CTA Form No. 8

21-000400-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10646

TOASTERLEVER, 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. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
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Bureau of Internal Revenue-Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

CAYETANO SEBASTIAN ATA DADO & CRUZ LAW OFFICES
12th Floor, NDC Building, 116 Tordesillas Street
Salcedo Village, Makati City

GREETINGS:

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

Quezon City, Philippines, **September 25, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TOASTERLEVER, INC., *Petitioner,*	**CTA CASE NO. 10646**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 23 2024 11:25AM

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DECISION

CUI-DAVID, J.:

Before this Court is an *Amended Petition for Review*[1] filed on February 10, 2022 by petitioner Toasterlever, Inc. ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), praying for the Court to:

a. Declare the Warrant of Distraint and/or Levy **(WDL)** dated June 30, 2021, as null and void; and

b. Withdraw and cancel the disputed deficiency assessments for income tax, value-added tax **(VAT)**, expanded withholding tax **(EWT)**, withholding tax on compensation **(WTC)**, documentary stamp tax **(DST)**, improperly accumulated earnings tax **(IAET)**, and compromise penalties for the taxable year **(TY)** 2017 in the aggregate amount of ₱8,070,828.51, inclusive of interest and increments.

[1] Docket – Vol. II, pp. 435-491, with annexes. The original Petition for Review was filed on October 27, 2021.

THE PARTIES

Petitioner Toasterlever, Inc. is a domestic corporation duly registered and authorized by the Securities and Exchange Commission with registered address at 148 Valero St., Salcedo Village, Makati City.[2]

Respondent CIR is vested with the authority under the National Internal Revenue Code (**NIRC**) to exercise functions, duties, and responsibilities of said office, including, inter alia, the power to decide disputed assessments.[3]

THE FACTS

On October 2, 2018, then Regional Director (**RD**) Glen A. Geraldino (**RD Geraldino**) of Revenue Region No. 8 issued Letter of Authority (**LOA**) No. LOA-050-2018-00000240/eLA-2016-00032530 authorizing Revenue Officer (**RO**) Emmanuel Virgines (**RO Virgines**) and Group Supervisor Ma Carmen Sy (**GS Sy**) to conduct the examination of petitioner's books of accounts for all internal revenue taxes for TY 2017.[4]

On an unknown date, the Revenue District Officer Claire Corpus (**RDO Corpus**) of Revenue District No. 50, issued an undated Notice for Informal Conference (**NIC**), which was received by Carlo Manaois (**Mr. Manaois**), a dining server of petitioner in its restaurant, The Flying Pan.[5] Petitioner alleges that Mr. Manaois never endorsed the NIC to management.[6]

On August 19, 2019, then RD of Revenue Region No. 8 Maridur V. Rosario (**RD Rosario**) issued a Preliminary Assessment Notice (**PAN**) dated August 19, 2019, assessing petitioner of deficiency income tax, VAT, EWT, WTC, DST, and IAET for TY 2017.[7] The PAN was received by Curt Bartolome (**Mr. Bartolome**) on September 2, 2020.[8] Petitioner alleges that Mr. Bartolome is not its employee.[9] Upon inquiry with the other staff, petitioner allegedly learned of the PAN through Ms. Maria

[2] Par. 2, Stipulation of Facts, Pre-Trial Order, Docket – Vol. III, p. 1363.
[3] Par. 1, *Ibid.*
[4] Amended Petition for Review, par. 3.2, admitted by respondent in his *Answer*, par. 4; Stipulation of Facts, par. 3, Pre-Trial Order, Docket – Vol. III, p. 1364; Exhibit "R-1".
[5] Amended Petition for Review, par. 3.3 and 3.3.1, admitted by respondent in his *Answer*, pars. 4 and 7; Exhibit "P-17", Docket – Vol. IV, p. 1750.
[6] Amended Petition for Review, par. 3.3.2.
[7] Amended Petition for Review, par. 3.4, admitted by respondent in his *Answer*, par. 4; Exhibit "P-11", Docket – Vol. IV, pp. 1687-1695.
[8] Amended Petition for Review, par. 3.4.1, admitted by respondent in his *Answer*, par. 4; Exhibit "P-11-a", Docket – Vol. IV, p. 1687.
[9] Amended Petition for Review, par. 3.4.2.

Consuelo Abalos (**Ms. Abalos**), the Accounting Supervisor of petitioner.[10]

On September 17, 2020 and October 8, 2020, petitioner allegedly submitted supporting documents concerning the PAN.[11] However, respondent denies that petitioner submitted supporting documents as, allegedly, no evidence is found on the BIR Records.[12]

On October 12, 2020, respondent issued the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) against petitioner.[13] However, petitioner alleges that it did not receive a copy.[14]

On July 7, 2021, a WDL was served to petitioner's allegedly defunct office by RO Rosauro Alex B. Basco (**RO Basco**),[15] who, as allegedly proven by a closed-circuit television (**CCTV**) footage, slid the WDL into a tight space between the entrance doors.[16] Petitioner was informed by building management about the WDL and secured the same on July 8, 2021.[17]

Following receipt of the WDL, petitioner alleged that it was only able to secure a copy of the FAN/FLD on August 5, 2021 with Revenue District Office No. 50.[18] Based on the certified true copy of the FAN/FLD, the same was received by Rodolfo Fonte, Jr. (**Mr. Fonte**)[19], a former dining assistant supervisor of The Flying Pan, who was allegedly not authorized to receive the same.[20]

PROCEEDINGS BEFORE THE COURT

On October 27, 2021, petitioner filed a *Petition for Review*.[21]

[10] *Id.*, par. 3.4.3.
[11] *Id.*, pars. 3.6 and 3.7.
[12] Answer, par. 11.
[13] Amended Petition for Review, par. 3.8, admitted by respondent in his *Answer*, par. 12; Exhibit "P-12", Docket – Vol. IV, pp. 1696-1705.
[14] Amended Petition for Review, par. 3.9.
[15] Amended Petition for Review, pars. 3.15 and 3.17, admitted by respondent in his *Answer*, pars. 17 and 18, except for the allegation that the office is 'defunct'.
[16] Amended Petition for Review, par. 3.19.
[17] Amended Petition for Review, par. 3.16.
[18] *Id.*, par. 3.10.
[19] Amended Petition for Review, par. 3.12, admitted by respondent in his *Answer*, par. 15; Exhibit "P-12-a", Docket – Vol. IV, p. 1696.
[20] Amended Petition for Review, par. 3.12.
[21] Docket – Vol. I, pp. 7-59, including annexes.

On November 17, 2021, a summons was issued to respondent.[22] On February 7, 2022, respondent forwarded to the Court the *BIR Records* in one folder consisting of 342 pages.[23]

On February 8, 2022, respondent filed his *Motion for Extension of Time to File Answer.*[24] On February 10, 2022, petitioner filed its *Motion for Leave to Amend Petition for Review*[25] with attached *Amended Petition for Review (with Motion for Suspension of Collection of Tax and to Dispense with Bond Requirement).*[26] With the above filings, on February 22, 2022, the Court granted respondent's *Motion for Extension of Time to File Answer,* and respondent was further ordered to file his comment on petitioner's *Motion for Leave to Amend Petition for Review.*[27]

On March 3, 2022, respondent filed his *Answer (with Special and Affirmative Defenses with Grounds to Dismiss for Lack of Jurisdiction).*[28] This was followed by his *Comment/Opposition (to Petitioner's Motion for Leave to Amend Petition for Review dated February 8, 2022)* on March 22, 2022.[29]

On April 13, 2022, the Court promulgated a *Resolution* granting petitioner's *Motion for Leave to Amend Petition for Review.*[30]

On April 22, 2022, both petitioner[31] and respondent[32] filed their respective *Pre-Trial Briefs*. Respondent likewise filed his *Compliance/Submission* (with attached Judicial Affidavit of Revenue Officer Rosauro Alex B. Basco dated April 22,2022),[33] with attached Judicial Affidavit of RO Alex B. Basco.[34]

On April 27, 2022, the Court ordered the parties to appear before the Philippine Mediation Center-Court of Tax Appeals **(PMC-CTA)** for mediation proceedings.[35] However, the parties

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[22] *Id.*, p. 422.
[23] *Id.*, p. 424.
[24] *Id.*, pp. 425-426.
[25] Docket – Vol. II, pp. 429-431.
[26] *Id.*, pp. 435-491, with annexes.
[27] *Id.*, p. 899.
[28] *Id.*, pp. 900-923.
[29] Docket – Vol. III, pp. 928-934.
[30] *Id.*, pp. 938-942.
[31] *Id.*, pp. 943-954.
[32] *Id.*, pp. 1028-1034.
[33] Docket, Vol. III, pp. 955-956.
[34] Docket, Vol. III, pp. 958-984.
[35] *Id.*, p. 1036.

failed to have their case settled based on the *No Agreement to Mediate* submitted to this Court on July 4, 2022 by the PMC-CTA.[36]

The Pre-Trial Conference was held on October 26, 2022 considering the failure to mediate the case, the hearing on petitioner's *Motion for Suspension of Collection of Tax and to Dispense with the Bond Requirement* (*Motion for Suspension*) was likewise held on even date. During the hearing, petitioner's counsel called to the witness stand, Ms. Abalos, who testified on direct examination by way of *Amended Judicial Affidavit*. No cross-examination followed.[37]

On November 11, 2022, petitioner filed its *Compliance* with attached *Formal Offer of Exhibits (for the Petitioner)*,[38] to which respondent filed his *Comment (to Petitioner's Formal Offer of Evidence dated November 11, 2022)* on November 17, 2022.[39] Thus, on January 17, 2023, the Court resolved petitioner's *Formal Offer of Exhibits* relative to the *Motion for Suspension* and set the initial presentation of petitioner's evidence for the said petition on March 1, 2023.[40]

On February 3, 2023, the *Pre-trial Order* was issued.[41]

On March 1, 2023, the Court promulgated a resolution granting petitioner's *Motion for Suspension*.[42] During the hearing held on even date, petitioner's counsel called to the witness stand Ms. Abalos, whose direct testimony was by way of a *Supplemental Judicial Affidavit*.[43]

On May 3, 2023, petitioner's counsel called to the witness stand Mr. Jovencio E. Tuluan (**Mr. Tuluan**), who testified on direct examination by way of his *Judicial Affidavit*. After his re-direct examination, no re-cross examination followed.[44]

On May 26, 2023, petitioner filed its *Formal Offer of Exhibits (for the Petitioner)*,[45] against which respondent filed his *Comment (to Petitioner's Formal Offer of Evidence)* on June 5,

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[36] *Id.*, p. 1045.
[37] *Id.*, pp. 1246-1248.
[38] *Id.*, pp. 1252-1262, with exhibits.
[39] *Id.*, pp. 1348-1350.
[40] *Id.*, pp. 1358-1361.
[41] *Id.*, pp. 1363-1369.
[42] *Id.*, pp. 1550-1558.
[43] *Id.*, p. 1547-1548.
[44] *Id.*, pp. 1562-A-1562-B.
[45] Docket – Vol. IV, pp. 1567-1580, with exhibits.

2023.[46] The Court resolved petitioner's Formal Offer of Evidence on July 13, 2023, where petitioner's exhibits were admitted, except Exhibits P-6-1, P-6-2, P-6-3, P-6-4, P-16, P-7-2, P-8-1, P-19, P-20, P-20-1, P-20-1-a and P-21.[47]

On September 7, 2023, respondent's counsel presented its witness, RO Basco, who testified by way of his *Judicial Affidavit* marked as Exhibits R-20 and R-20-a.[48]

On September 12, 2023, respondent filed his *Formal Offer of Evidence (with Manifestation)*,[49] to which petitioner filed its *Comment/ Opposition (To Respondent's Formal Offer of Evidence dated September 12, 2023)* on September 21, 2023.[50] Thus, on November 3, 2023, the Court admitted respondent's exhibits except for Exhibit R-3-a which was denied admission for failure of respondent's witness to identify it.[51]

On December 13, 2023, both petitioner [52] and respondent[53] filed their respective *Memoranda.*

On January 9, 2024, the Court promulgated a *Resolution* submitting the instant case for decision.[54]

THE ISSUE

The parties stipulated the following issue[55] for this Court's resolution, *viz.*:

> WHETHER OR NOT THE PETITIONER IS LIABLE FOR THE ASSESSMENTS OF DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, DOCUMENTARY STAMP TAX, IMPROPERLY ACCUMULATED EARNINGS TAX, AND COMPROMISE PENALTIES FOR THE TAXABLE YEAR 2017 IN THE AGGREGATE AMOUNT OF PHP8,070,828.51, INCLUSIVE OF INTEREST AND INCREMENTS.

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[46] *Id.*, pp. 1813-1814.
[47] *Id.*, pp. 1819-1821.
[48] *Id.*, pp. 1822-1823.
[49] *Id.*, pp. 1826-1831.
[50] *Id.*, pp. 1834-1846.
[51] Resolution, *Id.*, pp. 1850-1851.
[52] *Id.*, pp. 1875-1934.
[53] *Id.*, pp. 1852-1874.
[54] *Id.*, unpaged.
[55] Stipulation of Issue, Pre-Trial Order, Docket – Vol. III, p. 1364.

PETITIONER'S ARGUMENTS

In its *Amended Petition for Review*, petitioner argues that the assessment is void because it violated its right to due process.[56]

According to petitioner, it did not receive the NIC because it was received by Mr. Manaois, a dining server of petitioner who was allegedly not authorized to receive the same.[57] The PAN was also allegedly not received by petitioner, as it was received by Mr. Bartolome, who is allegedly neither an employee nor an authorized representative of petitioner.[58] Petitioner echoes the same allegation in relation to receipt of the FAN, claiming that it was Mr. Fonte, a Dining Assistant Supervisor of petitioner and likewise not authorized to receive such notice, who received the FAN.[59]

Moreover, petitioner avers that the LOA was not revalidated after the lapse of 120 days from its issuance on October 2, 2018, which makes the LOA ineffective and the assessment void.[60] Petitioner further argues that Mr. Ferrer, a person who signed the Transmittal Form, is not one of the authorized revenue officers indicated in the LOA dated October 2, 2018.[61] According to petitioner, this also makes the assessment void.

Citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[62] petitioner states that its "explanation, reconciliation, and schedules were rejected by [respondent] without offering any reason [for] such rejection." According to petitioner, this is evident with the identity of the PAN and the FAN.[63]

In relation to the service of the WDL, petitioner alleges that a CCTV footage reveals that the concerned RO only slid the document at the entrance of Citadines Building, that petitioner did not refuse to receive it as it had already vacated the leased premises as of June 30, 2021, and that the alleged constructive

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[56] Amended Petition for Review, pars. 5.1 to 5.6.
[57] *Id.*, pars. 5.7 to 5.11.
[58] *Id.*, pars. 5.12 to 5.21.
[59] *Id.*, pars. 5.22 to 5.26.
[60] *Id.*, pars. 5.29 to 5.35.
[61] *Id.*, pars. 5.36 to 5.39.
[62] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[63] *Amended Petition for Review*, pars. 5.105 to 5.110.

service was not attested to and signed by at least two witnesses[64] as required by Revenue Regulation (RR) No. 12-99.

Regarding petitioner's alleged undeclared income, petitioner avers that the discrepancy is not undeclared income "but simply a result of eSales reporting of the service fees under the Service Agreement between petitioner and Valero Primeland Realty Development Corporation (Valero)."[65] Anent petitioner's disallowed expenses due to alleged non-substantiation amounting to ₱485,679.70, petitioner claims to have sufficiently substantiated its taxes and licenses expense amounting to ₱272,588.99.[66] As for petitioner's disallowed expenses due to alleged non-withholding, petitioner alleges that respondent failed to state specific items of expense payments that were not subjected to withholding. [67] Anent petitioner's disallowed salaries and wages due to alleged non-withholding, petitioner submits that the discrepancy constitutes payments to the Social Security System (**SSS**), PhilHealth, and Home Development Mutual Fund (**HDMF**).[68] With regard petitioner's excess credits carried over to subsequent periods, petitioner maintains that it is allowed to carry over excess credits under Section 76 of the NIRC of 1997, as amended.[69]

In relation to petitioner's alleged deficiency VAT liability, petitioner avers that the alleged undeclared sales were "a result of eSales reporting of the service fees under the Service Agreement between petitioner and [Valero];" [70] the receipts allegedly not subjected to VAT were not specified by respondent;[71] the alleged unsupported exempt sales and input tax allocable to exempt sales pertain to service charge under the Service Agreement between petitioner and Valero, which is being merely held for trust to be distributed to its employees;[72] respondent did not specify the alleged overclaimed input tax;[73] and, the disallowed input tax must be allowed considering that the said purchases were reported in the Summary List of Purchases (**SLP**), the corresponding input VAT was paid, and it is not petitioner's fault that the suppliers indicated invalid TINs in their invoices.[74]

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[64] *Id.*, pars. 5.40 to 5.45.
[65] *Id.*, pars. 5.48 to 5.50.
[66] *Id.*, pars. 5.51 to 5.53.
[67] *Id.*, pars. 5.54 to 5.57.
[68] *Id.*, pars. 5.58 to 5.60.
[69] *Id.*, pars. 5.61 to 5.66.
[70] *Id.*, pars. 5.68 to 5.71.
[71] *Id.*, pars. 5.71 to 5.73.
[72] *Id.*, pars. 5.74 to 5.81.
[73] *Id.*, pars. 5.82 to 5.83.
[74] *Id.*, pars. 5.84 to 5.88.

Petitioner further assails the EWT assessment for the alleged failure of respondent to state specific items of expense payments that were not subjected to withholding.[75] Petitioner likewise claims that WTC assessment is void for lack of factual and legal basis as the discrepancy of ₱1,085,415.48 pertains to payments to the SSS, PhilHealth, and HDMF.[76]

Finally, petitioner assails respondent's assessment of the alleged deficiency IAET. Petitioner contends that it had appropriated retained earnings to acquire land for business expansion.[77]

RESPONDENT'S ARGUMENTS

In his *Answer*, respondent argues that the Court has no jurisdiction to take cognizance of the instant case as the assessment had already become final and executory when petitioner failed to file a protest within thirty (30) days from receipt thereof. According to respondent, even if petitioner's admission that it received a copy of the FAN on August 5, 2021 is considered, its failure to timely file a protest renders the assessment final and executory.[78]

Respondent likewise argues that the WDL is not appealable to the Court. According to respondent, the wording of the WDL shows that it is not a decision of the CIR that is appealable to the Court. Respondent avers that the WDL could have been protested within the administrative level before the Office of the Revenue Region, yet petitioner allegedly failed to do even if assuming the WDL is appealable to the Court. Respondent further avers that the Petition was filed beyond the 30-day period counted from the receipt of the WDL.[79]

Respondent also points out that the Verification and Certification on Non-Forum Shopping are not attached to the Petition.[80]

Anent the alleged violation of due process, respondent argues that the LOA, NIC, PAN, and FAN were properly served to petitioner. Based on the Affidavit of Service and BIR Records,

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[75] *Id.*, pars. 5.89 to 5.93.
[76] *Id.*, par. 5.94.
[77] *Id.*, pars. 5.95 to 5.104.
[78] Answer, pars. 28-30, 34-37.
[79] *Id.*, pars. 31-33, 38-41.
[80] *Id.*, pars. 42-44.

respondent was able to personally serve the LOA on October 3, 2018 to Joenalyn Vergara, the NIC to Mr. Manaois, the PAN on September 2, 2020 to Mr. Bartolome, and the FAN/FLD on October 14, 2020 to Mr. Fonte. According to respondent, all persons who received the respective documents are registered employees of petitioner based on the Alphalist of Employees filed by petitioner.[81] Respondent also argues that there is no need to revalidate the LOA beginning June 1, 2010.[82]

Lastly, respondent then echoes the contents of the FAN/FLD dated October 12, 2020 in maintaining its assessment of alleged deficiency income tax,[83] VAT,[84] EWT,[85] WTC,[86] DST,[87] and IAET.[88]

THE COURT'S RULING

The instant *Amended Petition for Review* is impressed with merit.

The present Petition was timely filed; hence, the Court has jurisdiction over this case.

Before delving into the merits, the Court shall first determine its jurisdiction over this case.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[89] as amended by RA No. 9282,[90] confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

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

[81] *Id.*, pars. 45-47.
[82] *Id.*, par. 48.
[83] *Id.*, pars. 50-55.
[84] *Id.*, pars. 56-61.
[85] *Id.*, par. 62.
[86] *Id.*, par. 63.
[87] *Id.*, par. 64.
[88] *Id.*, par. 65.
[89] An Act Creating the Court of Tax Appeals, June 16, 1954.
[90] 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, March 30, 2004.

(1) **Decisions of the [CIR] 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;

(2) **Inaction by the [CIR] 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *[Emphasis supplied.]*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal with the CTA, *viz.*:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the [CIR]...**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. ...** *[Emphasis supplied]*

The above provisions are likewise provided under Section 3(a)(1) and (2), Rule 4,[91] and Section 3(a), Rule 8[92] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent. The appeal must be filed by the taxpayer affected, or as worded by RA No. 9282, 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.

[91] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original 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;
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

[92] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Further, this Court's jurisdiction is not limited to the CIR's decisions or inactions involving assessments and refunds but also includes "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[93] the Supreme Court has this to say:

> **The law expressly vests the CTA the authority to take cognizance of "other matters"** arising from the 1977 Tax Code and other laws administered by the BIR, **which necessarily includes rules, regulations, and measures on the collection of tax**. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement. [*Emphasis and underscoring supplied.*]

Even more recently, the Supreme Court echoed the above pronouncements in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*,[94] to wit:

> As explained by the *Court in Commissioner of Internal Revenue v. Court of Tax Appeals Second Division,* the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.** The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.** [*Emphasis and underscoring supplied.*]

Moreover, in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[95] the Supreme Court held that the CTA's appellate jurisdiction encompasses the determination of whether the WDL issued by the BIR is valid, *viz.*:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.

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[93] G.R. No. 227049, September 16, 2020.
[94] G.R. No. 255473, February 13, 2023.
[95] G.R. No. 162852, December 16, 2004.

> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for a refund. **In *Pantoja v. David*, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**. Also, in *Commissioner of Internal Revenue v. Court of Appeals*, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court. [*Emphasis and underscoring supplied; citations omitted.*]

Based on the foregoing rules and jurisprudential pronouncements, the issue relative to the validity of a WDL falls within the ambit of the CTA's jurisdiction over the CIR's decision on "other matters arising under the NIRC or other laws administered by the BIR."

Given that the WDL is appealable to this Court, the Court now determines whether the *Petition for Review* is timely filed.

The 30-day period to file a *Petition for Review* before the Court, counted from petitioner's receipt of the WDL on July 8, 2021, fell on **August 7, 2021**.

On July 30, 2021, the Supreme Court issued Administrative Circular No. 56-2021,[96] declaring that *all* courts in the National Capital Region shall be physically closed from August 2 to 20, 2021; consequently, the time for filing and service of pleadings shall be suspended, *viz.*:

> To avert the possible surge in COVID-19 cases due to the Delta variant, and considering that the entire National Capital Region (NCR) has been placed under General Community Quarantine (GCQ) with heightened restrictions from 30 July 2021 to 5 August 2021, and under Enhanced Community Quarantine (ECQ) from 6 to 20 August 2021, **ALL courts and judicial offices in the NCR shall be PHYSICALLY CLOSED from 2 to 20 August 2021**. However, they shall continue to operate online and conduct videoconferencing hearings only for urgent incidents and cases, such as, but not limited to, applications for bail, releases due to dismissal of cases or acquittal, habeas corpus, applications for temporary protection orders for Violence Against Women and Children cases, and analogous circumstances. The courts may be reached through their respective hotlines and email addresses as posted in the Supreme Court website.

[96] Court Operations on 2-20 August 2021.

<u>**The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court**</u>.

This was further extended by OCA Circular No. 114-2021, [97] OCA Circular No. 119-2021, [98] Supreme Court Administrative Circular (**SC AC**) No. 72-2021,[99] and Supreme Court Administrative Circular No. 75-2021,[100] as follows:

Issuance	**Covered period**
SC AC No. 56-2021	August 2 - August 20, 2021[101]
OCA Circular No. 114-2021	For the duration of the MECQ from August 23, 2021[102]
OCA Circular No. 119-2021	September 8 - September 30, 2021
SC AC No. 72-2021	September 16, 2021 "until further notice"
SC AC No. 75-2021	October 4, 2021 "until further notice"

This Court notes that it is upon the issuance of SC AC No. 83-2021[103] that the suspension of the time for filing and service of pleadings and motions was lifted, *viz.*:

> The suspension of the time for filing and service of pleadings and motions, regardless of the alert level or community quarantine, is LIFTED. Pursuant to Administrative Circular No. 72-2021, the period for filing and service <u>**shall resume seven (7) calendar days from October 20, 2021.**</u> Electronic submissions and services may be resorted to. The personal filing or service of pleadings and other court submissions shall be allowed for exigent matters and cases. Pleadings, motions, and other court submissions may likewise be filed or served by registered mail, through the services of duly accredited private couriers, or by transmitting them through electronic mail in accordance with the existing electronic filing guidelines. [*Emphasis and underscoring supplied.*]

Accordingly, the filing of the *Petition for Review* on October 27, 2021, seven (7) calendar days from the resumption of the period for filing and service in accordance with SC AC No. 83-2021,[104] is timely.

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[97] *Re: Court Operations Starting 23 August 2021*, August 20, 2021.
[98] *Re: Court Operations Beginning 8 September 2021*, September 7, 2021.
[99] *Re: Court Operations Beginning 16 September 2021*, September 15, 2021.
[100] *Re: Court Operations Beginning 4 October 2021*, October 1, 2021.
[101] August 21 and 22, 2021 are Saturday and Sunday, respectively.
[102] The Modified Enhanced Community Quarantine (MECQ) was declared on NCR from August 21 to August 31, 2021 by IATF-EID Resolution No. 133-A, s. 2021 and from September 1 to September 7, 2021 by IATF-EID Resolution No. 135-A, s. 2021.
[103] *Re: Court Operations Beginning October 20, 2021 until October 29, 2021*, October 18, 2021.
[104] *Ibid.*

Having ruled on the timeliness of the *Petition for Review*, the Court likewise rules that it has jurisdiction to take cognizance of this case.

The improper or non-service of the NIC, PAN, and FAN/FLD violated petitioner's right to due process; thus, the deficiency tax assessment is void.

Section 228 of the NIRC of 1997, as amended, provides that when the CIR or his duly authorized representative finds that proper taxes should be assessed, the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In the oft-cited case of *CIR v. Metro Star Superama, Inc.* (*Metro Star*), [105] the Supreme Court underscored that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN and that its issuance and service to the taxpayer is part of the due process requirement.

Section 3.1.6, Revenue Regulations (**RR**) No. 18-2013,[106] amending RR No. 12-1999,[107] prescribes the modes of service of notice of assessment as follows:

> 3.1.6 **Modes of Service**. — The notice (**PAN/FAN/FLD**/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 **<u>to the party</u>** at his registered or known address or wherever he may be found. ...
>
> In case <u>personal service</u> is not practicable, the notice shall be served by <u>substituted service</u> or by <u>mail</u>.
>
> (ii) **Substituted service** can be resorted to when the party is not present at the registered or known address under the following circumstances:

MV

[105] G.R. No. 185371, December 8, 2010.
[106] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.
[107] 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, September 6, 1999.

> The notice may be left at the party's registered address, **with his clerk or with a person having charge thereof**.
>
> 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 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 signatures of the witnesses. [*Emphasis supplied*]

Section 3.1.6, reiterated in RMO No. 40-2019,[108] is clear that the notice may be served by *personal service* to the party, and if personal service is not practicable, since the party is not present at the registered or known address, the notice shall be served by *substituted service* with his clerk or with a person having charge thereof.

In this case, petitioner claims that it did not receive the NIC, PAN, and FAN.[109]

Petitioner contends that the undated NIC appears to have been received by **Mr. Manaois**, a dining server at its restaurant, The Flying Pan, who failed to forward the NIC to petitioner's management.[110]

Petitioner's witness, Ms. Abalos, an Accounting Supervisor, testified that Mr. Manaois was a *former* employee and dining server. She clarified that Mr. Manaois was not authorized to receive the NIC and was under investigation for theft.[111]

As for the PAN, petitioner asserts that it appears to have been received by **Mr. Bartolome**. However, petitioner alleges that he was neither an employee nor an authorized representative of petitioner to receive the PAN.[112]

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[108] Prescribing Procedures for Proper Service of Assessment Notices in Accordance with the Provisions of Section 3.1.6 of RR No. 18-2013, May 30, 2019.
[109] Amended Petition for Review, par. 5.2., Docket -Vol. II, p. 449; Memorandum, par. 33, Docket -Vol. IV, p. 1885.
[110] Amended Petition for Review, par. 3.3., Docket -Vol. II, p. 439; Memorandum, par. 41, Docket -Vol. IV, p. 1891.
[111] Exhibit "P-18", Q104/A104, Amended Judicial Affidavit, Docket – Vol. III, p. 1072.
[112] Amended Petition for Review, par. 3.4., Docket -Vol. II, p. 439; Memorandum, par. 48, Docket -Vol. IV, p. 1895.

Ms. Abalos testified that she learned about the PAN after the restaurant staff informed her about a document sent by the BIR. She further testified that the PAN was received *not* by petitioner's employee but by a mere ***reliever***, *viz.*:[113]

> 12. Q: What happened next, if any?
>
> A: After some time, I was informed by the restaurant staff at The Flying Pan, the Petitioner's former restaurant, that **a document for Toasterlever was sent by the BIR.**
>
> 13. Q: What did you do after that, if any?
>
> A: **I studied the document and it turned out to be a Preliminary Assessment Notice (PAN) for the Petitioner covering taxable year 2017.**
>
> 14. Q: Who was that restaurant staff of the The Flying Pan who received what appeared to be a PAN?
>
> A: It was received by Curt Bartolome.
>
> 15. Q: Was Curt Bartolome an employee of the Petitioner?
>
> A: **No, he was not an employee of the Petitioner.**
>
> 16. Q: What was he doing at the Petitioner's restaurant?
>
> A: He was asked to report on the day the PAN was received at the Petitioner's restaurant as a **reliever due to lack of plantilla.** [*Emphasis supplied*]

Regarding the FAN/FLD, it is claimed that petitioner only obtained its certified true copy from RDO No. 50 on August 5, 2021, after receiving the WDL.

Based on the certified true copy, the FAN/FLD was received by **Mr. Fonte**, a former dining assistant at The Flying Pan, who was not authorized to receive such notice on behalf of petitioner.[114]

Ms. Abalos testified that she was "shocked" to learn about the WDL, as petitioner had not yet received the FAN/FLD despite submitting documents to refute the PAN. She further stated that, after requesting certified true copies of the NIC, PAN, and FAN, she found that the FAN had been received by

[113] Exhibit "P-18", *supra* at note 111.
[114] Amended Petition for Review, pars. 5.22.- 5.23., Docket -Vol. II, p. 457; Memorandum, pars. 60-61, Docket -Vol. IV, p. 1900.

Mr. Fonte, a former dining assistant, who was not authorized to receive it:[115]

> 17. Q: Then, what happened, if any?
> A: I prepared reconciliations, schedules, and explanations to refute the findings of the PAN.
>
> 18. Q: What happened next, if any?
> A: On or about September 24, 2020, I submitted a letter addressed to Atty. Virgines and Ms. Sy dated September 17, 2020 containing the following:
>
> 1. Computation of Income Tax and VAT;
> 2. Supporting Schedule 1 for alleged Undeclared Income;
> 3. Supporting Schedule 2 for Disallowed Expenses Due to alleged Non-Substantiation, with proof of payments;
> 4. Supporting Schedule 3 for Disallowed Expenses Due to alleged Non-Withholding;
> 5. Supporting Computations for Schedule 4 for Disallowed Salaries and Wages Due to alleged Non-Withholding with photocopies of SSS, PAGIBIG and PHILHEALTH Payments;
> 6. Computation of VAT with Explanation in response to Schedules 5-7 of the PAN;
> 7. BIR Form 1702RT for 2017 and 2016 with Tax Receipt Return Confirmation;
> 8. Service Agreement between Toasterlever, Inc. and Valero Prime Realty Development Corp.
>
> ... ...
>
> 23. Q: After that, what happened, if any?
> A: After that, I also sent the said officers a Letter dated October 08, 2020 with attached computation of income with breakdown, supporting documents to income, and photocopy of Revenue Report from POS for 2017.
>
> ... ...
>
> 28. Q: What happened next, if any?
> A: After that, **I did not hear or receive any information or documents from the BIR or the restaurant staff regarding taxable year 2017** until about the second week of July 2021.
>
> 29. Q: What information or documents did you receive about taxable year 2017 in July 2021?
> A: I was informed by the Petitioner's President about the **Warrant of Distraint or Levy ("Warrant")** which was left by a BIR officer in our former restaurant, The Flying Pan.
>
> 30. Q: What was your reaction to the Warrant, if any?
> **A: I was shocked.**

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[115] Amended Judicial Affidavit of Maria Consuelo Abalos, Docket – Vol. III, pp. 1053-1074.

31. Q: Why is that?
A: Because we did not even receive the FAN after we submitted our reconciliations, schedules, and explanations to refute the PAN, and that the assessment in the PAN have no factual and legal basis.

32. Q: What did you do, if any, after that?
A: After that, I coordinated with our lawyer to discuss the legal remedies against the Warrant and the assessment.

33. Q: What happened next, if any?
A: Since <u>we did not actually receive the FAN, PAN and NIC,</u> we requested certified copies of these documents from the BIR.

34. Q: Did you receive certified copies of the FAN, PAN and NIC from the BIR?
A: Yes, ma'am.

35. Q: Upon receipt of the certified true copies, did you notice anything on the said copies?
A: Yes.

36. Q: What did you notice on the certified true copies?
A: I noticed that the FAN was received by <u>Rodolfo Fonte Jr., a person not authorized to receive such.</u>

37. Q: Why was Mr. Fonte not authorized to receive the FAN?
A: Mr. Fonte was a former dining assistant serving the diners and the like. [*Emphasis supplied*]

At the outset, petitioner denies receiving the NIC, PAN, and FAN/FLD issued in the instant case. Hence, the burden now shifts to respondent to prove, by clear and convincing evidence, that such notices were *duly served* to petitioner or its duly authorized representative in a manner prescribed in RR No. 12-1999, as amended by RR No. 18-2013 and RR No. 07-2018.[116]

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[117] The burden of proof in establishing the fact of receipt of the assessment notice is shifted from the taxpayer to the BIR.

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[116] 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.
[117] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,* G. R. No. 157064, August 7, 2006; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016, citing *CIR v. Metro Star Superama, Inc.*,652 Phil. 172, 181 (2010).

In this case, respondent offered in evidence the NIC,[118] PAN,[119] and the FAN/FLD.[120] However, respondent failed to present the Revenue Officer who could testify that the NIC, PAN, and FAN/FLD were properly served and received by petitioner through its duly authorized representative.

Furthermore, respondent presented only RO Basco, a Seizure Agent from the *Collection Division* assigned to **collect** petitioner's alleged assessed tax liabilities. Clearly, RO Basco had no personal knowledge of the preparation, issuance, or service of the assessment notices (NIC, PAN, and FAN/FLD) as he was not involved in the assessment process, which is the responsibility of the *Assessment Division/Section.*

The Court cites RO Basco's testimony,[121] where he clarifies that he was not assigned to the *Assessment Section.* He also testified that he did not know Mr. Fonte, who allegedly received the FAN, and confirmed that Mr. Bartolome, who allegedly received the PAN, was not listed as petitioner's employee, *viz.*:

> Q. Mr. Witness, I would like you to refer to Exhibit "R-19", the list of names of employees of the petitioner. Can you please tell me if you can find the name of Mr. Curt Bartolome in that list that you submitted and marked as Exhibit "R-19"?
>
> REVENUE OFFICER ROSAURO ALEX B. BASCO:
> A. I have here a copy of the list of the, the 2316, as employees of company, Mr. Bartolome (Interrupted).
>
> ATTY. APOLINARIO L. CAYMO II:
> Q. Is there a Bartolome in there, Mr. Basco?
>
> REVENUE OFFICER ROSAURO ALEX B. BASCO:
> **A. Mr. Bartolome is not in the list.**
>
> ATTY. APOLINARIO L. CAYMO II:
> Q. Thank you, Mr. Basco. **So, there is no Curt Bartolome in the list of employees.** Now, Mr. Witness, with respect to the FAN, Question No. 66, Final Assessment Notice for a Formal Letter of Demand, you said that the FAN was received by one Rodolfo Fonte?
>
> REVENUE OFFICER ROSAURO ALEX B. BASCO:
> **A. Per docket case record, sir.**

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[118] Respondent's Formal Offer of Evidence, Exhibit "R-4" Notice of Informal Conference, Docket -Vol. IV, p. 1827.
[119] *Id.*, Exhibit "R-6," Preliminary Assessment Notice, Docket -Vol. IV, p. 1827-28.
[120] *Id.*, Exhibits "R-7" to "R-14," Formal Letter of Demand and Assessment Notices, Docket -Vol. IV, p. 1828-29.
[121] Transcript of Stenographic Notes of the hearing dated September 7, 2023, pp. 39-40.

ATTY. APOLINARIO L. CAYMO II:
Q. So, you were not the one who personally received?

REVENUE OFFICER ROSAURO ALEX B. BASCO:
A. No, sir. I am not assigned in the Assessment Section.
ATTY. APOLINARIO L. CAYMO II:
Q. You don't know this person, Mr. Conte?

REVENUE OFFICER ROSAURO ALEX B. BASCO:
A. No, sir. [*Emphasis supplied*]

Indeed, the CIR failed to refute petitioner's claim that it did not receive the NIC, PAN, and FAN/FLD. The alleged receipt of these notices by Mr. Manaois (NIC), Mr. Bartolome (PAN), and Mr. Fonte (FAN/FLD) - none of whom were authorized to receive them - produces no legal effect and cannot be regarded as valid receipt by petitioner.

In the recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[122] the Supreme Court, citing *Metro Star*, held that:

> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc. (Metro Star)*, the Court also had the occasion to resolve the issue of whether **the failure to strictly comply with <u>notice requirements</u> prescribed under Sec. 228 of the 1997 NIRC and RR No. 12-99 is tantamount to a denial of due process.** The Court held that the failure of the CIR to send the PAN stating the facts and the law on which the assessment was made as required by Sec. 228 of R.A. No. 8424, renders its assessment void. The Court explained:
>
> > Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence. [*Emphasis supplied*]

In line with the above ruling in *Metro Star,* which emphasizes that the right to due process reaches both substantive and procedural rights, the Court finds that the

[122] G.R. No. 223767, April 24, 2023.

CIR's failure to strictly comply with the requirements laid down by law and <u>his own rules</u> constitutes a denial of the taxpayer's right to due process.[123]

Consequently, respondent's improper service of the NIC, PAN, and FAN/FLD, in this case, amounts to the denial of petitioner's right to due process. **Accordingly, such renders the entire deficiency tax assessment null and void.**

Neither can the subsequent receipt by petitioner of the *certified true copies* of the NIC, PAN, and FAN/FLD after receiving the WDL cure the defective service of the notices by respondent. Such does not denigrate the fact that petitioner was deprived of statutory and procedural due process to contest the assessment.[124]

It is a settled rule that tax assessments issued in violation of the taxpayer's right to due process are null and void and bear no fruit.[125]

Respondent issued the FAN/FLD without considering petitioner's arguments and submissions against the PAN.

Even if the NIC, PAN, and FAN/FLD were properly served and received by petitioner, the assessment remains void due to respondent's *another* violation of petitioner's right to due process – his failure to provide the reasons for rejecting petitioner's explanation.

Petitioner contends that:[126]

> 6. Nevertheless, on 17 September 2020, Petitioner, through Accounting Supervisor Maria Consuelo V. Abalos ("Ms. Abalos") submitted **supporting documents** in connection with the **2017 PAN** as follows:
>
> a. Computation of Income Tax and VAT;
> b. Supporting Schedule 1 for alleged Undeclared Income;

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[123] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.
[124] *CIR v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022; *Pilipinas Shell Petroleum Corporation vs. CIR*, G.R. No. 172598, December 21, 2007, cited in *CIR v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021.
[125] *Id.*
[126] Amended Petition for Review, pars. 5.108.- 5.110, Docket -Vol. II, p. 476 and p. 485; Memorandum, pars. 158-160, Docket -Vol. IV, p. 1923 and p.1932.

c. Supporting Schedule 2 for Disallowed Expenses Due to alleged Non-Substantiation, with proof of payments;
d. Supporting Schedule 3 for Disallowed Expenses Due to alleged Non-Withholding;
e. Supporting Computations for Schedule 4 for Disallowed Salaries and Wages Due to alleged Non-Withholding with photocopies of SSS, PAGIBIG and PHILHEALTH Payments;
f. Computation of VAT with Explanation in response to Schedules 5-7 of the PAN;
g. BIR Form 1702RT for 2017 and 2016 with Tax Receipt Return Confirmation;
h. Service Agreement between Toasterlever, Inc. and Valero Prime Realty Development Corp.

7. On 08 October 2020, Petitioner, through Ms. Abalos submitted **additional supporting documents** in connection with the ongoing audit:

a. Computation of Income with Breakdown; and
b. Additional Supporting Documents for alleged Income Tax Deficiency.

... ...

158. In the present case, **Petitioner's explanation, reconciliation, and schedules were rejected by the BIR <u>without offering any reason such rejection</u>.** This is clear from the *identical details* of discrepancies in both the PAN and the FAN which are totally devoid of any explanation as to why the reconciliations, schedules, explanations of the Petitioner were rejected ... .

159. Clearly, **the Respondent or his revenue officers rejected the Petitioner's explanations, reconciliations, and schedules <u>without offering any reason therefor</u>.**

160. Applying the ruling in the case of *CIR vs. Avon Products Manufacturing, Inc.* in the present case, **the present assessment is void for violation of the Petitioner's right to due process.** [*Emphasis supplied*]

Moreover, petitioner's witness, Ms. Abalos, testified that the BIR disregarded petitioner's explanations to refute the findings in the PAN, and that the BIR merely copied, word for word, period for period, the details of discrepancy in the PAN, without offering any reason or explanation:[127]

[127] Exhibit "P-18", *supra* at note 111.

38. Q: Given that Mr. Fonte was not authorized to receive the FAN, what did you do next, if any?
A: Upon receiving the above documents, **I studied the FAN and found out that the BIR officers totally disregarded our reconciliations, schedules, and explanations to refute the findings in the PAN,** despite the fact that the said findings have no factual or legal basis.

39. Q: What is your basis for saying that?
A: Based on the details of discrepancy attached to the FAN, **the BIR officers merely copied, word for word, period for period, the details of discrepancy in the PAN, without offering any reason or explanati**on.

40. Q: Do you have proof of that?
A: Yes, the certified copies of the FAN and the PAN.

After a judicious review of the records, the Court finds merit in petitioner's contention, as supported by the unrefuted testimony of its witness.

Section 228 of the NIRC of 1997, as amended, provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."** ... *(Emphasis added)*

Relative thereto, Section 3 of RR No. 12-1999,[128] as amended by RR No. 18-2013,[129] implements and specifies the *due process requirement* in the issuance of a deficiency tax assessment, 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:
>
> ... .
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FAN/FLD).* – The Formal Letter of Demand and Final Assessment Notice (FAN/FLD) shall be issued by the Commissioner or his duly authorized representative. **The FAN/FLD calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is</u>**

[128] *Supra* at note 107.
[129] *Supra* at note 106.

> **based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).

The use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and in RR No. 12-1999, as amended, indicates that the requirement of informing the taxpayers of the legal and factual bases of the assessment and the decision made against them is **mandatory**. This is an essential requirement of due process and applies to the PAN and FLD with FAN.[130]

A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding, and the *reasons for the decision* rendered by the quasi-judicial agency.[131]

In the oft-cited case of *CIR v. Avon Products Manufacturing, Inc.*[132] and *Avon Products Manufacturing, Inc. v. CIR (Avon),*[133] the Supreme Court declared the FAN/FLD null and void due to the BIR's complete disregard for due process when it failed to fully inform the taxpayer of the legal and factual basis for the assessment, despite the latter's defenses and submission of supporting documents, *viz.*:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon**. Thus, **Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00, **without any discussion *or* explanation on the merits of Avon's explanations**.

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[130] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[131] *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.
[132] *Id.*
[133] *Id.*

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

... ...

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, **when he or she rejects these explanations, he or she must give some reason for doing so**. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**

In *Edwards v. McCoy*:

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

In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but* ***the tribunal must consider the evidence presented***."

... ...

Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner failed to acknowledge these submissions and instead issued *<u>identical</u>* Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its

> protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time.
>
> ... ...
>
> The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect. ... . [*Emphasis and underscoring supplied, citation omitted.*]

In the *Avon case*,[134] the Supreme Court emphasized that the taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give *due consideration* to these in making their conclusions on the taxpayers' liabilities and sufficiently inform the taxpayer of the reasons for their conclusions.

In *Ang Tibay*,[135] cited in the *Avon case*, the Supreme Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts, *but the tribunal must consider the evidence presented*."

Here, a review and comparison of the PAN and FAN/FLD, together with the *Details of Discrepancies*, shows that they are ***identical***.[136] The BIR merely reiterated or copied its findings in

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[134] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[135] *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[136] Comparative Matrix of PAN and FLD/FAN:

Tax Type		PAN		FLD/FAN
I. INCOME TAX				
Basic Tax Due	₱	3,960,564.25	₱	3,960,564.25
Add: Interest		1,171,892.98		1,244,810.77
TOTAL AMOUNT DUE	₱	5,132,457.23	₱	5,205,375.02
II. VAT				
Basic Tax Due	₱	1,612,270.59	₱	1,612,270.59
Add: Interest		519,460.33		549,143.78
TOTAL AMOUNT DUE	₱	2,131,730.92	₱	2,161,414.37
III. EWT				
Basic Tax Due	₱	154,948.94	₱	154,948.94
Add: Interest		50,432.70		53,285.45
TOTAL AMOUNT DUE	₱	205,381.64	₱	208,234.39
IV. WTC				
Basic Tax Due	₱	143,078.52	₱	143,078.52
Add: Interest		46,569.12		49,203.33
TOTAL AMOUNT DUE	₱	189,647.64	₱	192,281.85
V. DST				

the PAN in the FAN/FLD albeit the amount of interest increased to reflect its accrual over time.

Glaringly, this points the Court to the conclusion that the BIR did not consider any of the explanations, schedules, reconciliations, and supporting documents submitted by petitioner in response to the PAN on September 24, 2020, and October 8, 2020.

Like the *Avon* case, there was no discussion in the FLD about respondent's findings and the reasons for rejecting petitioner's refutations and explanations against the PAN. Thus, petitioner was left unaware of how respondent or his authorized representative appreciated its explanations or defenses.

It is true that respondent is not obliged to accept the taxpayer's explanations; however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.[137] The right to be heard, which includes the right to present evidence, is meaningless if respondent can simply ignore the evidence without reason.[138]

Applying the ruling in *Avon* and *Ang Tibay*, there is no question that respondent's disregard of the due process standards and rules under RR No. 12-1999, as amended, and his failure to sufficiently inform petitioner of the reasons for his conclusions, render the subject deficiency tax assessment, *i.e.*, PAN and FAN/FLD, null and void. Further, as a void tax assessment bears no valid fruit, the Court finds that the WDL issued pursuant thereto is likewise void.

Basic Tax Due	₱	16,928.00	₱	16,928.00
Add: Surcharge		4,232.00		4,232.00
Add: Interest	₱	5,570.94	₱	5,882.60
TOTAL AMOUNT DUE		26,730.94		27,042.60
VI. IAET				
Basic Tax Due	₱	167,193.78	₱	167,193.78
Add: Surcharge		41,798.45		41,798.45
Add: Interest	₱	34,409.85	₱	37,488.05
TOTAL AMOUNT DUE		243,402.08		246,480.28

[137] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[138] *Id.*

With this, a discussion of the other issues, such as the improper service of the WDL, becomes unnecessary.

WHEREFORE, in light of the foregoing, the instant *Amended Petition for Review* is **GRANTED**.

Accordingly, respondent's *Formal Letter of Demand with Assessment Notices*, all dated October 12, 2020, assessing petitioner for deficiency taxes for taxable year 2017 in the total amount of **₱8,070,828.51**, inclusive of interest, and the *Warrant of Distraint and/or Levy* dated June 30, 2021, are **CANCELLED** and **SET ASIDE**.

Further, respondent is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice