REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IBM PLAZA CONDOMINIUM ASSOCIATION, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8740
For: Assessment

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 02 2019

1:40 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on November 16, 2018, is a Petition for Review filed by petitioner IBM Plaza Condominium Association, Inc. against respondent Commissioner of Internal Revenue on December 4, 2013, praying that the assessment issued by the respondent against petitioner for taxable year 2008 and the warrant of distraint and/or levy bearing No. 10-1264-13 issued by the respondent against the petitioner be cancelled and declared as null and void.[1]

Petitioner IBM Plaza Condominium Association, Inc. is a domestic corporation duly organized and existing under Philippine laws and likewise registered with the Bureau of Internal Revenue (BIR) with TIN 210-456-904-000. The petitioner is represented by its President, Mr. Rigoberto A. Santos, who was duly authorized to file and institute this petition.[2]

Respondent on the other hand, is the duly appointed Commissioner of the BIR mandated by law to enforce and implement

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1 Joint Stipulation of Facts and Issues (JSFI), Docket, volume (vol.) II, pp. 948-949.
2 Ibid.

the National Internal Revenue Code and related statutes, including, among others, the power to cancel disputed assessments. He may be served with summons and other court processes at the 5th Floor, Room 511, BIR National Office Building, East Triangle, Diliman, Quezon City.

Respondent issued Letter of Authority (LOA)[3] No. 00038546 dated June 18, 2009 authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable year 2008.

On December 16, 2009, respondent issued a Post Reporting Notice[4] requesting the petitioner to submit documentary evidence to support any objection in the proposed summary assessment amounting to Twenty Seven Million Two Hundred Seven Thousand Eight Hundred Fifty Nine and 46/100 Pesos (P27,207,859.46).

On May 12, 2011, petitioner received the Preliminary Assessment Notice (PAN)[5] from respondent dated May 6, 2011.

On June 7, 2011, respondent issued the Formal Letter of Demand and Assessment Notice (FAN/FLD)[6] demanding payment amounting to Fifty One Million Seven Hundred Forty Six Thousand and Three Hundred Forty One Pesos and Thirty Seven centavos (P51,746,341.37), representing alleged deficiency taxes on income tax, value-added tax and expanded withholding tax for fiscal year 2008.

Petitioner filed its Protest[7] to the FAN/FLD on July 8, 2011 and submitted additional documents on September 5, 2011[8] and September 9, 2011[9].

Subsequently, respondent issued a Final Decision[10] which was allegedly received by Mr. Ace Guerrero on behalf of petitioner sometime in September 2012.[11]

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[3] Exhibit "P-3", Docket, vol. IV, p. 1556.
[4] Exhibit "P-4", Docket, vol. IV, p. 1557.
[5] Exhibit "P-10", Docket, vol. IV, pp. 1584-1589.
[6] Exhibit "P-11", Docket, vol. IV, pp. 1438-1442.
[7] Exhibit "P-12", Docket, vol. IV, pp. 1443-1475.
[8] Exhibit "P-14", Docket, vol. IV, pp. 1496-1499.
[9] Exhibit "P-15", Docket, vol. IV, pp. 1500-1501.
[10] Exhibit "R-10", BIR Records, p. 234.
[11] Judicial Affidavit of Mr. Billy Ray Agustin, Docket, vol. I., p. 239.

On November 4, 2013, petitioner received a Warrant of Distraint and/or Levy signed by Ms. Ruth Vivian G. Gadia, the Chief of the Collection Division.[12] The subject details thereof read as follows:

"WARRANT OF DISTRAINT AND/OR LEVY

No. 10-1264-13

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WHEREAS, THERE IS DUE FROM **IBM PLAZA CONDOMINIUM ASSOCIATION INC.** WITH TAXPAYER IDENTIFICATION NO. **210-456-904** OF **NO. 8 EASTWOOD CITY CYBERPARK, E. RODRIGUEZ JR., BAGUMBAYAN, QUEZON CITY** THE SUM OF **51,746,341.37** AS INTERNAL REVENUE TAXES SHOWN HEREUNDER PLUS ALL INCREMENTS INCIDENT TO DELIQUENCY.

