REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

D.M. WENCESLAO & ASSOCIATES, INC., *Petitioner,*	**CTA Case No. 9764**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 0 9 2023 4:00 PM

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DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review[1] filed on February 9, 2018 by petitioner D.M. Wenceslao & Associates, Inc. praying for the cancellation and withdrawal of the assessment issued by respondent Commissioner of Internal Revenue against petitioner for its alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), documentary stamp tax (DST), and compromise penalty for taxable year (TY) 2009 in the aggregate amount of ₱308,835,204.52, inclusive of interest.

THE PARTIES

Petitioner D.M. Wenceslao & Associates, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 3rd Floor, Aseana Powerstation Bldg., Aseana Business Park, Pres. Diosdado Macapagal Blvd. cor.

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[1] CTA Docket Vol. I, pp. 10-26.

Bradco Ave., Baclaran, Parañaque City.[2] It is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) and is primarily engaged in the business of general builders and contractors.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR)-Revenue District Office (RDO) No. 52 with Tax Identification No. (TIN) 000-846-618-000.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested under appropriate laws the authority to carry out the functions, duties and responsibilities of his Office, including *inter alia*, the power to decide disputed assessments, and to cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, other tax laws, and rules and regulations. He may be served summons, pleadings, and other processes at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

THE FACTS

On July 13, 2010,[6] petitioner received a Letter of Authority (LOA) No. 2009-00019132 dated June 23, 2010,[7] issued by BIR-RDO No. 52, authorizing Revenue Officer (RO) Mariano M. Flores and Group Supervisor (GS) Bernard U. Urbano to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for TY 2009, signed by Regional Director (RD) Jaime B. Santiago.[8]

On January 9, 2013,[9] petitioner received the Preliminary Assessment Notice (PAN) dated December 28, 2012[10] from the BIR Revenue Region No. 8, which proposed to assess petitioner for alleged deficiency IT, VAT, EWT, FBT, IAET and DST, including interest and surcharge for TY 2009 in the following amounts:[11]

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[2] Par. 1, I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. II, p. 693; Exhibit "P-1", CTA Docket Vol. II, pp. 1069-1081.
[3] Par. 3, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 694; Exhibit "P-1", CTA Docket Vol. II, pp. 1069-1081.
[4] Par. 4, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 694; Exhibit "P-2", CTA Docket Vol. II, p. 1082.
[5] Par. 2, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, pp. 693-694.
[6] Exhibit "R-2-b", BIR Records, p. 96.
[7] Exhibit "P-3", CTA Docket Vol. II, p. 1083; Exhibit "R-2", BIR Records, p. 96.
[8] Par. 5, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 694.
[9] Exhibit "P-4-A", CTA Docket Vol. II, p. 1092.
[10] Exhibit "P-4", CTA Docket Vol. II, pp. 1084-1091, Exhibits "R-8" to "R-8-e", BIR Records, pp. 559-566.
[11] Par. 6, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 694.

Kind of Tax	Amount (₱)
IT	147,269,944.35
VAT	10,982,028.82
EWT	2,922,419.87
FBT	2,060,849.64
IAET	120,805,999.61
DST	2,256,227.62

On January 24, 2013,[12] petitioner received a Formal Assessment Notice (FAN) issued on January 14, 2013[13] from the BIR – Revenue Region No. 8, covering alleged deficiency IT, VAT, EWT, FBT, IAET and DST with compromise penalty, inclusive of interest and surcharges in the aggregate amount of ₱289,666,887.77 for TY 2009 broken down as follows:[14]

Kind of Tax	Amount (₱)
IT	148,935,776.17
VAT	11,102,834.92
EWT	2,954,457.36
FBT	2,082,238.84
IAET	122,212,005.09
DST	2,279,575.39
Compromise Penalty	100,000.00

On February 6, 2013, petitioner submitted a Letter dated January 21, 2013 to RD Nestor S. Valeroso acknowledging the receipt of the PAN, and informing him that it would contest the said PAN and prepare its reply and the supporting documents for submission to the BIR on or before February 11, 2013.[15]

On February 11, 2013, petitioner filed its reply to the PAN.[16]

On February 12, 2013, petitioner wrote a Letter to RD Valeroso acknowledging the receipt of the FAN on January 24, 2013 and that it would contest the said assessment and prepare its reply and documents for submission to the BIR within the thirty (30)-day period.[17]

[12] Exhibit "P-5-A", CTA Docket Vol. II, p. 1108.
[13] Exhibit "P-5", CTA Docket Vol. II, pp. 1093-1107; Exhibits "R-9" to "R-9-e", BIR Records, pp. 567-574.
[14] Par. 7, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 694.
[15] Exhibit "R-1", BIR Records, p. 583.
[16] Exhibit "P-6", CTA Docket Vol. II, pp. 1109-1114; Exhibit "R-13", BIR Records, pp. 627-632.
[17] Exhibit "P-8", CTA Docket Vol. II, p. 1117; Exhibit "R-10", BIR Records, before p. 581.

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On March 7, 2013,[18] petitioner filed its Letter dated February 25, 2013 protesting the FAN.[19]

On March 14, 2013, petitioner received a Letter dated March 6, 2013[20] from BIR Revenue Region No. 8 signed by RD Valeroso, stating that the FAN was already issued on January 14, 2013, but since the issues involved in the PAN and FAN were the same, the protest letter (Reply to PAN) dated February 11, 2013 has been considered as the protest against the FAN.

On July 19, 2013, petitioner received the Final Decision on Disputed Assessment (FDDA) dated July 17, 2013[21] which resolved petitioner's protest. In the FDDA, petitioner was found liable for deficiency taxes, including interest and surcharge as follows:[22]

Kind of Tax	Amount (₱)
IT	159,086,938.82
VAT	11,838,997.04
EWT	3,149,685.82
FBT	2,204,462.86
IAET	130,045,464.21
DST	2,409,655.77
Compromise Penalty	100,000.00

On August 16, 2013, petitioner filed an administrative appeal[23] with respondent to question the FDDA.[24]

On January 19, 2018, petitioner received the assailed Final Decision promulgated on January 10, 2018,[25] which found petitioner liable for deficiency IT, VAT, EWT, FBT, IAET, DST, and compromise penalty in the aggregate amount of ₱308,835,204.52.[26]

On February 9, 2018, petitioner filed the present Petition for Review.[27] The case was originally raffled to the Second Division.

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[18] Exhibit "R-11-a", BIR Records, after p. 582.
[19] Exhibit "P-10", CTA Docket Vol. II, pp. 1119-1125; Exhibit "R-11", BIR Records, after p. 582.
[20] Exhibit "P-7", CTA Docket Vol. II, p. 1115; Exhibit "R-12", BIR Records, after p. 633.
[21] Exhibit "P-11", CTA Docket Vol. II, pp. 1126-1133.
[22] Par. 8, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, pp. 694-695.
[23] Exhibit "P-12", CTA Docket Vol. II, pp. 1134-1182.
[24] Par. 9, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 695.
[25] Exhibit "P-13", CTA Docket Vol. II, pp. 1183-1200; Exhibit "R-14", BIR Records, pp. 767-783.
[26] Par. 10, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 695.
[27] CTA Docket Vol. I, p. 10.

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Subsequently, the case was transferred to the First Division pursuant to the Order dated September 24, 2018.[28]

On April 13, 2018, within the extended period,[29] respondent filed his Answer with Motion to Dismiss,[30] raising the following Special and Administrative Defenses:

(i) the Court has no jurisdiction to entertain the present case for failure of petitioner to file a valid and compliant protest against the FAN dated January 14, 2013 within the thirty (30)-day reglementary period reckoned from receipt of the FAN on January 24, 2013;

(ii) the FAN dated January 14, 2013 has already become final, executory and demandable pursuant to Section 228 of the NIRC of 1997, as amended;

(iii) petitioner's judicial appeal has no factual and legal bases;

(iv) the Court's only jurisdiction is to dismiss the present case and could not decide the case on the merits;

(v) petitioner was assessed deficiency IT, VAT, EWT, FBT, IAET, DST, and compromise penalty for TY 2009 since it failed to substantiate or controvert by substantial evidence the BIR's factual findings;

(vi) respondent has fully complied with the due process requirements mandated under Section 228 of the NIRC of 1997, as amended, and implemented by Revenue Regulations (RR) No. 12-99, as amended;

(vii) respondent's right to assess petitioner for deficiency taxes for TY 2009 has not yet prescribed; and,

(viii) the assessed deficiency IT, VAT, EWT, FBT, IAET, DST, and compromise penalty for TY 2009 are *prima facie* presumed correct and made in good faith.

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[28] CTA Docket Vol. II, p. 720.
[29] Order dated March 8, 2018, CTA Docket Vol. I, p. 150.
[30] CTA Docket Vol. I, pp. 151-163.

On May 28, 2018, within the extended period,[31] petitioner filed its Comment/Opposition (To Respondent's Motion to Dismiss dated April 13, 2018).[32]

In the Resolution dated June 6, 2018, the Court denied respondent's Motion to Dismiss incorporated in his Answer and ordered the parties to submit their respective Pre-Trial Briefs.[33]

Respondent's Pre-Trial Brief[34] was filed on June 29, 2018, while the Petitioner's Pre-Trial Brief[35] was filed on July 2, 2018. The Pre-Trial Conference was held on August 6, 2018.[36]

Upon motion[37] of petitioner, the Court commissioned Ms. Mary Josephine D. Tesalona as Independent Certified Public Accountant (ICPA) on August 29, 2018.[38]

On August 31, 2018, the parties filed their Joint Stipulation of Facts and Issues.[39] Thereafter, the Court issued the Pre-Trial Order on September 18, 2018.[40]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Gloria Manansala,[41] petitioner's Group Controller; and, Ms. Mary Josephine D. Tesalona,[42] the Court-commissioned ICPA.

During the hearing on May 28, 2019, the Court denied petitioner's oral motion to recall its first witness, Ms. Gloria Manansala.[43]

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[31] Orders dated May 15, 2018 and May 24, 2018, CTA Docket Vol. I, pp. 171 and 176.
[32] CTA Docket Vol. I, pp. 177-192.
[33] CTA Docket Vol. I, pp. 195-196.
[34] CTA Docket Vol. I, pp. 201-204.
[35] CTA Docket Vol. I, pp. 207-218.
[36] CTA Docket Vol. I, pp. 667 and 668.
[37] CTA Docket Vol. II, pp. 669-672.
[38] CTA Docket Vol. II, pp. 689-692.
[39] CTA Docket Vol. II, pp. 693-703.
[40] CTA Docket Vol. II, pp. 712-719.
[41] Exhibit "P-18", Sworn Statement of Gloria Manansala to Questions Propounded by Atty. Joshua Y. Bagotsay, CTA Docket Vol. I, pp. 245-263; and, Minutes of Hearing dated November 27, 2018, CTA Docket Vol. II, pp. 734-735.
[42] Exhibit "P-19", Amended Sworn Statement of Ms. Mary Josephine D. Tesalona to Questions Propounded by Atty. Joshua Y. Bagotsay, CTA Docket Vol II, pp. 839-890; and, Minutes of Hearing dated May 28, 2019, CTA Docket Vol. II, pp. 980-980-C.
[43] Minutes of Hearing dated May 28, 2019, CTA Docket Vol. II, pp. 980-980-C.

On June 13, 2019, petitioner filed a Motion for Reconsideration (Re: Order dated May 28, 2019) (With Motion to Defer Submission of Formal Offer of Evidence).[44] In the Resolution dated August 5, 2019, the Court denied petitioner's Motion for Reconsideration and gave petitioner a non-extendible period of ten (10) days from receipt thereof to file its Formal Offer of Evidence.[45]

On August 19, 2019, petitioner filed its Formal Offer of Evidence (With Omnibus Motion).[46] Petitioner prayed that it be allowed to present supplemental evidence and to set commissioner's hearing. The Court granted petitioner's Omnibus Motion in the Resolution dated October 8, 2019, and set a commissioner's hearing and a hearing for the presentation of petitioner's recalled witness, Ms. Gloria Manansala.[47]

On December 17, 2019, petitioner filed a Supplemental Formal Offer of Evidence.[48] In the Resolution dated January 22, 2020,[49] the Court submitted for resolution both petitioner's Formal Offer of Evidence and Supplemental Formal Offer of Evidence.

Petitioner's exhibits were admitted in evidence in the Resolution dated February 18, 2020,[50] save for Exhibits "P-14-AH" (page 4), "P-14-AR" (pages 26, 28-29) and "P-14-BC" (pages 1-6, 25-26, 32, 46-51, 54-56, 58-69, 74-79, 82-83, 85-87, 89, 92, 101, 104, 106-481) for failure to present the originals for comparison.

On March 13, 2020, petitioner filed a Motion for Reconsideration (Re: Resolution dated February 18, 2020)[51] praying for a hearing for the purpose of establishing its denied exhibits as secondary evidence. In the Resolution dated December 1, 2020,[52] the Court granted petitioner's prayer and set a hearing on February 4, 2021 for the aforesaid purpose.

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[44] CTA Docket Vol. II, pp. 984-989.
[45] CTA Docket Vol. II, pp. 1001-1002.
[46] CTA Docket Vol. II, pp. 1037-1067.
[47] CTA Docket Vol. III, pp. 1513-1518.
[48] CTA Docket Vol. III, pp. 1534-1540.
[49] CTA Docket Vol. III, p. 1569.
[50] CTA Docket Vol. III, pp. 1571-1579.
[51] CTA Docket Vol. III, pp. 1580-1587.
[52] CTA Docket Vol. III, pp. 1598-1603.

On February 9, 2021, petitioner filed a Supplemental Formal Offer of Evidence (Re Order Issued in Open Court on February 4, 2021).[53]

In the Resolution dated June 21, 2021,[54] the Court granted petitioner's Motion for Reconsideration (Re: Resolution dated February 18, 2020) and admitted Exhibits "P-14-AH" (page 4), "P-14-AR" (pages 26, 28-29) and "P-14-BC" (pages 1-6, 25-26, 32, 46-51, 54-56, 58-69, 74-79, 82-83, 85-87, 89, 92, 101, 104, 106-481).

Thereafter, respondent presented his lone witness, RO Bernard U. Urbano.[55]

On March 24, 2022, respondent filed his Formal Offer of Evidence.[56] In the Resolution dated June 1, 2022, the Court admitted all of respondent's formally offered evidence.[57]

Petitioner's Memorandum[58] was filed on July 21, 2022, while the Memorandum for the Respondent[59] was filed on July 27, 2022. Thereafter, the case was submitted for decision on August 10, 2022.[60]

ISSUE

The parties stipulated the following issue for the Court's resolution:[61]

> Whether or not petitioner is liable to pay the aggregate amount of Three Hundred Eight Million Eight Hundred Thirty Five Thousand Two Hundred Four and 52/100 (₱308,835,204.52) as deficiency income tax, VAT, EWT, FBT, IAET, DST, and compromise penalty, inclusive of interest and surcharges, for TY 2009.

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[53] CTA Docket Vol. III, pp. 1634-1639.
[54] CTA Docket Vol. III, pp. 1650-1656.
[55] Exhibit "R-15", Judicial Affidavit of Revenue Officer Bernard U. Urbano, CTA Docket Vol. II, pp. 895-911, and Minutes of Hearing dated November 18, 2021, CTA Docket Vol. III, pp. 1660-1660-A.
[56] CTA Docket Vol. III, pp. 1670-1680.
[57] CTA Docket Vol. III, pp. 1714-1715.
[58] CTA Docket Vol. III, pp. 1716-1789.
[59] CTA Docket Vol. III, pp. 1792-1807.
[60] Minute Resolution dated August 10, 2022, CTA Docket Vol. III, p. 1808.
[61] II. Proposed Issue for Stipulation, JSFI, CTA Docket Vol. II, p. 695.

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PARTIES' ARGUMENTS

Petitioner argues that:

(i) the assessments failed to comply with due process requirements of the law;

(ii) the FAN was issued prior to the lapse of the fifteen (15)-day period to file a reply to the PAN;

(iii) the FAN failed to consider and address the arguments raised by petitioner in its reply to the PAN;

(iv) the FAN did not contain a definite, final, and categorical demand for payment;

(v) the FAN did not sufficiently inform petitioner of the factual and legal bases of the assessments;

(vi) respondent is estopped from belatedly raising the issue of the alleged failure of petitioner to file a protest to the FAN;

(vii) respondent's right to assess deficiency EWT, FBT, DST, and VAT for TY 2009 has prescribed;

(viii) the ten (10)–year prescriptive period for the assessment of deficiency taxes does not apply; and,

(ix) the assessment for the alleged deficiency IT, VAT, EWT, FBT, IAET, DST and compromise penalty are not supported by factual and legal bases.[62]

On the other hand, respondent counter-argues that:

(i) the Court has no jurisdiction to entertain the present case for failure of petitioner to comply with the requirements under Section 228 of the NIRC of 1997, as amended, in relation to Section 3.1.5 of RR No. 12-99, as amended, and Revenue Memorandum Circular No. 39-2013;

(ii) petitioner's Letter Protest dated February 11, 2013 cannot be considered a protest against the PAN dated December

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[62] Memorandum, CTA Docket Vol. III, pp. 1722-1788.

28, 2012, but a protest against the FAN dated January 14, 2013;

(iii) there being no protest against the PAN, the doctrine enunciated in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[63] is not in all fours in the case at bar, thus, inapplicable;

(iv) respondent has fully complied with the due process requirements mandated under Section 228 of the NIRC of 1997, as amended, and implemented by RR No. 12-99, as amended, when the subject PAN and FAN were issued to petitioner for TY 2009;

(v) an action against petitioner's alleged protest to the PAN is not specifically required under Section 3 of RR No. 12-99, as amended by RR No. 18-13;

(vi) respondent's issuance of the BIR FAN dated January 14, 2013, bearing petitioner's deficiency taxes for TY 2009 has not yet prescribed; and,

(vii) petitioner's deficiency tax assessments for TY 2009 are *prima facie* presumed correct and made in good faith.[64]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

The Court shall first determine the timeliness of the filing of the present Petition for Review.

The present case is a Petition for Review assailing the Final Decision of respondent dated January 10, 2018[65] which affirmed in all

[63] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[64] Memorandum for the Respondent, CTA Docket Vol. III, pp. 1792-1806.
[65] Exhibit "P-13", CTA Docket Vol. II, pp. 1183-1200; Exhibit "R-14", BIR Records, pp. 767-783.

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respects the FDDA dated July 17, 2013[66] issued by respondent's representative, RD Valeroso.

This Court is vested with authority to review respondent's Final Decision pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282,[67] in relation to Section 3(a)(1), Rule 4 of Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[68]

Under Section 228 of the NIRC of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the Court within thirty (30) days from receipt of the assailed decision, *viz.*:

> "SEC. 228. *Protesting of Assessment.* -xxx
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> 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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Boldfacing supplied*)

On the other hand, under Section 11 of RA No. 1125,[69] as

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[66] Exhibit "P-11", CTA Docket Vol. II, pp. 1126-1133.

[67] 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 or part of law administered by the Bureau of Internal Revenue; xxx.

[68] SEC. 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; xxx.

[69] Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx 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 actions as referred to in Section 7(a)(2) herein. xxx

amended, in relation to Section 3(a), Rule 8 of the RRCTA,[70] a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

Based on the foregoing, this Court has exclusive appellate jurisdiction to review on appeal decisions of respondent involving disputed assessments. The taxpayer adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days after receipt of such decision.

Considering that petitioner received respondent's Final Decision dated January 10, 2018[71] on January 19, 2018,[72] petitioner had thirty (30) days therefrom, or until February 18, 2018 within which to file its appeal before the Court.

Petitioner's filing of the present Petition for Review on February 9, 2018 was timely. Thus, the Court acquired jurisdiction over the present case.

The FAN was issued in violation of petitioner's right to due process; hence, the same is void ab initio

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner in which the deficiency tax assessments should be issued and protested, *viz.*:

> "**SEC. 228.** ***Protesting of Assessment***. — When the Commissioner or his duly authorized representative finds that proper

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[70] RRCTA, Rule 8, Section 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on 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 taxes.
[71] Exhibit "P-13", CTA Docket Vol. II, pp. 1183-1200; Exhibit "R-14", BIR Records, pp. 767-783.
[72] Par. 10, I. Stipulation of Facts, JSFI, CTA Docket Vol. II, p. 695.

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:

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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 supplied*)

Corollary thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-13, provides:

"**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.

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." (*Boldfacing supplied*)

The foregoing provisions explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response. If the taxpayer

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fails to do so within the prescribed period, it will be considered in default and only then shall respondent or his duly authorized representative issue to the taxpayer an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties.[73]

Needless to say, the PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[74] To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

Truth to tell, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[75] and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*[76] relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, *viz.:*

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** 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, 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.
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> **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.** 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.**
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[73] *Commissioner of Internal Revenue vs. Yumex Philippines Corp.,* G.R. No. 222476, May 5, 2021.
[74] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[75] G.R. Nos. 201398-99, October 3, 2018.
[76] G.R. Nos. 201418-19, October 3, 2018.

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> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99. *(Citations omitted; additional boldfacing supplied)*

In *Prime Steel Mill Incorporated vs. Commissioner of Internal Revenue*,[77] the Supreme Court rendered an assessment void for failure to strictly comply with the fifteen (15)-day period provided under RR No. 12-99, as amended, before issuing the FAN, *viz.*:

> "In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[78] 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 '<u>[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.</u>'**
>
> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.
>
> 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.**" (*Boldfacing supplied*)

In the present case, it is undisputed that petitioner received the PAN dated December 28, 2012[79] on January 9, 2013.[80] Petitioner therefore had until January 24, 2013 within which to file its reply thereto. Records show that respondent issued the FAN on January 14, 2013 or barely five (5) days after respondent received the PAN.

[77] G.R. No. 249153, September 12, 2022.
[78] G.R. No. 222476, May 5, 2021.
[79] Exhibit "P-4", CTA Docket Vol. II, pp. 1084-1091, Exhibits "R-8" to "R-8-e", BIR Records, pp. 559-566.
[80] Exhibit "P-4-A", CTA Docket Vol. II, p. 1092.

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Evidently, respondent did not wait for petitioner to reply to the PAN within the fifteen (15)-day period.

Based on the foregoing, the Court finds that petitioner's right to due process was violated when respondent issued the FAN before the lapse of the fifteen (15)-day period for petitioner to respond to the PAN. Thus, the assessment issued against petitioner is void. Needless to say, a void assessment bears no fruit[81] and must be slain at sight.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review filed on February 9, 2018 by petitioner D.M. Wenceslao & Associates, Inc. is **GRANTED**. Accordingly, the Final Decision dated January 10, 2018 and the Formal Assessment Notice dated January 14, 2013 are **CANCELLED** and **SET ASIDE** for being void *ab initio*.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed income tax, value-added tax, expanded withholding tax, fringe benefits tax, improperly accumulated earnings tax, documentary stamp tax, and compromise penalty for taxable year 2009 in the aggregate amount of ₱308,835,204.52, inclusive of interest arising from the Formal Assessment Notice dated January 14, 2013 issued against petitioner D.M. Wenceslao & Associates, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[81] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice