CTA Form No. 8

12-000252-0079

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 8525

ASIA UNITED LEASING & FINANCE CORPORATION,
Petitioner,

\- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. VICTOR RICO P. LOPEZ
Bureau of Internal Revenue, Revenue Region No. 7B- East NCR
25th Floor, Legal Division, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

ZAMBRANO GRUBA CAGANDA & ADVINCULA LAW OFFICES
27/F, 88 Corporate Center, Sedeño corner Valero Streets
Salcedo Village, 1227 Makati City

GREETINGS:

You are hereby notified by these presents that on **February 26, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 27, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ASIA UNITED LEASING & FINANCE CORPORATION, *Petitioner,*	**CTA Case No. 8525** Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 2 6 2024 1:20PM

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by petitioner on August 3, 2012, praying that a judgment be rendered ordering the nullification of the Final Assessment Notice (FAN) dated January 4, 2012 and the cancellation of the deficiency assessments for (i) income tax, (ii) expanded withholding tax (EWT) and (iii) documentary stamp tax (DST), for the taxable year (TY) 2008.[1]

THE PARTIES

Petitioner Asia United Leasing & Finance Corporation, is a corporation duly registered and operating under the laws of the Philippines with current business address at 31/F Joy-Nostalg Center, 17 ADB Avenue, Ortigas Center, Pasig City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, who is vested with the authority to administer and enforce national internal revenue laws. He may be served

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[1] Statement of the Case, Pre-Trial Order dated February 5, 2013, Docket – Vol. I, p. 198.
[2] Par. 3(a), Parties' *Joint Manifestation* dated November 6, 2020; Docket – Vol. III, p. 1332.

with summons and other legal processes at his principal place of business at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

On October 11, 2011, a Notice of Informal Conference (NIC) was sent by the BIR, Revenue Region No. 7, Revenue District Office (RDO) No. 043A to petitioner informing the latter that a report of investigation relative to internal revenue deficiencies for TY 2008 has been submitted to Revenue District Officer, Florante R. Aninag, containing the recommendation of Revenue Officer Benedict R. Bacani.[4]

On December 16, 2011, the Assessment Division of Revenue Region No. 7 issued a Preliminary Assessment Notice (PAN) to petitioner, stating therein that the latter is subject to deficiency income tax, EWT, and DST, for TY 2008. The PAN was received by petitioner on January 4, 2012.[5]

On the same day that the PAN was received by petitioner, a FAN and Formal Letter of Demand (FLD) was also issued by the BIR, showing the amount of, *inter alia*, deficiency income tax and interest due from petitioner.[6] The FAN was received by petitioner only on January 11, 2012.[7] It is also on this latter date that petitioner filed its protest to the PAN.[8]

On February 1, 2012, the Assessment Division of the BIR Revenue Region No. 7 wrote petitioner, stating therein, that "this case will be forwarded to the Revenue District Office No. 43, Pasig City for appropriate action." This letter was in response to petitioner's letter dated January 23, 2012, reiterating petitioner's position in its protest to the PAN, and thereby protesting or disputing the FAN.[9]

Subsequently, on July 5, 2012, petitioner received from the BIR the Preliminary Collection Letter (PCL) dated June 25,

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[3] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 144.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[6] Refer to par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 146.
[7] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[8] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[9] Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. I, pp. 146 to 147.

2012, for deficiency internal revenue tax of ₱5,578,461.96,[10] to which petitioner sent a reply via a letter dated July 11, 2012.[11]

On August 1, 2012, petitioner received the Final Notice Before Seizure (FNBS) dated July 16, 2012 from the BIR Revenue Region No. 7, RDO No. 043A, stating that: "(a) [petitioner] has at least ten (10) days from the receipt of the same to settle the deficiency internal revenue taxes for the year 2008; (b) that upon Petitioner's failure to settle the Assessment, the BIR will be constrained to enforce collection through summary and/or judicial remedies by issuing the corresponding Warrant of Distraint and/or Levy (WDL) and Garnishment, and filing the necessary action in a court of law in order to protect the interest of the government, without further notice."[12]

On August 3, 2012, petitioner filed the present Petition for Review.[13]

Respondent's Answer to the Petition for Review was filed on September 28, 2012.[14]

Petitioner filed its Reply to the Answer on October 15, 2012.[15]

The Pre-Trial Conference was set and held on November 23, 2012.[16] Prior thereto, the Pre-Trial Brief for Petitioner and Respondent's Pre-Trial Brief were separately filed on November 20, 2012.[17]

On December 7, 2012, the parties then submitted their Joint Stipulation of Facts and Issues (JSFI), [18] which was approved by the Court (except the reservation made by both parties for the presentation of other witnesses who were not

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[10] Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 147.
[11] Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 147.
[12] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 147.
[13] Docket – Vol. I, pp. 6 to 28.
[14] Docket – Vol. I, pp. 101 to 105.
[15] Docket – Vol. I, pp. 107 to 112.
[16] Notice of Pre-Trial Conference dated October 4, 2012, Docket – Vol. I, p. 106; Minutes of the hearing held on November 23, 2012, Docket – Vol. I, p. 140; Resolution dated December 5, 2012, Docket – Vol. I, p. 143.
[17] Docket – Vol. I, pp. 113 to 132, and pp. 133 to 137, respectively.
[18] Docket – Vol. I, pp. 144 to 161. *cm*

identified or described) in the Resolution dated December 28, 2012,[19] thereby terminating the Pre-Trial. The Pre-Trial Order dated February 5, 2013 was then issued.[20]

In the Order dated April 3, 2013,[21] the present case was transferred to this Court's Third Division.

After a series of re-settings,[22] trial then proceeded. In the Resolution dated August 30, 2013,[23] counsel for petitioner was fined ₱1,000.00 due to the series of re-settings granted by the Court, all at the instance of petitioner, thereby delaying the administration of justice. In the same Resolution, counsel for petitioner was also ordered to submit a status report on the offer of compromise on the next scheduled hearing.

On September 20, 2013, petitioner filed a Compliance and Motion,[24] (1) informing the Court: (i) that the compromise offer is now pending review by the Regional Evaluation Board (REB) of Revenue Region No. 7 of the BIR; (ii) that petitioner already paid the amount of ₱115,006.67 for the EWT and DST as required by the Collection Division thereof; and (iii) that petitioner was informed by the same Division that the approval of the REB is expected at the soonest possible time, considering that only the signatures of the Assessment Chief of the same Revenue Region and the Regional Director are lacking; and (2) praying for the suspension of the proceedings for a period of at least four (4) months, for purposes of the compromise settlement to save the parties further cost of litigation and so as not to waste the time of the Court.

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[19] Docket – Vol. I, p. 163.
[20] Docket – Vol. I, pp. 198 to 208.
[21] Docket – Vol. I, p. 310.
[22] Petitioner's *Motion to Reset Hearings on 4 April and 9 May 2013 and Motion to Set Commissioner's Hearing* dated March 13, 2013, Docket – Vol. I, pp. 286 to 289; Order dated March 18, 2013, Docket – Vol. I, p. 310; Petitioner's *Motion to Reset Hearings on 17 June 2013 and Motion to Set Commissioner's Hearing* dated June 5, 2013, Docket – Vol. I, pp. 348 to 351; Order dated June 11, 2013, Docket – Vol. I, p. 353; Petitioner's *Motion for Reset Petitioner's Initial Presentation of Evidence* dated August 12, 2013, Docket – Vol. II, pp. 492 to 496; Resolution dated August 30, 2013; Docket – Vol. II, pp. 592 to 593.
[23] Docket – Vol. II, pp. 592 to 593.
[24] Docket – Vol. II, pp. 594 to 597.

In the Resolution dated September 25, 2013,[25] the Court noted the said Compliance filed by petitioner, and granted respondent ten (10) days from notice, to file comment/opposition to petitioner's Motion.