ASSESSMENT/DEMAND NO.	DATE ISSUED	KIND OF TAX	YEAR	AMOUNT
040-B058-08	06/07/11	IT	2008	40,541,907.93
		VT		9,854,917.85
		WTE		1,349,515.59
T O T A L				**51,746,341.37"**

On November 8, 2013 petitioner met with respondent's Collection Division to clarify the issuance of the warrant. Petitioner was allegedly informed that there were two (2) letters sent to the Association's principal address on September 24, 2012 and November 20, 2012. The first letter was a request of the RDO to furnish additional documents, while the second letter pertained to the transmittal of the docket to the Assessment Division. Petitioner alleged that it did not receive the said letters. On the other hand, respondent's examiner allegedly said that the same should be construed as a denial of the protest letter.[13]

In his Answer[14] filed on March 3, 2014, respondent interposed the following defenses:

> "5. Furthermore, the Petitioner alleged that they filed a timely protest on 08 July 2011 contesting that they were denied of procedural and substantive due process and that the assessment of the alleged deficiency taxes has no basis. Moreover, they also alleged that on 05 and 09 September 2011, they submitted voluminous documents in support of their protest. If such were the cases, then the Honorable

[12] Exhibit "P-16", Docket, vol. 1, p. 85.
[13] Petitioner's Memorandum, Docket, vol. IV, p. 1699.
[14] Docket, vol. I, pp. 106-108.

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Court has no jurisdiction to the case at bar because the period to elevate the case to the latter has already prescribed. The assessment is final and unappealable;

6. Section 228 of the National Internal Revenue Code (NIRC) of the Philippines, as amended, provides that and to quote:

   'SEC. 228 Protesting Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, that a pre-assessment notice shall not be required in the following cases

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   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, <u>or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'</u>

7. In simple words, if after the 180-day period, the protest was not acted upon, the remedy of the taxpayer is to appeal the inaction to the Court of Tax Appeals (CTA) within 30 days. As previously stated, the Petitioner submitted the documents in support of their protest on 05 September 2011. Counting from the latter, the 180-day period will fall on 03 March 2012. They have thirty (30) days from 03 March 2012 or until 02 April 2012 within which to appeal to the CTA. Clearly, the period to appeal had already prescribed and hence, the Honorable Court has no jurisdiction over the same."

A Notice of Pre-Trial Conference was issued by the Court on March 10, 2014[15], setting the case for pre-trial conference on April 10, 2014. Accordingly, petitioner's Pre-Trial Brief[16] was filed on April 7,

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[15] Docket, vol. I, p. 110.
[16] Docket, vol. I, p. 114-122.

2014; while respondent filed a Motion to Reset Pre-Trial Conference[17] on the same date.

The Court granted[18] respondent's motion and reset the Pre-Trial Conference to May 22, 2014.

On May 16, 2014, respondent filed another Motion for Resetting of Pre-Trial Conference.[19] During the pre-trial on May 22, 2014, petitioner's counsel objected to the motion and moved that respondent's motion be denied, and respondent be declared to have waived its right to present evidence, which the Court granted.[20]

Respondent filed its Motion for Reconsideration[21] on May 30, 2014 and a Motion to Hear Affirmative Defenses[22] on June 9, 2014, essentially reiterating its Special and Affirmative Defenses as set forth in its Answer:

> "1. The Petitioner stated in their Petition for Review that they filed a timely protest on 08 July 2011 contesting that they were denied of procedural and substantive due process and that the assessment has no basis. They also stated that on 05 and 09 September 2011, they submitted voluminous documents in support of their protest.
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> 2. If such were the cases, then the Honorable Court has no jurisdiction to the case at bar because the period to elevate the case to the latter has already prescribed. The assessment is already final and unappealable.
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> 3. Section 228 of the National Internal Revenue Code (NIRC) of the Philippines, as amended, provides that and to quote:
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> xxx xxx xxx
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> 4. In simple words, if after the 180-day period, the protest was not acted upon, the remedy of the taxpayer is to appeal the inaction to the Court of Tax Appeals (CTA) within 30 days. As previously stated, the Petitioner submitted the

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[17] Docket, vol. I, p. 111.
[18] Minutes of the Hearing dated April 10, 2014, Docket, vol. I, p. 160.
[19] Docket, vol. I, pp. 161-164.
[20] Minutes of the Hearing dated May 22, 2014, Docket, vol. I, p. 165; Resolution dated May 22, 2014, Docket, vol. I, p. 167.
[21] Docket, vol. I, pp. 168-172.
[22] Docket, vol. I, pp. 175-178.

documents in support of their protest on 05 September 2011. Counting from the latter, the 180-day period will fall on 03 March 2012. They have thirty (30) days from 03 March 2012 or until 02 April 2012 within which to appeal to the CTA.

5. In the case at bar, they only filed the Petition for Review on 04 December 2013. Clearly, the period to appeal had already prescribed and hence, the Honorable Court has no jurisdiction over the same."

In support thereof, respondent presented Mr. Jeremy D. Makinano and Ms. Gemina Salvador as witnesses.[23]

On July 7, 2014, petitioner filed an Urgent Motion to Expunge from the Records [Respondent's Motion to Hear Affirmative Defenses, Testimonies of Witnesses & Submitted Exhibits in Support Thereof][24], averring that having lost its right to present evidence as of May 22, 2014, respondent no longer had standing to participate in the proceedings. Hence, petitioner concluded that respondent's Motion to Hear Affirmative Defenses is a circumvention of the Court's Resolution[25] dated May 22, 2014 where it clearly ruled that the respondent has waived its right to present evidence.

During the hearing on July 14, 2014, the Court ordered the parties to submit their respective Memoranda.[26] Accordingly, both petitioner[27] and respondent[28] filed their Memoranda on August 13, 2014.

The Court in its Resolution[29] dated October 13, 2014, granted respondent's Motion for Reconsideration and Motion to Hear Affirmative Defenses. Further, the Court ordered petitioner to proceed with the cross-examination of respondent's witness. However, petitioner's Urgent Motion to Expunge from the Records [Respondent's Motion to Hear Affirmative Defenses, Testimonies of Witnesses & Submitted Exhibits in Support Thereof] was denied for being moot.

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23 Minutes of the Hearing dated June 19, 2014, Docket, vol. I, p. 211.
24 Docket, vol. I, pp. 212-218.
25 Docket, vol. I, p. 167.
26 Minutes of the Hearing dated July, 14, 2014, Docket, vol. I, p. 257.
27 Docket, vol. I, pp. 266-275.
28 Docket, vol. I, pp. 276-281.
29 Docket, vol. I, pp. 288-293.

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Respondent presented additional witnesses[30], Ms. Jeanette Uy and Billy Ray Agustin. On the other hand, petitioner presented its witnesses Ms. Mariae Edelgrace B. Ilagan[31] and Mr. Rigoberto Santos[32].

In its Resolution[33] dated May 21, 2015, the Court denied respondent's Motion to Dismiss (incorporated in respondent's Motion to Hear Affirmative Defenses). The Court found that respondent failed to prove that it served its Final Decision to the taxpayer or to his authorized representative. Hence, the Court ruled that the earliest indication of an appealable decision of the respondent was the Warrant of Distraint and/or Levy received by petitioner on November 4, 2013. Citing *Commissioner of Internal Revenue v. Algue, Inc. and The Court of Tax Appeals*, the Court held that "the warrant of distraint and levy is 'proof of the finality of the assessment' and 'renders hopeless a request for reconsideration,' being 'tantamount to an outright denial thereof and makes the said request deemed rejected"[34].

Considering that petitioner received the Warrant of Distraint and/or Levy on November 4, 2013, the Court found that it had thirty (30) days from November 4, 2013, or until December 4, 2013, within which to file an appeal before the Court. Petitioner filed its Petition for Review on December 4, 2013, hence, within the 30-day period allowed by law to appeal.[35]

A Notice of Pre-Trial Conference was issued by the Court on May 22, 2015, setting the case for pre-trial conference on July 9, 2015.[36] In the meantime, respondent filed a Motion for Reconsideration[37] of its Motion to Dismiss, hence, respondent also moved for the resetting of the pre-trial conference which was granted by the Court.[38]

In a Resolution[39] dated July 7, 2015, the Court denied respondent's Motion for Reconsideration.

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30 Minutes of the Hearing dated October 27, 2014, Docket, vol. I, p. 295.
31 Minutes of the Hearing dated February 18, 2015, Docket, vol. I, p. 549.
32 Minutes of the Hearing dated March 11, 2015, Docket, vol. II, p. 560.
33 Docket, vol. II, pp. 733-745.
34 *Commissioner of Internal Revenue v. Algue, Inc. and The Court of Tax Appeals*, G.R. No. L-28896, February 17, 1988.
35 Docket, vol. II, pp. 733-745.
36 Docket, vol. II, p. 746-747.
37 Docket, vol. II pp. 748-755.
38 Order dated July 3, 2015, Docket, vol. II, p. 768.
39 Docket, vol. II, pp. 769-771.

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On July 13, 2015, petitioner filed a Motion for Summary Judgment.[40] Citing Section 3 of Rule 35 of the Rules of Court[41], petitioner alleged that since there was no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, it may move for a summary judgment. Petitioner contended that in the Resolution dated May 21, 2015, the Court ruled that the Final Decision, Preliminary Collection Letter, and Final Notice Before Seizure failed to reach the petitioner. Thus, petitioner concludes that the Warrant of Distraint and/or Levy that was subsequently issued is void on the ground that petitioner's right to due process was violated and that there is no more genuine issue as to the validity of the aforesaid Warrant of Distraint and/or Levy.

Consequently, petitioner prayed that a summary judgment be rendered declaring the assessment, as well as the Warrant of Distraint and/or Levy No. 10-1264-13 null and void.

Respondent objected to the motion on the ground that the issue on the validity of the assessment had not been ruled by the Court.[42]

The Court denied[43] petitioner's Motion for Summary Judgment, in its resolution dated November 2, 2015. The Court emphasized that in its resolution dated May 21, 2015[44] petitioner did not present evidence to prove its submission of the supporting documents and that while petitioner submitted the Transmittal Letters of the supporting documents dated September 6, 2011 and September 9, 2011, the same were only photocopies. The Court found that there was a disputed fact that still needed to be determined to resolve the case. Moreover, the issue of whether or not the assessment is null and void for being arbitrary and devoid of procedural due process is material and substantial to the disposition of the case that cannot be determined merely on the basis of the pleadings and the documents submitted to the Court. The Court ruled that a full blown trial was

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40 Docket, vol. II, pp. 773-781.

41 RULE 35 – Summary Judgments

Section 3. *Motion and proceedings thereon.* — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (3a, R34)

42 Docket, vol. II, pp. 794-800.

43 Docket, vol. II, pp. 823-827.

44 Docket, vol. II, pp. 288-293.

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necessary to give the parties the opportunity to prove their allegations and to defeat each other's claim.

Respondent filed its Pre-Trial Brief[45] on February 16, 2016.

The parties submitted their Joint Stipulation of Facts and Issues (JSFI)[46] on March 9, 2016. Subsequently, the Court issued a Pre-Trial Order[47] on March 2, 2016.

Petitioner presented its sole witness, Rigoberto A. Santos[48], the President of IBM Plaza Condominium Association, Inc. Thereafter, petitioner formally offered its evidence[49] on July 14, 2016. The Court admitted all of petitioner's exhibits except for Exhibits "P-2", "P-8" "P-9" and "P-18" for petitioner's failure to submit the documents duly marked and compared during the Commissioner's Hearing.[50]

The admitted documentary exhibits of the petitioner are as follows:

Exhibit:	Description:
P-1	Secretary's Certificate duly notarized on 22 November 2013
P-3	Letter of Authority No. 2008-00038546 dated 18 June 2009
P-4	Post Reporting Notice dated 16 December 2009
P-5	Petitioner's Protest Letter to the Post Reporting Notice filed on 26 January 2010
P-6	Petitioner's Articles of Incorporation and By-Laws
P-7	Petitioner's Annual Income Tax Return (BIR Form No. 1702) for the year ended 2008
P-10	Preliminary Assessment Notice dated 06 May 2011 with stamped "received" on 12 May 2011
P-11	Formal Letter of Demand dated 07 June 2011 with stamped "received" on 09 June 2011
P-12	Protest to Assessment Notice with Demand with stamped "received" by the BIR on 08 July 2011

45 Docket, vol. II, pp. 834-837.
46 Docket, vol. II, pp. 948-949.
47 Docket, vol. II, pp. 952-957.
48 Minutes of the Hearing dated March 30, 2016, Docket, vol. II, p. 958; Minutes of the Hearing dated June 22, 2016, Docket, vol. II, pp. 976.
49 Docket, vol. III, pp. 1168-1186.
50 Resolution dated May 24, 2017, Docket, vol. IV, pp. 1594-1596.

