20-000076-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10262

HEALTH PLAN PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. LEONARDO B. USITA
Bureau of Internal Revenue - Revenue Region No. 7B
25th Floor, The Podium West Tower, ADB Avenue
Ortigas Center, Mandaluyong City

ARANAS CRUZ ARANETA PARKER & PARKER FAUSTINO LAW OFFICES
Unit 203 Le Metropole Building
155 H.V. Dela Costa corner Tordesillas Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **December 4, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 6, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HEALTH PLAN PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 10262**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 04 2024; 9:10 AM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Health Plan Philippines, Inc. (**petitioner**), pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of

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[1] Filed on 26 February 2020, Division Docket, pp. 7-28.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases Within the Jurisdiction of the Court in Division.* The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Tax Appeals (**RRCTA**). It seeks to cancel and set aside the Final Assessment Notice and Formal Letter of Demand[4] (**FAN/FLD**) that respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to petitioner for its alleged tax deficiency assessment in the aggregate amount of ₱16,043,592.51 for the fiscal year (**FY**) ending 30 June 2011.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Unit 1410 Prestige Tower Condo F. Ortigas Jr. Ave., Brgy. San Antonio, Ortigas Center, Pasig City.[5] Petitioner is primarily engaged in the business of providing medical and health maintenance services with Tax Identification Number (**TIN**) 000-182-496-000.

Respondent, on the other hand, is the duly appointed CIR vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

FACTS OF THE CASE

On 04 November 2011, respondent issued a Letter of Authority (**LOA**) No. 43A-2011-00000732/eLA201000064853[6], authorizing Revenue Officer (**RO**) Rhea Argoso (**Argoso**) and Group Supervisor (**GS**) Maricar Favis (**Favis**) of Revenue District No. 43-A, East-Pasig, to examine petitioner's books of accounts for all internal revenue taxes for the period of 30 July 2010 to 30 June 2011, or FY 2011. Petitioner's authorized

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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[.]

4 Dated 15 January 2014; Exhibits "P-11" and series, Division Docket, pp. 421-431.

5 See Paragraph 7, Parties, Petition for Review, supra at note 1, pp. 8-9.

6 BIR Records, p. 2.

representative, Rose G. Periño (**Periño**), received the LOA on 18 November 2011.

Later, or on 09 August 2012, petitioner received a Notice for Informal Conference[7] (**NIC**) informing it of the assessment for deficiency taxes in the aggregate amount of ₱12,116,776.26.

On 07 January 2014, petitioner also received the Preliminary Assessment Notice[8] (**PAN**), with Details of Discrepancies, stating that it had deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), fringe benefit tax (**FBT**) and compromise penalties in the total amount of ₱15,692,256.25.[9]

On 15 January 2014, while petitioner was preparing its reply to the PAN, petitioner again received the FAN/FLD[10] with Details of Discrepancies and Assessment Notices (**ANs**). There, it was indicated that petitioner should pay the said liabilities on or before 10 February 2014.[11]

On 21 January 2014, disagreeing with respondent's findings, petitioner filed a Protest[12] to the PAN and the FAN/FLD (**Protest**) before the Regional Director's (**RD**'s) Office and requested that its case docket be transferred to Revenue District Office (**RDO**) No. 43-A, Pasig City.

Still later, or on 24 June 2014, petitioner received a Preliminary Collection Letter (**PCL**) dated 18 June 2014. The PCL informed petitioner that respondent had already sent several notices demanding payment of its supposed tax liabilities in the total amount of ₱16,043,592.51, and pay the same within ten (10) days from the PCL's receipt.[13]

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7 Dated 09 August 2012, id., pp. 269-271.
8 Exhibits "P-10", Division Docket, pp. 418-420.
9 See Par. 7, Petition for Review, supra at note 1, p. 10.
10 BIR Records, pp. 367-375, see also the stamp receiving copy.
11 Id., pp. 371-375.
12 Exhibit "P-12", Division Docket, pp. 432-433; BIR Records, pp. 355-356.
13 See Exhibit "P-13", id., p. 434; id., p. 384.

Subsequently, petitioner sent a letter-reply to the PCL, informing the BIR of its pending administrative protest with the RD's Office filed on 21 January 2014.[14]

On 10 February 2015, petitioner received a Letter dated 30 January 2015[15] from RD Alfredo V. Misajon (**RD Misajon**) of Revenue Region No. 7, informing it that its Protest has been granted, and that the case will be forwarded to RDO No. 43-A.[16] On 23 March 2015, petitioner received another Letter dated 11 March 2015[17], stating that petitioner's tax docket was forwarded to RDO No. 43-A for evaluation.[18] The same letter indicated that petitioner's case was assigned to RO Joel Luces (**Luces**) and GS Favis for evaluation.[19]

On 20 August 2015, petitioner received a Letter dated 24 July 2015[20] from RDO No. 43-A, indicating that it failed to submit additional evidence in support of its Protest. As a result, the case docket was forwarded to Revenue Region No. 7 for the issuance of the Final Decision on Disputed Assessment[21] (**FDDA**).

Thereafter, or on 19 October 2015, petitioner, through its Vice President Natasha Alana Reyes (**VP Reyes**), executed a Waiver of the Defense of Prescription under Statute of Limitations of the NIRC[22] (**Waiver**), extending thus the period of investigation, collection and enforcement until 30 June 2016. RD Misajon appeared to not have accepted the Waiver as his signature did not appear thereon.[23]

Later, on 27 January 2020, petitioner received the Letter dated 14 January 2020[24] (**14 January 2020 Letter**) that Revenue Region No. 7 and RD Romulo Aguila (**Aguila**) signed. This letter apprised petitioner

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14 BIR Records, p. 425.
15 Id., p. 436.
16 See Par. 18, Petitioner's Memorandum, Statement of the Facts and of the Case, Division Docket, p. 513.
17 BIR Records, p. 439.
18 See Par. 19, Petitioner's Memorandum, Statement of the Facts and of the Case, Division Docket, p. 513.
19 Supra at note 17.
20 Exhibit "P-16", Division Docket, p. 437; BIR Records, p. 451.
21 See Par. 20, Petitioner's Memorandum, Statement of the Facts and of the Case, Division Docket, p. 513.
22 BIR Records, p. 461.
23 See the signatory portion of the acceptance section on the Waiver, which was left unsigned, id.
24 Exhibit "P-17", Division Docket, p. 438; BIR Records, p. 468.

that its Protest filed on 21 January 2014 was deemed not valid due to its supposed failure to submit supporting documents. As a result, the assessment allegedly had thus become final, executory, and demandable.[25]

PROCEEDINGS BEFORE THE COURT

On 26 February 2020, petitioner filed a "Petition for Review"[26] before this Court. The case was raffled to the Second Division and was docketed as CTA Case No. 10262. The Second Division thereafter ordered respondent to file his or her Answer to the petition.[27]

After being allowed an extension of time to file an Answer[28], respondent filed the same on 01 September 2020.[29] In his or her Answer, respondent interposed a singular special and affirmative defense, *i.e.*, the Court has no jurisdiction to entertain the present petition after petitioner failed to submit additional supporting documents within sixty (60) days from the filing of petitioner's Protest to the PAN and the FAN/FLD. According to respondent, the assessment has already become final.[30]

In the *interim*, respondent submitted the BIR Records[31], which the Second Division noted in a Resolution dated 15 September 2020.[32]

On 25 September 2020, petitioner filed a "Reply (Re: Answer dated 1 September 2020)"[33] where it argued that: (1) the assessment is void for violating its right to due process; (2) the FAN/FLD was issued prior to the expiration of the fifteen (15)-day period to reply to the PAN; (3) respondent's right to collect on the basis of the assessment had already prescribed; and, (4) the Waiver is ineffective since respondent, or his or her duly authorized representative, failed to sign and accept the same.

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25 See Par. 22, Petitioner's Memorandum, Statement of the Facts and of the Case, Division Docket, p. 513.
26 Supra at note 1.
27 See Summons dated 2 March 2020, Division Docket, p. 111.
28 See Order dated 20 August 2020, id., p. 119.
29 Id., pp. 120-125.
30 See Pars. 11 and 14, Respondent's Answer, id., pp. 120-124.
31 See Compliance, id., p. 127.
32 Id., p. 128.
33 See Reply, id., pp. 134-142.

Thereafter, both parties filed their respective Pre-Trial Briefs[34] on 16 November 2020. On even date, the Second Division also ordered them to appear before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings on 07 December 2020.[35]

Later, the PMC-CTA, through a Report, informed the Second Division that the parties decided not to proceed with the mediation proceedings.[36] Thus, the pre-trial proper proceeded on 22 February 2021.[37] There, the Second Division: (1) granted the parties a period of thirty (30) days to file their Joint Stipulation of Facts and Issues (**JSFI**); (2) granted petitioner a period of 30 days to file a Motion for the Commissioning of an Independent Certified Public Accountant (**ICPA**); and, (3) set both the Commissioner's Hearing on 10 March 2021 and the presentation of petitioner's evidence on 28 June 2021.

On 17 May 2021, petitioner filed its "Motion for Commissioning of [ICPA]"[38] together with its "[JSFI] (in Compliance with the Order dated 22 February 2021)".[39] On 07 June 2021, the Second Division issued the Pre-Trial Order.[40]

On 28 June 2021, the Second Division: (1) appointed Ms. Myra Celeste O. Dabalos (**ICPA Dabalos**) as the Court-commissioned ICPA; (2) directed ICPA Dabalos to submit her report within forty-five (45) days or until 12 August 2021; and, (3) set the presentation of petitioner's witnesses on 18 August 2021.[41]

In the trial that ensued[42], petitioner presented its witness, Ms. Fely Vale (**Vale**), who testified by way of a Judicial Affidavit[43] dated 11 November 2020, wherein she declared that: (1) petitioner timely filed its Annual Income Tax Return (**ITR**), VAT Return and EWT Return for the FY ending 30 June 2011; (2) petitioner received the PAN dated

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34 See Petitioner's Pre Trial-Brief and Respondent's Pre Trial-Brief, id., pp. 151-159 and 147-150, respectively.
35 See Order dated 16 November 2020, id., p. 146.
36 Id., p. 261.
37 See Minutes of the Hearing and Order, both dated 22 February 2021, id., pp. 267 and 268, respectively.
38 Id., pp. 273-277.
39 Id., pp. 292-297.
40 Id., pp. 302-306.
41 See Order dated 28 June 2021, id., p. 309.
42 See Order dated 13 December 2021, id., p. 329.
43 Exhibit "P-72", id., pp. 162-176.

27 December 2013 on 07 January 2014; (3) petitioner received the FAN/FLD dated 15 January 2014 on even date; (4) on 21 January 2014, petitioner was constrained to file the same protest to the PAN and the FAN/FLD, due to the FAN/FLD's premature issuance; (5) on 24 June 2014, petitioner received a PCL dated 18 June 2014; (6) petitioner received a Letter dated 30 January 2015[44], stating the grant of its Protest and that the docket will be transferred to RDO No. 43-A; (7) petitioner received another Letter dated 11 March 2015[45], notifying it that the docket was already with RDO No. 43-A for evaluation; (8) on 20 August 2015, petitioner received another Letter dated 24 July 2015[46], indicating that it failed to submit the supporting documents for the Protest and that the docket was to be transferred to the Assessment Division of Revenue Region No. 7; and, (9) on 27 January 2020, the BIR, in its 14 January 2020 Letter[47], advised petitioner that its Protest was considered invalid for its failure to submit the supporting documents; thus, the assessment had become final, executory and demandable. No cross-examination was conducted.[48]

On 07 February 2022, petitioner also presented ICPA Dabalos[49] who similarly testified through her Judicial Affidavit dated 07 December 2021.[50] There, she stated that: (1) the Second Division commissioned her as an ICPA on 28 June 2021; (2) she was tasked to verify the accuracy of IT, VAT, EWT and FBT assessments that respondent made for FY ending 30 June 2011, as well as the verification and examination of original documents; (3) she submitted an amended ICPA Report with one (1) USB; (4) the amendments were due to clerical corrections in the Report; (5) Vale called her attention to Journal Voucher #2010-12-0015[51], where she initially marked the transaction as unsupported but changed her comment in the amended ICPA Report and indicated that the transaction was actually supported and pertained to a correcting entry for Official Receipt (**OR**) No. 5454; and, (5) based on her findings, petitioner's deficiency IT, VAT, EWT and FBT liabilities amounted to ₱1,467,095.15, including interest computed up to 31 December 2021. No cross-examination was conducted.[52]

44 Supra at note 15.
45 Supra at note 17.
46 Supra at note 20.
47 Supra at note 24.
48 Supra at note 42.
49 See Order dated 07 February 2022, Division Docket, p. 355.
50 Exhibit "P-20", id., pp. 330-353.
51 Exhibit "P-35", id., p. 328-T.
52 Supra at note 49.

During the hearing held on 21 February 2022[53], the Second Division granted petitioner a period of 15 days within which to file its Formal Offer of Evidence (**FOE**). Respondent was likewise given the same period to file his or her Comment thereto. The Second Division also set the initial presentation of respondent's evidence for 02 May 2022.

On 08 March 2022, petitioner filed its "[FOE] with Omnibus Motion"[54] and offered Exhibits "**P-1**" to "**P-72-A**", inclusive of the sub-markings. In the Omnibus Motion, petitioner prayed that: (1) the BIR's copy of the Protest to the PAN and the FAN/FLD be permanently marked as Exhibit "**P-12**"[55]; and, (2) a Commissioner's Hearing be scheduled and conducted for the permanent and re-marking of its documentary exhibits. *Per* Records Verification Report dated 31 March 2022, it appears that respondent failed to file a Comment on petitioner's FOE.[56] Thus, in a Resolution dated 17 October 2022[57], the Second Division admitted all the offered exhibits.

In another Resolution dated 29 May 2023, the Second Division transferred the case to the First Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2023.[58]

During the hearing on 10 October 2023, the First Division noted respondent's manifestation that he or she will no longer be presenting any evidence and that he or she is waiving the presentation of the same.[59] The First Division then ordered the parties to file their memoranda within 15 days.

On 26 October 2023, petitioner filed its Memorandum.[60] As respondent failed to file a Memorandum[61], the First Division submitted the case for decision on 05 December 2023.[62]

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53 See Minutes of Hearing, dated 21 February 2022, id., p. 357.
54 Filed through courier, id., pp. 360-379.
55 Protest on Preliminary Assessment Notice for Final Period June 2010 to June 2011 dated 18 January 2014.
56 Division Docket, p. 468.
57 Id., pp. 497-499.
58 Reorganizing the Divisions of the Court following the retirement of Associate Justice Erlinda P. Uy, id., p. 501.
59 See Order dated 10 October 2023, id., p. 507.
60 See Petitioner's Memorandum, id., pp. 508-536.
61 See Records Verification dated 07 November 2023, id., p. 540.
62 See Resolution dated 05 December 2023, id., p. 541.

ISSUE

The parties put forward this sole issue for this Court's resolution –

> WHETHER PETITIONER HEALTH PLAN PHILIPPINES, INC. IS LIABLE TO PAY DEFICIENCY INCOME TAX (IT), VALUE-ADDDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT), FRINGE BENEFIT TAX (FBT), AND COMPROMISE PENALTY IN THE TOTAL AMOUNT OF ₱16,043,592.51, INCLUSIVE OF INTEREST FOR THE FISCAL YEAR (FY) 2011.

ARGUMENTS

In support of the petition, petitioner claims that respondent's right to collect its supposed tax deficiencies had already prescribed. According to petitioner, under Section 222(c)[63] of the NIRC of 1997, as amended, respondent only had five (5) years from the issuance of the FAN/FLD to collect. Since the FLD was issued on 15 January 2014, respondent only had until 14 January 2019 within which to collect against it. As the records bear, respondent's demand for payment was only received on 27 January 2020; thus, the tax assessment subject of the case should be cancelled due to prescription.[64]

Petitioner adds that respondent violated its right to due process as the FAN/FLD was issued before the lapse of the 15-day period to reply to the PAN. As a result, respondent's issuance of the FAN/FLD prior to the lapse of such period to file and before it could actually file its reply to the PAN should invalidate the FAN/FLD and the entire assessment.[65]

Petitioner contends further that it could not be held liable for the deficiency taxes for FY 2011 because of respondent's faulty analysis in its manner of recording transactions in its books.

Finally, petitioner explains that whenever it secures a contract with a client, it registers the entire contract price in its books as revenue. Thereafter, petitioner determines the portion of the revenue that covers

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63 SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
64 See Petitioner's Memorandum, Division Docket, p. 520.
65 Id., p. 525.

the period after June 30 of each year and proceeds to prepare an adjusting entry to deduct the same from the revenue recorded in the books. Unfortunately, as for FY 2011, respondent still found these debit entries to be unsubstantiated.[66]

Responding to petitioner's arguments, respondent prays for the Court not to grant relief considering that it is actually devoid of jurisdiction over the case. Quoting Section 228[67] of the NIRC of 1997, as amended, respondent argues that petitioner filed its Protest on 21 January 2014 and only had 60 days, or until 23 March 2014 (since March 22 was a Sunday), to submit all relevant supporting documents, otherwise the assessment would become final. Considering that petitioner failed to submit the said documents within the period required by law, the assessment had already become final, executory and demandable as early as 24 March 2014. Thus, this Court has no jurisdiction over the present case.[68]

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first decide on the timeliness of petitioner's judicial appeal as this is determinative of this Court's valid exercise of jurisdiction.

THE COURT HAS JURISDICTION OVER
THE PRESENT PETITION FOR REVIEW.

Respondent contends that the questioned assessment has become final, executory and demandable due to petitioner's failure to submit supporting documents within 60 days from the filing of its Protest. According to respondent, petitioner's Protest to the FAN/FLD is a request for reinvestigation, citing Section 228[69] of the NIRC of 1997, as amended. When it failed to submit supporting documents to support its request, the period to question the assessment lapsed and, in turn, deprived the Court of its jurisdiction.

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66 Id., p. 528.
67 SEC. 228. *Protesting of Assessment.*
68 See Respondent's Answer, Division Docket, pp. 120-125, supra at note 29.
69 Supra at note 67.

In this case, a reading of petitioner's Protest immediately shows that it did not state clearly if it is a request for reconsideration or reinvestigation. The relevant parts read:

...

We would like to inform you in writing that we disagree on the findings of your Assessment for the following:[70]

TAXES DEFICIENCIES	ISSUES	SUPPORTING RR NO. AND TAX CODE
I. Income Tax	- Unsupported debits to revenue per books	- these debit transactions on the revenue account are merely adjustment to [book] the unearned Income for the fiscal period. As medical and health maintenance services, we primarily enter into a contract or agreement with medical clinics, hospitals and other medical establishment on installment plan. The company recognized their revenue when cash payment has been received or instalment payments actually received in that taxable year. - ***Refer to NIRC Outline, Chapter VIII - Accounting Periods and Methods of Accounting, Sec. 49 Installment Basis (Annex A); Revenue Recognition Principle under IAS 18 Revenue. (Annex-B)***
	- Income payments not subjected to withholding tax	- these income payments are exempted from withholding tax because these are payments made to General Professional Partnership (GPP). - ***Refer to RR No. 14-2002 Amending portions of RR 12-2001 under Sec. 4 Exemption from***

70 Italics and emphasis in the original text and supplied.

	- Unsupported expenses	*Withholding, "Sec. 2.57.5 (B) (4). (Annex-C)* - no breakdown of expenses indicated on the details of discrepancy and considered these as allowable deductions from Income Tax. - ***Refer to NIRC Outline - Chapter VII – Allowable Deductions - A Sec. 34 (A) (1). (Annex-D)***
II. Value Added Tax	- Receipts not subjected to VAT	- these receipts are mainly due to the adjustment made on unearned income for the fiscal period. - ***Refer to NIRC Outline, Chapter VIII - Accounting Periods and Methods of Accounting, Sec. 49 Installment Basis (Annex-A); Revenue Recognition Principle under IAS 18 Revenue. (Annex-B)***
III. Expanded Withholding Tax	- Income payments not subjected to withholding tax	- these income payments are exempted from withholding tax because these are payments made to General Professional Partnership (GPP). - ***Refer to RR No. 14-2002 Amending portions of RR 12-2001 under Sec. 4 Exemption from Withholding, "Sec. 2.57.5 (B) (4) (Annex-C)***
IV. Fringe Benefits	- Non remittance of fringe benefits tax	- these benefits are merely company uniforms issued to Officers Not subject to FBT. - ***Refer to RR No. 3-98 Fringe Benefits Tax, (Annex-E)***

...

Revenue Regulations (**RR**) No. 18-2013[71], amending RR No. 12-99[72], restated the previous definitions laid down in RR No. 12-85[73], as follows:

...

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of

71 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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

73 Procedure covering administrative protests on assessments of the Bureau of Internal Revenue.

the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

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. 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. **Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.**

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

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 for 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.

> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable.** A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[74]
>
> ...

From the foregoing, a request for reconsideration is simply a plea for the re-evaluation of an assessment on the basis of existing records, without need of additional evidence. In contrast, a request for reinvestigation is a similar plea but involves newly discovered or additional evidence (that a taxpayer intends to present in the reinvestigation).

Reading from petitioner's Protest, while indeed it did not state whether the same is a request for reconsideration or request for reinvestigation, it is nevertheless clear that petitioner did not express any intention to submit additional evidence. In fact, what can be plainly inferred therefrom is that petitioner merely disagreed with the BIR findings. As it is, the Protest cannot be considered a request for reinvestigation but rather a request for reconsideration.

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[74] Italics in the original text, emphasis and underscoring supplied.

Considering that respondent's Protest is in the nature of a request for reconsideration, its failure to submit the supporting documents within 60 days from the filing of the same should not have rendered the assessment final, executory, and demandable.

Section 3.1.4 of RR No. 18-2013[75] distinguishes when an assessment or parts thereof are to be considered "final" as opposed to "final, executory and demandable". The word "final" in the phrase "the assessment shall become final" means that the taxpayer is barred from disputing the correctness of the issued assessment by introducing newly discovered or additional evidence. It cannot be taken to mean as a bar to avail the remedy of appeal because the rules also say that if the taxpayer opts to await the final decision of the CIR on the disputed assessment, the taxpayer can appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.[76]

In *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*[77], the Supreme Court affirmed the CTA *En Banc*, where the latter had the opportunity to define the word "final", as used in RR No. 18-2013.[78] We quote[79]:

> ...
>
> RR 18-2013 became effective on 15 December 2013 or during the pendency of respondent's Protest to the FLD and prior to the issuance of FDDA. **As stated, such provision clarifying that the term "final" only means that taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence is applicable in respondent's case.**
>
> ...

Here, petitioner filed its Protest on 21 January 2014. Although it could have appealed the FAN/FLD to the CTA within 30 days after the expiration of the 180-day period which ended on 19 August 2014, petitioner opted to await respondent's final decision, which it eventually

75 Supra at note 71.
76 See *Commissioner of Internal Revenue v. 8196 Convenience Corporation*, CTA EB No. 2648 (CTA Case No. 9818), 05 January 2024.
77 G.R. No. 257128, 17 October 2022.
78 Supra at note 71.
79 *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*, CTA EB No. 2036 (CTA Case No. 8786), 18 November 2020; Emphasis supplied.

received on 27 January 2020. The rules state that petitioner had 30 days therefrom within which to appeal to the CTA. Therefore, petitioner had until 26 February 2020 within which to file its appeal. Since the Petition for Review was filed on 26 February 2020, the appeal was timely, and thus, perfected. This Court then successfully acquired jurisdiction over this case.

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[80], the Supreme Court emphasized that the taxpayer has the option to wait for the CIR's final decision, to wit:

> ...
>
> In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) **await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.**
>
> This is consistent with Section 3 A (2), Rule 4 of the Revised Rules of the Court of Tax Appeals, to wit:
>
> 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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: **Provided, that in case of disputed assessments, the**

80 G.R. No. 171251, 05 March 2012; Citations omitted, italics and emphasis in the original text and supplied.

> **inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under** Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]
>
> ...

The next pivotal query is whether the CIR's 14 January 2020 Letter[81], received on 27 January 2020, is the latter's decision that is appealable to this Court.

Petitioner insists on the affirmative and We agree with it.

A review of the case records reveals that petitioner received a Letter dated 24 July 2015[82] from the BIR, informing it that an FDDA will be issued. We quote below the pertinent portion of the said letter:

> ...
>
> In view of this, please be informed that the docket of the case will be forwarded to the Assessment Division, this Region, **for [the] issuance of [a] Final Decision on Disputed Assessment.**[83]
>
> ...

It is noted that although an FDDA appears in the BIR Records[84], there is no indication that RD Misajon signed the same. Moreover, there is no proof that petitioner received the FDDA. Instead, petitioner received the 14 January 2020 Letter[85], informing it that the assessment had already become final, executory, and demandable. The said letter

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81 Supra at note 24.
82 Supra at note 20.
83 Emphasis supplied.
84 BIR Records, pp. 452-460.
85 Supra at note 24.

also mentioned that the BIR considered the said deficiency taxes as delinquency taxes which could be settled if petitioner avails the Tax Amnesty Program (Republic Act [**RA**] No. 11213).[86] The 14 January 2020 Letter reads:

> ...
>
> In this connection, please be informed that our records show that you failed to submit relevant supporting documents in support of your protest within the prescribed period. Thus, the protest cannot be considered a valid protest and **the assessment becomes final, executory and demandable <u>despite the absence of the issuance of Final Decision on Disputed Assessment (FDDA)</u>** in pursuance to Q37 of RMC 057-19.
>
> In view of the foregoing, we would like to inform you of your opportunity to settle the abovementioned **delinquency taxes** thru availment the Tax Amnesty Program 1019 (Republic Act No. 11213), as implemented by Revenue Regulations No. 4-2019, with the following tax amnesty rates[.][87]
>
> ...

In the unrebutted testimony of Vale, petitioner deemed the 14 January 2020 Letter as the CIR's final decision. Vale's Judicial Affidavit[88] dated 11 November 2020 reads:

> ...
>
> Q43: What happened after you receive the Letter dated 11 March 2015, if any?
>
> A43: We received another Letter dated 24 July 2015 from RDO No. 43-A on 20 August 2015, informing us that HPPI failed to submit evidence needed to overthrow the validity of the findings of the BIR stated in the FLD, and in view thereof, the tax docket would be forwarded to the Assessment Division of the RR [No.] 7 **for the issuance of [the FDDA].**
>
> ...
>
> Q46: What happened next after you received the Letter dated 24 July 2015?

86 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.

87 Emphasis and underscoring supplied.

88 Supra at note 43.

A46: We did not receive any other communication from the BIR until we received a **Letter dated 14 January 2020 on 27 January 2020, informing us that the protest dated 18 January 2024 was not valid due to HPPI's failure to submit supporting documents and that, as a result, the assessment had become final, executory and demandable.**

...

Q49: You mentioned that an FDDA was supposed to be issued by the BIR as mentioned in its Letter dated 24 July 2015. Did HPPI receive any such FDDA?

A49: No, HPPI did not receive any such FDDA.[89]

...

We agree that the 14 January 2020 Letter is the CIR's final decision for the following reasons: (1) it expressly mentioned that the assessment had become final, executory and demandable, and considered the deficiency taxes as delinquent taxes; (2) it also mentioned that, since petitioner's Protest was not valid, the BIR did not have to issue the FDDA as the assessment had already become final; (3) Vale's unrebutted testimony confirmed that the BIR already informed petitioner that it will issue an FDDA and that petitioner eventually received the said 14 January 2020 Letter; and, (4) the BIR demonstrated no intention of issuing the FDDA, as it remained unsigned and unserved. For these reasons, the Court has validly acquired jurisdiction over the present petition.

We now proceed to resolve the merits of the case.

THE SUBJECT ASSESSMENT AGAINST PETITIONER IS VOID FOR FAILURE TO OBSERVE DUE PROCESS.

Is the assessment against petitioner valid?

A review of the parties' evidence shows that at the time the FAN/FLD was issued, the period to file a reply to the PAN had yet to lapse. On the witness stand, Vale declared:

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89 Emphasis supplied.

...

Q18: What happened in the assessment subject of this case?

A18: **We received the PAN dated 27 December 2013 on 7 January 2014.** Upon perusal of the PAN, I saw that it referred to alleged Income Tax, VAT, EWT and Frine Benefit Tax ("FBT") deficiencies of HPPI amounting to Php15,692,256.25

...

Q24: What happened next if any?

A24: While we were preparing the supporting documents and our auditor the reply to the PAN, **we were surprised to receive the FLD on 15 January 2014[,] despite the fact that our deadline to file a reply was still on 22 January 2014 and thus, had not yet lapsed.**[90]

...

Vale's unrebutted declaration reveals that petitioner received the PAN on 07 January 2014. Counting 15 days therefrom, petitioner had until 22 January 2014 within which to file its Protest to the PAN. However, petitioner received the FAN/FLD on 15 January 2014. This clearly shows that respondent did not wait for the period allotted for petitioner to file its Protest/Reply to the PAN to expire before issuing and serving the subject FAN/FLD.

Section 228 of the NIRC of 1997, as amended, is clear, to wit:

...

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 preassessment notice shall not be required in the following cases: ...

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner

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90 See Judicial Affidavit dated 11 November 2020; supra at note 43.

> **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 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.[91]
>
> ...

Indubitably, a taxpayer shall be required to respond to the BIR's notice. It is only when the latter fails to respond that the CIR or his or her duly authorized representative could proceed to issue an assessment based on his or her findings. Section 3.1.1 of RR No. 12-99[92], as amended by RR No. 18-2013[93], reads:

> ...
>
> 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 (FAN/FLD) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**[94]
>
> ...

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91 Emphasis supplied and italics in the original text.
92 Supra at note 72.
93 Supra at note 71.
94 Emphasis supplied and italics in the original text.

By failing to allow the full 15-day period (to reply to the PAN) to expire, respondent denied petitioner due process.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[95], the Supreme Court held:

> ...
>
> In this case, the records show that respondent received the PAN on February 5, 2009. **However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**
>
> In *CIR v. Metro Star Superama, Inc.*, **the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to <u>strictly comply</u> with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process.**
>
> ...

Similarly in, *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[96] (**Avon**), the Supreme Court, citing *Ang Tibay v. Court of Industrial Relations*[97], 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**". The Supreme Court further explained in *Avon* that:

> ...
>
> **However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. The Bureau of Internal Revenue chose to ignore Avon's explanations** and refused to cancel the assessments unless Avon would agree to pay the other deficiency assessments.
>
> ...

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95 G.R. No. 227616 (Notice), 19 June 2019; Citations omitted, underscoring and emphasis in the original text and supplied.

96 G.R. Nos. 201398-99, 03 October 2018.

97 G.R. No. L-46496, 27 February 1940.

> **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.**
>
> **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.**
>
> *In Edwards v. McCoy*:
>
>> 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*."**
>
> ...
>
> **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 Regulations No. 12-99.**[98]
>
> ...

Furthermore, in a plethora of cases[99] decided by the CTA *En Banc*, it was ruled consistently that the taxpayer's right to due process was

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[98] Supra at note 96; Citations omitted, italics and emphasis in the original text and supplied.

[99] *Commissioner of Internal Revenue v. Merial Philippines, Inc.*, CTA EB No. 1398 (CTA Case No. 8370), 09 May 2017; *Commissioner of Internal Revenue v. Apex Chemical Corporation*, CTA EB

violated when the FAN/FLD was issued prior to the lapse of the 15-day period given to it to respond to the PAN. Particularly, in *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.*[100], the CTA *En Banc* held:

> ...
>
> Here, **respondent received a copy of the PAN dated December 12, 2008 on <u>January 5, 2009</u>**. Pursuant to RR No. 12-99, respondent has fifteen (15) days or until **<u>January 20, 2009</u>** within which to file a reply or protest against the PAN.
>
> Respondent filed its protest to the PAN on **<u>January 20, 2009</u>.** Barely a day after it filed its protest to the PAN or on January 21, 2009, respondent received the Formal Letter of Demand and Assessment Notice No. 54-2005 **<u>which are both dated January 9, 2009</u>.**
>
> Evidently, petitioner did not wait for respondent to reply to the PAN nor considered the arguments raised in respondent's protest thereto. The Formal Letter of Demand and Assessment Notice No. 54-2005 were already prepared by petitioner as early as January 9, 2009 or way before the lapse of the fifteen-day period within which petitioner could file a reply or protest to the PAN.
>
> ...

By prematurely issuing the FLD/FAN before the 15-day period to file a reply lapsed, respondent breached the due process requirements.

Lastly, Section 228[101] of the NIRC of 1997, as amended, provides that the right to respond to a "preassessment notice" or PAN is given to the taxpayer. Furthermore, under RR No. 12-99[102], as amended by RR No. 18-13[103], the 15-day period to file said response is also the taxpayer's right and cannot be waived by the CIR. Consequently, petitioner's right to due process was violated, rendering the FAN/FLD null and void.

Nos. 1382 and 1387 (CTA Case No. 8698), 14 October 2016; *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, CTA EB No. 1139 (CTA Case No. 8331), 11 August 2015; *Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.*, CTA EB No. 1151 (CTA Case No. 8095), 17 February 2015.

100 CTA EB No. 1151, 17 February 2015; Emphasis and underscoring in the original text.

101 Supra at pp. 21-22.

102 Supra at note 72.

103 Supra at note 71.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner Health Plan Philippines, Inc. on 26 February 2020 is hereby **GRANTED.** Accordingly, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Fringe Benefit Tax and Compromise Penalty for the fiscal year 2011, in the aggregate amount of ₱16,043,592.51, as found in the Final Assessment Notice/Formal Letter of Demand, are hereby **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice