REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MAXICARE HEALTHCARE CORPORATION, Petitioner,	CTA CASE NO. 9246
	Members:
-versus-	DEL ROSARIO, *P.J., Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 16 2020 1:16pm

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is a *Petition for Review*[1] filed by petitioner Maxicare Healthcare Corporation on January 20, 2016, praying that judgment be rendered declaring the disputed assessment issued against it for taxable year (TY) 2012 null and void.

First, the facts.

Petitioner is a domestic corporation with principal office address located at Maxicare Tower, 203 Salcedo Street, Legaspi Village, Makati City.[2] It was organized primary for the purpose is establishing, maintaining, conducting, and operating a prepaid group practice health care delivery system or a health maintenance organization (HMO) to take care of the sick, diseased, and disabled persons who are

[1] Docket, pp. 10-43.
[2] Par. 1(i), *Joint Stipulation of Facts with Manifestation and Motion* (JSF), docket, p. 671.

enrolled in a health care plan and to provide for the administrative, legal, and financial responsibilities of the organization.[3]

Respondent Commissioner of Internal Revenue, on the other hand, is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessment, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC).[4]

On August 28, 2014, respondent issued a *Letter of Authority* (LOA) No. 126-2014-00000060,[5] authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2012 to December 31, 2012.

On August 27, 2015, petitioner received a *Preliminary Assessment Notice*[6] (PAN) dated August 25, 2015, with attached *Details and Discrepancies*, assessing it for deficiency VAT for calendar year 2012 in the amount of ₱618,251,527.72, inclusive of penalties and surcharges.[7]

On September 14, 2015, petitioner protested the PAN through a letter[8] dated September 10, 2015.

On October 15, 2015, petitioner received the *Formal Letter of Demand*[9] (FLD) and *Final Assessment Notice*[10] (FAN), both dated October 8, 2015, finding it liable for deficiency VAT in the amount of ₱419,774,484.21, inclusive of penalties and surcharges, for calendar year 2012.

On November 9, 2015, petitioner filed with respondent a letter[11] dated November 6, 2015 protesting the FLD/FAN.

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[3] Par. 1(iii), JSF, docket, p. 672.
[4] Par. 1(ii), JSF, docket, pp. 671-672.
[5] Exhibit P-3, docket, pp. 1243.
[6] Exhibit P-4, docket, pp. 1246-1248.
[7] Par. 1(v), JSF, docket, p. 672.
[8] Exhibit P-6, docket, pp. 1265-1278.
[9] Exhibit P-1, docket, pp. 712-714.
[10] Exhibit P-2, docket, pp. 715-716.
[11] Exhibit P-7, docket, pp. 1279-1289.

Thereafter, respondent issued the *Final Decision on the Disputed Assessment*[12] (FDDA) dated December 9, 2015, which petitioner received on December 21, 2015, reiterating the assessment of deficiency VAT and compromise penalty for the year 2012.

On January 20, 2016, petitioner filed the instant *Petition for Review*.

In his *Answer*[13] filed on April 6, 2016, respondent claims that he observed both procedural and substantial due process in issuing the assessment subject of the instant case. Petitioner was informed of the factual and legal bases of the assessment since the PAN, FAN and FDDA, all with attached Details of Discrepancies, indicated not only the deficiency tax involved and interest due thereon, but also the facts, the law and rules and regulations upon which the assessment was based. Moreover, the assessment notices were all issued in accordance with law, rules and jurisprudence.

Further, petitioner's invocation of the *Commissioner of Internal Revenue vs. Tours Specialists, Inc.*,[14] in which the Supreme Court allegedly ruled that gross receipts does not include monies entrusted to the taxpayer for the purpose of computing VAT, is inapplicable in the instant case as explained in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[15] where this Court's Third Division distinguished the difference between a travel agency and an HMO with respect to the application of the concept of "money in trust."

Petitioner cannot also rely in BIR Ruling No. DA-(VAT-026) 375-08 as it was already revoked with the issuance of RMC No. 39-2010.

Finally, respondent submits that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the

[12] Exhibit P-9, docket, pp. 686-689.
[13] Docket, pp. 145-156.
[14] G.R. No. L-66416, March 21, 1990.
[15] CTA Case No. 7948, June 5, 2014.

absence of proof of any irregularities in the performance of their official duties, the assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessment.

After the pre-trial conference, the parties filed their *Joint Stipulation of Facts with Manifestation and Motion*[16] on the basis of which a *Pre-Trial Order*[17] was issued on June 22, 2016.

In support of its case, petitioner presented as its witnesses its Finance Manager, Ligaya P. Justo, the Court-Commissioned Independent Certified Public Accountant (ICPA), Emmanuel Y. Mendoza, and its Cashier Supervisor and former Treasury Analyst Darwin E. Genoguin.

Witness **Ligaya P. Justo** testified[18] that she is currently the Finance Manager of petitioner responsible for all matters relating to accounting, financing, and taxation of petitioner, for which reason she has in her custody the financial and tax records and documents of petitioner. She also deals with representatives of government agencies like the Bureau of Internal Revenue (BIR) for matters relating to petitioner's taxation.

According to the witness, petitioner is operating as an HMO and as such, it basically arranges for the coverage of designated managed care services needed by plan members for fixed prepaid membership fees, and for a specified period of time. Members who are enrolled with petitioner can avail of the pre-arranged medical services from its accredited competent physicians, surgeons, medical specialists and participating hospitals, sanitariums, medical and health centers and clinic, diagnostic clinics and such other health centers and health research institutions, without the necessary protocol of posting cash bonds/deposits prior to rendition of services or admission to the hospitals or clinics especially during emergencies, anytime of the day, any day of the week, anywhere in the Philippines.

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[16] Docket, pp. 671-677.
[17] Docket, pp. 678-681.
[18] Exhibit P-12, docket, pp. 694-711.

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As to how petitioner charges its clients or plan members, the witness explained that petitioner receives enrollment fees or premiums from its clients, eighty percent (80%) of which are pooled to answer for the medical/hospital utilization expenses of its members while the other twenty percent (20%) represents the actual gross receipts of petitioner. She added that the income of petitioner, if there's any, comes only from the 20% of the enrollment fees or premiums, which is actually the sale of services through the arrangement of these medical/hospitalization services. The 80% forms part of the earmarked account, from which the medical/hospital utilization of the members-clients shall be deducted.

Allegedly, petitioner is assailing the subject VAT deficiency assessment amounting to ₱419,774,484.21, inclusive of surcharges and interests, due to the following reasons (1) inconsistent with BIR RR No.16-2005 and BIR RR No. 4-2007; (2) violation of BIR Ruling No. DA-(VAT-026)-375-08 and other related tax rulings; (3) erroneous reliance on an RMC; (4) erroneous inclusion in the disputed assessment of sales which are either VAT exempt or subject to zero-rated tax; (5) lack of factual and legal bases of the subject assessment; and (6) the premature issuance of the FDDA in violation of its right to due process.

Upon receipt of the PAN, petitioner referred the same to its external counsel who, in turn, wrote the BIR a letter dated September 10, 2015 assailing the PAN, claiming that it was bereft of factual and legal bases. The amount of ₱3,405,882,121.85 pertained to VAT exempt and zero-rated sales, hence not subject to VAT as well as the sales which do not form part of petitioner's gross receipts.

The PAN was followed by the FLD/FAN both dated October 8, 2015, which petitioner received on October 15, 2015, reducing the subject deficiency VAT assessment for taxable year 2012 from ₱618,251,527.72 to ₱419,774,484.21, inclusive of surcharges and interests. Upon referral of the FLD/FAN, petitioner's external legal counsel prepared and timely filed a protest in the nature of a Request for Reinvestigation on November 9, 2015. In the said protest, petitioner argued that the amount of ₱2,267,404,693.64 pertained to VAT exempt and zero-rated sales, hence, not subject to VAT as well as the sales which did not form part of gross receipts. The amount of ₱469,528,967.22 pertained to sale of services to clients with special registrations and granted tax exemption under special laws; while the amount of ₱1,797,875,726.42 pertained to the portion which had been transferred and earmarked for medical utilization. In the same letter, petitioner obliged to submit within 60-days from the date of filing, relevant supporting documents to substantiate its position in the said protest letter.

On December 21, 2015, or prior to the expiration of the 60-day period for petitioner to submit relevant supporting documents, petitioner received the assailed FDDA dated December 9, 2015, reiterating the disputed assessment. This notwithstanding, petitioner proceeded to submit relevant supporting documents in support of its protest on January 8, 2016. Since respondent failed to consider and act upon the said supporting documents, petitioner filed the instant Petition for Review before the Court on January 20, 2016.

ICPA **Emmanuel Y. Mendoza** testified[19] that he was commissioned by the Court to perform the following tasks: (a) examine documents and verify whether the amount of ₱1,797,875,726.42 earmarked by petitioner for medical utilization was actually paid to its accredited medical providers; and (b) examine documents and verify whether the amount of ₱469,528,967.22 pertained to sale of services to clients with special registrations and granted tax exemption under special laws. Per his examination and verification of petitioner's voluminous documents, and as contained in his Final Report submitted to the Court via registered mail on February 13, 2017, the amount of ₱1,797,875,726.42 earmarked for medical expenses, but which the BIR considered as part of petitioner's gross receipts for purposes of VAT for calendar year 2012, was actually utilized for medical expenses of the latter's members. In fact, petitioner paid ₱1,956,729,446.93 for medical utilization of its members for calendar year 2012.

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[19] Exhibit P-24, docket, pp. 1190-1203.

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Anent petitioner's position that the amount of ₱469,528,967.22 pertained to sale of services to clients with special registrations and granted tax exemption under special laws, his examination revealed that only the amount of ₱442,018,857.99 pertained to sale of services to clients with special registrations and granted tax exemption under special laws.

Witness **Darwin E. Genoguin** testified[20] that he is currently the Cashier Supervisor of petitioner. Prior to his current post, he was petitioner's Treasury Analyst for Collection whose responsibilities included the prompt collection of payments from clients and endorsement of collection advice for issuance of official receipts. For issuance of correct type of receipt, he required clients to submit copies of their certificates of tax exemptions issued by the concerned government agencies allowing such tax incentives.

The witness claimed that he became familiar with the instant case when he was required by petitioner's Finance Department, sometime in September 2016, to forward to it the Certificates of Tax Exemption issued to petitioner's clients by government agencies for calendar year 2012. He was advised that the said certificates would be summarized by the ICPA to establish that the sales of services to said clients were zero-rated or tax exempt. As requested, he forwarded to petitioner's Finance Department the scanned copies of the certificates of tax exemptions of the subject clients, which in turn forwarded them to the ICPA.

He further declared that he was not able to provide the ICPA with the originals of the Certificates of Tax Exemptions issued by the concerned government agencies because they were issued only to petitioner's clients – the special registered entities. These clients who had the originals were not willing to submit them to petitioner. Efforts to secure copies of the originals from the government agencies concerned proved futile as petitioner was advised that they could only be issued directly to the entities with special registrations and/or granted tax exemption under special laws.

[20] Exhibit P-28, docket, pp. 1207-1213.

Petitioner rested after filing its Formal Offer of Evidence[21] on April 10, 2017, which the Court partly admitted in the Resolutions dated October 10, 2017[22] and June 4, 2018.[23]

For his part, respondent presented Revenue Officer (RO) III **Maria Salud J. Maddela**, as his lone witness.

Witness Maddela testified[24] that she was among the ROs authorized to conduct audit/investigation of petitioner's internal revenue taxes for taxable year 2012 per Letter of Authority No. LOA-126-2014-00000060 dated August 28, 2014 issued to petitioner.

After examination, they prepared a Memorandum dated August 10, 2015 containing their finding on petitioner's tax liability for taxable year 2012, and recommendation to issue the PAN. The PAN dated August 25, 2015, with attached Details of Discrepancies, was issued, served and duly received by petitioner.

Petitioner protested the PAN, however, they maintained their finding on petitioner's deficiency tax liabilities and recommended the issuance of the FLD/FAN through a Memorandum dated September 30, 2015.

Pursuant to their recommendation, the FLD/FAN were issued and served to petitioner, who again filed a protest thereto. After review, they still found petitioner liable for deficiency VAT and Compromise penalty for taxable year 2012 as indicated in their Memorandum dated November 27, 2015, with recommendation to issue the FDDA.

On October 4, 2018, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.[25]

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[21] Docket, pp. 1227-1238.
[22] Docket, pp. 1334-1384.
[23] Docket, pp. 1610-1647.
[24] *Judicial Affidavit of Revenue Officer Maria Salud J. Maddela,* docket, pp. 1397-1406.
[25] Resolution dated October 4, 2018, docket, pp. 1671-1672.

On January 17, 2019, the instant case was submitted for decision considering respondent's Memorandum[26] filed on December 18, 2018, and petitioner's Memorandum[27] filed on January 4, 2019.[28]

THE ISSUES

The issues raised by the parties in their respective Pre-Trial Briefs are as follows:

For Petitioner:

1. Whether or not the respondent prematurely issued the Final Decision on the Disputed Assessment in violation of the due process rights of petitioner;

2. Whether or not the subject tax assessment is inconsistent with the Tax Code, RR No. 16-2005 and RR No. 4-2007 on the determination of gross receipts of HMOs for purposes of VAT;

3. Whether or not HMOs are precluded from proving that their service fees are only a portion of the total amount received as enrolment fee under RR No. 16-2005, Section 4.108-3(k);

4. Whether or not the subject tax assessment is in violation of BIR Ruling DA-(VAT-026)-375-08 and other revenue issuances on the declaration of gross receipts of HMOs for VAT purposes;

5. Whether respondent's interpretation is in keeping with the constitutional mandate of the State to afford quality health care to its citizens;

[26] Docket, pp. 1687-1700.
[27] Docket, pp. 1702-1759.
[28] Resolution dated January 17, 2019, docket, pp. 1767-1768.

6. Whether or not the subject tax assessment is invalid for erroneously relying on an RMC instead of an RR, which carries more authoritative weight;

7. Whether or not deductions, exclusions or those earmarked for payment to unrelated third-party medical utilization expenses of HMOs are subject to VAT; and

8. Whether the subject tax assessment is erroneous with respect to the inclusion of sales of petitioner which are either VAT exempt or subject to zero rated VAT.

For Respondent:

Whether petitioner is liable to pay for deficiency Value-Added Tax and Compromise Penalty for taxable year 2012 in the amount of ₱428,677,102.70, as well as deficiency and delinquency interest as provided in Sections 248 and 249 of the NIRC.

THE COURT'S RULING

As in other assessment cases, the timeliness of the filing of the instant *Petition for Review* must first be ascertained.

Section 228[29] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that a taxpayer

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[29] 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: xxx xxx xxx

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.

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 adversely affected by the decision of respondent Commissioner of Internal Revenue, may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the same shall become final, executory and demandable.

In the instant case, petitioner received the FDDA with attached Details of Discrepancies on December 21, 2015. Counting thirty (30) days such receipt on December 21, 2015, petitioner had until January 20, 2016, within which to appeal respondent's adverse decision. Evidently, the instant Petition for Review was seasonably filed on January 20, 2016, vesting this Court with competence to take cognizance of the same pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.[30]

Now, on the merits.

Petitioner claims that the FDDA is null and void for having been prematurely issued in violation of its right to due process. Allegedly the said FDDA was issued prior to the expiration of the sixty (60)-day period for it to submit all supporting documents to substantiate its claim in its protest.

Petitioner's claim has merit.

Section 228 of the NIRC of 1997, as amended, provides certain procedures for the issuance of tax assessments, to wit:

> Section 228. *Protesting of Assessment.* — When the Commissioner or his duly

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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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Emphasis supplied*)

[30] 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; xxx.

> authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
>
> 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.
>
> **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. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted</u>**; 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

Evident from foregoing provision that a tax assessment issued by the BIR can be administratively protested by the taxpayer by filing a request for reconsideration or reinvestigation, within thirty (30) days from receipt thereof. The said taxpayer, on the other hand, is given a period of sixty (60) days from the filing of such protest to submit all relevant supporting documents.

In relation to the foregoing Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides for the procedure in disputing an assessment, to wit:

> Section 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 *Preliminary Assessment Notice (PAN).* — xxx.
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> xxx xxx xxx
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice.* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the assessment shall be void...
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> 3.1.5 *Disputed Assessment.* — The taxpayer or its 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:
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> (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.

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For 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, executory and demandable. The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. **The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration.** xxx.

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request of reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> 3.1.5 *Final Decision on a Disputed Assessment.* — **The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* ..., and (b) that the same is his *final decision.*** *(Emphases supplied)*

A careful reading of the foregoing provisions reveals that part of the due process requirement in the issuance of deficiency tax assessment is the observance of due process - such as giving the concerned taxpayer the opportunity to file reply/comment or to submit relevant supporting documents within 60 days from the filing of the protest.

Relevantly, in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.,*[31] the Supreme Court, speaking through Associate Justice Marvic M.V.F. Leonen, eloquently discussed the essence of due process in the issuance deficiency tax assessments. The ruling categorically states that respondent or the BIR is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of

[31] G.R. Nos. 201398-99, and 201418-19, October 3, 2018.

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procedure, and always with regard to the basic tenets of due process. Further, part of the administrative due process requirement is the recognition by the BIR that the taxpayer has the right to present evidence, and thus, should be allowed to submit comments or arguments with supporting documents ***at each stage*** of the assessment process. Failure of the BIR to observe due process shall render the deficiency tax assessment void, and of no force and effect, thus:

> **<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, 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 submit comments or arguments <u>with supporting documents at each stage in the assessment process</u>.** Due process requires the Bureau of Internal Revenue to consider 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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> The Bureau of Internal Revenue is the primary agency tasked to assessed and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under

the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. **However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

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xxx. **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

This Court has stressed the importance of due process in administrative proceedings:

> **The principle of due process furnishes a standard to which governmental action should conform in order to impress it with stamp of validity. Fidelity to such standard must of necessity be the overriding concern of government agencies exercising quasi-judicial functions.** Although a speedy administration of action implies a speedy trial, speed is not the chief objective of a trial. **Respect for the rights of all parties and the requirements of procedural due process equally apply in proceedings before administrative agencies with quasi-judicial perspective in administrative decision** making and for maintaining the

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vision which led to the creation of the administrative office.

In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) **The party interested or affected must be able to present his or her own case and <u>submit evidence in support of it</u>.**
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

Mendoza v. Comelec explained that the first requirement is the party's substantive right at the *hearing stage* of the proceedings, which, in essence, is the

> opportunity to explain one's side or to seek a reconsideration of the adverse action or ruling.
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> The second to the sixth requirements 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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> **Administrative due process is anchored on fairness and equity in procedure.** xxx, **<u>it demands that the party's defenses be considered by the administrative body in making its conclusions</u>**, and that the party be sufficiently informed of the reasons for its conclusions.
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> xxx. **The right to be heard, <u>which includes the right to present evidence</u>, is meaningless if the Commissioner can simply ignore the evidence without reason.**
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> In *Edwards v. McCoy*:
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>> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.
>
> In *Ang Tibay*, this Court similarly ruled that '[n]ot only must **the party be given an opportunity to present his case and**

> **to adduce evidence tending to establish the rights which he asserts** *but the tribunal must consider the evidence presented.'*
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> xxx xxx xxx
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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.**
>
> 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.
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> Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:
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>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.**
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> **In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. <u>Her disregard of the standards and rules renders the deficiency tax assessments null and void.</u>**
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> xxx xxx xxx
>
> **While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules.**" *(Emphases and underscoring supplied; Citations omitted)*

The record shows that on November 9, 2015, or within the 30-day period from receipt of the FAN/FLD, petitioner filed a letter protest dated November 6, 2015 explicitly requesting for a reinvestigation[32] of its tax case. The relevant portion of the said letter protest reads as follows:

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[32] Exhibit P-7, docket, pp. 1279 to 1289.

> Considering the clarifications made, **we <u>request for reinvestigation</u> of the BIR assessment of deficiency VAT for 2012**, and the cancellation and/or withdrawal of the FAN and the FLD for being without basis in fact and in law. **We shall submit within sixty (60) days from the date of filing hereof the pertinent supporting documents** and additional explanations on the foregoing items in the assessment."[33] *(Emphases and underscoring ours)*

Hence, petitioner had 60 days from the filing of such letter protest or until January 8, 2016 to submit relevant supporting documents. Respondent however in haste issued the assailed FDDA on December 9, 2015[34] without allowing the 60-day period to lapse thereby preventing petitioner from submitting relevant supporting documents for purposes of reinvestigation of its tax case in clear violation of its right to due process.

Respondent's blatant disregard of petitioner's right to due process rendered the subject deficiency tax assessments null and void. As such, the said deficiency tax assessments bear no valid fruit.[35]

In view thereof, the Court finds it unnecessary to address or resolve the other issues raised by the parties.

WHEREFORE, the instant *Petition for Review* filed by petitioner Maxicare Healthcare Corporation is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 9, 2015 issued against petitioner is **WITHDRAWN** and **SET ASIDE**. Furthermore, the Formal Letter of Demand and Final Assessment Notice, both dated October 8, 2015, assessing petitioner for deficiency Value-Added Tax and Compromise Penalty for calendar year 2012, are likewise **CANCELLED** and **SET ASIDE**.

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[33] *Supra*, at p. 1288.
[34] Par. 1(vii), JSF, docket, p. 672; Exhibit R-9, BIR Records, pp. 351-352; Exhibit P-9, docket, pp. 686-689.
[35] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice