REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PMAC BUSINESS OPERATIONS, INC.,	**CTA CASE NO. 10391**
Petitioner,	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	NOV 24 2023 2:05 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition"),[1] filed on 3 November 2020, under ***Section 7 of Republic Act No. 1125,***[2] ***as amended by R.A. No. 9282,***[3] asking the Court to render a judgment reversing, setting aside, and nullifying the Final Decision on Disputed Assessment ("FDDA") dated 22 September 2020[4] issued by respondent.[5]

In the FDDA, petitioner was assessed for deficiency income tax ("IT"), expanded withholding tax ("EWT") and withholding tax for compensation ("WTC") for taxable year 2013, in the aggregate amount of ₱4,025,660.28, inclusive of interest.[6]

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[1] See Petition for Review; Records, pp. 6-89, with annexes.
[2] An Act Creating the Court of Tax Appeals, 16 June 1954.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; 30 March 2004.
[4] Exhibit "P-19-2" to "P-19-5", Records, pp. 222-225.
[5] See Prayer, Petition for Review, *id.,* p. 24.
[6] See Final Decision on Disputed Assessment, Exhibit "P-19-2", *id.*, pp. 53-54; sum of alleged deficiency IT (₱1,349,869.03), EWT (₱379,705.37) and WTC (₱2,296,085.88).

The Parties

PMAC Business Operations, Inc. ("PMAC" or "petitioner"), is a domestic corporation duly organized and existing under Philippine laws[7] registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone IT Enterprise with Registration Number 07-04-IT.[8]

Respondent Commissioner of Internal Revenue ("CIR" or "respondent") is vested under the law the authority to carry out all functions, duties, and responsibilities of the Bureau of Internal Revenue ("BIR").[9] He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

The present petition arose from PMAC's receipt of the FDDA dated 22 September 2020 wherein respondent assessed petitioner of deficiency taxes for a total amount of ₱4,025,660.28 broken down as follows:

Tax Type	Basic Tax	Interest	Total
Income Tax	₱651,033.56	₱698,835.47	₱1,349,869.03
Expanded Withholding Tax	178,875.14	200,830.23	379,705.37
Withholding Tax on Compensation	1,081,661.52	1,214,424.36	2,296,085.88
TOTAL	**₱1,911,570.22**	**₱2,114,090.06**	**₱4,025,660.28**

Petitioner now seeks the cancellation of the assessment and avers the antecedents[10] discussed below.

In 2014, BIR conducted an audit of petitioner's accounting records for taxable year 2013. In response, petitioner transmitted to the BIR documents and records requested by the latter.[11]

Meanwhile, PMAC was able to secure a Tax Clearance, dated 24 July 2015, from the BIR which states that it has "no listed tax liability."[12] Such clearance was secured for purposes of petitioner's cancellation of PEZA registration. However, based on its averments, petitioner took it to mean that

[7] See Certificate of Filing of Amended Articles of Incorporation, Exhibit "P-78", *id.*, p. 389.
[8] See Amended Certificate of Registration No. 07-04-IT issued by PEZA on 22 April 2014, Exhibit "P-21", *id.*, p. 227.
[9] See The Parties, Petition for Review, *id.*, pp. 7-8.
[10] See Antecedents, Petitioner for Review, *id.*, pp. 8-11.
[11] See Letter to the BIR dated 29 July 2016, Exhibit "P-3", *id.*, p. 189; Transmittal Letter dated 3 February 2015, Exhibit "P-4", *id.*, p. 190; Transmittal Letter dated 23 December 2014, Exhibit "P-5", *id.*, p. 192.
[12] See Delinquency Verification dated 24 July 2015, Exhibit "P-26", *id.*, p. 232.

the BIR found no tax deficiencies due from the company including taxable year 2013 which, at that time, was subject to an ongoing investigation.

Thereafter, on 25 January 2017, PMAC received the following documents from the BIR: (a) Preliminary Assessment Notice ("PAN") dated 16 December 2016,[13] with Details of Discrepancy;[14] (b) three (3) Final Assessment Notices ("FAN") dated 9 January 2017,[15] and (c) Formal Letter of Demand ("FLD") dated 9 January 2017.[16]

In response thereto, petitioner filed a request for reinvestigation[17] with the BIR on 22 February 2017. The documents in support of such administrative protest were filed on 20 April 2017.[18]

After more than three years, or on 1 October 2020, the BIR served the FDDA dated 22 September 2020 to petitioner's former office at 16th Floor One Corporate Centre Julia Vargas Avenue Ortigas Center Pasig City via LBC.[19] Petitioner claims that it was only on 22 October 2020 when it was informed of said FDDA.

On 3 November 2020, PMAC filed the instant Petition for Review.[20]

On 19 January 2021, respondent was served summons and a copy of the Petition.[21] He was further instructed to file an Answer within thirty (30) days from after service of such summons.[22]

Due to respondent's failure to file an Answer within the required period, petitioner moved to declare the respondent in default, on 4 June 2021.[23] The same was granted by the Court on 17 June 2021.[24]

On 4 May 2022, petitioner presented its witness, Rulie B. Payapaya (Payapaya) who identified his Judicial Affidavit and the documentary evidence attached therein.[25]

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[13] Exhibits "P-15" to "P-15-1", *id.*, pp. 203-204.
[14] Exhibits "P-16" to "P-16-1", *id.*, pp. 205-206.
[15] Exhibits "P-11" to "P-13", *id.*, pp. 198-200.
[16] Exhibits "P-14" to "P-14-1", *id.*, pp. 201-202.
[17] Exhibits "P-17" to "P-17-9", *id.*, pp. 207-216.
[18] Exhibits "P-18" to "P-18-2", *id.*, pp. 217-219.
[19] See LBC Official Receipt, *id.*, "P-19-1", *id.*, p. 221.
[20] *Supra* note 1.
[21] See Notification dated 3 February 2021, *id.*, p. 99.
[22] See Summons dated 18 January 2021, *id.*, p. 98.
[23] See Motion to Declare Respondent in Default, *id.*, pp. 100-102.
[24] See Resolution dated 17 June 2021, *id.*, p. 104.
[25] See Minutes of the Hearing dated 4 May 2022, *id.*, p. 126

Subsequently, petitioner submitted its Formal Offer of Evidence on 18 May 2022.[26] The Court admitted most of the evidence submitted except for Exhibit "P-17-10", for failure to have the same marked; Exhibits "P-45-8", "P-51-33", and "P-79", for failure to submit these documents; Exhibits "P-93-7", "P-94-7", and "P-95-7", for failure to have these identified; and Exhibit "P-101-8", "P-102-8", and "P-106-8", for failure to both submit and have these identified.

With the filing of petitioner's Memorandum on 2 November 2022,[27] the Court submitted the instant case for decision per Resolution dated 24 November 2022.[28]

The Issues[29]

Petitioner submitted the following issues for this Court's resolution:

I. WHETHER RESPONDENT ERRED IN FINDING PETITIONER LIABLE FOR DEFICIENCY INCOME TAX FOR THE YEAR 2013;

II. WHETHER RESPONDENT ERRED IN DECLARING PETITIONER LIABLE FOR EXPANDED WITHHOLDING TAX DUE TO NON-WITHHOLDING OF TAXES ON THE PAYMENTS FOR UTILITIES, ASSOCIATION DUES, PANTRY, CLEANING, SUPPLIED, TELECOM, AND OTHER SIMILAR EXPENSES, FOR THE YEAR 2013; AND

III. WHETHER RESPONDENT ERRED IN DECLARING PETITIONER LIABLE FOR WITHHOLDING TAX ON COMPENSATION DUE TO NON-WITHHOLDING OF TAX ON NON-TAXABLE BONUS, DE MINIMIS BENEFITS, LEAVE ENCASHMENT 10 DAYS & BELOW, AND EMPLOYER'S SHARE FOR SSS, HDMF AND PHILHEALTH, FOR THE YEAR 2013.

Petitioner's Arguments

Petitioner posits that the respondent erred in finding deficiency income tax for the year 2013. Specifically, it argues that the travel expenses and training and seminar expenses incurred for the year are ordinary and necessary

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26 See Formal Offer of Evidence, *id.*, pp. 141-157.
27 See Memorandum for the Petitioner, *id.*, pp. 623-649.
28 See Resolution dated 24 November 2022, *id.*, p. 652.
29 See Petition for Review, *id.*, pp. 12-13; see also Memorandum for the Petitioner, *id.*, pp. 629-630.

expenditures incurred in carrying out its trade and business duly supported by documents, and thereby allowed to be deducted from gross income.[30]

Likewise, petitioner raises that at the time of the disputed assessment, it had no notice that it was among the top 20,000 private corporations. Thus, according to petitioner, it cannot be faulted for not withholding taxes from the payments made on utilities, association dues, pantry, cleaning, supplies, computer, and telecom repairs and other similar expenses. Corollary, respondent erred in finding deficiency EWT and the same expenses cannot be disallowed as deduction from gross income.[31]

Finally, as regards the alleged deficiency WTC, petitioner argues that the bonuses, de minimis benefits, leave encashment for ten (10) days and below, employer's share for SSS, HDMF, and PhilHealth are non-taxable compensation which do not require withholding of tax. Consequently, according to petitioner, there was error in finding deficiency WTC and in disallowing these expenses as deduction from gross income.[32]

The Ruling of the Court

Based on a judicious review of the matters alleged and evidence submitted by PMAC, the Court finds merit in the instant petition.

The Court has the authority to rule on issues not specifically raised by the parties

The Court notes that in the Petition, PMAC focused the issues and its corresponding arguments to the propriety of the assessment items in the notices and FDDA issued by the respondent. No contentions were raised related to matters of due process – on how it was observed by the administrative authorities or any violations thereto.

However, We find it proper to first determine any due process issues before delving into specific tax items in the assessment.

Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("***RRCTA***") provides that the CTA is not limited by issues raised by the parties but may also rule upon related issues necessary to achieve the orderly disposition of the case, to wit:

[30] See Petition for Review, *id.*, pp. 13-18; see also Memorandum for the Petitioner, *id.*, pp. 630-645.
[31] See Petition for Review, *id.*, pp. 18-19; see also Memorandum for the Petitioner, *id.*, pp. 645-646.
[32] See Petition for Review, *id.*, pp. 19-23; see also Memorandum for the Petitioner, *id.*, pp. 646-648.

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. Rendition of judgment. — The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court En Banc or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court En Banc or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court En Banc or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.

In deciding the case, the Court <u>may not limit itself</u> to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."
(Emphasis and underscoring supplied.)

The Supreme Court, in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[33] affirmed the authority of this Court to rule on issues not raised by the parties in this wise:

"**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

SECTION 1. Rendition of judgment. — x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter."
(Citations omitted; Emphasis supplied)

[33] G.R. No. 183408, 12 July 2017.

In the same vein, the High Court recognized this Court's authority to rule on issues not raised in the petition for review, in the case of ***Commissioner of Internal Revenue vs. Yumex Philippines Corporation ("Yumex case")***[34] as follows:

> "As the CTA *En Banc* held, the **CTA Division was justified in ruling on the issue that respondent was denied due process <u>even though it was not expressly raised by respondent in its petition for review</u>**. Sec. 1, Rule 14 of the RRCTA provides that '[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case.**' Herein, **the issue of the validity of the assessment against respondent also necessarily <u>requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process</u>**. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA."
> (Emphasis supplied.)

To emphasize, the Supreme Court ruled in the ***Yumex case*** that the validity of the assessment requires the determination of the propriety of the issuance of the notices in accordance with the taxpayer's right to due process. This remains true even if the violation of such right was not raised in the taxpayer's pleadings since due process is a related issue necessary to achieve the orderly disposition of an assessment case.

Further guidance may also be gleaned from the High Court's pronouncement in the case of ***Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue ("Prime Steel case")***.[35] While this involves an issue raised for the first time on appeal or on motion for reconsideration, the conditions laid therein may be used as parameters on determining whether an issue may be touched upon by the Court despite the parties' failure to raise it.

In the ***Prime Steel case***, the Supreme Court ruled that the CTA may consider arguments raised for the first time on appeal or on motion for reconsideration, provided that (1) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and (2) the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.

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[34] G.R. No. 222476, 5 May 2021.
[35] G.R. No. 249153, 12 September 2022.

> "At the outset, the Court shall delve into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.
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> As correctly held by the CTA *En Banc*, **in deciding a case, the tax court 'may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'** However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues 'should be dealt with, based not only on substantive law but in light of the relevant rules of evidence.'
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> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.**
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> From the foregoing, the Court so holds that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: **one, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and two, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.**
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> Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.
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> First. **The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment.** It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.
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> Second. Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN **may be resolved by an examination of the evidence on record without requiring the presentation of additional proof.** Thus, the CTA En Banc correctly took cognizance of this new issue."

Here, and as will be discussed below, the Court shall determine whether there was proper issuance of the PAN, FAN, and FLD. This issue is intricately related to the principal issue to be resolved by the Court, i.e., whether petitioner is liable for deficiency taxes for the year 2013, and is necessary to achieve an orderly and comprehensive disposition of the case. Also, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence.

Failure to serve the PAN prior to the issuance of the FAN is a violation of the taxpayer's right to due process

Section 228 the National Internal Revenue Code ("Tax Code"), as amended, mandates that taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.

To implement such provision, ***Section 3 of Revenue Regulations ("RR") No. 12-99,***[36] ***as amended by RR No. 18-2013,***[37] states:

> "Sec. 3. Due Process Requirement in the Issuance of a Deficiency Assessment. —
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> 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).
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> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an **FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
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> Sec. 3.1.3. Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — 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;**

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[36] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated 6 September 1999.

[37] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated 28 November 2013.

> **otherwise, the assessment shall be void** (see illustration in ANNEX "B" hereof)."
> (Emphasis supplied.)

It is clear from the foregoing provisions that a taxpayer shall be issued with a PAN upon determination of deficiency taxes. Thereafter, it has fifteen (15) days from the receipt of the PAN within which to submit its response. Only after receiving the taxpayer's reply or the lapse of the 15-day period to file the same shall the BIR issue the FLD/FAN.

In the oft-cited case of ***Commissioner of Internal Revenue vs. Metro Star Superama Inc.***,[38] the Supreme Court highlighted the importance of PAN and categorically stated that the issuance of the same is a substantive, not merely a formal, requirement, to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer **must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
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> From the provision quoted above, it is clear that the **sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."
> (Emphasis supplied; citations omitted.)

Here in PMAC's case, petitioner does not deny the receipt of the PAN but claims that the same was received simultaneously with the FLD/FAN. Nevertheless, the Court still believes that PMAC's right to due process was not faithfully observed by the BIR, consistent with the ruling of the Supreme Court in the ***Yumex case*** wherein the PAN was likewise served together with the FLD/FAN.

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[38] G.R. No. 185371, 8 December 8, 2010.

Citing ***Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. ("Avon case")***,[39] the Supreme Court, in the ***Yumex case***, commanded the strict observance of by the BIR of the procedures for the issuance of the assessment notices in accordance with the taxpayer's constitutional rights to due process. It was further emphasized that BIR must not only inform the taxpayer through the PAN, FLD, and FAN of the facts and law on which the assessment is based, but **it must also accord taxpayer the opportunity to be heard through the entire process, *i.e.* from tax investigation until assessment**. Relevant portion of the ***Avon case***, as reproduced in the ***Yumex case*** states:

> "The Bureau of Internal Revenue is the primary agency tasked to assess 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 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 taxpayers' constitutional rights.
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> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> **"The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**
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> On the other hand, the **taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment**. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the

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

> Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals."
> (Emphasis supplied.)

Also, the Supreme Court emphasized in the ***Yumex case***, that while the PAN was served to the taxpayer through registered mail, no evidence or explanation was offered by the BIR that would make reliance to constructive service of notice proper, to wit:

> "[T]he reliance by petitioner and the BIR on constructive service of notice is unavailing and not justified by the circumstances. **The PAN was posted through registered mail so there are easily records available by which the BIR could have determined whether or not respondent actually received the notice and the date of such receipt. The BIR did not offer any explanation as to why it did not verify first these details with the post office, which would have been the more prudent thing to do instead of immediately considering respondent to have already constructively received the PAN for purposes of issuing the FLD/FAN.** Petitioner's insistence on constructive notice is unwarranted and arbitrary when there is uncontroverted evidence of respondent's date of actual receipt of the PAN on January 18, 2011, simultaneously with the FLD/FAN."
> (Emphasis supplied.)

The above ruling of the Supreme Court is consistent with the long-standing decree that if the taxpayer denies having received an assessment from the BIR, it becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi is shifted to the respondent to prove by contrary evidence that the taxpayer received the assessment in due course.[40]

In the case at hand, PMAC offered the testimony of Payapaya, petitioner's Certified Public Accountant (CPA) consultant, to prove that the PAN was received, through registered mail, simultaneously with the FLD/FAN on 25 January 2017.[41] No evidence or explanation was submitted by the BIR to controvert such assertion. Assuming that the PAN was mailed on an earlier date, it still remains that the same was received together with the FLD/FAN, and the BIR did not observe prudence, as required in the ***Yumex***

[40] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 8, 2010, citing Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 157064, 7 August 2006.

[41] Exhibit "P-110", Judicial Affidavit of Rulie B. Payapaya, Records, p. 163.

case, in verifying with the post office the petitioner's actual receipt of PAN, prior to the issuance of the FLD/FAN.

Based on the foregoing, the Court holds that the non-service of PAN prior to the issuance of the FLD/FAN constitutes as a violation of PMAC's right to due process, thus, invalidating the assessment against the petitioner.

The FLD/FAN failed to indicate the due date for payment; thus, invalid.

As discussed above, ***Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013***, implementing ***Section 228 of the Tax Code***, prescribes that a taxpayer shall be issued with a FLD/FAN duly calling for payment of the alleged deficiency taxes, and stating the factual and legal bases of such assessments.

With the foregoing due process requirements, the Supreme Court, in the case of ***Commissioner of Internal Revenue (CIR) v. Pascor Realty and Development Corp.***, pronounced that *"(a)n assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period."*

Anchoring on such pronouncement, the Supreme Court opined in the case of ***Commissioner of Internal Revenue vs. Fitness by Design Inc. ("Fitness by Design Case)***[42] that the BIR's demand for payment was rendered void when the FAN did not indicate a due date. The court discussed that the FAN issued to Fitness by Design states that the taxpayer is requested to pay the deficiency internal revenue tax liabilities ***within the time shown in the enclosed assessment notice***. However, the attached assessment therein remained unaccomplished.

Similarly, in this case, the FLD,[43] dated 9 January 2017, indicates that PMAC is "requested to pay *x x x* within the time shown in the enclosed assessment notice." Yet, upon checking of the FAN,[44] the notice failed to indicate the date within which payment must be made as the space for due date was left blank.

On the other hand, the FLD indicates "FEB 09 2017" as the "Due Date" in the upper righthand corner. The Court, however, notes that such due date is couched in general terms and that it did not specify that it is the due date for payment. Moreover, the date is too equivocal, in that it may even refer to the due date when the FLD/FAN must be served to the taxpayer.

[42] G.R. No. 215957, 9 November 2016.
[43] *Supra* note 16.
[44] *Supra* note 15.

In addition, the interest on the assessment is calculated until 20 February 2017. The Court finds that it is irreconcilable for the BIR to compute interest until 20 February 2017 if the due date is on 9 February 2017.

Considering the foregoing, the Court finds the FLD/FAN lacking the due date within which the payment of assessed taxes should be made; thus, it must be considered void.

The FDDA failed to provide reasons for the rejection of the explanations and defenses of the taxpayer; thus, rendered void.

In the ***Avon case***, the Supreme Court also stressed that the respondent's duty does not extend to merely apprising the taxpayer of the legal and factual bases of the assessments issued against it. The CIR also has the duty to consider the explanations and defenses raised by the taxpayer and must communicate to the latter the reason for the rejection, thus:

> "The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon**. Thus, Avon was left **unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments**. There was clear inaction of the Commissioner at every stage of the proceedings.
>
> First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. **The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, <u>without any discussion or explanation on the merits of Avon's explanations</u>.**
>
> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue **issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

x x x

> The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
>
> x x x
>
> **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.**" (Emphasis and underscoring supplied.)

Upon checking of the FDDA, dated 22 September 2020,[45] with the attached Details of Discrepancies,[46] the Court notes that the BIR merely reiterated the assessment items in the FLD, with the exception of an increased interest calculated until 1 October 2020. Further, in the Details of Discrepancies, respondent stated that "(d)uring reinvestigation, (petitioner) failed to submit documents/evidence to support (the) protest;" hence, the disallowance of the expenses, the deficiency EWT and deficiency WTC were reiterated.

A perusal of the records, however, reveals that petitioner was able to submit documents intended to support the defenses raised in its protest.[47] Evidently, the BIR failed to recognize such submissions. The FDDA did not only lack the reasons for the rejection of the defenses raised by the petitioner in its protest. It also categorically reflects a total disregard of the submissions made by PMAC on 20 April 2017.

Accordingly, the Court finds unacceptable neglect of PMAC's right to due process on the part of the BIR, rendering the assessments against petitioner void.

All told, having ruled on the invalidity of the assessment, the Court finds no reason to discuss the other issues raised in the present petition.

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[45] Exhibits "P-19-2" to "P-19-3", Records, pp. 222-223.
[46] Exhibits "P-19-4" to "P-19-5", Records, pp. 224-225.
[47] See Submission of Documents/Evidence – Administrative Protest – Request for Reinvestigation, Exhibits "P-18" to "P-18-2", Records, pp. 217-219.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment, dated 22 September 2020, assessing petitioner for deficiency IT, EWT, and WTC in the aggregate amount of ₱4,025,660.28, inclusive of interest, for taxable year 2013 is **CANCELLED** and **SET ASIDE.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice