REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PAMPANGA RURAL ELECTRIC SERVICE COOPERATIVE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10996

Members:

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

Promulgated: JUL 07 2025

x---x

DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on September 30, 2022 prays that the assessment issued by respondent against petitioner on its alleged deficiency income tax in the total amount of Php10,639,553.03, inclusive of surcharges, interest and penalties, for taxable year 2013, be cancelled, annulled, and set aside.[1]

The Facts

Petitioner Pampanga Rural Electric Service Cooperative, Inc. is a nonstock, nonprofit electric cooperative duly organized by virtue of Presidential Decree ("PD") No. 269, otherwise known as "The National Electrification Administration Decree,"[2] with principal office at Brgy. Anao, Mexico,

[1] Summary of the Case, Pre-Trial Order dated July 28, 2023, Docket – Vol. 2, p. 747-A.
[2] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 670.

Pampanga.[3] It is a duly registered with the Bureau of Internal Revenue ("BIR") under Tax Identification Number 004-911-796-0000, with Revenue District Office ("RDO") No. 21-B – South Pampanga, which falls under Revenue Region No. 4 – San Fernando, Pampanga.[4]

Respondent Commissioner of Internal Revenue is vested under pertinent laws with authority to carry out the functions, powers, duties, and responsibilities, including, among others, the power to decide disputed assessments, cancel and abate tax liabilities, and other matters pursuant to and in accordance with the Tax Code and other applicable tax laws.[5]

On October 02, 2014, respondent issued *Letter of Authority* ("LOA") No. 21B-2014-00000196 SN: eLA201100064051,[6] authorizing Revenue Officer ("RO") Engracia Lacson / Group Supervisor ("GS") Dolores Balgos to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax, and other taxes, covering the period from January 01, 2013 to December 31, 2013.

On May 26, 2016, petitioner received the *Preliminary Assessment Notice* ("PAN") dated May 20, 2016, containing the deficiency income tax assessment amounting to Php7,164,451.71, or with surcharge and interest, in the total amount of Php12,060,160.37.[7] In the *Details of Discrepancy* attached to the PAN, it was alleged that the taxable year 2013 income tax assessment was issued pursuant to Sections 27 and 34(K) of the National Internal Revenue Code ("NIRC") of 1997, as amended, as implemented by Revenue Regulations ("RR") No. 12-2013, and Section 4.114-2 of RR No. 16-2005:[8]

> *"Entire net income per income tax return is subject to Corporate Income Tax Rate of thirty percent (30%) in pursuant to Sec. 27 of the National Internal Revenue Code (NIRC) of 1997, as amended.*
>
> *The following income payments [total of Php8,456,519.65] were disallowed for income tax purposes for failure to deduct and remit withholding taxes pursuant to Sec. 34 (K) of the NIRC of 1997, as implemented by Revenue Regulations No. 12-2013.*

---

[3] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 670.
[4] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 670.
[5] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 671.
[6] Par. 1.5, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 671; Exhibit "P-7", Docket – Vol. 3, p. 899; Exhibit "R-7", BIR Records (Exhibit "R-8"), p. 147.
[7] Par. 1.6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 671; Exhibit "P-10", Docket – Vol. 3, pp. 902 to 906; Exhibit "R-4", BIR Records (Exhibit "R-8"), pp. 414 to 418.
[8] Par. 1.10, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 672; Exhibit "P-10", Docket – Vol. 3, at 904 to 906.

xxx *xxx* *xxx*

Salaries amounting to Php5,917,102.65 [were] *not subjected to Withholding Tax on Compensation, thus disallowed pursuant to Sec. 34 (K) of the NIRC of 1997, as implemented by Revenue Regulations No. 12-2013.*

Actual input tax attributable to sale to government was only Php 1,333.34, while the standard input tax of seven percent (7%) amounted to Php 18,401.73, thus the difference of Php17,068.39 was closed to income pursuant to Sec. 4.114-2 of Revenue Regulations No. 16-2005."

On June 06, 2016, petitioner filed its letter of even date,[9] requesting for an additional thirty (30) days therefrom to respond to the PAN.

Thereafter, the *Formal Letter of Demand* ("FLD") and *Final Assessment Notice* ("FAN") dated June 07, 2016 from Revenue Region No. 4, containing the deficiency income tax assessment amounting to Php7,164,451.71, or with surcharge and interest, in the total amount of Php12,179,567.91, were served to petitioner on June 11, 2016.[10]

On July 05, 2016, petitioner filed its letter ("PROTEST") of even date with the BIR,[11] requesting for a reinvestigation of the assessed deficiencies on income tax and expanded withholding tax ("EWT"). The said request for reinvestigation was granted BIR per the letter dated July 11, 2016 issued by the OIC-Regional Director, Atty. Jethro M. Sabariaga.[12]

Petitioner later received a *Re-Assignment Notice* dated July 28, 2016 signed by Revenue District Officer Erlinda V. Victorino,[13] authorizing RO Leni G. Villavicencio supervised by GS Dolores R. Balgos, to continue the examination of petitioner's books and accounting records for taxable year 2013, to replace the previously assigned RO per protest letter/request for reinvestigation filed by petitioner.

On September 02, 2016, petitioner submitted its letter of even date,[14] submitting its additional documents to the BIR in support of its protest/request for reinvestigation.

---

[9] Exhibit "P-11", Docket – Vol. 3, p. 907.
[10] Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 672; Exhibit "P-12", Docket – Vol. 3, pp. 908 to 916; Exhibits "R-5", "R-5-1", BIR Records (Exhibit "R-8"), pp. 436 to 443.
[11] Exhibit "P-13", Docket – Vol. 3, pp. 917 to 920.
[12] Exhibit "P-14", Docket – Vol. 3, p. 921.
[13] Exhibit "P-15", Docket – Vol. 3, p. 922.
[14] Exhibit "P-18", Docket – Vol. 3, p. 925.

Thereafter, on June 27, 2017, petitioner received the *Final Decision on Disputed Assessment* ("FDDA") dated June 20, 2017 from the OIC – Regional Director of Revenue Region No. 4, informing petitioner that the assessments on income tax, EWT, and withholding tax on compensation ("WTC") were reduced. Petitioner was ordered to pay the only remaining unpaid deficiency income tax assessment amounting to Php5,599,764.75, or with surcharge and interest, in the total amount of Php10,639,553.03.[15] In the *Details of Discrepancy* attached to the FDDA, it was alleged that the taxable year 2013 income tax assessment was issued because of Revenue Memorandum Circular ("RMC") No. 74-2013, and pursuant to BIR Ruling No. 398-2013 dated November 4, 2013, finding Marinduque Electric Cooperative Inc. ("MARELCO") subject to income tax:[16]

> *"Accordingly this Office opines that MARELCO's income from its electric service operations is subject to income tax. Beginning January 1, 2004, however, MARELCO is subject to all national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended December 31, 2003, the thirtieth full calendar year after the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing whichever comes first.*
>
> *Therefore, similar to the case of MARELCO, income from your electric service operations in 2013 is already subject to income tax as your income tax exemption ended December 31, 2009, thirty years after your corporate organization on April 23, 1979, thus your entire net income per income tax return amounting to Php9,490,815.00 is subject to Corporate Income Tax Rate of thirty percent (30%) in pursuant to Sec. 27 of the National Internal Revenue Code (NIRC) of 1997, as amended."*

Thus, petitioner filed its *Request for Reconsideration* of the FDDA with the Office of respondent on July 26, 2017.[17]

On September 03, 2022, petitioner received respondent's *Decision* dated July 29, 2022,[18] affirming the FDDA issued against petitioner and demanding payment of the amount of Php10,639,553.03, representing its alleged deficiency

[15] Par. 1.9, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 672; Exhibit "P-25", Docket – Vol. 3, pp. 941 to 942; Exhibits "R-6", "BIR Records (Exhibit "R-8"), pp. 623 to 624.
[16] Par. 1.10, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 672; Exhibit "P-25", Docket – Vol. 3, pp. 941 to 942; Exhibits "R-6", "BIR Records (Exhibit "R-8"), pp. 623 to 624.
[17] Exhibit "P-26", Docket – Vol. 3, pp. 943 to 957.
[18] Exhibit "P-1", Docket – Vol. I, pp. 125 to 133.

income tax for taxable year 2013, and stating that the same is respondent's final decision on the matter.

Petitioner filed the present *Petition for Review* on September 30, 2022.[19]

On January 16, 2023, respondent filed his *Answer (Re: Petition for Review dated 30 September 2022)*,[20] interposing the following special and affirmative defenses, to wit: (1) the taxable year 2013 income tax assessment is valid as it was conducted by a revenue officer authorized by a valid LOA; (2) petitioner is not exempt from payment of income taxes; (3) the right to collect taxes has not prescribed; and (4) petitioner is liable for deficiency income tax.

Subsequently, on February 09, 2023, petitioner filed an *Urgent Verified Motion for the Suspension of the Collection of Tax Liability*,[21] to which respondent filed his *Comment (on Petitioner's Urgent Verified Motion for the Suspension of the Collection of Tax Liability)* on February 27, 2023.[22]

At the hearing held for the said *Urgent Verified Motion for the Suspension of the Collection of Tax Liability* on March 30, 2023, petitioner presented the testimony of its Officer-in-charge – Corporate Planning Info Tech and Energy Trading Department Manager, Mr. Ronald A. Perez.[23]

On April 04, 2023, respondent transmitted the *BIR Records* of this case, consisting of 998 pages in two (2) folders.[24]

The Pre-Trial Conference was set and held on April 11, 2023.[25] Prior thereto, petitioner's *Pre-Trial Brief* was submitted on April 3, 2023,[26] while *Respondent's Pre-Trial Brief* was filed on April 04, 2023.[27]

The *Formal Offer of Evidence for Petitioner with Motion for Commissioner's Hearing (in support of the Urgent Verified Motion for the Suspension of the Collection of Tax Liability)*

---

[19] Docket – Vol. I, pp. 7 to 67.
[20] Docket – Vol. I, pp. 158 to 176.
[21] Docket – Vol. I, pp. 187 to 222.
[22] Docket – Vol. I, pp. 333 to 349.
[23] Exhibit "Motion to Suspend P-14", Docket – Vol. I, pp. 361 to 388; Minutes of the hearing held on, and Order, dated March 30, 2023, Docket – Vol. I, pp. 488, and 491 to 492, respectively.
[24] *Compliance* dated April 4, 2023, Docket – Vol. 2, pp. 563 to 565.
[25] Notice of Pre-Trial Conference dated January 18, 2023, Docket – Vol. I, pp. 178 to 179; Minutes of hearing held on April 11, 2023, Docket – Vol. 2, p. 569.
[26] Docket – Vol. I, p. 496 to Docket – Vol. 2, p. 527.
[27] Docket – Vol. 2, pp. 556 to 560.

was filed on April 11, 2023.[28] In the Minute Resolution dated April 27, 2023,[29] the Court granted petitioner's *Motion for Commissioner's Hearing (in Support of the Urgent Verified Motion for the Suspension of the Collection of Tax Liability)*, and set the Commissioner's Hearing on May 18, 2023 for the marking and comparison of petitioner's documentary exhibits. Respondent then filed his *Comment (on Petitioner's Formal Offer of Evidence)* on April 20, 2023.[30] Thereafter, petitioner filed its *Supplemental Formal Offer of Evidence (in Support of the Urgent Verified Motion for the Suspension of the Collection of Tax Liability)* on May 25, 2023.[31]

In the Resolution dated July 17, 2023,[32] the Court admitted petitioner's offered exhibits. Thereafter, the Court granted petitioner's *Urgent Verified Motion for the Suspension of the Collection of Tax Liability,* and dispensed with the bond requirement, in the Resolution dated April 16, 2024.[33]

In the meantime, on May 11, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[34] which was admitted and approved by the Court in the Minute Resolution dated May 26, 2023[35] and in the Resolution June 21, 2023,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 28, 2023 was then issued.[37]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Ronald A. Perez,[38] petitioner's Corporate Planning Department Manager, and former General Accounting Section Chief; and (2) Mr. Delio I. Samulde,[39] Managing Partner of Delio I. Samulde & Associates, CPAs, and an accredited external auditor of the National Electrification Administration.

On October 05, 2023, petitioner filed its *Formal Offer of Evidence*,[40] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on October

---

[28] Docket – Vol. 2, pp. 571 to 593.
[29] Docket – Vol. 2, p. 657.
[30] Docket – Vol. 2, pp. 652 to 655.
[31] Docket – Vol. 2, pp. 714 to 727.
[32] Docket – Vol. 2, pp. 745 to 746.
[33] Docket – Vol. 3, pp. 1290 to 1306.
[34] Docket – Vol. 2, pp. 670 to 693.
[35] Docket – Vol. 2, p. ___ (after p. 735).
[36] Docket – Vol. 2, p. 744.
[37] Docket – Vol. 2, pp. 747-A to 755.
[38] Exhibit "P-52", Docket – Vol. 2, pp. 763 to 816; Minutes of the hearing held on, and Order dated, August 15, 2023, Docket – Vol. 2, pp. 818 to 818-B.
[39] Exhibit "P-53", Docket – Vol. I, pp. 135 to 148; Minutes of the hearing held on, and Order dated, August 15, 2023, Docket – Vol. 2, pp. 818 to 818-B.
[40] Docket – Vol. 3, pp. 826 to 855.

25, 2023.[41] In the Resolution dated January 09, 2024,[42] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimonies of the following BIR personnel, namely: (1) GS - Assessment Section Dolores R. Balgos;[43] Chief Revenue Officer Bethrel M. Bautista;[44] and (2) RO Leni G. Villavicencio.[45]

On March 18, 2024, *Respondent's Formal Offer of Evidence* was filed,[46] to which petitioner filed its *Comment and/or Objection (to the Respondent's Formal Offer of Evidence)* on April 08, 2024.[47] In the Resolution dated May 27, 2024,[48] the Court admitted respondent's offered exhibits.

In the Resolution dated April 16, 2024,[49] the Court granted petitioner's *Urgent Verified Motion for Suspension of the Collection of Tax Liability*, suspending the collection of taxes, enjoining and prohibiting respondent from implementing the *Warrant of Distraint and/or Levy*, ordering respondent and any of its officers and/or employees to cease and desist from committing any and all acts to collect on petitioner's alleged deficiency income tax assessment subject of this case, and dispensing with the bond requirement.

On May 10, 2024, respondent then filed a *Motion for Reconsideration (Re: Resolution Promulgated on 16 April 2024)*,[50] to which petitioner filed its *Comment/Opposition (to the Respondent's Motion for Reconsideration dated 10 May 2024)* on May 27, 2024.[51] In the Resolution dated July 30, 2024,[52] the Court denied respondent's *Motion for Reconsideration (Re: Resolution Promulgated on 16 April 2024)* for lack of merit.

In the meantime, respondent filed his *Memorandum* on June 26, 2024,[53] while petitioner's *Memorandum* was submitted on July 01, 2024.[54]

---

[41] Docket – Vol. 3, pp. 1254 to 1257.
[42] Docket – Vol. 3, pp. 1260 to 1261.
[43] Exhibit "R-12", Docket – Vol. 2, pp. 536 to 542; Minutes of the hearing held on, and Order dated, January 25, 2024, Docket – Vol. 3, pp. 1264 to 1265.
[44] Exhibit "R-13", Docket – Vol. 2, pp. 548 to 555; Minutes of the hearing held on, and Order dated, January 25, 2024, Docket – Vol. 3, pp. 1264 to 1265.
[45] Exhibit "R-14", Docket – Vol. 2, pp. 663 to 669; Minutes of the hearing held on, and Order dated, February 27, 2024, Docket – Vol. 3, pp. 1268 to 1270.
[46] Docket – Vol. 3, pp. 1271 to 1277.
[47] Docket – Vol. 3, pp. 1279 to 1285.
[48] Docket – Vol. 3, pp. 1308 to 1309.
[49] Docket – Vol. 3, pp. 1290 to 1306.
[50] Docket – Vol. 3, pp. 1310 to 1322.
[51] Docket – Vol. 3, pp. 1324 to 1332.
[52] Docket – Vol. 3, pp. 1435 to 1439.
[53] Docket – Vol. 3, pp. 1335 to 1358.
[54] Docket – Vol. 3, pp. 1360 to 1412.

The case was considered submitted for decision on August 12, 2024.[55]

The Issue

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "2.1 Whether or not Petitioner is liable to pay deficiency income tax in the amount of Ten Million Six Hundred Thirty-Nine Thousand Five Hundred Fifty-Three Pesos and 3/100 Centavos (Php10,639,553.03), inclusive of surcharge and interests for the taxable year 2013."[56]

Petitioner's arguments:

Petitioner argues that the taxable year 2013 income tax assessment is void because the audit was conducted by an RO who was not authorized under a valid LOA; that the assailed assessment is void for having been issued in violation of petitioner's right to due process; and that petitioner, by the very nature of its franchise, is not liable for income tax, and the taxable year 2013 income tax assessment should thus be immediately cancelled.

Respondent's counter-arguments:

Respondent contends that the assessment is valid as it was conducted by an RO named in a valid LOA; that the right to collect taxes has not prescribed; and that petitioner is not exempt from income taxes.

Discussion/Ruling

The present *Petition for Review* is meritorious.

The subject tax assessments are void, for violation of petitioner's right to administrative due process.

Section 228 of the NIRC of 1997, as amended, provides as follows:

---

[55] Minute Resolution dated August 12, 2024, Docket – Vol. 3, p. 1440.
[56] Stipulation of the Issue, JSFI, Docket – Vol. 2, p. 673.

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

xxx xxx xxx

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[57]

To implement the foregoing provision, Section 3 of RR No. 12-99,[58] as amended by RR No. 18-2013,[59] provides, in part, to wit:

---

[57] *Emphasis supplied.*

[58] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[59] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** **—**

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice*** **(PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office <u>shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment</u>.** It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx.

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, <u>in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued</u> calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD /FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, *the assessment shall be void* xxx.

xxx xxx xxx"[60]

As part of due process in the issuance of tax assessments, a taxpayer is given fifteen (15) days from receipt of the PAN to file a protest or response thereto with the BIR. It is only upon the lapse of the prescribed fifteen (15)-day period, without such protest or response being filed by the taxpayer within such period, that respondent may issue the corresponding FLD or FAN.

The BIR is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Moreover, part of the administrative due process requirement is the recognition by the BIR that the taxpayer has the right to present evidence, and thus, should be allowed to submit comments or arguments with supporting documents ***at each stage*** in the assessment process. And in case respondent or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.[61]

In this case, the PAN was received by petitioner on May 26, 2016.[62] Pursuant to Section 3 of RR No. 12-99, as amended by RR No. 18-2013, petitioner had fifteen (15) days or until June 10, 2016, within which to protest or respond to the said PAN.

However, respondent issued the subject FLD/FAN on June 07, 2016,[63] before the lapse of the said fifteen (15)-day period for petitioner to protest or respond thereto. Clearly, the FLD/FAN was prematurely issued, depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments.

While it may be true that petitioner was able to file the letter dated June 6, 2016 after the issuance of the said PAN, the same is of no moment. This is so because the said letter of petitioner cannot be treated as a response to PAN since the same merely contains a request for an additional thirty (30) days to respond thereto,[64] and does not state any comment or argument against it. Simply put, petitioner was not able to exhaust the fifteen (15)-day period to respond to the PAN, before the issuance of the subject FLD/FAN.

---

[60] *Emphasis and underscoring supplied.*
[61] *See Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et. al.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.
[62] Par. 1.6, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 671; Exhibit "P-10", Docket – Vol. 3, pp. 902 to 906; Exhibit "R-4", BIR Records (Exhibit "R-8"), pp. 414 to 418.
[63] Par. 1.8, Stipulation of Facts, JSFI, Docket – Vol. 2, p. 672; Exhibit "P-12", Docket – Vol. 3, pp. 909 to 916; Exhibits "R-5", "R-5-1", BIR Records (Exhibit "R-8"), pp. 436 to 443.
[64] Exhibit "P-11", Docket – Vol. 3, p. 907.

The premature issuance by respondent of the subject FLD/FAN on June 07, 2016, prior to the lapse of the fifteen (15)-day period given to petitioner, within which to respond to the PAN, as mandated under Section 228 of the NIRC of 1997, and RR No. 12-99, as amended by RR No. 18-2013, clearly establishes that the BIR utterly deprived petitioner of the opportunity to contest the PAN, and to present evidence in support thereto, when it issued the same. This clearly constitutes denial of due process as petitioner was not given the opportunity to dispute the PAN and present evidence against it, before the final assessment was issued.

In view of the invalidity of the subject tax assessments under the FLD/FAN dated June 07, 2016, and of the FDDA dated June 20, 2017, the same cannot be enforced against petitioner, and the BIR has no right to collect the subject deficiency income tax.

It then becomes unnecessary to address the other issues and matters raised by the parties.

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

The FLD/FAN dated June 07, 2016, assessing petitioner for deficiency income tax, EWT, and WTC, for taxable year 2013 is **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA dated June 20, 2017, assessing petitioner for deficiency income tax in the total amount of **Php10,639,553.03**, inclusive of surcharges and interest, for taxable year 2013, is **REVERSED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice