REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

KINGSTON ALUMINUM AND STAINLESS SALES CORP., represented by its President, **MILDRID V. CHING,** Petitioner,	**CTA CASE NO. 10326**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
BUREAU OF INTERNAL REVENUE – REVENUE REGION NO. 9A, represented by the Regional Director **GERRY O. DUMAYAS,** Respondent.	Promulgated:

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court are a *Petition for Review*,[1] filed on August 20, 2020, and *Supplemental Petition for Review*,[2] filed on September 2, 2020, praying that this Court nullify the Final Decision on Disputed Assessment ("FDDA"), Formal Letter of Demand ("FLD"), Preliminary Assessment Notice ("PAN"), Letter-Reply, and overall assessment against petitioner for taxable year ("TY") 2017.

The Parties

Petitioner Kingston Aluminum and Stainless Sales Corp. is a corporation registered with the Bureau of Internal Revenue ("BIR"), whose business is to buy, sell, distribute, and market, at wholesale or retail, aluminum, stainless steel, and glass products, among others.[3]

[1] *Rollo* Vol. 1, pp. 7-53.
[2] *Id.* at 251-258.
[3] Joint Stipulation of Facts and Issues, p. 1, *Rollo* Vol. 2, p. 981.

Despite being identified in the Petitions as the BIR and as represented by a Regional Director ("RD"), the parties have stipulated that the respondent in this case is the duly appointed Commissioner of Internal Revenue ("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.[4]

The Facts

On March 7, 2019, petitioner received a Letter of Authority ("LOA") authorizing Revenue Officer ("RO") Patricia Mae Valencia and Group Supervisor ("GS") Nimfa Nadal to examine petitioner's books of accounts and other accounting records for TY 2017.[5]

Respondent then issued a Notice of Informal Conference on September 10, 2019, and an Amended Notice of Informal Conference on November 4, 2019.[6]

Afterwards, on January 29, 2020, petitioner received the assailed PAN, dated January 23, 2020. Petitioner protested this through its Reply to the PAN, dated February 11, 2020, which it filed with the BIR on February 12, 2020.[7]

Respondent then issued the assailed FLD on February 20, 2020, which was received by petitioner on February 21, 2020. Petitioner filed a Protest to the FLD on March 19, 2020.[8]

Undeterred, respondent issued the assailed FDDA on July 20, 2020, with petitioner receiving the same on July 23, 2020.[9]

Aggrieved, petitioner filed the instant Petition for Review on August 20, 2020.

However, on August 26, 2020, petitioner received the assailed Letter-Reply, issued by RD Gerry O. Dumayas on August 18, 2020, in response to petitioner's Protest to the FLD.[10] This prompted petitioner to file the Supplemental Petition for Review.

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4 Joint Stipulation of Facts and Issues, pp. 1-2, *id.* at 981-982.
5 Petition for Review, p. 4, *Rollo* Vol. 1, p. 10.
6 *Id.*
7 Petition for Review, pp. 4-5, *id.* at 10-11.
8 Petition for Review, pp. 5-6, *id.* at 11-12.
9 Petition for Review, pp. 6-7, *id.* at 12-13.
10 Supplemental Petition for Review, p. 1, *id.* at 251.

Respondent filed an Answer[11] on October 2, 2020, but did not file an Answer to the Supplemental Petition for Review.[12]

After petitioner refused mediation,[13] and after a full-blown trial, respondent CIR filed his Memorandum[14] on February 12, 2024, while petitioner manifested that it would simply adopt the arguments it raised in its Petition and Supplemental Petition, with the additional of a handful of new arguments, in lieu of submitting a Memorandum.[15]

The Court then submitted the case for decision on March 7, 2024.[16] Hence, this Decision.

<u>The Issues</u>[17]

The issues here, summarized, are whether or not the assessment is void due to a violation of petitioner's right to due process, whether or not the assessment is void due to a lack of factual and legal basis, and whether or not petitioner is liable for the deficiency taxes assessed.

<u>Arguments of the Parties</u>

<u>Petitioner's Arguments</u>

Petitioner raises the following arguments in its Petition and Supplemental Petition:

(1) The assessment is void due to a failure to revalidate the LOA;
(2) The FLD is void for being issued more than 15 days from petitioner's receipt of the PAN and for lacking a definite amount and due date for payment;
(3) The FDDA is void as a whole for being improperly served upon petitioner;
(4) Both the FLD and FDDA are void for not considering petitioner's arguments, in violation of the latter's right to due process;
(5) The Income Tax and Value-Added Tax assessed in the FDDA should be cancelled as they were based on a new audit and lack factual and legal basis;
(6) The surcharges, interest, and compromise penalties should be cancelled for being erroneously imposed; and

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[11] *Id.* at 276-286.
[12] *See* Records Verification, dated February 3, 2021, *id.*, at 293.
[13] *See* Back to Court Form, dated June 2, 2021, *Rollo* Vol. 2, p. 503.
[14] *Rollo* Vol. 3, pp. 1180-1201.
[15] *See* Manifestation in Lieu of a Memorandum, *id.* at 1203-1207.
[16] Minute Resolution, dated March 7, 2024, *id.*, unpaginated.
[17] *See* Joint Stipulation of Facts and Issues, pp. 2-5, *Rollo* Vol. 2, pp. 982-985.

(7) The Letter-Reply is an ultra-vires act that violated petitioner's right to due process, neither supplemented nor amended the FDDA, and was improperly served.

Respondent's Arguments

Respondent, in his Memorandum, counters the above with the following:

(1) The FDDA was properly served;
(2) The failure to timely revalidate the LOA did not nullify it;
(3) The failure to issue a FLD within 15 days from a taxpayer's receipt of the PAN does not invalidate said FLD;
(4) The FLD contains a definite amount of tax due; and
(5) The assessment has factual and legal bases which petitioner failed to substantially dispute when it failed to submit documents sufficient for such purpose.

The Ruling of the Court

The Court finds merit in the Petitions.

The Court has jurisdiction over the present Petitions

Under *Section 7(a)(1) of Republic Act No. 1125, as amended*, this Court can take cognizance of, among others, decisions of the CIR in cases involving assessments arising from the *National Internal Revenue Code of 1997, as amended* ("*NIRC*"):

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

(Italics supplied.)

In order to gain jurisdiction over appeals to such decisions, the aggrieved taxpayer must file a Petition for Review within 30 days from receipt of the adverse ruling, as required by *Rule 8, Section 3(a) of the Revised Rules of the Court of Tax Appeals, as amended*:

> SEC. 3. Who may appeal; period to file petitioner. —
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> (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 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 petitioner for review* ***filed within thirty days after the 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. . . .
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> . . . .
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> (Emphasis and italics supplied.)

Here, the original Petition for Review was filed to appeal the FDDA, which, as its name implies, was respondent's final *decision* on a *disputed assessment*. Petitioner received said FDDA on July 23, 2020, and filed its Petition on August 20, 2020, well within the 30-day period.

Consequently, the Court gained jurisdiction over the present Petition for Review, as well as the Supplemental Petition for Review, which involves an intervening event of great significance to this case.

A LOA is not nullified by a failure to revalidate it

Petitioner claims that the LOA was invalidated by the auditing RO's failure to revalidate it within the 120-day period for such. The invalidity of the LOA thus rendered all subsequent actions of the BIR in the assessment void.

The argument is erroneous.

As raised by respondent, *Revenue Memorandum Order* ("*RMO*") *Nos. 19-09 & 44-10* clarified that a failure to revalidate a LOA does not invalidate it. Instead, such failure is a ground for the imposition of disciplinary action and administrative sanctions against the erring RO.

Consequently, RO Valencia's failure to revalidate the LOA has no bearing on the validity of PAN, FLD, and FDDA, and cannot be used to void the assessment.

Respondent is not required to issue the FLD within 15 days from a taxpayer's receipt of the PAN

Drawing from *RMO No. 26-16*, petitioner insists that respondent is mandated to issue a FLD within 15 days from a taxpayer's receipt of the PAN. As respondent did not do so here, it violated petitioner's right to due process.

The Court is not convinced.

As stated in its very first paragraph, *RMO 26-16* lays down "policies, uniform guidelines[,] and procedures for handling disputed assessments." Its provisions must thus be treated as such: as *guidelines* to streamline and standardize the process of handling disputed assessments. In other words, they are not *due process requirements*, such as those laid down in *Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR No. 18-13*, and are just policies for implementing such requirements.

Indeed, *Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-13*, requires the CIR to give a taxpayer 15 days from receipt of a PAN to reply to the same. The issuance of a FLD within that 15-day period would cause the FLD to be void, as declared in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[18] ("*Yumex*"). As such, the *earliest* that the CIR can issue a FLD is *16* days after the taxpayer's receipt of the PAN.

To support petitioner's insistence that the CIR *must* issue the FLD within 15 days from the taxpayer's receipt of the PAN would thus put the CIR in a lose-lose situation. If the CIR issues the FLD within 15 days from such receipt, the FLD would be void for not giving the taxpayer time to reply to the PAN. If the CIR issues the FLD after said period, the FLD would be void for being late. The Court obviously cannot accept such a situation.

In any event, if the two provisions are in conflict, the 15-day grace period before the issuance of a FLD must prevail. Said grace period has been recognized and affirmed by jurisprudence such as *Yumex*. Furthermore, *RMO 26-16* is a mere Revenue Memorandum Order issued by the then-CIR, whereas *RR No. 12-99, as amended by RR No. 18-13*, is a Revenue Regulation issued by the then-Secretary of Finance, as recommended by the then-CIR,

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[18] *See Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

pursuant to *Section 244 of the NIRC*. It is thus the latter that holds more weight.

Consequently, the Court finds no merit in petitioner's contention that respondent's failure to issue the FLD within 15 days from petitioner's receipt of the PAN violated the latter's right to due process.

The FLD lacks a clear due date

The alleged 15-day period for issuing a FLD is not the only argument petitioner raises to challenge the validity of the FLD. It also claims that the FLD lacks a definite amount and due date for payment, making it an invalid assessment. It lacks the former as it identified an amount but mentioned that petitioner's protest to the PAN would still undergo "further evaluation." It lacks the latter as it claims that petitioner was mandated to pay the taxes sought "[15] days upon receipt of the Preliminary Assessment Notice" but also gives February 29, 2020, as a due date.

While the Court disagrees that no definite amount was provided, We find that the FLD did, indeed, lack a clear due date.

Drawing from a deep well of jurisprudence, the Supreme Court, in *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[19] ("*Fitness*"), defined a valid final assessment by collating various requirements and necessary characteristics of such:

> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. *An assessment does not only include a computation of tax liabilities; it also includes a demand for payment **within a period prescribed**.* Its main purpose is to determine the amount that a taxpayer is liable to pay.
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> . . . .
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> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and *must demand payment of the taxes described therein **within a specific period***."
> (Citations omitted; emphasis and italics supplied.)

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[19] G.R. No. 215957, November 9, 2016.

The above provides two major requirements for the validity of the assessment: (1) it must demand a definite amount of tax liabilities; and (2) it must provide a clear due date for payment.

Upon review of the FLD, the Court finds that it complied with the 1st requirement. The grand total indicated therein, ₱5,001,509.04, is exact and unequivocal.

That respondent acknowledged petitioner's protest against the assessment as a whole does not change this. Acknowledging that a taxpayer has a right to protest an assessment, and thus that the assessment may still be modified, does not make the demanded amount indefinite. The CIR can and should inform a taxpayer that the "final" assessment against it can still be questioned through, say, a request for reconsideration or reinvestigation. The CIR can and should inform a taxpayer that it can still protest a "final" decision on a disputed assessment by raising a judicial appeal to this Court. These acts of informing taxpayers of their rights should not be treated as making the demanded amount indefinite. They are simply that: acknowledgements of a taxpayer's right to disagree with the assessment against it.

What the FLD here lacks, however, is a clear due date.

As observed by petitioner, the FLD sets such due date to 15 days from petitioner's receipt of the PAN:

> Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Revenue Regulations, *you are mandated to pay your deficiency tax liabilities* ***within fifteen (15) days upon receipt of the Preliminary Assessment Notice***. . . .[20]
> (Emphasis and italics supplied.)

Petitioner received the PAN on January 28, 2020,[21] which would thus give it until February *12*, 2020, within which to pay its alleged deficiency tax liabilities. Even ignoring the logistical unreasonableness of this date, considering that the FLD was issued on February *20*, 2020, however, the due date for such payment is given as February *29*, 2020 on the attached Assessment Notices.[22]

The FLD thus provides two distinct due dates and consequently lacks a *single* clear and precise due date for payment, violating petitioner's right to due process by failing to properly inform it of the factual and legal bases of the assessment. Following *Fitness*, then, the FLD is invalid, null, and void.

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[20] Formal Letter of Demand, p. 2, *Rollo* Vol. 3, p. 1096.
[21] Preliminary Assessment Notice, p. 1, *id.* at 1073.
[22] *Id.* at 1114-1116.

Tellingly, while respondent provides counterarguments to the claim that the FLD lacks a definite amount, he does *not* so much as mention the issue of due dates.

As an aside, the Court is bewildered by the claim that following *Section 228 of the NIRC* and the relevant rules, a taxpayer is "mandated" to pay the demanded amount within 15 days from receipt of the *PAN*. A review of said provision, read with *RR No. 12-99, as amended by RR No. 18-13*, suggests the opposite. Taxpayers are required to *respond* to a PAN within 15 days from receipt, not necessarily pay the amount demanded therein. The PAN is merely *preliminary*, corresponding with the "preassessment" mentioned in *Section 228 of the NIRC*.[23] The FLD is the actual assessment with demand for payment. This is reflected in *RR No. 12-99, as amended by RR No. 18-13*, which describes a PAN as being only a "proposed assessment" and the FLD as actually containing a "[call] for payment of the taxpayer's deficiency tax liability." In short, nothing in *Section 228 of the NIRC* and its implementing rules mandates that a taxpayer must pay the amount demanded right after receipt of the PAN.

In any event, for including two distinct due dates for payment, one of which directly contradicts the law, and for thus being violative of petitioner's right to due process, the FLD is invalid and void.

The FLD and FDDA failed to substantially address petitioner's protests

Petitioner also contends that respondent failed to properly reply to the arguments it raised in its protests to the PAN and FLD, which, following jurisprudence, is tantamount to failing to inform petitioner of the factual and legal bases of the assessment, in violation of its right to due process.

We once again agree with petitioner.

Section 228 of the NIRC requires that a taxpayer be informed of the bases for the assessment against it, on pain of a void assessment:

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

This requirement was expanded by the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* ("*Avon*"), portions of which We quote at length here:

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23 *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation*, G.R. No. 261065, July 10, 2023.

> The second to the sixth [fundamental requirements of due process in administrative proceedings] refer to the party's "inviolable rights applicable at the deliberative stage." The decision-maker must consider the totality of the evidence presented as he or she decides the case.
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> *The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."*
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> . . . .
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> Administrative due process is anchored on fairness and equity in procedure. 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. *Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.*
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> . . . .
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> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, *the Commissioner and her agents violated their own procedures* ***by refusing to answer*** *or even acknowledge* ***the submitted Reply and protest.***
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> . . . .
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> 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.*
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> 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.*
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> . . . .
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> 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.

To summarize the above, the due process requirement in *Section 228 of the NIRC* includes a necessary requirement to respondent to the arguments of taxpayers. In other words, when the CIR rejects the points raised by a taxpayer, in the latter's protests to a PAN or FLD, the CIR must give the *reasons* behind such rejection.

The logic of this requirement involves the taxpayer's right to an opportunity to intelligently defend its case. Suppose a taxpayer assails an assessment by claiming that the government's right to assess it has prescribed. If the CIR rejects this claim *without also explaining **why** the assessment has not yet prescribed*, then the taxpayer will be unable to continue intelligently defending its case. It will not know what critical faults in its reasoning led to the rejection of its arguments. It will not know what laws, issuances, and jurisprudence support the CIR's position. Consequently, it will have been practically deprived of its right to protest the assessment against it.

Note that the above is true even when the CIR is correct in rejecting a taxpayer's argument. Even if the hypothetical taxpayer's argument that the assessment against it has prescribed is devoid of merit, even if said argument is full of faulty reasoning, legal errors, and misappreciations of the facts, the failure of the CIR to identify these and explain *why* the taxpayer is mistaken is violative of the taxpayer's right to due process. To quote *Avon*, the CIR "is not obliged to accept the taxpayer's explanations" but "must give some reason for doing so."

Respondent failed to give reasons for rejecting petitioner's arguments to the PAN and FLD. He thus violated petitioner's right to due process, rendering the subject assessment void.

Take petitioner's argument that the auditing RO's failure to timely revalidate the LOA invalidated all subsequent parts of the assessment process. This is erroneous, as We have discussed above, and respondent was right to not accept it. However, respondent was wrong to ignore the argument completely.

Petitioner raised this argument as early as its Reply to the PAN, dated February 11, 2020.[24] Respondent could have refuted this argument in a couple of brief paragraphs, as We did above. However, respondent did not do so in either the FLD and the attached Details of Discrepancies. He does not even acknowledge that petitioner raised such an argument, implying that it was not considered at all in the production of the FLD.

Petitioner repeats the argument in its Protest to the FLD, dated March 18, 2020.[25] This is to be expected—without being informed *why* respondent rejected this argument, petitioner could not have known that it was erroneous and unconvincing. Despite this, respondent still did not acknowledge the argument in the FDDA, much less offer any clear reasons for its rejection.

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[24] Reply, p. 2-3, *id.* at 1080-1081.
[25] Protest, pp. 3-4, *id.* at 1119-1120.

Respondent would eventually address the argument regarding the LOA in the assailed Letter-Reply, dated August 18, 2020.[26] Said Letter-Reply, however, is distinct from both the FLD and the FDDA. As such, it cannot retroactively patch up the deficiencies of the former two issuances. Even if it were considered a supplement to the FDDA, it would still not correct the due process violations of the FLD, leaving the assessment void.

Indeed, respondent, in effect, even admits to failing to consider petitioner's arguments. Recall that petitioner's Reply to the PAN was still pending "further evaluation" when the FLD was issued. This suggests that (1) respondent was aware of the Reply while producing the FLD; and (2) respondent produced the FLD *without considering the points raised in the Reply*. If he had considered said points, then discussions on these should have been included in the FLD, and the Reply should not have still been pending "further evaluation." Thus, while the statement in question does not render the amount demanded indefinite, as discussed above, it does show that respondent simply ignored petitioner's protests to the assessment.

Much the same is true of numerous other arguments raised by petitioner in its Reply to the PAN. In fact, some of these arguments were not even addressed by the August 18, 2020, Letter-Reply, such as petitioner's charge that the third-party information, on which respondent based his finding of undeclared gross income from unaccounted purchases, was not independently verified with externally sourced information. Respondent did not even attempt to refute it by, for example, citing externally sourced information or claiming that such verification was unnecessary.

Whatever the correctness of petitioner's arguments, the point is that respondent violated the former's right to due process by not disclosing *why* he rejected such arguments. As this was done in both the FLD and the FDDA, the entire assessment is void.

The invalidity of the assessment extends to the Letter-Reply, so there is no longer any need to determine whether it was, as petitioner insists, an improperly served *ultra-vires* act.

There is similarly no need to discuss petitioner's other arguments as, to reiterate, the entire assessment is void.

ACCORDINGLY, the instant *Petition for Review*, filed on August 20, 2020, is hereby **GRANTED**. The assailed Preliminary Assessment Notice, Formal Letter of Demand, Final Decision on Disputed Assessment, and Letter-Reply are **CANCELLED** and **SET ASIDE**. The assessment against

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26 Letter-Reply, pp. 1-3, *Rollo* Vol. 1, pp. 259-261.

petitioner for alleged deficiency taxes for taxable year 2012 is declared **NULL AND VOID**.

Respondent and any of his agents and officers are **ENJOINED AND PROHIBITED** from collecting any amount in relation to the void assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion 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
Associate Justice
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.

ROMAN G. DEL ROSARIO
Presiding Justice