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**SECOND DIVISION**

[G.R. No. 204405; August 4, 2021]

**COMMISSIONER OF INTERNAL REVENUE,** *Petitioner*, *v.* **UNIOIL CORPORATION,** *Respondent*.

## D E C I S I O N

**HERNANDO, *J.*:**

This Petition for Review on *Certiorari*[1] assails the November 13, 2012 Decision[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 857 which affirmed *in toto* the October 4, 2011 Decision[3] and the December 21, 2011 Resolution[4] of the CTA Third Division in CTA Case No. 8000. The CTA rulings cancelled and set aside petitioner Commissioner of Internal Revenue's (CIR) assessments against respondent Unioil Corporation (Unioil) for deficiency withholding tax on compensation (WTC) and deficiency expanded withholding tax (EWT) in the total amount of ₱536,801.10.

**The Facts:**

We quote the uniform factual findings of the CTA, Third Division and *En Banc* based on the parties' own submissions:

> [Unioil] is a corporation duly organized and existing under Philippine laws, x x x.
>
> [The CIR] is the Commissioner of the Bureau of Internal Revenue (BIR), x x x.

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[1] Under Section 1, Rule 16 of the Revised Rules of the Court of Tax Appeals in relation to Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 10-22; penned by Associate Justice Caesar A. Casanova with all the members of the CTA *En Banc* concurring.

[3] Id. at 59-71; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez.

[4] Id. at 73-77.

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On January 26, 2009, [respondent] received a Formal Letter of Demand and Final Assessment Notice (FAN) finding [it] liable for deficiency withholding tax on compensation and deficiency expanded withholding tax for the year ending December 31, 2005. The relevant details are as follows:

I. DEFICIENCY WITHHOLDING TAX ON COMPENSATION

| | |
|---|---|
| Taxable Salaries per Investigation | ₱ 3,106,737.64 |
| Taxable Salaries per Alphalist | 559,070.00 |
| **Salaries not subjected to Withholding Tax** | **₱ 2,547,667.64** |
| Tax Due per Investigation | ₱ 319,623.33 |
| Less: Tax paid per Returns | 40,948.91 |
| Deficiency Withholding Tax on Compensation | 278,674.42 |
| Add: 20% interest p.a. (January 17, 2006 to February 13, 2009) | 173,159.89 |
| **Total Deficiency Withholding Tax on Compensation** | **₱ 451,834.31** |

II. DEFICIENCY EXPANDED WITHHOLDING TAX

| | |
|---|---|
| Professional Fees | ₱ 8,023.60 |
| Payment to contractors/subcontractors | 44,380.72 |
| Deficiency Expanded Withholding Tax | ₱ 52,404.32 |
| Add: 20% interest p.a. (January 17, 2006 to February 13, 2009) | 32,562.47 |
| **Total Deficiency Expanded Withholding Tax on Compensation** | **₱ 84,966.79** |

[Unioil] filed its protest to the FAN on February 25, 2009 and submitted its supporting documents on April 24, 2009.

Thereafter, [Unioil] filed the instant Petition for Review on November 20, 2009, considering that [the CIR] failed to act on its protest and the one hundred eighty (180) day period had already expired.

On December 14, 2009, [the CIR] filed her Answer, where she raised the following Special and Affirmative Defenses:

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5. All presumptions are in favor of the correctness of the Assessments;

6. [Unioil] was fully [apprised] of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to [Unioil], contained, in detail, the manner of computation, the facts of which the assessment were based and the provisions of the law used in arriving at such deficiency assessment;

7. Contrary to the allegations of [Unioil], not all supporting documents were x x x submitted to completely support or rebut the assessment issued against [it];

8. The [CIR] had acted on the protest of the subject taxpayer. However, [she] failed to issue its final resolution on the protest at the time the instant Petition was filed before this Honorable Court;

9. The right to collect the withholding tax liability of [Unioil] has not prescribed. The withholding tax is merely being held by [Unioil] as an agent of the Government and [Unioil] could not unjustly enrich itself by failing to remit the tax it withheld at the expense of the Government under the principle of *solutio indebiti*;

10. Section 72 of the National Internal Revenue Code was used by the Assessment Division as its authority to assess [Unioil] for its deficiency taxes. The assessment was based on the under declaration or undervaluation of the salaries account of [Unioil] which resulted in the Deficiency Withholding Tax on Compensation;

11. As per audit investigation, it was determined that various income payments were not fully subjected to expanded withholding tax as required under Revenue Regulations No. 2-98, particularly the accounts of Professional Fees, Payments to Contractors, Repairs and Maintenance-Labor, Advertising and Manpower Services.[5]

**Ruling of the Court of Tax Appeals Third Division:**

In resolving the propriety of the CIR's tax assessments for deficiency withholding taxes (on compensation and expanded) against Unioil, the CTA Third Division listed Unioil's procedural and substantive arguments:

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[5] Id. at 11-13, 60-61.

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1. The Final Assessment Notice (FAN) issued on January 26, 2009 is null and void for being issued beyond the three-year prescriptive period[;]
2. [T]he FAN failed to apprise [Unioil] of the specific provision of the law or rules and regulations upon which the assessments were based[;]
3. **[Unioil] did not receive a Preliminary Assessment Notice [(PAN)] prior to the issuance of the FAN, contrary to the procedures outlined in Revenue Regulation (RR) 12-99**[;]"[6]
4. Unioil is not liable for deficiency withholding tax on compensation since the CIR' s proof thereon was not admitted by the CTA Third Division for "failure to present the original copy";
5. There is no basis for the CIR's assessment of deficiency expanded withholding taxes "on Professional Fees, on Repairs and Maintenance, and on Advertising and Promotion,"[7] as payments made by Unioil in connection therewith are not income payments to general professional partnerships and/or contractors; and
6. The CIR's assessment of deficiency expanded withholding tax "on Manpower Services" contains errors and inconsistencies regarding "details of [the discovered] discrepancy of deficiency expanded withholding tax as stated in Schedule I of the [FAN].[8]

In its disquisition, the CTA Third Division only dealt with the threshold question of whether the CIR accorded Unioil due process in notifying the latter of the assessments for deficiency withholding taxes, specifically the CIR's issuance of the Preliminary Assessment Notice (PAN) and Unioil's due receipt thereof in accordance with Section 228[9] of the National Internal

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[6] Id. at 63. Emphasis supplied.

[7] Id. at 63-64.

[8] Id. at 62-64.

[9] Section 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: Provided, however, That a preassessment notice shall not be required in the following cases:

x x x x

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Revenue Code (NIRC) and Section 3[10] of Revenue Regulations (RR) No. 12-99.[11]

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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.

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.

[10] Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —

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

3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized

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As regards the CIR's issuance of the PAN, the tax court categorically found the following:

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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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based . . . If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x

3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void . . .*

3.1.5 *Disputed Assessment*. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. . . .

x x x x

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.

The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

x x x x

3.1.6 *Administrative Decision on a Disputed Assessment*. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void . . .* in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision*.

[11] *Rollo*, p. 73.

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In the case at bar, [UNIOIL] denied receiving the Preliminary Assessment Notice. It follows that it is incumbent upon [the CIR] to prove the receipt of the subject assessment notice by contrary evidence. However, records lay bare of clear and convincing evidence to show that [Unioil] indeed received a PAN.

**[The CIR] offered in evidence a draft Preliminary Assessment Notice (Exhibit "9") and a PAN dated November 27, 2008 (Exhibit "10") to establish, among others, that a PAN was issued in compliance with existing revenue issuances; but the same failed to show that they were sent to petitioner, either through personal delivery or mail. No other documentary or testimonial evidence was submitted by [the CIR] to disprove [Unioil]'s alleged non-receipt of the PAN and [the CIR]'s failure to do so leads to the conclusion that no PAN was really issued.** While there are instances when the non-issuance of a PAN prior to a FAN is allowed, the same are unavailing because the instant case is not among those enumerated.

In sum, [the CIR]'s failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 amounts to the denial of [Unioil]'s right to due process, effectively voiding the assessments issued.

x x x x

In view of the foregoing, there is no reason for the Court to discuss the other issues and arguments of the parties considering that a void assessment bears no fruit.

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, the assessments for deficiency withholding tax on compensation and deficiency expanded withholding tax in the total amount of ₱536,801.10, inclusive of interests, for taxable year 2005 are hereby CANCELLED and SET ASIDE.

SO ORDERED."[12] (Emphasis supplied)

The CTA Third Division no longer discussed the other issues and arguments raised by the parties considering its finding that the CIR did not issue a PAN which consequently avoided the assessment against Unioil for deficiency withholding taxes in the total amount of ₱536,801.10.

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[12] Id. at 69-70.

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The CIR moved for partial reconsideration[13] and contended that Unioil did receive a PAN since it was able to file a Protest thereon.[14] However, the CTA Third Division stood pat on its ruling:

> In sum, respondent's failure to strictly comply with the notice requirements as laid down in Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99 amounts to the denial of petitioner's right to due process, effectively voiding the assessments issued.
>
> WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.[15]

Thus, the CIR appealed to the CTA *En Banc* arguing for the validity of its assessment against Unioil and the latter's liability for deficiency withholding taxes.

The parties filed pleadings, including their respective Memorandum,[16] before the CTA *En Banc*.

**Ruling of the Court of Tax Appeals *En Banc*:**

As previously adverted to, the CTA *En Banc* rendered the assailed Decision affirming *in toto* the CTA Third Division. The CTA *En Banc* framed the core issue as turning on the CIR's duty to issue the PAN and the consequent validity of the deficiency withholding tax (on compensation and expanded) assessments against Unioil:

> This Court affirms the ruling of the CTA Third Division in the Assailed Decision and Assailed Resolution that [the CIR] failed to comply with the notice requirements mandated under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, thereby denying respondent of its right to due process, hence, effectively voiding the assessments issued.

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[13] Id. at 73.

[14] Id. at 74-75.

[15] Id. at 76.

[16] Id. at 14; *rollo*, CTA EB No. 857, pp. 87-124.

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Section 228 of the 1997 National Internal Revenue Code clearly provides for the right of the taxpayer to procedural due process in the issuance of assessment. It is mandated that a taxpayer should be informed in writing of the law and the facts upon which the assessment against him is based, otherwise such assessment shall be invalid. x x x

x x x x

The law and the regulations are clear on the requirements for procedural due process on the issuance of assessment for deficiency taxes. Full and complete compliance with these requirements is mandatory to ensure the validity of the assessment. Consequently, a void assessment bears no valid fruit.

The issuance of PAN is an integral part of procedural due process. The PAN lays down the factual and legal basis for the assessment. We reiterate the Assailed Decision's discussion on the indispensable nature of the PAN in the issuance of assessments and give emphasis to the fact that the 1997 NIRC provided that the issuance of PAN in assessments is mandatory in tax assessments except in a few instances, specifically enumerated by law, where it is not required.

x x x x

In the present petition, respondent denies the receipt of the PAN in relation to the deficiency tax assessments issued against it by the petitioner. Petitioner on the other hand alleges that petitioner actually received the PAN considering that it was able to file its protest to the PAN. We agree with respondent.

As respondent categorically denies the receipt of the PAN, it is incumbent upon petitioner to prove the contrary. x x x

x x x x

Hence, as petitioner failed to prove the receipt of the PAN by the respondent, thereby effectively denying the latter of its right to due process We affirm the CTA Third Division's ruling cancelling and setting aside the subject assessments for deficiency withholding taxes and deficiency expanded withholding taxes for the taxable year 2005. Accordingly, We find it unnecessary to delve into the other issues raised in the present petition.

x x x x

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In sum, the CTA *En Banc* finds no cogent justification disturb the findings and conclusion spelled out in the Assailed Decision dated October 4, 2011 and the Assailed Resolution dated December 21, 2011, both promulgated by the CTA Third Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for lack of merit. Accordingly, the October 4, 2011 Decision and the December 21, 2011 Resolution of the CTA Third Division are hereby **AFFIRMED *in toto***.

**SO ORDERED**.[17]

Obtaining no relief from the CTA, the CIR filed this petition for review *on certiorari* and **submitted for the first time proof of its issuance of a PAN and Unioil's actual receipt thereof**.[18]

The CIR insists that, contrary to the CTA's uniform rulings, it complied with the notice requirements for assessment under Section 228 of the NIRC and RR No. 12-99; Unioil was not denied its right to due process. The CIR is adamant that it did issue a PAN which had been duly acknowledged and received by Unioil.

Without changing tack or addressing the litigated issue of the "missing" PAN before the CTA, the CIR now unobtrusively states the dates of its issuance of a PAN and Unioil's actual receipt thereof:

**On November 27, 2008, petitioner issued a preliminary assessment notice for deficiency withholding tax on compensation amounting to Php438,549.55 and deficiency expanded withholding tax amounting to Php82,468.61.**

On December 22, 2008, respondent, through counsel, filed a protest on the Preliminary Assessment Notice dated November 27, 2008 before the Office of the Chief of the Billing Section of the Assessment Division, Revenue Region No. 7, Quezon City.

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[17] *Rollo*, pp. 15-21.

[18] Id. at 31-32; see Petition.

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On January 26, 2009, respondent received a Formal Letter of Demand and Final Assessment Notice (FAN), finding respondent liable for deficiency withholding tax on compensation and deficiency expanded withholding tax for the year ending December 31, 2005. The letter of demand and the FAN shows a deficiency withholding tax on compensation amounting to Php451,834.31, and deficiency expanded withholding tax amounting to Php84,966.79:[19]

In refutation, Unioil counters:[20]

1. The issues raised by the CIR, specifically whether there was valid receipt by Unioil of the PAN, is a question of fact not cognizable in a petition for review on *certiorari* which should only contain questions of law;

2. There was no valid receipt of the PAN since the assessment itself is void for being made beyond the three-year prescriptive period provided in Section 203 of the NIRC;

3. The PAN and FAN "are void x x x because x x x the facts, law, rules and regulations, and jurisprudence upon which [these were based were] not stated"; and

4. "Assuming *arguendo* that the assessments are valid, it [Unioil] is not liable to pay any deficiency taxes because it has submitted all relevant documents to rebut the Assessment Notice No. F43-128."[21]

On the CIR' s newly invoked proof that Unioil had in fact received the "missing" PAN, Unioil maintains that the CIR's assessments for deficiency withholding taxes were issued beyond the three-year prescriptive period provided in Section 203 of the NIRC:

9. [T]he issue of whether there was valid receipt by [Unioil] of the PAN, cannot be raised anymore.

10. Yet, [the CIR] still argued that the Court of Tax Appeals is incorrect in finding that [the CIR] failed to comply with the notice

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[19] Id. at 32.

[20] Id. at 108-119; see Comment.

[21] Id. at 109-111, 114.

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requirement under Section 228 of the National Internal Revenue Code (NIRC) because it overlooked the fact that [Unioil] received the PAN issued on 27 November 2008.

11. In fact, in an attempt to mislead this most Honorable Court, [the CIR] argued, this "receipt" by [Unioil] prompted it to file a protest thereon on 22 December 2008, when there can be [no] valid "receipt" if the assessment itself is void for being made beyond the prescriptive period provided by law.

12. However, a careful perusal of the protest reveals that there is no valid receipt as the government's right to assess has already prescribed.

13. It can be recalled that in the protest to the PAN, it was stated that the PAN was received by Unioil on 15 December 2008.

x x x x

15. According to Section 2.58[A][2], Revenue Regulations 2-98, x x x the three (3) year period is to be reckoned from the last day required by law for the filing of the monthly remittance return. The last day is ten (10) days after the end of each calendar month (except December) and fifteen (15) days after the end of December for taxes withheld from the last income payment for the said month.

16. In this case, the withholding tax returns for November 2005 were filed on December 2005. Hence, the BIR had only until 9 December 2008 within which to assess the alleged deficiency withholding taxes for compensation and expanded withholding for the months of July to November 2005.

17. It is thus indubitably clear that when the PAN was received by [Unioil] on 15 December 2008, the three (3) year prescriptive period had already lapsed. Not to mention, the FAN which was issued by the [CIR] on 26 January 2009, way beyond the three (3) year prescriptive period.

18. On this ground alone, the PAN and the FAN are rendered void.[22]

**Issues**

The issues for resolution, posed by the CIR, are succinct:

[22] Id. at 110-111.

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I

THE COURT OF TAX APPEALS ERRED IN FINDING THAT RESPONDENT WAS DENIED ITS RIGHT TO DUE PROCESS BASED ON THE PURPORTED FAILURE TO RECEIVE A PRELIMINARY ASSESSMENT NOTICE.

II

RESPONDENT IS LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION AND DEFICIENCY EXPANDED WITHHOLDING TAX FOR FAILURE TO SUBMIT ALL RELEVANT DOCUMENTS TO REBUT THE ASSESSMENT NOTICE NO. F43-128.[23]

**Our Ruling**

The petition is denied.

The respective pleadings of both parties before us circle around the CIR's belated proof of the PAN's alleged due issuance and Unioil's actual receipt thereof.

Plainly evident is the parties' and their counsels' evasion of the elephant in the room: a purportedly duly issued PAN dated November 27, 2008 and received by Unioil, through counsel, on December 15, 2008.

Obviously, the CIR's claimed reversible error of the CTA is **not a question of law** but a question of fact resulting primarily from the CIR's procedural missteps.[24] We cannot overemphasize that the Supreme Court is not a trier of facts.[25] The CTA was especially created by law[26] for the purpose of reviewing tax cases. The CTA undertakes trial on the issues brought before it and accordingly exercises the power to receive evidence under Rule

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[23] Id. at 35.

[24] See RULES OF COURT, Rule 45, section 1.

[25] *Commissioner of Internal Revenue v. Apo Cement Corporation*, 805 Phil. 441, 463 (2017).

[26] See REPUBLIC ACT No. 9282 amending REPUBLIC ACT No. 1125.

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12 of the Internal Rules of the Court of Tax Appeals[27] in relation to the procedure for authentication of documents under our Rules on Evidence.[28] It is not the Court's duty to look and sift through the evidence of the parties, much more in this case since the PAN, attached as Annex "G"[29] in the herein petition, had not been proffered and submitted by either of the parties before the CTA. Undoubtedly, appeals to this Court is discretionary and should be confined to only questions of law.[30]

The disingenuousness of the parties and their counsel does not escape this Court.

The existence and validity of the PAN was the threshold and only issue decided by the CTA, in Division and *En Banc*, when it cancelled and set aside the CIR's assessment for deficiency withholding taxes (on compensation and expanded) against Unioil. To stress, the CIR did not proffer this proof of Unioil's receipt of the PAN in their petition for review before the CTA *En Banc*.

Since it was not offered as evidence, there is nothing for this Court to consider. Otherwise stated, the CIR failed to establish the fact of issuance of the PAN to Unioil. The CIR's failure to comply with the notice requirements under Section 228 of the 1997 NIRC effectively denied Unioil of its right to due process. Consequently, the CIR's assessment was void.

Although the CIR never wavered in its assertion that they issued a PAN, during trial, however, they offered in evidence a mere draft thereof. In fact, to support their contention, the CIR utilized a part of Unioil's evidence before the CTA—the BIR Regional Office rubber stamp mark on the receiving copy of Unioil's Protest to the PAN.[31]

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[27] A.M. No. 05-11-07.

[28] RULES OF COURT, Rule 132 and its latest amendment 2019 Revised Rules on Evidence.

[29] *Rollo*, CTA EB No. 857, pp. 91-93.

[30] RULES OF COURT, Rule 45, section 6.

[31] *Rollo*, CTA EB No. 857, pp. 91-92; See *GIOS-SAMAR v. Department of Transportation and Communication*, G.R. No. 217158, March 12, 2019.

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The CIR's negligence in their power and duty to properly assess taxes is palpable in this case.[32] *First*, the CIR failed to establish the fact of their issuance of a PAN by not keeping proper records of the tax audit and assessment of Unioil. During the trial, the CIR even relied on Unioil's proffered evidence as proof of issuance.[33] *Second*, the issue on the ostensibly "missing" PAN arose because of the CIR' s contention that the timely issuance thereof sufficiently interrupted the three-year prescriptive period for the assessment of taxes under Section 203[34] of the NIRC. *Last*, the FAN accompanying the Formal Letter of Demand did not comply with the obligatory provision on protesting a tax assessment under Section 228[35] of the NIRC. Ultimately, void assessment bears no valid fruit.[36]

Tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence.[37] Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[38]

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[32] See Section 6 (A) of the NIRC in relation to Section 18 (1), Chapter 4, Title II of Executive Order No. 292 or the Administrative Code of 1987.

[33] *Rollo*, CTA EB No. 857, p. 92.

[34] Section 203. *Period of Limitation Upon Assessment and Collection*. — 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, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: 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.

[35] Supra note 9.

[36] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189 (2006).

[37] Id.

[38] Id.

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The CIR's lack of adherence to due process in its failure to demonstrate issuance of the PAN is the pith of the CTA's uniform rulings in this case.

In fine, We rule that the assessment is void for not stating the factual and legal bases therefor and the three-year period for assessment has already prescribed.

Indeed, while the government cannot be estopped by the negligence or omission of its agents, the mandatory provisions on Sections 203[39] and 228[40] of the NIRC cannot be rendered nugatory by the mere act of the CIR.[41]

Article 5 of the Civil Code is explicit: "[a]cts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

In affirming the CTA's holding that the assessment against Unioil is void, we emphasize the import of an assessment as containing not only a computation of tax liabilities but also a demand for payment within a prescribed period.[42] The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it.[43]

**The CIR's assessment of Unioil for deficiency withholding taxes has prescribed.**

Section 203[44] of the NIRC mandates the government to assess internal revenue taxes within three years from the last day

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[39] Supra note 34.

[40] Supra note 9.

[41] See *Commissioner of Internal Revenue v. Reyes,* supra.

[42] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018; *Adamson v. Court of Appeals*, 606 Phil. 10, 27 (2009).

[43] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* id.

[44] Supra note 34.

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prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective. Exceptions to the period of limitation of assessment, however, are provided under Section 222[45] of the same code, as in cases of (i) filing of a false or fraudulent return with intent to evade tax or (ii) failure to file a return or (iii) a written agreement to waive and extend the period within which to assess the taxpayer's liability.

Section 203 of the NIRC provides:

> Section 203. *Period of Limitation Upon Assessment and Collection*. — 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, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: 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.

We note that Unioil never waived its arguments on (a) prescription of the tax assessments and (b) the invalidity thereof for failure to state the facts and the law on which these were based.

In *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[46] *(La Flor)* we declared that withholding taxes are internal revenue taxes covered by Section 203[47] of the NIRC. *La Flor*

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[45] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

[46] G.R. No. 211289, January 14, 2019.

[47] Supra note 34.

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traced the withholding tax system observed in our jurisdiction and the distinct liabilities which arise for the taxpayer and the withholding agent.

Section 58 of the NIRC, on the other hand, outlines the requirement of "Returns and Payment of Taxes Withheld at Source."

To forestall Unioil's argument that the assessment was made beyond the three-year prescriptive period, the CIR cavalierly invokes Section 72[48] of the NIRC without explicitly stating that Unioil had filed a false or fraudulent return. Moreover, in the "Details of Discrepancy" stated in the FAN and Formal Letter of Demand, the CIR consistently cited that "the corresponding tax due was computed in accordance with Section 72 (e) of the Tax Code."

The blithe contention of the CIR is not well-taken; the exception to the prescriptive period to assess taxes under Section 222[49] of the NIRC is not applicable.

In determining whether the return filed is false or fraudulent, jurisprudence has consistently held that fraud is never imputed.[50] The Court has refrained from sustaining findings of fraud upon circumstances which, at most, create only suspicion.[51] The mere

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[48] SECTION 72. *Suit to Recover Tax Based on False or Fraudulent Returns*. — When an assessment is made in case of any list, statement or return, which in the opinion of the Commissioner was false or fraudulent or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement or return was not false nor fraudulent and did not contain any understatement or undervaluation; but this provision shall not apply to statements or returns made or to be made in good faith regarding annual depreciation of oil or gas wells and mines.

[49] Supra note 45.

[50] *Commissioner of Internal Revenue v. Philippine Daily Inquirer*, 807 Phil. 912, 935 (2017).

[51] Id. at 935 citing *Commissioner of Internal Revenue v. Javier*, 276 Phil. 914, 922 (1991).

understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[52]

Here, apart from the CIR's bare allegation of falsity or fraudulency in Unioil's filed returns, the CIR neither states nor points to any other detail establishing actual fraud committed by Unioil. The CIR does not substantiate its allegation of fraud and appears to make the argument only to evade the three-year prescriptive period to assess the tax.

On the whole, there is no *prima facie* evidence, much less any sort of evidence, that Unioil filed false and fraudulent returns on the ground of substantial under declaration of income in Unioil's Annual Income Tax Return for taxable year ending December 31, 2005.[53]

Moreover, we observe that the assessment notices, from the Post Reporting Notice[54] to the Formal Letter of Demand, erroneously cited Section 72 (e) of the NIRC. As pointed out by Unioil in its separate Protests to the PAN and the FAN, and all its pleadings before the tax court and this Court, Section 72 of the NIRC has no subsection (e).

In addition, we cannot abide by the haste with which the FAN was issued and the lack of detail of the assessment notices pertaining to the various dates of filing of the tax returns, whether the assessment was based on the monthly remittance return of income taxes withheld or the quarterly returns or annual information return. The assessments and Formal Letter of Demand simply stated that Unioil is due to pay "deficiency withholding tax on compensation and expanded withholding tax for the calendar year ending December 31, 2005."[55]

Another thing which militates against the CIR's claim that the three-year prescriptive period does not apply is the fact that the

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[52] Id. at 936 citing *Aznar v. Court of Tax Appeals*, 157 Phil. 510, 535 (1974).

[53] See *Commissioner of Internal Revenue v. Next Mobile, Inc.*, 774 Phil. 428 (2015).

[54] *Rollo*, pp. 85-87.

[55] Id. at 85, 91, 100, 102.

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Final Letter of Demand and FAN were issued only on January 14, 2009, in less than a month from Unioil's filing of its Protest to the PAN on December 22, 2008. Note that after January 15, 2009 the return filed by Unioil for December 2005 has already prescribed.

It bears repeating that Section 203[56] of the NIRC is the mandatory period of limitation for the government to assess taxes, subject only to the prefaced exception explicitly provided thereunder: "**[e]xcept 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."

If the CIR indeed substantiated their vaguely drawn imputation that Unioil had filed a fraudulent return, there was no reason for the speed with which they issued the Formal Letter of Demand. Plainly, the Formal Letter of Demand was hastily issued and did not take into consideration the arguments of Unioil in its Protest to the PAN. The Formal Letter of Demand and the FAN were ostensible automated assessments merely echoing the PAN.

From the date of the Formal Letter of Demand and the FAN which were simultaneously issued on January 14, 2009 and only received by Unioil on January 26, 2009, the three-year prescriptive period reckoned from the deadline set by law for the filing of the return, assessment of the January to November 2005 monthly remittance returns has palpably prescribed. As for the assessment for December 2005, suffice to state that all the circumstances obtaining herein lead to no other conclusion that the assessment has likewise prescribed.[57]

In conflict with its initial assertion that the assessment was made pursuant to Section 72[58] of the NIRC, the CIR yet again contends that the assessment has not prescribed since the contentious and "missing" PAN had been issued before the expiration of the three-year prescriptive period. Further on this point, the CIR argues

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[56] Supra note 34.

[57] See *Commissioner of Internal Revenue v. Next Mobile, Inc.,* supra note 53.

[58] Supra note 48.

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that Unioil was not deprived of due process and was adequately informed of its tax liability.

This contention deserves no merit. As we have previously discussed, the CIR utterly failed to establish the fact of issuance of the PAN. Moreover this disputed PAN was never offered as evidence before the CTA. Hence, it could not be considered in our disquisition at this belated stage.

In any case, the PAN and the FAN pertain to different aspects of the CIR' s power to assess taxes. In *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[59] we clarified that the assessment contemplated in Sections 203[60] and 222[61] of the NIRC refers to the service of the FAN upon the taxpayer:

> Finally, petitioner's contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable.
>
> **Considering the functions and effects of a PAN vis à vis a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer**.
>
> A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.
>
> **The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN**.

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[59] 821 Phil. 664 (2017).

[60] Supra note 34.

[61] Supra note 45.

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**On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer**. Thus, the National Internal Revenue Code imposes a 25% 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 payment until the amount is fully paid. 54 Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.[62]

**The Formal Letter of Demand and F43-128 are void; they did not state the factual and legal bases for the assessment.**

The CIR's ample powers under the tax code should be exercised with due regard to the taxpayer's constitutional rights.[63]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[64] *(Avon Products)* the Court expounded on the contemplation of administrative due process as exemplified in jurisprudence:

> Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly 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.[65] (Citations omitted)

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[62] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.,* supra note 59 at 679-680.

[63] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,* supra note 42.

[64] Id.

[65] Id.

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What we can refract from our ruling in *Avon Products* is that the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party.[66]

In the case before us, the CIR only perfunctorily assessed Unioil for deficiency withholding tax on compensation and expanded withholding tax and went through just the motions without due consideration. This is apparent from the haste in which the Formal Letter of Demand and the FAN were issued on January 14, 2009 in order to ostensibly beat the three-year prescriptive period which set after January 15, 2009.

Moreover, Section 228 of the NIRC and its implementing rule and regulation, Section 3 of RR No. 12-99, mandate the contents for an assessment: "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Section 3 of RR No. 12-99, on the other hand, prescribes the due process requirement for the four (4) stages of the assessment process:

> Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —
>
> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
>
> 3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case**. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for

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[66] Id.

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informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 ***Preliminary Assessment Notice (PAN)***. — **If after review and evaluation** by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** . . . If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

x x x x

3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand 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 formal letter of demand and assessment notice shall be void . . .**

3.1.5 *Disputed Assessment*. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. . . .

x x x x

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by

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the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

x x x x

3.1.6 ***Administrative Decision on a Disputed Assessment.* — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void . . . in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision**.

Once again, *Avon Products*[67] is illuminating. Petitioner therein (Avon) stacked indicators of the CIR' s feigned compliance to the mandatory provisions of the law and regulation, *i.e.* Section 228 of the NIRC and Section 3 of RR No. 12-99 which the CIR could not rebut. The Court agreed with Avon and categorically pronounced that the latter was demonstrably deprived of due process by the CIR:

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 the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which

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[67] Supra note 42.

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ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no under declaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulations No. 12-99.

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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.

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**Similarly**, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner** failed to acknowledge these submissions and instead **issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time.** For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."[68]

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.[69]

*Commissioner of Internal Revenue v. Reyes*[70] (*Reyes*) is instructive. In *Reyes*, the Court emphasized that "failure to comply with

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[68] Id.

[69] *Commissioner of Internal Revenue v. Reyes,* supra note 36.

[70] Id.

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Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code:"[71]

No doubt, Section 228 has replaced Section 229. The provision on protesting an assessment has been amended. Furthermore, in case of discrepancy between the law as amended and its implementing but old regulation, the former necessarily prevails. Thus, between Section 228 of the Tax Code and the pertinent provisions of RR 12-85, the latter cannot stand because it cannot go beyond the provision of the law. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure. The regulation then simply provided that notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.

Fourth, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.

The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."

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[71] Id. at 191.

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Fifth, the rule against estoppel does not apply. Although the government cannot be estopped by the negligence or omission of its agents, the obligatory provision on protesting a tax assessment cannot be rendered nugatory by a mere act of the CIR.

**Tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. Failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code. We cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding**.[72] (Emphasis Ours)

All told, the BIR' s right to assess and collect taxes must conform to the requirements for assessment and collection set forth in the law. There can be no equivocation from this right and duty *nexus*.

**WHEREFORE,** the Petition for Review on *Certiorari* is **DENIED**. The **CANCELLATION** of petitioner Commissioner of Internal Revenue's Formal Letter of Demand dated January 14, 2009 and Assessment Notice No. F43-128 against respondent Unioil Corporation is **SUSTAINED**.

**SO ORDERED.**

*Perlas-Bernabe, S.A.J. (Chairperson), Inting, Gaerlan,* and *Rosario,*[*] *JJ.*, concur.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Britanico Sarmiento and Franco Law Offices* for respondent.

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[72] Id. at 189-191.

[*] Designated as additional Member per S.O. No. 2835 dated July 15, 2021.