Counsel for respondent confirmed the status of the case and interposed no objection to petitioner's motion, rendering the Resolution dated September 25, 2013 directing respondent to comment thereon, moot.[26] In the Resolution dated September 30, 2013,[27] the Court archived the instant case considering that the parties agreed to have the case archived, to be revived upon the filing of the appropriate action.

Subsequently, in the Order dated October 3, 2018,[28] the instant case was transferred to this Court's First Division.

The parties failed to file a motion/manifestation as to the status of the compromise settlement.[29] Thus, in the Resolution dated February 12, 2019,[30] the Court directed the parties to give an update on the status of the offer of compromise by petitioner within (ten) 10 days from receipt thereof.

Petitioner then filed its Manifestation on March 8, 2019;[31] while respondent filed his Manifestation on March 11, 2019.[32] In the Resolution dated March 27, 2019,[33] the Court noted the said Manifestations separately filed by petitioner and respondent to the effect that the offer of compromise is still for deliberation by the Technical Working Group (TWG) of the REB.

However, the parties failed to give an update on the status of the compromise settlement.[34] In view thereof and considering that almost seven (7) months have lapsed from the last update,

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[25] Docket – Vol. II, pp. 602 to 603.
[26] Minutes of the hearing held on September 26, 2013, Docket – Vol. II, p. 600; Resolution dated September 26, 2013, Docket – Vol. II, pp. 605 to 606.
[27] Docket – Vol. II, pp. 605 to 606.
[28] Docket – Vol. II, p. 607.
[29] Records Verification dated February 1, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 609.
[30] Docket – Vol. II, pp. 611 to 612.
[31] Docket – Vol. II, pp. 613 to 615.
[32] Docket – Vol. II, pp. 616 to 617.
[33] Docket – Vol. II, p. 619.
[34] Records Verification dated September 17, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 620.

the Court directed the parties to provide an update on the status of the offer of compromise, within ten (10) days from notice.[35]

On October 3, 2019, the parties filed a Joint Manifestation,[36] stating that petitioner's offer of compromise has been approved by the TWG of the REB and has been elevated to the National Evaluation Board (NEB); and that petitioner's offer is set to be assigned to a revenue officer for evaluation and schedule for resolution, which the Court noted in the Resolution dated November 12, 2019.[37]

The parties failed to file a motion/manifestation as to the status of the compromise settlement.[38]

In the Resolution dated August 3, 2020,[39] the Court set the case for the initial presentation of petitioner's witness on October 7, 2020, considering that despite the opportunity granted for the parties to enter into a compromise, still, no compromise agreement has been reached by them.

Thereafter, the parties filed on October 13, 2020 their Joint Motion to Suspend Proceedings,[40] which was denied by the Court in the Resolution dated October 21, 2020.[41]

The parties then presented their respective documentary and testimonial evidence.

Petitioner presented the testimonies of the following individuals, namely: (1) Ms. Judith Labiaga,[42] petitioner's Operations Head; and (2) Atty. Edward M. Menor,[43] the Court-

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[35] Resolution dated October 7, 2019, Docket – Vol. II, pp. 623 to 624.
[36] Docket – Vol. II, pp. 625 to 627.
[37] Docket – Vol. II, p. 630.
[38] Docket – Vol. II, p. 631.
[39] Docket – Vol. II, pp. 634 to 635.
[40] Docket – Vol. II, pp. 636 to 640.
[41] Docket – Vol. II, p. 643.
[42] Exhibit "M[17]", Docket – Vol. II, pp. 649 to 725; Minutes of the hearing held on, and Order dated, October 27, 2020, Docket – Vol. III, pp. 1315 to 1317, and 1319 to 1320, respectively.
[43] Exhibit "P-346", Docket – Vol. III, pp. 1521 to 1544; Minutes of the hearing held on, and Order dated, October 19, 2021, Docket – Vol. III, pp. 1586 to 1590.

commissioned Independent Certified Public Accountant (ICPA).[44]

The ICPA Report was submitted on September 1, 2021.[45]

On November 8, 2021, Petitioner's Formal Offer of Evidence was submitted.[46] Respondent, however, failed to file his comment thereon.[47] In the Resolution dated April 28, 2022,[48] the Court admitted petitioner's offered documentary evidence, except for Exhibits "P-17", "P-169", "P-170" and "P-171", since the respective PDF files thereof are not accessible.

Consequently, petitioner filed on May 26, 2022 its Motion for Partial Reconsideration (on Resolution dated 28 April 2022).[49] Respondent, however, failed to file his comment thereon.[50] In the Resolution dated August 4, 2022,[51] the Court granted petitioner's Motion for Partial Reconsideration, and admitted Exhibits "P-17", "P-169", "P-170" and "P-171".

For his part, respondent presented the testimony of Revenue Officer Benedict Bacani.[52]

On October 5, 2022, Respondent's Formal Offer of Evidence was filed.[53] The BIR Records for this case was also transmitted on the same date.[54]

Petitioner then filed its Comment/Opposition [On Respondent's *Motion to Admit (Formal Offer of Evidence)* dated 04 October 2022] on October 17, 2022.[55] In the Resolution

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[44] *Oath of Commission* dated June 10, 2021, Docket – Vol. III, p. 1515-C; Minutes of the hearing held on, and Order dated, June 10, 2021, Docket – Vol. III, pp. 1515 to 1515-B and 1516 to 1517, respectively.
[45] Exhibit "P-345", Docket – Vol. III, pp. 1548 to 1567.
[46] Docket – Vol. III, pp. 1592 to 1603.
[47] Records Verification dated February 17, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1605.
[48] Docket – Vol. III, pp. 1609 to 1610.
[49] Docket – Vol. III, pp. 1613 to 1617.
[50] Records Verification dated July 7, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1628.
[51] Docket – Vol. III, pp. 1630 to 1632.
[52] Exhibit "R-10", Docket – Vol. III, pp. 1434 to 1438; Minutes of the hearing held on, and Order dated, September 20, 2022, Docket – Vol. III, pp. 1633 to 1635.
[53] Docket – Vol. III, pp. 1636 to 1639.
[54] Transmittal letter dated October 3, 2022, Docket – Vol. III, p. 1642.
[55] Docket – Vol. III, pp. 1644 to 1651.

dated December 13, 2022,[56] the Court admitted respondent's offered exhibits, except for Exhibit "R-8", for failure to present the original thereof for comparison.

The Memorandum for the Petitioner was filed on February 3, 2023.[57] However, respondent failed to file his memorandum.[58]

The present case was submitted for decision on March 15, 2023.[59]

THE ISSUES

As stipulated by the parties, the issues for the Court's resolution are as follows:

> "WHETHER OR NOT THE TAX DEFICIENCY ASSESSMENT HAS PRESCRIBED?
>
> WHETHER OR NOT RESPONDENT'S TAX DEFICIENCY ASSESSMENT IS VOID FOR HAVING BEEN ISSUED WITHOUT DUE PROCESS?
>
> WHETHER OR NOT THE SUBJECT TAX ASSESSMENT HAS ALREADY BECOME FINAL, UNAPPEALABLE, EXECUTORY AND DEMANDABLE BY REASON OF THE FAILURE OF THE PETITIONER TO SUBMIT SUPPORTING DOCUMENTS TO ITS PROTEST?
>
> WHETHER OR NOT THE PETITIONER IS LIABLE FOR ANY DEFICIENCY INCOME TAX, EXPANDED WITHHOLDING TAX AND DEFICIENCY DOCUMENTARY STAMP TAX FOR TAXABLE YEAR 2008?
>
> WHETHER OR NOT THE ADMINISTRATIVE PROTEST FILED BY THE PETITIONER BEFORE THE RESPONDENT IS A REQUEST FOR RECONSIDERATION OR A REQUEST FOR A RE-INVESTIGATION?"[60]

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[56] Docket – Vol. III, pp. 1654 to 1655.
[57] Docket – Vol. III, pp. 1656 to 1682.
[58] Records Verification dated March 6, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1684.
[59] Minute Resolution dated March 15, 2023, Docket – Vol. III, p. 1685.
[60] Issues to be Resolved, JSFI, Docket – Vol. I, p. 150. *an*

Petitioner's arguments:

Petitioner contends that the deficiency tax assessments issued by respondent for TY 2008 are void for failure to comply with the due process requirements as these were issued within the fifteen (15) day period allowed by law to respond to the PAN.

