Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

G.R. No. 215534

- versus -

LIQUIGAZ PHILIPPINES CORPORATION,
Respondent.

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LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

G.R. No. 215557

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

18 APR 2016

x - x

DECISION

MENDOZA, *J.*:

Presented before us is a novel issue. When may a Final Decision on Disputed Assessment *(FDDA)* be declared void, and in the event that the FDDA is found void, what would be its effect on the tax assessment?

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the May 22, 2014 Decision[1] and the November 26, 2014 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* which affirmed the November 22, 2012 Decision[3] of the CTA Division, Second Division *(CTA Division)*.

Liquigaz Philippines Corporation *(Liquigaz)* is a corporation duly organized and existing under Philippine laws. On July 11, 2006, it received a copy of Letter of Authority *(LOA)* No. 00067824, dated July 4, 2006, issued by the Commissioner of Internal Revenue *(CIR)*, authorizing the investigation of all internal revenue taxes for taxable year 2005. [4]

On April 9, 2008, Liquigaz received an undated letter purporting to be a Notice of Informal Conference *(NIC)*, as well as the detailed computation of its supposed tax liability. On May 28, 2008, it received a copy of the Preliminary Assessment Notice[5] *(PAN)*, dated May 20, 2008, together with the attached details of discrepancies for the calendar year ending December 31, 2005. [6] Upon investigation, Liquigaz was initially assessed with deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱23,931,708.72, broken down as follows:

Expanded Withholding Tax *(EWT)*	₱5,456,141.82
Withholding Tax on Compensation *(WTC)*	₱4,435,463.97
Fringe Benefits Tax *(FBT)*	₱14,040,102.93
TOTAL	**₱23,931,708.72**

Thereafter, on June 25, 2008, it received a Formal Letter of Demand[7] *(FLD)*/ Formal Assessment Notice *(FAN)*, together with its attached details of discrepancies, for the calendar year ending December 31, 2005. The total deficiency withholding tax liabilities, inclusive of interest, under the FLD was ₱24,332,347.20, which may be broken down as follows:

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[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Cielito N. Mindaro-Grulla concurring; Presiding Justice Roman G. del Rosario concurring and dissenting, and Associate Justice Ma. Belen M. Ringpis-Liban dissenting; Associate Justice Erlinda P. Uy on leave; *rollo* (G.R. No. 215557), pp. 44-53.

[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Cielito N. Mindaro-Grulla concurring; Presiding Justice Roman G. del Rosario concurring and dissenting, and Associate Justice Ma. Belen M. Ringpis-Liban dissenting; id. at 70-76.

[3] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda and Associate Justice Cielito N. Mindaro-Grulla concurring; id. at 105-129.

[4] Id. at 45.

[5] *Rollo* (G.R. No. 215534), pp. 80-83.

[6] Id. at 46.

[7] Id. at 87-90.

EWT	₱ 5,535,890.38
WTC	₱ 4,500,169.94
FBT	₱14,296,286.88
TOTAL	**₱24,332,347.20**

On July 25, 2008, Liquigaz filed its protest against the FLD/FAN and subsequently submitted its supporting documents on September 23, 2008.

Then, on July 1, 2010, it received a copy of the FDDA[8] covering the tax audit under LOA No. 00067824 for the calendar year ending December 31, 2005. As reflected in the FDDA, the CIR still found Liquigaz liable for deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱22,380,025.19, which may be broken down as follows:

EWT	₱ 3,479,426.75
WTC	₱ 4,508,025.93
FBT	₱14,392,572.51
TOTAL	**₱22,380,025.19**

Consequently, on July 29, 2010, Liquigaz filed its Petition for Review before the CTA Division assailing the validity of the FDDA issued by the CIR.[9]

The CTA Division Ruling

In its November 22, 2012 Decision, the CTA Division partially granted Liquigaz's petition cancelling the EWT and FBT assessments but affirmed with modification the WTC assessment. It ruled that the portion of the FDDA relating to the EWT and the FBT assessment was void pursuant to Section 228 of the National Internal Revenue Code *(NIRC)* of 1997, as implemented by Revenue Regulations (RR) No. 12-99.

The CTA Division noted that unlike the PAN and the FLD/FAN, the FDDA issued did not provide the details thereof, hence, Liquigaz had no way of knowing what items were considered by the CIR in arriving at the deficiency assessments. This was especially true because the FDDA reflected a different amount from what was stated in the FLD/FAN. The CTA Division explained that though the legal bases for the EWT and FBT assessment were stated in the FDDA, the taxpayer was not notified of the factual bases thereof, as required in Section 228 of the NIRC.

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[8] *Rollo* (G.R. No. 215557), pp. 103-104.
[9] Id. at 46.

On the other hand, it upheld the WTC assessment against Liquigaz. It noted that the factual bases used in the FLD and the FDDA with regard thereto were the same as the difference in the amount merely resulted from the use of a different tax rate.

The CTA Division agreed with Liquigaz that the tax rate of 25.40% was more appropriate because it represents the effective tax compensation paid, computed based on the total withholding tax on compensation paid and the total taxable compensation income for the taxable year 2005. It did not give credence to Liquigaz's explanation that the salaries account included accrued bonus, 13th month pay, *de minimis* benefits and other benefits and contributions which were not subject to withholding tax on compensation. The CTA Division relied on the report prepared by Antonio O. Maceda, Jr., the court-commissioned independent accountant, which found that Liquigaz was unable to substantiate the discrepancy found by the CIR on its withholding tax liability on compensation. The dispositive portion of the CTA Division decision reads:

> **WHEREFORE**, the *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, the assessments for deficiency expanded withholding tax in the amount of ₱3,479,426.75 and fringe benefits tax in the amount of ₱14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby **CANCELLED** and **WITHDRAWN** for being void.
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> However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:
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> | | |
> |---|---|
> | Salaries per ITR | ₱52,239,313.00 |
> | Less: Salaries per Alphalist | ₱42,921,057.16 |
> | Discrepancy | ₱9,318,255.84 |
> | Tax rate | 25.40% |
> | Basic Withholding Tax on Compensation | ₱2,366,836.98 |
> | Add: 25% Surcharge | ₱591,709.25 |
> | **Total Amount Due** | ₱2,958,546.23 |
>
> In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum of the basic deficiency withholding tax on compensation of ₱2,958,546.23 computed from January 20, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

> The compromise penalty of ₱25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.
>
> **SO ORDERED**.[10]

Both the CIR and Liquigaz moved for reconsideration, but their respective motions were denied by the CTA Division in its February 20, 2013 Resolution.

Aggrieved, they filed their respective petitions for review before the CTA *En Banc*.

The CTA En Banc Ruling

In its May 22, 2014 Decision, the CTA *En Banc* affirmed the assailed decision of the CTA Division. It reiterated its pronouncement that the requirement that the taxpayer should be informed in writing of the law and the facts on which the assessment was made applies to the FDDA—otherwise the assessment would be void. The CTA *En Banc* explained that the FDDA determined the final tax liability of the taxpayer, which may be the subject of an appeal before the CTA.

The CTA *En Banc* echoed the findings of the CTA Division that while the FDDA indicated the legal provisions relied upon for the assessment, the source of the amounts from which the assessments arose were not shown. It emphasized the need for stating the factual bases as the FDDA reflected *different* amounts than that contained in the FLD/FAN.

On the other hand, the CTA *En Banc* sustained Liquigaz's WTC assessment. It observed that the basis for the assessment was the same for the FLD and the FDDA, which was a comparison of the salaries declared in the Income Tax Return *(ITR)* and the Alphalist that resulted in a discrepancy of ₱9,318,255.84. The CTA *En Banc* highlighted that the change in the amount of assessed WTC deficiency simply arose from the revision of the tax rate used—from 32% to the effective tax rate of 25.40% suggested by Liquigaz.

Further, it disregarded the explanation of Liquigaz on the ground of its failure to specify how much of the salaries account pertained to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to the Social Security System, Medicare and Pag-Ibig Fund. The CTA *En Banc* reiterated that even the court-commissioned independent accountant reported that Liquigaz was unable to substantiate the discrepancy found by the CIR.

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[10] Id. at 127-128.

Both parties moved for a partial reconsideration of the CTA *En Banc* Decision, but the latter denied the motions in its November 26, 2014 Resolution.

Not satisfied, both parties filed their respective petitions for review, anchored on

SOLE ISSUE

WHETHER THE COURT OF TAX APPEALS *EN BANC* ERRED IN PARTIALLY UPHOLDING THE VALIDITY OF THE ASSESSMENT AS TO THE WITHHOLDING TAX ON COMPENSATION BUT DECLARING INVALID THE ASSESSMENT ON EXPANDED WITHHOLDING TAX AND FRINGE BENEFITS TAX.

The present consolidated petitions revolve around the same FDDA where Liquigaz seeks the cancellation of its remaining tax liability and the CIR aims to revive the assessments struck down by the tax court. Basically, Liquigaz asserts that like its assessment for EWT and FBT deficiency, the WTC assessment should have been invalidated because the FDDA did not provide for the facts on which the assessment was based. It argues that it was deprived of due process because in not stating the factual basis of the assessment, the CIR did not consider the defenses and supporting documents it presented.

Moreover, Liquigaz is adamant that even if the FDDA would be upheld, it should not be liable for the deficiency WTC liability because the CIR erred in comparing its ITR and Alphalist to determine possible discrepancies. It explains that the salaries of its employees reflected in its ITR does not reflect the total taxable income paid and received by the employees because the same refers to the gross salaries of the employees, which included amounts that were not subject to WTC.

On the other hand, the CIR avers that the assessments for EWT and FBT liability should be upheld because the FDDA must be taken together with the PAN and FAN, where details of the assessments were attached. Hence, the CIR counters that Liquigaz was fully apprised of not only the laws, but also the facts on which the assessment was based, which were likewise evidenced by the fact that it was able to file a protest on the assessment. Further, the CIR avers that even if the FDDA would be declared void, it should not result in the automatic abatement of tax liability especially because RR No. 12-99 merely states that a void decision of the CIR or his representative shall not be considered as a decision on the assessment.

The Court's Ruling

Central to the resolution of the issue is Section 228[11] of the NIRC and RR No. 12-99,[12] as amended. They lay out the procedure to be followed in tax assessments. Under Section 228 of the NIRC, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In implementing Section 228 of the NIRC, RR No. 12-99 reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 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

[11] Sec. 228. **Protesting of Assessment**. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers. *Provided*, *however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return;
(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(d) When the excise tax due on excisable articles had not been paid; or
(e) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded, or transferred to non-exempt persons.

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 party, 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, executor and demandable.** (Emphases supplied)

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

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 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 (see illustration in ANNEX A hereof). 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. xxx

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*** (see illustration in ANNEX B hereof). xxx

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. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period

> for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. xxx
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> 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*** (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision*.
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> [Emphases and Underscoring Supplied]

The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.

The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory.[13] The requirement of providing the taxpayer with written notice of the factual and legal bases applies both to the FLD/FAN and the FDDA.

Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process—to afford the taxpayer adequate opportunity to file a protest on the assessment and thereafter file an appeal in case of an adverse decision.

To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown.

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[13] *CIR v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014, 729 SCRA 113, 128.

A void FDDA does not ipso facto render the assessment void

The CIR and Liquigaz are at odds with regards to the effect of a void FDDA. Liquigaz harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA. On the other hand, the CIR believes that a void FDDA does not *ipso facto* result in the nullification of the assessment.

In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." In *St. Stephen's Association v. Collector of Internal Revenue*,[14] the Court has long recognized that a "decision" differs from an "assessment," to wit:

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment . . .*"

The difference is likewise readily apparent in Section 7[15] of R.A. 1125,[16] as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is

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[14] 104 Phil. 314, 317 (1958).

[15] SEC. 7. ***Jurisdiction.*** – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
   1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
   2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx

[16] *An Act Creating the Court of Tax Appeals*.

clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide.

Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment.

With the effects of a void FDDA expounded, the next issue to be addressed is whether the assailed FDDA is void for failure to state the facts and law on which it was based.

The FDDA must state the facts and law on which it is based to provide the taxpayer the opportunity to file an intelligent appeal

The CIR and Liquigaz are also in disagreement whether the FDDA issued was compliant with the mandatory requirement of written notice laid out in the law and implementing rules and regulations. Liquigaz argues that the FDDA is void as it did not contain the factual bases of the assessment and merely showed the amounts of its alleged tax liabilities.

A perusal of the FDDA issued in the case at bench reveals that it merely contained a table of Liquigaz's supposed tax liabilities, without providing any details. The CIR explains that the FDDA still complied with the requirements of the law as it was issued in connection with the PAN and FLD/FAN, which had an attachment of the details of discrepancies. Hence, the CIR concludes that Liquigaz was sufficiently informed in writing of the factual bases of the assessment.

The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[17] Merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient. In *CIR v. Reyes*,[18] the Court further explained:

> In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by Republic Act (RA) No. 8424, otherwise known as the Tax Reform Act of 1997.
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> *First*, RA 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid. xxx
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> At the time the pre-assessment notice was issued to Reyes, RA 8424 already stated that the taxpayer must be informed of both the law and facts on which the assessment was based. Thus, the CIR should have required the assessment officers of the Bureau of Internal Revenue (BIR) to follow the clear mandate of the new law. The old regulation governing the issuance of estate tax assessment notices ran afoul of the rule that tax regulations — old as they were — should be in harmony with, and not supplant or modify, the law. xxx
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> *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.
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> 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**

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[17] *CIR v. Bank of the Philippine Islands*, 549 Phil. 886, 899 (2007).
[18] 516 Phil. 176. 186-190 (2006).

> **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.
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> 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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> [Emphases Supplied]

In *CIR v. United Salvage and Towage (Phils.), Inc.*,[19] the Court struck down an assessment where the FAN only contained a table of the taxes due without providing further detail thereto, to wit:

> In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. **Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of P48,461.76 is collectible against respondent and how the same was arrived at.** Any short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced, in consonance with the ruling in Commissioner of Internal Revenue v. Enron Subic Power Corporation to wit:
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> > The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.
> >
> > We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-

[19] Supra note 13.

> assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.
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> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.
>
> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void. . . . .
>
> xxx
>
> Applying the aforequoted rulings to the case at bar, it is clear that the assailed deficiency tax assessment for the EWT in 1994 disregarded the provisions of Section 228 of the Tax Code, as amended, as well as Section 3.1.4 of Revenue Regulations No. 12-99 by not providing the legal and factual bases of the assessment. Hence, the formal letter of demand and the notice of assessment issued relative thereto are void.
>
> [Emphasis Supplied]

Nevertheless, the requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied. Emphasis on the purpose of the written notice is important. The requirement should be in place so that the taxpayer could be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision. In *Samar-I Electric Cooperative v. CIR*,[20] the Court elaborated:

> The above information provided to petitioner enabled it to protest the PAN by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency withholding taxes and assessment of minimum corporate income tax despite petitioner's position that it remains exempt therefrom. In its letter-reply dated May 27, 2002, respondent answered the arguments raised by petitioner in its protest, and requested it to pay the assessed deficiency on the date of payment stated in the PAN. A second protest letter dated June 23, 2002 was sent by petitioner, to which respondent replied (letter dated July 8, 2002) answering each of the two issues reiterated by petitioner: (1)

[20] G.R. No. 193100, December 10, 2014.

> validity of EO 93 withdrawing the tax exemption privileges under PD 269; and (2) retroactive application of RR No. 8-2000. The FAN was finally received by petitioner on September 24, 2002, and protested by it in a letter dated October 14, 2002 which reiterated in lengthy arguments its earlier interpretation of the laws and regulations upon which the assessments were based.
>
> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated.

Thus, substantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer would be eventually apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.

The above-cited cases refer to the compliance of the FAN/FLD of the due process requirement embodied in Section 228 of the NIRC and RR No. 12-99. These may likewise applied to the FDDA, which is similarly required to include a written notice of the factual and legal bases thereof. Without sounding repetitious, it is important to note that Section 228 of the NIRC did not limit the requirement of stating the facts and law only to the FAN/FLD. On the other hand, RR No. 12-99 detailed the process of assessment and required that both the FAN/FLD and the FDDA state the law and facts on which it is based.

Guided by the foregoing, the Court now turns to the FDDA in issue.

It is undisputed that the FDDA merely showed Liquigaz' tax liabilities without any details on the specific transactions which gave rise to its supposed tax deficiencies. While it provided for the legal bases of the assessment, it fell short of informing Liquigaz of the factual bases thereof. Thus, the FDDA as regards the EWT and FBT tax deficiency did not comply with the requirement in Section 3.1.6 of RR No. 12-99, as amended, for failure to inform Liquigaz of the factual basis thereof.

The CIR erred in claiming that Liquigaz was informed of the factual bases of the assessment because the FDDA made reference to the PAN and FAN/FLD, which were accompanied by details of the alleged discrepancies. The CTA *En Banc* highlighted that the amounts in the FAN and the FDDA were **different**. As pointed out by the CTA, the FLD/FAN and the FDDA reflected the following amounts:[21]

Basic Deficiency Tax	**Expanded Withholding Tax**	**Withholding Tax on Compensation**	**Fringe Benefits Tax**	**Total**
Per FLD	₱3,675,048.78	₱2,981,841.84	₱9,501,564.07	₱16,158,454.72
Per FDDA	₱1,823,782.67	₱2,366,836.98	₱7,572,236.16	₱11,762,855.81
Difference	**₱1,851,266.11**	**₱615,004.89**	**₱1,929,327.91**	**₱4,395,598.91**

As such, the Court agrees with the tax court that it becomes even more imperative that the FDDA contain details of the discrepancy. Failure to do so would deprive Liquigaz adequate opportunity to prepare an intelligent appeal. It would have no way of determining what were considered by the CIR in the defenses it had raised in the protest to the FLD. Further, without the details of the assessment, it would open the possibility that the reduction of the assessment could have been arbitrarily or capriciously arrived at.

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

On the other hand, the Court agrees that the FDDA substantially informed Liquigaz of its tax liabilities with regard to its WTC assessment. As highlighted by the CTA, the basis for the assessment was the same for the FLD and the FDDA, where the salaries reflected in the ITR and the alphalist were compared resulting in a discrepancy of ₱9,318,255.84. The change in the amount of assessed deficiency withholding taxes on compensation merely arose from the modification of the tax rates used—32% in the FLD and the effective tax rate of 25.40% in the FDDA. The Court notes it was Liquigaz itself which proposed the rate of 25.40% as a

[21] *Rollo* (G.R. No. 215557), p. 50.

more appropriate tax rate as it represented the effective tax on compensation paid for taxable year 2005.[22] As such, Liquigaz was effectively informed in writing of the factual bases of its assessment for WTC because the basis for the FDDA, with regards to the WTC, was identical with the FAN— which had a detail of discrepancy attached to it.

Further, the Court sees no reason to reverse the decision of the CTA as to the amount of WTC liability of Liquigaz. It is a time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside because by the very nature of the CTA, it is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.[23] The issue of Liquigaz' WTC liability had been thoroughly discussed in the courts *a quo* and even the court-appointed independent accountant had found that Liquigaz was unable to substantiate its claim concerning the discrepancies in its WTC.

To recapitulate, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void—but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[24]

WHEREFORE, the May 22, 2014 Decision and the November 26, 2014 Resolution of the Court of Tax Appeals *En Banc* are **PARTIALLY AFFIRMED** in that the assessment on deficiency Withholding Tax in Compensation is upheld.

The case is **REMANDED** to the Court of Tax Appeals for the assessment on deficiency Expanded Withholding Tax and Fringe Benefits Tax.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[22] Id. at 123.
[23] *CIR v. Mirant (Philippines) Operations, Corporation*, 667 Phil. 208, 222 (2011).
[24] *Philippine Health Care Providers, Inc. v. CIR*, 616 Phil. 387, 411 (2009).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice