23-000034-0065

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11078

POWERSOURCE PHILIPPINES ENERGY INCORPORATED,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARK JOEY S. LUCERO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GALIAS & RIVERA LAW OFFICES
3/F, Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City 1605

GREETINGS:

You are hereby notified by these presents that on **November 19, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

POWERSOURCE PHILIPPINES ENERGY INCORPORATED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11078

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

NOV 1 9 2025; 10:15AM

x- -x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* (**Petition**) filed on January 30, 2023, by petitioner Powersource Philippines Energy Incorporated ("**petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**respondent**"). The *Petition* seeks the reversal and setting aside of the Final Decision on Disputed Assessment (**FDDA**) dated December 13, 2022, which assessed petitioner for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), and documentary stamp tax (**DST**) in the amount of ₱4,690,981.26, exclusive of interest and surcharges.

THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws, with principal place of business at Purok

7 Kiwalan, Iligan City. It is engaged in the distribution/ generation of power supply and/or supply of electricity.[1]

Respondent is the duly appointed CIR who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, Senator Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City.[2]

THE FACTS

On January 10, 2020, respondent, through Revenue Region No. 016- Cagayan de Oro City, Revenue District No. 101 - Iligan City, Lanao del Norte, issued a Letter of Authority (**LOA**) under electronic LOA No. eLA201200017138/LOA-101-2020-00000008 dated January 9, 2020, covering the taxable period from January 1 to December 31, 2018.[3] The LOA authorized Revenue Officer (**RO**) Ahmad Yadhari Bantuas (**Bantuas**) and Group Supervisor (**GS**) Ommukhalthom Umpar (**Umpar**) to audit and examine petitioner's books of accounts and accounting records.

On June 8, 2020, respondent issued a Notice of Informal Conference (**NIC**) to petitioner.[4]

On November 24, 2021, petitioner received a copy of the Preliminary Assessment Notice (**PAN**) dated October 27, 2021, which found petitioner liable for basic deficiency IT, VAT, EWT, and DST in the amount of ₱4,690,981.26, plus surcharge, interest, and compromise penalty in the aggregate amount of ₱6,354,264.34.[5]

On December 9, 2021, within fifteen (15) days from receipt of the PAN, petitioner filed a *Request for Reinvestigation (Reply to Preliminary Assessment Notice dated 27 October 2021)*.[6] On the same date, respondent issued against petitioner the Formal Letter of Demand and Final Assessment Notices (**FLD/FAN**).[7]

---

1 Docket, p. 347, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 1.

2 *Id.* at 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 2.

3 *Id.* at 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 3; Exhibit "P-4", Docket, p. 66; Exhibit "R-1", BIR Records, p. 1277.

4 Exhibit "R-3", BIR Records, pp. 1372–1376.

5 Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 4; Exhibit "P-5", Docket, pp. 67–71. Exhibit "R-5", BIR Records, pp. 1494–1498.

6 Exhibit "P-6", Docket, pp. 72–74.

7 Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 5; Exhibit "P-7", Docket, pp. 78–87; Exhibit "R-6", BIR Records, pp. 1509–1518.

The FLD/FAN was received by a certain Nicole Rose Manata on December 23, 2021.[8] However, petitioner alleges that it received the FLD/FAN on March 21, 2022.[9]

On April 18, 2022, petitioner filed a *Protest or Motion for Reinvestigation to Formal Letter of Demand* dated April 11, 2022 (Protest to the FLD).[10] The *Protest* was received by the BIR on April 18, 2022.[11]

Petitioner likewise submitted its supporting documents thereto.[12] However, in a *Memorandum* dated August 25, 2022, respondent stated that the supporting documents were not provided within the sixty (60)-day period.[13]

Respondent issued against the petitioner an FDDA dated December 13, 2022, finding petitioner liable for basic deficiency taxes of IT, VAT, EWT, and DST plus surcharge, additional interest and compromise penalty in the aggregate amount of ₱6,988,125.15.[14] The said FDDA was received by a certain Sybil Ann Caingles on December 29, 2022.

