REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

A & A SECURITIES, INC., *Petitioner,*	**CTA Case No. 10866**
	Members:
- versus -	**REYES-FAJARDO,** Acting Chairperson, **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 20 2026 3:54 p.m.

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DECISION

REYES-FAJARDO, *J*.:

A & A Securities, Inc.'s appeal seeks to overturn and set aside: (1) the Final Decision on Disputed Assessment dated April 13, 2022; and (2) the finding of deficiency Income Tax (IT) assessment against it, for Taxable Year (TY) 2017.[1]

FACTS

Petitioner A & A Securities, Inc. is registered with the Securities and Exchange Commission (SEC) as "BROKER IN SECURITIES" under SEC C.R. No. 01-2004-00001 dated December 29, 2011.[2] It is also a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8A, Revenue District Office No. 47-East Makati, with Taxpayer Identification No. 000-103-110-000.[3] During the TY 2017 and the audit, petitioner's principal office address was located at Suite 1906 Security Bank Center, 6776 Ayala Ave., Makati City.[4]

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1 See Statement of the Case, Pre-Trial Order dated December 21, 2023. Docket, p. 674.
2 Exhibit "P-2." *Id.* at p. 35.
3 Par. 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 658.
4 Par. 3, Summary of Admitted Facts, JSFI. *Id.* at p. 658.

Respondent Commissioner of Internal Revenue is vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations.[5]

On September 4, 2018, petitioner received Regional Director Glen A. Geraldino (RD Geraldino)'s Letter of Authority (LOA) dated August 31, 2018 [6] with attached Checklist of Requirements (Checklist).[7] Said LOA authorized Revenue Officer Ana Clarizza Labajoy (RO Labajoy) and Group Supervisor Emmanuel James Obsequio (GS Obsequio), to examine petitioner's books of account and other accounting records for all internal revenue taxes for the period from January 1, 2017 to December 31, 2017.[8]

On September 14, 2018, the BIR issued a First Request for Presentation of Books of Account to petitioner, requesting that the latter produce the documents specified in the Checklist.[9]

Petitioner submitted documents to the BIR. These documents are enclosed in the Letters dated September 21, 2018[10] and September 25, 2018.[11]

On December 14, 2018, petitioner received the BIR's undated Notice of Informal Conference with Details of Deficiency Taxes (NIC),[12] finding petitioner liable for deficiency IT, value-added tax (VAT), expanded withholding tax (EWT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) for TY 2017, the particulars of which are as follows:

Tax Type	Basic Deficiency Tax	Surcharge	Interest	Compromise Penalty	Total
IT	₱6,367,827.15	₱ -	₱542,224.84	₱ -	₱6,910,051.99
VAT	27,780,621.73		3,096,207.38		30,876,829.11
EWT	447,143.08		51,305.07		498,448.15

5 Par. 4, Summary of Admitted Facts, JSFI. *Ibid.*
6 Exhibits "P-3" and "R-2." BIR Records (Folder 1 of 3), p. 1.
7 Exhibits "P-3-1" and "R-3." *Id.* at p. 2.
8 *Supra* note 6.
9 Exhibit "R-4." BIR Records (Folder 1 of 3), p. 3.
10 Exhibit "P-4." *Id.* at pp. 4-223.
11 Exhibit "P-5." *Id.* at pp. 225-264.
12 Exhibits "P-6" and "R-5" to "R-6." *Id.* at pp. 296-302.

DST	730,444.89	182,611.22	86,212.51	20,000.00	1,019,268.62
IAET	594,242.20	148,560.55	68,183.19	20,000.00	830,985.94
Total	₱35,920,279.05	₱331,171.77	₱3,844,132.99	₱40,000.00	**₱40,135,583.81**

On January 16, 2019, petitioner filed its Reply to Notice for Informal Conference.[13]

On October 22, 2019, petitioner received[14] Regional Director Maridur V. Rosario (RD Rosario)'s Preliminary Assessment Notice (PAN),[15] containing deficiency IT and VAT for TY 2017, with the following computation:

I. INCOME TAX			
Taxable Income per return		P	(183,754.00)
Add: Adjustments/disallowances			
Disallowed Office Supplies (Schedule 1)	31,959.71		
Disallowed Donations (Schedule 2)	105,000.00		
Disallowed Penalties	337,381.00		474,340.71
Subtotal		P	290,586.71
Add: Net Operating Loss Carry Over (NOLCO)			183,754.00
Adjusted Taxable Income		P	474,340.71
Basic Deficiency Income Tax		P	142,302.21
Less Total Tax Credits/Payment	606,841.00		
Less: Excess Tax Credits Carry Over to Succeeding Period	442,208.00		
Excess MCIT Carried Over to Succeeding Period	164,633.00		-
Less: Adjustments/Disallowances			
Income Tax Due		P	142,302.21
Less Payments			-
Basic Tax Due		P	142,302.21
Add: Interest 12% (04.16.18 to 11.29.19)			27,743.08
TOTAL AMOUNT DUE		P	170,045.29
II. VALUE-ADDED TAX			
Vatable Sales per Return		P	20,567,470.26
Add: Receipts not subjected to VAT (Schedule 3)			201,528,244.17
Adjusted VATable Sales		P	222,095,714.43
Output Tax Due (12%)		P	26,651,485.73
Less Input Tax per VAT Returns			1,097,810.94
VAT Payable		P	25,553,674.79
Less Tax Paid per Audit			1,370,285.50
Deficiency Value Added Tax		P	24,183,389.29
Add: Interest 12% (01.26.18 to 11.29.19)			2,448,816.63
TOTAL AMOUNT DUE		P	26,632,205.92

On November 18, 2019, the BIR received[16] petitioner's Protest to Preliminary Assessment Notice dated November 6, 2019, only

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13 Exhibit "P-7." BIR Records (Folder 3 of 3), pp. 608-616.

14 Par. 8, Summary of Admitted Facts, JSFI. Docket, p. 659

15 Exhibit "P-9." BIR Records (Folder 1 of 3), pp. 349-353; and Exhibits "R-8" to "R-9," *id.* at pp. 509-513.

16 Upper Left Portion, Page 1 Exhibits "P-10" and "R-11." *Infra* note 17.

disputing the deficiency VAT per PAN, while expressing willingness to pay the proposed deficiency IT found in the PAN.[17]

On November 13, 2020, petitioner received[18] RD Rosario's Formal Letter of Demand and Final Assessment Notice with Details of Discrepancies (FLD/FAN).[19] There, RD Rosario dropped, *inter alia*, the deficiency IT for TY 2017 per PAN because petitioner paid the same.[20] Despite the foregoing payment, RD Rosario introduced a *new* deficiency IT covering the same year in the sum of ₱3,310,078.54, computed as follows:

I. INCOME TAX

Taxable Income per return					P	-
Add: Undeclared Income (Schedule 1)						8,392,927.26
Adjusted Taxable Income					P	8,392,927.26
Income Tax Due					P	2,517,878.18
Less: Total Tax Credits/Payment			P	606,841.00		
Less: Adjustments						
Excess Tax Credits Carried Over to Succeeding Period	P	442,207.66				
Excess MCIT Carried Over to Succeeding Period		164,633.34		606,841.00		-
Income Tax Payable					P	2,517,878.18
Less: Payments						-
Basic Tax Due					P	2,517,878.18
Add: Interest 12% (04.16.18 to 11.27.20)						792,200.36
TOTAL AMOUNT DUE					P	**3,310,078.54**

RD Rosario explained that the *new* deficiency IT for TY 2017 is justified because petitioner undeclared its income by ₱8,392,927.26. Said figure was a result of comparison between petitioner's sales per VAT Returns as against the amount declared in its Annual ITR.[21]

On December 14, 2020, petitioner posted[22] its request for reinvestigation on RD Rosario's FLD/FAN,[23] which was granted, *via* Letter[24] dated January 20, 2021.

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17 Exhibits "P-10" and "R-11." BIR Records (Folder 1 of 3), pp. 661-676. Relate with par. 9, Summary of Admitted Facts, JSFI, Docket, p. 659.

18 See Par. 10, Summary of Admitted Facts, JSFI. Docket, p. 659.

19 Exhibits "P-11" to "P-11-A" and "R-13" to "R-15." BIR Records (Folder 1 of 3), pp. 696-701.

20 Page 2, Details of Discrepancies (Exhibit "P-11-A"). *Id.* at p. 697.

21 Page 1, Details of Discrepancies (Exhibit "P-11-A"). *Id.* at p. 698.

22 Exhibit "P-12-A." Docket, p. 292.

On February 15, 2021, petitioner posted [25] its Additional Documents for Request for Reinvestigation.[26]

On April 26, 2022, petitioner received[27] RD Rosario's FDDA dated April 13, 2022 with Result of Reinvestigation, upholding the *new* assessed deficiency IT for TY 2017, in the total amount of ₱3,750,465.78.[28]

On May 26, 2022, petitioner filed its Petition for Review,[29] docketed as CTA Case No. 10866, which was met with respondent's Answer[30] posted on September 16, 2022.

On October 7, 2022, petitioner moved, [31] and the Court granted,[32] its plea for suspension of collection of tax.

On September 13, 2023, pre-trial conference was held.[33] There, the parties jointly formulated, and We adopted the issue to be answered in this case. The scheduled presentation of the parties' evidence and the date of commissioner's hearing for the marking of their respective exhibits were as well set. Additionally, the parties were directed to submit their Joint Stipulation of Facts and Issues on or before October 3, 2023.

On October 2, 2023, the parties submitted their Joint Stipulation of Facts and Issues,[34] which was approved *via* Minute Resolution dated October 13, 2023.[35] On the basis thereof, a Pre-Trial Order[36] was issued on December 21, 2023.

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23 Exhibit "P-12." BIR Records (Folder 1 of 3), pp. 712-721.
24 Par. 12, Summary of Admitted Facts, JSFI. Docket, p. 659.
25 Exhibit "P-13," *infra* note 26, at p. 727.
26 Exhibit "P-13." BIR Records (Folder 1 of 3), pp. 727-914.
27 Par. 13, Summary of Admitted Facts, JSFI. Docket, p. 659.
28 Exhibits "P-14" and "R-17," BIR Records (Folder 1 of 3), pp. 951-953.
29 Docket, pp. 9-26, and 33-34 (for the Secretary's Certificate).
30 *Id.* at pp. 227-242. Together with the Answer are respondent's Special and Affirmative Defenses and Motion for Extension to File Judicial Affidavit of Revenue Officer Ana Clarizza L. Labajoy.
31 Motion to Suspend Collection of Tax. *Id.* at pp. 248-254.
32 Resolution dated February 21, 2023. *Id.* at pp. 416-426.
33 Order dated September 13, 2023. *Id.* at pp. 652-654.
34 *Id.* at pp. 658-663.
35 *Id.* at p. 665.
36 *Id.* at pp. 674-681.

Trial followed.

Petitioner presented its President, Ms. Cindy Therese Bangayan Chan,[37] as witness.

On February 5, 2024, Petitioner's Formal Offer of Exhibits[38] was filed, to which respondent filed a Comment/Opposition (Re: Petitioner's Formal Offer of Evidence dated 05 February 2024) on February 19, 2024,[39] followed by petitioner's Reply to Respondent's Comment/Opposition dated 19 February 2024.[40]

Through Resolution dated July 17, 2024,[41] the Court: (1) granted petitioner's Motion to Admit Reply to Respondent's Comment/Opposition dated 19 February 2024; and (2) admitted the exhibits offered by petitioner. Petitioner rested its case.

Respondent presented RO Labajoy as witness.[42]

On August 2, 2024, respondent filed his Formal Offer of Evidence,[43] to which petitioner submitted its Comment to Respondent's Formal Offer of Evidence on August 21, 2024.[44]

Under Resolution[45] dated November 8, 2024, the exhibits offered by respondent were admitted. Respondent rested his case.

On January 20, 2025, this case was submitted[46] for decision, considering: (1) Respondent's Memorandum[47] posted on December

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37 Consolidated and Supplemental Judicial Affidavit of Cindy Therese Bangayan Chan (Exhibit "P-18"), *id.* at pp. 684-694. Admitted and identified during the hearing held on January 25, 2024, see Order of even date, *id.* at pp. 696-697.

38 *Id.* at pp. 698-701.

39 *Id.* at pp. 896-898.

40 *Id.* at pp.

41 *Id.* at pp. 911-912.

42 Judicial Affidavit of Revenue Officer Ana Clarizza L. Labajoy (Exhibit "R-19"), *id.* at pp. 573-589. Identified during the hearing held on July 18, 2024, see Order of even date, *id.* at pp. 923-924.

43 *Id.* at pp. 913-920.

44 *Id.* at pp. 925-926.

45 *Id.* at pp. 931-932.

46 Minute Resolution dated January 20, 2025. *Id.* at p. 966.

47 *Id.* at pp. 936-946.

12, 2024; and (2) Petitioner's Memorandum[48] submitted on December 20, 2024.

ISSUE[49]

Is petitioner liable to pay the deficiency IT for TY 2017, in the total amount of ₱3,750,465.78, inclusive of statutory increments?

ARGUMENTS

Petitioner argues that it is not liable for the deficiency IT for TY 2017, found in the BIR's FLD/FAN, as affirmed in the FDDA. In so arguing, petitioner conveyed the following justifications:

> *One.* The deficiency IT for TY 2017 per the BIR's *FLD/FAN* in the amount of ₱3,310,078.54. Said figure stemmed from its alleged unreported income (₱8,392,927.26) after comparing its Annual ITR and Quarterly VAT Returns. However, the same failed to appear in the BIR's NIC and PAN; hence, its right to due process was violated.
>
> *Two.* The BIR acknowledged its payment of deficiency IT for TY 2017 per *PAN;* thus, its IT obligation for said year was already extinguished.
>
> *Three.* True, there exists a discrepancy of ₱8,392,927.26, if the sales/receipts reported in the Quarterly VAT Returns were compared against the amount reported in the Annual ITR. However, said figure is not income on its part. Rather, the bulk thereof pertains to the income of its sales agents. Therefore, it is not liable for IT thereon.
>
> *Four.* The corresponding tax on the discrepancy just mentioned were duly accounted for, by withholding taxes on the income payments made to its sales agents.

In closing, petitioner declares that the cancellation and withdrawal of the RD Rosario's FDDA and FLD/FAN are in order.

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48 *Id.* at pp. 950-964.

49 See Issue to be Resolved, JSFI. *Id.* at p. 659.

On the other hand, respondent counters that one of the conditions for the Court to exercise jurisdiction over the decision of his authorized representative on disputed assessment is the validity of an administrative protest. Petitioner's administrative protest is invalid because it was belatedly filed before the BIR. Specifically, petitioner received RD Rosario's FLD/FAN on November 13, 2020. Counting thirty (30) days therefrom, petitioner had until December 13, 2020 to file an administrative protest thereon. Thus, the belated filing of petitioner's administrative protest on January 6, 2021 robbed the CTA in Division of jurisdiction over CTA Case No. 10866.

Granting, the CTA in Division acquired jurisdiction over CTA Case No. 10866, respondent nonetheless ripostes that the deficiency IT assessment for TY 2017 appearing for the first time in RD Rosario's FLD/FAN, and subsequently, in the latter's FDDA is valid. In so riposting, respondent explained:

> *One.* Revenue Memorandum Circular (RMC) No. 11-2014[50] allows introduction of new deficiency tax in the FLD/FAN, if based on submitted documents or express admission of the taxpayer in its protest, such as the instant case.
>
> *Two.* The amount, *i.e.*, difference between sales per VAT Returns (₱20,567,470.26) and sales/receipts per AITR (₱12,174,543.00), from which the unreported income in the sum of ₱8,392,927.26 emanated, could be found in RD Rosario's PAN; hence, petitioner was satisfactorily informed of the basis of deficiency IT assessment in RD Rosario's FLD/FAN.

RULING

We grant the Petition.

Foremost, was jurisdiction acquired over CTA Case No. 10866?

Yes.

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50 SUBJECT: Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as Amended by RR 18-2013.

Section 7(a)(1) of Republic Act (RA) No. 1125,[51] as amended by RA No. 9282, endows the CTA exclusive appellate jurisdiction over, *inter alia,* respondent or his duly authorized representative's decision on disputed assessments:[52]

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal,** as herein provided:
>
> 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;
>
> ...[53]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[54] clarified that the CTA in Division has jurisdiction over respondent's or his duly authorized representative's decision involving disputed assessments, among others.[55] For the decision of respondent or his duly authorized representative to be elevated on appeal before the CTA in Division, a disputed assessment is required. [56] To correctly dispute a final assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
>
> If the taxpayer fails to respond, the Commissioner or his duly

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

[52] See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue,* G.R. No. 208731, January 27, 2016.

[53] Boldfacing supplied.

[54] A.M. No. 05-11-07-CTA.

[55] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive 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; (Boldfacing ours)

[56] See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

> authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[57]

In turn, the validity of the taxpayer's administrative protest rests upon confluence of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations.[58] Subsection 3.1.4 of RR No. 18-2013 echoed the period to institute an administrative protest before the BIR, along with the form and manner thereof, in this wise:

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

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57 Boldfacing ours.

58 See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated,* G.R. No. 239464, May 10, 2021.

> otherwise, his protest shall be considered void and without force and effect.

As presently formulated, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest. Upon the taxpayer's receipt of the FDDA, it has another thirty (30) days to seek redress with the CTA in Division.

On November 13, 2020, petitioner received[59] RD Rosario's FLD/FAN. Counting thirty (30) days therefrom, petitioner had until December 14, 2020[60] to file an administrative protest thereon; thus, petitioner timely posted[61] its Request for Reinvestigation on December 14, 2020.

Petitioner's Request for Reinvestigation[62] too, specified: (1) date of issuance and receipt of RD Rosario's FLD/FAN;[63] (2) it is a request for reinvestigation;[64] (3) the legal and factual basis thereof;[65] and (4) supporting documents, *i.e.*, Quarterly VAT Return, Annual ITR.[66] In fine, petitioner registered a valid administrative protest, thereby transmuting RD Rosario's FLD/FAN into a disputed assessment.

On April 26, 2022, petitioner received[67] RD Rosario's FDDA. Counting thirty (30) days therefrom, petitioner had until May 26, 2022 to seek redress. *Ergo*, the timely filing of petitioner's Petition for Review on May 26, 2022,[68] clothed Us with jurisdiction over CTA Case No. 10866.

Respondent contends that petitioner belatedly filed its Request for Reinvestigation on January 6, 2021, per stamp shown on page 1 thereof; hence, jurisdiction was not attained over this case.

The contention is unsound.

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59 *Supra* note 18.
60 The 30th day, *i.e.*, December 13, 2020, fell on a Sunday.
61 *Supra* note 22.
62 *Supra* note 23.
63 Opening Paragraph, Request for Reinvestigation.
64 Page 1, Request for Reinvestigation.
65 *Supra* note 23.
66 Par. 26, Request for Reinvestigation.
67 *Supra* note 27.
68 *Supra* note 29.

Under item C.3 of Revenue Memorandum Circular (RMC) No. 15-2020,[69] personal filing and registered mail are the recognized modes of filing of an administrative protest on the FLD/FAN. In case of registered mail, said circular further said that "... the date of mailing, as shown by the post office stamp on the envelope, shall be considered as the date of filing of protest."

Witness Chan explained [70] that petitioner's Request for Reinvestigation was filed *via* registered mail on December 14, 2020. Her explanation was validated by the stamped Registry Receipt No. RE 415 737 495 ZZ, appearing on the upper right portion of the first page of petitioner's Request for Reinvestigation, contained the date "December 14, 2020." Following RMC No. 15-2020, December 14, 2020 is the date of filing of petitioner's Request for Reinvestigation. Considering that the last day for filing thereof is likewise December 14, 2020,[71] petitioner timely posted its administrative protest on RD Rosario's FLD/FAN. If at all, the date "January 6, 2021" pointed out by respondent is the BIR's date of receipt of the *mailed* Request for Reinvestigation, and *not* the date of filing of said administrative protest.

The next query—is petitioner liable for deficiency IT covering TY 2017, found in RD Rosario's FLD/FAN and FDDA?

No.

RD Rosario slapped petitioner with deficiency IT for TY 2017 because the latter purportedly has undeclared income in the amount of ₱8,392,927.26, which was not subjected to IT. RD Rosario arrive at said figure, by deducting petitioner's sales/receipts per VAT Returns (₱20,567,470.26) from its sales/receipts per Annual ITR (₱12,174,543.00).[72]

This warrants nullification. Consider:

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69 SUBJECT: Prescribing the Manner on How Concerned Taxpayers Shall Be Informed of the Procedures in Responding to the Issuance of Deficiency Tax Assessments.

70 Answer to Question No. 31, Exhibit "P-18." *Supra* note 37.

71 *Supra* notes 59 and 60.

72 *Supra* note 21.

First. Petitioner was not informed of the sole item of IT assessment in RD Rosario's FLD/FAN and FDDA at *informal conference* stage.

Subsection 3.1.1[73] of RR No. 12-99[74] introduced a Notice of Informal Conference (NIC) as one of the mechanisms of the taxpayer's right to due process on assessment. RR No. 18-2013[75] then amended RR No. 12-99, dispensing with the NIC requirement. However, RR No. 7-2018[76] restored the NIC as part and parcel of the taxpayer's right to due process on assessment, in this wise:

> SECTION 2. Amendment. — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows:

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73 *Section 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

74 SUBJECT: IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY.

75 SUBJECT: AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT.

76 SUBJECT: AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99, AS AMENDED BY REVENUE REGULATIONS NO. 18-13, RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT.

> "**SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —**
>
> ...
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> **3.1.1 Notice for Informal Conference. —** The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing,** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.**
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.
>
> Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations."[77]

In the Details of Deficiency Taxes[78] appended in the BIR's NIC[79] petitioner's deficiency IT liability for TY 2017 stemmed from: (1) disallowed expenses due to non-withholding of tax; (2) disallowed expenses due to non-substantiation; (3) unaccounted expenses; (4) Net Operating Loss Carry-Over; (5) Excess Tax Credits Carried Over to Succeeding Period; and (6) Excess Minimum Corporate Income Tax (MCIT) Over Normal Corporate Income Tax (NCIT) Carried Forward to Succeeding Period. The BIR failed to state that petitioner

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77 Boldfacing and underscoring in the original.
78 Annex "B" of NIC. BIR Records (Folder 1 of 3), pp. 297-299.
79 *Supra* note 12.

was assessed for 2017 IT for *unreported income,* let alone, after comparison of its VAT Returns and Annual ITR.

Since the BIR's NIC failed to inform petitioner that it has unpaid IT on unreported income resulting from comparison of its VAT Returns and Annual ITR, petitioner was deprived of opportunity to present its side thereon at *informal conference* stage, as guaranteed by Subsection 3.1.1 of RR No. 12-99, as amended by RR No. 7-2018. For this reason, the BIR flouted petitioner's right to due process.

Second. Petitioner was not informed of the sole item of IT assessment in RD Rosario's FLD/FAN and FDDA at pre-assessment stage.

Section 228 of the NIRC, as amended,[80] as implemented by Section 3[81] of RR No. 12-99,[82] as amended by RR No. 18-2013, govern

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[80] SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he **shall first notify the taxpayer of his findings**: Provided, however, That a pre-assessment notice shall not be required in the following cases: ...

...

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 respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. ...

... (Boldfacing ours)

[81] SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —**

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

...

3.1.1 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. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

the due process requirement on assessment. Among the components thereof is that the PAN must be served to, and received by the taxpayer. Additionally, the taxpayer must be afforded the opportunity to ventilate its defenses on the PAN, within fifteen (15) days from receipt thereof, by way of a reply or response thereto, lest there be violation of the taxpayer's right to due process.[83]

In the Details of Discrepancies appended to RD Rosario's PAN,[84] the latter found petitioner liable for deficiency IT covering TY 2017 due to: (1) disallowed office supplies; (2) disallowed donations; (3) disallowed penalties; (4) NOLCO; and (5) Excess MCIT Over NCIT Carried Forward to Succeeding Period. RD Rosario never said that petitioner was assessed for 2017 IT for *unreported income*, let alone, after comparison of its VAT Returns and Annual ITR.

Given that RD Rosario's PAN failed to inform petitioner that it has unpaid IT on unreported income after comparing its VAT Returns and Annual ITR, it was again deprived of opportunity to contest the same at *pre-assessment* stage, as guaranteed by Section 228 of the NIRC, as amended, as implemented by Section 3 of RR No. 12-99, as amended by RR No. 18-2013. Therefore, the BIR again flouted petitioner's right to due process.

Respondent asserts that imposition of 2017 deficiency IT per RD Rosario's FLD/FAN is justified under RMC No. 11-2014.[85] According to him, said circular allows the introduction of a *new* item of tax assessment, *i.e.*, IT on undeclared income, in the FLD/FAN, because the new finding was based on the submitted documents or express admission of petitioner in its protest.

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.

82 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

83 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

84 *Supra* note 15.

85 SUBJECT: Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as Amended by RR 18-2013.

The assertion is unfounded.

For reference, RMC No. 11-2014 is quoted hereunder, *viz.*:

This Circular is issued to clarify certain issues relative to the amendments introduced to Revenue Regulations (RR) 12-99 by RR 18-2013.

(1) RR 12-99, as amended by RR 18-2013, provides that the Commissioner or his duly authorized representative shall issue the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and Final Decision on Disputed Assessment (FDDA). The term 'duly authorized representative' therein refers to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service.

Accordingly, pursuant to Revenue Memorandum Circular No. 39-2013, taxpayers shall submit/file their responses to the PAN and protests (requests for reconsideration/reinvestigation) to the FLD/FAN with the duly authorized representative of the Commissioner who signed the PAN and FLD/FAN. Protests in the nature of requests for reconsideration of taxpayers elevated to the Commissioner arising from inactions or adverse decisions of the 'duly authorized representatives' shall be filed with the Office of the Commissioner.

(2) Prior to the issuance of the PAN, the taxpayer may be allowed to make voluntary payments of probable deficiency taxes and penalties.

(3) An FLD/FAN issued reiterating the immediate payment of deficiency taxes and penalties previously made in the PAN is a denial of the response to the PAN. A final demand letter for payment of delinquent taxes may be considered a decision on a disputed assessment (*Commissioner of Internal Revenue vs. Isabela Cultural Corporation; G.R. No. 135210; July 11, 2001*). This includes a disputed PAN. So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with (*Calma vs. Court of Appeals; G.R. No. 122787; February 9, 1999*).

(4) An FDL/FAN issued beyond fifteen (15) days from filing/submission of the taxpayer's response to the PAN shall be valid, provided that, it is issued within the period of limitation to assess internal revenue taxes. The non-observance of the fifteen (15)-day period, however, shall

qd

constitute an administrative infraction and the revenue officers who caused the delay shall be subject to administrative sanctions as provided for by law and pertinent revenue issuances.

(5) RR 12-99, as amended by RR 18-2013, provides that '*[f]or requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.*' The term '*the assessment shall become final*' means that the failure of the taxpayer who requested for a reinvestigation to submit all relevant supporting documents within the sixty (60)-day period shall render the FLD/FAN 'final' by operation of law. He/it shall be barred from disputing the correctness of the FLD/FAN by the introduction of newly discovered or additional evidence because he/it is deemed to have lost his/its chance to present these evidence. The BIR shall then deny the request for reinvestigation through the issuance of an FDDA.

(6) The notice (PAN/FLD/FAN/FDDA) shall first be served to the taxpayer's registered address before the same may be served to the taxpayer's known address, or in the alternative, may be served to the taxpayer's registered address and known address simultaneously.

Indeed, RMC No. 11-2014 is silent as to the supposed circumstance, *i.e.*, permit introduction of *new* item of tax assessment in the FLD/FAN, when new findings were based on the submitted documents or express admission of the taxpayers through its protest, invoked by respondent. It means that such circumstance is non-existent on said circular. This highlights the lack of legal mooring with respect to the imposition of deficiency IT on unreported income against petitioner for TY 2017, appearing for the first time in RD Rosario's FLD/FAN.

Respondent nevertheless argues that the basis, *i.e.*, sales per VAT Returns (₱20,567,470.26) and sales/receipts per AITR (₱12,174,543.00), of RD Rosario's finding of unreported income in the sum of ₱8,392,927.26, could be found in her PAN; hence, petitioner was satisfactorily informed of the basis of deficiency IT assessment at pre-assessment stage.

This is disingenuous.

True, the items: (1) sales per VAT Returns (₱20,567,470.26); and (2) sales/receipts per AITR (₱12,174,543.00), both appeared in RD Rosario's PAN, as follows:

> Comparison of Sales per Income Tax Return as against the amount reflected in the VAT Returns showed that there are receipts not subjected to VAT amounting to P201,528,244.17. Since no evidences have been adduced to support your contentions in reply to our Notice of Informal Conference that Trade Receivables should include only Commission Income only being a Stock Broker nor did you submit substantial evidence to explain the herein discrepancy to warrant the cancellation of the same, the herein assessment is hereby reiterated pursuant Section 105 and 108 of the NIRC, as amended.
>
> *Schedule 3:*

Sales/Receipts per FS/ITR	P	12,174,543.00
Add: Trade Receivables, beg. Net of VAT (301,120,080/1.12)		268,857,214.29
Total	P	281,031,757.29
Less: Trade Receivables, end Net of VAT (66,008,368/1.12)		58,936,042.86
Adjusted Sales per FS/ITR	P	222,095,714.43
Less: Sales per VAT Returns		20,567,470.26
Receipts not subjected to VAT	**P**	**201,528,244.17**[86]

Yet, the figures (highlighted in grey) pointed out by respondent were solely used in determining and informing petitioner of receipts not subjected to VAT during pre-assessment stage. These amounts were neither utilized, nor meant to determine, much more, inform petitioner of its 2017 IT liability on unreported income during pre-assessment stage. In fact, *RD Rosario's* ***PAN*** *did not inform petitioner how the supposed unpaid IT on unreported revenue was arrived at,* offensive of petitioner's right to due process. To stress, the manner and computation of the supposed unpaid IT on unreported income for TY 2017 appeared as a novelty in RD Rosario's FLD/FAN.

Third. Jurisprudence elucidated the *rationale* why the taxpayer should be afforded the opportunity to present its side, during various stages of the assessment process.

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[86] Page 3, Details of Discrepancies appended to RD Rosario's PAN (*Supra* note 15). BIR Records (Folder 1 of 3), p. 349.

For instance, *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (APMI)*[87] held –

> The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. **They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time** without the need for the issuance of a Final Assessment Notice. ...

On top of *APMI, Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[88] ruled –

> The importance of **the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of the FAN.**

Petitioner was **not** informed of RD Rosario's 2017 IT assessment on unreported income during informal conference and pre-assessment stages of the assessment process. Said assessment only made its debut in RD Rosario's FLD/FAN. *Ergo,* the BIR frustrated the very purpose for which the legal mechanism on NIC and PAN was made – to possibly settle the differences with the taxpayer at the earliest opportunity, *sans* going through a formal assessment.

Fourth. Respondent and his agents overlooked the following passage in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:[89] "[t]he essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights." This can neither be sanctioned nor tolerated.

ACCORDINGLY, We **RESOLVE** to:

a. **GRANT** the Petition for Review in CTA Case No. 10866;

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87 G.R. Nos. 201398-99, October 3, 2018. Boldfacing ours.
88 G.R. No. 249153, September 12, 2022. Boldfacing ours.
89 G.R. No. 215957, November 9, 2016.

b. **OVERTURN** the Final Decision on Disputed Assessment dated April 13, 2022 issued by Regional Director Maridur V. Rosario;

c. **INVALIDATE** the Bureau of Internal Revenue's deficiency income tax assessment covering Taxable Year 2017, issued against A & A Securities, Inc.; and

d. **FORBID** the Commissioner of Internal Revenue, his agents, or other persons acting on his behalf from collecting on A & A Securities, Inc., the deficiency income tax assessment for Taxable Year 2017.

SO ORDERED.

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

I CONCUR:

HENRY S. ANGELES
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.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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
Presiding Justice