section 108 of the Tax Code, as amended.

It appears from these explanations that the variance was computed based on amounts reported in the financial statements of MASELCO, a third party.

As early as the Reply to the PAN, DMCI Power already expressed "the difficulty in confirming the accuracy of the amounts involved[,] considering that the assessment was made only on the basis of [MASELCO's] Audited Financial Statements." However, the BIR/CIR ignored this and proceeded to replicate in substance its pro-forma explanation in the succeeding FLD/FAN and FDDA.

The BIR's explanation referred only to the **2015 <u>beginning</u> and <u>ending</u> balances**, as reported in MASELCO's Audited Financial Statements; it compared the two balances and was quick to report the resulting variance as "unremitted collections" subject to VAT. This rudimentary approach overlooks the **specific transactions** that affected the "GRAM/ICERA Payable to DMPC" account (*i.e.*, balance at the beginning of the year, increases and decreases during the year, balance at the end of the year).

Verily, the CIR is authorized to make an assessment based on third-party information.[64] However, resort to this modality does not excuse tax authorities from compliance with due process requirements. In the context of audit findings based on third-party information, the mandate of providing the factual and legal bases of the assessment includes the disclosure of the source document/record and provision of the details thereof to allow the taxpayer to effectively address the findings. **For failure to do so, DMCI Power was deprived due process.**

It was not reasonable to expect DMCI Power to have said information at its disposal, as these details were clearly kept and maintained by an unrelated third-party entity.

ICPA verification yielded a similar observation:

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[64] Section 5(B) of the Tax Code provides, "In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized: x x x (B) To obtain on a regular basis **from any person other than the person whose internal revenue tax liability is subject to audit or investigation**, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members; x x x." (Boldfacing supplied)

1. The Letter of the BIR as attached to the FDDA stated that there was a decrease in of Generation Rate Adjustment Mechanism (GRAM)/Incremental Currency Exchange Rate Adjustment (ICERA) per Financial Statements (FS) of MASELCO as payments to DMPC amounting to P 65,202,454.00 for the taxable year 2015. This was computed by comparing the outstanding balance of payable of payable of MASELCO to DMPC as of December 31, 2015 and 2014 x x x

   Considering that **DMPC has no access to the details of the financial statements of MASELCO and will have no basis for validating their records**, it is our opinion that the examination should focus on the records and supporting documents of DMPC as reported in its AFS duly filed with the BIR for the taxable year 2015.[65]

DMCI Power already pointed out the difficulty in verifying the audit findings, but the tax authorities still failed to provide more details which could have assisted the taxpayer in preparing an explanatory reconciliation. They merely reiterated the same vague explanation in the FLD/FAN and FDDA.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **GRANTED**. The *Formal Letter of Demand* dated October 29, 2018 and *Final Decision on Disputed Assessment* dated August 5, 2020 against petitioner relative to taxable year 2015 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

[65] Page 11, ICPA Report, Exhibit "P-20," Docket – Vol. 2, p. 1186.

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.

CATHERINE T. MANAHAN
Chairperson
Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Third 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