Petitioner narrates that it received the PAN on January 4, 2012, thus, it had until January 19, 2012 to file its reply or protest. However, petitioner alleges that it received a FAN/FLD dated on the same day it received the PAN, on January 11, 2012, which was eight (8) days earlier than the last day to file its reply or protest to the PAN. It further claims that at the time it filed its protest to the PAN on January 11, 2012, it was simultaneously served with the FAN/FLD and this, petitioner stresses, is a clear deprivation of its opportunity to be heard on the findings embodied in the PAN, hence, a violation of its right to due process.

Respondent's counter-arguments:

In his Answer, respondent cites the oft-repeated argument that all presumptions are in favor of the correctness of the assessment and contrary to the position of petitioner, the latter was fully appraised of the facts and the law on which the final assessment was issued.

Respondent further alleges that petitioner's failure to submit the documents in support of the protest has rendered the assessments final and demandable, hence its appeal to the Court should be dismissed.

THE RULING OF THE COURT

We shall first resolve whether petitioner was able to file its appeal with this Court in the manner and within the period prescribed by relevant laws, which is determinative of our jurisdiction to take cognizance of this case.

Records show that respondent issued a FAN/FLD for deficiency income tax, EWT and DST against herein petitioner for TY 2008 dated January 4, 2012. Petitioner received the

FAN/FLD on January 11, 2012 and in a letter dated January 23, 2012, it reiterated its protest against the PAN.

On June 25, 2012, the BIR issued a PCL which was received by petitioner on July 5, 2012 who subsequently sent a reply (to this PCL) via a letter dated July 11, 2012.

As earlier mentioned, petitioner received an FNBS from the BIR Revenue Region No. 7, RDO No. 043-A, on August 1, 2012 stating that petitioner has at least ten (10) days from receipt of the same to settle the deficiency internal revenue taxes for TY 2008 and that failure to settle the assessment within said period will constrain the BIR to enforce collection through summary or judicial remedies.

On August 3, 2012, petitioner filed the present Petition for Review.

In the case of *South Entertainment Gallery, Inc. vs. Commissioner of Internal Revenue*,[61] (*South Entertainment Gallery* case), the Supreme Court stated that in instances when respondent, without categorically deciding a taxpayer's protest, instead proceeds with distraint and levy or institutes an action for collection in the ordinary courts, such is considered an implied denial.

In the same *South Entertainment Gallery* case, the Supreme Court considered the FNBS as the respondent's decision appealable to this Court because of the tenor of finality of the statements contained therein, and we quote:

> **"In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent**, who received no other response to its request. **Not only was the Notice the only response received: its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration**. The very title expressly indicated that it was a *final* notice prior to seizure of property. xxx xxx xxx" (*Emphases supplied*)

[61] G.R. No. 225809, March 17, 2021.

In such an instance, a taxpayer's remedy is to file an appeal with this Court within thirty (30) days from the date that it received such notice pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, which states, in part, as follows:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction** of the Commissioner of Internal Revenue...**may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." (*Emphases supplied*)

Further, Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides as follows, and we quote:

> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> xxx xxx xxx
>
> **SEC. 3**. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, **ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments**. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

Thus, petitioner had thirty (30) days from receipt of the said FNBS on August 1, 2012, or until August 31, 2012, within which to file its appeal before this Court. Correspondingly, the filing of the present *Petition for Review* on August 3, 2012, was timely made.

We now proceed to decide on the merits of the subject assessments.

The subject tax assessments are void, for violation of petitioner's right to administrative due process.

Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, provides as follows:

> "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**: xxx
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings**.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within 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." *(Emphases supplied)*

To implement the foregoing provision, Section 3 of Revenue Regulations (RR) No. 12-99, provides in part as follows:

> "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:
>
> xxx xxx xxx
>
> 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. 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.**
>
> xxx xxx xxx
>
> 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. 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.
>
> xxx xxx xxx" (*Emphases supplied*)

Based on the foregoing provisions, as part of due process in the issuance of tax assessments, a taxpayer is given fifteen (15) days from receipt of the PAN to file a protest or response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, (without such protest or response being filed by the taxpayer within such period), that respondent may issue the corresponding FLD or FAN.

Relative thereto, in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*,[62] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process**.
>
> **The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer** and to render a decision based on these submissions. **Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity**.
>
> xxx xxx xxx
>
> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. **However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights**.
>
> xxx xxx xxx
>
> xxx **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons**.

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

> xxx xxx xxx
>
> **Administrative due process is anchored on fairness and equity in procedure.** xxx, **it demands that the party's defenses be considered by the administrative body in making its conclusions**, and that the party be sufficiently informed of the reasons for its conclusions.
>
> xxx xxx xxx
>
> xxx **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
>
> xxx xxx xxx
>
> **While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules**." *(Emphases supplied)*

Based on the foregoing doctrinal pronouncements, respondent is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Moreover, part of the administrative due process requirement is the recognition by the BIR that the taxpayer has the right to present evidence, and thus, should be allowed to submit comments or arguments with supporting documents *at each stage* in the assessment process. And in case respondent fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

In this case, the PAN was received by petitioner on January 4, 2012.[63] Pursuant to Section 3 of RR No.12-99, petitioner had fifteen (15) days or until January 19, 2012, within which to protest or respond to the said PAN.

However, respondent issued the subject FLD/FAN on January 4, 2012,[64] or on the same day as petitioner's receipt of the PAN, and before the lapse of the said fifteen (15)-day period for petitioner to protest or respond thereto. Clearly, the

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[63] Pars. 3 and 4, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[64] Pars. 5 and 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145; Exhibits "R-9", "R-9-a", "R-9-b", and "R-9-c", Docket – Vol. III, pp. 1455 to 1457, 1458, 1459, and 1460, respectively. *om*

FLD/FAN was prematurely issued thereby depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments.

While it may be true that petitioner was able to file its protest to the PAN on January 11, 2012,[65] the premature issuance by respondent of the subject FLD/FAN on January 4, 2012 prior to the lapse of the fifteen (15)-day period given to petitioner within which to respond to the PAN as mandated under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, clearly establishes that the BIR did not consider petitioner's protest to the PAN when it issued the FLD/FAN. This clearly constitutes denial of due process as petitioner was not given the opportunity to dispute and present evidence against the PAN, before the FAN was issued.

Correspondingly, since the subject deficiency tax assessments were issued in violation of petitioner's due process rights, the same are null and void. As such, the said deficiency tax assessments bear no valid fruit,[66] and must not be given any effect.

In view of the nullity of the subject tax assessments, this Court finds it unnecessary to address the remaining issues or matters raised in the instant case.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, for being void in view of the violation of petitioner's right to due process, the subject tax assessments embodied in the FAN/FLD dated January 4, 2012 issued against petitioner for deficiency income tax, EWT, and DST plus interests, for TY 2008, in the total amount of ₱5,578,461.96, are **CANCELLED** and **SET ASIDE**. Moreover, the Preliminary Collection Letter dated June 25, 2012 and Final Notice Before Seizure dated July 16, 2012, both issued against petitioner for TY 2008 are **WITHDRAWN** and **SET ASIDE**.

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[65] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 145.
[66] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

Respondent or any person duly acting on his behalf is hereby **ENJOINED** from collecting or taking further action on the subject deficiency taxes against petitioner for TY 2008.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice