REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Special Second Division*

**MAQUINIT REALTY & DEVELOPMENT CORPORATION represented by LINDA GERARDINE J. RAMOS,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL,**
Respondent.

**CTA CASE NO. 10518**

Members:

**RINGPIS-LIBAN,** *P.J., Chairperson*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated: MAY 2 6 2026

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# DECISION

***RINGPIS-LIBAN, J.:***

## The Case

The *Petition for Review* prays to this Court that:

1) the instant *Petition* be given due course and be granted; and

2) after due proceedings, judgment be rendered setting aside the *Letter of Authority* ("LOA"), *Preliminary Assessment Notice* ("PAN"), *Formal Letter of Demand, Final Assessment Notices* ("FLD/FAN"), *Final Decision on Disputed Assessment* ("FDDA"), and declaring the assessments for alleged tax deficiencies on income tax, value added tax ("VAT"), expanded withholding tax ("EWT") and improperly accumulated earnings tax ("IAET"), as void, for utter lack of basis and merit, both in fact and in law, and for having

prescribed and for having been made in gross violation of petitioner's constitutional right to due process.[1]

## The Facts

Petitioner Maquinit Realty & Development Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at Sitio Maquinit, Brgy. Tagumpay, Coron, Palawan.[2]

Respondent is the Commissioner of Internal Revenue who is the chief of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[3]

The LOA No. SN: eLA201100050283/LOA-036-2014-00000014 dated July 15, 2014 was issued by Officer-in-Charge Regional Director Araceli L. Francisco of Revenue Region No. 006 - Manila, authorizing Revenue Officer ("RO") Ryan Gatpandan and Group Supervisor Luz Magdalena Bocita to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 01, 2012 to December 31, 2012.[4]

Thereafter, respondent issued the PAN dated December 11, 2015,[5] with attached *Details of Discrepancy*. Said PAN assessed petitioner for alleged deficiency income tax, VAT, EWT and IAET for the taxable year 2012.[6] Petitioner then filed its *Protest Letter and Request for Inhibition (Maquinit Realty & Development Corp. Preliminary Assessment Notice dated 11 December 2015 Taxable Year 2012 Electronic LOA No. 201100050283 dated 15 July 2014)* dated February 02, 2016.[7]

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1 Docket, Statement of the Case, Pre-Trial Order dated January 25, 2023, p. 604.
2 *Id.*, Par. 7, *Petition for Review*, *vis-à-vis* par. 4, *Answer,* pp. 8 and 136, respectively; Statement of Relevant Facts, respondent's *Memorandum*, p. 1209.
3 *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, Par. 1, p. 577.
4 Docket, JSFI, Stipulation of Facts, Par. 2, pp. 577 to 578; Exhibit "P-3", p. 250; BIR Records, Exhibit "R-1", p. 87.
5 Docket, JSFI, Stipulation of Facts, Par. 3, p. 578; Exhibit "P-4", pp. 251 to 253; BIR Records, Exhibit "R-13" to "R-13-1", pp. 176 to 178.
6 Docket, JSFI, Stipulation of Facts, Par. 4, p. 578.
7 Refer to Docket, JSFI, Stipulation of Facts, par. 7, p. 578; Exhibit "P-5", pp. 665 to 674.

In the meantime, respondent issued the FLD with attached *Details of Discrepancy* dated January 13, 2016,[8] with corresponding *Assessment Notices* Nos. 36-12-IT-15-0404, 36-12-VT-15-0405, 36-12-WE-15-0406 and 36-12-IAET-15-0407,[9] which were handed down to petitioner.[10]

Accordingly, petitioner filed its *Request for Reconsideration and Mandatory Inhibition (Maquinit Realty & Development Corp. Preliminary Assessment Notice dated 11 December 2015 Taxable Year 2012 Formal Letter of Demand (FLD), together with Assessment Notice Nos. 36-12-IT-15-0404, 36-12-VT-15-0405, 36-12-WE-15-0406 and 36-12-IAET-15-0407, all dated 13 January 2016, Electronic LOA No. 201100050283 dated July 15, 2014)* dated February 10, 2016.[11]

Subsequently, respondent issued the letter dated June 11, 2020,[12] to which petitioner filed its reply letter *(Re: BIR Letter dated 11 June 2020)* dated September 01, 2020.[13]

In the meantime, respondent issued the FDDA dated August 18, 2020.[14] The findings in the FDDA involves deficiency assessment for IT amounting to Php3,292,289.12, VAT amounting to Php512,088.58, EWT amounting to Php165,503.23, and IAET amounting to Php410,366.82, or for the total amount of Php4,380,247.75.[15]

Petitioner filed its *Administrative Appeal Request for Reconsideration* dated October 22, 2020.[16]

On April 08, 2021, petitioner received a copy of respondent's *Decision* dated March 01, 2021, which affirmed the tax assessment as per FDDA dated August 18, 2020.[17]

Petitioner filed the present *Petition for Review* on May 19, 2021.[18]

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8 Refer to Docket, JSFI, Stipulation of Facts, par. 3, p. 578; Exhibit "P-6", pp. 266 to 268; BIR Records, Exhibits "R-18" to "R-18-1", pp. 184 to 186.
9 Docket, Exhibits "P-7" to "P-10", pp. 264 to 265; BIR Records, Exhibits "R-14" to "R-17", pp. 187 to 190.
10 Docket, JSFI, Stipulation of Facts, Par. 5, p. 578.
11 Refer to Docket, JSFI, Stipulation of Facts, par. 7, p. 578; Exhibit "P-11", pp. 687 to 698.
12 Docket, JSFI, Stipulation of Facts, Par. 3, p. 578; Exhibit "P-12", p. 283.
13 Refer to Docket, JSFI, Stipulation of Facts, par. 7, p. 578; Exhibit "P-13", pp. 284 to 288.
14 Docket, JSFI, Stipulation of Facts, Par. 3, p. 578; Exhibit "P-14", pp. 1171 to 1173.
15 *Id.*, JSFI, Stipulation of Facts, Par. 6, p. 578.
16 Refer to Docket, JSFI, Stipulation of Facts, par. 7, p. 578; Exhibit "P-15", pp. 293 to 319.
17 Docket, JSFI, Stipulation of Facts, Par. 8, p. 578; Exhibit "P-2", pp. 49 to 57.
18 *Id.*, pp. 6 to 48.

Within the period granted by the Court,[19] on July 12, 2021, respondent filed his *Answer*,[20] interposing the following special and affirmative defenses, to wit: (1) the Court's power of judicial review over decisions of respondent is by nature exclusive and appellate, hence, petitioner should not be allowed to raise issues for the first time on appeal; (2) assuming that the validity of the LOA can still be passed upon by the Court, respondent maintains that the LOA is valid; (3) the petitioner's right to due process was not violated; (4) the FDDA served to the petitioner was accompanied by *Details of Discrepancy*; (5) the period for assessment and collection of the subject tax assessment has not prescribed; and (6) the subject tax assessment is supported by factual and legal basis.

On July 22, 2021, respondent forwarded the *BIR Records* of the case in one (1) folder, consisting 639 pages.[21]

The Pre-Trial Conference was initially set on September 08, 2021.[22] however, the said Conference was cancelled and reset to December 01, 2021,[23] then to January 26, 2022,[24] which was later reset to, and held on March 28, 2022,[25] wherein the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, at the Philippine Mediation Center - Court of Tax Appeals ("PMC-CTA") on May 16, 2022.[26] However, PMC-CTA issued the *Mediator's Report* dated August 01, 2022,[27] stating that there was unsuccessful mediation between the parties.

Thus, the Pre-Trial Conference was again set and held on November 03, 2022.[28] Prior thereto, *Respondent's Pre-Trial Brief* was filed on November 16, 2021,[29] while petitioner's *Pre-Trial Brief* was submitted on November 24, 2021.[30]

On December 5, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[31] which was admitted and approved by this Court in its Resolution

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19 *Id.*, Respondent's *Urgent Motion for Extension of Time to File Answer* dated June 29, 2021, pp. 132 to 134; and Order dated July 1, 2021, p. 134-A.
20 *Id.*, pp. 135 to 151.
21 *Id.*, Respondent's *Compliance* dated July 21, 2021, pp. 218 to 219.
22 *Id.*, Notice of Pre-Trial Conference dated July 14, 2021, between pp. 154 and 155.
23 *Id.*, Notice of Resetting dated October 4, 2021, p. 416.
24 *Id.*, Notice of Resetting dated November 23, 2021, p. 423.
25 *Id.*, Notice of Resetting dated February 16, 2022, p. 549; Minutes of the hearing held on, and Order dated, March 28, 2022, pp. 555 to 556.
26 *Id.*, Resolution dated March 28, 2022, p. 558.
27 *Id.*, p. 564.
28 *Id.*, Resolution dated August 15, 2022, p. 570; Minutes of the hearing held on, and Order dated, November 03, 2022, pp. 571, and 575 to 576, respectively.
29 *Id.*, pp. 417 to 421.
30 *Id.*, pp. 425 to 434.
31 *Id.*, pp. 577 to 583.

dated December 20, 2022,[32] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 25, 2023 was then issued.[33]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner presented the testimonies of the following individuals, namely: (1) Ms. Linda Gerardine S. Jovellanos-Ramos,[34] petitioner's President and authorized representative for this case; (2) Ms. Gellie L. Rabonga,[35] petitioner's Administrative Staff; (3) Mr. Christopher G. Boco,[36] the Court-commissioned Independent Certified Public Accountant ("ICPA");[37] and (4) Atty. Epifania Q. Navarro-Mendoza, CPA,[38] one of the founding and Senior Partner of Mendoza Navarro-Mendoza & Partners Law Offices.

The ICPA *Report* was submitted on July 04, 2023.[39]

On October 16, 2023, petitioner filed its *Formal Offer of Evidence,*[40] to which respondent filed his *Comment [Re: Petitioner's Formal Offer of Evidence dated 13 October 2023]* on November 3, 2023.[41] Petitioner then filed its *Reply (Re: Comment to Petitioner's Formal Offer of Evidence dated 31 October 2023)* on November 20, 2023.[42] Thereafter, the Court, in its Resolution dated February 1, 2024,[43] admitted petitioner's offered exhibits, *except* for the following: (1) Exhibits "P-14" and "P-30", for failure to submit the duly marked exhibits; (2) Exhibits "P-20 to P-20-438", "P-20-441 to P-20-464", "P-20-466 to P-20-611", "P-21 to P-21-71", "P-22 to P-22-26", "P-23 to P-23-43", "P-24 to P-24-8", "P-25 to P-25-451", "P-26 to P-26-11", "P-27 to P-27-11", "P-28 to P-28-11", and "P-29", for failure of the ICPA to certify whether they are originals, certified true copies, or faithful reproductions of the originals; (3) Exhibits "P-20-439", "P-20-440", and "P-20-465", for not being found in the records and for failure of the ICPA to certify

32 *Id.*, p. 586.
33 *Id.*, pp. 604 to 612.
34 *Id.*, Exhibit "P-16", pp. 632 to 646; Minutes of the hearing held on, and Order dated, September 19, 2023, pp. 1096 to 1097.
35 *Id.*, Exhibit "P-17", pp. 320 to 325; Minutes of the hearing held on, and Order dated, March 1, 2023, pp. 625, and 627 to 628, respectively.
36 *Id.*, Exhibit "P-33", pp. 909 to 918; Minutes of the hearing held on, and Order dated, September 19, 2023, pp. 1096 to 1097.
37 *Id.*, *Oath of Commission* dated March 1, 2023, p. 626; Minutes of the hearing held on, and Order dated, March 1, 2023, pp. 625, and 627 to 628, respectively.
38 *Id.*, Exhibit "P-36", pp. 1000 to 1011; Minutes of the hearing held on, and Order dated, September 19, 2023, pp. 1096 to 1097.
39 *Id.*, Exhibit "P-31", pp. 831 to 905.
40 *Id.*, pp. 1103 to 1114.
41 *Id.*, pp. 1116 to 1118.
42 *Id.*, pp. 1119 to 1124.
43 *Id.*, pp. 1128 to 1130.

whether they are originals, certified true copies, or faithful reproductions of the originals; and (4) Exhibit "P-38", for not being found in the records.

On March 13, 2024, petitioner filed its *Motion for Reconsideration (Re: Resolution dated 01 February 2024) with Motion to Admit Attached Sworn Affidavit.*[44] Respondent, however, failed to file comment thereon.[45] In the Resolution dated April 15, 2025,[46] the Court granted petitioner's *Motion* and admitted Exhibits "P-14", "P-20 to P-20-611", "P-21 to P-21-71", "P-22 to P-22-26", "P-23 to P-23-43", "P-24 to P-24-8", "P-25 to P-25-451", "P-26 to P-26-11", "P-27 to P-27-11", "P-28 to P-28-11", "P-29", "P-30" and "P-38".

For his part, respondent offered the testimony of RO Ryan S. Gatpandan.[47]

On February 15, 2024, *Respondent's Formal Offer of Evidence* was submitted,[48] to which petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 15 February 2024)* on February 27, 2024.[49] In the Resolution dated April 15, 2025,[50] the Court admitted all of respondent's offered exhibits.

Respondent's *Memorandum* was filed on May 22, 2025,[51] while petitioner submitted its *Memorandum* on June 11, 2025.[52]

The case was considered submitted for decision on June 18, 2025.

## **The Issues**

The issues to be resolved in this case are the following, to wit:

1) Whether or not the Honorable Court of Tax Appeals has the jurisdiction to entertain the instant Petition for Review; and

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44 *Id.*, pp. 1158 to 1170.
45 *Id.*, Records Verification dated December 12, 2024 issued by the Judicial Records Division of this Court, p. 1196.
46 *Id.*, pp. 1198 to 1203.
47 *Id.*, Exhibit "R-22", pp. 158 to 167; Minutes of the hearing held on, and Order dated, February 01, 2024, pp. 1131 to 1133.
48 *Id.*, pp. 1139 to 1145.
49 *Id.*, pp. 1147 to 1156.
50 *Id.*, pp. 1198 to 1203.
51 *Id.*, pp. 1209 to 1231.
52 *Id.*, pp. 1233 to 1280.

2) Whether or not Petitioner is liable for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Improperly Accumulated Earnings Tax, as well as Surcharge and Compromise Penalty, for taxable year 2012 in the amount of Philippine Pesos: Four Million Three Hundred Eighty Thousand Two Hundred Forty-Seven Pesos and Seventy-Five Centavos (Php 4,380,247.75).[53]

***Petitioner's arguments:***

Petitioner argues that this Court is empowered to rule upon related issues necessary to achieve an orderly disposition of the case; that the entire assessment is void on account of the nullity and/or invalidity of the LOA, as the LOA in the instant case suffers grave and irreparable defect, making it invalid, ineffective, and causing gross violation of petitioner's right to due process; that petitioner was not accorded due process, thus, the tax assessment is void, as: (a) respondent's improper service of the PAN, FLD/FAN, and FDDA was in gross violation of petitioner's constitutional right to due process, hence, making the PAN, FLD/FAN, and FDDA invalid and ineffective, and (b) the issuance of FLD/FAN, without the benefit of an informal conference nor due resolution of petitioner's reply to the PAN, not to mention the invalid service of the PAN, is in gross violation of petitioner's constitutional right to due process; that petitioner is not liable for the tax deficiency assessment levied against it, as the subject tax assessment is erroneous and has no basis, both in fact and in law, hence, should be stricken out completely; that the interest due and the total amount due is still subject to modification if paid beyond the date specified therein as indicated in the FLD/FAN and the FDDA makes the amount of tax liability indefinite, hence the assessment made is null and void; that the FDDA is void for lack of factual basis for not serving the Annex A – Details of Discrepancy as sub-annexes to FDDA; and that the period to assess and collect has prescribed.

***Respondent's counter-arguments:***

Respondent contends that the Court's power of judicial review over his decisions is by nature exclusive and appellate, hence, petitioner should not be allowed to raise issues for the first time on appeal; that assuming that the validity of the LOA can still be passed upon by the Court, the LOA is valid; that petitioner's constitutional right to due process was not violated; that the FDDA served to the petitioner was accompanied by *Details of Discrepancy*; that the period for assessment and collection of the subject tax assessment has not prescribed; and that the subject tax assessment is supported by factual and legal basis.

/r/

[53] *Id.*, JSFI, Stipulation of Issues, p. 579.

## Discussion/Ruling

The present *Petition for Review* is meritorious.

***This Court has jurisdiction to entertain the present appeal.***

In the present case, respondent contends that the Court's power of judicial review over his decisions is by nature exclusive and appellate. Despite this, respondent avers that in the instant case, petitioner is attacking the assessment by interposing the alleged: (a) improper service of the LOA; (b) failure to serve the LOA within thirty (30) days; (c) the LOA was not revalidated; and (d) the LOA is valid only for one hundred twenty (120) days. Since these issues were allegedly not raised by petitioner during the administrative level, respondent claims that the issues on the validity of the LOA were never part of the records of this case nor were the same been considered by respondent in the exercise of his quasi-judicial function. Hence, according to respondent, petitioner should not be allowed to raise issues on the validity of the LOA for the first time on appeal.

On the other hand, petitioner argues that the Court is empowered to rule upon related issues necessary to achieve an orderly disposition of the case. In the present case, the invalidity of the LOA is allegedly a gross violation of petitioner's right to due process which the Court may rule upon for the orderly and expeditious disposition of the instant case.

The Court disagrees with respondent.

Section 7(a)(1) of Republic Act ("R.A.") No. 1125,[54] as amended by R.A. No. 9282,[55] reads, in part, as follows:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

[54] An Act Creating the Court of Tax Appeals.

[55] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;"[56]

The foregoing provision was reiterated under Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), to wit:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;"[57]

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction over decisions, rulings or inactions of respondent. Moreover, the exclusive appellate jurisdiction of this Court is not limited to cases involving decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code ("NIRC") or related laws administered by the BIR. The wording of the provision is clear and simple.[58]

In any case, the party adversely affected by a decision of respondent must still observe the thirty (30)-day period to file the appeal before this Court, pursuant to Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, which provides as follows:

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56 *Emphases supplied.*
57 *Emphases supplied.*
58 *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[59]

Based on the above provision, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent. The appeal must be filed by the party adversely affected within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Relative thereto, in *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*,[60] the Supreme Court held:

"**The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein**. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

xxx xxx xxx

**The rule against raising new issues on appeal is <u>not without exceptions</u>; it is a procedural rule that the Court may relax <u>when compelling reasons so warrant or when justice requires it</u>. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts**. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

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[59] *Emphasis supplied.*
[60] G.R. No. 163835, July 07, 2010.

> **<u>The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings</u>.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.
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> xxx xxx xxx

Another exemption from the rule against raising new issues on appeal is when the question involves ***matters of public importance***."[61]

Thus, this Court may relax the rule against raising new issues on appeal, when compelling reasons so warrant or when justice requires it. Moreover, while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain **exceptions**, to wit: (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, and (ii) questions involving *matters of public importance.*

In this case, whether or not the subject tax assessments are valid is a *matter of record*, and *of public importance.* The said issue is a *matter of record* because the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by referring to the said evidence. Furthermore, the resolution of the same issue can be deemed as *matter of public importance*, as tax cases often involve public interest and the observance of strict procedural requirements imposed on the taxing authority.[62] Needless to state, 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.[63] If the assessments are indeed invalid,

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[61] *Emphasis and underscoring supplied.*

[62] *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 259729, November 17, 2025.

[63] *Commissioner of Internal Revenue v. Reyes, et. al.*, G.R. Nos. 159694 and 163581, January 27, 2006.

petitioner, like other taxpayers, must not be held liable under such invalid tax assessments. *Apropos*, a void assessment bears no valid fruit.[64]

Here, the issue on validity or invalidity of the LOA is crucial in resolving the principal issue on whether petitioner is liable to pay the deficiency tax assessment for taxable year 2012 and is necessary to achieve an orderly and comprehensive disposition of the case. Moreover, the resolution of this issue can rely solely on factual bases that are already matters of record in the case.

In view thereof, this Court sees no legal hindrance to resolve the issues or matters raised by petitioner for the first time on the present appeal.

Now, as to the timeliness of the present appeal, petitioner avers that on April 08, 2021, it received a copy of respondent's *Decision* dated March 01, 2021, affirming the tax assessment pursuant to the FDDA dated August 18, 2020.[65] Hence, pursuant to Section 11 of R.A. No. 1125, as amended, as well as Section 228 of the NIRC of 1997, as amended, it had thirty (30) days from receipt of respondent's *Decision* dated March 01, 2021 on April 08, 2021, or until May 08, 2021, within which to file its *Petition for Review* before this Court.[66] However, due to the physical closure of the courts in the National Capital Region from May 3 to 14, 2021, pursuant to Supreme Court Administrative Circular No. 29-2021, the deadline for filing its *Petition for Review* was effectively moved to seven (7) calendar days counted from the first day of the physical reopening of the court on May 17, 2021, as such, it has until May 24, 2021 to file its *Petition for Review*.[67] Hence, the filing of its *Petition for Review* on May 19, 2021 was timely made.[68]

On the other hand, respondent maintains that the case involves an undisputed assessment for failure on the part of petitioner to submit the relevant documents after filing a request for reinvestigation against the FLD and FAN.

The Court again disagrees with respondent.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, including a remedy to seek redress of the decision or inaction on the disputed assessment, *viz.*:

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64 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
65 Docket, petitioner's *Memorandum*, Par. 9, p. 1235.
66 *Id.*, petitioner's *Memorandum*, Pars. 10 to 11, p. 1235.
67 Refer to Docket, petitioner's *Memorandum*, pars. 12 to 13, p. 1236.
68 Refer to Docket, petitioner's *Memorandum*, par. 14, p. 1236; and par. 5, *Petition for Review*, p. 7.

"Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

**If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**"[69]

[69] *Emphasis supplied.*

Implementing the above-quoted Section 228, Section 3 of Revenue Regulations (R.R.) No. 12-99,[70] as amended by R.R. No. 18-2013,[71] and as renumbered by R.R. No. 7-2018,[72] provides, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
>
> 3.1.5[73] *Disputed Assessment.* — xxx
>
> xxx xxx xxx
>
> **If the <u>protest is denied</u>, in whole or in part, <u>by the Commissioner's duly authorized representative</u>, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) <u>elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>.** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> **If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration**; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation,

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[70] SUBJECT: 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.

[71] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[72] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[73] Formerly Section 3.1.4 under RR No. 18-2013 but was renumbered to Section 3.1.5 pursuant to Section 2 of RR No. 7-2018.

**the taxpayer may** either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**

**If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision.** Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

**If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either**: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) **await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**"[74]

Based on the foregoing, if the protest is denied, in whole or in part, by the respondent's duly authorized representative, as in this case, the taxpayer may either: (i) appeal to this Court within thirty (30) days from date of receipt of the FDDA; or (ii) **elevate its protest through request for reconsideration to respondent within thirty (30) days from date of receipt of the FDDA**. In case the administrative appeal is denied, in whole or in part, by respondent, the taxpayer may appeal to this Court within thirty (30) days from date of receipt of the said decision, notwithstanding that the one hundred eighty (180)-day period for respondent to act on the disputed assessment had already expired.

Also, when the protest is elevated through a request for reconsideration to the respondent within thirty (30) days from date of receipt of the decision of respondent's duly authorized representative, the taxpayer may await the final decision of the respondent himself on the disputed assessment.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[75] and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*,[76] as reiterated in *Light*

[74] *Emphasis and underscoring supplied.*
[75] G.R. No. 168498, April 24, 2007.
[76] G.R. No. 171251, March 05, 2012.

*Rail Transit Authority v. Bureau of Internal Revenue*,[77] the Supreme Court held that in case respondent failed to act on the disputed assessment within the one hundred eighty (180)-day period, the taxpayer may either: (1) file a petition for review with this Court within thirty (30) days after the expiration of the one hundred eighty (180)-day period fixed by law for the respondent to act on the disputed assessment; or (2) **await the final decision of the respondent on the disputed assessments and appeal such final decision to this Court within thirty (30) days after receipt of a copy of such decision. This is true even if the one hundred eighty (180)-day period for the respondent to act on the disputed assessment had already expired.**

This is also consistent with Section 3(a)(2), Rule 4 of the RRCTA, which states that "should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules".

In this case, petitioner opted to elevate the FDDA dated August 18, 2020[78] issued by the Regional Director before the respondent by filing its *Administrative Appeal Request for Reconsideration* dated October 22, 2020.[79] Hence, having opted to await for the decision of respondent on its administrative appeal, the reckoning of the thirty (30)-day period to appeal to this Court, shall be counted from petitioner's receipt of respondent's *Decision* on April 08, 2021.[80] Accordingly, petitioner had until May 08, 2021 to file the present *Petition for Review*.

However, pursuant to Supreme Court Administrative Circular No. 29-2021 dated April 30, 2021 *(Re: Work Arrangements in Courts on 3 – 14 May 2021)*, the time for filing and service of pleadings and motions in the National Capital Region, among others, was suspended from May 03, 2021 to May 14, 2021 and resumed after seven (7) calendar days counted from the first day of the physical reopening of the relevant court. Therefore, petitioner's filing of the present *Petition for Review* on May 19, 2021,[81] is well within the adjusted period for filing the same.

Moreover, contrary to respondent's allegation, a perusal of petitioner's *Request for Reconsideration and Mandatory Inhibition* dated February 10, 2016,[82] shows that petitioner's protest to the FLD/FAN is a request for *reconsideration* and not

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77 G.R. No. 231238, June 20, 2022.
78 Docket, Exhibit "P-14", pp. 1171 to 1173.
79 *Id.*, Exhibit "P-15", pp. 293 to 319.
80 *Id.*, Stipulation of Facts, JSFI, Par. 8, p. 578; Exhibit "P-2", pp. 49 to 57.
81 *Id.*, pp. 6 to 48.
82 *Id.*, Exhibit "P-11", pp. 687 to 698.

a request for reinvestigation. Even respondent's witness, RO Ryan S. Gatpandan, acknowledged that petitioner filed a request for reconsideration.[83]

Section 3 of R.R. No. 12-99, as amended by R.R. No. 18-2013, which implements Section 228 of the NIRC of 1997, as amended, discusses the difference between a request for reconsideration and for reinvestigation, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may **protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on

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[83] Refer to Docket, Q&A No. 43, Exhibit "R-22", p. 166; BIR Records, Exhibit "R-21", p. 241.

which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

xxx xxx xxx

**For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **<u>The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration.</u>** Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

xxx xxx xxx."[84]

On the basis of the foregoing provisions, the form and manner of protests to be filed by the concerned taxpayer has been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a *request for reconsideration* and a *request for reinvestigation*. Thus, the two (2) types of protest can no longer be used interchangeably and their differences so lightly brushed aside.[85]

Clearly, in a *request for reconsideration*, the plea for re-evaluation of the assessment is *"on the basis of existing records without need of additional evidence"*, while in a *request for reinvestigation*, such plea for re-evaluation is *"on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation"*. Furthermore, it must be pointed out that the distinction between a *request for reconsideration* and a *request for reinvestigation* is significant for the purpose of identifying which request triggers the application or operation of the sixty (60)-day period, within which to submit all relevant supporting documents, as determined by the concerned taxpayer. Apparently, the said sixty (60)-day period applies only to *requests for reinvestigation.*

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[84] *Emphasis and underscoring supplied.*

[85] Refer to *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 139736, October 17, 2005.

In this case, petitioner having filed a protest in the form of a request for ***reconsideration***, then, the submission of relevant supporting documents does not apply to its protest.

***The LOA is valid.***

Petitioner argues that the entire assessment is void on account of the nullity and/or invalidity of the LOA, as the LOA dated July 15, 2014 was not properly served within the required period of thirty (30) days or was not properly revalidated. Petitioner stresses that the LOA was not received by its responsible officers or authorized representatives.

On the other hand, respondent contends that the LOA was validly served within thirty (30) days from issuance date, thus, revalidation thereof is no longer necessary. Also, respondent alleges that the LOA was served to petitioner's authorized representative, Ms. Gellie L. Rabonga, on August 12, 2014.

The contention of petitioner is untenable.

Section 3.1.6 of R.R. No. 12-99, as amended by R.R. No. 18-2013, clearly states the modes of services of, *inter alia*, notices from the BIR to wit:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.6 ***Modes of Service.*** – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than

the registered address where business activities of the party are conducted or his place of residence.

In case of personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to <u>when the party is not present</u> at the registered or known address under the following circumstances:**

**The notice may be left at the party's registered address, <u>with his clerk or with a person having charge thereof</u>.**

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signature of the witnesses.

Should the party be found at his registered or known address of any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

*'Disinterested witnesses'* refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

xxx xxx xxx."[86]

Thus, with regard to substituted service, like in the present case, the same can be availed of only in specific instances depending on whether the concerned party is present or not, or in case the said party is present, but the same party refuses to receive the notice. **If the party is <u>not present</u>, the notice may be left at the party's registered or known address, <u>with his/her/its clerk or with a person having charged thereof</u>**. If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. Should the party be found at the registered or known address but refuses to receive the notice, the concerned revenue officers shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such refusal. In the latter two (2) cases, the notice shall be given to the said barangay official.

86 *Emphasis and underscoring supplied.*

Accordingly, **substituted service** can be resorted to only: (1) when the party is not present at the registered or known address; (2) if no person is found in the party's registered or known address; and (3) when the party is found therein but refuses to receive the notice.

In the present case, respondent resorted to substituted service, for the reason that petitioner was not present at its registered address and the only person present in the said address is Ms. Gellie L. Rabonga. During his cross-examination and re-direct examination RO Ryan S. Gatpandan testified as follows:

> "**CROSS-EXAMINATION**
> **X-----------------------X**
>
> ATTY. BANDILLO:
> Good morning, Mr. Witness, in your Answer and Question No. 5, you mentioned that you personally serve the original copies of the LOA and the Checklist of Requirements to Maquinit. To whom did you actually serve the LOA and Checklist?
>
> WITNESS:
> To Ms. Gellie Rabonga.
>
> ATTY. BANDILLO:
> Ms. Witness, did you inquire if Ms. Gellie Rabonga is an authorized representative of Maquinit to receive such documents from the Bureau of Internal Revenue (BIR)?
>
> WITNESS:
> **<u>She is the only person present during the time of service</u>**."[87] *(Emphasis and underscoring added)*

> "**RE-DIRECT EXAMINATION**
> **X---------------------------X**
>
> ATTY. MEDINA:
> Mr. Witness, during your cross-exam you were asked if Ms. Gellie Rabonga is an authorized representative, Mr. Witness, why did you serve the notices to Ms. Rabonga?

[87] Transcript of Stenographic Notes (TSN) dated February 01, 2024, p. 11.

WITNESS:

> **<u>Ms. Rabonga is the only person present at the registered address of the taxpayer, that authorized corporate officer of Maquinit cannot be found during the time of service</u>**, and given the geographical location of this, the company is located in Coron Island and I was based in Puerto Princesa and given that I only have the time of services, **<u>I resorted to substituted service through the person found in the registered address, and that is Ms. Gellie Rabonga</u>**."[88] *(Emphases and underscoring added)*

Based on the above, the LOA was properly served to Ms. Gellie L. Rabonga, on August 12, 2014,[89] which was within thirty (30) days from the date of issuance of the said LOA on July 15, 2014.

Here, the Court gives credence to respondent's evidence in view of the presumption of regularity, as tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.[90]

Petitioner further contends that considering the PAN was only issued on December 11, 2015 or more than a year from petitioner's alleged receipt of the LOA on August 12, 2014, the same is allegedly issued way beyond the one hundred twenty (120)-day period granted by law and by respondent's own rules and procedures to conduct the audit of petitioner's books and to submit a report. Petitioner posits that the LOA should have been revalidated for the grant of a valid and existing authority before any RO could have conducted an examination or assessment of petitioner's books.[91]

On the other hand, respondent contends that Revenue Memorandum Order ("RMO") No. 33-84 lays down the guidelines in the submission of report within the one hundred twenty (120)-day period, but the said RMO did not categorically state that the failure to accomplish and submit a final report on the investigation within the one hundred twenty (120)-day prescribed period from the date of issuance of the LOA shall automatically lead to its invalidation. Instead, it only prescribed for a possible administrative sanction on the erring examiner.

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88 TSN dated February 1, 2024, p. 19.
89 BIR Records, Exhibit "R-1", p. 87.
90 *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 04, 2020.
91 Refer to Docket, petitioner's *Memorandum*, pars. 84 and 85, p. 1249.

The Court does not agree with petitioner.

It must be pointed out that Revenue Memorandum Circular ("RMC") No. 23-2009 dated April 16, 2009[92] categorically states that failure on the part of the concerned RO to request for revalidation of an LOA or the expiration of the *"revalidation period"* does not nullify the same, nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. The said issuance states, in part, as follows:

> "**I. Revalidation of LAs**
>
> The revalidation of LA[93] shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. **Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.** However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary."[94]

After one (1) year from the issuance of RMC No. 23-2009, respondent issued RMO No. 44-2010 dated May 12, 2010,[95] whereby respondent declares that there is no need for revalidation of the LOA beginning June 1, 2010, to wit:

> "IV. POLICIES AND GUIDELINES
>
> xxx xxx xxx

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[92] SUBJECT: Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

[93] That is, an LOA or a Letter of Authority.

[94] *Emphasis supplied.*

[95] SUBJECT: Electronic issuance of Letters of Authority.

8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn**. Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.

xxx xxx xxx

V. REPEALING CLAUSE

**The provisions of existing issuances that are inconsistent herewith are hereby repealed, amended, or modified**."[96]

On the basis thereof, it is clear that the revalidation of LOAs which should be done "for failure of the revenue officials to complete the audit within the prescribed period", has been withdrawn beginning on June 01, 2010. The effect of such failure is merely to subject the concerned RO to applicable administrative sanctions, and not to render null the issued LOA. More significantly, the lapse of the said period of audit would not have the effect of revoking the authority given to the concerned RO.

Unlike in the case of *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[97] cited by petitioner which states that the expiration of the 120-day period renders the LOA unenforceable, the LOA therein was issued in 2008. On the other hand, the herein subject LOA No. SN: eLA201100050283/LOA-036-2014-00000014 was issued on July 15, 2014, thus, the above-quoted provisions of RMO No. 44-2010 must already govern the present case, as the same was already in full effect at the time of the issuance of the subject LOA. Correspondingly, the lack of revalidation of the same LOA, despite the lapse of the one hundred twenty (120)-day period, does not nullify the same.

In sum, the Court sees no irregularity in the issuance and service of the subject LOA.

***However, petitioner's right to due process was violated when***

[96] *Emphasis and underscoring supplied.*
[97] G.R. No. 222133, November 04, 2020.

***respondent issued the FLD/FAN even before the fifteen (15)-day period to reply to the PAN started to run.***

Aside from the alleged improper service of the PAN, petitioner argues that it received a copy of the PAN dated December 11, 2015 on January 22, 2016. Accordingly, it has fifteen (15) days from that date, or until February 06, 2016, which falls on a Saturday, hence, the next working day, February 08, 2016, within which to file its protest.[98] However, petitioner avers that on February 03, 2016, it was already handed down the FLD dated January 13, 2016, without giving due consideration to its *Protest Letter* to the PAN, which was filed on February 04, 2016. Hence, petitioner argues that the automatic and immediate issuance of the FLD/FAN, still within the reglementary period to file a protest to the PAN, without heeding the arguments laid down in its *Protest Letter* to the PAN, is tantamount to gross violation of the latter's constitutional right to due process.[99]

On the other hand, respondent contends that petitioner has been given every opportunity to refute the assessment made against it when it was able to file a protest to the PAN.

The Court agrees with petitioner.

Section 3.1.1 of R.R. No. 12-99, as amended by R.R. No. 18-2013, provides that the taxpayer has fifteen (15) days to reply to the PAN, to wit:

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

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98 Docket, petitioner's *Memorandum,* Par. 117, p. 1258.
99 *Id.,* petitioner's *Memorandum,* Par. 118, p. 1258.

> 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **within fifteen (15) days from date of receipt of the PAN, responds** that he/it disagrees with the finding of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties." [100]

In this case, the PAN dated December 11, 2015 was received by petitioner on January 22, 2016,[101] hence, it had fifteen (15) days therefrom, or until February 08, 2016,[102] within which to file its protest. On February 04, 2016, petitioner filed the corresponding *Protest Letter* to the PAN dated February 02, 2016.[103] However, records reveal that the FLD/FAN with attached *Details of Discrepancy* was already issued on January 13, 2016,[104] and was handed to petitioner on February 03, 2016,[105] or even before the fifteen (15)-day period to reply to PAN has lapsed.

During the hearing on February 01, 2024, respondent's witness, RO Ryan S. Gatpandan, stated that he does not know when the PAN was received by petitioner but since the PAN was issued on December 11, 2015 there is a presumption that it was already received by the taxpayer, given the date between the PAN and the FLD/FAN was more that fifteen (15) days, to wit:

> "ATTY. BANDILLO:
>
> Mr. Witness, would you agree that there is already a FAN/FLD dated January 13, 2016, but was served on Maquinit on February 2016 even before petitioner Maquinit received the PAN?

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100 *Emphasis and underscoring supplied.*
101 Docket, Exhibit "P-16", Q&A No. 12, p. 635.
102 February 6, 2016 fell on a Saturday.
103 Docket, Exhibit "P-5", pp. 665 to 674.
104 Docket, Exhibits "P-6" to "P-10", BIR Records, pp. 264 to 268; Exhibits "R-14" to "R-18-1", pp. 184 to 190.
105 Docket, Exhibit "P-16", Q&A No. 33, p. 639.

WITNESS:

I believe the PAN was issued December 11 [2015]. There is a presumption that that's already received by the taxpayer, and the taxpayer five (5) days or fifteen (15) days, I don't know exactly, but given the date between the PAN and the FAN was issued, it was more than fifteen (15) days.

ATTY. BANDILLO:

Mr. Witness, what is the basis of your presumption that it was received by the petitioner Maquinit?

WITNESS:

I don't know the exact."[106]

"JUSTICE LIBAN:

Anyway, so anything else? Any question? I just want to make it clear; the PAN is dated December 11, 2015?

WITNESS:

Yes, Your Honors.

JUSTICE LIBAN:

And the FAN was dated January 13, 2016?

WITNESS:

Yes, Your Honors.

JUSTICE LIBAN:

The Protest to the PAN was dated February 2, while the Protest to the FAN, that's February 10?

WITNESS:

Yes, Your Honors.

JUSTICE LIBAN:

But you have no knowledge on when the PAN was received?

WITNESS:

Yes, Your Honors. xxx"[107]

Although respondent's witness, RO Ryan S. Gatpandan, testified that the PAN was served by registered mail,[108] no other evidence was presented to prove

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[106] TSN dated February 1, 2024, pp. 17 to 18.
[107] TSN dated February 1, 2024, p. 22.
[108] Docket, Exhibit "R-22", Q&A No. 35, p. 164; TSN dated February 01, 2024, pp. 6 to 7.

the fact of mailing. He even admitted during his cross-examination that he has no knowledge as to the existence of the Registry Receipt with regard to the PAN since he was not the one who mailed the same, to wit:

> "ATTY. BANDILLO:
> Mr. Witness, the PAN dated December 11, 2015 was served via registered mail and the thing was received by Maquinit on January 22, 2016. Is that correct?
>
> JUSTICE LIBAN:
> Where did you get that?
>
> ATTY. BANDILLO:
> Your Honors, let me rephrase the question. Mr. Witness, do you have in any way will know when did Maquinit received the said PAN?
>
> JUSTICE LIBAN:
> Is there a registry return receipt, with regard to the PAN?
>
> WITNESS:
> **I have no knowledge with the registry return, since it is the Assessment Division who mailed the PAN**, Your Honors.
>
> JUSTICE LIBAN:
> **But do you know if there is a registry return receipt in the records of the case or you do not have knowledge?**
>
> WITNESS:
> **No, knowledge**, Your Honors."[109] *(Emphases added)*

In light of petitioner's positive testimony as to the date of receipt of the PAN on January 22, 2016, supported by its *Protest Letter* to the PAN dated February 02, 2016,[110] which also stated that the PAN was received on said date, as against respondent's lack of knowledge as to the date of receipt thereof, with no proof as to the fact of mailing or receipt thereof by petitioner, the former prevails.

In *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*,[111] the Supreme Court reiterated that the importance of the PAN stage of the

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[109] TSN dated February 01, 2024, pp. 16 to 17.
[110] Docket, Exhibit "P-5", pp. 665 to 674.
[111] G.R. No. 249153, September 12, 2022.

assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN. Further, citing the case of *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[112] the Supreme Court ruled that the fifteen (15)-day period provided under R.R. No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The High Court highlighted that only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN. That the taxpayer was able to file a protest to the FLD/FAN is of no moment as R.R. No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response. Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC of 1997, as amended, and R.R. No. 12-99 is void and produces no effect.

Hence, it is beside the point that petitioner was able to submit its *Protest Letter*. The fact remains that respondent violated petitioner's right to due process by issuing the FLD/FAN without even awaiting its reply to the PAN or the lapse of the fifteen (15)-day period to reply to the PAN.

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the respondent to <u>strictly comply</u> with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process**.[113]

In view of the nullity of the subject tax assessments, as above discussed, this Court finds it unnecessary to address the remaining issues or matters raised in the present case.

**ACCORDINGLY**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

For being void, the subject tax assessments embodied in the FLD/FAN with attached *Details of Discrepancy* dated January 13, 2016, issued against petitioner for alleged deficiency income tax, VAT, EWT and IAET for the taxable year 2012, are **CANCELLED** and **SET ASIDE**.

Respondent is **ENJOINED and PROHIBITED** from collecting the amount sought by the void assessments.

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[112] G.R. No. 222476, May 05, 2021.

[113] Refer to *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010, citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 06, 1991.

Likewise, the FDDA dated August 18, 2020 and *Decision* dated March 01, 2021, issued against petitioner for deficiency income tax, VAT, EWT and IAET, for the taxable year 2012, in the total amount of Php4,380,247.75, inclusive of increments, are **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Presiding Justice*

**WE CONCUR:**

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

**CORAZON G. FERRER-FLORES**
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.

**MA. BELEN M. RINGPIS-LIBAN**
*Presiding Justice*