REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DIGOS MARKET VENDORS MULTI-PURPOSE COOPERATIVE (DIMAVEMC), represented by its CHAIRMAN OF THE BOARD OF DIRECTORS, CONSTANTINO L. RABAYA, JR.,
Respondent.

CTA *EB* NO. 2518
(CTA Case No. 9131)

Present:

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

Promulgated:
NOV 30 2023 3:18 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision dated November 16, 2020 (assailed Decision)[2] and the Resolution dated August 31, 2021 (assailed Resolution)[3] of the Court's First Division (Court in Division) in CTA Case No. 9131, with the following dispositive portions:

[1] *En Banc* (*EB*) Docket, pp. 6-28.
[2] *EB* Docket, pp. 29-45.
[3] *Id.*, pp. 46-49.

Assailed Decision dated November 16, 2020:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the deficiency income, VAT, EWT, FWT, and DST assessments against petitioner for calendar year 2006 in the total amount of ₱4,108,625.83 are **CANCELLED** and **WITHDRAWN** for violation of petitioner's right to due process. The FLD/FAN dated April 8, 2010, the FNBS dated September 29, 2011, the WDL dated October 27, 2011, and the *Notice of Denial* dated June 15, 2015, insofar as petitioner is requested to pay the amount of ₱3,535,897.87 including all the increments incident to delinquency, are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

Assailed Resolution dated August 31, 2021:

> **WHEREFORE**, premises considered, respondent's *Motion for Reconsideration [Decision dated November 16, 2020]* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments and other matters arising under the Tax Code.[4]

Respondent Digos Market Vendors Multi-Purpose Cooperative is a cooperative duly organized and existing in accordance with Republic Act (RA) No. 6938 or the Cooperative Code of 2008.[5]

THE FACTS

The facts, as found by the Court in Division, are as follows:

[4] *Supra*, note 1, p. 8.
[5] Par. 1, The Parties, Amended Petition for Review, Division Docket, p. 95.

On August 29, 2007, the *Letter of Authority* (LOA) No. 200700003875 signed by Regional Director Marcelinda Omila-Yap of Revenue Region No. 19, Davao City, was issued, authorizing Revenue Officer (RO) Vilma M. Arendain, with the supervision of Group Supervisor Juliet R. Dayupay, to examine [respondent]'s books of accounts and other accounting records for all internal revenue tax liabilities for January 1, 2006 to December 31, 2006. The said LOA was revalidated on February 19, 2008.

On April 21, 2010, [respondent] received the *Preliminary Assessment Notice* (PAN) dated April 7, 2010, with attached *Details of Discrepancies*, finding due from [respondent] deficiency income, value-added tax (VAT), final withholding tax (FWT), expanded withholding tax (EWT), and documentary stamp tax (DST), including increments, for calendar year 2006, in the total amount of ₱4,108,625.83.

On the same date, [respondent] also received a copy of the *Formal Letter of Demand* (FLD) dated April 8, 2010, from the BIR, with attached *Details of Discrepancy*, and *Audit Results/Assessment Notices* (FAN) for deficiency income tax, VAT, EWT, FWT, and DST, including increments, for calendar year 2006, finding [respondent] liable therefor in the *same* total amount of ₱4,108,625.83.

[Petitioner] then issued to [respondent] the *Final Notice* dated August 26, 2011, requesting the payment of the said amount, within ten (10) days from receipt thereof; otherwise, the BIR will collect the same through warrant of distraint and/or levy or court action, without further delay.

Thereafter, [respondent] received a *Final Notice Before Seizure* (FNBS) dated September 29, 2011.

Consequently, [respondent], through its General Manager, sent to Ms. Herma G. Escudero, Revenue District Officer of Revenue District Office (RDO) No. 115, Digos City, Davao del Sur, the letter dated October 14, 2011, stating that [respondent] being a cooperative, enjoys tax-exempt status.

A *Warrant of Distraint and/or Levy* (WDL) dated October 27, 2011 was then issued by [petitioner] to [respondent].

On June 10, 2013, [respondent] filed with the Revenue District Officer of the BIR in Digos City a letter on even date, requesting reconsideration of the tax assessments for taxable year 2006.

Subsequently, [respondent] received on August 13, 2015 a copy of the *Notice of Denial* dated June 15, 2015 with attached *Evaluation Sheet* signed by the National Evaluation Board, signifying the denial of [respondent]'s application/offer for compromise settlement.

On August 28, 2015, [respondent] filed the instant *Petition for Review*. The case was initially raffled to this Court's Third Division.

Thereafter, [respondent] filed on November 10, 2015 a *Motion to Admit Herein Attached Amended Petition*, stating that the amendment consists merely of the name of the person who will represent [respondent], inasmuch as [respondent]'s representative by the name of General Manager Jocelyn S. Labajo had passed away, and that [respondent]'s deceased representative is substituted by [respondent]'s Chairman of the Board by the name of Constancio L. Rabaya.

[Petitioner] then filed on November 13, 2015 a *Motion for Leave to Admit Attached Answer with Opposition to the Application for TRO and/or Preliminary Injunction.* The *Answer with Opposition to the Application for TRO and/or Preliminary Injunction*, interposed [his] special and affirmative defenses[.] ...

In the Resolution dated December 17, 2015, the Court granted [respondent]'s *Motion to Admit Herein Attached Amended Petition*, and admitted [respondent]'s *Amended Petition for Review* as part of the records of the case.

On February 1, 2016, the hearing on [respondent]'s application for Temporary Restraining Order and/or Writ of Preliminary Injunction was held.

[Respondent] presented documentary and testimonial evidence. For its testimonial evidence, [respondent] presented Mr. Constancio L. Rabaya, [respondent]'s chairman of the board and attorney-in-fact in this case.

On February 5, 2016, [petitioner] transmitted the *BIR Records* for the instant case.

Subsequently, the *Memorandum of [Respondent]* was filed on February 19, 2016.

Thereafter, [respondent] filed a *Motion to Admit Belated Offer of Exhibits*. In the Resolution dated March 23, 2016, the Court admitted [respondent]'s *Motion*, in the interest of substantial justice, and admitted [respondent]'s *Submission of Documentary Exhibits*. In the same Resolution, the Court

gave [petitioner] five (5) days from notice to file his comment/opposition to [respondent]'s *Submission of Documentary Exhibits*. The Court also held in abeyance the parties' filing of their respective Memorandum until after the resolution of the pending incident.

On April 1, 2016, [petitioner] filed his *Comment to [Respondent]'s Formal Offer of Evidence*. In the Resolution dated April 7, 2016, the Court admitted [respondent]'s exhibits, and gave the parties fifteen (15) days from notice, within which to file their respective memoranda.

[Petitioner] failed to file his memorandum, while the *Memorandum for the [Respondent]* was filed on May 5, 2016.

In the Resolution dated June 1, 2016, the Court denied, for lack of merit, [respondent]'s *Application for TRO and/or Preliminary Injunction*, which was deemed as a *Motion for Suspension of Collection of Taxes*. The Court, in the Resolution dated June 7, 2016, also considered moot [respondent]'s *Memorandum* filed on May 5, 2016, in view of the said Resolution dated June 1, 2016, denying [respondent]'s *Application for TRO and/or Preliminary Injunction*.

On September 20, 2016, [respondent] filed its *Pre-trial Brief*; while *[Petitioner]'s Pre-trial Brief* was submitted on November 24, 2016.

Subsequently, the parties filed their *Joint Stipulation of Facts and Issues* on December 12, 2016. The Pre-Trial Order dated March 14, 2017 was issued, deeming the termination of the Pre-Trial Conference.

During trial, [respondent] presented documentary and testimonial evidence. For its testimonial evidence, [respondent] offered the testimonies of the following individuals, namely: (1) Ms. Juliet Borja, [respondent]'s administrative officer; and (2) Mr. Constancio L. Rabaya, [respondent]'s chairman of the Board of Directors and attorney-in-fact in this case.

On May 11, 2017, [respondent] filed its *Formal Offer of Evidence* (FOE). However, [respondent] failed to attach to it any proof that the adverse party was furnished with its FOE. Thus, in the Resolution dated June 15, 2017, the Court directed [respondent] to submit to the Court within ten (10) days from notice, any proof of service showing that it furnished [petitioner] a copy of its FOE, and granted [petitioner] ten (10) days from notice to file his comment/opposition to [respondent]'s FOE.

> Subsequently, [petitioner] filed on July 13, 2017 his *Omnibus Motion I. To Admit Attached Comment to [Respondent]'s Formal Offer of Evidence II to Cancel the Initial Presentation of Evidence for Respondent Scheduled on July 18, 2017*, praying, *inter alia*, that [petitioner]'s *Comment, Re: Formal Offer of Evidence* be admitted.
>
> [Respondent] then filed on July 14, 2017 its *Manifestation* with attached affidavit of proof of service and documents showing that [petitioner] was furnished (and received) a copy of its *Formal Offer of Exhibits*.
>
> In the Resolution dated July 18, 2017, the Court granted [petitioner]'s *Omnibus Motion*, and admitted [petitioner]'s *Comment Re: [Respondent]'s Formal Offer of Evidence*. The Court also noted [respondent]'s *Manifestation* in the Resolution dated July 21, 2017.
>
> Thereafter, in the Resolution dated August 1, 2017, the Court admitted [respondent]'s exhibits.
>
> In the Order dated September 27, 2018, this case was transferred to this Court's First Division.
>
> [Petitioner] likewise presented documentary and testimonial evidence. For his testimonial evidence, [petitioner] presented the following BIR employees: (1) Ms. Vilma Arendain, a Revenue Officer III (Assessment); and (2) Mr. Rodrigo M. Rellon, Chief of the Collection Section.
>
> On June 4, 2019, *[Petitioner]'s Formal Offer of Evidence* was filed. [Respondent] failed to file its comment to [petitioner]'s FOE.
>
> In the Resolution dated August 1, 2019, the Court admitted [petitioner]'s exhibits, and gave the parties a period of thirty (30) days from notice, within which to file their simultaneous memoranda.
>
> On September 20, 2019, [petitioner] filed his *Memorandum*, while [respondent] belatedly filed its *Memorandum* on November 6, 2019.

On November 16, 2020, the Court in Division promulgated the assailed Decision[6] cancelling the assessment against respondent for violation of its right to due process. The Court in Division found that the FLD/FAN was issued the day after the issuance of the PAN to respondent and that

[6] *Supra*, note 2.

respondent received the said PAN and the FLD/FAN on the same day.

On December 7, 2020, petitioner filed *via* registered mail a *Motion for Reconsideration [Decision dated November 16, 2020),*[7] without respondent's comment.[8]

On August 31, 2021, the Court in Division rendered the assailed Resolution[9] denying petitioner's motion for reconsideration for lack of merit.

On September 29, 2021, petitioner filed by e-mail his *Motion for Extension to File Petition for Review.*[10] Thereafter, or on October 25, 2021, petitioner filed the instant *Petition for Review*[11] with the Court *En Banc.*

In its Resolution dated February 16, 2022,[12] the Court *En Banc* granted petitioner's *Motion for Extension to File Petition for Review* and directed respondent to file a comment.

On July 14, 2022, the Judicial Records Division submitted a Records Verification Report that respondent failed to file its comment.[13]

On August 22, 2022, the Court *En Banc* referred the case to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).[14]

On December 7, 2022, the Court *En Banc* received the PMC-CTA's "No Agreement to Mediate" report, which states that the parties decided not to have their case mediated.[15]

On February 9, 2023, this case was submitted for decision.[16]

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[7] Division Docket, pp. 554-567.
[8] Records Verification dated June 4, 2021, Division Docket, p. 573.
[9] *Supra*, note 3.
[10] *EB* Docket, pp. 1-5.
[11] *Supra*, note 1.
[12] *EB* Docket, pp. 51-53.
[13] *Id.*, p. 61.
[14] Resolution, *id.*, pp. 63-65.
[15] *EB* Docket, p. 66.
[16] Resolution, *id.*, pp. 68-69.

THE ISSUE

Petitioner assigned the following errors for this Court's resolution:[17]

> I.
> WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN ASSUMING JURISDICTION OVER THE ORIGINAL PETITION FOR REVIEW.
>
> II.
> WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PETITIONER VIOLATED RESPONDENT'S RIGHT TO DUE PROCESS AND DECLARING THAT THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE AND SUBSEQUENT NOTICES ISSUED BY PETITIONER AGAINST RESPONDENT ARE VOID.

Petitioner's arguments:

Petitioner argues that the Court in Division has no jurisdiction over the original Petition for Review, considering that the deficiency tax assessments against respondent have become final, executory, and demandable for its failure to file a protest to the PAN and FLD/FAN within the period provided under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations, Revenue Regulations (RR) No. 12-99.

Further, petitioner alleges that the original petition seeking to overturn the denial of respondent's application for compromise settlement of deficiency taxes for 2006 states no cause of action because petitioner cannot be forced to enter into a compromise agreement with respondent.

Petitioner insists there was no violation of respondent's right to due process since the latter was apprised of the remedies provided by law to refute the assessment against it, but respondent did not avail of such remedies. Also, the presumption in favor of the correctness of the assessment stands, and the burden of proof is on the taxpayer contesting

[17] *Supra*, note 1, p. 10.

its validity. The taxpayer's failure to present proof of error in the assessment will justify its judicial affirmance.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is not impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Under Section 3(b), Rule 8[18] of the Revised Rules of the Court of Tax Appeals (RRCTA), a petition for review must be filed with the Court *En Banc* within fifteen (15) days from receipt of the copy of the questioned resolution of the Court in Division.

Petitioner received the assailed Resolution on September 14, 2021.[19] Counting fifteen (15) days, petitioner had until September 29, 2021, to file a petition for review with the Court *En Banc.*

On September 29, 2021, petitioner filed by e-mail his *Motion for Extension to File Petition for Review,*[20] requesting an additional 15 days, or until October 14, 2021, to file a petition for review.

On October 25, 2021, petitioner filed the instant *Petition for Review*[21] with the Court *En Banc,* within the extended period given by the Supreme Court in Administrative Circular Nos. 75-2021[22] and 83-2021.[23]

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[18] *Supra*, note 2.
[19] Notice of Resolution, Division Docket, p. 577.
[20] *EB* Docket, pp. 1-5.
[21] *Supra*, note 1.
[22] RE: COURT OPERATIONS BEGINNING 4 OCTOBER 2021 (October 1, 2021). The Supreme Court suspended the time for filing and service of pleadings and motions beginning October 4, 2021 until further notice.
[23] RE: COURT OPERATIONS BEGINNING OCTOBER 20, 2021 UNTIL OCTOBER 29, 2021 (October 18, 2021). The Supreme Court declared that the suspension of the time for filing and service of pleadings and motions, regardless of the alert level or community quarantine, is lifted and the period for filing and service shall resume seven (7) calendar days from October 20, 2021.

Having settled that the instant *Petition for Review* was timely filed, this Court likewise rules that it has validly acquired jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[24] of the RRCTA.

The Court in Division did not err in assuming jurisdiction over the case and has correctly ruled that the deficiency tax assessments against respondent are void.

Petitioner maintains that the Court has no jurisdiction to try and hear this case, considering that the deficiency tax assessments against respondent have already become final, executory, and demandable for respondent's failure to file its protest to the PAN and FLD.[25]

We disagree.

Petitioner's contention that the deficiency tax assessments have already become final, executory, and demandable should be premised on the assessments' validity.[26] The Court in Division found that the BIR failed to comply with the due process requirements in issuing the subject assessments.

Under Section 228 of the NIRC of 1997, a taxpayer must be given a prescribed period to respond to the PAN as part of the due process requirement, *viz.*:

> 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 preassessment notice shall not be required in the following cases:

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[24] SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; ...

[25] *Supra*, note 1, p. 11.

[26] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020.

... ...

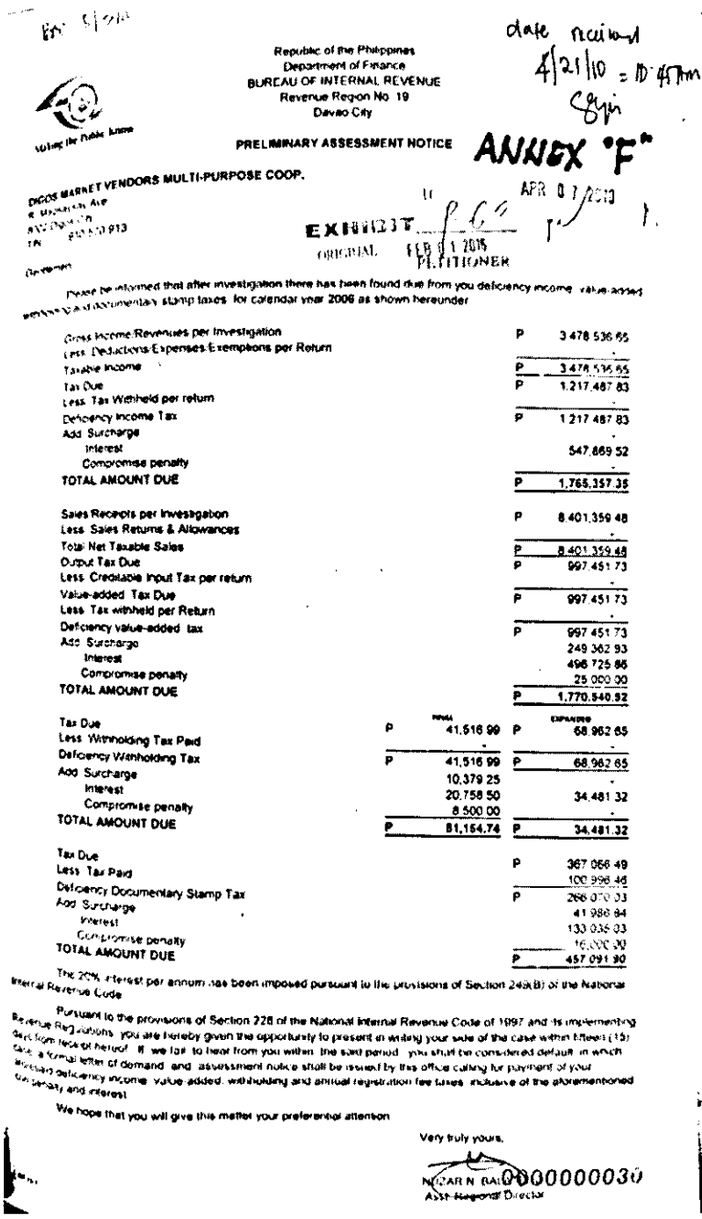
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice**. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be 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. (*Emphasis supplied*)

The above provision is implemented by Section 3 of RR No. 12-99, which provides that a taxpayer shall be given fifteen (15) days from the receipt date of the PAN to respond thereto:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> ... ...
>
> 3.1.2 *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.** (*Emphasis supplied*)

The above provisions indicate that the taxpayer has fifteen (15) days from receipt of the PAN to respond thereto. Only after the BIR's receipt of the taxpayer's response or in case of the taxpayer's default can petitioner issue the FLD/FAN.

Here, the PAN and FLD were issued on April 7, 2010 and April 8, 2010, respectively, only one day apart from each other, as shown below:



Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No 19
Davao City

PRELIMINARY ASSESSMENT NOTICE

ANNEX "F"

DIGOS MARKET VENDORS MULTI-PURPOSE COOP.

EXHIBIT P-8 ORIGINAL FEB 01 2016 PETITIONER

Please be informed that after investigation there has been found due from you deficiency income, value-added, withholding and documentary stamp taxes for calendar year 2006 as shown hereunder:

Gross Income/Revenues per Investigation		P 3,478,536.65
Less: Deductions/Expenses/Exemptions per Return		-
Taxable Income		P 3,478,536.65
Tax Due		P 1,217,487.83
Less: Tax Withheld per return		-
Deficiency Income Tax		P 1,217,487.83
Add: Surcharge		-
Interest		547,869.52
Compromise penalty		-
TOTAL AMOUNT DUE		P 1,765,357.35

Sales Receipts per Investigation		P 8,401,359.48
Less: Sales Returns & Allowances		-
Total Net Taxable Sales		P 8,401,359.48
Output Tax Due		P 997,451.73
Less: Creditable Input Tax per return		-
Value-added Tax Due		P 997,451.73
Less: Tax withheld per Return		-
Deficiency value-added tax		P 997,451.73
Add: Surcharge		249,362.93
Interest		498,725.86
Compromise penalty		25,000.00
TOTAL AMOUNT DUE		P 1,770,540.52

	FINAL	EXPANDED
Tax Due	P 41,516.99	P 68,962.65
Less: Withholding Tax Paid	-	-
Deficiency Withholding Tax	P 41,516.99	P 68,962.65
Add: Surcharge	10,379.25	-
Interest	20,758.50	34,481.32
Compromise penalty	8,500.00	-
TOTAL AMOUNT DUE	P 81,154.74	P 34,481.32

Tax Due	P 367,066.49
Less: Tax Paid	100,996.46
Deficiency Documentary Stamp Tax	P 266,070.03
Add: Surcharge	41,986.84
Interest	133,035.03
Compromise penalty	16,000.00
TOTAL AMOUNT DUE	P 457,091.90

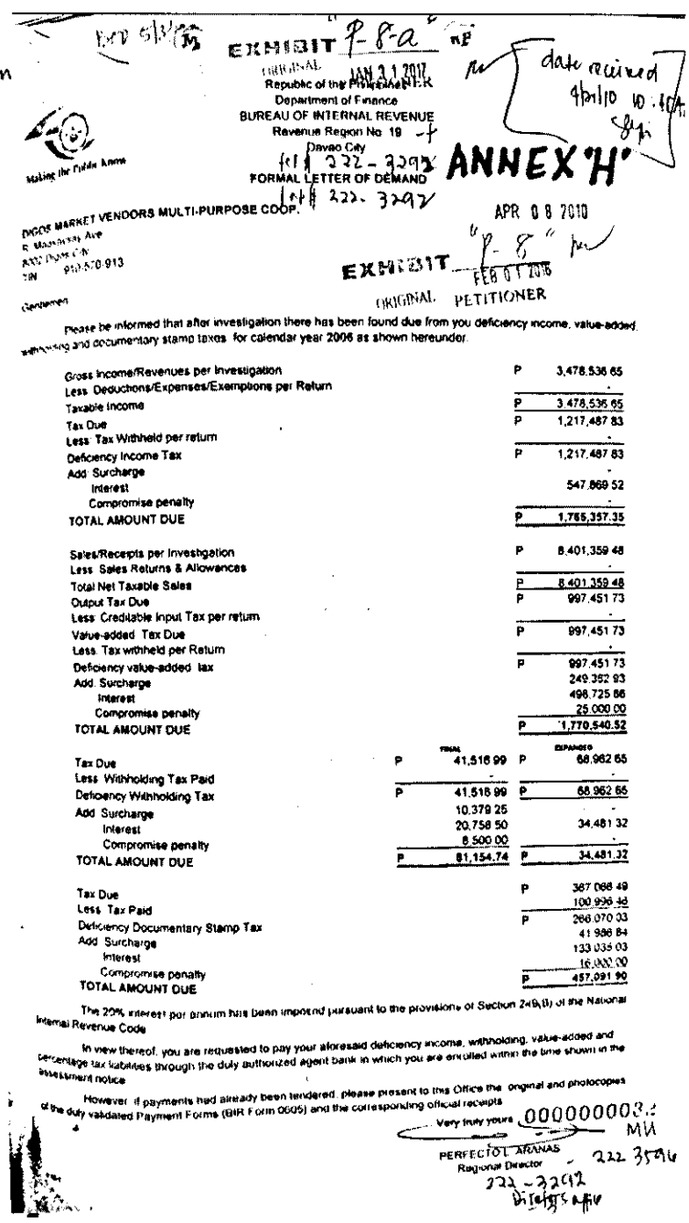
The 20% interest per annum has been imposed pursuant to the provisions of Section 249(B) of the National Internal Revenue Code

Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof. If we fail to hear from you within the said period, you shall be considered default, in which case, a formal letter of demand and assessment notice shall be issued by this office calling for payment of your aforesaid deficiency income, value-added, withholding and annual registration fee taxes, inclusive of the aforementioned surcharge and interest.

We hope that you will give this matter your preferential attention.

Very truly yours,

NAZAR N. BAJO
Asst. Regional Director



Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Revenue Region No 19
Davao City

FORMAL LETTER OF DEMAND

ANNEX "H"

DIGOS MARKET VENDORS MULTI-PURPOSE COOP.

EXHIBIT P-8a ORIGINAL FEB 01 2016 PETITIONER

Please be informed that after investigation there has been found due from you deficiency income, value-added, withholding and documentary stamp taxes for calendar year 2006 as shown hereunder:

Gross Income/Revenues per Investigation		P 3,478,536.65
Less: Deductions/Expenses/Exemptions per Return		-
Taxable Income		P 3,478,536.65
Tax Due		P 1,217,487.83
Less: Tax Withheld per return		-
Deficiency Income Tax		P 1,217,487.83
Add: Surcharge		-
Interest		547,869.52
Compromise penalty		-
TOTAL AMOUNT DUE		P 1,765,357.35

Sales/Receipts per Investigation		P 8,401,359.48
Less: Sales Returns & Allowances		-
Total Net Taxable Sales		P 8,401,359.48
Output Tax Due		P 997,451.73
Less: Creditable Input Tax per return		-
Value-added Tax Due		P 997,451.73
Less: Tax withheld per Return		-
Deficiency value-added tax		P 997,451.73
Add: Surcharge		249,362.93
Interest		498,725.86
Compromise penalty		25,000.00
TOTAL AMOUNT DUE		P 1,770,540.52

	FINAL	EXPANDED
Tax Due	P 41,516.99	P 68,962.65
Less: Withholding Tax Paid	-	-
Deficiency Withholding Tax	P 41,516.99	P 68,962.65
Add: Surcharge	10,379.25	-
Interest	20,758.50	34,481.32
Compromise penalty	8,500.00	-
TOTAL AMOUNT DUE	P 81,154.74	P 34,481.32

Tax Due	P 367,066.49
Less: Tax Paid	100,996.46
Deficiency Documentary Stamp Tax	P 266,070.03
Add: Surcharge	41,986.84
Interest	133,035.03
Compromise penalty	16,000.00
TOTAL AMOUNT DUE	P 457,091.90

The 20% interest per annum has been imposed pursuant to the provisions of Section 249(B) of the National Internal Revenue Code

In view thereof, you are requested to pay your aforesaid deficiency income, withholding, value-added and percentage tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the assessment notice.

However, if payments had already been tendered, please present to this Office the original and photocopies of the duly validated Payment Forms (BIR Form 0605) and the corresponding official receipts.

Very truly yours,

PERFECTO ARANAS
Regional Director

Worse, petitioner served the PAN and FLD to respondent on the same day, April 21, 2010, effectively foreclosing respondent's opportunity to respond to the PAN.

Petitioner alleges that the assessment has become final for respondent's failure to file its protest to the PAN. However, doing so would be a useless exercise, as the petitioner had already issued an FLD with the final assessment the day after

its issuance of the PAN, which, at that time, was not yet served to respondent.

It must be emphasized that the PAN is part of substantive, not just formal, due process requirements.[27] As such, contravening the conditions laid down by the law (Section 228) and its implementing rules (RR No. 12-99) denies the taxpayer's right to due process.[28]

Verily, providing taxpayers with a copy of the PAN is meaningless to the concept of due process if their right to respond within the prescribed period is ignored.[29]

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[30] the Supreme Court underscored the importance of the 15 days to reply to the PAN. It nullified the assessment since the taxpayer received the PAN and the FLD/FAN on the same date:

> **[T]he taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice**. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.
>
> Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, **the PAN and FLD/FAN were** both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and **served upon and received by respondent on January 18, 2011**. Under the circumstances, **respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment**. (*Emphasis supplied*)

Similarly, in this case, petitioner served the PAN and FLD simultaneously to respondent without regard to the latter's substantive right to reply to the PAN within 15 days from its receipt.

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[27] *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[28] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[29] *Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022.
[30] G.R. No. 222476, May 5, 2021.

The Supreme Court, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[31] affirming *Ang Tibay v. Court of Industrial Relations,*[32] 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 but **the tribunal must consider the evidence presented.**"

Petitioner's act in issuing the FLD without even serving the PAN to respondent and waiting for the lapse of the 15 days upon respondent's receipt of the PAN deprived respondent of the opportunity to present its side of the matter and for petitioner to consider the same. Consequently, for violation of respondent's right to due process, the assessments are void as correctly ruled by the Court in Division.

It is a settled principle in taxation that void assessment bears no valid fruit.[33] As the WDL dated October 27, 2011, emanated from the FLD, which was issued prematurely as provided under the rules, the same is also void, thereby preventing the petitioner from pursuing its collection against respondent.

WHEREFORE, premises considered, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated November 16, 2020, and the Resolution dated August 31, 2021, of the Court's First Division in CTA Case No. 9131 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[31] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[32] G.R. No. 46496, February 27, 1940.
[33] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023, G.R. No. 193100, citing *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice