REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

FLUOR DANIEL, INC.,
Respondent.

CTA *EB* NO. 2567
(CTA Case No. 9267)

Present:

DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN 01 2023 4:07

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue on February 2, 2022, assailing the Decision[2] dated May 28, 2021 (assailed Decision) and the Resolution[3] dated December 11, 2021 (assailed Resolution), both rendered by this Court's Third Division (Court in Division) in CTA Case No. 9267 entitled "*Fluor Daniel, Inc. v. Commissioner of Internal Revenue.*" The dispositive portion of the assailed Decision and Resolution reads as follows:

Assailed Decision dated May 28, 2021:

> **WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the FLD and FAN dated June 29, 2015, holding Petitioner liable

[1] *En Banc* (*EB*) docket, pp. 6-19.
[2] *EB* docket, pp. 27-61.
[3] *EB* docket, pp. 62-67.

> for deficiency VAT and compromise penalty in the respective amounts of PhP15,313,306.33 and PhP100,000.00, for January 01, 2012 to June 30, 2012, are **CANCELLED** and **SET ASIDE.** Consequently, Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against Petitioner.
>
> **SO ORDERED.**

Assailed Resolution dated December 11, 2021:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration Re: Decision dated 28 May 2021 is **DENIED** for lack of merit.
>
> **SO ORDERED**.

Petitioner prays that the assailed Decision and Resolution be set aside and a new one rendered ordering respondent Fluor Daniel, Inc. to pay the aggregate amount of ₱15,413,306.33 as deficiency value-added tax (VAT) and compromise penalty for the period January 1, 2012 to June 30, 2012, plus interests and surcharge until full payment thereof.

THE PARTIES

Fluor Daniel, Inc. - Philippines is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at 3F Asian Star Building, ASEAN Drive, Filinvest Corporation, Alabang, Muntinlupa City. It is a registered taxpayer of the Bureau of Internal Revenue (BIR), with Taxpayer's Identification No. (TIN) 000-159-649-000.

The Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the BIR vested under appropriate laws with authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, under the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS AND THE PROCEEDINGS

The relevant facts,[4] as narrated by the Court in Division in the assailed Decision, are as follows:

> On November 28, 2012, [respondent] received the Letter of Authority (LOA) No. LOA-V1-2012-00000056 dated November 19, 2012, authorizing the Revenue Officers (ROs) of Large Taxpayers Regular VAT Audit Group 1 to examine [respondent's] books of accounts and other accounting records for VAT for the 1st and 2nd quarters of calendar year (CY) 2012. The said ROs are composed of Messrs. Eric Sandoval and Michael Aldrin Bumanglag, with Group Supervisor (GS) Glorializa Samoy.
>
> Subsequently, OIC-Assistant Commissioner Nestor S. Valeroso of the BIR-Large Taxpayers Service (LTS) issued the Memorandum of Assignment (MOA) dated August 01, 2014, with No. LT-VATAG-2014-0003, authorizing RO Junelyn Ivanhoe S. Fernandez and GS Lydia A. Vito to continue the audit of (sic) investigation of the previously assigned ROs.
>
> On March 30, 2015, [respondent], through its President, Mr. Angus Alexander George Murray, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, which was accepted by OIC-Assistant Commissioner Alfredo V. Misajon on April 07, 2015, in connection with the investigation of its VAT liabilities, for the period ending June 30, 2012. This extended the period of assessment until June 30, 2015.
>
> On June 11, 2015, [respondent] received [petitioner's] Preliminary Assessment Notice (PAN), with attached Details of Discrepancies, in which [petitioner] informed [respondent] of the proposed assessment for deficiency VAT for the 1st and 2nd quarters of CY 2012, in the aggregate amount of PhP15,313,306.33, and compromise penalty in the amount of PhP100,000.00.
>
> [Respondent] then filed with the BIR-LTS, a request for reconsideration of the PAN, on June 25, 2015.
>
> Thereafter, on June 29, 2015, [respondent] received a Formal Letter of Demand (FLD), with attached Final Assessment Notice (FAN) dated June 29, 2015 and Details of Discrepancies, issued by [petitioner] through OIC-Assistant Commissioner of the BIR-LTS. In the FLD/FAN, [petitioner] requested [respondent] to pay its alleged deficiency VAT for the 1st and 2nd quarters of CY 2012 in the total amount of PhP15,313,306.33, and compromise penalty in the amount of PhP100,000.00, computed as follows:

[4] *EB* docket, pp. 28-30.

I. VALUE-ADDED TAX		
Vatable Receipts per VAT Return		₱ 401,953.93
Add: Sales Still Subject to VAT		80,473,347.32
Adjusted Vatable Receipts		₱ 80,875,301.25
Output Tax Due		₱ 9,705,036.15
Less: Input Tax Claimed per Return	₱21,606,635.70	
Less: Input Tax Carry-Over	21,558,401.23	48,234.47
VAT Due		₱ 9,656,801.68
Less: Tax Payment		-
Deficiency Value-Added Tax		₱ 9,656,801.68
Add: 20% Interest (7/26/2012 to 6/30/2015)		5,656,504.65
TOTAL AMOUNT DUE		**₱15,313,306.33**

II. COMPROMISE PENALTY	
Sec. 255 of the NIRC – for the Basic Tax Due of Php9,656,801.68	₱ 50,000.00
Sec. 113 of the NIRC – Non compliance to Invoicing Requirements	50,000.00
TOTAL AMOUNT DUE	**₱100,000.00**

> Based on the Details and Discrepancies attached to the FAN, the assessments for deficiency VAT and compromise penalties were based on the following: (1) sales still subject to VAT of PhP80,473,347.32, and (2) compromise penalty of PhP100,000.00.
>
> On July 28, 2015, [respondent] filed with the BIR-LTS, a request for reconsideration of the FLD/FAN, wherein [respondent] prayed for the cancellation and withdrawal of [petitioner's] assessments for deficiency VAT for the 1st and 2nd quarters of CY 2012, and the corresponding compromise penalty.

Counting 180 days from July 28, 2015, petitioner had until January 24, 2016 within which to act upon the protest of respondent. Since petitioner failed to do so, respondent was constrained to file a Petition of Review[5] with the Court in Division on February 23, 2016, which was well within 30 days after the expiration of the 180-day period

In his *Answer*[6] filed on April 22, 2016, petitioner interposed, among others, that: (a) respondent is liable for deficiency VAT since it is not a subcontractor who entered into a contract with a service contractor engaged in petroleum operations. Hence, the preferential rate of 8% under Presidential Decree (PD) No. 1354[7] in relation to Section 109(K) of the Tax Code is not available to it; (b) the Input Tax Carry-Over was properly deducted in the computation of respondent's deficiency VAT assessment; (c) respondent is liable for deficiency interest in relation to its deficiency VAT assessment; and (d) the

[5] Division docket, pp. 10-27.
[6] Division docket, pp. 77-88.
[7] IMPOSING FINAL INCOME TAX ON SUBCONTRACTORS AND ALIEN EMPLOYEES OF SERVICE CONTRACTORS AND SUBCONTRACTORS ENGAGED IN PETROLEUM OPERATIONS IN THE PHILIPPINES UNDER PRESIDENTIAL DECREE NO. 87.

compromise penalty was included as a suggestion for respondent to avoid criminal prosecution.

The trial ensued, during which both parties presented documentary and testimonial evidence supporting their respective positions.

On May 28, 2021, the Court in Division rendered the assailed Decision granting respondent's Petition for Review. In holding in favor of respondent, the Court in Division found that in issuing the Formal Letter of Demand (FLD) with Final Assessment Notice (FAN), the BIR never addressed or delved into the arguments raised by respondent in its request for reconsideration of the Preliminary Assessment Notice (PAN). This was clear when petitioner issued a FAN, a complete replica of the PAN, without explaining the demerits of respondent's contentions. According to the Court in Division, the right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response to it; and, the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. The Court in Division added that even assuming there was no due process violation, petitioner's assessment should still be cancelled and/or withdrawn for lack of legal and factual basis.

Not satisfied, petitioner moved for reconsideration[8] but was denied in the equally assailed Resolution of December 11, 2021.

Undeterred, petitioner filed the instant *Petition for Review* before the Court *En Banc* via registered mail on February 2, 2022.

On March 18, 2022, the Court *En Banc* issued a Resolution [9] directing respondent to file its comment on petitioner's *Petition for Review* within ten (10) days from notice.

Respondent filed its *Comment (Re: Petitioner's Petition for Review dated January 18, 2022)*[10] on March 31, 2022, which the Court *En Banc* noted in the Resolution[11] dated April 13, 2022. In the same Resolution, the Court *En Banc* referred the case to the Philippine Mediation Center – Court of Tax Appeals

[8] Division docket, pp. 4566-4577.
[9] *EB* docket, pp. 71-72.
[10] *EB* docket, pp. 73-86.
[11] *EB* docket, pp. 88-89.

(PMC-CTA) for mediation under Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*

On June 1, 2022, the case was submitted for decision considering the report of the PMC-CTA dated May 4, 2022, stating that the parties have decided not to have their case mediated.[12]

Hence, this Decision.

THE ISSUE

Petitioner anchors his petition on the sole ground, to wit:

> **WITH ALL DUE RESPECT, THE COURT A QUO ERRED WHEN IT CANCELLED AND SET ASIDE THE DEFICIENCY VAT AND COMPROMISE PENALTY FOR THE PERIOD JANUARY 01, 2012 TO JUNE 30, 2012.**

Petitioner's Arguments:

Petitioner claims that contrary to the ruling of the Court in Division, he observed both procedural and substantial due process in issuing the assessment subject of the instant case.

According to petitioner, in administrative proceedings, the right to due process merely requires notice and an opportunity to be heard. He continues that in this case, respondent was accorded more than the mere basic requirements of administrative due process by being given every opportunity to refute the subject assessment, which it was able to do. However, for petitioner, whether or not the protest would merit a reconsideration or cancellation of the deficiency is a different matter altogether. He posits that issuing the PAN and the FLD with just an interval of 4 days is immaterial since respondent was nonetheless fully appraised of the factual bases of the assessment in the said notices. Thus, such should not amount to a denial of due process of law that would warrant nullifying the said assessment.

[12] *EB* docket, pp. 92-93.

Petitioner also claims that respondent is liable for deficiency VAT since it is a subcontractor of the subcontractor, Fluor Daniel Pacific, Inc. (FDPI), and not a subcontractor *per se* of a petroleum service contractor, Shell Philippines Exploration BV (SPEX). Petitioner emphasizes that as a subcontractor of FDPI, respondent has a distinct and separate juridical personality from its affiliate. As such, FDPI's privilege of availing the preferential rate of 8% under PD No. 1354 in relation to Section 109(K) of the NIRC of 1997, as amended, cannot be claimed by respondent.

Petitioner likewise asserts that the input tax carry-over was properly deducted in the computation of respondent's deficiency VAT assessment. According to petitioner, respondent has not exercised the option to credit excess or unutilized input taxes for its VAT liabilities. He added that the same was carried over to the succeeding taxable periods and may have been used up in other periods.

In closing, petitioner reiterates that respondent is liable for deficiency interest due on all its unpaid taxes pursuant to Section 249 of the NIRC of 1997, as amended.

Respondent's Arguments:

Respondent submits that the grounds relied upon by petitioner to reverse the assailed Decision and Resolution are the same arguments raised in his *Motion for Reconsideration* in CTA Case No. 9267, which the Court in Division had already considered and passed upon in the assailed Resolution.

Nevertheless, respondent submits that the instant Petition for Review should be denied for lack of merit. According to respondent, petitioner's claim that an administrative protest on the PAN has no real consequences and failure to consider the protest is not a violation of a taxpayer's right to due process goes against a long line of cases wherein this Court has ruled that the taxpayer's right to respond to the PAN carries with it the correlative duty of the BIR to consider the response to the PAN. Hence, for respondent, the Court in Division correctly ruled that petitioner violated its right to due process when he issued the FLD/FAN without considering respondent's explanations in its administrative protest to the PAN.

Respondent likewise maintains that it is entitled to the VAT exemption under Section 109(K) of the NIRC of 1997, as amended, in relation to PD No. 1354. According to respondent, it is an affiliate of FDPI, a foreign corporation organized under the laws of the United States of America and licensed to do business in the Philippines. FDPI has entered into a contract with SPEX (the "Prime Contract") for the provision of project consultation services in connection with petroleum operations for the exploration and development of the Malampaya natural gas field located offshore of Palawan. Respondent added that SPEX is a petroleum service contractor of the Philippine Government under PD No. 87, as amended, otherwise known as "The Oil Exploration and Development Act of 1972," and under Service Contract No. 38. SPEX has authorized FDPI to have the affiliates of FDPI perform all or part of the services under the Prime Contract. Hence, FDPI entered into a service agreement with respondent, in which FDPI authorized respondent to perform the services provided in the Prime Contract. By doing so, respondent submits that its income from the sale of services to FDPI in connection with the petroleum operations project is subject to 8% final income tax, in lieu of all other taxes, under PD No. 1354. Thus, respondent asserts that its gross receipts of ₱80,473,347.32 are exempt from VAT, pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to PD No. 1354.

Assuming that its revenues from the petroleum operations project are indeed subject to VAT at a 12% rate, respondent submits that the deficiency VAT assessment on its sales to FDPI on July 25, 2012, in the amount of ₱19,548,758.97, is still void since it falls outside of the taxable period covered by the Letter of Authority (LOA), that is, January 1, 2012 to June 30, 2012.

Respondent also submits that the disallowance of its excess and unutilized input VAT credits as of the second (2nd) quarter of calendar year 2012, amounting to ₱21,558,401.23, has no legal and factual basis. According to respondent, petitioner improperly deducted from its input tax credits the amount of ₱21,558,401.23. Respondent posits that nothing in the FLD or the Details of Discrepancies attached thereto justifies or explains the legal and factual basis for such disallowance. Nevertheless, respondent asserts that even assuming that its exempt sales are subject to 12% VAT, it should still not be liable for any deficiency VAT for the 1st and 2nd quarters of 2012 because it has sufficient input tax credits

to offset against its supposed deficiency VAT in the amount of ₱9,656,801.68.

Lastly, respondent reiterates that petitioner cannot impose deficiency interest and compromise penalties to an invalid assessment.

THE COURT EN BANC'S RULING

Timeliness of the Petition

Before delving into the merits of the case, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. [*Emphasis supplied*]

Records show that petitioner received the assailed Resolution on December 16, 2021. Thus, petitioner had fifteen (15) days from December 16, 2021 or until December 31, 2021 to file his *Petition for Review* before the Court *En Banc*.

CTA Circular No. 02-2021,[13] dated December 21, 2021, suspended the filing of all pleadings with the Court of Tax Appeals from December 21, 2021 to January 3, 2022, and extended the filing of all pleadings for 7 days from January 4, 2022.

[13] https://cta.judiciary.gov.ph/downloads/downloadFile/CTA_CIRCULAR_02_2021.pdf.

On January 10, 2022, petitioner filed through registered mail a *Motion for Extension of Time to File Petition for Review*,[14] asking for an additional fifteen (15) days from December 31, 2021, or until January 15, 2022.

On January 12, 2022, the Supreme Court issued *Memorandum Order No. 10-2022*,[15] announcing the physical closure of Courts in select areas due to the rise of COVID-19 cases. Hence, under *Administrative Circular No. 01-2022*, the filing periods of any pleadings and other court submissions that fall due in January are extended until February 1, 2022.

Considering that the present *Petition* was filed through registered mail on February 2, 2022,[16] and considering further that petitioner's Motion for Extension of Time to File Petition for Review was deemed granted per Minute Resolution dated February 21, 2022, the instant *Petition for Review* was timely filed.

Now, on the merits of the *Petition for Review*.

After a careful review of petitioner's arguments and the record of the case, the Court *En Banc* finds no reason to reverse, set aside or modify the assailed Decision and Resolution of the Court in Division.

Indeed, the arguments raised by petitioner in his *Petition* are mere reiterations of the same flawed arguments he raised in his *Answer* and *Motion for Reconsideration* filed before the Court in Division, which had been thoroughly discussed, passed upon, and resolved in the assailed Decision of May 28, 2021 and Resolution of December 11, 2021. Nonetheless, petitioner's arguments shall be addressed and discussed briefly to reinforce the ruling of the Court in Division.

The subject assessment is void for petitioner's failure to consider respondent's explanation and defenses in its request for reconsideration of the PAN.

[14] *EB* docket, pp. 1-3.
[15] https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/10-2022.pdf.
[16] February 1, 2022 falls on a holiday.

Petitioner maintains that he observed procedural and substantial due process in issuing the subject assessment. According to petitioner, an administrative protest on the PAN has no real consequences, and failure to consider the protest is not a violation of respondent's right to due process. Moreover, petitioner claims that the right to due process in administrative proceedings merely requires notice and an opportunity to be heard, which respondent was duly afforded.

The Court *En Banc* is not convinced.

Section 228 of the NIRC of 1997, as amended, mandates the BIR to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[17]

Relative thereto, Revenue Regulations (RR) No. 12-99, as amended, prescribes that the FLD/FAN must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

The use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and in RR No. 12-99 indicates the requirement of informing the taxpayers of the legal and factual bases of the assessment and the decision made against them is mandatory. This is an essential requirement of due process and applies to the PAN, FLD with FAN, and the Final Decision on Disputed Assessment (FDDA).[18]

A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding and the reasons for the decision rendered by the quasi-judicial agency.[19]

It is well to note that the Supreme Court has consistently nullified FLDs/FANs that were issued in violation of the taxpayer's right to due process.

---

[17] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[18] *Id.*
[19] *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[20] and *Avon Products Manufacturing, Inc. v. The Commissioner of Internal Revenue (Avon),*[21] the Supreme Court eloquently discussed the utmost importance of observing the due process in issuing deficiency tax assessments. It declared the FLD/FAN null and void because of the BIR's total disregard of due process, to wit:

> **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.**
>
> xxx xxx xxx
>
> 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 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 taxpayers' constitutional rights.**
>
> xxx xxx xxx
>
> 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

[20] G.R. Nos. 201398-99, October 3, 2018.
[21] G.R. Nos. 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**.

xxx xxx xxx

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**.

xxx xxx xxx

(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**.

xxx xxx xxx

The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." **The decision-maker must consider the totality of the evidence presented as he or she decides the case**.

The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' 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 to ensure that the decision will be thought through by the decision-maker."

xxx xxx xxx

"[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

xxx xxx xxx

> **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.**
>
> xxx xxx xxx
>
> 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.
>
> xxx xxx xxx
>
> 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**. [*Citations omitted; emphasis supplied*]

In the present case, and as found by the Court in Division in the assailed Decision,[22] respondent received the PAN on June 11, 2015, assessing it for deficiency income VAT for the 1st and 2nd quarters of CY 2012, in the aggregate amount of ₱15,313,306.33.

[22] *EB* docket, p. 47.

On June 25, 2015, respondent filed its request for reconsideration of the PAN, addressing the findings in the PAN. It explained every line item/finding of the BIR and endeavored to refute the alleged deficiency assessments as devoid of any legal or factual bases.

On June 29, 2015, just four (4) days from filing respondent's request for reconsideration of the PAN, petitioner issued the subject FLD/FANs. The FLD/FANs contained the same issues and amount of deficiency taxes stated in the PAN. Moreover, in issuing the FLD/FANs dated June 29, 2015, the BIR *never* addressed or even cited the arguments raised by respondent in its request for reconsideration of the PAN.[23]

The fatal infirmity that attended the issuance of FLD/FANs is the fact that the BIR gave no reason for rejecting the explanations and defenses made by respondent in its request for reconsideration to the PAN.

It must be stressed that "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." [24]

A review of the PAN and FLD/FANs shows they are identical.[25] The BIR merely reiterated or copied in the FLD/FANs its findings in the PAN.

---

[23] *Id.*

[24] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[25] Comparative Matrix of PAN and FLD/FAN:

	PAN		FLD/FAN	
I. VALUE-ADDED TAX		₱ 401,953.93		₱ 401,953.93
Vatable Receipts per VAT Returns		80,473,347.32		80,473,347.32
Add: Sales Still Subject to VAT		₱ 80,875,301.25		₱ 80,875,301.25
Adjusted Vatable Receipts		₱ 9,705,036.15		₱ 9,705,036.15
Output Tax Due				
Less: Input Tax	₱ 21,606,635.70		₱ 21,606,635.70	
Claimed per Returns	21,558,401.23	48,234.47	21,558,401.23	48,234.47
Less: Input Tax Carry-Over		₱ 9,656,801.68		₱ 9,656,801.68
VAT Due		-		-
Less: Tax Payment		9,656,801.68		9,656,801.68
Deficiency Value Added Tax		₱ 5,656,504.65		₱ 5,656,504.65
Add: 20% Interest (7/26/2012 to 6/30/2015)		₱ **15,313,306.33**		₱ **15,313,306.33**
TOTAL AMOUNT DUE				

Notably, this points the Court to the conclusion that petitioner failed to consider respondent's arguments in its request for reconsideration of the PAN and gave no reason for rejecting the explanations and defenses made by respondent in its request for reconsideration to the PAN, as the assessed amounts and the Details of Discrepancies in the FLD are replicas of those in the PAN.

Similar to the *Avon* case, there was no discussion in the FLD about petitioner's findings and the reasons for rejecting respondent's explanations and defenses. Thus, respondent was left unaware of how petitioner or his authorized representative appreciated its explanations and defenses against the PAN.

Indeed, the Commissioner is not obliged to accept taxpayers' explanations; 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

II. COMPROMISE PENALTY Sec. 255 of the NIRC – for the Basic Tax Due of ₱9,656,801.68 Sec. 113 of the NIRC – Non Compliance to Invoicing Requirements			₱	50,000.00 50,000.00			₱	50,000.00 50,000.00
TOTAL AMOUNT DUE			₱	100,000.00			₱	100,000.00

DETAILS OF DISCREPANCY

PAN	FLD
VALUE-ADDED TAX **Sales Still Subject to VAT, ?80,473,347.32** – Verification disclosed that you had sales still subject to Value Added Tax (VAT). The said amount pertained to the revenues intercompany – staff labor and mark up. This was the result of the contract between you and Fluor Daniel Pacific Inc. which is a domestic corporation. Further verification disclosed that this amount was not included in the inward remittances received by your company. Therefore, no proof that would qualify to the inference that the said amount would be part of the exempt sales. Hence, this should be subjected to VAT pursuant to Section 108 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 16-2005. **Compromise Penalty, P100,000.00** - A total compromise penalty of P100,000.00 has been imposed. The first P50,000.00 was imposed against the unpaid basic tax due of P9,656,801.68. The second P50,000.00 was imposed in violation of the invoicing requirements laid down in Section 113 of the 1997 Tax Code. These penalties were further reiterated in the issued Revenue Memorandum Order No. 7-2015. The records of this case disclosed that you have not introduced any evidence to overthrow the validity of our said findings. Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof otherwise our said deficiency VAT assessment shall become final, executory and demandable.	**VALUE-ADDED TAX** **Sales Still Subject to VAT, ?80,473,347.32** – Verification disclosed that you had sales still subject to Value Added Tax (VAT). The said amount pertained to the revenues intercompany – staff labor and mark up. This was the result of the contract between you and Fluor Daniel Pacific Inc. which is a domestic corporation. Further verification disclosed that this amount was not included in the inward remittances received by your company. Therefore, no proof that would qualify to the inference that the said amount would be part of the exempt sales. Hence, this should be subjected to VAT pursuant to Section 108 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 16-2005. **Compromise Penalty, P100,000.00** – A total compromise penalty of P100,000.00 has been imposed. The first P50,000.00 was imposed against the unpaid basic tax due of P9,656,801.68. The second P50,000.00 was imposed in violation of the invoicing requirements laid down in Section 113 of the 1997 Tax Code. These penalties were further reiterated in the issued Revenue Memorandum Order No. 7-2015. The records of this case disclosed that you have not introduced any evidence to overthrow the validity of our said findings. Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing your side of the case within thirty (30) days from receipt hereof otherwise our said deficiency VAT assessment shall become final, executory anddemandable.

conclusions are based, and those facts must appear in the record.[26]

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[27]

Petitioner's disregard of the due process standards and rules under RR No. 12-99, as amended, and his failure to sufficiently inform respondent of the reasons for his conclusions in the FLD/FAN under Section 228 of the 1997 NIRC, as amended, render the same null and void.

Given the foregoing, the Court *En Banc* is one with the Court in Division in holding that respondent's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, and Sections 3.1.2 and 3.1.4 of RR No. 12-99, was violated by petitioner. Due to such violation, the deficiency VAT assessment and compromise penalty from January 01, 2012 to June 30, 2012 (1st and 2nd quarters of 2012), in the aggregate amount of ₱15,413,306.33 are rendered void and could not be enforced against respondent.[28]

Even if there is no violation of due process, the assessment issued against respondent would still be cancelled and/or withdrawn for lack of legal and factual basis.

As aptly observed by the Court in Division, [29] the deficiency VAT assessment arose from the following items:

A. Sales Still Subject to VAT	₱ 80,473,347.32
B. Disallowed Input Tax Carry-Over	21,558,401.23

On *Item A*, petitioner imposed the twelve percent (12%) VAT on respondent's sales amounting to ₱80,473,347.32 based on the following finding as stated in the Details of Discrepancy attached to the FLD:[30]

[26] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[27] *Id.*
[28] *EB* docket, p. 27; Division docket, Pre-Trial Order dated February 15, 2017, p. 379.
[29] *EB* docket, p. 51.
[30] BIR Records, Exhibit "R-9", p. 239.

> **Sales Still Subject to VAT, P80,473,347.32** — Verification disclosed that you had sales still subject to Value Added Tax (VAT). The said amount pertained to the revenues intercompany — staff labor and mark up. This was the result of the contract between you and Flour Daniel Pacific Inc. which is a domestic corporation. Further verification disclosed that this amount was not included in the inward remittances received by your company. Therefore, no proof that would qualify to the interference that the said amount would be part of the exempt sales. Hence, this should be subjected to VAT pursuant to Section 108 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 16-2005.

Allegedly, respondent is mistaken that its sales amounting to ₱80,473,347.32 are exempt from VAT pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to PD No. 1354. According to petitioner, to be entitled to the preferential rate of 8% in lieu of all taxes under Section 1 of PD No. 1354, the following conditions must concur:

1. That there be a service contractor engaged in petroleum operations in the Philippines;

2. That the service contractor subcontracted some of its obligations in the service contract; and

3. That the subcontractor entered into a contract with the service contractor engaged in petroleum operations in the Philippines.

Respondent is not a subcontractor who entered a contract with a service contractor engaged in petroleum operations. Hence, the preferential 8% under PD No. 1354 in relation to Section 109(K) of the Tax Code is not available to it, says petitioner.

The Court *En Banc,* like the Court in Division, agrees with petitioner.

Under Section 1 of PD No. 1354,[31] a domestic or foreign subcontractor entering a contract with a service contractor

[31] IMPOSING FINAL INCOME TAX ON SUBCONTRACTORS AND ALIEN EMPLOYEES OF SERVICE CONTRACTORS AND SUBCONTRACTORS ENGAGED IN PETROLEUM OPERATIONS IN THE PHILIPPINES UNDER PRESIDENTIAL DECREE NO. 87 dated April 21, 1978.

engaged in petroleum operations in the Philippines shall be liable to a preferential tax rate of eight percent (8%).[32]

Indeed, PD No. 1354 will only apply when a contract is entered between the service contractor engaged in petroleum operations in the Philippines and the domestic/foreign subcontractor.

Here, the record reveals that respondent is a subcontractor of the subcontractor and not a subcontractor engaged by a service contractor as contemplated under Section 1 of PD No. 1354. The Court in Division correctly found that SPEX, the service contractor, was not even a party to the Master Workshare Service Agreement (MWSA) executed between respondent and FDPI on January 2, 2012, in which the latter authorized respondent to perform the services within the general scope provided in the Prime Contract entered by SPEX and FDPI.

Settled is the rule that where the language of the law is unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws, and provisions of a taxing act are not to be extended by implication.[33]

Accordingly, the sales made to FDPI amounting to ₱80,473,347.32, broken below, are subject to 12% VAT.

Exhibit	Customer Name	OR No.	OR Date	Amount	PHP Conversion
P-17	FDPI (0302)	9538	3/21/2012	$ 471,720.02	₱ 14,959,643.84
P-18	FDPI (0302)	9548	4/25/2012	469,744.11	15,947,780.78
P-19	FDPI (0302)	9567	6/20/2012	833,344,57	30,017,162.73
P-20	FDPI (0302)	9577	7/25/2012	628,612.65	19,548,758.97
TOTAL				$2,403,421.35	₱ 80,473,346.32

However, while the amount of ₱80,473,347.32 is subject to 12% VAT, respondent correctly pointed out that the amount of ₱19,548,758.97, covered by OR No. 9577 dated *July 25, 2012*, is *not* within the scope of the present assessment as the LOA in

[32] SECTION 1. Tax on subcontractors. — **Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local**: Provided, however, that any income received from all other sources within and without the Philippines in the case of domestic subcontractors and within the Philippines in the case of foreign subcontractors shall be subject to the regular income tax imposed under the National Internal Revenue Code. xxx [*Emphasis supplied]*

[33] *Commissioner of Internal Revenue v. Julieta Ariete*, G.R. No. 164152, January 21, 2010.

the instant case covers only the period from *January 01, 2012 to June 30, 2012*.

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[34] the Supreme Court emphasized that the assessment must be done *within* the scope/coverage of a valid LOA; otherwise, the deficiency tax assessment arising therefrom is a nullity, *viz.*:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. **Equally important is that the revenue officer so authorized must not go beyond the authority given**. In the absence of such an authority, the assessment or examination is a nullity.
>
> As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." **For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998**. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, **it should have done so by including it in the LOA or issuing another LOA.**
>
> Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:
>
> > 3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years["] is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A. [*Emphasis supplied*]

Considering that the amount of ₱19,548,758.97 falls *outside* the coverage of the LOA issued in the present case, the same should not be included and reported under the 1st and 2nd quarters of 2012. Hence, as correctly found by the Court in Division, respondent's adjusted Vatable receipts for the 1st and 2nd quarters of 2012 would be ₱61,326,541.28, with the

[34] G.R. No. 178697, November 17, 2010.

corresponding output tax due of ₱7,359,184.95, computed as follows:

Vatable Receipts per VAT Return	₱ 401,953.93
Add: Sales Still Subject to VAT *(₱80,473,347.32 less ₱19,548,758.97)*	60,924,587.35
Adjusted Vatable Receipts	₱ 61,326,541.28
Output Tax Due	₱ 7,359,184.95

Regarding *Item B*, petitioner submits that the input tax carry-over was properly deducted in the computation of respondent's deficiency VAT assessment. However, as correctly pointed out by the Court in Division, nothing in the FLD or the Details of Discrepancy attached thereto states the legal and factual bases to justify such disallowance. We quote, with agreement, the Court in Division's disquisition on the matter:

> ***B. Disallowed Input Tax Carry-Over***
>
> Respondent disallowed Petitioner's excess input tax credit carried-over to the succeeding period amounting to ₱21,558,401.23. However, no legal and factual bases were provided in the Details of Discrepancy to justify the disallowance of such amount.
>
> "**SEC. 228. *Protesting of Assessment.*** —
>
> xxx xxx 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."
>
> The aforequoted Section 228 of the NIRC of 1997, as amended, in part provides that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made otherwise the assessment is void. This was further implemented by Section 3.1.4 of RR No. 12-99 in this way:
>
> "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 the payment of 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.**"

> Based on the above provisions of the law and regulations, a taxpayer has the right to be fully informed of the law and the facts upon which an assessment is based, the purpose being that the taxpayer should be given the opportunity to refute the findings of the examiners and give its own version or explanation with respect to the alleged findings of deficiencies or discrepancies. This stems from the basic constitutional principle that no person shall be deprived of his property without due process of law. [*Emphasis supplied*]

Thus, even though respondent is liable for output VAT for the assessed gross receipts of ₱60,924,587.35 (as adjusted), it has no deficiency VAT liability for the 1st and 2nd quarters of 2012 as its input tax credits for the same period far exceeded its output tax due of ₱7,359,184.95 by ₱14,247,450.75, *viz.*:

Vatable Receipts per VAT Return		₱ 401,953.93
Add: Sales Still Subject to VAT		60,924,587.35
Adjusted Vatable Receipts		61,326,541.28
Output Tax Due		₱ 7,359,184.95
Less: Input Tax		
Claimed per Return	₱21,606,635.70	
Less: Input Tax Carry-Over	0.00	21,606,635.70
VAT Due		₱ (14,247,450.75)
Less: Tax Payment		0.00
Excess Input Tax		**₱ (14,247,450.75)**

Respondent is not liable to pay the subject compromise penalty.

Petitioner claims that the Court in Division erred when it cancelled and set aside the compromise penalty. According to petitioner, the imposition of the compromise penalty is legal and warranted by the NIRC of 1997, as amended.

The Court *En Banc* is not convinced.

It must be emphasized that the Court cannot compel a taxpayer to pay the compromise penalty because, by its very nature, it implies a *mutual agreement* between the parties with respect to a thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[35] Jurisprudence dictates that the imposition of a compromise penalty without the conformity of the taxpayer is

[35] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

illegal and unauthorized.[36] Therefore, a compromise penalty may be imposed if the taxpayer agrees.

In the instant case, petitioner failed to prove that respondent consented to the payment of the compromise penalty. Hence, petitioner has no basis for imposing the ₱100,000.00 compromise penalty against respondent.

All told, the Court in Division did not err in cancelling the deficiency VAT assessment and compromise penalty in the respective amounts of ₱15,313,306.33 and ₱100,000.00 for January 01, 2012 to June 30, 2012, and in enjoining petitioner from collecting the said amount against respondent.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated May 28, 2021 and Resolution dated December 11, 2021 of the Court's Third Division in CTA Case No. 9267 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[36] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

(With Concurring & Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2567** (CTA Case No. 9267)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.***, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
FLUOR DANIEL, INC., Respondent.	Promulgated: JUN 0 1 2023 4:07 PM

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and affirming the Decision dated May 28, 2021 and assailed Resolution dated December 11, 2021 of the Court's Third Division in CTA Case No. 9267.

I wish to point out that the Revenue Officers (ROs) who continued the audit of petitioner for its tax liabilities for the 1st and 2nd quarters of calendar year (CY) 2012 were not authorized by a valid Letter of Authority (LOA).

Sections 6[1] and 13[2] of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his/her duly authorized representatives before an examination of a taxpayer may be made. An officer of the Bureau of Internal Revenue (BIR) cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[3] and in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[4] the Supreme Court held that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any RO is indispensable to the validity of an assessment.

Moreover, Revenue Memorandum Order No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by a RO other than the officer named in a previous LOA, *viz.*:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, **with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Boldfacing supplied and underlining supplied*)

Furthermore, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[5] the Supreme Court held that the practice of reassigning or transferring ROs originally named in the LOA

---

[1] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

[2] SEC. 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

[3] G.R. No. 178697, November 17, 2010.

[4] G.R. No. 222743, April 5, 2017.

[5] G.R. No. 242670, May 10, 2021.

and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his/her duly authorized representative to examine the taxpayer's books of accounts.

A perusal of the records shows that there was no new LOA issued to RO Junelyn Ivanhoe S. Fernandez and Group Supervisor (GS) Lydia A. Vito in relation to the audit of petitioner's tax liabilities for the 1st and 2nd quarters CY 2012. While Memorandum of Assignment No. LT VATAG-2014-003 dated August 1, 2014[6] was issued, the same cannot be regarded as a valid LOA within the context of the law. Hence, RO Fernandez and GS Vito had no valid authority to continue the audit or investigation on petitioner.

Since the conduct of the audit of petitioner was legally flawed, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[7] and must be slain at sight.

In fine, for want of a valid LOA in favor of RO Fernandez, the audit of petitioner's financial records and documents for the 1st and 2nd quarters of CY 2012 and the Formal Letter of Demand and Final Assessment Notices issued as a consequence thereof are void.

All told, I VOTE to DENY the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[6] Exhibit "R-3", BIR Records, p. 88
[7] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2567** (CTA Case No. 9267)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
FLUOR DANIEL, INC., Respondent.	Promulgated: JUN 01 2023 4:07pm

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague, Justice Lanee S. Cui-David, in upholding: (1) that the subject assessment for value-added tax (**VAT**) is void for violation of due process; and, (2) *assuming arguendo* that the assessment is valid, there is a deficiency output VAT of ₱7,359,184.95.

However, with due respect, I beg to differ with the conclusion reached in the *ponencia* that respondent Fluor Daniel, Inc. (**respondent/FDI**) has no deficiency VAT liability despite the findings of deficiency output VAT. The *ponencia* affirms the Court in Division's computation for deficiency VAT, which effectively utilizes FDI's input tax carry-over as of 30 June 2012 as payment for its deficiency VAT.

The *ponencia* reiterates the Third Division's ruling that petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "disallowance" of

FDI's excess input tax carried over from previous period as of 30 June 2012 (amounting to ₱21,579,443.90[1]) is unjustified because the latter failed to provide any factual and legal bases in the Details of Discrepancies.

I, respectfully, disagree.

Firstly, the disallowance of excess input tax carry-over is not disallowance *per se*. It is employed so as not to disrupt the amount of deficiency tax being assessed for the period. To illustrate, if CIR did not reflect the "disallowance" in the computation of basic deficiency VAT, the Formal Letter of Demand (**FLD**) would have shown the following, which is the Court in Division's computation[2] as affirmed in the *ponencia*:

Vatable Receipts *per* VAT Return		₱ 401,953.93
Add: Sales Still Subject to VAT		60,924,587.35
Adjusted Vatable Receipts		61,326,541.28
Output Tax Due		₱ 7,359,184.95
Less: Input Tax		
Claimed *per* Return	₱21,606,635.70	
Less: Input Tax Carry Over	0.00	21,606,635.70
VAT Due		₱ (14,247,450.75)
Less: Tax Payment		0.00
Excess Input Tax		**₱ (14,247,450.75)**

Based on the foregoing, this would eliminate the deficiency VAT for the period. Hence, if the total allowable input tax is not reduced by the excess input tax carried over to subsequent periods, a portion of the excess input tax that should have been carried forward and utilized in the subsequent period would be utilized and offset against the basic deficiency VAT, which would contradict the premise that the tax benefit from excess input tax carried over redounds to the subsequent period.

Secondly, the decision to not "disallow" or reduce the total allowable input tax would put additional burden on the taxpayer to amend subsequent returns to remove the excess input tax already utilized. Additional burden would also be imposed upon the Bureau of Internal Revenue (**BIR**) to monitor the decisions of this Court to make sure that utilized excess tax credits are not being utilized again in the subsequent periods. This is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government

---

1 Amount is lifted from Line Item No. 20A of the Quarterly Value-Added Tax Return (BIR Form No. 2550-Q) for the second quarter of taxable year 2012, or 30 June 2012, Division Docket (CTA Case No. 9267), Volume I, p. 299.

2 *Rollo*, p. 59.

and so should be collected without unnecessary hindrance.[3] Evidently, to countenance respondent's theory of automatically applying the input VAT **already** carried over to succeeding period (and may have already been exhausted) against its assessed basic deficiency VAT would give rise to confusion and abuse, rendering ineffective our tax assessment and collection system.

Furthermore, respondent failed to proffer any evidence to establish sufficiently that it did not utilize the initial input tax carried over of ₱21,579,443.90 to the succeeding period. Thus, if the Court were to allow this without ascertaining that such excess input tax carried over is still available, taxpayers may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

However, as the assessment is void for violation of respondent's due process, I still vote to **DENY** the Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[3] *Commissioner of Internal Revenue v. Algue, Inc., et al.*, G.R. No. L-28896, 17 February 1988.