REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2489** (CTA Case No. 9758)
- versus -	*Present:* **DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
CHUN LANG CHAN, then operating under business name TOKAI RUBBER PRODUCTS, represented by Li Chuan Chang, *Respondent.*	Promulgated: SEP 14 2022 4:05 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR), under Section 3 (b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals (RRCTA),[3] assailing the Decision dated December 3, 2020 (Assailed Decision) and the Resolution dated May 26, 2021 (Assailed Resolution) of the Court's Second Division (Court in Division) in CTA Case No. 9758, (which cancelled and set aside the assessments issued by petitioner against respondent for its alleged deficiency income tax and value-added tax (VAT) for the

[1] *Rollo*, pp.1-36, with annexes.

[2] SEC. 3. Who may appeal; period to file petition. – ... (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.

[3] A.M. No. 05-11-07-CTA, November 22, 2005.

taxable period January 1, 2014 to November 13, 2014, in the amount of ₱13,104,242.28, inclusive of interests; and denied petitioner's motion for reconsideration, respectively.)

THE PARTIES

Petitioner is the duly appointed CIR vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code or other laws or regulations administered by the Bureau of Internal Revenue (BIR), subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended. Her office is on 5th floor, BIR National Office Building, Quezon City.

Respondent Chun Lang Chan is of legal age, a naturalized Filipino, residing at No. 15 Isidro Francisco Street, Malinta, Valenzuela City. He is registered with the BIR with Tax Identification Number (TIN) 103-002-159 as a sole proprietor operating under the trade name Tokai Rubber Products, which is engaged in the manufacturing of rubber products using rubber as its raw materials in the production of rubber conveyor, rubber tires and tubes. His business is then registered with the Department of Trade and Industry (DTI) and with the BIR under Certificate of Registration No. 3RC0000071098 as a VAT-registered entity on April 26, 2000. He is represented by Li Chuan Chang, who is of legal age, a naturalized Filipino, with the same address as that of the respondent.

THE FACTS

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

> On September 17, 2014, [respondent] received the *Letter of Authority* (LOA) No. LOA-024-2014-00000337 (SN: eLA201100073243) dated September 16, 2014, authorizing Revenue Officer (RO) Rafael Lentejas II and Group Supervisor (GS) Henry Sarmiento, to examine his books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2013 to December 31, 2013.

[4] *Rollo*, pp. 11-15.

Subsequently, on November 13, 2014, [respondent] filed an *Application for Registration Information Update* (BIR Form No. 1905) with the BIR, for the cessation of his registration [specifically marking "Permanent closure of business (head office) of an individual"].

[Respondent] filed his *Annual Income Tax Return* for the calendar year 2014 on April 12, 2015.

On May 11, 2015, pursuant to an agreement with Revenue District Officer Alfredo P. Santos, [respondent] paid the deficiency taxes for calendar year 2013, in the aggregate amount of ₱230,393.98.

Thereafter, [respondent] received the LOA No. LOA-024-2015-00000080 (SN: eLA201100097262) dated May 22, 2015 on June 4, 2015, authorizing the same RO and GS, to examine his books of accounts and other accounting records for all revenue taxes for the period January 1, 2014 to November 13, 2014, pursuant to mandatory audit due to cessation of business.

On September 20, 2016, [respondent] received the *Preliminary Assessment Notice* (PAN) dated September 5, 2016, wherein the BIR ascertained that [respondent] have [*sic*] deficiency income tax and value-added tax (VAT), in the aggregate amount of ₱10,744,598.29. In reply thereto, on October 4, 2016, [respondent] filed the letter dated October 3, 2016 with the BIR.

On June 28, 2017, [respondent] received the *Formal Letter of Demand* (FLD) and *Assessment Notices*, all dated June 16, 2017, assessing him of deficiency income tax and VAT, in the total amount of ₱13,104,242.28.

[Respondent] filed his *Formal Protest* dated July 5, 2017 with the BIR, on July 6, 2017, and requested for a reinvestigation.

PROCEEDINGS BEFORE THIS COURT

[Respondent] filed the instant *Petition for Review* on January 26, 2018.

In his *Answer to the Petition for Review* filed on April 19, 2018, [petitioner] interposed his special and affirmative defense that the disallowance of [respondent]'s inventory written off/claim for deduction of alleged obsolete inventories is proper, for failure of [respondent] to justify and/or substantiate the claimed expense in accordance with law, existing regulations and supporting jurisprudence.

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[Respondent] filed his *Reply (To [Petitioner]'s Answer)* on April 30, 2018.

The pre-trial conference was set, and held, on May 24, 2018. Prior thereto, *[Respondent]'s Pre-Trial Brief* was filed on May 21, 2018; while *[Petitioner]'s Pre-Trial Brief* was submitted on May 23, 2018.

[Respondent] filed a *Manifestation* on July 17, 2018, informing the Court that the parties failed to reach an agreement on stipulations other than those already admitted in their pleadings. The Court then issued the Pre-Trial Order dated August 1, 2018, deeming the termination of the pre-trial.

As trial ensued, [respondent] presented documentary and testimonial evidence. [Respondent] offered the testimonies of the following individuals, namely: (1) Ms. Li Chuan Chang, [respondent]'s authorized representative; (2) Ms. Cristina Reyes Castro, accountant of Tokai Rubber Products; (3) Mr. Joey D. Clemenia, a dealer-supplier of natural rubber; (4) Ms. Chang Ming Hung, former Plant Supervisor of Tokai Rubber Products; and (5) Ms. Marysol O. Go, a translator of Chinese characters.

On October 11, 2018, [respondent] filed his *Formal Offer of Evidence*. [Petitioner] failed to file his comment thereon. In the Resolution dated December 17, 2018, the Court admitted [respondent]'s Exhibits, except for the following:

1. Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-50", "P-50-a", "P-50-b", "P-50-c", "P-50-d", "P-50-e", "P-50-f", "P-50-g", "P-50-h", "P-50-i", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-64", "P-65", "P-70", "P-71", and "P-72", for failure to submit the duly marked exhibits; and

2. Exhibit "P-50-j", for failure to present the original for comparison and for failure to identify.

[Respondent] then filed its *Motion for Reconsideration* on January 24, 2019. [Petitioner] likewise failed to file his comment thereon. In the Resolution dated April 5, 2019, the Court partially granted [respondent]'s *Motion for Reconsideration*, admitting Exhibits "P-50", "P-50-a", "P-50-b", "P-50-c", "P-50-d", "P-50-e", "P-50-f", "P-50-g", "P-50-h", "P-50-i", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", but *still* denying Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-

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> 42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-64", "P-65", "P-70", "P-71", and "P-72", and Exhibit "P-50-j", upon the same grounds indicated in the Resolution dated December 17, 2018.
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> [Respondent] then filed a *Motion to Admit Denied Exhibits* on May 14, 2019. [Petitioner] again failed to file his comment thereon. In the Resolution dated July 19, 2019, the Court admitted Exhibits "P-36", "P-36-a", "P-38", "P-39", "P-40-a", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46" to "P-46-d", "P-47" to "P-47b", "P-48", "P-49", "P-64", "P-65", "P-70", "P-71", and "P-72".
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> For his part, [petitioner] also presented his documentary and testimonial evidence. He proffered the testimonies of the following Revenue Officers of the BIR, namely: (1) Mr. Rafael Lentejas III [*sic*], and (2) Ms. Cindy Charlotte D. Sinogbohan.
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> On December 2, 2019, [petitioner] filed his *Formal Offer of Evidence*. [Respondent] filed his *Comment (To [Petitioner]'s Formal Offer of Evidence) and Motion to Adopt and Formally Offer Certain Evidence of [Petitioners] as Additional Evidence for [Respondent]* on December 5, 2019. The Court then admitted all of [petitioner]'s Exhibits, but denied [respondent]'s *Motion to Adopt and Formally* [*sic*], in the Resolution dated January 16, 2020.
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> On February 20, 2020, *[Petitioner]'s Memorandum* was filed; while on March 13, 2020, [respondent] filed [his] *Memorandum*.
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> On June 15, 2020, this case was considered submitted for decision.

On December 3, 2020, the Court in Division promulgated the assailed Decision,[5] and disposed the case in this wise:

> **WHEREFORE**, the instant *Petition for Review* is **GRANTED**. Accordingly, the assailed FLD and *Assessment Notices*, all dated June 16, 2017, holding [respondent] liable for deficiency income tax and VAT, for taxable period January 1, 2014 to November 13, 2014 (retirement), in the total amount of ₱13,104,242.28, inclusive of interests, are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**

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[5] *Id.* at 27.

Aggrieved, petitioner filed the Motion for Reconsideration on December 21, 2020, which was denied by the Court in Division in its assailed Resolution[6] dated May 26, 2021, with the following *fallo*:

> **WHEREFORE**, premises considered, [petitioner]'s Motion for Reconsideration (Notice of Decision promulgated on December 3, 2020) is **DENIED** for lack of merit.
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> **SO ORDERED.**

On June 23, 2021, petitioner filed this Petition for Review.[7]

On July 23, 2021, respondent filed his *Comment (Petition for Review dated June 22, 2021)*.[8]

In a Resolution dated July 29, 2021,[9] this Court directed petitioner to file: (1) a compliant Verification/Certification under Sections 4 and 5, Rule 7 of the Revised Rules of Civil Procedure; and (2) the affidavit of service.

On October 7, 2021, this Court received petitioner's *Compliance*[10] submitting a compliant Verification/ Certification and affidavit of service.

On March 4, 2022, the Court noted respondent's *Comment (Petition for Review dated June 22, 2021)*[11] and the subsequent *Compliance/ Manifestation and Addendum to Comment dated 21 July 2021.*[12]

In a Resolution dated May 4, 2022, the Court submitted the present case for decision, considering that the parties decided not to have the instant case mediated.

THE ISSUE

Petitioner raises the following ground for the resolution of the Court *En Banc*:

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[6] *Id.* at 29-33.
[7] *Id.* at 1-9.
[8] *Id.* at 37-43.
[9] *Id.* at 45-46.
[10] *Id.* at 54-56.
[11] *Id.* at 37-43.
[12] *Id.* at 65-71.

> **THE 2ND DIVISION OF THE HONORABLE COURT OF TAX APPEALS ERRED IN CANCELLING THE ASSESSMENT ON DEFICIENCY INCOME TAX IN THE AMOUNT OF PHP8,666,1203.84** [*sic*] **AND DEFICIENCY VALUE-ADDED TAX IN THE AMOUNT OF PHP4,438,038.44 FOR THE PERIOD FROM JANUARY 1, 2014 TO NOVEMBER 13, 2014 DUE TO THE FAILURE OF THE PETITIONER TO OBSERVE THE DUE PROCESS REQUIREMENTS ENSHRINED IN RR 12-99, AS AMENDED.**

Petitioner's arguments

Petitioner contends that respondent was accorded the due process requirements enshrined in Revenue Regulations (RR) No. 12-99, as amended. Respondent was furnished with a copy of the Preliminary Assessment Notice (PAN) and Assessment Notices with Formal Letter of Demand (FLD); hence, it follows that the respondent was accorded the due process requirements.

Petitioner posits that respondent was given an opportunity to file his protest, but he failed to submit the necessary documents to refute the assessment. Respondent's failure to support his protest leads to the assessment against him to become final, executory, and demandable.

Petitioner further avers that she should not be blamed for the reiteration of the assessment against respondent considering that respondent failed to support his protest.

Respondent's comment

Respondent counters that he timely refuted the PAN by a 12-page Reply raising issues and refuting the assessment but was ignored by petitioner. Respondent avers that his Protest to the FLD/Assessment Notices was supported with the same documents that he attached to his Reply, which he claims that petitioner did not read, depriving him of the right to be heard.

Respondent adds that Revenue Officer (RO) Rafael Lentejas II acted beyond his authority by continuing with the audit beyond the prescribed 120-day period without revalidating the LOA.

THE COURT *EN BANC'S* RULING

The instant Petition for Review was filed on time.

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 RRCTA states:

> **SEC. 3**. *Who may appeal; period to file petition.* — xxx
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> 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*)

On June 9, 2021, petitioner received a copy of the assailed Resolution denying the motion for reconsideration for lack of merit. Thus, petitioner had fifteen (15) days from June 9, 2021, or until June 24, 2021, to file a Petition for Review before the Court *En Banc*.

On June 23, 2021, petitioner filed the present Petition. Hence, it was timely filed.

The Court shall now proceed to determine the validity of the assessments.

The FLD/Assessment Notices issued by the BIR are void for failure to comply with the due process requirement.

On the issue of whether petitioner failed to observe the due process requirements under RR No. 12-99, as amended, Section

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228 of the 1997 NIRC, as amended, mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. It states, in part:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> ... ...
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> 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. *(Emphasis supplied)*

Relative thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, implements and specifies the *due process requirement* in the issuance of a deficiency tax assessment, to wit:

> SEC. 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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> ...
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> 3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** ...
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> ... ...
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — **The Formal Letter of Demand and Final Assessment Notice (FLD/FAN)** shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax

> or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be** <u>**void**</u> ... *(Emphasis supplied)*

Based on the foregoing, the importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228 of the 1997 NIRC, as amended, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[13] RR No. 12-99, as amended by RR No. 18-2013, 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 1997 NIRC, as amended, and 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 [or her], 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).[14]

In the instant case, petitioner insists that respondent was accorded the due process requirement enshrined in RR No. 12-99, as amended. Quoting Section 3 thereof, petitioner contends, in his Petition for Review,[15] that:

> Based on the above-quoted provisions of the revenue issuance, it is quite clear that the Respondent was furnished with a copy of the Preliminary Assessment Notice (Exhibit R-7) and Assessment Notices with Formal Letter of Demand (Exhibit R-8), hence, it follows that the Respondent was accorded the due process requirements.
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> An opportunity was given to the Respondent to file its protest (Annex D of Respondent's Petition for Review), however, he failed to submit the necessary documents to refute the assessment made against him. The failure of the Respondent to support his protest leads to the assessment against him to become final, executory and demandable.

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[13] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay vs. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[14] *Id.*
[15] *Rollo*, pp. 4-6.

Petitioner should not be blamed for the reiteration of the assessment against the Respondent considering that it was the Respondent's failure to support his protest that leads to the finality of the assessment.

Moreover, petitioner diligently complied with the due process requirements enshrined in the above-quoted revenue issuance.

Taxes are the lifeblood of the government and so should be collected without hindrance. *(Commissioner of Internal Revenue vs. Fitness by Design, Inc., G.R. No. 215957).*

Respondent counters, in his Comment to the Petition for Review,[16] that:

... ...

4. The above contentions [*sic*] of the petitioner is not true.

5. Documents offered in evidence by the respondent disclosed that within the prescribed 15-day period under BIR rules, Respondent timely refuted the Preliminary Assessment Notice (PAN) dated September 5, 2016, on October 3, 2016 by a 12-page reply raising the following issues and/or refuting the computation of the assessments but were all ignored by the petitioner. It seems that the following refutation were not even read: ...

... ...

6. Under the BIR rules, a taxpayer is given 60 days from the date of protest within which to submit documents to support its protest. The petitioner contended that herein Respondent was given this opportunity to submit documents to support its protest but failed to submit said documents.

With all due respect, Respondent begs to disagree with the petitioner's contention

When respondent filed its formal protest ...to the final assessments and formal letters of demand...said protest was duly supported with documents marked as Annexes 1 to 17. These are the same documents attached to the Reply of the respondent to the PAN which was ignored by the petitioner.

Apart from the above-cited documents attached to the protest, respondent submitted voluminous documents in compliance with the examiner's request for presentation of

[16] *Rollo*, *Comment*, pars. 4-6, pp. 38-40.

> documents during the examination of the company's books marked as Annexes A to QQ.
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> Clearly from the above discussion, it is very apparent that the petitioner just ignored the voluminous documents submitted by respondent and did not bother to read and act on these documents depriving the respondent of its right to be heard.
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> 7. In an addendum to its protest, respondent manifested to adopt the documents also attached to its reply dated October 3, 2016.
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> ... ...
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> 9. Clearly petitioner did not bother to comply with the requirement that for every assessment, the details, the facts, and the law, rules and regulations or jurisprudence must be provided to the taxpayer, otherwise, the assessment shall be null and void.

The Court *En Banc* agrees with respondent.

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.[17]

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* (*Avon*),[18] cited in the assailed Decision, the Supreme Court stressed that the taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but <u>the Commissioner and their subordinates must give *due consideration* to these,</u> in making their conclusions on the taxpayers' liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions. Failure to do so constitutes a violation of the taxpayer's right to due process.[19]

In *Avon*, the Supreme Court declared as null and void the FLD/FAN by reason of the BIR's total disregard of the due process when it failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it despite the latter's defenses and submission of supporting documents. by the taxpayer, *viz.*:

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[17] *Lourdes College vs. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.
[18] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[19] *Lourdes College vs. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021, citing *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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, <u>did not even comment or address the defenses and documents submitted by Avon</u>**. 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.

... ...

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

... ...

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.**

In *Edwards v. McCoy*:

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, **without the corresponding duty on the part of the board to consider it, is vain**. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.

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> In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts s ***the tribunal must consider the evidence presented.***"
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> ... ...
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> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner failed to acknowledge these submissions and instead issued *identical* Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. ..." (*Emphasis supplied, citation omitted*)

Here, petitioner issued the PAN against respondent on September 5, 2016, wherein it was ascertained that respondent had deficiency income tax and VAT in the aggregate amount of ₱10,744,598.29. On October 4, 2016, respondent filed his Reply to the PAN, requesting for the reconsideration and revision of the assessment, and raising the following issues:

> a. In respondent's financial operations for 2014 under petitioner's examination, respondent had not claimed expenses/inventory losses of ₱13,232,090 as disallowed by the examiner. How could this claim be possible when total reported expenses claimed by the company was only ₱406,228 as shown by the financial statements for 2014.
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> b. As to the ₱1,576,134 interest payments not recorded in the company's disbursement books, respondent explained that these were interest payments to personal loans of the proprietor. But the examiner presumed this to be undeclared source of income without giving the details of facts of his findings. There is no loans payable in the financial statements of the respondent so how could these interest payments be charged against company's operations?
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> c. As to the alleged disallowed disbursements of ₱3,846,996.89, respondent explained that some of these disbursements were not recorded in the company's books as these were expenses of companies like Accorn Rubber Mfg and Tokai Rubberbelt & other product Mfg. Corp. where respondent has also equity investments. Some expenses such as permits and licenses and taxes paid were filed in other folders and not attached to the vouchers.

> d. As to the alleged inventories end worth ₱19,059,360.76 which the BIR examiner declared to be a "deemed sale transaction", respondent requested for the details of how the amount was arrived at, but said request fell on deaf ears.
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> e. As to the inventory of non-current assets of ₱1,239,802.79, respondent submitted a Deed of Assignment showing that the remaining assets of the company were assigned to a corporation as respondent's subscription payment of his subscribed capital stock making him a majority stockholder and therefore it is incorrect to declare these assets as a "deemed sale transaction".
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> f. That the BIR examiner conducted an ocular inspection of such worthless inventories written off but did not issue any certification and/or findings of such ocular inspection.

Subsequently, or on June 28, 2017, petitioner issued the subject FLD/Assessment Notices all dated June 16, 2017, with findings of deficiency income tax and VAT that were copied *verbatim* from the PAN, except for the amounts of interest, despite respondent's timely submission of Reply, together with supporting documents.

Similar to *Avon* case, respondent submitted his Reply and supporting documents upon receipt of the PAN. Nevertheless, the BIR issued the FLD and Assessment Notices which merely reiterated and copied *verbatim* the assessments in the PAN, except for the amounts of interest. Petitioner did not comment or address the matters raised and the documents submitted by respondent. There was no discussion of the petitioner's findings in a manner that respondent may know the various issues involved and the reasons for the assessments. Thus, respondent was left unaware on how petitioner, or her authorized representatives, appreciated the explanations or defenses raised in connection with the assessments.

It is true that the Commissioner is not obliged to accept the taxpayer's 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 conclusions are based, and those facts must appear in the record.[20]

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[20] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[21]

In *Ang Tibay*, cited in *Avon*, the Supreme Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but the tribunal must consider the evidence presented.*"

Given the foregoing pronouncements, petitioner's assertion that respondent was accorded the due process requirement under Section 3 of RR No. 12-99 because he was furnished with a copy of the PAN and the Assessment Notices with the FLD, is bereft of merit. Her failure to give due consideration to respondent's defenses, explanations, and supporting documents when she made her conclusion as to respondent's tax liability, could hardly be considered substantial compliance with the due process requirement.

Petitioner's disregard of the due process standards and rules under RR No. 12-99, as amended, and her failure to sufficiently inform respondent of the reasons for her conclusions under Section 228 of the 1997 NIRC, as amended, render the subject deficiency income tax and VAT assessments null and void.

Hence, with approval, We quote and adopt the findings of the Court in Division in the assailed Resolution:[22]

> In the present case, [petitioners] ascertained via the PAN dated September 5, 2016, that [respondent] had deficiency taxes. In reply thereof, [respondent] filed a letter on October 4, 2016, refuting and giving explanations against the findings contained in the PAN, and further offering certain documents in support thereof. However, in the FLD-FAN dated June 16, 2017, [respondent] was still assessed of the same deficiency tax liabilities without providing particular facts upon which the conclusion were [*sic*] based. As such, this Court cancelled [petitioners'] deficiency assessments holding in the assailed Decision as follows:

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[21] *Id.*
[22] *Rollo*, pp. 29-33.

> "It is noteworthy that the foregoing assessments are exactly based on the above-stated significant findings as stated in the PAN dated September 5, 2016. If at all, in terms of the amounts indicated, the only difference between the said PAN and the subject FLD/*Assessment Notices* is that the amounts of interest were adjusted. It must be emphasized that the respective basic tax due substantially remained the same. **In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the refutations and explanations made by [respondent] in its letter dated October 3, 2016.** To stress, without addressing the said refutations and explanations, **the BIR did not give the particular facts upon which the FLD/*Assessment Notices* are based.** Consequently, [respondent] was left unaware on how [petitioner] or the BIR appreciated the explanations or defenses he raised against the subject PAN, in clear violation of [respondent's] right to administrative due process, thereby rendering the subject tax assessments void."

As to [petitioners'] assertion that sending copies of the PAN and FLD-FAN to [respondent] is already deemed sufficient to accord it due process of law, this Court does not agree.

To reiterate, without addressing [respondent's] refutations in its protest, [respondent] was not informed of the particular facts upon which the FLD-FAN was based pursuant to Section 228 of the National Internal Revenue Code of 1997, as amended, and as implemented by Revenue Regulations No. 12-99, as amended. By failing to do so, [respondent] was left unaware on how [petitioners] appreciated the explanations or defenses it raised against the subject PAN. Accordingly, such is in clear violation of [respondent's] right to administrative due process thereby rendering the subject tax assessments void.

On the final note, while the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules.

The Court *En Banc*, nonetheless, proceeds to discuss the point raised by respondent that RO Rafael Lentejas II acted beyond his authority by continuing with the audit beyond the prescribed 120-day period without submission of a progress report and without the surrender of LOA for revalidation to the Regional Office.

The issue on the 120-day rule has been squarely addressed in the case of *AFP General Insurance Corp. vs. Commissioner of Internal Revenue (AGIC)*.[23] According to the Supreme Court:

> ***Revalidating a served LOA in connection with the "120-day rule."***
>
> Alternatively, AGIC argues that the subject LOA also became null and void when it was not submitted for revalidation after the lapse of a supposed "120-day period."
>
> AGIC relies on RMC 40-06, which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88, which provides as follows:
>
> This Order aims to set the guidelines on the revalidation of Letters of Authority (LAs) for a more effective and efficient investigation and reporting on cases:
>
> The following are henceforth prescribed:
>
> ... ...
>
> The foregoing issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.
>
> AGIC claims that LOA No. 00021964 was nullified due to the assigned revenue officers' failure to: (1) render the investigation report within this period, and (2) submit the LOA for revalidation. Thus, the resulting tax assessments are also void.
>
> Notably, the above-cited issuances mention a "120-day period/rule," but do not provide a complete context within which the rule was established. Thus, to evaluate the theory, the Court must look into other related tax issuances to determine the nature and intended effect of the reglementary period adverted to by AGIC.
>
> An early tax issuance mentions both 30 and 120-day reglementary periods in imposing an LOA revalidation requirement, *viz.*:

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[23] G.R. No. 222133, November 4, 2020.

REVENUE MEMORANDUM ORDER NO. 43-64

... ...

RMO 43-64, read together with RMO 38-88, discredits AGIC's claim.

The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.

The superior officer or the Division Chief /Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from further investigation and contact with the taxpayer." The revalidation requirement here is aimed at reconfirming the revenue officer's authority and *extending the period of audit.* It contemplates a *served LOA* and an *on-going audit investigation.* Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

Given this context, it is clear that **failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*,** inasmuch as the revenue officer must first seek ratification of his *expired authority to audit to be able to validly continue investigation beyond the first 120 days.*

That the revenue officer is unable to conduct further investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service

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> of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.
>
> Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.
>
> Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity. *(Emphasis supplied)*

Clearly, the failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days. The 120-day period was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.[24]

Finally, petitioner invokes that taxes are the lifeblood of the Government, and so should be collected without hindrance.

Unfortunately for petitioner, the lifeblood doctrine cannot be used as shield to a patently void assessment issued in violation of the taxpayer's rights to due process.

While the lifeblood doctrine gives the State the right to collect taxes in the most expeditious way, it is not a license to disregard the constitutional guarantee that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.[25]

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[24] *Id.*
[25] *City of Iloilo vs. Philippine Ports Authority and Development Bank of the Philippines*, G.R. No. 233861, January 12, 2021, citing *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 & 204119, July 9, 2018.

In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[26]

All told, in view of petitioner's violation of respondent's right to due process, the Court sustains the findings of the Court's Second Division declaring the assailed FLD and Assessment Notices, all dated June 16, 2017, void and without legal effect.

WHEREFORE, premises considered, the *Petition for Review* is **DENIED,** for lack of merit. Accordingly, the Decision dated December 3, 2020, and the Resolution dated May 26, 2021, promulgated by the Court's Second Division in CTA Case No. 9758, are **AFFIRMED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[26] *City of Iloilo vs. Philippine Ports Authority and Development Bank of the Philippines*, G.R. No. 233861, January 12, 2021, citing *Manila Electric Co. v. City Assessor*, G.R. No. 166102, August 5, 2015.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
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.

ROMAN G. DEL ROSARIO
Presiding Justice