PROCEEDINGS BEFORE THE COURT

On January 30, 2023, petitioner filed its *Petition for Review*.[15]

Summons was issued to respondent on February 14, 2023.[16] With the grant[17] of respondent's *Motion for Extension of Time to File Answer*,[18] respondent filed his *Answer (to Petitioner's Petition for Review dated 30 January 2023)* on April 17, 2023.[19]

On June 5, 2023, respondent elevated the *BIR Records* of the case in five (5) folders consisting of 1,667 pages.[20]

---

8 Exhibit "R-6-1", BIR Records, p. 1513.
9 See Exhibit "P-8", Docket, pp. 88–96; Also alleged in Petition for Review, par. 15.
10 Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 6; Exhibit "P-8", Docket, pp. 88–96; Exhibit "R-12", BIR Records, p. 1565.
11 Exhibit "R-12-1", Docket, p. 88, as incorporated in Exhibit "P-8".
12 *Supra* note 10.
13 Exhibit "R-9", BIR Records, p. 1602.
14 Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 7; Exhibit "P-3", Docket, pp. 54–65; Exhibit "R-11", BIR Records, pp. 1633–1640.
15 Docket, pp. 8–38.
16 *Id.* at 179.
17 *Id.* at 186, Resolution dated March 24, 2023.
18 *Id.* at 180–183.
19 *Id.* at 188–200.
20 *Id.* at 220–222, Compliance dated June 5, 2023; Exhibit "R-13".

The *Pre-Trial Briefs* of petitioner[21] and respondent[22] were separately filed on September 18, 2023.

In the Pre-Trial Conference held on September 21, 2023, both counsels appeared.[23] Pursuant to the pre-trial, both parties filed their *Joint Stipulation of Facts and Issues* on October 11, 2023,[24] but petitioner failed to file a Motion to Commission an Independent Certified Public Accountant (**ICPA**).[25] Thus, on November 22, 2023, the Court ruled that petitioner is deemed to have abandoned its request for the appointment or commissioning of an ICPA.[26]

The said ruling was the subject of petitioner's *Omnibus Motion (1) to Reconsider the Order of the Court dated 22 November 2023; and (2) to Suspend Filing of Formal Offer of Evidence (**Omnibus Motion**)* filed on December 4, 2023.[27]

The Court promulgated the *Pre-Trial Order* on January 16, 2024.[28]

On January 26, 2024, petitioner filed a *Motion for Appointment and/or Commissioning of Independent Certified Public Accountant with Motion to Admit Judicial Affidavit of Leandro M. Lontok, CPA (**Motion for Commissioning of ICPA**)*.[29]

On February 27, 2024, the Court promulgated a resolution granting petitioner's *Omnibus Motion.*[30] The hearing on petitioner's *Motion for Commissioning of ICPA* was thus held on April 30, 2024.[31]

On July 4, 2024, the *ICPA Report* was filed.[32] This was followed by the filing of *Judicial Affidavit (For: Mr. Leandro M. Lontok)* on July 12, 2024.[33]

ICPA Lontok was presented anew on July 17, 2024. Petitioner presented no other witness.[34]

---

21 *Id.* at 240–256
22 *Id.* at 257–261.
23 *Id.* at 267–269, Order dated September 21, 2023.
24 *Id.* at 281-300.
25 *Id.* at 308, Records Verification dated November 6, 2023.
26 *Id.* at 311–312.
27 *Id.* at 324–327.
28 *Id.* at 342–354.
29 *Id.* at 355–359.
30 *Id.* at 378–380.
31 *Id.* at 408–409.
32 *Id.* at 421–422, Compliance.
33 Exhibit "P-22", Docket, pp. 479–483.
34 Docket, pp. 489–490.

Petitioner filed its *Formal Offer of Evidence* on July 29, 2024.[35] On September 20, 2024, the Court resolved to admit petitioner's exhibits except for Exhibits "P-2", "P-9", and "P-10".[36]

On September 24, 2024, respondent presented his sole witness, RO Bantuas, who testified by way of judicial affidavit.[37]

Respondent's Formal Offer of Evidence was filed on October 2, 2024.[38] On January 28, 2025, the Court resolved to admit all of respondent's exhibits.[39]

On March 3, 2025, respondent filed a *Manifestation* that he is adopting the arguments he raised in his *Answer* dated April 17, 2023, as his *Memorandum*;[40] while the *Memorandum (For: Petitioner Powersource Philippines Energy Incorporated)* was filed on March 4, 2025.[41]

On March 24, 2025, the case was submitted for decision.[42]

THE ISSUE

The parties stipulated the following issue for the Court's resolution:[43]

> WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY IT, VAT, EWT, AND DST FOR TAXABLE YEAR 2018 IN THE AGGREGATE AMOUNT OF PHP6,988,125.15, INCLUSIVE OF SURCHARGES, INTERESTS, AND COMPROMISE PENALTIES.

Petitioner's arguments

In its *Petition for Review* and *Memorandum,* petitioner alleges that the assessment is void for violating its right to due process. First, petitioner states that the FLD/FAN was issued prior to the lapse of the 15-day period to respond to the PAN. Second, petitioner contends that the PAN, FLD/FAN, and the

---

35 *Id.* at 495–505.
36 *Id.* at 530–531.
37 *Id.* at 532–533.
38 *Id.* at 536–543.
39 *Id.* at 564–566.
40 *Id.* at 567.
41 *Id.* at 573–606.
42 *Id.* at 610.
43 *Id.* 349, Pre-Trial Order, Issue to be Tried or Resolved.

FDDA contain identical findings, differing only in the computation of interest.

Petitioner further contends that it is not liable for deficiency IT because respondent allegedly used incorrect figures in determining the related cost of electricity sold and that he omitted ordinary allowable itemized deductions. It likewise argues that it is not liable for deficiency VAT since respondent erroneously disregarded its valid input VAT claims. As to the deficiency EWT, petitioner maintains that it is neither included in respondent's Taxpayers Account Management Program (**TAMP**) nor classified as a top withholding agent (**TWA**). Finally, with respect to the deficiency DST assessment, petitioner asserts that it is the responsibility of the bank to withhold and remit the DST on bank loans, and that its advances to contractors are not subject to DST.

Respondent's counter-arguments

In his *Answer*, which he adopts as his *Memorandum*, respondent contends that the FLD/FAN became final and executory, and that the Court has no jurisdiction to hear the case. Respondent contends that the FLD/FAN was received by petitioner on December 23, 2021, while the Protest was filed only on April 18, 2022.

Respondent maintains that the assessment was valid and did not violate petitioner's due process rights. According to respondent, the PAN and the FLD/FAN contained the factual and legal basis of the assessment. While admitting that the FDDA and the FLD/FAN are identical, respondent reasons that petitioner failed to submit newly discovered or additional evidence.

THE COURT'S RULING

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

The Court has jurisdiction over the instant case.

Before delving into the merits, the Court must first determine whether it has jurisdiction to take cognizance of this *Petition for Review*.

Mr

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[44] as amended by RA No. 9282,[45] vests the Court of Tax Appeals (**CTA**) with exclusive appellate jurisdiction over decisions and inactions of the CIR, *viz.*:

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

Complementing this, Section 11 of RA No. 1125, as amended, prescribes the thirty (30)-day period for filing an appeal:

> 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[46] and Section 3(a), Rule 8[47] of the Revised

---

44 An Act Creating the Court of Tax Appeals, June 16, 1954.

45 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.

46 *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: ...

47 Sec. 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

Rules of the Court of Tax Appeals (**RRCTA**). Clearly, the CTA has jurisdiction over appeals from decisions of the CIR, provided the appeal is filed within 30 days from the taxpayer's receipt of such decision.

In the instant case, the FDDA was received by petitioner on December 29, 2022.[48] Hence, it had until **January 30, 2023** to file its *Petition for Review*, as the 30th day, January 28, 2023, fell on a Saturday. On January 30, 2023, petitioner timely filed its *Petition for Review*.[49] Accordingly, the Court has jurisdiction over the instant case.

The FLD/FAN, having been prematurely issued, is void for violation of due process.

Petitioner contends that the FLD/FAN was issued before the lapse of the 15-day period to reply to the PAN. Respondent, on the other hand, insists that the assessment is valid and that petitioner's right to due process was not violated.

The Court rules in favor of petitioner.

The issuance of a PAN is governed by Section 228 of the NIRC of 1997, as amended, and implemented by Section 3.1.1 of Revenue Regulations (**RR**) No. 12-99, as amended by RR No. 18-2013, which respectively provide:

> **SEC. 228.** ***Protesting of Assessment.*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> ...
>
> 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. **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice**. If the taxpayer fails to

---

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.

[48] Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 7; Exhibit "P-3", Docket, pp. 54–65; Exhibit "R-11", BIR Records, pp. 1633–1640.

[49] Docket, pp. 8–38.

respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (*Emphasis supplied*)

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. ...

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be ***issued*** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds** that he/it disagrees with the findings of deficiency tax or taxes, **an FLD/FAN shall be *issued* within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (*Emphasis supplied*)

The above provisions clearly establish that a taxpayer is granted **15 days** from receipt of the PAN to respond before the CIR may issue an FLD/FAN. Importantly, RR No. 12-99, as amended, uses the term **"issued"** rather than **"served"** to underscore that the FLD/FAN must **<u>not</u>** be issued until the 15-day reply period has lapsed or a reply has been received.

The PAN is a part of due process and gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need to issue a FAN.[50] Due process demands that taxpayers receive the PAN *and* that they are given 15 days upon receipt to respond thereto.[51] The said 15-day period should be strictly complied with.[52]

[50] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division], cited in *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[51] *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*, G.R. No. 227616 (Notice), June 19, 2019.

[52] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division]; *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division]; *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

In *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue,*[53] citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation,*[54] the Supreme Court affirmed that the 15-day period under RR No. 12-99, as amended, must be strictly observed. It emphasized that only after receiving the taxpayer's response, or upon default, may the BIR issue an FLD/FAN:

> In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR.** The Court highlighted that **"[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN**."
>
> ....
>
> As the Court also held in *Yumex,* "[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment." "**Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response**."
>
> In the same vein, it is beside the point that petitioner was able to submit a "well-prepared protest letter." The fact remains that **respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.**
>
> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99 is void and produces no effect. (*Emphasis supplied*)

The CIR should have ascertained petitioner's date of receipt of the PAN before issuing the FLD/FAN.[55] This would have ensured that petitioner was afforded the full opportunity to respond, in accordance with procedural due process.

In this case, the PAN dated **October 27, 2021,** was received by petitioner on **November 24, 2021**.[56] Thus, petitioner had 15 days, or until **December 9, 2021**, to file its reply to the PAN. However, the BIR issued the FLD/FAN on

---

[53] G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].
[54] G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division].
[55] *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division].
[56] Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 4; Exhibit "P-5", Docket, pp. 67–71; Exhibit "R-5", BIR Records, pp. 1494–1498.

December 9, 2021, the same day petitioner filed its **Request for Reinvestigation** (Reply to the PAN). As a result, petitioner's reply was not considered, effectively depriving it of the opportunity to be heard.

By issuing the FLD/FAN before the expiration of the 15-day period, respondent violated the due process requirement under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended, rendering the FLD/FAN void and without legal effect.

Moreover, respondent failed to consider petitioner's arguments and supporting documents, not only in its Reply to the PAN but also in its subsequent Protest to the FLD.

The FDDA is void because it was founded on a void FLD/FAN and was issued without due consideration of the petitioner's Protest.

Petitioner asserts that on April 18, 2022, it filed a Protest to the FLD dated April 11, 2022,[57] and likewise submitted supporting documents.[58] Respondent, however, claims that the documents were not submitted within the prescribed sixty (60)-day period.[59] Nevertheless, on December 13, 2022, respondent issued against petitioner the FDDA containing the same findings as those in the PAN and FLD/FAN, except for the computation of interest. Respondent explains that the findings were merely reiterated because petitioner allegedly failed to submit supporting documents with its protest.

The Court finds petitioner's contention meritorious.

The FDDA suffers from **two defects**, either of which is sufficient to render it void.

First, the FDDA is void because it was issued in affirmation of a void FLD/FAN. As previously discussed, having been prematurely issued, the FLD/FAN did not acquire legal effect; thus, any decision affirming or based upon it is likewise void.

[57] Docket, p. 348, Pre-Trial Order, Summary of Admitted and Stipulated Facts, par. 6; Exhibit "P-8", Docket, pp. 88–96; Exhibit "R-12", BIR Records, p. 1565.
[58] *Supra* note 10.
[59] Exhibit "R-9", BIR Records, p. 1602.

The FDDA cannot breathe life into an assessment that is null from inception.

Second, the FDDA is void because, like the FLD/FAN, it failed to consider petitioner's arguments and supporting documents submitted in its Protest to the FLD. This omission constitutes a separate and distinct violation of petitioner's right to due process under Section 228 of the NIRC of 1997, as amended,[60] and Section 3 of RR No. 12-99, as amended.[61]

Under these provisions, the taxpayer must be informed in writing of the **facts and the law** on which the assessment is based; otherwise, the assessment is void. Both the FLD/FAN and the FDDA must clearly state these factual and legal bases as part of due process. This requirement is **mandatory** and cannot be presumed. The law imposes a substantive, not merely a formal requirement.[62] As a requirement of due process, this rule allows the taxpayer to make an effective protest.[63]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[64] the Supreme Court emphasized that a taxpayer must not only be given an opportunity to present defenses and evidence but that the Commissioner and his subordinates must also **give due consideration** to these submissions. The right to be heard becomes meaningless if the BIR may simply ignore the taxpayer's reply and supporting evidence without reason, *viz.*:

[60] SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
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.

[61] 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:
...
3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law,</u> rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
...
3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative <u>shall state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence on which such decision is based, ***<u>otherwise, the decision shall be void</u>*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. (*Emphasis supplied*)

[62] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

[63] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

[64] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

> <u>**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.**</u> **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts,** <u>**but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process**</u>**.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. <u>**Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions**</u>**.** <u>**Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity**</u>**.**
>
> ... ...
>
> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. ... **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**
>
> ... ...
>
> In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:
>
> (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
> (2) **The administrative tribunal or body must consider the evidence presented.**
> (3) There must be evidence supporting the tribunal's decision.
> (4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
> (5) The administrative tribunal's decision must be rendered on the evidence presented, or at least

W

contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) **The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.**

... ...

<u>The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage</u>." **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**

... ...

Administrative due process is anchored on fairness and equity in procedure. <u>It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself</u>. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **<u>that the party be sufficiently informed of the reasons for its conclusions</u>.**

... ...

The facts demonstrate that Avon was deprived of due process. **It was <u>not fully apprised of the</u> legal and <u>factual bases of the assessments issued against it</u>. The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, <u>Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments</u>.** There was clear inaction of the Commissioner at every stage of the proceedings.

... ...

<u>It is true that the Commissioner is not obliged to accept the taxpayer's explanations</u>, 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. <u>He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record</u>.**

... ...

> **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 supplied; citations omitted*]

In the present case, a side-by-side comparison of the PAN, FLD/FAN, and FDDA, alongside their respective *Details of Discrepancies*, reveals that they are *identical*. The FLD/FAN makes no mention of petitioner's Reply to the PAN, understandably so, as the FLD/FAN was prematurely issued on the same day petitioner filed its Reply. Likewise, the FDDA failed to clearly and sufficiently address petitioner's Protest to the FLD and the supporting documents submitted therewith, demonstrating respondent's disregard of petitioner's explanations and evidence at the administrative level.

These observations are contrary to *Avon* which emphasizes that:

> Due process requires the Bureau of Internal Revenue **to consider the defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process** and taints the administrative proceedings with invalidity.

The BIR must therefore evaluate and discuss the taxpayer's protest and supporting documents when resolving the protest and issuing the FDDA.

The Supreme Court further underscored in *Avon* that:

> "The use of the word *'shall'* in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is **mandatory**." This is an essential requirement of due process and applies to the **Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and the **Final Decision on Disputed Assessment**.

Hence, a valid FDDA must not only cite the laws and rules relied upon but must also address the taxpayer's arguments and evidence to show that the BIR has duly considered them. The absence of such acknowledgment violates the taxpayer's right to due process and deprives it of a fair opportunity to be heard.

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc.,*[65] echoing *Avon* and *Ang Tibay*, the Supreme Court reiterated 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.***"

Indeed, the right to protest a PAN carries with it the BIR's corresponding duty to consider the taxpayer's response. The issuance of an FLD/FAN or FDDA without considering the taxpayer's reply and submissions is contrary to the cardinal principles of due process.

Respondent's failure to uphold petitioner's fundamental right to due process under Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999, as amended, renders both the FLD/FAN and the FDDA **null and void**.

It is axiomatic that tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[66]

Due process is the very essence of justice itself.[67] While "taxes are the lifeblood of the government," the power to tax has its limits in spite of all its plenitude.[68] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[69]

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements is *void and produces no effect.*[70] A void assessment bears no valid fruit.[71]

WHEREFORE, in light of the foregoing considerations, petitioner's *Petition for Review* is hereby **GRANTED**.

---

65 G. R. No. 232055 (Notice), April 27, 2022 [Per Resolution, Third Division].

66 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

67 *Macias v. Macias*, G.R. No. 149617, September 3, 2003, 457 SCRA 463-471 [Per J. Sandoval-Gutierrez, Third Division].

68 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 652 SCRA 172-188 [Per J. Mendoza, Second Division].

69 *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 SCRA 829-836 [Per J. Cruz, First Division].

70 *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

71 *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division]; *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division].

Accordingly, the Formal Letter of Demand and Final Assessment Notices dated December 9, 2021, are **CANCELLED** and **SET ASIDE**. The Final Decision on Disputed Assessment dated December 13, 2022, assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax, penalties, and interest for taxable year 2018, is **REVERSED** and **SET ASIDE**.

Furthermore, respondent is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the First Division Acting Chairperson's Attestation, 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice