CTA Form No. 8

18-000456-0081

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9952

APPLIED FOOD INGREDIENTS CO., INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. LIEZL G. BOHOL
Bureau of Internal Revenue - Revenue Region No. 7B
25th Floor, Legal Division, The Podium Tower
ADB Avenue, Ortigas Center, Mandaluyong City

IFURUNG LAW OFFICES
Unit 1902-A East Tower
Philippine Stock Exchange Centre
Exchange Road, Ortigas Center, 1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **May 23, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 24, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

APPLIED FOOD INGREDIENTS CO., INC., *Petitioner,*	**CTA Case No. 9952**
	Members: **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 23 2024, 2:05PM

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DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by Applied Food Ingredients Co., Inc. (petitioner or Applied Food), assailing the Decision dated September 10, 2018 (Assailed Decision).[2] Respondent Commissioner of Internal Revenue (CIR) affirmed the Final Decision on Disputed Assessment (FDDA) dated March 27, 2015[3] issued by the Regional Director,[4] finding petitioner liable for deficiency value-added tax (VAT) amounting to ₱20,115,479.81 relative to taxable year (TY) 2010.

FACTS

Petitioner is a domestic corporation engaged in the business of trading chemicals. Its principal place of business is located at Unit 2505 Tektite West Tower Exchange Road, Ortigas Center, Pasig City.[5]

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1 Docket - Vol. 1, pp. 10-45.
2 Exhibits "P-1" and "R-39", Docket - Vol. I, pp. 515 to 520.
3 Par. 9, Joint Stipulation of Facts, JSFI, Docket - Vol. 2, p. 644; Exhibit "P-3", Docket - Vol. 1, p. 615.
4 Alfredo V. Misajon, Regional Director, Revenue Region No. 7, Quezon City.
5 Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. 2, p. 643.

Respondent is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to assess and collect all national internal revenue taxes. It has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR.[6]

For TY 2010, petitioner filed its quarterly VAT returns (BIR Form No. 2550Q) as follows:

Quarter	Date Filed	Exhibit
First	April 24, 2010	P-5-b[7]
Second	July 21, 2010	P-5-c[8]
Third	October 21, 2010	P-5-d[9]
Fourth	January 20, 2011	P-5-e[10]

For each these quarters, petitioner reported VAT payable at *nil* because its available input tax exceeded the output tax due, *viz.*:

Output tax due	₱6,991,317.48	₱6,224,462.98	₱7,385,882.69	₱7,646,843.59
Carried over from previous period	₱16,988,906.74	₱18,700,144.77	₱19,538,534.88	₱18,850,835.55
Deferred from previous period	880,712.46	747,754.18	614,795.90	481,837.62
From current transactions	8,569,597.23	6,929,894.81	6,565,225.08	3,348,043.89
Less Deferred for succeeding periods	747,754.18	614,795.90	481,837.62	348,879.39
Allowable input tax	₱25,691,462.25	₱25,762,997.86	₱26,236,718.24	₱22,331,837.67
Excess of input over output tax due	₱18,700,144.77	₱19,538,534.88	₱18,850,835.55	₱14,684,994.08

Proceedings at the administrative level.

Pursuant to **Letter of Authority** (LOA) No. LOA-43A-2011-00000466/ SN: eLA201000063451 dated September 6, 2011, the BIR[11]

[6] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 5, p. 2247.
[7] Docket – Vol. 1, pp. 72-73.
[8] Docket – Vol. 1, pp. 75-76.
[9] Docket – Vol. 1, pp. 88-89.
[10] Docket – Vol. 1, pp. 91-92.
[11] Through Revenue Officer Renato and Group Supervisor Roummel Bernos of Revenue District Office (RDO) No. 43A – East Pasig

examined petitioner's books of account and other accounting records relative to all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

In **Notice of Informal Conference** (NIC) dated May 10, 2013,[12] the BIR[13] proposed a deficiency VAT assessment amounting to ₱14,743,076.91, inclusive of interests. Petitioner responded to the NIC in a letter dated June 5, 2013.[14]

Later on, respondent[15] issued a **Preliminary Assessment Notice** (PAN) dated January 6, 2014,[16] served on January 8, 2014,[17] finding petitioner liable for deficiency VAT amounting to ₱17,438,665.67, computed as follows:

Taxable Sales per VAT Returns			₱235,404,222.72
Add: Adjustments per Investigation			-
Taxable Sales per Investigation			235,404,222.72
Output Tax thereon			₱28,248,506.73
Less: Allowable Tax Credits and Payments			
Excess Input Tax Carried Over from the Previous Period		₱16,988,906.71	
Input Tax Deferred on Capital Goods Exceeding P1M		880,712.45	
Input Tax		25,412,761.03	
Total		₱43,282,380.19	
Less: Input Tax on Capital Goods Exceeding P1M Deferred for the Succeeding Period	₱348,879.39		
Others	14,684,994.08		
Disallowed Excess Input Tax Carried-Over from the Previous Period	10,970,549.75	26,004,423.22	17,277,956.97
Deficiency Value-Added Tax			**₱10,970,549.76**
Add: 20% Interest p.a. from 01.26.2011 to 01.06.2014			**6,468,115.91**
TOTAL AMOUNT DUE			**₱17,438,665.67**

12 Par. 4, Joint Stipulation of Facts, JSFI, Docket - Vol. 2, p. 643; Exhibits "P-6" and "R-6", Docket - Vol. 1, pp. 544 to 549.

13 Through Florante R. Aninag, RDO, Revenue Region No. 7.

14 Exhibit "P-7", Docket - Vol. 1, pp. 550 to 551.

15 Through Jonas DP. Amora, Regional Director, Revenue Region No. 7.

16 Par. 5, Joint Stipulation of Facts, JSFI, Docket - Vol. 2, p. 644; Exhibits "P-8" and "R-16", "R-16-A, and "R-16-B", Docket - Vol. 1, pp. 567 to 568.

17 Exhibit "R-16-A," Docket - Vol. 1, p. 567.

Petitioner refuted the findings in the PAN through a letter dated January 23, 2014, which it filed on even date.[18]

Thereafter, respondent[19] issued the **Formal Letter of Demand and Assessment Notice** (FLD/FAN) dated January 27, 2014,[20] served the same upon petitioner on the same day,[21] finding petitioner liable for deficiency VAT amounting to ₱17,733,217.42, *viz.*:

Taxable Sales per VAT Returns			₱235,404,222.72
Add: Adjustments per Investigation			-
Taxable Sales per Investigation			235,404,222.72
Output Tax thereon			₱28,248,506.73
Less: Allowable Tax Credits and Payments			
Excess Input Tax Carried Over from the Previous Period		₱16,988,906.71	
Input Tax Deferred on Capital Goods Exceeding P1M		880,712.45	
Input Tax		25,412,761.03	
Total		₱43,282,380.19	
Less: Input Tax on Capital Goods Exceeding P1M Deferred for the Succeeding Period	₱348,879.39		
Others	14,684,994.08		
Disallowed Excess Input Tax Carried-Over from the Previous Period	10,970,549.75	26,004,423.22	17,277,956.97
Deficiency Value-Added Tax			₱10,970,549.76
Add: 20% Interest p.a. from 01.26.2011 to 02.24.2014			**6,762,667.66**
TOTAL AMOUNT DUE			₱17,733,217.42

The amount due in the FLD/FAN represented the same basic deficiency VAT as indicated in the PAN, adjusted only to include additional interest accruing from the time of the PAN's issuance. **Notably, the FLD/FAN did not contain any discussion of the arguments raised in petitioner's response to the PAN (i.e., letter dated January 23, 2014).**

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[18] Exhibit "P-9", Docket – Vol. I, p. 128 to 133.
[19] Through Jonas DP. Amora, Regional Director, Revenue Region No. 7.
[20] Par. 6, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 644; Exhibits "P-10" and "R-20", Docket – Vol. I, p. 572.
[21] Exhibit "R-20-A," Docket – Vol. 1, p. 572.

Petitioner filed a *Protest* to the FLD/FAN through letters dated February 6[22] and February 7, 2014,[23] both addressed to the Regional Director. In the main, it argued that the right of the BIR to assess petitioner for deficiency VAT is barred by prescription and that the assessment had been issued in violation of its due process rights.

In a **letter** dated February 16, 2015,[24] the Regional Director responded to petitioner's protest, informing the latter that the case will be returned to Revenue District Office No. 43A - East Pasig City for the issuance of the FDDA.

Petitioner regarded the letter dated February 16, 2015 as a denial of its Protest. Thus, on March 12, 2015, it filed a *Request for Reconsideration* before respondent CIR.[25]

On March 27, 2015, the Regional Director issued the subject **FDDA**, finding petitioner liable for deficiency VAT amounting to ₱20,115,479.81, representing the same basic VAT indicated in the PAN and FAN/FLD, only with corresponding adjustment to accrued interest. As the Request for Reconsideration was still pending before the CIR, petitioner adopted the arguments therein as its protest to the FDDA.[26]

Acting on petitioner's Request for Reconsideration, respondent CIR issued the assailed **Decision** promulgated on September 10, 2018,[27] upholding the FDDA and ordering petitioner to pay the assessed amount. The CIR made an express statement that said issuance constituted the final decision on petitioner's assessment case.[28]

Hence, Applied Food filed the present petition on October 16, 2018 to appeal the CIR's final decision.[29]

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22 Par. 7, Joint Stipulation of Facts, JSFI, Docket - Vol. II, p. 644; Exhibits "P-4" and "R-22", Docket - Vol. 1, pp. 574 to 577.

23 Exhibit "P-4-a," Docket - Vol. 1, pp. 580-584. Petitioner wrote this letter to supplement its Protest / Letter dated February 6, 2014.

24 Exhibit "P-18," Docket - Vol. 1, pp. 154-155.

25 Exhibit "P-2," Docket - Vol. 1, pp. 54 to 66.

26 Par. 10, Joint Stipulation of Facts, JSFI, Docket - Vol. 2, p. 644; Exhibit "P-1," Docket, Vol. 1, p. 517.

27 Exhibit "P-1," Docket, Vol. 1, pp. 515-520

28 Exhibit "P-1," Docket, Vol. 1, p. 518.

29 Docket - Vol. 1, pp. 10 to 47.

Proceedings before the Court.

Respondent filed an *Answer*[30] and transmitted the BIR Records[31] of the case on January 14, 2019 and March 1, 2019, respectively.

The Court resolved[32] to refer this case to mediation on January 28, 2019. During the pendency of mediation, petitioner made an offer of compromise. Consequently, the Court granted the parties' request to suspend the proceedings to allow more time to reach an amicable settlement.[33] However, the Court proceeded to hear the case after more than a year of not receiving any information or update regarding the status of the compromise settlement. [34] Later on, it was reported that the mediation had been unsuccessful.[35]

The case proceeded to pre-trial.[36] The parties submitted their respective pre-trial briefs[37] and a Joint Stipulation of Facts and Issues (JSFI).[38] The Court's approval of the JSFI[39] marked the termination of pre-trial. Consequently, the Court issued the Pre-Trial Order on March 18, 2022.[40]

During trial, the parties presented their respective testimonial and documentary evidence.

For its part, petitioner offered the testimony of Myrna A. De La Fuente,[41] its Chief Accountant. In resolving petitioner's Formal Offer of Exhibits,[42] the Court admitted petitioner's offered exhibits except for Exhibits "P-12," "P-20," "P-27," and "P-28," for failure to present the originals thereof for comparison.[43] While petitioner filed a *Manifestation and Submission of Certified Copies of Exhibits*,[44] the Court

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30 Docket - Vol. 1, pp. 247 to 255.
31 Compliance dated February 27, 2019, Docket - Vol. 1, pp. 265 to 266.
32 Docket - Vol. 1, pp. 257 to 258.
33 In a Resolution dated July 24, 2019, Docket - Vol. 1, p. 283.
34 In a Resolution dated November 20, 2020, Docket - Vol. 1, pp. 299 to 300.
35 Mediator's Report dated December 3, 2020 issued by the PMC-CTA, Docket - Vol. 1, p. 307.
36 In a Resolution dated November 20, 2020, Docket - Vol. 1, pp. 299 to 300.
37 Docket - Vol. II, pp. 661 to 672, 326 to 329.
38 Docket - Vol. 2, pp. 643 to 648.
39 Resolution dated July 29, 2021, Docket - Vol. 2, p. 694.
40 Docket - Vol. 2, pp. 717 to 733.
41 Exhibit "P-34", Docket - Vol. 2, pp. 685 to 692; Minutes of the hearing held on, and Order dated, November 16, 2021, Docket - Vol. 2, pp. 699 to 701.
42 Docket - Vol. 2, pp. 705 to 707.
43 In a Resolution dated July 4, 2022, Docket - Vol. 2, p. 753 to 755.
44 Docket - Vol. 2, pp. 778 to 780.

still denied the same.[45] Thereafter, petitioner sent a *Motion for Tender of Excluded Evidence*, which the Court noted in a Resolution dated February 21, 2023.[46]

On the other hand, respondent presented Revenue Officers Renato M. Atos[47] and Madonna Bognot[48] as its witnesses. In resolving[49] respondent's Formal Offer of Evidence,[50] the Court admitted all of respondent's offered exhibits.

After the parties failed to file their respective memoranda,[51] the Court resolved to submit the case for decision on May 26, 2023.[52] Nevertheless, the Court admitted[53] petitioner's *Memorandum* and *Supplemental Memorandum* filed thereafter.

ARGUMENTS

Applied Food's Arguments

Petitioner asserts that the right to assess and collect has prescribed; that the FLD/FAN did not state the facts, law, rules and regulations on which it is based; and that there was no basis to disallow excess input tax-others carried over from one quarter to another.

The CIR's Arguments

Respondent contends that the period of the government to assess petitioner has not yet prescribed; that the right of the government to collect has not yet prescribed; and that the assessment issued against petitioner has factual and legal basis.

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45 In a Resolution dated January 10, 2023, Docket - Vol. 2, pp. 804 to 806.
46 Docket - Vol. 2, p. 826.
47 Exhibit "R-41", Docket - Vol. 1, pp. 527 to 537; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket - Vol. 2, pp. 793 to 796.
48 Exhibit "R-42", Docket - Vol. 1, pp. 503 to 512; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket - Vol. 2, pp. 793 to 796.
49 In a Resolution dated March 30, 2023, Docket - Vol. 2, pp. 829 to 830.
50 Docket - Vol. 2, pp. 807 to 816.
51 Records Verification dated May 22, 2023 issued by the Judicial Records Division of this Court, Docket - Vol. 2, p. 831.
52 Notice, Docket - Vol. 2., p. 832.
53 In a Resolution dated September 22, 2023, Docket - Vol. 2, unpaginated.

ISSUES

Based on the parties' submissions, We restate the issues as follows:

A. Were the subject VAT assessments relative to TY 2010 already barred by prescription?

B. Did the CIR observe proper due process in the issuance of the subject assessment against Applied Foods?

OUR RULING

The Petition for Review is meritorious.

The VAT Assessments relative to the first, second, and third quarters of TY 2010 were already barred by prescription.

It is settled that the three-year period for assessment shall be reckoned from the statutory deadline for filing a tax return or the actual date of filing, whichever is later.[54] In other words, what is controlling is the **filing of the return *as required by law*,** whether it be filed on or before the deadline, or after that.

Specifically for VAT, Section 114 of the National Internal Revenue Code of 1997, as amended (Tax Code), provides:

> (A) In General. —Every per liable to pay the value-added tax x x x shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, *That VAT-registered persons shall pay the value-added tax on a monthly basis.*

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[54] Section 203 of the Tax Code provides, "Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

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Based on the above-quoted provision, a VAT taxpayer is required to **file a return *quarterly***, but is nonetheless required to **pay the tax due *monthly***. The deadline for filing of the quarterly VAT return (BIR Form No. 2550Q) is set on or before the 25th day following the close of the taxable quarter.

Thus, as pronounced in the recent case of *Lapanday Foods Corp. v. Commissioner of Internal Revenue*,[55] the three-year prescriptive period for issuing a VAT assessment shall be counted from the last day of the 25-day period from the close of the taxable quarter within which to file the quarterly VAT return, or the date of actual filing of the quarterly VAT return, whichever comes later.

In the present case, petitioner filed its 2010 quarterly VAT returns prior to its respective statutory deadlines. Thus, We count the three-year period from the statutory deadline as follows:

Quarter	Exhibit	Date Filed	Statutory Deadline	Last Day of Assessment Period
First	P-5-b[56]	April 24, 2010	April 25, 2010	**April 25, 2013**
Second	P-5-c[57]	July 21, 2010	July 25, 2010	**July 25, 2013**
Third	P-5-d[58]	October 21, 2010	October 25, 2010	**October 26, 2013**
Fourth	P-5-e[59]	January 20, 2011	January 25, 2011	January 27, 2014[60]

It appears that when respondent issued the FLD/FAN on January 27, 2014,[61] the right to assess petitioner for deficiency VAT relative to the first, second, and third quarters of TY 2010 had already prescribed. It is settled that assessments already barred by prescription are **void**.[62] On this score, We must strike down respondent's attempt to still hold petitioner liable for deficiency VAT relative to the first, second, and third quarters of TY 2010.

Lastly, respondent defends its assessment against prescription by arguing that "[t]he assessment was lumped on an annual basis since the Petitioner earned over from the 1st until the 4th Quarter the

[55] G.R. No. 186155, January 17, 2023.

[56] Docket - Vol. 1, pp. 72-73.

[57] Docket - Vol. 1, pp. 75-76.

[58] Docket - Vol. 1, pp. 88-89.

[59] Docket - Vol. 1, pp. 91-92.

[60] The last day of the three-year period was on January 25, 2014, which fell on a Saturday. Thus, the last day shall be regarded to be on January 27, 2015, the immediately succeeding business day.

[61] Par. 6, Joint Stipulation of Facts, JSFI, Docket - Vol. II, p. 644; Exhibits "P-10" and "R-20", Docket - Vol. I, p. 572.

[62] *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.

disallowed excess input tax from taxable year 2009 x x x 'considering that the disallowed excess input tax was earned over up to the 4th quarter of 2010, there is no need to make the quarterly assessment. The assessment is considered as the 4th quarter assessment.'"

This position is erroneous.

The prescriptive period to assess the taxpayer for deficiency VAT is separable into four quarters, inasmuch as the taxpayer is mandated by law to file a VAT return on a quarterly basis. The requirement to file quarterly VAT returns must be differentiated from that of quarterly corporate income tax returns. While corporations are required by law to file income tax returns for the first, second, and third quarters of a taxable year, the Final Adjustment Return must reflect the transactions for the whole taxable year, not just the fourth quarter.[63] Thus, the prescriptive period to assess a corporate taxpayer for that taxable year shall be reckoned from the filing of the Final Adjustment Return. On the other hand, each quarterly VAT return thus filed constitutes a final computation of the taxpayer's VAT payable for that taxable quarter; the filing thereof / statutory deadline therefor shall commence the three-year period for assessment.

The FLD/FAN was issued in violation of petitioner's right to due process.

The cardinal rules in upholding a litigant's right to due process in administrative proceedings are laid out in *Ang Tibay v. Court of Industrial Relations* (Ang Tibay).[64] According to the second and seventh rules in *Ang Tibay*, "[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**...[Further, the administrative tribunal or body] should, in all controversial questions, render its decision **in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered**." (Emphasis supplied)

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[63] See *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 551 PHIL 519-567; *ACCRA Investments Corp. v. Court of Appeals*, G.R. No. 96322, December 20, 1991, 281 PHIL 1060-1069; *Commissioner of Internal Revenue v. TMX Sales, Inc.*, G.R. No. 83736, January 15, 1992, 282 PHIL 199-208.

[64] G.R. No. 46496, February 27, 1940, 69 PHIL 635-645.

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The Supreme Court reiterated these principles in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (Avon).[65] In *Avon*, the taxpayer responded to the PAN. However, the CIR simply reproduced the PAN's contents in the subsequent FLD/FAN. That the FAN/FLD had no mention of the taxpayer's arguments (raised in its reply) or any discussion on the merits thereof was, according to the Supreme Court, an indication that the tax authorities did not comply their own procedures. It explained further:

> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are **deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.** (Emphasis supplied)

It is clear from the pronouncements in *Ang Tibay* and *Avon* that the requirement of administrative due process is not met sufficiently by the mere formal act of receiving a taxpayer's defenses submitted in writing. Administrative due process also requires **judicious consideration of the matters raised therein, independent evaluation of the case, and due notification to parties of the reasons for judgment.**

In the present case, We note that petitioner responded to the PAN through a letter dated January 23, 2014 to refute the CIR's findings, *viz.*:

> The 2009 input tax carried over to 2010 in the amount of P6,018,356.96 was already adjusted by deducting the amount of P10,970,549.78 [the disallowed amount carried over in 2009] from the amount of P16,988,906.74. The BIR committed an error when it deducted or included the amount of P14,684,994.08 which represents alleged Actual Input carried over to 2011. It is very clear that per BIR's own computation, there is an excess input VAT of P3.711.44.32 in 2010.

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[65] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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> xxx
>
> It is very clear from the above findings of the BIR that our client is not liable for any output VAT in 2010 because the input VAT is more than the output VAT.
>
> There was also no basis in law and jurisprudence alleged by the tax examiners to disallow the excess input tax-others carried over from one taxable year to another. There is also no basis in law and jurisprudence alleged to conclude that our client cannot carry-over an alleged disapproved application for tax credit. There was no declaration during the informal conference/s and letters between the BIR and our client which indicated that it cannot carry-over a denied application for tax credit. If ever the denial was on mere technicality not even authorized by law which are correctible and were sufficiently documented and substantiated by our client. There is also a difference between application for tax credit and the carrying-over excess input tax. If ever, the formal defects, are not fatal to carry-over excess input to the following year:
>
> 1) The BIR Permit to Print is not indicated;
> 2) The word 'zero-rated' is not imprinted on the face of invoices; and
> 3) The invoices do not bear the term 'TIN-VAT'.
>
> xxx
>
> More importantly, the three-year period of limitation to assess the deficiency value[-]added tax has clearly prescribed because the law requires a quarterly return to be filed on the 25th day of the following quarter and the three-year period is reckoned from the last date to file the VAT return. For the calendar quarters in 2010, the three-year period expired on the 25th day of the month of the following quarter [i.e., April, June, October 2013, and January 2014]. Note that 2012 is a leap year."

However, respondent's FLD/FAN contained a basic tax amount identical to that in the PAN, adjusted only to update the computation of interest. **The FLD/FAN made no reference to petitioner's reply to the PAN; the CIR did not mention any of petitioner's arguments, much less give an intelligent discourse in resolving each matter raised.** Verily, the CIR attached Details of Discrepancies to the PAN to explain the findings and resulting deficiency tax amounts. However, the FAN/FLD bore the exact same explanation as that already provided in the Details of Discrepancies accompanying the PAN, to wit:

PAN **Explanation provided in Details of Discrepancies (Annex "A")**	**FLD/FAN** **Explanation provided on the face of the FLD/FAN**
The complete details covering the aforementioned factual and legal basis of the discrepancies established during the investigation of this case are shown in the accompanying ANNEX "A" of this letter. [66] x x x DEFICIENCY VALUE-ADDED TAX a. *Disallowed Excess Input Tax Carried-Over from the Previous Period (₱10,970,549.75)* - Verification disclosed that excess input tax - others carried over from taxable year 2009 were input tax credits that were applied for refund but were disapproved, hence disallowed pursuant to Section 112(C), in relation to Section 110 of the NIRC of 1997, as amended.[67]	The complete details covering the aforementioned factual and legal basis of the discrepancies established during investigation of this case are shown hereunder: DEFICIENCY VALUE-ADDED TAX *Disallowed Excess Input Tax Carried-Over from the Previous Period (₱10,970,549.75)* - Verification disclosed that excess input tax - others carried over from taxable year 2009 were input tax credits that were applied for refund but were disapproved, hence disallowed pursuant to Section 112(C), in relation to Section 110 of the NIRC of 1997, as amended.[68]

The identity in substance between the subject PAN and the subsequent FLD/FAN, as in *Avon*, shows that the CIR completely ignored petitioner's response to the PAN.

The filing of a response to the PAN prior to the issuance of the FAN/FLD cannot be a useless exercise. While the CIR remains to have the sole discretion whether or not to act favorably on the response/protest, it is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion.

We have also noted the following from the period within which the tax authorities conducted an investigation of petitioner's books of account and issued an assessment:

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66 Exhibit "P-8," p. 567.
67 Exhibit "P-8," p. 568.
68 Exhibit "P-10," p. 572.

Particulars	Date
Issuance of:	
LOA	September 6, 2011
NIC	May 10, 2013
PAN	January 6, 2014
FLD/FAN	January 27, 2014
Last day to assess 2010 Q4 VAT	January 27, 2014

Notably, the BIR began its audit of the petitioner's books in **2011**. However, it took almost two years to issue the NIC and another eight months for the PAN. This is in contrast with its urgent issuance of the FLD/FAN on January 27, 2014, despite having received petitioner's response to the PAN only on January 23, 2014.

These demonstrate that the CIR issued the FLD/FAN in haste and as a mere afterthought to foreclose the impending prescription of its right to assess, **which was set to expire on the very same day**.[69]

We find the above-discussed lapses on the part of the tax authorities as amounting to a violation of petitioner's violation to due process. Thus, We cannot sustain even the VAT assessment pertaining to the fourth quarter of TY 2010.

Parenthetically, even assuming that the FLD/FAN is valid and effective, it appears that the tax authorities are also barred from collecting the alleged deficiency VAT.

Respondent points out that under Section 222(c) of the Tax Code, tax authorities are allowed five years from the date of the assessment within which to collect from petitioner.[70] However, an extension of the collection period (i.e., to five years) under Section 222(c) shall be justified only when specific conditions are met, particularly, when the assessment period was extended to 10 years on the ground of a false or fraudulent return with the intent to evade or the non-filing of a return. In the present case, respondent does not invoke the 10-year exceptional assessment period or even assert that the subject VAT return had been false or fraudulent.

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[69] See *Commissioner of Internal Revenue v. Unioil Corp.*, G.R. No. 204405, August 4, 2021.
[70] *Answer*, Docket - Vol. 1, p. 253.

Nor could We consider the collection period, whether under Section 203[71] or 222 of the Tax Code, to have been suspended because none of the pre-requisite conditions under Section 223 are present here. More particularly, petitioner protested the FLD/FAN *via* a request for *reconsideration*. Absent a *reconsideration*, the running of the statute of limitations for collection continued to run from **January 27, 2014** or "the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer."[72] Nothing on the case records shows sufficiently that, to this day, the tax authorities have implemented any summary administrative measure or instituted an independent court action for the collection of deficiency VAT against petitioner. Verily, respondent *alleged* that it issued a Preliminary Collection Letter dated November 15, 2018,[73]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notice dated January 27, 2014 and the Decision dated September 10, 2018 assessing petitioner for deficiency value-added tax for taxable year 2010 are hereby **CANCELLED** and **SET ASIDE** for being void.

Respondent, his representatives, agents, or other persons acting on his behalf are **ENJOINED** from enforcing against the petitioner the collection of deficiency value-added tax assessment for calendar year 2010.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[71] In *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022, the Supreme Court held that, in the case of an assessment issued validly within the basic three-year assessment period, the BIR has another three years within which to collect the tax due by distraint, levy, or court proceeding.

[72] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 227049, September 16, 2020.

[73] *Answer*, Docket – Vol. 1, p. 253.

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