21-000460-0043

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10687

ALTIMAX BROADCASTING CO. INC. ,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. OSCAR A. AGUILAR
ATTY. ALVIN N. STO. DOMINGO
ATTY. MARY JOYCE P. MAGGAY
Bureau of Internal Revenue
Legal Division, Revenue Region No.7B
25th Floor, The Podium West Tower, ADB Ave.
Ortigas Center, Mandaluyong City

SALVADOR LLANILLO & BERNARDO
8th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 21, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 22, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALTIMAX BROADCASTING CO., INC.,	**CTA CASE NO. 10687**
Petitioner,	*Members:*
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	AUG 2 1 2024; 1:30PM

x- x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed on November 25, 2021, praying that the Final Decision on Disputed Assessment (FDDA) dated October 22, 2021, issued by respondent against petitioner on its alleged deficiency income tax in the total amount of ₱21,597,097.96, inclusive of interest, for taxable year 2016, be reversed and set aside.[2]

THE PARTIES

Petitioner Altimax Broadcasting Co., Inc. is a domestic corporation existing under and by virtue of the laws of the Philippines, with principal office located at 3/F Globe Telecom Tower 1, Pioneer Highlands corner Madison Streets, Mandaluyong City.[3] It is registered with the Securities and Exchange Commission (SEC) and primarily engaged in the following:

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[1] Docket, pp. 7 to 41.
[2] Summary of the Case, Pre-Trial Order, Docket, p. 319.
[3] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 298.

> To own, acquire, carry on, lease, maintain and operate the business of television and radio network [broadcasting][4] of all kinds and types (such as but not limited to VHF-TV, UHF-TV, AM radio, FM Radio, direct to user broadcast via satellite, HDTV, CATV, LMDS, MMDS) using microwave, satellite, or whatever means including the use of any and all new technologies in television and broadcast systems, religious, educational and commercial.[5]

Petitioner is also a registered taxpayer of the Bureau of Internal Revenue (BIR), as shown by its Certificate of Registration (BIR Form No. 2303) with Taxpayer's Identification Number (TIN) 272-993-967- 000.[6]

Respondent is the Commissioner of Internal Revenue duly appointed to perform the duties of his office, including, *inter alia*, the power to decide disputed assessments subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the Tax Code and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

THE FACTS

On November 16, 2017, petitioner received at its registered principal office at 3F Globe Telecom Tower 1 Pioneer Highlands, Pioneer corner Madison Streets, Mandaluyong City, the Letter of Authority (LOA) with LOA No. SN: eLA201500080331 LOA-041-2017-00000669 dated October 26, 2017, covering the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes, including other taxes, for the period January 1, 2016 to December 31, 2016.[8]

On November 15, 2019, petitioner received a copy of respondent's Preliminary Assessment Notice (PAN) dated November 15, 2019, with attached Details of Discrepancies. The PAN provides that petitioner is liable for deficiency income tax in the amount of ₱18,530,133.02, inclusive of interest.[9]

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[4] The word "broadcasting" was omitted in par. 4, Stipulation of Facts, JSFI, Docket, p. 299, but the same appears in petitioner's primary purpose as stated in its Amended Articles of Incorporation, Exhibit "P-1", Docket, p. 389.
[5] Par. 4, Stipulation of Facts, JSFI, Docket, p. 299; Exhibit "P-1", Docket, pp. 386-396.
[6] Par. 2, Stipulation of Facts, JSFI, Docket, p. 298; Exhibit "P-3", Docket, p. 424.
[7] Par. 3, Stipulation of Facts, JSFI, Docket, pp. 298 to 299.
[8] Par. 5, Stipulation of Facts, JSFI, Docket, p. 299; Exhibit "P-4", Docket, p. 425; Exhibit "R-1", BIR Records, p. 1.
[9] Par. 6, Stipulation of Facts, JSFI, Docket, p. 299: Exhibit "P-6", Docket, pp. 431-434; Exhibit "R-8", BIR Records, pp. 274-277.

On November 29, 2019, petitioner filed with the BIR a Reply to PAN of even date.[10]

On December 9, 2019, petitioner received respondent's Formal Letter of Demand and Assessment Notice dated December 6, 2019 (collectively referred to as FLD). In the FLD, petitioner was requested to pay its alleged deficiency income tax in the amount of ₱18,667,327.70, inclusive of interest.[11]

On January 7, 2020, within thirty (30) days from receipt of the FLD, petitioner filed a Protest *via* a Request for Reinvestigation (the Administrative Protest).[12]

On February 5, 2020, petitioner received a letter from the BIR which states that petitioner's Administrative Protest was in accordance with Section 228 of the Tax Code, to wit:

> Please be informed that you are given sixty (60) days from filing of the protest letter to submit all required documents relevant to the contested assessment which is in accordance with Section 228 of the National Internal Revenue Code of 1997, as amended[.][13]

On March 6, 2020, petitioner filed a letter of even date, submitting additional supporting documents.[14]

On October 28, 2021, petitioner received respondent's FDDA, which concluded that petitioner is liable for alleged deficiency income tax for taxable year 2016, in the aggregate amount of ₱21,597,097.96, inclusive of interest, broken down as follows:

I. INCOME TAX

Taxable Income per Income Tax Return (ITR)		₱6,152,261.00
Add: Adjustment per Investigation		
Disallowed Additional Fee on Management Fee (Schedule 1)	₱27,500,000.00	
Unsupported Management Fee (Schedule 2)	17,371,018.78	₱44,871,018.78
Adjusted Taxable Income		₱51,023,279.78
Income Tax Due (30%)		₱15,306,983.93
Less: Allowed Tax Credits/Payments		

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[10] Exhibit "P-7", Docket, pp. 435-460.
[11] Par. 7, Stipulation of Facts, JSFI, Docket, p. 299; Exhibit "P-8", Docket, pp. 461-466; Exhibits "R-10" & "R-11", BIR Records, pp. 320-324.
[12] Par. 8, Stipulation of Facts, JSFI, Docket, p. 299; Exhibit "P-9", Docket, pp. 467-493.
[13] Par. 9, Stipulation of Facts, JSFI, Docket, p. 300; Exhibit "P-10", Docket, p. 494.
[14] Exhibit "P-11", Docket, pp. 495-497.

Prior Year's Excess Tax Credits	₱12,604,328.00	
Excess MCIT Applied this Current Year	1,410,862.00	
Creditable Tax Withheld	2,750,000.00	
Subtotal	₱16,765,190.00	
Less: Excess tax credits carried forward to succeeding period	14,919,512.00	₱1,845,678.00
Deficiency Income Tax		₱13,461,305.93
Add: 20% Interest (04/16/2017 to 12/31/2017)	₱1,917,775.09	
12% Interest (01/01/2018 TO 11/05/2021)	6,218,016.93	₱8,135,792.02
TOTAL AMOUNT DUE		**₱21,597,097.95**[15]

PROCEEDINGS BEFORE THIS COURT

On November 25, 2021, petitioner filed a *Petition for Review,* initially raffled to this Court's Second Division.

On February 8, 2022, respondent filed his Answer,[16] interposing special and affirmative defenses.

On March 3, 2022, respondent transmitted the BIR Records of the present case consisting of 409 pages in one (1) folder.[17]

During the Pre-Trial Conference initially set on March 21, 2022,[18] the Court ordered the parties to immediately proceed and appear, personally or through their authorized representative, at the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on May 11, 2022, under Section 2 of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[19] However, the PMC-CTA later issued the No Agreement To Mediate dated June 9, 2022,[20] stating that the parties decided not to have their case mediated.

[15] Par. 10, Stipulation of Facts, JSFI, Docket, p. 300; Exhibit "P-12", Docket, pp. 143-146; Exhibit "R-15", BIR Records, pp. 400-403; Total amount due indicated on FDDA is actually ₱21,597,097.96.
[16] Docket, pp. 194-201.
[17] Transmittal Letter dated March 2, 2022, Docket, p. 210.
[18] Notice of Pre-Trial Conference dated February 22, 2022, Docket, pp. 206-207; Minutes of the hearing held on, and Order dated, March 21, 2022, Docket, pp. 275-276.
[19] Resolution dated March 21, 2022, Docket, p. 278.
[20] Docket, p. 279.

Thus, the Pre-Trial Conference was set anew and held on August 17, 2022.[21] Prior to it, *Respondent's Pre-Trial Brief* was filed on March 15, 2022,[22] while *Petitioner's Pre-Trial Brief* was submitted on March 16, 2022.[23]

On September 15, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[24] which was admitted and approved in the Resolution dated September 21, 2022,[25] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 17, 2022 was then issued.[26]

The 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. James Kenneth Venta,[27] petitioner's Group Comptroller and Administrative Head; and (2) Mr. Joel M. Ganalon,[28] the Court-commissioned Independent Certified Public Accountant (ICPA).[29]

On December 29, 2022, the *Report* of the ICPA was submitted.[30]

On February 6, 2023, petitioner filed a *Formal Offer of Evidence*.[31] Respondent failed to file his comment to it.[32] In the Resolution dated March 16, 2023,[33] the Court admitted petitioner's offered exhibits.

For his part, respondent presented the testimony of Revenue Officer Jeniño S. Gambala.[34]

[21] Resolution dated June 17, 2022, Docket, p. 281; Minutes of the hearing held on, and Order dated, August 17, 2022, Docket, pp. 282-284.
[22] Docket, pp. 214-217.
[23] Docket, pp. 258-274.
[24] Docket, pp. 298-307.
[25] Docket, p. 309.
[26] Docket, pp. 319-326.
[27] Exhibit "P-19", Docket, pp. 42-60; Minutes of hearing held on, and Order dated, November 24, 2022, Docket, pp. 327 and 329-330, respectively.
[28] Exhibit "P-29", Docket, pp. 356-368; Minutes of hearing held on, and Order dated, January 25, 2023, Docket, pp. 351-352.
[29] *Oath of Commission* dated November 24, 2022, Docket, p. 328; Minutes of hearing held on, and Order dated, November 24, 2022, Docket, pp. 327 and 329-330, respectively.
[30] Exhibit "P-30", Docket, pp. 336-347.
[31] Docket, pp. 370 to 385.
[32] Records Verification dated February 22, 2023 issued by the Judicial Records Division of this Court, Docket, p. 541.
[33] Docket, pp. 543-544.
[34] Exhibit "R-16", Docket, pp. 220 to 228; Minutes of the hearing held on, and Order dated April 19, 2023, Docket, pp. 545-546-A.

On May 5, 2023, *Respondent's Formal Offer of Evidence* was filed[35] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated May 3, 2023)* on May 22, 2023.[36] In the Resolution dated August 4, 2023,[37] the Court admitted respondent's offered exhibits.

In the meantime, per the Notice of Resolution dated May 29, 2023,[38] the present case was transferred to the First Division of this Court.

Petitioner's *Memorandum* was filed on September 12, 2023,[39] while *Respondent's Memorandum* was filed on September 13, 2023.[40]

On September 25, 2023, the present case was submitted for decision.[41]

THE ISSUE

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

> Whether or not the Petitioner is liable for deficiency income tax for taxable year 2016 for a total amount of Php21,597,097.96 inclusive of increments.[42]

Petitioner's arguments:

Petitioner argues that: (i) respondent's deficiency income tax assessment for calendar year 2016 is not in accordance with law and regulations which is in violation of petitioner's right to due process as: (a) respondent's FLD and FDDA do not constitute an imperative and unequivocal demand for the payment of taxes, (b) the FDDA is invalid since petitioner's tax liability remains indefinite, (c) the PAN, FLD and FDDA issued by respondent failed to state the facts and law upon which the assessment was based, (d) respondent failed to explain in his FLD and FDDA the reasons for the denial of petitioner's defenses against the deficiency tax assessment, and (e) respondent failed to conduct quality audit; and that: (ii) the

[35] Docket, pp. 547-553.
[36] Docket, pp. 555-561.
[37] Docket, pp. 566-570.
[38] Docket, p. 563.
[39] Docket, pp. 571-612.
[40] Docket, pp. 614-632.
[41] Notice of Resolution dated September 25, 2023, Docket, unpaged.
[42] Par. 11, Issues, JSFI, Docket, p. 300.

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alleged deficiency income tax for taxable year 2016 lacks legal and factual basis as: (a) the disallowed Management Fees, in the amount of ₱27,500,000.00, constitutes as ordinary and necessary expenses in petitioner's business, (b) petitioner provided official receipts and other documents to fully substantiate the management fees, and (c) respondent has no legal or factual basis to deduct petitioner's "excess tax credits carried forward to the succeeding period."

Respondent's arguments:

Respondent contends that the Management Fee equivalent to 50% of the fees earned by petitioner from Innove was properly disallowed by the BIR, that the disallowance of the Unsupported Management Fees is proper, and that both the FLD and FDDA contain demands for payment of taxes.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The present Petition for Review was seasonably filed; hence, the Court has jurisdiction over the instant case.

The Court shall first determine its jurisdiction over the present petition before delving into its merits.

Section 7(a)(1) and (2) of RA No. 1125,[43] as amended by RA No. 9282,[44] confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters**

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[43] An Act Creating the Court of Tax Appeals, June 16, 1954.
[44] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...; (*Emphases added*)

Further, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling, or inaction of the [CIR] ... may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ... (*Emphases added*)

The above provisions are also provided under Section 3(a)(1)(2), Rule 4,[45] and Section 3(a), Rule 8[46] of the Revised Rules of the Court of Tax Appeals (RRCTA).

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent. The taxpayer affected must file the appeal within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Here, petitioner received the FDDA on October 28, 2021. Counting thirty (30) days from such date, petitioner had until November 27, 2021, to file an appeal with this Court. Thus, the filing of the instant *Petition for Review* on November 25, 2021, was timely, and this Court has validly obtained jurisdiction over this case.

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[45] SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees ...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees: ...

[46] SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

The FLD and FDDA contain a demand for payment of deficiency income tax.

Petitioner submits that respondent's deficiency income tax assessment for taxable year 2016 is null and void because the FLD and FDDA do not constitute an imperative and unequivocal demand for the payment of deficiency taxes. It contends that a mere request does not constitute an imperative demand for the payment of taxes. Petitioner stresses that in this case, respondent's FLD and FDDA merely requested petitioner to pay the alleged deficiency tax for taxable year 2016 and that there is no demand for it to pay the alleged taxes due as contemplated in jurisprudence. Thus, respondent's deficiency tax assessment against petitioner for taxable year 2016 is void and should be cancelled accordingly.

On the other hand, respondent contends that the FLD and FDDA contain demands for payment of taxes. He argues that considering the pertinent portions of the FLD, and by the name itself as "Formal Letter of Demand," it can be construed that the use of the phrase "you are requested to pay" was because petitioner still has the option to pay its tax deficiencies or file a valid protest to the said findings of tax deficiencies. Respondent adds that a close scrutiny of the pertinent portion of the FDDA would show that despite using the term "requested," petitioner has no other option than to pay its deficiency taxes through the duly authorized agent bank so that the assessment will be cancelled. It was also clearly indicated that the same is the "final decision" of the Commissioner.

We find that the FLD and FDDA contained demands for payment of deficiency income tax.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*,[47] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> **An assessment contains not only a computation of tax liabilities but also a <u>demand for payment</u> within a prescribed period.** It also signals the same time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due

[47] G.R. No. 128315, June 29, 1999.

> process requires that it must be served on and received by the taxpayer.
>
> . . . .
>
> To start with, an assessment must be sent to and received by a taxpayer **and must <u>demand payment</u> of the taxes described therein within a specific period**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment. (*Emphases added*)

A demand is defined as "[t]he assertion of a legal right; a legal obligation asserted in the courts. An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act. Request for payment of debt or amount due. An asking with authority, claiming or challenging as due."[48]

Based on the foregoing, a demand can be in the form of a *request* for payment.

In this case, the pertinent portion of the FLD issued on December 6, 2019[49] states:

> In view thereof, you are **requested to pay** your aforementioned deficiency tax liabilities through the duly authorized agent bank in which you are enrolled in using the electronic BIR Payment Form (eBIR Form 0605) within the time shown in the enclosed assessment notice. (*Emphasis added*)

Also, the last page of the *Details of Discrepancies* attached to the FLD[50] states:

> Should you disagree with our assessment, you or your authorized representative may file an administrative protest through a written request for reinvestigation or reconsideration within thirty (30) days from receipt hereof ... Otherwise, it shall be considered void and without force and effect. However, if you are amenable, whether in whole or in part, it is **requested that you settle** the taxes attributable to the undisputed issue/s first and furnish this Office a

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[48] Black's Law Dictionary, Sixth Edition, p. 429.
[49] Exhibit "P-8", Docket, pp. 461-466, at p. 464; Exhibits "R-10" & "R-11", BIR Records, pp. 320-324, at p. 322.
[50] Exhibit "P-8", Docket, pp. 461-466, at p. 466; Exhibits "R-10" & "R-11", BIR Records, pp. 320-324, at p. 320.

> photocopy of the official receipts and the duly received electronic BIR Payment Form (eBIR Form 0605) by an authorized agent bank before an action can be taken in your protest. (*Emphasis added*)

As to the FDDA issued on October 22, 2021,[51] the pertinent portion thereof states, to wit:

> In view thereof, it is **requested that you pay** the abovementioned deficiency taxes through the duly authorized agent bank in which you are enrolled using the BIR Payment Form (BIR Form 0605) attached herewith. Afterwards, submit copy thereof to the Office of the Regional Director, this Region, located at 25th Floor, The Podium West Tower, ADB Ave., Ortigas Center, 1550 Mandaluyong City within five (5) days from payment to update your records and for the cancellation of the herein assessment, if warranted.
>
> This is our final decision. Should you disagree you or your authorized representative may appeal with the Commissioner of Internal Revenue or with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof. Otherwise, the assessment shall become final, executory and demandable. (*Emphasis added*)

Similarly, in *Commissioner of Internal Revenue v. Fitness By Design, Inc.* (*Fitness By Design*),[52] the last paragraph of the Final Assessment Notice (FAN) issued therein states that the taxpayer is "*requested to pay*" its deficiency internal revenue tax liabilities. There, the taxpayer argued that the FAN issued was a mere *request* for payment and not a demand for payment of tax liabilities. Interestingly, however, the Supreme Court did not take issue with the use of the word "request" and merely held that the absence of the due dates in the FAN negates the demand for payment.

Further, as cited by respondent, in the case of *Allied Banking Corporation v. Commissioner of Internal Revenue*,[53] although the FLD with Assessment Notices therein reads in part: "[i]t is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency," the Supreme Court also did not take issue on the use of the word "requested" and considered the same as the CIR's demand letter.

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[51] Exhibit "P-12", Docket, pp. 143-146, at p. 144; Exhibit "R-15", BIR Records, pp. 400-403, at p. 402.
[52] G.R. No. 215957, November 9, 2016.
[53] G.R. No. 175097, February 5, 2010.

The use of the title "Formal Letter of Demand" immediately reveals that it is a demand. Hence, the use of the phrases "*requested* to pay," "*requested* that you settle," or "*requested* that you pay" does not negate the unequivocal demand for payment of deficiency tax.

The subject deficiency income tax assessment is void for violating petitioner's right to administrative due process.

Petitioner also contends that respondent failed to explain in his FLD and FDDA the reasons for denying petitioner's defenses against the deficiency tax assessment.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, reads, in part, as follows:

> 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
>
> ....
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.** (*Emphasis added*)

Under the foregoing provision, it is required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[54] The requirement that the taxpayer 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.[55] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[56] More, it must be emphasized that failure to comply with Section 228 renders the assessment void and finds no validation in any provision in the Tax Code.[57]

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[54] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[55] *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[56] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[57] *Id.*, citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

To implement Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[58] as amended by RR Nos. 18-2013[59] and 7-2018,[60] provides, in part, as follows:

> SEC. 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:
>
> ....
>
> 3.1.2 *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 shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> ....
>
> 3.1.4 *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 <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> ....
>
> 3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision.*" *(Emphases and underscoring added)*

[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 Taxpayers 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.

[60] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

The foregoing provisions prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN, and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[61] the Supreme Court said:

> Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ....
>
> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**
>
> ....
>
> In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and

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

exercise of discretion in a judicial nature.' Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

....

In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

....

The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

....

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly

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notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it **demands that the party's defenses be considered** by the administrative body in making its conclusions, **and that the party be sufficiently informed of the reasons for its conclusions.**

....

The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. **Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

....

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, <u>Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments</u>.** There was clear inaction of the Commissioner at every stage of the proceedings.

> ....
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. <u>He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record</u>.**
>
> ....
>
> **The Commissioner's total disregard of due process rendered the <u>identical</u> Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.** (*Emphases and underscoring added*)

Avon is emphatic that respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process, which requires respondent to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

In addition, if respondent or his duly authorized representative fails to observe due process, the deficiency tax assessment is void and of no force and effect. A significant part of the due process requirement in the issuance of tax assessment is that the taxpayer must be informed, in writing, of the law and the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion is based, and those facts must appear in the record. As a corollary, the concerned taxpayer must *not* be left unaware of how respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

To stress, if respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall render the assessment and collection of the pertinent deficiency tax void.

x--x

In this case, as stated in the PAN dated November 15, 2019,[62] the BIR found due from petitioner deficiency income tax for taxable year 2016, in the amount of ₱18,530,133.02, inclusive of interest, computed as follows:

I. INCOME TAX		
Taxable Income per Income Tax Return (ITR)		₱6,152,261.00
Add: Adjustment per Investigation		
Disallowed Additional Fee on Management Fee (Schedule 1)	₱27,500,000.00	
Unsupported Management Fee (Schedule 2)	17,371,018.78	44,871,018.78
Adjusted Taxable Income		₱51,023,279.78
Income Tax Due (30%)		₱15,306,983.93
Less: Allowed Tax Credits/Payments		
Prior Year's Excess Tax Credits	₱12,604,328.00	
Excess MCIT Applied this Current Year	1,410,862.00	
Creditable Tax Withheld	2,750,000.00	
Subtotal	₱16,765,190.00	
Less: Excess tax credits carried forward to succeeding period	14,919,512.00	1,845,678.00
Deficiency Income Tax		₱13,461,305.93
Add: 20% Interest (04/16/2017 to 12/31/2017)	₱1,917,775.09	
12% Interest (01/01/2018 TO 12/31/2019)	3,151,052.00	5,068,827.09
TOTAL AMOUNT DUE		**₱18,530,133.02**

The Details of Discrepancies attached to the said PAN read as follows:

I. INCOME TAX

- Disallowed Additional Fee on Management Fee, ₱27,500,000.00 - Besides the 10% mark-up added on your management fee expense, verification disclosed that you also included an additional fee on your total management fees equal to 50% of your annual revenue amounting to ₱27,500,000.00, which is not necessary and ordinary in the conduct of you[r] business, hence, disallowed as deduction from your Gross Income pursuant to Section 34 (A) (1) of the NIRC of 1997, as amended.

[62] Exhibit "P-6", Docket, pp. 431-434; Exhibit "R-8", BIR Records, pp. 274-277.

Schedule 1

Management Fees paid to Bethlehem Holdings Inc. (BHI)	₱ 36,896,018.78
Less: Cost charge by BHI to Altimax Broadcasting Co., Inc. with 10% mark-up	9,396,018.78
Disallowed Additional Fee on Management Fee	₱27,500,000.00

➢ Unsupported Management Fees, ₱17,371,018.78 - Audit disclosed that you have not provided supporting documents or evidence to support your income payments/expenses amounting to ₱17,371,018.78 in violation of Section 34 (A) (1) (b) of the NIRC, as amended, which states that *"xxx No deductions from Gross Income shall be allowed under this Subsection (A) hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records; (i) the amount of expense being deducted...xxx"* Hence, the said amount have been disallowed as deduction from your Gross Income pursuant to the aforementioned provision of the law.

Schedule 2

Management Fees paid to Broadcasting Enterprises and Affiliated Media Inc. (BEAM)	₱ 7,975,000.00
Management Fees paid to BHI	36,896,018.78
Total Management Fees	₱ 44,871,018.78
Less: Disallowed Management Fees (Schedule 1)	27,500,000.00
Unsupported Management Fees	₱ 17,371,018.78

It is requested that your aforesaid deficiency taxes be paid within fifteen (15) days upon receipt hereof, inclusive of applicable penalties. Otherwise, a Formal Letter of Demand and Final Assessment Notice shall be issued.

Records show that petitioner filed its Reply to PAN dated November 29, 2019,[63] wherein petitioner laid out its arguments and defenses against the deficiency income tax imposed by the BIR, attaching various supporting documents. Specifically, the following is the summary of arguments raised by petitioner therein, to wit:

I. The deficiency income tax assessment for taxable year 2016 is null and void for having been issued in violation of the Company's right to due process of law

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[63] Exhibit "P-7", Docket, pp. 435-460.

A. The PAN does not contain the facts and the law upon which the assessment was based, contrary to law, regulations, and jurisprudence
B. The BIR failed to conduct quality audit

II. The proposed deficiency income tax assessment for taxable year 2016 lacks legal and factual basis

A. Disallowed Additional Fee on Management Fee – ₱27,500,000.00 (Petitioner submits that the management fee paid by the Company to BHI is a valid deduction from its net income given that it is an ordinary and reasonable expense necessary in the conduct of the Company's business.)
B. Unsupported Management Fee – ₱17,371,018.78 (Petitioner submits that the management fees paid by the Company were duly substantiated by supporting documents and have complied with the relevant provisions of the Tax Code and its regulations. The Company has provided the BIR examiners with sufficient documents to support the deductibility of the management fees.)

However, in the FLD dated December 6, 2019,[64] petitioner was still assessed the ***same*** basic deficiency income tax of ₱13,461,305.93, and notably, only the total interest was adjusted or updated to ₱5,206,021.77, bringing the total amount due to ₱18,667,327.70. In fact, the Details of Discrepancies attached to the FLD merely reiterated or copied *verbatim* what is indicated in the Details of Discrepancies attached to the PAN.

In other words, the BIR merely reiterated the same findings as stated in the said PAN without giving any reason for rejecting the above-stated refutations and explanations made by petitioner in its Reply to PAN dated November 29, 2019—an indication that respondent or the BIR did not consider the same when it issued the subject FLD. Consequently, petitioner was left unaware of how respondent or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, clearly violating petitioner's right to administrative due process.

To emphasize anew, under *Avon*, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessment and must not be left unaware of how respondent or his authorized representatives appreciated the explanations or

[64] Exhibit "P-8", Docket, pp. 461-466; Exhibits "R-10" & "R-11", BIR Records, pp. 320-324.

defenses raised by petitioner in connection with the assessment.

Correspondingly, as part of the due process requirement in the issuance of tax assessment, respondent must give reason(s) for rejecting petitioner's refutations and must provide the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear in the record. Respondent has obviously not observed such requirement in the issuance of the subject FLD.

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, vis-à-vis Section 3.1.4 of RR No. 12-99, as amended by RR Nos. 18-2013 and 7-2018, was violated by respondent. Because of such a violation, the said deficiency tax assessment is rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[65] It is also settled that a void assessment bears no valid fruit.[66] Such being the case, the subject tax assessment cannot be enforced against petitioner, and respondent or the BIR has no right to collect the same.

Given the finding that the subject tax assessment is invalid, it becomes unnecessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD and *Assessment Notice*, all dated December 6, 2019, assessing petitioner for deficiency income tax for taxable year 2016, are **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA dated October 22, 2021, assessing petitioner for deficiency income tax for taxable year 2016 in the total amount of **₱21,597,097.96**, inclusive of interest, is **REVERSED** and **SET ASIDE**.

Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

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[65] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra.
[66] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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