REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

UP NORTH PROPERTY HOLDINGS, INC.,	**CTA CASE NO. 10208**
Petitioner,	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 25 2024 4:05 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review[1] ("Petition"), filed on November 8, 2019, pursuant to *Section 7 of the Republic Act (RA) No. 1125,*[2] *as amended by RA No. 9282,*[3] praying that this Court render a decision declaring the Final Decision on Disputed Assessment ("FDDA"),[4] issued by respondent on February 1, 2018, null and void, and consequently, cancelling the same.

In the FDDA, respondent assessed petitioner for alleged deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), documentary stamp tax ("DST"), and compromise penalties, in the total amount of ₱717,786,038.34, including increments, for the taxable year 2009 ("TY2009").

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[1] Docket Vol. 1, pp. 6-73, with annexes.
[2] An Act Creating the Court of Tax Appeals, June 16, 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; March 30, 2004.
[4] Exhibit "P-4", Docket Vol. 1, pp. 79-83.

The Parties

Petitioner UP North Property Holdings, Inc. ("UP North" or "petitioner") is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at 28th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is engaged primarily to develop, invest, own, acquire, lease, hold, mortgage, administer, or otherwise deal with commercial, residential, industrial or agricultural lands, buildings, structures, or apertures, or in any other profitable business enterprise, venture, or establishment.[5]

On the other hand, respondent is the Commissioner of Internal Revenue ("CIR" or "Respondent") duly appointed and empowered to perform the duties of his office, as the chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the assessment and collection of all internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and charges therewith. He is holding office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, but for purposes of this case he is represented by the Legal Officers of the BIR Legal Division, Revenue Region 8A, 36/F Export Bank Plaza Building, Sen. Gil Puyat Ave. cor. Chino Roces Ave., Makati City.[6]

The Facts

On September 9, 2021, respondent issued Letter of Authority ("LOA") with reference number ELA201000003838, authorizing Group Supervisor Ma. Cristina Carsolin and Revenue Officer Gloria Beltran of Revenue District Office No. 50- South Makati to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes, for TY2009.[7]

Pursuant to the investigation, respondent issued Notice of Informal Conference ("NIC"),[8] dated October 4, 2012, and Amended Notice of Informal Conference ("ANIC"),[9] dated and January 18, 2013, which were received by petitioner on October 4, 2012 and January 21, 2013, respectively.[10]

On March 22, 2013, petitioner received a Preliminary Assessment Notice ("PAN"),[11] dated March 21, 2013, with Details of Discrepancies, covering TY2009.

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[5] See Exhibit "P-14", Audited Financial Statement, Note 1, ICPA USB Flash Drive.
[6] Joint Stipulation of Facts, dated December 21, 2020, Docket p. 294.
[7] Exhibit "R-1", BIR Records p. 740; Joint Stipulation of Facts, par. 3, Docket p. 294.
[8] Exhibit "R-2", BIR Records pp. 431-436.
[9] Exhibit "R-3", BIR Records pp. 447-454.
[10] Joint Stipulation of Facts, pars. 4-5, Docket p. 295.
[11] Exhibit "R-5", BIR Records pp. 488-495.

On April 11, 2013, petitioner received the Final Assessment Notice ("FAN")[12] issued by BIR on even date, assessing petitioner for deficiency income tax, VAT, EWT, DST, for a total amount of ₱490,532,743.53, inclusive of penalties, broken down as follows:

	Basic Tax	Surcharge	Interest	Total
Income Tax	₱177,171,973.51	₱88,585,986.76	₱ 109,409,761.18	₱ 375,167,721.45
VAT	44,816,430.57	22,408,215.28	29,640,236.55	96,864,882.40
EWT	11,049,022.30		7,368,032.95	18,417,055.25
DST	38,799.00	9,699.75	26,085.68	74,584.43
Compromise Penalties				8,500.00
TOTAL				**₱ 490,532,743.53**

Petitioner then filed its protest letter ("Protest to FAN"),[13] dated May 3, 2013, disputing the assessment per FAN, on May 10, 2013. Additional documents to support such protest were filed by petitioner on July 9, 2013.[14]

In response to the protest, the BIR issued its FDDA,[15] dated February 1, 2018, assessing petitioner for alleged deficiency taxes for a total amount of ₱717,786,038.34, broken down as follows:

	Basic Tax	Surcharge	Interest	Total
Income Tax	₱177,212,628.34	₱88,606,314.17	₱282,083,663.20	₱547,902,605.71
VAT	44,816,430.57	22,408,215.28	73,302,490.54	140,527,136.39
EWT	11,069,424.67		18,165,987.34	29,235,412.01
DST	38,799.00	9,699.75	63,885.48	112,384.23
Compromise Penalties				8,500.00
TOTAL				**₱717,786,038.34**

Undeterred, petitioner elevated its protest to the office of the CIR through a one-page letter dated and filed on March 9, 2018, indicating therein a "request for reinvestigation of the assessments" and reserving its right to present additional arguments and documents to support its position ("Request for Reinvestigation").[16]

[12] Exhibit "P-1", Docket pp. 228-239.
[13] Exhibit "P-2", *id.*, pp. 240-252
[14] Exhibit "P-3", *id.*, p. 253.
[15] *Supra* note 4.
[16] Exhibit "P-5", Docket p. 268.

On October 10, 2019, petitioner received respondent's decision on the Request for Reinvestigation, dated September 26, 2019 ("Decision"),[17] denying its administrative protest and affirming the FDDA dated February 1, 2018.

Aggrieved, petitioner appealed to this Court through the instant Petition,[18] filed on November 8, 2019.

After being granted a 30-day extension,[19] respondent filed his Answer[20] on January 27, 2020.

Thereafter, respondent and petitioner submitted their pre-trial briefs on July 15, 2020[21] and September 14, 2020,[22] respectively, and the pre-trial conference was held on November 19, 2020.[23]

On December 22, 2020, the parties filed their Joint Stipulation of Facts and Issues[24] which was admitted and approved by the Court on January 14, 2021.[25] Adopting the facts and issues jointly agreed upon therein, the Pre-Trial Order[26] was issued by the Court, on July 27, 2021.

Meanwhile, in an Omnibus Motion[27] filed by petitioner on January 15, 2021, petitioner moved to be allowed to avail the services of, and commission, an independent Certified Public Accountant ("ICPA") in the person of Madonna Mia S. Dayego of M.F. Padernal and Co. The commissioning was approved by the Court during the hearing held through videoconferencing, on May 19, 2021.[28]

On May 6, 2021,[29] petitioner presented its witness Ricardo Ulysses C. Tabije IV, its Chief Finance Officer, who testified on direct examination by way of a Judicial Affidavit dated September 11, 2020.[30]

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[17] Exhibit "P-6", *id.*, pp. 86-91.
[18] *Supra* note 1.
[19] See Resolution dated January 9, 2020, Docket p. 99.
[20] Answer, *id.*, pp. 101-109.
[21] Respondent's Pre-trial Brief, *id.*, pp. 135-142.
[22] Petitioner's Pre-trial Brief, *id.*, pp. 211-218.
[23] Minutes of Hearing, dated November 19, 2020, *id.*, p. 279.
[24] Joint Stipulation of Facts and Issues, Docket pp. 294-302.
[25] See Resolution, dated January 14, 2021, *id.*, p. 305.
[26] Pre-Trial Order, dated July 27, 2021, *id.*, pp. 424-432.
[27] Omnibus Motion, dated January 15, 2021, *id.*, pp. 301-209.
[28] Minutes of Hearing, dated May 19, 2021, *id.*, p.362.
[29] Minutes of Hearing, dated May 6, 2021, *id.*, p. 357.
[30] Exhibit "P-8", *id.*, pp. 219-227.

Moreover, on October 5, 2021,[31] petitioner also presented as its witness ICPA Dayego who submitted the ICPA Report[32] on July 12, 2021, and testified on direct examination through Judicial Affidavit dated July 29, 2021.[33]

On the other hand, respondent presented its lone witness RO Beltran during the hearing held on October 19, 2022.[34] RO Beltran testified on direct examination by way of her Judicial Affidavit, dated July 13, 2020,[35] and Supplemental Judicial Affidavit, dated August 23, 2022.[36]

On November 10, 2021, petitioner submitted its Formal Offer of Evidence with Manifestation.[37] The same was resolved by the Court on April 19, 2022.[38]

Respondent, on the other hand, filed his Formal Offer of Evidence[39] on October 27, 2022, which was resolved on February 8, 2023.[40]

Petitioner and respondent submitted their memoranda on May 19, 2023[41] and June 7, 2023,[42] respectively.

The instant Petition was then submitted for decision on June 27, 2023.[43]

The Issues[44]

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

I.

WHETHER PETITIONER HAS TAX DEFICIENCY FOR TAXABLE YEAR 2009 IN THE AGGREGATE AMOUNT OF ₱717,786,038.04 INCLUSIVE OF SURCHARGES AND INTERESTS AS INDICATED IN THE FDDA; AND

[31] Minutes of Hearing, dated October 5, 2021, *id.*, p. 448.
[32] Exhibit "P-9", *id.*, pp. 371-419.
[33] Exhibit "P-60", *id.*, pp. 435-444.
[34] Minutes of Hearing, dated October 19, 2022, *id.*, p. 514.
[35] Exhibit "R-21", *id.*, pp. 143-150.
[36] Exhibit "R-22", *id.*, pp. 498-503.
[37] Formal Offer of Evidence with Manifestation, *id.*, pp. 451-457.
[38] Resolution, dated April 19, 2022, *id.*, pp. 484-485.
[39] Formal Offer of Evidence / Exhibits with Motion, *id.*, pp. 518-526.
[40] Resolution, dated February 8, 2023, *id.*, pp. 534-535.
[41] Petitioner's Memorandum, dated May 16, 2023, *id.*, pp. 541-558.
[42] Memorandum for Respondent, dated June 7, 2023, *id.*, pp. 561-571.
[43] Resolution dated June 27. 2023, *id.*, p. 573.
[44] See Stipulated Issues in the Pre-Trial Order, *id.*, p. 426.

II.
WHETHER THE DEFICIENCY TAX ASSESSMENT HAVE FACTUAL AND LEGAL BASES.

Petitioner's Arguments[45]

Petitioner advances that the assessment must be cancelled by the Court for being void. Specifically, it argues that:

a. The FAN does not appropriately state the law and facts on which they were made, and such invalidity becomes more apparent when considered in relation to petitioner's protest letter;
b. The deficiency taxes have no factual and legal bases:
    i. The FAN does not indicate the legal basis for alleging undeclared sales on the basis of comparing the sales per VATt returns versus the sales per income tax return and the movement of receivables without regard to Philippine Accounting Standards ("PAS") 17 adjustments;
    ii. The FAN does not indicate the legal and factual bases for comparing amounts of different nature, allege unaccounted expenses on the basis of resulting variance, and then treat the same as undeclared income from unaccounted expense;
    iii. The FAN does not indicate the legal and factual bases for comparing amounts subjected to withholding by third parties versus amounts declared by petitioner for VAT purposes without regard to the differences in the nature of the amounts and the timing of income recognition in alleging undeclared receipts per letter notice;
    iv. The FAN does not indicate the legal basis to disallow expenses due to non-withholding notwithstanding petitioner's claim that the same expenses were subjected to withholding in a different period or that there are amounts which petitioner has not claimed as expenses to begin with;
    v. The FAN does not indicate the legal or factual basis in disallowing creditable withholding tax;
    vi. The VAT portion of the FAN does not indicate the legal basis for imposing VAT on income rather than on receipts;
    vii. The EWT portion of the FAN is void for simply reiterating the allegation under the income tax portion of the assessment;
    viii. The DST portion, as well as the compromise penalties for DST, are void for failure to indicate the legal basis for imposing DST on trade transactions that are not loan transactions;
c. Respondent erred in considering as pro forma the "request for reconsideration" filed by petitioner on March 10, 2018.

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[45] Petitioner's Memorandum, *id.*, pp. 544-556.

Respondent's Counter-Arguments[46]

On the other hand, respondent insists that the instant Petition must fail due to the following:

a. Petitioner's tax deficiency for TY2009 in the aggregate amount of ₱717,786,038.04 inclusive of interest, surcharges and penalty as indicated in the FDDA are supported by factual and legal bases; and
b. The FDDA has already attained finality by virtue of *Section 228 of the National Internal Revenue Code, as amended, ("Tax Code")* considering the fact that the appeal filed by petitioner to the CIR does not allege any material fact or law that would amount to raising a valid issue with the findings made by the CIR's duly authorized representative in the issuance of the FDDA and that the presumption of regularity in the assessments made by tax examiners was not refuted in this case.

The Ruling of the Court

The FAN and FDDA duly state the factual and legal bases of the assessments made against the petitioner.

Petitioner argues that respondent's deficiency tax assessments are void for failure to inform petitioner of the factual and legal bases thereof, denying the latter the opportunity to intelligibly respond thereto, as required by *Section 228 of the Tax Code.*

We disagree.

Section 228 of the Tax Code reads:

> SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> . . . .
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> *The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.*
>
> . . . .
>
> (Italics supplied)

[46] Memorandum for Respondent, *id.*, pp. 563-568.

In relation thereto, *Section 3 of Revenue Regulations No. 12-99*,[47] *as amended by RR No. 18-2013*,[48] provides as follows:

> SECTION 3. Due process requirement in the Issuance of a deficiency tax assessment.—
>
> . . . .
>
> 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; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof).
>
> . . . .
>
> (Italics supplied)

The law requires that the legal and factual bases of the assessment be stated in the FAN. This is in keeping with the constitutional principle that no person shall be deprived of property without due process of law.

Based on the Court's perusal of the Details of Discrepancies[49] attached to the FAN dated April 11, 2013, the factual and legal bases on which the assessments were made were duly stated therein. Such Details of Discrepancies partly provides:

> **INCOME TAX**
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> - **Undeclared Sales, P178,392,162.52** – Reconciliation of Sales as computed below disclosed that there was an undeclared sales amounting to P178,392,162.52. Income realized within taxpayer's annual accounting period becomes the basis for computation of the gross income and the tax liability pursuant to Sec. 32 and 43 of the NIRC, as amended, and should be taxes in accordance to Sec. 27 of the said Code.
>
>   Schedule 1:
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> . . . .
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> - **Unaccounted Expenses treated as Undeclared Income, P260,884,804.64** – Verification disclosed that some of your expenses were not explained nor accounted in your FS/ITR. Said

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[47] 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 September 6, 1999.

[48] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, dated November 28, 2013.

[49] Exhibit "R-9", BIR Records pp. 498-499.

discrepancy was considered undeclared source of income as cited the case of Perez vs. CTA and CIR L-10507 dated May 30, 1858 for it has been held that unreflected sources of funds not accounted for in the taxpayer's returns led to the inference that part of his income had not been reported, subject to income tax rate of 30% pursuant to Section 27 of the Tax Code in relation with Section 32 of the same code, as amended.

Schedule 2:

. . . .

- **Undeclared Sales per LN, P83,082,736.82** – Audit disclosed an understatement of income amounting to P83,082,736.82 which was arrived at after comparing Sales per Summary List of Sales as against Sales per Letter Notice. The said discrepancy was then assessed in accordance with the provision of Section 32 of the National Internal Revenue Code, as amended.

Schedule 3:

. . . .

- **Disallowed expenses for non-withholding of tax, P54,548,313.33** – Comparison of your income payments subject to withholding tax claimed per financial statement/income tax return as against the Alphalist disclosed that you have not subjected to withholding tax the hereunder expenses hence disallowed pursuant to Section 34 (K) of the NIRC, as amended, which states that "...any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be disallowed as a deduction only if it is shown that the tax required to be deducted and withheld there from has been paid to the Bureau of Internal Revenue in accordance in this Section of this Code".

Schedule 4:

. . . .

- **Disallowed Creditable Withholding Tax, P4,099,418.22** – Verification disclosed that your creditable withholding tax claimed per income tax return amounting to P4,099,418.22 were not supported with copies of the withholding tax certificates (BIR Form 2307) thus disallowed pursuant to Section 2.58.3(B) of Revenue Regulations No. 2-98, as amended.

- **Excess credits carried forward to succeeding year P23,234,954.00** – Excess tax credits carried over to succeeding period in the amount of P23,234,954.00 was deducted from the total allowable tax credit considering that the said amount has been credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 76 of 1997 NIRC.

VALUE ADDED TAX

- **Undeclared Income, P343,967,541.46** – The unaccounted expenses and undeclared sales per LN in the aggregated amount of P343,967,541.46 which was considered as undeclared income as shown under income tax is likewise subject to VAT pursuant to Sections 106 and 108 of the Tax Code, as amended:

  Schedule 5:

. . . .

- **Input Tax Carried Over to Succeeding Period/Quarter, P249,700,465.02** – The excess input tax was not applied against the allowable input tax in computing deficiency value added tax since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the Tax Code, as amended.

EXPANDED WITHHOLDING TAX

- **Basic Tax Due, P11,049,022.30** – Since you did not withhold and remit the corresponding expanded withholding tax on several income payments previously disallowed as deduction from gross income (refer to Schedule 4), you are still liable for the deficiency EWT pursuant to the provisions imposed under Section 2.57.2(C) of the Revenue Regulations No. 2-98, as amended.

DOCUMENTARY STAMP TAX

- **Basic tax due, P38,799.00** – Verification disclosed that you failed to pay the documentary stamp tax on your loan as presented below pursuant to Section 179 of the National Internal Revenue Code as established in the case of CIR vs. Filinvest Dev't Corp.

  Schedule 5:

. . . .

Clearly, the above Details of Discrepancies states the basis used by the BIR in its assessment. The description for each assessment narrates the type of reconciliation, documents, and/or specific provision of the Tax Code and/or regulations relied upon by the tax authorities. Moreover, the accompanying schedules provide labels/descriptions as to where the amounts in the BIR's computations correspond.

We also note that petitioner highlights that the alleged invalidity, due to failure to indicate the required facts and law, becomes more apparent when considered in relation to petitioner's Protest Letter. However, upon checking the Protest Letter,[50] We find that the contentions of the petitioner effectively question the probative value of the alleged facts and the merits of the claimed legal basis of the BIR. Petitioner argued therein, among others, the BIR's

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[50] *Supra* note 13.

failure to consider certain accounting standards required for financial reporting purposes (i.e., PAS 17), the use of the formula for the alleged undeclared income, BIR's reliance to the net worth method in the *Perez case*[51] instead of the *Benipayo case*[52] — all of which manifest that the BIR's basis were stated in the FAN, albeit deemed unmeritorious by petitioner.

Thus, We find it erroneous for petitioner to claim that there was violation of *Section 228 of the Tax Code* due to failure to state the factual and legal bases used by the BIR, that would necessitate an outright nullity of the assessment notices.

The FDDA has already attained finality due to petitioner's failure to file a valid motion for reconsideration.

To recall, petitioner filed an administrative protest before the CIR after receipt of the FDDA. In its one-page Request for Reinvestigation filed on March 9, 2018,[53] petitioner stated:

> We refer to the notice of Final Decision on Disputed Assessment dated February 1, 2018 and received on February 8, 2018 assessing UP North Property Holdings, Inc. (UP North or the "Company") deficiency internal revenue taxes for the taxable year ended 31 December 2009, in the following amounts:
>
> . . . .
>
> We respectfully ***request for a reinvestigation of the assessments***. We provide as ***attached the submitted protest to the Formal Assessment Notice (FAN) submitted on May 10, 2013 accompanied by the additional supporting documents submitted on July 9, 2013*** in support of our position but we also reserve our right to present additional arguments and documents within the period allowed by law for your kind office to be able to validate the correctness of our allegations and our position.
> (Emphasis and italics supplied)

In response to the foregoing, the CIR issued his Decision,[54] dated February 1, 2018 whereby it was held that the protest against the FDDA through the above-quoted one-page Request for Reinvestigation does not allege the relevant information necessary to put in issue certain findings in the FDDA.

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[51] Perez vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. L-10507, May 30, 1958.
[52] Commissioner of Internal Revenue vs. Benipayo, G.R. No. L-13656, January 31, 1962.
[53] *Supra* note 16.
[54] *Supra* note 17.

Moreover, the CIR, quoting the Decision in his Answer[55] and Memorandum,[56] argues that:

> Considering the fact that the appeal filed by UPNPHI against the FDDA does not allege any material fact or law that would amount to raising a valid issue with the findings made by the Commissioner's duly authorized representative in the issuance of the FDDA and that the presumption of regularity in the assessments made by the tax examiners was not refuted in this case, this Office rules that the FDDA has already attained finality by virtue of the provisions of Section 228 of the NIRC, as implemented by RR No. 18-2013.

We agree with respondent.

Section 228 of the Tax Code refers to the implementing rules and regulations as to the form and manner by which an assessment may be protested administratively, to wit:

> SECTION 228. Protesting of Assessment.
>
> . . . .
>
> 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.
> (Emphasis and italics supplied)

Accordingly, guidance on determining the propriety of the administrative remedy availed by petitioner may be gleaned from *RR No. 12-99, as amended by RR No. 18-2013. Section 3.1.4* thereof states:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) ***Request for reconsideration*** — refers to a plea of ***re-evaluation of an assessment on the basis of existing records without need of additional evidence.*** It may involve both a *question of fact or of law or both.*
>
> ***(ii) Request for reinvestigation*** — refers to a plea of ***re-evaluation of an assessment on the basis of newly discovered or additional evidence***

[55] *Supra* note 20.
[56] *Supra* note 42.

> ***that a taxpayer intends to present in the reinvestigation.*** It may also involve a *question of fact or of law or both.*
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the ***applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.***
>
> ....
>
> If there are several issues involved in the 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 ***assessment attributable thereto shall become final, executory and demandable***; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.
>
> ....
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) ***elevate his protest <u>through request for reconsideration</u> to the Commissioner within thirty (30) days from date of receipt of the said decision. <u>No request for reinvestigation shall be allowed in administrative appeal</u>*** and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
> (Emphasis, italics and underscoring supplied)

We find that petitioner's one-page administrative protest to the CIR failed to exhibit compliance with the foregoing regulations.

First, it is clear from *RR No. 12-99, as amended by RR No. 18-2013*, that if the protest is denied by the CIR's duly authorized representative, the elevation to the CIR through a request for reinvestigation shall not be allowed. Instead, only a request for reconsideration shall be permitted.

Here, petitioner's appeal to the CIR unequivocally states that it is a ***request for reinvestigation***. Petitioner even made a reservation on the submission of other documents to support its position. Although no additional documents were submitted thereafter, this does not negate petitioner's intention to ask for reinvestigation, not merely a reconsideration, which is clearly not sanctioned by the regulations.

Second, the appeal to the CIR does not state the applicable law, rules and regulations, or jurisprudence on which the protest is based. In the one-page protest to the CIR, petitioner merely stated the FDDA being protested and attached thereto the Protest Letter against the FAN. There was even no mention of the provision of law or regulations relied upon by petitioner to elevate an appeal, via request for reinvestigation, to the CIR, much less a discussion of any claimed meritorious grounds to support its position.

Third, petitioner cannot insist that the administrative appeal be simply read in conjunction of the Protest Letter against the FAN and the documents submitted in relation thereto.

At the time of the appeal to the CIR, the BIR's regional office already had the opportunity to review all the contentions raised by the petitioner in its Protest Letter, as well all the documents subsequently submitted. This can be inferred from the FDDA which acknowledges the arguments raised by petitioner and the reasons for denying the same, to wit:

> I. INCOME TAX
>
> ▪ Undeclared Receipts . . .
>
> In your protest letter, you discussed that adjustments conforming to PAS No. 17 were made on accounts receivable per Financial Statements in such no income earned or received by the lessor for income tax purposes. Moreover, you further explained that the investigation failed to consider certain recoveries which were presented at gross for VAT purposes while being presented at net for income tax purposes. However, *you have failed to provide adequate documents to prove the assessment as otherwise such as contract of lease indicating the terms and conditions of the lease*. In view of the foregoing, the assessment is hereby reiterated.
>
> ▪ Undeclared Revenue from Unaccounted Expenses . . .
>
> You have argued that you have no unaccounted or undeclared sales. However, *you failed to support such allegation* by providing invoices, contract & accounting records/documents. Moreover, *you have not provided reconciliation of the discrepancy per investigation*. Hence this assessment is hereby sustained.
>
> ▪ Undeclared Receipts per Letter Notice . . .
>
> You have contested that you have no unaccounted or undeclared sales. However, *you failed to make some reconciliation which must be duly supported with invoices*

> *and accounting records/documents*. Hence, this assessment is hereby reiterated.
>
> - Disallowed Expenses due to non-withholding . . .
>
> Reinvestigation disclosed that there was a mathematical error in computing the total amounts, hence, adjustments were made.
>
> - Disallowed Creditable Withholding Tax . . .
>
> Reinvestigation disclosed that *you failed to submit supporting documents (Form 2307) on your claimed Creditable Withholding Tax*, hence, this assessment was reiterated.
>
> II. VALUE ADDED TAX
>
> . . . .
>
> Since you have failed to refute the validity of the assessment under Income Tax, hence the assessment under VAT is likewise reiterated.
>
> III. EXPANDED WITHHOLDING TAX
>
> . . . .
>
> As previously discussed under Income Tax, the assessment for disallowed expenses were reiterated, hence the assessment for deficiency expanded withholding tax is likewise reiterated.
>
> IV. DOCUMENTARY STAMP TAX
>
> . . . .
>
> You argued that this assessment has *no basis for the amount represents payables in* the course of trade or business. However, you have *failed to present supporting documents to prove your claim*. Hence, the assessment is hereby sustained.
>
> V. COMPROMISE PENALTY
>
> . . . .
>
> Since you have failed to refute the validity of our assessment for deficiency DST, hence the corresponding compromise penalty is hereby reiterated.
> (Italics supplied)

Procedural rules would dictate that the in the appeal to the CIR, petitioner must allege and highlight the facts, laws, rules and jurisprudence to contest not just the assessment per FAN but also the regional director's findings per FDDA. Specifically, petitioner should have justified the sufficiency of the documents already provided to the regional office during the request for reinvestigation on the FAN, and likewise provided explanation on its failure to submit the documents mentioned in the FDDA which, to the regional director, could have duly supported its position.

Moreover, We must emphasize that as a general rule, there is a presumption of administrative regularity and that the tax assessments made by tax examiners are correct and made in good faith.[57] To simply ask the CIR to review the same protest and all the documents already considered by the regional director goes against such presumption of regularity.

Thus, as there was failure to allege facts and law that would raise valid issue against the FDDA, and there was similar failure to refute the administrative regularity on the issuance of the FDDA, the Court finds that the Request for Reinvestigation filed with the CIR is merely a *pro-forma* protest. The aforesaid appeal is merely an empty statement of objection executed simply to disagree without consideration on the significance of every opportunity, even at administrative level, to dispute an assessment, consistent with a taxpayer's due process rights.

In the case of *Ferdinand R. Marcos II vs. Court of Appeals*,[58] the Supreme Court clarified the consequence of a taxpayer's failure to properly protest an assessment:

> Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 (now 228) of the NIRC on protests on assessments of internal revenue taxes.

Further, in *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*,[59] the Supreme Court held that the fact that an assessment has become final shall mean that the validity or correctness of the assessment may no longer be questioned on appeal.

As applied herein, the FDDA dated February 1, 2018 has become final and unappealable due petitioner's failure to file a valid administrative protest before the CIR, or to elevate the same to this Court within 30 days from receipt thereof. Thus, the validity and correctness of the assessment may no longer be ruled upon by this Court in the instant Petition.

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[57] Commissioner of Internal Revenue v. Spouses Magaan, G.R. No. 232663, May 3, 2021, citing Commissioner of Internal Revenue v. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.
[58] G.R. No. 120880, June 5, 1997.
[59] G.R. No. 169225, November 17, 2010.

ACCORDINGLY, premises considered, the Petition for Review is hereby **DISMISSED** given that the BIR's Final Assessment Notice, dated April 11, 2013, Final Decision on Disputed Assessment, dated February 1, 2018, and Decision, dated September 26, 2019, assessing petitioner for deficiency income tax, VAT, EWT, DST and compromise penalty in the aggregate amount of ₱717,786,038.34, including increments, for the taxable year 2009, have already become final, executory, and demandable.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(on Official Business)
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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting 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