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P-13	Petitioner's Audited Financial Statements for Calendar Year 2008
P-14	Copy of filed transmittal letter with stamped "received" by the BIR on 6 September 2011
P-15	Copy of filed transmittal letter with stamped "received" by the BIR on 9 September 2011
P-16	Warrant of Distraint and/or Levy No. 10-1264-13 received by petitioner on 4 November 2013
P-17	Copy of BIR Letter dated 24 September 2012
P-19	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for Return Period January 2008
P-20	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period February 2008
P-21	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period March 2008
P-22	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period April 2008
P-23	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period May 2008
P-24	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period June 2008
P-25	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period July 2008
P-26	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period August 2008
P-27	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period September 2008
P-28	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period October 2008
P-29	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form

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	No. 1601-E with Monthly Alphalist of Payees for the Return Period November 2008
P-30	Petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E with Monthly Alphalist of Payees for the Return Period December 2008
P-31	Petitioner's Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) for the year ended
P-32	Judicial Affidavit of Mr. Rigoberto A. Santos
P-32-A	Signature of Mr. Rigoberto A. Santos

Respondent presented its witnesses, Ms. Rosiel A. Montilla and Mr. John E. Tokdan[51]. Thereafter, respondent filed its Formal Offer of Evidence[52] on November 24, 2017. The Court admitted all of respondent's exhibits.[53]

Respondent's admitted documentary exhibits are as follows:

Exhibit:	**Description:**
R-1	Letter of Authority
R-2	Memorandum/Recommendation for Issuance of Subpoena Duces Tecum
R-3	Subpoena Duces Tecum
R-4	Referral Letter dated 30 September 2009
R-5	Complaint-Affidavit
R-6	Indorsement dated 09 December 2009
R-7	Preliminary Assessment Notice (PAN) with Details of Discrepancies
R-8	Letter dated 26 May 2011
R-9	Final Assessment Notice with Formal Letter of Demand and Details of Discrepancies
R-10	Protest Letter dated 07 July 2011
R-11	Financial Statements
R-12	Annual Income Tax Return
R-13	Judicial Affidavit of RO Rosiel A. Montilla
R-13A	Signature of RO Rosiel A. Montilla

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51 Minutes of the Hearing dated August 23, 2017, Docket, vol. IV, p. 1617.
52 Docket, vol. IV, pp. 1632-1638.
53 Resolution dated August 31, 2018, Docket, vol. IV, pp. 1686-1687.

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R-14	Judicial Affidavit of RO John E. Tokgan
R-14A	Signature of RO John E. Tokgan

In view of the filing of petitioner's Memorandum on October 29, 2018 and the report of the Records Division dated November 5, 2018 that no memorandum has been filed by respondent, the case was submitted for decision on November 16, 2018.[54]

STATEMENT OF ISSUES

The parties submitted the following issues[55] for this Court's resolution:

1. Whether or not the assessment is null and void for being arbitrary and devoid of procedural due process; and

2. Whether or not the Warrant of Distraint and/or Levy issued by the respondent is null and void for being devoid of procedural due process.

In this case, petitioner decries the lack of procedural due process in the issuance of the assessment and the Warrant of Distraint and/or Levy. Hence, petitioner prays that the Court cancel the assessment and the Warrant of Distraint and/or Levy and to declare them as null and void.

In its memorandum, petitioner argues that the LOA, the PAN and FAN/FLD were received by unauthorized persons on behalf of IBM in violation of procedural due process.[56] In addition, petitioner argues that it was deprived of substantive due process when the CIR failed to set forth the factual and legal basis of its findings of tax delinquency in its post-reporting and amended post-reporting notices.[57] Moreover, petitioner claims that it was deprived of the right to question the said notices as the PAN was prematurely issued before the expiration of its time to reply as set forth in the said notices. The petitioner further

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54 Resolution dated November 16, 2018, Docket, vol. IV, p. 1719.
55 JSFI, Docket, vol. II, pp. 948-949.
56 Petitioner's Memorandum, Docket, vol. IV, p. 1703-1705.
57 Petitioner's Memorandum, Docket, vol. IV, p. 1708.

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claims that the FAN/FLD was also issued before the expiration of the fifteen (15)-day period allowed to reply to the PAN.[58]

Petitioner also maintains that it did not receive the CIR's Final Decision on the Disputed Assessment (FDDA) and only received a Warrant of Distraint and/or Levy. Citing paragraph 3.1.6[59] of RR No. 12-99, petitioner argues that in order to sustain the validity of the assessment, the CIR or his authorized representative shall state the facts and the laws on which the final decision is based.[60]

We agree with petitioner.

Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99, provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

> Section 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:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> (d) When the excise tax due on excisable articles has not been paid; or

[58] Ibid, pp. 1708-1711.
[59] 3.1.6 Administrative Decision on a Disputed Assessment. — The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision.
[60] Ibid., 1712-1713

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within 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.

Section 3 of Revenue Regulations No. 12-99 prescribes the due process requirement for the four (4) stages of the assessment process:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be**

informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default**, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the **Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** (see

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illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**

3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, 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. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, 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 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 the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.
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> 3.1.6 Administrative Decision on a Disputed Assessment. — **The decision of the Commissioner or his duly authorized representative shall** (a) **state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void** (see illustration in ANNEX C hereof), **in which case, the same shall not be considered a decision on a disputed assessment**; and (b) **that the same is his final decision**.

From the foregoing rules, it is clear that the respondent is required to issue the Notice of Informal Conference, the PAN and the FAN in writing to the taxpayer and that the taxpayer must actually receive the same for such notices to be valid.[61]

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[61] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Barcelon Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064,

In the present case, respondent's witnesses testified to the personal service of the LOA, the PAN and the FAN/FLD at the administrative office of petitioner's building. However, petitioner avers that the same were not served to persons authorized to receive the same.

Revenue Officer Montilla stated that the LOA was received by Ms. Janice Melendrez.[62] During cross-examination[63], the revenue officer could not establish that she ascertained whether Ms. Janice Melendrez was in fact authorized to receive the LOA:

> ATTY. ARANAS: When you said served, you mean personally served, is that correct?
>
> WITNESS: Yes, sir.
>
> ATTY. ARANAS: And you said it was received by Ms. Janice Melendrez on 24 June 2009?
>
> WITNESS: Yes, sir.
>
> ATTY. ARANAS: And Ms. witness, is Ms. Janice Melendrez the same taxpayer referred to this case?
>
> WITNESS: No, sir.
>
> JUSTICE CASTAÑEDA: All right. Who is Janice Melendrez?
>
> WITNESS: I believe she is an employee of IBM Plaza condominium, Your Honors.
>
> JUSTICE CASTAÑEDA: Did she represent herself as an employee?
>
> WITNESS: I cannot recall if she wears an I.D. when I came at the company, because the only person there to receive the Letter of Authority (LOA), since the subject taxpayer was not

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August 7, 2006; *Pundanera vs. Commissioner of Internal Revenue*, CTA Case No. 8333, December 2, 2014; *Palaganas vs. Commissioner of Internal Revenue,* CTA Case No. 8394, September 17, 2014; *Coolmate Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8264, May 19, 2014.

62 Exhibit "R-"

63 Transcript of Stenographic Notes (TSN) dated August 23, 2017.

around, as indicated in the Letter of Authority, there was a note that...

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ATTY. ARANAS: At the time you served to Ms. Melendrez, did Ms. Janice Melendrez showed to you an Special Power of Attorney? Are you aware of an Special Power of Attorney?

WITNESS: Yes, sir.

ATTY. ARANAS: Did she present an Special Power of Attorney at that time?

WITNESS: No, sir.

ATTY. ARANAS: And before you served it to Ms. Janice Melendrez, presumably for IBM Plaza, did you check the general information sheet of the IBM?

WITNESS: No.

ATTY. ARANAS: So you are not aware who is the President, officers and Board of Directors before you sent the Letter of Authority (LOA)?

WITNESS: At the face of the income tax return, it was signed by Rhemus Maramba who is the building administrator and it was indicated that he is taxpayers authorized representative.

ATTY. ARANAS: Ok, but did you serve the Letter of Authority (LOA) to Mr. Rhemus Maramba?

WITNESS: No.

The revenue officer who reviewed and evaluated the internal revenue taxes of petitioner, Mr. John E. Tokdan, testified that the PAN and FAN were both received by petitioner IBM's administrative assistant, Ms. Gina F. Monteron.[64]

On the other hand, petitioner's witness, Ms. Mariae Edelgrace B. Ilagan, the property manager assigned by First Oceanic Property Management, Inc. to IBM Plaza testified that Ms. Janice Melendrez was an administrative assistant of IBM Plaza. However, in the absence of

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64 Exhibit "R-14", Docket, vol. II, pp. 858-861.

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the duly elected officers and JGLaw, IBM Plaza's legal counsel, it was the property manager of IBM Plaza was authorized to receive the notices from the BIR. She also testified employees of Service Providers are not authorized to receive any mail matter on behalf of IBM Plaza.[65]

It is also worth noting that in its resolution[66] dated May 21, 2015, the Court held that there was nothing on record to show that the recipient of the FDDA is the duly authorized representative to receive letters, mails and correspondences for petitioner. The Court noted that the testimony of Mr. Billy Ray Agustin, the letter carrier, failed to establish that the recipient, Mr. Guerrero is petitioner's duly authorized representative. The pertinent portions of his testimony[67] are reproduced as follows:

> Q29. Do you recall having delivered BIR mail sometime in February 2013?
>
> A: Yes, Your Honor.
>
> Q30. What are your proofs?
>
> A: It has Registry Receipt No. 005 and Certification from our Office that I delivered it.
>
> Q31. I am showing you a mail matter dated 04 February 2013 with Registered Letter No. 005 which is mark as Exhibit "R-19". Could you please go over the same and tell this Honorable Court what the relation of this Registry Receipt Number to the mail matter that we are pertaining to?
>
> A: This is the Registered Letter Number that I delivered to the Petitioner and was received by Mr. Ace Guerrero on 13 February 2013.
>
> Q32. Who is Mr. Ace Guerrero?
>
> A: He works in the Administration Room, Basement Area of IBM Building.
>
> Q33. Where did he receive the said mail?
>
> A: In the Administration Room, Basement Area of IBM Building.

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65 TSN dated February 18, 2015.
66 Docket, vol. II, pp. 733-745.
67 Exhibit "R-23", Docket, vol. I, pp. 382, 389.

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Thus, in its resolution, the Court found that the respondent failed to establish that Mr. Guerrero has authority to receive the subject Final Decision. The Letter Carrier did not even verify the rank or the position of the recipient. Hence, the Court ruled that the respondent fell short of the requirements to adduce competent evidence to establish petitioner's actual receipt of the Final Decision.[68]

In the similar case of *Mannasoft Technology Corp. vs. Commissioner of Internal Revenue*[69], the taxpayer did not receive the FDDA and only received a Warrant of Distraint and/or Levy. In its petition, the taxpayer alleged that the BIR violated its right to due process by failing to follow RR No. 12-99 in serving the NIC, PAN and FAN.

The Court stated that "[w]hile the Court is aware about the dangers of entertaining petitioner's blanket denial of receipt of the notices served upon it by personal service, it is also incumbent upon respondent to prove that such personal service was done properly and that the notices were received by the taxpayer or the taxpayer's authorized representative. This, respondent failed to do."[70]

The Court ruled in favor of the taxpayer, finding that while the BIR established that it was able to personally serve the notices at the office of the taxpayer, it failed to establish that said notices were served to the taxpayer or authorized representative of the taxpayer. The BIR even admitted that the NIC and PAN were received by the receptionist of the company while the FAN was received by the security guard. The BIR failed to establish that the persons who received the notices were authorized persons to receive such and or even connected to the taxpayer.[71]

Section 3 of RR 12-99 provides for the due process requirement in the issuance of deficiency tax assessments. It prescribes the mode of procedure for service of the notices, specifically Section 3.1.4 of the said regulation provides that if FAN was served by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand showing

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68 Docket, vol. II, pp. 733-745.
69 CTA Case No. 8745 dated Jan. 13, 2017
70 Ibid.
71 Ibid.

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his name, signature, designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself, and date of receipt thereof. Considering that the BIR has miserably failed to discharge its burden of proving that the notices were duly served on the taxpayer's duly authorized representatives, it is thus a necessary conclusion that the said assessment is not validly issued, therefore, it is void.[72]

The Court had occasion to rule on the validity of service of BIR notices to an unauthorized person, thus:

> An examination of the Notice of Informal Conference reveals that a certain SG Pacelo H.B. received it. A signature above the printed name, SG Pacelo, possibly a security guard, and the date March 30, 2010 appear and below is the printed name of one Geraldine Ayllon but without any signature.
>
> Significantly, there is no indication that SG Pacelo H.B. has been authorized to receive any communication for and in behalf of petitioner. Without proof of his authorization, or at the very least his connection with petitioner, his receipt of the Notice of Informal Conference is of no moment. His receipt cannot be deemed that of petitioner.[73]

The CTA *En Banc* also affirmed the cancellation of an assessment after finding that the requirements under Section 228 of the 1997 NIRC and RR No. 12-99 were not strictly complied with. A portion of the CTA En Banc's discussion dealt with the authority of the person who received the FAN, as follows:

> While the foregoing Certifications may have proven the fact of mailing via registered mail of the subject FAN/FLD, no evidence was, however, submitted by the CIR proving that the same had been actually served and received by petitioner or its duly authorized agent.
>
> In fact, CIR failed to establish that "S/G Macavinta, Jr." who received the said FAN/FLD on January 12, 2010, was duly authorized by SVI to receive the same in its behalf.[74]

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[72] Ibid.
[73] Ibid.; *Artdepot, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8548, January 6, 2016.
[74] Ibid.; *Commissioner of Internal Revenue v. SVI Technologies, Inc.,* C.T.A. *EB* Case No. 1304, May 24, 2016.

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In this case, petitioner denied the receipt of the LOA, the PAN, the FAN/FLD and the FDDA by authorized persons. Respondent also failed to present any evidence to show that they served the notices to authorized representatives. Hence, the receipt of these notices cannot be deemed as receipt by the petitioner. Essentially, the failure of the respondent to prove actual receipt of the Notice of assessment renders the assessment void for failure to accord the taxpayer due process.

The fact that petitioner was able to protest the FAN does not cure respondent's violation of petitioner's right to due process. Thus, petitioner's filing of a protest to the FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."[75]

In the recent case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[76], the Supreme Court ruled in favor of the taxpayer after finding that the CIR failed to accord it due process in the issuance of the assessment. The Court discussed its finding as follows:

> 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

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[75] Ibid.; *Pilipinas Shell Petroleum Corporation v. CIR*, G.R. No. 172598, December 21, 2007.
[76] G.R. Nos. 201398-99, October 3, 2018.

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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.

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 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.

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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.

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

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

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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 the present case, it is clear that the respondent failed to properly serve the FDDA to petitioner. Moreover, even if the petitioner received the same, it would not have been able to file an intelligent appeal as the respondent also failed to apprise the petitioner the basis for the denial of its Protest. The contents of the FDDA are reproduced as follows:

"IBM PLAZA CONDOMINIUM ASSOCIATION, INC.
#8 Eastwood City, Cyberpark, E. Rodriguez Jr.,
Bagumbayan, Quezon City

Attention: **Mr. Benigno G. Par, Jr.**
Mr. Winston P.L. Esguerra
Mr. Germaine L. Chua

Sir/Madam:

This refers to your internal revenue tax liabilities for the taxable year **2008** for which you have filed a protest letter received by this office dated **July 7, 2011**.

Please be informed that your case was returned by the investigating officer of **Revenue District Office No. 40, Cubao, Quezon City**, recommending for the reiteration of the assessments issued against you considering that you failed to submit documents in support of your protest.

In view thereof, it is requested that your tax liability per Final Assessment Notice/Demand Letter No. **040-B-058-08** dated **June 7, 2011** be paid immediately with the authorized agent bank in which you are enrolled and to submit to this office the proof/s of payment.

This is our **FINAL DECISION**. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from receipt hereof, otherwise your said deficiency tax liabilities shall become final, executory and demandable.

Thank you.

Very truly yours,

JONAS DP. AMORA
OIC-Regional Director

The Supreme Court in *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation* has ruled that it is important to note that Sec. 228 of the Tax Code did not limit the requirement of stating the facts and law only to the FAN/FLD. In addition, RR No. 12-99 which provided for the detailed process of assessment actually required that both the FAN/FLD and the FDDA state the law and facts on which the tax assessment is based. [77]

Accordingly, the deficiency tax assessments against herein petitioner for the taxable year 2008 are void for violating petitioner's right to due process. It has been settled that an invalid assessment bears no fruit.[78] Since the assessment against petitioner is void, the Warrant of Distraint and/or Levy subsequently issued by respondent to enforce the collection of such assessment is therefore also void.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of ₱40,541,907.93, for deficiency value-added tax in the amount of ₱9,854,917.85 and ₱1,349,515.59, all inclusive of interest, surcharges, and penalties for taxable year 2008, and the Warrant of Distraint and/or Levy are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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77 GR. Nos. 215534, G.R. No. 215557, April 18, 2016.

78 *Commissioner of Internal Revenue v. BASF Coating+ Inks Phils., Inc.,* G.R. No. 198677, November 26, 2014.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice